

United States Senate

WASHINGTON, DC 20510

September 7, 2017

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Pruitt:

We write concerning the Environmental Protection Agency's (EPA's) enforcement of the New Source Performance Standard (NSPS) methane oil and gas rule ("Methane Rule").¹ Recently, *E&E News* reported that EPA would enforce the Methane Rule on a "case by case" basis,² which appears to represent a sharp break from the enforcement practices and policies that EPA has applied for many years under both Republican and Democratic administrations. Specifically, the statement suggests to both industry and the public that EPA will not take a comprehensive approach to enforcing the requirements of the rule. At the same time, the agency has not followed its long-standing No Action Assurance policy requiring that the Assistant Administrator of the Office of Enforcement and Compliance Assurance (OECA) establish well-substantiated findings and well-reasoned justifications for taking no enforcement action with respect to those requirements. As a result, the statement may signal an attempt to circumvent the ruling and mandate of the D.C. Circuit Court of Appeals, which specifically reinstated a June, 2017 compliance deadline for certain Methane Rule requirements.

The Methane Rule was finalized in 2016 after EPA sought input from states, tribes, industry, and environmental groups, reviewed more than 9,000 public comments, and conducted several public hearings. In addition to setting emissions control standards for methane when key pieces of equipment are installed or replaced at oil and gas production and transmission sites, the rule also mandated that operators implement programs to detect equipment leaks and repair them. It is well documented that the benefits of the rule exceed compliance costs by hundreds of millions dollars.³ In April of this year, EPA granted an industry petition to reconsider this rule. On June 5, EPA put in place a 90-day stay on certain aspects of the Methane Rule retroactive to June 2, the day before the rule required regulated parties to have concluded initial monitoring for

¹ Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources <https://www.federalregister.gov/documents/2016/06/03/2016-11971/oil-and-natural-gas-sector-emission-standards-for-new-reconstructed-and-modified-sources>

² With Obama EPA rule in force, compliance clash may loom. <https://www.eenews.net/stories/1060059016>

³ EPA releases first-ever standards to cut methane emissions from the oil and gas sector. <https://www.epa.gov/newsreleases/epa-releases-first-ever-standards-cut-methane-emissions-oil-and-gas-sector>

methane leaks and begin repairs. The United States Court of Appeals for the District of Columbia rejected EPA's stay, concluding that this action was "arbitrary and capricious" because EPA and petitioners had not established that it was impracticable for opponents of the rule to have raised their concerns during the public comment period. *Clean Air Council, et al. v. E. Scott Pruitt*, No. 17-1145 (D.C. Cir. July 3, 2017). On August 10, the full court rejected requests to rehear the case *en banc*.

With EPA's efforts to immediately halt enforcement of the Methane Rule rebuffed by the courts, its announcement that enforcement will now proceed on a "case by case basis" suggests that EPA will attempt to accomplish by an *ad hoc* enforcement approach what it could not accomplish through its unlawful stay. We appreciate that EPA, as with any agency with enforcement powers, enjoys discretion as to what cases to bring. But EPA has recognized that statements not to enforce the law or regulations "may erode the credibility of EPA's enforcement program" and undermine the agency's credibility, which is "vital as a continuing incentive for regulated parties to comply with environmental protection requirements."⁴ EPA's policy against so-called "No Action Assurances" has been in place since 1984. It requires that exceptions only be granted with the concurrence of the Assistant Administrator for Compliance and Enforcement Monitoring and be documented with justifying reasons in each case file.

Under your tenure, EPA has done an about-face on the need to regulate methane emissions, rejecting the conclusions of a careful and inclusive rulemaking process, apparently at the behest of a few regulated industries that already had the opportunity to provide comments during the rulemaking. These actions elevate the concerns of industry over the documented environmental and public health benefits of reducing methane leakage and may have the further effect of "erod[ing] the credibility of EPA's enforcement program," which Administrators of both parties have long fought to maintain. To permit us to determine whether these concerns are valid, please provide answers and documents responsive to the following questions:

- What standards are being used to determine EPA's "case by case" enforcement of the Methane Rule? Please provide us copies of all written guidance related to enforcement of this rule.
- Does the 1984 policy addressing "No Action Assurances" remain in full effect? If so, please explain how EPA's "case-by-case" approach to compliance with the Methane Rule is consistent with EPA's 1984 policy. If not, please provide a copy of EPA's new enforcement policy, and how it applies to the Methane Rule.
- If EPA has issued a No Action Assurance for the Methane Rule, please provide the documentation of the justifying reasons as required by the 1984 No Action Assurances Policy.

⁴ EPA Memorandum, "Policy Against No Action Assurances," Courtney M. Price, Assistant Administrator for Compliance and Enforcement Monitoring, Nov. 16, 1984.

- Which states have been delegated enforcement authority over the Methane Rule? What oversight and/or assistance will EPA provide these states to ensure that regulated entities are complying with the rule?
- What types of reports and notifications will EPA require states with delegated enforcement authority to submit to the agency to ensure that the states are enforcing the rule?

We would appreciate a response no later than September 28.


Sincerely,




Sheldon Whitehouse
United States Senator



Thomas R. Carper
United States Senator




Brian Schatz
United States Senator




Cory A. Booker
United States Senator




Al Franken
United States Senator



Michael F. Bennet
United States Senator



Edward J. Markey
United States Senator



Tom Udall
United States Senator