

Roll Back of Methane Regulations Would Pose Novel Legal Questions

Flashback to June 2021. President Biden had just signed a Congressional Review Act resolution reversing the Trump administration's roll back of EPA's methane regulations. "You may remember . . . when President Obama . . . and I [first] put in place a rule that required that companies capture methane leaks," Biden stated. "Since then, we've learned methane is even more dangerous to the climate than we knew." This bill is "an important first step of cutting methane pollution."

The tables have turned once again. In the second Trump administration, methane regulations will likely be back on the chopping block, and the CRA will once more be center stage.

Under the CRA's "lookback" provision, Congress can disapprove an agency rule during a short window of time following the rule's adoption. Disapproval requires both chambers of Congress to pass a resolution and the president must sign it. Importantly, the CRA also prohibits the agency from ever promulgating a "substantially similar" rule without new authorization from Congress.

The CRA methane resolution Biden signed did several things. It re-instituted the Obama-era New Source Performance Standards for methane, which established emissions standards for new and modified sources in the oil and natural gas sector. The resolution also restored the coverage of sources in the "transportation and storage" segment of the industry, which was dropped by the prior administration. Finally, the resolution restored the legal predicate for regulation of methane emissions from thousands of existing oil and gas sources under Section 111(d) of the Clean Air Act.

Following the CRA resolution, the Biden EPA proposed a revised NSPS standard for new and modified sources

and a new plan to regulate methane emissions from existing sources. The rules would limit routine flaring and create a new program for addressing large emissions events (i.e., "super-emitters"). They would also revamp the way fugitive emissions are addressed through leak monitoring, detection, and repair—incentivizing the use of innovative monitoring and leak detection technologies, from continuous monitoring to drones.

Congress then jumped back into the fray. As part of the Inflation Reduction Act, signed in August 2022, the law established an annual fee for every ton of methane that exceeds facility-specific methane intensity thresholds for oil and gas sources. Congress allowed the methane fee to sunset, but not until states promulgated EPA-approved plans, under Section 111(d), to control methane emissions with standards equal to or greater than those proposed by the Biden EPA.

During the second half of the Biden administration, the agency finalized four major methane rulemakings: for new and modified sources; for existing sources; for updating the methodologies for monitoring methane emissions for purposes of EPA's greenhouse gas inventory and the IRA methane fee; and for mechanisms enforcing the IRA methane fee. These four rules will undoubtedly be on the short list for reconsideration, but they raise a host of questions that practitioners will need to grapple with.

Given Republican control of both Houses of Congress, will the CRA be used to claw back these regulations? It turns out that only the most recent one—the November 2024 IRA methane fee rule—will likely fall within the reach of the CRA's "lookback window" (running from about August 2, 2024). The CRA may become moot, howev-



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Four rules governing this potent climate pollutant may be revisited under Trump

er, if Congress winds up repealing the statutory IRA methane fee provisions altogether.

What about Biden's 2021 CRA resolution revoking Trump-45's rollback of methane regulation? To what extent will the prohibition against adopting a "substantially similar" rule constrain Trump-47's ability to withdraw the Biden rules? This question will likely have to play out in the courts.

Will the courts have a chance to opine on EPA's authority to regulate methane emissions any time soon? Unlikely. Although the D.C. Circuit and Supreme Court denied requests to stay the rules pending resolution of legal challenges, the D.C. Circuit will likely not have a chance to opine before the new administration seeks to hold the cases in abeyance pending reconsideration.

Finally, will regulatory rollbacks stymie deployment of advanced technologies for methane monitoring and leak detection? Not necessarily. A strong case can be made that such technologies improve operational efficiency and strengthen compliance. Pressure for methane emissions reduction will continue to be exerted based on state standards, the desire to access E.U. markets with high standards, third-party monitoring of emissions by NGOs utilizing advanced technologies such as satellites, and the expansion of voluntary commitments to reduce emissions and produce natural gas with lower carbon intensity. Stay tuned.