June 10, 2022

Senator Shelley Moore Capito
Ranking Member
U.S. Senate Committee on Environment and Public Works
456 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Ranking Member Capito,

As the backbone of the American oil and natural gas industry, our respective organizations express our firm opposition to a methane emissions tax currently being considered in Congress as part of a potential budget reconciliation package.

Since 2012, the Environmental Protection Agency (EPA) has regulated methane emissions via the Clean Air Act (CAA) New Source Performance Standards (NSPS) OOOO and OOOOa, primarily through storage tank vapor capture, pneumatic controllers, and leak detection and repair. The focus is to prevent emissions from new facilities, identify leaks as early as possible, quickly fix them, and remove the emissions from the atmosphere.

Last year, EPA released proposed revisions to its NSPS rules that would further tighten emission standards for all new sources and update guidelines for existing sources. These revisions are likely to be finalized within the next year. Because EPA tightly regulates methane, any new fee is unlikely to have a large-scale impact on overall emission levels and would merely be punitive in nature. Furthermore, the extreme impracticability of a proposed tax leads us to believe that the true intent, combined with other proposals from Congress and the Administration, is not to protect the environment but to regulate American oil and natural gas production out of existence.

Although no legislative text has been made available at this time, media reports suggest a methane fee is under consideration as one of the primary energy and climate-related provisions in a slimmed-down Build Back Better Act (BBBA). The structure of a methane tax considered during negotiations on BBBA last year created a complicated and logically incoherent formula which amounts to taxing industry based on a hypothetical percentage of loss assigned to the basin they operate in.

The formula penalizes companies that have achieved lower emissions rates and disincentivizes them to further reduce emissions. The opt-out formula is also unworkable since direct measurements are not feasible, and the costs associated with determining whether a company's operations are covered by the opt-out will alone be prohibitive for numerous low-producing wells.

Widespread air monitoring systems do not exist that can accurately measure basin-wide methane emissions and reliably distinguish between those from oil and natural gas and those from natural or other manmade sources. At best, studies attempting to determine emissions or percentages of lost methane across entire basins are imprecise estimates, subject to scientific error.

Taxing companies based on a large-area estimate with scientific uncertainty and not directly on their actual loss percentage would be antithetical to American tax jurisprudence. It would also be double jeopardy, as companies already face significant costs controlling emissions per the NSPS rules. Even if methane emissions could be directly measured, rather than waste time and resources measuring them it is much preferable to quickly fix leaks and remove those emissions, as regulations generally require.

Our industry has a four decades-long record of reducing methane emissions and has delivered the most significant reduction in U.S. greenhouse gases, per the U.S. Energy Information Administration and the International Energy Agency. Oil and natural gas account for 28% of U.S. methane emissions while agriculture is the largest contributor of anthropogenic methane emissions at 40%, yet only emissions from the oil and natural gas industry are being targeted. We do not advocate for methane taxation of agriculture, as that would be just as impractical, but merely note these percentages for context.

Any potential methane fee will be punitive in nature, duplicative of existing regulations, and targeted at an industry that is already contributing to decreased emission levels. We oppose any such proposal, and urge Congress not to move forward with this ill-considered proposal.

Sincerely,

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Western Energy Alliance

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