

EPA'S Final Methane Rule Targets Super Emitters

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The U.S. Environmental Protection Agency's (EPA) [final methane rule](#) limits methane emissions from the oil and gas sector and may be the latest battleground over whether the agency is exceeding its authority to regulate planet-warming emissions.

EPA's Final Methane Rule and Super Emitters

This final rule is part of a suite of regulatory actions by the Biden administration to address climate change. It establishes a new "super-emitter" program that authorizes outside groups to become certified by the EPA to monitor for the biggest polluters using technology like satellites.

Once a "super-emitter" event is identified, the third party notifies the EPA, which verifies the report and informs the owner or operator. The owner or operator is then required to investigate and report back to the EPA. The agency will then publish the notifications on its website. While the EPA has released the certification requirements for outside monitors, nobody yet knows how the rule will operate in practice.

EPA's Final Methane Rule and the Major Questions Doctrine

Opponents of the rule may invoke the Major Questions Doctrine to challenge the rule. The theory, which says agencies must have express permission from Congress to handle politically and economically significant issues, gained new prominence after the Supreme Court used it in 2022 to invalidate an Obama-era EPA rule on power plant emissions. (For a detailed discussion of how to attack an agency rule, see my two-part podcast series, "[Demystifying Agency Rulemaking](#).")

The Major Questions Doctrine provides that when a federal agency decides on matters of vast economic and political significance, clear congressional authorization is required for the agency to act. This doctrine is based on the premise that Congress, not administrative agencies, should make major policy decisions affecting the economy or significant aspects of American life.

Under the Major Questions Doctrine, a court reviewing an agency's action may require more explicit and clear congressional approval for the agency's decision if it falls under the "major question" category. This principle acts as a check on the power of administrative agencies, essentially requiring that certain pivotal decisions must be clearly rooted in the statutory authority granted by Congress.

The Takeaway

The EPA's final methane rule was released on Friday, March 8, 2024, with an effective date of May 7, 2024. Affected parties may consider challenging the rule based on the Major Question Doctrine.

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