EPA and BLM Easing Methane Rules for the Oil and Natural Gas Industry

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Earlier this month, the Trump Administration took two actions in their efforts to reverse the Obama administration's climate change agenda. First, on September 11, 2018, the United States Environmental Protection Agency ("EPA") proposed amendments[1] to scale back the 2016 New Source Performance Standards for the oil and natural gas sectors[2] introduced by the Obama administration (the "2016 Methane Rule"). The 2016 Methane Rule imposed a number of requirements on new and modified oil and gas operations aimed at reducing emissions of methane, a potent greenhouse gas ("GHG") which traps 87 times the heat of carbon dioxide. The proposed amendments to the 2016 Methane Rule (the "Methane Rule Amendments") would, among other changes, relax the fugitive emissions monitoring requirements by reducing the required frequency of monitoring, extend the timelines for repairing leaks and allow compliance with states' standards in certain areas as an alternative to corresponding federal standards. Second, on September 18, 2018, the Bureau of Land Management ("BLM") released a final rule revising the 2016 Waste Prevention, Production Subject to Royalties, and Resource Conservation Rule[3] (the "Waste Prevention Rule"), which are aimed at reducing methane emissions at existing oil and gas operations on federal land. The rule setting out the BLM's revisions[4] (the "Revised Waste Prevention Rule") largely returns to an updated version of the pre-Waste Prevention Rule standards.

These actions follow other EPA efforts aimed at reversing the prior administration's regulatory initiatives targeting climate change, including the EPA's publication of proposed rules last month to freeze fuel-efficiency standards for cars and light trucks[5] and to replace the Obama administration's plan to regulate GHG emissions from the power sector, the Clean Power Plan, with the substantially less stringent Affordable Clean Energy Rule.[6] And these efforts are expected to continue: the EPA plans a broader rulemaking later this year which may end direct regulation of methane emissions from the oil and gas sector entirely as well as reversing rules requiring new coal-fired power plants to install expensive carbon capture and sequestration technology.

Key Provisions of the Methane Rule Amendments

- Relaxed Monitoring Requirements. The Methane Rule Amendments proposes to require less frequent fugitive emissions monitoring citing concerns about the burden on small businesses with

[1] Currently available at **https://www.epa.gov/sites/production/files/2018-09/documents/frnoilgasreconsideration2060-at54nprm20180910.pdf** (hyperlink will no longer be available once the rule is published in the Federal Register).

[2] 81 Fed. Reg. 35824.

[3] 81 Fed. Reg. 83008.

[4] Currently available at **https://www.blm.gov/sites/blm.gov/files/Final%20Rule%20-1004-AE53%20-%20%20Ready%20for%20OFR%209.18.18_508%20%281%29.pdf** (hyperlink will no longer be available once the rule is published in the Federal Register).

[5] *Available at* **https://www.govinfo.gov/content/pkg/FR-2018-08-24/pdf/2018-16820.pdf**.

[6] *Available at* **https://www.gpo.gov/fdsys/pkg/FR-2018-08-31/pdf/2018-18755.pdf** and see our recent memo "EPA's New Greenhouse Gas Emissions Rule for U.S. Power Sector – Legal Considerations and Business Impacts" *available at* **https://www.davispolk.com/files/2018-08-24_epas_new_greenhouse_gas_emissions_rule_for_u.s._power_sector.pdf**.

relatively low emissions reduction potential. Whereas the 2016 Methane Rule called for semiannual monitoring of the fugitive emissions components at all well sites regardless of size, the Methane Rule Amendments propose annual monitoring for so-called "non-low production well sites," i.e., those with combined oil and natural gas production of greater than 15 barrels of oil equivalent ("boe") per day, and biennial monitoring for "low production well sites," i.e., those with combined oil and natural gas production of less than 15 boe per day. The Methane Rule Amendments also call for reducing the frequency of monitoring requirements of compressor stations from quarterly to semiannual or annual because the EPA was "unable to conclude that quarterly monitoring is cost-effective." In addition, the Methane Rule Amendments provide that monitoring may be stopped altogether when major production and processing equipment is removed from a site and all that remains are wellheads.

- Relaxed Repair Requirements. The EPA is also proposing changes to the fugitive emissions repair requirements. The 2016 Methane Rule requires repairs to be completed within a 30-day timeframe, while the Methane Rule Amendments would require a "first attempt at repair" within 30 days and any issue to be "repaired" within 60 days. A "first attempt at repair" is defined as an action taken to stop or reduce fugitive emissions, while "repaired" means that components have been altered in order to eliminate fugitive emissions and a resurvey has been conducted to ensure that repairs have been completed effectively.

- Alternative Methods of Compliance. The Methane Rule Amendments also propose changes to alternative means of emissions limitations ("AMEL") – an equivalent method of meeting fugitive emissions standards based on either the use emerging technologies or compliance requirements under state or local programs. The EPA is proposing to streamline the application process for the use of AMELs, particularly in connection with the adoption of emerging technologies, by, among other things, allowing single applications to multiple sites. The EPA is also establishing options for alternative compliance with state requirements. When developing the 2016 Methane Rule, the EPA determined that no state program was sufficiently comparable to the federal program to reflect what it had identified as the "best system of emissions reduction." The subsequent development of state programs led the EPA to identify certain aspects of existing state programs as equivalent to the proposed amendments and allow compliance with those particular aspects as an alternative to compliance with the analogous sections of the EPA's proposed requirements – even when those standards may be less stringent.[7]

Key Provisions of the Revised Waste Prevention Rule

The final rule issued by the BLM, while similar to the EPA's Methane Rule Amendments, applies to current and future oil and gas production facilities on federal land. The preamble to the Revised Waste Reduction Rule notes that the BLM believes revisions were required because many of the provisions of the Waste Prevention Rule exceed its statutory authority, much of the rule is duplicative of EPA and state-level regulation, the compliance costs outweigh the benefits of the rule, and the oil and gas sector is voluntarily pursuing methane emissions reductions. The Revised Waste Prevention Rule is essentially an improved version of NTL-4a,[8] the rule which was in place for the 35 years before the Waste Prevention Rule was implemented. The Revised Waste Prevention Rule includes a variety of changes including

[7] EPA has specifically identified standards in California, Colorado, Ohio, and Pennsylvania for both well sites and compressor stations, and Texas and Utah for well sites only.

[8] United States Department of the Interior - Geological Survey Conservation Division, *Notice to Lessees and Operators of Onshore Federal and Indian Oil and Gas Leases - Royalty or Compensation for Oil and Gas Lost available at* **https://www.blm.gov/sites/blm.gov/files/energy_noticetolessee4a.pdf**.

rolling back of many the novel aspects of the Waste Prevention Rule, most of which the BLM suggests are already regulated by the EPA under the Clean Air Act. Notably, the BLM is rescinding the Waste Prevention Rule's "capture targets" which required oil producers to capture a certain amount of the natural gas associated with production, and also deferring to state and tribal regulation regarding flaring so long as those regulations provide reasonable assurance that operators will not be permitted to engage in flaring without limitation and associated gas will be controlled. The Revised Waste Prevention Rule also increases the permissible volume of short-term flaring (such as in connection with initial production testing or downhole well maintenance) to 50 million cubic feet (MMcf) of gas from 20 MMcf as permitted under the Waste Prevention Rule.

Next Steps for the Methane Rule Amendments and the Revised Waste Prevention Rule

The EPA's proposed amendments to the 2016 Methane Rule will be subject to a 60-day comment period beginning on the day that the rule is published in the Federal Register and a public hearing in Denver, Colorado is planned. The proposal will also likely be the target of legal and administrative challenges by certain states, environmental groups and other stakeholders. One such potential challenge could be based on the EPA's failure to adequately consider the public health impact of the proposal, including the impact of volatile organic compounds ("VOCs") and hazardous air pollutants ("HAPs") emissions, which the EPA noted was due to data limitations regarding the footprint of the oil and gas industry. The Revised Waste Prevention Rule is set to become effective 60 days from publication in the Federal Register. It is also expected to become the subject of legal challenges.

Business Implications

If finalized, the Methane Rule Amendments and the Revised Waste Prevention Rule could have a substantial impact on the oil and gas sector. The EPA estimates savings to the oil and gas industry of as much as $484 million between 2019 and 2025 due to decreased expenses relating to monitoring and expedited repairs, and the BLM estimates savings of as much as $1.08 billion between 2019 and 2028 due to reduced compliance costs. While the changes would reduce costs for the owners and operators of oil and natural gas wells, they might also have a negative impact on companies that service the oil and natural gas industry. Reduced monitoring and repairs could mean a reduction in opportunities for companies providing compliance-related services, such as fugitive emissions monitoring and leak repair, reporting and record keeping, and installation and maintenance of control equipment, a reversal of the trend of growth in that sector since the introduction of the 2016 Methane Rule. The changes could also have an unintended negative long-term effect on natural gas, viewed by many as the bridge fuel for the 21st century, where companies typically flare natural gas (resulting in methane emissions subject to the amendments) rather than capture and transmit it for energy use because of the lack of sufficient distribution systems. If the amendments become law, particularly in conjunction with the implementation of the Revised Waste Reduction Rule, they may disincentivize investment by the oil & gas industry to get these distribution systems built.

As with the Trump administration's other efforts to roll back Obama-era climate change initiatives, state, industry and investors can be expected to take more of a leadership role in addressing methane emissions from the oil and gas sector. For example, states such as Pennsylvania and Colorado, whose methane inspection and repair regulations are stricter than that the Methane Rule Amendments, are likely to enforce its methane rules notwithstanding what the EPA does. And about a week after the EPA's release of its proposed rule, Royal Dutch Shell announced a commitment to limit methane emissions to less than 0.2% of the total natural gas extracted from any one project. This announcement followed commitments made earlier this year by Exxon Mobil and BP PLC to cut methane emissions. In addition, the Oil and Gas Climate Initiative, a network of the world's largest oil and gas companies, are expected to announce methane reduction targets by the end of the year.

Finally, methane emissions, together with other greenhouse gas issues, has been a popular topic for environmental shareholder proposals in the past several proxy seasons. These proposals, targeted at oil

and gas companies, take various forms, including requesting companies to disclose their efforts above and beyond current regulatory requirements to measure, monitor, disclose and reduce their methane emissions. Particularly if the EPA's amendments become law, relevant public companies should be prepared for a significant uptick in methane-related proposals seeking this disclosure or resulting in companies taking measures to reduce their methane emissions in exchange for proposal withdrawal. If shareholders do not take up the mantle and push for methane information through shareholder proposals, on Monday, a coalition of senators proposed a bill, the Climate Risk Disclosure Act, which if passed, would tighten requirements for oil and gas companies to disclose in their public filings how they detect, mitigate and aim to reduce leakage of methane.

If you have any questions regarding the matters covered in this publication, please contact any of the lawyers listed below or your regular Davis Polk contact.[7]

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[7] The authors gratefully acknowledge the assistance of law clerk Michael Stenbring in preparing this memorandum.