



November 1, 2017

US Department of the Interior
Bureau of Land Management
Mail Stop 2134 LM
1849 C St., NW
Washington, DC 20240

Re: Waste Prevention, Production Subject to Royalties, and Resource Conservation; Delay and Suspension of Certain Requirements, Docket ID No. BLM-2017-0002-0001

To Whom It May Concern:

The American Exploration & Production Council (AXPC) appreciates the opportunity to provide comment on the Bureau of Land Management's (BLM) proposed suspension of certain provisions of the Methane and Waste Prevention rule (the "2016 Rule"). Given the lengthy original rulemaking process, which lasted over two years, we believe that more than a year will be needed to revise the new final rule. Thus AXPC requests that the BLM stay compliance dates for two years, as suggested as an alternative length in the Discussion of the Proposed Rule (FR 10/5/17, p. 46460).

AXPC is a national trade association representing 34 of America's largest and most active independent natural gas and crude oil exploration and production companies. The AXPC's members are "independent" in that their operations are limited to the exploration for and production of natural gas and crude oil. Moreover, its members operate autonomously, unlike their fully integrated counterparts, which operate in different segments of the energy industry, such as refining and marketing. The AXPC's members are leaders in developing and applying the innovative and advanced technologies necessary to explore for and produce natural gas and crude oil that allows our nation to add reasonably priced domestic energy reserves in environmentally responsible ways.

AXPC member companies operate across the US and many have operations on federal lands in the western US. Our members have struggled for years to obtain timely drilling permits to develop the federal leases which they own. Adding administrative filings and the emissions requirements called for in this rule only exacerbates this situation.

The BLM Waste Prevention Rule Exceeds the BLM's Statutory Authority

AXPC believes that the BLM lacks authority to require the oil and gas industry to reduce such emissions, except as those reductions may occur as an incident of an otherwise lawful measure to prevent the "waste" of gas adopted pursuant to BLM's authority under the Mineral Leasing Act ("MLA") of 1920. For

purposes of the MLA, it is well established that oil or gas is “wasted” only if it could have been economically captured and marketed or put to beneficial use on the lease, but is not. Thus, to establish that a proposed waste prevention measure is a “reasonable precaution” against “waste,” and authorized under the MLA, BLM must demonstrate that the gas that is subject to the measure can be economically captured by the operator. If the oil or gas cannot be practically and economically captured, then it is not “waste,” and BLM has no authority to regulate.

Federal oil and gas lessees have a right to develop the oil and gas resources on their leases, subject to the requirement that they take “reasonable precautions” to prevent the “waste” of those resources, and that they comply with other applicable federal laws and regulations, like the ones adopted by EPA to regulate air emissions. The fact that several of the emission requirements in this rule are stated to be satisfied by compliance with the EPA New Source Performance Standard (NSPS) OOOOa makes it very clear that BLM has deviated from its waste authority into EPA’s air emissions arena.

Considering the obvious authority question of the 2016 Rule, the BLM’s decision to re-evaluate is a prudent approach. As stated in the Background of the proposed suspension (FR 10/5/17, p. 46459), the rule replaced Notice to Lessees 4-A (NTL-4A). BLM should focus the revised rule on an update to NTL-4A, which has been in place since 1974. The simple concepts of “avoidable” and “unavoidable” losses in this guidance are still valid today based on an operator taking “reasonable precautions” to prevent “waste” of product. Operators should not be penalized with uneconomic air emissions requirements disguised as “waste” prevention.

BLM’s 2016 Emissions Requirements are Redundant and Confusing

EPA NSPS OOOOa already required methane based Leak Detection and Repair (LDAR) for new and modified facilities built/modified after September 18, 2015. The first annual reporting of this program was due in October 2017. There are also VOC-based emission requirements for tanks, compressors and pneumatic devices under EPA NSPS OOOO for sites constructed/modified after August 21, 2011. Under this rule sites in operations prior to 8/23/11 that are considering “existing sources” by EPA would now require a third set of emissions requirements imposed by the BLM Waste rule. Considering the fact that the average older federal oil well makes about 10 barrels of oil per day and the average gas well 60 MCFD many of these wells will become uneconomic resulting in thousands of such wells being shut in. Also the emission risk from such low volume and pressure wells is very small. In addition, EPA withdrew the Information Collection Request (ICR) on “existing sources” as it evaluates the need for such emissions requirements for these sites.

It is also important to consider that most states have rules on venting and flaring of gas from wells. New Mexico rule 19.15.18.12/19.15.7.37 requires agency permits for flaring after the initial flowback. The NM Environmental Department (NMED) also has rules requiring combustion efficiency for flares used to burn such gas. Similarly, North Dakota NDCC rules NDCC 38-08-03, 38-08-04, 38-08-06.4, 38-07-04 prevent gas waste and there are combustion efficiency limits from NDDoH. No venting of gas is allowed in ND. Both NM and ND also have gas capture plan requirements to ensure operators are being prudent in securing gas gathering and processing contracts. As stated in the suspension publication, the most important problem the BLM could solve to reduce flaring of gas is to timely approve operator and gatherers request for right of ways for new pipelines.

BLM Should Also Rescind the Royalty Changes to Reinstated Leases Proposed in 3103.3-1

There is no justification for the royalty increases in noncompetitive or competitive leases which are reinstated. Also BLM currently does not allow commingling of oil or gas with different federal royalty interest so such changes could result in the need to construct separate facilities for measurement of these new royalty leases.

BLM Should Add Operator Variances to 3179.401 State/Tribe Variance

It may not be possible for an operator to persuade the state to request a variance for a specific operator(s), especially if the request is only for a portion of the state. An operator(s) should have the flexibility to offer an alternative approach if reasonable for consideration by the State BLM Director.

AXPC Supports the Suspension of All Sections Proposed by BLM

We believe that BLM has done an excellent job of evaluating the impactful and questionable sections of the rule and fully supports the recommended suspensions. Below please find comments on each section recommended for delay.

Waste minimization plans: Since the plan is not “approved” by BLM it is an unnecessary, ineffective administrative burden. Requiring well operators to provide confidential gathering system capacity and throughput information is not feasible. Even if this data were available to such operators, the gathering information would surely change by the nearly a year it takes BLM to approve a drilling permit.

Gas Capture Requirement: While this section attempted to model the ND gas capture target approach, as written it is almost impossible to implement. This section would require a totally separate accounting process from what is currently needed. How could operator equitably restrict production from wells across the relevant area” which includes state and private interest?

Measuring and reporting volumes flared/vented: What benefit is it to measure or estimate gas that is not royalty bearing?

Determinations regarding royalty-free flaring-Prior flaring approvals should remain effective until the BLM revises the rule. Having the BLM twice review the same site under a different rule is non-productive at best.

Well Drilling: Requiring the capture of the insignificant volumes of gas that break out of the mud while drilling gas bearing formations is infeasible.

Well completion and related operations: These requirements are redundant with the “green completion” requirements of NSPS OOOO and OOOOa and should be rescinded.

Other Emissions sections: covering pneumatic controllers/pumps, storage vessels, liquid unloading and leak detection and repairs will mainly impact “existing sources” including mostly low volume, marginal

wells with very limited emission potential as discussed above. These sections should definitely be suspended and ultimately eliminated as they go beyond BLM authority regarding waste and into EPA OOOO and OOOOa rules on air emissions.

Conclusion

In the 2008 there were 5,044 wells drilled on federal, onshore lands in the US. In 2016 this number had steadily dropped to fewer than 1,000. We applaud this administration's shift in priorities to encourage the development of federal minerals for the benefit of the local communities, the states and the entire United States of America.

AXPC fully supports BLM's plan to delay compliance dates of the 2016 rule. We implore the BLM to expedite this rulemaking to ensure completion before the 1/17/18 existing source sections become effective as they will be very costly and likely result in the shut in of thousands of marginal wells.

Sincerely,

A handwritten signature in blue ink, appearing to read "V. Bruce Thompson". The signature is fluid and cursive, with the first name "V." and last name "Thompson" clearly distinguishable.

V. Bruce Thompson

President
American Exploration & Production
Council