

Existing Oil And Gas Sources Could Face More Methane Pain

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On March 10, 2016, the U.S. and Canada released a joint statement on climate, energy and Arctic leadership in conjunction with a meeting between President Obama and Canadian Prime Minister Trudeau. Included in the statement was the announcement that the U.S. Environmental Protection Agency “will begin developing regulations for methane emissions from existing oil and gas sources immediately and will move as expeditiously as possible to complete this process.” This is a move the industry has long feared as the Obama administration has continued to expand greenhouse gas-related regulations during its second term. Methane regulations for existing sources are likely to result in significant new costs at a time when the industry is facing punishing market conditions and a barrage of new federal rules.



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Why is the Administration Targeting Methane?

Methane is considered to be a potent GHG, and is being regulated as part of the Obama administration’s ambitious and far-reaching climate change agenda. As with its prior rulemakings, the EPA proposes to regulate methane purely based on the contribution that the EPA asserts that the gas has on climate change, and not because the methane emissions from oil and gas operations have any other impact on human health or the environment.



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Unlike other compounds the EPA regulates, methane is not toxic, and does not accumulate in the body. The administration identified methane as the second most prevalent GHG emitted in the U.S. from human activity, and deemed methane a GHG with significantly more global warming potential than carbon dioxide. Moreover, the EPA has determined that nearly 30 percent of those emissions come from oil production and the production, processing, transmission and distribution of natural gas.



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How is this Proposal Different From Previous Measures?

In August 2015, the Obama administration proposed expanding existing regulations, known as "Subpart OOOO," to apply to methane emissions from certain sources in the upstream and midstream segments of the oil and gas sector built or modified after Sept. 18, 2015. The

EPA anticipates finalizing these expanded regulations which impose methane requirements — known as "Subpart OOOOa" — this summer.

Unlike Subpart OOOOa, however, the administration's new methane proposal would also apply to existing oil and gas sources. This new proposal would be the first rule that directly regulates methane at existing oil and gas sources. As a result, this most recent proposal could subject hundreds of thousands of older sources to methane regulations across the country. Indeed, the U.S. Energy Information Administration estimates there are currently nearly 515,000 producing natural gas wells in the U.S. The vast majority of those wells would be considered existing sources and potentially be covered by this new methane rule.

Separately, the EPA proposed draft control techniques guidelines (CTG) in August 2015, which could result in additional controls on existing oil and gas sources in certain parts of the country that are not in attainment with the EPA's new ground level ozone standards. Unlike the CTG proposal, which is geographically limited and allows the states some discretion in how the controls are implemented, the administration's most recent methane proposal could potentially impose a uniform federal standard on existing sources across the entire U.S.

What Next Steps Will the EPA Take?

The EPA plans to ask for information from companies in the oil and gas industry via an "information collection request." The EPA has indicated that it will begin this part of the process in April 2016, with a goal of receiving the first phase of information later this year. The agency will then use the information that it obtains to begin formulating a proposed rule. According to the EPA, it will be seeking information on a broad range of topics, including the existing technologies to reduce those emissions and the costs of those technologies, how equipment and emissions controls are, or can be, configured, and what installing those controls entails. The EPA will also be engaged in an outreach program to talk with industry, environmental groups, and state, local and tribal air agencies about its plan. After receiving information and feedback through this process, the EPA will issue a proposed rule for public comment.

What Should I Do if I Am Concerned About this Proposal?

By participating early in the regulatory process, members of the oil and gas industry can help the EPA identify particularly onerous or technically infeasible regulatory requirements that it is considering. Companies concerned with the impact that these regulations could have on their operations can compile and share information with the EPA demonstrating why a proposed regulation is unnecessary, or demonstrating how the EPA could meet its goals without imposing costly new obligations. Additionally, there may be opportunities to meet with agency representatives to provide targeted feedback on technical and cost impacts of an existing source methane rule on a company's particular operations.

What Will the 2016 U.S. Elections Mean for the EPA's Methane Rules?

The EPA's initial statements regarding its proposal for an existing source methane rule suggest that it will not seek to finalize a rule by the end of the Obama administration. If the clock runs out for the current EPA before an existing source rule is proposed or finalized, the new administration that takes office in January 2017 would have latitude in shaping a final methane rule for existing sources, and deciding whether to proceed with such a rule. For Obama administration rules finalized before January 2017, there is a much higher hurdle for the new administration to modify or rescind such regulations. An

agency must generally follow lengthy procedures, such as advance notice and an opportunity for public comment, before rescinding, amending or replacing a final regulation.

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