

August 25, 2016

Energy Update

Outlook for Environmental and Energy Regulations

As the Obama Administration enters its final months, federal agencies are working to advance a series of energy and environmental rulemakings, even as they are also seeking to resolve court challenges and stays to other regulations.

Some of the significant regulations that remain in development – or are tied up in court challenges – include:

- ***Clean Power Plan:*** On October 23, 2015, the Environmental Protection Agency (EPA) published the final rule establishing the [Clean Power Plan](#). The regulations would restrict greenhouse gas (GHG) emissions from the power sector. States would play the central role in implementing the Clean Power Plan, however the program would be enforced by the EPA, which can step in to establish a Federal Implementation Plan (FIP) for any state that fails to meet the requirements of the regulations. The Clean Power Plan directs states to take actions reducing GHG emissions from existing power plants by 32 percent below 2005 levels by 2030. On February 9, 2016, the Supreme Court issued a stay on enforcement of the Clean Power Plan while its merits are litigated. Oral arguments in the case, *West Virginia v. EPA*, are scheduled before the U.S. Court of Appeals for the D.C. Circuit on September 27, 2016.
- ***Oil and Gas Sector Methane Emissions Information Collection Request:*** On June 3, 2016, the EPA published a [notice](#) announcing the “Proposed Information Collection Request; Comment Request; Information Collection Effort for Oil and Gas Facilities” as the first step towards establishing emissions regulations for existing oil and gas sector sources.
- ***Study on the Impact of Hydraulic Fracturing on Drinking Water Resources:*** In 2009, Congress, through the conference report for the “Department of the Interior, Environment and Related Agencies Appropriations Act, 2010” ([H.Rept. 111-316](#)) requested that the EPA “carry out a study on the relationship between hydraulic fracturing and drinking water, using a credible approach that relies on the best available science, as well as independent sources of information.” On June 4, 2015, the EPA released its [draft](#) “Assessment of the Potential Impacts on Hydraulic Fracturing for Oil and Gas on Drinking Water Resources”. While the study found no “widespread, systemic impacts on drinking water resources”, it raised a number of potential concerns. On August 11, 2016, the EPA’s Science Advisory Board (SAB) issued the “[SAB Review of the EPA’s draft Assessment of the Potential Impacts of Hydraulic Fracturing for Oil and Gas on Drinking Water Resources](#)”. The SAB made a number of recommendations, including calling on the EPA to substantiate the statement

that hydraulic fracturing has not “led to widespread, systemic impacts on drinking water resources in the United States.” Having received the SAB’s final recommendations, the EPA is now developing a revised version of its draft report.

- **2017 Renewable Fuel Standard:** On May 31, 2016, the EPA published the [Notice of Proposed Rulemaking \(NPRM\)](#) titled “Renewable Fuel Standard Program: Standards for 2017 and Biomass-Based Diesel Volume for 2018”. The Renewable Fuel Standard (RFS) establishes the requirements for blending ethanol and other biofuels into the transportation fuel supply. Congress established the RFS in the “Energy Policy Act of 2005” ([P.L. 109-58](#)) and expanded the requirements in the “Energy Independence and Security Act of 2007” ([P.L. 110-140](#)). The RFS sets annual targets for renewable fuels, including ethanol, advanced biofuels and cellulosic biofuels. The EPA has struggled in recent years to implement the program as the nation reached the so-called “blend wall”, when the amount of gasoline and other conventional fuels available cannot absorb the targeted amounts of biofuels. Most biofuels are blended into the transportation fuel supply as gasoline with ten percent ethanol (E10), which contributes to the overall blending constraints. To reflect the impact of the blend wall, recent years’ RFS volume totals have lagged below those set in statute. That would be the case again in 2017 under the NPRM published on May 31. The EPA is working to issue the final rule on the 2017 RFS by the end of this year.
- **Hydraulic Fracturing on Federal Lands:** This rule has been overturned by a federal court, but that decision is subject to appeal. On March 26, 2015, the Department of Interior’s Bureau of Land Management (BLM) published the [final rule](#) titled “Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands”. The rule sets forth requirements for operators engaged in hydraulic fracturing on federal lands. On June 24, 2015, the U.S. District Court for the District of Wyoming issued an “[Order Postponing Effective Date of Agency Action](#)”. On September 30, 2015, the same court issued a [preliminary injunction](#) blocking implementation of the regulations, and on June 21, 2016, it issued an [order](#) setting aside the rule.
- **Gas Flaring and Venting on Federal Lands:** On February 8, 2016, the BLM published an [NPRM](#), titled “Waste Prevention, Production Subject to Royalties, and Resource Conservation”. As described by the BLM, the regulations are intended “to reduce waste of natural gas from venting, flaring, and leaks during oil and natural gas production activities on onshore Federal and Indian leases”. The new regulations “would require operators to take various actions to reduce waste of gas, establish clear criteria for when flared gas would qualify as waste and therefore be subject to royalties, and clarify the on-site uses of gas that are exempt from royalties.” BLM expects to publish the final rule by this November.
- **Onshore Oil and Gas Order Number 1:** As described in the most recent “[Unified Agenda of Regulatory and Deregulatory Actions](#)”, BLM plans to issue a proposed “rule [that] would revise [Onshore] Order [Number 1] by requiring electronic submission of Applications for Permit to Drill (APD) and Notices of Staking (NOS).” BLM asserts that the changes “would help expedite and streamline the review process of APDs and NOSs.”
- **Onshore Oil and Gas Orders Numbers 3, 4, and 5:** BLM published an [NPRM](#) on July 13, 2015, which would replace Onshore Oil and Gas Order Number 3. The revised Order Number 3 would include “the creation of uniform standards for locating, tracking, and reporting facility measurement points; new reporting requirements for oil and gas purchasers

and transporters; and clarification of theft and fraud reporting.” On September 30, 2015, BLM published an [NPRM](#) that would replace Onshore Oil and Gas Order Number 4, which governs the measurement of oil produced on federal lands. On October 13, 2015, the BLM published an [NPRM](#) which would replace Onshore Oil and Gas Order Number 5, which governs the measurement of gas produced on federal lands. The BLM is expected to issue all three final rules together by the end of September, 2016.

- ***Safety of On-Shore Hazardous Liquid Pipelines:*** On October 13, 2015, the Pipeline and Hazardous Materials Safety Administration published an [NPRM](#) titled “Pipeline Safety: Safety of Hazardous Liquid Pipelines”. The NPRM would establish significant new requirements for operators of crude oil, refined product and other hazardous liquid pipelines, including: requiring “inspections of pipelines in areas affected by extreme weather, natural disasters, and other similar events” within 72 hours of such an event; expanding integrity management requirements to “require periodic inline integrity assessments of hazardous liquid pipelines that are located outside of [High Consequence Areas]”; and requiring “that all new hazardous liquid pipelines be designed to include leak detection systems.” PHMSA expects to publish the final rule later this year.
- ***Safety of Gas Transmission and Gathering Pipelines:*** On April 8, 2016, PHMSA published the [NPRM](#) titled “Pipeline Safety: Safety of Gas Transmission and Gathering Pipelines”. The NPRM would establish new requirements for: how operators inspect natural gas transmission pipelines, including in-line inspections (ILI); what actions they take in response to those inspections; and how they verify the maximum allowable operating pressure (MAOP) of pipelines.
- ***Underground Natural Gas Storage:*** PHMSA is developing an Interim Final Rule that would establish safety standards for the underground storage of natural gas. On February 5, 2016, PHMSA issued an [Advisory Bulletin](#) on “Safe Operation of Underground Storage Facilities for Natural Gas”. In issuing the bulletin, PHMSA stated that it “is intended to inform operators about recommended practices and to urge operators to take all necessary actions, including but not limited to those set forth in this bulletin, to prevent and mitigate breach of integrity, leaks, or failures at their underground storage facilities and to ensure the safety of the public and operating personnel and to protect the environment.” According to the most recent “[Unified Agenda for Regulatory and Deregulatory Actions](#)”, “PHMSA is planning to issue an interim final rule to require operators of underground storage facilities for natural gas to comply with minimum safety standards, including compliance with API RP 1171, Functional Integrity of Natural Gas Storage in Depleted Hydrocarbon Reservoirs and Aquifer Reservoirs, and API RP 1170, Design and Operation of Solution-mined Salt Caverns Used for Natural Gas Storage.”
- ***Operator Qualification, Cost Recovery, Accident and Incident Notification, and Other Changes:*** On July 10, 2015, PHMSA published an [NPRM](#) titled “Pipeline Safety: Operator Qualification, Cost Recovery, Accident and Incident Notification, and Other Pipeline Safety Proposed Changes”. The NPRM would: establish new requirements for certain pipeline employee qualifications; require that pipelines notify the National Response Center “as soon as practicable” following “confirmed discovery” of a covered incident; require notification to PHMSA of pipeline flow reversals and changes to the type of product transported; incorporate by reference industry standards on inline inspections and stress

corrosion cracking direct assessment (SSCDA); and implement other changes to pipeline safety regulations. PHMSA plans to issue the final rule later in 2016.

- ***Valve Installation and Minimum Rupture Detection Standards:*** This planned NPRM would require mandatory installation of automatic shutoff valves and remote controlled valves and establish performance based metrics for rupture detection for gas and liquid transmission pipelines. Section 4 of the “Pipeline Safety, Regulatory Certainty and Job Creation Act of 2011” ([P.L. 112-90](#)) requires PHMSA, “if appropriate”, to promulgate rules to “require...the use of automatic or remote-controlled shut-off valves, or equivalent technology, where economically, technically, and operationally feasible...” PHMSA had been expected to issue an NPRM on valve installation and rupture detection by September, 2016.

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