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ENVIRONMENTAL LAW

EPA Final Rules Amend Greenhouse Gas Emissions Standards for Oil and Gas Industry

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Special to the Legal

On Aug. 13, the Environmental Protection Agency (EPA) issued two final rules impacting the new source performance standards (NSPS) for the oil and natural gas industry pursuant to its authority under the Clean Air Act (CAA). The rules finalized amendments to the NSPS at 40 CFR part 60, subpart OOOO (promulgated in 2012) and OOOOa (promulgated in 2016) concerning the regulation of greenhouse gas (GHG) emissions. The first new rule contains policy amendments, while the second new rule contains technical amendments. Among other things, the final policy amendments remove the natural gas transmission and storage segment of the oil and gas industry from regulation and rescind methane-specific limits that apply to the industry's production and processing segments. The technical amendments include changes to the fugitive emissions requirements and allow certain owners and operators to apply for the use of an alternative means of emission limitation in lieu of the federal standards.



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The Trump administration's stated purpose for the rollback is to make things "simpler and less burdensome" for the oil and natural gas industry. Industry response has been mixed, however, as some oil and gas companies have praised the new rules while others have publicly stated that their companies will continue to operate under the more stringent Obama-era standards. The final rules have also been denounced by numerous environmental organizations, and after adding the complicating factor of the upcoming presidential election into the mix, the complex and important debate regarding the appropriate regulation of GHGs is clearly far from settled.

BACKGROUND

In 2012 (and again in 2016), the EPA issued NSPS for several source categories in the crude oil and natural gas sector in response

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to rising concerns related to GHGs and their impact on climate change. Specifically, the 2016 NSPS established “emission standards and compliance schedules for the control of the pollutant greenhouse gases ... in the form of a limitation on emissions of methane from affected facilities in the crude oil and natural gas source category [and] emission standards and compliance schedules for the control of volatile organic compounds (VOC) and sulfur dioxide (SO₂) emissions from affected facilities in the crude oil and natural gas source

category.” See 40 C.F.R. Section 60.5360a(a).

The Obama administration considered the regulation of methane and other GHGs to be a critical component of its fight against global climate change. The EPA has noted that “pound for pound,” the comparative impact from methane is about 25 times greater than that of carbon dioxide. According to a 2018 EPA study, methane accounted for about 9.5% of all United States GHG emissions from human activities. Human activities that produce methane include agriculture (primarily, the raising of livestock) and emissions from natural gas systems. Natural gas production also results in releases of VOCs, SO₂, nitrogen oxide and various other forms of hazardous air pollutants (HAPs).

POLICY AMENDMENTS

In the NSPS that it promulgated in 2012 and 2016, the EPA identified and regulated three different segments of the oil and gas industry: the production segment, the processing segment and the transmission and storage segment. Emissions sources in the transmission and storage segment include transmission compressor stations, pneumatic controllers and underground storage vessels. As noted above, one of the rules just passed rescinds the standards applicable to sources in the transmission and storage segment of the oil and natural gas industry.

In support of its decision to remove the transmission and storage segment from the NSPS, the EPA explained that because the original source category for the oil and gas industry did not cover the transmission and

storage segment, and because that “segment constitutes a separate source category from the production and processing segments, the EPA was authorized to list it for regulation under CAA Section 111(b) only by making a cause-or-contribute-significantly and endangerment finding as required by the statute, which the EPA never did.”

The new rule also clarifies the EPA’s position that the CAA “requires the EPA to make a ‘significant contribution finding’ for any particular air pollutant before setting performance standards for that pollutant, unless the EPA addressed the pollutant when it initially listed or regulated the source category.” Because methane was not part of the initial regulation of the source category, the EPA has concluded that it must make a significant contribution finding for methane before it would have the authority to regulate methane emissions from the oil and gas industry. The EPA has noted, however, that because the emission source control technologies used to control VOC emissions will also achieve reductions in methane emissions, having a separate methane requirement is “redundant” and therefore unnecessary.

TECHNICAL AMENDMENTS

The final technical amendments include changes to recordkeeping and reporting requirements for fugitive emissions by reducing the frequency of monitoring and by eliminating certain components of the monitoring plan. For example, gathering and boosting compressor stations are now only required to monitor twice per year instead of four times per year, and low production well sites

(defined as well sites that produce 15 barrels of oil equivalent per day or less) no longer have to conduct fugitive emissions monitoring.

The amendments also incorporate state fugitive emissions standards for well sites and compressor stations in California, Colorado, Ohio, Pennsylvania and Texas, and for well sites in Utah. Under the new rule, operators in those states may apply for the use of an alternative means of emission limitation which would allow operators to comply with the state standards in lieu of the federal standards.

FUTURE IMPLICATIONS

The politically charged nature of GHG regulation significantly contributes to ongoing uncertainty regarding the implementation of the new rules, and individual states and nongovernmental environmental organizations will likely file challenges to the rules. As one might imagine, the upcoming presidential election will also play a role in the future of GHG emissions regulation with the Biden campaign indicating that it will seek to require “aggressive methane pollution limits for new and existing oil and gas operations” if elected. •

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