



BLM Usurped Clean Air Act Authority – Wyoming Federal District Court Vacates BLM’s 2016 Waste Prevention Rule

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October 8, 2020, the United States District Court for the District of Wyoming vacated the BLM’s 2016 Waste Prevention, Production Subject to Royalties and Resource Conservation Rule (Waste Prevention Rule) with two exceptions governing royalty-free use of lease production and royalty on production. A copy of the Court’s order is available [here](#).

On July 15, 2020, the U.S. District Court for the Northern District of California overturned BLM’s 2018 regulations designed to replace the 2016 Waste Prevention Rule. Those regulations eliminated several key provisions of the 2016 Rule based upon BLM’s reconsideration of the burdens and benefits, overlap with other federal and state requirements, and undue impact on marginal, low-producing wells. The Department of the Interior, the State of Wyoming, and several trade groups including the American Petroleum Institute and Western Energy Alliance appealed this decision to the 9th Circuit.

As a result, until BLM promulgates new regulations or the 9th Circuit overturns the San Francisco decision on the 2018 rules, BLM’s Notice to Lessees and Operators of Onshore Federal and Indian Leases 4A (NTL-4A) now governs venting and flaring on Federal and Indian oil and gas leases.

2016 Waste Prevention Rule Overview

The Waste Prevention Rule eliminated BLM’s long-standing discretion, including economic considerations, to make unavoidable loss determinations on a case-by-case basis.

The Rule prohibited venting except in very limited circumstances and required operators to capture a certain percentage of gas produced each month excluding specific volumes of allowable flared gas. Operators would also be required to inspect and repair equipment twice a year and update old equipment that contributes to waste, and minimize lost gas from storage vessels and during well maintenance, drilling, and completion.

Vacatur

The District Court held that the Waste Prevention Rule exceeded BLM’s authority under the Mineral Leasing Act and that BLM acted arbitrarily and capriciously in promulgating the Rule. The Department of the Interior agreed that the Rule exceeded BLM’s authority under the Mineral Leasing Act.

The Court determined that the Waste Prevention Rule usurped authority to regulate air emissions that Congress expressly delegated to EPA and States under the Clean Air Act. Specifically, the overall purpose of the Waste Prevention Rule was to curb air emissions from existing oil and gas facilities and not to prevent mineral waste. The Court concluded that BLM also failed to consider the long-standing prudent operator standard, *i.e.* the Mineral Leasing Act requirements that operators use reasonable diligence and reasonable precautions to prevent waste, and improperly used ancillary air quality benefits to justify the Rule's extensive costs.

For the same reasons, BLM acted arbitrarily and capriciously in promulgating the Rule. Moreover, BLM further acted arbitrarily and capriciously in failing to fully assess the impact of the Rule on marginal wells; explain and identify support for the Rule's gas capture requirements; and separately consider the domestic costs and benefits of the Rule.

NTL-4A

Because the 2018 regulations have also been overturned, BLM will now resume using NTL-4A to guide venting and flaring on Federal and Indian oil and gas leases.

Venting and flaring is allowed on a short-term basis for the reasons expressly listed in NTL-4A and may be allowed in other cases upon:

- (1) the demonstration that expenditures necessary to market or beneficially use gas are not economically justified and that the conservation of gas, if required, would lead to the premature abandonment of recoverable oil reserves and ultimately to greater loss of equivalent energy than would be recovered if venting or flaring were permitted to continue; or
- (2) an action plan that will eliminate venting or flaring of the gas within one year from the date of application.

For questions about venting and flaring on Federal or Indian Leases, please contact [Nicole Blevins](#), [Chris Colclasure](#), or [Bret Sumner](#).