

March 19, 2014

## Bureau of Land Management to Focus Anew on Venting and Flaring on Federal and Indian Lands

Consistent with the administration's ongoing focus on methane emissions, the Bureau of Land Management (BLM) is initiating a process of inviting feedback for the anticipated rulemaking regarding *Onshore Oil and Gas Order 9, Waste Prevention and Use of Produced Oil and Gas for Beneficial Purposes*. The rulemaking is expected to focus on limiting waste from the venting and flaring of gas in the process of producing oil and gas on federal and Indian lands. The order is also expected to address what constitutes "beneficial use" and what standards would determine unavoidable losses or avoidable losses of resources in which royalties might be due. The order is probably more appropriately considered an update to the *Notice to Lessees and Operators of Onshore Federal and Indian Oil and Gas Leases (NTL-4A), Royalty or Compensation for Oil and Gas Lost*, which was signed in January 1980.

It is worth noting that while there has been a great deal of focus from the administration and the environmental community regarding environmental issues associated with fugitive emissions, the BLM's authority actually emanates from its duty under the Mineral Leasing Act to minimize the loss of resources in which royalties might not otherwise accrue to the federal Treasury or Indian tribes. What the BLM chooses to do on this issue will likely be constrained accordingly, although ongoing interest on the broader topic from other federal agencies, including the Environmental Protection Agency (EPA), indicates that this rulemaking is not likely to be the only action at the federal level regarding the issue.

Potential issues that may receive attention by the BLM in its rulemaking include the potential loss of resources through well completion, production testing, options for liquids unloading, pneumatic instruments, and leak detection, among others. It is also expected that the BLM will address issues of how the standards might be applied in the field. The BLM has occasionally been criticized for the unequal application of some rules in the field, and the agency will undoubtedly be examining how to remedy that criticism while also recognizing the likelihood that it will remain resource constrained in the foreseeable future. The BLM will also likely examine recent state rules dealing with similar subject matter in Colorado and Wyoming.

The BLM is in the process of gathering information from interested parties at a forum on the topic in Denver today, March 19, as well as upcoming forums that will take place in North Dakota, New Mexico and Washington, D.C. In its invitation, the BLM noted its interest in "preventing the waste of hydrocarbons, while promoting the conservation of produced oil and gas, and to also ensure a fair return to the American taxpayer." The forums will aid the agency in gathering input and help provide guidance to the agency as it drafts a proposed rule in the coming months. Further input will also be required during the public comment period associated with the formal rulemaking.

For information on [Brownstein Hyatt Farber Schreck's](#) Energy, Environment & Resource Strategies group including information about the team members, [click here](#).

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