

# **Bureau of Land Management**

## *Venting & Flaring*

### ***Public Outreach***

March 19, 2014



# **Bureau of Land Management**

## *Venting & Flaring*

### ***Public Outreach***

Tim Spisak

Senior Advisor – Conventional Energy

BLM – Washington Office

March 19, 2014



# Venting & Flaring Public Outreach

## *Reasons for Considering the Various Options*

- NTL-4A doesn't reflect current best management practices.
- Recent OIG/GAO Reports suggest progress can be made to minimize waste and promote conservation of produced gas through better management of venting and flaring.
- EPA New Source Performance Standards (NSPS) require new actions to minimize venting and flaring.



# Venting & Flaring Public Outreach

## *Process and Application*

1. Public Outreach designed to begin the dialog with interested parties.
2. Several more public sessions planned for the coming months in North Dakota, New Mexico and Washington, DC.
3. The BLM will consider existing Federal, tribal, and state rules and industry best practices.

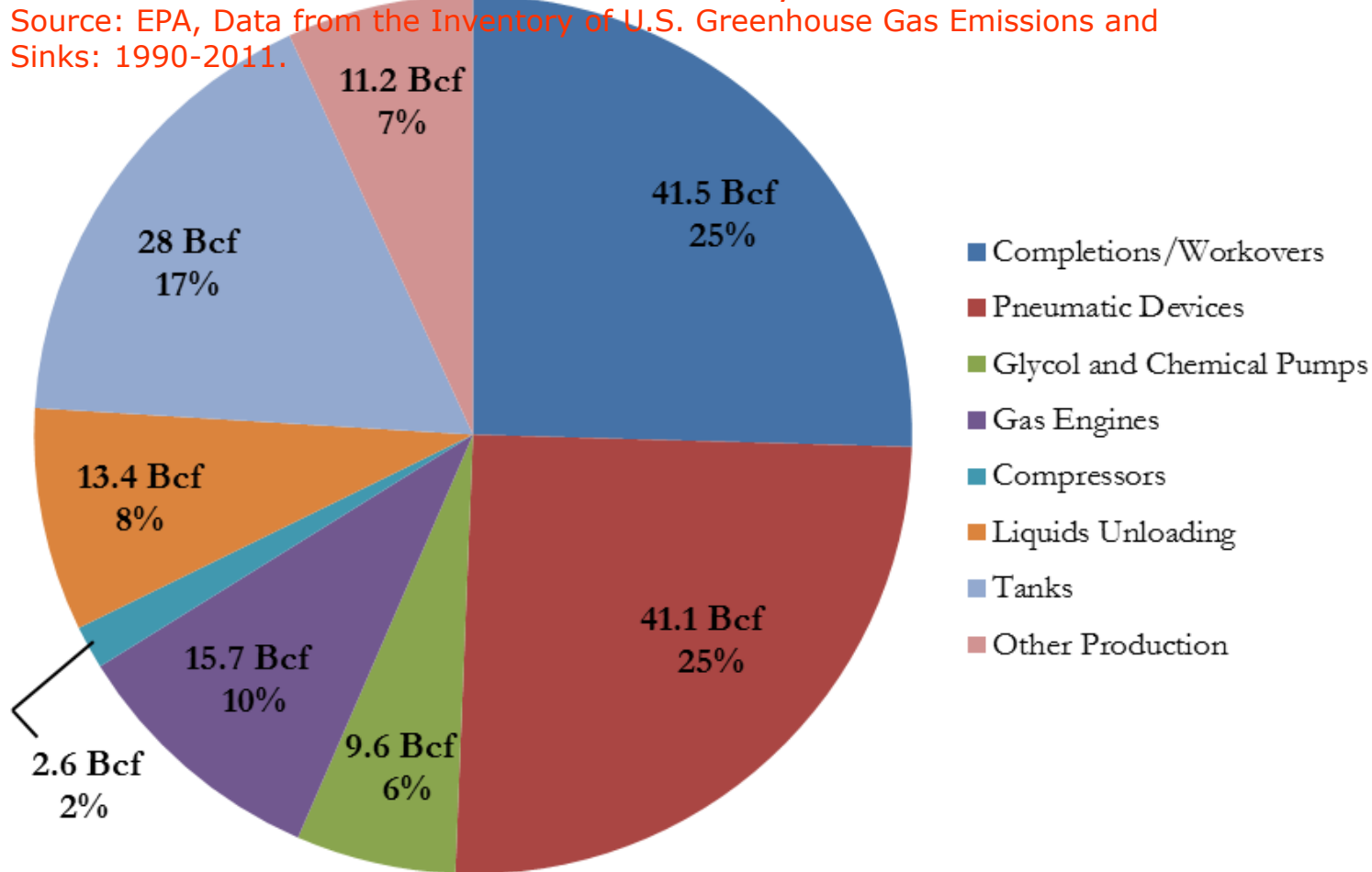


# Venting & Flaring Public Outreach

## *EPA Analysis of Emissions (from all onshore production--not limited to Federal leases)*

### Onshore Production Sector Methane Emissions, 2011

Source: EPA, Data from the Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2011.



# Venting & Flaring Public Outreach

## *Major Topics*

- Well completions
- Production tests
- Liquids unloading – Well Purging
- Casing head and associated gases
- Gas conservation plans
- Storage vessel/tank emissions
- Pneumatic devices
- Leak detection and repair



# Venting & Flaring Tribal Outreach

## *Ground Rules*

- Purpose of the Outreach
  - Solicit views on how to address major topics
  - Not intended to be complete list
  - Keep in mind:
    - Are there others that should be considered?
    - Are some of these unrealistic?
  - We welcome your input (comment period)



# Venting & Flaring Public Outreach

## *Well Completions*

- Defined as:
  - The process to establish production from a well after the production-casing string has been set, cemented, and pressure-tested until the permanent wellhead is installed for production.
- Current BLM policy:
  - “No royalty obligation shall accrue on any produced gas which ... is vented or flared with the [Area Oil and Gas] Supervisor’s prior authorization or approval during drilling, completing, or producing operations ...”





# Venting & Flaring Public Outreach

## *Well Completions*

- Potential options:
  - Place no new requirements on well completions.
  - In certain situations in addition to HF gas wells, consider requirement to:
    - Capture
    - Inject
    - Use
    - Combust
    - Flare



# Venting & Flaring Public Outreach

## *Production Tests*

- Defined as:
  - Tests on an oil or gas well to determine its flow capacity at specific conditions of reservoir and flowing pressures.
- Current BLM policy:
  - Initial Production Test: Venting & flaring authorized up to 30 days or 50 million cubic feet (MMcf) of gas.
  - Evaluation test: Not to exceed 24 hours.



# Venting & Flaring Public Outreach

## *Production Tests*

- Potential options:
  - Extend well completion requirements to production tests.
  - Gas wells: Limit initial well evaluation tests to XX (30) days or XX (20) MMcf of gas and require the use of Best Available Control Technology (BACT).
  - Oil wells: Limit initial well evaluation tests to XX (30) days or XX (10) MMcf of gas.
  - Require operator to be on site during all tests; limit performance tests to the time needed to validate performance.



# Venting & Flaring Public Outreach

## *Liquids Unloading – Well Purging*

- Defined as:
  - Process of opening the well bore to the atmosphere and allowing the reservoir pressure to push the accumulated liquids out of the well bore.
- Current BLM policy:
  - Limits events to 24 hours but does not set cumulative duration limits, i.e., monthly.



# Venting & Flaring Public Outreach

## *Liquids Unloading – Well Purging*

- Potential options:
  - Operator must first attempt to unload liquids without venting.
  - Requiring operator to be on site during the treatment.
  - Must record cause, date, time and duration of the event.
  - Opening well bore to atmosphere as a last resort.
  - For new wells, if and when liquids unloading is necessary, a method other than well purging must be employed.
  - Establish lower cumulative duration limits.



# Venting & Flaring Public Outreach

## *Casinghead and Associated Gases*

- Defined as:
  - The natural gas that is produced from an oil well and is either sold, re-injected, used for production purposes, vented (rarely), or flared, depending on whether the well is connected to a gathering line.
- Current BLM policy:
  - Require operators to receive approval to flare casinghead gas.
  - The BLM considers the total leasehold production (including both oil and gas) as well as the economics of the field-wide plan.



# Venting & Flaring Public Outreach

## *Casinghead and Associated Gases (1 of 2)*

- Potential options:
  - Establish a clear and rigorous economic test that *may* include:
    - Specific rate of return and/or discount rate;
    - Define specific pay-out criteria;
    - Field-wide economics for gas capture and transportation regardless of operator;
  - Consider gas combustion efficiency standard.



# Venting & Flaring Public Outreach

## *Casinghead and Associated Gases (2 of 2)*

- Potential options:
  - If gas conservation is not economic:
    - An operator may only flare with an approved Application to Flare
    - Consider whether the approvals should be valid for a fixed time period and/or consider limitations to the approval term.
    - If valid for a fixed time, subsequent Applications to Flare must have a revised economic analysis that reflects any changes in conditions.
    - When new wells are added to a field that the economics are re-evaluated.





# Venting & Flaring Public Outreach

## *Gas Conservation Plan*

- Defined as:
  - An action plan that eliminates or minimizes venting or flaring of the gas from oil wells.
- Current BLM policy:
  - An action plan that will eliminate venting or flaring of the gas within one year from the date of application.
  - Royalty free during implementation of plan



# Venting & Flaring Public Outreach

## *Gas Conservation Plan (1 of 2)*

- Potential options:
  - With an operator's commitment to install gas gathering infrastructure, then flaring is authorized during the construction time.
  - Restrict number of extensions allowed for approval of flaring.
  - If gas conservation is economic and the infrastructure is not in place, an operator may only flare under an approved Gas Conservation Plan.



# Venting & Flaring Public Outreach

## *Gas Conservation Plan (2 of 2)*

- Potential options:
  - In cases where gas recovery is clearly economic, refine definition of unavoidably lost gas to a fixed time period (causing gas to become royalty bearing thereafter).
  - Conditionally approve APDs if it is clear there will be gas, but infrastructure will be ready ‘soon’ (i.e. 90 days, 180 days, one year).



# Venting & Flaring Public Outreach

## *Storage Vessel/Tank Emissions*

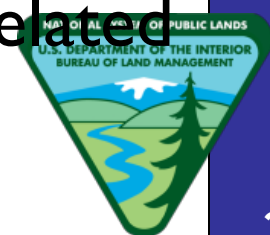
- Defined as:
  - Gas vapors lost from storage tanks on lease.
- Current BLM policy:
  - Gas vapors released from storage tanks to be unavoidably lost and not royalty-bearing unless the Authorized Officer requires recovery.



# Venting & Flaring Public Outreach

## *Storage Vessel/Tank Emissions*

- Potential options:
  - New wells: Require the capture or combustion of gas vapors from certain tanks.
  - Existing wells: Install combustors or equivalent device for storage vessels with emissions potential greater than X(?) tons per year of volatile organic compounds.
  - Is there another threshold or throughput equivalent that might work better? Safety-related threshold?



# Venting & Flaring Public Outreach

## *Pneumatic Devices*

- Defined as:
  - Devices powered by pressurized natural gas as liquid level controllers, pressure regulators, and valve controllers and other similar devices.
- Current BLM policy:
  - Gas used to power pneumatic devices (regardless of bleed rate) is considered used on lease and not royalty-bearing.



# Venting & Flaring Public Outreach

## *Pneumatic Devices*

- Potential options:
  - New (or replacement) devices: NSPS controls.
  - Existing devices: Requiring replacement of existing pneumatic devices if the cost of replacement, when considering the following, is consistent with economic operation:
    - (a) the reduction in bleed rate,
    - (b) cost of replacement equipment/installation
    - (c) the price of natural gas and
    - (d) the rate and extent of recovery of cost through additional gas capture.
  - How would this be administered?



# Venting & Flaring Public Outreach

## *Leak Detection and Repair*

- Defined as:
  - Programs to identify and repair leaks to reduce gas loss from lease operations.
- Current BLM policy:
  - Does not have a leak detection/monitoring standard.





# Venting & Flaring Public Outreach

## *Leak Detection and Repair*

- Potential options:
  - Operators' periodic inspection of facilities to identify and repair leaks.
  - What threshold might be used to determine which leaks require repair?



# Venting & Flaring Public Outreach

## *Next Steps*

- Comments from Session accepted until May 30
  - Comment form found at: [www.blm.gov/live](http://www.blm.gov/live)
- Additional Outreach Sessions
  - Three planned
    - North Dakota, New Mexico, Washington DC
    - Dates: Early May
    - Specific locations: TBD



# Venting & Flaring Public Outreach



Questions?

[tspisak@blm.gov](mailto:tspisak@blm.gov) – 202-912-7311

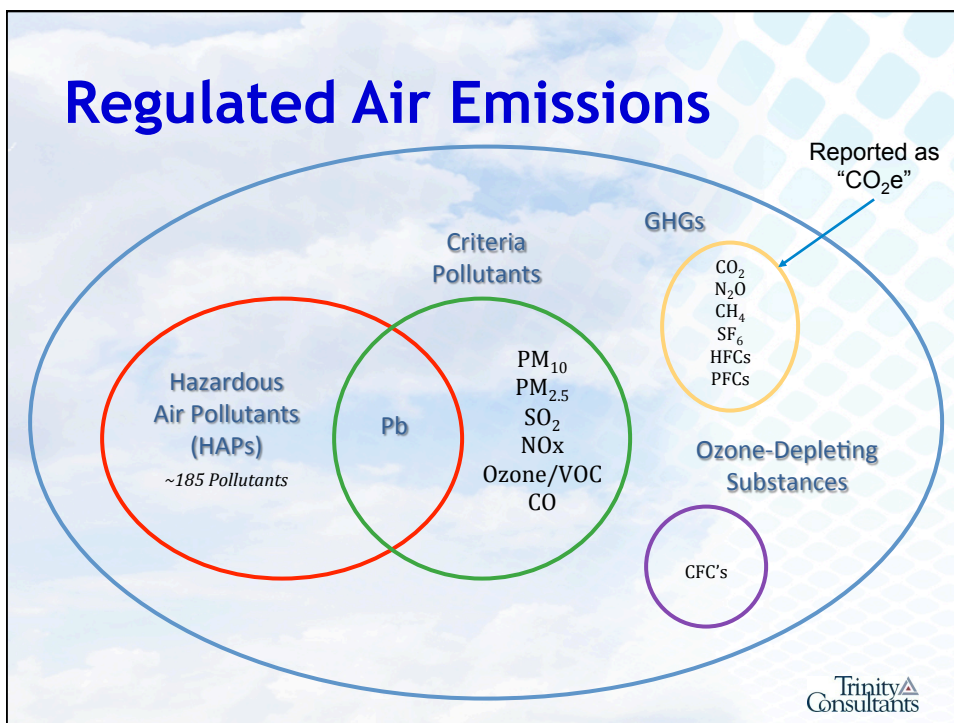


**Trinity Consultants**  
trinityconsultants.com

## Air Quality Permitting Primer Oil & Gas Production

IPANM  
June 2, 2014

N. Jarrett Airhart  
Manager of Consulting Services, Albuquerque NM



## Typical Upstream Sources of Regulated Emissions

- > Engines
- > Compressors
- > Tanks
- > Loading
- > Fugitives
- > Flaring
- > Combustion Sources (heater treater)

65

Trinity  
Consultants

## Definition of VOCs

“Volatile organic compounds (VOC) means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions.

(1) This includes any such organic compound other than the following, which have been determined to have negligible photochemical reactivity: methane; ethane

Volatile Organic Compounds” Definition per 40 CFR Part 51.100(s)  
(as of November 26, 2013)

Trinity  
Consultants

## Key Concepts

- > Potential Emission Rate/Potential To Emit
- > Federal Enforceability
- > Preconstruction Approval
- > SSM/MMS startup-shutdown-maintenance
- > NSPS
- > NESHAP
- > SIP

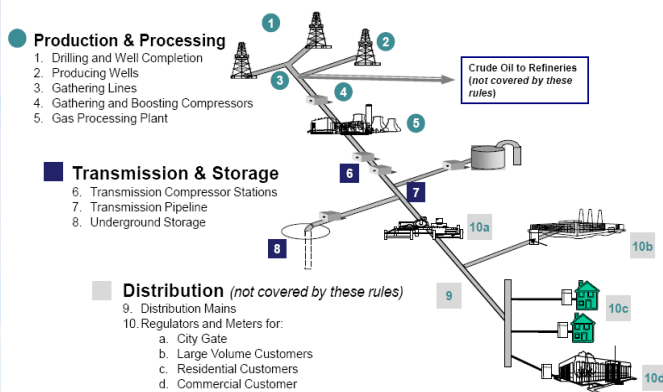
67

Trinity  
Consultants

## Oil and Gas per EPA - Handout

### Oil and Natural Gas Operations

Oil and natural gas systems encompass wells, gas gathering and processing facilities, storage, as well as transmission and distribution pipelines. These components are all important aspects of the process of getting natural gas out of the ground and to the end user.



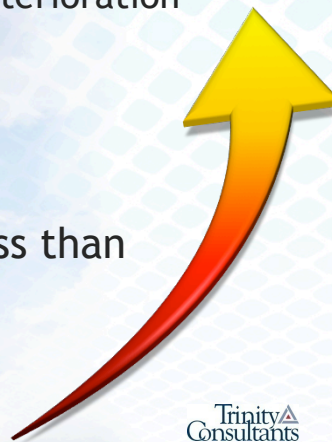
Source: Adapted from American Gas Association and EPA Natural Gas STAR Program

68

3  
Trinity  
Consultants

## New Mexico Permitting Thresholds

- > 250 tons per year (tpy) or more:
  - ❖ Prevention of Significant Deterioration (PSD) Permitting
- > 100 tpy or more:
  - ❖ Federal operating permit
  - ❖ Construction permit
- > Greater than 10 tpy and less than 100 tpy VOC:
  - ❖ NOI



Trinity  
Consultants

## New Mexico Construction Permit Paths

-----PER-----

PTE



New Mexico Permitting Timelines

70

Trinity  
Consultants

## No Permit Required

- > A facility's potential emission rate (PER) must be less than 10 pounds per hour (pph) and 10 tons per year (tpy) of any regulated air contaminant (including VOCs) and less than 1 ton per year (tpy) of lead.
- > Facilities applicable to NSPS Subpart I and NSPS OOO (asphalt plants and crushers) **do not qualify** for NPR's (or NOI's) no matter how low the emissions are.
- > NPR may be determined through 20.2.72.202, which provides an exemption from permitting activities that meet the requirements of the rule. Exemptions do not apply to emissions of toxic air pollutants listed under 20.2.75.502 NMAC if the uncontrolled quantity emit is greater than the value listed in that section.

71

Trinity  
Consultants

## Permitting Thresholds

- > 20.2.73 Notice of Intent required for emissions greater than 10 tpy for any REGULATED air pollutant
  - ❖ Any owner or operator intending to construct a new stationary source which has a potential emission rate greater than 10 tpy of any regulated air contaminant; or 1 tpy of lead shall file a notice of intent with the department

Trinity  
Consultants



## General Permitting Thresholds

- > PER/PTE greater than 25 tpy and less than 100 tons per year:
  - ❖ Minor source permitting (starts at 25 tpy in NM)
  - ❖ GCP-6
  - ❖ NOI with PER less than 25 tpy of most pollutants and less than 100 tpy for VOC's

73

Trinity  
Consultants

## Things to Watch Out for

- > Approval before construction
- > Tank emission calculations (flash + working & breathing)
- > Universal application form
  - ❖ Representation of maximum emissions/PER/PTE
- > Combustion devices flares as emission controls
  - ❖ Source of combustion emissions
  - ❖ Incomplete combustion

74

Trinity  
Consultants

## Things to Watch Out for

- > No provision for temporary sources
  - ❖ Includes engines
  - ❖ Includes Flares
- > Reporting potential emissions on GHG and subpart OOOO reports in excess of permitting thresholds
- > Co-location of sources
- > Calculation of fugitives

75

Trinity  
Consultants

## Other Rules and Considerations

- > 20 NMAC part 38 for Tanks
  - ❖ Based on capacity and not emissions
- > Self Disclosure/civil penalty policy
- > Startup shutdown maintenance (SSM)
- > Combustion devices flares as emission controls
- > Opacity
- > Applicability Analysis (NSPS/NESHAP)

76

Trinity  
Consultants

## Possible Rule Changes

- > 20 NMAC part 38 for Tanks
- > Co-location of sources
- > New Mexico Civil Penalty Policy
- > SSM
- > New NAAQS for Ozone
- > Petition to regulate HAPS
- > Regulation of VOC's
- > Regulation of GHG (i.e. methane)

77

Trinity  
Consultants

---

## BLM Proposals on Venting & Flaring Oil & Gas Production

---

Trinity  
Consultants

## Primary Statutory Authority

- > Mineral Leasing Act of 1920
- > National Environmental Policy Act of 1969
- > Federal Land Policy and Management Act of 1976
- > Federal Oil and Gas Royalty Management Act of 1982
- > Federal Oil and Gas Leasing Reform Act of 1987
- > National Energy Policy Act of 2005

79



## EPA Role vs Role of BLM

**EPA** - focused on emissions of certain pollutants

1. SIP (state permitting programs)
2. NSPS (subpart OOOO)
3. NEHAPS (MACT ZZZZ)
4. GHG programs (reporting, tailoring rule)

**BLM** - Focused on Conservation (waste) and royalties

1. Onshore Orders
2. NTL's

80



## BLM Focus Gas Emissions (methane)

- > Well completions
- > Production tests
- > Liquids unloading - Well Purging
- > Casing head and associated gases
- > Gas conservation plans
- > Storage vessel/tank emissions
- > Pneumatic devices
- > Leak detection and repair

81



## Things to Watch Out for

- > New Proposals
  - ❖ Onshore orders vs NTL's
- > Sources of cited emissions
  - ❖ GHG reporting
  - ❖ NSPS subpart OOOO
  - ❖ Emission Factors
- > Definitions
  - ❖ VOC's
  - ❖ Waste
  - ❖ Economical recovery
  - ❖ Avoidably lost
  - ❖ Best achievable control technology
  - ❖ Reasonable measures
  - ❖ Best management practice
- > Reporting requirements
- > Outrageous claims

82



## Things to Consider

- > Alternatives to NGO proposals and comments
  - ❖ Proposed language
  - ❖ Statutory authority to make the change
  - ❖ More relevant data or information
  
- > Incorporate incentives and flexibility into BLM mandates
  - ❖ Proposed language
  - ❖ Statutory authority to make the change
  - ❖ More relevant data or information
  - ❖ “net basin decrease” vs “performance standard”

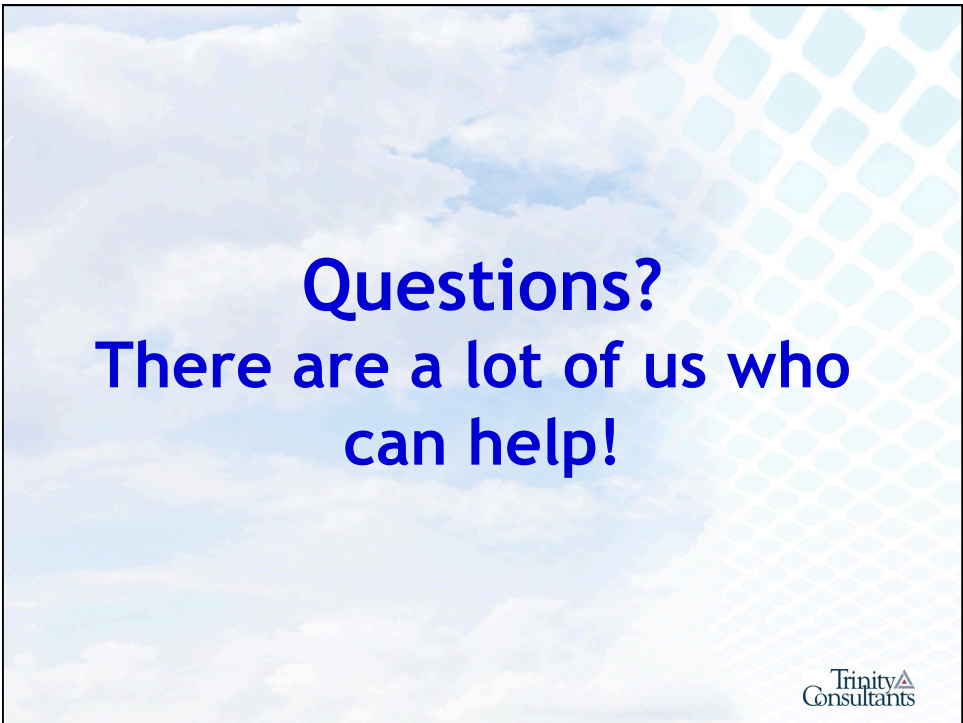
83




“While no regulations can make fracking entirely safe, the Obama Administration, through the BLM and other agency rule making processes, must ensure that Americans are better protected by requiring stringent pollution control measures that will help limit the devastating effects of climate disruption and protect communities from dangerous smog.”

*SIERRA CLUB STATEMENT ON BUREAU OF LAND MANAGEMENT METHANE VENTING AND FLARING FORUM*





# Questions? There are a lot of us who can help!

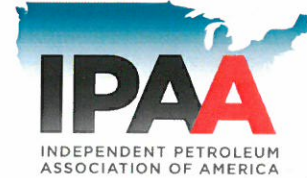




## Trinity's Oil & Gas Experts

<p>Rob Liles - Director, Southwest Region (505) 266-6611 <a href="mailto:rliles@trinityconsultants.com">rliles@trinityconsultants.com</a> Permian, San Juan &amp; Bakken Shales</p>	<p>Jason Swofford - Principal Consultant (225) 346-4003 <a href="mailto:jswofford@trinityconsultants.com">jswofford@trinityconsultants.com</a> Louisiana, Gulf Coast &amp; Offshore</p>	<p>Whitney Boger - Senior Consultant (972) 661-8100 <a href="mailto:wboger@trinityconsultants.com">wboger@trinityconsultants.com</a> Texas</p>
<p>Shannon Lynn, P.E. - Principal Consultant (501) 225-6400 <a href="mailto:slynn@trinityconsultants.com">slynn@trinityconsultants.com</a> Fayetteville Shale, Arkoma Basin</p>	<p>Christi Wilson - Managing Consultant (724) 935-2613 <a href="mailto:cwilson@trinityconsultants.com">cwilson@trinityconsultants.com</a> Marcellus and Utica Shales</p>	<p>George Iwaszek - Managing Consultant (720) 638-7647 <a href="mailto:giwaszek@trinityconsultants.com">giwaszek@trinityconsultants.com</a> Colorado &amp; Wyoming</p>
<p>Vineet Masuraha - Regional Manager, West Sub-region (949) 296-4100 <a href="mailto:vmasuraha@trinityconsultants.com">vmasuraha@trinityconsultants.com</a> California</p>	<p>Ron Truelove - Director, Oil &amp; Gas Sector Services (405) 848-3724 <a href="mailto:rtruelove@trinityconsultants.com">rtruelove@trinityconsultants.com</a> Oklahoma and National</p>	<p>Jarrett Airhart - Managing Consultant (505) 266-6611 <a href="mailto:jairhart@trinityconsultants.com">jairhart@trinityconsultants.com</a> New Mexico</p>
<p>Tom Muscenti - Managing Consultant (724) 935-2611 <a href="mailto:tmuscenti@trinityconsultants.com">tmuscenti@trinityconsultants.com</a> Marcellus and Utica Shales</p>	<p>Georgette Reeves - Gulf Region Business Development Manager (512-349-5800 <a href="mailto:grees@trinityconsultants.com">grees@trinityconsultants.com</a> Permian, San Juan, Anadarko Basins</p>	<p>Arun Kanchan - Principal Consultant, International Services Regional Manager, GCC Cell phone (Qatar): +974 3325 4562 Cell phone (Bahrain): +973 3686 7426 <a href="mailto:akanchan@trinityconsultants.com">akanchan@trinityconsultants.com</a> Middle East</p>
<p>Adam Erenstein - Managing Consultant (505) 266-6611 <a href="mailto:aerenstein@trinityconsultants.com">aerenstein@trinityconsultants.com</a> New Mexico</p>	<p>Jane Romero Kotovsky - Consultant (505) 266-6611 <a href="mailto:jromero@trinityconsultants.com">jromero@trinityconsultants.com</a> New Mexico</p>	
<p>Matt McDanel - Consultant (505) 266-6611 <a href="mailto:mmcdanel@trinityconsultants.com">mmcdanel@trinityconsultants.com</a> New Mexico</p>		





May 30, 2014

Mr. Tim Spisak  
Senior Advisor – Conventional Energy  
Bureau of Land Management  
Washington, D.C.

**RE: Comments of IPAA on Bureau of Land Management Venting & Flaring Public Outreach (NTL-4A)**

Dear Mr. Spisak:

The Independent Petroleum Association of America (“IPAA”) appreciates this opportunity to comment on the information provided during the four Venting & Flaring Public Outreach meetings held by the Bureau of Land Management (“BLM”) in March and May of this year.<sup>1</sup> This comment letter supplements preliminary comments jointly filed by IPAA and the American Exploration & Production Council (“AXPC”) on May 2, 2014.

IPAA represents thousands of independent oil and natural gas producers and service companies across the United States. Independent producers develop 95 percent of American oil and gas wells, produce 68 percent of American oil, and produce 82 percent of American natural gas. IPAA submits these comments along with the following organizations:

The Texas Independent Petroleum & Royalty Owners Association  
American Exploration and Production Council  
Petroleum Association of Wyoming  
North Dakota Petroleum Council  
Independent Oil Producers Agency  
Public Lands Advocacy  
The California Independent Petroleum Association  
Montana Petroleum Association

Our members question the need for new or amended venting and flaring rules because the U.S. Environmental Protection Agency (“EPA”) and the states have already promulgated

---

<sup>1</sup> Golden, Colorado (March 19, 2014); Albuquerque, New Mexico (May 7, 2014); Dickinson, North Dakota (May 9, 2014); and Washington DC (May 15, 2014).



emissions control regulations for oil and gas operations. Several states have recently passed even more stringent requirements, others are poised to do the same, and the EPA is currently seeking comments on five methane reduction strategy white papers. In light of the preceding, we believe that this rulemaking initiative is unnecessary, premature, and would very possibly result in duplicative or inconsistent regulatory requirements.

We also note that, although the sudden rush to revise or replace NTL-4A is very clearly part of the White House's Methane Reduction Strategy, any rulemaking must be conducted under the Mineral Leasing Act ("MLA") and must be based on waste prevention and royalty issues. Some commenters have suggested that the federal Clean Air Act ("CAA") and the Federal Land Policy and Management Act ("FLPMA") provide the BLM with general rulemaking authority over air quality and greenhouse gas ("GHG") standards. These contentions are inaccurate and misplaced because Congress reserved this authority to the EPA and the states.

In addition to these statutory issues, IPAA notes that a venting and flaring rulemaking may prove counterproductive—reducing royalties by driving capital investments away from federal lands. Oil and gas production involves very large capital expenditures and several of the BLM's proposed measures would further increase capital requirements and could even strand investments by imposing retroactive requirements. In particular, our members are concerned that periodic reevaluation of infrastructure requirements could lead to the shut-in and abandonment of wells. IPAA believes that an alternative approach, such as streamlining the permitting process for gas gathering infrastructure, would prove more effective.

In the sections below, we more fully explore the fundamental jurisdictional concerns raised by the information provided during the public outreach process. We also briefly address several of the more significant policy and technical concerns raised by our members.

#### **Under the MLA, Rulemaking is Limited to the Prevention of Waste**

We understand that the venting and flaring rulemaking would be an update to NTL-4A, which was last revised on January 1, 1980. In light of pending EPA methane reduction white papers, the ongoing implementation of NSPS Subpart OOOO, and the likelihood of additional EPA rules, and state emissions control regulations, we believe that revising or replacing NTL-4A is unnecessary and premature. If the BLM nevertheless proceeds with a proposal, the proposed regulations must adhere to the intent and limitations of the MLA.

NTL-4A, titled "Royalty or Compensation for Oil and Gas Lost" and issued pursuant to what is now 43 CFR Part 3160 (Onshore Oil and Gas Operations), addresses whether produced

natural gas not captured for sale is royalty-bearing. The MLA was the primary authority for these regulations and limits the BLM's authority to revise or replace NTL-4A.<sup>2</sup>

Section 16 of the MLA states that oil and gas permits and leases must require that oil and gas operators "use all *reasonable* precautions to prevent waste of oil or gas."<sup>3</sup> When the MLA was passed in 1920, the term "waste" meant the unreasonable loss of mineral resources and associated economic benefits. Accordingly, reasonableness is assessed using an economic cost-benefit analysis, with "waste" generally understood to mean a preventable loss, the value of which exceeds the cost of avoidance.<sup>4</sup>

As required by the MLA, the BLM's current regulations for the prevention of waste incorporate both reasonability and economic considerations. The BLM has defined "waste of oil or gas" as including "avoidable surface loss of oil or gas," meaning venting or flaring of produced gas resulting from negligence, a failure to take "all *reasonable* measures to prevent and/or control the loss," or a failure to comply with applicable regulations and orders.<sup>5</sup> Operators must market hydrocarbons, but only if doing so is "economically feasible."<sup>6</sup>

NTL-4A further clarifies whether natural gas venting and flaring is avoidable (and therefore royalty-bearing). In general, royalties do not attach if the gas is used for beneficial purposes, vented or flared pursuant to BLM or state agency authorizations, or unavoidably lost. For example, venting or flaring is authorized for certain well purging and well testing activities and storage tank emissions are recognized as an unavoidable loss.

There are two provisions in 43 CFR Part 3160 that address environmental quality. 43 CFR § 3161.2 directs the BLM to require that operations be conducted in a manner which protects environmental quality and 43 CFR § 3162.5-1 imposes corresponding obligations on operators. We anticipate that the BLM will receive comments portraying these regulatory provisions as a mandate for the BLM to stray beyond waste minimization and royalty issues.

---

<sup>2</sup> 43 CFR § 3160.0-3 sets forth the statutory authorities for 43 CFR 3160. Although the National Environmental Policy Act ("NEPA") is also one of the listed authorities, we note that NEPA is a procedural statute and does not provide federal agencies with the authority to issue substantive environmental quality regulations.

<sup>3</sup> Emphasis added.

<sup>4</sup> See WILLIAMS AND MEYERS, OIL AND GAS LAW vol. 8 at 1133 (2013) (citing McDonald, *Petroleum Conservation in the United States: An Economic Analysis* (1971)).

<sup>5</sup> 43 CFR § 3160.0-5 (emphasis added).

<sup>6</sup> *Id.* § 3162.7-1(a).

However, the BLM has explained that these provisions merely require compliance with other applicable laws, such as the Safe Drinking Water Act, that are not themselves statutory authorities for the 43 CFR Part 3160 regulations.<sup>7</sup> Accordingly, these provisions are not based on some hypothetical general authority in the MLA pursuant to which the BLM may promulgate sweeping environmental quality regulations. Quite the opposite, these provisions are part of a regulatory structure in which the BLM must condition oil and gas authorizations on compliance with environmental programs (including air quality) over which it does not have jurisdiction.

In sum, the MLA, and the BLM's implementing regulations do not prohibit all oil and gas waste—they require only *reasonable* and *economic* measures for the prevention of waste. If the BLM proceeds with a regulatory proposal, the agency must ensure, pursuant to the MLA, that the rule is based on (and limited to) the reasonableness and economic feasibility of preventing and minimizing the waste of oil and gas resources.

### **The BLM Cannot Establish Air Quality Standards and Implementation Plans**

In its public outreach sessions, the BLM communicated that, if a venting and flaring rule is proposed, its scope would be based, not on air quality, but on waste minimization and royalty concerns. As discussed above, IPAA believes that any rules proposed must be based on the MLA and that statute's narrow focus on the reasonable and economically feasible minimization of waste.

However, numerous commenters have urged the BLM to focus its rulemaking efforts on ambient air quality and climate change concerns, on grounds that certain provisions in FLPMA and the CAA provide the requisite authority. These allegations are incorrect—FLPMA and the CAA require the BLM to condition oil and gas approvals on compliance with CAA requirements established by the EPA and the states, but otherwise limit the BLM to an advisory role. As discussed below, any rulemaking based on air quality concerns would trespass on the express jurisdictions of the EPA and the states, contrary to Congressional intent.

### **The CAA Reserves Air Quality Jurisdiction to the EPA and the States**

The CAA “creates a complex regulatory regime designed to protect and enhance the quality of the Nation’s air resources.”<sup>8</sup> The essential structure of the modern CAA emerged in 1970, when Congress amended the statute to require that the EPA establish primary and

---

<sup>7</sup> 47 Fed. Reg. 47,758, 47,759 (Oct. 27, 1982).

<sup>8</sup> *Sierra Club v. Jackson*, 648 F.3d 848, 851 (D.C. Cir. 2011) (citing 42 U.S.C. § 7401(b)(1)).

secondary National Ambient Air Quality Standards (“NAAQS”)<sup>9</sup> and that the states develop State Implementation Plans (“SIPs”)<sup>10</sup> designed to bring nonattainment areas into compliance with the NAAQS.

The CAA ensures nationwide consistency through the establishment of air quality standards and oversight by the EPA, while also promoting flexibility by allowing the states to determine the nature and scope of the emissions control measures best suited, based on their separate circumstances, to achieving and maintaining compliance with the NAAQS.<sup>11</sup> Significantly, Congress assigned each state the “primary responsibility for assuring air quality *within the entire geographic area comprising such state . . .*”<sup>12</sup> This structure does not provide a jurisdictional role for the BLM.

*The CAA Provides Only Limited, Advisory Roles for Federal Land Managers*

In 1977, Congress amended the CAA to establish the Prevention of Significant Deterioration permitting program and provisions addressing visibility at “Class I” areas, such as national parks. Congress assigned the EPA responsibility for promulgating a list of Class I areas for which visibility is an important value and assigned the states responsibility for revising their SIPs to include measures to make reasonable progress towards national visibility goals.<sup>13</sup>

Significantly, Congress provided only a very limited role for federal land managers, such as the BLM. Most relevant here, 42 U.S.C. § 7475(d)(2) states that federal land managers must consult with the EPA regarding whether certain proposed major stationary sources could have an adverse impact on air quality related values within a Class I area and may file notices alleging that these sources may cause or contribute to a change in air quality.<sup>14</sup>

---

<sup>9</sup> The primary NAAQS are established based on the protection of public health. The secondary NAAQS are set based on “public welfare,” meaning a wide set of potential concerns, including visibility impacts and impacts on wildlife and vegetation. See 42 U.S.C. § 7409(b).

<sup>10</sup> Under certain circumstances, such as a state’s failure to submit an approvable SIP, the EPA may backfill by promulgating a Federal Implementation Plan (FIP). 42 U.S.C. § 7410(c). The CAA does not provide for the issuance of FIPs by other federal agencies.

<sup>11</sup> “The Congress finds that air pollution prevention . . . and air pollution control at its source is the primary responsibility of States and local governments . . .” 42 U.S.C. § 7401(a)(3).

<sup>12</sup> 42 U.S.C. § 7407(a) (emphasis added).

<sup>13</sup> 42 U.S.C. §§ 7491(a)(2) & (b)(2).

<sup>14</sup> Federal land managers were also required to consult with the EPA regarding the EPA’s promulgation of a list of Class I areas for which visibility is an important value and to consult with the states on proposed revisions to SIPs. 42 U.S.C. §§ 7491(a)(2) & (d).

The above provision states that federal land managers “have an affirmative responsibility to protect the air quality related values (including visibility) of any such lands within a class I area . . . .” Some commenters have cited this language, without context, to incorrectly assert that it provides the BLM with general authority to pass air quality standards and to otherwise base revisions to NTL-4A on air quality concerns.

To counteract any misperception, we note that this language is buried in the air permitting provisions. Read with the surrounding text, the “affirmative responsibility” of federal land managers is merely to consult with the EPA and to provide notice where a proposed major stationary source may cause a change in air quality. As acknowledged by other federal land managers, this provision does not provide a basis for the BLM or other federal land managers to issue air quality standards or implementation plans.<sup>15</sup>

Other than the advisory role described above, the CAA includes “conformity” provisions that prohibit the BLM and other federal agencies from engaging in, supporting, or approving any activity which does not conform to a CAA implementation plan (i.e., a SIP or FIP).<sup>16</sup> These provisions were primarily passed to force federal agencies to meet the same requirements as industry and other sources of air emissions and do not provide a basis for the BLM to pass air quality standards.<sup>17</sup>

#### *BLM Regulation of Air Quality Would Infringe the Jurisdiction of the EPA and the States*

Based on the above, it is exceedingly clear that Congress did not intend for federal land managers, including the BLM, to function as air quality agencies. Those roles were assigned exclusively to the EPA and the states, with other agencies serving as consultants in narrowly-defined areas. This structure was already clear in 1970, was reinforced by the dearth of air quality provisions in FLPMA (1976), and was reaffirmed by the 1977 CAA Amendments.

---

<sup>15</sup> In a 2010 report, the U.S. Forest Service, the National Park Service, and the U.S. Fish & Wildlife Service all stated that “[federal land managers] have no permitting authority under the Clean Air Act, and they have no authority under the Clean Air Act to establish air quality-related rules or standards.” *Federal Land Managers’ Air Quality Related Values Work Group (FLAG): Phase I Report—Revised (2010)* at xii (Oct. 2010), available at [http://www.nature.nps.gov/air/pubs/pdf/flag/FLAG\\_2010.pdf](http://www.nature.nps.gov/air/pubs/pdf/flag/FLAG_2010.pdf).

<sup>16</sup> 42 U.S.C. § 7506(c).

<sup>17</sup> Of note, the conformity provisions do not allow federal agencies the discretion to determine when and how to make conformity decisions—Congress assigned even that level of authority to the EPA. 42 U.S.C. § 7506(c)(4)(A) (“The Administrator shall promulgate, and periodically update, criteria and procedures for determining conformity . . .”).

Our members have expressed strong concerns that the BLM intends to regulate venting and flaring from oil and gas operations based on air quality goals, and not the MLA, despite Congressional intent that jurisdiction over these issues be reserved to the EPA and the states. Our members are also concerned that the BLM will impose regulations which duplicate and/or conflict with EPA and/or state requirements.

In support, we note that many of the venting/flaring reduction options included by the BLM in the materials presented during the four public outreach sessions were clearly based on air quality measures, in particular the EPA's NSPS Subpart OOOO standards and certain state oil and gas emissions control regulations.

When promulgating air quality regulations, the EPA and the states must make numerous "line-drawing" decisions, such as identifying the emissions sources for which controls are needed, specifying the stringency of controls, and determining whether controls should apply to existing sources. These EPA and state regulations are already effective and the BLM already requires compliance with these regulations as a condition of leases and drilling permits.

Therefore, the only reasons for the BLM to pass regulations based on air quality would be to duplicate EPA and state requirements, which would be unnecessary, or to implement different or more stringent air quality measures. For example, the BLM's venting and flaring slide presentation appears to contemplate extending NSPS Subpart OOOO requirements for gas wells to oil wells and extending requirements for new sources to existing sources. These actions would constitute the BLM impermissibly replacing the regulatory considerations of the EPA and the states with its own contrary judgments.

The end conclusion is simple: to avoid trespassing on the air quality jurisdiction of the EPA and the states, the BLM must restrict its assessment of how and whether to revise or replace NTL-4A to the concerns jurisdictionally permitted under the MLA—waste prevention and royalties.

### **The BLM Does Not Have Jurisdiction to Regulate GHGs**

During the four public outreach meetings, our members heard repeated comments regarding the need for stringent venting and flaring regulations as a means to reduce greenhouse gas (GHG) emissions. We also understand that the sudden rush to rulemaking on this issue is largely driven by the White House's pan-agency methane reduction initiative.

Our comments above regarding the CAA apply equally to the BLM's lack of jurisdiction to regulate GHGs. In addition, we note that the United States Supreme Court has already weighed in on the issue of regulatory jurisdiction over GHG emissions and concluded in *American Electric Power Co. v. Connecticut* that such authority is vested in the EPA and the states.<sup>18</sup> The Court stated the following:

- “The critical point is that Congress delegated to EPA the decision whether and how to regulate carbon-dioxide emissions from power plants . . . .”
- “The appropriate amount of regulation in a particular greenhouse gas-producing sector requires informed assessment of competing interests. The Clean Air Act entrusts such complex balancing to EPA in the first instance, in combination with state regulators.”

### **FLPMA Does Not Grant the BLM Jurisdiction to Promulgate Air Quality Standards**

#### **Section 108(a)(8) is a Non-Jurisdictional Policy Statement**

As discussed above, the CAA prohibits the BLM from independently regulating air quality. However, certain commenters have asserted that Section 101(a)(8) of FLPMA nevertheless provides the BLM with broad and independent authority over air quality issues. Accordingly, we are also providing comments regarding the lack of BLM authority to pass air quality rules pursuant to FLPMA.

Section 101(a)(8) of FLPMA is very clearly a policy statement and is not a mandate or a jurisdictional grant—assertions that this provision provides the BLM with broad authority over air quality issues are either mistaken or a deliberate attempt to mislead. Properly quoted, Section 101(a)(8) states:<sup>19</sup>

The Congress declares that it is the policy of the United States that . . . the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values . . . .

---

<sup>18</sup> 131 S. Ct. 2527 (2011). This case did not present an ideological split. The majority opinion was delivered by Justice Ginsburg, who was joined by Justices Roberts, Scalia, Kennedy, Breyer, and Kagan. Justice Alito filed a concurring opinion and was joined by Justice Thomas. Justice Sotomayor took no part in the consideration or decision of the case.

<sup>19</sup> 43 U.S.C. § 1701(a)(8). The BLM cites this provision in the “Authority” section of its Air Resource Management Program Manual, but properly notes that this language is a Congressional policy objective and does not explicitly state that this language confers a jurisdictional grant upon the agency.

To forestall any interpretations that the above language is no more than aspirational, Congress also stated that “[t]he policies of this Act shall become effective only as specific statutory authority for their implementation is enacted by this Act or by subsequent legislation . . . .”<sup>20</sup>

Despite clear and express drafting by Congress, commenters often cite Section 101(a)(8) as a mandate, arguing that the BLM must manage the public lands in a manner that protects air and atmospheric values. For example, sixteen organizations made this exact assertion in a joint letter submitted to Secretary Sally Jewell in January 2014.<sup>21</sup>

FLPMA speaks for itself on this issue—the statute’s policy goals are not a grant of regulatory authority. We comment here only to spotlight language (regarding policy) that is commonly omitted by others and to counteract the egregious mischaracterization of the statute as a Congressional mandate for BLM regulations concerning air quality.

*FLPMA Requires Only that the BLM Provide for Compliance with Air Quality Regulations Promulgated by Other Federal Agencies and the States*

Section 202(c)(8) is the only clear statutory command in FLPMA regarding air quality. It states that, when developing land use plans, the BLM must “provide for compliance with applicable pollution control laws, including State and Federal air, water, noise, or other pollution standards or implementation plans.”<sup>22</sup>

This provision is clear evidence that Congress did not consider the BLM to be an air quality agency. Instead of directing that the BLM develop air emissions standards for federal lands, Congress simply required that the BLM condition land use approvals on compliance with the air quality standards and implementation plans developed by other federal agencies and the states.<sup>23</sup>

The above assessment is consistent with and reinforced by the conformity provisions and limited role for federal land managers established under the CAA Amendments of 1977, as previously discussed.

---

<sup>20</sup> 43 U.S.C. § 1701(b).

<sup>21</sup> The letter faithfully reproduced the language in Section 101(a)(8), but omitted text from the beginning of Section 101(a) declaring the subsequent language to be policies. The letter is available at:

[http://www.eenews.net/assets/2014/03/20/document\\_gw\\_01.pdf](http://www.eenews.net/assets/2014/03/20/document_gw_01.pdf).

<sup>22</sup> 43 U.S.C. § 1712(c)(8).

<sup>23</sup> See *WildEarth Guardians v. Salazar*, 880 F. Supp. 2d 77, 94 (D.D.C. 2012) (concluding that the BLM satisfied its FLPMA obligations by preparing an oil and gas lease requiring compliance with air and water quality standards).



*Normal Oil and Gas Emissions are Not Unnecessary or Undue Degradation ("UUD"); UUD is Determined on a Case-By-Case, Location-Specific Basis*

As a final consideration, we note that FLPMA includes a requirement that, in managing the public lands, the Secretary shall "take any action necessary to prevent unnecessary or undue degradation of the lands."<sup>24</sup> When it comes to air quality, UUD must be read in conjunction with the CAA and Section 202(c)(8) of FLPMA as being applied on a case-by-case basis to ensure compliance with the air quality standards passed by the EPA and SIP provisions promulgated by the states.

For mining operations the BLM has defined UUD as including activities not "reasonably incident" to prospecting, mining, or processing operations.<sup>25</sup> Although UUD has not been defined for oil and gas exploration and production activities, the preceding definition indicates that impacts which are normal and typical are not UUD. In fact, this is the exact position adopted by the Interior Board of Land Appeals ("IBLA"). In *Biodiversity Conservation Alliance* (IBLA 2004-316, 2005-3), the IBLA recognized that the approval of oil and gas development does not constitute UUD and that UUD must be something more than the usual effects anticipated from such development.<sup>26</sup>

Regardless, how UUD applies to air emissions should be determined in the context of the CAA and the other provisions in FLPMA and the CAA. As discussed elsewhere, the CAA established an elaborate system of combined federal-state jurisdiction, but assigned federal land managers no more than an advisory role. We have also noted that there is only one clear statutory command in FLPMA regarding air quality and that provision limits the BLM's role to ensuring compliance with air quality requirements passed by other federal and state agencies.

In light of the preceding, it is difficult to imagine that Congress intended UUD (an undefined term) to provide the BLM with the authority to set nationwide air quality standards, much less standards different or more stringent than those established by the EPA and the states. In other words, to read such general language as giving the BLM extensive national air quality powers, powers that bypass the entire structure of the CAA, just doesn't make sense.

Lastly, we note that the multiple-use mandate imposed by FLPMA necessitates that, when it comes to air emissions, the BLM assess UUD issues on a case-by-case basis, and not as part of a nationwide rulemaking. For example, in a 2010 case concerning the scope of the BLM's

---

<sup>24</sup> 43 U.S.C. § 1732(b).

<sup>25</sup> 43 CFR § 3809.5.

<sup>26</sup> 174 IBLA 1 (2008).

UUD obligations, the District Court for the District of Columbia held that “the BLM was not required, under FLPMA, to adopt the practices best suited to protecting wildlife, but instead to balance the protection of wildlife with the nation’s immediate and long-term need for energy resources and the lessee’s right to extract natural gas.”<sup>27</sup>

The competing needs associated with various land parcels will vary from place to place, but this is especially the case for air quality, for which a nationwide system of air monitoring stations has been established and for which site-specific air dispersion modeling is commonplace in permit applications. This means that the BLM’s assessment of air quality UUD issues, associated with the balancing of interests required by FLPMA, must be location specific and cannot provide the basis for a nationwide air quality rule.

### **Other Considerations and Comments**

As previously noted, this comment letter is focused primarily on communicating our members’ substantial jurisdictional concerns. However, we are also providing brief comments regarding several other significant issues.

#### **“Best Practices” Must be Identified Based on Waste Prevention Criteria**

The BLM’s presentation materials note that NTL-4A no longer reflects best management practices and that the agency will consider Federal, tribal, and state rules and industry best practices as part of the venting and flaring public outreach process. These statements provide no insight into the criteria that the BLM will use to identify the new best practices that would be incorporated into a revised NTL-4A or a replacement rule.

Many of the venting and flaring practices currently required by EPA and state rules were identified and selected based on a cost-benefit analysis for the reduction of air pollutants, such as volatile organic compounds and hazardous air pollutants and not for waste minimization. These best practices for air quality control are not necessarily best practices for waste minimization.

The issue is that the metrics for pollution control are very different than the metrics for waste prevention. In the air quality world, best practices may result in a net cost of thousands or even tens of thousands of dollars per ton of emissions reduction and yet be deemed cost-effective. In contrast, the economic analysis for waste prevention is based on

---

<sup>27</sup> *Theodore Roosevelt Conservation Partnership v. Salazar*, 744 F. Supp. 2d 151, 157–58 (D.D.C. 2010). *See also Biodiversity Conservation Alliance v. BLM*, No. 09-CV-08-J (D. Wyo. 2010) (noting in the context of whether UUD obligations were met that the BLM is required to balance interests pursuant to its multiple use mandate).

conservation of a valuable resource and therefore considers whether the prevention costs exceed the value gained—a net zero metric.

If the BLM proceeds with a rule proposal, best practices cannot be selected on grounds that they are already widely-employed because the very reason they have become commonplace is for purposes of air quality. Instead, the BLM must choose best practices based on an independent assessment of waste minimization principles, such as an analysis of the value of the resources preserved and the associated costs.

*Infrastructure Expectations Should Not Change Over Time*

The installation of additional infrastructure, which we understand to mean requirements to install gas collection pipelines, was included in the BLM's public outreach materials as one of the measures that could be included in a possible venting and flaring rule. These same materials note the possibility of periodic economic reevaluations.

As a result, our members are very concerned that the BLM will approve flaring during the early stages of field development, but may then revoke or deny renewal of those approvals and at some undetermined point require the shut-in of existing wells pending the permitting and installation of gas collection pipelines.

Oil and gas leasing, exploration, well drilling, and well completion involve very large capital expenditures. Accordingly, before drilling commences, operators need assurances that wells will not be shut-in and the associated capital will not be stranded. In addition, given the significant delays and difficulties in obtaining permits for infrastructure projects on public lands, shut-ins could last for several years. Due to time discounting, production delays would result in a net loss of value, even if the same volume of reserves were ultimately recovered.

If BLM rulemaking increases uncertainty with regard to the long-term viability of capital investments, many operators will reduce or eliminate their capital investments on federal lands. This would have the counterproductive effect of reducing production on federal lands and reducing net royalties received by the federal government, the states, and the tribes. Therefore, infrastructure requirements, if any, should not be retroactively imposed.

*Streamlining Infrastructure Permitting Would More Effectively Meet the BLM's Goals*

Regulatory obstacles to obtaining timely permits have significantly inhibited the construction of natural gas collection infrastructure, which in turn has resulted in flaring. This phenomenon is particularly significant on federal lands, due to overly lengthy and arduous permitting requirements.

We believe that a command-and-control rule that mandates controls and/or imposes one-size-fits-all venting and flaring restrictions is the wrong way to address venting and flaring, as it will dis-incentivize capital investments on public lands. Instead, we believe that efforts to streamline the siting, permitting, and construction of natural gas infrastructure on federal lands would better achieve the BLM's policy goals.

---

We appreciate the opportunity to provide these comments regarding venting and flaring under NTL-4A. Please feel free to contact me at [dnaatz@ipaa.org](mailto:dnaatz@ipaa.org) if you have any questions regarding the issues discussed herein.

A handwritten signature in black ink that reads "Dan Naatz". The signature is written in a cursive, flowing style.

Dan Naatz  
Vice President, Federal Resources  
Independent Petroleum Association of America

The Bureau of Land Management (BLM) is considering new regulations that would require stricter natural gas venting and flaring rules. It bases much of its authority for the update on waste reduction and conservation of produced gas, and therefore, royalty payments to the US government. BLM officials are holding outreach sessions in Denver, CO, Albuquerque, NM, Dickinson, ND and Washington, DC, and it is requesting public comments on the [presentation slides](#) and discussions held during the sessions, due May 30<sup>th</sup>.

Below are some points about the rule that may be helpful when discussing the issue at the public meetings, based on what Western Energy Alliance learned at the first session in Denver.

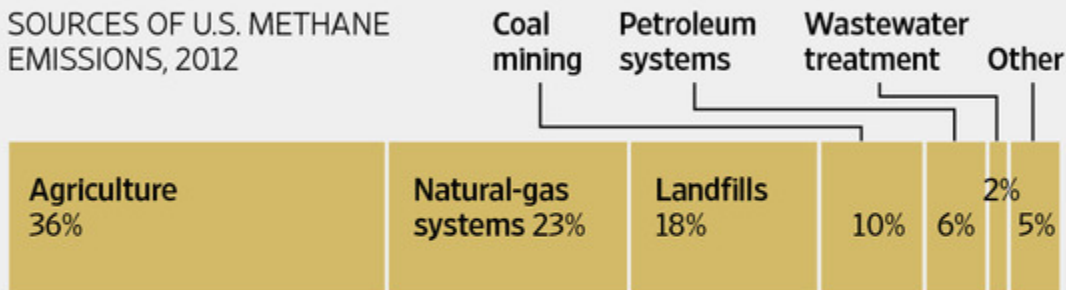
- The oil and natural gas industry has delivered significant greenhouse gas (GHG) reductions through voluntary means. Industry reduced methane emissions [by 40% between 2006 and 2012](#) without federal regulation, and agriculture is now the largest source of methane.
- Increased natural gas electricity generation is the primary reason the U.S. has reduced GHGs more significantly than any other industrialized country. Making natural gas more expensive with more red tape will decrease that climate change success over time.
- BLM and other federal agencies should encourage more natural gas production, not make it more time consuming and expensive through new regulation and red tape. More regulation is counterproductive to the President's climate change goals.
- Natural gas and petroleum systems account for only 3.5% of U.S. GHG emissions, about ten times less than the largest source, power plants.
- EPA's New Source Performance Standards (NSPS) for oil and natural gas (Quad O) already require further reductions in methane emissions along with reductions in VOCs. Operators must comply with these rules on BLM land, and there is considerable risk of conflicting and duplicative regulation if BLM adds its own requirements.
- In its presentation, BLM discussed best available control technology (BACT), which has a specific definition in air quality rules and requires analysis of the public health and environmental benefits along with economic costs. BLM does not have the authority to require BACT and regulate emissions for public health and environment, which is the jurisdiction of EPA.
- Industry has been continuously innovating and developing new technologies to reduce emissions. This success along with the market incentive to capture and sell as much natural gas as possible will continue without new rules from BLM.
- Duplicative rules and bureaucratic processes already reduce the incentive to develop oil and natural gas on federal lands, which is much more difficult than on state and private lands.

- Ironically, flaring and venting on federal and Indian lands may be higher than on adjacent private and state lands because of the delay from the federal government in approving rights of way for gas gathering lines. The North Dakota Petroleum Council Flaring Task Force estimates that 40% of natural gas production is flared at oil wells on the Fort Berthold Indian Reservation, versus 27% on state and private land. Rather than new regulations, BLM could make a significant difference in quickly capturing methane from new oil wells by simply processing ROWs in a timelier manner.

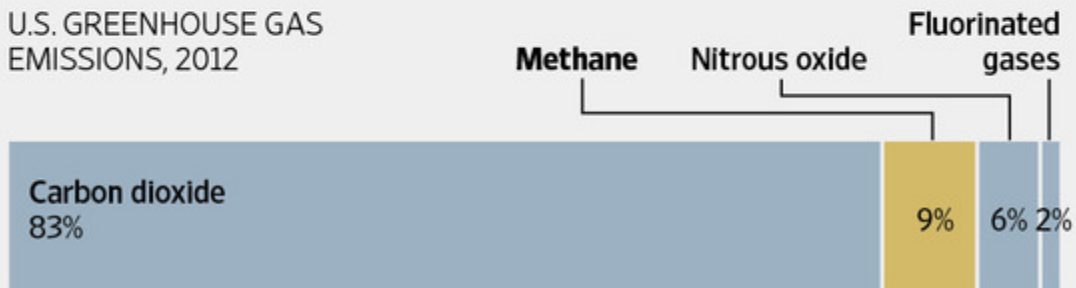
## Emissions Count

The Obama administration unveiled plans Friday to address methane-gas emissions from key sources as part of its strategy on climate change.

SOURCES OF U.S. METHANE EMISSIONS, 2012



U.S. GREENHOUSE GAS EMISSIONS, 2012



Source: Environmental Protection Agency

The Wall Street Journal