CLEAN AIR ACT: THE STATUS OF EPA'S METHANE REGULATION ROLLBACKS AND ASSOCIATED LITIGATION

Fri Dec 18th, 2020 | Categories: Litigation |

Methane is the main ingredient of natural gas and a potent greenhouse gas ("GHG") with a short half-life. When methane leaks into the air before its use—from a leaky valve at a drilling site, for example—it absorbs the sun's heat and warms the Earth's atmosphere. The largest source of methane emissions in the United States is the oil and gas industry (source: EPA).

The methane regulations established by the Obama administration sought to reduce methane emissions from new, reconstructed, and modified sources in the oil and gas industry by 2025. They created significant new regulatory requirements to reduce methane and Volatile Organic Compounds ("VOCs") from equipment, and to monitor and correct leaks. These regulations were rolled back by the US Environmental Protection Agency ("EPA") under the Trump administration with a rule finalized in August 2020.

The rollback removes the transmission and storage segment from the Obama-era New Source Performance Standards rule ("NSPS"), rescinds VOC and methane emissions standards for the transmission and storage segment, and dispense with methane emissions standards for the production and processing of oil and gas. Technical amendments to the NSPS change the rule "to simplify compliance" by changing the monitoring and repair schedules for compressor stations, and changing the requirements for keeping records and reporting leaks for gas and oil infrastructure.

A coalition made up of environmental activist groups, states, and cities have filed (since consolidated) suits challenging technical and policy aspects of this rule. Litigation of the methane rollback continues along a two-pronged attack structure: (1) challenging a policy change to the New Source Performance Standards rule ("NSPS"); and (2) challenging a technical rule weakening emissions standards for compression stations and dispensing with leak mitigation requirements for low production oil and gas wells.

Policy Rule Challenge: Deregulating Methane From Oil and Gas Infrastructure

The Obama-era NSPS rule identified methane as a significant source of industrial air pollutants that are dangerous to human health and the environment and set methane emissions standards governing fossil fuel industry sources. A similar rule governing VOCs was finalized in 2012. The EPA has since claimed these regulations must be rolled back in order to correct measures enacted without a proper demonstration that oil and gas equipment emit gases that endanger human health. The EPA says that without this kind of proof, the NSPS rule is not in compliance with the Clean Air Act ("CAA"). Furthermore, the EPA argues setting methane emissions standards for gas transmission and storage infrastructure is unnecessary, given they are already regulated for VOCs.

EPA's take on methane emissions is challenged by a coalition of environmental groups (including the Environmental Defense Fund, the Sierra Club, and others), states (New York, California) and local governments (Washington D.C., Chicago). The coalition cites oil and natural gas operations as the largest source of methane emissions in the United States (a claim supported by EPA's own research), and the second largest source of GHGs overall in the U.S. (source: EPA). Regulations like the ones established by the Obama administration

could prevent 500,000 tons of methane emissions.

In September, the coalition asked the D.C. Circuit to stop and/or eradicate this new rule. The coalition argues the policy change violates the CAA by dispensing with pollution standards for oil and gas production equipment altogether. Such a policy abandons methane regulation without cause or explanation, and allows the oil and gas industry to more easily pollute the environment without obstruction. In their application for an emergency stay, the coalition claimed the rollback shouldn't be implemented.

The D.C. Circuit granted an administrative stay to allow the court to evaluate the emergency motion to freeze EPA's policy change altogether. However, in late October 2020, the D.C. Circuit lifted its administrative stay and denied the environmental activists' emergency stay motions. -They ruled EPA can proceed with its rule change. The court said the groups had not met the standards for a longer stay, but neglected to elaborate further on this point.

Technical Rule: "[A]rbitrary and [C]apricious" Weakening of Emissions Standards, Incomplete Science

In mid-December, plaintiffs filed a brief challenging a technical rule weakening emissions standards for compression stations and dispensing with leak mitigation requirements for low production oil and gas wells. The Plaintiffs argued these changes must remain on pause until the litigation efforts have been resolved; their briefs argue the EPA arbitrarily decided to weaken emissions standards for compressor stations and used incomplete science to justify their rescinding of leak mitigation requirements for low production oil and gas wells.

EPA and its supporting industry groups say the Plaintiffs don't identify any errors in the analyses supporting the changes. Instead, they attack the conclusions. They say the challengers are not likely to succeed in their efforts, nor have they demonstrated the requested relief would guard against irreparable harm.

In contrast, attorneys for activist groups say it's clear EPA acted outside of the law to deregulate low-production wells and to weaken compressor station requirements. The litigation before the D.C. Circuit is still continuing.

With the incoming Biden administration poised to take power in late January, EPA career staff have signaled they believe the Biden transition team is already preparing to dismantle Trump's dismantling of EPA regulations. They have adopted what one former EPA official, Judith Enck, called a "Humpty Dumpty" approach to dealing with the EPA in the wake of trump: they want to put the agency back together, piece by piece.