BICK LAW LLP
exclusively environmental

FEDERAL COURT STRIKES DOWN TRUMP ADMINISTRATION METHANE ROLLBACK

Mon Jul 20th, 2020 | Categories: Litigation |

Last week, a Federal Court vacated a Trump administration rule that weakened Obama-era limits on natural gas methane emissions from drilling on federal and Native American lands. U.S. District Judge Yvonne Gonzales Rogers said the Trump Administration's rule was flawed and ill-supported, and restored a 2018 Obama era rule.

The judge criticized the Trump administration for moving ahead with its decision to loosen regulation without giving proper consideration to the requirements of the Mineral Leasing acts and other laws, said Gonzales. In addition, the Bureau of Land Management did not follow proper rule making procedures, nor did they bother to explain the rationale for reversing a rule made only two years prior was logical or appropriate at this juncture.

The judge detailed the "cascade of faults" she found in the methods used in trying to obtain this rule change in a 55-page order. She argues that the Trump administration's fervor to upend the 2016 Obama-era rule blinded them to the proper procedure for obtaining a legitimate change to policy.

At issue in particular is methane. In 2018, the Bureau of Land Management (BLM) rolled back parts of the prior rule that limited release of methane under the Waste Prevention Rule, which was originally proposed as an effort to reduce methane emissions. (Methane emissions have been shown to worsen climate change.) The Trump administration argued that the Waste Prevention Rule interfered with state, tribal, and federal regulations and businesses' increased compliance costs. Industry groups disagreed with the 2016 rule because they argued it was interfering with the EPA's authority to control air emissions. The Bureau of Land Management, however, had argued that they were trying to reduce waste, which they argued was under its purview. The rule change was expected to allow for more methane leaks in a process called flaring and add to air pollution.-

The 2018 Trump administration rule defines "waste of oil or gas" to apply only when the value of the resource that will be conserved is greater than the regulation's compliance costs (according to the opinion). In other words, they argued that if the oxygen (or water, or soil) is worth more than how much it costs them to keep these businesses running in compliance, then the oxygen (or water, or soil) will be clean enough to breathe (or drink, or grow food).

The judge said this "economic limitation" argument is fatally flawed. The Mineral Leasing Act requires that the public welfare be protected, and that efforts be made to prevent waste. The rule change also allows more deference to state and tribal rules and "effectively eliminates any federal regulation." The judge also found that the Bureau of Land Management violated the National Environmental Policy Act by not considering public health impacts of the change. This neglect was especially egregious in the case of tribal communities.

"In its zeal, BLM simply engineered a process to ensure a preordained conclusion," she added in the decision's conclusion.- "Where a court has found such widespread violations, the court must fulfill its duties in striking the defectively promulgated rule."