

### **The BLM 2016 Methane and Waste Prevention Rule Resurfaces**

On the evening of July 15, 2020, U.S. District Judge, Yvonne Gonzalez Rogers, nullified the 2018 revisions of the Bureau of Land Management's [2016 Waste Prevention, Production Subject to Royalties, and Resource Conservation Rule](#) (Methane and Waste Prevention Rule). If the ruling stands, the Methane and Waste Prevention Rule will be reinstated 90 days from the ruling date, or October 23, 2020. This ruling may have significant impacts on oil and gas operators on public lands.

The 2016 rule prohibits venting and flaring of natural gas on federal and native lands. Mainly, it bans methane flaring from oil and gas wells, requires operators to pay royalties for "avoidable losses" of natural gas, prescribes a leak detection and repair (LDAR) program, and may necessitate upgrades of equipment. Barring other legal action to change or delay reinstatement of the rule, affected operators must comply with these requirements starting on October 23, 2020. This could impose heavy burdens on industry and the cost of compliance may be steep.

Several industry players and states believe the 2016 rule was an overreach into the U.S. Environmental Protection Agency's (EPA) territory. The rule added several air emissions related requirements to oil and gas activity on federal and Indian lands, many of which were redundant with existing state and EPA requirements.

The following are highlights of the [2018 Final Rule](#) and how it changed the 2016 version of the rule:

#### **Requirements of the 2016 rule which were removed in their entirety:**

- Waste Minimization Plans
- Well drilling and completion requirements
- Pneumatic controller and diaphragm pump requirements
- Storage vessel requirements
- Leak Detection and Repair requirements

#### **Requirements of the 2016 rule which were modified and/or replaced:**

- Gas-capture requirement: the BLM will now defer to state or tribal regulations in determining when the flaring of associated gas from oil wells will be royalty-free
- Downhole well maintenance and liquids unloading requirements
- Measuring and reporting volumes of gas vented and flared

Judge Gonzalez Rogers noted her decision addresses the rescission process of the 2016 rule and not the rule itself. The following are highlights of the inadequacies as [described by the judge](#):

- The bureau misinterpreted the Mineral Leasing Act (MLA) by creating a definition of "waste of oil or gas" that is contrary to the language of that statute. The statute mandates the bureau to ensure oil and gas lessees observe "such rules ... for the prevention of undue waste as may be prescribed by [the] Secretary," to protect "the interests of the United States," and to safeguard "the public welfare." The MLA additionally mandates the bureau require all leases of land containing oil or gas use all reasonable precautions to prevent waste of oil or gas on the land. Gonzalez Rogers found that BLM's actions in revising the 2016 waste prevention rule favored

certain oil and gas companies that operate on federal lands, and protects inefficient players in the market.

“... BLM does not explain why it ignored the market as a whole in favor of economic protection of certain market players on federal lands. Compliance costs vary based on company size and location. Fluctuating oil and gas prices and other state regulatory regimes also impact the market. Periodic review is completely lacking. The analysis is complex and, in BLM’s rush to revise, it failed to provide any reasoned explanation... As a result, the definition of ‘waste’ effectively protects inefficient players in the market to the detriment of others without explanation.”

- The bureau expects operators to use low-bleed pneumatic controllers without making it a requirement, leaving it up to industry to make the call of meeting the expectation.
- BLM failed to adequately weigh the negative health effects of pollution against the rule’s public health benefits. Particularly, the bureau ignored the health impacts of oil and gas emissions on Native Americans living in low-income communities.
- The BLM failed to follow the Administrative Procedure Act’s notice and public comment requirements, resulting in an action considered capricious.

Before the 2018 Final Rule was promulgated, several states, including Wyoming, Montana, North Dakota, and Texas, were challenging the soundness of the 2016 Waste Prevention Rule. That challenge, which was stayed due to promulgation of the 2018 Final Rule, was lifted in response to District Judge Gonzalez Rogers’s recent ruling.

Only time will tell how these proceedings pan out and if the recent ruling will be overturned. If the ruling stands, operators will need to review the 2016 requirements carefully, compare them to already applicable federal and state environmental requirements and permits they are currently complying with, and be prepared to identify and address gaps/differences in a very short period of time.