May 08, 2017

Majority Leader Mitch McConnell
317 Russell Senate Office Building
Washington, D.C. 20510

Minority Leader Charles E. Schumer
322 Hart Senate Office Building
Washington, DC 20510

Dear Sirs,

We write to express our strong concern about what is likely to happen if the Bureau of Land Management's (BLM) Methane and Waste Prevention Rule (Waste Prevention Rule) is overturned through the Congressional Review Act (CRA). Specifically, **repealing this rule through the CRA may greatly impair BLM's ability to promote recapture of wasted gas, absent new legislation from Congress**. It will also generate considerable litigation and delay, consuming taxpayer dollars and agency resources and prolonging the wasteful practices of some oil and gas operators.

The Waste Prevention Rule has numerous important beneficial effects. It will curb waste of a valuable natural resource, because an estimated $330 million worth of publicly-owned gas is wasted every year, enough to supply 1.5 million homes a year. It will reduce harmful greenhouse gas emissions. It will create thousands of jobs in the industry that designs and operates gas capture equipment. Finally, the royalty on the captured gas will generate hundreds of millions of dollars in new revenue for state and federal governments, reducing burdens on taxpayers.

The Waste Prevention Rule was adopted because BLM's existing management regime for federal oil and gas did little to prevent waste. BLM's principal regulatory effort on the subject had been in the form of a Notice to Lessees, #NTL-4A, adopted in 1979. That Notice has never been altered, even though in the ensuing decades the gas industry has dramatically changed as a result of technological advances in hydraulic fracturing and directional drilling, which have together allowed the development of vast new resources. The Interior Department's decision to launch a rulemaking reflected the widespread belief that BLM needed modern, enforceable rules on the subject.

The Waste Prevention Rule that resulted is, at bottom, simply implementing the plain statutory mandate Congress gave the Interior Secretary in the Mineral Leasing Act of 1920, to ensure that lessees of federal oil and gas "use all reasonable precautions to prevent waste of oil or gas developed" on federal lands. 30 U.S.C. § 225.

We understand that those who oppose some of the provisions in the Waste Prevention Rule have suggested that, even if the Rule is overturned under the CRA, the Interior Department would remain free to take steps to prevent waste of gas by other means.

That course of action is, in our judgment, risky and, will result in prolonged litigation.

For one thing, the experience of the last few decades has demonstrated that, without the backing of clear, enforceable rules, simply encouraging the industry to reduce waste does not produce meaningful results. Even more important, there is a serious legal question whether the Interior Secretary can impose new requirements on lessees by simply revising the existing Notice to Lessees. The CRA clearly provides that, if the Waste Prevention Rule is overturned by CRA resolution, the Interior Department becomes legally prohibited from adopting new rules that are "substantially the same" as the regulations overturned, unless

Congress specifically provides the Department with such authority in new legislation. The meaning of that limitation is unknown as no court has yet interpreted it.

Key ingredients of the Waste Prevention Rule include (a) placing numeric limits on flaring, (b) addressing gas lost through leaks, equipment operation or liquids unloading, and (c) requiring operators to develop waste minimization plans prior to drilling. If the Secretary were to try to include one or more of those features in a revised Notice to Lessees, undoubtedly some in the industry would seek to prevent him from doing so, arguing that he was pursuing a substantially similar course to the Waste Prevention Rule. Having just gone through a six-year formal rulemaking to prevent wasted gas, it is easy to see how the Interior Department could have a difficult time persuading a court that new regulatory steps do not constitute a rule "substantially the same" as the rule thrown out under the CRA. At the very least, any decision by the Secretary will likely face uncertainty and a prolonged legal challenge.

If the Interior Department believes that the Waste Prevention Rule needs to be improved, by far the best course of action is simply to move forward with the new rulemaking that has already been initiated. Completing that rulemaking would allow additional public input, leave intact entirely uncontroversial aspects of the Waste Prevention Rule like its provisions clarifying when operators may avoid paying royalties on oil or gas used on the lease, and still preserve the Department's flexibility to make modifications it determined were necessary.

By contrast, using the blunt instrument of the CRA to overturn the existing rule might make a nice headline, but it could also forever insulate the industry from meaningful, effective regulation on this important subject and tie up the Interior Department in years of litigation, unless the Congress could muster the political will to provide new authority in new legislation.

That would be a bad deal for state and federal taxpayers and the environment.

Sincerely,

(All of the following signatures are signed in personal capacity.)

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