

**INTERSTATE OIL & GAS COMPACT  
COMMISSION  
MIDYEAR MEETING**

Vancouver, British Columbia

**Energy, Resources, Research & Technology  
Committee**

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# RECENT U.S. EPA ACTIONS AFFECTING OIL & GAS



# 3-1/2 Years into Obama / Jackson EPA

- MAJOR pendulum swing from Bush II
- Many Bush II rules pulled back, re-examined
- Sea change in approach to climate, coal
- EPA support for climate legislation
- EPA rulemakings for greenhouse gas (GHG) controls
- Sierra Club “Beyond Coal” campaign



# Obama/Jackson Policies/Rules Discouraging Mining/Use of Coal

- Coal Combustion Residue (CCR) proposed rule (2010) under Resource Conservation and Recovery Act (RCRA)
- “Cross-State” final rule (2011) under Clean Air Act (CAA)
- “Mercury MACT” final rule (2012) under CAA
- GHG New Source Performance Standards (2012) under CAA
- “Veto” of Mingo Logan coal mining permit under Clean Water Act (CWA) (2011)



# Moves Toward Middle

- “Joint Proposal” for CCR proposed rule (2010)
- Deferral of new ambient air standard for ozone (2012)
- Relaxations on “Boiler MACT” rules (2012)
- Extensions for portland cement kilns MACT rules (2012)



# Two Recent Oil and Gas Actions Reflect “Moves Toward Middle”?

- CAA NSPS (final rule signed April 17, 2012)
- “Draft Guidance” under Safe Drinking Water Act (SDWA), May 4, 2012



# CAA NSPS Oil and Gas Final Rule

- Prompted by “citizens deadline suit” filed by WildEarth Guardians
- Signed April 17, 2012 (under WildEarth court order), not yet (as of 5.31.12) in Federal Register
- CAA emission controls for many types of activities/units in gas production
- “No direct impact on oil wells” but equipment downstream from oil wells may be covered
- Applies to units newly constructed or modified after August 23, 2011



# CAA NSPS Oil and Gas Final Rule

- Most heralded requirement: Hydraulic fracturing (HF) must follow work practice known as “green completion” or “reduced emissions completion” (REC)
- Most newsworthy change from proposed rule: REC not required until January 2015
- EPA rejects industry’s request for 10% VOC threshold
- EPA rejects industry’s request to extend tank compliance date (sticks with one year)





# CAA NSPS Oil and Gas Final Rule

- Environmental groups' criticisms
  - REC extension until January 2015
  - EPA “deferral” of direct regulation of methane
  - EPA’s decision not to regulate “hybrid” wells



# CAA NSPS Oil and Gas Final Rule

## ● Major industry concerns

- One-year compliance date for tanks (major disconnect between industry and EPA's assumptions of number of tanks affected)
- “Rushed” rule written by “too many cooks” leaves many key issues in very confused state
- Confusion in distinguishing “gas wells” from “oil wells”
- Already expecting dozens of “technical” corrections
- But more serious issues where words in regulations do not match EPA's stated intent



# CAA NSPS Oil and Gas Final Rule

- Like most EPA final rules – especially “rushed” rules – expect:
  - Lots of changes through “post-final” stakeholder meetings
  - Administrative petitions for reconsideration
  - “Stay” of effective date requests for some requirements
  - Judicial review petitions filed in D.C. Circuit



# “Draft Guidance” Under SDWA

- EPA for years maintained HF not subject to SDWA Underground Injection Control (UIC) program
- Lost court cases on position
- Congress amended SDWA in 2005 to specify EPA cannot regulate HF EXCEPT where “diesel fuels” are injected in process
- EPA took no action to regulate diesel HF for next five years
- Obama EPA gets pressure from Cong. Waxman, others in Congress



# “Draft Guidance” Under SDWA

- EPA’s “surprise” website announcement 2010
  - Hydraulic fracturing (HF) with diesel requires UIC permit under SDWA
  - “Class II” UIC permit required
  - EPA will work with “stakeholders” to develop “guidance” on key issues



# “Draft Guidance” Under SDWA

- EPA “Draft Guidance” released May 4, 2012
  - EPA solicits written public comments on Draft Guidance, sets comments deadline as July 9, 2012 (77 Fed. Reg. 27451, May 20, 2012)
  - NOT a “rule” (at least EPA’s position)
  - Draft Guidance repeatedly stresses “draft,” “recommendations,” “for consideration,” “not legally binding”



# “Draft Guidance” Under SDWA

- Most significant elements
  - Definition of “diesel fuels” NOT what Cong. Waxman and some environmental groups sought (any and all BTEX)
  - “Tailoring” of many Class II permitting requirements



# “Draft Guidance” Under SDWA

- Reasons to think Draft Guidance may be relatively insignificant
  - Not a “rule” but only “guidance”
  - Not final but “draft”
  - Only applies to “diesel” (EPA says it assumes less than 2% of HF now uses diesel)
  - Only applies in “non-primacy” states where EPA retains UIC permit authority (most states have primacy, although New York, Pennsylvania, Kentucky and Tennessee do not)





# “Draft Guidance” Under SDWA

## ● Reasons to think again

- “Guidance” (even “draft”) has a way of taking on a life of its own
- Key EPA CAA new source review (NSR) “Draft” guidance issued in 1990, never finalized, still considered “Bible” by EPA staffers
- States may follow guidance in their own permit programs EVEN FOR NON-DIESEL HF – will stand as marker for what EPA considers acceptable
- Anyone who has issues, problems with current “Draft” should comment, conduct advocacy in seeking improvements for “final” guidance



# Other Developments/Initiatives Regarding HF

- EPA “Enforcement Initiative”
- EPA “aggregation” policy for determining when CAA new source review/prevention of significant deterioration (NSR/PSD) may be triggered
- Possible new EPA regulations under Toxic Substance Control Act (TSCA) for HF chemicals
- EPA “study” of HF’s health/environmental impacts (interim due 2012, final due 2014)
- Sierra Club “Beyond Natural Gas” campaign



# Thank You

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