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## U.S. District Court overrules suspension of Methane Venting and Flaring Rule as BLM proposes revisions

February 22, 2018

On February 22, the U.S. District Court for Northern California issued a preliminary injunction against suspension of the Bureau of Land Management's (BLM) 2016 rule on Waste Prevention, Production Subject to Royalties, and Resource Conservation. The Obama-era rule seeks to reduce methane waste from venting, flaring, and leakage during oil and gas production on onshore federal and Indian lands.

The latest court decision is one in a series driven by legal sparring between proponents and opponents of the measure, which began almost immediately after the rule was finalized in November 2016. Within a few weeks of rule finalization, western states and industry groups filed legal challenges in the U.S. District Court of Wyoming arguing that the BLM did not have the authority to regulate air pollution. Although the court denied their request in January 2017 for a preliminary injunction to suspend the rule, or to effectively halt the rule's implementation pending court proceedings, litigation is still ongoing.

Congressional attempts to undo the rule began on February 3, 2017, when the House passed H.J.Res.36 to overturn the rule in perpetuity using provisions of the Congressional Review Act. Shortly afterward, President Donald Trump issued the Executive Order for Promoting Energy Independence and Economic Growth (E.O. 13783) on March 28, followed by Interior Secretary Ryan Zinke's Secretarial Order on American Energy Independence (S.O. 3349) issued the next day, prompting administrative review of the rule by the BLM. However, the Senate narrowly rejected the congressional resolution on May 10, 2017.

Despite the Senate's rejection of H.J.Res.36, BLM temporarily delayed the implementation dates of certain aspects of the rule, pursuant to Section 705 of the Administrative Procedure Act (APA), in light of the ongoing litigation in Wyoming. California, New Mexico, and 17 environmental and tribal groups swiftly responded and filed two lawsuits against the BLM in July, challenging BLM's overly-broad use of the APA. The U.S. District Court for Northern California sided with the states and overturned BLM's rule delay on October 4, 2017. An appeal was filed on December 4 by the Department of Justice on behalf of the Department of the Interior and is currently pending review.

On December 8, BLM issued a broad one-year implementation delay of certain rule provisions, citing undue compliance costs associated with provisions that "may be rescinded or significantly revised in the near future." This once again prompted California, New Mexico, and the same 17 environmental and tribal groups to file another suit against BLM on December 19. On February 22, 2018, the California court once again sided with the plaintiff and issued a preliminary injunction against the rule suspension, stating that the BLM did not provide a reasoned analysis for the rollback.

This recent court ruling casts doubt on the legal foothold for the BLM's newest proposed rule, which relies on similar arguments relating to excessive financial burden and duplicative regulatory measure. The proposed revisions would effectively repeal the current venting and flaring requirements altogether, replacing them with pre-2016 requirements, which have remained unchanged for over 30 years (NTL-4A). BLM is accepting comments on these revisions until April 23, 2018.

*Sources: Climate Change Litigation, Columbia Law School, Department of the Interior, E&E News, Library of Congress, Natural Gas Intel, The Oil & Gas Journal*

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