

Oil and Gas Regulatory Climate

Air Waste Management Association Annual Conference 2017

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Overview

Environmental Regulatory Development Affecting Oil and Gas Sources:

1. During the Obama Administration: 2008-2016;
2. Developments to Date in the Trump Administration: first 3 ½ weeks;
3. What's next....

The past 8 years

The Obama Administration

Significant action in the regulation of GHGs:

- *Massachusetts v. EPA*, US Supreme Court, 2007
 - Endangerment Finding, December 2009
 - Tailoring Rule, June 2010
 - ✓ Step One, effective date January 2011
 - ✓ Step Two, effective date July 2011
- *UARG v. EPA*, US Supreme Court, 2014
 - BACT review of GHGs upheld for PSD-Anyway Sources only.
- Subpart W, GHG Reporting Rule
 - Originally adopted, November 2010

The past 8 years

The Obama Administration

Control of VOCs and HAPs from oil and gas sources:

- NSPS Subpart OOOO, August 2012
- NESHAP Subparts HH & HHH, August 2012

Methane Strategy:

- Methane Challenge Program, March 2016
- NSPS Subpart OOOOa, June 2016
- Information Collection Request re Methane Emissions from Existing Sources – ESPS Development, Section 114 letters sent late November – early December 2016.

The past 8 years

The Obama Administration

Two New Ozone NAAQS

- 75 ppb – 2008
 - ✓ Wise County added to DFW nonattainment area
- 70 ppm – 2015
 - ✓ TCEQ proposes to add Bexar, Hood, and El Paso Counties
 - ✓ EPA final designation October 2017

Control Technique Guidelines

- RACT for VOC Emissions for sources in nonattainment areas – issued October 2016

The past 8 years

The Obama Administration

Other Final Rules affecting O&G Sources:

- WOTUS, June 2015
- Source Aggregation, June 2016
- Regional Consistency Rule, August 2016
- NESHAP for Stationary RICE, Subpart ZZZZ, March 2010
- NESHAP for Process Heaters and Boilers, Subpart DDDDD, March 2011

Non-final Rules affecting O&G Sources:

- Risk Management Program Rule, final rule published in Fed. Reg. January 2017, effective date extended to March 2017
- Proposed revision to EPCRA Toxic Release Inventory provisions, proposal Jan. 6, 2017; comments due March 7, 2017.

Natural Gas Industry has a Good Story to Tell...

April 2016, ICF International Report prepared for the Natural Gas Council concludes natural gas systems have achieved the following reductions:

- Absolute reduction of 15% in methane emissions from 1990 – 2014; and
- 43% reduction, based on unit of gas produced, during the same period.
- Reductions achieved through:
 - ✓ Voluntary efforts to integrate emission reduction practices;
 - ✓ Participation in voluntary industry programs;
 - ✓ Installation of more efficient, lower-emitting new equipment;
 - ✓ Co-benefit of recent regulations.

Trump Administration Changes

First 3 ½ weeks

- White House Memos
- Executive Orders
- Congressional Review Act
- New EPA Administrator

Trump Administration Changes

First 3 ½ weeks

Regulatory Freeze Memorandum, issued by Reince Priebus, January 20, 2017:

- Purpose: to give the new Administration time to review regulations before they are published or before their effective dates.
- Halts the Federal Register process for rulemaking actions after January 20, 2017 as follows:
 1. No proposed or final rule may be sent to the Federal Register for publication until reviewed and approved by new Administration;
 2. A proposed or final rule that has already been sent to the FR but has not yet been published must be immediately withdrawn for review and approval; and
 3. The effective date of a final rule that has been published in the FR but has not yet taken effect is temporarily postponed until 3/21/17, unless the agency justifies a longer postponement.

Trump Administration Changes

First 3 ½ weeks

Regulatory Freeze Memo:

- Defines “regulation” very broadly, it includes:
 - ✓ Any substantive action by an agency, normally published in the Federal Register,
 - ✓ That promulgates or is ***expected to lead*** to the promulgation of a final rule or regulation, and
 - ✓ Also covers any agency statement of general applicability and future effect that sets forth a policy on a statutory, regulatory, or technical issue or an interpretation of a statutory or regulatory issue.

Trump Administration Changes

First 3 ½ weeks

Current Final Rules affected by Regulatory Freeze memo:

- Risk Management Program Rules revisions
 - AERMOD revisions
 - Texas Particulate Matter SIP revisions
 - FWS Endangered Species Act policy revisions re Candidate Conservation Agreements
- All effective dates extended to March 21, 2017

Trump Administration Changes

First 3 ½ weeks

Presidential Memorandum Regarding Hiring Freeze, January 23, 2017

- Imposes a freeze on the hiring of federal civilian employees applied across the board in the executive branch.
- No vacant positions existing at noon on January 22 may be filled and no new positions may be created, except in limited circumstances.

Trump Administration Changes

First 3 ½ weeks

Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, January 30, 2017

(the “2 for 1 EO”):

- For every new proposed or adopted regulation, the federal agency must identify at least 2 regulations to be repealed.
- Exceptions for emergencies and national security.
- For FY 2017, the total incremental cost of all new regulations, including repealed regulations, shall be no greater than zero, unless otherwise required by law or consistent with advice provided by OMB.

Trump Administration Changes

First 3 ½ weeks

EO 13771 was quickly clarified by guidance issued by the OMB.

Memorandum: Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, Titled ‘Reducing Regulation and Controlling Regulatory Costs,’ February 2, 2017.

- Applies to “significant regulatory actions” between Jan. 20 – Sept. 30, 2017, includes proposed rules for which notice was issued before Jan. 20, 2017.
- “Significant regulatory action” means one with an annual impact of \$100 million on the economy or have a material adverse impact on the economy; will create inter-agency inconsistency; will materially alter the budgetary impact of entitlements or grants; or will raise novel legal or policy issues.
- Applies to executive branch departments and agencies, not to actions of “independent regulatory agencies”; merely “encourages” independent regulatory agencies to comply.
- EPA, USFWS, USACE are executive branch agencies.

Congressional Review Act

Congressional Review Act (“CRA”):

- Allows Congress to overturn rules recently finalized by federal agencies
- According to the Congressional Research Service, final rules submitted to Congress on or after June 13, 2016 are subject to disapproval by Congress under the CRA.
- Once used, the agency is barred from adopting a rule in substantially the same form unless it specifically authorized by a subsequent law.

Congressional Review Act

Key environmental rules currently subject to CRA resolutions include:

- ***HJR 38: nullifying Interior Department Stream Protection Rule HJR 38 passed House and Senate; presented to President on 2/6/17***
- HJR 36; SJR 11: proposing to nullify BLM rule re venting and flaring on federal lands HJR 36 (passed House on 2/3/17)
- HJR 59: proposing to nullify EPA Risk Management Program revisions (introduced 2/1/17)
- HJR 60: proposing to nullify FWS Endangered Species Act compensatory mitigation policy (introduced 2/2/17)
- SJR 21: proposing to nullify EPA CSAPR rule (introduced 2/3/17)

New EPA Administrator

Scott Pruitt – could be confirmed an EPA Administrator as early as tomorrow, Feb. 17.

Ryan Jackson – aide to Senator Inhofe, rumored to join EPA as Pruitt's Chief of Staff

Don Benton – current head of EPA Beachhead Team, plans to stay on as agency's senior White House Advisor

Catherine McCabe, current Acting EPA Administrator - returning EPA Region 2

New EPA Administrator

Rumors of possible immediate action:

- New EO's on first day possible:
 - ✓ Sweeping government-wide EO, including plans to withdraw from the Paris Treaty, or
 - ✓ Targeted EO on the Clean Power Plan and WOTUS.

New EPA Administrator

Other Executive Actions that could be taken that would affect the resources of EPA to conduct its business:

- Cuts in Funding Levels
- Cuts in Personnel
- Freeze on contracts and grants
- Review of scientific studies / data
- Restrictions on media communications
- Strategic decisions in on-going litigation

Questions?

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