

# Background on Venting and Flaring Rulemaking by the Bureau of Land Management

February 2016

## Summary of Problem

The Bureau of Land Management (BLM) within the Department of the Interior (DOI) manages about 245 million acres of public lands, located primarily in the American West. The BLM administers mineral leasing on these lands, including onshore federal oil and gas leasing. Federal and Indian onshore lessees and operators lost 375 billion cubic feet (Bcf) of natural gas between 2009 and 2014—enough gas to serve about 5.1 million households for a year. In 2013 alone, 98 Bcf of natural gas was vented and flared from Federal and Indian leases, with a sales value of \$392 million and a royalty value of \$49 million.

The existing rules governing payment of royalties for natural gas lost during production on federal lands are more than 30 years old. BLM is in the process of updating these rules, originally adopted in 1980. The oil and gas industry has changed dramatically in the last three decades, with the advent of new technology and techniques such as “fracking.”

Existing rules allow the loss of natural gas in certain cases, exempting oil and gas companies from royalty payments on gas that is vented (released directly into the atmosphere) or flared (burned) with prior authorization or approval, known as “unavoidably lost” gas. Oil and gas companies are

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Oil derrick drilling

## Patchwork of State Regulations

The existing federal rules regarding lost gas are set forth in a Notice to Lessees from the Geological Survey in 1980. With the dramatic increase in natural gas mining in recent years, some states have adopted limits to venting and flaring, but there are significant gaps. Colorado is the only state that currently regulates methane emissions from oil and gas production. North Dakota has adopted regulations to reduce flaring by requiring gas capture plans. Pennsylvania, Wyoming, and Ohio have requirements for instrument-based Leak Detection and Repair (LDAR). But few states have rules in place that address methane emissions at all, and if so, may only cover a few sources. No state development plan includes provisions like those vested in BLM for planning and management to control the timing, location, and intensity of development.

also allowed to freely use gas from a well as fuel and for other uses on a lease site. No royalties are paid on this gas. Significant amounts of this natural gas are unintentionally leaked into the atmosphere from oil and gas machinery and equipment. Because this gas is free to oil and gas companies, there is less incentive to upgrade old, leaky equipment.

Federal onshore oil and gas minerals are a public trust resource, and preventing waste of these resources will encourage more responsible use. BLM retains considerable authority to promulgate new or revised rules to prevent waste as a result of changing circumstances and conditions.

According to the Mineral Leasing Act of 1920: “Each lease shall contain provisions for the purpose of insuring the exercise of reasonable diligence, skill, and care in the operation of said property; a provision that such rules for ... the prevention of undue waste as may be prescribed by said Secretary shall be observed...”

In 1976, Congress passed the Federal Lands Policy and Management Act (FLPMA), which requires “the United States receive fair market value of the use of the public lands and their resources ...” Congress further articulated BLM’s authority in the Federal Oil and Gas Royalty Management Act of 1982, which states, “Any lessee is liable for royalty payments on oil or gas lost or wasted from a lease site when such loss or waste is due to negligence on the part of the operator of the lease, or due to the failure to comply with any rule or regulation, order or citation issued under this Act or any mineral leasing law.”



Methane flaring

## Environmental Protection Agency Rule-making

The Clean Air Act authorizes the EPA to develop technology-based standards, known as New Source Performance Standards (NSPS), for certain stationary sources, including oil and gas development.

On September 18, 2015, the EPA proposed new limits on emissions of methane and volatile organic compounds (VOC) for oil and natural gas operations, including production, processing, transmission and storage. The proposal adds methane standards for certain new, modified and reconstructed sources. EPA's actions, however, do not preempt BLM's mandate to both reduce waste and capture fair market value for publicly owned gas.

BLM's authority allows it to promulgate new or revised rules that apply to existing federal leases to prevent waste as a result of changing circumstances and conditions. EPA rules will only apply to new or modified leases.



### BLM's Mandate and Authority to Prevent Waste

The BLM methane rule is necessary in addition to the EPA rule because the BLM and the EPA have much different legal authorities and responsibilities. The BLM is responsible for stewardship of public lands and resources (under Federal Land Policy and Management Act), and waste prevention (under Mineral Leasing Act). The EPA is responsible for air quality and climate pollution (under Clean Air Act).

The BLM rule covers new and existing sources of methane emissions from oil and gas on onshore federal lands. This is significant, as roughly 90% of emissions in 2018 are estimated to come from existing sources. The EPA rule will cover only new and modified methane emissions sources nationally.

Unlike EPA, BLM has a duty to plan and manage oil and gas development on public lands to avoid waste, controlling leasing activity and the pace and place of drilling and infrastructure.

Because the EPA rule is focused on methane as a pollutant, it requires methane capture but does not prohibit methane flaring. BLM has a duty to reduce the waste of methane which requires a reduction in flaring.

## BLM Proposed Rule (RIN 1004-AE14)

Under BLM's proposed rule, operators on public lands would be required to:

- deploy equipment and processes to limit the amount of flaring gas;
- establish an instrument-based leak detection program (such as infrared cameras) to limit venting from storage tanks – similar to CO air quality rules;
- limit on monthly basis the amount of gas an operator can flare at a well, averaged across all of the producing wells on a lease (phased in, over a three-year-period);
- submit a waste minimization plan with the federal application for a permit to drill;
- prohibit venting of natural gas, except in emergencies;
- replace all "high bleed" pneumatic controllers with the "low bleed" variety within one year;
- replace certain pneumatic pumps with solar pumps, (or route the pumps to a flare).

The rules also clarify when operators owe the government royalties, and gives the BLM the *option* of setting certain royalty rates higher than 12.5%. The public will have until April 8 to submit comments on the proposed rules.

BLM is holding public hearings in February 16 in Farmington, NM; February 18 in Oklahoma City, OK; March 1 in Lakewood, CO; March 3 in Dickinson, ND.

## Contact Us

TCS can be contacted using the information below.

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