

PA's New Strategy for Methane Reduction Raising the Bar on Air Emissions for Oil & Gas Operations

"Today, we are announcing a new way forward that protects our environment, reduces climate change and helps businesses by reducing the waste of a valuable product." *Governor Tom Wolf, Facebook Town Hall, January 19, 2016.*

On January 19, 2016, Pennsylvania Governor Tom Wolf and the Department of Environmental Protection ("DEP") outlined a strategy to reduce methane emissions from oil and gas operations as part of their plan to establish Pennsylvania as a national leader in regulating methane. As Governor Wolf noted in his press release, "We are uniquely positioned to be a national leader in addressing climate change while supporting and ensuring responsible energy development, creating new jobs, and protecting public health and our environment."

The Commonwealth's strategy is to leverage and improve upon the following: (a) current best practices implemented by some industry operators; (b) the ongoing federal changes in the regulatory structure mandated by the United States Environmental Protection Agency's implementation of regulations set forth as Subpart OOOO (Standards for Performance for Crude Oil and Natural Gas Production, Transmission and Distribution) for new or modified air emission sources; (c) the adoption of new state regulations for existing air emission sources on an expeditious basis; and (d) significant revisions to the current General Permit - 5 (state GP-5 permit which regulates air emissions). The new framework is intended to implement a higher level of monitoring, permitting and detection to achieve a reduction in methane emissions throughout the life cycle of the oil and gas extraction process encompassing well pads, processing facilities, compressor stations, production, gathering, transmission and distribution pipelines and storage facilities.

As announced by the Governor and the Department, the broad four-point plan highlights the following objectives:

1. To reduce leaks at new unconventional natural gas well pads, DEP will develop a new general permit for oil and gas exploration, development, and production facilities, requiring Best Available Technology (BAT) for equipment and processes, better record-keeping, and quarterly monitoring inspections.
2. To reduce leaks at new compressor stations and processing facilities, DEP will revise its current general permit, updating best-available technology requirements and applying more stringent LDAR [Leak Detection and Repair system], other requirements to minimize leaks. A new condition will require the use of Tier 4 diesel engines that reduce emissions of particulate matter and nitrous oxide by about 90%.

3. To reduce leaks at existing oil and natural gas facilities, DEP will develop a regulation for existing sources for consideration by the Environmental Quality Board.
4. To reduce emissions along production, gathering, transmission and distribution lines, DEP will establish best management practices, including leak detection and repair programs.¹

The strategy represents a broad effort to reduce both permitted and fugitive methane emissions in oil and gas operations. This reduction would not only mitigate potential impacts to the environment and climate change, but would also raise the bar on the entirety of the oil and gas sector to measure up to companies that have already implemented such measures.

Some important items to consider:

- There are many oil and gas operators who already have implemented or are in process of implementing these methane reduction measures. While there are a myriad of reasons to do so, including environmental impacts and stewardship, there are important economic incentives as well. Remember that both permitted and fugitive methane emissions represent product waste and lost profits due to escape of product that is not available for sale.
- There will be some differences in application of the new strategy, depending on whether the source of the emission is "existing" vs "new/modified." This establishes a grandfathering effect on certain sources and may lead to some uncertainty as to what constitutes a modification of an existing source that renders it a "new" source and therefore subject to the heightened requirements. The EPA rules establish what types of equipment modifications may equate to "new/modified" status, and we would anticipate that Pennsylvania will adopt the same or similar definitions.
- The United States Department of the Interior's Bureau of Land Management ("BLM") is currently proposing new regulations (announced on January 22,) "to reduce the waste of natural gas from flaring, venting and leaks from oil and gas production operations on public and Indian lands." The BLM's rule proposal emphasizes not only the beneficial impact of reducing air pollution and greenhouse gases, but also places significant weight on the fact that fugitive emissions result in smaller payments for royalty owners (U.S. tax payers (via BLM), Indian Tribes and States). See *BLM Fact Sheet*.

This is important to operators in Pennsylvania for several reasons. First, while BLM rules have a minimal direct regulatory impact in Pennsylvania, they create a rising threshold for federally-owned lands throughout the United States. This often raises the bar even for individual states that do not have material amounts of land owned by federal agencies. As certain state regulatory practices evolve, the bar for best practices is raised, as evidenced by Pennsylvania's comparison of its proposed rules against EPA Quad OOO) regulations, as well as against the State of Colorado See *DEP Briefing Paper and Appendix A*. Therefore, what happens in BLM's world potentially has a ripple effect in Pennsylvania.

¹ "Governor Wolf Announces New Methane Rules to Improve Air Quality, Reduce Industry Loss," <https://www.governor.pa.gov> (January 19, 2016).

Secondly, the BLM's focus on the financial impact of economic waste and diminished royalty payments for royalty owners sets up an interesting potential for the dual track prosecution of methane emission reductions through traditional government enforcement as well as private landowner royalty action as a motivating factor for operators to achieve the new standards for best practices.

Cohen & Grigsby's Energy and Environmental Practice Groups will continue to monitor the regulatory activities of state and federal programs, as these changes will significantly impact operators in Pennsylvania. For more information, please contact Todd L. Normane at (412) 297-4780 or tnormane@cohenlaw.com. To receive future bulletins by e-mail, please send an e-mail to bulletins@cohenlaw.com.

Copyright © 2016 by Cohen & Grigsby, P.C. (No claim to original U.S. Governmental material.)

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without prior written permission of Cohen & Grigsby, P.C. and is intended to alert the recipients to new developments in the areas of energy and environmental law. The hiring of a lawyer is an important decision that should not be based solely on advertisements. Before you decide, ask us to send you free written information about Cohen & Grigsby's qualifications and experience.