



U.S. CHAMBER OF COMMERCE



April 22, 2016

Neil Kornze
U.S. Department of the Interior
Director (630), Bureau of Land Management
Mail Stop 2134 LM
1849 C Street NW
Washington, DC 20240
Attention: 1004-AE14

RE: Docket No. 1004-AE14: 43 CFR Parts 3100, 3160, and 3170 Waste Prevention, Production Subject to Royalties, and Resource Conservation; 81 Fed. Reg. 6616 (Monday, February 8, 2016)

Dear Director Kornze:

The National Association of Manufacturers, the U.S. Chamber of Commerce, the Aluminum Association, the American Iron and Steel Institute, the Corn Refiners Association, the Fertilizer Institute, the Industrial Minerals Association - North America, the Natural Gas Supply Association, the National Industrial Sand Association, and SPI:

The Plastics Industry Trade Association (collectively, “the Associations”) submit the following comments in response to the Department of the Interior (“DOI”), Bureau of Land Management’s (“BLM”) proposed rule on Waste Prevention, Production Subject to Royalties, and Resource Conservation for oil and gas production activities on onshore Federal and Indian leases (“Proposed Rule”). According to the BLM, the Proposed Rule would “require operators to limit waste of gas through flaring and venting, clarify the situations in which flared gas would be subject to royalties, conform the royalty terms applicable to competitive leases with the corresponding statutory language, and clarify the on-site uses of gas that are exempt from royalties” and “require operators to record and report information related to venting and flaring of gas.”¹

The **National Association of Manufacturers (“NAM”)** is the largest manufacturing association in the United States, representing small and large manufacturers in every industrial sector and in all 50 states. Manufacturing employs more than 12 million men and women, contributes \$2.09 trillion to the U.S. economy annually, has the largest economic impact of any major sector and accounts for more than three-quarters of private-sector research and development. The NAM is the powerful voice of the manufacturing community and the leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States.

The **U.S. Chamber of Commerce (“the Chamber”)** is the world’s largest business federation representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations. The Chamber is dedicated to promoting, protecting, and defending America’s free enterprise system.

The **Aluminum Association** is the industry’s leading voice in Washington, DC. It provides global standards, industry statistics and expert knowledge to member companies and policy makers nationwide. Highly engaged in public policy and technical forums, the Association is committed to advancing aluminum as the sustainable metal of choice around the world.

The **American Iron and Steel Institute (“AISI”)** serves as the voice of the North American steel industry in the public policy arena and advances the case for steel in the marketplace as the preferred material of choice. AISI also plays a lead role in the development and application of new steels and steelmaking technology. AISI is comprised of 19 member companies, including integrated and electric furnace steelmakers, and approximately 125 associate members who are suppliers to or customers of the steel industry.

The **Corn Refiners Association (“CRA”)** is the national trade association representing the corn refining (wet milling) industry of the United States. CRA and its predecessors have served this important segment of American agribusiness since

¹ 81 Fed. Reg. at 6636.

1913. Corn refiners manufacture starches, sweeteners, corn oil, bioproducts (including ethanol), and animal feed ingredients. www.corn.org

The Fertilizer Institute (“TFI”) represents the nation’s fertilizer industry including producers, importers, retailers, wholesalers, and companies that provide services to the fertilizer industry. TFI members provide nutrients that nourish the nation’s crops, helping to ensure a stable and reliable food supply. TFI’s full-time staff, based in Washington, D.C., serves its members through legislative, educational, technical, economic, information, and public communications programs.

The **Industrial Minerals Association - North America (“IMA-NA”)** is the representative voice of companies which extract and process a vital and beneficial group of raw materials known as industrial minerals. Industrial minerals are the ingredients for many of the products used in everyday life, and our companies and the people they employ are proud of their industry and the socially responsible methods they use to deliver these beneficial resources. IMA-NA represents ball clay, barite, bentonite, borates, calcium carbonate, diatomite, feldspar, industrial sand, kaolin, magnesia, soda ash, talc and wollastonite.

Established in 1965, the **Natural Gas Supply Association (“NGSA”)** encourages the use of natural gas within a balanced national energy policy, and promotes the benefits of competitive markets, thus encouraging increased supply and the reliable and efficient delivery of natural gas to U.S. customers.

The **National Industrial Sand Association (“NISA”)** is a trade association representing the major North American producers and processors of industrial sand (sometimes called silica sand). Founded in 1936, NISA is committed to advancing research and maintaining a dialogue with industry, legislators, regulatory agencies and the scientific community with respect to issues of concern to the industrial sand industry, including the potential health effects associated with the inhalation of respirable crystalline silica.

Founded in 1937, **SPI: The Plastics Industry Trade Association** promotes growth in the \$427 billion U.S. plastics industry. Representing nearly one million American workers in the third largest U.S. manufacturing industry, SPI delivers advocacy, market research, industry promotion, and the fostering of business relationships and zero waste strategies. SPI also owns and produces the international NPE trade show. All profits from NPE are reinvested into SPI’s industry services. Find SPI online at www.plasticsindustry.org and www.inthehopper.org.

Introduction

The Associations represent the nation’s leading industrial sectors that form the backbone of the nation’s ability to grow the economy and provide jobs in an environmentally-sustainable and energy-efficient manner. The Associations both

represent companies that produce, process, transport and consume oil and natural gas. The Associations are key and necessary stakeholders regarding any regulation that impacts the availability or cost of energy and which may impact manufacturers and other energy consumers directly or indirectly in the future.

There are abundant oil and natural gas resources in the United States and the Associations support policies that promote the leasing, exploration and development of the nation's oil and natural gas resources in a responsible manner, balancing environmental protection and economic impacts. Major advances in hydraulic fracturing and horizontal drilling technologies have made the extraction of shale gas and oil more cost-effective and technologically feasible. Development of these massive new deposits of oil and gas has greatly improved the current and future outlook for energy in the U.S. and has made the nation more energy secure.

The impacts of regulations like the Proposed Rule do not occur in a vacuum for the Associations' members, but rather are felt collectively in the form of higher energy prices, greater challenges in obtaining necessary environmental permits and threats to international competitiveness from higher operating costs. Often, the negative impacts of overly burdensome regulations compound each other. For example, and in the context of the Proposed Rule, the burdens and additional costs potentially imposed may result in the curtailing of oil and gas production on Federal and Indian lands. Land under BLM management and regulation accounts for 11 percent of the Nation's natural gas supply and five percent of its oil supply.²

Taking this example a step further, reduced oil and gas production would limit the supply of these resources for end use, such as fuel and feedstock for electric power plants and manufacturing facilities. Manufacturers and other industrials directly consume 30 percent of all of the natural gas consumed in the United States,³ not including the natural gas indirectly consumed through natural gas-powered electricity purchased from the grid, and more than one-third of the petroleum.⁴ Efforts to substantially or completely curtail energy development on federal lands would deprive manufacturers and other energy consumers of critical energy supplies, increase operating costs and threaten international competitiveness. In addition, such a scenario likely would increase compliance costs associated with other major rules, such as the U.S. Environmental Protection Agency's ("EPA") Boiler MACT (which is causing manufacturers to switch to gas-fired boilers) and the recently-finalized greenhouse gas rules for existing power plants (the Clean Power Plan).⁵

² Id at 6616.

³ Energy Information Administration (EIA). *Natural Gas Consumption by End Use* (March 31, 2016). More information is available at, https://www.eia.gov/dnav/ng/ng_cons_sum_dcunus_a.htm.

⁴ EIA. *Monthly Energy Review*, Tables 3.7a, 3.7b and 3.7c (March 2016).

⁵ The Clean Power Plan is currently subject to a Stay Order issued by the U.S. Supreme Court. Nothing in these comments shall constitute a waiver of any arguments the Associations have made or will make in the context of any litigation involving the EPA's greenhouse gas regulations for existing and new power plants.

Finally, the Associations are aware of several other pending regulations and policies that threaten to further limit access to or increase the cost of production of critical oil and gas energy resources, including among others:

- BLM's new proposed rules governing measurement of crude oil and natural gas production, coupled with new restrictions on commingling production from federal, state, tribal or private leases for field storage and measurement purposes (as has been the practice in some areas for many years);
- the EPA's Oil and Natural Gas Sector: Emission Standards for New and Modified Sources under the Clean Air Act ("CAA") section 111(b);
- in-development emission standards for existing oil and gas operations under CAA section 111(d);
- a proposed moratorium on oil and gas development off the Atlantic Coast under the DOI's proposed Offshore Leasing Plan; and
- the EPA's October 2015 Ozone National Ambient Air Quality Standards revision that will put many energy development areas into nonattainment.

This list does not include dozens of state and local efforts designed to shut-in production of oil and gas. It also does not include the increasing regulatory challenges and burdens in the permitting and construction of necessary energy infrastructure for delivering these energy resources to industrial and manufacturing facilities.

Industry is already reducing emissions on its own accord. In recent years, even as oil and natural gas production has risen dramatically, methane emissions have held steady or fallen slightly.

Given this context, the Associations offer the following comments to the BLM on this rulemaking.

BLM's Role as Land Manager

The Associations believe that the Proposed Rule would create requirements that are in excess of the BLM's statutory authority and result in the BLM inadequately fulfilling its mission to sustain the productive use of lands under its charter. The BLM has a unique role in overseeing oil and gas development on federal lands. As noted in the BLM mission statement: "It is the mission of the Bureau of Land Management to sustain the health, diversity, and productivity of the public lands for the use and enjoyment of present and future generations."⁶ While there is a mandate of stewardship of the lands BLM administers consistent with the mission of "multiple use and sustained

⁶ See http://www.blm.gov/wo/st/en/info/About_BLM.html.

yield” in this mission, there is also a clear and primary focus on “productivity.” Whether grazing, recreation, or mineral extraction, BLM has articulated the need to maximize the value for the American people on lands designated for multiple use on which oil and gas exploration and production have long been recognized as legitimate and beneficial uses. Further, the vast majority of the revenue collected by BLM is in the form of oil and gas royalty payments to the federal government.

Regulations that inhibit investments on federal lands with overly burdensome and redundant requirements run counter to BLM’s mission of maximizing the value of production of oil and gas resources to the American people for whose benefit those resources are managed. The Proposed Rule is an example of such a regulation. Congress gave the BLM the authority to prevent waste; in seeking to protect air quality and reduce methane emissions with the Proposed Rule, the BLM is exceeding its legal authority. The authority to regulate air quality lies more properly with the EPA under the Clean Air Act.

The Proposed Rule is Costly and Burdensome

As the BLM itself outlines, the Proposed Rule would require additional and costly measures for oil and gas activities on Federal and Indian lands. For example, the BLM has looked at the costs of implementing its proposed rules from a broad industry standpoint, but has failed to analyze those impacts at an operational scale. The costs of this rule will be borne not only by larger companies, but by a number of companies that operate wells with low daily rates of production. While individually, such wells may produce only a few barrels of oil per day, in the aggregate their production remains important to our domestic energy supply, and these operations often represent an important source of employment for communities and regions in the West. The Proposed Rule also would impose additional recordkeeping burdens on the impacted industry. Under the regulation, operators would have to keep records documenting their compliance with many of the provisions in the Proposed Rule.⁷ For example, the operators would have to estimate or measure all of the gas vented or flared, and then report those amounts.⁸

Each and every one of these additional costs and burdens makes oil and gas development and production on Federal and Indian lands less and less economically viable and competitive. Additionally, regulations like the one being proposed here create uncertainty around an industry’s ability to do business. For example, the Proposed Rule would remove the current fixed royalty rate for competitive oil and gas leases, and give BLM the discretion to raise the rate for future leases.⁹ This type of unpredictability makes it very difficult for businesses to plan, operate and compete.

Further, the Associations are concerned that the Proposed Rule fails to accurately account for both technological and market realities and limitations.

⁷ 81 Fed. Reg. 6660.

⁸ *Id.*

⁹ *Id.* at 6658-59.

Proposing a regulation under those circumstances almost certainly would result in the curtailment of energy production on Federal and Indian lands and increased costs for end-users. For example, the Proposed Rule would classify all venting and flaring from leases connected to pipeline gathering system infrastructure as an “avoidable loss,” and therefore, “waste”. Such classification would have the practical effect of shutting-in production at leases that may indeed be connected to pipelines but that may be unable to deliver their production to these pipelines during periods when new production brought online may restrict overall gathering system capacity until additional lines are installed. In other cases, BLM’s delay in approval of rights of way to construct and install such pipelines may restrict the companies’ ability to deliver crude oil or natural gas production to market. Under this new treatment and combined with current regulations that treat avoidable losses as violations, the permit holder will have no choice but to shut-in production and deprive the market of these energy resources.¹⁰

Redundancy of the Proposed Rule

Numerous requirements being proposed here are already being addressed through other existing or proposed regulations and initiatives. As BLM points out, several states have enacted laws requiring emissions reductions during oil and gas activities. States such as New Mexico, Utah, Colorado, Wyoming, Montana and Texas all have laws in place that address many of the objectives BLM is seeking in the Proposed Rule. States are often far better situated to address these issues, as each state’s production sites and oil and gas fields have characteristics unique to that state.

Additionally, the EPA has initiated regulatory actions to limit methane emissions from new oil and gas production site sources under the Clean Air Act (“CAA”) section 111(b). Any authority to regulate methane emissions from existing sources would stem from section 111(d) of the CAA; however, that determination and any subsequent requirements can only take place after EPA has taken final action on new sources—which has not occurred. Even if EPA elects to take action on existing oil and gas sources under section 111, the CAA calls for guidelines that would be less stringent than any new source rules for that source category, thereby leaving wide-discretion to the states as to implementation.¹¹

As regulated sectors, the Associations are all-too-familiar with the inefficiencies and costs created by duplicative or unnecessary regulations. Given the regulations already in place at the state level, substantial efforts underway by industry to reduce methane emissions, and other federal measures in place or under development, the Associations urge the BLM to take a step back and limit the scope of any final regulation in order to avoid redundancies.

¹⁰ The Associations are aware of comments being filed by other industry associations outlining several other technical, economic and practical concerns. The Associations urge the BLM to carefully review and address those concerns in any final rule.

¹¹ Some of the Associations are parties to a lawsuit challenging CAA section 111 regulations for electric-generating utilities arguing that the EPA has misinterpreted and misapplied section 111 in those rulemakings.

Thank you for your consideration of the above comments in this important matter. If you have any further questions, please feel free to contact Greg Bertelsen, Senior Director, Energy and Resources Policy at the National Association of Manufacturers at (202) 637-3174 or by e-mail at gbertelsen@nam.org, or Mary Martin, Energy, Clean Air & Natural Resources Policy Counsel, U.S. Chamber of Commerce at (202) 463-5986 or by email at mmartin@uschamber.com.

Respectfully submitted,

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