

Wyoming Environmental Compliance and Public Land News - August 2015

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Public Land News

EPA Finalizes GHG Standards for Power Plants with Substantially More Stringent Limits for Wyoming

The federal Environmental Protection Agency (EPA) released on August 3 its long-expected rules limiting greenhouse gas (GHG) emissions from fossil-fuel fired power plants. The rule package includes the final Clean Power Plan, which reflects dramatically more stringent state-specific emission targets for Wyoming than EPA initially proposed. Governor Mead has vowed to fight the regulations, which he calls scientifically flawed and bad policy for Wyoming and the nation.

The final rules, which govern new, modified, and existing power plants, represent the first federal foray into the direct regulation of GHG from a source category under Section 111 of the Clean Air Act. If they survive judicial scrutiny, these rules will result in a fundamental shift in the generation and transmission of electricity across the country and will set the bar for future GHG performance standards for source categories from oil and natural gas production to petroleum refineries.

EPA also proposed a federal plan for meeting the state-specific limits in the Clean Power Plan that EPA would impose on states that do not develop their own plans.

The performance standards for new power plants, while less stringent than initially proposed, still will require any new coal-fired power plant to employ partial carbon capture and sequestration or co-firing with natural gas. These rules are a prerequisite for the Clean Power Plan's existing source standards, which are considered the centerpiece of President Obama's Climate Action Plan.

EPA estimates that the Clean Power Plan will result in a 32% reduction in GHG emissions from the power sector below 2005 levels. This reduction is achieved through stringent state-level emission limits, which will be phased in over an eight-year period between 2022 and 2030.

For Wyoming, the final rule requires that the State develop a plan to meet emission targets for its fossil-fuel fired power plants that would not be achievable for any single coal-fired unit. The interim limit for Wyoming is 1,526 lbs/MWh (compared to the proposed limit of 1,808 lbs/MWh), while the final limit is 1,299 lbs/MWh (compared to the proposed limit of 1,714

lbs/MWh).

EPA's final Clean Power Plan drops demand-side energy efficiency from the state goal-setting process, but creates a uniform emission performance rate for coal- and natural gas-fired power plants that punishes states like Wyoming that are more heavily invested in coal-fired power. The targets also reduce the emphasis on re-dispatch to natural gas and EPA now predicts that the share of overall generation from natural gas will not increase dramatically as a result of implementation of the rule.

Opposition to Wetland Rule Mounts

Federal and state officials have been working to block implementation of an Environmental Protection Agency (EPA) and Army Corps of Engineers (Corps) jointly-issued rule that would expand the definition of a wetland subject to a Section 404 permit under the Clean Water Act. The rule was published in the Federal Register on May 29, 2015 and takes effect August 28th. According to the EPA, the waters affected would only be those with a “direct and significant” connection to larger bodies of water downstream that are already protected. EPA further avers that the rule aims to protect the waters from pollution and development and safeguards drinking water.

On June 16th, the U.S. House Appropriations Committee approved a 2016 Interior and Related Agencies Appropriations bill prohibiting EPA from spending money to implement the rule. The U.S. Senate Appropriations Committee followed suit on June 18th.

On June 10th, the U.S. Senate Environment and Public Works Committee approved separate legislation (S 1140) that would effectively restore Bush administration rules requiring EPA and the Corps to rewrite rules to clarify which smaller bodies of water would require a disturbance permit under the Clean Water Act. The legislation also forces EPA to consult with local governments on the rule, conduct a full economic analysis and assess the impacts on small business owners. The legislation was placed on the U.S. Senate Legislative Calendar on July 16th.

Additionally, thirteen states led by North Dakota, including Wyoming, filed a lawsuit on June 29th challenging the EPA and the Corps over the agencies' rule. The states argue the rule is a “federal power grab” that is unnecessary and unlawful.

“This rule expands the reach of federal agencies to lands and waters beyond the bounds set by Congress,” said Wyoming Governor Matt Mead. The lawsuit was filed in Bismarck, North Dakota and asks that the rule be thrown out. A copy of the Complaint is available [here](#).

BLM Proposes New Oil and Gas Accounting Rules

The U.S. Bureau of Land Management (BLM) recently proposed updated regulations to overhaul its accounting practices in an effort to ensure the government collects all money it is owed from oil and gas production from federal and Indian leases. The proposal requires BLM to standardize the methods used to measure an operator's production. Under the plan, a company must identify a counting point (i.e., a well or tank) where production is assessed. The point may vary among companies, but would

apply across a company's operations. The proposed regulations also, among other things, implements a review process for company requests to count combined production from multiple leases, sets standards for measuring oil and gas production from split-estate leases, and updates reporting requirements. The proposed regulations would replace Onshore Oil and Gas Order Number 3. BLM will accept public comment on the proposal through September 11, 2015.

Sage-Grouse News

Governor Mead Finalizes Core Area Policy Revisions

On July 29, Governor Mead released Executive Order 2015-4 finalizing revisions to Wyoming's core area policy ahead of schedule. Within core areas, the 5% surface disturbance cap and one location per 640 acres density cap still apply. However, the conservation goals in sage-grouse core areas were modified slightly to emphasize avoidance of impacts—where the 2011 Executive Order allowed activities in core areas where the activity would “not cause declines in Greater Sage-Grouse populations,” the revised policy provides that state permitting agencies will authorize activities only if they “will avoid negative impacts to Greater sage-grouse.” The policy also commits to develop, but has not yet developed, standards to manage disturbance in identified and mapped winter concentration areas. The map of core areas was also revised, adding thousands of acres of core habitat. The core areas and the policies for sage-grouse conservation shall not be altered for a minimum of seven years.

Congress Weighs in on Sage-Grouse

In the wake of BLM's and the U.S. Forest Service's proposal for sweeping land use management changes to conserve sage-grouse across the West, Congress is considering riders to the 2016 Defense Authorization (H.R. 1735) and Department of the Interior (H.R. 2822) spending bill that would block any decision to list the sage-grouse for 10 years and preclude the implementation of land use plan amendments, respectively. In June, the Senate rejected the 10-year delay sage-grouse rider in the House's version of the Defense Authorization bill, which has now been sent to conference without final resolution. In mid-July, 89 House Democrats sent a letter to the conferees asking that the rider be removed from the final package. In June, Nevada representative Mark Amodei, introduced an amendment to the Department of the Interior's 2016 spending bill that would preclude for one year any attempt to withdraw minerals from location under the 1872 mining law for the purpose of conserving sage-grouse. The amendment would also withhold funding for BLM to finalize its proposed land use plan amendments. The DOI spending bill is currently stalled in the House.

Sage-Grouse Guidelines for Power Industry Set

In June, the Avian Power Line Interaction Committee released guidelines on the Best Management Practices for Electric Utilities in Sage-Grouse Habitat. The guidelines include recommendations for the siting, operation, maintenance, and mitigation of power lines, and were prepared with input from the Bureau of Land Management, Fish and Wildlife Service, and state wildlife agencies. The guidelines recommend that power lines in prime sage-grouse habitat be buried to avoid habitat fragmentation and

avoidance behaviors, or consolidated with existing infrastructure. The recommendation is consistent with BLM's proposed land use plans, which call for similar restrictions on power lines in sage-grouse habitat, unless offsite mitigation is available to demonstrate a net conservation gain for the species. Compared to other land uses, however, data regarding impacts of power lines to sage-grouse is limited. Thus, the guidelines are intended as living document, and incorporate flexibility to address local conditions and the latest science.

State News

Wyoming Considers Carbon-Capture Lab

Wyoming officials are studying researchers' requirements as they work to determine where to locate a laboratory to test carbon-capture technology at a state coal-fired power plant. Considerations include how to construct the lab so as not to interfere with plant operations and how much water may be needed to test carbon-capture technologies. Basin Electric's Dry Fork Station and Black Hills Power's WyGen unit No. 2 are among several sites under consideration for the project. Officials should have a better idea as to what such a project will look like, including the estimated cost, by the end of the summer. The Wyoming Legislature allocated \$15 million for the project.

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