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EPA Takes Aim at Oil & Gas Industry with New Fracking Rules

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On July 28, 2011, the U.S. Environmental Protection Agency (EPA) released a 604-page, pre-publication version of proposed rule changes that are poised to force oil and gas drillers that use hydraulic fracturing, or "fracking," to use new or improved processes and equipment. The proposals include four air regulations for the oil and natural gas industry:

1. Performance standards to limit emissions from new wells of volatile organic compounds (VOCs);
2. Performance standards for sulfur dioxide emissions;
3. Air toxics regulation for oil and natural gas production; and
4. Air toxics standard for natural gas transmissions and storage.

The proposed regulations require the oil and gas industry, for the first time, to control certain air emissions at its wells. The stated intent of the draft regulations is to reduce impacts from the growing use of large-scale fracking operations, thereby helping to reduce ozone nonattainment issues in areas where oil and gas production occurs. An estimated 11,400 new wells are fractured each year and another 14,000 are re-fractured to stimulate production – so these proposed regulations, when codified, will have a major impact on the oil and gas industry.

Current "new source performance standards" for the industry govern only natural gas processing plants. The new regulations, however, propose to expand EPA's authority and control over wells, compressors, storage vessels and tanks, and other equipment. Some of the proposed rule changes include:

- Mandating the use of special equipment to separate gas and liquid hydrocarbons from the flowback that comes from the well as it is being prepared for production (called a green completion);
- Equipping centrifugal compressors with new dry seal systems and mandating new rod packing systems for reciprocating compressors every 26,000 hours of operation;
- Replacing pneumatic controllers with non-natural gas controllers, or limiting them to no more than six cubic feet of gas emissions per hour of operation;
- Installing new leak detection equipment at gas processing plants; and
- Mandating a 95 percent reduction in benzene emissions by large glycol dehydrators as well as an unspecified reduction in emissions by small dehydrators.

The EPA believes that its proposals are based on "proven technology and best practices" that the oil and gas industry already utilizes in some states, and claims that the proposals are aimed at cutting emissions of VOCs, air toxics, such as benzene and n-hexane, methane and sulfur dioxide by capturing natural gas that currently escapes into the air. The EPA also asserts that the proposed regulations reduce VOC emissions by 95 percent during the completion of new and modified hydraulically fractured wells.

According to the EPA, the alleged benefit to the industry is a net savings of tens of millions of dollars annually from the value of natural gas that would no longer escape into the air. Conversely, the new rules are estimated to cost the industry almost a billion dollars by 2015, according to the EPA's Regulatory Impact Analysis document.

The proposed changes are complex and will cost the industry and, very likely, natural gas consumers more money. Advocates of the new rules claim that the resulting changes will clean the air around gas drilling fields in places like Wyoming, where smog surrounds thousands of gas drilling operations, and it will prevent the same from happening in places like the relatively new Marcellus drilling area in Somerset County, Pennsylvania. Recent air tests in the state, however, showed little or no air pollution from drilling. Additionally, there are significant concerns that compliance with the new rules would be difficult at best, and perhaps even impossible.

The EPA's draft regulations stem from a court order originating from a law suit in January 2009 when WildEarth Guardians and the San Juan Citizens Alliance sued the EPA, alleging that the Agency had failed to review the new source performance standards and air toxic standards for the oil and natural gas industry. The EPA is under a consent decree requiring the Agency to take final action by February 28, 2012.

As part of the public comment period, the EPA will hold three public hearings in the Dallas, Denver and Pittsburgh areas. Details on the hearings will be announced at the time the Proposed Rule is published in the Federal Register. The prepublication version of the Proposed Rule is published at 40 C.F.R. Parts 60 and 63, EPA-HQ-OAR-2010-0505.

If you have questions or would like assistance with commenting on the proposed rules, please contact your Baker Donelson attorney or one of our environmental and oil and gas attorneys.