From:	Polak, Tiffany, EMNRD
To:	WasteRule, EMNRD, EMNRD
Subject:	FW: MRO - Draft Methane/Waste Rule Feedback Discussion
Date:	Thursday, August 13, 2020 7:46:23 AM
Attachments:	image002.png Methane Talking Points (004) 8-3.pdf

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From: Bradfute, Jennifer (MRO) <jbradfute@marathonoil.com>
Sent: Monday, August 3, 2020 5:10 PM
To: Polak, Tiffany, EMNRD <Tiffany.Polak@state.nm.us>; Ames, Eric, EMNRD <Eric.Ames@state.nm.us>; Wade, Gabriel, EMNRD <Gabriel.Wade@state.nm.us>; Powell, Brandon, EMNRD <Brandon.Powell@state.nm.us>; Matt Lepore <matt.lepore@insightenergylaw.com>; Mike Teague (Brass Compass) <michael@brasscompassconsulting.com>; bolanderja5@gmail.com; Kuehn, Elizabeth, NMENV <Elizabeth.Kuehn@state.nm.us>; Katz, Lara, NMENV <Lara.Katz@state.nm.us>
Subject: [EXT] RE: MRO - Draft Methane/Waste Rule Feedback Discussion

All: Marathon Oil is looking forward to tomorrow's meeting. Please see the attached talking points that we will be using to help facilitate our conversation.

These talking points focus on high-level concerns that Marathon sees in the draft rules. That being said, we also want to thank the agencies for taking the approach of releasing draft and proactively encouraging feedback and we plan on taking some time during the meeting to also discuss items that we like in the proposed rules. Our goal is to have a constructive conversation and raise several questions tomorrow. The main purpose of these questions is to help ensure that we understand the draft rules, as intended by the agencies, while Marathon prepares its more-detailed written comments.

Thanks!
Jennifer

Jennifer Bradfute
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Marathon Oil

-----Original Appointment-----
From: Polak, Tiffany, EMNRD <Tiffany.Polak@state.nm.us>
Sent: Monday, July 27, 2020 2:05 PM
To: Polak, Tiffany, EMNRD; Bradfute, Jennifer (MRO); Ames, Eric, EMNRD; Wade, Gabriel, EMNRD; Powell, Brandon, EMNRD; Matt Lepore; Mike Teague (Brass Compass); bolanderja5@gmail.com; Kuehn, Elizabeth, NMENV; Katz, Lara, NMENV
Subject: [External] MRO - Draft Methane/Waste Rule Feedback Discussion
When: Tuesday, August 4, 2020 10:30 AM-12:30 PM (UTC-07:00) Mountain Time (US & Canada).
Where: Microsoft Teams Meeting

Beware of links/attachments.
Good afternoon,
Blocking the time you selected for our feedback session with Teams link below. Looking forward to the discussion. Both NMED and EMNRD will be present for your questions and discussion. If you have areas you know you want to focus prior to the meeting please let us know.
Please feel free to forward to those other team members you want to attend.

Many thanks,
Tiffany

Tiffany A. Polak
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New Mexico: Proposed Methane Rule Talking Points

The Proposed Rules Are Prescriptive and Limit Innovation: The Proposed Rules are prescriptive in nature, which severely limits flexibility and innovation. For example, NMOCD's Proposed Section 19.15.27.8 contains a laundry list of requirements prohibiting most venting and flaring activities; the agency then sets a gas capture percentage of 98% in Proposed Section 19.15.27.9 (which is a performance-based standard). While most operators prefer performance standard regulations, it is unclear what value this performance standard adds given the prescriptive requirements contained in 19.15.27.8.

Excessive Reporting Creates a Lack of Transparency: The Proposed Rules require *excessive* and duplicative reporting, which creates a lack of transparency for royalty owners and other stakeholders. These requirements incentivize investment in reporting and record keeping services, not gas capture and emissions reductions innovations. *A portion* of the proposed reporting and record keeping requirements is summarized below:

Weekly Reports • Documented leak inspections required by NMED • Documented AVO inspections required by NMOCD	**Annual Reports** • Annual gas capture report with NMOCD
Monthly Reports • Documented inspections of equipment subject to control or monitoring requirements • C-115B reports for NMOCD, classifying both by volume and percentage gas produced into 20 different categories, as designated by the Division • Submission of statements to royalty owners showing publically reported C-115B information	**Event-Based Reports** • C-129 reports to approve venting or flaring events • C-141 reports to report releases of vented and flared volumes • Excess emissions reports with NMED • Natural Gas Management Plans, prior to submitting APDs with NMOCD

Could these requirements be streamlined into consistent reports between NMED and NMOCD? Perhaps, there could be a Memorandum of Understanding executed by the agencies, which streamlines reporting requirements, facilitates the sharing of information, and provides more transparency regulatory certainty?

Confusion Regarding Regulatory Jurisdiction and Lack of Regulatory Certainty: NMED and NMOCD attempt to regulate the exact same issues in different ways. This creates regulatory confusion and a lack of certainty. Where does NMED's jurisdiction end and NMOCD's jurisdiction begin? There is confusion as to how the Proposed Rules will interact with NMED permits and other applicable federal requirements. In some cases, they are in direct violation of federal rules, so operators will have to choose compliance with state or federal requirements. For example, it is unclear how the ozone precursor rules will tie to air permits under 20.2.72 NMAC and Notice of Intents under 20.2.73.200 NMAC. The thresholds identified in these new rules do not align with current permitting thresholds, but rather instills different requirements midway between tpy limits. Is the intent to tie these rules to the Federal Implementation Plan (FIP) to allow for federal enforceability and ability to take reductions for PTE in air permits? Similarly, how will NMOCD's prescriptive requirements apply to federally permitted wells? Has the agency consulted with the BLM?

Software Development: Operators are required under NMED's Proposed Rule to create an electronic system to track EMITT scanner codes (which will be created by the operator and traceable by NMED inspectors). This must occur within a one-year period after the rule is issued, which is likely unreasonable. How will this system work?

Expectations re Measurement vs. Calculations: The Proposed Rules are unclear regarding what constitutes "measurement." We assume that measurements may be obtained under the rules using API standards.

Gas cannot accurately be measured unless it has sufficient motive force, such as gas routed to a high-pressure flare. Low pressure systems typically operate in "breathing fashion" and have very low flow rates making metering these flows impractical if not impossible. Additionally, introduction of a potentially restrictive device in a relieving system can introduce safety concerns. As a result, gas volumes emitted from certain pieces equipment or during certain

operations need to be estimated because they can't be measured. It is unprecedented for NMOCD to require that estimated volumes be sent on a monthly basis to royalty owners – particularly since production data is publically available. It is also unclear under the Oil and Gas Act whether these volumes would even qualify as "underground waste" or "surface waste."

Furthermore, the process to file C-115 forms is very cumbersome. A PUN code must be provided before C-115 filings can be made. What happens under the Proposed Rules when the government does not timely provide a PUN? Is the operator excused by the delay? Corrections to C-115 forms are extremely difficult to make. Currently, if changes need to be made to a gas estimate, a corrected C-115 must be filed for all of the operator's properties. Is there a way that C-115 filings (including the C-115B) can be filed on an individual PUN basis in order to assist with the proposed requirements?

Significant Costs Required to Retrofit Existing Wells: Significant costs will be required to equip old vertical wells in compliance with NMED and NMOCD's Proposed Rules. NMED's rules allow for some exclusions under the stripper well definition, but many wells *will still require* retrofitting or replacement with new equipment. It is unclear how these investments will impact the economic analysis of these wells. This may cause industry members to drill fewer wells in New Mexico and premature abandonment. It may also result in economic hardship for oil and gas companies hit hardest by 2020 market conditions. Are there alternatives that could be inserted into the rules which could be used to prove a low PTE for wells that will have to be retrofitted? Similarly, can deminimis operating time or emission thresholds sources be established for equipment that is infrequently operated or that has inherent lower emissions?

Compliance Timelines: The one-year timeline to comply is too short. Could this be extended to ensure adequate time to order, obtain, and install equipment and metering required by new requirements?

Timelines for Repairs and Reporting: The repair deadlines are unreasonably short. NMED proposes a mere seven-day deadline to make repairs. This time limit is less than 1/3 what is allowed under OOOOa and imposes significant burdens on industry. Additionally, what if there are insufficient services within the Permian Basin to provide the repair services? Seven days to order and obtain some pieces of equipment in the Permian is impossible.

Reporting timelines are also impossibly short. Informing the NMOCD of an emergency release within 2 hours will take resources away from handling the issue of limiting emissions and require an unnecessary reporting burden. In addition, basing on current reporting requirements, industry will not have the details necessary within that timeline.

The Ability to Shut-In Wells: Given the onerous requirements proposed in the rules and the short compliance timelines, it is anticipated that operators will need to shut-in wells and reduce production activities within the State of New Mexico. We recommend that shut-in wells be expressly exempted from the rules in order to allow production to cease without causing the forfeitures of oil and gas leases. Shutting-in wells stops production, eliminating the PTE.

NMED's Proposed Use of "Credible" Information in Enforcement: The term "credible evidence" is not defined in NMED's rule. As drafted, this provision of the NMED Proposed Rule is legally infirm. New Mexico agencies cannot rely on unverified hearsay complaints brought by the public to be used as the sole basis for civil enforcement. If a fine or penalty were to be issued in such circumstances, a litany of valid legal concerns would arise including but not limited to violations of due process, the improper delegation of the agency's duties, and non-compliance with the New Mexico residuum rule. In addition, the outsourcing of inspections to the general public may encourage safety and trespass issues as untrained people attempt to access to oil and gas processing sites.