

THE BEAT GOES ON: PENNSYLVANIA TAKES AIM AT REDUCING METHANE EMISSIONS FROM THE OIL AND GAS INDUSTRY

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Oil and Gas Alert

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Pennsylvania is currently a hotbed of regulatory initiatives focused on the oil and gas industry. The Environmental Quality Board, for example, will decide on February 3 whether to adopt the Department of Environmental Protection's ("Department") final rulemaking for oil and gas surface activities, which has been in development since 2012. By midyear, the Department plans to begin work on a proposed rulemaking for subsurface activities (e.g., drilling, casing, cementing, operation, and plugging). And severance tax proposals continue to proliferate in the General Assembly.

Against this backdrop, on January 19, Governor Tom Wolf and the Department announced a strategy for reducing methane emissions from the industry. They say that the strategy is designed to curb methane's contributions to climate change "while supporting [the governor's] commitment to ensuring responsible development, creating new jobs, and protecting public health and our environment."^[1] The strategy calls for the Department to take four primary actions:

- Issue an air pollutant emissions general permit for upstream oil and gas exploration, development, and production facilities ("GP"). This permit would establish best available technology ("BAT"), leak detection and repair ("LDAR"), recordkeeping, and monitoring requirements for emissions sources at well pads. It would also replace the conditional exemption from air permitting requirements—known as "Exemption 38"—that is currently available for production activities in the Commonwealth. The decision to require permit coverage at well sites is a reversal of the Department's 2013 determination, made in the context of revamping Exemption 38, that upstream emissions could be adequately controlled without imposing the transaction costs associated with a permit program.
- Revise the air pollutant emissions general permit for new and modified gas compression and processing facilities ("GP-5") so that it covers an additional type of facility—natural gas transmission stations—and imposes more stringent BAT and LDAR requirements.
- Craft a regulation that would establish standards for controlling methane emissions from existing oil and gas sources. This "existing source" rule is necessitated by the U.S. Environmental Protection Agency's ("EPA") development of control techniques guidelines ("CTGs") for the oil and gas industry, which are expected to be finalized in 2016. The Department's rule will be due to EPA within two years after EPA issues the final CTGs.

- Establish best management practices ("BMPs"), including LDAR programs, for reducing fugitive methane emissions from oil and gas production, gathering, transmission, and distribution facilities, including pipelines.

These proposals are framed under Pennsylvania's Air Pollution Control Act^[2] which gives the Department and Environmental Quality Board authority to regulate air pollutant emissions from a wide variety of sources.^[3] The proposals would, in certain respects, be more stringent than proposed federal requirements that cover the same topics. In particular, several features of the proposed GP and proposed revisions to GP-5 would go beyond EPA's proposed revisions to 40 C.F.R. Part 60, Subpart OOOO ("Quad-O").

The proposed federal Quad-O revisions, published in September of 2015, would establish new source performance standards ("NSPS") for methane emissions from various types of new and modified oil and gas sources. They would, for example, require monthly audio visual olfactory ("AVO") inspections at a well site, but only for tank covers and closed vent systems. The Department's proposed GP, by contrast, would "require monthly AVO inspections on the entire well site operations."^[4] As another example, the proposed Quad-O revisions would not impose *any* requirements for pigging operations. The Department's proposed GP and proposed revisions to GP-5, on the other hand, would require any pig launcher at a well site, midstream compressor station, or gas processing plant to be operated "without venting methane and hydrocarbons into the atmosphere."^[5]

The Department characterizes its proposals as "best-in-class measures" that will significantly reduce methane emissions and fortify "Governor Wolf's vision for an economically and environmentally sustainable future for Pennsylvania."^[6] But some members of the oil and gas industry, pointing to anticipated compliance costs and the EPA's pre-existing initiatives in this arena, will likely see things differently. The Department plans to unveil more details about its proposals in February, at the next meeting of the Pennsylvania Air Quality Technical Advisory Committee. That meeting will provide the first of many opportunities for interested stakeholders to give input on the Department's proposals as they work their way through Pennsylvania's regulatory process in the months and years ahead.

Notes:

^[1] *A Pennsylvania Framework of Actions for Methane Reductions from the Oil and Gas Sector* (Jan. 19, 2016) ("Framework Document") at 2.

^[2] See Framework Document at 5.

^[3] See, e.g., 35 P.S. §§ 4003, 4004 and 4005.

^[4] Framework Document, Appendix A at 2.

^[5] *Id.* at 5, 8, and 11.

^[6] Framework Document at 1 and 2.

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