

FALLING SHORT

STATE OIL & GAS RULES FAIL TO CONTROL METHANE WASTE



PUBLIC HEALTH,
TAXPAYER REVENUE &
OUR CLIMATE FUTURE
ARE AT STAKE

How a strong federal rule can
fill the gaps in state methane
waste regulation and achieve the
government's obligation to protect
public trust resources for the
American people



Western
Environmental
Law Center



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Contact Information

Western Environmental Law Center
1216 Lincoln St.
Eugene, OR 97401
(541) 485-2471
www.westernlaw.org info@westernlaw.org

Western Organization of Resource Councils
220 South 27th Street
Billings, MT 59101
(406) 252-9672
www.worc.org billings@worc.org

Western Environmental Law Center

WELC is a nonprofit, public interest environmental law firm that safeguards the American West's wildlife, wildlands, and communities. We combine our legal skills with sound conservation biology and environmental science to address major environmental issues in the West in the most strategic and effective manner. WELC has offices in New Mexico, Oregon, Washington, and Montana.

Western Organization of Resource Councils

WORC's mission is to advance the vision of a democratic, sustainable, and just society through community action. WORC is committed to building sustainable environmental and economic communities that balance economic growth with the health of people and stewardship of their land, water, and air resources.

Key Staff Involved in this Report



Laura King, WELC attorney, works in both our Climate & Energy and Wildlands & Wildlife programs. Laura received her J.D. from Harvard Law School. While in law school, she worked for the Emmett Environmental Law & Policy Clinic, interned for the Northern Rockies office of Earthjustice, was a senior editor of the Harvard Environmental Law Review, and taught environmental law at Boston College.



Thomas Singer, WELC senior policy advisor, works on policy development, advocacy, and litigation support to address the environmental impacts of oil and natural gas development with an emphasis on reducing methane pollution. Tom holds a B.A. from Harvard University, an M.B.A. from Stanford University, and a Ph.D. in international business from George Washington University.



Scott Skokos, WORC regional organizer, handles WORC's oil and gas campaign. Scott worked as an organizer and lobbyist for Dakota Resource Council from 2010-2014. At Dakota Resource Council, Scott successfully led a grassroots campaign to get flaring rules passed in North Dakota. He holds a bachelor's degree from Michigan State University in social relations and policy and holds a master's degree from the University of Denver Sturm College of Law in Natural Resources Law and Policy.

Sara Kendall, WORC DC office director, has represented WORC in Washington, DC since 1994, monitoring Washington policy decisions that affect WORC's members, activating our organizations and leaders, and leading issue campaigns. Sara is a graduate of Middlebury College with a B.A. in environmental studies. Sara has written and edited many WORC publications, including "Uncertain Fortune" and "Law and Order in the Oil and Gas Fields."

Executive Summary

Right now, when companies produce oil and gas, they release a tremendous amount of methane into the atmosphere. Much of this waste occurs on federally owned lands and subsurface minerals. In the West, where the majority of the nation's public lands are located, existing state rules to guard against waste fail to address this problem.

Fortunately, the federal government is setting new standards to provide a strong floor of protection, force the industry to act more responsibly, and guide states in updating their waste rules.

THE PROBLEM: THE TROUBLE WITH METHANE WASTE

Wasting natural gas makes no sense, yet oil and gas companies intentionally leak methane from poorly maintained equipment, deliberately vent it to the atmosphere, and burn it as a waste product from oil drilling. This threatens public health because dangerous pollutants are released alongside methane. It squanders energy that could be used by homes, schools, and businesses. It robs public treasuries of royalty revenue, harms other resource values, and makes an outsize contribution to climate change.

With few exceptions, state oil and gas waste rules in the Interior West allow methane from drilling and equipment to go straight into the atmosphere or be burned and wasted. Methane, if extracted, should be used, not emitted to our skies.

THE SOLUTION: COMPREHENSIVE STRICT FEDERAL METHANE WASTE STANDARDS

The federal Government Accountability Office conservatively estimates that new federal standards could eliminate 40 percent of U.S. methane wasted by the oil and gas industry by requiring companies to put into place readily available, low-cost technologies and improved planning and operating practices.¹

Close examination makes clear that Interior West state oil and gas rules leave too many gaps to solve the problem of methane waste on federal lands. Further, the federal government has an obligation to prevent the waste of publicly owned resources.

The solution: broad federal standards that target all of the major sources of oil and gas methane waste and protect public health, conserve resources, deliver to the public its fair share of the value of these resources, and limit the pace of climate change.

Methane Quick Facts

- 11% of all U.S. natural gas production and 6% of U.S. oil production came from onshore federal lands in 2014.²
- 12% of U.S. methane emissions from natural gas production came from federal lands in 2013.³
- The oil and gas industry is the nation's largest industrial source of methane emissions.⁴
- Millions of dollars worth of natural gas is wasted from venting, flaring, and leaks on federal lands.⁵ In 2013, the value of this wasted gas was:
 - Nationwide: \$227 million
 - New Mexico: \$92 million
 - Wyoming: \$42 million
 - Colorado: \$15 million
 - Utah: \$4 million
- Methane is 86 times more potent than carbon dioxide in causing climate change.⁶
- Methane wasted every year from drilling on public lands equals the climate pollution from 14 coal-fired power plants.⁷ Kept out of the atmosphere, it is enough energy to heat over one million homes.⁸
- The oil and gas industry could reduce methane waste by almost half using existing technologies and best practices.^{9,10}
- These cuts in methane waste can be achieved for just one penny per thousand cubic feet of gas,¹¹ which is 0.5% of the current natural gas price of around \$2.00 per thousand cubic feet.¹²

We did the research. The findings are clear.
State rules fall short across the board to control methane waste on public lands.
This report shows why a strong federal rule is needed.

PURPOSE: ARE STATES PREVENTING METHANE WASTE ON FEDERAL LANDS?

“Let the states do it.” This is a familiar refrain by industry regarding federal standards. But does this argument hold water in the context of proposed standards to curb the waste of methane, the main component of natural gas, on federal lands? This report is designed to answer that question. It looks at whether federal standards to reduce methane waste on federal lands duplicate what state oil and gas regulators in the Interior West are already doing, or could fill major gaps in state regulation. It also looks at whether state methane waste rules can fulfill the federal government’s legal responsibilities to protect resources it holds in trust for the American people.

BACKGROUND: TIME IS OF THE ESSENCE FOR NEW FEDERAL STANDARDS

When producing oil and gas, the industry today intentionally leaks, releases (vents), and burns (flares) scandalous amounts of methane into the atmosphere. Companies routinely vent or flare methane produced by oil wells rather than putting it into pipelines. They use outdated equipment that regularly vents methane to the atmosphere and they allow leaks to occur throughout their systems. Altogether, the industry wastes enough methane each year on federal lands to heat one million homes,¹³ costing taxpayers millions of dollars in lost royalty revenue,¹⁴ threatening public health,¹⁵ and contributing climate pollution equal to the annual emissions of 14 coal plants.¹⁶

To address these problems, the Bureau of Land Management, the nation’s steward of public lands, has recognized the need to update its rules on methane waste. The BLM is now taking steps to adopt new standards to eliminate or reduce venting, flaring, and leaks.

True to form, oil and gas industry groups have opposed new federal standards meant to rein in out-of-control, harmful practices, claiming that new standards are unnecessary and duplicative of existing state regulations. For instance, when the BLM established new standards on fracking, the American Petroleum Institute stated that “a duplicative layer of new federal regulation is unnecessary, and we urge the BLM to work carefully with the states...”¹⁷ The Western Energy Alliance complained that the BLM fracking standard “is not properly justified and duplicates state regulation.”¹⁸ Again, when EPA recently proposed new oil and gas

methane air pollution standards, the American Petroleum Institute also dismissed them as “duplicative.”¹⁹

We issue this investigation of Interior West state natural gas waste regulations in anticipation of similar objections to the forthcoming BLM waste standards.

APPROACH: HOW DO STATE OIL AND GAS RULES STACK UP AGAINST TOUGH BLM STANDARDS?

The research for this report was conducted before details of the BLM rule were released to the public. But in developing its standards, the agency has sought public comment on how to reduce methane waste from venting, flaring, and leaks.

National, regional, and local advocates have united to call on BLM to adopt the highest standards for controlling methane waste from all major sources through a combination of up-to-date methane capture technologies, best operating practices, and better planning for development.²⁰ The report uses these recommendations as a benchmark for assessing the adequacy of state controls on methane waste.

Our recommended standards cover methane waste from the major oil and gas activities occurring on public lands, including well drilling, oil and gas production, gathering of gas into pipelines, and gas processing. They also call for better analysis for exemptions and waivers, for conditions to be placed on industry when developing oil and gas on federal lands, and for penalties to ensure operators adhere to the rules.

As is the case with BLM, state oil and gas regulators have a legal duty to prevent the waste of publicly owned resources, but have adopted rules that vary widely in their coverage and leave many sources unaddressed. Our report analyzes state rules across the board in order to answer the question “Are state oil and gas rules in place to prevent methane waste?” The report identifies rules that have been adopted by state air quality regulators in Colorado, Utah, and Wyoming to control methane as an air pollutant, but it does not include these rules in grading these states’ oil and gas waste regulations.²¹ The report also does not address how effective states are in implementing their rules.

Our report focuses on the six Western states that host the bulk of oil and gas activity on public lands: Colorado, Montana, New Mexico, North Dakota, Utah, and Wyoming. For each major source of methane waste, the report compares the rules on the books of

state oil and gas regulators against our recommended standards and assigns a grade of pass, partial credit, or fail.

The legal obligation of the federal government to manage federal lands in trust for the American people is also a key piece in assessing the ability of the states to regulate methane waste on public lands. The report analyzes whether controls on waste can be left solely to the states and whether BLM standards can raise the bar on non-federal lands developed in conjunction with federal lands.

FINDINGS: STATE OIL AND GAS RULES ARE NOT PREVENTING WASTE ON FEDERAL LANDS

Controls on methane waste by states responsible for most of the oil and gas production on federal lands leave enormous gaps and fail to protect the public interest in these resources. Again, while air quality regulators in Colorado, Utah, and Wyoming have taken steps to address impacts from methane emissions, state oil and gas regulators in all six states are falling short in their efforts to reduce methane waste. Colorado has a rule requiring oil wells to be completed in a manner that captures methane for sale or use (green completion), but the exemption for wells “not sufficiently proximate to sales lines” is a loophole that perpetuates waste. The Wyoming rule only “encourages” the use of green completions, and waste rules in the other four states fail to address green completions at all. For oil wells that are producing both gas and oil, North Dakota prohibits venting but allows flaring for at least a year, while Montana, New Mexico, Utah, and

Wyoming place limited time and/or volume restrictions on venting and flaring.

New Mexico rules prohibit venting or flaring when liquids built up in gas wells are removed, while Montana and Utah impose time and/or volume limits on liquids unloading, and Colorado, North Dakota, and Wyoming leave this waste source unaddressed. None of the states has waste rules addressing major maintenance activities for either oil or gas wells, gas-driven controllers, compressors, or storage tanks. Nor do state oil and gas regulators require leaks to be located and repaired.

Interior West states also do not employ key management tools for ensuring that future methane production will be used and not wasted. Only North Dakota requires drillers to submit plans showing how they will get the methane they produce to market or use it to power their operations. None of the states requires that economic impact analysis of standards must look beyond individual wells or private interests, and only Colorado has adopted rules to control the pace and location of drilling to prevent waste.

All of the states, with the exception of Wyoming, have rules authorizing conditions to be placed on drilling and other activity, which could include a ban on waste, and all have rules authorizing penalties for not following the rules.

While in practice Interior West states and the BLM do work together to prevent waste, BLM’s standards will set a floor for state action, and the BLM is ultimately responsible for preventing methane waste on federal lands. It is clear that states are not doing the job and that new federal standards are urgently needed.

HOW THIS IMPACTS ME...

“We want a healthy and safe environment for our future generations. We need stronger rules to require oil and gas operators to fix their leaky wells, storage tanks, and other well-site equipment.

Where I live on Ft. Berthold has been impacted by the lack of state regulation regarding flaring. For the past 5 years regulators in Bismarck have routinely approved flaring exemptions within and near Ft. Berthold. The result of these exemptions has meant health problems and costs for all reservation residents and lost royalties for both individual tribal mineral owners and our tribal government.”

- Theodora Bird Bear
Enrolled member of Three Affiliated Tribes
Fort Berthold Indian Reservation, North Dakota



Can the states do the job?
Look at their methane waste rules for the answer.

TABLE 1: Current state methane waste rules compared to recommended standards for major sources of waste and prevention tools.

		STATES AND THEIR GRADES						
		★★★ Pass	★★ Partial Credit	★ Fail				
		CO	MT	NM	ND	UT	WY	
WASTE SOURCES	Oil Well Completion	★★	★	★	★	★	★	
	Well Maintenance	★	★	★	★	★	★	
	Well Liquids Removal	★	★★	★★★	★	★★	★	
	Gas-Driven Equipment	★	★	★	★	★	★	
	Compressors	★	★	★	★	★	★	
	Storage Tanks	★	★	★	★	★	★	
	Gas-Producing Oil Wells	★	★★	★★	★★	★★	★★	
	Leaks	★	★	★	★	★	★	
PREVENTION TOOLS	Gas Capture Planning	★	★	★	★★★	★	★★	
	Benefit-Cost Test	★	★	★	★	★	★	
	Conditions on Permits	★★★	★★★	★★★	★★★	★★★	★	
	Phasing of Development	★★★	★	★	★	★	★	
	Penalties	★★	★★★	★★★	★★★	★★	★★	

Air Quality regulators in CO, UT, and WY have adopted rules that cover some methane emissions.
Page 5 details waste sources and prevention tools. Pages 6-7 detail the state analysis with citations supporting this table.

Our Recommendations By:

SOURCES OF METHANE WASTE

OIL WELL COMPLETION: Making a new well ready for production by installing equipment to bring oil to the surface, testing the well's performance, and venting or flaring methane that is released during the process.²²

> **OUR RECOMMENDATION:** Require green completions for all new oil wells to capture methane released during the process and route it to a pipeline or use it at the well-site.

WELL MAINTENANCE (recompletion/workover): Cleaning out, making repairs to, or conducting other major maintenance activities to restore production at existing oil or gas wells and venting or flaring methane that is released in this process.

> **OUR RECOMMENDATION:** Require best waste prevention technologies and practices to capture and route methane released during well maintenance to a pipeline or use it at the well-site.

WELL LIQUIDS REMOVAL: Removing water and other liquids that accumulate in gas wells and impede production, particularly in older wells, and venting or flaring methane that is released during the process.

> **OUR RECOMMENDATION:** Ban venting of methane that is released in this process and require any of a number of available technologies and practices when removing liquids from a well to capture and route methane released to a pipeline or use it at the well-site.

GAS-DRIVEN EQUIPMENT: Equipment using gas pressure to open and close valves and control gas and liquid pressures, levels and flows, and which then deliberately releases methane into the air.

> **OUR RECOMMENDATION:** Require that all gas-driven equipment releasing methane in excess of lower-emitting alternatives be replaced at existing facilities, and require low-emitting devices to be used at all new facilities, or capture and route the gas to a pipeline or use it at the well-site.

COMPRESSORS: Equipment that increases the pressure of gas to move it through cleaning equipment and pipelines and vents methane from components into the air.

> **OUR RECOMMENDATION:** Require improved maintenance on or replacement of components to eliminate methane releases to the air, or capture and route the gas to a pipeline or use it at the well-site.

STORAGE TANKS: Tanks holding oil and other liquids produced at wells or treated by processing equipment prior to delivery to pipelines or other transportation that vent methane trapped in the liquids into the air.

> **OUR RECOMMENDATION:** Require technologies that capture methane vented from storage tanks and route it to a pipeline.

GAS-PRODUCING OIL WELLS: Oil wells that also produce methane and vent it into the air or flare it.

> **OUR RECOMMENDATION:** Ban venting and require methane produced at oil wells to be routed to pipelines or otherwise transported, or used at the well-site. Adopt a schedule to phase out flaring at existing wells.

LEAKS: Unintentional releases of methane anywhere along the production and processing systems (for example, from worn-out or rusted equipment or connections between pieces of equipment).

> **OUR RECOMMENDATION:** Require frequent inspections, at least quarterly, using up-to-date leak detection equipment and require repairs to be made quickly.

TOOLS FOR ENFORCING STANDARDS

GAS CAPTURE PLANNING: A planning process for determining how methane from future drilling and production will be routed to a pipeline and processed or otherwise used and not vented or flared.

> **OUR RECOMMENDATION:** Require gas capture plans in drilling and other permit applications that identify how much methane is expected to be produced, the pipeline or other means to transport the methane to a processing plant (unless the methane is used on-site), and the processing plant that will separate the methane from impurities and ready it for delivery to an interstate gas pipeline.

BENEFIT-COST TEST: An analysis comparing the benefits and costs of preventing methane waste.

> **OUR RECOMMENDATION:** Require economic analysis for permits or authorizations at a field-level rather than well-by-well basis to identify lower costs that may be available from preventing methane waste at multiple wells. Also require consideration of costs and benefits to the public, rather than just private interests, including the long-term value to the public of federal oil and gas resources and lands.

CONDITIONS ON PERMITS: Legally-binding requirements for drilling permits or other approvals identifying actions that must be taken by the driller or limitations on their activities.

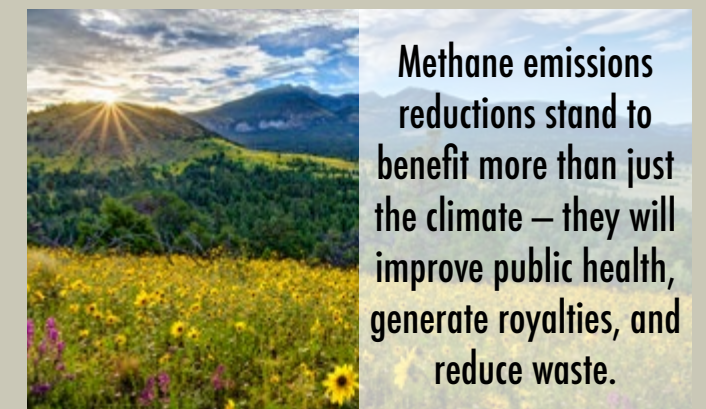
> **OUR RECOMMENDATION:** Place conditions of approval on permits specifying what actions must be taken to prevent methane waste.

PHASING OF DEVELOPMENT: Limitations placed on when and where oil and gas can be developed to make sure that pipelines and processing capacity is in place to prevent waste.

> **OUR RECOMMENDATION:** Restrict drilling permits to locations close to existing pipelines or where methane can be transported by other means or be used on-site, and where there is enough existing processing capacity. Restrict drilling permits to areas where enough methane will be produced to support new pipelines and processing plants.

PENALTIES: Costs imposed on companies for failing to follow waste prevention standards.

> **OUR RECOMMENDATION:** Set a royalty rate of 100% on wasted methane when operators waste methane, cancel or suspend leases, ban the acquisition of additional leases, or deny or cancel permits to drill.



Methane emissions reductions stand to benefit more than just the climate – they will improve public health, generate royalties, and reduce waste.

COLORADO²³

Pass ★★★

CONDITIONS ON PERMITS: The Oil and Gas Conservation Commission may impose conditions on drilling permits. 2 Colo. Code Regs. § 404-1:305.e.

PHASING OF DEVELOPMENT: Production can be limited in a field or pool to limit waste. Colo. Rev. Stat. Ann. § 34-60-117(1).

Partial Credit ★★

OIL WELL COMPLETION: Green completions required except for exploratory wells, for wells not sufficiently close to a sales line, or where otherwise not technically and economically feasible. 2 Colo. Code Regs. § 404-1:805(b)(3) (A).

PENALTIES: The Commission may fine violators of oil and gas rules up to \$15,000 for each violation per day. Colo. Rev. Stat. Ann. § 34-60-121.

Fail ★

WELL MAINTENANCE: Gas may be flared or vented during well maintenance without notice or approval. 2 Colo. Code Regs. § 404-1:912(b).

WELL LIQUIDS REMOVAL: Gas may be flared or vented during well purging operations without notice or approval. 2 Colo. Code Regs. § 404-1:912(b).

GAS-DRIVEN EQUIPMENT: Not covered.

COMPRESSORS: Not covered.

STORAGE TANKS: Not covered.

GAS-PRODUCING OIL WELLS: Not covered.

LEAKS: Not covered.

GAS CAPTURE PLANNING: Operators may submit a voluntary comprehensive drilling plan that may involve gas capture planning. 2 Colo. Code Regs. 404-1:216.

BENEFIT-COST TEST: No requirements for field-wide analysis, consideration of public benefits and costs, or the long-term value of public oil and gas resources.

MONTANA

Pass ★★★

CONDITIONS ON PERMITS: The Board of Oil and Gas Conservation may impose conditions on drilling permits. Mont. Admin. R. 36.22.601(5) (a).

PENALTIES: The Board may reject applications to flare an amount greater than allowed by rule. Mont. Admin. R. 36.22.1220(3)(b). For violations of oil and gas rules, the Board shall take “necessary action.” Mont. Admin. R. 36.22.503(3).

Partial Credit ★★

WELL LIQUIDS REMOVAL: Venting is permitted during cleaning of the well bore subject to time and volume limits. Mont. Admin. R. 36.22.1219; Mont. Admin. R. 36.22.1221(1).

GAS-PRODUCING OIL WELLS: Flaring is allowed up to a certain production limit. Mont. Admin. R. 36.22.1220.

Fail ★

OIL WELL COMPLETION: Not covered.

WELL MAINTENANCE: Not covered.

GAS-DRIVEN EQUIPMENT: Not covered.

COMPRESSORS: Not covered.

STORAGE TANKS: Not covered.

LEAKS: Not covered.

GAS CAPTURE PLANNING: Not covered.

BENEFIT-COST TEST: No requirements for field-wide analysis, consideration of public benefits and costs, or the long-term value of public oil and gas resources.

PHASING OF DEVELOPMENT: Not covered.

NEW MEXICO

Pass ★★★

WELL LIQUIDS REMOVAL: Gas cannot be used to gas-lift the well unless all gas produced is processed or beneficially used. N.M. Admin. Code 19.15.19.10.

CONDITIONS ON PERMITS: The Oil Conservation Division may impose conditions on drilling permits. N.M. Admin. Code 19.15.14.10(B).

PENALTIES: The Division “shall” suspend allowed production if the operator violates venting and flaring limitations. N.M. Admin. Code 19.15.18.12(C).

Partial Credit ★★

GAS-PRODUCING OIL WELLS: Venting is allowed for 60 days from well completion, after which no venting or flaring is permitted except that gas may be burned pending connection to a gas-gathering facility. N.M. Admin. Code 19.15.18.12(A), (F).

Fail ★

OIL WELL COMPLETION: Not covered.

WELL MAINTENANCE: Not covered.

GAS-DRIVEN EQUIPMENT: Not covered.

COMPRESSORS: Not covered.

STORAGE TANKS: Not covered.

LEAKS: Not covered.

GAS CAPTURE PLANNING: Not covered.

BENEFIT-COST TEST: No requirements for field-wide analysis, consideration of public benefits and costs, or the long-term value of public oil and gas resources.

PHASING OF DEVELOPMENT: Not covered.

NORTH DAKOTA

Pass ★★★

GAS CAPTURE PLANNING: Required by North Dakota Industrial Commission policy. Bakken/ Three Forks Pool Field Rules to Restrict Oil Prod. to Reduce the Amount of Flared Gas, Order No. 24665, Case No. 22058 (N.D. Indus. Comm’n July 1, 2014) (hearing on a motion to consider amendments).

CONDITIONS ON PERMITS: The Commission may impose conditions on drilling permits. N.D. Admin. Code 43-02-03-16.

PENALTIES: Production can be restricted if Commission-approved gas capture goals are not met. Order No. 24665.²⁴ Royalties are due on gas produced in violation of flaring limitations. N.D. Cent. Code Ann. § 38-08-06.4(4). Violators of Commission rules or orders are subject to civil or criminal penalties. N.D. Cent. Code Ann. § 38-08-16(1).

Partial Credit ★★

GAS-PRODUCING OIL WELLS: Venting is prohibited. Flaring is allowed for one year, after which the well must be capped, the well must be connected to a gathering line, or the gas must be beneficially used at the well-site. N.D. Cent. Code Ann. § 38-08-06.4; N.D. Admin. Code 43-02-03-45.

Fail ★

OIL WELL COMPLETION: Not covered.

WELL MAINTENANCE: Not covered.

WELL LIQUIDS REMOVAL: Not covered.

GAS-DRIVEN EQUIPMENT: Not covered.

COMPRESSORS: Not covered.

STORAGE TANKS: Not covered.

LEAKS: Not covered.

BENEFIT-COST TEST: No requirements for field-wide analysis, consideration of public benefits and costs, or the long-term value of public oil and gas resources.

PHASING OF DEVELOPMENT: Not covered.

UTAH²⁵

Pass ★★★

CONDITIONS ON PERMITS: The Division of Oil, Gas and Mining can place conditions of approval on venting or flaring. U.A.C. R649-3-20(4.4). The Division may impose conditions on the drilling permit. U.A.C. R649-3-18(2.1).

Partial Credit ★★

WELL LIQUIDS REMOVAL: Venting is permitted when purging a well subject to time and volume limits. U.A.C. R649-3-20(4.5).

GAS-PRODUCING OIL WELLS: Venting and flaring is allowed up to a certain volume. U.A.C. R649-3-20(1).

PENALTIES: The Board of Oil, Gas and Mining may issue a formal order to alleviate non-compliance and/or require a violator to appear before the Board and shall notify taxing and royalty agencies. U.A.C. R649-3-20(7).

Fail ★

OIL WELL COMPLETION: Not covered.

WELL MAINTENANCE: Not covered.

GAS-DRIVEN EQUIPMENT: Not covered.

COMPRESSORS: Not covered.

STORAGE TANKS: Gas may be vented from oil storage tanks. U.A.C. R649-3-20(4.1).

LEAKS: Not covered.

GAS CAPTURE PLANNING: Not covered.

BENEFIT-COST TEST: No requirements for field-wide analysis, consideration of public benefits and costs, or the long-term value of public oil and gas resources.

PHASING OF DEVELOPMENT: In response to a request for approval to vent or flare, production can be limited until the gas is marketed or otherwise beneficially utilized. U.A.C. R649-3-20(6.2).

WYOMING²⁶

Partial Credit ★★

GAS-PRODUCING OIL WELLS: Venting and flaring is allowed up to a certain volume. WY Rules and Regulations OIL GEN Ch. 3 section 39(b).

GAS CAPTURE PLANNING: The Oil and Gas Conservation Commission has proposed new rules requiring operators to submit gas capture plans with applications to vent or flare over certain volume limits.²⁷

PENALTIES: The Oil and Gas Conservation Commission can impose misdemeanor charge(s) and fine(s) of \$100 to \$1000 per offense per day of unlawful venting or flaring. Wyo. Stat. Ann. § 30-5-123.

Fail ★

OIL WELL COMPLETION: The Oil and Gas Conservation Commission encourages the use of technologies to minimize or prevent flaring or venting during drilling and completion activities. Wyo. Admin. Code § OIL GEN Ch. 3 section 39(a) (iv).

WELL MAINTENANCE: Not covered.

WELL LIQUIDS REMOVAL: Venting and flaring is authorized during unloading or cleaning up during routine well purging. WY Rules and Regulations OIL GEN Ch. 3 section 39(a)(ii).

GAS-DRIVEN EQUIPMENT: Not covered.

COMPRESSORS: Not covered.

STORAGE TANKS: Not covered.

LEAKS: Not covered. While this is not covered by state oil and gas regulations, WY air quality regulations require leak detection and repair in parts of the state with high levels of pollution from oil and gas activity.

BENEFIT-COST TEST: Not covered.

CONDITIONS ON PERMITS: Not covered.

PHASING OF DEVELOPMENT: Not covered.

Legal Q&A on Federal vs. State Authority

QUESTION:

WHO HAS AUTHORITY TO REGULATE METHANE WASTE ON FEDERAL LANDS—THE STATES OR THE FEDERAL GOVERNMENT?

ANSWER: Both. The Tenth Amendment of the Constitution recognizes the inherent “police power” of the states, which empowers the states to legislate to protect the public welfare. Under this authority, the states have enacted “oil and gas conservation” statutes and accompanying regulations to prevent waste of oil and gas and thereby protect the public’s interest in this natural resource. These state laws extend to federal lands unless preempted. Under the Mineral Leasing Act and its implementing regulations, the BLM also has the authority to ensure that oil and gas from federal lands is conserved and not wasted.

QUESTION:

HOW IS METHANE WASTE REGULATION CURRENTLY SPLIT OR SHARED BETWEEN THE STATES AND THE FEDERAL GOVERNMENT?

ANSWER: The states and the BLM work hand-in-hand to regulate oil and gas development on federal lands. Some state oil and gas conservation agencies have formal “Memoranda of Understanding” with BLM that detail how responsibility for preventing oil and gas waste is shared between the agencies. Under the MOU between the BLM and Colorado, for example, state rules are assumed to apply on all federal lands and leases; BLM and state permitting processes proceed in tandem; and compliance with state standards and practices can suffice for federal approvals (i.e., applications for permit to drill or master development plans) if the state standards are “at least as stringent” as the comparable federal standards. However, the BLM retains ultimate jurisdiction over federal oil and gas and has the power to overrule state determinations or orders that apply to federal minerals.

In general, the law of preemption applies to federal-state regulation of oil and gas, meaning that federal law prevails where there is a conflict. However, there is a history of cooperation between states and the federal government on oil and gas regulation.

QUESTION:

HOW WILL METHANE WASTE REGULATION BE SPLIT OR SHARED WHEN BLM RELEASES ITS NEW RULE?

ANSWER: A strong federal rule will fill any gaps in state regulation and provide a strong floor of protection. Otherwise, we anticipate that BLM will continue to work in concert with the states to regulate methane waste on federal lands.

QUESTION:

DOES THE FEDERAL GOVERNMENT HAVE THE AUTHORITY TO APPLY METHANE WASTE STANDARDS ON MIXED-OWNERSHIP OIL AND GAS FIELDS?

ANSWER: The BLM has the authority to set standards to prevent waste from oil and gas in private or state ownership in various circumstances, including if the well is part of a BLM-approved unit agreement or if the development of the resource threatens the surface of a national forest or other federal public lands.

TABLE 2: Percentage of state production from federal lands and minerals.

	Colorado	Montana	New Mexico	North Dakota	Utah	Wyoming
Gas Production	15%	13%	68%	9%	14%	72%
Oil Production	16%	5%	55%	7%	18%	51%

Source: “Onshore Petroleum and Natural Gas Operations on Federal and Tribal Lands in the United States,” ICF International, 2015; DrillingInfo HPDI data.

A large share of the oil and gas produced in the West comes from federal lands. States’ rules are inadequate to prevent methane waste on federal lands within their borders. Tough new federal standards are needed to ensure that both the residents of these states and federal taxpayers receive full value from production of these resources.

Conclusions

Are the states that host the largest amounts of federal land prepared to prevent methane waste on these lands and protect the public interest? Would new federal standards duplicate what the states are already doing? The answer to both of these questions is no.

Our examination of methane waste rules shows that Interior West states leave too many sources of waste unaddressed and too much methane leaked, vented, and flared. State rules that are in place are simply not adequate to prevent methane waste on federally owned lands and subsurface minerals.

Comprehensive, up-to-date federal standards are needed. These standards will establish uniform rules that apply across the board to oil and gas activities and force more responsible behavior by industry. They will lead the way for states, filling the many gaps left by state rules. And they will conserve energy resources, protect public health, ensure payment of royalties, give weight to other resource values, and help curb climate change.

Finally, while the states and the BLM work together to regulate oil and gas activity on federal lands, it is ultimately the federal government’s responsibility to prevent the waste of resources it holds in trust for the American people.

We must protect the West’s natural heritage, safeguard public health, and ensure fair compensation for use of public resources.

Deficient state rules necessitate a strong federal methane waste rule.

A PERSONAL STORY...

“New Mexico oil and gas regulators lack the technical or political fortitude to evaluate controls on venting and flaring when they approve new wells and drilling units. This and the lack of controls on existing wells has created the largest methane ‘hot spot’ in the nation. I’d like to see a strong methane rule from BLM that will make the state stop approving projects without controlling waste and protecting the public interest.”

- Mike Eisenfeld, Staff Organizer, NM Energy Issues
San Juan Citizens Alliance, New Mexico



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Endnotes

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- 21 While not covered by state oil and gas waste regulations, CO, UT, and WY have adopted air quality rules that cover some methane emissions. See 5 Colo. Code Regs. § 1001.9; U.A.C. R307-503 and Utah DEQ, Approval Order: General Approval Order for a Crude Oil and Natural Gas Well Site and/or Tank Battery, DAQE-AN149250001-14 (June 5, 2014); 8 Wyo. Code R. §§ 1-10.
- 22 Federal rules require green completions for gas well completions pursuant to 40 C.F.R. §§ 60.5360-5499 (2015).
- 23 The Colorado Department of Health and the Environment has adopted air quality rules that directly cover some methane emissions: Well maintenance: 5 Colo. Code Regs. § 1001-9:XVII(G); Well liquids removal: 5 Colo. Code Regs. § 1001-9:XVII(H); Gas-driven equipment: 5 Colo. Code Regs. § 1001-9:XVIII; Compressors: 5 Colo. Code Regs. § 1001-9:XVII(B)(3)(b)-(c); Storage tanks: 5 Colo. Code Regs. § 1001-9:XVII(C); Leaks: 5 Colo. Code Regs. § 1001-9:XVII(F).
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- 26 The Wyoming Department of Environmental Quality has adopted air quality rules for the Upper Green River Basin that address ozone and indirectly cover some methane emissions: Gas-driven equipment: WY Rules and Regulations ENV AQ Ch. 8 section 6(f); Leaks at existing wells and compressor stations: WY Rules and Regulations ENV AQ Ch. 8 section 6(g); Leaks at new and modified wells: Oil and Gas Production Facilities: Chapter 6, Section 2 Permitting Guidance (revised September 2013), *available at* http://www.pipelinelaw.com/files/2014/04/September_2013_Oil_and_Gas_Revision_UGRB.pdf. WY DEQ has also adopted permitting requirements covering: Green completions and well maintenance: *id.* and Wyoming DEQ-Air Quality Division: Well Completions / Re-completions Permit Application, *available at* <http://deq.wyoming.gov/media/attachments/Air%20Quality/New%20Source%20Review/Applications%20on%20Notice/17067app.pdf>.
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