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Methane Regulatory Update

Independent Petroleum Association of America
Strategic Planning Conference on Land Access and
Environmental Issues

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Relevant Regulatory Chronology

- August 16, 2012: 40 CFR Part 60, Subpart OOOO
 - New Source Performance Standards ("NSPS") for Volatile Organic Compounds ("VOCs") from well completions, storage vessels, and pneumatic controllers
- October 15, 2012: IPAA and many other trade associations filed for judicial review with the U.S. Court of Appeals for the District of Columbia Circuit and Petition for Administrative Reconsideration with EPA
- 2013-2014: Various reconsideration rulemakings and related legal challenges



Relevant Regulatory Chronology

- August 2015: EPA issued draft Control Techniques Guidelines ("CTGs") for the oil and natural gas industry
- September 18, 2015: EPA proposed 40 CFR Part 60, Subpart OOOOa
 - First time regulation of methane from the same Subpart OOOO sources, plus more sources and more stringent
- October 26, 2015: EPA lowered National Ambient Air Quality Standards ("NAAQS") for ozone to 0.070 parts per million ("ppm")



Relevant Regulatory Chronology

- June 3, 2016: EPA finalized Subpart OOOOa with changes that made it more stringent
- August 3, 2016: IPAA and 18 other trade associations filed a judicial challenge to OOOOa with the DC Circuit and a Petition for Administrative Reconsideration with EPA
- October 20, 2016: EPA issued final CTGs
- November 10, 2016: EPA announced issuance of its Information Collection Request ("ICR")



Impact of the Election





Impact of the Election

- Congressional Review Act
- January 20, 2017: Reince Priebus – Regulatory Freeze Pending Review
- January 26, 2017: Federal Register – Delay of Effective Date for 30 Final Regulations
 - EPA Risk Management Plan (7 days)
- January 30, 2017: EO on Reducing Regulation and Controlling Regulatory Cost



Impact of the Election

- Information Collection Request
- Control Techniques Guidelines



Impact of the Election – 0000a Litigation

- Unopposed Motion to Extend Proposed Briefing Schedule
- Stay of Leak Detection and Repair ("LDAR")
June 3, 2017 Compliance Date???
- Litigate – "Damn the Torpedoes"
- Stay – "Settlement"



Impact of the Election – 0000a Litigation

Judicial Review

- Failure to make a pollutant specific endangerment finding
- Failure to explain what is a "significant contribution"
- Expansion of O&G source category was A&C
- EPA's use of cost-benefit analysis was A&C
- Decision to regulate CH₄ from E&P was A&C

Administrative Petition

- Reinstate low production well exemption
- Remove requirement that separator be onsite during entirety of flowback
- Remove requirement of "technical feasibility"
- Other non 307(d) issues



Impact of the Election – 0000a Litigation

"Damn the Torpedos" –
Who said it?



Impact of the Election – 0000a Litigation





Impact of the Election – 0000a Litigation

- Continue Litigation – Issues to Consider
– D.C. Circuit





Impact of the Election – 0000a Litigation

- Continue Litigation – Issues to Consider
 - D.C. Circuit – Unfriendly Venue
 - Good Legal Arguments but No Slam Dunk
 - Decision May Be out of Our Hands
 - Article 3 Case and Controversy?
 - Ability of Intervenors to Carry On?



Impact of the Election – 0000a Litigation

- Stay – Issues to Consider
 - Greater Degree of Certainty/Control
 - Pick and Choose Issues
 - Potentially Faster
 - Supplement the Administrative Record
 - § 111(d) Ramifications?



Impact of the Election

- 0000a Petition for Administrative Reconsideration
 - Low Production Well Exemption
 - Separator Onsite at All Times
 - State LDAR Equivalence
 - Technical Infeasibility





QUESTIONS?

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