Transparency, Enforcement and Implementation in BLM Waste Prevention, Production Subject to Royalties, and Resource Conservation Rule

Transparency:
This administration has recognized the need for increased transparency within government agencies. We have seen the Department of the Interior and specifically the Bureau of Land Management embrace this theme over the past year. The press release for the Federal coal PEIS stated, "Secretary Jewell also announced today that the Interior Department will undertake a series of good government **reforms to improve transparency** and administration of the federal coal program."[1] This sentiment was reiterated again in the summary of the proposed revisions to Onshore Order 1 which looks to amend the APD and NOS process to "**improve the efficiency and transparency**…"[2] We support these efforts by both DOI and BLM and encourage the agency to incorporate this transparency initiative into the final methane waste rule.

We believe the final rule should mandate that all Sundry Notices and other required reports be made publically available. Those include:

- Applications/sundry notices that include a request for royalty-free use submitted pursuant to 3178.5 (on-lease) and 3178.7 (off-lease) and all required information pursuant to 3178.9.
- Applications for and approval of an alternative venting or flaring limit (Sundry notice required to be submitted pursuant to 3179.7) and any sundry notice submitted for approval for a 2-year exemption.
- Any requests for longer initial or subsequent test periods pursuant to 3179.103 and 104.
- Any sundry notice submitted pursuant to the Emergency provision in 3179.105.
- Any sundry notice submitted to apply for exemption from pneumatic requirements under 3179.201(b) and (c) and 3179.202(c) and (d).
- Any sundry notice submitted for an exemption from storage vessels requirements pursuant to 3179.203(c).
- Any sundry notice submitted for exemption from liquids unloading requirements pursuant to 3179.204(a).
- Any sundry notice submitted showing non-compliance with unloading requirements pursuant to 3179.204(e)
- Requests for state variance pursuant to 3179.401.

Additionally, the proposed rule requires operators to track and record a significant amount of additional data that is not required to be submitted to the agency. We believe the final rule should mandate the following information be submitted on an annual basis to the BLM and made publically available:

- Production data along with royalties collected and any gas or oil used royalty-free. Operators are already required to track this information pursuant to 3178.8)

[1] Available online at: https://www.doi.gov/pressreleases/secretary-jewell-launches-comprehensive-review-federal-coal-program
[2] Available online at: https://www.gpo.gov/fdsys/pkg/FR-2016-07-29/pdf/2016-17400.pdf

- All flared and vented volumes. Operators are already required to track this pursuant to 3179.8.
- All information required to be kept for LDAR inspections pursuant to 3179.305.
- Any volumes captured from liquids unloading pursuant to 3179.204(g).
- Full APD packages as well as the required waste minimization plans.

In additional to making records available, the BLM should also strive to improve outreach to and work with affected communities including tribal communities.

We believe both the agency and the public will derive a number of benefits from such increased transparency measures. First and foremost, collecting and making this information publically available will ensure BLM is complying with its waste prevention mandate. Additionally, this data can be used to track emissions from public lands in order to estimate the severity of the issue and effectiveness of this rule in addressing it. Public access to these records can also be used to incentivize compliance as it allows watchdog groups and the public can hold violators/operators with poor compliance records accountable. This in turn will help with enforcement. Finally, it increases public goodwill towards an agency that has historically been viewed as closed-off.

Enforcement:
Without proper enforcement and oversight this rule will not have the impact nor provide the benefits described in the agency's Regulatory Impact Analysis (RIA). While the rule is largely dependent on self-reporting, and although most operators strive to comply with all applicable rules and regulations non-compliance does and will occur. The following reflect our opinions on proper enforcement of the rule:

- We are in favor of permitting compliance with EPA standards in lieu of the applicable BLM standard. Such options exist for certain well completions requirements under 3179.102, storage vessel requirements under 3179.203 and LDAR requirements under 3179.203(e). Such provisions take advantage of existing and effective rules to eliminate redundancy for operators and decrease the workload for the agency.
- BLM should make the waste minimization plan requirement, under 3162.3-1, an enforceable part of the rule. Note that BLM has this authority and reiterates this under section 3179.10 where the agency states it has the existing authority to limit production or delay action on an APD if gas capture capacity is not available.
- Require that any report that must be submitted pursuant to the proposed rule, be signed by the President, Chief Executive Officer or other certified officer designated by the operator. This can increase compliance and attention to reporting.
- The agency should evaluate reduced or static royalty rates for certain amounts of time for operators that expedite connection to gas capture equipment and show other commitments to compliance with the new rules. This would include establishing a mechanism for increasing royalty rates as a punitive measure for operators that fail to comply with the overall regulations.
    - For example, a temporary increase in royalty rate assessed on oil and gas produced from a specific well in addition to assessing the appropriate penalty as required under 43 CFR Subpart 3163.1. The potential for increased royalty rates could act as a form of penalty, would incentivize compliance, and the increased royalties collected would directly benefit the American taxpayer and those communities affected by the non-compliance. If a company is continually out of compliance with the venting and flaring limits, then it would be completely appropriate to raise royalty rates on produced and sold oil and gas

to recoup the lost revenue owed to states and taxpayers. We propose that companies venting or flaring more than 10 Mcf/day/well would be subject to a 4 percent increase in their royalty rate. We encourage the agency to look at an escalating royalty adder for operators that are continually out of compliance. A royalty adder that continues to increase over time would ensure that operators who are regularly flouting the regulations would be incentivized to comply. An operator should not see an increased royalty rate as "the cost of doing business." A royalty rate that increases in proportion to failures to comply would make it clear that noncompliance comes with a substantial cost.

The agency could also use royalty rates to incentivize compliance. Provide a mechanism for operators that are expediting connection to gas capture systems, investing in LDAR or other compliance-related equipment, or setting and meeting expedited timeframes for compliance with various aspects of the rule to seek a corresponding adjustment to royalty rates. BLM could commit to maintaining the initial royalty rate for a certain amount of time, even if the reevaluation mechanisms proposed above would have increased it, or negotiating a royalty rate reduction for a limited timeframe based upon proof of certain activities.

Implementation:

Although implementation of the rule is not explicitly addressed in the rule itself, we believe there are a number of things the agency can do in the final rule to ensure successful implementation. First and foremost, it is imperative to secure adequate funding and staffing. While the agency's budgetary woes are no secret and although the agency cannot itself appropriate funds to carry out implementation of the rule through the rulemaking process, the agency can and should identify the need for such funding in the preamble to the rule. Historically, the highest rates of non-compliance and therefore enforcement actions, generally occur during the first few years of a rule being implemented. These initially high rates of non-compliance can result in the need for additional resources both in terms of money and employee time. BLM should note that a similar result is anticipated with this rule in the preamble in an effort to make clear its expectations. We also want to make it clear that while increased funding and staffing can significantly improve compliance and thus the effectiveness of the rule, the rule will remain effective under a limited resource scenario as it places the burden of demonstrating compliance largely on the operator.

Additionally, BLM should evaluate staffing needs associated with permitting the infrastructure that will be required under the rule, such as processing of right-of-way permits. To the extent there is not additional funding allocated, BLM should prioritize available funding, including evaluating how existing staff can be used to fulfill these obligations and how related efforts, such as processing related rights-of-way, could be handled more effectively or prioritized where they will enhance compliance with this rule. BLM should also evaluate the potential for industry to develop and implement self-monitoring programs or third-party monitoring programs, if they can be sufficiently supervised to ensure compliance and accuracy.

We also believe a rollout and a training program should be developed to assist field staff with understanding how to enforce the rule and operators with understanding how to comply. Along with training for field staff, the BLM should develop Instruction Memorandum and internal guidance describing how to carry out the requirements of the rule. This direction could come from DC or be delegated to state office, although we believe guidance from DC would ensure the most consistent interpretation across the BLM.

Finally, we are in favor of the State variance provision and believe it a great tool for both the states and operators to eliminate duplicative requirements, reduce the overall burden of compliance and acknowledge the great work already being done by some states. It must be made clear however, that this is not a substitution for strong baseline requirements from the BLM. A variance granted for any provision must meet or exceed the federal standard. BLM should provide guidance on how to conduct an appropriate variance request review and should establish a system for periodic review of the granted variance to ensure the state standard continue to exceed the requirements of the federal standard. We suggest the agency even initiate a preliminary review of state variance applicability to assist inb this process.