

INSIGHTS

Federal District Court Vacates BLM's Postponement of the Waste Prevention Rule

October 6, 2017

By: [Whit Swift](#) and [Brittany M. Pemberton](#)

On October 4, 2017, the U.S. District Court for the Northern District of California issued [a decision vacating the Bureau of Land Management's \("BLM's"\) June 15, 2017 notice that indefinitely postponed compliance dates for sections of BLM's Methane and Waste Prevention Rule](#). *State of California v. BLM*, Nos. 17-cv-03804-EDL and 17-cv-3885-EDL (N.D. Cal., Oct. 4, 2017). The Methane and Waste Prevention Rule, which was adopted as a final rule in November 2016, is intended to limit venting, flaring, and leaks of natural gas from oil and natural gas production activities on public and tribal lands.

Certain provisions of the Methane and Waste Prevention Rule went into effect in January 2017, while others have a compliance date of January 2018. BLM's June 15, 2017 *Federal Register* postponement notice sought to postpone compliance with those requirements for which compliance would be required in January 2018, and claimed authority under Section 705 of the Administrative Procedure Act ("APA"). 82 *Fed. Reg.* 27430 (June 15, 2017).

BLM's postponement notice is one of multiple actions taken by the Trump Administration to delay or postpone the implementation of Obama-era environmental regulations. In addition to BLM, the U.S. Environmental Protection Agency ("EPA") has taken steps to delay the implementation of the 2016 Methane Rule (which establishes requirements aimed at reducing methane emissions from oil and gas facilities constructed or modified after September 18, 2015), the January 2017 amendments to the Risk Management Plan ("RMP") rules, and landfill gas/methane standards for municipal solid waste ("MSW") landfills.

The Federal District Court hearing the challenge to the BLM's June 2017 postponement notice found that it did not have the authority to do so under APA Section 705. The court rejected BLM's use of APA Section 705 to postpone particular compliance dates for an already effective rule (as opposed to postponing the effective date of an entirely new rule), and also held that BLM had failed to establish that the postponement notice met the "when justice so requires" standard for postponement actions under APA Section 705.

The October 4 decision represents the second court decision rejecting an attempt by the Trump Administration to postpone, on an interim basis, an Obama-era regulation. On July 3, 2017, the U.S. Court of Appeals for the D.C. Circuit issued a decision vacating EPA's initial 90-day stay of the Methane Rule. As with the Methane Rule, the court's decision on the BLM Methane and Waste Prevention Rule creates significant uncertainty for the regulated community. The upcoming January 2018 requirements for which BLM indefinitely postponed compliance now

spring back into effect – though at the same time, BLM is already moving forward with rulemaking aimed at changing those comments through formal notice-and-comment rulemaking. On October 5, 2017, BLM published a formal proposal to delay and suspend certain Methane and Waste Prevention Rule requirements in the *Federal Register*. 82 Fed. Reg. 46458 (Oct. 5, 2017).

While the October 4 decision is a setback for BLM's attempt to delay compliance with the Methane and Waste Prevention Rule, the grounds for the court's decision are unlikely to impact BLM's authority to move forward with formal rulemaking aimed at amending the rule. While any action ultimately taken by BLM on the Methane and Waste Prevention Rule will likely be challenged in court, the changes that BLM makes to the rule will not be based on an agency's authority under APA Section 705. As a result, the basis for the court's decision on the June 2017 postponement notice should not control any court looking at BLM's subsequent amendments to the Methane and Waste Prevention Rule.