Cloaked in President Trump’s ‘Energy Independence’ Executive Order, Environmental Protection Agency Deregulated Fugitive Emissions from Oil and Gas Well Pads

Earlier this year, President Trump visited the headquarters of the Environmental Protection Agency for a particular purpose. Flanked by the newly-appointed EPA Administrator Scott Pruitt, President Trump placed himself at the center of the room, signed a large leather-bound document, and then presented the page bearing his signature for the entire world to see. With a stroke of his pen, President Trump certified Executive Order 13783, ‘Promoting Energy Independence and Economic Growth.’ President Trump’s ‘Energy Independence’ Executive Order was both proscriptive and preemptive. Generally, the Order rescinded ‘numerous energy and climate-related Presidential and regulatory actions’ imposed by the Obama Administration. See Promoting Energy Independence and Economic Growth (‘Energy Independence Executive Order’), 82 FR 16093, §3 (March 31, 2017). As well, the Order demanded that federal agencies [immediately]...review all existing regulations, orders, guidance documents, policies, and any other similar agency actions...that potentially burden the development or use of domestically produced
energy resources, with particular attention to oil, natural gas, coal, and nuclear
energy resources... Energy Independence Executive Order, at §2 (emphasis added).

On May 31, 2017, the Environmental Protection Agency stayed certain portions of
the Clean Air Act’s revised New Source Performance Standards (‘NSPS’) for the oil
and gas industry. Issued as a final rule in the last year of the Obama Presidency,
NSPS Subpart OOOOa (commonly referred to as ‘Quad Oa’) more stringently
regulates operating and emission standards for certain new, reconstructed, and
modified oil and gas sources. See 40 CFR §60.5360a et seq. In accordance with
President Trump’s ‘Energy Independence’ Executive Order, the EPA issued a 90-day
stay pertaining to the fugitive emissions, pneumatic pumps, and professional
engineer certification requirements from NSPS Subpart OOOOa; this action relieves
operators from any federal obligation to comply with these requirements. See EPA
Stays Oil and Gas Standards, Environmental Protection Agency, (May 31,
2017), available here. NSPS Subpart OOOOa’s fugitive emissions requirements
impose significant obligations on the oil and gas industry. ‘Fugitive emissions’ are
leaks or unintended releases of pressurized gas (usually methane) that are
sometimes emitted at oil and gas wells. Generally, NSPS Subpart OOOOa requires
operators to monitor and repair all fugitive emissions observed by optical gas
imaging or an instrument reading of 500 ppm or greater. 40 CFR §60.5397a(a) et
seq. As a result of the stay, however, operators are not bound by federal law to
monitor and repair fugitive emissions at well sites within the 90-day window; certain
unintended releases of methane at oil and gas wells are now unregulated on a
federal level by the Environmental Protection Agency. While the stay deregulates
fugitive emissions on a federal level, it is unclear what impact, if any, the stay will
have on oil and gas operations that are permitted by state agencies.

Under the Clean Air Act, states are encouraged to develop their own environmental
agencies that meet or exceed the federal standards. As a result, a significant
proportion of upstream oil and gas air permits are issued by the state, not the
federal government. Thus, state agencies are likely not bound to EPA’s
reconsideration of the fugitive emissions monitoring and repair requirements; state
agencies may assert their authority under the Clean Air Act and continue to regulate
these emissions. It remains to be seen how EPA balances the future regulation of
fugitive emissions emanating from oil and gas well pads with the demands of
President Trump’s ‘Energy Independence’ Executive Order. As a result of the EPA’s
reconsideration of certain portions of NSPS Subpart OOOOa, the EPA will conduct
notice and comment rulemaking sometime within the 90-day stay.

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