

INSIGHTS

EPA Proposes Additional Two-Year Stay of Parts of the Methane Rule

June 14, 2017

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

On June 13, 2017, the U.S. Environmental Protection Agency (EPA) issued a pre-publication proposed rule that would grant an additional two-year stay to the effectiveness of certain portions of the 2016 rule establishing methane emissions standards for the oil and gas industry ("Methane Rule"). The Methane Rule applies to oil and gas facilities for which construction, modification, or reconstruction started after September 18, 2015. *See* 40 C.F.R. Part 60, Subpart OOOOa (40 C.F.R. § 60.5360a *et seq.*, adopted at 81 Fed. Reg. 35824 (June 3, 2016)).

The June 13 proposed rule affects three elements of the Methane Rule for which EPA has previously granted reconsideration: (1) the fugitive emissions monitoring and repair requirements of 40 C.F.R. § 60.5397a, including the inclusion of low-production wells and the provisions relating to approvals for alternative means of compliance; (2) the requirement that the design and capacity assessment of a closed vent system used to comply with the rule be performed by a Professional Engineer; and (3) the requirement that the determination that it is technically infeasible to route a pneumatic pump to a control device or process be made and certified by a Professional Engineer.

EPA has previously granted 90-day stays to the effectiveness for all three of these Methane Rule elements, at the same time that it announced the reconsideration of those parts of the rule. Under the June 13 proposal, the stay of these Methane Rule provisions would extend for two years beyond the date of the final rule's publication in the *Federal Register*. If EPA finalizes the rule on the schedule set forth in the proposal, this would extend the stay for these elements of the Methane Rule until approximately September 2019.

The proposed rule states that the two-year stay will allow EPA to complete the reconsideration proceeding for these elements of the Methane Rule. Consistent with prior statements, the proposal further states that EPA will "look broadly at the entire 2016 rule." EPA is not taking comment on the substantive Methane Rule elements in response to this proposal; EPA only seeks comment on the duration and impact of the stay itself. Comments must be received on or before July 17, 2017.

On June 13, EPA also issued a companion proposed rule aimed at ensuring that there is no gap between the current three-month stay of the effectiveness of these parts of the Methane Rule and the longer two-year stay. The companion proposal states that, because the two-year stay would likely be determined to be a major rule under the Congressional Review Act, it would not be effective until 60 days after being published as a final rule in the *Federal Register* or after

Congress receives the rule report, whichever is later. Because there is the potential for the current three-month stay to expire prior to the two-year stay taking effect, EPA is proposing an additional three-month stay to the effectiveness of these Methane Rule elements that it plans to finalize prior to the expiration of the current stay. The companion action is aimed at ensuring that the currently stayed rule provisions will not come back into effect prior to the longer two-year stay that will remain in place during EPA's reconsideration of the rule.

[Click here](#) to view the proposed two-year stay and [here](#) to view the companion rule.

For more information or insights about any of EPA's recent actions relating to Obama-era environmental rules, please contact a member of Bracewell's Environmental Strategies Group.