

MITIGATING METHANE

Babst Calland Shareholder Gary Steinbauer unpacks a series of proposed new EPA regulations that would further restrict methane gas emissions within the region's oil and gas industry

By Daniel Bates, Contributing Writer

The region's oil and gas industry is about to face yet another round of restrictive new federal and state regulations aimed at reducing the industry's impact on the world's climate. This time, the U.S. Environmental Protection Agency (EPA) has proposed a new set of rules under the Clean Air Act that would greatly restrict the emission of methane gas – a greenhouse gas – into the air at gas wells, compressor stations and processing plants.

Likewise, the industry will soon have to contend with similar new regulations from the likes of the U.S. Pipeline and Hazardous Materials Safety Administration, the multi-state Regional Greenhouse Gas Initiative (RGGI), and the Pennsylvania Department of Environmental Protection, among others.

So, what does this mean for the region's already-heavily regulated oil and gas industry, which remains a target of the Biden administration and its climate-change initiatives?

"It's going to be a busy year," said Gary Steinbauer, a shareholder with Pittsburgh law firm Babst Calland and member of the firm's environmental practice. "Let's just say that, in 2022, when it comes to these federal Clean Air Act requirements particularly, we all should just buckle up and be prepared to invest the resources and time to really understand what this is going to mean for the future of air regulations that will impact the industry."

In other words, the oil and gas industry should take action now about the proposed regulations for consideration.

"Companies," he added, "should be reviewing, evaluating and considering how the proposal may impact their operations and also strongly consider participating in the rulemaking process and submitting comments to the EPA."

Steinbauer shared this summary of the current regulatory situation recently as part of the law firm's ongoing "Business Insights" video series, produced in partnership with the Pittsburgh Business Times. Babst Calland is one of the Pittsburgh region's largest law firms.

Aiming for a 74 percent industry reduction?

As Babst Calland's Steinbauer reported, the EPA claims that the oil and gas industry is the largest source of industrial methane emissions in the U.S., emitting more methane than the total emissions of all greenhouse gases from a collective 164 countries.

The proposed rule changes, Steinbauer said, purportedly would reduce methane emissions from regulated sources by an estimated 74 percent in 2030, in comparison to 2005 levels. And that's coming from an administration seeking to set the country on a course to reduce greenhouse gas emissions to so-called net-zero by 2050.

Relative to the region's oil and gas industry, are such new rules even necessary to drive President Biden's net-zero goal? According to Steinbauer, the industry already has been making great strides in reducing emissions.

According to industry sources, while multiple steps remain in the rulemaking process, Pennsylvania is already realizing significant air quality gains directly associated with natural gas and the industry-leading best practices being deployed by companies.

Regulatory "ping-pong"

Targeting the oil and gas industry, Steinbauer said, is nothing new when it comes to regulating industries deemed to impact climate change.

"In the last decade, the oil and gas industry has been impacted by numerous federal Clean Air Act regulatory requirements that began with the Obama administration in 2011 and has continued through the Trump administration and now into the Biden administration," Steinbauer said. "As you might expect, with different administrations and changes in policy priorities and the like, the EPA's views and interpretations of the Clean Air Act requirements that apply to this industry have changed, and they've changed vastly over the course of the last decade, which in my world



Gary E. Steinbauer, Esq.

Shareholder
gsteinbauer@babstcalland.com

is a relatively compressed time frame.

"I think what we're seeing," he continued, "is this game of regulatory ping-pong where, based on the administration in power at the time and its own policy prerogatives and priorities and interpretations, we're seeing vastly different outcomes and a shifting regulatory landscape as a result."

Five key changes to consider

The current shift, Steinbauer said, not only would regulate new sources, but would also tighten restrictions already in place under the Clean Air Act's federal air emission regulations, created under the Clean Air Act's Section 111 new source performance standards program.

"What it's proposing to do now," he continued, "is to expand upon existing regulations including new sources that are currently regulated and make more stringent the existing requirements that already apply to the oil and gas industry." That regulatory expansion, Steinbauer noted, is extensive. "There's a lot," he said. "The proposal itself is extremely voluminous, and there are numerous background documents that must be reviewed and considered."

Still, Steinbauer summarized the proposal as containing what he described as five key changes. "One, EPA is proposing for the first time to create federal emission guidelines that would require individual states to regulate existing sources within the oil and natural gas industry and, more specifically, regulate methane emissions from those existing sources," he said.

The second proposed change, he said, is the metric by which the EPA determines whether a well site is subject to so-called leak detection and repair requirements. "It's moving away from production as the basis to determine whether a well site is regulated and toward a new standard that involves site-level baseline emissions," he said.

Steinbauer said the third key change is a proposal to expand existing requirements that apply to tanks or storage vessels. "Those are used throughout the oil and gas industry, and, as a consequence we're likely to see more tanks and storage vessels regulated," he said.

Fourth, he said, is a proposal to expand upon and create new requirements for sources or activities that currently aren't regulated within the industry.

"Fifth in this package, the EPA is asking for and soliciting comments on a number of items that aren't explicitly addressed, and one of those is, the EPA is driving towards potentially creating regulations that would allow communities or third parties to play a role in monitoring emissions from sources within the oil and gas industry," Steinbauer said. "I'm not aware of any current federal Clean Air requirements that do that, so that would be an entirely new thing for not only the oil and gas industry, but for Clean Air Act regulations themselves."

Potential impacts

Steinbauer anticipates significant impacts on the oil and gas industry overall if those regulations are adopted.

"The potential impacts are undoubtedly going to create additional compliance burdens and costs for the industry," he said. "Within the industry as a whole – there's a lot of variety. I mean the size of the operator, the type of operations, the assets owned – all are different and vary widely.

"But what we're dealing with is a one-size-fits-all federal regulatory approach that's going to be manifested and impact industry participants differently," he added. "But I think, undoubtedly, we're likely to see higher compliance costs and additional regulatory burdens."

An alignment of state and federal rules

Meanwhile, Pennsylvania is preparing to finalize and publish its own rules affecting existing air emission sources. The state's DEP announced in December that it intends to finalize the regulation of volatile organic compound emissions from existing oil and gas industry sources by mid-2022.

"That timing, in some respects, is a bit fortuitous, but what Pennsylvania is intending to do is specific to volatile organic compound emissions from existing sources within the industry," Steinbauer said. "Methane is not defined as a volatile organic compound, so those are different requirements. They stem from different Clean Air Act programs."

Steinbauer did suggest, though, that Pennsylvania's forthcoming regulations and the EPA's proposed rules do offer some similarities.

However, he said, "The proposed methane rule, I would expect, will be more stringent than what Pennsylvania is likely to be doing later this year. When you look at it through the lens of the Biden administration, climate change is a significant policy priority. . . .so, in many respects it's targeting the industry and working on finalizing more stringent requirements, specifically those that address methane emissions because it sees a value in reducing those emissions."

What the industry can do

The region's industry already is trying to be proactive in reducing methane and other greenhouse gas emissions voluntarily, Steinbauer said. "Those efforts have been under way for many years and, in many respects, are independent of what the EPA is proposing and really what Pennsylvania is also likely to do later this year. Companies are being innovative, looking at innovative ways to reduce methane and greenhouse gas emissions, and many within the industry right now have voluntarily made commitments to reach and achieve net-zero by dates that aren't too far in the future."

In the meantime, Steinbauer recommended that companies take the time to respond to the EPA during this current public comment period, which ends at the end of January.

That said, he did suggest that companies will find themselves at a disadvantage because the "EPA deviated from its standard practice here" by not including proposed regulatory text with the proposed methane rule. The proposed regulatory text typically provides details on requirements that industry can review and comment upon. "But right now, what we have is a rule-making package that didn't include the proposed regulatory text."

However, Steinbauer expects the EPA to release a supplemental proposal later this year that will provide proposed "regulatory text" and additional information to enable a more comprehensive review.

"EPA is projecting to finalize these rules at the end of the year," Steinbauer said, "and that will put into motion a whole host of regulatory actions that, for example, Pennsylvania will need to take to create plans to implement the emission guidelines."

In the end, he added, we "encourage clients and industry stakeholders to be proactive about their positions and their progress in reducing emissions."

Babst Calland is closely tracking EPA's proposed new methane requirements for the oil and gas industry. Regulated parties would be well advised to prepare now to review, evaluate, and consider commenting on the new requirements. If you have any questions about these developments, contact Gary Steinbauer at gsteinbauer@babstcalland.com.

Business Insights is presented by Babst Calland and the Pittsburgh Business Times. To learn more about Babst Calland and its environmental practice, go to www.babstcalland.com.