Industrial Energy Consumers of America

The Voice of the Industrial Energy Consumers

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August 23, 2013

U.S. Department of the Interior
Director (630)
Bureau of Land Management
Mail Stop 2134 LM
1849 C St. NW.
Washington, DC 20240
Attention: 1004-AE26

RE: Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands – Docket No: 78 FR 34611

The Industrial Energy Consumers of America (IECA) strongly objects to this rule that is a "rule in search of a problem" – and makes a mockery of public policy. The BLM provides absolutely no environmental justification for its rule that will increase drilling costs that will be passed onto us, the consumer. The rule will unquestionably further increase delays for approval of an APD (Application for Permit to Drill) beyond the already very long 228 days that it is currently taking. IECA encourages the BLM to reconsider its proposed rule.

The Industrial Energy Consumers of America is a nonpartisan association of leading manufacturing companies with $1.2 trillion in annual sales, over 1,500 facilities nationwide, and with more than 1.7 million employees worldwide. Member companies are substantial consumers of natural gas as a fuel and feedstock, natural gas-fired power generation and crude oil for non-integrated refineries. IECA membership represents a diverse set of industries including: chemicals, plastics, cement, paper, food processing, brick, fertilizer, steel, glass, industrial gases, pharmaceutical, refining and aluminum.

The manufacturing sector has greatly and directly benefited from hydraulic fracturing technology that has resulted in lower natural gas, feedstock, and natural gas-fired electricity prices. The BLM regulation of hydraulic fracturing raises significant concerns that drilling permitting will slow down, and that production rates will fall. When production rates fall, prices will rise.

Manufacturing companies have announced over $100 billion in new facilities because of the U.S. newfound supplies of natural gas that has resulted in lower prices. Manufacturing companies are relocating their production to the U.S. to take advantage of the low natural gas prices. This is providing the best opportunity in a generation to expand the manufacturing sector, creating high paying jobs, and value-added exports. For the first time in over a decade, we can begin to reduce the trade deficit because we have a competitive advantage over manufacturing companies in other countries. Costly and unnecessary regulations such as this BLM rule create an obstacle to the manufacturing renaissance and jobs.

The Boston Consulting Group, Inc. study of August 20, 2013 entitled "The U.S. as One of the Developed World's Lowest-Cost Manufacturers" makes it clear what is at stake. Low-cost natural gas is the anchor of this newfound global competitiveness.

> "We project that the U.S., as a result of its increasing competitiveness in manufacturing, will capture $70 billion to $115 billion in annual exports from other nations by the end of the decade. About two-thirds of these export gains could come from production shifts to the U.S. from leading European nations and Japan. By 2020, higher U.S. exports, combined with production work that will likely be "reshored" from China, could create 2.5 million to 5 million America factory and service jobs associated with increased manufacturing."

IECA member companies have good reason to be concerned about regulatory burdens on natural gas and oil production on federal lands. From 2000 to 2005, natural gas prices doubled and tripled because demand exceeded supply. We recall that BLM's permitting system (ADP), heavy with increased bureaucracy and inadequate staffing, resulted in thousands of drilling permit backlogs. As a result, wells were not drilled, natural gas and oil were not produced and the manufacturing sector and the economy as a whole suffered. There were plenty of natural gas reserves and <u>the federal government was directly responsible for the failure to allow producers access to the natural gas in order to produce it for us, the consumer</u>. The manufacturing sector lost 3.0 million jobs from 2000 to 2005 and a great number of these jobs were directly related to the high price of natural gas. We could no longer compete in the global marketplace. Tens of thousands of chemical, plastics, fertilizer, steel, paper, glass and aluminum manufacturing plants shut down. We cannot and should not let this happen again.

KEY POINTS

1. The rule is unnecessary.
There are no cases of hydraulic fracturing contamination of groundwater anywhere in the country. Numerous officials from BLM, DOI and other agencies within the federal government have testified to Congress that there have been no confirmed cases of hydraulic fracturing impacting groundwater. With over one million oil and gas wells hydraulically fractured over 60 years, including about 90 percent of the wells on federal and Indian lands, there is not a single demonstrated instance of the fracturing process affecting groundwater. Thus, the Federal Lands Policy Management Act, does not compel BLM to further regulate hydraulic fracturing.

2. The rule will be costly. All costs are passed onto us, the consumer, impacting our competitiveness and jobs.
The BLM's assessment that the cost of the rule will range between $12 million and $20 million cannot be accurate. The assessment does not take into consideration the resulting costs of higher natural gas and natural gas-fired electricity prices to the U.S. consumer, or its impacts to lost jobs in the manufacturing sector and reduced exports.

For a more technical rebuttal of the BLM cost estimate, please refer to the Economic Research and Policy Institute study entitled "Individual Well Costs and Proposed Federal BLM Rule Changes," from the Oklahoma City University. Among the key concerns and findings are the following are:

> "The rule in question would impose irreversible costs on society in an attempt to generate benefits that are unknown; Pindyck (2007) shows that in such cases traditional cost-benefit analysis is biased towards policy adoption.

"The BLM estimates the per-well costs of the rule to range from $3,138 to $5,110. While we illustrate that these costs most likely represent an extreme lower bound, taking them as given and using the risk parameters provided by the BLM would conclude that the policy is only in society's interest if the environmental remediation associated with a major contamination ranged from $9,760,714.29 to $16,803,571.43. The BLM provides no documented evidence of hydraulic fracturing causing this (or any significant level) of fresh water aquifer contamination.

"The cost estimates are generated under considerable uncertainty, with the BLM unilaterally controlling the cost of rule implementation only as key parameters and definitions within the rule are revealed in the implementation process. This uncertainty is highlighted in a Monte Carlo simulation modeled around the BLM's proposed cost structure.

"The concept of a type well is not fully defined but is a key driver of actual costs. Depending on the maturity of the fields considered, the type well percent on a per-field basis can range from 3% to over 50%. Calculating the type well on a per-field, per-operator basis drives the type well percent even higher.

"Using the Monte Carlo model, we find that every 5% type well increase is associated with an approximately $34 million increase in industry costs. With a type well fraction range of 3% to 50%, this represents a substantial uncertainty in costs.

"The concept of usable water is not fully defined, and also has a significant impact on costs. Under this proposal, operators will be mandated to protect water at depths and of qualities that don't routinely receive BLM's protection. Given this change, it is presumed that usable water data must be, to some extent, collected and analyzed by the operator in situ.

"Assuming usable water probabilities and 0.13 as the type well fraction, the analysis leads to an estimated total annual industry cost of $289 million. Holding usable water probabilities constant and allowing the type well fraction to vary leads to estimated annual industry costs ranging from $231.6 million to $607.6 million (see table 3 page 12).

"The range of expected values is broad given the uncertainties surrounding the type well fraction and usable water concepts. The range of outcomes is depicted in the contour graph below (where both type well fractions and usable water probabilities are variable). Contour lines represent million dollar increments.

"Drilling capital is mobile across fields of exploration. As such, the imposition of additional drilling costs in fields of federal mineral deposits only is the equivalent of a partial factor tax on drilling capital (see Harberger, 1962).

"In response to the tax, capital is expected to flow out of the higher taxed fields and into other exploration opportunities until after tax rates of return to capital are equalized, disproportionately burdening local labor, capital, and governments in the impacted states."

3. There is no regulatory void that the BLM must fill.
BLM even acknowledges in the proposed rule's preamble that onshore oil and gas development, including hydraulic fracturing, well construction, mechanical integrity, well monitoring, and fluid management and disclosure, is already strictly regulated by the federal government, state governments, and industry standards and best practices.

4. BLM has failed to assert that any specific existing state regulation is inadequate to protect federal and Indian Lands.
The BLM has included in this version of the proposed rule a new proposed provision that would allow for a state-wide variance to be issued where BLM determines state or tribal regulations meet or exceed the effectiveness of the proposed rule. This is a positive addition to the rule. However, this also supports our point that states with federal lands are already doing an effective job of regulating the drilling industry.

5. Management and capacity limitations.
We remain very concerned over the capacity of BLM to deal with the volume of information requested without delaying drilling. BLM's claim, that well stimulations would be approved without any associated delays, does not give us much confidence. The shear breadth and number of technical concerns raised suggests that BLM lacks capacity to regulate and process permits and approvals in a timely fashion. The proposed rule would be applied to **all** wells administered by BLM. The federal Application for Permit to Drill (APD) approval process is already slow – so an additional hydraulic fracturing approval will likely add bureaucracy and delays without any clear benefit. Plus, where will the BLM get the funding for the increased staff to implement this rule given budget cut realities?

6. The natural gas industry could avoid drilling on federal lands - loss of state and federal royalties.
The proposed rule will discourage exploration and production on federal lands, which would substantially reduce state and federal royalties, and when those are combined they account for billions of dollars of revenue. Furthermore, the proposal could give BLM authority to recommend completion design, and encourage production to move from federal lands to state and private lands. The states argue they can adequately regulate, and in fact are doing so.

7. Newly required plans and reports are excessive and could contribute to delays.
BLM claims they will only require hydraulic fracturing fluid disclosure after the fact. However, the proposed rule requires operators to submit highly detailed plans (including Cement Bond Logs, and likely hydraulic fracturing fluids) for approval in advance of well stimulation. Deviations from the submitted well stimulation plan must be explained in the after-the-fact report. Thus, the process of getting a well stimulation plan approved could be tantamount to the creation of a new and extensive permitting process for hydraulic fracturing fluids, water sourcing, and waste water management.

8. No deadline for BLM to approve or disapprove.
There is no time deadline for BLM's approval or disapproval of well stimulation plans. Likewise, there is no information on deadlines for BLM responses to Cement Bond Logs (CBL) or process if a CBL is unacceptable. Variances concerning CBLs and BLM's rights to rescind or modify any condition of approval, for practically any reason, simply drive uncertainty into the permitting process. No deadlines – means drilling will be delayed.

9. Duplicative water information – lack of jurisdiction.
BLM's proposed rule requires operators to provide information about the water source to be used in the hydraulic fracturing operations. BLM states the information is needed to determine the impacts associated with operations and the need for any mitigation applicable to federal and Indian Lands. BLM does not describe the range of mitigation processes or actions that may be required, or the associated costs. EPA and the states have direct or delegated jurisdiction under the Clean Water Act and the Safe Drinking Water Act for the protection of surface water and underground sources of drinking water. Additionally, states already manage and protect all their water resources (both surface and

groundwater) to ensure clean, safe, and reliable water supplies and to maintain a strong economy, and a healthy environment for its citizens.

10. Protection of trade secret information is vague.
The proposed rule allows information to be exempt from public disclosure, but does not identify the applicable federal law. Trade secret protection under the Uniform Trade Secret Act would be less onerous than other federal statutes. Further, BLM provides no information on appeal process on BLM decisions to publicly release stimulation fluid information.

Since 2000, the manufacturing sector has lost 5.3 million jobs. For the first time in two decades, we have the potential for a manufacturing renaissance because of low natural gas and electricity prices. Low energy prices provide a strategic advantage over our non-U.S. competitors, and companies are beginning to invest in the U.S. We urge you to not impose regulations that are unnecessary – the consequences are too great.

Respectfully submitted,

Paul N. Cicio
President

cc: The Honorable Ron Wyden
The Honorable Lisa Murkowski
The Honorable Fred Upton
The Honorable Henry Waxman
The Honorable Doc Hastings
The Honorable Peter DeFazio