



Nedd, Michael <mnedd@blm.gov>

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## Draft Tribal Consultation Letter re: Hydraulic Fracturing Rule and Venting & Flaring Rule

1 message

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**Mali, Peter** <pmali@blm.gov>

Wed, Jul 19, 2017 at 7:49 PM

To: Richard Cardinale <richard\_cardinale@ios.doi.gov>, "Howarth, Robert" <robert\_howarth@ios.doi.gov>

Cc: Michael Nedd <mnedd@blm.gov>, Timothy Spisak <tspisak@blm.gov>, "Joseph (Gene) Seidlitz" <gseidlitz@blm.gov>, "Moran, Jill" <jcmoran@blm.gov>, Kelly Orr <korr@blm.gov>

Rich and Rob:

Attached is the draft tribal consultation letter for BLM's Hydraulic Fracturing Rule and Venting & Flaring Rule. The attached serves as a template to be sent to our SOs to send to their Tribal partners, and it deliberately covers both rules under one letter. Acting Director Nedd asked that I send this to ExecSec and ASLM simultaneously for clearance so that BLM can initiate the tribal consultation process as soon as practical.

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Bureau of Land Management  
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[INSERT STATE OFFICE ADDRESS]

Dear [Tribal Leader INSERT ADDRESSEE]:

On March 28, 2017, the President issued Executive Order 13783, entitled “Promoting Energy Independence and Economic Growth,” which directs federal agencies to “review existing regulations that potentially burden the development or use of domestically produced energy resources and appropriately suspend, revise, or rescind those that unduly burden the development of domestic energy resources beyond the degree necessary to protect the public interest or otherwise comply with the law.”

Executive Order 13783 also specifically called for a review and action, as appropriate, for the Bureau of Land Management (BLM) final rules entitled “Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands,” which was published in the Federal Register on March 26, 2015 (80 Fed. Reg. 16128) (hereafter “the 2015 Hydraulic Fracturing Rule” or “the 2015 Rule”), and “Waste Prevention, Production Subject to Royalties, and Resource Conservation,” which was published in the Federal Register on November 18, 2016 (81 Fed. Reg. 83008) (hereafter “the 2016 Waste Prevention Rule” or “the 2016 Rule”).

In accordance with Executive Order 13783 and Secretarial Order No. 3349, the BLM has reviewed the 2015 Hydraulic Fracturing Rule and is now considering a rule that would rescind it.<sup>1</sup> The BLM is reviewing the 2016 Waste Prevention Rule and is considering a rule that would suspend or delay the implementation of certain requirements until July 17, 2019.

Obtaining tribal participation and input will be a vital component in the advancement of the two proposed rulemaking actions. To facilitate meaningful dialogue, the BLM invites you to provide written comments and/or to discuss, either during an in-person meeting or by other means, any concerns or input that your Tribe may have regarding the proposed rulemaking actions.

Please contact the following individual to schedule this consultation or to provide written comments within 60 days of your receipt of this letter.

[Insert State Tribal Coordinator name, mailing address, phone, and email]

Or, you may also contact the State Office Director directly.

[Insert State Office O&G Official name, phone and email]

The BLM appreciates your interest in this matter and we look forward to continued discussions.

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<sup>1</sup> Secretarial Order No. 3349, entitled “American Energy Independence,” was issued by Secretary of the Interior on March 29, 2017, in order to implement Executive Order 13783.

Sincerely,

State Director  
XXXX State Office

Enclosures

cc: Timothy Spisak, Acting Assistant Director, Minerals and Realty Management (WO-300)

## ATTACHMENT 1 – Rescinding the 2015 Hydraulic Fracturing Rule

After it was finalized, a lawsuit challenging the 2015 Hydraulic Fracturing Rule was filed in the U.S. District Court for the District of Wyoming. On June 21, 2016, the District Court set aside the 2015 Rule. *Wyoming v. Jewell*, No. 15-cv-41 (D. Wyo. June 21, 2016). The Department of the Interior then appealed the District Court’s decision to the 10th Circuit Court of Appeals and that appeal is currently pending. *Wyoming v. Zinke*, No. 16-8068 (10th Cir.). If the Appeals Court were to reverse the District Court’s decision, the case would be remanded to the District Court to decide the issues that were raised by the petitioners in the suit, but not addressed by the Court. In sum, the 2015 Hydraulic Fracturing Rule has never gone into effect and it would not go into effect unless and until the courts decide that the 2015 Rule was properly promulgated.

The BLM is now considering a proposed rule that would rescind the 2015 Hydraulic Fracturing Rule, in its entirety, and restore the affected regulations in 43 CFR part 3160 to exactly as they were before the 2015 Rule, except for any changes to those regulations that were made by other rules published between March 26, 2015 (the date of publication for the 2015 Rule) and now.

The BLM’s proposal would remove the following requirements placed on operators by the 2015 Hydraulic Fracturing Rule and which would be required if that rule were to go into effect:

- Obtain the BLM’s approval before conducting hydraulic fracturing operations by submitting an application with information and a plan for the fracturing (43 CFR 3162.3-3(d)(4)).
- Include a hydraulic fracturing application in applications for permits to drill (APDs), or in a subsequent “sundry notice” (43 CFR 3162.3-3(c)).
- Include information about the proposed source of water in each hydraulic fracturing application (43 CFR 3162.3-3(d)(3)).
- Include available information about the location of nearby wells to help prevent “frack hits” (i.e., unplanned surges of pressurized fluids into other wells that can damage the wells and equipment and cause surface spills) (43 CFR 3162.3-3(d)(4)(iii)(C)).
- Verify that the well casing is surrounded by adequate cement, and test the well to make sure it can withstand the pressures of hydraulic fracturing (43 CFR 3162.3-3(e)(1) and (2) and (f)).
- Isolate and protect usable water, while redefining “usable water” to expressly defer to classifications of groundwater by states and tribes, and the Environmental Protection Agency (43 CFR 3160.0-7); and require demonstrations of at least 200 feet of adequate cementing between the fractured formation and the bottom of the closest usable water aquifer, or cementing to the surface (43 CFR 3162.3-3(e)(2)(i) and (ii)).
- Monitor and record the annulus pressure during hydraulic fracturing operations, and report significant increases of pressure (43 CFR 3162.3-3(g)).
- File post-fracturing reports containing information about how the hydraulic fracturing operation actually occurred (43 CFR 3162.3-3(i)).
- Submit lists of the chemicals used (non-trade-secrets) to the BLM, to FracFocus (a public website operated by the Ground Water Protection Council and the Interstate Oil and Gas Compact Commission), or to another BLM-designated database (43 CFR 3162.3-3(i)(1)).

- Withhold trade secret chemical identities only if the operator or the owner of the trade secret submits an affidavit verifying that the information qualifies for trade secret protection (43 CFR 3162.3-3(j)).
- Obtain and provide withheld information to the BLM, if the BLM requests the withheld information (43 CFR 3162.3-3(j)(3)).
- Store recovered fluids in above-ground rigid tanks of no more than 500-barrel capacity, with few exceptions, until the operator has an approved plan for permanent disposal of produced water (as required by Onshore Oil and Gas Order No. 7) (43 CFR 3162.3-3(h)).
- The 2015 Rule authorized BLM to approve two types of variances from the requirements the Rule:
  - Individual operation variances to account for local conditions or new or different technology (43 CFR 3162.3-3(k)(1)); and
  - State or tribal variances to account for regional conditions or to align the BLM requirements with state or tribal regulations (43 CFR 3162.3-3(k)(2)).

The BLM is proposing to rescind the 2015 Hydraulic Fracturing Rule because we believe it imposes unnecessary, burdensome costs and requirements on the oil and gas industry.

The BLM also believes that rescinding the 2015 Hydraulic Fracturing Rule will assist in preventing Indian and public lands from being viewed by oil and gas operators as less attractive than other lands due to burdensome and unnecessary compliance costs, which in turn will assist in preventing economic harm to Indian tribes and allottees and the American public that could result from the implementation of the 2015 Rule.

The BLM has several pre-existing regulations, some of which are set out at 43 CFR subpart 3162 and in Onshore Oil and Gas Orders 1, 2, and 7, that it will continue to implement if the 2015 Hydraulic Fracturing Rule were rescinded.

Although the states with significant federal oil and gas resources have regulatory programs governing hydraulic fracturing operations, oil and gas producing Indian tribes have not as uniformly promulgated regulatory provisions expressly addressing hydraulic fracturing. In light of this, the BLM is inviting you to discuss or provide any comments you may have regarding the potential effects of the proposed rescission of the 2015 Rule on your tribe. In particular, the BLM is seeking your views about existing or proposed tribal regulation of hydraulic fracturing operations, and the potential economic and environmental impacts of the proposed rescission of the 2015 Rule to Indian lands, and whether all or any parts of the 2015 Rule should continue to apply on Indian lands.

ATTACHMENT 2 – Suspending or Delaying the Waste Prevention Rule

After the BLM finalized the 2016 Waste Prevention Rule, it was immediately challenged in court. Unlike with the 2015 Hydraulic Fracturing Rule, however, the presiding court neither set aside nor stayed the 2016 Rule and it went into effect. On June 15, 2017, the Department of the Interior issued a Federal Register notice, pursuant to 5 U.S.C. 705, postponing requirements of the 2016 Rule with compliance dates that have not yet arrived, pending judicial review (82 Fed. Reg. 27430). The BLM is now considering a proposed rule that would extend that postponement and suspend additional requirements with compliance dates that have arrived.

The BLM is currently reviewing the 2016 Waste Prevention Rule and wants to avoid imposing temporary or permanent compliance costs on operators for requirements that may be rescinded or significantly revised in the near future. Therefore, the BLM is considering a proposed rule that would suspend or delay certain requirements in the 2016 Rule until July 17, 2019, a date by which the BLM believes that it may review the rule and promulgate a new rule to replace it.

This proposed rule may be of interest to your Tribe as it potentially affects the oil and gas operations on tribal lands as well as the royalties that your Tribe receives.

The following table summarizes the potential changes to compliance dates:

<b>Citation</b>	<b>Summary</b>	<b>Existing Compliance Date</b>	<b>New Compliance Date</b>
3162.3-1(j)	Operators must submit a waste minimization plan with their an Application for Permit to Drill	January 17, 2017	July 17, 2019
3179.7	Requires operators to capture a certain percentage of the gas they produce	January 17, 2018	July 17, 2019
3179.9	Measurement requirements for flared gas	January 17, 2018	July 17, 2019
3179.10	Regarding existing approvals to flare royalty free	January 17, 2018	July 17, 2019
3179.101, 3179.102	Limits on, and requirements for disposal of, gas lost during well drilling, well completion and related operations	January 17, 2017	July 17, 2019
3179.201, 3179.202	Operators must upgrade to lower-emission pneumatic equipment	January 17, 2018	July 17, 2019
3179.203	Operators must route tank vapors from covered storage vessels to sales line or to flare	January 17, 2018	July 17, 2019
3179.204	Requirements for minimizing gas losses from downhole well maintenance and liquids unloading	January 17, 2017	July 17, 2019
3179.301 – 3179.305	Leak detection and repair requirements	Various but primarily on January 17, 2018	July 17, 2019