

# NATURAL GAS WEEK<sup>®</sup>



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## N.D. Sues Over Methane Rule; More Challenges Likely

The federal government's new rule aimed at curbing methane leaks from certain oil and gas facilities has been hit with its first legal challenge -- and it's unlikely to be the last.

The state of North Dakota, in a two-page petition to the US Court of Appeals for the DC Circuit last week, argued that the US Environmental Protection Agency (EPA) regulation for new and modified sources "exceeds EPA's statutory authority, goes beyond the bounds established by the US Constitution and is an arbitrary, capricious abuse of discretion and not in accordance with law."

Industry officials and lawyers expect similar legal action from other states and energy trade groups, particularly given the EPA's stated intention to follow with a proposal to regulate methane from the broader category of existing sources.

"We are currently determining the key issues with the rule and the best pathway to respond," Neal Kirby, a spokesman for the Independent Petroleum Association of America, told *Natural Gas Week*. "We are also concerned about the potential regulation of existing facilities, in particular for small marginal wells," for which compliance alone would "greatly exceed the daily costs of operating these wells."

The EPA's final rule released in May requires operators to regularly test new high and low-producing wells as well as pipelines, pumps, compressor stations and other equipment so they can detect and repair leaks in a timely manner ([NGW May16'16](#)). The regulation is part of the Obama administration's goal of cutting methane emissions overall by 40% to 45% below 2012 levels by 2025.

Emissions of methane, the primary component of natural gas, is an acute issue in North Dakota, where an oil drilling boom in the Bakken tight oil formation has resulted in the production of large volumes of associated gas. Because the state doesn't have adequate gas gathering and processing infrastructure, producers flare almost 190 million cubic feet per day, reflecting a recent 41 MMcf/d rise as associated gas production jumps in areas with constrained gas-capture capacity (p8) ([related](#)). Still, that is down about 75% from its peak in 2011 and within targets.

The flaring has raised concerns among environmentalists and some public officials about the resulting methane and ethane entering the atmosphere. Methane might not linger as long as carbon dioxide, the most prevalent greenhouse gas, but studies show it may be 25 times more potent.

Lawmakers and regulators in Texas have been debating whether to pursue a legal challenge to the EPA rule, attorney James Morriss, head of the government and regulatory practice with Thompson and Knight in Austin, told *NGW*. He expects a key at the DC Circuit to be whether the EPA can use section 111(a) of the Clean Air Act's New Source Performance Standards to simply regulate a new greenhouse gas.

"I think the argument can be made that you really can't continue to bolt on new pollutants without a new, separate review of that pollutant under 111(a)," he said.

The methane rule applies only to new and modified facilities, meaning it would not affect the majority of wells already

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drilled in North Dakota or elsewhere as new drilling has been ratcheted back due to the oil and gas price downturn. However, Morriss expects the industry to seek legal clarity on the term "modified" to ensure the rule does not inadvertently pull existing facilities into the mix.

"Does a refracked well, for instance, suddenly become a 'new' facility that is now subject to the rule? There will be a lot of debate about this," he said.

During the comment period on the EPA rule, the American Petroleum Institute (API) said the annual cost of implementing it could reach \$800 million, largely for increased record-keeping and monitoring costs. The API and other industry groups also insist that voluntary methane-reduction efforts have worked so well that federal regulation is unnecessary ([NGW Apr.11'16](#)). They also say producers have a financial incentive to limit leaks of methane, which they can capture and sell as a commodity.

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