

Activists Urge BLM To Subject Drill Leases To Voluntary EPA GHG Plan

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Environmentalists are urging the Bureau of Land Management (BLM) to require oil and gas industry officials to join a voluntary EPA greenhouse gas (GHG) reduction program as an initial condition for winning drilling leases on BLM-managed land, an unusual move given activists' long-standing criticisms of voluntary GHG programs.

The call is part of a broader effort by environmentalists to require BLM to develop GHG rules as a condition for granting oil and gas drilling leases on federal lands.

The Western Environmental Law Center (WELC), together with several other groups, is protesting BLM's June 17 lease sale in Montana and North Dakota, arguing that BLM's failure to limit GHG emissions as a condition of the sale violates several environmental laws. The protestors argue that the National Environmental Policy Act (NEPA), the Federal Land Policy & Management Act (FLPMA), the public trust doctrine and Interior Department policy obligate BLM to address GHG emissions.

WELC suggests that BLM should take the "initial action" of requiring lessees to "actively participate" in EPA's Natural Gas Star program, an otherwise-voluntary program to reduce methane emissions from natural gas production and distribution.

The EPA program, modeled after Energy Star, is a nearly two-year-old effort to share technology on preventing gas losses in pipelines and encourages members to share data on methane emissions. WELC described the program as well-known, but underutilized.

"As an initial action, BLM should subject leases to the stipulation that the lessee must actively participate in EPA's GHG reduction programs -- e.g., EPA's Natural Gas STAR program -- given that the mineral resources being extracted are the people's resources and that lessees that derive profit from public resources should be held to the highest standards," the groups said in comments to BLM ahead of the sale.

Environmentalists say requiring industry to participate in the EPA program is necessary because industry officials have told activists that they will slow their voluntary efforts to reduce GHG emissions because of uncertainty about future mandatory requirements under a cap-and-trade program. "The reason behind this potential [industry] slow-down is that these companies may not otherwise be able to get credit for GHG reductions taken prior to the deployment of the market-based GHG reduction programs," WELC said in the

protest, filed May 30, ahead of the sale.

"This suggests that BLM must initiate near-term measures to ensure that efforts to reduce GHG emissions do not regress and potentially compromise long-term GHG reduction efforts."

WELC submitted the protest on behalf of the Natural Resources Defense Council, the Oil and Gas Accountability Project, and Rocky Mountain Clean Air Action, asking BLM to quantify "past, present, and reasonably foreseeable" GHG emissions from BLM leases; address the emissions "direct, indirect, and cumulative impacts"; adopt a GHG emissions limit or reduction objective for BLM leases; adopt emissions-reducing management measures, such as pre-commitment lease stipulations; and track and monitor emissions through time. Relevant documents are available on InsideEPA.com.

"We anticipate that BLM may object to setting a GHG emissions limit or GHG reduction objective by punting to other federal or state agencies, such as the EPA. This would be a mistake," said WELC in the protest, because BLM has "independent legal obligations" to address climate change and "is uniquely positioned to address greenhouse gas emissions from oil and gas development, in particular given the interplay between greenhouse gas pollution, climate change impacts, and the planning, authorization, and construction of oil and gas development."

Protestors say that a 2001 DOI policy -- Secretarial Order 3226, Evaluating Climate Change Impacts in Management Planning -- provides an initial basis for regulatory action; that NEPA and FLPMA offer a statutory mandate for BLM to mitigate the GHG impact of energy development authorized by the agency; and that the Public Trust Duty, an extension of the common-law concept that the federal role has a fiduciary responsibility to manage certain resources as a trust for the people, "underscores the need for BLM to take a precautionary approach to managing the public lands."

The application of the trust duty to GHGs reflects a novel legal strategy developed by University of Oregon law school Professor Mary Wood called the "atmospheric trust concept." Drawing on case law dating back to the 19th century, Wood argued in a February lecture to the University of Montana that the government must assume a fiduciary role over the climate and manage it for the people. In its BLM lease protest, WELC appears to be the first environmental group to cite the atmospheric trust concept.

BLM aims to issue a decision on the protest -- which is a formal administrative procedure -- within 60 days. A BLM spokeswoman says,

however, that since the protest affects more than one state, the agency is taking "a broader look" at the issue and may not meet the 60-day goal.

A WELC source says that, if BLM denies the protest, the environmental groups have the option to appeal the decision to the Interior Board of Land Appeals or challenge the decision in federal court.