



Department of the Interior-Hydraulic Fracturing Rule

On March 20, 2015, the Department of the Interior released its final rule governing hydraulic fracturing operations on lands administered by the Bureau of Land Management (“BLM Managed Lands”). Of the requirements imposed by the rule, the following appear to be the most significant. Operators must:

1. Submit a Notice of Intent detailing a master hydraulic fracturing plan, which includes wellbore geology, the location of faults and fractures, the depths of all usable water, estimated volume of fluid to be used, and estimated direction and length of fractures;
2. Comply with certain cementing and casing standards, including (i) implementing a casing and cementing program in compliance with industry best practices, (ii) monitoring cementing operations during well construction, (iii) taking any necessary remedial actions when indications of inadequate cementing exist, and (iv) performing a successful mechanical integrity test prior to hydraulic fracturing operations. Notably, the final rule eliminates the use of “type wells” in demonstrating well integrity, and requires the use of best practices for all wells, not merely a sample well;
3. Hold recovered fluids in enclosed and covered, or netted and screened, above-ground storage tanks, with limited exceptions granted on a case-by-case basis; and
4. Disclose to the public all chemicals used in hydraulic fracturing operations within thirty (30) days after completion of the operations. Such disclosures can be made to the existing database, FracFocus (<http://fracfocus.org>). However, because the identity of certain chemicals may be entitled to protection under federal law as trade secrets, the bureau may allow such information to be withheld if the operator or owner of the trade secret submits an affidavit explaining sufficient reasons for the claim for protection.

Additionally, while operators on BLM Managed Lands must comply with both the bureau’s regulations and state operating requirements, the final rule allows for a variance where state or tribal regulations are demonstrated to be equal to or more protective than the bureau’s rule.

This rule is scheduled to be published in the Federal Register on March 26, 2015 and, in the absence of an intervening court order, will become effective 90 days following such publication. The

Independent Petroleum Association of America (IPAA) and Western Energy Alliance have filed suit against the Department of the Interior to prevent the rule from being implemented and we expect the rule to be subject to additional legal challenges. Crowley Fleck PLLP will closely monitor this situation and keep you apprised of significant new developments.

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