

**Written Testimony of Todd Parfitt, Director
Wyoming Department of Environmental Quality**

Before

**Senate Committee on Energy and Natural Resources:
Subcommittee on Public Lands, Forests, and Mining**

**Re: Bureau of Land Management's proposed rule, entitled "Waste
Prevention, Production Subject to Royalties, and Resource Conservation"**

April 14, 2016

Good Afternoon Chairman Barrasso, Ranking Member Wyden, and honorable members of this Subcommittee. My name is Todd Parfitt. I am the Director of the Wyoming Department of Environmental Quality and thank the subcommittee for inviting the State of Wyoming to share its perspective on the Bureau of Land Management's proposed rule entitled "Waste Prevention, Production Subject to Royalties, and Resource Conservation". My comments today focus on the environmental aspects of BLM's proposal. The State of Wyoming will be providing written comments to the BLM on its proposed rule.

In order to assist the committee's understanding of Wyoming's perspective, I would like to share some key characteristics of our state. Wyoming is the 9th largest state covering 97,814 square miles, yet hosts the smallest population of any state, at approximately 584,000. Much of the state consists of many rural communities with large distances in between.

Wyoming is blessed with amazing and abundant natural resources. We are home to Yellowstone and Grand Teton national parks as well as many other special and scenic places. Wyoming is also blessed with abundant mineral resources that have provided the nation, the State and her citizens with revenue and jobs. In 2014, Wyoming's 11,501 oil wells ranked 5th in the nation in oil production (75.6 million barrels) and its 23,757 gas wells ranked 8th in the nation in natural gas production (1,765 trillion cubic feet) with most of this production from federal minerals. Wyoming's land and minerals reflect a checkerboard ownership pattern and the intermingled nature of private, state, and federal minerals.

In Wyoming, we manage our natural and mineral resources exceptionally well, providing for both environmental stewardship and energy production. Wyoming's statutory and regulatory framework encourage the responsible production of oil and gas resources. Throughout the past twenty years, Wyoming has been recognized as a national leader in regulating air emissions from oil and gas production. In that time, Wyoming has issued over 29,000 air quality permitting actions. In 1997, absent an EPA permitting program or guidance, Wyoming DEQ's Air Quality Division established its oil and gas minor source guidance and permitting program. This air emissions program is consistent with Wyoming's legislative directive aimed at preventing, reducing, and eliminating pollution and retaining primacy over Wyoming's air quality resources.

Wyoming's air permits are issued under its state implementation plan that the EPA has approved and codified into federal law. *See* 40 C.F.R. § 52.2620(c)(1).

In 2011, in response to the growth in hydraulically fractured natural gas wells, the EPA looked to Wyoming and Colorado as it developed its oil and gas new source performance standards for production equipment – commonly referred to as Quad O. EPA's rule recognized that some state permitting programs already regulated those wells and the rule took advantage of existing state compliance mechanisms.

Moving forward to 2014 and 2015, under the President's climate change agenda, the EPA proposed two additional rulemakings. The EPA's first proposal is commonly referred to as "Quad O A" because it would revise the Quad O standards. Quad O A proposes to address methane and Volatile Organic Compounds (VOCs), extend coverage to additional "downstream" natural gas transmission equipment and add leak detection requirements. The EPA's second proposal addresses the aggregation of oil and gas sources for permitting purposes.

In March of this year, the EPA announced its next step in reducing methane emissions – regulating emissions from existing sources. The EPA noted that this effort was broad based and would start with an "information collection request" (ICR) that would look at a large universe of representative sources and data. Under the EPA's existing source standard program (111(d)), we, as a state, will have the choice and ability to implement the standards under a state plan or defer to EPA.

At the same time that the EPA has started its data collection effort, the BLM came out with its proposed rule which includes requirements for venting and flaring. The BLM, however, proposes environmental regulation for which it has no jurisdiction, under the guise of royalty regulation. This would be like EPA coming out with a proposal that says it will address an environmental issue but at the same time will also address royalties because the BLM hasn't done so yet. This is not effective governance.

Though portions of the BLM's proposed rule derive from the BLM's statutory authority, other portions of the BLM's proposed rules are designed to regulate air pollution (*see ex.* 81 FR 6685, proposed emission standards for certain storage vessels), which is a matter that Congress delegated to the States and EPA, not to the BLM. The BLM has neither the authority nor the technical expertise to promulgate those portions.

The Clean Air Act mandates that [a]ir pollution control at its source is the primary responsibility of State and local governments," 42 U.S.C. § 7401(a)(3), in part because local regulators have the on-the-ground information and experience necessary to develop effective local pollution control regimes. Wyoming and EPA already regulate what the BLM is attempting to regulate under the guise of waste prevention and royalty accountability. This is evident by the fact that much of the BLM's proposal is based off of Wyoming's air quality environmental regulations. In fact, the BLM references Wyoming's air quality regulations over 40 times in the proposed rules.

The BLM's proposal leads to the creation of regulations that either duplicate or contradict pre-existing state and federal air pollution requirements, in contravention of the BLM's own

regulations. The purpose of the BLM's surface regulations is to "[p]rovide for maximum possible coordination with appropriate State agencies and to avoid duplication." 43 C.F.R. § 3809.1(b).

Different definitions create confusion. For example, the BLM's proposed definitions related to *components* and *storage vessels* are inconsistent with EPA's definitions of *fugitive emissions components* and *storage vessels*. As a result, the BLM's proposed definitions contravene section 1(b)(10) of Executive Order 12866: "[e]ach agency shall avoid regulations that are inconsistent, incompatible, or duplicative with its other regulations or those of other Federal agencies." In addition, where the BLM's proposed definitions differ from terms that have already been defined by EPA or states such as Wyoming, confusion is likely to result.

The BLM's proposal usurps authority currently vested with the State. Attempting to exert control over state and private lands that are intermingled within a federal lease is a classic example of federal government overreach. It is also unnecessary. Wyoming's air quality and Wyoming's Oil and Gas Conservation Commission (WOGCC) regulations apply across the entire state – to private, state, and federal mineral development.

The WOGCC regulates all oil and gas exploration and production activities of fee, state, and federal minerals in Wyoming. In February of this year, the WOGCC updated its rules that are applicable to all wells in Wyoming, including federal wells. Many of the BLM's proposed provisions conflict with existing WOGCC regulations in areas such as timing of requirements (waste minimization plan submittals).

The BLM's proposed Variance Process is not a legitimate variance process in the context of cooperative federalism. It is dissimilar to EPA's primacy recognition AND is subject to BLM interpretation which creates an inconsistency within and among states and creates competitive advantages and disadvantages.

It is worth repeating that BLM's proposed rule cites Wyoming's air quality existing source regulations over 40 times. While Wyoming appreciates that the BLM recognizes the good work that Wyoming has done in addressing oil and gas emissions, the BLM has misapplied Wyoming's environmental regulations. All Wyoming operators are required to install the best available emission control technology, regardless of where development occurs. The Wyoming existing source regulations relied upon by BLM addressed a specific ozone non-attainment situation in the Upper Green River Basin (UGRB) and did not consider how Wyoming addresses oil and gas development on a state-wide level. Because of the unique nature of these emissions, location, and weather conditions, Wyoming's existing source requirements for the UGRB, are not applicable to other areas of the state. Air quality agencies understand the impacts and interactions of multiple pollutants and that certain actions may actually worsen or create additional air pollution issues.

Wyoming has a long history of effectively regulating oil and gas production and the associated emissions. The EPA is also regulating those emissions. The BLM has, in the NEPA process, also historically recognized the state's air quality primacy and deferred to the state on air

quality issues.¹ The BLM's proposed rule would be an inconsistent deviation from this practice. The cumulative result of BLM's duplicative and conflicting proposed rule will lead to needless inconsistency and uncertainty. This inconsistency and uncertainty will ultimately result in administrative inefficiencies and delays in the development of federal minerals within states, including Wyoming.

The BLM's assertion of authority to regulate air emissions as part of its general land use oversight under the Federal Land Policy and Management Act (43 U.S.C. §§ 35 through 1787) (FLPMA) exceeds the BLM's long-standing interpretation of its own authority under the statute. FLPMA directs the BLM to manage public lands and to assure, through promulgation of regulations, (43 U.S.C. § 1701(a)(5)), that there is no "unnecessary or undue degradation" of federal lands. (43 U.S.C. § 1732). The BLM's longstanding interpretation of this Congressional directive is that undue degradation occurs in the air quality context when owners or operators fail to comply with federal and state air quality standards. 43 C.F.R. § 3809.420(b)(4). The BLM's newfound interpretation of authority to regulate air quality above and beyond state and EPA requirements is, at best, arbitrary and unreasonable.

We therefore respectfully request that the BLM continue to recognize the state's air quality primacy and defer to the state on air quality issues. Thank you for the opportunity to provide Wyoming's perspective. We will submit our written comments on the proposed rule to this committee when we submit comments to BLM.

¹ See Letter dated December 1, 2005, from BLM's Pinedale Field Office to EnCana Oil & Gas (USA) Inc., re: Drill Rig Emission COA, acknowledging that the BLM does not have authority to regulate air quality: "It has been administratively determined that BLM does not have the authority to regulate air quality. That authority rests with the Wyoming Department of Environmental Quality." See also, Joint Motion to Dismiss Appeal, *In re BP America Production Co.*, IBLA Docket No. 2006-158 at ¶ 1, "In two prior appeals [IBLA Docket Nos. 97-309 and 97-346] involving other oil and gas projects in southwest Wyoming, BLM agreed that . . . other agencies regulate air emissions."