



U.S. Department of the Interior,
Bureau of Land Management
Mail Stop 2134 LM
1849 C Street NW.
Washington, DC 20240

Submitted to BLM via www.regulations.gov

April 22, 2016

Attn: 1004-AE14

The State of Colorado appreciates the opportunity to comment on the Bureau of Land Management's ("BLM") proposed Waste Prevention, Production Subject to Royalties, and Resources Conservation (*25 Fed. Reg. 6616*, February 8, 2016), which encompass revisions to:

- 43 CFR Part 3100, Onshore Oil and Gas Leasing;
- 43 CFR Part 3160, Onshore Oil and Gas Operations; and
- 43 CFR Part 3170, Onshore Oil and Gas Production.

BLM proposes new regulations to reduce natural gas waste from venting, flaring, and leaks during oil and natural gas production activities on onshore leases. Colorado regulations also address emissions from oil and natural gas production activities. The Colorado Oil and Gas Conservation Commission ("COGCC") is charged with fostering the responsible development of Colorado's oil and gas natural resources, including the prevention of waste and the prevention and mitigation of adverse environmental impacts. The Colorado Department of Public Health and Environment, Air Pollution Control Division ("Division") develops, implements, and enforces the Colorado Air Quality Control Commission's ("Commission") air quality regulations for, among other things, Colorado's oil and gas industry. Taken as a whole, Colorado's comprehensive oil and gas regulations protect public health and the environment while ensuring responsible energy development.

Colorado believes it is very important that state and federal regulations work together and do not create duplicative or contradictory requirements. Colorado appreciates BLM's efforts to recognize state expertise and rules and align BLM's proposed regulations with existing state and federal regulations for the oil and gas industry, and provides the following specific comments on BLM's proposed rules.

I. Leak detection and repair ("LDAR")

Colorado supports BLM's efforts to reduce emissions from leaking components at well sites. Colorado has been at the forefront of well site and compressor station leak emission reductions, as well as other oil and gas emission reduction strategies. BLM cited and utilized the Commission's oil and gas regulations in developing BLM's proposed rules requiring operators to conduct semi-annual instrument-based inspections at their well sites. Colorado's state and local governments, industry, and environmental organizations expended significant resources to



COLORADO
Oil & Gas Conservation
Commission
Department of Natural Resources



COLORADO
Department of Public
Health & Environment



develop, and now implement, the Commission's oil and gas regulations. For example, twenty-one companies reported 4,869 leak inspections in 2014 at 1,803 well production facilities and natural gas compressor stations, identifying 1,706 leaks.¹ Colorado believes that requiring its oil and gas industry to comply with the proposed BLM rule in addition to Colorado's LDAR program could result in considerable administrative effort for all parties for little, if any, demonstrated additional environmental benefit. Therefore, Colorado appreciates and supports BLM's efforts to allow compliance with a state regulation in place of BLM regulation. Colorado believes that Colorado's robust, cost-effective LDAR program for components at well production facilities and natural gas compressor stations achieves similar or greater emission reductions than the proposed BLM LDAR program.

A. Alternatives

BLM proposes to require semi-annual leak inspections with an optical gas imaging device ("OGI") or an alternative monitoring device or program approved by BLM.

Colorado appreciates and supports BLM's effort to allow appropriate implementation of alternative and emerging monitoring technologies and methods. The Commission's regulation also recognizes technological innovation and allows alternative emissions control equipment and monitoring methods, upon approval by the Division, in order to demonstrate compliance. The Division has developed a procedure for evaluating alternative controls² or technologies to determine whether the proposed monitoring technology or method satisfies Colorado's LDAR inspection requirements.³ The approval of such alternatives by the Division does not exempt a source from an applicable emission limitation, control measure, or monitoring method, but rather acknowledges and allows for changing technologies and methods. When reviewing and approving alternative monitoring technologies and methods, Colorado suggests BLM also consider factors such as: whether the monitoring technology or method is a qualitative or quantitative detection; the scanning or viewing range; the pollutant and level detected; any limitations; and cost. Colorado also believes the approval process for such alternative control and monitoring methods or technologies should be limited to a time frame that does not render the alternative obsolete. For example, the Division reviews requests for alternative monitoring technologies and methods on a quarterly basis.

B. Step up/down

BLM proposes to allow or require operators to conduct leak inspections on an annual or quarterly basis based on the number of leaks detected in two consecutive inspections.

Colorado is concerned with the potential administrative burdens and compliance challenges of a "step up, step down" LDAR program. In developing Colorado's LDAR program, the Division

¹ <https://www.colorado.gov/pacific/cdphe/ldar-annual-reports-regulation-7-section-xvii>

² <https://www.colorado.gov/pacific/sites/default/files/AP-AlternativeEmissionsControlDeviceRequestForm.pdf>

³ <https://www.colorado.gov/pacific/cdphe/AIMM>





considered a “step down” inspection frequency based on the percentage of leaking components, but was concerned with potentially disincentivizing the detection and repair of leaks. The Division was also concerned with the potential burdens on industry of tracking components for the purpose of a step down LDAR program. Either an owner or operator would have to track potentially thousands of components at each facility, or rely on component count studies such as the GRI/EPA document from 1996, which may no longer be the most accurate information due to changes in facility development. This concern about the potential burden associated with tracking components was generally supported by industry, particularly related to recordkeeping. The Division was also concerned with the accuracy of tracking components and the challenges of compliance oversight with a step down LDAR program, such as component count and detection verification. Colorado supports proactive emission reduction activities but notes that the percentage or number of leaks may be a misleading metric for a step down program. This is due to the potential for a facility to avoid LDAR activities when the facility does not have many leaks, according to percentage or number, but may in fact emit a large quantity of fugitive emissions from leaking components. The percentage or number of leaks may not be representative of the volume or rate of fugitive emissions, and, therefore, may not require the inspection and repair of “super emitters.” Colorado ultimately decided not to include a step down inspection program in its 2014 regulations for these reasons. Colorado suggests BLM consider similar concerns when finalizing the BLM’s LDAR inspection frequencies.

C. Component – compressors, pneumatic controllers

BLM proposes to require leak inspections of all equipment and equipment components (such as separators, heater/treaters, and liquids unloading equipment) at a wellhead, all facilities that the operator operates, and all compressors located on the lease. BLM proposes to define “component” as any piece of equipment that has the potential to leak. BLM also proposes to define facility as a site and associated equipment used to process, treat, store, or measure production from or allocated to a lease and a site and associated equipment used to store, measure, or dispose of produced water that is located on a lease.

Colorado supports the inclusion of compressors in an LDAR program. The Division has found that some companies are installing compressors at well production facilities, particularly those facilities without storage tanks, to more efficiently and swiftly move natural gas into and down the gathering system. These compressors may have significant emissions, which may warrant regulation.

Colorado also supports the inclusion of pneumatic controllers as a component in an LDAR program. Natural gas actuated pneumatic controllers are designed to emit gas as part of their normal operations. However, Colorado notes increased concerns about malfunctioning pneumatic controllers and believes that including both continuous bleed and intermittent natural gas actuated pneumatic controllers in an LDAR program will help identify and reduce emissions from such malfunctions.





D. Leak threshold

BLM proposes to allow operators with less than 500 wells to conduct semi-annual leak inspections with a portable analyzer device. BLM does not propose to require the use of EPA's Method 21 or propose a threshold for detecting a leak with a portable analyzer. BLM requested comment on whether BLM should establish a leak threshold of 500 ppm or more above background for portable analyzers.

Colorado supports the option to survey and resurvey repaired components with a portable analyzer and a leak threshold of 500 ppm hydrocarbons. The Commission's regulation allows the monitoring of components with EPA Method 21, and also establishes a 500 ppm leak threshold. However, the Commission's regulation specifies 500 ppm of hydrocarbon, in contrast to 500 ppm above background. Colorado notes that a 500 ppm above background threshold will produce variable inspection, and thus variable repair results due to the potential differences in each facility's "background." Colorado, therefore, suggests BLM establish a 500 ppm pollutant specific leak threshold.

II. Storage tanks

BLM proposes to control emissions from crude oil or condensate storage vessels with VOC emissions equal to or greater than 6 tons per year ("tpy"). In establishing the 6 tpy threshold, BLM references EPA's NSPS and the Commission's rules. Colorado comments clarify that the Commission's regulation establishes a 6 tpy uncontrolled actual VOC emissions threshold for storage tanks subject to the 95% control requirement. In contrast, EPA's NSPS establish a 6 tpy controlled actual VOC emissions threshold. This threshold difference means the Commission's regulation addresses more storage tanks than EPA's NSPS because 6 tpy controlled actual emissions is equivalent to 120 tpy uncontrolled actual emissions.

The Commission's regulation also applies to an individual or series of storage vessels that contain crude oil, condensate, intermediate hydrocarbon liquids, or produced water. Colorado supports BLM's similar definition of storage vessel as an individual storage tank or tank battery and suggests BLM expand the definition beyond crude oil or condensate to also include intermediate hydrocarbon liquids and produced water.

III. Auto-igniters and combustion devices

BLM proposes to require operators to route all tank vapor gas from subject storage vessels to a combustion device, continuous flare, or sales line. BLM requests comment on whether to require operators to use automatic igniters on their flares and combustion devices.

As BLM notes, the Commission's regulation requires all combustion devices used to control hydrocarbon emissions be equipped with auto-igniters. Historically, the Division had commonly found the pilot light out at combustion control devices, with little data on the duration of the outage. Therefore, Colorado determined that auto-igniters were a cost-effective method to



prevent pilot light outages thereby reducing hydrocarbon emissions, particularly at unmanned sites subject to inclement weather, and adopted the auto-igniter requirement. Colorado supports automatic electronic spark ignition relighting systems as a means of ensuring that continuous flame pilot lights remain functional at all times and combust as much gas as possible. Colorado also requires combustion devices used to control VOC and other hydrocarbon emissions be enclosed and suggests BLM include a requirement for enclosed combustion devices.

IV. Flaring/gas capture

Colorado supports BLM's efforts to minimize waste and losses of natural gas on federal and tribal leases. The COGCC's rules and policies prohibit venting and flaring except in certain conditions or with prior approval from the COGCC Director. These rules do not utilize royalty payments⁴ as a disincentive to flaring or venting, but instead assess the potential waste of the resource and possible alternatives to avoid waste on a case-by-case basis. COGCC's rules characterize any unnecessary or excessive venting or flaring of natural gas produced from a well as a waste of resources, which is therefore prohibited. This limits the loss of royalty and severance tax in Colorado.

Similar to BLM's proposed rules, COGCC Rule 912 prohibits unnecessary venting or flaring. However, Rule 912 allows for flaring "during an upset condition, well maintenance, well stimulation flowback, purging operations, or a productivity test," which are circumstances parallel to those listed in BLM's proposed rule at §3179.4. All other instances of venting or flaring require case-by-case prior approval from the COGCC Director, as outlined in the COGCC's "Notice to Operators, Rule 912. Venting or Flaring Produced Natural Gas," ("NTO") (dated March 28, 2016). This NTO requires operators to request approval to flare after well completion. The information requested for this analysis is identical to some of the information requested to justify alternative limits on venting and flaring under BLM's proposed rule at §3179.7.

In contrast, BLM proposes a much more prescriptive framework to limit venting and flaring. For example, BLM proposes at §3179.6.a. that "[t]he operator must flare rather than vent any gas that is not captured." While Colorado does not have a similar stated preference for flaring over venting, Colorado only allows venting when the vented rate is "too low to measure" by standard oil field meters. Colorado recommends the adoption of a "too low to measure" standard in BLM's rules, which would serve the same purpose but obviate the need to flare if an undetectable amount of venting is more efficient.

In addition, both the limits proposed in §3179.6 and the extensive information requirements of §3179.7 for alternative limits may prove to be overly burdensome and less effective at reducing waste than a case-by-case approach. As such, Colorado recommends that BLM revise its rules to

⁴ The discussion on royalty-free production from the wellhead production in BLM's proposed rules at §3179.5 does not apply to Colorado because Colorado computes royalty and severance tax payments at the point of sale, which is after any used on-lease flare/vented or shrinkage may have occurred.



allow more case-by-case flexibility for operators rather than the exhaustive process currently outlined for alternative limits on venting and flaring. In many cases, operators may not need an alternative limit, but may only require a one time or temporary authorization to flare. COGCC's process with its thorough but less intensive information requirements contemplates this situation.

V. Avoid duplicative reporting and data collection

Colorado recommends that BLM allow data collection and reporting through state agency mechanisms wherever possible. This should be explicit in BLM's rules. For example, BLM proposes at §3179.8 to require measuring and reporting volumes of gas vented and flared from wells. Colorado's parallel rule is COGCC Rule 912.c., which requires that "gas flared, vented or used on the lease shall be estimated based on a gas-oil ratio test or other equivalent test approved by the Director, and reported on Operator's Monthly Report of Operations, Form 7." Allowing an operator to submit a single Form 7 to COGCC avoids duplicative reporting. Colorado recommends BLM look for similar streamlining opportunities both in drafting the final rule and in its variance process.

VI. Additional technical points for clarification and recommendations

1. BLM uses the term "development" several times in the rule discussion. Colorado interprets "development" to mean that the well and facilities are in or related to an existing field with infrastructure and pipelines within reasonable proximity. Due to the importance of this term, Colorado requests BLM define "development" for purposes of BLM's rule.
2. Under proposed §3160.3-1, if the Application for a Permit to Drill (APD) is not issued due to pipeline capacity when there are drilling commitment clauses as part of a Federal Unit or CA, Colorado is unclear whether the Federal Unit or CA will be extended to allow for pipeline construction. Colorado is concerned that this scenario could limit resource development and the efficiency of concurrent development because full field development is dependent on a number of wells to provide the economic justification for constructing pipeline infrastructure. Further, Colorado is unclear how lease and contractual commitments would be addressed if APDs are not issued and wells not drilled. Colorado recommends that BLM provide clear guidance on how it intends to handle these APDs and delayed completions.
3. Under proposed §3160.3-1(j), it appears that the BLM's "Waste Minimization of Natural Gas Plan" submitted with the APD will be an independent plan, rather than part of a global waste plan included with the E&P Waste Management Plan submitted as an APD attachment. In contrast, COGCC evaluates each flaring and venting situation on a case-by-case basis using the APD Form 2, Oil and Gas Assessment (OGLA) Form 2A, and Completion Interval Report Form 5A to show compliance with Rule 805.b. "green completions" and Rule 912.b. for post-completion flaring and venting. Each of these COGCC forms and rules represent a different stage of development. Operators report to COGCC as a project develops through various drilling, completion and production stages.





Colorado believes that placing drilling and completion conditions in a separate document, BLM's Waste Minimization of Natural Gas Plan complicates regulating and managing compliance. Colorado suggests that BLM include all drilling and completion items as an integral part of the BLM's APD, and be included in the field permit.

4. Under proposed §3162-3.1(j), Colorado believes obtaining the requested detailed information during a pre-planning stage may be difficult. The proposal's prescriptive nature may limit BLM's ability to obtain information directly related to the APD's individual details and such a plan would be "conceptual" only. For example, Colorado has found that well flows vary widely even within a single field. Therefore, predictions about well flowback, the effectiveness of the hydraulic fracture treatment, the gas content of the oil, and other completion uncertainties can be difficult until after completion. Due to these uncertainties, Colorado is unclear how BLM will judge and administer the APD "conceptual" Waste Minimization of Natural Gas Plan in line with actual construction as well as how waste will be managed post-completion.

Colorado suggests that BLM focus §3162-3.1(j) on the §3162.3-1(j)(4)(v), operator certification at the APD stage. Colorado believes BLM's intent is to encourage early gas capture planning. Operators certifying that they have had discussions with the gas gathering company would fulfill this objective without encumbering both BLM and the operator to an APD "conceptual" Waste Minimization of Natural Gas Plan.

5. Under proposed §3160.3-1(j).3, BLM is requesting a map showing all existing gas pipelines within 20 miles of the well. Colorado is concerned that the distance may unintentionally define an economic distance for a pipeline connection to capture gas and reduce resource waste. COGCC's Rule 912 Flaring and Venting Statewide - Notice to Operators, which clarifies COGCC Rule 912.b., requires operators to submit a sundry explanation, gas analysis, and economic rationale for their request to flare or vent, but does not have a distance parameter. Colorado suggests that BLM remove the distance requirement and instead request the map indicate the closest gathering line and/or point of connection.
6. Under proposed §3179, Colorado is unclear how and whether BLM will evaluate the composition of the natural gas to define economically whether the gas can be captured, transported, or flared, which then determines if the loss is "avoidable" or "unavoidable". Colorado believes that understanding product value is integral to understanding the options for gas capture and gathering, and COGCC has found the natural gas value ranges widely based on the gas composition. Colorado suggests that BLM's rules also consider the gas composition to determine the economic value of the natural gas. Colorado also suggests BLM provide guidance to operators on how to value the product including an evaluation of the natural gas composition.
7. Under proposed §3179.4, BLM does not clearly define a reporting method. In contrast, COGCC Rule 912.b. requires sundry submittal that includes a clear rationale. Colorado



suggests that BLM provide a method of reporting and requesting approval of “avoidable” and “unavoidable losses”.

8. Under proposed §3179.4(b), BLM prescriptively, and somewhat strictly, defines situations requiring gas capture. However, Colorado is concerned that in some situations operators may believe that gas capture is not required because their situation is not specifically listed in BLM’s rule. Therefore, Colorado suggests that BLM’s rules allow for flexibility and a system design review for efficiency. For example, COGCC Rule 912.b. requires an operator to submit a request for post-completion venting or flaring approval sundry with a clear rationale. COGCC reviews the request to ensure resources are not wasted and losses are unavoidable.

Some examples of situations Colorado has addressed, but would be unclear under BLM’s proposed rules include:

- a. The natural gas analysis of two samples showed a high presence of nitrogen in one and carbon dioxide in the other. The pipeline line company would not accept either. Therefore, because the gas could not be put into a pipeline, the gas would be a wasted resource and this would be an unavoidable loss.
 - b. A facility designed to ensure a separator’s resident time and design size are efficiently removing low pressure flash prior to the oil stream being transferred from separator to storage tanks. If the storage tanks are getting a high volume of flash gas, the gas will overwhelm the tanks and release gas to the emission control device. This would be an avoidable loss.
 - c. In high rate multi-well pad locations with multiple storage tanks, continuous vapor space can release to the emission control device as the tanks cycle between loading and unloading. This would be an unavoidable loss.
9. Under proposed §3179.10, Colorado is concerned that a project may not be fully developed if production limits or restrictions are imposed post-completion, resulting in a waste of resources. If the BLM defines production limits or restrictions based on third-party pipeline capacity, Colorado recommends that the BLM provide feedback to operators at the APD stage so that operators can judge the economic viability of the project prior to drilling and completing the well. Further, production limits or restrictions have potential to limit these projects’ economic rationale, which is needed to justify gathering line construction because new fields are developed in stages.

In addition, Colorado believes fee mineral owners who have acreage in a federal unit or CA that has production limits or other restriction may have a limited ability to participate and achieve the economic benefit of their minerals at a production level justifying paying for the working interest commitments within the Unit or CA. Colorado is unclear whether BLM’s rules will provide owners an opportunity to comment on production limits or restrictions placed on a project. Colorado suggests that BLM create a basis for project production limits or restrictions that do not financially restrict early field development.





Under proposed §3179.10.b, Colorado is concerned that BLM's rule suggests that an operator constructs a gathering system prior to knowing if, and at what production level, resources can be developed. BLM's intent may be directed towards existing fields where the resource is known to be present in proven or probable reserve quantities. Colorado suggests clarifying BLM's intent and distinguishing between existing field development and undeveloped resources.

10. Under proposed §3179.201 and §3179.202, Colorado is unclear whether these sections regulate oil wells that release casing head gas to balance fluid levels in a well. Specifically, BLM should clarify whether oil wells that maintain casing head pressure and vent gas will be regulated under these sections.

VII. Variance Process

Like the Hydraulic Fracturing rules (HF Rules) released in 2015, BLM's proposed rules contain a provision for a state to request a variance. Colorado believes this is an important provision in both the HF Rules and these proposed rules. Colorado began working with the BLM state office to develop a request for a state variance shortly after the HF Rules became final in May 2015, an effort that ended because of the Colorado Attorney General's lawsuit challenging the HF Rules. In addition to the lawsuit, Colorado and the BLM state office had several other challenges in negotiating the variance request. This section shares these challenges and provides recommendations for implementation of the variance request provision in these proposed rules.

A. Challenges Associated with HF Rules Variance Process

At the initial meeting between Colorado and the BLM state office, Colorado provided a side-by-side comparison of each of the provisions in the BLM HF Rules with existing COGCC rules. Many of the provisions were similar and both parties felt that a variance could potentially cover many, if not all, of the BLM rules since the Colorado rule structure was designed to achieve the same overall objective as the BLM HF Rules. After the first meeting, Colorado sent a list of questions to the BLM state office to better understand the next steps for the variance request process. These questions included:

1. What should the variance request look like? How much and what kind of information should be included? Colorado has a whole set of forms, policies, and orders in addition to the rules and regulations. Will BLM consider all of these as part of the state's demonstration of how the state is meeting the objectives of the BLM rules?
2. What form will the variance actually take? Will it be an addendum to the MOU? Will it contain only a list of the BLM provisions that the state has a variance from?
3. Will the Washington, D.C. office need to review and approve the variance before it goes into effect? How will this affect the timing of this process?



4. How will operators show that they are complying with the variance? Will BLM still inspect and enforce? Will operators need to provide a certificate of compliance to demonstrate commitment to compliance with state rules?
5. How does BLM plan to collect the information required in the regulations from operators and the state?
6. How does BLM envision the process for amending or adding to the variance in the future?
7. The BLM rules include the possibility of revocation of the variance without administrative appeal. What would the process for revocation include?

Unfortunately, the BLM state office did not have answers and was unable to get clear guidance from the Washington, D.C. office. In addition, BLM had not finalized implementation guidance for the state and field offices so evaluating whether the COGCC rules and procedures achieved the same result as the BLM HF Rules was difficult. Even though both COGCC and BLM staff were operating in good faith, the variance request process lacked clear parameters and direction from BLM. Colorado suggests BLM again consider the questions above in developing the variance process and provide early guidance to states and tribes.

B. Recommendations

BLM's standard in the proposed rules for a variance is that the state or tribal regulation or rule meets or exceeds the requirements of the provision(s) from which the state or tribe is requesting the variance. This standard appears to be more restrictive than the standard in the HF rules because it specifically references "regulation or rule" and it shifts from objective to requirements. However, Colorado is unclear whether BLM intends for a state or tribe to request a variance on a section-by-section basis, or will allow a state or tribe to request a variance on a program-basis.

For example, initial conversations between Colorado and the BLM state office concerning the HF Rules variance request focused on the potential for a variance that covered large portions of the BLM rules, despite some differences in timing and specific documentation. However, it was not clear what the BLM objectives were for the rules or the variance process that the state needed to address. Consequently, the focus ultimately shifted to look at each provision. The BLM state office received guidance that a variance would only be appropriate where the state requirements at a minimum met the BLM requirements exactly. The objective of a broader section got lost in the prescriptive requirements of each provision. Colorado is concerned that a regulatory program or purpose may similarly get lost if BLM intends to require a provision-by-provision rule comparison.

Colorado provides the following, specific recommendations concerning variance review.





1. Colorado recommends that in evaluating a variance request, BLM consider the state or tribe's relevant policies, procedures, and any other documents or guidance that the state or tribe uses to implement and enforce its rules, in addition to the rules themselves, to determine if and which portions of the state or tribe's regulatory structure meets or exceeds BLM's requirements. For Colorado's relevant agencies (COGCC and CDPHE), these additional documents serve an important role in making our regulatory programs robust, transparent, and understandable for the regulated community and the general public. Colorado recommends that BLM expand the standard to include the state or tribal regulatory program as a whole and provide clarification in the Preamble to the rules.
2. Both the HF Rules and these proposed rules require the state or tribe to identify the provisions of the BLM rules from which it is requesting a variance. Colorado recommends that BLM provide the option to grant a variance on entire sections or an entire program if the state or tribe has a regulatory program that requires the same or more stringent performance and achieves the same or better result than the BLM requirements. For example, Colorado would request a variance from BLM's entire LDAR section (§§3179.301-3179.305), instead of provision-by-provision. Because state and tribal regulatory programs vary substantially, Colorado believes BLM should explicitly include this variance option in the Preamble and subsequent guidance.

Colorado provides the following, specific recommendations concerning the variance request.

3. Colorado found the side-by-side rule comparison very helpful for the HF Rules variance conversations between Colorado and the BLM state office. The comparison provided a framework to compare Colorado's rules with the BLM rules and included discussion space for Colorado's policies, procedures, and guidance. Due to the variation between state and tribal regulatory programs and potential multi-agency jurisdiction, Colorado suggests BLM consider developing a variance request template for comparison that states and tribes could use. A template would also help states and tribes comply with the rule identification requirement in §3179.401(a)(2)(ii).
4. Concerning the provisions included in an approved variance, Colorado recommends that BLM rely on the state agencies' and tribes' enforcement and reporting programs to ensure compliance with the rules, rather than requiring additional or different reporting documentation from operators. The variance itself should serve as confirmation that the state and tribe will ensure compliance with state and tribe requirements.

Colorado provides the following, specific recommendations concerning amending the variance and appealing BLM decisions.

BLM's proposed rules do not contemplate updates or amendments to the variance, even when states or tribes adopt or amend rules that meet or exceed BLM requirements. In addition, the



proposed rules do not require notice from BLM or allow for a state or tribe to appeal either a decision on a variance or a BLM rescission or modification to a variance.

5. Colorado recommends that BLM develop a process for incorporating administrative changes to state and tribal rules into the variance as well as an amendment process for the variance when the state or tribal rules change substantively. State and tribal rules change more frequently than federal rules. If a state or tribal rule change only affects a portion of the provisions in the variance, the state or tribe should not have to renegotiate the entire variance. Colorado recommends that BLM's rules state explicitly that the variance may be amended. Colorado also recommends that BLM clearly differentiate processes for administrative and substantive changes in the Preamble and subsequent guidance.
6. Colorado recommends that BLM provide notice of and the right to appeal any revocation or denial of a variance to the state or tribe. Colorado recommends that BLM develop clear criteria for what would trigger a revocation or denial and include the list of deficiencies in the notice to the state or tribe. In addition, Colorado recommends that the BLM allow a state or tribe to appeal the revocation or denial of a variance based on the criteria and deficiencies listed in the notice.

Thank you for the opportunity to submit these comments.

Sincerely,

William C. Allison V
Director, Air Pollution Control Division
Colorado Department of Public Health and Environment

Matthew J. Lepore
Director, Colorado Oil and Gas Conservation Commission
Colorado Department of Natural Resources

