THE PETROLEUM ALLIANCE
OF OKLAHOMA

March 17, 2023

Submitted via http://www.regulations.gov

U.S. Department of Interior
Eastern Oklahoma Region
Bureau of Indian Affairs
Attn: Regional Director
P.O. Box 8002
Muskogee, OK 74402

Re: RIN 1076-AF59, Docket No. BIA-2022-0006, Mining of the Osage Mineral Estate for Oil and Gas

Dear Madam or Sir:

The Petroleum Alliance of Oklahoma ("The Alliance") appreciates the opportunity to provide comments to the Bureau of Indian Affairs ("BIA") regarding the proposed rule, Mining of the Osage Mineral Estate for Oil and Gas ("Proposed Rule"), RIN 1076-AF59, Docket No. BIA-2022-0006.

The Alliance represents more than 1,400 individuals and member companies and their tens of thousands of employees in the upstream, midstream, and downstream sectors and ventures ranging from small, family-owned businesses to large, publicly traded corporations. Our members produce, transport, process and refine the bulk of Oklahoma's crude oil and natural gas. Our members are committed to extracting, producing, transporting, and refining crude oil and natural gas in a safe and environmentally-sound manner.

1. Summary

The Proposed Rule provides sweeping revisions (e.g., updates to bonding, royalty payment and reporting, production valuation and measurement, site security, and operational requirements) to the existing rules that apply to oil and gas development in the Osage Mineral Estate, and it will significantly alter how operators and the Osage Minerals Council ("Council") conduct future oil and natural gas development. There is minimal discussion on where the Proposed Rule came from (other than to "mirror other Indian Country oil and gas regulations"), rationale and assumptions for the requirements, how it addresses the 2014 Office of Inspector General Report ("2014 OIG Report")[1], or how it is different than the remanded final 2015 rule. BIA provides limited cost impact information and does not provide any information on how the compliance timeframes were determined in the Proposed Rule or how it will conduct outreach and education to operators to facilitate compliance with the many new requirements. Additionally, on Feb. 22, 2022, the Council requested BIA not publish the Proposed Rule based on the discussion draft received in 2020; however, the Council was told that the Proposed Rule had already been prepared and the BIA was in the process of completing the procedural requirements for publication, yet BIA did not publish the rule until Jan. 13, 2023.

[1] Office of Inspector General ("OIG"), U.S. Department of the Interior, BIA Needs Sweeping Changes To Manage The Osage Nation's Energy Resources, Report No.: CR-EV-BIA-0002-2013, October 2014.

It is unclear if further consultation took place since Feb. 2022 or if the Council's issues and concerns have been resolved. These are just a few of the issues that indicate the Proposed Rule is not ready to be finalized.

Action Requested. We request BIA withdraw the Proposed Rule, conduct further consultation with the Council and conduct further education and outreach to oil and gas operators, repropose a rule that provides more details of the requirements and cost impacts, and consider a phased rulemaking approach to reduce compliance burdens and costs on operators.

The following information provides more specific comments on the Proposed Rule.

2. **General Comments**
   a. **More details should be provided.** Overall, the BIA provides minimal details on the Proposed Rule other than it is based on model rules that "mirror other Indian Country oil and gas regulations". It fails to provide information on where these regulations are currently being implemented, how those regulations are currently working, and any associated challenges with those rules. Also, it fails to provide assumptions or rationale for the new requirements or a detailed cost impact analysis. Additionally, it fails to provide information on how this Proposed Rule is different than BIA's final 2015 rule that was remanded, and how it addresses (or goes beyond) the recommendations of the 2014 OIG Report. Finally, though the 2014 OIG Report discussed the need for BIA to make "sweeping changes", there was nothing in the report that required BIA to issue a single, comprehensive rulemaking. BIA could have conducted a phased rulemaking over time to ease compliance burdens and costs on operators.

      Action Requested. We request BIA withdraw and repropose the Proposed Rule that provides more details to help operators better understand and comment on Proposed Rule. BIA should also consider a less burdensome and costly approach on operators by prioritizing issues and providing a phased rulemaking process with reasonable compliance timeframes.

   b. **Allow extensions to compliance deadlines based on good cause.** Many of the requirements become effective when the Proposed Rule is finalized, while other provisions have differing compliance time frames. It is unclear how the compliance deadlines were determined. Also, it is unclear if operators are allowed to request an extension to compliance deadlines based on good cause (e.g., supply chain issues, service provider availability, etc.).

      Action Requested. We request BIA withdraw and repropose the Proposed Rule that provides more details on how the compliance deadlines were determined and incorporate into the rule the option to allow operators to request extensions to compliance deadlines based on good cause.

   c. **Develop an education and outreach program for operators.** The Proposed Rule provides sweeping changes to the existing rules. This will create confusion and compliance issues for oil and gas operators, especially smaller operators. BIA does not provide any information on how it plans to facilitate an orderly transition to the new requirements to help operators comply with the final rule.

      Action Requested. We request BIA develop an education and outreach program to help operators understand the new rule to facilitate compliance.

3. **Specific Comments**
   a. **Section I (Executive Summary)** - The 2014 OIG Report evaluated the BIA's management of the Osage Mineral Estate. The report recommended that BIA "use its authority to correct program

deficiencies by modifying 25 CFR part 226 to mirror other Indian Country oil and gas regulations." However, in the Proposed Rule, BIA provides no information as to which regulations were used as the model for this Proposed Rule, how those regulations are working, assumptions or rationale for the requirements or whether the Proposed Rule includes "additional" requirements that were not covered by the 2014 OIG Report.

Action Requested. We request BIA withdraw and repropose the Proposed Rule that provides more details to clarify these issues.

b. **Section III (Background)** – The Proposed Rule references BIA's final rule issued in 2015, the subsequent litigation and the remand for further action. The Proposed Rule states that "The current effort to revise the regulations in 25 CFR part 226 is not a continuation of the negotiated rulemaking process undertaken pursuant to the Settlement, nor is it a republication of the 2015 final rule." However, there is no discussions as to how this Proposed Rule addresses the issues that led to the remand, how it is different or how this Proposed Rule was developed to avoid similar litigation.

Action Requested. We request BIA withdraw and repropose the Proposed Rule that provides additional details on these issues.

c. **Section IV (Incorporation by Reference of Industry Standards)** – The Proposed Rule incorporates by reference several industry standards and practices either in whole or in part. Several of these standards are available only by purchase from the organization that developed them. BIA fails to describe the cost impacts to operators (especially smaller operators) for those standards that are required to be purchased. It would be beneficial to all operators if BIA made these documents available on its website.

Action Requested. We request BIA provide the various industry standards and practices being incorporated by reference in the Proposed Rule on its website so that operators can easily obtain and comply with those requirements.

d. **Section VI (Procedural Matters)**

i. **Regulatory Flexibility Act.** BIA states that the proposed rule would likely impact a substantial number of small entities within the Osage Mineral Estate. However, BIA only provides a minimal cost impact analysis based on a per year, per "average" lessee. The Proposed Rule is a complete rewrite of the existing rules. BIA fails to provide a detailed cost impact analysis of each new requirement on operators, especially smaller operators of low producing, marginal wells.

For additional context, the tax code provisions define a low producing well as one producing 15 barrels per day ("Bpd") of oil equivalent or less. The Interstate Oil and Gas Compact Commission ("IOGCC") defines a marginal well as a well that produces 10 barrels of oil or 60 Mcf of natural gas per day or less.[2] In Oklahoma, there are approximately 28,000 marginal oil wells (with an average production of 1.43 Bpd) and approximately 45,000 marginal gas wells (with an average of 18 thousand cubic feet per day [Mcfpd]); however they contribute approximately 9.5% and 12%, respectively, to Oklahoma's total production.[3] We assume that marginal wells exist in the Osage Mineral Estate. These types of wells are important to the Osage Nation, operators (including many small business operators), and the state's economy. Small businesses in

[2] IOGCC, Marginal Wells: Fuel for Economic Growth, 2016.
[3] Id.

the Mining, Quarrying, and Oil and Gas Extraction industry in Oklahoma employ over 20,000 people, or over 50.5% of the private workforce employed in that sector in 2017. Many of these small oil and gas businesses may be negatively impacted if the Proposed Rule is finalized as currently proposed. Additionally, marginal wells provide a significant share of the U.S. domestic oil and natural gas output and economic contributions. The IOGCC states that since approximately 2006, marginal wells have produced oil and natural gas valued at nearly $30 billion annually, or approximately 10 percent of the total value of oil and natural gas produced domestically. It is important that BIA understand and recognize the importance and benefits of marginal wells to the U.S., the State of Oklahoma, Osage Nation, small businesses, and rural environmental justice communities that depend on the oil and gas industry, in its rulemaking process.

BIA's regulatory impact analysis does not address how a marginal well producing an average of 1.43 Bpd and/or 18 Mcfpd can be economically viable under BIA's Proposed Rule. The Proposed Rule will impact existing wells, especially low producing, marginal oil and gas wells that provide the Osage Nation, with direct revenue in the form of royalties, and the indirect economic benefits through employment and other economy-enhancing activity**.**

Action Requested. We request BIA withdraw and repropose the Proposed Rule that provides a detailed cost impact analysis for public review and comment.

ii. **Consultation With Indian Tribal Governments (Executive Order 13175).** On Feb. 22, 2022, the Council requested BIA not publish a Proposed Rule based on the discussion draft received in 2020; however, the Council was told that the Proposed Rule had already been prepared and the BIA was in the process of completing the procedural requirements for publication, yet BIA did not publish the rule until Jan. 13, 2023. It is unclear if further consultation took place since Feb. 2022, and whether the Council's issues and concerns with the Proposed Rule were resolved.

Action Requested. We request BIA withdraw the Proposed Rule and conduct additional consultation with the Council. A reproposed rule should address the details described above and any additional consultation conducted by the BIA.

4. **Proposed Rule**
   a. **Subpart A [Definitions], I [Production and Site Security], L [Tribal and Royalty-Free Use of Production] and M [Venting and Flaring])** - There are provisions in BIA's Proposed Rule that are the same or similar to the Bureau of Land Management's (BLM's) proposed Waste Prevention Rule (WPR). The Alliance's comments on the WPR are attached and similarly apply to this Proposed Rule.

      Action Requested. We request BIA review our attached comments on BLM's WPR as they have implications on this Proposed Rule. In addition, we request BIA clarify how the flared volume threshold under initial production testing was determined as it is very different than BLM's volume threshold.

   b. **Subpart F – Rental and Royalty.** The annual rental amount for leases approved after [effective date of final rule] is $8 per acre or fraction thereof. BIA does not provide any discussion on how $8 per acre fee was determined.

      Action Requested. We request BIA clarify how this dollar per acre fee was derived.

c. **Subpart N - Assessments and Penalties** – Under Section 226.160, the Proposed Rule provides "Other Assessments". If a lessee fails to commence or perform an operation within five calendar days after official notice, the Superintendent may take action to resolve the issue and charge the lessee. Five calendar days is a short time frame to commence or perform operations provided in orders. There may be valid situations (e.g., supply chain issues or availability of service providers) where an operator may not be able to comply.

Action Requested. We request BIA consider a longer threshold e.g., ten business days.

The Alliance appreciates the opportunity to provide comments to the BIA on the Proposed Rule. If you have questions, please contact me at angie@okpetro.com or 405-601-2124.

Sincerely,

Angie Burckhalter
Senior V.P. of Regulatory & Environmental Affairs

Attachment

THE PETROLEUM ALLIANCE
OF OKLAHOMA

January 30, 2023

Submitted electronically via: www.regulations.gov

U.S. Department of Interior
Director (630)
Bureau of Land Management
1849 C St. NW, Room 5646
Washington, D.C. 20240
Attention:1004-AE79

Subject: Bureau of Land Management - Proposed Waste Prevention, Production Subject to Royalties, and Resource Conservation Rule, RIN 1004-AE79

Dear Sir or Madam:

The Petroleum Alliance of Oklahoma ("The Alliance") appreciates the opportunity to submit comments on the Bureau of Land Management's ("BLM's") proposed Waste Prevention, Production Subject to Royalties, and Resource Conservation Rule, RIN 1004-AE70 ("Proposed Rule").

The Alliance represents more than 1,400 individuals and member companies and their tens of thousands of employees in the upstream, midstream, and downstream sectors and ventures ranging from small, family-owned businesses to large, publicly traded corporations. Our members produce, transport, process and refine the bulk of Oklahoma's crude oil and natural gas.

The Proposed Rule will impact our members as they develop new Federal and Indian leases in Oklahoma and in many other states where they operate. Additionally, the Proposed Rule is far-reaching and will impact our smaller members operating existing low volume, marginally producing wells that will have a more difficult time operating on Federal and Indian leases e.g., the Proposed Rule will require new equipment installations or retrofits, emissions monitoring, and recordkeeping and reporting requirements.

The Alliance supports the comments submitted by American Petroleum Institute (and several other industry trade associations). In addition, we provide the following specific comments on the Proposed Rule.

General Comments

1. **BLM's Proposed Rule contains provisions that are outside its statutory authority.** BLM has made notable improvements since its 2016 Waste Prevention Rule; however, supporting

materials and the Proposed Rule are still centered on methane emissions and climate change and are outside BLM's statutory authority. For example:

a. The abstract from the Fall 2022 Unified Agenda of Regulatory and Deregulatory Actions states that "This proposed rule would ensure that companies do not waste valuable Federal mineral resources in their extraction processes and would further address the priorities associated with Executive Order 14008, "Tackling the Climate Crisis at Home and Abroad." In addition, in accordance with Executive Order 13990, "Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis", this proposed rule would reduce methane emissions in the oil and gas sector and mitigate impacts of climate change." [emphasis added]

b. Section 3179.2 (b) provides an exception where the Proposed Rule does not apply e.g., Sections 3179.6 (Safety), 3179.201 (Pneumatic Controllers and Pneumatic Diaphragm Pumps), 3179.203 (Oil Storage Vessels), and 3179.301-.303 (LDAR, and Inspection Recordkeeping and Reporting) apply "…only to operations and production equipment located on a Federal or Indian oil and gas leases. They do not apply to operations and production equipment on State or private tracts, even where those tracts are committed to a federally approved unit or communitization agreement." [emphasis added] We support BLM's clarification of this exception in accordance with the Wyoming Court decision as they are clearly under the authority of other agencies e.g., the state and/or EPA. However, it is unclear how the same requirements on wells and associated equipment placed on Federal or Indian oil and gas leases are any different.

c. The Proposed Rule includes requirements for emissions on Federal and Indian leases that is not economically and/or technically feasible to collect and put into the pipeline e.g., fugitive leaks from valves and connections or from normal wear and tear on equipment. These types of emissions are under the jurisdiction of EPA and/or the states.

d. As part of the analysis of costs and benefits provided in the Regulatory Impact Analysis ("RIA"), BLM considered the social costs and benefits of the estimated emissions reductions with respect to climate impacts and used the Interim Estimates of the Social Cost of Greenhouse Gas Emissions (IWG, 2021).[1] BLM states that the purpose of that reporting is solely to provide the most complete accounting of the costs and benefits of the proposed rule for the public's awareness and consideration. Additionally, BLM estimated the quantity of methane reductions using emissions factors and reductions data made available by the EPA. It is unclear why this exercise was conducted if the Proposed Rule is not, at least in part, an air emission rule that is outside BLM's statutory authority.

Action Requested: We request BLM remove the air emissions requirements from the Proposed Rule (or at least defer those regulations) to the jurisdiction of EPA and/or the state where the well is located.

[1] BLM, Regulatory Impact Analysis for Revisions to 43 CFR 3160 (Onshore Oil and Gas Operations), Addition of 43 CFR 3179 (Waste Prevention and Resource Conservation), November 2022.

2. **BLM should maintain in the Proposed Rule the economic feasibility analysis provided in NTL-4A.** BLM states its Proposed Rule would supersede NTL-4A. NTL-4A provides a long-standing economic feasibility analysis that operators with existing Federal and Indian leases have relied upon when they obtained and developed their lease. Now BLM proposes a wholly different approach for existing leases and wells that does not account for the diverse nature of oil and natural gas production and operations. The only economic feasibility analysis in the Proposed Rule applies to the installation of vapor recovery units ("VRUs") on storage tanks. BLM cannot increase requirements on existing operators without consideration of leasehold economics and then later challenge the leaseholder on whether the lease is maintained through production in paying quantities. By using this approach, BLM forces operators to shut in wells, operate wells at an economic loss or plug wells. This unnecessarily defers or leaves Federal and Indian oil and natural gas resources in the ground and forgoes royalty.

   Action Requested: We request BLM maintain the long-standing economic feasibility analysis provided in NTL-4A for all wells, especially existing low volume, marginal wells.

3. **BLM should phase-in the compliance time frame for existing wells, especially low volume, marginal wells.** As stated above, BLM is not allowing operators of existing wells the option of utilizing an economic feasibility analysis (except for storage tanks) for new requirements in the Proposed Rule and it is not proposing a phase-in compliance time for these types of wells. BLM does not account for the additional time it may take operators of existing wells (especially smaller operators) to plan and budget for new requirements, obtain and implement new equipment, retrofit equipment, obtain and implement new electronic recordkeeping and reporting systems, train employees on the collection of new reporting and recordkeeping requirements. BLM must consider the supply chain issues that are still a significant issue for our industry. In addition, it does not appear that BLM is considering the impacts to low volume, marginally economic wells. The Interstate Oil and Gas Compact Commission ("IOGCC") defines a marginal well as a well that produces 10 barrels of oil or 60 Mcf of natural gas per day or less.[2] In Oklahoma, there are approximately 28,000 marginal oil wells (with an average production of 1.43 barrels of oil per day) and approximately 45,000 marginal gas wells (with an average 18 Mcf per day); however they contribute approximately 9.5% and 12%, respectively, to Oklahoma's total production.[3] These types of wells are important to our members and the state.

   Action Requested: Under EPA's proposed Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review rule ("NSPS OOOOb/c"), EPA is requiring states to implement rules to address emissions from existing wells. BLM should defer to the state's rules and compliance time frames for existing wells to avoid duplicative and/or inconsistent requirements. At a minimum, BLM should reconsider the impacts of the Proposed Rule on existing wells, especially low volume, marginally economic wells, and incorporate a phased compliance timeframe over 5 years.

[2] IOGCC, Marginal Wells: Fuel for Economic Growth, 2016.
[3] ibid.

4. **BLM lacks the resources to manage the new requirements in the Proposed Rule.** Though BLM is making efforts to reduce processing time frames for various actions, we have significant concerns that the new requirements in the Proposed Rule e.g., Waste Management Plans ("WMPs") and new sundry notices (for Sections 3179.203 [oil storage vessels], 3179.301 [Leak Detection and Repair program], 3179.302 [repairing leaks]) will further impede BLM's Applications for Permits to Drill ("APDs") processing times. BLM's oil and gas statistics show that when the number of APDs increase, (i.e., FY2019-3,181, FY2020-4,226, and FY2021-4,859), the average days for BLM to complete approvals increase (FY2019-44, FY2020-59, and FY2021-89).[4] BLM does not provide any discussion on how it plans to manage this new workload, how long review times will take (specifically for WMPs or Leak Detection and Repair ["LDAR"] plans) and respond to the regulated community in a timely manner without further delaying oil and gas development.

   Action Requested: We request BLM fully detail how it plans to manage this effort in a consistent and timely manner without delaying oil and gas development. To reduce additional workload on BLM staff, the new submittals discussed above should only be submitted upon request by BLM instead of the proposed submittal, review, and approval process. If BLM maintains the submittal requirement in the Proposed rule, it should specify in the rule its review time of no more than 30 days for WMPs and LDAR plans.

5. **BLM overestimates emissions and reduction benefits.** BLM estimated the quantity of emissions and potential reductions using EPA data that contains emission factors ("EFs") and estimation methodologies that do not reflect actual emissions. In some instances, EFs and estimation methodologies overestimate emissions from sources e.g., pneumatic and liquids unloading. Congress recognized this issue and incorporated into the Inflation Reduction Act a requirement for EPA to revise its Greenhouse Gas Reporting Rule to allow reporting entities to collect and submit empirical emission data.[5]

6. **BLM's comment period for this Proposed Rule was inadequate.** The Alliance requested a 60-day extension to the comment period providing several reasons for the request. On Jan. 11, BLM stated in its on-line forum that it would not be extending the comment period. However, BLM did not provide any reasoned rationale or justification for not extending the comment period. NTL-4A is currently in effect and has been since 1979 (with minor time frame exceptions) therefore a 60-day extension to the comment period would not have significant adverse impacts on waste prevention requirements provided in the Proposed Rule.

   Action Requested: We request BLM provide its rationale and justification for not extending the comment period.

Specific Comments

7. **Section 3162.3-1 Drilling Applications and Plans.** BLM requires the operator to submit a WMP with its APD. The waste minimization plan must demonstrate how the operator plans

[4] BLM, Oil and Gas Statistics, website, January 14, 2023.
[5] Pub. L. 117-169, Sec. 60113, August 16, 2022.

to capture associated gas upon the start of oil production, or as soon thereafter as reasonably possible, including an explanation of why any delay in capture of the associated gas would be necessary. The BLM may deny or delay an APD if the operator fails to submit a complete and "adequate" WMP. The Proposed Rule allows BLM to attach conditions of approval to APDs to require additional requirements to prevent waste of natural gas.

a. The Proposed Rule infuses significant subjectivity and uncertainty into the requirements e.g., what is "adequate" and what are "reasonable measures". Though BLM describes "reasonable measures" to prevent waste as "factors including but not limited to relevant advances in technology and changes in industry practice", it is unclear what BLM means, or how it will consistently make this determination within its statutory authority. BLM does not discuss costs of the equipment, design/construction, implementation, maintenance, or the consideration of the complexity, accuracy, reliability, effectiveness, risk or other similar issues related with the technologies to reduce or eliminate emissions. Economic feasibility is of key importance to operators, especially smaller companies operating low volume marginal wells. It is unclear how BLM will consistently implement "reasonable measures". Additionally, BLM does not specify a review time frame for WMPs.

Action Requested: We request BLM clarify various nebulous terms and clarify how it will consistently implement additional conditions of approval that are within BLM's statutory jurisdiction. In addition, we request BLM specify in the rule that reviews of WMPs will be complete within 30 days of submittal to avoid APDs approval delays.

b. This Proposed Rule applies to both new and existing wells operations. There is minimal discussion as to how new requirements will affect existing operations or any discussion of a phased compliance timeframe for existing leases and wells.

Action Requested: As previously stated above, we request BLM incorporate a phased compliance approach into the Proposed Rule for existing wells. Under EPA's proposed NSPS OOOOb/c rule, EPA is allowing states to implement rules to address emissions from existing wells. BLM should defer to state's requirements and compliance time frames for existing wells.

c. The Proposed Rule requires operators to submit information related to the gas pipeline to which the operator plans to connect that has sufficient capacity to accommodate the anticipated production of the proposed well(s), and information on the pipeline, including, to the "extent that the operator can obtain it", the following information. This type of information may not be obtainable or cannot be provided because of contractual or confidential business information.

(i) Maximum current daily capacity of the pipeline;
(ii) Current throughput of the pipeline;
(iii) Anticipated daily capacity of the pipeline at the anticipated date of first gas sales from the proposed well;
(iv) Anticipated throughput of the pipeline at the anticipated date of first gas sales from the proposed well; and

(v) Any plans known to the operator for expansion of pipeline capacity for the area that includes the proposed well.

Action Requested: BLM should remove this requirement from the Proposed Rule.

8. **Section 3179.2 Scope.** Section 3179.2(b) provides an exception where the Proposed Rule does not apply e.g., Sections 3179.6 (Safety), 3179.201 (Pneumatic Controllers and Pneumatic Diaphragm Pumps), 3179.203 (Oil Storage Vessels), and 3179.301-.303 (LDAR, and Inspection Recordkeeping and Reporting). These sections apply only to operations and production equipment located on a Federal or Indian oil and gas leases. They do not apply to operations and production equipment on State or private tracts, even where those tracts are committed to a federally approved unit or communitization agreement. We appreciate and support BLM's clarification on this issue.

9. **Section 3179.3 Definitions.**
   a. **Automatic Ignition System** – BLM states that an automatic ignition system means an automatic ignitor and, where needed to ensure continuous combustion, a continuous pilot flame. In Section, 3179.6(b), BLM states that a flare that is not lit may be subject to an immediate assessment of $1,000 per violation. However, there may be systems in place that do not have a pilot flame and instead have an automatic ignition system that sparks when gas is present. A pilot flame would not be visible in these situations. In addition, in those systems that have a pilot flame, and it is not lit, BLM should allow operators the option to provide flare run times to show that the flare may have been unlit for only a short duration. BLM should factor that information into its evaluation before assessing a violation.

   Action Requested: We recommend BLM revise the definition.
   "Automatic ignition system means an automatic ignitor and, where needed to ensure continuous combustion <u>when gas is present,</u> a continuous pilot flame.

   b. **High-pressure flare** - BLM states that a high-pressure flare means an open-air flare stack or flare pit designed for the combustion of natural gas leaving a pressurized production vessel (such as a separator or heater-treater) that is not a storage vessel. The definition is vague, will be inconsistently applied, and does not consider the site-specific conditions around the flaring. Flaring is a means of disposal of gas for safety reasons or where there is no economical way to transport the gas to market or economical way to use the gas for another purpose. It should be limited to gas that could have been sold without the installation of a compressor or VRU that is not otherwise required by this Proposed Rule. High pressure flaring should not include gas from a heater treater, vapor recovery tower or other similar equipment that is lower pressure than the natural gas sales line.

   Action Requested: The definition of "High pressure flare" should be redefined as:
   "High-pressure flare means an open-air flare stack or flare pit designed for the combustion of natural gas leaving a pressurized production vessel ~~(such as a separator or heater treater) that is not a storage vessel.~~ <u>with sufficient pressure to be injected into a pipeline without the aid of a compressor."</u>

c. **Gas Well** – BLM defines a gas well to mean a well for which the energy equivalent of the gas produced, including its entrained liquefiable hydrocarbons, exceeds the energy equivalent of the oil produced. Unless more specific British thermal unit ("Btu") values are available, a well with a gas-to-oil ratio greater than 6,000 standard cubic feet ("scf") of gas per barrel of oil is a gas well. It is unclear why BLM proposed this new definition and how it plans to use it. Historically, BLM has deferred to state oil and gas conservation agencies' definition of a "gas well". States have rules and requirements built around established definitions of "gas well". BLM's new definition will only create confusion and uncertainty, as to how differing definitions between BLM and states will be reconciled.

   Action Requested: We request BLM defer to state's "gas well" definition where the natural gas or oil well is located unless the state does not have a definition.

d. **Leak** - BLM defines a leak to mean a release of natural gas from a component that is not associated with normal operation of the component, when such release is: (1) A hydrocarbon emission detected by use of an optical-gas-imaging instrument; (2) At least 500 ppm of hydrocarbon detected using a portable analyzer or other instrument that can measure the quantity of the release; or (3) A hydrocarbon emission detected via visible bubbles detected using soap solution.

   Action Requested: BLM should allow the use of audio, visual and olfactory ("AVO") inspections to quickly allow operators to find and fix leaks. This is an efficient and effective method that is beneficial to all operators, especially smaller operators who do not have the resources to purchase an optical gas imaging instrument or obtain a consultant in a timely manner. Additionally, EPA incorporates the use of AVOs inspections into its proposed NSPS OOOO b/c rule.

e. **Unreasonable and undue waste of gas -** BLM proposes a definition of "unreasonable and undue waste" of gas to mean a frequent or ongoing loss of gas that could be avoided without causing an ultimately greater loss of equivalent total energy than would occur if the loss of gas were to continue unabated. This proposed definition is unnecessary considering other provisions of BLM's rule that outlines limits of when gas is unavoidably lost. In addition, it is confusing and provides uncertainty without the economic consideration provision provided in NTL-4A.

   Action Requested: We request BLM remove this definition.

10. **Section 3179.4 Determining when the loss of oil or gas is avoidable or unavoidable.** In this section, BLM outlines when gas is unavoidably lost. BLM applies one-size-fits-all limits to several of the items listed under Section 3179.4(b) without the consideration of site-specific conditions or circumstances.

    Action Requested: We request BLM include an additional item under section 3179.4(b) that allows operators to request unavoidable loss determinations based on technical and economic site-specific conditions.

11. Section 3179.6 Safety.

a. Section 3179.6(a)(1) states that operators must flare, rather than vent, any gas that is not captured, except: (1) When flaring the gas is technically infeasible, such as when volumes are too small to flare. There are other situations where it is not technically feasible to flare the gas that should be included in item (1) e.g., when the gas is not readily combustible due to low BTU content and/or contaminants.

Action Requested: We recommend the following edits:

"…when volumes are too small to flare, or the gas is not combustible or marketable."

b. Section 3179.6(b) states that, "All flares or combustion devices must be equipped with an automatic ignition system. Upon discovery of a flare that is not lit, the BLM may subject the operator to an immediate assessment of $1,000 per violation."

As previously stated above in item 9 regarding the definition of "automatic ignition system", BLM should remove "immediate" assessment of $1,000 per violation until it can verify site specific information from the operator as to the type of flare system in operation and other pertinent information such as air permit conditions. In addition, BLM should allow operators the option to submit flare run times to show that a flare may have been unlit for a short duration before assessing a fine.

Also, when wells are shut-in, tank emissions are reduced to breathing emissions which are very minimal and often there is not enough flow to the flare or control device to prevent flashback and an explosion, which creates greater environmental impact than the minimal breathing emissions. After multiple tank fires in North Dakota, the North Dakota Department of Environmental Quality acknowledged this risk and issued guidance that allows for tank vapor flares and control devices to be bypassed when a well is shut in to minimize the risk.

Action Requested: We recommend the following edits:

"Upon discovery of a flare that is not lit when the associated well(s) is (are) producing and gas is present, the BLM may subject the operator to an ~~immediate~~ assessment of $1,000 per violation. BLM shall consider operator information prior to this assessment."

12. Section 3179.8 Oil-well Gas and Section 3179.9 measuring and reporting volumes of gas vented and flared. In this section, BLM states that oil-well gas may be flared due to pipeline capacity constraints, midstream processing failures, or other similar events up to 1,050 thousand cubic feet ("Mcf") per month, per lease, unit, or CA. Such flared gas will be considered "unavoidably lost" for the purposes of Sections 3179.4(b)(12) and 3179.5. BLM may order the operator to curtail or shut-in production as necessary to avoid the unreasonable and undue waste of Federal or Indian gas where the operator has reported flaring in excess of 4,000 Mcf per month for 3 consecutive months and the BLM confirms that flaring is ongoing. BLM requires measurement of all high-pressure flares flaring 1,050 Mcf per month or more within 6 months of the final rule.

a. BLM's Proposed Rule does not consider site specific conditions or economics on wells, especially low-volume, marginally economic wells. As previously stated, a marginal well is a well that produces 10 barrels of oil or 60 Mcf of natural gas per day or less.[6] BLM's 1,050 Mcf per month threshold is 35 Mcf per day, well below IOGCC's definition of a low-volume, marginally economic well.

Action Requested: We request BLM allow operators to submit unavoidable loss determinations based on site specific technical or economic conditions that are above the proposed threshold. As an alternative, BLM should revise its 1,050 Mcf per month threshold upwards to avoid unnecessary requests for unavoidable loss determinations for low-volume, marginally economic wells or defer to state requirements and compliance deadlines being proposed under EPA's NSPS OOOOb/c rules.

b. Additionally, BLM does not discuss any flaring related to pipeline permitting issues. The most effective means by which the BLM can reduce flaring while protecting the amount of royalties generated is to approve right of way applications in a timely manner. Completion of capture infrastructure is critical to managing stranded gas and new development. In the Proposed Rule, BLM has failed to acknowledge the significance of federal right of way permitting delays that have contributed to flaring volumes.[7]

Action Requested: We request BLM detail its efforts to reduce pipeline permitting delays that contribute to flaring volumes.

13. **Section 3179.10 Determinations regarding royalty-free flaring.** BLM proposes that royalty-free flaring in place at the time the final rule is published will terminate 6 months after the effective date.

Action Requested: BLM should not automatically terminate royalty free flaring in effect for existing wells. We request BLM consider our comments provided elsewhere in this letter regarding this issue.

14. **Section 3179.12 Reasonable precautions to prevent waste**. BLM states that the Authorized Officer may specify reasonable measures to prevent waste as conditions of approval of an Application for Permit to Drill. After an Application for Permit to Drill is approved, the Authorized Officer may order an operator to implement, within a reasonable time, additional reasonable measures to prevent waste at ongoing exploration and production operations. (d) Reasonable measures to prevent waste may reflect factors including but not limited to relevant advances in technology and changes in industry practice**.**

Action Requested: In reference to the underlined text, see comments provided in item 7 above.

---

[6] IOGCC, 2016.

[7] NMOGA, 2016 comments on Bureau of Land Management's "Waste Prevention, Production Subject to Royalties, and Resource Conservation" Proposed Rule at 81 FR 6616 (February 8, 2016).

15. **Section 3179.102 Well completions and related operations.** BLM provides volume thresholds at which gas is no longer royalty free. The Proposed Rule does not include any opportunity for operators to request exceptions to this threshold based on site-specific conditions. Additionally, well completions are regulated under EPA's existing NSPS OOOOa regulations.

    Action Requested: BLM should defer to EPA's well completion requirements under existing NSPS OOOOa regulations. If BLM maintains this requirement in the Proposed Rule, we request BLM provide more details as to how these thresholds were established and allow operators to request higher volume thresholds based on site specific conditions.

16. **Section 3179.201 Pneumatic controllers and pneumatic diaphragm pumps.** An operator of a lease, unit participating area (PA), or CA producing at least 120 Mcf of gas or 20 barrels of oil per month would be prohibited from using natural-gas-activated pneumatic controllers or pneumatic diaphragm pumps with a bleed rate that exceeds 6 scf/hour, effective one year from the effective date of the final rule.

    BLM states that to avoid excessive compliance burdens on marginal wells requirements, pneumatic equipment would apply only where a lease, unit PA, or CA is producing a quantity of oil or gas (120 Mcf of gas or 20 barrels of oil per month) that would offset the compliance costs within a reasonable payout period. The 120 mcf of gas per month or 20 barrels of oil per month equates to 4 mcf per day or 0.7 barrels of oil per day. As previously stated, a marginal well is a well that produces 10 barrels of oil or 60 Mcf of natural gas per day or less.[8] BLM does not allow an economic feasibility analysis for pneumatics that have to be replaced or retrofitted. BLM's proposed threshold is extremely low and would cover a significant number of low-producing, marginal wells.

    BLM proposes a 1-year compliance time frame after the final rule becomes effective. Smaller operators may have difficulties replacing or retrofitting pneumatics due to supply chain issues or competing with larger companies for the same equipment. Additionally, EPA is proposing under NSPS OOOOc rule to allow states to implement requirements on existing sources.

    Additionally, there are situations in which pneumatic pumps are used for chemical injection. These types of pumps operate at very low pressures, have minimal emissions, and should be exempt. There are also pumps that are used intermittently. BLM should allow operators the option to provide technical information to justify why they should be exempt for replacement and/or retrofitting.

    Action Requested: We request BLM defer to EPA's NSPS OOOOc regulations and remove this requirement. If BLM maintains this requirement in its Proposed Rule, the threshold at which the requirements apply should be raised to avoid impacting marginal wells or allow operators to submit an economic feasibility analysis. Also, BLM should exempt chemical injection pumps from this requirement. For clarity, we request the following edits:

[8] IOGCC, Marginal Wells: Fuel for Economic Growth, 2016.

"Where a lease, unit PA, or Ca is producing at least 120 Mcf of gas or 20 barrels of oil per month, the operator may not use a continuous bleed natural-gas-activated pneumatic controller or pneumatic diaphragm pump with a bleed rate that exceeds 6 scf per hour.

17. **Section 3179.203 Oil storage vessels.** BLM states that the thief hatch on a storage vessel may be open only to the extent necessary to conduct production and measurement operations. Upon discovery of a thief hatch that has been left open and unattended, the BLM will impose an immediate assessment of $1,000 on the operator. BLM is proposing a one-year compliance time frame to have all oil storage vessels equipped with a VRU or is allowing operators to submit a technical or economical infeasible analysis. Where tanks are not equipped with a VRU system, BLM is requiring an operators conduct costly and rigorous compositional sampling analysis of the production flowing to the storage vessels and submit that information annually.

    a. When wells are shut-in, tank emissions are reduced to breathing emissions which are very minimal and often there is not enough flow to the flare or control device to prevent flashback and an explosion, which create greater environmental and safety impacts than the minimal breathing emissions. As previously stated, after multiple tank fires in North Dakota, the North Dakota Department of Environmental Quality acknowledged this risk and issued guidance that allows for tank vapor flares and control devices to be bypassed when a well is shut in to minimize the risk. In these cases, the hatches may need to be left open to relieve breathing pressure due to temperature fluctuations throughout the day. Further, it is common to isolate a tank that needs repair, empty the tank, and leave the hatch open to vent vapors to allow for repair. This can take several days. Finally, if a VRU and flare are not required at a facility, then tank emissions are understood to be vented to atmosphere in their entirety, regardless of whether the emissions occur from tank vents, openings, conservation vent valves, pressure relief valves, or a thief hatch.

    Action Requested: We request the following edits.
    "The thief hatch on a storage vessel may be open only to the extent necessary to conduct production and measurement operations when the associated well(s) is (are) producing to the storage vessel. Upon discovery of a thief hatch that has been left open and unattended while the associated well(s) is (are) producing to the storage vessel, the BLM may ~~will~~ impose an immediate assessment of $1,000 on the operator. However, if a VRU and flare are not required at a given facility, and BLM has approved Sundry request for same, no monetary assessment shall apply for an open hatch for that facility.

    b. Once a facility's production has declined such that the VRU becomes uneconomical, it is not likely to become economical again because the well(s) and tank vapors will continue to decline unless an associated well is hydraulically re-stimulated or additional wells are added to a tank battery to increase flow. In the absence of either condition, an annual compositional analysis is unnecessarily burdensome. Further, when an analysis is conducted on older well's liquids for the purpose of tank vapor flash analysis, it can be very difficult to collect because the low pressures present in the production stream often cannot overcome the pressurized cylinder necessary to pull the sample in compliance with the EPA method. Most state environmental departments allow for emissions modeling

programs such as ProMax and/or representative analyses from nearby wells to be utilized in lieu of well-specific analyses.

Action Requested: We suggest the following edits. *"(c) Where an operator has not equipped a storage vessel with a vapor recovery system or other appropriate mechanism under paragraph (b) of this section, the operator, using a Sundry Notice, must submit a compositional analysis of production flowing to the storage vessel. The analysis must be repeated if the associated well(s) are re-fractured or additional wells are added to the tank battery.*

(1) The compositional analysis must be based on pressurized samples taken downstream of the last pressurized vessel and upstream of the last pressure reduction (e.g., a valve) prior to the oil flowing into the storage vessel. If pressurized samples are not possible because of the low pressures involved, emissions modeling tools such as (but not limited to) ProMax and/or representative analyses obtained from a well within a reasonable proximity may be utilized.

18. **Section 3179.301 Leak Detection and repair program, Section 3179.302 Repairing leaks, and Section 3179.303 Leak detection inspection recordkeeping and reporting.** Section 3179.301 requires operators to submit an LDAR plan within 6 months after the effective date of the final rule. BLM requires the inspection and repair of leaks and the submittal of inspection and repair information.

Fugitive emissions are low pressure and cannot possibly be routed to a sales pipeline. As such, these types of emissions are outside BLM's statutory authority and fall under EPA and/or state air programs. If an operator's LDAR plan meets EPA requirements and/or state requirements, BLM should acknowledge and deem these sufficient for its purposes. Further, BLM's proposed LDAR reporting is duplicative with many facilities that already report under NSPS OOOOa, but on a different established timeline. The reporting date in the Proposed Rule is the same due date as multiple other significant environmental reports, including state emissions inventories, federal Greenhouse Gas reports, state Tier Two reports, and others, at a time when the workload for compliance is already abnormally high. The proposed reporting date presents an unreasonable burden on the regulated community. EPA recognized this issue when setting the reporting deadline for Federal Implementation Plan facilities and various New Source Performance Standards and set those corresponding reporting due dates for different times in the year. The proposed requirements will result in multiple recordkeeping systems that are almost, but not quite, the same and on different timelines which will lead to duplicative reporting and unnecessary confusion. In addition, we support BLM allowing operators the flexibility to submit LDAR plans for a single well, multiple wells or for all wells a company has on BLM managed lands.

Action Requested: To reduce requirements on BLM staff, LDAR plans should only be submitted upon request. If BLM requires the submittal of these plans, we suggest the following edits.

Section 3179.301 Leak detection and repair program.

(b) The operator of a Federal or Indian lease must submit a Sundry Notice to the BLM describing the operator's LDAR program for producing well(s) on the operator's lease(s) ~~site~~, including the frequency of inspections and any instruments and/or methodologies to be used for leak detection. LDAR programs that meet the relevant requirements of EPA and/or state environmental agencies or incorporates those by reference for the facilities subject to this regulation will be deemed sufficient for the purposes of this regulation. The BLM will review the operator's LDAR program and notify the operator if the BLM deems the program to be inadequate within 30 days after submittal by the operator.

Section 3179.302 Repairing leaks. BLM's proposed repair time frames do not align with EPA's NSPS OOOOa repair time frames. This will create confusion within the regulated community and is unnecessarily complicates compliance.

Action Requested: We request BLM to defer to or align repair time frames with EPA and/or state LDAR repair time frames.

Section 3179.303 Leak detection inspection recordkeeping and reporting. We recommend the following edits.

(b) By ~~March~~ April 30 of each calendar year, the operator must provide to the BLM an annual summary report on the previous year's inspection activities. ~~that includes:~~ As an alternative, the operator may provide its report on the NSPS OOOOa, OOOOb, or OOOOc for inspection activities that occurred within the relevant NSPS compliance period. The report shall include, at a minimum:

(1) The number of sites inspected;

(2) The total number of leaks identified, categorized by the type of component;

(3) The total number of leaks repaired;

(4) The total number of leaks that were not repaired as of December 31 of the previous calendar year, or the end of the NSPS OOOOa compliance period if that reporting option is chosen, due to good cause and an estimated date of repair for each leak.

(c) Audio/visual/olfactory (AVO) checks are not required to be documented unless they find a leak requiring repair.

(d) If an operator's well(s) on Federal and Indian leases are reported under the LDAR provisions of the relevant NSPS report, then an abbreviated version of the NSPS report showing only the LDAR activities for facilities on Federal and Indian leases may be submitted in lieu of the separate report specified above.

19. **Section 3179.401 State or Tribal requests for variances from the requirements of this subpart.** BLM proposes to grant a variance to a State or a Tribe for provisions that meet BLM's requirements.

Action Requested: BLM should conduct this process in a streamlined, transparent, consistent, and objective manner. As stated elsewhere in this letter, BLM should remove and defer all proposed requirements outside its statutory authority to EPA and/or state air agencies. This will avoid duplication and provide certainty to the regulated community.

THE PETROLEUM ALLIANCE
OF OKLAHOMA

We appreciate the opportunity to provide comments on BLM's Proposed Rule. If you have any questions, please contact me at 405-601-2124. Thank you for your consideration of these comments.

Sincerely,

Angie Burckhalter

Angie Burckhalter
Sr. V.P. of Regulatory and Environmental Affairs