March 8, 2021

BEATTY & WOZNIAK, P.C.
ENERGY IN THE LAW

Produced Water Series, Part 3 of 4: Multi-State Regulatory Update for Produced Water

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Western states are actively reviewing their requirements for processing, handling, and disposing of produced water. This article provides an update on recent legislative and regulatory developments in New Mexico, Texas, Utah, Wyoming, and Colorado.

New Mexico

Some recent proposals have failed to advance but additional actions are anticipated in 2021. The legislature tabled Senate Bill 86, which would have prohibited spills, leaks, or other releases of oil, gas, and produced water. In addition, it would have required the use of produced water, recycled water, or treated water – not fresh water – for oil and gas well drilling and development at depths lower than protected freshwater resource zones.

The New Mexico Oil Conservation Commission canceled its planned April hearing on WildEarth Guardians (WEG) petition to adopt rules expressly prohibiting spills and releases of produced water, oil, and oilfield wastes (see our November 2020 summary) due to procedural defects in the petition that would have prevented WEG from presenting technical evidence at the hearing. The hearing was cancelled with the understanding that WEG, the New Mexico Oil Conservation Division (OCD), and the New Mexico Oil and Gas Association will work together to propose a rulemaking to prohibit "major or minor releases." Depending on how quickly OCD files the petition, a hearing could occur as soon as May 2021.

The New Mexico Environment Department (NMED) is developing rules to protect water quality and restrict the use of untreated produced water off the oilfield (see our January 2021 summary). NMED also plans to propose new methane and ozone regulations in early 2021 which may impact evaporation ponds. The July 20, 2020 initial draft rule proposed to require passing liquids through a tank prior to unloading into a pond to reduce VOC emissions, installing an impermeable continuous barrier or cover over "the entire surface area of the liquid," and routing emissions from the pond to a control device. The Department is revising the draft in response to public comments.

Texas

On January 15, 2021, the U.S. Environmental Protection Agency authorized the Texas Commission on Environmental Quality (TCEQ) to regulate discharges of produced water,

hydrostatic test water, and gas plant effluent within the State of Texas and extending three miles offshore, pursuant to the Clean Water Act Section 402 (National Pollutant Discharge Elimination System). Operators may now apply to the TCEQ for a permit to discharge produced water to water within the State of Texas.

While produced water treatment remains relatively expensive, the EPA authorization should make it easier for operators in Texas to discharge treated produced water that meets applicable standards. In addition, State Senator Charles Perry introduced Senate Bill 601 to create the Texas Produced Water Consortium to study the economics and technology of beneficial uses of produced water.

Utah

The Utah Division of Air Quality, EPA Region 8, and the Ute Indian Tribe jointly published a November 2020 white paper on produced water disposal facility emissions. The air agencies concluded, based on sampling data, that emissions from produced water skim ponds and evaporation ponds were nearly ten times greater than previously reported. The agencies are currently evaluating industry comments. While Utah has not announced specific policy or regulatory changes, the state has identified produced water ponds as a significant source of ozone precursor emissions.

Wyoming

WDEQ's Air Quality Division, in collaboration with the Utah State University and GSI Environmental, Inc., developed an emissions estimation tool called the Wyoming Pond Emissions Calculator (WYPEC). WDEQ published draft guidance in October 2020 for permitting air emissions from new and existing ponds and pits at oilfield waste disposal facilities. Under the draft guidance, new facilities must obtain air permits before construction. Existing facilities would have to collect samples and potentially apply for air permits.

Colorado

The Colorado Oil and Gas Conservation Commission (COGCC) "mission change" rulemaking includes several new requirements affecting produced water that took effect on January 15, 2021. COGCC 800 and 900 Series Rules. The COGCC intends to track produced water "from cradle to grave." New requirements include:

- Analyzing produced water for radium and other constituents.
- Elimination of a provision that allowed disposal of produced water by roadspreading.
- Minimizing air emissions from pits and prohibiting pits above certain emissions limits. Certain pits used for produced water reuse or recycling are exempt.
- Expanded requirements to submit waste management plans, which may include reuse and recycling plans.
- Fencing and netting for all new and some existing pits.
- Additional requirements for approval of injection wells.
- Seismic monitoring of certain Class II UIC wells.

The Board of Health adopted a new Regulation 20 governing Technologically Enhanced Naturally Occurring Radioactive Material (TENORM), including produced water and other non-exempt exploration and production waste meeting threshold concentrations of radioactive substances, effective January 14, 2021. Wastes subject to the rule require a TENORM determination and may be subject to registration or a specific radioactive materials license. The rule becomes enforceable on July 14, 2022, to allow operators time to characterize materials and come into compliance.

Produced water regulations are rapidly evolving. Successfully managing produced water as a resource, rather than a waste, will become increasingly important to operator's bottom lines. Please contact Nicole Blevins and Chris Colclasure for additional information.