

## Energy Trends: Is EPA Entering Its “Development Phase” for Important Oil and Gas Rules?

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One of this Administration’s top priorities is to improve the nation’s energy policy by [removing unduly burdensome regulations](#). The past year has brought considerable EPA action on rules affecting electric utilities, with multiple proposed rules regarding the Clean Power Plan and [possible replacement](#). Addressing regulations affecting the oil and gas sector is also a key part of this Administration’s energy policy. As 2018 draws to a close and 2019 is on the horizon, EPA appears to be ramping up regulatory actions affecting oil and gas sources. EPA’s section of the Fall 2018 Unified Agenda of Regulatory and Deregulatory Action (“Unified Agenda”) provides an updated timeline for the agency’s priorities, including several important oil and gas rules.

### **New Source Performance Standards for Oil and Gas Sources (“Quad Oa”)**

This fall, EPA began the process of revising the New Source Performance Standards for Oil and Gas Sources in 40 C.F.R. Part 60, Subpart OOOOa (“Quad Oa”) by publishing a proposed rule in October. [83 Fed. Reg. 52056 \(Oct. 15, 2018\)](#). EPA issued Quad Oa in 2016, just a few years after it reviewed and revised the oil and gas NSPS under CAA Section 111 by issuing Quad O, which obtained reductions in methane emissions indirectly by requiring detection and correction of leaks of VOCs. In Quad Oa, EPA regulated greenhouse gas emissions from oil and gas sources (“expressed” as methane) and instituted leak detection and repair requirements directly for methane.

The October 2018 proposed rule seeks to streamline compliance with Quad Oa with several technical amendments and address inadvertent errors in Quad Oa with technical corrections. Key elements of this proposal include: decreased frequency of well site monitoring, longer time periods for repairing leaks, enhanced ability to satisfy federal requirements by complying with state fugitive emission requirements (the alternative means of emissions limitations, or AMEL provisions). EPA intends to move on these changes quite quickly. In the Unified Agenda, EPA says it intends to [finalize the technical corrections rule in April of 2019](#).

Further changes are in the pipeline for Quad Oa: EPA plans to propose another rule that will address the Administration’s policy positions in Quad Oa. With few details available, it is difficult to anticipate what may be in this rule. However, looking at issues that have been raised in industry challenges to

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Quad Oa,<sup>[1]</sup> we can theorize that EPA may address issues such as the size and scope of the source category, the legal justification for regulating GHGs expressed as methane, and the factual case for regulating methane instead of achieving methane reductions from VOC controls, like Quad O did. In the Unified Agenda, EPA says it plans to [propose this rule in December of 2018 and finalize it by June of 2019](#).

## Control Technique Guidelines Withdrawal

In March, EPA published its proposal to withdraw the Control Technique Guidelines (“CTG”) for oil and gas sources. [83 Fed. Reg. 10478 \(Mar. 9, 2018\)](#). EPA issued the CTG in 2016 to provide states with guidance on how to reduce VOC emissions from oil and gas sources in certain ozone nonattainment areas. 81 Fed. Reg. 74798 (Oct. 26, 2016). States use CTGs to determine reasonably available control technology (“RACT”) to help areas come into attainment. Critically, if EPA issues a CTG for sources that emit VOCs, many states become obligated to revise their State Implementation Plans (“SIPs”) to implement RACT for those sources. This SIP revision requirement applies to states with moderate, serious, severe, and extreme nonattainment areas and states in the ozone transportation region (“OTR”). See CAA 182(b)(2)(A) (requiring states with moderate nonattainment areas to revise their SIPs to implement RACT for “Each category of VOC sources in the area covered by a CTG document issued” by EPA between Nov. 16, 1990 and the NAAQS attainment date); CAA 182(c)-(e) (applying requirement to serious, severe, and extreme nonattainment areas); CAA 184(b) (applying requirement to OTR states).

EPA plans to finalize the CTG withdrawal [this December](#). The withdrawal only affects how states address non-major sources; sources that exceed major source thresholds for RACT review will still need to determine RACT. (The RACT major source thresholds are 100 tpy in Moderate areas, 50 tpy in Serious areas, 25 tpy in Severe areas, and 10 tpy for Extreme areas). EPA’s withdrawal of the CTG will remove the SIP revision requirement for many states, thus “reliev[ing] state, local, and tribal air agencies of the requirement to address RACT for nonmajor sources in this sector (and the associated need to consider the recommendations in the CTG for the time being).” 83 Fed. Reg. at 10479. EPA notes, however, that this withdrawal “will not hinder states from establishing, where desired or otherwise required, emission standards for sources in the oil and natural gas industry, including standards based on the recommendations contained in the withdrawn CTG.” *Id.*

## Reconsidering the Oil and Gas NESHAP: The Less Famous Half of EPA’s 2012 Rulemaking

In 2012, in the same final rule as Quad O, EPA also revised the NESHAP for oil and gas sources. Under CAA Section 112, EPA conducted the required residual risk and technology review for the prior MACT standard and issued a revised NESHAP. This part of the 2012 rule has not received quite as much attention as Quad O, but there are many important issues regarding these standards for hazardous air pollutants from oil and gas sources. In 2012, EPA agreed to grant portions of administrative reconsideration petitions, and this administrative process has paused litigation on the 2012 NESHAP, which has been pending before the D.C. Circuit for several years.

EPA is planning to conclude that process by [July of 2019](#). Depending on the outcome, we can expect the currently stayed D.C. Circuit litigation on the 2012 NESHAP to spring back to life, along with the possibility of additional litigation on any changes EPA adopts in 2019/2020.

## Revision of Tribal Minor NSR FIP for Oil and Gas Sources

In May, EPA proposed to revise its current FIP for minor oil and gas sources on tribal lands. [83 Fed. Reg. 20775 \(May 8, 2018\)](#). Specifically, EPA proposed to apply the FIP to the Uintah and Ouray Reservation, which includes an area that will be designated nonattainment for the 2015 ozone NAAQS. This rule has a small direct footprint on oil and gas sources because it addresses a small geographic area. This rule is of interest more broadly, however, because it touches on EPA's discretionary authority to issue FIPs and otherwise streamline minor source NSR compliance in nonattainment areas.

EPA stated it intended to [issue the final rule in October](#), but it has not yet done so.

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