



October 21, 2011

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Heard It Through The Pipeline

Environmental Law Compliance & Enforcement for Energy Producers Conference U.S. Department of Justice October 18, 2011 Great Falls, Montana

Over eighty people attended the full-day conference “Environmental Law Compliance and Enforcement Issues for Energy Producers in North Central Montana”. Attendees included 18 oil/gas companies, 3 wind companies, federal and state agency personnel and representatives of two oil and gas association including the Montana Petroleum Association.

Opening Remarks:

Conference leader, Robert S. Anderson, senior counsel in the environmental crimes section of the US Attorney’s office based in Missoula opened with a brief statement. He pointed out that the criminal violations of the clean water/air act, migratory bird act, bald/golden eagle protection act) are prosecuted by his office, and he would rather educate the oil and gas industry about how to avoid criminal violations rather than meet in the court room.

US Attorney for the District of Montana Michael Cotter spoke next with an introductory statement. He gave a short history on US oil consumption and a statement about how the Obama administration supports domestic production and encourages development on federal lands. Mr. Cotter pointed out that despite current environmental law being 40 to 60 years old, it is apparently not completely understood. His goal was to make sure we had an opportunity to learn and discuss application at the field level and educate wind and oil and gas operators. Cotter emphasized that environmental law enforcement was a high priority in the US Attorney’s office in this District. He closed with a personal statement, “wells in the Bakken are highly profitable with a life expectancy of 28 years and will produce an average of 550,000 barrels over the life of a well. Each well will generate \$20 million in profit, so there is no cost factor when discussing compliance with environmental law.”

Regulatory Agencies

Bureau of Land Management Don Judice, petroleum engineer and field manager in Great Falls, Montana, gave a presentation on the authority of the BLM and the regulations that apply to all environmental protections including bird mortality. Don had examples of poor “workmanship” on locations in north central Montana. He used both positive and less than positive examples of compliance by industry members. He emphasized contacting him or his staff when an operator discovers a spill or other environmental mishap. He gave assurance that the BLM would work with the

operator and authorize actions to resolve the situation. He called on operators to be “workman-like”, be proactive and be diligent. The violation notice process drew questions from industry members as did pit netting. Don repeated that oil is not allowed in pits even if netted.

Montana Board of Oil and Gas Conservation Northern District supervisor Gary Klotz gave a presentation of state rules and regulations under the authority of MBOGC. He recommended utilizing skim pits which are easier than the larger pits to fence, screen and net and to recover any oil releases. He also covered the new hydraulic fracturing rules that became effective August 2011.

Mary Clare Weatherwax and George Rutherford from the Blackfeet tribe reviewed the list of tribal regulations and permits that must be obtained, even if the operator has gotten Montana Board of Oil and Gas Conservation permits. Seismic operations need permits too. They were clear that hydraulic flow back water and pit contents have to be removed from the reservation and disposed of elsewhere. Pits are to be lined and reclaimed using clean fill dirt. Grinnell Day Chief, the oil and gas director for the Blackfeet, finished their program by pointing out the high value the tribe places on environmental protection. He asked for industry compliance otherwise permits would not be issued.

EPA Criminal Enforcement

Robert Mardsen, EPA’s Resident Agent in Charge in Helena, Montana, gave a presentation that covered the CWA, CAA, RCRA, Safe Drinking Water Act, and Title 18 Criminal offenses like fraud and conspiracy. He said his office deals with the most egregious violations and violators. He reviewed several EPA cases in each of the different areas and spent some time with the SDWA and underground injection. He pointed out how the mental state of “knowing and willful intent” played into the cases. Mardsen promised quick action on environmental crimes.

US Fish and Wildlife Service

Brent Esmoil, deputy field supervisor USFWS Helena, Montana, presented on minimizing risk to birds at energy production sites. This presentation covered wind, transmission lines and oil and gas field structures. He talked about both Endangered Species Act animals as well as birds covered by the Migratory Bird Treaty Act. Over 900 species of birds are covered under the Migratory Bird Treaty Act. He explained and photo-illustrated oil impacts on birds and showed examples of good and bad industry practices. He brought up that the BLM-required netting mesh size of 1.5 inches may not be adequate to safeguard some song birds. He believed the Miles City BLM office was ordering use of ¾ inch mesh. One attendee lamented that he had just purchased a lot of 1.5 inch mesh netting and that if a different mesh size is going to be required, it should be in rule or guidance so he knows ahead of time.

Special agent Brian Lakes of the USFWS in Great Falls, Montana, reviewed the processes at the forensic laboratory in Ashland, Oregon, where veterinary pathologists determine the species and cause of death of bird and small animal remains which have been retrieved from oil/gas field pits. He said his office uses reports from the laboratory in their investigations. He said the USFWS issues warning notices, issues violation notices, and requests prosecution from the US Attorney’s office. He noted that their authority is within the boundaries of the U.S., on all lands.

US Attorney’s Office

Conference leader, Robert Anderson, senior counsel in the environmental crimes section of the US Attorney’s office, returned to the podium for a full presentation on the different federal acts and what

the criminal penalties are. There was some discussion about the availability of incidental take permits for endangered species that can be issued to industrial applications. He was clear that no permits for incidental take are allowed under the Migratory Bird Treaty Act, only the ESA. He also pointed out that the MBTA is a strict liability act and that they usually win in court. He went through several examples. Anderson expressed his belief that violation fines were simply shrugged off as a cost of doing business by oil/gas companies. He made one statement that many companies would happily write checks for \$1,000 all day long and not mind at all. Earlier in the day EPA's Robert Marsden made a related comment saying company management "can't pass jail time on as a cost of doing business."

Industry Example

The last presenter Tommy Overstreet, a retired Texas law enforcement agent who was hired by an oil company to manage a recently purchased oil property in North Central Montana, related his experiences with fixing a flowline rupture on a 40 degree slope in dead of winter and his positive experience of working through it with the Great Falls BLM office.

Presentations to be available

All presentations were on power point and will be sent to meeting participants on a CD. Senior counsel Anderson's presentation was handed out and is attached.

The DOJ and BLM do intend to hold a meeting in eastern Montana at a time and location yet to be determined.



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Select Committee of Government Efficiency

During the 2011 legislative session, HB 642 was passed that created a "select legislative committee" to look at government efficiency in four areas. The areas are priority budgeting, medical care, government information technology and natural resource development. To date, the committee has met twice and the natural resource segment is set for later in the year. Please take a look at the bill <http://data.opi.mt.gov/bills/2011/billpdf/HB0642.pdf>. Please pay particular attention to section 2 paragraph C. MPA will be working to develop a statement to the committee as the issue arises. I am very concerned about the fact we must have a statement, and we must think that statement through carefully. Your thoughts would be appreciated.

MPA E&S Committee

MPA has an Environment & Safety Committee scheduled for Monday, October 17th at 1:30pm at the Crowne Plaza Hotel in Billings. The agenda and some background material are on the MPA website, www.montanapetroleum.org. You will need your membership username & password to access the background material we have posted to date in the Members Only page of the website. Normally I would just advise the committee members of the meeting, but since the topics are so important and we have so many new members, I want to make sure you all are aware. All MPA members are invited, but we would like to have you RSVP to mpa@montanapetroleum.org. We will make a phone conference available. Keep in mind that we try to hold these meetings on a quarterly basis (or fewer), and I hope these meetings are worth your time to attend. MPA understands that travel is expensive and time consuming, but it is very hard to make conference calls work for those on the call. The room is big and there are sound issues both for those at the meeting and those on the call. However, given the importance of the issues on the agenda a call in number has been arranged.

Dial In Number: 800-326-0013

Conference ID: 2050982#

Secretary of Energy Advisory Board Report

Most likely, many of you have seen this report from the Secretary of the Department of Energy dated August 18th, 2011. I call your attention to this report because they have made several recommendations to the President that will be difficult to implement. If you are not familiar with this report please spend a few minutes reviewing. MPA has copies of comments from national industry associations, but I want to understand comments from operators in Montana. Last week, staff from Senator Max Baucus asked what we thought of the report and I intend to provide him a response. Your thoughts would be appreciated. The advisory committee report can be seen at this link: http://www.shalegas.energy.gov/resources/081811_90_day_report_final.pdf

Water Issues

There is an old saying in Montana, "Whisky is for drinking, Water is for fightin". The Water Policy Interim Committee will be looking at exempt wells and water use across the State with all eyes on use by subdivision developers. MPA would like to thoroughly understand water use in well construction and completion. Please send an email to dave@montanapetroleum.org with the contact information of people in your company whom I can visit with about water use issues. MPA is monitoring the actions of the committee and will be sure to keep our interests at the table.

Migratory Birds

My friends, as you know the BLM sent the attached information to several north central oil and gas companies for a meeting in Great Falls on October 18th. Here is what I know. The USFWS wanted me to give them all MPA member's names and addresses so they could mail an invite. I refused, but offered to email the invite to all MPA members once they had details. BLM helped the USFWS by sending the invite to those noted companies in north central Montana. MPA was then contacted by USFWS to invite all our members. When I asked if they were going to hold a meeting in eastern

Montana, the answer was, if we get a good turnout in Great Falls. Since there is no assurance that they will hold another meeting, I think each of you should make every effort to attend. Behind all this, is the U.S. Attorney's office, they are the ones who are calling the shots and want to speak with industry. Given there are several criminal cases regarding migratory birds on going in North Dakota with members of our industry, it would be prudent to attend. MPA strongly urges your attendance.

Articles of Interest:

<http://www.mtpr.net/commentaries/1046> Dave Galt comments on the Keystone XL Line on Montana Public Radio.