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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

STATE OF WYOMING, et al., Petitioners, v. UNITED STATES DEPARTMENT OF THE INTERIOR, et al. Respondents.	Civil Case No. 2:16-cv-00285-SWS [Lead] Consolidated with: Case No. 2:16-cv-00280-SWS Assigned: Hon. Scott W. Skavdahl

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REPLY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION OR VACATUR OF CERTAIN PROVISIONS OF THE RULE PENDING ADMINISTRATIVE REVIEW

After filing the lawsuit to halt implementation of the unlawful Waste Prevention Rule, 81 Fed. Reg. 83,008 (Nov. 18, 2016), VF_360 ("the Waste Prevention Rule"), Petitioners Western Energy Alliance ("Alliance") and the Independent Petroleum Association of America (collectively, "Industry Petitioners") and their members continue to incur irreparable harms and be denied the relief they originally sought over sixteen months ago.[1] Industry Petitioners' members must expend approximately $115 million to comply with the Waste Prevention Rule or risk enforcement and penalties for non-compliance unless wells are shut in, among other harms. These harms are significant and ongoing each day the rule remains in effect. Preliminary relief is necessary to avoid these harms.

Alternatively, the Court should exercise its equitable discretion and vacate the Core Provisions[2] of the Waste Prevention Rule in light of BLM's proposal to revise it, *see* 83 Fed. Reg. 7924 (Feb. 22, 2018) ("Proposed Revision Rule"). Further, the Court must vacate the Core Provisions of Waste Prevention Rule if the Court determines they are unreviewable because of ripeness or prudential mootness concerns.

ARGUMENT

I. A Preliminary Injunction is Warranted

A. Proceeding to the Merits Absent Immediate Relief is Not Appropriate

Proceeding to brief merits of this litigation would continue to deny Industry Petitioners the immediate relief necessary to avoid significant, unrecoverable harms. Amongst the parties to this litigation, Industry Petitioners are uniquely suffering actual, permanent, and irreparable harms every day the Waste Prevention Rule remains in effect. *See* Section I.C., *infra*; Dkt. No.

[1] The administrative record is cited as AR "[page number]," excluding leading zeros.

[2] *See* Dkt. No. 197 at 1 n.1.

197. These include the obligation under § 3179.305 to provide the first annual report of the previous year's Leak Detection and Repair (LDAR) inspection activities a mere eight days from today (March 31st), in addition to the harms described in Sections I.C and D, *infra*. VF_441.[3] Industry Petitioners have sufficiently demonstrated these harms warrant immediate preliminary relief should the Court decide to proceed to the merits.

B. Collateral Estoppel or Issue Preclusion Does Not Bar Industry Petitioners' Request for a Preliminary Injunction

The Respondent-Intervenors argue that Industry Petitioners' request for preliminary relief is barred by the doctrines of collateral estoppel or issue preclusion. *See* State Respts' Resp. at 7–8; Citizen Group's Resp. at 7–9. This argument is legally incorrect and ignores the changes in this case over the last year. A court is not bound by its original decision on a preliminary injunction and may reach a different conclusion based on additional evidence or changed circumstances. *See Nw. Pallet Supply Co. v. Peco Pallet, Inc.*, No. 3:15-CV-50182, 2016 WL 8671902, at *1 n.2 (N.D. Ill. May 13, 2016) (plaintiff is not precluded "from seeking subsequent preliminary relief based on changed circumstances."); *see also* 18A Charles Alan Wright *et al*., Fed. Prac. & Proc. Juris. § 4445 (2d ed.) ("Even if the same matters arise again in a similar interlocutory setting, preclusion should be defeated if there is a reasonable prospect that a different preliminary showing can be made on the merits or on the balance of hardships.").

Here, the Court is well aware of the events of the past fourteen months and how dramatically circumstances have changed. Most significant is the fact that for nearly six months

[3] This report must be accompanied by a certification from a responsible officer that the information in the report is true and accurate to the best of the officer's knowledge. VF_441. Civil and criminal sanctions accompany such a certification, yet for many companies, compliance is impossible due to the six-month delay of the rule during 2017. *See* Dkt. No. 197, Ex. 3 ¶ 11.

during 2017, the Waste Prevention Rule was not in effect and industry reasonably delayed spending millions of unrecoverable dollars until the regulatory uncertainty lifted. *See* Dkt. No. 197 at 2. Thus, the circumstances guiding the Court's prior conclusion that the rule did not present immediate harms have materially changed. *See* PI Order at 25. These harms are now not only immediate but ongoing. These changes justify preliminary relief from the Core Provisions of the Waste Prevention Rule.

C. Industry Petitioners are Currently Suffering Irreparable Harm

Respondent-Intervenors minimize the irreparable harms Industry Petitioners are suffering to the point of suggesting no harms are occurring at all. *See* Citizen Groups' Resp. at 14 ("Industry Petitioners' unsubstantiated and generalized allegations . . ."); State Respts' Resp. at 9–13 (Industry Petitioners' allege speculative harms of their own making). Respondent-Intervenors' position is absurd. At a minimum, the Waste Prevention Rule requires Industry Petitioners to install millions of dollars of emission-control equipment on thousands of wells operating on federal and Indian leases or alternatively shut in wells that cannot bear these costs. *See generally* VF_552 (2016 Regulatory Impact Assessment). For example, BLM estimated that each year operators must: (1) conduct LDAR inspections at 36,700 well locations, VF_537; (2) control or replace 7,950 existing diaphragm pumps, VF_507; (3) replace 5,040 existing high-bleed pneumatic controllers, VF_502; (4) install meters on as many as 3,680 existing flare stacks, VF_497-498; (5) comply with best management practices for liquids unloading at 1,575 new and existing wells, VF_509; and (6) install controls on approximately 300 storage tanks, VF_520.[4] Failure to comply with these requirements risks civil penalties unless an operator can

[4] Industry Petitioners maintain estimates of the scope and cost of the Waste Prevention Rule, while significant, are low and the impacts are actually greater than BLM estimated. *See, e.g.*, VF_33580; VF_33583; VF_33585; VF_33613; VF_33621.

obtain an exemption.[5] *See* 43 C.F.R. § 3163.2. The Supreme Court has recognized such harms compel judicial review. *Abbott Labs. v. Gardner*, 387 U.S. 136, 154, (1967), *abrogated by Califano v. Sanders*, 430 U.S. 99 (1977) (finding harm when a rule required an industry "to make significant changes in their everyday business practices" and failure to do so resulted in exposure "to the imposition of strong sanctions").

This Court has already recognized the $110 to $279 million annual compliance costs attached to the Waste Prevention Rule are "certain and significant" and "unrecoverable from the federal government." PI Order at 25. Although Respondent-Intervenors argue compliance costs do not constitute irreparable harm, the cases they cite hold otherwise when compliance costs cannot be recovered later for reasons such as sovereign immunity. *See, e.g.*, *Mexichem Specialty Resins, Inc. v. E.P.A.*, 787 F.3d 544, 555 (D.C. Cir. 2015).

Importantly, compliance costs are not the only harms facing oil and gas operators. *See generally* Ex. 1, Sgamma Decl. ¶¶ 10–13.[6] Most immediately, operators must submit a report of LDAR activities in 2017 on March 31, 2018. *See* 43 C.F.R. § 3179.305. Having been suspended for nearly six months during 2017, it is impractical for many operators to complete the necessary LDAR surveys in the 29 days since reinstatement of the rule given the sheer number of wells involved to constraints with availability of equipment and personnel. *See* Ex. 1, Sgamma Decl.

[5] Even if the exemption process provided Industry Petitioners with practical relief, which they do not *see e.g.*, VF_31721;VF_31805, it requires the submittal of thousands of sundries, adding to an already existing backlog. *See* VF_31833. As explained in Section I.D, *infra*, BLM is not prepared to process these applications, rendering the exemption process unavailable and meaningless at this point in time.

[6] Respondent-Intervenors make much of the fact Ms. Sgamma's Declaration submitted on February 28, 2018 is similar to her Declaration submitted on October 27, 2017. *See* State Respts' Resp. at 10 n.6; Citizen Group Resp. at 13 n.5. The estimated impacts of the Waste Prevention Rule in October 2017 were largely the same in scope and nature as now because the rule was suspended between December 8, 2017 and February 22, 2018. Ms. Sgamma acknowledges that the estimates "have not materially changed" since October 2017. Dkt. No. 197, Ex. 3 ¶ 10.

¶ 11; Dkt. No. 197, Ex. 3 ¶ 11. Now that all provisions of the rule are arguably in effect, Industry Petitioners' members risk enforcement, penalties, and additional royalty for noncompliance.[7] *Id.* Even State Respondents concede such harms are irreparable. State Respts' Resp. at 12 (recognizing "the threat of enforcement" and "potential penalties" constitute irreparable harm). These risks are heightened by the fact that BLM and the Office of Natural Resources Revenue (ONRR) cannot enable operators to comply with the rule. When asked, BLM cannot provide operators with technical guidance on implementation and, in some cases, has directed operators to submit outdated information. Ex. 1, Sgamma Decl. ¶¶ 12, 13. ONRR also has not created or updated the reporting systems necessary to allow operators to submit production reports consistent with the new rule. *Id.*

Respondent-Intervenors attempt to rebut Industry Petitioners' alleged harms by pointing to BLM's rosy, but inaccurate, assessment of the rule's impacts. *See* State Respts' Resp. at 12–13; Citizen Groups' Resp. at 14. They specifically point to BLM's meaningless estimates that the Waste Prevention Rule will decrease per-company profits by 0.15 percent and reduce crude oil production by 3.2 million barrels per year.[8] *Id.* These self-serving statements ignore the entire

[7] The Citizen Groups criticize Industry Petitioners for not identifying companies that cannot comply with the Waste Prevention Rule. Citizen Groups' Resp. at 15. Identifying such companies would expose them to public scrutiny and potential future enforcement. Respondent-Intervenors have aggressively sought information from the Environmental Protection Agency related to its regulation of methane from the oil and gas industry. *See, e.g.*, Ex. 2, Freedom of Information Act Request from Natural Resources Defense Council to EPA (Mar. 7, 2017) (seeking submissions by oil and gas operators related to sources of methane emissions and emission control devices); Ex. 3, Freedom of Information Request on behalf of Mr. Xavier Becerra, Att'y Gen. for California (Nov. 21, 2017) (seeking LDAR reports and other records submitted by oil and gas operators as required by 40 C.F.R. subpart OOOOa).

[8] To assess irreparable harm necessary for the issuance of a preliminary injunction, this Court is not bound by BLM's determinations in the administrative record. *See generally Sierra Club v. Envtl. Prot. Agency*, 292 F.3d 895, 898 (D.C. Cir. 2002) (allowing courts to consider evidence outside administrative record to assess Article III standing).

history and record of this case. Industry Petitioners have spent the last two years, first in comment and then in litigation, disputing BLM's reliance on per-company profits and inaccurate forecasts about the rule's impacts on crude oil production, among other projections. *See* VF_33613, VF_33618; *see also* Dkt. No. 84 at 5; Dkt. No. 197, Ex. 3 ¶ 10. In sum, Respondent-Intervenors incorrectly minimize Industry Petitioners' ample evidence of harm and Industry Petitioners have met their burden of demonstrating clear and serious irreparable harm necessary for preliminary relief.

D. The Balance of Harms and Public Interest Favor Industry Petitioners

Despite their criticisms of Industry Petitioners' alleged harms, the Respondent-Intervenors themselves offer only speculative and overstated benefits of the Waste Prevention Rule. They almost exclusively argue that enjoining the Waste Prevention Rule will cause climate change and air quality impacts, thus reinforcing that it improperly regulates air quality rather than waste. *See* State Respts' Resp. at 14–16; Citizen Groups' Resp. at 18–19. Furthermore, these alleged benefits will not be realized immediately given the time it will take operators to come into full compliance and may never be realized by the time a new rule is finalized. *Compare* Citizen Groups' Resp., Ex. 2 at ¶ 7, Ex. 3 at ¶ 28 *with* Dkt. 197, Ex. 1 ¶ 11. The Respondent-Intervenors then undermine their contention that the rule is absolutely necessary to avoid these harms by acknowledging that some operators are already complying with the rule. *See* Citizen Groups' Resp. at 15. Further, Respondent-Intervenors overlook the Court's prior conclusion that "a preliminary injunction would not be adverse to the public interest in resource conservation" because the Environmental Protection Agency and states currently regulate emissions from oil and gas production and BLM has other effective regulations. *See* PI Order at 28.

In weighing the public interest, the Court must also consider that neither BLM nor ONRR is in any position to effectively administer the Waste Prevention Rule. Although the rule compels operators to expend millions of dollars to comply with it, BLM itself acknowledges the agency has only limited resources and is unprepared to administer the rule. Dkt. No. 207 at 13. This aligns with Alliance members' recent experience. Since the Waste Prevention Rule was reinstated one month ago, some operators have attempted to comply but encountered widespread confusion and uncertainty within BLM and ONRR over its implementation. *See* Sgamma Decl. ¶ 12, 13. These agencies are unable to provide industry with guidance on how to implement the rule or respond to questions. *Id.* BLM field offices have indicated that there has been no staff training on rule implementation or formal written directives or other guidance from BLM headquarters. *Id.* ¶ 13. Likewise, operators cannot submit royalty reports to ONRR that reflect royalty calculations as required by the rule because ONRR has not updated its processing system to accommodate the rule's new framework. *Id.* ¶ 12. The Court should not impose a higher burden on Industry Petitioners to comply with the rule than BLM and ONRR bear to implement it. Moreover, BLM's lack of readiness has effectively made full compliance impossible. Accordingly, the balance of harms and public interest favor a preliminary injunction.

E. Industry Petitioners are Likely to Succeed on the Merits

The Court is well aware of its serious concerns about the statutory authority for the Waste Prevention Rule. *See* PI Order at 15-19; Dkt. 197 at 9-10. Since then, BLM has strongly echoed those concerns. *See* Proposed Revision Rule, 83 Fed. Reg. at 7,927 (recognizing this Court's "concerns that the BLM may have usurped the authority of the EPA and the States under the Clean Air Act" and stating "the BLM is not confident that all provisions of the 2016 final rule would survive judicial review"). Although BLM has not expressly concluded provisions of the Waste Prevention Rule exceeded the agency's statutory authority, BLM tellingly omitted nearly

all of the Core Provisions from the Proposed Revision Rule. *See* 83 Fed. Reg. at 7,928 (proposing to rescind "emissions-targeting provisions of the 2016 final rule"). Accordingly, Industry Petitioners are likely to succeed on the merits of their claim that the Core Provisions were promulgated without statutory authority and are arbitrary and capricious on this record.[9]

In sum, should the Court decide to proceed to the merits, Industry Petitioners have met all four elements necessary for preliminary relief, and such relief is necessary to prevent ongoing, serious, and irreparable harms.

II. THIS COURT SHOULD VACATE THE WASTE PREVENTION RULE

This Court may alternatively invoke its equitable powers and vacate the Core Provisions of the Waste Prevention Rule while BLM completes its ongoing rulemaking process. The Court, however, must vacate the Waste Prevention Rule if it determines concerns of ripeness or prudential mootness render the rule unreviewable.

A. The Court Should Vacate the Core Provisions of the Waste Prevention Rule While BLM Completes Its Rulemaking Process

Vacatur of the Core Provisions of the Waste Prevention Rule is a lawful and equitable remedy in light of BLM's Proposed Revision Rule. The Court of Appeals has recognized that district courts have "considerable discretion" to fashion equitable remedies. *Stichting Mayflower Recreational Fonds v. Newpark Res., Inc.*, 917 F.2d 1239, 1245 (10th Cir. 1990). "Vacatur is an equitable remedy . . . and the decision whether to grant vacatur is entrusted to the district court's

[9] Respondent-Intervenors incorrectly frame Industry Petitioners' request as seeking the "same suspension of regulatory requirements that the Northern District of California found to be illegal." *See* State Respts' Resp. at 21; Citizen Group's Resp. at 25. Industry Petitioners, however, simply seek what they have sought since November 2016—relief from the obligation to comply with the illegally promulgated Core Provisions of the Waste Prevention Rule. It is ironic that Respondent-Intervenors now express concern with efficiency and urge this Court to exercise "comity" when they have twice fled the jurisdiction of this Court in pursuit of a more preferable forum. *See e.g.*, Citizen Group's Br. at 7.

discretion." *Nat'l Ski Areas Ass'n, Inc. v. U.S. Forest Serv.*, 910 F. Supp. 2d 1269, 1285 (D. Colo. 2012) (quoting *Rio Grande Silvery Minnow v. Bur. of Reclamation*, 601 F.3d 1096, 1139 (10th Cir. 2010) (Henry, J., dissenting)). By publishing the Proposed Revision Rule, BLM is effectively treating the Waste Prevention Rule as remanded. *See Limnia, Inc. v. U.S. Dep't of Energy*, 857 F.3d 379, 387 (D.C. Cir. 2017) (describing remand as "entail[ing] further agency action on the agency decision under review"). This Court should accommodate BLM's review and vacate the Core Provisions to accompany BLM's effective remand.

The Federal Respondents do not provide any substantive objections to vacating the Waste Prevention Rule in whole or in part. Federal Respts' Resp. at 7. Only the Respondent-Intervenors oppose vacatur and, in doing so, distort the sound holdings of sister courts.

First, the Respondent-Intervenors incorrectly claim that this Court must find the Waste Prevention Rule invalid to vacate the Core Provisions. For the Citizen Groups, this argument is nothing more than one of convenience because two of the Citizens Groups have invoked this very remedy when it benefited their own interests.[10] *See* Ex. 4, Pet'rs' Resp. to Federal Respts' Mot. for Voluntary Remand & Vacatur, Dkt. No. 77, *Ctr. for Native Ecosystems v. Salazar*, No. 1:09-cv-01463, at 2 (D. Colo. June 3, 2011) And, not only is the Citizens Groups' newfound position convenient, it is wrong. "[V]acation of an agency action without an express determination on the merits is well within the bounds of traditional equity jurisdiction." *Ctr. for Native Ecosystems v. Salazar*, 795 F. Supp.2d 1236, 1241–42 (D. Colo. 2011). Courts may vacate an agency action even though the "gravity of the agency's errors . . . remains in question to a large extent." *See ASSE Int'l, Inc. v. Kerry*, 182 F. Supp.3d 1059, 1065 (C.D. Cal. 2016).

[10] Specifically, Natural Resources Defense Council and Center for Biological Diversity argued that a court "may exercise its authority to remand and vacate the agency action under review without conducting the full inquiry into the merits that would otherwise be required."

Therefore, this Court may vacate the Core Provisions of the Waste Prevention Rule at this stage of the litigation.

Second, the Respondent-Intervenors suggest that another court or authority must cast doubt on the propriety of the Core Provisions before this Court may vacate them. *See* Citizen Groups' Resp. at 25; State Respts' Resp. at 29. Again, this is incorrect. To determine whether to vacate an agency rule, courts need only consider "the seriousness of the deficiencies in the completed rulemaking and the doubts the deficiencies raise about whether the agency chose properly from the various alternatives open to it in light of statutory objectives." *Ctr. for Native Ecosystems*, 795 F. Supp.2d at 1242. Here, the "serious deficiencies" with the Waste Prevention Rule already identified by the Court in its PI Order, *see* PI Order at 17, allow this Court to vacate the rule to allow BLM to review it.

Finally, the Citizen Groups argue that vacatur is inappropriate because BLM has not requested it. Citizen Groups' Resp. at 23. This distinction lacks any relevance. Courts invoke the same equitable considerations to determine whether to vacate an agency action pending remand, regardless of the party that requested it. *See Coal. of Ariz./N.M. Counties for Stable Econ. Growth v. Salazar*, No. 07–CV–00876, 2009 WL 8691098, at *3 (D. N.M. 2009) (responding to plaintiffs' request for vacatur pending remand); *see generally Allied-Signal, Inc. v. U.S. Nuclear Regulatory Comm'n*, 988 F.2d 146, 150–51 (D.C. Cir. 1993) (outlining the test for vacatur). Thus, the fact that the Federal Respondents have not requested vacatur of the Core Provisions does not preclude the Court from granting this remedy.

Fundamentally, the Respondent-Intervenors' objections to vacatur ignore both BLM's ongoing rulemaking effort and this Court's broad equitable discretion to craft an appropriate remedy. *See Nat'l Ski Areas Ass'n*, 910 F. Supp. 2d at 1285 ("As a matter of equitable

jurisdiction, this Court retains its full equitable authority to craft the appropriate remedy." (citing 5 U.S.C. § 702)). In cases in which courts have vacated an agency rule without ruling on its merits, the agency has sought remand of the rule to reexamine its decision and, possibly, correct its errors. *See Ctr. for Native Ecosystems*, 795 F. Supp.2d at 1238–40; *Coal. of Ariz./N.M. Counties for Stable Economic Growth*, No. 07–CV–00876, at *1; *ASSE Int'l*, 182 F. Supp.3d at 1063. Courts "routinely" grant such requests because they are consistent with agencies' inherent authority and minimize waste of judicial resources. *ASSE Int'l*, 182 F. Supp.3d at 1063. Therefore, this Court may vacate the Core Provisions while BLM completes its rulemaking.

B. This Court Must Vacate the Waste Prevention Rule if It is Unreviewable

Industry Petitioners maintain they are suffering real, immediate, and irreparable harms warranting preliminary relief. Should this Court disagree, however, and determine the Waste Prevention Rule is unreviewable because of mootness or ripeness concerns, the Court must vacate the rule.

The Respondent-Intervenors do not dispute the Federal Respondents' contention that the Waste Prevention Rule is unreviewable. *See* Citizen Groups' Resp. at 5–7; State Respts' Resp. at 20–21. Yet in their Responses, both the Federal Respondents and the Citizen Groups ignore that vacatur is the necessary remedy for an unreviewable rule, instead arguing that ripeness and mootness considerations compel a stay or dismissal of this case. *See* Federal Respts' Resp. at 8–11; Citizen Groups' Resp. at 5. Although Industry Petitioners question how a rule can be moot yet simultaneously impose compliance obligations, vacatur is the necessary remedy should the Court find the rule to be unreviewable.

The Supreme Court has held that when an agency action under judicial review becomes moot, courts must vacate the agency action. *A.L. Mechling Barge Lines, Inc. v. United States*, 368 U.S. 324, 329–31 (1961). The Courts of Appeals have endorsed this holding. *See, e.g.*, *Am.*

Family Life Ass. Co. of Columbus v. Fed. Commc'n Comm'n, 129 F.3d 625, 630 (D.C. Cir. 1997) ("Since *Mechling* we have, as a matter of course, vacated agency orders in cases that have become moot by the time of judicial review."); *see also Chamber of Commerce v. Envtl. Prot. Agency*, 642 F.3d 192, 210–12 (D.C. Cir. 2011) (declining to vacate under *Mechling* because petitioners lacked standing). Thus, vacatur is required should the Court find the Waste Prevention Rule unreviewable.

The cases Federal Respondents cite in support of staying the Waste Prevention Rule only reinforce the propriety of vacating it. In support of their argument that the Waste Prevention Rule is prudentially moot, the Federal Respondents cite *Rio Grande Silvery Minnow v. Bureau of Reclamation*, 601 F.3d 1096 (10th Cir. 2010), but omit that this decision compels vacatur rather than a stay. *See* Federal Respts' Resp. at 8–9. There, the Court of Appeals recognized that "when a case becomes moot on appeal, the ordinary course is to vacate the judgment below and remand with directions to dismiss." *Id.* at 1129 (quoting *Kan. Judicial Review v. Stout*, 562 F.3d 1240, 1248 (10th Cir. 2009)) (internal alterations omitted); *accord Southern Utah Wilderness Alliance v. Smith*, 110 F.3d 724, 729–30 (10th Cir. 1997). Accordingly, the authority on which Federal Respondents rely only further justifies vacatur of the Waste Prevention Rule.

The fact that this authority addresses whether the Court of Appeals must vacate a district court decision, rather than an agency decision, is irrelevant. The Supreme Court has recognized the same considerations apply to both. In *United States v. Munsingwear, Inc.*, the Court articulated the principle that when an issue resolved by a district court becomes moot while on appeal, the appellate court must vacate the unreviewed judgment. 340 U.S. 36, 41 (1950). In *Mechling*, the Supreme Court held that "the principle enunciated in *Munsingwear* [is] at least

equally applicable to unreviewed administrative orders . . . ." *Mechling*, 368 U.S. at 329. Therefore, this Court must vacate the Waste Prevention Rule if it finds it prudentially moot.

Similarly, if this Court determines that the Waste Prevention Rule is unreviewable because it is not ripe, the Court of Appeals' decision in *Wyoming v. Zinke* instructs that vacatur is also the appropriate remedy. *See Wyoming v. Zinke*, 871 F.3d 1133, 1145 (10th Cir. 2017) (stating "we are . . . guided by our cases discussing mootness"). The Court of Appeals recognized that "[w]hen an appeal becomes moot, we generally vacate the district court's judgment to prevent it 'from spawning any legal consequences.'"[11] *Id.* at 1145 (quoting *United States v. Munsingwear, Inc.*, 340 U.S. 36, 41 (1950)). Therefore, the Court must vacate the Waste Prevention Rule if it is either prudentially moot or not ripe and thus unreviewable.

CONCLUSION

Industry Petitioners are suffering ongoing, immediate, and irreparable harm from the Core Provisions of the Waste Prevention Rule and have demonstrated preliminary relief is necessary. Alternatively, the Court may exercise its equitable authority and vacate the Core Provisions in light of the Proposed Revision Rule. If the Court finds concerns of prudential mootness or ripeness preclude judicial review, however, precedent requires it vacate the rule.

[11] Indeed, the Citizen Groups rely on *Wyoming v. Zinke* to argue that this Court must dismiss the Waste Prevention Rule if it is unripe, yet recognize that the Court must first vacate the decision. *See* Citizen Groups' Resp. at 5–6.

Respectfully submitted this 23th day of March, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of March, 2018, the foregoing **REPLY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION OR VACATUR OF CERTAIN PROVISIONS OF THE RULE PENDING ADMINISTRATIVE REVIEW** was filed electronically with the Court, using the CM/ECF system, which caused automatic electronic notice of such filing to be served upon all counsel of record.

s/ Eric Waeckerlin