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# Oil and Gas Industry: EIG RCRA Citizen Suit Alleges U.S. Environmental Protection Agency Failure to Meet Nondiscretionary Duties

## Arkansas Environmental, Energy, and Water Law Blog

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The Environmental Integrity Project and a number of other organizations (collectively “EIP”) filed a May 4<sup>th</sup> Complaint for Declaratory and Injunctive Relief (“Complaint”) in the United States District Court for the District of Columbia alleging that the United States Environmental Protection Agency (“EPA”) failed to fulfill certain nondiscretionary duties and promulgate revised regulations and guidelines for the disposal, storage, transportation, and handling of oil and gas waste.

The Complaint references the oil and gas industries growth and generation of what are characterized as:

... vast amounts and wide varieties of liquid and solid wastes during exploration and production, including wastewater, drill cuttings, residual waste, and drilling muds.

Also referenced is the use of horizontal drilling and hydraulic fracturing technologies and the application of such technologies to unconventional oil and gas formations.

The EIP Complaint generally alleges that EPA “failed to meet continuing nondiscretionary duties under the Resource Conservation and Recovery Act (“RCRA”) to review and revise regulations to keep up with this growing source of wastes and the threats these wastes pose to human health and the environment.”

The alleged EPA failures identified in paragraphs 4, 5 and 6 of the Complaint include:

- ... has failed to meet the nondiscretionary duty under section 2002(b) of RCRA, 42 U.S.C. § 6912(b), to review and, if necessary, revise at least once every three years the Subtitle D criteria regulations, 40 C.F.R. part 257, for wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal energy (oil and gas wastes). EPA last conducted a review of the Subtitle D regulations for oil and gas wastes on July 6, 1988, when it determined that it was necessary to revise the general Subtitle D regulations to promulgate “tailored” regulations for oil and gas wastes. To date, EPA has not completed these necessary revisions.
- ... even if EPA had not determined in 1988 that revisions to the Subtitle D criteria regulations for oil and gas wastes were necessary, Defendant is under a nondiscretionary and continuing duty to review and, where necessary, revise the regulations “not less frequently than every three years.” 42 U.S.C. § 6912(b). EPA has not reviewed the Subtitle D criteria regulations for oil and gas wastes since July 6, 1988. Since that time, nine successive three-year deadlines have passed with no further review.
- ... had failed to meet the nondiscretionary duty under section 4002(b) of RCRA, 42 U.S.C. § 6942(b), to review the guidelines for state solid waste management plans “not less frequently than every

three years, and revise[] as may be appropriate.”The last time EPA conducted a review and/or revision of the state plan guidelines was in 1981, when it revised the state plan guidelines to include additional public participation provisions.Since that time, eleven successive three-year deadlines have passed with no further review or revision of the guidelines.

The Complaint argues that Congress mandated EPA regularly review and revise RCRA Subtitle D regulations and state guidelines to “keep up with changes in industry practice and advances in understanding about public health and environmental risks related to waste management.” It further states that the Subtitle D regulations and state guidelines are “outdated, contain generic provisions that do not specifically address the modern oil and gas industry, and fail to adequately protect against potential harm to human health and the environment resulting from oil and gas wastes.”

The Complaint includes a discussion of EIP’s views on the relevant statutes and regulations. Additional topics of discussion include:

- The Oil and Gas Industry’s Wastes and Disposal Practices
- The Subtitle D Regulations for Oil and Gas Wastes
- The State Plan Guidelines for Oil and Gas Wastes

[Click here to download a copy of the Complaint.](#)