

ADMINISTRATIVE WATCH

ADDRESSING ENVIRONMENTAL, ENERGY AND NATURAL RESOURCE ISSUES



Babst | Calland
Attorneys at Law

BABSTCALLAND.COM

Pittsburgh, PA

Two Gateway Center
603 Stanwix Street
Sixth Floor
Pittsburgh PA 15222
412-394-5400

Charleston, WV

Suite 1000
300 Summers Street
Charleston, WV 25301
681-205-8888

State College, PA

Suite 302
330 Innovation Blvd.
State College, PA 16803
814-867-8055

Washington, DC

Suite 601
805 15th Street NW
Washington, DC 20005
202-853-3455

Canton, OH

3711 Whipple Avenue NW
Canton, OH 44718
234-352-1650

Sewell, NJ

380-A Tylers Mill Road
Sewell, NJ 08080
856-256-2495

Environmental Groups File Suit Over Absence of Regulation of Oil & Gas Waste

On May 4, 2016, seven environmental groups followed through on a prior threat to sue the United States Environmental Protection Agency (EPA) by filing a lawsuit against the EPA in a bid to force the agency to develop tailored rules for the disposal, storage, transportation, and handling of oil and gas waste under the Resource Conservation and Recovery Act (RCRA) Subtitle D solid waste program. In an effort to trigger movement on the issue, the environmentalists had previously sent the EPA a 60-day [Notice of Intent to Sue](#) in August 2015; however, according to the environmentalists, the agency did not formally respond to the Notice. The [Complaint](#), filed with the U.S. District Court for the District of Columbia, alleges that the agency has not within the statutorily required three-year timeframe (1) reviewed and, where necessary, revised RCRA's Subtitle D solid waste regulations for oil and gas waste, and (2) reviewed and/or revised its guidelines for state solid waste management plans for oil and gas waste.

The EPA last addressed the regulation of oil and gas waste under RCRA in 1988 when it exempted oil and gas waste from RCRA's hazardous waste regulations (commonly referred to as the Subtitle C regulations), which impose rigorous management, disposal, treatment, recordkeeping, and reporting requirements. The oil and gas hazardous waste exemption applies to wastes generated from a material or process uniquely associated with the exploration, development, or production of crude oil and/or natural gas (*e.g.*, produced water, drilling fluids, drilling cuttings, produced sand, flowback, etc.). In 1988, the EPA also noted that RCRA's existing solid waste general regulations (commonly referred to as the Subtitle D regulations) may not "address oil and gas waste concerns." However, since that time, EPA has not issued more specific rules governing the handling and management of oil and gas waste and instead has left the more general solid waste standards in place. The environmental groups argue that, despite its 1988 determination that more detailed regulations may be necessary, the EPA has continually failed to meet its statutory duty to review and, if necessary, to revise the Subtitle D regulations.

The EPA has thus far declined to comment on the allegations set forth in the lawsuit but an agency representative noted that "states may have authority to regulate unconventional oil and gas extraction activities under their own state laws." It remains to be seen whether the agency plans to proceed with the litigation or if it plans to address the environmentalists' concerns with a rulemaking, which may result in the development of more stringent solid waste regulations specifically for oil and gas waste. EPA has 60 days to answer the Complaint or file a motion seeking to dismiss the action. As noted in our previous [Administrative Watch](#), *Environmental Groups Plan Suit Over Absence of Regulation of Oil & Gas Waste*, a more stringent solid waste program that includes manifest, recordkeeping, management, and disposal requirements could severely limit the transport, management, and handling of oil and gas waste and significantly affect the oil and gas industry's reuse and recycling efforts.

If you have any questions regarding the regulation of oil and gas waste, please contact Joseph K. Reinhart at 412-394-5452 or jreinhart@babstcalland.com, Sean M. McGovern at 412-394-5439 or smcgovern@babstcalland.com, or Nacha Dixit at 412-394-6580 or ndixit@babstcalland.com.