

MISTAKEN IDENTITY

Sacrificing a Sound Federal-State Regulatory Partnership without Reason

The following represents just a few of the landmark environmental laws passed more than a generation ago, but which very soon may be changed to target independent oil and gas operators.

1974: Safe Drinking Water Act (SDWA)

Original Intent: Set standards for public water supply and protect groundwater.

New Target: Hydraulic fracturing

How: Empower federal EPA with authority to pre-empt states in regulating critical well stimulation technology under SDWA's Underground Injection Control (UIC) program

1976: Resource Conservation and Recovery Act (RCRA)

Original Intent: Set standards for disposable waste management

New Target: Existing regulatory programs for drilling fluids and produced water

How: The original law was intended to regulate "low-volume, high-toxicity wastes." Oil and natural gas production's "high-volume, low-toxicity" wastes, such as drilling fluids and produced water, are managed through long-standing, state programs. Efforts could undermine this sound system.

1980: Superfund (CERCLA)

Original Intent: Provide federal authority to create federal liability for the clean up and remediation hazardous substance releases.

New Target: Small, independent oil and gas producers

How: Although oil and natural gas producers were initially and intentionally excluded from the scope of CERCLA, new legislation would extend its regulatory reach, imposing sweeping liability on family-run energy

operations for the sins of 50s-era industrial and chemical manufacturers.

1986: Toxic Release Inventory (TRI)

Original Intent: Compel large-scale chemical and manufacturing facilities to share information on use of hazardous chemical emissions in mostly urban population centers.

New Target: Oil and natural gas producers

How: Even though Section 313 of the law specifically directs Congress to focus the scope of new regulation on high-risk industrial facilities, some in Congress would like to see TRI extended to oil and natural gas producers despite EPA's 1995 determination that these operations should not be covered.

1987: Clean Water Act (CWA) amendments

Original Intent: Provide standards and enforcement mechanisms to improve our nation's water.

New Target: Oil and natural gas production construction activities

How: Section 323 of the Energy Policy Act of 2005 clarified the intent of CWA, excluding oil and gas operators from having to obtain federal EPA permits for discharging uncontaminated storm water. Efforts to overturn that exemption are targeting Capitol Hill.

1990: Clean Air Act (CAA) amendments

Original Intent: Set standards to improve our nation's air.

New Target: Small, independent wellsite operators

How: Current law prohibits EPA from combining multiple oil and gas production operations for the purpose of regulating small, stationary production sites. Opponents of this policy would like to see this policy over-turned, opening the door to new federal regulatory authority over the wellsites by adding enough wells together to meet the federal regulation threshold.