

# ADMINISTRATIVE WATCH

ADDRESSING ENVIRONMENTAL, ENERGY AND NATURAL RESOURCE ISSUES



## Environmental Groups Plan Suit Over Absence of Regulation of Oil & Gas Waste

On August 26, 2015, seven environmental groups sent the U.S. Environmental Protection Agency (EPA) a Notice of Intent to Sue the agency in an attempt to force the agency to develop tailored rules for oil and gas wastes under the Resource Conservation and Recovery Act (RCRA) Subtitle D solid waste program. The groups argued 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 wastes, and (2) reviewed and/or revised its guidelines for state solid waste management plans for oil and gas wastes.

The EPA last addressed the regulation of oil and gas wastes 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 "fully address oil and gas waste concerns." However, since that time, EPA has not issued more tailored rules governing the handling and management of oil and gas wastes and instead has left the more general solid waste standards in place.

While the process may take several years, the environmental groups' Notice of Intent to Sue has the potential to trigger an evaluation of whether the application of the existing general solid waste standards to oil and gas wastes is still appropriate. The evaluation may result in the development of more stringent, tailored solid waste regulations for oil and gas wastes. A more stringent solid waste program (*e.g.*, manifest, recordkeeping, management, and disposal requirements) could severely limit the transport, management, and handling of oil and gas wastes 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](mailto:jreinhart@babstcalland.com), Sean M. McGovern at 412-394-5439 or [smcgovern@babstcalland.com](mailto:smcgovern@babstcalland.com), or Naeha Dixit at 412-394-6580 or [ndixit@babstcalland.com](mailto:ndixit@babstcalland.com).

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