

**CITIZENS  
CAMPAIGN**  
FOR THE ENVIRONMENT



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**TO: Members of Congress**  
**FROM: Citizens Campaign for the Environment (CCE)**  
**RE: Oil and Gas Exemptions from Federal Environmental Statutes**

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Protecting American's access to clean air and water is paramount and should not be trumped by oil and gas exploration. Domestic energy exploration and generation is part of our energy future, but it should not come at the expense of the public's health and well-being. **CCE strongly urges Congress to remove environmental statute exemptions provided to the oil and gas industry.** For the US to realize the actual cost of fossil fuels, environmental standards must be enforced. Local municipalities and state governments are burdened with the responsibility of maintaining clean water and clean air standards, and addressing toxic contamination. To uphold the responsibility for protecting citizens and upholding environmental and public health standards, Congress should end following exemptions for the oil and gas industry:

**1. Safe Drinking Water Act (SDWA)**

- a. The SDWA was amended in the Energy Policy Act of 2005 in three ways:
  - i. Hydraulic Fracturing operations were completely exempted from regulation under SDWA
  - ii. Energy Policy Act of 2005 asked for voluntary discontinuance of diesel fuel in fracing operations instead of banning outright
  - iii. Underground Injection Control of fracing fluids were defined to codify the EPA's practice of not regulating fracing fluids unless diesel fuels were used, and in the case of the use of diesel fuels regulation is discretionary.

**2. Clean Water Act (CWA)**

- a. The Energy Policy Act of 2005 amended the CWA so that sediment is no longer considered a pollutant in managing stormwater run-off. The exemption provided for in the Energy Policy Act of 2005 encompasses the drill pad site and all oil and gas field construction activities and operations.
- b. The EPA confirmed Congress' interpretation by stating that "all covered oil and gas-related construction activities are eligible for the NPDES permitting exemption for their uncontaminated stormwater discharges without regard to the acreage disturbed."
- c. The EPA also defined oil and gas operations and activities to include the construction of the drill site, waste management pits, access roads, in-field treatment plants and transportation infrastructure.

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### **3. National Environmental Policy Act (NEPA)**

- a. The Energy Policy Act of 2005 created a presumption that the following oil and gas related activities should be analyzed and processed by the Interior and Agricultural Departments under categorical exclusions. Categorical exclusions are less comprehensive than environmental assessments and there is no public comment. Exempted Activities:
  - i. Individual surface disturbance of less than five acres as long as total surface disturbance is not greater than 150 acres and site-specific analysis has been prepared pursuant to NEPA.
  - ii. Drilling within five years of a previous well.
  - iii. Placement of a pipeline in a right-of-way corridor that has been determined within five years.
  - iv. Drilling a well within a developed field where there is an approved land use plan or documentation prepared pursuant to NEPA that would see the drilling as reasonably foreseeable activity.
  - v. The presumption in the Energy Policy Act also shifts the burden to prove the activity would require further analysis from the EPA to the public. The public must now demonstrate that drilling activities occur in an area of extraordinary circumstances to require a full NEPA review.

### **4. Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)**

- a. Section 101(14) of CERCLA lists the hazardous substances covered under the statute. The last clause of this section excludes crude oil and petroleum.

### **5. Resource Conservation and Recovery Act (RCRA)**

- a. The Solid Waste Disposal Act of 1980 exempts oil field waste from Subchapter III of RCRA until the EPA could prove the wastes were a danger to human health and the environment. In 1988 EPA made a regulatory determination that oil field waste should be exempted because of adequate state and federal regulations. This includes:
  - i. Produced waters
  - ii. Drilling fluids
  - iii. Associated wastes

### **6. Clean Air Act (CAA)**

- a. The CAA states that the oil and gas industry will not be aggregated together to determine if they are subject to Maximum Achievable Control Technology (MACT) for each source. The exemption also extends to pipeline compressors and pump stations in some instances.
- b. Hydrogen sulfide is not listed as an extremely hazardous substance in the Clean Air Act.

### **7. Toxic Release Inventory under the Emergency Planning and Community Right-to-Know Act (EPCRA)**

- a. The oil and gas industry is exempted from reporting under section 313 of EPCRA, even though it generally meets the requirements established for reporting.

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