

Program	Description	Exemption	(Notes)
Safe Drinking Water Act			
<p style="text-align: right;">Overview:</p>	<p>SDWA's Underground Injection Control (UIC) program regulates how industrial and municipal waste and other fluids can be pumped into underground strata that contain, or may be a source of, drinking water. The act regulates the entire injection operation, from permitting, siting, construction, operation, maintenance, monitoring, testing, and closing wells. In 2004 a controversial report by EPA found that chemicals used for hydraulic fracturing "pose little or not threat" to drinking water, clearing the path for a 2005 statutory exemption from the UIC program for fracturing.</p>		
Hydraulic Fracing Fluids Are Exempt from Groundwater Protection Regulations			
	§ 300h	Protective Standard for Underground Injection – UIC regulations shall contain minimum requirements for effective programs to prevent underground injection which "endangers drinking water sources" (defined at § 300h(d)(2)). 42 U.S.C. § 300h(b)(2).	Exemption for Fracing Chemicals – UIC regulations may not interfere with or impede O&G hydraulic fracing or other underground injection for recovery of oil or natural gas unless such requirements are essential to assure that underground drinking water sources will not be endangered by such injection. 42 U.S.C. § 300h(b)(2).
	§ 300h	Underground Injection Defined – the term "underground injection" means the subsurface emplacement of fluids by well injection. 42 U.S.C. § 300h(d)(1).	Specific Exemptions for Fracing Fluids – underground injection excludes (i) injection of natural gas for purposes of storage; and (ii) injection of fracturing fluids (other than diesel fuels) related to oil, gas, or geothermal production activities. 42 U.S.C. § 300h(d)(1)(B). H.R. 7231 (Introduced 110th Session , 9/29/08) -- To repeal the exemption for hydraulic fracturing in the Safe Drinking Water Act.
Disposal of Oil and Gas Wastes in Underground Wells			
	40 CFR § 146.5	Well Classifications for Underground Disposal – The UIC program classifies different types of wells, imposing stricter regulations on wells used to inject RCRA-classified hazardous materials.	RCRA Exemptions for O&G Toxic Materials means they can be injected into Class II wells with fewer regulatory controls, instead of limiting injection to strictly regulated Class I wells.
Clean Water Act			
Overview:			
	<p>-- Oil & gas exploration and production operations are generally exempt from the Clean Water Act's storm water discharge permit program. So long as runoff at drilling sites, well pads, and transmission corridors are 'uncontaminated' the industry does not need to submit a storm water prevention plan or seek a NPDES storm water permit. The industry is excused for both large and small land disturbances, and the category of excused activities was expanded in 2005 to include new roads and pipelines associated with oil and gas production.</p> <p>-- Under another exemption fracing fluids used in natural gas production are not considered pollutants subject to NPDES permitting. The exemption also covers produced water that is 'disposed of' by re-injection into gas wells.</p>		
Oil & Gas Exploration and Production Exemptions from Storm Water Discharge Regulations			
	§ 402(p) NPDES Storm Water Discharge Permits	Permit Program for Municipal and Industrial Storm Water Discharges – NPDES permits required for discharges associated with industrial activity and municipal storm and sewer collection and treatment systems.	Statutory Exemption for O&G from Storm Water Regulation – EPA shall not require a permit for storm water discharges from O&G exploration or development activities and "transmission facilities" so long as the runoff is not contaminated with any raw material, byproduct, or waste. 33 U.S.C. § 1342(l)(2).

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	§ 502(24) Definition of Exempt O&G Activities	Expansion of Exempted Activities – Energy Policy Act of 2005 § 323 (119 Stat. 694) – defined oil and gas exploration and production to cover many more types of surface disruptions that would otherwise be subject to storm water discharge permitting, including well pads, new roads, and pipelines.	New, Broader Definition of Permissible Disruptions – ‘Oil and gas exploration, production, processing, or treatment operations or transmission facilities’ means all field activities [associated with exploration and development]... including activities necessary to prepare a site for drilling... whether or not such field activities or operations may be considered to be construction activities. 33 U.S.C. § 1362(24).	
	40 CFR § 122.26 Storm Water Discharge Permit Regulations	Storm Water Discharge Regulations – EPA implemented regulations for storm water discharges – Phase I large sites (5+ acres); Phase II small sites (1-5 acres).	Exemption for sediment Loading – EPA revised 40 CFR § 122.26(a)(2)(ii) to say that a water quality standard violation for sediment alone does not trigger a permitting requirement – based on interpretation of the 2005 amendment that exempted construction activities at O&G sites. 71 Fed. Reg. 33,628 (Jan. 6, 2006).	NRDC v. EPA – 9th Cir. overturns EPA’s sediment loading rule from 2006. The 9th Cir. reaches Chevron step 2, but overturns the new rule: “We conclude... that EPA’s interpretation... is arbitrary and capricious because of the agency’s changed position on what constitutes ‘contamination’ under that section.” – 526 F.3d 561, 607 (2008).
<u>Injected Fracing Fluids and Re-Injected Water are not NPDES Pollutants</u>				
	§ 502(2)(B)	Definition of ‘Pollutant’ – discharge of pollutants requires a NPDES permit.	Statutory Exemption for Fracing Fluids – Materials injected into an oil or gas well to facilitate production (such as fracing fluid), or produced water re-injected for disposal, are not considered pollutants if approved by a state and that state determines that such injection or disposal will not result in the degradation of ground or surface water resources. 33 U.S.C. § 1362(2)(B).	H.R. 469 (Introduced 111th Session, 1/13/09) Produced Water Utilization Act of 2009 – To provide R&D funding for new technologies to treat and re-use produced water from oil and gas production
Resource Conservation and Recovery Act				
Overview:				
		<p>-- Hazardous wastes created during exploration and production (E&P) of crude oil and natural gas reserves are categorized by EPA as "special wastes" and are exempt from the federal hazardous waste regulations of the Resource Conservation and Recovery Act (RCRA). Under EPA regulations, exempt status of these wastes depends on how the material was used or generated as waste, not necessarily on whether the material is hazardous or toxic. Wastes generated directly during O&G production -- and in limited circumstances during natural gas processing, -- are almost always exempt. Wastes related to transportation and manufacturing operations generally do not fall within the hazardous wastes exemption.</p> <p>-- Although exempt from federal regulation E&P hazardous wastes may not be exempt under state law where EPA has delegated regulatory authority to a state enforcement agency. E&P wastes may be subject to regulation as regular solid waste in some situations, and subject to cleanup actions by EPA and/or private plaintiffs where wastes pose an "imminent and substantial endangerment to health and the environment."</p>		
<u>Hazardous Waste Exemptions for Oil and Gas Production</u>				
	§ 3001(2)(A) Hazardous Wastes Designation	Wastes associated with exploration, development, and production were exempted from RCRA pending recommendations from EPA to Congress.	Legislative Exemption – The exempted wastes were defined as "...drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil or natural gas or geothermal energy...." 42 U.S.C. § 6921(b)(2)(a)	Congressional Intent – Legislative history from 1980 Bevill Amendments to RCRA (which added specific language on O&G exemptions to § 3001(b)(2)(a)) indicates that "wastes associated with [] exploration, development, or production" was intended to distinguish between production wastes and wastes associated with transportation and manufacturing states. – See EPA, RCRA Exemptions 5-6 (2002).
	53 Fed. Reg. 25,445 (1988)	EPA’s final regulation on exemption of exploration, development and production wastes.	Wastes "Uniquely Associated" with E&P are exempt from Subtitle C. These include gas and oil drilling muds, oil production brines, drilling fluids, and produced water. Natural gas plants that process NG to remove water and other impurities prior to entering the sales line are considered to be part of the exempt production operations regardless of their location with respect to the wellhead. See the final regulations for a list of exempt and non-exempt wastes.	
	58 Fed. Reg. 15,284 (1993)	EPA clarifications of the exemption rules.	Scope of exemption – "A simple rule of thumb for determining the scope of the exemption is whether the waste in question has come from down-hole (i.e. brought to the surface during oil and gas E&P operations) or has otherwise been generated by contact with the oil and gas production stream during the removal of produced water or other contaminants from the product.... If the answer to either question is yes, the waste is most likely considered exempt."	

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	§ 3006 State Hazardous Waste Programs	Delegation of Regulatory Authority -- EPA can delegate regulatory authority to state hazardous waste programs that meet the minimum standards of the federal regulations 42 U.S.C. § 6926.	Narrower E&P Waste Exemptions Under State Law -- States may adopt more stringent regulation on hazardous wastes than the federal standards by choosing to regulate federally-exempted wastes. California, for example, has stricter disposal and injection requirements than federal law and uses state standards to classify hazardous wastes.	
Possible Liability in RCRA Cleanup Actions				
	§ 1004 Definitions	Solid Waste -- "The term 'solid waste' means any garbage, refuse, sludge... and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations...." 42 U.S.C. § 6903(27). Hazardous wastes are a subset of solid wastes.	Solid Waste Regulation -- The hazardous waste exemption does not preclude regulation of exempt exploration and production wastes under the less stringent Subtitle D regulations on solid wastes.	
	§ 7003 Imminent and Substantial Endangerment	Cleanup Actions -- EPA and citizen plaintiffs can bring cleanup actions against "any person (including any past or present generator... or owner or operator...)" where "evidence that the past or present handling, storage, treatment, transportation or disposal of any solid waste or hazardous waste may present an imminent and substantial endangerment to health or the environment...." 42 U.S.C. § 6973.	Operator Liability -- Generators and treatment facilities dealing with otherwise exempt hazardous materials may be liable for cleanup under this standard if the exempt wastes are considered solid wastes. EPA has (informally) acknowledged potential operator liability under this section, but notes that the RCRA hazardous waste exemption allows the operator to choose a waste management and disposal option that is less stringent and possibly less costly than would be required under Subtitle C. -- See EPA, RCRA Exemptions 21-22 (2002).	<i>Jones v. Inmont Corp. -- The imminent hazard provision of § 7003 contains a substantive provision that can be the basis of a RCRA citizen suit. 584 F. Supp. 1425 (S.D. Ohio 1984). But see U.S. v. Hooker Chemicals & Plastics Corp. 749 F.2d 968 (2d Cir. 1984) (holding that this "emergency powers" provision and similar "imminent and substantial endangerment" sections in the CAA and SDWA cannot be the basis of a citizen suit).</i>
CERCLA (Superfund)				
Overview:				
		Superfund liability does not extend to oil and natural gas pollution, nor is it triggered by the release of other hazardous materials like benzene, arsenic, and mercury when they are naturally present in oil or natural gas. This enormous loophole was won when the industry pledged to pay into the original federal cleanup fund (the Superfund), an obligation that has since sunset.		
Oil and Natural Gas Pollution Does Not Trigger CERCLA Liability				
	§ 101 Definitions	Materials that Trigger CERCLA Liability -- § 101(14) defines hazardous substances whose release or threatened release is a prerequisite for CERCLA liability	Specific Exemption for Petroleum and Natural Gas -- "The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance [in other environmental provisions -- see below], and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel..." 42 U.S.C. § 9601(14).	

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	§ 101(14) Hazardous Materials	Hazardous Materials Defined by Reference to Federal Environmental Statutes -- CERCLA defines hazardous wastes by reference to hazardous substances definition at: RCRA (42 U.S.C. § 6921); CWA (33 U.S.C. §§ 1317(a), 1321(b)(2)(a)); TSCA (15 U.S.C. § 2606); CAA (42 U.S.C. § 7412).	Referenced Sections Contain Exemptions for Oil, Gas, and Associated Wastes -- These citations are to definitions with exemptions for oil and associated wastes -- see relevant provisions in this table for details.	Exemption for Hazardous Materials When They Occur Naturally in Oil or Natural Gas -- EPA has interpreted the exemption to cover other hazardous substances when they occur naturally in oil or gas, including benzene, toluene, xylenes, polycyclic aromatic hydrocarbons, arsenic, and mercury. -- See Daniel L. McKay, RCRA's Oil Field Wastes Exemption and CERCLA's Petroleum Exclusion, 15 J. Energy Nat. Resources & Envtl. L. 41, 70-71 (1995).
Clean Air Act				
Overview:				
		Although oil and gas wells are major sources of volatile organic compounds (VOCs) and other hazardous pollutants, and the machinery associated with drilling and extraction is a major source of particulate matter emissions from diesel exhaust, exemptions from the Clean Air Act's hazardous air pollutants regulations mean that wells and well fields cannot be regulated either collectively as major sources or individually as small "area sources." Well fields are not regulated as major sources for purposes of the Act's ambient air quality standards either; however, they may be affected indirectly through the state-regulated pollution control allocation process.		
	§ 111 New Source Performance Standards	Category sources regulated under NSPS -- EPA is charged with listing any category of source that "causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare" -- EPA has not to listed wells or well fields in the NSPS regulations -- listing wells as a new category would require operators to comply with technology-based emissions control standards.		
Hazardous Air Pollutants from Oil and Gas Production Cannot Be Regulated as Major Sources				
	§ 112 Hazardous Air Pollutants	National Emission Standards for Hazardous Air Pollutants (NESHAPs) -- 190 identified pollutants known or suspected to cause cancer or other serious health effects are regulated has hazardous air pollutants -- technology-based regulations (maximum achievable control technology (MACT)) with a health standard backstop.		
	§ 112(a)(1) Aggregation	Aggregation of Collected Stationary Sources -- any "group of stationary sources located within a contiguous area and under common control" with aggregate emissions equal to a major source shall be regulated as such. 42 U.S.C. § 7412(a)(1).	Oil and Gas Production Facilities Cannot Be Aggregated for Major Source Control -- "Emissions from any oil or gas exploration or production well (with associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units..." 42 U.S.C. § 7412(n)(4)(A).	
	§ 112(a)(2) Small Sources Regulation	Area Source Regulation -- "any stationary source of hazardous air pollutants that is not a major source" excepting motor vehicles. 42 U.S.C. § 7412(a)(2)	Oil and Gas Production Facilities Cannot Be Regulated as Small Sources -- EPA "shall not list oil and gas production wells (with associated equipment) as an area sources category... except that the Administrator may establish an area source category... in any metropolitan statistical area... with a population in excess of 1 million, if the Administrator determines that emissions of hazardous air pollutants from such wells present more than a negligible risk of adverse effects to public health." 42 U.S.C. § 7412(n)(4)(B).	

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	§ 112(b)(1) List of HAPs	Regulated HAPs – Designated by Congress in the 1990 amendments to the CAA. 42 U.S.C. § 7412(b)(1).	Hydrogen Sulfide Emissions from Wells Not Regulated – Hydrogen sulfide was not listed as a HAP by Congress as a concession to oil industry even though human exposure is linked to irritation, difficulty breathing, nausea, vomiting, headaches, loss of consciousness, and even death in some circumstances (see NRDC report "Drilling Down" 11-13 (2007)).	
	§ 160 Prevention of Significant Deterioration	PSD Program – limits incremental increases of criteria pollutants above a legally defined baseline level in areas where air quality exceeds ambient standards for § 108 criteria pollutants – new "major emitting facilities" that propose locating within PSD areas are required to meet certain technology-based and ambient emissions standards. 42 U.S.C. § 7470.		
	§ 169(1)	Major Emitting Facility – potential to emit ≥ 100 tn/yr of any criteria pollutant – regulated sources include petroleum refineries and petroleum storage and transfer facilities. 42 U.S.C. § 7469(1).	Well fields are not regulated directly as MEFs – emissions from production facilities 'eat up' remaining emissions capacity in PSD areas – may be subject to regulation under state implementation plans.	
	§ 171 Nonattainment Areas	Nonattainment Areas – where NAAQS are regularly exceeded air quality districts may be classified as nonattaining, which imposes additional permitting requirements on new and modified major stationary sources.		
	§ 172(c)(5)	Permits for Major Stationary Sources – new and modified major sources require special permits in nonattainment areas – permit requirements set out at § 173. 42 U.S.C. § 7501(c)(5).	Well Fields Are Not Major Sources Subject to Permitting Requirements – refineries and other large facilities are major sources.	
	§ 173(a)(1)(A)	Pollution Offset Requirements – as a condition for issuance of new permits "sufficient offsetting emissions reductions" must be obtained, so as to represent "reasonable further progress" towards NAAQS attainment. 42 U.S.C. § 7503(a)(1)(A).	O&G Production Offsets may be required by states in nonattainment areas to demonstrate pollution offsetting for other industrial growth – this possibility is identified as a factor limiting growth of O&G production (see Argonne National Laboratory, USDOE, "Environmental Policy & Regulatory Constraints to Natural Gas Production" 84-85 (2004)).	
	§ 181 (note)	1990 Amendments to the CAA contain a minor note exempting stripper wells from nonattainment provisions. These are oil and natural gas wells with marginal daily production, but which make up 85% of all U.S. oil wells and account for 18% of U.S. crude production. 42 U.S.C. § 7511.	Stripper Well Exemption in Nonattainment Areas – ozone, carbon monoxide, PM-10, sulfur dioxide, nitrous oxides, and lead nonattainment provisions contained in Title I of the CAA will not apply with respect to the production of and equipment used in O&G production from stripper wells or stripper well natural gas. This exemption does not apply (1) in serious nonattainment areas having a population of 350,000 or more, or (2) in severe or extreme nonattainment areas.	
National Environmental Policy Act				

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	Energy Policy Act of 2005 § 390	Categorical Exclusion of NEPA Review in DOI and USFS Lands -- "Action by [DOI] in managing the public lands, or the Secretary of Agriculture in managing National Forest System Lands... shall be subject to a rebuttable presumption that the use of a categorical exclusion under [NEPA] would apply if the activity is conducted pursuant to the Mineral Leasing Act for the purpose of exploration or development of oil or gas." 42 U.S.C. § 15924(a).	Categorical Exclusion Applies when: -- surface disturbance of < 5 acres; -- sites where drilling took place w/in previous 5 years -- drilling of wells w/in a developed field for which an approved land-use plan or NEPA document was prepared. 42 U.S.C. § 15924(b)	Most Drill Pads Are Less Than 5 Acres -- opens possibility that large drilling projects could avoid NEPA review as any number of individual wells.
	72 Fed. Reg. 45,504	Categorical Exclusion of NEPA Review for Oil and Gas Exploration Activities on BLM Lands -- BLM categorical exclusion for geophysical exploration projects that do not include the construction of roads.	Where Exploration Activities Do Not Require New Road Building -- If the proposed action involves no new or temporary road construction, the field office shall use the categorical exclusion to satisfy NEPA compliance, unless the authorizing officer determines that an EA would be helpful, or there are extraordinary circumstances involved in the application. 516 DM 11.9(B).	