

# The Oil and Water Don't Mix Act

## SUMMARY

### Overview:

Oil and gas production puts our air, land, water, and communities at risk, yet the industry enjoys several exemptions from federal laws and regulations, and lax enforcement of the rules that do exist.

Oil and gas wells can require millions of gallons of water for hydraulic fracturing (fracking) and enhanced recovery. Large volumes of chemical additives are used during both fracking and routine maintenance. The wastewater that results from production, known as produced water, can contain significant amounts of contaminants, including chemicals, heavy metals, salts, hydrocarbons, and naturally occurring radioactive material. Wastewater is hazardous to human health and the environment. For example, the high salt content can be extremely damaging to agricultural land. There are significant uncertainties around the safety of oil and gas wastewater constituents due to inadequate chemical reporting requirements, industry trade secret claims, and analytical requirements. Water use and wastewater volumes vary widely, based on geology and construction, but a single fracked well can use between 1.5 million and 16 million gallons of water,<sup>1</sup> and some wells produce more than 15 times as much wastewater as oil.<sup>2</sup>

In 2016, the Environmental Protection Agency (EPA) published its “Study of Hydraulic Fracturing and Its Potential Impact on Drinking Water Resources.”<sup>3</sup> The agency concluded that fracking has contaminated drinking water and identified several ways that fracking puts drinking water at risk. There have been several documented cases of groundwater contamination, including drinking water well contamination, from oil and gas development related to fracking, wastewater disposal and spills.<sup>4</sup> There is currently no federal requirement for operators to submit a water management plan before receiving a permit to drill for oil or gas. Additionally, the Trump administration has been hard at work rolling back protections to safeguard communities and the environment from oil and gas development. In 2017, the administration repealed the Bureau of Land Management’s (BLM) 2015 final rule governing hydraulic fracturing on federal lands.

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<sup>1</sup>[https://www.usgs.gov/faqs/how-much-water-does-typical-hydraulically-fractured-well-require?qt-news\\_science\\_products=0#qt-news\\_science\\_products](https://www.usgs.gov/faqs/how-much-water-does-typical-hydraulically-fractured-well-require?qt-news_science_products=0#qt-news_science_products)

<sup>2</sup> CA Department of Conservation “2018 Report of California Oil and Gas Statistics” October 2019. Accessed from [https://www.conservation.ca.gov/calgem/pubs\\_stats/annual\\_reports/Pages/annual\\_reports.aspx](https://www.conservation.ca.gov/calgem/pubs_stats/annual_reports/Pages/annual_reports.aspx)

<sup>3</sup> <https://cfpub.epa.gov/ncea/hfstudy/recordisplay.cfm?deid=332990>

<sup>4</sup> Ibid.

The Oil and Water Don't Mix Act is an important step forward to enact meaningful safeguards for air, water, land, and communities. When it comes to protecting water resources, the bill requires that the oil and gas industry actively plan for how it will protect water user rights and the quality and quantity of both groundwater and surface water. It ensures that fracking is subject to the protections of the Safe Drinking Water Act. It also requires a water management plan in advance of drilling, baseline water testing before fracking operations begin, and replacement water to be provided for impacted water users. This bill improves transparency by requiring chemical disclosure of fracking fluids and other additives, mandates testing and reporting of wastewater quality, and prevents oil and gas companies from claiming the identities and concentrations of chemicals used as trade secrets. Overall, the Oil and Water Don't Mix Act closes the loopholes highlighted in the next section, reverses the repeal of the 2015 BLM fracking rule, and puts in place new safeguards for health and water resources from oil and gas development.

#### *Oil and Gas Loopholes:*

The oil and gas industry has long enjoyed several exemptions from federal laws and regulations that put water, air, lands, and health at risk:

1. Safe Drinking Water Act (SDWA)- Hydraulic fracturing is exempt from the Safe Drinking Water Act unless diesel is used in the fracking process. While underground injection operations, such as wastewater disposal and enhanced recovery, are regulated under SDWA, lax regulations and poor oversight have left groundwater at risk from these activities.
2. Clean Water Act - Oil and gas operations are exempt from important permitting and planning requirements of the Clean Water Act, including the stormwater runoff permit requirement.
3. Clean Air Act - The oil and gas industry is exempt from critical requirements to assess, monitor, and control hazardous air pollutants. Specifically, the exemptions exclude oil and gas wells from requirements that generally require small sources to aggregate and control emissions as a major source of air pollution.
4. Resource Conservation and Recovery Act - Oil and gas waste is exempt from the provisions that govern the assessment, control, and clean-up of hazardous waste under this law, and, by extension, from the Comprehensive Environmental Response, Compensation and Liability Act (a.k.a "Superfund"), which adopts the same definition of hazardous waste.

## SECTION-BY-SECTION

1. **Title**
2. **Protection of Water Resources** Requires operators to replace the water supply of any water user whose surface or underground source has been contaminated, reduced, or interrupted as a result of the operator's activities. Operators who contaminate, reduce, or interrupt said water source must also work to avoid, to the maximum extent possible, the long-term or permanent degradation of the water source by using best management practices and technology. Additionally, operators must submit a water management plan alongside their Applications for Permits to Drill (APD) including measures to (a) protect the quality and quantity of water systems from any adverse effects of the exploration, development, and reclamation processes, or provide alternative sources if protection cannot be assured; (b) protect the rights of present water users, including from discharged waters; and (c) identify agreements with other parties for beneficial uses of produced waters. The Secretary of the Interior can reject an APD if they determine that the proposed water management plan does not meet these requirements.
3. **Fracking Regulation on Federal Lands** Requires the Bureau of Land Management to issue regulations governing hydraulic fracturing on federal lands within one year of enactment. These regulations shall include at a minimum: baseline water testing and public disclosure of all chemicals used in hydraulic fracturing. The legislation will also require that the entirety of this information will be posted on publicly-accessible websites. The 2015 BLM fracking rule, titled, "Oil and Gas; Hydraulic Fracturing on Federal and Indian Land" shall apply until the new regulation is in effect.
4. **Closing Loopholes** The bill closes several loopholes under federal law and regulation for oil and gas production activities within the following statutes:
  - a. Safe Drinking Water Act
    - i. Repeals the loophole that exempts hydraulic fracturing from the Safe Drinking Water Act's Underground Injection Control (UIC) program, by explicitly defining fracking as a type of underground injection.
    - ii. Requires that all underground injection projects (including fracking, enhanced recovery and disposal) disclose a complete list of all chemicals used, and the results of baseline water testing.

1. For enhanced recovery and waste disposal that utilizes continuous injection, requires quarterly reporting of all chemicals used and chemical testing and analysis of injected fluids.
  - iii. For any underground injection project where fluids, such as produced water, come to the surface, requires a quarterly report of recovered fluids including volume, chemical testing, source, and disposition.
  - iv. Prohibits hiding as a trade secret: 1) the identities and/or concentrations of any chemical additive, including fracking fluids and routine maintenance fluids; 2) air or other pollution monitoring data; 3) health and safety data associated with underground injection fluids; and 4) chemical composition of recovered fluids.
- b. Clean Water Act
- i. Repeals the loophole that exempts oil and gas and mining operations from stormwater runoff permit requirements.
  - ii. Direct the Secretary of the Interior to conduct a study on stormwater impacts from oil and gas operations.
- c. Clean Air Act
- i. Repeals the loophole that exempts oil and gas wells from the requirement to aggregate emissions from small individual sources.
  - ii. Adds hydrogen sulfide to the national list of hazardous air pollutants.
- d. Resource Conservation and Recovery Act
- i. Requires EPA to determine whether drilling fluids, produced waters, and other wastes meet the criteria for identification or listing of hazardous waste:
    1. Requires EPA to list or identify wastes that meet hazardous criteria.
    2. Requires EPA to promulgate regulations for wastes identified or listed as hazardous pursuant to this act.
    3. Requires EPA to promulgate regulations for facilities that may receive oil and gas or geothermal energy wastes that are not listed as hazardous.
      - a. These regulations should include groundwater monitoring, establish criteria for acceptable locations of new or existing facilities, and provide for corrective action and financial assurance as appropriate

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