

How billions of barrels of toxic oil and gas waste are falling through regulatory cracks

The oil and gas industry has a dirty little secret, make that a dirty big secret ... no, make that one of the biggest, dirtiest secrets in U.S. history.

What is no secret these days is that the potential for negative environmental and health impacts as a result of oil and gas exploration and production activity is very real.

Concern over fracking, with its toxic cocktail composed of some combination of between 300 and 750 chemicals, 70 percent of which are known to be harmful to humans because they are carcinogenic or endocrine disruptors, etc., gets most of our collective attention these days. But this industry practice is not the only or largest contamination problem our nation faces as the result of oil and gas development.

In fact, the oil and gas industry's other contamination problems are so large, they have literally been deemed impossible to prevent or even clean up by both industry and government. As a result, an unimaginable tonnage of contamination is being placed into our environment every year thanks to the near total lack of regulations over oil and gas exploration and production wastes.

The story behind this unregulated onslaught of contamination is so bizarre as to seem impossible, but it isn't.

We often hear of the "Halliburton loophole," a name used to describe a regulatory exemption that was created for the industry in 2005 to relieve fracking fluid of the burden of the Safe Drinking Water Act. But the Halliburton loophole is just one small exemption to federal regulations for the oil and gas industry. There are many others.

The mother of all oil and gas waste exemptions had its beginnings in 1978 when the EPA proposed reduced requirements for a couple of types of large-volume wastes

associated with the oil and gas industry, namely produced water and drilling muds.

Today, the federal government and the oil and gas industry seem to have created a revisionist history of this early exemption process that gutted the requirements of the Resource Conservation and Recovery Act (RCRA) of 1976 — an act created specifically to guarantee that there was cradle-to-grave oversight and enforcement for all hazardous wastes under RCRA's Subtitle C.

The modern version of the Subtitle C exemption fictitiously purports that the reason for reducing requirements for oil and gas waste was because these large-volume wastes were deemed to be “lower in toxicity” and therefore not as much of a threat to human health and the environment as other wastes being regulated under Subtitle C. You can find such statements throughout the websites and literature of local, state and federal government regulators of toxic waste and in industry marketing materials.

But it is simply not true, not by any stretch of the imagination. Go back and research the records of the exemption process and you will find a far different rationale for the largest exemption of toxic wastes in U.S. history.

In the late 1970s, the EPA had decided to study the idea of removing large volume oil and gas exploration and production wastes from RCRA's Subtitle C. The study was barely off the ground when Ronald Reagan took office in 1980 and government once again started tinkering with RCRA.

According to a 2002 EPA report on the RCRA oil and gas exemption, “The oil and gas exemption was expanded in the 1980 legislative amendments to RCRA to include “drilling fluids, produced water, and other wastes associated with the exploration, development, or production of crude oil or natural gas. . . .”

By the time they had finished defining “other wastes,” every single ounce of toxic waste generated by the process of

exploring for and/or producing oil and gas had been removed from RCRA's hazardous waste oversight.

The 1980 exemption was deemed temporary, pending EPA's final report on whether it was a good idea to exempt such wastes. It was a cart and horse problem to be sure, but not one that the industry or its friends were going to complain about. Finally, in 1987, EPA presented its exemption report to Congress.

What it did *not* say is that the exemption was being recommended because oil and gas waste isn't as toxic as other waste governed by RCRA's Subtitle C.

What EPA did say is a startling indictment of our system of environmental and public health oversight.

EPA's report found that "oil, gas, and geothermal wastes originate in very diverse ecologic settings and contain a wide variety of hazardous constituents."

EPA further found that "Imposition of Subtitle C regulations for all oil and gas wastes could subject billions of barrels of waste to regulation under Subtitle C as hazardous wastes and would cause a severe economic impact on the industry and on oil and gas production in the U.S. Additionally, because a large part of these wastes is managed in off-site commercial facilities, removal of the exemption could cause severe short-term strains on the capacity of Subtitle C Treatment, Storage, and Disposal Facilities, and a significant increase in the Subtitle C permitting burden for State and Federal hazardous waste programs."

The report concluded that regulating toxic oil and gas exploration and production waste under RCRA Subtitle C would not give the agency the "flexibility to consider costs when applying these requirements to oil and gas wastes.

Consequently, EPA would not be able to craft a regulatory program to reduce or eliminate the serious economic impacts that it has predicted."

Translation: Even though this waste is hazardous to human health and the environment, EPA is going to exempt it from the federal laws written to protect the public from toxic waste because the problem is so massive (billions upon billions of barrels) that it would make it literally impossible to drill for oil and gas in the U.S. if the industry had to pick up the tab for remediating the contamination it creates. It is just math. More than 10 barrels of waste are created for every barrel of oil. Having to properly deal with this waste to Subtitle C standards would be so cost-prohibitive as to be a threat to our economy and, therefore, our security. And besides, the industry creates so much toxic waste that EPA was concerned that we couldn't possibly find enough places to safely store it, so we might as well just make it legal to get rid of it wherever. In fact, there are so many billions and billions of barrels of toxic waste being created by the industry that the EPA was afraid that the federal government wasn't capable of creating a bureaucratic licensing system large and efficient enough to produce enough permits to make the creation, transportation and disposal of the waste legal on paper. And finally, the government doesn't want to cut into industry profits. **End of translation.**

This is the real history of oil and gas toxic waste regulations in this country, whether it's drilling fluids, mud, produced water, radioactive sludge and scale or fracking fluid. As hard as it is for most people to believe, there is virtually no regulation on the vast majority of the oil and gas industry's waste at any level of government.

There are plenty of "policies and guidance" concerning this waste — at least that's what government likes to call them. "Suggestions" is the word most of us tend to use for the same meaning. But these government suggestions are not laws and they have very little, if any, enforcement mechanism. They can be completely ignored without fear of fine or other punishment.

The regulatory agencies at every level of government charged with overseeing oil and gas industry waste are engaged in a shell game of sorts called “find the regulation.”

The EPA says that it doesn't need to regulate oil and gas exploration and production toxic waste under Subtitle C because the states mostly have this covered. The states, on the other hand, claim that they are charged with enforcing all federal laws concerning this waste, they just don't tell you that the waste has been exempted from the federal law they claim to be enforcing. Literally everyone is using some version of legalese to claim that every other regulatory agency has authority over this waste when, in truth, no one does for the most part.

Some states, like Colorado, even have statutes on the books prohibiting their state regulatory agencies from creating any enforceable laws on oil and gas toxic waste unless and until the EPA ends its exemption, which of course it says it doesn't need to do because the states have it covered. It is a dangerous game for all of us.

The real numbers of how much exempted exploration and production waste we are talking about is hard to come by because the government relies on the industry to provide them. The American Petroleum Institute (API) estimated that 149 million barrels of drilling wastes, 17.9 billion barrels of produced water and 20.6 million barrels of other associated wastes were generated in 1995 from exploration and production (E&P) operations.

But that was before the largest drilling boom in history started. And the horizontal drilling in shale formations as well as production from coal bed gas fields is creating far more waste than traditional wells. So those numbers could easily have doubled or tripled by now.

The EPA claims it hasn't given up on the idea of someday regulating the oil and gas industry's toxic waste. It says that it is working with the industry to come up with appropriate options.

The agency says that it's just waiting for API to finish its analysis and recommend what the industry thinks should be done to better regulate its waste. That's all fine and good, but API has been working on its analysis now for a quarter of a century. Perhaps we already have the industry's answer. In the weeks and months ahead, *Boulder Weekly* will be reporting on this lack of government oversight concerning the oil and gas industry's toxic waste. The industry has received some level of exemptions from virtually every major environmental act that has come to pass, from clean air to clean water to safe drinking water to even Superfund's ability to hold the industry accountable for paying for the contamination it has caused.

In addition to examining the industry's regulatory loopholes, *BW* will also be investigating specific oil and gas waste streams that are being allowed to fly under the regulatory radar. We'll do our best to shine light on the industry's waste disposal practices and explore the possible impact that those disposal methods could have on our health and the environment. ...

The first 3 pages of an article from the March 13, 2014 **Boulder Weekly**, pp 16-18, by Joel Dyer and Jefferson Dodge.

The full article can be found at <http://npaper-wehaa.com/boulder-weekly/2014/03/13/?article=2174620>

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