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Resource Conservation and Recovery Act: U.S. District Court (District of Columbia) Approves U.S. Environmental Protection Agency/EIP Consent Decree Addressing Oil and Gas Waste

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The United States District Court for the District of Columbia approved on December 28th a Consent Decree (“CD”) between the United States Environmental Protection Agency (“EPA”) and a number of other organizations (collectively “EIP”) resolving allegations that the agency failed to fulfill certain nondiscretionary duties and promulgate revised regulations and guidelines for the disposal, storage, transportation, and handling of oil and gas waste. See *Environmental Integrity Project, et al. v. Gina McCarthy*, Civil Action No. 16-842 (JDB).

EIP previously filed a May 4th Complaint for Declaratory Injunctive Relief alleging that EPA “failed to meet continuing nondiscretionary duties under the Resource Conservation and Recovery Act (“RCRA”) to review and revise regulations to keep up with this growing source of wastes and the threats these wastes pose to human health and the environment.” [See previous blog post here.](#)

The Complaint argued that Congress mandated EPA regularly review and revise RCRA Subtitle D regulations and state guidelines to “keep up with changes in industry practice and advances in understanding about public health and environmental risks related to waste management.” It further alleged that the Subtitle D regulations and state guidelines are “outdated, contain generic provisions that do not specifically address the modern oil and gas industry, and fail to adequately protect against potential harm to human health and the environment resulting from oil and gas wastes.”

The December 28th CD requires that EPA review, and if necessary, revise its rules for the disposal and handling of oil and gas wastes by certain timelines.

For example, the CD requires that:

...no later than March 15, 2019, EPA shall either (a) sign (and thereafter expeditiously transmit to the Office of the Federal Register) a notice of proposed rulemaking for the revision of the Subtitle D criteria regulations pertaining to oil and gas wastes, 40 C.F.R. Part 257, or (b) sign a determination that revision of the regulations is not necessary. If EPA signs a notice of proposed rulemaking, the EPA shall provide to Plaintiffs a copy of the notice of proposed rulemaking within seven (7) days of publication by the Office of

the Federal Register, and if EPA signs a determination that revision of the regulations is not necessary, then EPA shall provide to Plaintiffs a copy of the determination with seven (7) days of signature.

In the event that EPA undertakes proposed rulemaking, the CD requires that final action on the proposal take place no later than July 15, 2021. Similar requirements are mandated for the state plan guidelines pertaining to oil and gas wastes (40 C.F.R. Part 256).

[A copy of the CD can be downloaded here.](#)