



**Walter Wright, Jr.**  
wwright@mwlaw.com  
(501) 688.8839

# Industrial Wells/Acid Injection: Federal Appellate Court Addresses Request for Declaratory Judgment Regarding Illinois Environmental Protection Agency Jurisdiction

02/07/2019

The United States Court of Appeals (Seventh Circuit) (“Court”) addressed in a January 16th opinion an appeal of a denial by the United States District Court regarding an issue associated with injection of hazardous waste acid into industrial wells. See *EOR Energy LLC v. Illinois Environmental Protection Agency*, 913 F.3d 660.

The request for the jurisdictional determination was undertaken by a company that unsuccessfully appealed a penalty assessment before the Illinois Pollution Control Board (“Board”) and the Illinois courts.

The Illinois Environmental Protection Agency (“IEPA”) had undertaken enforcement before the Board against EOR Energy, LLC, (“EOR”) and AET Environmental, Inc., for alleged violations of the Illinois Environmental Protection Act. The alleged violations involved:

- Transporting hazardous waste acid into Illinois
- Storage of hazardous waste acid
- Injection of hazardous waste acid into EOR’s industrial wells in Illinois

EOR challenged the enforcement actions on the basis that neither the IEPA nor the Board had jurisdiction over the injection of this material.

This argument was rejected by the Board and the Illinois courts.

EOR subsequently filed a request in the United States District Court for the issuance of a declaratory judgment that under the relevant federal statutes neither IEPA nor the Board had jurisdiction over future hazardous waste acid injection activities.

The United States District Court dismissed on several bases, which included:

- Eleventh Amendment
- Issue Preclusion
- Rooker-Feldman

The Court, in addressing the appeal, upheld the lower court’s action, stating by way of summary:

- It is blocked by claim and issue preclusion

- In some respects Rooker-Feldman deprives the lower court of subject-matter jurisdiction
- Eleventh Amendment

The Court also rejected DOR's request for the opportunity to cure and refile its Complaint. It rejected this request stating:

There is no way that EOR could remedy the errors outlined above. Any change in the suit that would remove these flaws would also destroy EOR's standing and the entire point of its lawsuit. If EOR intends to ignore the state court's rulings and inject the same kinds of hazardous waste acid into the same kinds of wells, then it will have to account for its actions before the state authorities. If, on the other hand, EOR wants to inject into its wells an entirely different acid that is not hazardous waste under Illinois law, then it will have to take its chances in a future proceeding that is not at this time ripe for any federal-court action.

A copy of the opinion can be found [here](#).