Damascus Citizens for Sustainability

B. Arrindell - Director, Damascus Citizens for Sustainability
And my family owns property in Pennsylvania.
The DRBC is so correct to propose a protective ban on fracking in the Delaware Basin. It is wrong to propose allowing drilling wastes into the Basin or export of our precious water.
The oil and gas industry has received unprecedented exemptions from our nation's most important environmental and public health laws, including the Safe Drinking Water Act, Clean Air Act, and the Clean Water Act.
The industry has known for decades about their inability to prevent damages from the drilling and from their liquid and solid wastes— leading to their need to avoid liability for the damages they knew they would cause. TheIr solution was exemptions, first by making the wastes, 'special' via the Bentsen Amendment to the RCRA law in 1980 so that the wastes from oil and gas exploration and production are not tracked or manifested and needn't be disposed of as the toxic materials they actually are. Then after about 25 years of trying the industry got exemptions to major provisions of 7 protective environmental laws in the 2005 Energy Policy Act. The more I learned about the contents of and the potential impacts from these wastes the more alarmed I have become.

DCS is actively involved with people and communities where drilling wastes are transported, and then disposed of, truck accidents, spills, damaging legal and illegal dumping all occur - they will verify that these are literally killer practices. They should not be inflicted on any community and certainly not in the DRB. If the DRBC was to allow the import of drilling wastes, then tge DRBC should eliminate the exemptions boosting that waste in the Delaware Basin and restore the liability due the companies doing the damaging dumping.
Property rights do not include the right to pollute and contaminate - and regulatory constraints on property usage are not takings, but rather the obligation of government to protect health and safety.
The DRB is not for sale to the highest bidder or as a favor to a business associate - it is our home and it is the DRBC's mandate to protect and preserve the Basin and its resources for current and future residents, human and otherwise.
ATTACHED is a two page summary of the exemptions held by the oil and gas industry.

LOOPHOLES FOR POLLUTERS –
The oil and gas industry's exemptions to major environmental laws

Loopholes: The oil and gas industry is exempt from key provisions of seven major federal environmental laws — allowing practices that would otherwise be illegal. Some exemptions date back decades. Others were adopted as recently as 2005.

While states and tribes have tried to fill the gaps with their own rules and regulations, they vary widely in effectiveness and enforcement. Federal laws provide consistent standards that equally protect all Americans. That's why it's essential to reverse these federal loopholes.

1. The Safe Drinking Water Act – SDWA

The Safe Drinking Water Act[1] (SDWA) of 1974 was established to protect America's drinking water. It covers waters actually or potentially designated for drinking, whether from above ground or underground sources.

The Energy Policy Act of 2005 exempted hydraulic fracturing (fracking) from SDWA[2] oversight, leaving drinking water sources in the 34 oil and gas producing unprotected from the host of toxic chemicals used during fracking. Congress qualified this exemption to regulate diesel fuel additives used during fracking, which requires industry to apply for a SDWA permit if they are using diesel fuel to hydraulically fracture a well.

2. The Clean Air Act – CAA

The Clean Air Act[3] (CAA), adopted in 1970, is the comprehensive federal law that regulates air emissions from area, stationary, and mobile pollution sources. The CAA established limits for major pollution sources called the National Emission Standards for Hazardous Air Pollutants (NEHAPS)[4]. NEHAPS must be met by installing the Maximum Achievable Control Technology (MACT) for each source.

Smaller sources of pollutants that are under common control by a single operator, are located in close proximity to each other, and perform similar functions are considered as one source of emissions. This aggregation allows for the CAA oversight of smaller sources that, when concentrated, may actually be as harmful as larger sources.

Unfortunately, the CAA exempts oil and gas wells, and in some instances pipeline compressors and pump stations, from aggregation. This exemption to the aggregation requirement allows the oil and gas industry—which often operates many small facilities in one area—to pollute the air while being largely unregulated under the CAA.

In addition, in 1991 hydrogen sulfide was removed from the list of Hazardous Air Pollutants under the CAA. This elimination has remained despite a 1993 EPA study, *Hydrogen Sulfide Air Emissions Associated with the Extraction of Oil and Natural Gas*, which clearly concludes that accidental releases of hydrogen sulfide during oil and gas development are a serious air quality concern and pose a great risk to public health. Common symptoms of exposure to low levels of hydrogen sulfide can include headache, skin complications, respiratory problems and system damage, confusion, verbal impairment, and memory loss.

3. Clean Water Act – CWA

Enacted in 1972 , the Federal Water Pollution Control Act[5], commonly known as the Clean Water Act (CWA), establishes the basic structure for regulating discharges of pollutants into the waters of the United States.

In 1987, Congress amended the CWA to require EPA to develop a permitting program for storm-water runoff — but exempted oil and gas production[6].

The 2005 Energy Policy Act amended the CWA to redefine sediment as a nonpollutant. This redefinition broadened the existing exemption for storm-water discharges to oil and gas construction. These exemptions leave streams and rivers in high oil and gas areas unprotected from sediment run-off caused by the construction and operation of well pads, pipelines, drill rigs,

The oil and gas industry is exempt from key provisions of seven major federal environmental laws — allowing practices that would otherwise be illegal.

- READ OUR COMPLETE EXEMPTIONS WHITE PAPER http://oilgas-exemptions.earthworksaction.org
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OIL & GAS ACCOUNTABILITY PROJECT

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EARTHWORKS • 1612 K St., NW, Suite 808 Washington, D.C., USA 20006
www.earthworksaction.org • www.ogap.org • lpagel@earthworksaction.org • 202.887.1872

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4. Resource Conservation and Recovery Act – RCRA

Adopted in 1976, the Resource Conservation and Recovery Act[7] (RCRA) is the principal federal law that governs the disposal of solid and hazardous wastes. The law takes a "cradle to grave" approach to ensure that wastes are handled properly from the point of creation to transport to disposal.

In 1980, Congress exempted oil field wastes (which includes waste from natural gas production) from RCRA[8] until EPA proved they were a danger to human health and the environment. Rather than do so, EPA eventually ceded authority to regulate these wastes to the states.

This exemption leaves produced water, drilling fluids, and hydraulic fracturing fluids from oil and gas production unregulated under the nation's premier hazardous waste law. This allows unsafe handling of toxic substances, including their conventional transport on roads and treatment in municipal rather than specialized facilities.

5. Comprehensive Environmental Response, Compensation, and Liability Act – CERCLA

Commonly known as the "Superfund" law, the Comprehensive Environmental Response, Compensation, and Liability Act[9] (CERCLA) of 1980 makes liable those responsible for a spill or release of a hazardous substance into the environment.

Included in the list of hazardous substances under CERCLA are benzene, toluene, ethylbenzene, and xylene (Btex)– chemicals found in crude oil and petroleum.

Yet CERCLA exempts these substances from liability requirements if they are found in crude oil and petroleum[10] (which are used in natural gas production). Thus, hazardous chemicals that would otherwise be regulated under CERCLA are immune from the statute. The definition of hazardous substance also excludes natural gas, natural gas liquids, liquefied natural gas, and synthetic gas usable for fuel.

In addition, Superfund allows "Potentially Responsible Parties" to be held liable for clean-up costs for a release or threatened release of a "hazardous substance." But CERCLA defines this term to exclude oil and natural gas. Consequently, industry has little incentive to clean up its hazardous waste, or to minimize leaks and spills, in part because the exemption allows companies to escape liability when these problems occur.

6. National Environmental Policy Act – NEPA

The National Environmental Policy Act[11] (NEPA) of 1970 establishes the broad national framework for protecting our environment. NEPA's ensures the federal government gives proper consideration to the environment before undertaking any major federal action (including involvement in industrial projects) that significantly affects the environment.

The Energy Policy Act of 2005 stripped NEPA's strong requirements for public involvement and environmental review when it comes to several oil and gas related activities[12]. It stipulated that they should be analyzed and processed by the Interior and Agricultural Departments under a much narrower and weaker process known as a "categorical exclusion[13]" (CE), as opposed to the more comprehensive and stringent Environmental Assessment[14] (EA) or Environmental Impact Statement[15] (EIS) required under NEPA. In addition, a CE does not allow for any public comment. In 2006 and 2007, the BLM granted this exemption to about 25 percent of all oil and gas wells approved on public land[16] in the West.

7. The Toxic Release Inventory of EPCRA

The Toxic Release Inventory[17] (TRI) was created by section 313 of the Emergency Planning and Community Right-to-Know Act[18] (EPCRA) of 1986. It requires most industries to report significant of toxic substances to the EPA, which then aggregates and disseminates the information to the public.

The information on chemical use and release includes point and fugitive onsite air releases, water releases, on and off-site land releases, underground injection, transfers to a Publicly Owned Treatment Works (POTW) or waste management facility (including the name and address of the facility), and the use of specific on-site waste treatment and management practices.

But despite their use of toxic chemicals throughout production, oil and gas facilities are not required to report to the TRI[19]. This exemption leaves communities in oil and gas producing areas in the dark about what chemicals are being released—making it difficult to attribute responsibility and seek remedy for resulting health and environmental problems.

Sources

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NOTE: this fact sheet is a synopsis of a more comprehensive white paper available at http://oilgas-exemptions.earthworksaction.org

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1612 K St., NW, Suite 808 Washington, D.C., USA 20006 • 202.887.1872
lpagel@earthworksaction.org
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