# Court challenges to EPA’s oil and gas air emissions rules filed



*Posted: Oct 26, 2012 3:29 PM EDT*
*Updated: Oct 26, 2012 3:33 PM EDT*

By Pam Kasey - email

Small natural gas producers could be unfairly burdened by the Environmental Protection Agency's August air emissions rules for the oil and gas industry, according to a court challenge.

"Despite acknowledging the wide variation in emission profiles from basin to basin and even within the same basin, the EPA promulgated a ‘one-size-fits-all' approach to wells based on an industry-wide average," said James D. Elliott, counsel in Spilman Thomas and Battle's Harrisburg, Pa.-area office. "Such an approach unfairly hurts the smaller, independent producers."

A Spilman Petition for Review, filed Oct. 15 against the EPA in D.C. Circuit Court on behalf of oil and natural gas associations throughout the eastern United States, is one of eight industry, environmental and state challenges filed by the Oct. 15 deadline.

Spilman filed its petition on behalf of the Independent Petroleum Association of America, the Independent Oil and Gas Association of West Virginia, the Kentucky Oil & Gas Association, the Indiana Oil and Gas Association, the Pennsylvania Independent Oil & Gas Association, the Ohio Oil and Gas Association, and the Illinois Oil & Gas Association.

The petition asks the United States Court of Appeals for the District of Columbia Circuit to review the EPA's Final Rule, "Oil and Natural Gas Sector: New Source Performance Standards and National Emissions Standards for Hazardous Air Pollutants Reviews." The rule is, in part, the result of a 2009 lawsuit brought by the WildEarth Guardians against that resulted in deadlines by which the agency was required to abide.

Although the petition really only serves as notice that a challenge is coming and the complaint can be modified before it is filed, the Spilman petition on behalf of the trade groups raises two points.

The definition of a low-pressure gas well is one, said IOGA-WV Executive Director Charlie Burd. Elliott credited Burd, along with the IPAA, with pulling together the coalition for this challenge.

"There is potential detrimental effect of this rule to many of these small operators not only in West Virginia but any operator that operates low-pressure wells," Burd said. "We felt it was important that we ask the EPA to reconsider their action and take a second look at the effect this would have on thousands of small operators across the country."

While the agency aimed to exempt certain low-pressure wells from the rule, it was done through 20 pages of technical support documents that were inserted in the final rule and for that reason was not available during the public comment period, according to Elliott.

"We would like for them to change the definition of low-pressure wells, which would then eliminate the necessity for those wells to fall under the same regulations as larger wells," Burd said. "That would help many small operators who just don't operate wells the same way that larger, more productive wells are operated."

Failing that, the coalition also is looking at the "one size fits all" approach Elliott refers to.

In justifying the cost effectiveness of the emissions controls the EPA requires in the rule, Elliott said by way of example the agency acknowledges that volatile organic compound content in emissions ranges from 0.0 percent to 52 percent.

"EPA picks 18.28 percent and runs all their numbers and justifies all their controls using one number," he said. "If you have a very low-VOC natural gas you're pulling out of the ground, it's not cost effective to have to do these controls."

Similarly, he said, the agency grouped all hydraulic fracturing operations as similar, in spite of the fact that some are low-pressure, low-volume vertical wells and some are fractured using nitrogen or carbon dioxide rather than water — all of which makes the requirement for capturing or flaring emissions during flowback infeasible.

"'Independent' a lot of times means they're not doing the big Marcellus wells — some are, some aren't," Elliott said.

"What we're trying to get at is, EPA should have excluded some, whether it be based on VOC content or volume of gas produced or something else," he continued. "These small, independent producers are marginally cost effective now with the price of gas where it is — add on the additional cost of these controls, and smaller wells may be forced out of business."

It is Elliott's belief that the agency will be willing to do a supplemental rulemaking to make the rule fairer to small producers.

More detailed challenges are due to be filed by all petitioners by Nov. 16.

The State Journal
PO Box 11848
Charleston, WV 25339
350 Quarrier Street
Charleston, WV 25301

Home
- News
- Opinion
- Country Roads Journal
- SJ Biz Lists
- Decision Makers
- Lifestyle
- Jobs
- Contact Us

News
- Business
- Energy
- Government
- Law
- Health Care
- Finance

Opinion
- Editorials
- Columns
- Letters to the Editor
- Bray Cary's Commentaries

Country Roads Journal
- Country Roads Journal

SJ Biz Lists
- SJ Biz Lists

News Partners
- WBOY
- WOWK
- WTRF
- WVNS