



WildEarth Guardians Threatens High-Dollar Litigation Against Seven DJ Producers

By: [Chris Colclasure](#)

WildEarth Guardians (WEG) [notified](#) seven oil and gas operators in the Denver-Julesburg Basin on February 19, 2019 of its intent to sue over alleged violations of the Clean Air Act and implementing regulations. WEG claims violations at a total of 15 production facilities. WEG claims the companies' total liability could reach \$1.3 billion.

The letters of intent (LOIs) invoke Section 304 of the federal Clean Air Act, which allows citizens to bring a federal lawsuit over alleged violations after giving notice and in some cases waiting 60 days. WEG argues the operators are at risk because they completed the wells and began production before filing emission notices or applying for air permits. WEG's claims are dramatic but they ignore certain provisions of Colorado's permitting regulation, approved by the EPA, that allow producers to wait up to 90 days after first production before filing emission notices or applying for permits. DJ Basin operators routinely use these 90 days to characterize a well's production and develop accurate emission estimates.

WEG also argues that the production facilities are "major sources" of emissions and are subject to stringent permitting and operational requirements. Although many production facilities use flares and other emission control devices to stay below major source thresholds, WEG argues the 15 facilities' emission controls should be disregarded because they are not federally enforceable. The LOIs are silent about state regulations that require operators to reduce emissions from storage tanks and separators by 95% or route gas from the separator to a gathering line starting on the date of first production.

The LOIs cite many statutes and regulations but conveniently omit certain key sections that cast doubt on the allegations. Time will tell whether WEG's objectives are to generate headlines, foment anger, solicit donations, pressure Colorado to change its regulations, go to court, or some combination of these goals. WEG's positions, if adopted by Colorado, EPA or a court, would mark a dramatic change from the way Colorado's air permitting rules are currently implemented. We are skeptical these claims will ever mature into a lawsuit because the arguments are such long shots and arguably even frivolous.

For more insights regarding how these letters affect the oil and gas industry and the legal framework behind them, please contact [Chris Colclasure](#) or [Jim Martin](#).