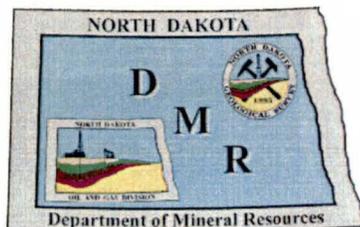


Department of Mineral Resources



Lynn D. Helms – Director

North Dakota Industrial Commission

www.dmr.nd.gov

North Dakota Industrial Commission
 Department of Mineral Resources
 Report to Budget Section
 December 5, 2012

The Environmental Protection Agency (EPA) draft guidance for permitting hydraulic fracturing using diesel fuel was published May 9, 2012. The initial 60 day comment period was extended to August 23, 2012 and has now been closed. The Industrial Commission, North Dakota Petroleum Council, and many other stakeholders submitted comments that addressed a significant number of concerns with the guidance as proposed, but the major points covered in Industrial Commission comments are as follows:

- 1) This is a state's rights issue. States that have adopted hydraulic fracturing rules that include chemical disclosure, well construction, and well bore pressure testing should be explicitly exempted from the guidance.
- 2) The definition of diesel fuel is too broad because it includes six Chemical Abstract Service Registry Numbers as well as any materials referred to by one of these primary names or any associated common synonyms.
- 3) EPA made no attempt to identify dangerous concentrations of these materials. Hydraulic fracturing treatments that utilize concentrations of less than 1% of any material defined as diesel fuel should be exempt from permitting requirements.
- 4) The guidance is written for Enhanced Oil Recovery wells or disposal wells completed with tubing and packer. It shows a serious lack of understanding of the horizontal drilling-hydraulic fracturing process. Most of the requirements will not work mechanically on wells completed with swell packers and fractured down the production casing.

Contacts within EPA have informed the Industrial Commission that over 97,000 comments, the vast majority from post card campaigns with approximately 2,700 unique comments, were received on the guidance. The final guidance document is being drafted and will not be published until spring of 2013.

None of the appropriated funds have been expended at this time.

Following is information from EPA and others that indicate why North Dakota must remain prepared to lead an effort in the courts to protect our state Underground Injection Control primacy and regulatory jurisdiction over hydraulic fracturing:

Browner Calls For Strict Fracking Rules

Inside EPA, November 8, 2012

Carol Browner, the former Clinton EPA administrator and Obama energy adviser, is urging the Obama administration in its second term to pursue national hydraulic fracturing standards but to leave enforcement and oversight of those standards to the states. In the editorial, Browner argued that national fracking rules could address the current patchwork of state regulations, given that states largely regulate fracking and EPA faces limits to oversee the practice. National rules, she said, should be "based on the best available science and technology and leave the oversight and enforcement up to the states," an approach which she said has enjoyed congressional support and had "great success" protecting health and the environment.



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EPA Seeks Data For Fracking Study

Inside EPA, November 8, 2012

EPA is currently studying the effects of the fracking process on water quality, and is seeking new data from the public to inform the research. Advocates of strict fracking rules hope the study will show risks to water that could boost calls for EPA to win new powers to regulate the sector, given concerns that inadequate state rules for fracking could lead to drinking water contamination and other harms.

In a notice published in the Nov. 9 Federal Register, EPA asks the public to identify and submit relevant data and scientific literature to inform the pending study, which was mandated by Congress. In the pre-publication notice, EPA says it will accept data and literature until April 30, 2013.

EPA's Office of Research & Development (ORD) and Office of Water jointly launched the study last year, spurred by a request in EPA's 2010 appropriations bill that the agency examine the possible adverse effects of fracking on drinking water. The study consists largely of two prospective and five retrospective case studies where EPA will examine how fracking in several states interact with drinking water supplies, along with laboratory analysis, literature reviews and other data.

Antimicrobial, Minimal Risk Pesticide Rules

E&E reporter, October 24, 2012

A range of significant EPA pesticide rules are more likely to move forward under the Obama administration, including what the pesticide industry views as a significant new regulation of antimicrobial pesticides, which has been under OMB review for more than a year. The rule would require manufacturers and importers to submit oral, dermal, and inhalation studies for antimicrobial products with a high probability of human exposure.

EPA submitted a draft proposed rule to clarify the exemption requirements for minimum risk pesticides to the departments of Agriculture and Health and Human Services in December 2011 for interagency review. According to the Consumer Specialty Products Association the rule is expected to require testing to ensure such minimal risk products are effective, as well as certain product chemistry and stability testing for the products, which are exempted from more significant regulation under Section 25(b) of the Federal Insecticide, Fungicide, and Rodenticide Act.

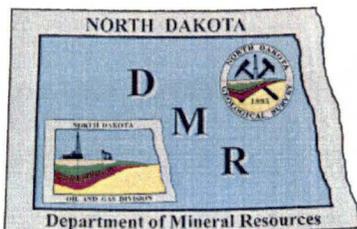
Centers for Disease Control

Inside EPA, May 4, 2012

Christopher Portier, director of the CDC's National Center for Environmental Health and Agency for Toxic Substances and Disease Registry is advocating additional studies to examine whether wastewater from hydraulically fractured wells can harm people or animals and vegetables they eat, said.

President Obama Executive Order

Other federal agencies including the Bureau of Land Management, United States Geological Survey, and Department of Energy have now begun investigating hydraulic fracturing under a Presidential Executive Order.



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AGs seek to shed light on EPA 'sue and settle' tactic

The Edmond Sun August 11, 2012

Oklahoma Attorney General Scott Pruitt and 12 other attorneys general are seeking documents related to the EPA's purported "sue and settle" strategy with environmental groups.

The FOIA letter requests electronic and print documents involving organizations that include Greenpeace, Defenders of Wildlife, Wild Earth Guardians, Sierra Club and the AFL-CIO. In some instances, the U.S. Environmental Protection Agency entered a consent decree the same day the lawsuit was filed, demonstrating prior knowledge, Pruitt said.

The agreements have led to new rules and regulations for states without allowing attorneys general to enter the process to defend the interest of states, businesses and consumers, Pruitt said. Pruitt said his office is investigating the pervasiveness of the purported tactic and requested documents to help in that effort.

Out of the 45 settlements made public the EPA has paid nearly \$1 million in attorneys' fees to the environmental groups, while also committing to develop sweeping new regulations, Pruitt said. One EPA consent decree led to the EPA's costliest regulation ever — the Mercury Air Toxics Standards, Pruitt said.

Once the documents are received the requesting states will analyze the data and produce a report as part of the ongoing review of the EPA's operations, Pruitt said. The report will be disseminated to each state as well as to the news media and Congress as a component of the AGs' active involvement in state efforts to address environmental issues, he said.

Conclusion and Recommendation

There is a fairly high probability that at least some portion of the appropriated funds will need to be expended prior to June 30, 2013.

If a lawsuit is initiated by another party in this matter the State of North Dakota needs to be prepared to act immediately so that we are a party to negotiations of any consent decrees.

The Industrial Commission plans to request that the 63rd Legislative Assembly consider a contingency appropriation of the sum of \$1,000,000, or so much of the sum as may be necessary, to the Industrial Commission for the purpose of defraying expenses associated with possible litigation and other administrative proceedings involving any federal agency's effort to regulate hydraulic fracturing.

Submitted by *Lynn D. Helms*
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