

# Uncertainty for the future of fracking

*McAfee & Taft RegLINC - January 2012*

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Hydraulic fracturing, or “fracking” as it is commonly known, involves injecting fluids down a well in order to access previously untapped sources of hydrocarbons. While this procedure is not new, it has recently become instrumental in the exploitation of shale gas which, in turn, has led to large increases in U.S. production and reserves. As it has grown in popularity, it has also courted controversy as it often calls for the use of chemicals or diesel fuel. Concerns have been raised by landowners and environmental groups about water pollution, air pollution, worker protections and even earthquakes.



## Federal Regulation

In 2005, Congress excluded most fracking activities from federal regulation with the Energy Policy Act. Since that time, there have been calls by many regulatory agencies, environmental groups and landowners to provide a federal regulatory framework for this activity. Industry leaders have argued that federal regulation has been made unnecessary because of currently existing state law. Nevertheless, the Environmental Protection Agency (EPA) is currently conducting a two-year study into the possible adverse effects of fracking. While the report will be issued sometime in late 2012, some conclusions may not appear until 2014. Therefore, it should be unlikely that the federal government will move to regulate the industry anytime in the near future. However, the current administration has shown a propensity for taking action before all predicates have been addressed.

Although the final study will not be issued until next year, the EPA has already released preliminary results of groundwater tests in Wyoming. On December 8, 2011, the agency released a draft report that found “likely” contamination from oil and gas production. Samples were taken over a two-year period in deep monitoring wells around Pavillion, Wyoming. The samples allegedly contain synthetic chemicals used in fracking. Opponents of fracking regulation note that the findings are not conclusive, nor have they been independently reviewed. However, if these findings hold up to scrutiny, they could indicate big changes for the oil and gas industry in the near future.

Groundwater contamination is not the only concern with fracking regulations. The EPA has also shown an interest in regulating the emissions that result from the procedure. A plan is currently being formulated that would require the oil and gas industry to cut emissions of volatile organic compounds by almost 95 percent for gas wells currently utilizing fracking. A final rule is expected sometime in April, but the debate over it is far from over. Industry groups have hotly contested the necessity and feasibility of such a rule. It has been described as “overly burdensome” and lacking nuance in its heavy-handed approach to regulating all fracking, regardless of the specific circumstances under which it occurs. Moreover, industry groups have pointed out that it is already in producers’ best interest to limit emissions as doing so increases the amount of hydrocarbons they recover. The EPA and environmental groups have countered that the new rule would reduce harmful air pollution and prevent the dissipation of valuable gas. More information on the proposed rule can be accessed on the EPA’s website, but the EPA is no longer taking comments.

## State Regulation

State agencies have been more willing to regulate fracking. Some states have taken aggressive stances, often reflecting perceived popular sentiment. Other states have been more measured in their approach. The Oklahoma Corporation Commission, for example, has issued a regulation prohibiting pollution to any surface or subsurface water through fracking operations. It then goes on to reference several other regulations, such as casing requirements, water quality standards, and well site and surface facility rules which indirectly affect fracking. This is a common-sense approach that basically relies on existing regulations to police the process, reflecting the notion that fracking is adequately regulated by many of the same protections in place for conventional drilling.

There have been other approaches towards regulation. Many states have enacted rules covering recordkeeping and disclosure requirements. For example, Colorado's Oil & Gas Conservation Commission has enacted a rule requiring operators to keep a chemical inventory of all products used downhole that exceed 500 pounds. These records must be readily available on request from state agencies. These types of rules often include protections for trade secrets, ensuring that companies who use "cocktails" of chemicals do not have to disclose the exact admixture. Moreover, it should be noted that many companies, including some of the largest operators, voluntarily disclose the chemicals that they use in an effort to address public concerns through transparency.

Many more state regulations are currently in the works. Colorado is considering adding to their current regulatory framework for fracking by promulgating specific rules that cover the process itself. Comments are currently being solicited on the new rules. Pennsylvania and New York have also recently considered promulgating new regulations.

Currently no consistency has emerged in the different regulatory structures enacted by the various state agencies with authority over fracking. The addition of federal rules will complicate matters further. With the increasing prevalence and success of fracking and horizontal drilling, this area will remain on the radars of many state agencies, and companies will need to pay close attention to the nuances of the different rules where they operate.

## LINKS

- [Jared Burden's Bio](#)

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