

environmental lawflash

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Federal Agencies Move to Regulate Aspects of Hydraulic Fracturing

The U.S. Department of the Interior issues proposed rules for hydraulic fracturing on federal and Indian lands; the U.S. Environmental Protection Agency issues draft Underground Injection Control program permitting guidance for wells that use diesel fuels.

On May 4, both the U.S. Department of the Interior and the U.S. Environmental Protection Agency (EPA) announced new draft proposals related to hydraulic fracturing. The Interior Department announced proposed rules for hydraulic fracturing occurring on lands controlled by the Bureau of Land Management (BLM). EPA issued draft guidance on using diesel fuel in hydraulic fracturing operations, which would apply to operations EPA directly permits under the Safe Drinking Water Act, regardless of whether located on federal or private lands. Both the Interior Department's proposed rules and EPA's draft guidance will be subject to a public comment period before being made final.

Interior Department Issues Proposed Federal Land Fracturing Rules

The proposed rules from the Interior Department's BLM govern future hydraulic fracturing of oil and natural gas wells on 700 million acres of federal mineral estate and 56 million acres of Indian mineral estate. Currently, such lands account for approximately 3,400 new wells per year, 90% of which BLM estimates are developed using hydraulic fracturing. The proposed rules revise current BLM regulations, imposing various new requirements on hydraulic fracturing operations (both future and already operational). Public comments on the proposed rules are due within 60 days of formal publication in the *Federal Register* (expected shortly), with BLM expected to adopt final rules by the end of 2012.

In general, the proposed rules would do the following:

- Impose new well-bore integrity assurance requirements to verify that fluids used do not escape during fracturing operations.
- Require public disclosure of chemicals used during hydraulic fracturing after fracturing operations are completed.
- Establish new requirements that oil and gas operators have a water management plan for handling fracturing fluids that flow back to the surface.

BLM estimates the new rules will impose additional annual costs of \$37–\$44 million per year, and maintains that its rules are “consistent with” current American Petroleum Institute guidelines for well construction and integrity.

The rules would impose a range of new specific requirements on operators in furtherance of the three general new regulatory objectives described above. Many of the regulations will require that, before beginning well-stimulation activities, operators submit to BLM information such as cement bond logs that demonstrate well integrity and information specifying the water source to be used in the fracturing operation. In addition, operators would be required to provide detailed information about the proposed well-stimulation engineering design, including estimated maximum injection pressure, estimated fracture length, and total fluid volumes to be used. Other requirements for receiving BLM approval would involve providing information on the geologic formation of

the well and the handling of recovered fluids, and any additional information requested by the BLM reviewing official. Operators also would be required to certify that they have complied with all applicable federal, tribal, state, and local laws.

As to actual operations, among other things, operators would be required to conduct certain pressure tests before beginning operations and to continuously monitor and record pressures during well-stimulation operations. Operators will be required to report certain pressure irregularities on the annulus immediately and to use lined pits or storage tanks to manage flowback fluids, although BLM specifically invites comments on whether this latter requirement is unnecessarily duplicative or burdensome in light of existing state regulatory regimes.

Under the proposed rules, further information must be reported 30 days after completion of well stimulation. One key requirement involves disclosing each fluid additive used, along with the fluid's associated trade name, its purpose, and "the complete chemical makeup of all materials used in the actual stimulation fluid." The proposed rules exempt the disclosure of trade secrets and proprietary information. BLM indicates that it is seeking ways to coordinate this chemical reporting requirement with similar requirements adopted by various states, including potentially using the existing FracFocus website. BLM specifically requests comments on the most effective means to "avoid duplication of requirements with existing state requirements" while also noting that it is BLM's intention to implement on public lands "whichever rules, state or Federal, are most protective of Federal lands and resources and the environment." In addition to chemical disclosures, operators would also be required to, among other things, certify that well-bore integrity was maintained throughout the operation and provide detailed information regarding the handling of recovered fluids (e.g., volume recovered, methods for handling and disposal).

EPA Issues Draft Guidance on Diesel Use in Fracturing

EPA's draft guidance details how EPA will permit hydraulic fracturing activity for which diesel fuel is part of the fracturing fluid. The guidance would apply where EPA is the permitting agency under the Safe Drinking Water Act's Underground Injection Control (UIC) program. While not itself a binding "regulation," any final guidance will likely be considered highly controlling by individual EPA agency permit writers involved in crafting and approving particular permits. In addition, in those jurisdictions where states have directly assumed the responsibility of issuing UIC permits, the guidance may also prove influential

The draft guidance outlines for EPA permit writers requirements for allowing diesel fuels to be used for hydraulic fracturing wells and technical recommendations for permitting those wells. Among the topics covered in the guidance are descriptions of "diesel fuels," including six Chemical Abstracts Service (CAS) registry numbers: CAS 68334-30-5, CAS 68476-34-6, CAS 68476-30-2, CAS 68476-31-3, CAS 8008-20-6, and CAS 68410-00-4. Other topics include approaches for authorizing multiple wells through area permits; application submission and review procedures; well-construction requirements (new and already constructed wells); operation, mechanical integrity, monitoring, and reporting requirements; financial assurance requirements; and public notification and environmental justice considerations.

Implications

Both the BLM proposed rules and the EPA draft guidance will undergo a 60-day public comment period once formally published in the *Federal Register*. Interested parties should review each set of proposals closely to assess how their operations would be affected and should submit comments to the agencies noting any concerns. Failure to participate in the public rule-making process, whether directly or through an industry trade association, can severely limit any later opportunity to bring a court challenge to such rules or guidance.

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