

FRACKING

Oil and gas production are expanding across the nation, largely because advanced hydraulic fracturing (also known as “fracking”) has made it easier to extract oil and gas from previously inaccessible sites. Fracking involves injecting water and chemicals deep into the earth at extremely high pressure to break up layers of rock that harbor deposits of natural gas and/or oil. Hundreds of thousands of new oil and gas wells have been drilled in the past decade, and oil and gas development is now occurring in about thirty states. While fracking has increased domestic fuel supplies and has made it easier for natural gas to displace dirtier coal in electricity generation, fracking has also raised concerns about contaminated drinking water supplies, increased air pollution, toxic waste disposal, impairment of rivers and streams, and destruction of landscapes and wildlife habitat. NRDC opposes expanded fracking until effective safeguards are in place.



I. PRIMARY STATUTES

EXEMPTIONS

Federal safeguards for oil and gas production are missing. Many of the fundamental environmental statutes have exemptions for oil and gas production, leaving aspects of those activities largely ungoverned at the federal level.

■ SAFE DRINKING WATER ACT

Fracking is exempted from the Safe Drinking Water Act pollution control measures unless diesel is used in the fracking process.

■ CLEAN WATER ACT

Oil and gas operations are exempt from important permitting and pollution control requirements of the Clean Water Act, including the stormwater runoff permit requirement. In addition, there is a loophole that allows certain wastewater produced by oil and gas wells to be discharged into surface waters in the western United States.

■ CLEAN AIR ACT

The oil and gas industry is exempt from critical requirements to assess, monitor, and control hazardous air pollutants.

■ RESOURCE CONSERVATION AND RECOVERY ACT

Oil and gas waste is exempt from the testing, treatment and disposal provisions that govern the assessment control and clean-up of hazardous waste under this law, and, by extension, from the Comprehensive Environmental Response, Compensation and Liability Act (aka “Superfund”), which adopts the same definition of hazardous waste.

■ NATIONAL ENVIRONMENTAL POLICY ACT

When oil and gas companies lease federal lands, they are exempted from some requirements for environmental impact reviews.

GOVERNANCE

■ CLEAN AIR ACT

EPA does have authority to limit emissions of some pollutants released during the fracking process and issued new rules in 2012 to limit emissions of some air pollutants from fracking.

■ MINERAL POLICY ACT AND FEDERAL LAND POLICY AND MANAGEMENT ACT


Leasing of federal lands for oil and gas production is controlled by these statutes, which govern all uses of federal lands.



For more
information,
please
contact:

Amy Mall

amall@nrdc.org
(202) 289-6868

 switchboard.nrdc.org/
blogs/amall

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II. MAJOR CONCERNS

- Fracking is being regulated largely at the state level, and states vary widely in their ability and commitment to governing the practice. Moreover, state law sometimes prevents localities from banning fracking in a specific area. NRDC believes there needs to be strong federal governance of fracking to protect drinking water, air quality and human health.
- Companies are not required by any federal law to identify the chemicals they are injecting into the ground as part of fracking, and state disclosure requirements vary widely.
- Fracking releases methane, a gas that contributes to climate change, into the atmosphere. Companies could be required to capture such “fugitive methane,” since they can then sell it. Scientists have not yet concluded exactly how much is escaping from fracked wells.
- Water pollution is a threat from fracking, poor well construction, leaks and spills, and runoff. Drilling and fracking produce large amounts of toxic wastes (including wastewater that is returned and collected back at the surface) that need to be transported and disposed of.
- Oil and gas development destroys wildlife habitat and sensitive lands.
- Oil and gas development and related industrial activities add to local, regional and global air pollution problems from drilling, fracking, processing, trucking and other activities.
- In many states, oil and gas rights take precedence over surface ownership, so oil and gas wells and the associated industrial activity—including chemicals and waste—can be located in residential or agricultural areas regardless of zoning.

III. UPCOMING ISSUES

- Legislation is needed to close these loopholes and may be introduced in the new Congress.
- EPA is expected to issue standards to govern the discharge of oil and gas wastewater under the Clean Water Act.
- EPA will be issuing guidance for states on how to issue permits for fracking when diesel is used in fracking fluid.
- Last year, the Bureau of Land Management (BLM) proposed rules for issuing permits for fracking on public land. It is receiving comments and is expected to issue final rules this spring.
- EPA is conducting a comprehensive scientific study into the risks of fracking on drinking water. While the final report is scheduled for 2014, EPA may issue interim reports before then. EPA was directed by Congress to conduct this study because of the lack of research into the risks to drinking water posed by fracking. This will be the first independent study of its kind.
- EPA intends to initiate a stakeholder process to provide input on the design and scope of possible reporting of fracking chemicals under the Toxic Substances Control Act (TSCA).

PUBLIC OPINION

- A December, 2012 Bloomberg National Poll found that 66 percent of Americans want more government oversight of fracking, an increase from 56 percent in a September poll.