
Docket No. EPA-HQ-OA-2015-0245

COMMENTS

of

WASHINGTON LEGAL FOUNDATION

to the

**ENVIRONMENTAL PROTECTION AGENCY
SCIENCE ADVISORY BOARD**

Concerning

**REVIEW OF EPA DRAFT REPORT,
*ASSESSMENT OF THE POTENTIAL IMPACTS OF
HYDRAULIC FRACTURING FOR OIL AND GAS
ON DRINKING WATER RESOURCES***

IN RESPONSE TO THE PUBLIC NOTICE PUBLISHED
AT 80 FED. REG. 32111 (June 5, 2015)

Richard A. Samp
Mark S. Chenoweth
Washington Legal Foundation
2009 Massachusetts Ave., NW
Washington, DC 20036
(202) 588-0302

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WASHINGTON LEGAL FOUNDATION
2009 Massachusetts Avenue, N.W.
Washington, DC 20036
202-588-0302

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Office of Environmental Information Docket
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: Review of EPA Draft Report, *Assessment of the Potential Impacts of Hydraulic Fracturing for Oil and Gas on Drinking Water Resources*
Docket No. EPA-HQ-OA-2015-0245
80 Fed. Reg. 32111 (June 5, 2015)

Dear Sir or Madam:

Washington Legal Foundation (WLF) appreciates this opportunity to submit these comments to the Scientific Advisory Board's Hydraulic Fracturing Research Advisory Panel in connection with the Advisory Panel's review of the Environmental Protection Agency's (EPA) draft report entitled, *Assessment of the Potential Impacts of Hydraulic Fracturing for Oil and Gas on Drinking Water Resources* (the "Draft Assessment"). EPA is to be commended for its comprehensive efforts to bring together all available evidence regarding the potential impacts of hydraulic fracturing on drinking water resources. That evidence fully supports the Draft Assessment's conclusion that there is no evidence that hydraulic fracturing has led "to widespread, systematic impacts on drinking water resources in the United States" and that the number of cases in which activities associated with hydraulic fracturing have been shown to have had an impact on those resources "was small compared to the number of hydraulically fractured wells." The evidence also demonstrates that those cases in which spills/accidents had an impact on drinking water resources did not involve activity unique to hydraulic fracturing;

e.g., waste water is generated by all oil and gas production activity (not just hydraulic fracturing), and thus infrequent but inevitable waste-water spills would be a potential issue of concern regardless whether the oil and gas industries engaged in hydraulic fracturing.

WLF's enthusiasm for the Draft Assessment's scientific findings is tempered, however, by the Draft Assessment's failure to set out conclusions that naturally flow from those scientific findings. Congress directed EPA to undertake its study because it sought an answer to a question raised by a number of environmental groups: does hydraulic fracturing pose such dangers to the safety of drinking water resources that we should question its continued use as a means of extracting oil and gas resources and/or that more stringent regulations (beyond those already imposed at the state level) are warranted? The evidence compiled by the Draft Assessment indicates that the answer to that question is a resounding "no." By refusing to directly answer that basic question, the Draft Assessment fails to provide legislative bodies with the definitive guidance they had expected this long-awaited study would provide.

Interests of Washington Legal Foundation

Washington Legal Foundation is a public-interest law firm and policy center based in Washington, D.C., with supporters in all 50 States. WLF devotes a substantial portion of its resources to defending free enterprise, individual rights, a limited and accountable government, and the rule of law. To that end, WLF regularly appears before federal and state courts and administrative agencies to urge adoption of environmental policies that strike a proper balance between environmental safety and economic well-being. *See, e.g., Utility Air Regulatory Group v. EPA*, 134 S. Ct. 2427 (2014) (challenging EPA's Clean Air Act "tailoring rule"); *United*

States v. King, 660 F.3d 1071 (9th Cir. 2011), *cert. denied*, 132 S. Ct. 2740 (2012) (urging reasonable enforcement policies for Underground Injection Control programs); *Wallach v. Town of Dryden*, 23 N.Y.3d 728 (2014) (urging preemption of hydraulic fracturing bans imposed by municipal governments).

WLF has submitted formal comments to EPA in connection with regulatory proceedings involving hydraulic fracturing. *See, e.g.*, Advance Notice of Proposed Rulemaking Regarding Hydraulic Fracturing Chemicals and Mixtures, 79 Fed. Reg. 28664 (comments filed Sept. 18, 2014). WLF also regularly publishes articles addressing the need to adopt reasonable limits on the scope of government regulation of oil and gas development. *See, e.g.*, Eric Waeckerlin and Joe Green, *Hydraulic Fracturing & TSCA: EPA's Surprising Move and Its Sweeping Implications*, WLF LEGAL BACKGROUNDER (Feb. 24, 2012) (available at www.wlf.org/upload/legalstudies/legalbackgrounder/2-17-12Waeckerlin_LegalBackgrounder.pdf).

**The Assessment Should State Explicitly the Conclusions
to Be Drawn from Its Scientific Findings**

The Draft Assessment has performed an invaluable service in pulling together in one report all available information about the potential impacts of hydraulic fracturing on drinking water resources. But in requesting EPA to undertake this study, Congress sought more than a simple compilation of scientific information. It sought an answer to a basic policy question: does hydraulic fracturing pose unacceptably high risks to drinking water supplies? The scientific evidence compiled in the Draft Assessment indicates that the answer to that question is no; accordingly, the Assessment should say so explicitly.

Opinion surveys suggest that the public would consider the risks to be unacceptably high (in the absence of new regulations to strengthen existing state regulations) under either of two scenarios: (1) if hydraulic fracturing were shown to have a natural tendency to pollute ground or surface water even when conducted in accordance with existing state regulations; or (2) if there is at least a small chance that an accident could result in catastrophically bad outcomes (*e.g.*, the long-term destruction of a significant amounts of our drinking water supply). The Draft Assessment indicates the absence of any evidence to support either scenario; the Assessment ought to include statements explicitly noting the absence of such evidence.

The Draft Assessment's discussion of "Well Injection" (one of five major topics covered in the report) is illustrative of our point. The "Well Injunction" discussion is divided into two major topics: (1) the containment of fluids before, during, and after fracturing; and (2) subsurface migration of fluids. The second topic raises issues that are unique to hydraulic fracturing, the first does not. Yet, the Draft Assessment concludes that credible dangers to drinking water arise only under the first topic (containment of fluids), not the second.

The Draft Assessment found that containment through use of multiple casings cemented along the wellbore are an important means of isolating drinking water resources from fluids moving through the subsurface. It further found that, on a small number of occasions, drinking water resources have been adversely affected by accidents caused by inadequately designed or constructed casing or cement. Although the Draft Assessment fails to state the point explicitly, proper containment through use of casing and cement is important in *all* oil and gas operations, not simply in hydraulic fracturing. No one is suggesting that the nation should cease all oil or

gas operations because rare accidental spills have occasionally had adverse effects on drinking water. The possibility of such spills is not a reason to single out hydraulic fracturing for special regulation.

The most frequently articulated concern about hydraulic fracturing has been the (unfounded) fear that even when operations are conducted in accordance with all regulations, the fracturing activity will cause oil or gas (or the chemicals used in the fracturing process) to migrate in the direction of drinking water resources. The Draft Assessment has put such fears to rest, and it should say so explicitly. In particular, the report notes that most hydraulic fracturing occurs at subsurface depths that are well below the levels at which drinking water resources are found. More than 80% of the 23,000 wells studied were more than 2,000 feet lower than the base of protected ground water resources. The report concluded that there is no scientific evidence to suggest that subsurface fluids generated by hydraulic fracturing will migrate upward and have an impact on drinking water.

Conclusion

Unfortunately, because the Draft Assessment does not include the explicit statements outlined above, opponents of hydraulic fracturing have not been the least bit chastened by the clean bill of health the report provided. They point to the Draft Assessment's frank acknowledgment of a small number of accidents as supposed proof of the extreme dangerousness of hydraulic fracturing. Such exaggerated claims will not be silenced unless the Draft Assessment is revised to include a definitive positive evaluation of the safety of this long-utilized industrial practice.

Sincerely,

/s/ Richard A. Samp

Richard A. Samp
Chief Counsel

/s/ Mark S. Chenoweth

Mark S. Chenoweth
General Counsel