

Issue: DeGette Bill Targeting Hydraulic Fracturing To Be Introduced Today

Later today, U.S. Reps. Diana DeGette (D-Colo.) and Maurice Hinchey (D-N.Y.) are expected to introduce legislation seeking to strip a critical provision of the Energy Policy Act of 2005 – one offering a clear declaration of Congress's intent on whether hydraulic fracturing was ever intended to be regulated under the Safe Drinking Water Act (SDWA) of 1974 (it was not).

If successful, the DeGette-Hinchey legislation would allow EPA to claim regulatory jurisdiction over a commonly used well-stimulation technology used on [nine of out 10 wells in America](#), a job that states and communities have done – and done well – for the [entire 60 years](#) in which hydraulic fracturing has been in safe commercial use.

Regrettably, the authors of this legislation have been less than thorough in characterizing the true purpose and intent of their bill. What follows is a quick round-up of statements being made on this issue, along with the actual facts in cases where the rhetoric has failed to match the reality.

Claim: Hydraulic fracturing earned an “exemption” from proper regulation under the Energy Policy Act of 2005. Efforts to reverse that exemption are thus a simple and straight-forward means of reinstating the true intent of the 35-year-old law.

[Rep. Maurice Hinchey \(D-N.Y.\)](#): “We’re not trying to do anything revolutionary. We’re trying to **restore** a safe, solid piece of legislation that was passed back in 1974.”

Fact: The Safe Drinking Water Act was [never contemplated](#) as a tool to be used in exerting federal control over hydraulic fracturing -- not prior to 1974, not during, and not after.

In 2005, Congress passed ([with the vote](#) of then-Sen. Barack Obama) the Energy Policy Act, a key provision of which sought to clarify Congress's historical intent on whether the Safe Drinking Water Act (SDWA) of 1974 was ever designed to regulate hydraulic fracturing.

The answer was no, and in this case, history proved an effective guide: When SDWA was passed in 1974, hydraulic fracturing **had already been in use for 25 years**. Hydraulic fracturing was never considered for inclusion under SDWA jurisdiction at the time. The Act was amended in [1986](#), and then again in [1996](#). At no point in the process was the concept of SDWA regulation over fracturing ever considered a necessity – or even a possibility.

Hydraulic fracturing was never regulated under SDWA – and, by that definition, could never have been granted an “exemption.” *How can you be exempt from something that never covered you in the first place?*

Claim: The DeGette bill simply seeks to make a “technical” fix. It's only purpose? To create a system allowing energy producers to “file reports” with EPA regarding materials used at the well site.

[Rep. Diana DeGette \(D-Colo.\)](#): “This bill would make drillers subject to the same reporting requirements as any other industry under the SDWA. ... Oil and gas companies ... are totally blowing our bill out of proportion.”

Fact: Neither “reporting” nor “registry” are terms that appear anywhere [among the 97 words](#) of the DeGette legislation, at least as introduced in the 110th Congress. Make no mistake: This bill is about regulation, not reporting.

If previous legislation on this topic is any guide, the 2009 DeGette bill will seek to eliminate key sections of SDWA, replacing them with two lines of legislative text at complete odds with the historical and practical intent of the Act.

The upshot? Under DeGette/Hinchey, EPA would take long-established power away from the states and be granted sole authority to determine where fracturing is allowed to take place, when, how, and under what conditions.

Because the Safe Drinking Water Act does not allow any materials covered by its authority (whether that's water, sand or anything else) to be injected without a permit, EPA would be given that job as well. Unfortunately, EPA neither has the personnel apparatus nor operational regime in place to receive, consider or administer such permits. And even if it did, the issuance of EPA fracturing permits would be subject to endless litigation and appeal – effectively resulting in a de facto ban on the safe deployment of the technology.

Flashback: “EPA does not regulate – and does not believe it is legally required to regulate – the hydraulic fracturing of methane gas production wells.”

“There is no evidence that the hydraulic fracturing at issue has resulted in any contamination or endangerment of underground sources of drinking water.”

-- [Carol Browner](#), then-EPA Administrator and current White House energy czar. (1997)

Claim: The history of hydraulic fracturing may lead some people to believe its safe, but recent evidence suggests more than 1,000 separate instances of groundwater contamination as a result of it.

ProPublica: “In fact, ProPublica's stories documented more than 1,000 cases in which water was contaminated in the same places where fracturing takes place.”

Spokesman for Rep. DeGette: “Without federal oversight, there is no way to really track whether the process [of hydraulic fracturing] is safe.”

Fact: Not a single documented case of drinking water contamination has ever been credibly tied to hydraulic fracturing. Not one. In 60 years.

From where does that “1,000 cases” figure arise? Last year, 452,000 wells produced natural gas in the United States. Opponents of hydraulic fracturing have asked state regulators to produce lists of each individual case in which a well was breached or any amount of methane compromised the integrity of the well. That none of these cases had anything to do with hydraulic fracturing is rarely mentioned.

In 2004, [no less an authority than EPA itself](#) undertook an exhaustive project of research and analysis aimed at finding out, once and for all, whether hydraulic fracturing posed a legitimate risk to ground and drinking water. It found “no evidence” of any such risk.

Those findings have been confirmed by the [U.S. Department of Energy](#), the [Ground Water Protection Council](#), and [numerous](#) other state, federal and outside agencies.

###

www.EnergyInDepth.org