



What the Waxman Report Doesn't Report

E&C minority staff paper on fracturing fluids heavy on scary words, but light on context – and silent on what really matters

How do you debunk that which doesn't exist? It's a question we've been asking ourselves ever since Rep. Henry Waxman's report on fracturing fluids landed in our inbox over the weekend. Sure, the paper itself exists (though Jean-Paul Sartre might disagree) – but what constituting anything new, or important, or even controversial is actually found inside? In other words, as Walter Mondale might say, where's the beef?

Well, stare at the document long enough, and you find that the only real charge put forth is that some of the additives found in fracturing fluids — materials which typically comprise less than 0.5 percent of the total fracturing solution — are not the types of things you'd ever want to eat or drink. Pretty thin soup from an investigative standpoint — industry's been saying this for decades — but catnip for wire reporters and headline writers who found themselves chasing The New York Times on Saturday night after the document was leaked to a particularly friendly reporter.

"Carcinogens injected into wells" was the Associated Press headline to which we woke up on Sunday morning, with the AP trumpeting in its lead that "millions of gallons of potentially hazardous chemicals and known carcinogens were injected into wells by leading oil and gas service companies from 2005-2009." Of course, the AP doesn't tell us whether those materials were injected into water wells, gas wells, or geothermal wells — why get into a detail like that? And it erroneously reports that the Waxman paper says that "millions of gallons" of these chemicals were used, even though the actual report cleverly avoids providing specific information on those volumes.

But reading the AP piece again got us to thinking: Why not highlight a couple things that weren't reported in the Waxman document? A couple things that were craftily avoided, obfuscated or cut altogether by Waxman's staff, all for the purpose of producing a press-friendly document that includes lots of big numbers and scary words, but zero context and no real way to verify or understand what's actually being represented?

Ok, we'll do that. Here below are some of the most glaring omissions we found:

The Waxman report has lots to say about toxicity of chemicals, but nothing to say about quality of drinking water.

- *To Waxman and his staff, the mere existence of a chemical (in and of itself) constitutes a hazard to human health, even if no evidence exists indicating that these materials have any ability to access underground sources of drinking water.*
- *But, as EID told reporters this week, "the only way that'd be relevant in a public health context is if those materials were somehow finding their way into potable water supplies underground. Naturally, this report has no ability to show that, precisely because they aren't, don't, and according to regulators, never have." (EID, as quoted by Wall Street Journal, April 16, 2011)*
- *The Waxman report stays conspicuously silent on the relationship between hydraulic fracturing and drinking water, choosing not to cite or even acknowledge letters from more than a dozen top environmental regulators in the states testifying to the fact that fracturing technology has never been found to adversely affect potable drinking water underground.*
- *Neither does the report discuss any of the myriad processes or technologies used by producers to identify and eliminate potential pathways of exposure in the subsurface. Things like the use of multiple and redundant*

casing strings; the cementing and re-cementing of wells to depths far deeper than potable water; and the utilization of 3-D (and in some cases 4-D) fracture-mapping technology that provides producers and service companies a 360-degree, full-color view of the surrounding subsurface geology.

Notwithstanding all the big numbers, the Waxman report doesn't actually include information on chemical volumes.

- *Hard to believe given the headlines and news reports we've seen this week, but read the report again: Nowhere will you find an answer to the basic question of how much methanol, for instance, is being used in the context of hydraulic fracturing – even though the Waxman staff presumably has access to that information (heck, companies like Range Resources even post it online).*
- *Here's what you'll find instead: Really big numbers, tossed-in all over the place, meant to create the impression that millions of gallons of unnecessarily toxic chemicals are used in the fracturing process. In reality, all the Waxman report actually says is that millions of gallons of additives are used — and that a very small percentage of those additives could pose a danger if not managed properly. Waxman is happy to provide volumetric data on the former category, but far less willing to provide information on the latter.*
- *In other words, the Waxman report provides details on the total volume of fracturing fluids containing even small amounts of chemicals, **but no information on the actual volume of "hazardous" materials being pumped**. The report also doesn't say a word about how many fracturing operations have been executed to support the volumes described, or where or when those jobs took place — preventing the reader from gaining any understanding of how much of a given chemical is used at a specific job.*

The Waxman report creates its own definition of a "toxic" chemical – and then applies it all over the place.

- *Believe it or not, almost 40 percent of the chemicals Waxman lists as "toxic" in the context of hydraulic fracturing can only lay claim to that status because of their role as **air pollutants** when converted into a completely different (in this case, gaseous) state.*
- *Consider once again the example of methanol, a product that's used as a corrosion inhibitor to protect the integrity of the pipe downhole, but also as a feedstock to make just about every consumer product under the sun. Under the Waxman methodology, methanol is considered one of the 29 "toxic" materials used in the fracturing process principally because the chemical is listed as an air pollutant under the Clean Air Act.*
- *Of course, what the Waxman report fails to acknowledge is that producers aren't exactly venting vaporized methanol off into the atmosphere – they're applying small (liquid) volumes of it downhole to prevent the inside of their pipes from corroding.*
- *All told, 11 of the 29 chemicals tagged as "toxic" by Waxman fit into this category – that is, they qualify for Waxman's list because they're mentioned in the Clean Air Act, but apply in no other context.*
- *Another handful of constituents earn the "toxic" title because they're regulated under the Safe Drinking Water Act. But isn't that the point? Not that every single molecule of material used in the fracturing process is completely devoid of risk – but that when risks exist, the right kind of procedures and regulations are in place to ensure they're managed properly?*

The Waxman report fails to mention that the fracturing process is well-regulated – and so is the discharge and disposition of water.

- *Waxman goes out of his way to create the impression that the entire natural gas development process occurs outside the view and reach of regulators, with the report stating categorically that "federal law ... contains no public disclosure requirements for oil and gas producers or service companies involved in hydraulic fracturing."*
- *But if that's true, how did Waxman and his staff gain access to this information in the first place? According to the report: "For each hydraulic fracturing product reported, the companies also provided a Material Safety Data Sheet (MSDS) **detailing the product's chemical components**. ... The MSDS **must list all hazardous ingredients** if they comprise at least 1% of the product; for carcinogens, the reporting threshold is 0.1%" (emphasis added)*
- *In other words, Waxman admits in his report that MSDS must include information "detailing the product's chemical components" and that federal law "requires chemical manufacturers to create a MSDS for every product they sell" – but somehow, none of this constitutes "disclosure" in his eyes. Instead, the solution put forth by Rep. Diana DeGette (D-Colo.), who released the report alongside Mr. Waxman this week, is for Congress to pass a bill that she authored, even though it has almost nothing to do with "disclosure" at all.*

- *In reality, the entire process of siting, constructing, drilling, and yes, fracturing a well is regulated as a matter of law by the states in which these activities actually take place. On the federal level, water that's discharged on the surface is regulated by the Clean Water Act, with water disposed of through the Underground Injection Control program managed by EPA under the Safe Drinking Water Act. And as we've seen, even though the act of hydraulic fracturing itself has never been directly regulated under SDWA, that fact has never stopped EPA from gathering and disseminated data on fracturing when and where needed.*
- *To its credit, the Waxman report does include a glancing reference to a new national fracturing fluid registry launched by the Ground Water Protection Council, which went live on April 11 and currently includes a broad range of data (volumes, concentrations, CAS numbers) from more than 31 major natural gas operators in the United States (with new major participants coming on everyday). Not to its credit, the report errs in suggesting the registry is still in the development phase. It's live right now; and even at this early stage, it already provides a lot more and better information than can be found in the Waxman report.*

UPDATE (4/27/11; 9:55 a.m. EST):

Well, we did what we could with the resources we had — but turns out, Blank Rome's analysis of the Waxman report, published a few days after ours, is a lot more thorough than ours ... and a heck of a lot more damning. [Click here](#) for the four-page Blank Rome document.