



INTERSTATE
Oil & Gas
COMPACT COMMISSION

A CHRONOLOGY OF HYDRAULIC FRACTURING AND THE SAFE DRINKING WATER ACT.

NOVEMBER 2009

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1974

- In 1974, the U.S. enacted the Safe Drinking Water Act (SDWA) which gave the U.S. Environmental Protection Agency (EPA), among other things, authority to regulate the underground injection of fluids. The SDWA defined “underground injection” to be “the subsurface emplacement of fluids by well injection.”

1980

- In 1980, the SDWA was amended to provide an alternative for the states to obtain primary enforcement responsibility (“primacy”) for oil and gas underground injection control programs, which was interpreted by EPA and the states to apply to salt water disposal wells and injection wells for enhanced recovery.

1982

- In 1982, the EPA granted primary enforcement responsibility to the State of Alabama for the regulation of UIC Class II wells (injection wells associated with oil and gas operations).
- In its enforcement of the SDWA, EPA did not treat injections associated with water or oil and natural gas drilling or completion operations to be “underground injection” under the act. This interpretation was based in part upon legislative history (a colloquy in the U.S. House of Representatives) that the provisions “are not concerned so much with drilling as the injection of waste into the underground.”

1994

- In 1994, a Florida-based environmental group, the Legal Environmental Assistance Foundation (LEAF) sued EPA under the SDWA.
- It requested that EPA take over administration of the Underground Injection Control (UIC) Program in the State of Alabama which had been administered by the state under “primacy. LEAF alleged that the program was deficient because it didn’t regulate hydraulic fracturing associated with methane gas production as “underground injection” under the SDWA.

1997

- In 1997, the 11th Circuit Court of Appeals issued a ruling in favor of the Plaintiffs to the effect that hydraulic fracturing constituted “underground injection” under the SDWA.
- The ruling was issued based solely on a legal interpretation of the SDWA and without any finding of environmental harm to drinking water or public health risk from hydraulic fracturing.
- Following EPA approval of the new Alabama program, LEAF filed a motion with the court contending that EPA erred in approving the program. The court subsequently ruled in favor of EPA and an appeal by LEAF to the U.S. Supreme Court was denied.

1999

- Commencing in 1999 (authorized by IOGCC Resolutions [99.603](#), [01.121](#), and [03.101](#)), the IOGCC began to actively inform Congress of the role that states play in the regulation of hydraulic fracturing in their states and to encourage Congress to reverse the LEAF case through legislation.

JUST THE FACTS: A CHRONOLOGICAL LOOK AT HYDRAULIC FRACTURING

2002

- In 2002, the IOGCC conducted and published a survey of the states that showed no documented cases of ground water contamination associated with hydraulic fracturing since inception of the technology.

2004

- A 2004 a study by EPA, under President Clinton, evaluated the potential threat to underground sources of drinking water (USDW) from hydraulic fracturing of coalbed methane (CBM) production wells and concluded that additional or further study was not warranted and “that the injection of hydraulic fracturing fluids in to CBM wells pose[d] minimal threat to USDWs.”

2005

- In 2005, Congress, responding to the evidence inserted a provision (**Section 322**) with Democrat and Republican support into the bi-partisan Energy Policy Act of 2005 (EPACT).
- This provision clarified that “underground injection” under the SDWA excluded, “except for diesel fuels”, the underground injection of fluids pursuant to hydraulic fracturing operations. Senator Bingaman’s office played in a key role in crafting the provision.

2007

- In October 2007, responding to those who opposed the passage of Section 322 of EPACT, the Committee on Oversight and Government Reform of the U.S. House of Representatives held a hearing on hydraulic fracturing.
- At the hearing, by design, most of those invited to testify asserted that oil and natural gas development in this country was having a negative environmental and public health impact and that a number of the provisions of EPACT should be reversed, including Section 322.
- The IOGCC, through the Deputy Director of the State of Alabama Oil and Gas Board, testified that the evidence strongly suggested otherwise -- that there has been no harm to drinking water as a consequence of the operation of Section 322 of EPACT and that hydraulic fracturing is well and adequately regulated by the states.

2009

- In June 2009, legislation was introduced in both the House (**HR 2766**) and Senate (**S 1215**) to repeal the exemption for hydraulic fracturing in the SDWA.
- In September 2009, the IOGCC once again passed a resolution on hydraulic fracturing (**Resolution 09.011**). The resolution declares the IOGCC’s “support for maintaining the exemption of hydraulic fracturing from the provisions of the SDWA and urges the Congress of the United States not to pass legislation that removes the exemption for hydraulic fracturing.”