

Environmental & Energy Insights

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Drill Baby, Drill

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Technology has outpaced regulation when it comes to the latest advances in oil and gas drilling and extraction. However, with both state and federal regulations under development, the law may soon catch up.

At the federal level, the Bureau of Land Management (“BLM”) plans to release a set of revised proposed regulations addressing hydraulic fracturing (or “fracking”) by the end of March. A copy of the regulations, which will apply to drilling activities on federal lands, was recently leaked ahead of its publication in the federal register. The proposed regulations, originally released last May, have been revised in response to public comments. The revised regulations drop a pre-drilling compliance certification requirement, and although the rules would require disclosure of fracking chemicals to BLM, such disclosure would be made after drilling and would be subject to potential trade secret protection. The regulations additionally require that operators have an appropriate management plan for flowback water and set standards for well bore construction. Notably, unlike the original version, the revised regulations appear limited to fracking as opposed to other drilling techniques, such as “acidizing.”

The BLM is not the only federal agency looking into possible fracking regulation. For example, the Environmental Protection Agency is currently studying the effects of fracking on drinking water sources, something that could become a steppingstone to water quality based regulations.

Regulatory efforts are also heating up at the state level. For example, the California Department of Conservation, Division of Oil, Gas & Geothermal Resources (“DOGGR”), released a “discussion draft” set of rules in December that would require oil companies to notify state officials at least 10 days prior to fracking and to disclose fracking fluid chemicals on the website FracFocus.org, unless such chemicals are protected as trade secrets or confidential business information. The draft rules also require well testing to assure that the well can withstand fracking force, and a public posting of information about the testing results and where fracking is scheduled to occur at least seven days before drilling.

Other recent California initiatives are also aimed at fracking. For example, SB 395 would have water produced during the drilling processes treated as hazardous waste. Other bills introduced in California would similarly subject fracking to greater scrutiny. For example, some of the provisions in proposed laws would require avoidance of seismicity risk, require oil companies to demonstrate that use of fracking would present no threat to public health and safety, require full disclosure of well construction materials and chemical use, and provide for citizen suits for disclosure failures. The California South Coast Air Quality Management District also appears ready to propose regulations governing fracking and its impact on air quality.

Between BLM and DOGGR's proposed regulations, state legislative efforts, and indications of other possible rules, drilling oversight promises to be a big focus this year. How those efforts will impact the use of hydraulic fracturing in California remains to be seen, especially as domestic production of oil and gas surges, stimulating economic activity and reducing dependence on foreign sources. In the least, as both industry and environmentalists ramp up their arguments, we can expect a year of hearty debate over fracking related techniques and other technological developments in oil and gas exploration and production.