Fracking Hazards Obscured by “Halliburton Loophole”

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One of the most worrisome aspects of the gas drilling process known as hydraulic fracturing, or fracking, are the fluids injected into the ground in order to force out natural gas. Unfortunately, thanks to a move by Congress in 2005, fracking is exempt from regulation under the Safe Drinking Water Act, so drillers don’t have to disclose what is contained in their fracking fluids.

This exemption, included in the 2005 Energy Act, has become known as the “Halliburton Loophole.” Prior to its adoption, the Safe Drinking Water Act forbid any underground injection activity to endanger drinking water sources by introducing a contaminant that may adversely affect human health. According to the National Resource Defense Council (NRDC), in 1997, the 11th Circuit Court of Appeals ruled that “hydraulic fracturing activities constitute ‘underground injection’ under Part C of the SDWA (Safe Drinking Water Act).”

The drilling industry convinced Congress that fracking should be exempted from the Safe Drinking Water Act by claiming that fracking fluids are ultimately removed from the shale formations into which they are pumped. But is this true? A ProPublica investigation recently purported that “as much as 85 percent of the fluids used during hydraulic fracturing is being left underground after wells are drilled in the Marcellus Shale,” the region rich in natural gas that lies beneath parts of West Virginia, Pennsylvania, New York, Ohio and Maryland. According to the NRDC, the water treatment company ProChem Tech reports that “generally 10 to 20% is recovered.”

So what is contained in the fracking fluid that remains in the ground? Of course, we don’t really know, thanks to the Halliburton Loophole. But we have some clues. One study conducted by Theo Colburn, PhD, the director of the Endocrine Disruption Exchange in Paonia, Colorado, has so far identified 65 chemicals that are probable components of the injection fluids used by shale gas drillers. These chemicals included benzene, glycol-ethers, toluene, 2-(2-methoxyethoxy) ethanol, and nonylphenols. All of these chemicals have been linked to health disorders when human exposure is too high.

There have also been many well-documented instances of water contamination in communities where fracking is occurring. In one small Pennsylvania town called Dimock, for example, problems with the cement casing on 20 wells drilled by Cabot Oil & Gas have caused contamination of local water wells, driving down property values and causing sickness. In some cases, levels of methane in some Dimock water wells are so high that homeowners are able to set water aflame as it comes out of their taps. Fifteen Dimock residents whose wells were contaminated are now suing Cabot.

Just yesterday, we reported that federal health officials warned some water well owners in Pavillion, Wyoming not to use their water for cooking or drinking after it was found to be contaminated with benzene, methane gas and other toxins. While the Environmental Protection Agency (EPA) can’t say yet what may have caused the contamination, EnCana, the Canadian company drilling in and around Pavillion, has offered to pay to provide impacted families with safe water.

Incidents like these have spurred momentum for better regulation of fracking. The so-called FRAC Act, which is currently being considered in the US Congress, would close the Halliburton Loophole. And the EPA has just embarked on a large study to investigate the environmental and health impacts of hydraulic drilling that could ultimately lead to better regulation.

Sensing that the winds might be changing, some gas drillers are trying to head off regulation by offering to voluntarily disclose the contents of their fracking fluids. Earlier this summer, we reported that Texas-based Range Resources, which pioneered drilling in Pennsylvania's Marcellus shale, had made such a move. And earlier this week, Chief Oil & Gas LLC, said it would make such disclosures to state officials in Pennsylvania and West Virginia starting October 1.

While many environmentalists are pleased with these moves, they haven't stopped calling for regulations requiring mandatory fracking fluid disclosures.

"One company's efforts at transparency don't substitute for an industry-wide requirement that such substances be disclosed to the public," Dave Alberswerth of the Wilderness Society, recently told The New York Times. "Congress and state legislatures should move forward with requirements that all companies engaged in hydraulic fracturing publicly disclose the chemicals used in this process."