

# EPA starts work on diesel fracking guidance

Mike Soraghan, Environment & Energy Publishing, 4-29-11

U.S. EPA is in discussions with industry to issue formal guidance on how drillers can perform hydraulic fracturing with diesel fuel, seeking to resolve an issue that has chipped away at the credibility of both the agency and industry.

"We are in the process of engaging the public, industry, states and environmental groups as we develop permitting guidance for companies that use diesel fuel," EPA said in a statement, confirming a comment by Administrator Lisa Jackson to reporters earlier this week. "Our intention is to issue draft guidance for public comment, following a dialogue with stakeholders."

The diesel issue is a small but politically charged part of the debate about fracturing. It involves a relatively small number of wells, and the amount known to be used is small in comparison to the amount of water used in the process on a daily basis.

But the prospect of toxic diesel fuel in groundwater highlights the water contamination fears of industry critics, and can overshadow claims from companies that they're developing "green" fracturing techniques.

In addition, drilling companies had long assured Congress, EPA and policymakers that the use of diesel was nearly nonexistent. But last year, Rep. Henry Waxman (D-Calif.) disclosed findings of an investigation in which companies acknowledged using diesel fuel and possibly violating an agreement with EPA. Earlier this year, Waxman announced that companies had acknowledged using 32 million gallons of the fuel in "frack jobs."

EPA retained the authority to regulate fracturing with diesel in 2005 legislation that forbade it from regulating other fracturing activity under the Safe Drinking Water Act. But it made no move to use that authority until last year. In the wake of Waxman's revelations and criticism from environmental groups, EPA posted permitting directions for fracturing with diesel on its website without notice (*Greenwire*, Jan. 20).

More recently, companies have reported using diesel fuel in "frack jobs" recorded in a new database devoted to voluntary public disclosure of fracturing fluid, according to *The Denver Post* (*Greenwire*, April 25).

The second-in-command at EPA, Bob Perciasepe, told a Senate panel this month that companies were breaking the law if they didn't have a permit. It remains unclear whether EPA believes companies that have acknowledged using diesel could be penalized. Companies say that would be unfair because there was no permit to get (*Greenwire*, April 12).

Environmental groups cheered that EPA was finally using what authority it has on fracturing. But the Independent Petroleum Association of America went to court to challenge the agency's posting of permitting directions (*Greenwire*, Jan. 19).

"Guidance" is less binding than agency regulations, which must be drafted and implemented in a formal "rulemaking" process. EPA officials say there are already regulations that cover hydraulic fracturing with diesel under the Safe Drinking Water Act. The guidance, they say, merely explains to drillers how that regulation is to be implemented.

But IPAA says guidance won't settle its dispute with EPA. The organization says a full rulemaking is needed to properly clarify what is required and what isn't.

"We haven't seen the guidance document yet," IPAA spokesman Jeff Eshelman said. "We think that guidance would fall short of an adequate rulemaking. We want to see an adequate rulemaking process."

Environmentalists say that if drillers really need to inject diesel, they should at least wait until the guidance is done.

"If industry really needs more guidance on how to comply when companies inject diesel underground in hydraulic fracturing operations, then companies should stop injecting diesel until they receive enough information to obtain permits as required by law," said Dusty Horwitt of the Environmental Working Group.