

Fracking with diesel violated law, EPA says

Mike Soraghan, Environment & Energy Publishing, 4-12-11

Oil and gas drillers who injected diesel fuel during hydraulic fracturing without a permit broke the law, a U.S. EPA official said today.

The assertion by Deputy Administrator Bob Perciasepe means some companies that have acknowledged injecting diesel could be subject to sanctions under the Safe Drinking Water Act.

It is a technical but politically charged question in the ongoing debate about regulation of the fracturing process.

While Congress in 2005 exempted fracturing from the need to get permits under the Safe Drinking Water Act, it is not exempt when diesel is used. But companies have acknowledged using diesel in some instances. At a subcommittee hearing today, Sen. Tom Udall (D-N.M.) questioned Perciasepe on that.

"If they didn't get a permit, they were in violation of the law?" Udall asked.

"Yes," Perciasepe said.

Perciasepe, the No. 2 official at EPA, also gingerly pointed out a shortcoming in state regulation of oil and gas drilling, noting that Pennsylvania rules have not covered all the chemicals in drilling wastewater.

Unlike other states, Pennsylvania has allowed the wastewater that comes out of drilling wells to be disposed of at regular wastewater treatment plants, despite the presence of radioactive material and dangerous chemicals not common to sewage.

"The state permit did not contain limits on some of the contaminants that were involved there," Perciasepe said.

Josh Fox, who made the anti-drilling documentary "Gasland," sat in the audience at the hearing of the Environment and Public Works Subcommittee on Water and Wildlife. He was a row behind representatives of the Independent Petroleum Association of America, the trade group most ardently opposing federal regulation of fracturing.

Sen. Bob Casey (D-Pa.), sponsor of legislation that would impose that regulation under the Safe Drinking Water Act, testified, although the hearing was not billed as a hearing on his bill. The legislation is called the "FRAC Act," for Fracturing Responsibility and Awareness of Chemicals.

"Our state went through most of the 19th century and half of the 20th century not getting it right, in this case with coal," Casey said. "Today, we have to get it right."

Drilling service companies have acknowledged to Congress that they injected at least 32 million gallons of diesel fuel underground during fracturing. The congressional report said an agency official told congressional investigators that EPA had assumed that the use of diesel had stopped seven years ago.

Of the total figure, 10 million gallons was "straight diesel fuel," the investigation found, while another 22 million gallons was products containing at least 30 percent diesel.

EPA took no action to regulate the use of diesel until last year. In early 2010, a report from the nonprofit Environmental Working Group found confusion among state officials about the diesel exemption. The report charged that many wells were being fractured with diesel without anyone getting a permit.

A few months later, EPA posted rules about fracturing with diesel on its website without notice.

IPAA is now challenging that change in federal court. Industry representatives said EPA never clarified to them whether they could be penalized for that past use.