

Fracking companies injected 32M gallons of diesel, House probe finds

Mike Soraghan, Environment & Energy Publishing, 1-31-11

Drilling service companies have injected at least 32 million gallons of diesel fuel underground as part of a controversial drilling technique, a Democratic congressional investigation has found.

Injecting diesel as part of "hydraulic fracturing" is supposed to be regulated by U.S. EPA. But an agency official told congressional investigators that EPA had assumed that the use of diesel had stopped seven years ago.

"The industry has been saying they stopped injecting toxic diesel fuel into wells," said Rep. Henry Waxman (D-Calif.), the ranking member on the House Energy and Commerce Committee, who led the inquiry. "But our investigation showed this practice has been continuing in secret and in apparent violation of the [Safe Drinking Water Act]."

Waxman calculated the amount of diesel based on voluntary disclosures from "service companies" like Halliburton Co. and Schlumberger, which do the "frack jobs" for well operators. On Monday, Waxman and fellow committee members Diana DeGette (D-Colo.) and Ed Markey (D-Mass.) shared their findings in an open letter to EPA officials.

The letter said they had not been able to determine whether the diesel injections threatened groundwater. The service companies told Waxman's staff they did not know how close their frack jobs were to sources of drinking water, saying their clients, the well operators, would have that information.

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

That is likely to cause more debate about an industry that has long assured Washington policymakers that diesel is rarely used, that most fracturing fluid is water and that the amount of chemicals in fracturing fluid is less than 2 percent.

Industry officials derided the lawmakers' announcement, saying it was long on sensationalism and short on substance.

"While Waxman focuses attention on the volumes of diesel fuels that may have been used in this unregulated period, he fails to report that no incidents of groundwater contamination have been reported -- with or without diesel fuels being used," said Lee Fuller, executive director of Energy in Depth, which was formed to fight federal regulation of fracturing.

Fuller is also vice president of government relations for the Independent Petroleum Association of America, which is challenging EPA in court after it posted rules about fracturing with diesel on its website without notice last summer.

EPA officials note that they have undertaken a multi-year study of the safety of fracturing and are working on implementing the diesel regulation authority Congress granted in 2005.

"EPA has embarked on an expeditious effort to clarify the permitting process as it relates to diesel use in hydraulic fracturing operations under the UIC program," said an EPA spokeswoman who asked that no name be used.

"Our goal is to put in place a clear framework for permitting so that fracturing operations using diesel receive the review required by law. We will provide further information about our plans as they develop."

Limited diesel prohibitions

Congress exempted hydraulic fracturing from EPA regulation under the Safe Drinking Water Act in the energy bill of 2005.

Critics now refer to this as the "Halliburton Loophole." Halliburton is a major provider of fracturing services and was the chief company lobbying for the exemption at the time.

Bill drafters forged a compromise on the use of diesel. Fracturing would still be regulated if drillers mixed diesel into the solution. A 2004 EPA study had recommended against further study of the dangers of fracturing in underground sources of drinking water but said that using diesel was worrisome.

The three leading providers of fracturing services had already signed a "memorandum of agreement," or MOA, with EPA not to use diesel. Halliburton, BJ Services and Schlumberger then accounted for 95 percent of the "frack jobs" in the country.

But the agreement with service providers covered only a narrow set of circumstances -- drilling into underground sources of drinking water to get methane from coal beds. It also lacked any enforcement provisions.

So a driller could legally inject diesel for most types of fracturing. The driller just needed to get an "underground injection control" permit from EPA or state regulators.

EPA took no action to regulate the use of diesel until last year. In early January 2008, then-EPA water chief Benjamin Grumbles told congressional Democrats his staff was focusing on what it considered bigger risks to drinking water.

Meanwhile, "the agency assumed that the MOA had eliminated most diesel use," Waxman's letter said, citing a phone conversation with Ann Codrington, acting director of EPA's Office of Ground Water and Drinking Water. The letter also indicated that officials in Colorado and Texas were unaware of the extent of diesel use in drilling in their states.

In recent years, shale drilling started injecting itself into the public consciousness as the practice intensified in the Northeast. Fracturing is essential to prying loose gas from the concrete-like shale formations.

Last January, 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.

In February, Waxman let it be known that two of those major fracturing service providers had acknowledged to his committee that they had used diesel.

He announced that one, BJ Services, said it had done so in violation of the agreement. According to today's letter, BJ Services said its diesel use was not in violation of the agreement. Halliburton said it had not violated the agreement, because its fluid was not poured into a coal bed that was also an underground source of drinking water.

Push to regulate diesel

The discovery led to angry calls from environmentalists to step in and block the use of diesel. And grass-roots groups in Pennsylvania and New York, upset with drilling in their communities, saw it as one more reason to ban fracturing.

EPA added language to its website in the early summer stating that diesel use was subject to Safe Drinking Water Act regulation.

That alarmed the service companies, which, it is now known, had just disclosed to Waxman's committee that they had used millions of gallons of diesel fuel. The companies said EPA never clarified to them whether they could be penalized for that past use.

The IPAA filed a legal challenge in the U.S. Circuit Court of Appeals for the District of Columbia in August. The case is pending.

Environmental groups say it is the companies that ignored the law.

"Drilling companies have won exemption from just about every piece of federal environmental law except the requirement to get permits if they use diesel in their fracking fluid," said Dusty Horwitt of the Environmental Working Group. "This report shows they haven't even complied with this limited provision. How can communities trust these companies to drill responsibly?"