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Environmental Health — OIL AND GAS EXTRACTION

Fact Sheet

Summary of Federal Regulations and Regulatory Gaps

The oil and gas extraction industry is subject to several federal regulatory programs, although States are the primary regulators of the industry.[1] This Paper will outline the nine federal laws that apply to this sector:

(1) The Clean Air Act ("CAA");

(2) The Safe Water Drinking Act ("SWDA");

(3) The Clean Water Act ("CWA");

(4) The Resource Conservation and Recovery Act ("RCRA");

(5) The Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA");

(6) National Environmental Protection Act ("NEPA")

(7) The Emergency Planning and Right to Know Act ("EPCRA");

(8) The Toxic Substances Control Act ("TSCA"); and

(9) The Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA").

Natural gas extraction has been exempted from most, if not all of these laws. In a recent effort to improve federal oversight, President Obama issued Executive Order 13605, which established an interagency working group chaired by the Director of the Domestic Policy Council and containing deputy-level representatives from a variety of other agencies including the Department of Commerce, the Environmental Protection Agency, and the Department of Energy. The purpose of this Paper is to briefly describe the federal regulations and requirements that apply to this sector, to identify regulatory gaps or exemptions extended to oil and gas extraction, and to highlight the areas in which federal agencies are able to regulate natural gas extraction.

Clean Air Act

Overview

The Clean Air Act (CAA) is the comprehensive federal law that regulates air emissions from stationary and mobile sources. The goal of the CAA is to "protect and enhance the nation's air resources so as to promote public health and welfare and the productive capacity of the population." CAA § 101(b). To achieve this goal, the Act requires the Environmental Protection Agency (EPA) to establish national standards for ambient air quality and to implement, maintain, and enforce such standards with the States.

Relevant Regulatory Provisions

- **CAA § 108-110: National Ambient Air Quality Standards (NAAQS)**

- Under Title I, EPA is required to adopt NAAQS for "criteria pollutants," including ozone, particulate matter, carbon monoxide, nitrogen oxides, sulfur dioxide, and lead. For these criteria pollutants, primary and secondary NAAQS are set to protect public health with an adequate margin of safety and to protect public welfare, respectively. § 109.
- Each state must submit a State Implementation Plan (SIP) specifying sources of air pollution and identifying the reductions necessary to assure compliance with the NAAQS. § 110.

- **CAA § 112: National Emission Standards for Hazardous Air Pollutants (NESHAPs)**
  - EPA is required to establish national uniform standards for each category or subcategory of "**major sources**" and "**area sources**" of hazardous air pollutants (HAPs) that reflect the maximum achievable control technology with more stringent standards being imposed if necessary to protect the public. § 112(d).
    - Major sources are stationary sources, or groups of stationary sources, located in a contiguous area under common control that emits, ***in the aggregate***, more than **10 tons/yr** of any HAP or **25 tons/yr** of any combination of HAPs.
    - Area sources are any stationary sources of HAPs that are not major sources.
- **CAA § 111: New Source Performance Standards (NSPS)**
  - Under § 111, EPA is required to establish nationally uniform, technology-based standards for new or modified ***major*** stationary sources (major buildings, structures, facilities, or installations that emit ***any*** air pollutant) that cause, or contribute significantly to, air pollution that may reasonably be anticipated to endanger public health or welfare.
- **CAA § 160-169: Prevention of Significant Deterioration (PSD) of Air Quality**
  - The PSD provisions establish a national permitting program to limit the extent to which new sources, or the major modification of existing sources, deteriorate air quality in attainment areas (areas in which air quality already meets the level required by the NAAQS).
  - The PSD program prevents the construction of any petroleum refinery, fuel conversion plant, or petroleum storage and transfer facility that emits more than ***100 tons/yr*** of ***any*** pollutant unless a PSD permit is issued. § 165(a). For other sources, a PSD permit is required if the emissions of ***any*** air pollutant exceed ***250 tons/yr***.
- **CAA § 171-179B: Requirements for Nonattainment Areas**
  - Nonattainment provisions impose more stringent requirements to control pollution in nonattainment areas (areas that failed to meet the NAAQS), including the use of all reasonably available control technology by existing sources and a preconstruction permit program requiring new or modified major stationary sources to obtain offsetting emission reductions. § 172(c)(5); § 173(a)(1)(A).
- **CAA § 303: Imminent and Substantial Endangerment Authority**
  - Where EPA receives evidence that a source or a combination of sources present an imminent and substantial endangerment to public health or welfare, or the environment, EPA may bring suit or, where prompt action is needed, issue orders to stop the emission of air pollutant or take other necessary action. § 303.

Regulatory Gaps and Exemptions

- **CAA § 112: National Emission Standards for Hazardous Air Pollutants (NESHAPs)**
  - Under § 112(n)(4)(A), emissions from ***any oil and gas*** well, pipeline compressor, or pump station ***shall not be aggregated*** with emissions from other similar units when defining ***major sources***, nor are such emissions aggregated for any purpose under § 112.
  - Under § 112(n)(4)(B), ***oil and gas wells*** may not be listed as an ***area source*** category ***unless*** the wells are "located in a metropolitan statistical area or consolidated metropolitan statistical area with over a million people," and EPA determines that emissions of HAPs from such wells present "more than a negligible risk of adverse effects to public health."
  - Section 112(n)(5) initially required EPA to assess the hazards to public health and the environment resulting from the

emission of hydrogen sulfide associated with the extraction of oil and natural gas resources. Although originally listed as an HAP, hydrogen sulfide was later removed by a joint resolution stating that the original listing was a clerical error.[2]

- **CAA § 111: New Source Performance Standards (NSPS)**
  - For the first time the EPA is regulating volatile organic compounds (VOCs) generated during hydraulic fracturing as a category subject to NSPS. The EPA recently approved a rule that aims to reduce VOCs emitted during hydraulic fracturing. In the first phase (before Jan. 1, 2015), the industry must reduce VOCs by flaring or capturing the gas. In the second phase, the operators must capture the gas and either sell the gas or otherwise make it available for use.
  - The EPA also regulates sulfur dioxide (SO2) emissions from onshore natural gas processing plants.
- **CAA § 160-169: Prevention of Significant Deterioration (PSD) of Air Quality**
  - At this time, wells and well fields are not a source category subject to permitting requirements.
- **CAA § 171-179B: Requirements for Nonattainment Areas**
  - Under the 1990 Amendments (specifically § 819 of Pub. L. 101-548), the nonattainment provisions do not apply to the production of and the equipment used in the exploration, production, development, storage, or processing of oil or natural gas from a stripper well property unless in a serious nonattainment area with a population exceeding 350,000 or areas in severe or extreme nonattainment. § 181 (note).
    - Stripper wells are wells that produce up to 10 barrels of oil or 60,000 cubic feet of natural gas per day. Currently, stripper wells account for 17.8% and 9% of domestic oil and gas production, respectively.[3]

Safe Drinking Water Act

Overview

The Safe Drinking Water Act ("SDWA") establishes a national program to ensure the safety of drinking water supplied by public water supply systems; hence, ***the Act does not apply to individual wells that supply homes with water for human use and consumption***. Under the Act, EPA promulgates regulations ***for each contaminant*** that may have any adverse effect on health and that is known or anticipated to occur in such systems. SDWA § 300g-1. EPA is authorized to delegate primary enforcement responsibility to states that have drinking water regulations at least as stringent as the federal standards and adequate procedures for enforcement. SDWA § 300g-2. Finally, the Act establishes an underground injection control program to prevent danger to drinking water sources.

Relevant Regulatory Provisions

- **SWDA § 300h-300h-8: Underground Injection Control Program**
  - EPA is required to establish minimum requirements for state programs to prevent underground injections which endanger drinking water sources. § 300h(b)(1).
    - Underground injection is defined as the subsurface emplacement of fluids by well injection. § 300h(d)(1).
    - An underground injection is considered to endanger drinking water sources if it may result in the presence of any contaminant in underground waters which supply, or can reasonably be expected to supply, any public water system, and the presence of such contaminant may result in noncompliance with the national primary drinking water regulation or may otherwise adversely affect human health. § 300h(d)(2).
  - SDWA requires owners or operators of injection wells to obtain a permit for hydraulic fracturing when diesel fuels are used in fracturing fluids. The EPA has issued draft guidance for oil and gas hydraulic fracturing activities using diesel fuels. The draft guidance provides recommendations related to permit applications, area of review (for other nearby wells), well construction, permit duration, and well closure.
- Imminent and Substantial Endangerment Authority
  - SDWA gives EPA authority to issue orders when the agency receives information about present or likely contamination of

a public water system or an underground source of drinking water that may present an imminent and substantial endangerment to human health. § 1431, 42 U.S.C § 300i(a).

Regulatory Gaps and Exemptions

- **SDWA § 300h(b): Prohibition on Interfering or Impeding Regulations**
  - Unless requirements are ***essential*** to ensure underground sources of drinking water will not be endangered by injections, state underground injection control programs ***preclude*** EPA from prescribing requirements that interfere with or impede: 1) the underground injection of brine or other fluids which are brought to the ***surface in connection with oil or natural gas production***, or 2) any underground injection for secondary or tertiary recovery of ***oil or natural gas***. § 300h(b)(2).
- **SDWA § 300h(d): Exclusion from Underground Injection Definition**
  - The term "underground injection" expressly excludes the underground injection of fluids or propping agents (other than diesel fuels) pursuant to ***hydraulic fracturing operations*** for oil, gas, or geothermal production. § 300h(d)(2).

Clean Water Act

Overview

The Clean Water Act (CWA) is a comprehensive regulatory program to restore and maintain the chemical, physical, and biological integrity of the nation's waters. CWA § 101(a). The goals of the CWA include eliminating the discharge of pollutants into navigable waters, prohibiting the discharge of toxic pollutants in toxic amounts, developing waste treatment management plans, and developing programs to control nonpoint sources of water pollution. *Id.*

Relevant Regulatory Provisions

- **CWA § 301: Effluent Limitations**
  - Under § 301, "the discharge of any pollutant by any person shall be unlawful" unless in compliance with the Act's permit requirements including § 402 (discharge of pollutants) and § 404 (discharge of dredged or fill material).
    - "Discharge" is defined as "any addition of ***any pollutant*** to ***navigable*** waters from any ***point*** source." § 502(12).
    - "Navigable waters" is defined as "the waters of the United States, including the territorial seas." § 502(7).
    - "Point source" is defined as "any discernible, confined and discrete conveyance … from which pollutants are or may be discharged." § 502(14).
- **CWA § 402: National Pollutant Discharge Elimination System (NPDES)**
  - EPA's NPDES program limits the types and amounts of pollutants that industrial sites, industrial wastewater treatment facilities, and municipal wastewater treatment facilities (often called publicly owned treatment works or POTWs) can discharge into the nation's surface waters by requiring these facilities to obtain permits listing pollutants and their discharge limits. EPA develops effluent limitations for certain industrial categories based on available control technologies and other factors to prevent or treat the discharge. § 402.
  - Under CWA § 402, EPA may delegate NPDES permitting to the States.
  - **Direct Discharge:** A facility that proposes to discharge into the nation's waters must obtain a permit prior to initiating a discharge. The permittee must identify the pollutants present in the facility's effluent. § 401.
  - **Indirect Discharge:** CWA § 307 controls the indirect discharge by "industrial users" to publicly owned treatment works (POTW). Under § 307(b), EPA must establish pretreatment standards for the introduction of pollutants which are ***not susceptible to treatment*** or which would ***interfere with the operation*** of treatment by publicly owned treatment works. To date, EPA has not set pretreatment standards specifically for produced water, though there are some general requirements; for example, discharges to POTWs cannot cause the POTW to violate its NPDES permit or interfere with the treatment process. In October 2011, EPA announced its intention to develop pretreatment standards specific to the

produced water from shale gas development. It has not yet published a notice of proposed rulemaking.[4]

- CWA § 504 provides EPA an imminent and substantial endangerment authority, authorizing EPA to bring suit to restrain a person to stop the discharge of pollutants causing or contributing to pollution

- **Spill Prevention, Control, and Countermeasure (SPCC) Rule**
  - CWA requires facilities—including oil and gas well sites—to report any unpermitted releases of oil or hazardous substances above threshold quantities. 40 C.F.R. pt. 112 (2012). Under the Spill Prevention, Control, and Countermeasure (SPCC) rule, facilities are required to prepare and implement a plan describing, among other things, how they will control, contain, clean up, and mitigate the effects of any oil discharges that occur. Onshore oil and gas well sites, among others, are subject to this rule if they have total aboveground oil storage capacity greater than 1,320 gallons and could reasonably be expected, based on location, to discharge oil into U.S. navigable waters or on adjoining shorelines.
- **Imminent and Substantial Endangerment and Release Response Authorities**
  - Under CWA § 311(b)(1), (3), operators are required to report certain discharges of oil or a hazardous substance to the waters of the United States. The scope of jurisdiction for the section 311 oil spill program is broader than that for the NPDES program. The section 311 oil spill program and the NPDES program both have jurisdiction over navigable waters of the United States; Section 311 also provides jurisdiction over spills of oil or hazardous substances into or on adjoining shorelines or that may affect natural resources of the United States, among others.

Regulatory Gaps and Exemptions

- **CWA § 402(l): NPDES Exemption**
  - Under § 402(l), neither EPA nor the States may require NPDES permits for uncontaminated ***stormwater discharges*** from ***oil and gas*** exploration, production, processing or treatment operations, or transmission facilities.
    - The Energy Policy Act of 2005 expanded the definition of "***oil and gas*** exploration and production" to include "***all*** field activities or operations associated with exploration, production, processing, or treatment operations, or transmission facilities, including activities necessary to prepare a site for drilling and for the movement and placement of drilling equipment, whether or not such field activities or operations may be considered to be construction activity." § 502(24).
    - In *NRDC v. EPA*, 526 F.3d 591 (9th Cir. 2008), the court vacated an EPA rule that would have broadened this exemption to include sediment from construction.
- **CWA § 502(6)(b): Exemption from the Definition of Pollutant**
  - Under CWA § 502(6)(b), the term "pollutant" does not include water, gas, or ***other material*** which is injected into a well to facilitate production of ***oil or gas***, ***or water derived in association*** with ***oil or gas*** production and disposed of in a well so long as the well is approved by the state and the state determines that such injection or disposal will not result in the degradation of ground or surface waters.

Resource Conservation and Recovery Act

Overview

The Resource Conservation and Recovery Act (RCRA) is a comprehensive amendment to the Solid Waste Disposal Act (SWDA) and is designed to: promote the protection of health and the environment, conserve valuable material and energy resources, reduce the amount of waste generated, and ensure generated waste is managed in a manner to minimize the threat to human health and the environment. § 1003. Subtitle C of RCRA establishes a "cradle to grave" system that governs ***hazardous waste*** from generation to

disposal. Subtitle D focuses on the management of ***nonhazardous waste*** and requires EPA to establish guidelines for state solid waste management plans.

Relevant Regulatory Provisions

- **RCRA § 1004: Definition of Solid Waste**
  - Under § 1004, "solid waste means any garbage, refuse, sludge . . . and any other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations . . . ."
- **RCRA § 3001: Identification and Listing of Hazardous Waste**
  - Under § 3001, EPA is authorized to develop the criteria for identifying characteristics of hazardous waste. Under the Act, hazardous waste is a subset of solid waste.
    - "Hazardous waste" means ***solid waste***, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or serious illness, or poses a substantial hazard to human health or the environment if improperly managed. § 1004(5).
- **RCRA § 3006: Authorized State Hazardous Waste Programs**
  - EPA is authorized to delegate the administration and enforcement of a hazardous waste program to states that meet the minimum federal standards. § 3006(b).
- **RCRA § 7003: Imminent Hazard**
  - Under § 7003, upon evidence that past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste may present an imminent and substantial threat to health or the environment, EPA is authorized to file suit against any person (past or present) who has contributed or is contributing to such handling, storage, treatment, transportation, or disposal to restrain such person from that action and to order other action as necessary.

Regulatory Gaps and Exemptions

- **RCRA § 3001: Exemption from Identification and Listing of Hazardous Waste**
  - Originally, in 1978, the EPA issued proposed regulations that would have regulated oil field wastes under Subtitle C of RCRA. Congress responded with the Solid Waste Disposal Act of 1980, stating "drilling fluids, produced waters, and ***other wastes associated with*** the exploration, development, or production [E&P] of ***crude oil or natural gas***" were exempt from being listed as hazardous wastes pending completion of an EPA study.
  - In 1988, EPA issued a regulatory determination stating that wastes associated with oil and gas E&P operations were exempt from Subtitle C, as distinguished from wastes associated with transportation and manufacturing operations.[5] The EPA found that the wastes were adequately protected under existing state and federal law.
    - EPA's simple rule of thumb for identifying such exempt wastes is whether the wastes came from down-hole (brought to the surface during oil and gas E&P operations) or otherwise were generated in contact with the oil or gas production stream for the purpose of removing water or other contaminants from the well or the product. If yes to either, the wastes are exempt from Subtitle C.[6]
  - However, the RCRA Subtitle C exemption does not preclude these wastes from control under state regulations, under the less stringent RCRA Subtitle D ***solid waste regulations***, or under other federal regulations. RCRA Subtitle D.
  - RCRA Subtitle C regulations generally apply to other wastes that may be generated at oil and gas wells, such as discarded unused products, solvents used to clean surface machinery, if they are hazardous.

Comprehensive Environmental Response, Compensation, and Liability Act

Overview

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) was enacted in 1980. CERCLA created a Superfund, funded by tax on feedstock chemicals, and authorized EPA to respond directly to releases or threatened releases of "***hazardous substances***" that may endanger public health or the environment. CERCLA imposes strict, joint and several liabilities for the costs of responding to the release of "hazardous substances" and establishes a trust fund to provide for cleanup when no responsible party can be identified. However, if a substance is not a "hazardous substance," the provisions of CERCLA are not triggered.

Relevant Regulatory Provisions

- **CERCLA § 101: Definition of Hazardous Substance**
  - Hazardous substance means … any element, compound, mixture, solution, or substance designated under … ***CERCLA § 102***, any hazardous waste under ***SWDA § 3001***, any toxic pollutant listed under ***CWA § 307(a)***, and any hazardous air pollutant listed under ***CAA § 112***. CERCLA § 101(14).
- **CERCLA § 102: Designation of Hazardous Pollutants and Reportable Quantities**
  - Under CERCLA § 102, EPA must list elements, compounds, mixtures, solutions, and substances which, when released into the environment, may present a substantial danger to the public health or welfare or the environment, and promulgate the release quantities that must be reported under § 103.
- **CERCLA § 103: Notification Requirement**

  The release of "hazardous substances" must be reported to the National Response Center if the release equals or exceeds "reportable quantities." § 103.
- **CERCLA § 107: Liability**
  - CERCLA § 107 imposes strict, joint and several liability on 1) current owners and operators of facilities where a hazardous substance is released or threatened to be released; 2) owners and operators at the time the substances were disposed; 3) persons that arranged for disposal or treatment of such substances; and, 4) persons who accepted such substances for transport, disposal, or treatment.
  - Liability extends to all costs of removal or remedial action incurred by the government and any other necessary response costs consistent with the national contingency plan, damages to natural resources, and costs of health assessment.

Regulatory Gaps and Exemptions

- **CERCLA § 101: Exemption From Definition**
  - Section 101(14) ***expressly excludes petroleum, including crude oil or any fraction thereof*** which is not otherwise specifically listed or designated as hazardous under CERCLA § 102, RCRA § 3001, CWA § 307(a), and CAA § 112. Also excluded are natural gas, natural gas liquids, liquefied natural gas, and synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).
    - The referenced statutes also have express exemptions relating to oil and gas production and extraction. As a result, the exemptions carry through to the CERCLA notification and liability requirements.
  - An EPA memorandum addressing the scope of the petroleum exemption states that the exclusion extends to hazardous substances, such as benzene, which are indigenous to petroleum substances. Secondly, the exemption includes hazardous substances that are normally mixed with or added to oil during the refining process, even if the levels of the hazardous substances are increased. This exclusion does not include hazardous substances that are added to or increase the concentration solely as a result of contamination during use. [7]

National Environmental Policy Act

Overview

The National Environmental Policy Act (NEPA) was enacted in 1969. The congressional intent behind NEPA is to ensure the continuing policy of the Federal Government to use all practicable means and measures to create and maintain conditions under which man and nature can exist in productive harmony. NEPA § 101.

Relevant Regulatory Provisions

- **NEPA § 102: Environmental Impact Assessment and Alternative Considerations**
  - NEPA requires that ***federal agencies*** prepare and consider an environmental impact statement (EIS) that includes a detailed statement of the environmental impacts, proposed alternatives, and any irretrievable commitment of resources before undertaking any major federal action likely to have a significant effect on the environment. NEPA § 102.

Regulatory Gaps and Exemptions

- **42 U.S.C. § 15942: NEPA Review**
  - The Energy Policy Act of 2005 added § 15942 to create a rebuttable presumption that a categorical exclusion under NEPA would apply if the activity is conducted pursuant to the Mineral Leasing Act for the purpose of ***exploration or development of oil or gas*** for the following activities:
    - surface disturbances of **less than 5 acres** if the total disturbance is less than 150 acres;
    - drilling a well at a location where drilling occurred in the previous 5 years;
    - drilling a well within a developed field that had an approved land use plan or any environmental document prepared pursuant to NEPA in the previous 5 years;
    - pipelines placed in an approved right-of-way corridor, so long as the corridor was approved in the previous 5 years; and,
    - maintenance of a minor activity. § 15942(b)(1)-(5).

Emergency Planning & Community Right to Know Act

Overview

The Emergency Planning and Community Right to Know Act of 1986 (EPCRA) provides a mechanism to help communities plan for emergencies involving extremely hazardous substances, and provides individuals and communities with access to information regarding the storage and release of certain toxic chemicals and other extremely hazardous substances. EPCRA requires companies to report the release of significant levels of toxic substances to EPA's Toxics Release Inventory (TRI).

Relevant Regulatory Provisions

- **EPCRA § 304: Release Reporting**
  - Requires owners or operators of facilities where a chemical is produced, used, or stored to notify state and local emergency planning authorities of certain releases. § 304.
- **EPCRA § 311, § 312: Chemical Information and Inventories**
  - Regarding reporting of chemical information and inventories, EPCRA §§ 311, 312 requirements apply only to those facilities storing or using (1) more than 500 pounds or the threshold planning quantity, whichever is lower, of extremely hazardous substances, or (2) more than 10,000 pounds of other hazardous chemicals.

- Well sites are subject to EPCRA sections 304, 311, and 312, among others, and may be subject to reporting requirements to the extent that the chemicals used, stored, or produced at well sites meet the respective reporting thresholds.

Regulatory Gaps and Exemptions

- EPCRA also requires some facilities in listed industries to report to EPA their releases of listed toxic chemicals to the environment; at present, these requirements do not apply to oil and gas well operations.

Toxic Substances Control Act

Overview

To help protect human health and the environment, the Toxic Substances Control Act (TSCA) authorizes EPA to regulate the manufacture, processing, use, distribution in commerce, and disposal of chemical substances and mixtures. EPA maintains the TSCA Chemical Substance Inventory that currently lists over 84,000 chemicals that are or have been manufactured or processed in the United States; about 62,000 were already in commerce when EPA began reviewing chemicals in 1979. Generally, TSCA's reporting requirements fall on the manufacturers (including importers), processors, and distributors of chemicals, rather than users of the chemicals.

Relevant Regulatory Provisions

- **TSCA § 4: Testing**
  - Upon making certain findings, EPA has the authority to require companies to conduct testing on chemical substances and mixtures. § 4.
- **TSCA § 8: Chemical Substance Inventory**
  - Some of the chemicals on the TSCA Chemical Substance Inventory are used in oil and gas exploration and production. For those chemicals that are listed, some hydraulic fracturing service companies may be manufacturers, processors, or distributors, and could be subject to certain TSCA reporting provisions. § 8.

Regulatory Gaps and Exemptions

- EPA denied a citizen petition requesting that EPA issue a TSCA § 4 rule to require identification and toxicity testing of chemicals used in oil and gas exploitation or production.[8]
- The petition also requested that EPA issue new rule(s) under TSCA § 8 to require, for these chemicals, maintenance and submission of various records, call-in of records of allegations of significant adverse reactions, and submission of all existing not previously reported health and safety studies.[9] EPA is drafting an Advance Notice of Proposed Rulemaking for the § 8 rules.

Federal Insecticide, Fungicide, and Rodenticide Act

Overview

FIFRA requires that EPA register new pesticides; pesticide registration is a very specific process that is not valid for all uses of a particular chemical. Instead, each registration describes the chemical and its intended use (i.e., the crops/sites on which it may be applied), and each use must be supported by research data. Some pesticides registered under FIFRA are used in hydraulic fracturing, and EPA has approved registrations of some pesticides for this purpose.

SUPPORTERS

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This document was developed by Kathleen Hoke, Director of the Network for Public Health Law Network - Eastern Region at the University of Maryland Francis King Carey School of Law, with assistance from student attorneys in the Public Health Law Clinic—Beau Burton, Sanjay De, Molly Madden, Helena Mastrogianis, Preston Ridinger, and Anne Havemann. **The Network for Public Health Law provides information and technical assistance on issues related to public health. The legal information and assistance provided in this document does not constitute legal advice or legal representation. For legal advice, please consult specific legal counsel.**

REFERENCES

[1] Exec. Order No. 13,605, Supporting Safe and Responsible Development of Unconventional Domestic Natural Gas Resources (April 13, 2012).

[2]EPA, *Modifications to the 112(b)1 Hazardous Air Pollutants*, http://www.epa.gov/ttn/atw/pollutants/atwsmod.html (last visited April 22, 2011).

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[4] *Pretreatment Standards for the Shale Gas Industry*, U.S. ENVTL. PROT. AGENCY (last visited Dec. 12. 2012), http://yosemite.epa.gov/opei/rulegate.nsf/byRIN/2040-AF34#1.

[5] *Exemption of Oil and Gas Exploration and Production Wastes from Federal Hazardous Waste Regulations*, U.S. Envtl. Prot. Agency (October, 2001), http://www.epa.gov/osw/nonhaz/industrial/special/oil/oil-gas.pdf.

[6]*Id.*

[7] Memorandum from Francis S. Blake, EPA General Counsel, to J. Winston Porter, *Scope of the CERCLA Petroleum Exclusion Under Sections 101(14) and 104(a)(2)*, (July 31, 1987), *available at* http://www.epa.gov/compliance/resources/policies/cleanup/superfund/petro-exclu-mem.pdf.

[8] Stephen A. Owens, Assistant Administrator EPA, Letter to Deborah Goldberg, Earthjustice, Re: TSCA Section 21 Petition Concerning Chemical Substances and Mixtures Used in Oil and Gas Exploration or Production, Nov. 2, 2011

[9] Earthjustice et al., Letter to Lisa P. Jackson, EPA Administrator, re: Citizen Petition under Toxic Substances Control Act Regarding the Chemical Substances and Mixtures Used in Oil and Gas Exploration or Production, Aug. 4, 2011.