



## SAFE DRINKING WATER ACT SHOULD COVER HYDRAULIC FRACTURING

### Protect our Drinking Water: Close the Halliburton Loophole in the Safe Drinking Water Act

**Myth:** States have adequate authority over hydraulic fracturing without federal oversight.

**FACT:** While states are not prohibited from setting standards for hydraulic fracturing, only Alabama has adopted specific protections, and these were court-ordered in 1997. Other states merely address pieces of the fracturing process such as well casing requirements. Colorado alone sets standards for chemical disclosure. A strengthened Safe Drinking Water Act is essential to protect drinking water across the nation.<sup>1</sup>

**Myth:** Removing the Safe Drinking Water Act exemption would either shut down drilling for natural gas or mandate a burdensome permitting process.

**FACT:** The oil and gas industry already complies with the SDWA when it injects fracturing fluids for disposal, but not when it injects those same fluids when drilling an oil or gas well. Under the act, the industry has already obtained approval for more than 150,000 injection wells including wells used to inject waste fluids from drilling such as fracturing fluids to ensure that these fluids do not pollute underground sources of drinking water (USDWs).<sup>2</sup> Oil and gas injection wells under the SDWA must be tested to ensure that they do not leak and must be monitored to check for contamination. Existing wells must not “initiate new fractures [or] propagate existing fractures in the confining zone adjacent to the USDWs.” New wells “shall be...separated from any

USDW by a confining zone that is free of known open faults or fractures.”<sup>3</sup> Both industry and EPA have years of experience operating with these standards.

Legislation to close the fracturing loophole would not require significant new federal standards, environmental impact statements, or additional individual permits for each well. U.S. Environmental Protection Agency (EPA) standards already exist for underground injection activities, and current EPA rules allow a state to incorporate hydraulic fracturing into the existing permitting process for each well.

If hydraulic fracturing were covered by the SDWA, operators who plan to fracture using nontoxic fluids or to fracture in formations isolated from drinking water sources would face little regulatory burden. In some states, operators already have to provide information on whether fracturing will be used and a brief description of the fracturing process. Where state regulations would have to be changed, it would take between 6 and 9 months for a rulemaking process. New rules could be phased in over a period of months, as has been done for many other rules.

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<sup>1</sup>Wiseman, H., “Untested Waters: the Rise of Hydraulic Fracturing in Oil and Gas Production and the Need to Revisit Regulation”, 20 Fordham Env. L.Rev. 115 (Spring 2009). Professor Wiseman is a Visiting Assistant Professor at the University of Texas School of Law.

<sup>2</sup>Environmental Protection Agency. Technical Program Overview: Underground Injection Control Regulations, Office of Water 4606, EPA 816-R-02-025, Revised July 2001, p. 7, 61. Personal communications with EPA and Colorado Oil and Gas Conservation Commission, June 3, 2009.

<sup>3</sup>Id. at 14, 17; 40 CFR §§ 144-146. EPA Inventory of Class II UIC Wells, 2009.

