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EPA Shrinking 'Halliburton Loophole' Threatens Obama Gas Pledge

By Mark Drajem and Katarzyna Klimasinska - Feb 1, 2012

The Environmental Protection Agency is moving ahead with hydraulic fracturing standards that industry groups say will undercut President Barack Obama's bid to speed the search for natural gas.

The EPA is preparing guidelines, due for release by mid- March, which would set how gas-drilling companies can use diesel. In 2005 Congress <u>exempted</u> fracking from <u>requirements</u> of the Safe Drinking Water Act, a move health advocates labeled the "<u>Halliburton loophole</u>" after the company led by Richard Cheney before he became vice president. Halliburton is the world's largest provider of fracking services.

The 2005 law specified that the EPA retained authority if diesel is used. While companies such as <u>Schlumberger Ltd. (SLB)</u> say they no longer use diesel, industry lobbyists in Washington are warning that the EPA's guidelines, the first for the agency on fracking fluids, may constrain drilling if they include a broad definition of diesel and amount to the establishment of national regulation.

"This effort to federalize fracking can create enormous delays," Lee Fuller, vice president of government relations for the Independent Petroleum Association of America in Washington, which represents companies such as Chesapeake Energy Corp. (CHK) and Marathon Oil Corp. (MRO), said in an interview.

It could force states to hold up drilling while rewriting their own rules, or compel companies to seek permits from the EPA, which isn't set up to process them, he said.

Energy Bills Cut

Delays could harm those gas producers and drillers, which boosted gas sales in 2011 to 65.92 billion cubic feet a day, up 4.5 billion, or 7.4 percent, the largest annual gain in history, according to the Energy Information Administration. Natural gas prices fell more than 30 percent last year. That drop may mean American consumers would see a cut of \$16.5 billion a year in their energy bills, according to Mine Yucel, senior economist at the Federal Reserve Bank of Dallas.

The EPA's proposed guideline "provides a flexible approach for permit writers to develop permits that protect drinking water sources," Betsaida Alcantara, an EPA spokeswoman, said in an e-mail. "It is based on existing best practices in use by industry today."

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The agency's proposal, which is called a guidance document, has not been released. It was sent to the White House for review in December, putting its schedule for publication by mid-March. The guidelines have taken on new importance following Obama's public advocacy in his State of the Union address for the drilling for natural gas in shale, which he said will mean the country doesn't have to "choose between our environment and our economy."

'Necessary Step'

Some environmental groups, such as the Philadelphia-based Protecting Our Waters, disagree. They say hydraulic fracturing, in which a mix of water, sand and chemicals are shot underground to break apart rock and free gas or oil, can contaminate groundwater and even trigger earthquakes.

Environmentalists say the EPA's diesel guidelines may be one way to clean up the process.

"Drilling companies have succeeded in exempting themselves from every major" environmental law, Dusty Horwitt, senior counsel of the Environmental Working Group, said in an interview. "This is a small, but necessary step" in the opposite direction, he said.

Diesel is used in some fracking operations where the underground rock or clay will absorb water, according to a report by Democrats on the House Energy and Commerce Committee. The lawmakers said Halliburton and BJ Services, now part of <u>Baker Hughes (BHI)</u> Inc., injected millions of gallons of diesel from 2005 to 2009.

Waxman Letter

Beverly Stafford, a Houston-based spokeswoman for Halliburton didn't return a phone call seeking comment. Two e- mails sent to <u>Halliburton's (HAL)</u> public relations department weren't returned. Pamela Easton, a spokeswoman for Baker Hughes, third-largest oilfield services provider, didn't respond to e-mails and phone messages seeking comment.

Lawmakers, such as California Democrat Henry Waxman, urged the EPA to adopt a broad definition of diesel to include similar products that may contain benzene and related compounds, which the agency says is the greatest risk from diesel.

"Limiting the definition of <u>diesel fuel</u> to only a slim set" of compounds "would not be consistent with Congress's intent," Waxman wrote in a letter to EPA Administrator Lisa Jackson Aug. 8. Environmental advocates who met with White House officials on Jan. 19 pushed for the same approach.

Mineral Oil

The EPA has considered that approach, asking companies such as <u>ConocoPhillips (COP)</u> and Chesapeake how inclusive it should be in its consideration of diesel, according to a synopsis of the

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meeting posted on the agency's website. Some analysts expect them to follow through and include petroleum distillates and mineral oil within its definition of diesel, which would curb their use.

"EPA is expected to use a broad definition of diesel fuel," Whitney Stanco, a Washington-based energy policy analyst at Guggenheim Securities LLC in New York, said in an interview.

And if it happens, "that would surely hold up an awful lot of fracking projects no matter how much the administration might want to promote use of natural gas," Richard Stoll, a lawyer at <u>Foley & Lardner LLP in Washington</u>, said.

The U.S. holds an estimated 2,214 trillion cubic feet of gas, enough to meet domestic demand for about a century at current consumption rates, according to the Energy Department. At least 90 percent of onshore natural gas production in the U.S. comes from fracking, according to Richard Spears, vice president of the Tulsa, Oklahoma-based Spears & Associates Inc.

Well Design

The EPA may also establish standards for well design and construction that will be difficult for state regulators to ignore, whether or not diesel is being used, according to Jason Hutt, a lawyer at Bracewell & Giuliani LLP in Washington, which represents companies such as Chesapeake.

Environmental groups want Congress to pass legislation that would close the Halliburton loophole and give EPA authority to preserve safe drinking water, Craig Segall, an attorney at the <u>Sierra Club</u> in Washington, said in an interview.

"This is setting a federal baseline standard for how you drill one of these wells," said Segall, who was part of the group of environmentalists that met with White House officials on Jan. 19.

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