SLIDES: Evolving Policy on Shale Plays

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Evolving Policy on Shale Plays

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Regulatory Context

» The public’s perception of hydraulic fracturing
Public Perception

» Water contamination
Hydraulic Fracturing/Allegations of Contamination
Public Perception

» Water scarcity

"Whiskey is for drinking; water is for fighting over."
– attributed to Mark Twain
Public Perception

» Spills/contamination
Public Perception

» Fracking and earthquake activity
Hydraulic Fracturing Policy

2003 Memorandum Agreement
- 3 Largest oil service companies agreed to eliminate diesel fuel from fracturing coaled methane seams

» 2004 EPA Study
- Injection of fracturing fluids into coalbed methane wells posed little or no threat to underground sources of drinking water
- Identified diesel fuel as a constituent of concern
Safe Drinking Water Act

» Amended by Energy Policy Act of 2005
  – Exempts hydraulic fracturing from SDWA regulation
  – Can the EPA regulate the use of diesel fuel to fracture formations?
  – Current EPA Position
    • Regulation under UIC Program for Class II wells?
    • Diesel as the primary constituent?
    • Diesel as an additive?
Clean Water Act and State Regulation

» CWA covers the discharge of water produced by hydrofracturing regulations

» Regulated by the National Pollutant Discharge Elimination System
Jurisdictional Limits of Clean Water Act

» Water Volume vs. Water Quality?

– CWA precludes regulation of water rights/use of water

– Stream damage associated with water volume as opposed to water quality?

– Volume of contaminants?
Jurisdictional Limits of Clean Water Act

- “Navigable Waters” of the United States
- CWA jurisdiction over intermittent or ephemeral streams?
Ongoing EPA Study on Hydraulic Fracturing

» Congress asked EPA to study:

– “[T]he relationship between hydraulic fracturing and drinking water, using a credible approach that relies on the best available science, as well as independent sources of information.”

– Will be a multi-year study

– EPA is gathering information from operators and from service companies
Effluent Limit Guidelines

» New category of effluent guidelines for discharge of hydraulic fracturing fluids?

» Environmental organizations and landowners associations very interested in promulgation of new Effluent Limit Guideline for hydraulic fracturing
The Wyoming Disclosure Rules

» States have authority to regulate fracturing
» 2010 Wyoming disclosure rules – most far reaching disclosure requirements
» Confidentiality issues
Safe Drinking Water Act

» § 1421(d) – Definition of “underground injection”
  – (1)(A) - means the subsurface emplacement of fluids by well injection; and
  – (1)(B) excludes –
    • (i) the underground injection of natural gas for purposes of storage; and
    • (ii) the underground injection of fluids or propping agents (other than diesel fuels) pursuant to hydraulic fracturing operations related to oil, gas, or geothermal production activities.
How did we get here?

» Federal regulation of fracturing
- The Safe Drinking Water Act
  • Underground Injection Control Program
  • The 2004 EPA Study & 2003 Memorandum Agreement
  • Energy Policy Act of 2005 (Hydraulic Fracturing Exemption)
- Clean Water Act
- State Regulation