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**Fracturing Responsibility and Awareness of
Chemicals (FRAC) Act: S. 1215 and H.R. 2766**

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On June 9, 2009, members of the U.S. Senate and House of Representatives introduced companion bills in Congress to amend the federal Safe Drinking Water Act (SDWA), 42 U.S.C. § 300h, known as the Fracturing Responsibility and Awareness of Chemicals (FRAC) Act. The SDWA grants the Environmental Protection Agency the power to set maximum contaminant levels that may be present in public drinking water supplies and regulate activities so that the contaminants do not pose serious health risks to the public. Under the SDWA, any entity that adversely affects the contaminant levels may be subject to civil actions and penalties. Currently, the SDWA provides an exemption for the oil and natural gas industry and excludes the process known as hydraulic fracturing from regulatory efforts of underground injection controls. 42 U.S.C. § 300h(d)(1)(B)(ii). If enacted, the bills would remove the exemptions and increase regulations on the industries.

The federal Safe Drinking Water Act provides the individual States the power to enforce minimal regulations, established by the Administrator of the EPA, within their own boundaries. The federal SDWA seeks to prevent the injection of any substance underground which may pollute or otherwise endanger sources of drinking water. Under the Act, potential water wells or wellfields which provide drinking water to the public are to be identified and recorded. The SDWA then grants

individual States the power to enact regulations to prevent any contaminants from coming into contact with this well or wellfield. Such regulations often consider such factors as the wells' radius of supply, the depth of the wells and other geologic information that may affect the possibility of contamination when enacting protective regulations. Within these designated zones, the underground injection of potentially harmful chemicals or fluid constituents is highly regulated, so as to prevent harmful levels of contaminants from infecting the public water supply. Currently, the SDWA excludes the process known as hydraulic fracturing (a process commonly used by natural gas producers whereby fluids are pumped underground under extreme pressures to fracture layers of shale containing gas deposits) from underground injection regulations.

The FRAC Act proposes two major changes to the federal Safe Drinking Water Act. The first change relates to section 1421(d)(1) of the SDWA (42 U.S.C. § 300h(d)(1)(B)(ii)) which specifically excludes the underground injection of fluids to be used in the hydraulic fracturing process. With this exemption, natural gas drilling companies can inject any fluid or propping agent that is necessary for hydraulic fracturing into the ground, whether the fluid or propping agent may impact surrounding water supplies or not. In practice, this exclusion enables companies to use certain fluids which may bring contamination levels above federally proscribed limits without facing potential penalties. The proposed amendment within the FRAC Act would remove this exemption, and explicitly include the underground injection of fluids and other agents used in hydraulic fracturing within SDWA regulations. Therefore, any oil or natural gas producer seeking to use hydraulic fracturing techniques would be required to apply for permits with the States' regulatory bodies.

The second change the FRAC Act proposes is a two-fold amendment of § 1421(b) of the Safe Drinking Water Act (42 U.S.C. § 300h(b)). First, the FRAC Act proposes to insert a clause in 42 U.S.C. § 300h(b)(1)(C), requiring natural gas development companies that employ the hydraulic fracturing method to disclose the chemical constituents that they use. In addition to propping agents, hydraulic fracturing requires a fluid predominantly made up of water, but that includes chemicals that

assist in the fracturing of the shale containing oil or natural gas deposits. Currently, the federal SDWA does not require companies to release the chemical make-up of the less than 1% of fluids that they use in natural gas development. If enacted, the FRAC Act would require the companies to disclose the chemicals used in hydraulic fracturing, although the exact formula will not have to be revealed. The chemical make-up is to be submitted to and recorded by the Administrator of the individual State's Safe Drinking Water Act, and is to be disclosed to the public on appropriate internet sites.

The second amendment to § 1421(b) of the Safe Drinking Water Act would require the immediate disclosure of trade-secret chemicals and proprietary formulas of hydraulic fracturing fluids used in the case of an emergency. Should an emergency arise, this portion of the FRAC Act would require companies to immediately disclose the exact components and quantities used in its hydraulic fracturing fluids, if a treating physician believes the information is necessary for emergency treatment. Any request for this information would require a statement of need, as well as a confidentiality agreement, to be issued as soon as reasonably possible.

Currently, the FRAC Act bills await the approval of the committees to which they were assigned, the Senate Environment and Public Works committee and the House Energy and Commerce committee.



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