



Safe Drinking Water Act (SDWA)

States Have Primary Enforcement Over Safe Operations to Protect Water

“Unconventional oil and natural gas play a key role in our nation's clean energy future. The U.S. has vast reserves of such resources that are commercially viable as a result of advances in horizontal drilling and hydraulic fracturing technologies. These technologies enable greater access to oil and natural gas in shale formations. Responsible development of America's shale gas resources offers important economic, energy security, and environmental benefits,” [U.S. Environmental Protection Agency \(EPA\)](#)

CLEAN Future Act, Section 623: Safe Hydration is an American Right in Energy Development

This provision could allow the EPA to effectively shut down hydraulic fracturing nationwide.

- Both the EPA and more than 25 scientific, peer-reviewed studies and expert assessments have concluded that hydraulic fracturing is not a major threat to groundwater.
- Hydraulic fracturing is successfully regulated by the states. States and EPA coordinate the sharing of best practices through organizations like the Interstate Oil and Gas Compact Commission (IOGCC) and the Ground Water Protection Council (GWPC).
- Congress provided states with authority to regulate hydraulic fracturing to best account for varying conditions nationwide. During the Obama Administration, EPA released a comprehensive report on the potential impacts of hydraulic fracturing on water resources. After years of analysis and stakeholder input, the study found further regulation at the federal level was unwarranted.
- Oil and gas producing states each have comprehensive laws and regulations to provide for safe operations and to protect drinking water sources. They also have trained personnel to effectively permit, inspect, and enforce oil and gas exploration and production regulations. These laws include requirements for the public disclosure of chemicals used in hydraulic fracturing operations, many of which utilize FracFocus.org, a disclosure website created and managed by the Ground Water Protection Council.
- This proposal is entirely duplicative of existing state regulations, which have been built over decades of on-the-ground experience by state regulators. This provision in the CLEAN Future Act would not result in any new or additional environmental protections over what is already heavily regulated at the state level, just duplicative regulations. Furthermore, this action could have the effect of undermining the state programs and their existing delegations of authority from EPA.
- The 2005 Energy Policy Act did not exempt the regulation of fluids used in the hydraulic fracturing process. A bipartisan amendment provided clarifying language that diesel fuel used in hydraulic fracturing operations **does fall under the purview of the SDWA.**

- In drafting the SDWA, Congress never intended to regulate short-term drilling and production operations such as underground injection under the underground injection control program. EPA itself agreed that the differing nature of the hydraulic fracturing process was not envisioned to be regulated under the SDWA.
- In 1995, Clinton Administration EPA Administrator Carol Browner clarified EPA's position that hydraulic fracturing is not within the definition of "underground injection" because, in EPA's view, that term referred only to those wells whose primary function is to permanently place fluids underground.
- States work to continuously improve their regulatory programs through the sharing of best practices and processes through the Interstate Oil and Gas Compact Commission (IOGCC), the Ground Water Protection Council (GWPC), and the State Review of Oil and Natural Gas Environmental Regulations (STRONGER).
- In 2011, GWPC and IOGCC introduced an online chemical registry that later came to be embraced by many of the oil and gas producing states, FracFocus. FracFocus provides a mechanism for operators to list each chemical ingredient in all the additives used to make frac fluids. The data are entered for each well and included chemical names CAS number, and the amount used in each well.¹

Background²

- In 1974, Congress enacted the SDWA, which gave EPA authority to regulate the underground injection of fluids. The SDWA defined "underground injection" to be "the subsurface emplacement of fluids by well injection."
- Congress amended the SDWA in 1980 to provide an alternative for states to obtain primary enforcement responsibility for oil and gas underground injection control programs, which was interpreted by EPA and the states to apply to saltwater disposal well and injection wells for enhanced recovery.

Energy Policy Act of 2005

- In 2005, with bipartisan support, and the support of Energy and Natural Resources Ranking Member Jeff Bingaman (D-NM), Congress provided language in the Energy Policy Act of 2005 to clarify that "underground injection" would include diesel fuels in the underground injection of fluids used in hydraulic fracturing operations.

Ground Water Protection Council

- Chartered by states in 1983, the Ground Water Protection Council (GWPC) was incorporated as a forum to bring together technical and regulatory experts to discuss underground injection control issues and overall groundwater protection.

¹ https://www.gwpc.org/sites/gwpc/uploads/documents/publications/pw_report_2017_final.pdf

² <https://www.energyindepth.org/wp-content/uploads/2018/01/Chronology-of-LEAF-case-11-091-1.pdf>