



INDUSTRIAL COMMISSION OF NORTH DAKOTA

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North Dakota Industrial Commission
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Report to Budget Section
September 20, 2012

The draft Environmental Protection Agency (EPA) guidance for permitting hydraulic fracturing using diesel fuel was published May 9, 2012. The initial 60 day comment period was extended to August 23, 2012 and has now been closed. The Industrial Commission, North Dakota Petroleum Council, and many other stakeholders submitted comments that addressed a significant number of concerns with the guidance as proposed, but the major points covered in Industrial Commission comments are as follows:

- 1) This is a state's rights issue. States that have adopted hydraulic fracturing rules that include chemical disclosure, well construction, and well bore pressure testing should be explicitly exempted from the guidance.
- 2) The definition of diesel fuel is too broad because it includes six Chemical Abstract Service Registry Numbers as well as any materials referred to by one of these primary names or any associated common synonyms.
- 3) EPA made no attempt to identify dangerous concentrations of these materials. Hydraulic fracturing treatments that utilize concentrations of less than 1% of any material defined as diesel fuel should be exempt from permitting requirements.
- 4) The guidance is written for Enhanced Oil Recovery wells or disposal wells completed with tubing and packer. It shows a serious lack of understanding of the horizontal drilling-hydraulic fracturing process. Most of the requirements will not work mechanically on wells completed with swell packers and fractured down the production casing.

There is currently no indication from EPA when a final guidance document will be published.

None of the appropriated funds have been expended at this time.

North Dakota must remain prepared to lead an effort in the courts to protect our state Underground Injection Control primacy and jurisdiction over hydraulic fracturing regulation if EPA does not explicitly exempt states that have adopted hydraulic fracturing rules that include chemical disclosure, well construction, and well bore pressure testing; or the definition of diesel remains too broad.

Other federal agencies including the Bureau of Land Management, United States Geological Survey, and Department of Energy have now begun investigating hydraulic fracturing under a Presidential Executive Order. The 63rd Legislative Assembly should consider a contingency appropriation of the sum of \$1,000,000, or so much of the sum as may be necessary, to the Industrial Commission for the purpose of defraying expenses associated with possible litigation and other administrative proceedings involving any federal agency's effort to regulate hydraulic fracturing.

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