

**Earthjustice – Earthworks – Natural Resources Defense Council
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BLM's Proposed Fracking Rule

In May 2013, the Bureau of Land Management (BLM) re-proposed updates to regulations governing hydraulic fracturing for the first time in decades. Hydraulic fracturing, known as “fracking,” is a method of extracting oil and gas that involves pumping water, proppant, and chemicals underground at high pressures to fracture rock layers.

The proposed rule would apply to more than 750 million subsurface acres of federal and Indian mineral estate, including lands managed by the Forest Service and the Fish and Wildlife Service. The BLM proposal contains three components: chemical disclosure, well integrity, and flowback water management. While it is important that BLM update its regulations, this draft is sorely inadequate and even weaker than the previously proposed rules. At a minimum, the BLM should have standards at least as strong as state-level requirements.

Disclosure

The BLM proposal would require operators to identify chemicals used by name, purpose, and Chemical Abstracts Service Registry Number. This information would be posted on a public website.

However, the BLM proposal would not require disclosure of chemicals before fracking takes place--only after. Pre-fracking disclosure is essential for testing water sources near fracking sites to establish a baseline before any fracking occurs. Several states, including Wyoming, already require pre-fracking disclosure. The BLM proposal provides protection for information that is a confidential “trade secret” but does not include a process by which first responders and medical professionals can obtain the information if necessary to diagnose or treat a patient or to respond to an emergency. States including Colorado, Pennsylvania and Texas ensure that medical professionals can obtain this information, and BLM should, too. In addition, the proposal allows companies to continue to hide behind a veil of secrecy by requiring only an affidavit from the operator stating that components in their fracking fluid deserve trade secret protection. Although the rule requires operators to disclose things like anticipated fracture length and height, that information can now be generic rather than well-specific, meaning that regulators will be making decisions to issue permits without critical information about drilling and fracturing operations.

This proposal also adopts the website FracFocus.org for chemical disclosure. However, FracFocus does not meet minimum standards for federal records management, and its use would violate President Obama's own executive order on open data. FracFocus is industry-funded, contains limited and sometimes inconsistent information, is difficult to navigate, isn't searchable, and there's no way to ensure proper compliance. For these reasons, a recent Harvard Law study found that “[i]n its current form, FracFocus is not an acceptable regulatory compliance method for chemical disclosures.”

Well Integrity

Maintaining an oil or gas well's mechanical integrity is crucial to ensuring that it does not allow oil, gas, fracking fluids or fracking waste to migrate into drinking water sources. The BLM proposal backslid from one of the stronger requirements of last year's proposal. Last year's proposal required operators to submit a cement bond log on the surface casing to ensure that useable water has been properly isolated. The current draft eliminates this requirement on most wells. Instead, operators would only be required to perform a cement evaluation log on a “type well” and data from that well can be used for others. Also, those logs now wouldn't have to be submitted until *after* the well is fractured, defeating

the whole purpose of running these logs, which are used to identify and fix any problems with the well that may endanger drinking water *before* fracturing begins.

Additionally, the proposed rule does not contain any updates or additions to the BLM's existing but outdated well construction rules. For example, existing BLM rules are completely silent on how deep below usable water the surface casing must be set, and on the design and use of intermediate and production casing. Neither the existing nor the proposed rules require operators to run cement bond logs on intermediate or production casing to ensure proper isolation of hydrocarbon-bearing zones.

Toxic Waste Management

The BLM proposes to require companies to estimate the volume of wastewater to be recovered after fracking and submit information regarding the proposed methods of management and disposal of the wastewater. These provisions will help ensure that facilities are available to handle the projected amount of fracking wastewater, which can be very toxic and can include metals, hydrocarbons, salts or naturally occurring radioactive material.

However, the BLM proposal would allow toxic waste to be stored in open air pits, which are known to increase the risk of environmental harm to soils, groundwater, surface water, and wildlife. Closed loop systems, also known as pitless systems, instead capture the waste in tanks. These systems can actually save companies' money and are better for the environment—a win/win solution that should be required by the BLM. Fracking waste should be subject to hazardous waste standards. The proposal also does not require the capture of toxic air pollutants and global warming pollutants emitted during fracking. Although new federal rules will require this for some wells beginning in late 2014, the BLM should require this immediately on federal leases to protect clean air. It is another win/win solution that can save the industry millions of dollars.

How the BLM Rule Should Be Improved

In addition to the improvements detailed above, the BLM rule should:

- Restore the definition of “well stimulation” rather than the more narrow definition of “hydraulic fracturing,” to ensure that environmental risk from all forms of well stimulation is properly managed
- Require robust baseline water testing by a certified laboratory prior to beginning wellpad or well construction operations or prior to fracking of existing wells within at least 2,500 feet from an identifiable and accessible water source. Documenting the pre-drilling and fracking condition of any nearby water source is essential to investigate any changes in water quality or quantity that occur later on. Test results should be disclosed to BLM, landowners and the public.
- Establish safe setbacks from homes, schools, and sensitive environmental features.
- Place some areas completely off limits to oil and gas fracking, including the most sensitive lands, such as proposed wilderness areas, and areas that support critical water sources.
- Ban the use of diesel in fracking under federal leases.

The technology used to extract oil and gas from the ground has evolved rapidly, but federal regulation has failed to keep up and properly address the risks associated with these new techniques. While the BLM proposal is an important first step, communities across the country are looking to the agency to go further to ensure that human health, public lands, wildlife, clean air and clean water are all protected from the oil and gas industry.

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