

Energy Industry Reps Greet House Fracking Probe With Shrug

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Energy industry insiders say a new House probe of hydraulic fracturing is unlikely to hinder development of new domestic shale gas plays or stall a massive merger between Exxon Mobil Corp. and a large independent gas producer.

The House Energy and Commerce Committee's two top Democrats asked eight oil-field service firms last week for details about chemicals they use during hydraulic fracturing, a decades-old drilling technique that blasts sand, chemicals and water into a wellbore to break apart compact rock and release hydrocarbons. The lawmakers also publicized for the first time details of a similar investigation that revealed that two drillers used diesel in their fracturing fluids in violation of a voluntary agreement with U.S. EPA.

"They're certainly putting a new torpedo in the water," said Jason Hutt, a partner at the Washington office of Bracewell & Giuliani. "There's going to be a burden to respond to all this."

"But frankly," he added, "I think they're fear-mongering."

Moves by Energy and Commerce Chairman Henry Waxman (D-Calif.) and Rep. Ed Markey (D-Mass.), who chairs the Energy and Environment Subcommittee, come after months of congressional debate about the drilling technique, which has helped open access to massive domestic natural gas plays and also has raised concerns among environmentalists and some lawmakers about the technique's environmental impacts and whether it is adequately regulated by individual states.

Waxman and Markey launched their inquiry just days after EPA's top drinking water official said he had not seen documented evidence of contamination caused by fracturing and that state regulators were doing a good job overseeing the process.

"The week started out pretty good for us," said Chris Tucker, a spokesman for the industry-backed group Energy in Depth. "Anytime the top drinking water official acknowledges the tremendous track record of state regulators, that's a nice feather in your cap."

Industry advocates say Waxman and Markey tried to spoil their good week and tilt the debate toward environmentalists.

"The debate was not trending in the direction opponents of fracturing wanted it to go," Hutt said. "They had this one at the ready ... and it let them steal the debate back a little bit."

The oil and gas industry has used hydraulic fracturing for years to stimulate production from aging wells, and more recently, it has used the technique to tap unconventional sources of oil and natural gas, like coalbed methane and shale gas.

Concerns about the impact of hydraulic fracturing in coal seams on underground drinking water supplies led to a series of lawsuits in the late 1990s and early 2000s that prompted EPA to regulate the drilling practice under the Safe Drinking Water Act and study its environmental impact.

The EPA study, released in 2004, found that hydraulic fracturing posed “little or no threat” to drinking water.

Environmentalists contended that the study was scientifically unsound, but Congress endorsed it and used it to override the earlier decision to regulate hydraulic fracturing under the Safe Drinking Water Act. Lawmakers specifically exempted the practice from federal regulation in a broad 2005 energy law.

Exxon’s role

Questions about fracturing environmental safety have been raised again in recent months as new reserve estimates point to the massive potential of natural gas shale plays like the Marcellus in Appalachia, Barnett in Texas and Haynesville in Louisiana. Those plays are feasible only if they are tapped with a combination of hydraulic fracturing and horizontal drilling.

More recently, a proposed \$41 billion merger between Exxon Mobil and XTO Energy Inc. has drawn widespread attention to the drilling practice. The deal has been seen by many as a firm commitment by mainstream industry to the drilling technology ([E&ENews PM](#), Dec. 16, 2009).

In contract language filed by Exxon with the Securities and Exchange Commission, the proposed all-stock deal is contingent on Congress’ not passing laws that would make hydraulic fracturing “illegal or commercially impracticable.”

And a recent congressional hearing on the economic ramifications of the deal on oil and gas markets quickly turned into a debate over hydraulic fracturing’s risks and benefits ([E&E Daily](#), Jan. 21).

“I suspect that if the Exxon Mobil-XTO deal were not in the process, the fact that EPA said what they said or the chairman asked for this information would not be headline stories,” said William Hederman, senior vice president for energy policy at Concept Capital, a research firm advising institutional investors.

In Hederman’s view, the Waxman-Markey inquiry is not likely to lead to passage of any legislation that would hinder development of shale plays that require the use of hydraulic fracturing.

“I don’t see a cause for concern here,” he said.

“While there may be legislation proposed after the information is submitted, we think that the Republicans on the committee would view this as a gift for them to attack the Democrats for harming job growth and a clean domestic energy supply option,” he wrote in a briefing paper last week. “We do not think this action will lead to any measure that would materially harm shale gas development through hydraulic fracturing nor harm the Exxon-XTO deal.”

Most industry advocates agree.

“People could say this is a huge blow,” Tucker said. “But really, it’s just another platform to state our case.”

Threat of legislation?

There are currently two bills that propose federal regulation of hydraulic fracturing.

Reps. Diana DeGette (D-Colo.) and Maurice Hinchey (D-N.Y.) are sponsoring the House measure ([H.R. 2766](#) (pdf)), and Sens. Robert Casey (D-Pa.) and Charles Schumer (D-N.Y.) are sponsoring the Senate bill, ([S. 1215](#) (pdf)). Both would require drilling companies to comply with the Safe Drinking Water Act and disclose the chemicals used during hydraulic fracturing.

Previous versions of the legislation have stalled in committee, but some have said the legislation could be included in a broader energy bill.

Still, industry representatives remain undeterred.

“The more I look at it, [the inquiry] suggests acknowledgement that the legislative past is more complicated and difficult than previously thought,” Energy in Depth’s Tucker said. “Maybe if we take the most positive viewpoint, it could be an acknowledgement that attempts to ram through legislation aren’t the best way to proceed, and before rewriting the law, it might be a good thing to do some work in terms of educating and try to get as many materials as possible to render a good decision.”

But any legislation that could come out of the Waxman-Markey inquiry or action on the pending legislation would not likely occur until after EPA conducts a new congressionally mandated study into the effects of hydraulic fracturing in shale plays on underground and surface water supplies.

That study, authorized in the fiscal 2010 spending bill for environmental agencies, was pushed through by Hinchey and others in the New York delegation.

Waxman and Markey’s inquiry ahead of the release of the study has raised a few eyebrows.

“They’re jumping the gun on science,” Hutt said. “Congress has already asked through the appropriations process to look at the science, but they’re not willing to wait on that.”

But Susan Riha, director of the New York State Water Resources Institute and a professor at Cornell University’s Earth and Atmospheric Sciences Department, thinks legislation should move forward ahead of the EPA study.

“I think they should just move ahead [with legislation] to get more information about how many times chemicals show up in drinking water ... because it will help with future studies,” she said during an event on Capitol Hill this morning. “If it’s not required [to disclose chemicals used in fracturing fluids], then it will be extremely difficult to study their impact on water supplies.” And environmentalists have also welcomed the Waxman-Markey inquiry and the second level of information it could provide about hydraulic fracturing.

“EPA’s work is going to be scientific, and [Waxman and Markey are] not going to be scientific,” said Amy Mall, a senior policy analyst for the Natural Resources Defense Council. “We’re pleased they’re doing it. It’s another important avenue of inquiry.”

She added, “It’s time to get more information out into the sunshine.”