

Provisions Benefiting Energy Industry Are Folded into Bill

DAN MORGAN / Washington Post 12oct03

Drilling Technique Pioneered by Halliburton—That Might Pollute Water—Would No Longer Require Special Permit

For several years the Environmental Protection Agency has been studying whether an increasingly popular -- but environmentally controversial -- drilling technique used by Halliburton Co. and other big oil and gas operators pollutes underground drinking water supplies.

Now Republicans drafting broad energy legislation have decided not to wait for EPA to issue its final report. Instead, the House-Senate compromise on the energy bill exempts the technique, known as "hydraulic fracturing," from some of the controls of the 1974 Safe Drinking Water Act.

The little-noticed decision shows the extent to which the far-reaching energy legislation has become a catchall for environmental provisions long advocated by industry lobbyists.

Some controversial initiatives, such as one allowing oil and gas exploration in Alaska's Arctic National Wildlife Refuge, could yet be removed from the bill to improve chances of passage in the politically divided Senate. But other less prominent environmental provisions, especially ones dealing with water issues, seem likely to survive, according to congressional aides in both parties.

For example, language agreed to by House-Senate negotiators would, for the first time, end a requirement that construction activities related to oil and gas exploration operate with a permit under the Clean Water Act.

In a letter this week to GOP negotiators, Rep. James L. Oberstar (D-Minn.) called the provision "a complete, unprecedented end run around one of our nation's most successful environmental laws." He warned that oil and gas exploration could go forward without controls over storm water runoff into lakes, rivers and streams.

House Republicans are pushing for revisions in underground gasoline storage regulations that could make it easier for companies to get federal aid to clean up leaks and spills even if the companies are financially able to pay, congressional sources said.

Meanwhile House GOP officials, led by Majority Leader Tom DeLay (R-Tex.), have insisted that the legislation limit the liability of manufacturers and refiners of the gasoline additive MTBE (methyl tertiary butyl ether), which has been blamed for polluting water supplies in California, New Hampshire and other states.

Lyondell Chemical Co., based in DeLay's home state, is the largest manufacturer of MTBE, industry officials say.

The provision would prevent communities from collecting damages resulting from MTBE infiltration into water supplies unless there is proof the product was handled negligently. Manufacturers and refiners could not be sued merely because their products contain MTBE.

House Republicans have pragmatic reasons for wanting the liability protection clause. It would strike at trial lawyers, a thorn in the side of the GOP's big business backers and a key source of campaign funds for Democrats.

The provision is a priority for the American Petroleum Institute, the National Petrochemical and Refiners Association and companies such as Exxon Mobil Corp., Chevron Texaco Corp. and Shell Oil Co., which have used MTBE in gasoline products.

"We don't want to be liable just because we made what Congress told us to make," said Bob Slaughter, president of the petrochemical and refiners group. He noted that federal law mandates the use of smog-reducing oxygenates such as MTBE where there are high levels of air pollution.

But senators from states where MTBE in groundwater has resulted in multimillion dollar lawsuits and widespread public concern have threatened to block any energy bill containing the liability exclusion.

"The goal of the legislation is to eliminate the most obvious resources to pay for solving the problem," said Victor Sher, a California attorney who was involved in a suit filed by

the South Tahoe Public Utility District against major oil companies and refiners. It resulted in a \$69 million settlement.

Democrats and environmental organizations are also objecting to a provision in the bill that exempts fluids used in hydraulic fracturing from the law that regulates the underground injection of liquid wastes.

The drilling procedure involves injecting a mixture of fluids and sand under very high pressure to crack rock and coal seams, aiding the escape of trapped oil and gas. The technique is spreading because of a boom in drilling for methane gas in coal beds. Most of the richest lodes are adjacent to vast underground drinking water reservoirs.

EPA, in an initial assessment of the impact published last summer, concluded there was a low risk of drinking water contamination. But it invited public comment.

However, Sen. Pete V. Domenici (R-N.M.) and Rep. W. J. "Billy" Tauzin (R-La.), who are drafting a compromise House-Senate energy bill, rejected Senate-passed language that would have allowed EPA to continue to study the issue, subject to a review by the National Academy of Sciences.

Instead, they adopted the full exemption included in the House-passed version of the energy legislation.

Benjamin Grumbles, EPA's assistant associate administrator for congressional relations, said the agency was "not enthusiastic about the language." He said the agency's priority was to "retain a regulatory safety net, so if it is determined there is an imminent substantial danger to health we would have the authority to respond."

The issue has been heavily lobbied by the oil and gas industry.

William F. Whitsitt, president of the Domestic Petroleum Council, which represents large independent exploration and production companies, said hydraulic fracturing is effectively regulated by states wherever the procedure is used.

Even if the new provision becomes law, he added, EPA will retain broad authority under the Safe Drinking Water Act to prevent danger to drinking water supplies.

Halliburton, which pioneered hydraulic fracturing more than 50 years ago and is a leading provider of the service, acknowledged in a statement that representatives "spent time educating many members of Congress and many staffers on the process and the issue."

It added, however, that none of its representatives had contacted anyone in the office of Vice President Cheney, its former chief executive, concerning the issue.

Verified reports of serious drinking water contamination resulting from the injection of the drilling fluids appear rare, officials of environmental organizations acknowledge. But EPA has found instances in which diesel fuel, which contains benzene, has been injected. It has urged companies to "voluntarily move away from that."

EPA's initial assessment that risks were low resulted in a testy exchange of letters between then-EPA Administrator Christine Todd Whitman and Rep. Henry A. Waxman (D-Calif.), who charged that "the administration once again appears to be altering scientific and policy conclusions to accommodate Halliburton's interest."

He also charged that "technical information that was presented to Congress had been manipulated to change data on the risks." But Whitman denied that data had been altered, and she said she was "troubled" that Waxman would question the "integrity and professionalism" of EPA's staff.

Halliburton said in a statement last week that it does not use diesel fuels in hydraulic fracturing operations above coal beds.