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'Fracking' regulation may undo energy bill

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Environmentalists have launched a new offensive against an oil-drilling technique known as hydraulic fracturing that could throw up a roadblock to the new energy bill Congress is considering, much as the dispute over the issue of liability for the gasoline additive MTBE contributed to the bill's breakdown during the last session.

So far, the oil industry and its allies on Capitol Hill have been able to fight off proposals for tighter regulation of the practice, which critics said can lead to the pollution of underground water supplies that supply rural towns and ranchers.

Hydraulic fracturing is the process of injecting hundreds or even thousands of gallons of highly pressurized fluids into the ground in order to fracture rock formations and allow oil and natural gas trapped in them to flow into wells where they can be brought to the surface.

Critics have claimed the practice has fouled underground water repeatedly with not only hydrocarbons, but also the sometimes-toxic fracturing fluids. Environmentalists are particularly concerned about the increasing use of fracturing to coax gas out of hard-to-reach deposits known as tight sands, and from coal seams that often are much nearer to the surface than conventional gas reserves.

Energy companies insist hydraulic fracturing -- known in the oil-and-gas business as fracking -- is safe and should not be placed under the burdensome jurisdiction of the 1974 Safe Drinking Water Act. Nevertheless, their staunch opposition to regulation has stirred up opponents who contend that if fracturing is so safe, why is the industry fighting a level of environmental oversight and reassurance?

"This is supposedly an open society. Would you want hydraulic fracturing taking place next to your water well without you being able to know what the risks are?" asked Wes Wilson, an Environmental Protection Agency engineer based in Colorado who has been a public critic of his own agency's handling of the issue.

It is a question some members of Congress want answered as the Energy Policy Act of 2005 moves from the House to the Senate -- perhaps by the end of this month -- where it previously ran aground in large part over provisions granting the industry a level of protection from liability for groundwater contamination from methyl tertiary-butyl ether -- better known as MTBE.

The House Energy and Commerce Committee defeated proposed amendments to the energy bill late Wednesday that would have banned the use of diesel fuel as a fracturing fluid and require further study before the exemption to the Safe Drinking Water Act would take effect.



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Wilson last year sent a dour critique to Congress of the EPA's 2004 final report on fracturing and whether or not it posed enough of a threat to be regulated under the act. In a conference call with reporters Wednesday, Wilson and other speakers characterized the EPA report as basically glossing over the matter.

The EPA report was issued last year based on what critics characterized as a spotty review of current data and a lack of field testing of water in areas where fracturing takes place.

Critics included the Oil and Gas Oversight Project, the organizers of Wednesday's conference call, which contended the EPA was, in effect, giving the oil industry a pass in order to clear the way for the increased domestic production, which is a cornerstone of the Bush administration's energy policy.

In a policy statement urging that fracturing not be regulated, the American Association of Petroleum Geologists told Congress the technique had been used in oil fields since the 1940s and was becoming increasingly important as drillers go after "tighter" deposits of oil and natural gas -- meaning deposits that are more difficult to recover.

Geoffrey Thyne, a geochemist with the Colorado School of Mines in Golden, told reporters on the conference call as many as 90 percent of new wells in the near future will require fracturing, which means virtually the entire industry will have a new layer of regulation to contend with at a time when they already are scrambling to meet increasing energy demand.

At the same time, increased monitoring under an EPA mandate conceivably could turn up instances of well contamination that could leave the drilling companies vulnerable to lawsuits from landowners.

"It is required at this point to use hydraulic fracturing in the tight sands that the administration has earmarked as part of our national security," Thyne said. "They are basically being required to use it."

Such a dilemma is similar to the one the industry found itself in with MTBE, and refiners argue they should not be held liable for using a product that was virtually mandated by the Clean Air Act.

Shielding oil companies from massive damage suits is one thing, but critics of the move to block regulation of fracking said it is quite another simply to ignore instances of pristine wells becoming poisoned and allow drillers to leave landowners and cash-strapped rural towns holding the bag for finding alternative water supplies.

The EPA may not see any reason to get involved in fracturing, but Senate Democrats could decide in the coming weeks that it would be better to err on the side of caution and hold up the energy bill until there are better guarantees fracturing is as safe as it is cracked up to be.