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# Gas Drilling Technique Is Labeled Violation

By **TOM ZELLER Jr.**

Oil and gas service companies injected tens of millions of gallons of diesel fuel into onshore wells in more than a dozen states from 2005 to 2009, Congressional investigators have charged. Those injections appear to have violated the Safe Water Drinking Act, the investigators said in a letter to the [Environmental Protection Agency](#) on Monday.

The diesel fuel was used by drillers as part of a contentious process known as hydraulic fracturing, or fracking, which involves the high-pressure injection of a mixture of water, sand and chemical additives — including diesel fuel — into rock formations deep underground. The process, which has opened up vast new deposits of [natural gas](#) to drilling, creates and props open fissures in the rock to ease the release of [oil](#) and gas.

But concerns have been growing over the potential for fracking chemicals — particularly those found in diesel fuel — to contaminate underground sources of drinking water.

“We learned that no oil and gas service companies have sought — and no state and federal regulators have issued — permits for diesel fuel use in hydraulic fracturing,” said Representative [Henry A. Waxman](#) of California and two other Democratic members of the House Committee on Energy and Commerce, in [the letter](#). “This appears to be a violation of the Safe Drinking Water Act.”

Oil and gas companies acknowledged using diesel fuel in their fracking fluids, but they rejected the House Democrats’ assertion that it was illegal. They said that the E.P.A. had never properly developed rules and procedures to regulate the use of diesel in fracking, despite a clear grant of authority from Congress over the issue.

“Everyone understands that E.P.A. is at least interested in regulating fracking,” said Matt Armstrong, a lawyer with the Washington firm Bracewell & Giuliani, which represents several oil and gas companies. “Whether the E.P.A. has the chutzpah to try to impose retroactive liability for use of diesel in fracking, well, everyone is in a wait-and-see mode. I suspect it will have a significant fight on its hands if it tried it do that.”

Regardless of the legal outcome, the Waxman findings are certain to intensify an already contentious debate among legislators, natural gas companies and environmentalists over the safety of oil and gas development in general, and fracking in particular.

Oil services companies had traditionally used diesel fuel as part of their fracturing cocktails because it helped to dissolve and disperse other chemicals suspended in the fluid. But some of the chemical components of diesel fuel, including toluene, xylene and benzene, a carcinogen, have alarmed both regulators and environmental groups. They argue that some of those chemicals could find their way out of a well bore — either because of migration through layers of rock or spills and sloppy handling — and into nearby sources of drinking water.

An E.P.A. investigation in 2004 failed to find any threat to drinking water from fracking — a conclusion that was widely dismissed by critics as politically motivated. The agency has taken up the issue again in a new investigation started last year, although the results are not expected until 2012 at the earliest.

The House committee began its own investigation in February last year, when Democrats were in the majority. In Monday's letter, Mr. Waxman, along with Representatives [Edward J. Markey](#) of Massachusetts and Diana DeGette of Colorado, said that they were so far “unable to draw definitive conclusions about the potential impact of these injections on public health or the environment.”

Still, the investigators said that three of the largest oil and gas services companies — [Halliburton](#), [Schlumberger](#) and BJ Services — signed an agreement with the E.P.A. in 2003 intended to curtail the use of diesel in fracking in certain shallow formations.

Two years later, when Congress amended the Safe Water Drinking Act to exclude regulation of hydraulic fracturing, it made an express exception that allowed regulation of diesel fuel used in fracking.

The Congressional investigators sent letters to 14 companies requesting details on the type and volume of fracking chemicals they used. Although many companies said they had eliminated or were cutting back on use of diesel, 12 companies reported having used 32.2 million gallons of diesel fuel, or fluids containing diesel fuel, in their fracking processes from 2005 to 2009.

The diesel-laced fluids were used in a total of 19 states. Approximately half the total volume was deployed in Texas, but at least a million gallons of diesel-containing fluids were also

used in Oklahoma (3.3 million gallons); North Dakota (3.1 million); Louisiana (2.9 million); Wyoming (2.9 million); and Colorado (1.3 million).

Where this leaves the companies in relation to federal law is unclear.

Mr. Waxman and his colleagues say that the Safe Drinking Water Act left diesel-based hydraulic fracturing under the auspices of E.P.A.'s "underground injection control program," which requires companies to obtain permits, either from state or federal regulators, for a variety of activities that involve putting fluids underground.

No permits for diesel-based fracking have been sought or granted since the Safe Drinking Water Act was amended in 2005.

Lee Fuller, a vice president for government relations with the Independent Petroleum Association of America, said that was because the E.P.A. had never followed up by creating rules and procedures for obtaining such permits and submitting them for public comment.

The agency did quietly update its Web site last summer with language suggesting that fracking with diesel was, indeed, covered as part of the underground injection program, which would suggest that permits should have been obtained. But Mr. Fuller's organization, along with the U.S. Oil and Gas Association, has gone to court to challenge the Web posting, arguing that it amounted to new rule-making that circumvented administrative requirements for notice and public commentary.

The E.P.A. said Monday that it was reviewing the accusations from the three House Democrats that the companies named were in violation of the Safe Drinking Water Act.

"Our goal is to put in place a clear framework for permitting so that fracturing operations using diesel receive the review required by law," Betsaida Alcantara, an E.P.A. spokeswoman, said in an e-mail message. "We will provide further information about our plans as they develop."