

Inside EPA:

Jackson Downplays Concerns Over Broad EPA Oversight Of Fracking Wells

Posted: February 1, 2012

EPA Administrator Lisa Jackson says the agency's limited resources make it impossible for federal regulators to be able to broadly oversee hydraulic fracturing operations -- even if Congress were to restore EPA's legal authority to regulate the injection process once officials complete their pending study on whether the process impacts drinking water.

"Let me speak really plainly," Jackson told a Jan. 31 teleconference hosted by the American Sustainable Business Council (ASBC). "There is no EPA setup that allows us to oversee each and every well that's drilled."

Instead, EPA will continue to focus on the "big things" at the top of its priorities for mitigating environmental risks from fracking -- an arena the agency has historically left in the hands of the state regulators -- including regulating wastewater under the Clean Water Act (CWA) and stricter air rules for the drilling sector, she said.

Her comments come as GOP lawmakers and industry groups are raising concerns that the agency is increasingly targeting alleged fracking contamination at high-profile sites in Texas, Wyoming and Pennsylvania even before it has completed its pending study. "EPA's going after fracking wherever they can," House science committee Chairman Ralph Hall (R-TX) told a Feb. 1 panel hearing on the agency's investigation of groundwater contamination in Pavillion, WY.

He cited a case in Texas, where EPA brought an enforcement action against Range Resources, and one in Dimock, PA, charging that both of those cases "raise questions about EPA's commitment to getting the science right."

But Jackson and other top agency officials are downplaying such concerns, noting that they have prioritized their top environmental concerns stemming from fracking while cautioning that they lack strong scientific conclusions about actual impacts, saying this could hamper their ability to fill in gaps in state oversight.

EPA's senior policy counsel Robert Sussman said recently that the agency's top concerns include large-scale water withdrawals, wastewater disposal, potential for groundwater contamination and increased emissions of hazardous air pollutants (HAPs) and the greenhouse gas methane, but acknowledged limited scientific conclusions exist to support stricter regulations.

The agency is currently studying the potential relationship between fracking and drinking water, an analysis directed by Congress in 2010 appropriations language. Environmentalists hope that the study will provide justification for repealing a provision in a 2005 energy law that prohibits EPA from regulating fracking under its Safe Drinking Water Act permitting program.

Jackson told the sustainable business group that the study, which is slated for completion in 2014, may drive strengthening of state laws and "there may be some changes to EPA authority and there may be some law that grows out of that."

However, speaking in response to a question about how EPA will be able to keep pace with oversight on day-to-day fracking operations given President Obama's State of the Union address vow to expand domestic energy production, Jackson said "I don't think we can."

Even if the two-year study led to changes to EPA regulations or authority, Jackson told ASBC she doesn't see management of individual fracking operations being within the agency's purview. "We're a large agency,

but we're not nearly large enough to be on the ground the same way" that state regulators can in conducting proper oversight.

Jackson highlighted EPA's recent steps to expand its framework for ensuring adequate regulation of other aspects related to fracking beyond the actual injection process, including pending air toxics and new source performance standards for oil and gas, which propose to target emissions from fracking wells for the first time.

And she described EPA's effort to craft CWA pretreatment rules for the shale gas industry, regulation it is developing to ensure that municipal and industrial wastewater treatment plants can effectively treat produced water and flowback associated with shale gas drilling. But Jackson added that the agency is looking to its pending CWA rules to pressure drillers to commit to reusing, or recycling, fracking wastewater to avoid having to dispose of it, though she said the agency is also working to "make sure we're not concentrating pollutants" in the re-use process.

Strong Environmental Standards

During the Jan. 31 teleconference, Jackson also argued that strong environmental standards are consistent with President Obama's Jan. 24 State of the Union message to strengthen the manufacturing sector, encourage development of cleaner energy sources and create an economy "built to last."

For example, Jackson pointed to recycling mandates as creating "resource and labor intensive jobs" for communities and opportunities for small businesses, and touted the agency's clean vehicle rules as providing more "clarity" for the auto industry, referencing announcements by Chrysler and General Motors last spring that the companies would be adding or retaining 4,000 or more jobs.

She added that "green products and green strategies are a part of both the new era of energy and the revitalization of manufacturing" outlined in the President's blueprint. "Weak environmental standards are not a path to more jobs," she said.

While few credible reports have surfaced finding a definitive link between strict environmental standards and job destruction, there is substantial evidence that weak environmental rules put human health at risk, Jackson told the ASBC.

"We need to make clear that we're not going to move ahead by rolling back environmental protections," she said.

In response to a question about the forecast for likelihood of advancing green chemistry in the manufacturing sector absent passage of legislation to reform the Toxic Substances Control Act (TSCA), Jackson acknowledged that the effort is not likely to move forward anytime during the next legislative year. But she added that "I hope the chemical industry stays at the table," and said that the growing patchwork of differing state rules on toxic chemicals should put sufficient pressure on manufacturers to ensure that they continue to work toward negotiation of a reform bill.

Sen. Frank Lautenberg (D-NJ) last April introduced S.847, which would amend TSCA to require industry to prove chemicals are safe, rather than the current system, where EPA must prove chemicals pose an unreasonable risk, among other provisions. The bill would also have spurred progress in green chemistry, Democratic supporters say, because it would have mandated formation of EPA green chemistry and engineering centers to facilitate production of safer alternatives to industrial chemicals.

But the bill failed to gain Republican support and though industry has participated in stakeholder talks and acknowledges the need to reform the chemical safety law, negotiations seemed stymied over core disagreements in where to set the bill's safety standard. -- *Bridget DiCosmo* (bdicosmo@iwpress.com This e-mail address is being protected from spambots. You need JavaScript enabled to view it)