



**EARTHWORKS**

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Senate Energy and Natural Resources Subcommittee on Public Lands, Forests, and Mining

Testimony of Bruce Baizel, Energy Program Director, Earthworks

Chairman Barrasso, Ranking Member Wyden and Members of the Subcommittee:

Thank you for the opportunity to testify before you on the Bureau of Land Management's hydraulic fracturing rule. My name is Bruce Baizel, Director of Energy Programs at Earthworks, a national nonprofit organization that protects communities and the environment from harmful energy development while seeking sustainable solutions.

Over approximately the last fifteen years, the so-called Shale Revolution has spread across our country. The Bureau of Land Management (BLM), however, has not updated its oil and gas regulations since the 1980s. In the absence of updated rules to accommodate this rapidly growing industry, states have created a patchwork of regulations that continue to evolve with changing industry practices.

This BLM rule creates a minimum standard, a basic level of protection for our public lands, the water that flows through them and the citizens that enjoy their use daily. It also delivers the regulatory certainty and consistency the oil and gas industry has said it desires. Under this rule, states will continue to develop and adapt their hydraulic fracturing regulations as technology improves or problems develop. This rule allows for that flexibility by providing a waiver procedure for states whose rules are at least as protective as the BLM rule. This will ensure that these rules are not duplicative of what states currently have in place, while also allowing states to pass more stringent regulations if they so desire.

**I. It is doubtful whether state regulation of hydraulic fracturing has kept up with changes in shale development**

It is difficult to say with certainty whether state regulation of hydraulic fracturing has kept pace with shale development. I sit on the board of an organization called STRONGER (the State Review of Oil and Natural Gas Environmental Regulations) that works toward the continuous improvement of state regulations. STRONGER is a non-profit multi-stakeholder organization that includes representatives from state governments, industry, and environmental representatives. I was part of STRONGER's original workgroup that in 2009 and 2010

Bruce Baizel  
Energy Program Director  
Earthworks

developed the hydraulic fracturing guideline states should follow. So far, only six states have had a STRONGER review of their hydraulic fracturing regulations.

Since the onset of the shale gas boom, of the Western states with significant BLM mineral development, only Colorado has undergone any kind of STRONGER review of either its general oil and gas, or hydraulic fracturing specific, regulations. Montana and Utah have never been reviewed. Wyoming was last reviewed in 1994, New Mexico in 2001, and California in 2002 – years before the shale oil and gas boom.

The result is that, as long as states do not step up to have STRONGER review their regulations, neither the public nor policy makers have an independent sense of whether states have the necessary regulations in place to effectively protect the people and the environment from the impacts of oil and gas development.

Even if states had those protections, regulations mean nothing without adequate enforcement. We were recently asked to evaluate six states from an enforcement perspective, looking at staffing, inspection numbers, violations, sanctions and penalties and tracking of, and response to, citizen complaints. We looked at Colorado, New Mexico, Texas, Ohio, New York and Pennsylvania. Some of our findings included:

- In all states, the number of wells that do not get inspected is immense. For example, in 2010 Pennsylvania inspectors were unable to monitor approximately 81,000 active wells (89% of the state's active wells), Ohio failed to inspect more than 58,000 wells (91% of active wells), and Texas inspectors did not make it to approximately 161,000 wells (57% of active wells).
- Enforcement actions do not appear to be consistently applied in most states. New Mexico was particularly notable in the discretion afforded to inspectors to decide whether or not to issue a Letter of Violation. As a result, operators may receive different treatment simply because their site was visited by inspector X instead of inspector Y.
- In most states, we did not find that increased inspection levels resulted in less contamination. For example, in Colorado, in fiscal year (FY) 2011, 133 of the 513 reported spills (or 26%) contaminated either ground or surface water.

## **II. BLM is simply doing what any responsible regulator would do – adapting its regulations to changing industry practice.**

National public lands need national standards that are not subject to the vagaries of state politics, budgets and varying levels of expertise. BLM's rule sets that standard while providing certainty and consistency for operators. As the largest manager of oil and gas resources in the United States, the BLM should set the example for all oil and gas operations. BLM's rule now can join with the more responsible states in moving toward a future where the oil and gas industry develops their resources in ways that reduce threats to public health and the environment and that respect the quality of life in local communities.

Improved regulation of hydraulic fracturing can reduce the risks presented by oil and gas development to clean air, clean water, wildlife habitat, and communities. Some in industry have increasingly moved to use such practices as full chemical disclosure, notice to landowners, green completions, wastewater recycling, closed-loop waste management systems, and have found that many of these approaches are economical to adopt.

### **III. Among state regulations, the only real consistency is variation.**

In the debates over hydraulic fracturing, we often hear the argument that states are the most effective regulators, due to their understanding of local geology and their technical expertise. For many years, Earthworks has participated in various rulemaking processes and as part of governor's task forces, so we have had a chance to look carefully at the question of what makes an effective regulation. Part of the answer lies in the clear, consistent and functional statement of standards.

A survey by Resources For the Future<sup>1</sup> of state regulations shows the variation among the six states – California, Colorado, Montana, New Mexico, Utah, and Wyoming – in the same regulatory areas BLM addresses with this rule. For example, Montana has no requirement for intermediate or production cement casing, while Colorado requires cement casings at least 200 feet above the hydrocarbon zone. Similarly, Wyoming has a specific requirement for intermediate and production cement casings<sup>2</sup>, while Utah has none.

Another study performed by the Ground Water Protection Council for the Environmental Defense Fund reached similar conclusions<sup>3</sup>. Again, looking at a number of states with a large acreage of federal lands, we find that since 2009, many states have updated their oil and gas regulations designed to protect groundwater. One of the difficulties, however, is that states have varying definitions of usable groundwater. States also have varying groundwater protection standards sometimes based on numeric levels of total dissolved solids or, alternatively, on narrative standards.

Some states have lessened the risks of ground water contamination from hydraulic fracturing by tightening their regulations in the areas of well integrity, casing, cementing, chemical disclosure, and waste disposal.

To that end, BLM commonly enters in to memoranda of understanding (MOUs) with states to help achieve better coordination. The variance procedure within the BLM hydraulic fracturing rule also fosters this type of cooperation. Rather than duplicate, the rule supplements in areas where states have yet to make important upgrades. Without this supplement, BLM would be putting all taxpayers at risk, as owners of public land and public minerals.

### **Conclusion**

We see a need for coordinated regulation of hydraulic fracturing at all levels – federal, state and local. Based upon our experience, no single level of government can adequately regulate in a way that protects human health and our public lands, while allowing for responsible development

Bruce Baizel  
Energy Program Director  
Earthworks

of the resource. In times of constrained budgets and a lack of trained personnel, careful and appropriate attention by all levels of government is necessary.

The BLM rule provides a critical minimum standard for the protection of public lands and waters. It allows for greater predictability and consistency for operators. For states, it allows for the flexibility to address more individualized conditions.

We know that a significant segment of the people in the US hope that we will transition our energy mix towards renewable energy development. But, until this transition, we feel it is important to take steps to carefully regulate the oil and gas industry to minimize harm to our natural resources and public lands.

Thank you for the opportunity to present the views of Earthworks on this important topic. We appreciate the Committee's consideration of this issue and we look forward to working with you in the future to address the issue of necessary and appropriate regulation of hydraulic fracturing.

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<sup>1</sup> Resources for the Future: Center for Energy, Economics, and Policy: *The State of State Shale Gas Regulation: State by State Tables* This report reviewed twenty different categories of hydraulic fracturing regulations in states with active or potential shale plays as of 2013.

<sup>2</sup> 200 feet above the trona interval

<sup>3</sup> Overview of Groundwater Protection Regulations in Oil and Gas States Steven P. Musick, P.G. Ground Water Protection Council April 2014