

PUBLICATION

Failing on the Big Stage: Another Attempt to Regulate Fracking Falls Short

Authors: Luke Preston Cantrell

October 23, 2015

In March 2015, the U.S. Department of the Interior (DOI) became the most prominent governmental entity to join in on the attempts to regulate hydraulic fracturing, or fracking. More specifically, the DOI's sweeping regulations that sought to increase restrictions on fracking on federal and Native American tribal lands were to be implemented by the Bureau of Land Management (BLM). Although the federal government carries much greater influence than the individual municipalities that have attempted to regulate fracking, its effort also proved to be unsuccessful.

The largest difference in the debate this time was that, unlike previous state and municipal efforts to accomplish such regulation, the Environmental Protection Agency (EPA) possessed the power to regulate fracking but had it taken away. The court in the United States District Court for the District of Wyoming questioned whether, after Congress specifically removed the authority of the EPA to regulate fracking in the Energy Policy Act of 2005, it could reverse course and delegate that same power to the BLM. Judge Skadvahl stated in his opinion that "It is hard to analytically conclude or infer that, having expressly removed the regulatory authority from the EPA, Congress intended to vest it in the BLM, particularly where the BLM had not previously been regulating the practice."

The court also found compelling that the proposed rules sought to regulate areas it believed were already regulated, recognizing that "[t]he Fracking Rule's focus is three aspects of oil and gas development – wellbore construction, chemical disclosures, and water management – each of which is subject to comprehensive regulations under existing federal and state law." The court was hesitant to create a federal regulatory scheme that overlaps and interferes with states' interests in regulating fracking without having the Congressional authority to implement the rules. With the fracking debate's latest escalation in venue, the supporters and opponents of fracking regulation have also become more prominent, with Colorado, Utah, Wyoming and North Dakota joining as plaintiffs to oppose the imposition of regulations that their state laws already govern.

Although the issues and disagreements remain over what entities can regulate fracking, as well as the benefits and the impacts of the highly-used practice, it appears that, without Congressional action, the federal government will not be able to control the practice which has proved prosperous to the oil and gas industry and provided a needed boost to the industry over recent years.