



States Quickly Take a Stand Against BLM Fracking Regulations

By: [Michael Cross](#)

As promised, on March 20, 2015, the Obama Administration released a [new rule](#) to regulate underground injections in the hydraulic fracturing process, which is slated to become effective on June 24, 2015. This new rule requires approval of fracking operations, regulations on well integrity, and disclosure of chemicals used and storage of recovered fluids. Significantly, the Bureau of Land Management (“BLM”) promulgated this rule despite numerous pieces of federal legislation, state regulations, and local zoning and permitting requirements that already regulate hydraulic fracturing. In fact, nearly every Application for Permit to Drill approved last year was approved by a state that already had wellbore construction and/or fracking regulations.

In addition to a lawsuit filed by industry associations, the State of Wyoming filed an action in the United States District Court for the District of Wyoming challenging the BLM rule and alleging that the regulation exceeds the agency’s statutory jurisdiction, conflicts with the Safe Drinking Water Act (“SDWA”), and unlawfully interferes with the state’s own fracking regulations.

Specifically, the State of Wyoming argued that Congress created an exclusive, comprehensive program to regulate underground injections in the underground injection control (“UIC”) program of the SDWA, and the BLM rule violates that legislation because Congress explicitly prohibited regulation of fracking under the UIC program. Moreover, the State of Wyoming argued that BLM exceeded its statutory jurisdiction by basing the new fracking rule on authority granted to it under the Federal Land Policy and Management Act (“FLPMA”) and the Mineral Leasing Act (“MLA”), because FLPMA and the MLA do not supersede the SDWA.

On April 1, North Dakota moved to intervene in Wyoming’s action claiming that it had significant interest at stake in the litigation. In support of its Motion to Intervene, North Dakota agreed with Wyoming’s argument that BLM does not have the authority to promulgate its rule under FLPMA or the MLA. North Dakota further alleged that the Environmental Protection Agency gave states primary authority to regulate fracking, and BLM’s rule is duplicative of North Dakota’s current regulations and would impede the state’s ability to properly enforce its own regulations. North Dakota’s Motion to Intervene has not yet been granted. The Federal Respondents have appeared in the action, but their answers are not due until June.

Secretary of the Interior Sally Jewell stated that the BLM regulation is necessary to modernize federal drilling regulations which are more than 30 years old, and will not create duplicative or needless regulation. Meanwhile, some environmental groups have claimed that the new rule does not go far enough.

A link to the Federal Register publication of the BLM rule is available here: [26 Fed. Reg. 16127](#).

For more information on the states’ lawsuit, please contact [Bret Sumner](#) or [Michael Cross](#).

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