

116TH CONGRESS
2D SESSION

H. R. 6112

To require operators of oil and gas production facilities to take certain measures to protect drinking water, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 5, 2020

Mr. HUFFMAN (for himself, Mr. LOWENTHAL, Mr. GRIJALVA, and Ms. BARRAGÁN) introduced the following bill; which was referred to the Committee on Natural Resources, and in addition to the Committees on Energy and Commerce, and Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To require operators of oil and gas production facilities to take certain measures to protect drinking water, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Oil and Water Don’t
5 Mix Act of 2020”.

1 **SEC. 2. PROTECTION OF WATER RESOURCES.**

2 (a) MINERAL LEASING ACT REQUIREMENTS.—Sec-
3 tion 17 of the Mineral Leasing Act (30 U.S.C. 226) is
4 amended—

5 (1) in subsection (g) by striking “lands or sur-
6 face waters adversely” and inserting “surface or
7 ground waters or lands adversely”;

8 (2) by redesignating subsection (p) as sub-
9 section (q); and

10 (3) by inserting after subsection (o) the fol-
11 lowing:

12 “(p) WATER REQUIREMENTS.—

13 “(1) An operator producing oil or gas (includ-
14 ing coalbed methane) under a lease issued under this
15 Act shall—

16 “(A) replace the water supply of a water
17 user who obtains all or part of such user’s sup-
18 ply of water from an underground or surface
19 source that has been affected by contamination,
20 diminution, or interruption proximately result-
21 ing from drilling, fracking, or production oper-
22 ations for such production;

23 “(B) ensure that if a surface or ground
24 water source is affected by contamination, dimi-
25 nution, or interruption proximately resulting
26 from such production, best management prac-

1 tices and appropriately available technologies
2 are used to prevent, to the maximum extent
3 possible, the long-term or permanent degrada-
4 tion of the surface or ground water source; and

5 “(C) comply with all applicable require-
6 ments of Federal and State law with respect
7 to—

8 “(i) discharge of any water produced
9 under the lease; and

10 “(ii) activities that would divert or
11 otherwise alter a surface or ground water
12 source or lead to a discharge not covered
13 by clause (i).

14 “(2) An application for a permit to drill under
15 a lease under this Act shall be accompanied by a
16 proposed water management plan including provi-
17 sions to—

18 “(A) protect the quantity and quality of
19 surface and ground water systems, both on-site
20 and off-site, from adverse effects of the explo-
21 ration, development, and reclamation processes
22 or to provide alternative sources of water if
23 such protection cannot be assured;

24 “(B) protect the rights of present users of
25 water that would be affected by operations

1 under the lease, including the discharge of any
2 water produced in connection with such oper-
3 ations that is not reinjected; and

4 “(C) identify any agreements with other
5 parties for the beneficial use of produced waters
6 and the steps that will be taken to comply with
7 State and Federal laws related to such use.

8 “(3) The Secretary may not approve an applica-
9 tion if the Secretary determines that the applicant
10 did not submit a water management plan that meets
11 the requirements described in paragraph (2).”.

12 (b) RELATION TO STATE LAW.—Nothing in this sec-
13 tion or any amendment made by this section shall be con-
14 strued as—

15 (1) impairing or in any manner affecting any
16 right or jurisdiction of any State with respect to the
17 waters of such State; or

18 (2) limiting, altering, modifying, or amending
19 any of the interstate compacts or equitable appor-
20 tionment decrees that apportion water among and
21 between States.

22 **SEC. 3. FRACKING REGULATION ON FEDERAL LANDS.**

23 (a) IN GENERAL.—Not later than 1 year after the
24 date of enactment of this Act, the Secretary of the Inte-
25 rior, acting through the Bureau of Land Management,

1 shall issue regulations governing the use of hydraulic frac-
2 turing under oil and gas leases for Federal lands.

3 (b) INCLUDED PROVISIONS.—The regulations under
4 this section shall require—

5 (1) baseline water testing, the results of which
6 shall be posted on an appropriate internet website;
7 and

8 (2) public disclosure of each chemical used for
9 hydraulic fracturing on an appropriate internet
10 website.

11 (c) INTERIM APPLICATION OF PRIOR RULE.—The
12 final rule entitled “Oil and Gas; Hydraulic Fracturing on
13 Federal and Indian Lands”, as published in the Federal
14 Register March 26, 2015 (80 Fed. Reg. 16128), and cor-
15 rected by the rule published on March 30, 2015 (80 Fed.
16 Reg. 16577), shall apply until the effective date of a final
17 rule under subsection (a).

18 **SEC. 4. CLOSING LOOPHOLES.**

19 (a) SAFE DRINKING WATER ACT.—

20 (1) UNDERGROUND INJECTION.—Section
21 1421(d)(1) of the Safe Drinking Water Act (42
22 U.S.C. 300h(d)(1)) is amended—

23 (A) in subparagraph (A), by striking “;
24 and” and inserting a semicolon; and

1 (B) by striking subparagraph (B) and in-
2 serting the following:

3 “(B) includes the underground injection of
4 fluids or propping agents pursuant to hydraulic
5 fracturing operations related to oil, gas, or geo-
6 thermal production activities; and

7 “(C) excludes the underground injection of
8 natural gas for purposes of storage.”.

9 (2) DISCLOSURE OF CHEMICALS; MEDICAL
10 EMERGENCIES; PROPRIETARY CHEMICAL FOR-
11 MULAS.—Section 1421(b) of the Safe Drinking
12 Water Act (42 U.S.C. 300H(b)) is amended by add-
13 ing at the end the following:

14 “(4)(A) Regulations included under paragraph (1)(C)
15 shall include the following requirements:

16 “(i) A person conducting underground injection
17 operations shall disclose to the State (or the Admin-
18 istrator if the Administrator has primary enforce-
19 ment responsibility in the State)—

20 “(I) prior to the commencement of any un-
21 derground injection operations at any lease area
22 or portion thereof, a list of chemicals intended
23 for use in any underground injection during
24 such operations, including identification of the
25 chemical constituents of mixtures, Chemical Ab-

1 stracts Service numbers for each chemical and
2 constituent, material safety data sheets when
3 available, and the anticipated volume of each
4 chemical;

5 “(II) the results of baseline water testing;

6 “(III) not later than 30 days after the end
7 of any underground injection operations, the
8 list of chemicals used in each underground in-
9 jection during such operations, including identi-
10 fication of the chemical constituents of mix-
11 tures, Chemical Abstracts Service numbers for
12 each chemical and constituent, material safety
13 data sheets when available, and the volume of
14 each chemical used;

15 “(IV) for continuous injection operations,
16 such as enhanced recovery or disposal, a fluid
17 analysis report, which shall be submitted on a
18 quarterly basis and shall include a complete
19 chemical analysis of all injected fluids; and

20 “(V) for any underground injection oper-
21 ation that results in fluids returning to the sur-
22 face, such as flowback after hydraulic frac-
23 turing or produced water recovered from an en-
24 hanced recovery project, a quarterly report of
25 recovered fluids that includes the source, vol-

1 ume, and specific composition and disposition of
2 all water, including water used as base fluid
3 during the injection operation and produced
4 water that is recovered from the well following
5 injection and during the production phase.

6 “(ii) The State or the Administrator, as appli-
7 cable, shall make the disclosure of baseline water
8 testing results and chemical constituents referred to
9 in clause (i) available to the public, including by
10 posting the information on an appropriate internet
11 website.

12 “(iii) Whenever the State or the Administrator,
13 or a treating physician or nurse, determines that a
14 medical emergency exists and the proprietary chem-
15 ical formula of a chemical used in underground in-
16 jection operations is necessary for medical treat-
17 ment, the person conducting the underground injec-
18 tion operations shall, upon request, immediately dis-
19 close the proprietary chemical formulas or the spe-
20 cific chemical identity of a trade secret chemical to
21 the State, the Administrator, or the treating physi-
22 cian or nurse, regardless of whether a written state-
23 ment of need or a confidentiality agreement has
24 been provided. The person conducting the under-
25 ground injection operations may require a written

1 statement of need and a confidentiality agreement as
2 soon thereafter as circumstances permit.

3 “(B) Notwithstanding any other provision of law,
4 none of the following information shall be protected as a
5 trade secret:

6 “(i) The identities, including Chemical Ab-
7 stracts Service identification numbers, of the chem-
8 ical constituents of additives used in underground
9 injection projects, including well stimulation treat-
10 ment fluids and routine maintenance fluids.

11 “(ii) The concentrations of the additives in
12 fluids used in underground injection projects.

13 “(iii) Any air or other pollution monitoring
14 data.

15 “(iv) Health and safety data associated with
16 fluids used in underground injection.

17 “(v) The chemical composition of recovered
18 fluids or fluids injected for disposal.”.

19 (b) CLEAN WATER ACT.—

20 (1) LIMITATION ON PERMIT REQUIREMENT.—
21 Section 402(l) of the Federal Water Pollution Con-
22 trol Act (33 U.S.C. 1342) is amended by striking
23 paragraph (2) and redesignating paragraph (3) as
24 paragraph (2).

1 (2) DEFINITIONS.—Section 502 of the Federal
2 Water Pollution Control Act (33 U.S.C. 1362) is
3 amended—

4 (A) by striking paragraph (24); and

5 (B) by redesignating paragraphs (25),
6 (26), and (27) as paragraphs (24), (25), and
7 (26), respectively.

8 (3) STUDY.—

9 (A) IN GENERAL.—The Secretary of the
10 Interior shall conduct a study of stormwater
11 impacts with respect to any area that the Sec-
12 retary determines may be contaminated by
13 stormwater runoff associated with oil or gas op-
14 erations, which shall include—

15 (i) an analysis of measurable contami-
16 nation in such area;

17 (ii) an analysis of ground water re-
18 sources in such area; and

19 (iii) an analysis of the susceptibility of
20 aquifers in such area to contamination
21 from stormwater runoff associated with
22 such operations.

23 (B) REPORT.—Not later than 1 year after
24 the date of enactment of this section, the Sec-
25 retary shall submit to Congress a report on the

1 results of studies conducted under subpara-
2 graph (A).

3 (c) CLEAN AIR ACT.—

4 (1) REPEAL OF EXEMPTION FOR AGGREGATION
5 OF EMISSIONS FROM OIL AND GAS SOURCES.—Sec-
6 tion 112(n) of the Clean Air Act (42 U.S.C.
7 7412(n)) is amended—

8 (A) by striking paragraph (4); and

9 (B) by redesignating paragraphs (5), (6),
10 and (7) as paragraphs (4), (5), and (6), respec-
11 tively.

12 (2) HYDROGEN SULFIDE AS A HAZARDOUS AIR
13 POLLUTANT.—The Administrator of the Environ-
14 mental Protection Agency shall—

15 (A) not later than 180 days after the date
16 of enactment of this Act, issue a final rule add-
17 ing hydrogen sulfide to the list of hazardous air
18 pollutants under section 112(b) of the Clean
19 Air Act (42 U.S.C. 7412(b)); and

20 (B) not later than 365 days after a final
21 rule under paragraph (1) is issued, revise the
22 list under section 112(c) of such Act (42 U.S.C.
23 7412(c)) to include categories and subcategories
24 of major sources and area sources of hydrogen
25 sulfide, including oil and gas wells.

1 (d) SOLID WASTE DISPOSAL ACT.—

2 (1) IDENTIFICATION OR LISTING, AND REGULA-
3 TION UNDER SUBTITLE C.—Paragraph (2) of section
4 3001(b) of the Solid Waste Disposal Act (42 U.S.C.
5 6921(b)) is amended to read as follows:

6 “(2) Not later than 1 year after the date of en-
7 actment of the Oil and Water Don’t Mix Act of
8 2020, the Administrator shall—

9 “(A) determine whether drilling fluids, pro-
10 duced waters, and other wastes associated with
11 the exploration, development, or production of
12 crude oil, natural gas, or geothermal energy
13 meet the criteria promulgated under this sec-
14 tion for the identification or listing of haz-
15 ardous waste;

16 “(B) identify or list as hazardous waste
17 any drilling fluids, produced waters, or other
18 wastes associated with the exploration, develop-
19 ment, or production of crude oil, natural gas, or
20 geothermal energy that the Administrator de-
21 termines, pursuant to subparagraph (A), meet
22 the criteria promulgated under this section for
23 the identification or listing of hazardous waste;
24 and

1 “(C) promulgate regulations under this
2 subtitle for wastes identified or listed as haz-
3 arduous waste pursuant to subparagraph (B),
4 except that the Administrator is authorized to
5 modify the requirements of this subtitle to take
6 into account the special characteristics of such
7 wastes so long as such modified requirements
8 protect human health and the environment.”.

9 (2) REGULATION UNDER SUBTITLE D.—Section
10 4010(e) of the Solid Waste Disposal Act (42 U.S.C.
11 6949a(e)) is amended by adding at the end the fol-
12 lowing new paragraph:

13 “(7) DRILLING FLUIDS, PRODUCED WATERS,
14 AND OTHER WASTES ASSOCIATED WITH THE EXPLO-
15 RATION, DEVELOPMENT, OR PRODUCTION OF CRUDE
16 OIL, NATURAL GAS, OR GEOTHERMAL ENERGY.—Not
17 later than 1 year after the date of enactment of the
18 Oil and Water Don’t Mix Act of 2020, the Adminis-
19 trator shall promulgate revisions of the criteria pro-
20 mulgated under section 4004(a) and under section
21 1008(a)(3) for facilities that may receive drilling
22 fluids, produced waters, or other wastes associated
23 with the exploration, development, or production of
24 crude oil, natural gas, or geothermal energy, that
25 are not identified or listed as hazardous waste pur-

1 suant to section 3001(b)(2). The criteria shall be
2 those necessary to protect human health and the en-
3 vironment and may take into account the practicable
4 capability of such facilities. At a minimum such revi-
5 sions for facilities potentially receiving such wastes
6 should require ground water monitoring as necessary
7 to detect contamination, establish criteria for the ac-
8 ceptable location of new or existing facilities, and
9 provide for corrective action and financial assurance
10 as appropriate.”.

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