

# WILLIAMS & JENSEN, PLLC

## Pending Actions on Natural Gas and Hydraulic Fracturing Issues

Following the November elections, attention is returning to a series of pending federal regulatory initiatives targeting hydraulic fracturing and oil and natural gas drilling and production.

The significant activities in this area include:

- ***Liquefied Natural Gas (LNG) Export Study:*** The Department of Energy is expected to release, by the end of the year, the results of a review, conducted by a third-party contractor, on the “economic impacts of proposed liquefied natural gas exports.” In January of this year, the Energy Information Administration released a [report](#), also requested by the Department of Energy, on LNG exports.
- ***Study on the Impacts of Hydraulic Fracturing on Water Resources:*** The Environmental Protection Agency (EPA) is expected to release, before the end of the year, a “progress report” on its study on the impact of hydraulic fracturing on drinking water and groundwater resources. Congress, through the conference report for the “Department of the Interior, Environment and Related Agencies Appropriations Act, 2010” (H.Rept. 111-316, P.L. 111-88) requested that the EPA conduct a study on hydraulic fracturing. The EPA released its [final study plan](#) on November 3, 2011, and expects to issue its final report in 2014.
- ***Guidance on the Use of Diesel Fuel in Hydraulic Fracturing:*** In May, the EPA issued [draft guidance](#) on “Oil and Gas Hydraulic Fracturing Activities Using Diesel Fuels”. In the “Energy Policy Act of 2005” (P.L. 109-58), Congress exempted hydraulic fracturing from regulation under the Safe Drinking Water Act, with the exception of when the process uses diesel fuel. The EPA received public comments on the draft guidance through August 23, 2012. Representatives of the oil and gas industry raised concerns regarding the guidance, asserting that the definition of “diesel fuel” is too broad. Environmental organizations countered that the draft guidance is insufficient and should incorporate a broader definition of diesel fuel.
- ***Regulation of Hydraulic Fracturing on Public Lands:*** On May 4, 2012, the Department of Interior’s Bureau of Land Management (BLM) released [proposed regulations](#): “Oil and Gas; Well Stimulation, Including Hydraulic Fracturing, on Federal and Indian Lands”. As described in the proposal, the rules would require operators on federal and Indian lands to employ “certain best practices, including: (1) the public disclosure of chemicals used in hydraulic fracturing operations on Federal lands; (2) confirmation that wells used in fracturing operations meet appropriate construction standards; and (3) a requirement that operators put in place appropriate plans for managing flowback waters from fracturing operations.” On June 25, the BLM announced that it would extend the public comment period on the proposed regulations through September 12.
- ***Chemical Release Disclosure:*** On October 24, the Environmental Integrity Project, along with 16 other environmental organizations submitted a [petition](#) asking the EPA to require the oil and gas industry to report covered releases of substances to the Toxics Release Inventory (TRI). Congress established the TRI when it enacted the “Emergency Planning and Community Right-to-Know Act” (P.L. 99-499) in 1986. Under the Act, the EPA has

the authority to expand TRI reporting requirements to additional industrial sectors, such as oil and gas drillers and producers.

- ***Interagency Research and Development:*** In April, the Obama Administration established the Interagency Steering Committee on Unconventional Oil and Gas Research and Development, which includes the Department of Energy, Department of Interior and the EPA. The Committee is tasked to undertake an “effort to address the highest priority challenges associated with safely and prudently developing unconventional shale gas and tight oil resources.” According to the [memorandum of understanding](#) establishing the Committee, it is expected to issue a “formal multi-year Research Plan” within the next few months. This plan will be issued following release of “a draft of the research plan”, which will be subject to public comment.
- ***Wastewater Disposal:*** On October 20, 2011, the EPA announced that it is developing proposed rules for disposal of wastewater produced from development of natural gas from shale and coalbed methane. According to the agency’s [press release](#), “the EPA will consider standards based on demonstrated, economically achievable technologies, for shale gas wastewater that must be met before going to a [wastewater] treatment facility.” The EPA is also considering replacing existing state regulation of disposal of coalbed methane wastewater with “uniform national standards based on economically achievable technologies.” The EPA expects “to solicit public comment on a proposed rule for coalbed methane in 2013 and a proposed rule for shale gas in 2014.”
- ***Gas-Electric Coordination:*** On November 15, the Federal Energy Regulatory Commission (FERC) approved an [order](#) on coordination between the electric generation and natural gas transmission industries. The order requires: (1) FERC staff to schedule two additional technical conferences on the issue; (2) the Regional Transmission Organizations (RTOs) and the Independent Systems Operators (ISOs) to report on efforts to coordinate between the electric utility industry and natural gas pipeline operators; and (3) FERC staff to provide quarterly reports in 2013 and 2014 on gas-electric coordination. A [press release](#) notes that “FERC’s action comes after a series of five regional technical conferences at which gas and electric market participants discussed the challenges of meeting increased demand for natural gas by electric power generators and how that affects the larger energy markets.” FERC also released a [staff report](#) on the five gas-electric coordination technical conferences held in August.

These actions would follow prior regulatory initiatives that the Obama Administration has implemented, including:

- ***Regulation of Emissions Related to Oil and Gas Activities:*** In April, the EPA issued the [final rule](#) titled “Oil and Natural Gas Sector: New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants Reviews”. According to a [fact sheet](#) issued by the EPA, the regulations “include the first federal air standards for natural gas wells that are hydraulically fractured, along with requirements for several other sources of pollution in the oil and gas industry that currently are not regulated at the federal level.” In a concession to industry, which had repeatedly expressed concern about the availability of the equipment required to capture waste gas from drilling operations, that requirement does not take effect until 2015. The EPA emphasized that the regulations would reduce emissions of volatile organic compounds (VOCs), air toxics, and methane.

- ***Secretary of Energy Advisory Board Report:*** On May 6, 2011, Secretary of Energy Steven Chu directed the Secretary of Energy Advisory Board’s Subcommittee on Natural Gas to provide recommendations on “the safety and environmental performance of natural gas hydraulic fracturing from shale formations...” The Subcommittee issued its [final report](#) on November 18, 2011.

By: Frank Vlossak