
Aaron Ball Discusses Frac Bill

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Aaron Ball, a Member at Gray Reed & McGraw, was quoted in the article "Frac bill bent on hurting both operators and service companies" in *E&P Magazine*. Aaron said US-based gas producers are right to be anxious about passage of the legislation. "We represent independent oil and gas producers," Aaron said. "The IPAA [Independent Petroleum Association of America] and others predict this bill's passage would add to producers' costs, slow time to market, and decrease the overall supply of natural gas. This will be particularly harmful to small- and medium-sized producers."

Aaron's practice is concentrated in the manufacturing and oil & gas industries. Aaron structures, negotiates and manages complex business transactions such as acquisitions and the planning and organization of business ventures. These transactions frequently involve corporate and tax planning issues in many different countries. Aaron is experienced in working with foreign counsel and other professional advisors to plan sophisticated transactions and business structures such as holding companies, joint ventures, and other commercial arrangements. In, addition to his admissions to practice in numerous U.S. jurisdictions, Aaron is also admitted to the Law Society of England and Wales as a Solicitor. Aaron often serves as outside general counsel to his clients, advising them on a wide range of matters as an integral part of the management team. Aaron provides services to numerous businesses including oil & gas exploration companies, oil field services companies, oilfield parts and equipment manufacturers, oil & gas syndicators and investment funds, and the leading technology standards organization to the oil & gas industry.

Frac Bill Bent on Hurting Both Operators and Service Companies

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Article By Kevin Parker – Senior Editor
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A bill recently introduced into both the US House of Representatives and the US Senate, known as the Fracturing Responsibility and Awareness of Chemicals (FRAC) Act, seeks to repeal the exemption in the 2005 clarification of the Safe Drinking Water Act that placed fracturing fluids outside the regulatory purview of the Environmental Protection Agency (EPA) and the bill's underground injection control (UIC) program.

Aaron Ball, an attorney with Gray, Reed & McGraw in Houston, said that US-based gas producers are right to be anxious about passage of the legislation.

"We represent independent oil and gas producers," Ball said. "The IPAA [Independent Petroleum Association of America] and others predict this bill's passage would add to producers' costs, slow time to market, and decrease the overall supply of natural gas. This will be particularly harmful to small- and medium-sized producers."

By creating new federal permitting requirements, the legislation would inhibit gas field development, Ball said. "Regional producers depend on capital from private investors. The delayed returns created by a prolonged development cycle will make oil and gas investment a less attractive prospect."

The bill H.R. 7231 also would require service companies to disclose fracturing fluid ingredients.

"How will the government ensure that the confidentiality of these proprietary chemical formulas will be maintained?" Ball said. "Service companies compete on the basis of proprietary fracturing recipes. If that information gets in the public domain, it's a real mess."

Such formulas are most often considered a trade secret, not a patent. That means, according to Ball, the company that developed the technology would have to litigate nearly every instance of others unlawfully using it.

"There also would be a huge grey area where other companies could make a small change to what was publicly disclosed and claim it as a unique formula," he said.

"Owners of proprietary formulas would be forced to engage in an incredibly expensive discovery and trial process in order to protect their right. Our clients say they've been doing hydraulic fracturing for the last 60 years and don't see the legislation as necessary."

Back Story

Moreover, said Ball, the legislation should not be seen as an isolated instance of regulation, but part of a larger effort by the Democrat-controlled Congress to restrict domestic petroleum production.

“This is only one tree in the forest. Amendments are being proposed to a whole laundry list of current legislation,” he said. “Congress is going back and revisiting statutes that were never intended to regulate oil and gas and adding focused amendments that target the oil and gas industry, to the detriment of domestic production.”

Ball believes development in the Marcellus Shale helped stir opposition to hydraulic fracturing in the Northeast US, although environmental groups have long opposed the practice.

Representative Maurice Hinchey, a New York Democrat, is one of the bill’s authors. Democrats recently gained control in Colorado, and Representative Diana DeGette of that state is the House sponsor.

“The oil industry has already been demonized in the eyes of the public,” Ball said, “who don’t really understand what fracing is and aren’t able to distinguish it from the use of harmful chemicals in other applications. It’s never been regulated under the UIC before because EPA saw no reason to do so.”

A 2004 EPA study characterized the threat to drinking water from hydraulic fracturing as “minimal.” Following the results of that study, Congress included a provision in the Energy Policy Act of 2005 specifically exempting hydraulic fracturing from the UIC program.

“Even though the FRAC Act sponsors have called the provision [excluding hydraulic fracturing from the Safe Drinking Water Act] a holdover from the Bush administration,” Ball said, “previous Democratic administrations, including the Clinton administration, also declined to regulate the practice, even though they could have.”

The legislators named above and others maintain that fracing fluids present a risk to safe drinking water and that the 2005 provision shields the petroleum industry from having to disclose information needed for a thorough evaluation. Others maintain that the harm is proven.

Evaluating Risk

The new bill is built on some relatively well-known cases where claims have been made that fracing chemicals injured people, Ball said. “To my knowledge there hasn’t been a single credible case where chemical exposure from fracing was tied to drinking water contamination, and in every case but one the state environmental agency found there was no water-source contamination.”

The exception involved contamination of a single industrial well in Wyoming, where an elevated amount of toluene was found — though it was still below the limits approved for

drinking water. The presence of toluene could not be linked to hydraulic fracturing and there was no contamination to drinking water wells.

In another case, a health worker who treated a petroleum field worker exposed to chemicals claimed she too was thereby exposed and that lack of information about the fluids involved caused harm. “But operators are already required to identify the constituent chemical components under existing federal laws and did so in this case,” Ball said.

Oil industry companies tend to fight the suits. Many are brought by environmental watchdog organizations. The suits trigger investigations that bring in state environmental agencies or the EPA. “Even for the ones that went to the circuit-court level there has never been any credible evidence that contamination resulted from fracing,” Ball said.

Ball points out that the water table is typically hundreds of feet below the ground surface while fracing takes place thousands of feet below the surface. In conclusion, he said that Texas will be disproportionately impacted by the proposed legislation, “Our clients’ big concern is the Barnett shale area.”