

SIDLEY UPDATE

Shale and Hydraulic Fracturing

Federal

Additional states and business groups file briefs supporting challenges to BLM's hydraulic fracturing rule. On Sept. 23, Alaska, Kansas, Montana and Texas filed an [amicus brief](#) in the Tenth Circuit Court of Appeals in support of petitioners challenging the Bureau of Land Management's (BLM) March 2015 hydraulic fracturing rule governing the practice on public and tribal lands. The states argue, as the original petitioners (Wyoming, Colorado, North Dakota and Utah) did, that Congress specifically removed federal oversight of hydraulic fracturing through the Energy Policy Act of 2005. State petitioners prevailed in [June](#), when the district court struck down the rule. The Department of Justice appealed that ruling to the Tenth Circuit. Several industry trade associations also filed amicus briefs this week in the case. They echo the states' argument, but also assert that even if BLM had authority to promulgate the rule, it did not have adequate justification for enacting it and underestimated the cost of compliance for U.S. businesses. The Tenth Circuit is expected to hear oral argument on the appeal later this year or in early 2017.

States

Pennsylvania Supreme Court overturns additional sections of state hydraulic fracturing rule as unconstitutional. On Sept. 28, the Pennsylvania Supreme Court issued a further [decision](#) striking down sections of Act 13 as an unconstitutional special law that benefits specific groups. The state law had limited spill notifications to public water suppliers, not private owners, and prohibited healthcare professionals from seeking and disclosing information related to drilling chemicals. The court also struck down a portion of the law that had granted private companies limited eminent domain authority for the purpose of taking property to store, transport or sell natural gas. The decision is the latest in a lawsuit that originated in March 2012 when several municipalities, an environmental group and a physician challenged multiple provisions of the state law. Reaction to the decision has varied. However, the decision may not have a material effect because there was no indication that the medical professionals had claimed the need to disclose drilling chemical information, and the Pennsylvania Department of Environmental Protection was already alerting both public and private water supply recipients of spills.

International

United Kingdom receives first shipment of U.S. shale gas. This past week, the Ineos Insight carried the first shipment of United States-produced shale gas to the United Kingdom. The United States began exporting natural gas in February. The tanker carried nearly 1 million cubic feet of ethane to Grangemouth, Scotland. The delivery is the result of a US\$2 billion investment by Ineos Group Ltd. to create a virtual pipeline across the Atlantic Ocean. Ineos' Grangemouth facility produces the bulk of the fuel used in Scotland and is responsible for approximately three percent of Scottish gross domestic product. As the plant's North Sea supply of ethane decreases, shipments from the United States are expected to keep the plant running at full production levels. The shipment was met with mixed reaction. The United Kingdom's Conservative government has pledged to support shale gas production, while the Labor Party and Green Party oppose it.

Studies

Environmental groups advocate revisions to U.S. EPA hydraulic fracturing study. Environmental groups have written a letter to the Administrator of the U.S. Environmental Protection Agency (EPA) urging the agency to reconsider its June 2015 finding that hydraulic fracturing has not contributed to "widespread, systemic" drinking water contamination. The groups' letter cites the recommendation of EPA's independent Science Advisory Board that EPA clarify its finding regarding drinking water. In particular, the groups assert that EPA did not provide a clear explanation of what it considered to be a widespread, systemic impact and claim that EPA misrepresented the conclusion of its extensive study without providing a quantitative analysis or scientific basis for the finding. The letter requests a full explanation from EPA clarifying its finding.

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