



Connecticut Department of
**ENERGY &
ENVIRONMENTAL
PROTECTION**

**STATE OF CONNECTICUT
DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION**

Public Hearing – March 22, 2013
Environment Committee

Testimony Submitted by Commissioner Daniel C. Esty
Presented by Deputy Commissioner Macky McCleary

Committee House Bill No. 5335 - AN ACT PROHIBITING THE POSSESSION AND STORAGE OF FRACKING BY-PRODUCTS

Thank you for the opportunity to present testimony regarding Committee House Bill No. 5335 – An Act Prohibiting the Possession and Storage of Fracking By-Products. The Department of Energy and Environmental Protection (DEEP) offers the following testimony.

The federal Environmental Protection Agency (EPA) maintains information on crude oil and natural gas waste on its website at: <http://www.epa.gov/osw/nonhaz/industrial/special/oil/index.htm> . This website also contains a link to an October 2002 EPA publication entitled, Exemption of Oil and Gas Exploration and Production Wastes from Federal Hazardous Waste Regulations (PDF)

Exploration and production (E&P) wastes are regulated by EPA, though certain types of this waste are exempted from the federal hazardous waste regulations. As stated in the EPA publication referenced above: “In general, the exempt status of an E&P waste depends on how the material was used or generated as waste, not necessarily whether the material is hazardous or toxic. For example, some exempt E&P wastes might be harmful to human health and the environment, and many non-exempt wastes might not be as harmful.” *Id.* EPA notes that the following “rule of thumb” can be used to determine if an E&P waste is exempt or non-exempt from RCRA Subtitle C regulations:

- “Has the waste come from down-hole, i.e., was it brought to the surface during oil and gas E&P operations?”
- Has the waste otherwise been generated by contact with the oil and gas production stream during the removal of produced water or other contaminants from the product?”

Id. If the answer to either question is yes, then the EPA would likely consider the waste exempt from RCRA Subtitle C regulations. The EPA notes, however, that it is “important to remember that *all E&P wastes require proper management to ensure protection of human health and the environment.*” *Id.* (Emphasis added.)

Additional information on the role of state and federal regulation in the area hydraulic fracturing and E&P wastes is set out in this EPA publication.

Testimony filed on House Bill 6533 - AN ACT CONCERNING HYDRAULIC FRACTURING raised concerns about radioactive wastes associated with hydraulic fracturing and E&P wastes. While DEEP recognizes the concerns some may have regarding handling any material that may contain radium, DEEP also notes that there are many materials flowing through our modern industrialized and technologically-advanced society that contain low-levels of radioactive material. Low-level radioactive material plays important roles in our everyday lives – in medical devices, instruments, and a myriad of other applications – and hydraulic fracturing may be another example where risk management principles should be applied.

Under Section 22a-148(b) of the Connecticut General Statutes, Connecticut currently has a robust registration program for sources of radioactive materials. This provision provides, in part: “No person, firm, corporation, town, city or borough shall operate or cause to be operated any source of ionizing radiation or shall produce, transport, store, possess or dispose of radioactive materials except under conditions which comply with regulations or with orders imposed by the Commissioner of Energy and Environmental Protection for the protection of the public health and preservation of the environment.”

Sections 19-24-1 through 19-24-14 of the Regulations of Connecticut State Agencies (RCSA) require that sources of radioactive material in Connecticut obtain a registration from DEEP. The waters associated with fracturing – if they contained the amounts of radium reported in the press and elsewhere – would be regulated under these provisions. Specifically, one microcurie of radium triggers registration requirements. If fracturing wastes contain thousands of picocuries per liter – multiplied by thousands of gallons of drilling fluid – then the possession, storage, and handling of these materials would require a registration under DEEP’s program (and would not be exempted under the associated Appendix A - Materials Not in Sealed Sources).

Additionally, Section 19-24-14(a) of the RCSA states: “Any person may apply to the department for approval of proposed procedures to dispose radioactive materials into the ground, water and air environment in a manner not otherwise authorized in sections 19-24-1 to 19-24-14, inclusive.” Therefore, thanks to the foresight of the Connecticut General Assembly’s Regulation Review Committee, there can be no disposal of hydraulic fracturing wastes containing radium in the State of Connecticut without approval from DEEP.

Thank you for the opportunity to present testimony on this proposal. If you should require any additional information please contact DEEP’s legislative liaison, Robert LaFrance, at (860) 424-3401 or Robert.LaFrance@ct.gov.

Exempt/Non-Exempt Wastes

