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Current Law is Inadequate to Ensure Doctors, Nurses, and First Responders Have Access to Fracking Chemical Information



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Late last week, outgoing Interior Secretary Ken Salazar said that a new Obama Administration proposal for rules related to fracking on public lands is “[imminent](#).” Those rules are expected to require disclosure of the chemicals companies use when they frack. The rules apply to fracking of any oil or gas well where the federal government manages the rights to the oil and gas, including beneath about 700 million acres of federal and tribal lands and about 57 million acres of private lands. The first draft of the Administration’s rules, released last May, allowed companies to keep certain information confidential if it qualifies as a “trade secret.” But the first draft provided no way for doctors, nurses, or emergency responders to obtain the information if it is necessary to respond to an accident or to diagnose or treat a patient. This new proposal must do better.

A Cautionary Tale:

In 2008, the *Denver Post* reported on [the case of Cathy Behr](#), an emergency room nurse in Durango, Colorado, who became critically ill one day in 2008 after treating a worker who arrived in the ER reportedly soaked in fracking fluid. As she was treating him, Behr reported breathing in chemical fumes, after which her vision became blurry, her skin [turned yellow](#), she began vomiting, and her lungs filled with fluid. She was diagnosed with multiple organ failure. For days, the fracking company refused to tell her doctors what chemicals were in the fracking fluid, even though her life was in jeopardy.

Fortunately, Cathy’s doctors were able to save her without the information. But Cathy’s story illustrates why it is essential that doctors, nurses, and emergency responders have all the information they need to do their jobs. Thankfully, six states, including Colorado, Texas, and Pennsylvania, [have at least some written rules](#) to provide medical professionals with access to confidential information on these chemicals when it is needed. The details of these rules differ and, unfortunately, some of these states have provided access to medical professionals but not to first responders.

The Need for Federal Rules:

There are still upwards of twenty states where fracking is occurring but where complete chemical information is not available to medical professionals or first responders, even in emergencies. When it comes to fracking on public lands, the Administration has a chance to ensure that stories like Cathy Behr’s don’t happen again.

EXISTING FEDERAL LAW IS INADEQUATE:

Some have argued that federal laws like the Emergency Planning and Community Right-to-Know Act (EPCRA) already do the job of ensuring that the necessary information will be available. Unfortunately, this is not the case. EPCRA requires facilities to maintain Material Safety Data Sheets (MSDSs) for chemicals stored on-site and to submit copies to the state and local emergency planning committees and the local fire department. However, MSDSs provide incomplete information and, even then, only for certain chemicals.

MSDSs are required only for those chemicals deemed “hazardous” under OSHA regulations. But OSHA requires that chemicals be identified as hazardous only if studies have shown that they are dangerous in a workplace setting. Many chemicals used in the hydraulic fracturing process have not been adequately studied and thus are not identified as hazardous under OSHA rules. OSHA rules also focus on workplace safety and immediate health effects due to acute exposure. Long-term effects due to chronic exposure are rarely evaluated and potential transmission pathways like drinking water contamination are unlikely to be studied in the workplace context.

Even for those chemicals for which an MSDS is required, OSHA does not ensure that the information provided is complete or accurate. While the regulations provide some guidelines concerning the contents of an MSDS, the rules do not require manufacturers to list all ingredients in a product or the amounts of hazardous chemicals in the product.

INFORMATION IN MSDSS RIDDLED WITH GAPS:

Reviews of Material Safety Data Sheets clearly demonstrate the gaps in the information MSDSs provide. Ingredients are often only identified by their general function (e.g. “biocide”) without actually identifying the specific chemicals in the product. Certain chemical ingredients are also

frequently listed simply as “proprietary.”

[An analysis](#) of MSDSs used in the oil and gas context found that of 944 products for which an MSDS was prepared, 43% reported less than 1% of the total composition. **Only 14% of the MSDSs reviewed provided information on the complete contents of the product.**

EPCRA TRADE SECRET PROVISIONS ARE INADEQUATE TO ENSURE ACCESS TO NECESSARY INFORMATION FOR MEDICAL PROFESSIONALS AND EMERGENCY RESPONDERS:

EPCRA authorizes companies to withhold the identity of chemicals if the information is claimed to be a trade secret. On one hand, EPCRA provides relatively strong provisions requiring that trade secrets be justified, allowing for public challenges to individual claims that certain information is genuinely proprietary, and allowing for medical professionals to obtain confidential information withheld from an MSDS when needed for diagnosis or treatment. However, because only some chemicals (those deemed “hazardous” under OSHA regulations) have MSDSs, many other chemicals are exempt from these OSHA rules and companies are not required to provide information about them to medical professionals or emergency responders.

Conclusion:

While EPCRA contains important measures to further the public’s right to know, it is insufficient to protect human health or the environment from the risks of fracking chemicals being stored, transported, used, and disposed of in communities across the country. Medical professionals and emergency responders should have full access to information about the chemicals used in hydraulic fracturing and other well stimulation techniques. As states and the Obama Administration update their rules to require disclosure of fracking chemicals, it is essential that they include provisions to ensure that medical professionals and emergency responders have full access to that information when they need it.