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DRILLING DOWN

Pressure Limits Efforts to Police Drilling for Gas

By IAN URBINA

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When Congress considered whether to regulate more closely the handling of wastes from oil and gas drilling in the 1980s, it turned to the Environmental Protection Agency to research the matter. E.P.A. researchers concluded that some of the drillers' waste was hazardous and should be tightly controlled.



Enlarge This Image Carol M. Browner, left, the E.P.A. administrator in the Clinton administration, has argued both for and against exemptions for the oil and gas industry.

But that is not what Congress heard. Some of the recommendations concerning oil and gas waste were eliminated in the final report handed to lawmakers in 1987.

"It was like the science didn't matter," Carla Greathouse, the author of the study, said in a recent interview. "The industry was going to get what it wanted, and we were not supposed to stand in the way."

E.P.A. officials told her, she said, that her findings were altered because of pressure from the Office of Legal Counsel of the White House under Ronald Reagan. A spokesman for the E.P.A. declined to comment.

Ms. Greathouse's experience was not an isolated case. More than a quarter-century of efforts by some lawmakers and regulators to force the federal government to police the industry better have been thwarted, as E.P.A. studies have been repeatedly narrowed in scope and important findings have been removed.

For example, the agency had planned to call last year for a moratorium on the gas-drilling technique known as hydrofracking in the New York City watershed, according to internal documents, but the advice was removed from the publicly released letter sent to New York.

Now some scientists and lawyers at the E.P.A. are wondering whether history is about to repeat itself as the agency undertakes a broad new study of natural gas drilling and its potential risks, with preliminary results scheduled to be delivered next year.

Drilling Down

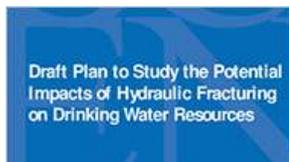
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The documents show that the agency dropped some plans to model radioactivity in drilling wastewater being discharged by treatment plants into rivers upstream from drinking water intake plants. And in Congress, members from drilling states like Oklahoma have

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Left, Manuel Balce Ceneta/Associated Press; Stephen Crowley/The New York Times

In its efforts to oppose new federal regulations, the oil and gas industry found allies in Senator James M. Inhofe, left, and Senator Tom Coburn, Republicans from Oklahoma.

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They have been helped in their lobbying efforts by a compelling storyline: Cutting red tape helps these energy companies reduce the nation's dependence on other countries for fuel. Natural gas is also a cleaner-burning alternative to coal and plentiful within United States borders, so it can create jobs.

But interviews with E.P.A. scientists, and confidential documents obtained by The New York Times, show long and deep divisions within the agency over whether and how to increase regulation of oil and gas drillers, and over the enforcement of existing laws that some agency officials say are clearly being violated.

Agency lawyers are heatedly debating whether to intervene in Pennsylvania, where drilling for gas has increased sharply, to stop what some of those lawyers say is a clear violation of federal pollution laws: drilling waste discharged into rivers and streams with minimal treatment. The outcome of that dispute has the potential to halt the breakneck growth of drilling in Pennsylvania.

The E.P.A. has taken strong stands in some places, like Texas, where in December it overrode state regulators and intervened after a local driller was suspected of water contamination. Elsewhere, the agency has pulled its punches, as in New York.

Asked why the letter about hydrofracking in the New York City watershed had been revised, an agency scientist

involved in writing it offered a one-word explanation: "politics."

Natural gas drilling companies have major exemptions from parts of at least 7 of the 15 sweeping federal environmental laws that regulate most other heavy industries and were written to protect air and drinking water from radioactive and hazardous chemicals.

Coal mine operators that want to inject toxic wastewater into the ground must get permission from the federal authorities. But when natural gas companies want to inject chemical-laced water and sand into the ground during hydrofracking, they do not have to follow the same rules.

The air pollution from a sprawling steel plant with multiple buildings is added together when regulators decide whether certain strict rules will apply. At a natural gas site, the toxic fumes from various parts of it — a compressor station and a storage tank, for example — are counted separately rather than cumulatively, so many overall gas well operations are subject to looser caps on their emissions.

An Earlier Reversal

The E.P.A. also studied hydrofracking in 2004, when Congress considered whether the process should be fully regulated by the Safe Drinking Water Act.

An early draft of the study discussed potentially dangerous levels of contamination in hydrofracking fluids and mentioned "possible evidence" of contamination of an aquifer. The report's final version excluded these points, concluding instead that hydrofracking "poses little or no threat to drinking water."

Shortly after the study was released, an E.P.A. whistle-blower said the agency had been strongly influenced by industry and political pressure. Agency leaders at the time stood by the study's findings.

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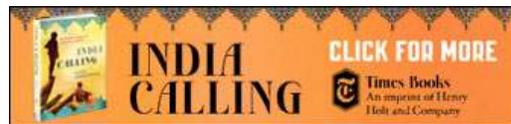


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“It was shameful,” Weston Wilson, the E.P.A. whistle-blower, said in a recent interview about the study. He explained that five of the seven members of that study’s peer review panel were current or former employees of the oil and gas industry.

“The study ended up being the basis for this industry getting yet another exemption from federal law when it should have resulted in greater regulation of this industry,” Mr. Wilson added.

Some E.P.A. scientists say this pattern may be playing out again in the [national study](#) of hydrofracking that Congress will consider as it decides whether drillers will have to operate under stricter rules.

Internal documents from [early](#) meetings, obtained through public-records requests filed by The Times and provided by E.P.A. officials who are frustrated with how research is being handled, show agency field scientists demanding that certain topics be included in the study. And [earlier versions](#) of the research [plan](#) indicate that many of those topics were to be included.

For example, the study was to consider the dangers of toxic fumes released during drilling, the impact of drilling waste on the food chain and the risks of this [radioactive](#) waste to workers.

But many of these concerns, cited by field scientists in earlier documents as high priorities, were cut from the [current study plan](#), according to a version of it made public on Feb. 8.

Earlier planning documents also called for a study of the risks of contaminated runoff from landfills where drilling waste is disposed and included detailed [plans](#) to model whether [rivers](#) can sufficiently dilute hazardous gas-well wastewater discharged from treatment plants.

These topics were cut from the current study plan, even though E.P.A. officials have acknowledged that sewage treatment plants are not able to treat drilling waste fully before it is discharged into rivers, sometimes just a few miles upstream from drinking water intake plants. While the current study plan clearly indicates that the agency plans to research various types of radioactivity concerns related to natural gas drilling, this river modeling, which E.P.A. scientists say is important, has been removed.

In interviews, several agency scientists and consultants, who declined to be named for fear of reprisals, said the [study](#) was narrowed because of pressure from industry and its allies in Congress, and budget and time constraints.

Brendan Gilfillan, an agency spokesman, said that the plan remained broad and that the agency had taken additional steps to investigate the impacts of drilling, including recently issuing a subpoena against the energy services company [Halliburton](#) to force the company to provide fuller disclosure about its drilling operations.

Federal scientists also say the national study is being used to squelch other research by the E.P.A. on hydrofracking. At a January meeting in Washington, Jeanne Briskin of the [E.P.A.’s Office of Research and Development](#) informed regional directors that the national study would be the [only forum](#) for research on hydrofracking.

This meant, these scientists said, that some projects under way in regional offices would probably have to be halted.

“That may impact our plans to pursue some of the other research,” wrote Ron Landy, regional science liaison of E.P.A. Region 3, in an [e-mail](#) to another agency official in January in which he complained about the new directive.

He suggested that until the directive was lifted, his staff should keep quiet about its continuing hydrofracking research and instead emphasize its work on coal to superiors. “I think we can go ahead, but keep the focus on mining, and prepare for moving these efforts into hydraulic fracking once these limitations are lifted,” Mr. Landy wrote.

Though the E.P.A. has emphasized the importance of openness and public involvement in the study, internal e-mails show agency officials expressing concern about the reaction if the public were to learn of the narrowing scope of the study. In those e-mails, these officials strongly discourage putting anything in writing about the study unless it is vetted by managers.

One [e-mail](#), forwarded to The Times by David Campbell, director of the [E.P.A. Region 3 Office of Environmental Innovation](#), described the instructions he had been given by the agency's regional administrator, Shawn M. Garvin.

"He could not have been more adamant or clear about the development of any documentation related to our efforts on Marcellus," Mr. Campbell wrote last December, referring to the Marcellus Shale, a gas-rich rock formation that stretches under Pennsylvania and other states. "His concern is that if we spell out what we think we want to do (our grandest visions) that the public may have access to those documents and challenge us to enact those plans."

Mr. Gilfillan, the E.P.A. spokesman, said the e-mail exchange — which was shown to him for comment — did not reflect the agency's efforts to understand the impacts of natural gas extraction better.

But in interviews, agency scientists and lawyers said Mr. Garvin's office had been most resistant to stepping up its regulatory role in Pennsylvania.

These scientists and lawyers said that high-level agency officials in Washington had made it clear in meetings that some of the resistance to more rigorous enforcement was also coming from members of the environmental and energy staff at the White House.

Clark Stevens, a White House spokesman, rejected these assertions and argued that the Obama administration had taken "unprecedented steps" to study the impact of natural gas drilling.

### **Support in Washington**

In its efforts to oppose new federal regulations, the oil and gas industry has found strong allies in Congress to [lobby the agency](#) about its current research.

"I am confident this study, if truly focused on hydraulic fracturing," [wrote](#) Senator [Tom Coburn](#), Republican of Oklahoma, last April to the E.P.A. administrator, [Lisa P. Jackson](#), "will prove the process indisputably safe and acceptable."

In September, Senator [James M. Inhofe](#), also a Republican from Oklahoma, wrote to agency officials to offer his guidance about who should be allowed to review the research. "We caution against potential panelists who have been longtime critics of hydraulic fracturing," he [wrote in a letter](#).

Over their careers, the two lawmakers from Oklahoma, a major drilling state, have been among the Senate's top 20 recipients of oil and gas campaign contributions, according to federal data.

The oil and gas industry has not hesitated to convey its views to the agency about the study now under way, frequently quoting the language used in 2010 by a Congressional committee, which urged the E.P.A. "to carry out a study on the relationship between hydraulic fracturing and drinking water."

In one [comment](#) submitted to the agency, Chad Bradley, a lobbyist for [Chesapeake Energy](#), criticized the E.P.A., saying it was going beyond its "mandate" from Congress, adding new topics resulting in "mission creep."

Virtually all of the companies [echoed](#) his comments.

But Representative [Maurice D. Hinchey](#), Democrat from New York, who wrote the original language, said his words were being taken out of context. He added that the

E.P.A. had full jurisdiction to study other risks from hydrofracking, like air quality or toxic waste being discharged into rivers.

“The language I authored does not at all limit the scope of the E.P.A.’s study, rather it sets forth the minimum that Congress expects,” he added. “Any assertion otherwise by industry is a blatant attempt to misrepresent Congress’s intentions.”

The [argument](#) over the scope of the study will affect whether certain exemptions for the oil and gas industry will remain intact.

These exemptions have led to conflicting impulses in Washington for a long time. For example, [Carol M. Browner](#), the E.P.A. administrator in the Clinton administration, has argued both for and against these sorts of exemptions.

“Whatever comes out of the ground, you don’t have to test it, you don’t have to understand what’s in it, you can dump it anywhere,” she told “60 Minutes” in 1997, discussing exemptions for toxic wastes from the oil industry, which also apply to natural gas drillers.

“That’s how broad the loophole is,” Ms. Browner added at the time (her office declined to answer questions about those comments). “There’s nothing like it in any environmental statute. Congress should revisit this loophole.”

And yet, Ms. Browner, who has announced that she is stepping down as [President Obama](#)’s top adviser on energy and [climate change](#), has also strongly supported natural gas drilling over the years. For example, she helped ensure in 1995 that hydrofracking would not be covered by certain parts of the Safe Drinking Water Act.

### **Exemptions Stymie E.P.A.**

The natural gas drilling boom is forcing the E.P.A. to wrestle with questions of jurisdiction over individual states and how to police the industry despite its extensive exemptions from federal law.

In Wyoming, for example, the agency is investigating water-well contamination in an area of heavy drilling, even though some E.P.A. officials said in interviews that because of industry exemptions, the agency might not have jurisdiction for such an investigation.

In Texas, after an aquifer was contaminated, E.P.A. officials in December ordered a drilling company to provide clean drinking water to residents despite strong resistance from state regulators who said the federal action was premature and unfounded.

The stakes are particularly high in Pennsylvania, where gas drilling is expanding quickly, and where E.P.A. officials say [drilling waste](#) is being discharged with inadequate treatment into rivers that provide drinking water to more than 16 million people.

Drillers throughout the country are watching Pennsylvania to see whether the federal agency will overrule the state’s decisions on how to dispose of drilling waste. The central question on this issue: Should drillers in Pennsylvania be allowed to dump “mystery liquids” into public waterways?

Under federal law, certain basic rules govern sewage treatment plants. At their core, these rules say two things: operators have to know what is in the waste they receive, and they have to treat this waste to make it safe before discharging it into waterways.

But in Pennsylvania, these rules are being broken, according to some E.P.A. lawyers. “Treatment plants are not allowed under federal law to process mystery liquids, regardless of what the state tells them,” explained one E.P.A. lawyer in an internal draft memo obtained by The Times. “Mystery liquids is exactly what this drilling waste is, since its ingredient toxins aren’t known.”

This fact has led to a heated fight within the E.P.A. Some agency lawyers say the state is not policing treatment plants properly in some instances and is acting beyond its authority

in others — allegations that state officials reject.

These lawyers are calling for the E.P.A. to revoke, at least temporarily, Pennsylvania’s right to give treatment plants operating permits to handle drilling waste. Last year, state regulators created their own pretreatment standards for plants handling this waste, even though the regulators lacked federal permission to do so, agency lawyers say.

E.P.A. scientists working on the agency’s national hydrofracking study have also emphasized that sewage treatment plants are not, technically speaking, treating the waste.

For example, when one agency scientist wrote in a draft plan for the national study that wastewater could be “discharged to surface water after treatment to remove contaminants,” another scientist corrected the statement in the margin.

Using the federal definition of treatment, the second scientist wrote, “we really don’t fully treat the waste.”

Nevertheless, the E.P.A. Region 3 office, which oversees Pennsylvania, has staunchly resisted calls from agency lawyers to order the state to stop issuing permits to treatment plants handling drilling waste.

“The bottom line is that under the Clean Water Act, dilution is not the solution to pollution,” the enforcement lawyer wrote. “Sewage treatment plants are legally obligated to treat, not dilute, the waste.”

“These plants are breaking the law,” the lawyer said. “Everyone is looking the other way.”

A version of this article appeared in print on March 4, 2011, on page A1 of the New York edition.

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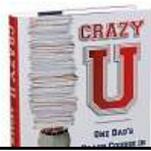
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