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Fracking in California raises questions about regulation

By Fiona Smith

A controversial technology that has brought a massive boom to the natural gas industry in many parts of the country has been quietly used in California for decades.

Called hydraulic fracturing or fracking, the practice involves injecting a soup of water, sand and chemicals miles down into oil and gas wells to fracture rocks and tap previously unavailable fuel.

The practice has stoked public fear over the large amount of water it uses and the potential for contamination of drinking water. Fights over regulating fracking have raged in other states and now the issue is bubbling up in California as lawmakers and environmentalists push for oversight.

“There might be cases of pollution associated with fracking but we don’t know because we don’t know where fracking has occurred,” said Bill Allayaud, California director of government affairs for the nonprofit Environmental Working Group. “We can’t just trust the industry to say it’s a clean, safe process ... We need to make sure our watchdog agency is on top of this and they have not been.”

Several states have already put some type of fracking regulations into place, including requiring disclosure of where it is happening

and what chemicals are being used. On Wednesday, the federal Environmental Protection Agency finalized rules to curb air pollution related to fracking and it is currently doing a study on the public health effects of the practice.

In California - the country’s fourth largest oil producing state - there are more than 52,000 oil wells scattered in 29 counties. Fracking has been done in oil wells in the state for decades but as drilling technology has improved in recent years, there is a potential for increased fracking in California. While the state Division of Oil, Gas and Geothermal Resources, or DOGGR, regulates the oil and gas drilling, it has not specifically monitored fracking and has no figures on where and when it is happening.

That would change under AB 591, a bill proposed by Assemblyman Bob Wieckowski (D-Fremont), which would require the industry going forward to disclose where and when it is fracking, the amount and source of the water it used to frack and the chemicals in the fracking fluid.

In the meantime, DOGGR officials have scheduled a listening tour this spring to get public input on potential fracking rules and in March it sent a letter to energy companies requesting they voluntarily disclose where they are fracking.

“The Division is unaware of any environmental damage related to the use of hydraulic fracturing in California,” wrote DOGGR spokesman Don Drysdale in an email. “Existing regulations related to well integrity have protected the health and well being of Californians and their environment. That being said, we understand that people are interested and have concerns, primarily because there isn’t a mechanism in place to track the use of hydraulic fracturing.”

The nonprofit Environmental Working Group is sponsoring AB 591 and the oil industry is currently supporting the bill, which was amended this month to include more trade secret protection for the disclosure of chemicals in fracking fluid.

“Initially there was a sense we were being swept into a certain scrutiny ... that seemed not particularly relevant to California, but our members now recognize that there are questions being raised and the public and regulators have a desire to know more and the industry has recognized that we need to be more transparent,” said Tupper Hull, a spokesman for the Western States Petroleum Association.

There is no evidence of fracking causing environmental harm in the state and the industry puts a lot of time and resources into protecting water sources, Hull said.

The industry association has come out against a second bill, pushed by state Senator Fran Pavley (D-Agoura Hills) that would require companies to notify nearby landowners 20 days before they frack a well. The legislation will slow down, discourage and raise costs for energy development while not adding any environmental protections, Hull said.

Pavley's bill, SB 1054, passed the Senate Natural Resources Committee this month.

While fracking has paid off in states such as Pennsylvania, New York and Texas, the jury is out in California, said Earl Hagstrom, a member of Sedgwick LLP's hydraulic fracturing task force.

"The question is going to be if fracking can produce enough additional energy to make it economic in California," said Hagstrom, who formerly worked as an exploration geologist in the oil industry.

How it gets regulated will also be important in deciding fracking's future in the state, Hagstrom said.

"California is pretty much at the leading edge of environmental issues and I think it'll be a factor in whether or not this process really takes full flight in California," Hagstrom said.

While DOGGR regulates activities underground, local governments regulate above surface activity related to oil and gas drilling and these entities could also play a major part in the development of fracking, Hagstrom said.

Santa Barbara County amended its local permitting process last year after it emerged that Venoco Inc. had fracked three oil wells in the area. Concerned over potential impacts to local groundwater supplies as well as with the transportation and storage of hazardous fracking chemicals, the county now requires companies notify and do additional environmental review if they plan to frack._

In Monterey County last year, local residents and environmental groups raised questions over a request by Venoco to drill nine exploratory wells. When county officials moved to find out if the wells would be fracked and signaled they would require more environmental review, the company pulled its permit request.

Michael Edwards, a Venoco spokesman, declined to say whether the wells would have been fracked but said the company withdrew the request because it needed more data.

Litigation has also ensued over fracking. After the federal Bureau of Land Management leased 2,500 acres of land in Monterey and Fresno Counties last year for oil drilling, nonprofits Center for Biological Diversity and Sierra Club sued in district court alleging the lease sale

violated the National Environmental Policy Act because officials failed to assess the potential for fracking on the land. The case is currently being briefed, *Center for Biological Diversity v. BLM*, CV11-6174 (N.D. Cal., filed Dec. 8, 2011).

Governor Jerry Brown has not taken a position on the two proposed fracking bills. But speaking at a recent energy conference, he said that while he is still learning about the issue, he does not expect to see a wave of lawsuits over fracking pollution.

"We want to just make sure we're doing the thing right," Brown said. "We've got water issues. We don't want to pollute the aquifer. And I don't think any company wants to pollute the aquifer, because we have a lot of good trial lawyers in California. We have a very vigorous tort system. So I think there's a certain self-discipline that is going to operate on the management of the fracking operations."

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