

115TH CONGRESS
1ST SESSION

S. 865

To amend the Safe Drinking Water Act to repeal a certain exemption for hydraulic fracturing, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 6 (legislative day, APRIL 4), 2017

Mr. CASEY (for himself, Mr. WHITEHOUSE, Ms. HIRONO, Mr. FRANKEN, Mr. SCHUMER, Mr. MENENDEZ, Mr. REED, Mr. MERKLEY, Mr. DURBIN, Mrs. FEINSTEIN, and Mr. VAN HOLLEN) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend the Safe Drinking Water Act to repeal a certain exemption for hydraulic fracturing, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fracturing Responsi-
5 bility and Awareness of Chemicals Act” or the “FRAC
6 Act”.

7 **SEC. 2. REGULATION OF HYDRAULIC FRACTURING.**

8 (a) UNDERGROUND INJECTION.—Section 1421(d) of
9 the Safe Drinking Water Act (42 U.S.C. 300h(d)) is

1 amended by striking paragraph (1) and inserting the fol-
 2 lowing:

3 “(1) UNDERGROUND INJECTION.—

4 “(A) IN GENERAL.—The term ‘under-
 5 ground injection’ means the subsurface em-
 6 placement of fluids by well injection.

7 “(B) INCLUSION.—The term ‘underground
 8 injection’ includes the underground injection of
 9 fluids or propping agents pursuant to hydraulic
 10 fracturing operations relating to oil or natural
 11 gas production activities.

12 “(C) EXCLUSION.—The term ‘underground
 13 injection’ does not include the underground in-
 14 jection of natural gas for the purpose of stor-
 15 age.”.

16 (b) STATE PRIMARY ENFORCEMENT RELATING TO
 17 HYDRAULIC FRACTURING OPERATIONS.—Section 1422 of
 18 the Safe Drinking Water Act (42 U.S.C. 300h-1) is
 19 amended by adding at the end the following:

20 “(f) HYDRAULIC FRACTURING OPERATIONS.—

21 “(1) IN GENERAL.—Consistent with such regu-
 22 lations as the Administrator may prescribe, a State
 23 may seek primary enforcement responsibility for hy-
 24 draulic fracturing operations for oil and natural gas
 25 without seeking to assume primary enforcement re-

1 sponsibility for other types of underground injection
2 control wells, including underground injection con-
3 trol wells that inject brine or other fluids that are
4 brought to the surface in connection with oil and
5 natural gas production or any underground injection
6 for the secondary or tertiary recovery of oil or nat-
7 ural gas.

8 “(2) ADMINISTRATION.—

9 “(A) IN GENERAL.—Paragraph (1) shall
10 not apply until the date that is 1 year after the
11 date on which the Administrator publishes in
12 the Federal Register any regulations promul-
13 gated under that paragraph.

14 “(B) EFFECT ON ADMINISTRATOR.—Noth-
15 ing in this subsection affects the authority of
16 the Administrator to approve State programs
17 that assume primary enforcement responsibility
18 for only certain types of underground injection
19 control wells.”.

20 (c) DISCLOSURE.—Section 1421(b) of the Safe
21 Drinking Water Act (42 U.S.C. 300h(b)) is amended by
22 adding at the end the following:

23 “(4) DISCLOSURES OF CHEMICAL CONSTITU-
24 ENTS.—

1 “(A) IN GENERAL.—A person conducting
2 hydraulic fracturing operations shall disclose to
3 the State (or to the Administrator, in any case
4 in which the Administrator has primary en-
5 forcement responsibility in a State), by not
6 later than such deadlines as shall be established
7 by the State (or the Administrator)—

8 “(i) before the commencement of any
9 hydraulic fracturing operations at any
10 lease area or a portion of a lease area, a
11 list of chemicals and proppants intended
12 for use in any underground injection dur-
13 ing the operations (including identification
14 of the chemical constituents of mixtures,
15 Chemical Abstracts Service numbers for
16 each chemical and constituent, material
17 safety data sheets if available, and the an-
18 ticipated amount of each chemical to be
19 used); and

20 “(ii) after the completion of hydraulic
21 fracturing operations described in clause
22 (i), the list of chemicals and proppants
23 used in each underground injection during
24 the operations (including identification of
25 the chemical constituents of mixtures,

1 Chemical Abstracts Service numbers for
2 each chemical and constituent, material
3 safety data sheets if available, and the
4 amount of each chemical used).

5 “(B) PUBLIC AVAILABILITY.—The State or
6 the Administrator, as applicable, shall—

7 “(i) ensure the accuracy and com-
8 pleteness of the information required under
9 subparagraph (A); and

10 “(ii) make available to the public the
11 information contained in each disclosure
12 required under subparagraph (A), includ-
13 ing by posting the information on a single,
14 searchable Internet website such that all
15 the information disclosed to the State or
16 Administrator, as applicable, under that
17 subparagraph is contained on the same
18 Internet website.

19 “(C) IMMEDIATE DISCLOSURE IN CASE OF
20 MEDICAL NEED OR EMERGENCY.—

21 “(i) IN GENERAL.—Subject to clause
22 (ii), the regulations promulgated pursuant
23 to subsection (a) shall require that, in any
24 case in which the State or the Adminis-
25 trator, as applicable, a first responder, or

1 healthcare practitioner determines that the
2 proprietary chemical formula or specific
3 chemical identity of a trade-secret chemical
4 used in hydraulic fracturing is necessary
5 for medical diagnosis, treatment, or emer-
6 gency response, the applicable person using
7 hydraulic fracturing shall, upon request,
8 immediately disclose to the State, the Ad-
9 ministrator, first responder, or healthcare
10 practitioner the proprietary chemical for-
11 mula or specific chemical identity of a
12 trade-secret chemical, regardless of the ex-
13 istence of—

14 “(I) a written statement of need;

15 or

16 “(II) a confidentiality agreement.

17 “(ii) REQUIREMENT.—A person using
18 hydraulic fracturing that makes a disclo-
19 sure required under clause (i) may require
20 the execution of a written statement of
21 need and a confidentiality agreement as
22 soon as practicable after the determination
23 by the State, Administrator, first re-
24 sponder, or healthcare practitioner, as ap-
25 plicable, under that clause.

1 “(iii) PROFESSIONAL NECESSITY.—

2 “(I) IN GENERAL.—Subject to
3 subclause (II), a first responder or
4 healthcare practitioner may share any
5 information disclosed under clause (i)
6 with other persons if the information
7 is medically necessary.

8 “(II) RESTRICTION.—A first re-
9 sponder or healthcare practitioner de-
10 scribed in subclause (I) shall not
11 make publicly available any informa-
12 tion disclosed under clause (i).

13 “(D) NO PUBLIC DISCLOSURE RE-
14 QUIRED.—Nothing in subparagraph (A), (B),
15 or (C) authorizes a State or the Administrator
16 to publicly disclose any proprietary chemical
17 formula.”.

○