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

JUNE 11, 2013

Mr. Casey (for himself, Mr. Schumer, Mrs. Gillibrand, Mr. Whitehouse, and Mr. Merkley) 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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Fracturing Responsibility and Awareness of Chemicals Act” or the “FRAC Act”.

SEC. 2. REGULATION OF HYDRAULIC FRACTURING.

(a) UNDERGROUND INJECTION.—Section 1421(d) of the Safe Drinking Water Act (42 U.S.C. 300h(d)) is
amended by striking paragraph (1) and inserting the fol-
lowing:

“(1) UNDERGROUND INJECTION.—

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

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

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

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

“(f) HYDRAULIC FRACTURING OPERATIONS.—

“(1) IN GENERAL.—Consistent with such regu-
lations as the Administrator may prescribe, a State
may seek primary enforcement responsibility for hy-
draulic fracturing operations for oil and natural gas
without seeking to assume primary enforcement re-
sponsibility for other types of underground injection control wells, including underground injection control wells that inject brine or other fluids that are brought to the surface in connection with oil and natural gas production or any underground injection for the secondary or tertiary recovery of oil or natural gas.

“(2) ADMINISTRATION.—

“(A) IN GENERAL.—Paragraph (1) shall not apply until the date that is 1 year after the date on which the Administrator publishes in the Federal Register any regulations promulgated under that paragraph.

“(B) EFFECT ON ADMINISTRATOR.—Nothing in this subsection affects the authority of the Administrator to approve State programs that assume primary enforcement responsibility for only certain types of underground injection control wells.”.

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

“(4) DISCLOSURES OF CHEMICAL CONSTITUENTS.—
“(A) IN GENERAL.—A person conducting hydraulic fracturing operations shall disclose to the State (or to the Administrator, in any case in which the Administrator has primary enforcement responsibility in a State), by not later than such deadlines as shall be established by the State (or the Administrator)—

“(i) before the commencement of any hydraulic fracturing operations at any lease area or a portion of a lease area, a list of chemicals and proppants intended for use in any underground injection during the operations (including identification of the chemical constituents of mixtures, Chemical Abstracts Service numbers for each chemical and constituent, material safety data sheets if available, and the anticipated amount of each chemical to be used); and

“(ii) after the completion of hydraulic fracturing operations described in clause (i), the list of chemicals and proppants used in each underground injection during the operations (including identification of the chemical constituents of mixtures,
Chemical Abstracts Service numbers for each chemical and constituent, material safety data sheets if available, and the amount of each chemical used).

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

“(i) ensure the accuracy and completeness of the information required under subparagraph (A); and

“(ii) make available to the public the information contained in each disclosure required under subparagraph (A), including by posting the information on a single, searchable Internet website such that all the information disclosed to the State or Administrator, as applicable, under that subparagraph is contained on the same Internet website.

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

“(i) IN GENERAL.—Subject to clause (ii), the regulations promulgated pursuant to subsection (a) shall require that, in any case in which the State or the Administrator, as applicable, a first responder, or
healthcare practitioner determines that the proprietary chemical formula or specific chemical identity of a trade-secret chemical used in hydraulic fracturing is necessary for medical diagnosis, treatment, or emergency response, the applicable person using hydraulic fracturing shall, upon request, immediately disclose to the State, the Administrator, first responder, or healthcare practitioner the proprietary chemical formula or specific chemical identity of a trade-secret chemical, regardless of the existence of—

“(I) a written statement of need;

or

“(II) a confidentiality agreement.

“(ii) REQUIREMENT.—A person using hydraulic fracturing that makes a disclosure required under clause (i) may require the execution of a written statement of need and a confidentiality agreement as soon as practicable after the determination by the State, Administrator, first responder, or healthcare practitioner, as applicable, under that clause.
“(iii) PROFESSIONAL NECESSITY.—

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

“(II) RESTRICTION.—A first responder or healthcare practitioner described in subclause (I) shall not make publicly available any information disclosed under clause (i).

“(D) NO PUBLIC DISCLOSURE REQUIRED.—Nothing in subparagraph (A), (B), or (C) authorizes a State or the Administrator to publicly disclose any proprietary chemical formula.”.