

113TH CONGRESS  
1ST SESSION

# S. 1135

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

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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

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## 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.”.

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