

National Drinking Water Advisory Council

December 12, 2002 Conference Call Minutes

Final Draft

Prepared by:
The Cadmus Group, Inc.

Prepared for:
**United States Environmental Protection Agency
Office of Ground Water and Drinking Water**

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National Drinking Water Advisory Council (NDWAC) Draft Summary Notes of December 12, 2002 Conference Call

Participants

Present: About 20 people, including Brenda Johnson, Mike Osinski, Peter Shanaghan, Bill Diamond, Charlene Shaw, Kevin Bliss, Mary Helen Yarborough

By phone: NDWAC Chair David Spath, Bradford McLane, Diana Neidle, Mary Davis, John Young, Blanca Surgeon, Kenneth Merry, Dennis Schwartz, Cynthia Roper, Vicki Ray, Graciela Ramirez-Toro, Michael Baker, Bruce Florquist, Brian Ramaley, Dennis Lathem, Lynn Helms, Pete Giovanni, Jerry Baker

Meeting was convened at 10:00am.

Opening Remarks

David Spath gave an overview of the structure and goals for the meeting: **Mike Baker** described the draft resolution that he and **Brad McLane** put together. A discussion followed, then the floor was open to public comment before the Council voted.

Background of draft resolution (David Spath)

- At the Philadelphia meeting, **Brad McLane** presented a proposal regarding hydraulic fracturing, and **Mike Baker** proposed an alternate.
 - **Mr. Baker** and **Mr. McLane** came up with a consensus.
- If the Council felt that this issue was important enough to convey to the Administrator, it should be transmitted in the form of a report.
 - That is, it should be conveyed as “recommendations” rather than a “resolution.”

The Council discussed a coalbed methane report that had been distributed via e-mail before the conference call. Not all Council members had received it, but it was decided the meeting should continue anyway.

Presentation of resolution (Mike Baker)

- With regard to the “recommendation” format brought up by **Dr. Spath**, **Mr. Baker** suggested removing “resolution” from the title (“National Drinking Water Advisory

Council (NDWAC) Resolution) and attaching the document to a cover letter to Administrator.

- Background of draft resolution:
 - There was a great deal of discussion on hydraulic fracturing at the Philadelphia meeting, and the reactions of the NDWAC members varied widely.
 - **Mr. Baker** and **Mr. McLane** recommended that, since agreement among the Council is probably unreachable, the Council should wait to make any recommendations to EPA.
- Overview of draft resolution:
 - **Mr. Baker** discussed issues that were brought up in a meeting in Maine earlier this year. These issues were addressed in the draft resolution:
 1. Class V wells have contributed substantial contamination in private and public water systems.
 2. Funding for underground injection control (UIC) has remained at \$10.5 million while other resource-related grants have increased. So, relative to other areas, Class V wells have remained understudied.
 - The EPA Administrator should allocate greater resources to UIC, especially Class V wells.
 - Hydraulic fracturing: EPA report states that fluids present a potential threat to drinking water systems.
 - Currently, there are voluntary means to limit diesel fuel use in hydraulic fracturing so fluids won't exceed contamination limits.
 - Several members expressed concern with regard to other consequences from coalbed methane (aside from hydraulic fracturing) - EPA should study those as well.

To enable further discussions, a motion to adopt the recommendations was made by **Mike Baker** and seconded by **Diana Neidle**.

Draft Resolution

Joint Resolution submitted jointly by **Mike Baker** and **Brad McLane**

National Drinking Water Advisory Council (NDWAC) Resolution

Whereas, the protection of the Nation's ground water resources is of critical importance to the protection of public health and the continued economic vitality of the United States of America;

Whereas, there are many potential as well as documented threats to the quality of the America's ground water, including impacts from Class V underground injection wells that have caused or contributed to ground water contamination including that associated with over 100 superfund (CERCLA) sites;

Whereas, the Underground Injection Control (UIC) Program authorized by the Safe Drinking Water Act (SDWA) is one of the primary means by which the US EPA and States can safeguard our ground water resources;

Whereas, federal funding for state underground injection control programs has remained at \$10.5 million since 1988;

Whereas, a 1998 survey of states conducted by US EPA and the Ground Water Protection Council estimated there is a \$48 million shortfall of funding for State Class V Programs;

Whereas, on August 28, 2002, the US EPA released a draft Phase I Study evaluating impacts to underground sources of drinking water by the hydraulic fracturing of coalbed methane wells;

Now Therefore Be It Resolved that the National Drinking Water Advisory Council makes the following recommendations to the Administrator, US EPA, concerning the issues of coalbed methane production, hydraulic fracturing, and underground injection control:

1. The Administrator should seek, prioritize and direct additional resources to the underground injection control program, with particular emphasis given to the resource needs of the Class V program;
2. With respect to the issue of hydraulic fracturing, the Council recognizes that certain constituents of concern are introduced into fracturing fluids through the use of diesel fuel and other toxins as additives. As such, the NDWAC encourages the Administrator to work through voluntary and/or regulatory means as appropriate in order to eliminate the use of diesel fuel and related additives in fracturing fluids that are emplaced in geologic formations containing sources of drinking water, such that hydraulic fracturing fluids do not exceed any Maximum Contaminant Levels (MCLs) in any Underground Sources of Drinking Water (USDW);

3. Recognizing that certain aspects of the coalbed methane production process, such as the dewatering of drinking water formations and the discharge of produced water to the surface streams, rivers, and lakes could have adverse consequences to the quality of those waters, the US EPA should continue its studies of these actions to determine the extent and nature of public health and environmental problems that could occur as a result and recommend appropriate actions to avoid these impacts; and
4. The Council encourages the Administrator to defend as necessary the US EPA's existing authority and discretion to implement the Underground Injection Control Program in a manner that advances the protection of our ground water resources from contamination.

Finally, the Council pledges its support to the Administrator in working toward the above ends.

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Discussion of resolution

Brad McLane wanted to clarify that his previous resolution had been withdrawn and is no longer on the table.

John Young: With regard to item #3 (“... the US EPA should continue its studies of these actions...”), will there be a specific level of commitment to the continuing studies or is the wording just a general statement?

Bill Diamond: There are no specific dollar amounts. Region 8 is working closely with the states, however, there is no list of specific studies.

John Young: The level of commitment will be up to EPA discretion?

Brad McLane: Yes.

Mike Baker concurred with **Mr. McLane**.

Brian Ramaley (to **Bill Diamond**): One critical issue is resource allocation to health issues. Is it disproportionate to impact? Should there be a reevaluation?

Bill Diamond: The original resolution concerns were about additional studies to UIC (e.g., field data, etc.). Projections found the expense for these additional studies was not justified, however, removal of this language allayed any concerns.

MCL language

The Council discussed the MCL language in item #2 of the draft resolution. The wording seems to imply that dumping is allowed as long as levels remain below the MCL.

The Council discussed and approved removing ambiguous language from item #2 in the draft resolution. The following phrase was struck from the text: "...such that hydraulic fracturing fluids do not exceed any Maximum Contaminant Levels (MCLs) in any Underground Sources of Drinking Water (USDW);").

Item #2 in draft resolution now reads as follows:

2. With respect to the issue of hydraulic fracturing, the Council recognizes that certain constituents of concern are introduced into fracturing fluids through the use of diesel fuel and other toxins as additives. As such, the NDWAC encourages the Administrator to work through voluntary and/or regulatory means as appropriate in order to eliminate the use of diesel fuel and related additives in fracturing fluids that are emplaced in geologic formations containing sources of drinking water.

Changing resolution to draft of recommendations

The Council discussed changing the "draft resolution" to a "draft of recommendations" before submitting it to EPA.

Ken Merry: There is an implication that a "recommendation" is backed by the Council. The cover letter could become the report.

Charlene Shaw: Once recommendations are received, they're forwarded to the Administrator. "Report" is being taken too literally. The "whereas" parts in the draft resolution could become part of the background. The report has to meet certain requirements.

It was discussed and agreed that **Brad McLane** and **Mike Baker** work on a simple cover letter for the draft of recommendations.

Public comments

The meeting was now opened up to public comments.

- A **Kevin Bliss** (Interstate Oil and Gas Compact Commission (IOGCC)): Read prepared testimony:
- Submitted two items for the record:
 - 1.1 IOGCC comments on EPA's study on environmental effects of hydraulic fracturing.
 - 1.2 July 2002 IOGCC survey "States Experience with Hydraulic Fracturing"
 - Agrees with EPA that hydraulic fracturing does not pose a threat to drinking water.
 - **Blanca Surgeon**: How many documented wells?
Mr. Bliss did not have information, referred Ms. Surgeon to the survey.
 - **Brad McLane**: Asked for copy of statement
Mr. Bliss said it is automatically included at the Web sites he mentioned in the testimony.
- **Mary Helen Yarborough** asked about coalbed methane and salinity levels.
 - Question determined to be off-topic.
 - **Dennis Lathem** (Coalbed Methane Association of Alabama)
 - Expressed wish that his association had the opportunity to participate earlier.
 - Concerned with inaccuracy of hydraulic fracturing information, misunderstanding of process.
 - Takes 20-30 minutes off the 20-30 year life span of a well
 - Creates a better pathway, but the process itself doesn't continue over the life of a well.
 - Sand is used to hold coal open, reclaimed water is used with sand.
 - Diesel fuel is not used in Alabama.
 - Hydraulic fracturing methods are regulated by state.
 - Wants a better opportunity to present hydraulic fracturing methods.
 - Water in coal seams is not used as drinking water.
 - 98% pure water, some additives in order to interact with sand, but not as "nefarious" as some lead others to believe.

- **David Spath:** What happens to discharged water?
Association has had NPDES permits for over 20 years. Extensive monitoring is required. Geological Survey of Alabama says that current effluent guidelines are more than sufficient.

- **Lynn Helms** (North Dakota Industrial Oil and Gas Commission)
 - Supports **Kevin Bliss**.
 - Several dozen wells are fractured per year and this has been happening for about 50 years.
 - No wells come from drinking water sources and no problems have been found in wells near underground drinking water sources.
 - In North Dakota, perhaps this is due to the sparse population and the fact that there are fewer monitored wells.
 - Memo of agreement with North Dakota's health department, share information.

- **Peter Giovanni** (Department of Energy)
 - Worked with EPA on hydraulic fracturing study; the recommendations are sound.
 - Coalbed methane is an important future source of energy.
 - Supports studies for the environmental impact of produced water.
 - DOE can help with Council actions.

- **Jerry Baker** (Interstate Oil and Gas Commission)
 - Represents association of 30 states.
 - Is there time to address industry concerns before Council takes action?

Dennis Lathem: If Council approves action, how soon until it's available to public?

Peter Shanaghan: Immediately, if no major changes. Two weeks mentioned by Brenda Johnson refers to entire formal process.

David Spath: Final recommendations will be submitted to EPA.

Various comments: Conflicting statements will be further verified somehow. Letter shouldn't be too definitive and binding. Not comfortable taking definitive action, defer for more compelling data?

Mike Baker: Public comments highlight disparate opinions. It is difficult to make recommendations on those specific issues. The Council should limit recommendations to outside issues (i.e., Class V wells, diesel fuel use near drinking water).

Other Council members did not feel there were any conflicts with the recommendations and that they did not need any more information in order to vote.

Peter Giovanni: Hydraulic fracturing is contentious. Council may perceive it as mild, but action could be taken out of context and seen as a contradiction to previous studies.

Brad McLane: Asked **Dr. Spath** for any advice/guidance should the recommendations be accepted and there is a need to ensure that they're not misconstrued by the media.

David Spath: Always the possibility for misconstruing. Recommendations are consistent with Phase I report. Council members can refer any calls from the media to him.

Dennis Lathem: Can the cover letter explain that the decision was made with limited exposure to public hearings?

Brad McLane: Will share draft of letter with public before submittal to EPA.

Vote

A substitute motion to vote on accepting revised recommendations and transmitting them to the Administrator was made by **Dennis Schwartz** and seconded by **Vicki Ray**.

Motion carried 12-0.

The finished letter will be posted on EPA's Web site.

No need to address further issues.

Meeting was adjourned at 12:00pm.