

**Clean Water Watch • Earthjustice • Earthworks • Environment America •
League of Conservation Voters • Natural Resources Defense Council • Sierra Club**

Dear Representative,

We are writing today to express our strong opposition to language in the latest discussion draft of the Chemicals in Commerce Act (CICA), which could block states and localities from taking actions necessary to protect their citizens from the potential health and environmental impacts of hydraulic fracturing (“fracking”) for oil and gas. While many of our groups have other significant concerns with CICA, we want to draw attention in this letter solely to issues related to fracking and the broad language that potentially preempts current and future state laws regarding important issues such as: public disclosure, baseline water testing and monitoring, disposal, and prohibition of the use of certain chemicals.

As fracking has spread, more and more states and communities are recognizing the need for action to protect communities from the chemicals used in fracking fluids, and are finding out how hard, if not impossible, information about these chemicals is to obtain absent state and local requirements. Individuals and communities sensibly want to know what chemicals they are at risk of being exposed to. This information is needed to address such fundamental matters as determining whether fracking fluids are contaminating drinking water and knowing how to respond if chemicals leak or are spilled. Yet Sections 14 and 17 of the April 22 discussion draft of CICA would block states and localities from exercising their authority to get information to inform and protect their citizens, and the public would have no access to this basic information. Among its other failings, the language pre-empting state and local requests for information is especially broad, blocking any state requirements to submit information if EPA has evaluated a chemical, even if EPA never sought the information itself. Furthermore, the language in Section 14 could prevent the disclosure of chemical information claimed confidential by the companies to health professionals in the event of an emergency, greatly impacting their ability to assist affected individuals.

Baseline water testing and monitoring both before and after hydraulic fracturing operations is critical to both landowners and oil and gas operators in order to properly assess whether contamination of drinking water sources has occurred. Many states, including Colorado, Illinois, and Wyoming, are enacting important groundwater testing and monitoring requirements. Several states are also actively considering measures to restrict or prohibit the transfer or processing of fracking waste within their borders. Vermont has banned fracking waste, and similar measures are under consideration in New Jersey, Massachusetts, and other states. In Section 17 of the CICA, state law is preempted from regulating a chemical for its “intended conditions of use” under numerous circumstances – language that is so broad it could potentially preempt a state’s ability to decide whether or not it wants fracking waste disposed of within its borders. Fracking waste includes flowback water, which can contain dangerous chemicals used in the fracking process, as well arsenic, lead, mercury, naturally occurring radioactive materials, and volatile organic compounds such as benzene. States and localities should have the right to decide whether they want this hazardous waste in their communities.

The broad preemption language of CICA could also preempt attempts by states to limit what chemicals are used in fracking operations in their states, including the use of diesel. Several states are stepping up to restrict the use of diesel and other volatile organic compounds in order to protect their groundwater resources.

There is simply no reason for a federal law to prevent states, localities, and communities from taking actions necessary to protect their citizens from the potential health and environmental impacts of fracking, especially given the loopholes in our major environmental laws enjoyed by the fracking industry. Again, along with the impacts on state fracking laws and regulations, our organizations have strong concerns about how CICA would preempt state regulations on toxic chemicals as well as the weaknesses of the federal system it would establish. We urge you to reconsider your approach to reforming the Toxic Substances Control Act.

Sincerely,

Clean Water Action

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