



Insight

Let the States Regulate the Natural Gas Boom

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The difference between how candidates frame public policy during election campaigns and how they frame it in policy discussions is deplorable. Sound bites make for good television and stump speeches but can make for awful policy.

One example in the 2012 presidential election was the shale gas critics justifying the Environmental Protection Agency's relentless push for a single, overarching federal law to regulate the entire industry. They made the dubious claim that one law is superior to a patchwork of 50 state regulations.

This language holds out hope for regulatory simplicity. But this approach, at least for natural gas, is misguided. It perpetuates the myth that there isn't already federal regulation of the oil and gas industry. In reality, various parts of the drilling process are regulated under the Safe Drinking Water Act, Clean Water Act, Clean Air Act and others.

Additionally, the U.S. Department of Energy and the EPA fund the State Review of Oil & Natural Gas Environmental Regulations program and the Ground Water Protection Program, which audit state regulatory programs and share best practices. In fact, the Secretary of Energy Advisory Board's report on fracking supported continued state oversight through these programs and called for additional funding of these programs in its report last year.

Though broad, simple campaign declarations sound great, they fail to take into consideration that each company — in whatever industry a policy regulates — is very different. Even the shale fields themselves differ greatly in terms of geology, topography and hydrology from state to state. Shale gas deposits are different in Pennsylvania's Marcellus, Ohio's Utica, and Texas' Barnett deposits. Because of this, drilling strategies need to be tailored to individual circumstances.

So the question is, how do you create a master set of federal regulations that can efficiently and effectively balance safety and resource development when every case is different? The simple truth is you can't.

A one-size-fits-all approach would probably require a federal waiver for every shale gas field permit. Even in a perfect world, getting a permit under any federal rule is time-consuming and expensive. But to obtain a federal permit through a waiver process only compounds the difficulty.

In practice, states are also usually more sensitive to overregulation. At the federal level, the benefits of production are of secondary concern, and no federal regulator is accountable for the impact of decreased production. In contrast, state legislatures from both parties in places as different as Ohio, Pennsylvania, Colorado and Texas have effectively engaged stakeholders, from the environmental community to the producing community, to craft effective laws. In each of those states, lawmakers identified the need to set rules for shale gas exploration early in the process, and to address in legislation chemical disclosure requirements that

balance the need for public transparency and protection of trade-sensitive information.

Another benefit of state over federal regulation is the states' ability to respond to emerging issues. As Washington still wrestled with what role government should play, state governments had already established well-engineering standards, cleanup requirements, water guidelines, local government revenue sharing and clear guidelines in the permitting process.

The growth in natural gas production occurring under state regulation contrasts dramatically with the trend on federal lands. According to the U.S. Energy Information Administration, onshore federal natural gas production has dropped the past two years as its share of our natural gas production has dropped from 35 percent to 21 percent, a track record that is hardly comforting for federal regulation skeptics.

Ultimately, if the EPA continues to limit coal generation and pursues an “all in” strategy with natural gas generation, it must stop working at cross purposes with itself. The best way is drop out of this debate and let individual states do what the federal government cannot.

This piece originally appeared in the print edition of the [Washington Examiner](#).