Federal Regulations

Clean Air Act (CAA)
- 42 U.S.C. §§ 7401-7671q
- https://www.law.cornell.edu/uscode/text/42/chapter-85
- Aims to decrease air pollution, but until 2012 did not address air pollution directly. Now, all onshore natural gas fracking regulations are subject to regulation for volatile organic compound emissions. *Overview of Final Amendments to Air Regulations for the Oil and Natural Gas Industry*, U.S. EPA (Apr. 17, 2012), http://www.epa.gov/airquality/oilandgas/pdfs/20120417fs.pdf.
- EPA has proposed updates to its 2012 New Source Performance Standards to add methane to the pollutants covered, but these have not been implemented. *Updates to 2012 Oil and Gas Standards: EPA’s Air Rules for the Oil & Natural Gas Industry*, U.S. EPA (Aug. 18, 2015), http://www3.epa.gov/airquality/oilandgas/pdfs/natgas_well_site_summ_081815.pdf.
- Otherwise, no direct regulation of fracking.

Clean Water Act (CWA)
- 33 U.S.C. §§ 1251-1388
- https://www.law.cornell.edu/uscode/text/33/chapter-26

CERCLA (Comprehensive Environmental Response, Compensation, and Liability Act)
- 42 U.S.C. §§ 9601-9675
- https://www.law.cornell.edu/uscode/text/42/chapter-103
- Authorizes cleanup of contaminated properties and provides a cost recovery action for litigants. Any of the following elements may establish a cost recovery action: (1) the defendant is a “responsible party;” (2) hazardous substances are disposed of at a “facility;” (3)

- Petroleum and natural gas are excluded from the definition of “hazardous substance,” and so the injection of fluids for fracking is permitted. 42 U.S.C. § 9601(10) (2012).

**Endangered Species Act (ESA)**
- 16 U.S.C. §§ 1531-1544
- https://www.law.cornell.edu/uscode/text/16/chapter-35
- Fracking operations must comply with the ESA, and protects endangered species’ habitats. 16 U.S.C. § 1536(a)(2) (2012).

**Migratory Bird Treaty Act**
- 16 U.S.C. §§ 703-712
- https://www.law.cornell.edu/uscode/text/16/chapter-7/subchapter-II
- Shale gas operators are liable for harm to protected species. 16 U.S.C. § 703-12 (2012).

**National Environmental Policy Act (NEPA)**
- 42 U.S.C. §§ 4321-4370h
- https://www.law.cornell.edu/uscode/text/42/chapter-55
- The Energy Policy Act of 2005 created a “rebuttable presumption” that oil and gas operations fall under a “categorical exception to the normal procedural requirements.” *Id.* *See also* Energy Policy Act of 2005, Pub. L. No. 109-58, § 390, 119 Stat. 594 (2005). To rebut this presumption, a citizen bringing a suit must meet the high standard of “extraordinary circumstances warranting a full NEPA review.” *Id.* This means that NEPA rarely applies to fracking.

**Resource Conservation and Recovery Act (RCRA)**
- 42 U.S.C. §§ 9601-9675

Safe Drinking Water Act (SDWA)

- 42 U.S.C. §§ 300f-326
- https://www.law.cornell.edu/uscode/text/42/chapter-6A/subchapter-XII
- To protect drinking water, the SDWA requires EPA to establish a maximum contaminant level for contaminants that “may have an adverse effect on the health of persons” and there is a “substantial likelihood” that it will occur in public water systems. 42 U.S.C. § 300g-1 (2012).

Toxic Substances Control Act (TSCA)

- In 2014, EPA promulgated a new rule that will require the inclusion of inorganic chemical substances (which are utilized in shale gas development) in the reporting requirements. The Advanced Notice of Proposed Rulemaking closed in September 2014 and an update has not since been posted to EPA’s website. L. Poe Leggette et al., EPA’s Efforts, 33 ENERGY & MINERAL L. FOUND. § 22.13, sec. 5 (2012); Hydraulics Fracturing Chemicals and Mixtures, U.S. ENVTL. PROT. AGENCY, http://yosemite.epa.gov/opei/rulegate.nsf/byRIN/2070-AJ93 (last accessed Nov. 20, 2015).