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THE ROLE OF THE STATES IN PROTECTING THE ENVIRONMENT

FRIDAY, FEBRUARY 15, 2013

House of Representatives,

Subcommittee on Environment and the Economy,

Committee on Energy and Commerce,

Washington, D.C.

The subcommittee met, pursuant to call, at 9:29 a.m., in Room 2123, Rayburn House Office Building, Hon. John Shimkus, [chairman of the subcommittee] presiding.

Present: Representatives Shimkus, Gingrey, Hall, Murphy, Latta, Cassidy, McKinley, Bilirakis, Johnson, Barton, Upton (ex officio), Tonko, Green, DeGette, McNerney, Schakowsky, Barrow, and Waxman (ex officio).

Staff Present: Nick Abraham, Legislative Clerk; Charlotte

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Baker, Press Secretary; Matt Bravo, Professional Staff Member; Allison Busbee, Policy Coordinator, Energy and Power; Jerry Couri, Senior Environmental Policy Advisor; David McCarthy, Chief Counsel, Environment/Economy; Andrew Powaleny, Deputy Press Secretary; Tina Richards, Counsel, Environment; Krista Rosenthall, Counsel to Chairman Emeritus; Chris Sarley, Policy Coordinator, Environment and Economy; Lyn Walker, Coordinator, Admin/Human Resources; Phil Barnett, Minority Staff Director; Alison Cassady, Minority Senior Professional Staff Member; Jacqueline Cohen, Minority Counsel; Greg Dotson, Minority Staff Director, Energy and Environment; Caitlin Haberman, Minority Policy Analyst; and Karen Lightfoot, Minority Communications Director and Senior Policy Advisor.

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Mr. Shimkus. Let's see if we can get the doors closed, and I know the folks in the hallway will be happy to hear.

Good morning. Thank you all for being punctual. Who knows when votes will occur, they are going to be earlier today, so we are going to try to get through as much as possible, and then we will see where we go from there.

The subcommittee will now come to order. I would like to welcome all the members of the subcommittee to our first hearing in the 113th Congress. I want to say a special welcome to our new ranking member, Mr. Tonko, as well as our new vice chairman, Dr. Gingrey, who is late, not a good sign, and all our new Republican and Democrat members.

Today's hearing focuses on the important role that States play in environmental protection under current law. This hearing will help raise awareness and set the stage for future discussions we are going to have on environmental protection.

Many of us get caught up with what the U.S. EPA thinks or what it can do and fail to focus on States and what they can and must do. The States are by no means junior regulators or the minor leagues of environmental protection. Rather, their plate is twice as full. To carry out Federal environmental law, States have a lot of delegated authority, but States also have their own protective laws, often beyond anything the Federal Government has asked.

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State regulators have every bit the same educational background, expertise, desire to protect the environment, and sense of professionalism as any employee at the EPA, with the added bonus of actually living in the communities they are trying to make safe. They intimately know the terrain being regulated.

Some people might suggest that States lack the will to enforce their laws or that are reluctant to pass anything serious. I think that answer is not fair, and I think history shows that States have generally acted first on matters before the Federal Government has stepped in to do something. In this fast-paced, technology-driven society, a static regulatory regime cannot respond to innovations nor complex problems and challenging geologies. Let me offer a few examples of what I mean from issues familiar to our committee.

In the State of Maryland, there was a terrible coal ash problem. The State did not sit by powerless. Rather, in December 2008, the Maryland Department of Environmental issued one of the most robust sets of coal ash rules in the country. Maryland is not the only State. Pennsylvania and Wisconsin have demonstrated strong programs that are serious, flexible, and successful.

On the issue of hydraulic fracturing, Colorado has shown it can move two major changes to its rules on hydraulic fracturing in a matter of months. Ohio has also jumped in to address seismicity and other

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fracturing-related issues important to its State. Even North Carolina, which has not fractured a single gas well in the entire State, is moving legislation to place restrictions on this practice. Back in Illinois, we are home to the New Albany shale gas formation with a footprint that is much of the southern part of the State and much of my congressional district.

At the State level, they are quickly realizing the jobs and positive economic impact of hydraulic fracturing and moving steadily towards regulations. While this play is still unproven, estimates of upward to 47,000 jobs annually and \$9.5 billion of economic impact for Illinois if the New Albany shale potential is realized.

It is well known that States, rather than the EPA, have been dominating the regulatory space for hydraulic fracturing for decades. When you consider the amount of additional resources and new experiences that would be needed to infuse into the EPA to replace what States already do well, it defies conventional budgetary wisdom that this is a good public policy move. I am not trying to suggest that the EPA does not have an important role to play in protecting the environment, but when you contrast the nimbleness and commitment of the States with the cumbersome and lengthy process which characterizes U.S. EPA's one-size-fits-all approach, trusting the States a little more seems the right thing to do.

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I know some of my colleagues here will dismiss these arguments and suggest coal and gas need even more regulation because they are, quote-unquote, "dirty," and we need cleaner fuels. I would submit to my colleagues that if this is really about environmental protection and not energy use manipulation, we must acknowledge that every fuel production method has risk.

On Monday, ABC News ran a story from the Associated Press about the negative environmental externalities with solar power. It read, Fueled partly by billions in government incentives, the industry is creating millions of pounds of polluted sludge and contaminated water. Companies must transport it by truck or rail to waste facilities hundreds and in some cases thousands of miles away. AP compiled a list of 41 solar makers in California, and based on State data, 24 of them did not report their waste. The State records show that 17 companies, which had 44 manufacturing facilities in California, produced 46.5 million pounds of sludge and contaminated water from 2007 through the first half of 2011. Roughly 97 percent of it was taken to hazardous waste facilities throughout the State, but more than 1.5 million pounds were transported to nine other States, and though it could be manifested, AP reports 2.1 million tons are unaccounted. Even though EPA and this administration are bullish on solar technologies, the same level of Federal data does not exist.

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I want to welcome the State officials who have joined us today from across the country to share their experience, perspective, and devotion to their States' environments. We have representatives from State groundwater, drinking water, oil and gas, solid and hazardous waste offices as well as their agency heads. We also have a State legislator and a city council member.

I now yield to Mr. Tonko, our subcommittee's ranking member, for his opening statement.

[The prepared statement of Mr. Shimkus follows:]

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Mr. Tonko. Thank you, Mr. Chair, and it is a pleasure to join with you, Chairman Shimkus, and our expert witnesses, who will share their thoughts with us this morning. Thank you to the entire panel for making the effort, and to join with the ranker of our committee, with Ranker Waxman and our team, and all of the members of the subcommittee. While we will not always be in agreement, I hope that we can find common ground to move this Nation forward on important issues in the jurisdiction of this committee, this subcommittee.

Today's hearing revisits an issue that we have been discussing since the day of the 13 original colonies deciding to ban together and declare their independence from Great Britain. Over the years, we have continued to struggle to define the proper balance between Federal and State regulation. I expect we will continue to debate this for many years to come. Each one of the individual States we represent is different, to be sure, and the States have a responsibility to their citizens to manage their resources and their economies, but we know that from our Nation's history, decisions made in one State often have impacts beyond that particular State's borders. Just as we have State laws to ensure consistency among the towns, villages, counties, and regions within States, Federal law guarantees minimum standards for all of our Nation's citizens. They promote good relations amongst neighboring States, and they ensure that shared resources -- water,

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air, land, forests, wildlife, and fisheries to name a few -- remain viable and available for everyone's beneficial use.

The environment of any one State does not fit discreetly within its political boundaries. New York, my home State, shares its borders with five other States and with the Nation of Canada. We share our watersheds and airsheds with an additional six States. While New York has strong environmental protections, our environment is not only dependent upon how New York State manages its resources. It also depends upon the choices made by those other neighboring States in our region and by Canada.

The system we have today was put in place largely as a result of the experience we had prior to the adoption of sound Federal environmental laws. That experience was not good. It involved polluted surface and groundwater, acid rain, smog, soil erosion, and collapsed fisheries as a result of a States-only approach to environmental protection. Most of these environmental problems have been reduced significantly by Federal laws implemented in cooperation with the States.

I would also point out that we have accomplished these environmental success stories while our population and economy grew. We do not have to choose between a healthy environment and a healthy economy. Indeed, one complements the other, and we know that public

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health is not a luxury; it is indeed a necessity.

Just last month, a number of reports appeared about the terrible pollution problems in China, problems that are now too large to ignore. The result is increased hospitalizations and emergency shutdowns of some factories. The Chinese are discovering what we learned a long time ago: Unfettered industrial activity results in widespread serious pollution that does, indeed, impact public health and the economy.

Clean air, clean water, and healthy soils are fundamental building blocks of a sound economy and a healthy society. With creativity and willing partners in the private sector, we can do even better. We do not want to go backward. Forward is our only direction.

Pollution prevention is always less costly than pollution cleanup. Our laws are not perfect, and their implementation is not perfect, but the public is well served by them, and we should be working to improve and strengthen them for the sake of public health and resource protection.

Every citizen in this Nation deserves to live in a community with clean air and clean water. Federal and State partnership in this effort has made this guarantee a reality and delivered real results. We should build on this success to address new challenges, like climate change. Now is not the time to reverse course.

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I look forward to hearing from our witnesses, expert that they are, this morning.

Thank you all for agreeing to appear before our subcommittee today.

And again thank you, Mr. Chairman. I look forward to working with you and our fellow committee members, subcommittee members.

[The prepared statement of Mr. Tonko follows:]

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Mr. Shimkus. Thank you, Mr. Tonko.

And I look forward to working with you, too.

Now I would like to yield to the chairman of the full committee, Mr. Upton, for 5 minutes.

The Chairman. Thank you, Mr. Chairman.

You know, we are eager to better understand the role of the States in conserving resources and protecting the health of their residents.

And it is a special pleasure to see Hal Fitch, who manages Michigan's DEQ's Office of Oil, Gas and Minerals. Welcome.

Effective regulatory management of resource development is crucial. Excess restrictions cost jobs and revenue, but inadequate oversight and regulation could turn a State's residents against resource development. So we have got to strike the right regulatory balance.

Most agree that for policy decisions to be fair, they have to be made at the appropriate level of government, but what is that level? It is the one closest to the people but still has enough authority to carry out the policy. If the decision affects only folks in Kalamazoo, it should be made by the Kalamazoo City Commission. If it also affects others in Michigan, it ought to be made by State officials. Only those policies that impact citizens from more than one State should be made by the Federal Government.

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Today's hearing gives us a chance to see environmental protection through the eyes of State officials. We are going to see firsthand that they, A, care about the environments in which they live and work; B, have professional experience and local expertise; C, seek the right balance between environmental protection and economic opportunity; and, lastly, take seriously their legal obligations under both State and Federal law. It is important to understand the important roles States play in protecting the environment, and that is what this hearing is about.

And I yield to my friend, Mr. Barton.

[The prepared statement of The Chairman follows:]

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Mr. Barton. Thank you, Chairman.

And I first want to put to bed the rumor that I would not attend an early morning hearing on a getaway day. Staff seemed to think that I wouldn't show up. I want the record to show the only two members here ahead of me were the subcommittee chairman and the ranking member. They were here when I arrived. So I can show up in the morning, although I will admit there have been times that I have not.

I do appreciate this first hearing of this subcommittee being on this issue. I think we have a great panel of witnesses from around the country. When I was chairman of this committee back in 2005, we passed the Energy Policy Act, and in that, we revised the Safe Drinking Water Act to state as follows: Underground injection, to exclude the term underground injection, the underground injection of fluids or propping agents pursuant to hydraulic fracturing operations related to oil, gas, or geothermal production activities. In other words, we said that the Federal Government could not regulate those. I think that is the best way to do it.

In my home State of Texas, in my congressional district, there are over 16,000 producing wells that have been hydraulically fractured and horizontally drilled. In the largest county that I represent, Tarrant County, which is an urban-suburban county, the number of mineral property owners went from 500 in the mid 1990s to today well

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over 100,000. This has been done without affecting the environment in any shape, form or fashion, other than the normal issues you have with noise and dust and trucks and things like that when you drill or have any kind of a commercial activity.

I think the ranking member's statement from New York State is dead on in the sense that, comparing his State and my State, Texas has chosen to regulate hydraulic fracturing, but to allow it. His State so far has chosen not to. I don't have a problem with that. I do predict over time, his home State of New York may decide, in fact, that it may be well to do it in certain shapes, forms or fashions.

With that, I would like to yield to Dr. Gingrey for 2 minutes.

[The prepared statement of Mr. Barton follows:]

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Dr. Gingrey. And I thank the gentleman for yielding.

Mr. Chairman, I want to thank you for calling this hearing today on the role the States play in implementing our Federal environmental laws.

I also would like to welcome our panel of witnesses that will provide the subcommittee with its collective wealth of knowledge on how they implement the various Federal laws, Federal and State laws.

Today's hearing is my first as vice chair of this subcommittee, and today's hearing is a great example of the broad jurisdiction that we have. Mr. Chairman, I look forward to working with you and the other members of this subcommittee on both sides of the aisle, the ranking member Mr. Tonko, my good friend from New York, during this Congress to address the important environmental issues that will have a significant impact on the American people. We will examine spent nuclear fuel and its long-term storage with the hopes of finally turning the use of Yucca Mountain into a reality.

During the 113th Congress, this subcommittee will also study the benefits of hydraulic fracturing in our domestic energy production.

Mr. Chairman, I stand ready to work and I look forward to providing solutions for the policy areas under our jurisdiction on this subcommittee.

Today's hearing provides a strong starting point for the

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subcommittee for the 113th Congress, and I believe that we will learn a great deal from our panel today that will help guide us throughout the next 2 years, and I yield back.

[The prepared statement of Dr. Gingrey follows:]

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Mr. Shimkus. The gentleman yields back his time.

The chair now recognizes the ranking member of the full committee, Mr. Waxman, for 5 minutes.

Mr. Waxman. Thank you, Mr. Chairman.

I congratulate you on this hearing and taking over this chairmanship.

And I want to recognize our ranking leader on the subcommittee as well. We look forward to working on a bipartisan basis to get things done.

The hearing is to examine the way Federal-State regulators work together to protect public health and the environment. Over the years, the Federal Environmental Protection Agency and the States have developed a proven model that has successfully reduced air pollution and ensured the public's access to safe drinking water.

Under this model, EPA sets minimum standards that States can exceed if they so choose. Implementation can be delegated to States on the showing that they have requirements in place that are at least as stringent as the Federal floor.

Even then, EPA retains backstop enforcement authority to ensure that every citizen in the United States is receiving a minimum level of protection from environmental risks.

EPA also plays an essential role in supporting State

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implementation through technical assistance, grants, and often loan funds as well.

As we will hear from the panel, this model has worked. States have received delegation for over 96 percent of the environmental programs that can be delegated. This is an impressive track record, and even more so when you consider the fact that this approach has offered protection to American families from pollution that causes respiratory diseases from contaminants in their drinking water and from toxic environmental exposures that can cause cancers and other diseases.

Despite these successes, there have been recent proposals to abandon the proven models and abdicate responsibilities to the States. One of the most immediate examples is the coal ash legislation from the last Congress.

As we hear from State regulators about the good work they are doing, we should be mindful of the serious threat the sequester and the Republican budget pose to this proven model of environmental protection. Without Federal technical assistance and funding, States may be unable to maintain their delegated programs. If the programs are handed back to EPA, EPA may not have the resources to take on this added implementation.

The transition between State and Federal programs may create

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costs for regulated entities and uncertainty for industry, and worst of all, bad actors may see opportunities to shirk environmental regulations because of the lack of enforcement resources.

According to EPA, if sequestration goes into effect, there will be nearly 300 fewer cleanups under the leaking underground storage tank program; there could be a thousand fewer inspections to protect communities from toxic air pollution and other pollution that could cause illness and death; and essential services to industry, like EPA's certification of auto engines for emission standards, could be curtailed.

Budget cuts that undermine implementation of our environmental statutes are penny wise and pound foolish. I hope my colleagues will listen closely to the testimony we hear today and bear it in mind as we consider sequestration, which is to take effect just a couple weeks from now, and EPA's budget in the coming weeks.

So I thank you for this hearing and look forward to the testimony.

I would be happy to yield to any of my colleagues.

Ms. Schakowsky, I yield to you the balance of my time.

[The prepared statement of Mr. Waxman follows:]

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Ms. Schakowsky. I thank the gentleman for yielding, and I appreciate this hearing.

An overarching theme of today's hearing will be the role of States in monitoring and enforcing regulation over the process of hydraulic fracturing, I suspect. I am principally concerned about the environmental impacts of hydraulic fracturing.

According to Cornell University president Robert Howarth, 3.6 to 7.9 percent of the methane from shale gas production which results from fracturing escapes to the atmosphere in venting and leaks over the lifetime of a well, that was an unquote. The study claims that this represents a 30 to 100 percent increase over conventional gas production. The impact of that methane pollution could be more impactful on greenhouse gas emissions than on the burning of oil.

Concerns about the impact of fracturing on water are well documented. Reports have been filed in more than 10 States about water contamination that occurred shortly after hydraulic fracturing.

I just want to point out that last month the EPA announced its third delay in investigating water contamination that the residents of Pavillion, Wyoming, believe is connected to hydraulic fracturing. We need to make sure that the EPA does follow up and examine the cause of contamination of drinking water.

And I yield back.

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Thank you.

[The prepared statement of Mr. Schakowsky follows:]

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Mr. Shimkus. The gentlelady yields back her time.

Again, thank all members for their attendance.

And now I would like to turn to our panel. Thank you for being patient.

We are going to go left to right, and I am just -- for the sake of time, I am just going to -- I usually do a whole introduction, but I am just going to go straight. We are just going to run into this.

So, first, let me welcome Mr. Harold Fitch, who is supervisor of the mineral wells and chief, Office of Oil, Gas, and Minerals for Michigan Department of Environmental Quality.

Sir, your full statement is in the record, you have 5 minutes, and you are now recognized.

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STATEMENTS OF HAROLD R. FITCH, SUPERVISOR OF MINERAL WELLS, AND CHIEF, OFFICE OF OIL, GAS AND MINERALS, MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY; MATTHEW J. LEPORE, DIRECTOR, COLORADO OIL AND GAS CONSERVATION COMMISSION; SARAH PILLSBURY, ADMINISTRATOR, DRINKING WATER AND GROUNDWATER BUREAU, NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES; JEFFERY STEERS, DIRECTOR, LAND PROTECTION AND REVITALIZATION DIVISION, VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY; TERESA MARKS, DIRECTOR, ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY; THE HONORABLE PRICEY HARRISON, NORTH CAROLINA HOUSE OF REPRESENTATIVES; AND THE HONORABLE MICHAEL A. SESMA, COUNCIL VICE PRESIDENT, CITY OF GAITHERSBURG, MARYLAND

STATEMENT OF HAROLD R. FITCH

Mr. Fitch. Thank you, Mr. Chairman and members of the subcommittee.

I am Hal Fitch, as you heard. I am the State geologist of Michigan as well as the director of our Office of Oil, Gas, and Minerals. Our office is charged with regulating oil and gas and mining in Michigan. I am here today on behalf of the Interstate Oil and Gas Compact Commission. I am also a member of the board of directors of the

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Groundwater Protection Council, which you are going to hear from in just a minute.

The IOGCC is an organization chartered by Congress that represents the Governors of 38 States. Its mission is to promote the conservation and efficient recovery of domestic oil and gas, while protecting health, safety, and the environment. Thank you for the opportunity to be here this morning.

I want to talk briefly about the regulatory structure and processes in Michigan, recognizing that Michigan is typical of many of our sister States in many respects, and we are also unique; each State is unique. And I want to talk about IOGCC's role in assisting the States in coordinating their efforts. The States have a long and successful history of regulating oil and gas operations. The States recognized the need, in fact, to protect the environment while at the same time fostering orderly development of oil and gas decades before the beginning of the modern environmental movement.

Michigan's regulatory structure is typical of our sister States. We oversee well drawing and production from cradle to grave, and we also cover injection wells that are associated with oil and gas operations. We have a staff of about 60 people, comprised of geologists, engineers, attorneys, enforcement specialists, and administrative support staff. Michigan has had over 60,000 oil and

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gas wells drilled starting back in the 1920s. We currently have about 19,000 wells active.

My agency's oversight starts with issuance of permits and administration of our rules. They cover well drilling and construction to assure that oil and gas and by-products are contained within the well bore. If a well is productive, we regulate production rates, surface equipment, and environmental monitoring. Our staff conduct regular inspections over the life of a well, and we prescribe how a well has to be plugged and the site restored at the end of its productive life. Last year, we conducted over 17,000 field inspections.

My agency enforces strict requirements for spill prevention, containment, cleanup and reporting. We monitor air and water emissions to assure compliance with State and Federal standards. Finally, we have dedicated funding to plug wells in the event that the operator isn't solvent or enters into bankruptcy so that the State can take care of that well and plug it properly.

State oil and gas statutes, regulations, and administrative procedures are tailored to the legal structure and doctrines, environmental conditions, geology, topography, climate, and community sensitivities that are specific to each State. In addition, our regulatory staff must have highly specialized backgrounds and

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expertise in well drilling, oil and gas production, law enforcement, and property rights as they apply in each specific State. A one-size-fits-all Federal approach would not be as effective or efficient in accommodating those unique issues.

Hydraulic fracturing is an example of the adaptability of State regulations in addressing emerging technologies. Michigan has had over 12,000 wells hydraulically fractured, starting back in 1952. We have not had one incident of environmental contamination related to hydraulic fracturing. In talking to my counterparts in other States, they have the same conclusion. None of us have seen a direct impact or direct contamination of groundwater from hydraulic fracturing. There are some other issues associated with it that have to be managed properly. One of those is management of wastewater, the flow-back water that comes back out of the well. Another one is the increased water withdrawals that are necessary for large-scale fracturing which we are seeing in recent years.

Michigan issued special requirements for evaluation of water withdrawals. We use a Web-based assessment tool, and we issued requirements for monitoring and reporting of hydraulic fracturing operations. We have also begun posting chemical additive reports on our Web site. Oil and gas agencies in other States have taken similar steps to address those same issues.

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While we are unique, we also -- States also have elements in common with each other, and that is where the IOGCC and Groundwater Protection Council come in. They are very effective in helping us to coordinate our efforts and increase our effectiveness. The IOGCC provides a forum for States to share ideas, it has a training program, provides model statutes, coordination, and they have an inspector certification program.

Groundwater Protection Council developed FracFocus in cooperation with the IOGCC, the nationwide Web-based registry for reporting of chemicals used in hydraulic fracturing. It is used by 10 States currently. We also, the IOGCC, supports underground injection peer-review program; the RBDMS, risk-based data management system, and we are evaluating the use of that RBDMS to help provide information to the Energy Information Administration.

Mr. Shimkus. Mr. Fitch, if you can just sum up real quickly. We are going to have time for questions, so I think we will be able to --

Mr. Fitch. That is all I have to say. Thank you very much.

[The prepared statement of Mr. Fitch follows:]

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Mr. Shimkus. Thank you.

I would now like to turn to my colleague and friend Diana DeGette from Colorado to introduce our next member of the panel.

Ms. DeGette. Mr. Chairman, I am really happy to welcome Matthew Lepore from Colorado. He is the director of the Colorado Oil and Gas Conservation Commission, relatively new to that post, and he has been very busy since he got there. We have had two rule changes, and he is working hard to implement all of the rules.

Colorado has a really innovative way that we are trying to grapple with this new oil and gas development, particularly hydraulic fracturing. The Oil and Gas Commission has been working with a coalition that includes environmentalists as well as the industry. While I don't always agree 100 percent with all the rules they are promulgating, I think they are working hard, and I think he is a great witness to the high standard that some States like Colorado, of course, has always had.

So thank you for coming, Mr. Lepore. We are looking forward to hearing your testimony.

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STATEMENT OF MATTHEW J. LEPORE

Mr. Lepore. Thank you very much, Mr. Chairman.

Thank you very much, Ms. DeGette, I appreciate that a great deal.

I am pleased to be here to provide our perspective on how the State of Colorado regulates oil and gas exploration and production to develop our important indigenous resources responsibly and in a manner that protects our environmental resources.

I am here today on behalf of both the State of Colorado and the Groundwater Protection Council. The Groundwater Protection Council was formed in 1983. It has 43 member States, and its purpose is to -- its members include organizations of environmental underground injection control, source water, groundwater, and oil and gas regulatory agencies. GWPC promotes the use of best practices and fair but effective laws regarding comprehensive groundwater protection. Among many other projects intended to protect groundwater, GWPC, in conjunction with the Interstate Oil and Gas Compact Commission, manages FracFocus, the national hydraulic fracturing chemical registry, which I will discuss in greater detail below.

Colorado has a very long history of oil and gas production. Our first well was drilled in 1862. It was one of the first wells in the

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country. Today we have 50,265 active oil and gas wells. We add about 2,000 a year and will continue to do so for the foreseeable future. In 2012, we produced a record-breaking, for Colorado, 47 million barrels of oil. At the same time, we have a thriving resort and tourist economy. Our rugged mountains, clear streams, and abundant wildlife are an essential part of our heritage.

I would like to focus for just a minute or two on some of the rules that Colorado has adopted, specifically in the last 15 months. Starting in December 2011, Colorado adopted the most progressive frack fluid chemical disclosure rule in the country up to that time. It requires operators to disclose all of the chemicals used in their frack fluid. All those chemicals are posted on FracFocus and are available for public review. Colorado's rule has been imitated by several States, including Pennsylvania, Ohio, and Tennessee, and much of BLM's proposed regulation looks to Colorado for a model.

In January of this year, last month, we adopted a groundwater monitoring requirement. Beginning on May 1st all new wells drilled in Colorado will be required, the operator will be required to take a pre-drilling groundwater sample and two post-drilling groundwater samples so that we can understand what baseline conditions are and have an opportunity to see if any drilling has impacted any of those groundwater resources.

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And, finally, Monday of this week, although it seems much longer ago, we adopted a rule setting new setback distances, the distance between occupied buildings and wells, after about a year-long stakeholder process.

My agency has 76 full-time employees dedicated to protecting the environment and seeing that our resources are responsibly developed. Many of those have advanced degrees, including Ph.D.s, master's degrees, we have geochemists, we have hydrologists, we have environmental specialists. There is no one on my staff who is interested in seeing oil and gas development adversely impact our environment.

In the limited time I have left, I would like to show you a couple of pictures and talk about some of the tools that we use to regulate efficiently, effectively, and transparently.

If you can go to the next slide for me, please. We have -- these are hard to see. This is an interactive map that is available on our Web site, that is publicly accessible. This map has 125 layers of information. What you are looking at there is a picture of Weld County, Colorado, and all of the wells in that particular section. You click on any one of those links, you will find out everything you want to know about that well, when it was drilled, how deep it is drilled, how it was completed, how much production there has been, whether there

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has been an inspection, a violation, an enforcement action.

If I could have the next slide please.

I am going to keep going, skip a couple, please. One more. That is a production report. This is a FracFocus link. You can get there directly from our Web site. Again, for any well in the State, you can pull this up. If it was stimulated since the rules became effective, you can find out what was used in the frack stimulation fluid.

Next slide please. I want to go one more. Thank you.

This is what we call an e-form through GWPC. GWPC developed for us an electronic form submittal and management system so that an operator's permit to drill is submitted electronically, and this is an inspection report. So we generate electronic inspections, we send these to the operators directly. Tremendously efficient and effective regulatory system developed by GWPC for us.

My time is up. Thank you very much.

[The prepared statement of Mr. Lepore follows:]

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Mr. Shimkus. And I thank you. One of the things we did do in the last Congress, do an e-manifest issue which I think was a bipartisan bill that actually passed Congress, signed into law, so we appreciate that.

Now representing the Association of State Drinking Water Administrators, Sarah Pillsbury, who is the administrator, Drinking Water and Groundwater Bureau of New Hampshire's Department of Environmental Sciences.

Ma'am, welcome, you are recognized for 5 minutes.

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STATEMENT OF SARAH PILLSBURY

Ms. Pillsbury. Great, thank you. And I don't have any pictures, but every once in a while I will hold this up, just to remind everybody how important public drinking water is.

I thank you very much for this opportunity to testify. I represent the Association of State Drinking Water Administrators, I am the current president, and our members include the 50 States, the District of Columbia, five territories, and the Navajo Nation.

State drinking water programs are fully committed to their public health mission. States recognize that the health and well-being of their citizens and communities are dependent on receiving safe and reliable drinking water. It is important to remember that the State drinking water program personnel live and work in the communities served by the programs they administer. It is personal to us.

State personnel are highly qualified to implement the public drinking water programs. They fully understand the multifaceted nature of the challenges they face and what is needed to protect the sources of drinking water, adequately treat those sources, and get good water to the tap. Our work is especially challenging in light of extremely constrained resources for the State drinking water programs.

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State personnel also have the on-the-ground knowledge about how to best tailor Federal programs to States' needs and conditions. In brief, the key role of the State drinking water programs are to inform water systems of what the requirements are, make sure they have the capabilities to implement those requirements and comply, and then giving ongoing oversight to ensure that that compliance continues over time.

Turning to the EPA-State partnership, we believe it should be and currently is one of mutual respect that allows each partner to do what they do best. For EPA, this involves establishing overarching national requirements along with needed tools and information. States believe that the Federal requirements need to be based upon State input so that implementation is both possible and practical. For States, this partnership entails implementing Federal requirements in a manner consistent with local conditions and realities.

Two recent examples of where this partnering has really led to great results, the first is the total coliform rule, the revised total coliform rule, and the second is the agency's decision to allow electronic distribution of our consumer confidence report.

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Ms. Pillsbury. To appreciate the challenge of ensuring compliance with the Safe Drinking Water Act, it is important to understand the universe of water systems that the act covers, from restaurants to manufactured housing parks to America's largest cities.

While most Americans receive their water from large community water systems, most of the 53,000 community water systems serve less than 3,300 people. In my State of New Hampshire, of the 700 community water systems, 82 percent of those serve less than 500 people. And those systems have to meet basically the same requirement as my largest city. So States must employ strategies for addressing systems of all sizes and capabilities.

In addition, States are challenged by complex regulations, many of which are risk-based and system-specific. That is really a good thing in terms of the water that gets delivered, but it can be challenging to implement.

Finally, we are challenged by an ever-increasing number of emerging contaminants and the need to work with our partners on protecting the sources of drinking water.

Certainly, one of the most multifaceted source-protection

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challenges currently is the rapid expansion of hydrofracturing to extract oil and gas. We understand that State oil and gas programs have been working diligently to provide needed oversight of these activities. We await the results of EPA's studies to help shed light on the relationship between hydraulic fracturing and the sources of our drinking water and whether additional support of the States is necessary.

One last programmatic responsibility worthy of mention is the need for States to continue their work on emergency preparedness and response, whether the emergency is rooted in terrorism, vandalism, natural disasters, or cyber intrusions is the latest.

As I mentioned earlier, State drinking water programs are constrained by lack of resources. State budgets are under extreme pressure and are unable, often, to bridge the gap between the currently inadequate Federal funding and the amount of funds that is actually necessary to implement the Federal requirements.

The Public Water Supply Supervision grant is the primary, and in some cases the only, Federal funding source for the State. It has been flatlined at roughly \$100 million for several years, whereas about twice that is needed. And we understand that this subcommittee has no jurisdiction over appropriations, but we believe that you are key and that your support is key to get that funding increased to where

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it needs to be to be adequate.

So, in summary, States are doing a remarkable job, all things considered, and are carefully setting priorities to help ensure that public health protection remains preeminent. A strong drinking water program supported by the Federal-State partnership and adequately funded by Congress will ensure that the quality of drinking water in this country remains safe, no matter where we live or work or play.

Thank you.

Mr. Shimkus. Thank you.

[The prepared statement of Ms. Pillsbury follows:]

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Mr. Shimkus. Now I would like to recognize Mr. Jeffrey Steers. He is here on behalf of the Association of State and Territorial Solid Waste Management Officials. He works as the director of the Land Protection and Revitalization Division for the Virginia Department of Environmental Quality.

Sir, welcome. And you are recognized for 5 minutes.

STATEMENT OF JEFFERY STEERS

Mr. Steers. Good morning. And thank you, Chairman Shimkus and members of the subcommittee, for allowing me the opportunity to testify this morning.

My name is Jeffrey Steers, and I am president of the Association of State and Territorial Waste Management Officials and am testifying on behalf of the organization. Our association represents the waste management and remediation programs of the 50 States, 5 territories, and the District of Columbia.

I would like to preface my remarks by commenting that our organization has a positive working relationship with U.S. EPA. Our collaborative efforts and problem-solving should not be underestimated. However, it is appropriate to have a conversation about the role, the significant role, that States play in regulating

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and protecting the environment, which is oftentimes understated.

In implementing EPA's delegated programs, such as in the hazardous waste and underground storage tank programs, States develop regulatory programs and approve permits, conduct inspections, provide compliance assistance, and, yes, take appropriate enforcement action when necessary. Implementing these programs, however, oftentimes involves duplication of effort and resources. In carrying out our responsibilities under these Federal programs, State management and cleanup programs have identified opportunities to gain efficiencies and work together to alleviate such duplicative energy.

To illustrate this point, I would like to provide three examples: risk-based planning, area-wide approaches to remediation, and leveraging resources in voluntary cleanup programs.

Let me begin with the value of State-based risk planning expertise. States are in a unique position to evaluate the specific conditions of how those conditions relate to the surrounding area. Having the knowledge and experience to assess environmental population and economic factors associated with a site make a risk-based approach to planning and prioritization possible.

States are similarly better suited to assess risk and set priorities on permitting of inspections for regulated facilities. And the results thereby allow States to make better use of their resources.

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The regional knowledge and experience that the State environmental programs possess is vital in establishing the requirements for the protection of our citizens.

Two States recently completed a 3-year pilot project on the benefits of a risk-based inspection planning strategy. Rather than using traditional models of a one-size-fits-all approach to targeting inspections, we looked at several opportunities to target specifically those high-risk facilities where it may have had poor performance in the compliance histories or are located in environmentally sensitive areas.

The discoveries that we found through these pilot projects included understanding that there were greater violations found during inspections at the higher-risk facilities and the opportunity for inspectors to work closer with the facilities to improve compliance rates over time.

With respect to area-wide approaches to remediation, State-specific knowledge and natural economic resources in surrounding sites that are contaminated are particularly beneficial for States. And they have the expertise to evaluate how remediation at multiple sites can be integrated to an area-wide approach.

The full advantage can be made of economic redevelopment opportunities, and it affords the opportunity to evaluate and recognize

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communities where they are often overburdened. It offers a more holistic approach to site cleanup and development.

For example, several States effectively leveraged resources and brought parties to the table to address contaminated properties and stream sediment using an area-wide approach. In Ohio, two rivers within the Lake Erie Watershed, the Ottawa and Ashtabula, are shining examples where Federal, State, local governments, private parties, and nonprofit organizations worked together using an area-wide approach to assess contamination, develop implementation, remediation, and restoration plans.

The State of Ohio was a driving force in collaborating, using its knowledge of local issues and understanding of economic and development interests to facilitate the investment of over \$50 million at dozens of sites and miles of contaminated river. The result in that watershed included restored habitat, creation of green spaces, and the construction of a world-class auto assembly plant on land that many had thought too blighted and contaminated to ever be reused.

Regarding the leveraging of resources, States are able to develop voluntary cleanup programs and, doing so, leverage Federal funding to achieve results that benefit business, create parks, and build community resources. Brownfield programs are highly successful, due in large part to the flexibility that can be achieved when business

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and developers work together.

In Virginia, for example, in my home State, we leveraged Federal brownfield grant funds and developed an economically distressed area of Roanoke, Virginia. The State played a critical role in bringing the parties together and creating synergies that transformed 23 acres of blighted and contaminated land into vibrant medical research facilities with over \$200 million in public and private investment.

The time-critical development project not only relied upon the State to help bring the parties together, but it also necessitated the use of flexible approaches in assessing and remediating pollution on the property. Virginia's voluntary cleanup program gave developers the certainty they needed with respect to future liability and, thus, allowed for the private funding of the project.

In conclusion, ASTSWMO's membership takes seriously its responsibility to protect the environment and human health, and we do so in the face of ongoing reductions in Federal budgets and funding -- a paradigm shift from Federal command and control policies that limit the States' being able to carry out our mission as needed. We will work continually to collaborate with U.S. EPA and work with the local level at managing risk.

Thank you.

Mr. Shimkus. Thank you, Mr. Steers.

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[The prepared statement of Mr. Steers follows:]

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Mr. Shimkus. I would now like to recognize Ms. Teresa Marks, who is director of the Arkansas Department of Environmental Quality, on behalf of the Environmental Council of States.

Welcome, ma'am.

STATEMENT OF TERESA MARKS

Ms. Marks. Thank you, Mr. Chairman and members of the committee. Thank you for inviting me here today to discuss the role of State environmental agencies in protecting our Nation's environment.

As the chairman told you, I am representing the Environmental Council of States, or we refer to them as ECOS, whose members are the leaders of the State and territorial environmental protection agencies. I am the current president.

My comments are primarily directed at the Federal programs enacted through legislation by Congress and administered by the United States Environmental Protection Agency. These include, for example, the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act, and the Resource Conservation and Recovery Act. There are certainly other applicable statutes, but these are the four that are most integral to our environmental protection efforts.

EPA and the States each play a complementary role in administering

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these laws. In general, EPA has oversight and rule issuance authority, while the States implement the day-to-day activities needed to ensure the programs are carried out on the local level.

States obtain the authority to implement the Federal programs from EPA through a delegation process. Delegation occurs once for each program and is updated as new rules are issued or changed.

Nearly every State has taken delegation of nearly every such Federal program. As of 2013, ECOS and EPA agree that 100 percent of the Clean Air Act programs are delegated; all but one State has the Safe Drinking Water program; all but two have the RCRA or the hazardous waste program. There are still four States that do not have delegation for the Clean Water Act discharge permitting program. You can see that the States assumed operation of a Federal environmental program in 193 out of the possible 200 cases, or 96.5 percent of the time.

While operating these programs, the State agencies issue permits, conduct inspections, monitor pollutants, conduct enforcement, and work on many other related matters, such as setting standards for watersheds. States conduct about 96 percent of the inspections at regulated facilities. Pursuant to ECOS data, when violations are found, States conduct about 90 percent of the enforcement cases.

States are the source of about 94 percent of the data found in EPA's six biggest air, water, and waste databases. The States also

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review and issue nearly all of the water, air, and waste permits across the Nation.

The States' implementation of the delegated programs provides benefits to government, the regulated community, and our citizens. States pay for the majority of the cost of operating these delegated programs, thereby saving the Federal Government millions of dollars. ECOS has no firm estimates of the cost to the Federal Government if it were to operate these programs, but we are confident it would be significantly greater than the current EPA budget.

The operation of the environmental programs by the States also provide for a more efficient and effective regulation of environmental issues, in that the States are more familiar with their regulated industries and they are located geographically closer to them, thereby providing more timely compliance assistance in response to citizen concerns and complaints. In addition, States are generally able to provide a quicker turnaround on permit issuance, renewal, and modification.

States contribute to our successes on environmental protection in other key ways. We are often the first to see the impacts of new pollution sources, and therefore we react quickly. We often develop innovative ways to address environmental challenges. We can sometimes tailor environmental rules to fit local conditions. Some States may

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also implement more stringent rules in cases where such a rule is needed to protect a State resource that is not addressed in national legislation.

Both ECOS and EPA understand that a cooperative relationship is important to the successful implementation of national environmental policies. States are coregulators with EPA, and in addition to implementing the Federal laws, they also implement their own State laws.

While States and EPA agree on how to address most matters, our different roles mean that sometimes States and EPA see our mutual challenges somewhat differently. Sometimes these views are driven by concerns that more is being asked of the States without the provision of new resources. Sometimes a State may think an EPA-issued rule or policy would result in a fundamental shift in the State-Federal relationship. We usually work through these differences in a professional manner, and we are usually successful in resolving them.

As mentioned previously, State environmental agencies are coregulators with the U.S. Environmental Protection Agency. Both agencies are key to our joint mission to protect human health and the environment. I hope I have given you the information you need to understand how vital the State role is and how much we, as States, contribute to this joint mission.

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Mr. Shimkus. Thank you very much, ma'am.

[The prepared statement of Ms. Marks follows:]

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Mr. Shimkus. And now I would like to recognize, on behalf of the National Caucus of Environmental Legislators, the Honorable Pricey Harrison. She is from the North Carolina House of Representatives.

Ma'am, welcome. You are recognized for 5 minutes.

STATEMENT OF THE HONORABLE PRICEY HARRISON

Ms. Harrison. Thank you, Mr. Chairman and members of the committee, for the opportunity to speak to you today.

I am Pricey Harrison, serving in my fifth term in the North Carolina House. I am also here as a representative of the National Caucus of Environmental Legislators. I am on their board of directors. It is an organization of 850 environmentally progressive legislators from around the country. It is a bipartisan organization.

On the topic of today's hearing regarding the States' role in protecting the environment under current law, I think most of us agree that the States play an important role.

My own State of North Carolina has had a tradition of environmental leadership and passed landmark legislation in 2002 called the Clean Smokestacks Act that established an ambitious timetable for reducing emissions from our coal-fired power plants and allowed our utilities to stagger costs of pollution-control

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technologies over a longer period while keeping State rates low and providing significant health benefits.

But the States can't do it alone. One only has to think back to the Cuyahoga River on fire and cities cloaked in smog as evidence of the inability of some States to protect the public health and environment of their citizens. It was during that time in 1970 that the National Environmental Policy Act was passed and the EPA was established with overwhelming bipartisan support. Other environmental measures were also enacted, such as the Clean Water Act, the Clean Air Act, and the Safe Drinking Water Act.

I think Congress recognized the importance of a Federal role in providing a backstop of protection, especially in cases where States are incapable, unable, or unwilling to act to protect the public health and the environment. And, as Congressman Tonko pointed out, we know pollution doesn't observe political boundaries and we are all downwind or downstream from pollution sources.

My testimony focuses on two areas where our State needs help from the EPA and other Federal agencies, and that is coal ash and hydraulic fracturing.

North Carolina ranks tenth in the country in coal ash production. We have more high-hazard ponds than any other State, yet we have a complete absence of State regulations for safe disposal or containment

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of the sometimes toxic product. We have no liner requirements for our ponds; no closure, siting, or structural stability requirements; no reporting requirements; no emergency action plans; no plans for dealing with legacy ponds despite the fact that several coal-fired power plants are converting to cleaner-burning natural gas. Our lax regulation of coal ash has resulted in seepage and exceedances of a variety of toxins, from arsenic to selenium to boron to cadmium, and the list goes on.

I wish we were more like Maryland. I have tried for years since the Kingston spill brought attention to the issue in our State to enact legislation for safer regulation of coal ash and haven't been able to even get a hearing, and that includes when my party was in charge of State government. I think that speaks, in part, to the enormous influence of the regulated industries at the State legislatures, both through their lobbies and campaign support. I think we are more vulnerable to those pressures and less equipped to deal with them and the complexities in many of these complicated environmental issues.

Regarding fracking, we are in a similar position. We have had very little history of extractive industries in our State, and, prior to last summer, fracking was prohibited. But we have rushed to permit fracking and established the Mining and Energy Commission and charged them with establishing rules over the next 18 months. But our agencies are ill-equipped to do the work needed to properly regulate and enforce

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natural-gas drilling, and strong Federal oversight is needed.

It is a problem for us that the industry is exempted from so many Federal protections. We have had a significant change of leadership in our State in the past 2 years, and they seem to be seized with an enthusiasm for deregulation. We have undertaken a number of measures to weaken environmental protections.

Legislation -- and there was a chart included in your handouts, and I am sorry I don't have a slide, but this is what rulemaking is like in North Carolina now for environmental and public health regulations. That legislation contained language which is significant which prevents any State regulations from being stronger than any Federal standard. And that means we are completely dependent on the Federal Government for setting standards to protect our public health and our environment.

Last week, the Senate passed legislation that wipes out the membership of many of our environmental commissions as well as our utilities commission and removes conflict-of-interest restraints and designated seats for specialized and diverse knowledge and experience. We have also had legislation that will sunset all rules in our administrative code, and they will have to be rejustified to be reenacted.

Budget issues have been challenging in North Carolina, as well.

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We have slashed our Department of Environment's budget by 40 percent off of 2005-2006 levels, and our State is not alone in this trend.

So I am here today to plead with you to let the EPA do its job. Our State is not unique in its inability or intransigence to protect the public health and environment of its citizens from issues relating to coal ash and fracking. We need the involvement of the Federal agencies. It is vital that the Federal Government be allowed to establish at least minimal standards of health and safety regulations to ensure effective oversight of State agencies.

Thank you for the opportunity.

Mr. Shimkus. Thank you, ma'am.

[The prepared statement of Ms. Harrison follows:]

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Mr. Shimkus. And now I would like to recognize our last member of the panel, not least, from the National League of Cities, the Honorable Michael Sesma, who is a council vice president, city of Gaithersburg, Maryland, and has some friends in Edwardsville, Illinois, which is the county seat of my home county. So I may be generous a few seconds with time.

So welcome.

STATEMENT OF THE HONORABLE MICHAEL A. SESMA

Mr. Sesma. I will probably need it. Thank you.

Good morning, Chairman Shimkus --

Mr. Shimkus. Extend your mike.

Mr. Sesma. -- Ranking Member Tonko, and members of the subcommittee. I am Michael Sesma, council member of the city of Gaithersburg, Maryland.

Mr. Shimkus. Will you either pull it closer or make sure the light is on?

Mr. Sesma. All right. The light is on. It is probably going to count against my time.

Mr. Shimkus. It is starting to come now.

Mr. Sesma. All right. Thank you.

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Mr. Shimkus. Just get a little bit closer, and I think we will all be happy.

Mr. Sesma. Okay.

I appreciate the opportunity to share our perspective. I am here today on behalf of the National League of Cities, the oldest and largest organization representing cities and towns across America. I appreciate the opportunity to share our perspective on the important role local governments play in protecting the environment.

We have heard a lot about States this morning. States can't do it without the cities being part of it. As implementers of State and Federal environmental policies and programs and with authority over local land use, zoning, and code development decisions, cities and towns are key partners in ensuring that the health, safety, and welfare of the public is protected.

Many local governments, including my city of Gaithersburg, are at the forefront of sustainability and planning, taking action to make our communities vibrant places to live, work, and play. America's cities and towns serve as the first line of defense and innovation for environmental protection. I would like to highlight some of the approaches that Gaithersburg has used as an example of the role cities and towns, urban and rural, large and small, have in protecting the environment.

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While not currently required by the Federal or State government, the city of Gaithersburg has taken steps to minimize storm-water runoff and encourage residents to be active participants in protecting our watershed and public and private property. We have a popular RainScapes program that rebates rain barrel use and conservation landscaping to keep our neighborhoods green and to prevent rainwater from running into the storm drains.

We have constructed "green streets" to achieve the same thing. We have been a Tree City USA since 1990, but Gaithersburg is becoming more urban. As you know, urban forests contribute significantly to energy conservation and overall environmental quality.

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DCMN HOFSTAD

[10:30 a.m.]

Ms. Sesma. So our forest conservation plan allows us to protect our urban tree canopy even as we promote development throughout the city. We try to replace every lost mature tree with a new tree.

In 2007, the city adopted a resolution requiring LEED Silver certification for all future municipal buildings. We were one of the first cities in the country to enact mandatory green building requirements for both residential and commercial development. Happily, there was no resistance from the development community, and our approach has been good for business. Green buildings are going up throughout the city.

And Gaithersburg has the first youth center in the United States and the fourth building in Maryland to be certified LEED Platinum by the USGBC.

Cities are committed to working in partnership with the EPA to develop strategies and enact policies that enhance our environmental resources and create viable communities for future generations. These efforts are aided by several positive steps that EPA has taken in recent years that strengthen the Federal, State, and local partnership. I

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would like to touch on three of these.

The first is the federalism consultation process. We thank EPA for lowering the threshold for triggering the State and local consultation process from a threshold of \$100 million to \$25 million. Since lowering the threshold for triggering the federalism consultation process, State and local governments have been consulted on a more regular basis on issues of mutual importance. And we firmly believe that early consultation will lead to better results and strengthen the partnership between Federal, State, and local government in achieving the environmental goals of the EPA.

In regulatory review and reform, an Executive order calling on Federal agencies to identify opportunities for reducing administrative and regulatory burdens on local government has saved cities money. As cities and towns continue to recover from the economic downturn, every dollar counts, and this flexibility is a welcome means of lessening the financial burden on local governments.

Finally, EPA's integrated municipal storm-water and wastewater planning approach planning approach framework and the recent memorandum on assessing financial capability from Municipal Green Water Act requirements serve as acknowledgment that local governments face difficult financial conditions that impact their ability to meet the Clean Water Act obligations. By allowing an integrated planning

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approach, local governments, not the agency, can decide how they will meet the CWA requirements. This flexibility allows for better compliance, better planning, and more efficient spending.

So cities and towns across the country continue to have concerns about the affordability of meeting CWA requirements. In Maryland, the implementation of storm-water management programs has a direct impact on the quality of water in streams and rivers that flow into the Chesapeake Bay. And a healthy, clean Chesapeake Bay is vital to the economic health of the mid-Atlantic States. While the CWA mandates may be necessary to maintain and improve water quality, they come with high costs to local governments and taxpayers.

For example, under our next permit cycle, Gaithersburg must retrofit 20 percent of its impervious acreage at a cost that is estimated to be about \$127,000 per acre. And the projected cost for Gaithersburg to do this over 576 acres is \$73 million. Our operating budget for fiscal year 2013 was \$46 million. Montgomery County in Maryland has a bigger problem. About 20 percent of their budget must be used -- or a proportion of their budget of \$4.6 billion will be spent to retrofit their impervious services before 2020.

So in response to local government concerns about affordability and the fiscal impact of regulatory compliance, EPA issued a memorandum on the fiscal burdens of compliance. Local governments will continue

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to dialogue with EPA on affordability. And we commend EPA for both the integrated planning effort and local government affordability dialogue that will serve to strengthen the intergovernmental partnership.

However, this integrated planning framework can still be improved, and we urge EPA to include drinking-water regulations in the planning framework.

So I will just cut to the quick chase and the major reason that we are here. And one is to call on Congress some support existing and new financing mechanisms for funding water infrastructure projects. Cities have been forced to contend with significant decreases in intergovernmental revenue, including Federal, State, and county aid, adding to the fiscal problem.

Elected officials are making difficult decisions and working hard to find innovative solutions to re-energize their communities. And without the resources to do that, it will be difficult to implement the objectives of the Safe Drinking Water and the Clean Drinking Water Act. So there is a need for new financing -- for financing mechanisms.

As the administration and Congress seek to identify savings and new revenue to reduce the deficit, the Federal income tax exemption on interest paid on State and municipal bonds is under threat. Tax-exempt municipal bonds are --

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Mr. Shimkus. Mr. Sesma, I have been overly generous --

Mr. Sesma. Thank you.

Mr. Shimkus. -- with a minute more than the other --

Mr. Sesma. A minute more. Thank you.

Mr. Shimkus. No, no, no. I --

Mr. Sesma. Thank you. I end my remarks.

Mr. Shimkus. Thank you very much.

[The prepared statement of Mr. Sesma follows:]

***** INSERT 2-1 *****

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Mr. Shimkus. Now I would like to recognize myself for 5 minutes for questions. The first question goes to Mr. Fitch.

Please explain the Risk-Based Data Management System. And can you give me a specific example of how this tool aids in the regulatory effort?

Mr. Fitch. The Risk-Based Data Management System is a kind of a common platform that is used by many of the oil- and gas-producing States. We enter all of our data into it, all the information on individual wells, the drilling, construction, production history. And it can be linked to other records associated with the well. It helps us to manage our internal data, and it also is a good portal for public or industry, any interested party, to access that data.

Mr. Shimkus. Thank you.

And, Mr. Lepore, how did the Risk-Data Management System help you manage the delicate balance between water and energy?

Mr. Lepore. Mr. Chairman, as Mr. Fitch alluded to, the RBDMS allows us to track a vast amount of information, tie that information to specific wells, search that information, keep that information publicly available. So I guess all of those tools combined can be used by someone looking to that energy-water balance as they want to use that information.

Mr. Shimkus. And is water data shared across State lines?

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Mr. Lepore. It certainly can be. One of the slides that I didn't have time to show you is we have an environmental database now that went live in September of 2012. Go to that database, click on a well, you can find out everything there is to know about that particular groundwater well. Again, fully publicly accessible, so it could be shared across State lines.

Mr. Shimkus. Ms. Pillsbury, do you agree? Do you agree with the comments of Mr. Lepore?

Ms. Pillsbury. That we are able to get information from other States about water and water quality? Yes, I agree with that.

Mr. Shimkus. Great. Thank you.

Mr. Steers, do you believe that with the Federal standards set by Congress in statute rather, than set by the EPA, that you could establish, implement, and enforce a permit program that meets the requisite level of protection established by the Federal Government?

Mr. Steers. Mr. Chairman, yes, I do believe the States are capable. We have a significant history over the last 20 to 30 years of permitting and implementing standards and using the flexibilities and understanding local conditions on how we apply permitting program across the Nation.

Mr. Shimkus. And, Ms. Marks, if EPA has authority to take over control of a State permit program when the permit program isn't meeting

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a minimum Federal standard, would you consider that backstop authority for the EPA?

Ms. Marks. Yes. I do think that is a backstop authority. And it is rarely exercised. Fortunately, it hasn't had to be.

Mr. Shimkus. And going back to Ms. Pillsbury, your testimony talks about other partnerships for training and technical assistance. Could you please discuss these and what are you trying to obtain from them? And how do you think they will help your members with the mission?

Ms. Pillsbury. Sure. On both the national organization and State level, two of the big partners are the National World Water Association and the Community Assistance Program. And they basically put boots on the ground to help water systems obtain financing, meet compliance, those kinds of things.

In addition to that, up until pretty recently, there were both finance centers and technical centers that EPA sponsored. And for us in New Hampshire, arsenic was a huge issue, and that technical center at University of New Hampshire was critical in figuring out what was the least-cost way to these small, struggling systems to meet arsenic compliance.

Mr. Shimkus. And I am going to wrap up. I appreciate the testimony. I think it is a very good panel.

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I think it is safe to say that the States, you know, are doing most of the work. I am a former infantryman, so I would call you the boots on the ground and the infantry of protecting our citizens and their air quality and their environment and the like. And I want to thank you for your service.

And I yield to the ranking member, Mr. Tonko, for 5 minutes.

Mr. Tonko. Thank you, Mr. Chair.

And I heard a number of concerns about financing, about funding streams from the Federal level. Over 40 percent of EPA's budget is typically passed through the agency to the States to make their work possible. And, according to EPA, 75 percent of that volume of its State cleanup grants and 80 percent of its State prevention grants support the salaries of State staff, so that that could mean huge cuts and losses at your important State agency level.

Ms. Pillsbury, you represent the State officials trying to provide all of our constituents with safe drinking water. You held up a great visual. According to EPA, if the sequester goes into effect, more than 100 water quality protection and restoration projects would be eliminated. What does that mean from your perspective in trying to provide safe drinking water?

Ms. Pillsbury. Well, the Safe Drinking Water Act is really structured to be a multibarrier approach to safe drinking water. So,

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you know, you start with a source, the treatment, the distribution system, and then monitoring and getting information out there. That source piece of it, making sure that the water is clean to begin with, is really critical. Trying to treat it at the public water systems is very difficult, sometimes impossible, oftentimes very expensive.

So we like the Clean Water Act. And there is actually work in progress between Groundwater Protection Council, as do our association, the State Drinking Water Administrators, and the Association of Clean Water Administrators to look at what tools can be brought to bear under the Clean Water Act to protect the sources being used by public drinking waters.

Mr. Tonko. And, Ms. Marks, you represent the State officials who work every day to address cleanup of contaminated sites. If the sequester, again, goes forward, we are told that nearly 300 contaminated, leaking underground storage tanks would not be cleaned up. Nearly 600 contaminated properties would not get cleaned up under the voluntary cleanup program.

What does that mean to the work that is assigned you and your colleagues?

Ms. Marks. Well, the Federal dollars that come in to do cleanups are absolutely vital, and it would be devastating to our programs to lose that assistance. Certainly, the States provide a certain amount

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of that funding, but the Federal funding is actually integral to getting those sites cleaned up.

Mr. Tonko. And, Ms. Harrison, as a State legislator, you have to deal with State budgetary issues every year. I served for 25 years in State government in New York; I know the struggles States are facing.

Are the States prepared to step in and make up for any loss of funding if that should be the result here from Washington?

Ms. Harrison. The short answer is, no, sir. I think we have made significant cuts to our department budgets already, and we have actually replaced a lot of the State funding with Federal funding and moved positions into federally funded positions. So I think any cuts would be devastating to our ability to protect the public health of our citizens.

Mr. Tonko. And, Mayor Sesma, you represent cities across the country. Can our cities absorb these costs if Federal funding is cut significantly? And what plans would perhaps States make to respond to the shortfall?

Mr. Sesma. Well, the intergovernmental revenue from State and Federal governments have caused other stresses on local budgets. That either means an increase in local taxes or an increase in fees or new fees, or projects don't get done or they don't even get planned.

So one of the big asks of the NLC is to continue to support the

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financing mechanisms that exist, and ask the Federal Government, Congress, to consider new or additional creative mechanisms that allow us to begin to deal with this infrastructure -- not just new infrastructure, but maintaining the existing infrastructure that is becoming obsolete and inefficient.

Mr. Tonko. Thank you.

It becomes clear to me that this panel is working hard every day to implement our environmental laws and doing a commendable job, but sequestration is an imminent threat. If these important programs survive sequestration, the budget here, Ryan budget, threatens to cut Federal funding even more drastically.

One of today's witnesses has suggested that the members of this subcommittee write to the Appropriations Committee and urge them to ensure adequate funding for these programs. I think that is a great idea. And I would like to pledge to work with our outstanding chair to convey that message to the appropriators. I hope that we can work together and make sure that we don't sacrifice public health and the environment with ill-considered budget cuts.

So thank you for your advocacy and your advice.

Mr. Shimkus. The gentleman yields back his time.

The chair now recognizes the vice chairman of the subcommittee, Mr. Gingrey, for 5 minutes.

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Dr. Gingrey. Mr. Chairman, thank you for the recognition. And since we are somewhat rushed for time -- I think votes are coming up pretty soon -- let me get right to my questions. And I would like to begin with Ms. Marks.

Ms. Marks, how much staffing and other resources would the EPA need to amass to replicate the technical expertise, the enforcement, and administrative efforts provided by the States for environmental and public health protection?

Ms. Marks. Since each State runs their own programs, it would be difficult to estimate that. But I can tell you from Arkansas, which is a small State, we employ anywhere from 375 to 400 people. We have expenditures of over \$50 million a year.

And even though we do operate State programs in addition to the Federal programs, if EPA came in they would have to pick up those State programs, such as landfills. You can't leave landfills unregulated. So they would have to pick up beyond what they are currently overseeing.

Dr. Gingrey. So, basically, lots of boots on the ground and lots of expertise.

Ms. Marks. Yes, sir, absolutely. It would be a tremendous, massive effort and change in the Federal organization.

Dr. Gingrey. Thank you. Thank you so much.

And now I would like to move to a couple of questions for

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Mr. Steers.

Some have argued that States use variances as a, quote, "copout" for enforcing strict environmental standards in their States. Do you agree with that, Mr. Steers?

Mr. Steers. No, I do not. I think that variances are a necessary --

Dr. Gingrey. And if you don't mind, also just explain what they are, how that works, and --

Mr. Steers. Sure. Variances are a regulatory process that States use in order to adapt local conditions and site-specific risk that may be present that the regulations may not account for, and the ability to allow facilities to operate at a different standard based on those local conditions.

Variances are not a copout, and they are taken seriously by the States, inasmuch as they are needed in order to look at the differences in the way that regulation is applied across the country.

For example, groundwater protection standards and how we regulate groundwater in the eastern part of the United States around the landfill where there may be shallow aquifers is not necessarily the same as you would have out west or in the desert where groundwater may be several hundred feet below the surface. And so you need to be able to take into account the local geologic conditions when you are applying a

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one-size-fits-all national standard.

Dr. Gingrey. So that basically is what you are talking about when you say "variances."

Mr. Steers. Variances, yes.

Dr. Gingrey. Thank you very much.

In my remaining time, I would like to conclude with one question for Ms. Pillsbury. Your testimony talks about tailoring of Federal regulations. This doesn't mean compromising water quality for consumers in that State, does it?

Ms. Pillsbury. No, it certainly does not. The ultimate compliance with whatever the regulation is is the compliance that we achieve.

There is in implementing pretty much any national regulation some discretion on the part of States about how best to do that given local circumstances. So that is really what I meant by saying "tailoring," to make it so that it is as practical to implement as possible.

Dr. Gingrey. Can you tell me the difference in tailoring and variances? Is there a distinct difference there?

Ms. Pillsbury. Well, "variance" I think is an actual term that is used in the rules and regulations. And so tailoring is more of a concept of making a national standard fit within your State and how best to implement it, how best to train people, you know, what kind

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of capabilities they are going to need to be able to meet compliance.

So we don't really do variances in the drinking water program that are allowed by statute, but we do a lot of tailoring to get the job done.

Dr. Gingrey. I understand. Thank you.

Thank all three of you.

Mr. Chairman, I would yield back.

Mr. Shimkus. The gentleman yields back his time.

The chair recognizes the gentleman from California, Mr. McNerney, for 5 minutes.

Mr. McNerney. Well, I think the chairman. And I want to congratulate you for your elevation and selection. And I look forward to working with you on a bipartisan basis to solving some of the problems that we are facing in this committee.

You know, I found the testimony on fracking, Mr. Fitch and Mr. Lepore, very informative. So thank you for coming, as all the witnesses.

One of the questions that I have that is sort of ongoing about fracking is, how important is complete transparency to public acceptance of fracking in local communities?

Mr. Fitch. I think transparency is a crucial element in the whole debate there. There is a lot of misunderstanding, frankly, on the part

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of the public about what fracking is and what the potential impacts are. There is a lot of suspicion about the chemicals that are used.

I think it is important for the States to get that information out there. In Michigan, we are going all over the State, my staff and I, giving presentations to kind of try to get the facts out there and hear people's concerns.

Mr. McNerney. Mr. Lepore?

Mr. Lepore. I would agree with Mr. Fitch's comments. I think transparency is critical. Building trust with our community members is critical. Imparting information is critical is a huge challenge.

To use one example, I think the term "fracking" has been used widely as sort of a substitute for all things oil and gas. And it is an ongoing challenge to try to parse those distinctions.

Mr. McNerney. I mean, it sounds to me like disclosure is something that the Federal Government could impose as a requirement on fracking nationwide. I mean, there are differences in terms of geologic formations, but disclosure is something that should be universal in all fracking requirements. Would you agree with that?

Mr. Lepore. Obviously, Colorado has made the decision that disclosure is important. And it was a long and lengthy conversation in Colorado. It started in 2008. There were a lot of concerns by operators with respect to trade secrets, in particular. And I think

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FracFocus is a tremendous tool that is available to all States. I think it is in operators' best interest, to be quite frank, to disclose the chemicals they use in frack fluids.

Mr. McNerney. Good. I agree.

Like Colorado, California, my home State, is water-bound. I mean, we always have to worry about our water sources. And one of the concerns I have about fracking is the amount of water that is used and what happens to that water after it is used. Is it reclaimed? Is it discarded into local aquifers?

How do we deal with the water issue in a State like California and Colorado?

Mr. Lepore. When you talk about how much water it takes to frack a well and you talk about several million gallons, it certainly seems like a big number. For the State of Colorado, the amount of water used totally for fracking is, we have calculated, at less than 1 percent. The vast, vast majority of our water is used for agriculture.

That said, again, I would say that reclaiming and recycling and reusing that water is becoming an entrepreneur's dream. There is a huge need to do that. And we are approached fairly regularly now -- we, the Colorado Oil and Gas Conservation Commission -- from businesses interested in instituting onsite recycling and reclamation and asking us questions about how that would be regulated and so forth.

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So it is an important issue. It is going to continue to be an important part of discussion. And we should encourage as much reuse as we can.

Mr. McNerney. So that is an area for innovation, then.

Mr. Lepore. Yes, sir.

Mr. McNerney. Recycling and recovering.

What about the water that is just discarded after fracking? I mean, is some of the water that is recovered just discarded into the aquifer? Or how is that managed?

Mr. Fitch. That so-called flow-back water has to be handled carefully because it does have some -- it may have some remnant contaminants it in from the hydraulic fracturing additives, and it may also may be picking up salts and compounds from that target formation.

In Michigan, it all has to be contained in steel tanks and injected into deep injection wells. And most States have similar methods for dealing with it.

Mr. McNerney. And so that is part of the transparency, is how that wastewater is finally disposed of.

Mr. Fitch. That is correct.

Mr. McNerney. That would have to be part of the transparency.

Mr. Fitch. Yes.

Mr. McNerney. Go ahead.

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Mr. Lepore. I think the disposal question, too, is one which highlights what we are talking about today, which are the differences regionally or locally. In Colorado, like Michigan, most of our exploration and production waste, when it is exhausted, is injected into deep disposal wells. Other States use different disposal methods depending on the geology and topography and so forth, including discharge to surface streams. So they have to deal with the waste the way that works for them.

Mr. McNerney. Thank you.

Mr. Chairman, I yield back.

Mr. Shimkus. The gentleman yields back.

Just for notification of how we are going to operate, we are going to try to finish 5 more, 10 more minutes of questioning. The two Texans, Mr. Barton will be next, then Mr. Green. I think Mr. Green and I have agreed to be the last guys out of here to hit the floor to vote. We would like to come back after the votes for those who still want to ask questions.

And, with that, I recognize Mr. Barton for 5 minutes.

Mr. Barton. Thank you, Mr. Chairman.

I have listened to all the testimony and to the questions that have been asked so far and want to go back to the purpose of the hearing. "The Role of the States in Protecting the Environment," that is the

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title of this hearing.

As I read the Constitution, it starts with three words, "We, the people," which means the power comes from God to the people. The people delegate some of that power to the States; States delegate some of their power to the Federal Government. And then the Tenth Amendment says that all powers that are not explicitly enumerated in the Constitution are reserved for the States or the people, respectively.

As is pointed out by the witness from Arkansas, who represents all the States, as I understand her role, the States are doing most of the work in actual environmental protection on a day-to-day basis. They use some Federal law, and, of course, there are State laws to do it.

So the issue before the subcommittee and this panel is really, who is going to set the policy? Who is best able to set the policy? Is it the Federal Government, top-down, or is it the people in the States, bottom-up?

And I listened, and with the exception of the gentlelady from North Carolina, I didn't hear too much complaint about the States being able to set the policy.

Now, I want to ask the gentleman from Colorado, do you think the Federal Government is better able to set the policy in your State than you and the legislature and the people of Colorado?

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Mr. Lepore. No, sir, I don't think so. I think that we have had a successful oil and gas commission in the State for 60 years that understands the distinctions not only of Colorado versus other States but in our different oil- and gas-producing basins. We have coal-bed methane, we have Niobrara shale, we have a variety of different geologies. We have a 60-year history of rules that have evolved over time as our understanding and as technology have evolved. So I think the Oil and Gas Commission is perfectly capable of setting policy.

I think there is a role for the Federal Government in research and other things that are a little bit beyond our reach in terms of the ability to finance those kinds of projects. But I think the States are doing a fine job.

Mr. Barton. As I understand the process in Colorado, these State regulations that have just been promulgated are the result of a process. There was a lot of stakeholder interaction, a lot of involvement with the people and the legislature and the industries, and it kind of evolved. And, finally, either there was a regulation issued by your agency or a law passed by the State of Colorado that you are implementing. Is that correct?

Mr. Lepore. That is correct, sir. What we adopted are rules of the agency that the commission itself adopted pursuant to our statutory authority. The stakeholder process for the setback rules, in

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particular, was a year long. About 11 separate stakeholder meetings over a period of 7 months, and then we moved into more formal rulemaking.

We had representatives from industry, of course, from environmental groups, from groups like homebuilders, agricultural interests -- very, very diverse. So everybody had an opportunity to be heard.

Mr. Barton. So not everybody is totally happy, but everybody had input. And you have a set of regulations now that seems to be working and seems to be successful. Is that a fair statement?

Mr. Lepore. I think that is a fair statement. I might add that I don't think anybody was totally happy. But, yes.

Mr. Barton. Now, the gentleman next to you, Mr. Fitch, represents the Interstate Oil and Gas Compact Commission, which is a voluntary association of State regulators and State governments. Is that not correct?

Mr. Fitch. That is correct, sir.

Mr. Barton. And you have provided technical information to any State who wishes on the various technical aspects of hydraulic fracturing. And in doing that, you have been able to use some research from various universities, like mine, Texas A&M, that could give States a technical basis on which to base their regulations. Is that not

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correct?

Mr. Fitch. That is correct. That is one of the great benefits of IOGCC, that ability to share information and coordinate between the States.

Mr. Barton. Now, is anybody complaining that that process is flawed or broken?

Mr. Fitch. No, sir. It has been very effective.

Mr. Barton. Mr. Chairman, I am going to yield back. But it would appear to me that the current law gives the States great flexibility, great opportunity. They can get research money and technical assistance from a number of sources, including the Federal EPA. But the basic policy decisions on these issues appear to me to be best made at the State. And the State seems to be using those authorities, if Colorado is any example, in a very fair and effective process.

And, with that, I yield back.

Mr. Shimkus. The gentleman yields back the time.

The chair recognizes the gentleman from Texas, Mr. Green, for 5 minutes, the former ranking member of this committee. Noted.

Mr. Green. When am I going to get my picture put up, Mr. Chairman?

Thank you, Mr. Chairman. I appreciate the panel and the

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questions.

We conveniently hear that uniform Federal standards are necessary whenever Federal legislators want to override State actions. However, isn't it accurate to describe most Federal environmental laws as creating a broad, overarching Federal framework, while delegating to the States the responsibility of creating specific regulations, regulations to reflect the realities of circumstances that differ in each State that may require different approaches?

And if you can't tell, I am from Texas also and served 20 years in the legislature. And, of course, we always have complaints about EPA, but we also know that our Texas Environmental Quality Commission and EPA work out the relationship that they have so that permits are issued, except now in carbon. But is that generally the State experience?

Mr. Fitch. I would say so. A lot of the States, including Michigan, had environmental regulations on the books before some of the major Federal legislation. So it is not like we have been lagging behind. But I think some of the Federal legislation did establish kind of a threshold or a standard that applies across the States, so it does encourage some consistency.

Mr. Green. But in every case I can think of, it is a partnership, though, between EPA and the local State regulator in actually issuing

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permits and enforcing it.

Mr. Fitch. Yes, it is.

Mr. Green. Okay.

Mr. Fitch, much has been discussed regarding the States' role in regulating oil and gas, natural gas development, production, and the process of hydrofracking. In some cases, hydrofracking is taking place in States that aren't traditionally viewed oil- and gas-producing States.

And I will give you an example. We have fracked in Texas for, I guess, 30 years. Of course, the success now is because, you know, first Barnett Shale, Eagle Ford, and even in west Texas now reopening the Permian Basin. And, for example, Pennsylvania has actually done some things locally that Texas actually followed Pennsylvania's lead on, one in the release of the -- at least a lot of the information that is in the fluid.

Is there a program available to States to review their State regulatory programs and assess what is currently on the books between the interstate compact?

Mr. Fitch. Yes. The IOGCC does perform that function. And the Groundwater Protection Council has a peer-review program for the Underground Injection Program also that -- you know, other States come in and compare against standards to assure some consistency.

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Mr. Green. Do you know -- which is STRONGER? How many State reviews have there been done?

Mr. Fitch. By STRONGER? We have done about six or seven just on hydraulic fracturing. I think the States with probably about 90 percent -- accounting for 90 percent of the production have undergone an overall State review.

Mr. Green. Is there a separate review available to States for hydraulic fracking, or fracturing?

Mr. Fitch. I am sorry?

Mr. Green. Is there a separate review available for States for hydraulic fracking?

Mr. Fitch. STRONGER -- STRONGER, by the way, is the State Review of Oil and Natural Gas Environmental Regulations -- they do have a module for hydraulic fracturing.

The IOGCC does -- I mean, we have kind of an informal system, and they also have an inspector certification program that will help assure that State inspectors are qualified and capable.

Mr. Green. I have some information that says STRONGER has completed specific hydrofracking reviews for Arkansas, Colorado, Louisiana, Oklahoma, North Carolina, Pennsylvania, and Ohio. In each of these reviews, have they had a critical assessment? And is that available to other States who may also be experiencing expansion of

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hydrofracturing?

Mr. Fitch. Yes, there is a report made on each of those reviews, and it is available on the STRONGER Web site.

Mr. Green. Okay.

Thank you, Mr. Chairman. I will give you back 49 seconds.

Mr. Shimkus. And I will take that 40 and make an announcement that we will recess and return approximately 10 minutes after the last vote is called, which should give you time to get a little boy's or girl's break, maybe a soda or a sandwich. But we will reconvene about 10 minutes after the vote.

[Recess.]

Mr. Shimkus. Let me call the hearing back to order. And there are a couple pieces of business I want to make sure I accomplish.

I ask unanimous consent that all Members be given 5 days for opening statements that will be submitted as part of the record.

Without objection, so ordered.

[The information follows:]

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Mr. Shimkus. And, with that, thank you for coming back. Hopefully, you got a chance to take a break. I didn't get my soda or candy bar, so I am a little grouchy. But they are used to that in this committee, so I am in good shape.

So, with that, I would like to -- seeing no other Members present, Mr. McKinley is recognized for 5 minutes for his round of questions.

Mr. McKinley. Thank you, Mr. Chairman. I heard earlier it was going to be quite a few minutes before, but I will go with it. Thank you very much.

I have questions of Ms. Harrison, if I could, please, if you could get your mike on and close.

Ms. Harrison. Yes, sir.

Mr. McKinley. Okay. I was one of the sponsors of the bill on the fly ash legislation, so I am just curious. Let's just start with that, if you would. Have you read both of the bills?

Ms. Harrison. I have read some summaries of them.

Mr. McKinley. Okay. Could you summarize the difference between the two bills?

Ms. Harrison. I am not sure -- between the Senate and the House bills?

Mr. McKinley. No, between the House bills that passed. The Senate has never taken one.

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Ms. Harrison. Oh, I am sorry. Okay. No, sir, then I haven't read both of them. And I am not familiar enough to summarize the differences.

Mr. McKinley. Okay. Because you made quite a bit in your written presentation about your knowledge of it. But you are saying you have not even read the bill and you don't know the difference between the two.

Ms. Harrison. I --

Mr. McKinley. Thank you. That is it.

Do you acknowledge that the -- does the EPA have the expertise to deal with fly ash?

Ms. Harrison. Well, I think my position --

Mr. McKinley. It is kind of a yes-or-no.

Ms. Harrison. I think they are in a better position than we are --

Mr. McKinley. Okay.

Ms. Harrison. -- to deal with fly ash.

Mr. McKinley. And that is fine.

Ms. Harrison. And that was my point.

Mr. McKinley. So if they have the expertise and they have made some determinations about fly ash over the last few years, I am just curious, do you disagree with their reports? You are familiar they have done two reports on fly ash; are you not?

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Ms. Harrison. Well, I am familiar that they have done the reports. I am not sure I am intimately familiar with the details of those reports.

Mr. McKinley. Interesting. They have done two reports, and both times the EPA has said it is not a hazardous material. So your statements in your testimony are based on what fact?

Ms. Harrison. Based on -- actually, I --

Mr. McKinley. Do you have the educational background, science background, to differ with them on this? If the EPA has said it is okay --

Ms. Harrison. No, I have submitted with my testimony some pretty significant research that has taken place at Duke University. And that study that was released and attached to my testimony by --

Mr. McKinley. No, my question was, how did you differ from the EPA's own determination? They have done it in 1993 and 2000. Both times they said, the EPA, that the fly ash is not a hazardous material, and it should be continued to be recycled. It is a way of taking care of the product.

So if you are differing from that, I am just curious, on what scientific basis are you saying the EPA is wrong?

Ms. Harrison. As I mentioned -- thank you for that question. As I mentioned, we have had some scientific studies that have been

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undertaken in North Carolina by Duke University, Dr. Vengosh. I included it in my testimony, and it shows contamination from seepages from some of these coal ash ponds.

Mr. McKinley. The material -- I think one of the material differences is that the opponents of the legislation -- and we have passed it four times out of the House -- is that they did not -- the people in the House did not want the EPA to have primacy, and they wanted to retain that control with the State legislatures, State governing groups.

Now, are you saying that North Carolina doesn't have the expertise to handle fly ash?

Ms. Harrison. Yes, sir. That has been my experience with working with our agencies and working with the legislature and trying to get a better, safer regulatory regime for coal ash. I don't feel like we have good regulations in place.

Mr. McKinley. Do you know that -- do you -- the way you have acknowledged that you haven't even read the bill and you don't know the differences. You know, in the bill, one of the major differences was that we listened to people like you and we put language into the bill to deal with the disposal of fly ash that heretofore is not in current law. And for you in North Carolina, it gave you the ability in North Carolina to call for liners under new impoundments.

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So we are trying -- and the EPA -- and, furthermore, that if the EPA determines that you in North Carolina are not following those standards, they can seize the landfill and take over primacy themselves.

So by virtue of what you are saying, you were having a problem that you thought you -- with the legislation. It actually was intended to help you in North Carolina and any other State that has some degree, or lack thereof, of how to dispose of fly ash.

So I am really troubled by your remarks and particularly your written testimony. And I appreciate what you are saying. I am -- fortunately, we have run over time. But thank you. Because you have explained a little bit about why you have taken the position you have had. Thank you very much.

Ms. Harrison. I appreciate that. I think a lot of my remarks were driven by the findings of the CRS report. And I think they found significant shortcomings with the bill. And I think I was basing my testimony on that, the CRS report.

Thank you.

Mr. McKinley. Okay. So, in other words, you are in opposition to what the Environmental Council of States, one of the more well-recognized groups around the country, that they were supporting; the Association of State and Territorial Solid Waste -- so many people

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all came together, the stakeholders, to make this bill possible. And you are saying they were wrong. I find that curious.

Thank you very much. Sorry. I yield back my time.

Mr. Shimkus. The gentleman's time has expired.

Just for comity and appreciation for the committee, not everyone has a lot of scientific expert -- I definitely don't. I understand legislators trying to be involved. And I am a big coal ash supporter. We appreciate your being here and your testimony.

I want to do a couple more pieces of business. I ask unanimous consent to include statements from seven environmental groups, dated February 15, 2013; a statement from Patrick Parenteau, P-a-r-e-n-t-e-a-u; and a statement from Susan Bodine for the record.

Without objection, so ordered.

[The information follows:]

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Mr. Shimkus. We still have -- Mr. Bilirakis, are you prepared to ask questions?

The chair recognizes the gentleman from Florida for 5 minutes.

Mr. Bilirakis. Thanks so much. Appreciate it.

Chairman Shimkus and Ranking Member Tonko, I am honored, of course, to have the opportunity to represent Florida's Ninth -- 12th Congressional District -- it is 12 now -- on the committee, and I look forward to working with you. Thank you for giving me the opportunity to serve on this committee.

Ms. Marks, you have spoken about the delegation process and the importance of respect between the Federal and local agencies responsible for protecting the public. Unfortunately, this relationship does not always live up to our ideals. For example, the EPA issued an America nutrient criteria for Florida to avoid litigation with environmental groups and, in the process, circumvented the State's reasonable and scientifically based efforts to address its water quality. That rule was based on flawed science, had no consideration for the harm it would inflict on Florida jobs, particularly in agriculture, and was a threat to other States' rights to self-regulate.

Considering the EPA's recent agenda, what are some of the examples of specific steps that Congress can take to ensure that State and local governments are able to compete with Federal agencies on a level playing

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field when disputes over Federal regulations are called into question?

Thank you.

Ms. Harrison. Thank you, Congressman.

I am not sure that I can tell you what type of specific statutes might be passed or anything to that effect.

I can tell you that we certainly are concerned that cooperation with the States be encouraged at every point, that there be full disclosure with the States. We would like to be in on the rulemaking process at an earlier time, and we would like to certainly be in on the guidance that is issued with these rules. There have been times, I think, where guidance has been issued that has not adequately taken into account the effects that it will have, particularly the resources it will drain from the States.

So we would like to work with EPA. And I don't know if a statute would be necessary in that regard --

Mr. Bilirakis. Well, any steps, exactly, not necessarily statutes.

Ms. Marks. We would like to work with EPA and have EPA encouraged to work with us on getting us involved early in the adoption of rules and on the guidelines to implement those rules.

Mr. Bilirakis. Very good.

Anyone else on the panel wish to comment?

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Well, thank you very much, Mr. Chairman. Appreciate it. I yield back the balance of my time.

Mr. Shimkus. The Gentleman yields back his time.

The chair recognizes the gentlelady from Colorado, Ms. DeGette, for 5 minutes.

Ms. DeGette. Thank you very much, Mr. Chairman.

For those of you who don't know, I have been working on a bill called the FRAC Act since 2006. And what this bill basically does is it says, just like every other industry or activity that puts substances into drinking water, the oil and gas industry should be subject to the requirements of the Safe Drinking Water Act.

Now, as you all know and we know, what the Safe Drinking Water Act does is it establishes baseline requirements for underground injection control, but then States may set stricter standards. And, also, the EPA works with States to make sure that they promulgate regulations that are unique and work for those States.

So, for example, if you have a State like my State of Colorado or Pennsylvania or North Carolina or California or New York or any of these other States that are doing hydraulic fracturing, the geologic issues are different in all of those States, the depth of the wells is different in all of those States.

So the Safe Drinking Water Act wouldn't put a cookie-cutter

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process into place. What it would simply do is say, you have to meet a minimum requirement for the chemicals that are being injected into that ground. And you have to have a readily accessible disclosure scheme.

And, frankly, a couple of years ago, the industry and I were this close to being able to come up with an agreed-upon reporting scheme that would not be overly onerous but would allow consumers to see what chemicals were going into their drinking water.

I am getting ready to reintroduce that bill again next month, and I want to ask a couple of questions around that.

First of all, Mr. Lepore, since you are my guy from Colorado, and I am so proud of the work that your agency has done, Colorado, you would say we are really in the vanguard of the States that have enacted rules around fracking and natural gas development, correct?

Mr. Lepore. Yes, I would.

Ms. DeGette. And one reason is because, as you said, we have been doing natural gas and oil in Colorado for over 100 years, right?

Mr. Lepore. Yes.

Ms. DeGette. Now, Representative Harrison, in your State, you said you only just started fracking, and you really don't have a regulatory scheme, right? Is that correct?

Ms. Harrison. Actually, we haven't actually started fracking.

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We lifted the ban on fracking and are anticipating permitting in the next year or 2.

Ms. DeGette. So you have absolutely no regulatory history on hydraulic fracturing.

And this is particularly true with fracking, Mr. Chairman, because it is a technique that has been found to use in all types of formations, whereas, before, some of the traditional techniques were not economically feasible to use all around the country.

So, Mr. Lepore, I wanted to ask you, if we have widely ranging techniques and formations and State regulatory frameworks, I am going to assume that you and your association wouldn't disagree if there was a Federal disclosure rule that was sort of a baseline rule so long as the EPA worked with States and States could adapt that to their own needs, correct?

Mr. Lepore. With the caveat that the devil is in the details.

Ms. DeGette. Well, obviously. But, I mean, the general concept, you don't disagree with that, right?

Mr. Lepore. The general concept of disclosure I do not disagree with.

Ms. DeGette. Okay.

And let me ask you another question. In your written testimony, you said that the Colorado Commission prides itself on oil and gas

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development tailored to the needs of specific basin, environments, and communities.

Do you think that further flexibility is needed for development on split estate lands?

Mr. Lepore. Split mineral and surface estate lands?

Ms. DeGette. Yeah.

Mr. Lepore. I think that is why we have the rules that we have and why we have just gone through the setback --

Ms. DeGette. So would you say, yes, local consultation is necessary to do that?

Mr. Lepore. With local governments?

Ms. DeGette. Yeah.

Mr. Lepore. I think engaging with local governments is very important.

Ms. DeGette. It is critical, right?

Mr. Lepore. Yes.

Ms. DeGette. Thanks.

And one more thing, I wanted to ask you about this reporting under FracFocus. How many States are requiring disclosure of frack fluid components through FracFocus?

Mr. Lepore. I am getting two different answers, but --

Ms. DeGette. Mr. Fitch, do you know the answer to that?

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Mr. Lepore. -- I believe the answer is 10 or 13.

Ms. DeGette. Okay.

Mr. Lepore. Thirteen.

Ms. DeGette. And is it required disclosure through FracFocus, or is it voluntary disclosure?

Mr. Lepore. Required by statute or rule, as I --

Ms. DeGette. In all of those States? Yes. Okay. The audience member is nodding yes.

So that is about 10 or 12 States, correct?

Maybe, Mr. Fitch or Mr. Lepore, you can supplement your testimony and give me a list of those States. I am sure my staff knows, but I don't know off the top of my head.

[The information follows:]

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Ms. DeGette. One last thing I wanted to ask is, the EPA study on the fracking is coming out next year. And once that happens, then we are going to all sit down, and I hope that you will come and help us work this out to see what the appropriate regulatory framework will be. Because I think the States and the Federal Government really need to work together on this issue.

Thank you for your comity, Mr. Chairman.

Mr. Shimkus. The gentlelady yields back her time.

The chair now recognizes the ranking member of the full committee, Mr. Waxman, for 5 minutes.

Mr. Waxman. Thank you very much, Mr. Chairman.

We have heard today from some of the witnesses that we can rely upon the States -- or Members -- we can rely on the States to protect the public health and environment, and, therefore, a reduced Federal role is appropriate. But the States' track records are not flawless.

For example, sea-level rise is an undisputed consequence of warming climate. Many States are dealing with this challenge, but the response is not uniform. For example, the scientists on North Carolina's Coastal Resource Commission recently concluded that North Carolina could see a sea-level rise of more than 3 feet by the end of the century. This is critically important information for coastal development decisions, but the information wasn't consistent with the

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ideology of some in the General Assembly.

Representative Harrison, are you familiar with what happened in the General Assembly, and could you tell us about it?

Ms. Harrison. Yes, sir, I am. It was rather a black mark in the history of our legislature, I think.

What happened was, under pressure from developers in the communities on the coast, legislation was introduced that would have banned the calculation of sea-level rise as a factor in climate change and acceleration from thermal expansion and melting glaciers. So rather than factoring in a trajectory of about a meter sea-level rise over the next century, the legislation would have in fact limited us to anticipate an 8-inch rise in sea-level rise.

We are particularly vulnerable in North Carolina because of our 4,000-plus miles of shoreline and the low-lying areas near the shoreline. So this is a real problem for folks who are trying to have a better adaptation strategy --

Mr. Waxman. The bill that was introduced would have precluded the commission from planning for anything other than 8 inches of sea-level rise. Is that right?

Ms. Harrison. Yes, sir.

Mr. Waxman. And after enduring public ridicule, the legislature succeeded in blocking the Coastal Resources Commission from estimating

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rates of sea-level change until July 1, 2016. Is that right?

Ms. Harrison. Yes, sir.

Mr. Waxman. Well, in your view, was this policy a policy that ensures North Carolina makes the best decision possible about its coastal development?

Ms. Harrison. I think it is sort of reflective of the current attitude of the legislature, that they are not doing what is best for the State or its resources.

Mr. Waxman. Well, States play a critical role in environmental protection, but they don't always get it right. And in some cases, as in the North Carolina example, State legislatures have proposed or passed bills to tie the hands of the State regulators, whose job it is to protect the environment and public health.

Another example also South Dakota. And numerous other States have laws on the books, as well, that prohibit the State agencies from taking any actions that are more protective than rules adopted by the Federal Government. In Ohio, the State environmental agency is blocked from setting air quality standards that are more stringent than the Federal standards. And those are just a few examples.

State regulators may have the best interests of public health and environment at heart, but they can only do what their legislatures authorize them to do.

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I assume that -- do any of the witnesses disagree that an agency can't take action if their State legislatures enact a law that blocks them from doing so? Does anybody disagree with that? That is just the reality.

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[12:02 p.m.]

Mr. Waxman. While some here may believe that State regulators will always be better than Federal regulators at protecting the local environment, we have to remember this important lesson: Polluters are fighting hard at the State level, as they do at the Federal level, to block or weaken meaningful safeguards. And that is why it makes sense to set a Federal floor of protection for environmental laws, so that all Americans are guaranteed a minimum baseline of protection. I wanted to bring out that point.

And thank you, Mr. Chairman. I will yield back the balance of my time.

Mr. Shimkus. The gentleman yields back his time.

Seeing no other Members present -- Mr. Tonko, do you wish to be recognized?

Mr. Tonko. Yeah, Mr. Chair, just briefly. And I appreciated the comments you offered on behalf of the subcommittee concerning the cross-examination of our witness, Representative Harrison.

But I am compelled to state that, you know, the representative was invited here to speak as a legislator on behalf of the National

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Caucus of Environmental Legislators. She cited a scientific review or a study done by others.

And I thought that the cross-examination just didn't respect this panel and its sacrifice, in whatever dimension, to be here today. Their role is to inform us and to share their opinions. And I found that being treated as a scientist, which -- I don't know her resume, but she was here as a legislator. And, you know, to begin with, 2273 had passed the House, but 1391 wasn't even released from committee.

And, again, I just feel it is important for us to stay focused on the perspective that was being shared at the table by our witnesses, and we show due respect when we conduct ourselves that way. So I was very concerned about the cross-examination by the gentleman from West Virginia.

With that, I yield back.

Mr. Shimkus. The gentleman yields back his time.

And I appreciate the comments. And I would just hope that, as we move forward, that the same concern expressed on this exchange will be the same expressed on the other side whence there are other interchanges that will occur, because we are a big, powerful committee here in Washington, we have divergent views, and we fight like cats and dogs. We can agree to disagree respectfully, and I think that is the point being made. And we will do our utmost to try to do that.

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We do thank you. Great testimony. We appreciate you coming here. Thanks for staying through lunch so that everyone had a chance to come and ask their questions.

You may get a few questions for the record submitted by Members who were here or even were not here but are members of the committee. If you would get those back to us as promptly as possible.

I think our rules say -- do we give a set time?

We have no idea. So try to do it as soon as possible. We would appreciate it.

With that, I will adjourn the hearing.

[Whereupon, at 12:04 p.m., the subcommittee was adjourned.]