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ONE HUNDRED THIRTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6115
Majority (202) 225–2927
Minority (202) 225–3641

March 8, 2013

Mr. Harold R. Fitch
Chief, Office of Oil, Gas, and Minerals
Michigan Department of Environmental Quality
P.O. Box 30473
525 W. Allegan Street
Lansing, MI 48909

Dear Mr. Fitch,

Thank you for appearing before the Subcommittee on Environment and the Economy on February 15, 2013, to testify at the hearing entitled "The Role of the States in Protecting the Environment Under Current Law."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for 10 business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and then (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please e-mail your responses, in Word or PDF format, to Nick.Abraham@mail.house.gov by the close of business on Friday, March 22, 2013.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

John Shimkus
Chairman
Subcommittee on Environment and the Economy

cc: The Honorable Paul Tonko, Ranking Member,
Subcommittee on Environment and the Economy

Attachment

The Honorable John Shimkus

1. You mention 12,000 hydraulic fracturing wells in Michigan since 1952 without an environmental contamination related to the practice. Do other states have the same type of record?

2. What gives you confidence that the information reported on Fracfocus is accurate and complete?

3. At the hearing you mentioned the Underground Injection Control Peer Review program.

    a. Is this a new initiative?

    b. How does it help states evaluate their injection well programs?

    c. Who is involved in this process?

    d. What is the significance of this program compared other audit programs?

4. You mention in your testimony that you are a board member of the Groundwater Protection Council.

    a. Is it typical that the IOGCC official and the Ground Water Protection Council member are different people or are they the same person wearing two different hats?

    b. What are the respective roles of the two sets of officials?

5. Your testimony mentions the rapid changes occurring in the technologies used to hydraulically fracture wells.

    a. How do States keep up with technology as it changes on the ground?

    b. Do you have training Centers to educate your regulators on new developments?

6. How would you characterize EPA's technical experience as opposed to the expertise of State regulators regarding hydraulic fracturing regulation?

7. In your testimony you state "a one-size-fits all federal approach would not be as effective or efficient" in addressing a state's individual geological, topographical or societal sensitivities.

    a. Can you please give examples where something is unique to the state of Michigan and the adaptability of state level regulations was able to address this?

    b. What are some specific concerns of how a federal "one-size-fits all" federal approach would be detrimental to Michigan?

8. You all emphasize the importance of a risk-based approach to regulation and compliance enforcement. How important is local expertise to making the risk-based approach effective? In prioritizing which permittees need more attention, do you use metrics, personal knowledge of the neighborhood, both, or something else?

9. Do you know of any state that has hydraulic fracturing activities occurring in their state with zero regulations regarding these activities?

10. Please explain the types of communications that occur between State agencies or departments within your State or among the IOGCC members regarding the many facets of natural gas development and production.

The Honorable Robert E. Latta

1. According to the American Petroleum Institute (API), nine million U.S. jobs are tied to the oil and natural gas industry, and in my state of Ohio, over 230,000 jobs are provided or supported by the industry. Furthermore, the industry contributes $227 billion to the Ohio economy and those who work in the industry (non-gas station employees) earn an average salary of $68,000 a year, nearly $30,000 more than the average Ohio salary. Advances in technology like hydraulic fracturing are making this possible. Can you discuss some of the positive economic impacts that the industry is having on your area?

    a. As a follow up question, I mentioned how advances in technology are contributing to the success of hydraulic fracturing. What role do you see further advances in technology having on the continued success of this industry?

2. Over the past few years, Ohio has put in place some of the nation's toughest regulatory measures to ensure hydraulic fracturing and oil and gas exploration technologies are conducted in an environmentally safe and transparent manner. In fact, I think we're talking about 50 regulations. These measures ensure collaboration among stakeholders, proper well construction, chemical disclosure requirements, protection of groundwater, and sound environmental quality testing methods. These high standards of environmental protections allow for a thriving oil and natural gas sector in Ohio. In turn, it creates over 230,000 jobs for Ohioans and greater U.S. energy independence and less reliance on foreign oil. Can you discuss some measures your state has taken to ensure hydraulic fracturing is done is an environmentally safe manner?

The Honorable Paul Tonko

1. The impact of one or two hydraulic fracturing wells in an area may be minimal, but the pace of expansion of gas production has been rapid in some states and the cumulative impacts of this expansion results in additional challenges for local communities, regions and states. For example, there are estimates that each well requires additional heavy equipment traffic on roads leading to and from the well site to transport the construction, operation, and maintenance of the well of as many as 1500 trips while the well is being constructed and is producing gas.

    The water and chemicals required for hydrofracking and the produced water resulting from gas production, the resources required for treating, storing, or disposing of these liquids safely are considerable when the needs of each well are multiplied by the number of wells in a given area. A similar argument can be made regarding fugitive emissions from each production well.

    a. How are these cumulative impacts of oil and gas production handled within your state's regulatory program?

    b. What provisions does your state have (e.g. taxes, fees) to ensure that the costs of impacts to public resources and for additional infrastructure to support oil and gas production are covered by the oil and gas industry?

2. There are also cumulative impacts on the economics of gas production as we are already seeing. States and resource owners certainly receive lucrative gross receipts from the produced gas, directly,

and economic benefits from the increased indirect economic activity associated with the increase in workers and demand for all inputs required for production activities. However, as gas production continues to expand nationally, the market's ability to absorb all the gas produced is being saturated and the price per unit has dropped. Certainly individual gas production companies realize this and may decide to cap existing wells or to forgo drilling a play they have leased to allow supply to be more in line with demand.

a. Does your state consider the market price of gas in your permitting process – permitting fewer wells when the price is lower and increasing them when the price improves to ensure the state maximizes its return from hosting the expanding gas production?

The Honorable Henry A. Waxman

Drilling mud and other wastes from the exploration and production of oil and gas have been exempt from the requirements of the Resource Conservation and Recovery Act since July 1988, but now include recovered hydraulic fracturing fluid with potentially dangerous constituents. Democratic members of the Energy and Commerce Committee released a report in April, 2011 finding that the top hydraulic fracturing companies had injected fluid containing 29 chemicals that are known or possible human carcinogens, as well as other contaminants regulated under the Clean Air Act and the Safe Drinking Water Act.

Despite this, according to the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration, shippers and transporters of these materials do not have to comply with any Federal hazardous materials safety regulations. And, as mentioned above,, such mud and other wastes are also exempt from requirements under the Resource Conservation and Recovery Act. This means that these hazardous materials are not required to be labeled as hazardous, contained and transported in accordance with Federal hazardous materials regulations, or included in shipping manifests to track the material, prevent diversion, and ensure proper handling by emergency response personnel in accidents and incidents.

The risks of this approach are illustrated by a recent event in Youngstown, Ohio, where authorities were alerted to illegal dumping of drilling fluid into the Mahoning River on January 31, 2013, by an anonymous tip. According to Federal investigators, the dumping went on for several months before the tip was received. Even after the dumping was discovered, state officials failed to inform the public and drinking water facilities drawing water downstream of the dumping site. Public health and environmental impacts are still being assessed.

1. What, if any, requirements does your Department impose through regulation to ensure that drilling mud and associated wastes from the exploration and production of oil and gas are properly disposed?

2. What, if any, authority or ability does your Department have to address the interstate movement of drilling mud and other associated wastes and to track such wastes entering or leaving the state?

3. How many investigators are employed by your Department to identify and investigate illegal dumping of these wastes within the state, and ameliorate the potential risks posed by any such dumping?

The Honorable Henry A. Waxman and The Honorable Diana DeGette

1. Does the IOGCC provide technical assistance to reporting companies who have questions about how to complete the FracFocus form or what to disclose on the form?

2. Does the IOGCC offer or provide trainings to reporting companies on how to submit data to FracFocus, besides the webinar available on the FracFocus website? If so, please explain.

3. Does the IOGCC consider itself to be a "public agency" and therefore subject to the disclosure requirements of the federal Freedom of Information Act (FOIA)? Does the IOGCC consider itself subject to the disclosure requirements of the Oklahoma Open Records Act? Please explain why or why not.

4. Colorado's regulations state that if the chemical disclosure registry (FracFocus) (a) "does not allow the Commission staff and the public to search and sort the registry for Colorado information by geographic area, ingredient, chemical abstract service number, time period, and operator" and (b) there is "no reasonable assurance that the registry will allow for such searches by a date certain acceptable to the Commission," then operators disclosing to FracFocus also must submit the disclosure forms to the Commission for appropriate disclosure.

   a. What is FracFocus doing to ensure that FracFocus meets the "search and sort" requirements of Colorado's regulations?
   b. Has IOGCC or FracFocus staff met with the Colorado Oil and Gas Commission to discuss this "search and sort" requirement? Please explain.

5. A number of states direct companies to disclose directly to FracFocus or provide companies with the option of disclosing to FracFocus.

   a. For those states that require companies to disclose directly to FracFocus, such as North Dakota and Utah, does FracFocus provide the state agencies with the chemical disclosure forms once received? If no, please explain.

   b. For those states that provide companies with the option of disclosing to FracFocus, such as Montana, does FracFocus provide the state agencies with the chemical disclosure forms once received? If no, please explain.

   c. Does FracFocus notify the relevant state agency when a company has submitted a disclosure form for a well?

   d. Does FracFocus tailor its disclosure form template for each state? If no, please explain why. If yes, please describe how FracFocus tailors the form.

   e. Some states require operators to disclose to FracFocus all chemical components in a fracturing fluid, not just chemicals subject to 29 CFR 1910.1200(i) and Appendix D. How has FracFocus modified its template disclosure form to facilitate operator compliance with requirements to disclose chemicals that do not appear on Material Safety Data Sheets?

   f. Some states require a well operator or service company to report the type of base fluid used in a fracturing job if it does not use water. In Texas, for example, the regulations state that an operator has to disclose "the total volume of water used in the hydraulic fracturing treatment(s) of the well or the type and total volume of the base fluid used in the hydraulic fracturing treatment(s), if something other than water." How has FracFocus modified its template disclosure form to facilitate operator compliance with requirements to disclose the type and volume of any non-water base fluid used?

g. If a state requires an operator to disclose an aspect of the fracturing fluid or process that is not on the FracFocus disclosure form, such as the length of a fracture, how does the operator include that required information on the disclosure form?

6. Does the FracFocus disclosure form allow an operator to enter Chemical Abstract Service (CAS) numbers that do not exist or are inaccurate?

7. What is IOGCC or FracFocus doing to improve the (a) accuracy and (b) completeness of the data it receives from operators?

8. What does IOGCC or FracFocus do to substantiate an operator's claim that a chemical component constitutes a trade secret or confidential business information?

9. The FracFocus "terms of use" states the following (see http://fracfocus.org/terms-of-use): "You are only permitted to use the content as expressly authorized by us or the specific content provider. Except for a single copy made for personal use only, you may not copy, reproduce, modify, republish, upload, post, transmit, or distribute any documents or information from this site in any form or by any means without prior written permission from us or the specific content provider, and you are solely responsible for obtaining permission before reusing any copyrighted material that is available on this site. Any unauthorized use of the materials appearing on this site may violate copyright, trademark, and other applicable laws and could result in criminal or civil penalties."

   a. If EPA downloaded and analyzed chemical disclosure data posted on FracFocus, without obtaining permission from GWPC, IOGCC, or FracFocus, is it your position that EPA would be violating the "terms of use"?

   b. If a state agency downloaded and analyzed chemical disclosure data posted on FracFocus, without obtaining permission from GWPC, IOGCC, or FracFocus, is it your position that the state agency would be violating the "terms of use"?

   c. If a non-profit organization downloaded and analyzed chemical disclosure data posted on FracFocus, without obtaining permission from GWPC, IOGCC, or FracFocus, is it your position that the non-profit organization would be violating the "terms of use"?