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ONE HUNDRED THIRTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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March 8, 2013

Ms. Teresa Marks
Director
Arkansas Department of Environmental Quality
5301 Northshore Drive
North Little Rock, AR 72118

Dear Ms. Marks,

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. If Congress includes in legislation, specific national standards, in other words, minimum requirements that a State program must meet, do you think it is necessary for EPA to first issue federal regulations in order for states to implement protective programs?
2. Critics of the approach taken in H.R. 2273 and S. 3512 from the last Congress – allowing States to be in the driver’s seat with respect to creating a coal ash regulatory program that meets a minimum federal standard – argue that without a greater role for EPA, in particular rulemaking authority and concurrent enforcement authority, that there won’t be a consistent level of protection across the States. Do you agree? Why or why not?
3. The chart in your written testimony indicates that EPA is increasing its regulatory output, which then increases the amount of work States have to do. Are their times when the rules coming out of EPA make it harder for your State members to manage their programs?

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.

Coal ash is also currently exempt from federal requirements under the Resource Conservation and Recovery Act and Federal hazardous materials safety regulations, despite the presence of hazardous constituents including arsenic, lead, mercury, and hexavalent chromium in the ash. On December 22, 2008, a coal ash impoundment in Kingston, Tennessee, burst, releasing 5.4 million cubic yards of toxic sludge, blanketing the Emory River and the surrounding land, and creating a superfund site that could cost up to \$1.2 billion to clean up. On August 23, 2005 an ash impoundment at the Martins Creek power plant in Allentown, Pennsylvania was breached, releasing over 100 million gallons of contaminated water and ash into Oughhoughton Creek and the Delaware River. The spill impacted public water supplies in Pennsylvania and New Jersey, elevating arsenic levels to 3,000 times the drinking water standard. The cleanup lasted several months and cost an estimated \$37 million.

1. What, if any, requirements does your state apply to drilling mud and other wastes from the exploration and production of oil and gas when generated, stored, transported, or disposed of within the state?
 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 the state?
 3. What, if any, requirements does your Department impose to ensure that drilling mud and associated wastes from the exploration and production of oil and gas that enter the state are properly disposed?
 4. What, if any, requirements does your state apply to coal ash when generated, stored, transported, or disposed of within the state?
 5. What, if any, authority or ability does your Department have to address the interstate movement of coal ash and to track coal ash entering the state?
 6. What, if any, requirements does your Department impose to ensure that coal ash that enters the state is properly disposed?
 7. If contamination from drilling mud, associated wastes, or coal ash is discovered in a source of public drinking water in your state, what information and resources will be available to your Bureau to track the source of that contamination?
 8. How many investigators are employed by your Department to identify and investigate illegal dumping of drilling mud, other wastes from the exploration and production of oil and gas, and coal ash within the state, and ameliorate the potential risks posed by any such dumping?
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