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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

Mr. Jeffery Steers
Land Protection Division Director
Virginia Department of Environmental Quality
629 East Main street
Richmond, VA 23219

Dear Mr. Steers,

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 mentioned in your written testimony that Virginia Department of Environmental Quality (DEQ) successfully brought parties together and using only the authorities of the Virginia Voluntary Cleanup Program, was able to successfully redevelop a blighted area in Roanoke, VA.

   a. Would you say that your Agency's local expertise and knowledge of the area and the stakeholders, helped you successfully complete this complex cleanup?

   b. Do you think that States may be better suited to deal with some of these complicated cleanup sites under state voluntary cleanup programs and state Brownfields programs than EPA is under federal law?

   c. Can States achieve cleanups faster and more efficiently than EPA and why (or why not)?

   d. What changes to current federal law would make the cleanup process quicker and more efficient?

2. If EPA has authority to assume control of a state permit program when the permit program isn't meeting minimum federal requirements, would you consider that backstop authority for EPA?

3. Your boss, Governor McDonnell, wrote to us two years ago in support of the coal ash bill, H.R. 2273, which sets a minimum federal standard for regulating coal ash but gives States the authority to develop and implement their own permit programs based on the needs of the State. Governor McDonnell noted that Virginia's program would need to make some improvements in order to meet the requirements of our bill and called the bill a "sensible approach for the management of CCR." Since that time the Senate has introduced legislation, that we support, which provides additional pollution prevention focused initiatives.

   a. How has EPA's current rulemaking impacted the regulation of coal ash in Virginia?

   b. Does Virginia still support the approach in the bills based on the fact that States are in a better position to regulate coal ash?

4. In June 2010, EPA proposed a rule for coal combustion residuals with multiple regulatory scenarios. Now, almost 3 years later EPA is not close to picking one. What has Virginia done in the meantime? How do you and other States know what direction to take with making improvements to your coal ash 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. 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?