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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

July 30, 2013

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Administrator McCarthy:

Pursuant to Rules X and XI of the United States House of Representatives, the Committee on Energy and Commerce is examining recent actions by the Environmental Protection Agency (EPA) relating to its studies of hydraulic fracturing and groundwater contamination.

Over the last several years, EPA has examined the groundwater at three different hydraulic fracturing sites for contamination: Pavillion, Wyoming, Parker County, Texas, and Dimock, Pennsylvania. In addition to these site-specific studies, the agency is currently conducting a comprehensive study of the potential impacts of hydraulic fracturing on drinking water resources (the "Hydraulic Fracturing Study"), begun in March 2010.[1]

On June 20, 2013, after spending over four years investigating the Pavillion, WY site, EPA announced that it would be ceding primary responsibility for its investigation of alleged well water contamination to the State of Wyoming.[2] EPA's announcement in late-June is a sharp reversal from its previous statements about the Pavillion site, which the agency had begun to investigate in 2008 asserting jurisdiction under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). In a December 2011 draft report on alleged well water contamination in Pavillion, EPA found that "the data indicates likely impact to groundwater that can be explained by hydraulic fracturing."[3] EPA's testing methods in the December 2011 report were the subject of criticism from both state regulators and industry leaders. Due, in part, to these concerns, EPA agreed in March 2012 to take additional water

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[1] "EPA Announces Final Study Plan to Assess Hydraulic Fracturing," Environmental Protection Agency, November 3, 2011, accessed July 24, 2013, http://www.epa.gov/research/priorities/docs/hydraulic-fracturing-research.pdf.
[2] "Wyoming to Lead Further Investigation of Water Quality Concerns Outside of Pavillion with Support of EPA," Environmental Protection Agency, June 20, 2013, accessed July 24, 2013, http://yosemite.epa.gov/opa/admpress.nsf/20ed1dfa1751192c8525735900400c30/dc7dcdb471dcfe1785257b90007377bf!OpenDocument.
[3] "Investigation of Groundwater Contamination near Pavillion, Wyoming," Environmental Protection Agency, December 8, 2011, accessed July 24, 2013, http://www2.epa.gov/sites/production/files/documents/EPA_ReportOnPavillion_Dec-8-2011.pdf.

samples and delay the peer review process.[4] An independent review of EPA's December 2011 draft report, released in May 2012, ultimately found that EPA did not adequately distinguish between potential natural impacts and those from gas drilling activities.[5] Despite past criticism, when the agency announced last month that it would neither finalize its Pavillion study nor rely on the conclusions of the draft report resulting from its investigation, it nonetheless stated that it was "standing behind its work and data."[6]

EPA's history in Pavillion – asserting its jurisdiction, alleging contamination in the ground water, then closing its investigation or inquiry – is similar to its history in both Dimock and Parker County. For example, in January 2012, as part of an inquiry under CERCLA, EPA stated that water tests indicated dangerous levels of barium, arsenic, and "other hazardous substances" in well water in Dimock, PA.[7] The agency made these allegations *after* sending a December 2, 2011 email to Dimock residents stating "the data does not indicate that the well water presents an immediate health threat to users."[8] Then, on July 25, 2012, EPA announced the cessation of its inquiry after tests of wells near a gas drilling operation found no unsafe levels of contaminants.[9]

In December 2010, claiming that state regulators were not acting quickly enough, EPA issued an emergency order under Section 1431 of the Safe Drinking Water Act (SDWA) against Range Resources Corp. in Parker County, TX, demanding that the company place monitors in two homes and provide two families with water based on an allegation that the company had contaminated domestic water wells.[10] On March 29, 2012, EPA dropped its lawsuit against Range Resources.[11]

In order to better understand EPA's decisionmaking, and how EPA's prior experiences in the Pavillion, Dimock, and Parker County cases are informing its present approach to the Hydraulic Fracturing Study, please respond to the following questions and requests for information and documents by August 13, 2013.

1. In its June 20, 2013, press release announcing that the State of Wyoming would lead further investigation of water quality concerns outside of Pavillion, EPA states that it

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[4] Pierre Bertrand, "Study Slams EPA's Draft Fracking Report on Wyoming Water Pollution," *International Business Times*, May 16, 2012, accessed July 24, 2013, http://www.ibtimes.com/study-slams-epas-draft-fracking-report-wyoming-water-pollution-698753#.
[5] Ibid.
[6] "Wyoming to Lead Further Investigation of Water Quality Concerns Outside of Pavillion with Support of EPA," Environmental Protection Agency.
[7] "Dimock, PA: "Ground Zero" in the Fight over Fracking," *StateImpact Pennsylvania*, accessed July 24, 2013, http://stateimpact.npr.org/pennsylvania/tag/dimock/.
[8] John Krohn, "If Confirmed, McCarthy Should Avoid Pitfalls of Past at EPA," *The Hill*, April 11, 2013, accessed July 24, 2013, http://thehill.com/blogs/congress-blog/energy-a-environment/293141-if-confirmed-mccarthy-should-avoid-pitfalls-of-past-at-epa.
[9] Mark Drajem, "EPA Will End Dimock Water Deliveries After Final Water Tests," *Bloomberg*, July 25, 2012, accessed July 24, 2013, http://www.bloomberg.com/news/print/2012-07-25/epa-ends-water-deliveries-in-pennsylvania-after-tests-correct-.html.
[10] Ramit Plushnick-Masti, "Texas Agency: Gas Driller Didn't Contaminate Water," *The Washington Post*, March 22, 2011, accessed July 24, 2013, http://www.washingtonpost.com/wp-dyn/content/article/2011/03/22/AR2011032202141.html.
[11] Mike Lee, "EPA Agrees to Dismiss Well Contamination Case Against Range," *Bloomberg Businessweek*, March 30, 2012, accessed July 24, 2013, http://www.businessweek.com/news/2012-03-30/epa-agrees-to-dismiss-well-contamination-case-against-range.

"stands behind its work and data" but adds that it "does not plan to finalize or seek peer review of its draft Pavillion groundwater report released in December, 2011. Nor does the agency plan to rely upon the conclusions in the draft report."[12] EPA notes it will "look to the results" of its ongoing national study on the potential relationship between hydraulic fracturing and drinking water "as the basis for its scientific conclusions and recommendations on hydraulic fracturing."[13]

a. From the origination of the investigation, in response to the public petition submitted to EPA under CERCLA, up until June 20, 2013, how much appropriated funds did EPA spend on the Pavillion investigation out of the Superfund account, and under what program area(s) at the subaccount level? EPA's response should include all costs the agency has incurred related to the Pavillion investigation conducted under CERCLA, including but not limited to costs related to preparation of the December 2011 draft report.

b. Aside from CERCLA, did EPA rely on any other program authorities or resources in carrying out the investigation and related activities at Pavillion? If so, what were EPA's total investigation costs, what was the scope of activities funded under the investigation, and what were the costs of each activity?

c. Does EPA anticipate that it will provide support to the Wyoming Department of Environmental Quality and the Wyoming Oil and Gas Conservation Commission and under what program authorities? If so, what type of support does it anticipate, and what amount does EPA plan to expend on such support and out of what appropriations?

2. In its Hydraulic Fracturing Study Plan released in November 2011, EPA indicates that its retrospective case studies will be conducted in a "tiered fashion" to "develop integrated data on site history and characteristics, water resources, contaminant migration pathways, and exposure routes." In what Tier are EPA's retrospective case studies at present? Please detail how much appropriated funds EPA has spent, sequentially, on each sampling and/or testing activity already completed.

3. EPA's Hydraulic Fracturing Study Plan also indicates that the prospective case studies will be conducted in a "tiered fashion." In what Tier are EPA's prospective case studies at present? Please detail how much appropriated funds EPA has spent, sequentially, on each sampling and/or testing activity already completed.

4. What data quality standards will EPA use to determine whether data obtained from prior ground water investigations will be incorporated into its Hydraulic Fracturing Study?

5. EPA has designated the study's expected "Report of Results" as a "highly influential scientific assessment," thus requiring the agency to follow peer review requirements described in the Office of Management and Budget's *Information Quality Bulletin for Peer Review*. The Bulletin states that important scientific information must be peer reviewed by qualified specialists before being disseminated by the federal government.

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[12] "Wyoming to Lead Further Investigation of Water Quality Concerns Outside of Pavillion with Support of EPA," Environmental Protection Agency.
[13] Ibid.

Will EPA apply this peer review standard to all of the components and projects that will constitute the "report of results"?

6. In the section of its website devoted to EPA's Hydraulic Fracturing Study, the agency provides a series of "Questions and Answers" to inform the public about its plans for carrying out the study.[14] In a subset of questions focusing on the "Analysis of Existing Data," the following question is posed: "Is EPA incorporating ongoing ground water investigations, such as the ones in Pavillion, WY and Dimock, PA, into this study?" Responding to this question, EPA writes: "Ground water investigations are distinct from the retrospective and prospective case studies conducted as a part of this study, and so they cannot be used as case studies. *However, ground water investigations such as these will be considered in this study's analysis of existing data, once they have undergone peer review*." (Emphasis added)

    a. Since EPA announced, on June 20, 2013, that it would no longer seek peer review on its draft study of alleged groundwater contamination from hydraulic fracturing activities near Pavillion, WY, is there any portion of the Pavillion study that EPA might consider in its analysis of existing data for its ongoing Hydraulic Fracturing Study? If so, please provide all documents referring or relating to how EPA may use or apply the data from Pavillion to the Hydraulic Fracturing Study.

7. EPA Region 3 Administrator, Shawn Garvin, speaking of the agency's activities in Dimock, PA, announced on July 25, 2012, that "[t]he sampling and an evaluation of the particular circumstances at each home did not indicate levels of contaminants that would give EPA reason to take further action."[15]

    a. Two of the principal contaminants identified by DEP at Dimock, PA were methane and arsenic. Considering that releases of natural gas generally are excluded from the authorities of CERCLA, and that the federal authorities of CERCLA generally are limited to respond to releases of naturally occurring substances, what were EPA's basis and rationale for using the authorities of CERCLA to conduct an investigation of potential contamination in groundwater at Dimock?

    b. How much appropriated funds did EPA spend on the Dimock investigation out of the Superfund account, and under what program area(s) at the subaccount level, from the origination of the investigation when EPA determined that the use of federal response authorities under CERCLA was warranted up until July 25, 2012?

    c. Aside from CERCLA, did EPA rely on any other program authorities or resources in carrying out the investigation and related activities at Dimock? If so, what were EPA's total investigation costs, what was the scope of activities funded under the investigation, and what were the costs of each activity?

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[14] "Questions and Answers about EPA's Hydraulic Fracturing Study," Environmental Protection Agency, accessed July 24, 2013, http://www2.epa.gov/hfstudy/questions-and-answers-about-epas-hydraulic-fracturing-study.
[15] Mark Drajem, "EPA Will End Dimock Water Deliveries After Final Water Tests."

d. Is there any portion of the Dimock investigation that EPA might consider in its analysis of existing data for the Hydraulic Fracturing Study? If so, please provide all documents referring or relating to how EPA may use or apply the data from Dimock to the Hydraulic Fracturing Study.

e. Please detail the interaction between EPA and Pennsylvania Department of Environmental Protection (DEP) relating to actions taken by EPA at Dimock, PA. In your response, please include all communications between EPA employees and DEP referring or relating to EPA's decision to become involved in the investigation at Dimock. Also, please include all documents referring or relating to EPA's December 2, 2011 email to Dimock residents, informing them of the absence of any immediate health threat to well water users, continuing through the agency's subsequent finding, one month later, in January 2012 – six months prior to ending its investigation – that water tests indicated dangerous levels of barium, arsenic, and "other hazardous substances."

8. How much appropriated funds did EPA spend on the Parker County, TX investigation and enforcement action, including actions preceding the issuance of an emergency order under Section 1431 in December 2010 up until March 29, 2012?

9. Does EPA plan to incorporate data obtained from its ground water investigation in Parker County into the Hydraulic Fracturing Study? If so, please provide all documents referring or relating to how EPA may use or apply the data from Parker County to the Hydraulic Fracturing Study.

10. How many times has EPA invoked its emergency powers under Section 1431 of SDWA over the past 5 years? Please provide a list of all such instances.

11. How many times has EPA used its authorities under CERCLA over the past 5 years to investigate potential contamination in groundwater based on risks to drinking water sources, and of those times, how many instances were at sites at which oil or natural gas production occurred in the vicinity? Please provide a list of all such instances.

12. What is EPA's definition of "an imminent and substantial endangerment to the health of persons" in relation to its emergency powers under Section 1431(a) of SDWA and has it withstood judicial scrutiny?

13. Under Section 1431(a) of SDWA, how does EPA determine when "appropriate State and local authorities have not acted"? How, precisely, does EPA define inaction in these instances?

An attachment to this letter provides additional information about how to respond to the Committee's request. If you have any questions regarding this request, please contact Sam Spector with the Committee staff at (202) 225-2927.

Sincerely,

Fred Upton
Chairman

Tim Murphy
Chairman
Subcommittee on Oversight and Investigations

Joe Barton
Chairman Emeritus

Ed Whitfield
Chairman
Subcommittee on Energy and Power

Marsha Blackburn
Vice Chairman

John Shimkus
Chairman
Subcommittee on Environment and Economy

Michael C. Burgess
Vice Chairman
Subcommittee on Oversight and Investigations

Attachment

cc: The Honorable Henry A. Waxman, Ranking Member

The Honorable Diana DeGette, Ranking Member
Subcommittee on Oversight and Investigations

The Honorable Bobby Rush, Ranking Member
Subcommittee on Energy and Power

The Honrable Paul Tonko, Ranking Member
Subcommittee on Environment and Economy