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Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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June 19, 2012

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Heather Zichal
Chair
Interagency Working Group to Support Safe and Responsible Development
of Unconventional Domestic Natural Gas Resources
Executive Office of the President
Washington, DC 20500

Dear Administrator Jackson and Chairwoman Zichal:

On April 13, 2012, President Obama issued Executive Order 13605, "Supporting Safe and Responsible Development of Unconventional Domestic Natural Gas Resources." The Order's stated purpose is "to coordinate the efforts of Federal agencies responsible for overseeing the safe and responsible development of unconventional domestic natural gas resources and associated infrastructure and to help reduce our dependence on oil." The Order establishes the Interagency Working Group, whose membership includes EPA.

In articulating the Order's underlying policy, the President states that "it is vital that we take full advantage of our natural gas resources" and "States are the primary regulators of onshore oil and gas activities." The Executive Order charges the Working Group to "facilitate coordinated Administration Policy efforts to *support* safe and responsible unconventional natural gas development." [Emphasis added.] However, the Executive Order flags "augmenting State safeguards" as a role for the Federal government. The Order is not clear on whether that Federal standard-setting role is in addition to or in lieu of the States' role as primary regulators. As this Federal "augmenting" role is mentioned as something apart from simply implementing Federal law, it requires particular explanation.

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Aware that EPA has underway a wide array of activities with respect to the development of unconventional domestic gas resources, we need a greater understanding of these plans and the Working Group's role in them. Among these are the following.

1. Using funds first appropriated to EPA for fiscal year 2010, the Agency has been studying drinking water integrity in connection with hydraulic fracturing. We understand that EPA, absent statutory direction, now seeks to expand this study.

    a. Who initially recommended expansion of the study?
    b. Is the Working Group aware of EPA's activity on this study and has EPA provided results to date from the study to the Working Group?
    c. Which Members of the Working Group are involved with the study?
    d. Will the Working Group review the study's processes and methodology?
    e. Will the study be conducted as a highly influential scientific assessment subject to rigorous peer review prior to public release, and will the Working Group advise on and approve that peer review process in advance?
    f. What are the Working Group's views as to how the study, particularly the extension and expansion of it, supports development of domestic natural gas resources?
    g. Is the Working Group taking steps to involve experienced State regulatory officials (including members of the Ground Water Protection Council and the Interstate Oil and Gas Compact Commission), industry, and other relevant stakeholders in reviewing the study's processes and methodology?

2. On January 11, 2012, EPA announced an initiative aimed at creating new chemical reporting requirements for hydraulic fracturing under section 8 of the Toxic Substances Control Act (TSCA). This announcement follows, and seems redundant to, action already underway through State officials. Further, it is not clear what the new TSCA proposal adds beyond already established reporting systems to support development of domestic natural gas resources or to acknowledge that "States are the primary regulators of onshore oil and gas activities."

    a. Is the President's Interagency Working Group aware of this announcement and of the prior State activities on chemical reporting?
    b. Is the Working Group involved in any part of the TSCA section 8 proposal, including the stakeholder meetings being suggested by EPA as part of this effort?

3. EPA is using broad authority under section 104(e) of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) to conduct groundwater investigations in areas where hydraulic fracturing has occurred. Despite rapidly evolving technology, EPA has tested old, "retrospective" sites that may not reflect current practices and where there is no baseline data with which to compare water quality prior to fracking with water quality after fracking.

    a. For useful sampling, would it not make more sense to test sites before fracking has occurred, then test them again after the fracking operation to get a fair read of the fracking effect, if any?

b. Is the Working Group fully informed of this investigative approach and, if so, does the Working Group endorse it?
c. Is EPA or the Working Group actively and collaboratively working with State regulators to obtain information on well sites before invoking CERCLA authority?
d. If so, does the Working Group believe this investigative approach and the use of CERCLA credibly support development of domestic natural gas resources while respecting the States' role?

While these are not EPA's only activities with regard to hydraulic fracturing, we think they provide a fair, initial sampling to help us understand the relationship between the President's Interagency Working Group and one of its member agencies.

Thank you for your consideration of these matters. Please respond no later than June 28, 2012. If you have any questions, please contact Committee staff David McCarthy or Jerry Couri at (202) 225-2927.

Sincerely,

Fred Upton
Chairman

John Shimkus
Chairman
Subcommittee on Environment and the Economy

Joe Barton
Chairman Emeritus

Tim Murphy
Vice Chairman
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Cathy McMorris Rodgers

Greg Harper

Bill Cassidy

cc: The Honorable Henry A. Waxman, Ranking Member

The Honorable Gene Green, Ranking Member
Subcommittee on Environment and the Economy

Signatories

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