ENERGYINDEPTH

May 25, 2010

The Honorable Henry Waxman
Chairman, Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515-6115

The Honorable Joe Barton
Ranking Member, Committee on Energy and Commerce
2322A Rayburn House Office Building
Washington, DC 20515-6115

Dear Chairman Waxman and Ranking Member Barton:

This week, the Energy & Commerce Committee is scheduled to markup the Assistance, Quality and Affordability (AQUA) Act of 2010, which seeks, among other priorities, to reauthorize the State Revolving Fund in place under the Safe Drinking Water Act (SDWA).

Among the many amendments to the bill that you and your colleagues are likely to consider, one amendment in particular will seek to rewrite SDWA in a manner that could have serious consequences on American energy producers' ability to deploy a key technology needed to access abundant energy resources from shale formations onshore. The amendment, which some have indicated may be offered by Rep. Diana DeGette (D-Colo.), will include language taken from H.R. 2766, which the committee has not acted upon in any discernable way since the legislation's introduction nearly a year ago.

Drafts of the proposed amendment text which have surfaced indicate it will seek to compel service companies to disclose materials used in the fracturing process to the appropriate state agencies or the Environmental Protection Agency (EPA). Before you and your colleagues vote on this amendment, though, you should be aware that the structure of the amendment could result in significant and adverse consequences.

First, it would amend the delegation process under SDWA. For states to maintain their primacy under the Act, they would have to accept the disclosure requirements found in the amendment. As a part of those requirements, states would have to incur the costs of managing the data that would be generated for each fractured well, and post that information on an Internet site.

No funding is provided to pay for these costs; states would have to sacrifice other functions to generate the information. Of course, if they choose not to do that, states would have to give up their regulatory responsibilities under SDWA and turn these functions over to EPA. Not only would this burden EPA – since it is not staffed with the capabilities to undertake daily regulatory responsibilities – but it would also lead to duplicative regulations.

Second, these reporting requirements would undermine other efforts for which some members of your committee have advocated – for example, work related to the development of "green" additives for the fracturing process. Even though state regulatory programs have effectively managed the environmental considerations associated with hydraulic fracturing, some companies are actively working to produce new additive compounds considered to be even more environmentally benign than they are today.

While existing concerns related to Confidential Business Information tend to be focused more on other areas of the broader fracturing debate, the release of information to competitors – both foreign and domestic – on initiatives such as the development of "green" chemicals could have the perverse effect of forcing companies to cut their investment in this important research, or abandon it altogether.

As it relates to the composition of fluids commonly used in the fracturing process today, it's important to note that greater than 99.5 percent of the mixture is comprised of water and playground sand. The remaining materials, used to help deliver the water down the wellbore and position the sand in the tiny fractures created in the formation, are typically components that can found in your kitchen cupboard and beneath your kitchen sink. The most prominent of these, a substance known as guar gum, is an emulsifier more commonly found in ice cream and peanut butter.

In contrast to the assertions on which this amendment is premised, these materials are well known to state regulators, and are generally available to members of the public upon a quick search of the Internet, or by request to the state. In Pennsylvania, a list of these components can be found easily on the website of the Department of Environmental Protection; in New York, a basic search of the Department of Environmental Conservation's website returns the same. Lists of these components have also been made available by the U.S. Department of Energy, the Ground Water Protection Council, and on the website of Energy In Depth (EID), of which I have the privilege to serve as executive director.

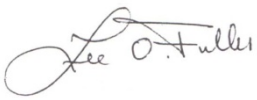
The fact is, hydraulic fracturing has been ably and aggressively regulated by the states almost since the moment of its invention, with regulators compiling an impressive record of enforcement and oversight during that time. It's a record that continues to be acknowledged by regulators and lawmakers on the federal level as well, most recently by EPA's director of drinking water protection, who told a reporter in February that there existed "no evidence" that "states aren't doing a good job already" when it comes to regulating fracturing activities.

In closing, it's important for members of the committee to understand that, as additional attention has been paid on the technologies that are making the modern-day shale revolution possible, EPA has taken appropriate notice as well, announcing earlier this year the commencement of a new study focusing on the relationship between hydraulic fracturing and drinking water. In 2004, the agency published a report finding hydraulic fracturing to be a safe and well-regulated technology. Notwithstanding those findings, EPA is honoring a request by Congress to study the technology once again.

This research, once complete, will confirm and reinforce the existing record of safety and performance to which hydraulic fracturing has laid consistent claim over the years. However, legislative efforts such as the one proposed by Rep. DeGette should wait until the results of that study are released. Otherwise, why should the time, energy and resources be spent on doing the study in the first place?

Thank you for your forthright consideration of this position. EID stands ready and eager to assist you and your staff should you need any additional information in the future.

Sincerely,



Lee Fuller
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cc: All members of the Energy & Commerce Committee