



June 11, 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:

On May 26, the Energy and Commerce panel held a full committee markup of H.R. 5320, the Assistance, Quality, and Affordability (AQUA) Act of 2010, a bill that was reported favorably to the House by a vote of 45-1. One of the amendments brought up for consideration that afternoon, offered by U.S. Rep. Diana DeGette (D-Colo.), sought to amend the Safe Drinking Water Act (SDWA) to target the continued use of hydraulic fracturing, a key energy technology never previously regulated under SDWA, but over the past 60 years, one that has been aggressively regulated by the many states in which the technique is commonly deployed.

Although the DeGette language was ultimately withdrawn -- a motion that was supported by the chairman -- the debate that was spurred by the introduction of the amendment included several assertions which, upon closer scrutiny, don't quite reflect the current reality as it relates to state involvement in the regulation and oversight of fracturing activities. I appreciate the opportunity to correct that record on behalf of the Independent Petroleum Association of America and Energy In Depth, of which I have the pleasure to serve as executive director.

Reviewing the archived video of the debate on the committee's website, Rep. DeGette on several occasions makes reference to what she believes to be an inadequate number of states currently requiring service companies to disclose information related to the materials used in the fracturing process. In particular, she suggests that "only three states have laws requiring reporting," and that two other states "are considering implementing those laws" as well. All told, she estimates that "only one-tenth of the states require this type of reporting," and proceeds to use that premise as the foundation for constructing a broader argument in support of her amendment.

But those numbers don't quite align with research jointly published last year by the Ground Water Protection Council (GWPC) and the U.S. Department of Energy. According to that report, of the 27 states in which 99.9 percent of oil and gas activity takes place:

- 25 of those states require a detailed well treatment report to be submitted to state regulatory agencies;
- 18 states require the submission of a list of materials used (water, sand, additives) in the process;
- 19 states require the volumes of those materials to be disclosed; and
- 10 states demand a list of specific additives the service company intends to use on site.

Attached for your convenience, please find a previously unpublished addendum to the GWPC report providing a detailed summary of how these states regulate hydraulic fracturing, as well as other rules in place governing every stage of the energy exploration, production and delivery process. Please note that

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since this addendum was compiled, a number of states – such as Colorado, Pennsylvania, and most recently Wyoming – have updated their disclosure rules to provide for even greater level of transparency in the process.

In analyzing the disclosure requirements currently in place in the individual states, it's important also to recognize that the federal government also requires the forthright disclosure of additives used in the fracturing process in the form of Material Safety Data Sheets (MSDS), which are mandated by the Occupational Safety and Health Administration (OSHA) to be present at every well site in America where a minimum amount of chemicals are found. In states such as New York, Pennsylvania and West Virginia, these sheets and aggregations thereof can be accessed easily by navigating to the website of the appropriate state regulatory office. In other states, similar information can be obtained by submitting a simple request to the agency.

In closing, one additional comment made by Rep. DeGette during the debate over her amendment last week may warrant further explanation – specifically, the assertion that “in 2005, the oil and gas industry got itself exempted from the Safe Drinking Water Act, the only industry which is exempt from that legislation.”

As senior members of the committee during that time, certainly you remember that the provision of the Energy Policy Act of 2005 dealing with hydraulic fracturing did not result in a substantive change to existing law; it merely clarified Congress's long-standing position that hydraulic fracturing had never been – and, in fact, was never intended to be – regulated under SDWA. But that doesn't mean other aspects of the process aren't regulated under SDWA and a host of other federal rules and statutes. For your convenience, I've attached a fact sheet depicting the various forms of federal regulation (SDWA, Clean Water Act, etc.) that apply to each step of that process.

Thank you for the opportunity to address some of the misconceptions that exist regarding ongoing efforts by the states to discharge their long-held responsibilities related to the regulation of oil and natural gas. Please don't hesitate to contact me directly should you have any additional questions, concerns or comments.

Sincerely,

A handwritten signature in black ink that reads "Lee O. Fuller". The signature is written in a cursive style with a large, looping initial "L".

Lee Fuller
Executive Director
Energy In Depth

cc: All members of the House Energy & Commerce Committee

Enclosures