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Congress of the United States

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October 29, 2014

Dana Aunkst
Acting Secretary
Pennsylvania Department of Environmental Protection
Rachel Carson State Office Building
400 Market Street
Harrisburg, PA 17101

Dear Acting Secretary Aunkst,

I am writing to request information about the state regulatory process for monitoring the handling and disposal hydraulic fracturing (fracking) waste. As you know, fracking wastes are categorized as "special wastes" and are exempt from federal hazardous waste regulations under Subtitle C of the Resource Conservation and Recovery Act (RCRA).¹ As a result, fracking wastes are regulated as non-hazardous wastes by state governments under the less stringent RCRA Subtitle D solid waste regulations.² I am writing to inquire about your state's reporting requirements for fracking operators, fracking waste transporters and disposal site operators.

Fracking operations generate wastes that include toxic chemicals and radioactive waste. A minority staff report of the House Energy and Commerce Committee identified 29 chemicals found in fracking waste as (1) known or possible human carcinogens, (2) regulated under the Safe Drinking Water Act for their risks to human health, or (3) listed as hazardous air pollutants under the Clean Air Act.³ Studies have also found naturally occurring radioactive material

¹ Environmental Protection Agency, *Crude Oil and Natural Gas Waste* (online at www.epa.gov/epawaste/nonhaz/industrial/special/oil/index.htm); See Resource Conservation and Recovery Act, Pub. L. No. 94-580, 42 U.S.C. § 6901 *et seq.* (1976) (online at www.epw.senate.gov/rcra.pdf).

² Environmental Protection Agency, *Regulatory Determination for Oil and Gas and Geothermal Exploration, Development and Production Wastes* (July 6, 1988) (online at www.epa.gov/epawaste/nonhaz/industrial/special/oil/og88wp.pdf).

³ Minority Staff, House Committee on Energy and Commerce, *Chemicals Used in Hydraulic Fracturing* (Apr. 2011) (online at democrats.energycommerce.house.gov/sites/default/files/documents/Hydraulic-Fracturing-Chemicals-2011-4-18.pdf).

(NORM) in fracking waste.⁴ Exempt oil and gas wastes include drilling fluids and cuttings, produced water, used hydraulic fracturing fluids, rig wash, workover wastes, tank bottom sludge, glycol-based dehydration wastes, amine-containing sweetening wastes, hydrocarbon-bearing soil, and many other individual waste products.⁵

If not handled properly, these fracking wastes can contaminate nearby lands and waters and cause harm to human health and the environment.⁶ Due to the RCRA exemption, tracking the production, movement and disposal of fracking wastes falls to state governments.

The Pennsylvania Auditor General recently performed an audit of the Pennsylvania Department of Environmental Protection (PA-DEP) performance in monitoring potential impacts to water quality from shale gas development.⁷ One of the audit's findings was that PA-DEP relies on a disjointed process of utilizing different sources of reports and self-reporting by operators with no assurances that waste is disposed properly. The audit concluded that Pennsylvania's current system for oversight of fracking waste "is not an effective monitoring tool" and "it is not proactive in discouraging improper, even illegal, disposal of waste." The Auditor General recommended that PA-DEP implement a true manifest system to thoroughly track waste and its disposal as well as review and verify the accuracy of self-reported waste data to ensure waste is handled properly and disposed of in compliance with pertinent laws.

The Subcommittee minority is conducting this oversight to determine if state regulations and monitoring of fracking waste are sufficient to ensure accuracy, completeness and compliance with applicable environmental laws. To help the Subcommittee conduct its oversight, I request the following information about your state's regulatory process and requirements:

- 1) An explanation of PA-DEP's response to the PA Auditor General in which PA-DEP said that cross checking data occurs "when practical."
- 2) An explanation of the reporting requirements for producers, transporters and disposal site operators that handle fracking waste. Please include the standard units of measure for reported data and how often data is required to be reported.

⁴ *In Fracking's Wake: New Rules are Needed to Protect Our Health and Environment from Contaminated Wastewater*, Natural Resources Defense Council (May 2012) (online at www.nrdc.org/energy/files/fracking-wastewater-fullreport.pdf).

⁵ Environmental Protection Agency, *Exemption of Oil and Gas Exploration and Production Wastes from Federal Hazardous Waste Regulations* (Oct. 2002) (online at epa.gov/waste/nonhaz/industrial/special/oil/oil-gas.pdf).

⁶ *Id.*

⁷ Commonwealth of Pennsylvania, Department of the Auditor General, *DEP's performance in monitoring potential impacts to water quality from shale gas development, 2009-2012* (July 2014) (online at www.auditorgen.state.pa.us/media/default/reports/speDEP072114.pdf).

- 3) An explanation of how state regulators monitor the accuracy of reporting and compliance with reporting and certification requirements for the handling and disposal of fracking waste.
- 4) An explanation of the use of audits, inspections or investigations for ensuring compliance with laws and regulations applicable to fracking waste. Please include a description of how these compliance tools are initiated; whether the findings from audits, inspections or investigations are made public; how audits, inspections or investigations relate to enforcement actions.
- 5) An explanation of the process for receiving and investigating complaints regarding fracking waste handling or disposal.
- 6) A description of any mandatory testing of recycled fracking wastewater and any residual by-product of treated wastewater.
- 7) A description of penalties imposed for noncompliance with regulatory requirements regarding the handling and disposal of fracking wastewater and any residual by-product of treated wastewater.
- 8) Information on how your state ensures that disposal facilities, wells and landfills are not contaminating nearby waterways and complying with applicable federal and state laws when handling exempt fracking wastes.
- 9) A description of state inspection procedures of disposal facilities that receive oil and gas wastes with respect to protecting human health and the environment from contamination by oil and gas wastes that have hazardous characteristics.
- 10) Information on the percentage of fracking waste that is: treated for reuse, disposed of via underground injection well, disposed of via landfill, disposed via other means, or transported out of state.
- 11) Information on your state's oversight approach of the Underground Injection Control program. Please include the number of waste disposal wells in your state and the number of full-time equivalents assigned to conduct oversight on these sites.

I also request the following aggregate statistics by year from 2011 to present:

- 12) The number of investigations and inspections of improper handling or disposal of fracking waste. Please distinguish the investigations by how they were initiated (e.g. complaints, inconsistency in reported data, random inspections).
- 13) The number and types of findings of violations from investigations.
- 14) The volume and type of fracking waste reported during generation, transportation and disposal.
- 15) The volume and type of fracking waste that is transported into the state and the volume and type of waste that is transported out of the state.
- 16) The number of complaints regarding a disposal facility receiving fracking waste. The number of inspections or investigations of disposal facilities receiving fracking waste. The number and types of findings of violations found at disposal facilities receiving fracking waste.

Acting Secretary Dana Aunkst
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The Committee on Oversight and Government Reform is the principal oversight committee in the House of Representatives. Please provide the requested information by November 12, 2014. If you have questions, please contact Brian Quinn of the Committee at (202) 225-5051. Thank you for your attention to this matter.

Sincerely,



Matt Cartwright
Ranking Member
Subcommittee on Economic Growth, Job Creation
and Regulatory Affairs