

ONE HUNDRED THIRTEENTH CONGRESS
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

October 25, 2013

The Honorable Sylvia Mathews Burwell
Director
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Dear Director Burwell:

Last month, the Environmental Protection Agency (EPA) sent to the White House Office of Management and Budget (OMB) its permitting guidance for oil and gas hydraulic fracturing activities using diesel fuels. We urge you to finalize this long overdue guidance expeditiously and to reject any industry efforts to weaken or delay it.

In 2005, Congress passed the Energy Policy Act, which contained a provision limiting the application of the Safe Drinking Water Act to hydraulic fracturing except when diesel is used. Congress modified the definition of “underground injection” to exclude “the underground injection of fluids or propping agents (other than diesel fuels) pursuant to hydraulic fracturing operations related to oil, gas, or geothermal production activities.”¹ This language reflects the limited information available to Congress at the time, which suggested that diesel fuel was the primary constituent of concern in hydraulic fracturing fluids.²

The effect of the Energy Policy Act was to exempt hydraulic fracturing from underground injection control permit requirements unless the fluid being injected is diesel fuel. But the lack of guidance from EPA has created questions about the application of the law. Seven years passed before EPA issued draft guidance for the permitting of hydraulic fracturing using

¹ 42 U.S.C. § 300h(d).

² U.S. Environmental Protection Agency, *Evaluation of Impacts to Underground Sources of Drinking Water by Hydraulic Fracturing of Coalbed Methane Reservoirs* (June 2004) (EPA 816-R-04-003) at 4-11 (concluding that the “use of diesel fuel in fracturing fluids poses the greatest threat” to underground sources of drinking water).

diesel fuels.³ Sixteen more months passed before EPA sent the guidance to OMB for review. During this period, the permitting regime for hydraulic fracturing operations using diesel fuel has remained unclear.

Industry has taken advantage of the lack of clarity. In 2011, Democrats on the House Energy and Commerce Committee released data showing that oil and gas service companies injected more than 32 million gallons of diesel fuel or fracturing fluids containing diesel fuel between 2005 and 2009. Moreover, none of the state agencies or EPA regional offices had issued underground injection control permits for the use of hydraulic fracturing fluids containing diesel.⁴ These findings surprised many industry observers, as the oil industry and at least one senior EPA official appointed by President George W. Bush had assured the public that diesel fuel was no longer used in fracking.⁵

More recent data appear to indicate that the oil and gas industry continues to use hydraulic fracturing fluids containing diesel fuel. Data from FracFocus, the industry-run voluntary registry of chemicals used in hydraulic fracturing, shows that oil and gas companies reported using products containing three different kinds of diesel fuel in wells in four states in 2013.⁶ The number of wells in each state was small and the reported amounts were not large, but FracFocus is not a comprehensive database of all hydraulically fractured wells.

Diesel fuel is toxic and should not be used in fracking without careful environmental review under the Safe Drinking Water Act. We urge you to review EPA's guidance

³ U.S. EPA, *Permitting Guidance for Oil and Gas Hydraulic Fracturing Activities Using Diesel Fuels – Draft: Underground Injection Control Program Guidance #84* (EPA 816-R-12-004) (May 2012).

⁴ Letter to the Honorable Lisa Jackson, Administrator, U.S. EPA, from Ranking Members Henry A. Waxman, Edward J. Markey, and Diana DeGette, Committee on Energy and Commerce (Jan. 31, 2011); Letter to the Honorable Lisa Jackson, Administrator, U.S. EPA, from Ranking Members Henry A. Waxman, Edward J. Markey, and Diana DeGette, Committee on Energy and Commerce (Oct. 25, 2011).

⁵ Energy In Depth, *When Gummy Bears Attack* (Jan. 20, 2010) (online at <http://www.energyindepth.org/2010/01/when-gummy-bears-attack/>) (stating “diesel fuel is simply not used in fracturing operations”); Letter from Benjamin Grumbles, Acting Assistant Administrator, U.S. EPA, to Senator Jim Jeffords (Dec. 7, 2004) as cited in the Congressional Record, S7278 (June 23, 2005) (stating that a voluntary agreement with the top hydraulic fracturing service providers had “accomplished the intended goal of removing diesel from hydraulic fracturing fluids in a matter of months”).

⁶ On October 21, 2013, minority committee staff searched FracFocus by CAS number for six types of diesel fuels, as defined by EPA in its draft permitting guidance. They found 11 wells reporting use of injectate containing CAS 68334-30-5, CAS 68476-34-6, and CAS 8008-20-6.

The Honorable Sylvia Mathews Burwell
October 25, 2013
Page 3

expeditiously so that the agency can finalize strong, clear guidance for permit writers for the remaining cases in which drilling companies opt to use hydraulic fracturing fluids containing diesel fuel.

We thank you for your consideration of this matter.

Sincerely,



Henry A. Waxman
Ranking Member



Diana DeGette
Ranking Member
Subcommittee on Oversight
and Investigations