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ONE HUNDRED TENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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September 5, 2007

The Honorable Dirk Kempthorne
Secretary
U.S. Department of the Interior
1849 C Street, NW
Washington, DC 20240

Dear Secretary Kempthorne:

I am writing to you because the Department of the Interior (DOI) has not fulfilled the requirement in section 1811 of the Energy Policy Act of 2005 to study the effects of coal-bed methane production on ground and surface water resources. In EAct 2005, Congress required DOI to fund a study on coal-bed methane production to assess these impacts and produce recommendations for congressional action to address them. However, DOI has failed to meet this requirement and has indicated that it does not intend to meet it in the future.

Through its effects on water resources, coal-bed methane production can threaten human health, the environment, and economic activities. The large quantities of water produced as a by-product of coal-bed methane production, and discharged to surface waters can contain harmful toxins such as heavy metals, hydrocarbons and other volatile organic compounds.¹ Coal-bed methane production commonly occurs in underground aquifers used for drinking water and uses a production technique that may contaminate these drinking water sources.²

In producing coal-bed methane, large quantities of water must be removed from coal seams in order to bring the methane to the surface. The produced water is then released to nearby surface streams, left in pits to evaporate, re-injected into the coal-bed methane site, or

¹ U.S. Department of Energy, *Environmental Regulatory Drivers for Coal Bed Methane Research and Development* (online at <http://www.ipd.anl.gov/anlpubs/2002/10/44472.pdf>).

² U.S. Environmental Protection Agency, *Evaluation of Impacts to Underground Sources of Drinking Water by Hydraulic Fracturing of Coalbed Methane Reservoirs*, ES-13 (June 2004) (EPA 816-R-04-003); Weston Wilson (EPA, not in official capacity), *EPA Allows Hazardous Fluids to be Injected into Ground Water: A Report on EPA's Failure to Protect America's Ground Water from the Impacts of Oil and Gas Production*, 1-3 (October 8, 2004).

disposed of in a variety of other manners. This water can contain ammonia, chloride, heavy metals, and other compounds in sufficient concentrations to adversely affect normal crop yields, plant growth, fisheries, and other agricultural and economic activity, as well as harming ecosystems.³

In addition, most coal-bed methane fields are located, at least in part, in aquifers, and producers use the production technique of hydraulic fracturing for most of these coal-bed methane wells.⁴ Hydraulic fracturing involves pumping fluid into rock formations to create fractures in the rock that allows more oil and gas to flow in. Some hydraulic fracturing mixtures contain hazardous chemicals that are associated with numerous dangerous health impacts such as respiratory problems, neurotoxicity, and cancer.⁵ Introducing dangerous chemicals into underground sources of drinking water threatens to contaminate drinking water and harm human health.

Section 1811 of EPAct 2005 requires DOI, in consultation with the Environmental Protection Agency, to enter into an agreement with the National Academy of Sciences (NAS) to “conduct a study on the effects of coal bed natural gas production on surface and ground water resources, including ground water aquifers, in the States of Montana, Wyoming, Colorado, New Mexico, North Dakota, and Utah.”⁶ The study must address:

- a. the management of coal bed methane produced water;
- b. the use of best management practices; and
- c. various production techniques for coal bed methane natural gas in minimizing impacts on water resources.⁷

Section 1811 further requires NAS to “analyze available hydrologic, geologic and water quality data,” evaluate mitigation techniques and costs, and examine the “effects on surface or ground water resources, including drinking water, associated with surface or subsurface disposal of waters used and produced during extraction of coalbed methane.”⁸

³ U.S. Department of Energy, *supra note 1*.

⁴ U.S. Environmental Protection Agency, *supra note 2*.

⁵ U.S. Environmental Protection Agency, ES-16 *supra note 2*; The Endocrine Disruption Exchange, *Chemicals Used in Natural Gas Development and Delivery: Four Western States* (March 28, 2007) (online at <http://www.endocrinedisruption.com/>).

⁶ Pub. L. 109-58, § 1811(a) (1), (2005).

⁷ Pub. L. 109-58, § 1811(a) (2), (2005).

⁸ Pub. L. 109-58, § 1811(b), (2005).

In addition, section 1811 requires NAS to evaluate current federal and state laws and regulations regarding “the effectiveness of current mitigation practices of coal bed methane produced water handling.”⁹ The study must include recommendations for any changes to federal law necessary to address the harmful impacts coal-bed methane production may have on surface and ground water resources.¹⁰ EAct 2005 requires NAS to complete the study within twelve months after the date of enactment, and DOI and EPA must report the findings and recommendations to Congress six months after the study is completed.¹¹

DOI tasked the Bureau of Land Management (BLM) with executing these requirements. However, BLM has indicated that they have no intention of complying with the law’s directives. BLM wrote to NAS on April 24, 2006, informing NAS that BLM would not be funding the study required under section 1811.¹² The letter included a set of studies BLM claimed addressed the concerns about coal-bed methane production that the EAct study requirement aims to address.¹³ BLM stated that: “...the existing studies provide a comprehensive analysis of topics that were intended to be addressed by the act...BLM believes it would not be in the public interest to enter into arrangements to conduct any further study at this time.”¹⁴

BLM made no representations regarding whether any of these studies addressed the adequacy of the regulatory framework for managing these problems, although the section 1811 study requires NAS to assess this issue and make recommendations for any necessary changes to federal law. BLM’s letter went on to say that “BLM is prepared to discuss any additional studies which the Academy or others can demonstrate a need.”¹⁵

NAS responded to BLM on February 2, 2007, and provided options for next steps that ranged from reviewing the studies BLM had provided to completing a twelve month full National Research Council (NRC) study that would satisfy the section 1811 requirement.¹⁶

⁹ Pub. L. 109-58, § 1811(c), (2005).

¹⁰ *Id.*

¹¹ Pub. L. 109-58, § 1811(d), (2005).

¹² Letter from Kathleen Clark, Director, Bureau of Land Management to Dr. Anthony de Souza, Director, Board on Earth Sciences and Resources, National Academy of Sciences (Apr. 24, 2006).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Letter from Elizabeth A. Eide, Director, Committee on Earth Resources, National Academy of Sciences to James M. Hughes, Deputy Director, Programs and Policy, Bureau of Land Management (February 2, 2007).

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According to NAS, BLM officials informed them orally in April 2007 that BLM had no intention to fund the required study or request NAS to take other further action on this matter. Apparently, BLM did not offer any further explanation at that time.¹⁷

BLM has no authority to ignore the law. There are numerous documented damaging effects of coal-bed methane production on water resources, the ecosystems that depend on those resources, and agricultural and other economic activities. There are also significant concerns about threats to human health. Congress required DOI to fund NAS to study these issues and recommend solutions to Congress. Moreover, the law requires DOI to make its decisions about study methods and design in consultation with EPA. Anything less than a comprehensive NAS study, designed in consultation with EPA, that addresses all subject area, data analysis, and recommendation requirements set forth in section 1811 will fail to meet the law's requirements.

I request your assurance that DOI will in fact comply with the law. In addition, I ask that you answer the following questions and provide the requested materials related to this matter:

1. Who made the decision to ignore the requirement in section 1811 of EPAct 2005?
2. In making this decision, did DOI consult with other agencies, industry entities, or advocacy organizations? Detail the entities consulted and the recommendations they made.
3. Provide all documents related to the execution of section 1811 of the EPAct of 2005 and the decision not to undertake the coal-bed methane study.

Please provide detailed responses to these questions and the requested materials by close of business on September 26, 2007.

The Committee on Oversight and Government Reform is the principal oversight committee in the House of Representatives and has broad oversight jurisdiction as set forth in House Rule X. An attachment to this letter provides additional information about how to respond to the Committee's request.

¹⁷ Elizabeth A. Eide, Director, Committee on Earth Resources, National Academy of Sciences, telephone communication with committee staff (August 21, 2007).

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If you have any questions regarding this request, please contact Gilad Wilkenfeld with the Committee staff at (202) 225-4407.

Sincerely,

A handwritten signature in black ink that reads "Henry A. Waxman". The signature is written in a cursive, slightly slanted style.

Henry A. Waxman
Chairman

Enclosure

cc: Tom Davis
Ranking Minority Member

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Responding to Oversight Committee Document Requests

In responding to the document request from the Committee on Oversight and Government Reform, please apply the instructions and definitions set forth below.

Instructions

1. In complying with the request, you should produce all responsive documents in your possession, custody, or control.
2. Documents responsive to the request should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual denoted in the request has been, or is currently, known by any other name than that herein denoted, the request should be read also to include them under that alternative identification.
4. Each document produced should be produced in a form that renders the document capable of being copied.
5. When you produce documents, you should identify the paragraph or clause in the Committee's request to which the documents respond.
6. Documents produced in response to this request should be produced together with copies of file labels, dividers, or identifying markers with which they were associated when this request was issued. To the extent that documents were not stored with file labels, dividers, or identifying markers, they should be organized into separate folders by subject matter prior to production.
7. Each folder and box should be numbered, and a description of the contents of each folder and box, including the paragraph or clause of the request to which the documents are responsive, should be provided in an accompanying index.
8. It is not a proper basis to refuse to produce a document that any other person or entity also possesses a nonidentical or identical copy of the same document.

9. If any of the requested information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, memory stick, or computer backup tape), you should consult with Committee staff to determine the appropriate format in which to produce the information. Documents produced in electronic format should be organized, identified, and indexed electronically in a manner comparable to the organizational structure called for in (6) and (7) above. Documents produced in an electronic format should also be produced in a searchable format.
10. In the event that a responsive document is withheld on any basis, you should provide the following information concerning the document: (a) the reason the document is not being produced; (b) the type of document; (c) the general subject matter; (d) the date, author, and addressee; and (e) the relationship of the author and addressee to each other.
11. If any document responsive to this request was, but no longer is, in your possession, custody, or control, you should identify the document (stating its date, author, subject and recipients) and explain the circumstances by which the document ceased to be in your possession, custody, or control.
12. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
13. This request is continuing in nature and applies to any newly discovered document. Any document not produced because it has not been located or discovered by the return date should be produced immediately upon location or discovery subsequent thereto.
14. All documents should be bates-stamped sequentially and produced sequentially.
15. Two sets of documents should be delivered, one set to the majority staff and one set to the minority staff. The majority set should be delivered to the majority staff in Room 2157 of the Rayburn House Office Building, and the minority set should be delivered to the minority staff in Room B350A in the Rayburn House Office Building. You should consult with Committee staff regarding the method of delivery prior to sending any materials.
16. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee or identified in a privilege log provided to the Committee.

Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone calls, meetings or other communications, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto). The term also means any graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, voice mails, microfiche, microfilm, videotape, recordings and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, memory sticks, and recordings), and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “documents in your possession, custody, or control” means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that you have placed in the temporary possession, custody, or control of any third party.
3. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, telexes, discussions, releases, personal delivery, or otherwise.
4. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of the request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
5. The terms “person” or “persons” means natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures,

proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.

6. The terms “referring” or “relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.