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# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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January 19, 2012

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LAWRENCE J. BRADY  
STAFF DIRECTOR

The Honorable Lisa Jackson  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 20460

Dear Administrator Jackson:

The Committee on Oversight and Government Reform continues its oversight of the development of domestically available energy resources. As you are aware, innovation in the field of shale gas extraction has dramatically expanded the amount of natural gas that is domestically available. According to your own testimony before the Committee, "Thanks to advances in drilling technology, including hydraulic fracturing or fracking, America's potential natural gas resource is nearly 50 percent larger than we believed it was just a few years ago . . . Increasing America's natural gas production is a good thing."<sup>1</sup> However, the Committee has recently come into possession of documents that appear to indicate that the U.S. Environmental Protection Agency (EPA) is planning for a future where new supplies of natural gas are limited because of the agency's concern about the "environmental impacts" of hydraulic fracturing.

We write to better understand EPA's views on hydraulic fracturing and whether you have prejudged that hydraulic fracturing poses an environmental threat, even before the agency has completed a congressionally mandated review of the practice.

As you are aware, states across the country, ranging from Pennsylvania and Ohio to Louisiana, Texas, and South Dakota, are all experiencing first-hand the economic benefits of the renewed interest in American energy resources. Foreign investors have taken notice: for example, France's Total SA announced plans to invest \$2.3 billion in Chesapeake Energy Corp. assets to explore the Utica shale formations in Ohio.<sup>2</sup> Development of natural gas resources has great potential for job creation, much needed in these tough economic times.

<sup>1</sup> *Pain at the Pump: Policies that Suppress Domestic Production of Oil and Gas: Hearing Before the H. Comm. on Oversight & Gov't Reform*, 112<sup>th</sup> Cong. (2011) (statement of Lisa Jackson, Administrator, EPA).

<sup>2</sup> *Opinion, More Brown Jobs*, WALL ST. J., Jan. 5, 2012.

Recognizing the promise that natural gas has for the American economy, you assured the Committee that hydraulic fracturing has been successfully regulated at the state level for over 60 years. You stated that, “state governments are appropriately the first line of defense against harmful or unsafe drilling practices.”<sup>3</sup> Yet, despite the potential benefits of increased utilization of our domestic energy resources through hydraulic fracturing, this Administration has demonstrated a significant interest in regulating the practice at the federal level. As was pointed out in the Committee hearing, “Pain at the Pump: Policies that Suppress Domestic Production of Oil and Gas,”<sup>4</sup> three federal agencies are vying for the role of federal regulator of the industry. The Department of Energy (DOE) has assembled a panel of non-practitioners to assess the state of the industry<sup>5</sup> and the Department of the Interior (DOI) recently announced new regulations for natural gas extraction on federal lands.<sup>6</sup>

According to documents obtained by the Committee, it appears that EPA is preparing to regulate the practice of hydraulic fracturing in such a way as to make it an unreliable method of obtaining natural gas. The documents reveal a dispute between EPA and Federal Energy Regulatory Commission (FERC) staff during the interagency review of the Utility MACT rule.<sup>7</sup> E-mails show EPA staff indicated to FERC that EPA would not recognize the Commission’s estimates of the quantity of natural gas reserves – including natural gas recovered by hydraulic fracturing.<sup>8</sup> In reference to conversations with EPA, David Kathan of FERC’s Office of Energy Policy and Innovation was concerned that EPA was “sticking to their opinion that hydraulic fracturing should not be relied upon to provide a resource boost.”<sup>9</sup> It appears that EPA rejected the possibility of more abundant natural gas reserves from hydraulic fracturing due to concern about the “environmental impacts of hydraulic fracturing.” Specifically, Mr. Kathan stated:

EPA rejects the option of fuel switching based [sic] its concerns about natural gas availability and **environmental impacts of hydraulic fracturing associated with shale gas production. FERC’s seasonal market reports have found adequate natural gas supplies to meet U.S. generation requirements.** We suggest that EPA acknowledge FERC’s forecasts and clarify the concerns about long-term availability.<sup>10</sup> (emphasis added)

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<sup>3</sup> *Pain at the Pump: Policies that Suppress Domestic Production of Oil and Gas: Hearing Before the H. Comm. on Oversight & Gov’t Reform*, 112<sup>th</sup> Cong. (2011) (statement of Lisa Jackson, Administrator, EPA).

<sup>4</sup> *Id.*

<sup>5</sup> Press Release, U.S. Department of Energy, Secretary Chu Tasks Environmental, Industry and State Leaders to Recommend Best Practices for Safe, Responsible Development of America’s Onshore Natural Gas Resources, May 5, 2011.

<sup>6</sup>

<sup>7</sup> Email from David Kathan to Julie Simon and Mason Emmett FER Mar. 15, 2011 01:25 EST (on file with author).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

In response to FERC, EPA refused to alter its projections of natural gas availability resulting from hydraulic fracturing:

EPA could remove this from the justification for the [sic] rejecting the beyond-the-floor analysis if FERC believes there is sufficient gas for all coal- and oil-fired electric generation to be replaced by natural gas **without the use of hydraulic fracturing**.<sup>11</sup> (emphasis added)

EPA's statements suggest the agency does not believe hydraulic fracturing will be a reliable method for extracting natural gas in the future due to potential EPA regulation. This view of EPA's position was shared by a FERC staff member:

There are two paragraphs [in EPA's response to FERC's interagency comments] discussing concerns related to hydraulic fracturing, which seems to suggest that potential environmental impacts of natural gas development led EPA to reject the idea of fuel switching.<sup>12</sup>

EPA's objections to FERC's estimates of future supplies of natural gas due to EPA's concern about the environmental impacts of hydraulic fracturing contradict your testimony before the Committee on May 24, 2011. In a response to a question about permitting from Congressman Mike Kelly, you stated: "As EPA Administrator, I see the credible potential in natural gas. I think it is important for our country."<sup>13</sup> You then testified with regard to regulating hydraulic fracturing, EPA would only "step in" if drinking water was threatened by the practice, but ultimately, the states were the best actors for maintaining safe drilling standards.<sup>14</sup> Moreover, you led the Committee to believe that EPA would not make any assumptions about the environmental impacts of hydraulic fracturing until the agency had completed its study.<sup>15</sup>

Your testimony was clearly meant to demonstrate to the Committee that EPA was not planning to limit hydraulic fracturing due to environmental concerns. These internal e-mails demonstrate very different intentions. EPA's comments to FERC demonstrate EPA has come to a predetermined conclusion that hydraulic fracturing will be

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<sup>11</sup> *Id.*

<sup>12</sup> Summary of Additional Interagency Working Comments on Draft Language under EO 12866 Inter Agency Review, U.S. Environmental Protection Agency, pg. 5-6 (on file with author).

<sup>13</sup> *Pain at the Pump: Policies that Suppress Domestic Production of Oil and Gas: Hearing Before the H. Comm. on Oversight & Gov't Reform*, 112<sup>th</sup> Cong. (2011) (statement of Lisa Jackson, Administrator, EPA).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* (Stating the following: "One of the things we are doing in addition to our authorities as mandated by Congress is a study of fracking to determine its impacts on drinking water . . . . So as we do that study, the other thing we have said, because we will not see initial results from that study until the end of next calendar year, is that we will, when asked or when we become aware of an issue that may be a violation of the Clean Water Act, the Safe Drinking Water Act or the Clean Air Act, respond, and we will provide **guidance** on those areas that are becoming areas of concern or challenges for the regulated community as we see our country move into fracking in new areas such as the Marcellus Shale." (emphasis added))

imminently regulated by EPA due to the agency's concerns about the "environmental impacts" of the practice.

These documents obtained by the Committee suggest that EPA has not been forthcoming with the Committee with regard to its plans to regulate the practice of hydraulic fracturing. Accordingly, we are writing you to clarify the public record and request that you respond to the following questions and provide the following documents:

1. Why did EPA staff indicate to FERC that FERC's estimates of natural gas supplies were not consistent with EPA's assumptions as to the availability of natural gas?
2. As detailed above, EPA rejected the option of fuel switching under the Utility MACT rule based in part on its concerns about natural gas availability and environmental impacts of hydraulic fracturing associated with shale gas extraction. Yet FERC's seasonal market reports found adequate natural gas supplies to meet U.S. generation requirements. Please explain the basis for EPA's disagreement with FERC. Why did EPA believe the future production of natural gas would be constrained?
3. Based on the correspondence obtained by the Committee, it appears that EPA staff strongly believe that hydraulic fracturing will not be a viable mechanism to extract natural gas in the near future. What is the basis for this belief? Does EPA currently have plans to use its existing authority to regulate hydraulic fracturing?
4. Has EPA come to a pre-determined conclusion on hydraulic fracturing in advance of its hydraulic fracturing study that is due to be released in 2012? On what basis has staff made assertions of environmental concerns regarding hydraulic fracturing?
5. You testified before this Committee that states are the "front lines" for the regulation of "various aspects of oil and gas exploration and recovery."<sup>16</sup> As the FERC emails and comments suggest, EPA staff is sending different signals to other federal agencies. Has EPA taken a different position internally about the agency's plans to regulate hydraulic fracturing than you have provided to Congress?
6. Can EPA cite a single instance where the practice of hydraulic fracturing has led to groundwater contamination?
7. Please provide all documents and communications referring or relating to the availability of natural gas in the development of the Utility MACT rule. These documents should include all internal and interagency communications, memoranda, e-mails, briefing documents, and any other materials or documents responsive to this request.

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<sup>16</sup> *Id.*



The Honorable Lisa Jackson  
January 19, 2012  
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The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X. An attachment to this letter provides additional information about responding to the Committee's request.

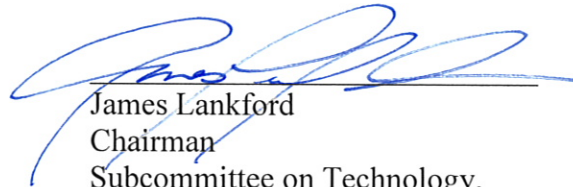
We ask that you provide the requested information as soon as possible, but no later than 5:00 p.m. on Thursday, February 2, 2012. Please directly respond to each question and request as numbered herein. When producing documents to the Committee, please deliver production sets to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format.

If you have any questions about this request, please contact Joseph Brazauskas or Kristina Moore of the Committee Staff at 202-225-5074. Thank you for your attention to this matter.

Sincerely,



Darrell Issa  
Chairman



James Lankford  
Chairman  
Subcommittee on Technology,  
Information Policy,  
Intergovernmental Relations and  
Procurement Reform

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Minority Member  
Committee on Oversight and Government Reform

The Honorable Gerry Connolly, Ranking Member  
Subcommittee on Technology, Information Policy, Intergovernmental Relations  
and Procurement Reform

ONE HUNDRED TWELFTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM  
2157 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6143

Majority (202) 225-5074  
Minority (202) 225-5051

**Responding to Committee Document Requests**

1. In complying with this request, you should produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
  - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
  - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
  - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.

6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when they were requested.
8. When you produce documents, you should identify the paragraph in the Committee's request to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full, compliance shall be made to the extent possible and shall include an explanation of why full compliance is not possible.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (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.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. 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.
15. The time period covered by this request is included in the attached request. To the extent a time period is not specified, produce relevant documents from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.



17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.
19. 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.

### 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, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, 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), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, 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 "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 in a meeting, by telephone, facsimile, email, regular mail, telexes, releases, or otherwise.
3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this 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.

4. The terms "person" or "persons" mean 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, or other units thereof.
5. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term "referring or relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.