

January 22, 2010

An Open Letter to Congress:

We are extremely concerned regarding Representative Diana DeGette's (D-CO) comments about hydraulic fracturing at the recent hearing held by the Subcommittee on Energy and Environment of the Committee on Energy and Commerce entitled "ExxonMobil and XTO Merger: Impacts on U.S. Energy Markets" (January 20, 2010). Unfortunately, Representative DeGette's comments were factually incorrect. They not only mischaracterized her own legislation but also the hydraulic fracturing process, the Safe Drinking Water Act (SDWA), and how the process is currently regulated. It is exactly this type of misinformation which in turn is misleading the public, members of Congress and regulators with respect to what has been and continues to be an environmentally safe practice.

Hydraulic fracturing has been used safely for more than 60 years, and it is effectively regulated with oversight by the states. Numerous sound studies demonstrate the safety of this practice and that there have been no environmental issues affecting ground water contamination arising from hydraulic fracturing. Additionally, Congress has requested that EPA conduct another study of the fracturing process and the protection of ground water. We believe that study will again demonstrate the effectiveness of the state regulatory programs managing natural gas and oil production.

We want to address several key issues that were raised during the hearing.

Representative DeGette indicated that her bill, H.R.2766, would only require disclosure of hydraulic fracturing fluids and not inhibit hydraulic fracturing. This is simply not the case. Representative DeGette's legislation requires the EPA to regulate hydraulic fracturing under the SDWA providing yet another layer of regulation on top of the state permitting processes and could make it commercially impracticable to drill here in the U.S. for natural gas. This provision could freeze the permitting of shale gas wells. Since there are no current federal hydraulic fracturing Underground Injection Control (UIC) regulations, requiring federal regulations would prevent states from permitting fracturing because there would be no regulatory structure in place.

Representative DeGette tries to suggest that a federal standard would be simpler for industry compliance. This characterization fails to recognize the federal and state roles in the SDWA. Like most federal environmental laws, the success of regulation under the SDWA hinges on states doing day-to-day regulation. Congress recognized that EPA would never be able to regulate throughout the country at every site and that federal laws would largely duplicate state regulations. In the SDWA, EPA develops a regulatory framework and then relies on states to seek "primacy" to implement them. For Class II UIC regulation, Congress in 1980 modified the SDWA to give states greater flexibility to reflect their unique needs. In reality, industry must function with 50 state programs under the SDWA and does so. H.R.2766 could cause a failure of this balance. Because not all states currently have underground injection wells – Pennsylvania is an example – those states do not have primacy. Since H.R.2766 would require federal UIC regulation of hydraulic fracturing, states like Pennsylvania would not be able to permit new wells.

Representative DeGette indicated that few states – she mentioned four – regulate hydraulic fracturing. It is a misleading assertion. In fact, states regulate to protect ground water. The state regulatory systems provide that the construction and monitoring of natural gas and oil wells prevent the movement of any fluids from the well bore to ground water formations – whether the fluids are injected into the wells or produced from them. The Ground Water Protection Council – comprised of the state regulators responsible for managing these water resources – analyzed state programs in its 2009 report, *State Oil and Natural Gas Regulations Designed to Protect Water Resources*. One of its key conclusions is: "State oil and gas regulations are adequately designed to directly protect water resources through the application of specific programmatic elements such as permitting, well construction, well plugging, and temporary abandonment requirements." Most states do not list the regulations that protect ground water from hydraulic fracturing risks under a specific "hydraulic fracturing" title, but Representative DeGette is incorrect to imply that the states do not effectively regulate its risks to ground water.

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Representative DeGette asserted that only the oil and natural gas production industry is exempt from public disclosure of chemicals under the SDWA. In reality, no one publicly discloses chemical compositions under the SDWA; rather, disclosure, when needed, is to state regulators. The disclosure that H.R.2766 creates would require states or EPA to receive, manage and publicly release information on the nature of fracturing fluids. This information is largely publicly available today on state websites in Pennsylvania and New York, on the *Energy In Depth* website (<http://www.energyindepth.org/frac-fluid.pdf>) and on many company websites that include Material Safety Data Sheets (MSDS) on their chemicals. Additionally, regulators have access to MSDS that must be present at the drilling site if a response is necessary. Representative DeGette's home state, Colorado, grappled with the disclosure issue in recent revisions to its regulations. Rather than broad public disclosure, Colorado chose to require detailed chemical disclosure through the state regulator to first responders if an environmental or health related incident necessitated action. Each state makes disclosure choices based on its experience and the costs of management. A federal standard will impose costs but the regulators have not concluded that it will provide beneficial information. When the broad disclosure issue was raised in a June 2009 Energy and Minerals Subcommittee hearing to the state regulator from North Dakota, his response was, "I do not see a great benefit to the public in massive volumes of records of what was hauled to a location and utilized in trace amounts during a hydraulic fracturing job and then later hauled away and disposed of in an underground injection-controlled well."

At a time when our nation is trying to become more energy independent, and it needs more energy not less, developing American natural gas resources is essential. Natural gas is a clean, abundant supply of American energy, jobs and revenues. Industry is committed to continuing to doing its practices safely and responsibly.

For more information on this issue, I encourage you to click on the industry's coalition website, Energy In Depth ([www.energyindepth.org](http://www.energyindepth.org)).

Sincerely,



Barry Russell  
President and CEO