

United States Senate
WASHINGTON, DC 20510

June 19, 2012

Arthur A. Elkins, Jr.
Inspector General
Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2410T)
Washington, DC 20460

Dear Mr. Elkins:

In light of EPA's recent announcement to withdraw an Emergency Administrative Order against Range Resources, we are concerned with the procedural and decision-making process the Agency followed both publically and internally leading up to the order's issuance and through its subsequent withdrawal.

On December 7, 2010, EPA issued an Emergency Administrative Order (Docket Number: SDWA-06-2011-1208) pursuant to the authority of Section 1431 of the Safe Drinking Water Act (SDWA). This order was released with an accompanying press statement announcing EPA had "determined that natural gas drilling near the homes by Range Resources in Parker County, Texas, has caused or contributed to the contamination of at least two residential drinking water wells." The press statement also said that EPA found cancer-causing contaminants in the water of two homeowners and there was an "imminent and substantial risk of explosion or fire." In the order itself, EPA "determined that that [sic] appropriate State and local authorities have not taken sufficient actions to address the endangerment described herein and do not intend to take such action at this time."

Following the issuance of the order, EPA officials made numerous public statements definitively incriminating Range Resources as the responsible party and implicating them as creating "a danger of fire or explosion." The press statement released with the order also referred to hydraulic fracturing four times with little context, leading the public to infer the process was somehow involved.

Section 515 of the Information Quality Act (IQA) directs federal agencies to maximize "the quality, objectivity, utility, and integrity" of information they prepare and disseminate, and it requires agencies to adopt and follow implementing guidelines. The OMB guidelines note the

IQA applies to the “creation, collection, maintenance, and dissemination of information.” The basic standard of care is that information must be “accurate, clear, complete, and unbiased.” Stricter and even more rigorous quality standards apply when the information is “influential,” meaning it will “have a clear and substantial impact on important public policies.”

“Objectivity” is a measure of whether disseminated information is accurate, reliable, and unbiased and whether that information is presented in an accurate, clear, complete, and unbiased manner; “utility” refers to the usefulness of the information to the intended users; “integrity” refers to the security of information—protection of the information from unauthorized access or revision, to ensure that the information is not compromised through corruption or falsification.

It is for these reasons that we request a review to determine if EPA followed proper procedures in issuing and revoking a SDWA Section 1431 emergency order against Range Resources in Parker County, TX. In your review, we would like you to utilize applicable requirements and guidelines including, but not limited to those contained in the Safe Drinking Water Act and the Information Quality Act and address the following:

1. What is the typical communication and procedure followed between an EPA Region and DC Headquarters in the issuance of an emergency order under SDWA? To what extent did Region 6, Headquarters, and their personnel follow that protocol in issuing and subsequently withdrawing this order?
2. Did EPA follow proper protocols and procedures in implementing their SDWA Emergency Authority?
 - A. To apply the authority granted under Section 1431, the Administrator must receive information that: A contaminant is present in or likely to enter a Public Water System or Underground Source of Drinking Water; and the contaminant may present an “imminent and substantial endangerment” to human health; and the appropriate State and local authorities have not acted to protect public health. Based on the totality of information in EPA’s administrative record of the Agency decision, did EPA follow these requirements when issuing the emergency order?
 - B. According to EPA’s Final Guidance on Emergency Authority under Section 1431 of the Safe Drinking Water Act (“Guidance”), “Section 1431 should not to [sic] used in cases where the risk of harm is remote in time or completely speculative in nature” and “the emergency authority of Section 1431 should not be used in cases where the risk of harm is completely speculative in nature or is de minimis in degree.” What guidelines or standards are in place to ensure enforcement and orders are based on sufficient evidence

and are not speculative? Did EPA meet such standards and guidelines when issuing the emergency order and “determining” Range Resources “caused or contributed” to the presence of natural gas detected in two domestic water wells and when determining “houses could explode”? What evidence did EPA rely upon to determine a “risk of harm” not remote in time, speculative in nature, or de minimis in degree? What evidence did EPA obtain that led to issuance of the order and its subsequent withdrawal? What sources did EPA rely on for this evidence? Did EPA follow the guidelines and standards in place to ensure evidence relied upon by the Agency was sufficient to issue the order?

3. What protocols or procedures are in place for dismissing evidence contradictory to the Agency’s determinations? Did EPA follow protocols or procedures in place to dismiss contrary evidence that would have obviated the need for an emergency order? How did EPA assess the widely known fact of natural gas naturally—that is, through non-anthropogenic means—entering water wells in the area prior to Range Resources’ drilling activities?
4. What protocols or procedures are in place to ensure EPA’s press statements are consistent with their orders and enforcement actions? Were EPA’s public statements leading up to the order through the withdrawal consistent with evidence established in the order or administrative record?
5. Were EPA’s actions consistent with the requirements of the Information Quality Act? In addition were EPA’s actions consistent with EPA’s specific policies on IQA implementation?
6. What are EPA’s typical protocols for state cooperation or communication when entering a situation where a state is actively conducting an investigation? How in this case did EPA determine that the Texas Railroad Commission was not acting “in a timely fashion?” How is “in a timely fashion” defined by EPA? If it is defined, did the available evidence meet that definition and was there evidence that the State had not taken and did not intend to take sufficient action?
7. EPA’s Guidance further says, “Section 1431 also provides that prior to taking action and to the extent practicable in light of the imminent endangerment, EPA shall consult with the State and local authorities to confirm the information on which EPA is basing the proposed action and to determine what action the State and local governments are taking or will take. [...] Regions should be aware that EPA will need a basis in the record for the finding in the Section 1431 Order that State and local authorities ‘have not acted to protect the health of persons.’” Did EPA’s administrative record and actions satisfy these requirements? Did EPA inform any nongovernmental parties prior to giving notice to state or local authorities, and if so, what was the Agency’s justification?

8. The Guidance also says, "The Regions should note that they need to determine that both State and local authorities have failed to act before bringing a Section 1431 action. The State can be of assistance to EPA in making this determination because the State should be able to identify the appropriate local authorities and may be aware of whether these authorities have taken any actions." Did EPA's administrative record and actions satisfy these requirements?

We appreciate your prompt attention to these questions and look forward to your reply.

Sincerely,

James M. Chalfe

Paul Vitter

Tom Cole

John Cornyn
John Boozman
Kay Bailey Hutchison

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