



May 15, 2014

TO: Neil Kornze, Director, Bureau of Land Management

CC: Sally Jewell, Secretary, Department of the Interior
Tommy Beaudreau, Chief of Staff, Department of the Interior
Linda Lance, Deputy Director (Policy), Bureau of Land Management
John Deutch, Co-Chair, Secretary of Energy Advisory Board
Persis Drell, Co-Chair, Secretary of Energy Advisory Board

RE: *BLM Final Rule on Hydraulic Fracturing and Public Disclosure of Fracking Chemicals*

Dear Director Kornze,

I am writing concerning the Bureau's upcoming rule that will govern hydraulic fracturing (fracking) operations on public landsⁱ, specifically regarding the requirement that companies operating oil and gas wells must publicly identify the chemicals used during the fracking process. While I applaud this requirement, I am very concerned that it will be implemented in a manner that undermines its intent – and thwarts fundamental principles in the President's Executive Order on Open Dataⁱⁱ – by designating a small industry-sponsored organization, FracFocus, as the sole mechanism for accomplishing this nationally important function. I offer specific recommendations to address this concern.

I am founder and President of SkyTruth, a nonprofit organization based in West Virginia that uses satellite images and data analysis to investigate and communicate about environmental issues. As you are no doubt acutely aware, scientifically under-investigated issues and unresolved questions about the well-completion process known as hydraulic fracturing are heightening public concern about the potential environmental and public health impacts of oil and gas development. Because more and more of this activity is occurring in populated areas, it is becoming increasingly important to collect, and make publicly available, the basic data and information necessary to begin addressing those questions in a scientifically robust manner, to provide assurance to the public that the risks of drilling and hydraulic fracturing are fully understood.

As a geologist with ten years of experience conducting oil and gas and mineral exploration studies for industry and government clients, I appreciate the importance of timely, complete, and accurate data. And as a homeowner who, like millions of Americans, relies on a residential well for my water supply, I viscerally understand the importance of maintaining the quality and quantity of groundwater to protect my family's health and my property value.

Comprehensive, accurate, timely, and accessible disclosure of these chemicals is necessary for municipal water-supply managers and concerned well-water users to design and conduct cost-effective monitoring schemes to ensure the quality of water supplies and public safety. Effective disclosure is also necessary to enable much-needed scientific research to identify and quantify any links between fracking activity, and environmental and public health indicators and outcomes. But, in various ways, the FracFocus data repository is failing to meet those needs. We've detailed these failures in invited testimony to Congressⁱⁱⁱ, in comments submitted for this proposed rulemaking^{iv}, and in comments to the Secretary of Energy Advisory Board, discussed them in a meeting with Mr. Beaudreau (copied here), and communicated them publicly via our website and blog^v.

FracFocus's chief failing as a potential repository for federally required data is that it does not comply with the President's Executive Order on Open Data: the FracFocus website does not make information available to the public in a machine-readable format.

Public users of the FracFocus site are also being actively blocked from downloading reports beyond an arbitrarily assigned limit, effectively rendering data aggregation and analysis impossible^{vi}. Not only does this thwart the public interest in measuring and monitoring industry compliance with the disclosure rules, it also blocks scientific research and stifles innovation by crippling commercial efforts to sell value-added analyses and other services to industry, researchers, the government and the public.

These critical failures could be easily remedied if FracFocus chose to make the data publicly available in machine-readable format. Doing so would greatly reduce the load on FracFocus servers and other information infrastructure, obviating the need to throttle downloading by the concerned public. This can easily be remedied, as the site operators already collect the data from industry in machine-readable format, and currently distribute it to several state agencies in machine-readable format.

In fact, FracTracker, a non-profit entity that makes maps and datasets available to the public, recently asked the operators of FracFocus if they would change the way they make information available, to satisfy the public interest. As described in a recent FracTracker blog post and comment^{vii}, FracFocus refused, despite being offered a range of uncomplicated options to choose from. Expressing their concern with lack of responsiveness, FracTracker published an open letter calling for FracFocus to make the machine-readable data publicly available.

FracFocus site operators are on record saying their website was never intended to be national in scope, or to support data aggregation and analysis, despite obvious public demand^{viii}. Industry supporters of the site are on record saying the data are essentially meaningless, and would only be used for political purposes^{ix}. This fear of public misuse of public data is anathema to the philosophy of open data so vigorously espoused by the Obama Administration^x, and makes it seem unlikely that any effective remedy will be implemented as long as access to the data is controlled by an industry-sponsored entity, rather than the federal government.

For these reasons, we strongly urge DOI to assert control over the curation and publication of the fracking reports and other information collected by FracFocus (or any other authorized entity) for all wells drilled and fracked on public lands. We respectfully urge you to adopt in the final BLM fracking rule, *at a minimum*, these important and achievable procedures that would place responsibility for curating and publishing the data with the BLM. This would allow BLM to use FracFocus as the established interface for collecting the chemical disclosure information from industry, if BLM does not set up its own interface to do so. Many of these changes mirror recommendations of the Secretary of Energy Advisory Board's FracFocus task force^{xi xii}:

1. Write into the rule a policy of downloading the full BLM dataset (for oil and gas fracking operations conducted on public lands) from FracFocus weekly, and expeditiously posting that updated dataset to a publicly accessible BLM-operated website, in a standard machine-readable format, as the official BLM-validated reference version of the data.
2. Ensure that BLM and the public are alerted to updated, revised, withdrawn or superseded disclosures by either creating a system to compare the weekly data versus previous bulk data downloads; or by requiring FracFocus to incorporate standard document change management practices, and to alert BLM whenever a report has been modified or superseded.

3. Require that document management by FracFocus and BLM includes the date of the relevant hydraulic fracturing operation; the date the report was submitted to FracFocus; the date the report was made available to the public on the BLM site; and the dates of any additions or revisions to a report or withdrawal of that report. All versions of a chemical disclosure report should be made continuously available, with the current, official reference version of the report plainly marked as such. Each report, including previous versions, should be given a unique report ID number.
4. Condition BLM's use of FracFocus on changing the terms of use on the FracFocus website to eliminate restrictions that prohibit sharing, aggregating, and/or republishing the chemical disclosure reports and information^{xiii}. These restrictions violate the Open Data policy.
5. Develop a federal system, or require FracFocus to develop a system, to conduct routine error-checking on CAS numbers in the chemical disclosure reports, and alert BLM and the public of likely errors in CAS numbers or any mismatch between chemical names and CAS numbers.
6. Require language in FracFocus chemical disclosure reports specifically justifying any uses of the trade-secret exemption.

Thank you for your attention to this issue. In a world of big data, the fracking chemical disclosure dataset is relatively small and uncomplicated. My technical staff and I are at your disposal to discuss any questions or concerns with you or your staff, including specific methods for implementing these recommendations. Please feel free to call our office at 304-885-4581.

Sincerely,

A handwritten signature in black ink, appearing to read 'John Amos', with a stylized, flowing script.

John Amos
President

ⁱ Oil and Gas: Hydraulic Fracturing on Federal and Indian Lands. <http://www.regulations.gov/#!documentDetail;D=BLM-2013-0002-0011>

ⁱⁱ Executive Order – Making Open and Machine Readable the New Default for Government Information. May 9, 2013. <http://www.whitehouse.gov/the-press-office/2013/05/09/executive-order-making-open-and-machine-readable-new-default-government->

ⁱⁱⁱ “Considerations for Public Disclosure of the Chemicals Used in Hydraulic Fracturing Operations” – testimony to the United States Congress, Committee on Natural Resources, May 8, 2013. <http://naturalresources.house.gov/uploadedfiles/amostestimony05-08-13.pdf>

^{iv} Executive Summary of SkyTruth Comment on BLM Proposed Rule, August 22, 2013. <http://www.regulations.gov/#!documentDetail;D=BLM-2013-0002-5375>

^v “TO: Bureau of Land Management. RE: Fracking Disclosure Recommendations for Public Lands.” December 12, 2012. <http://blog.skytruth.org/2012/12/disclosure-recommendations-blm.html>

^{vi} FracFocus straining under heavy use as BLM weighs disclosure. September 6, 2013. <http://www.eenews.net/stories/1059986809>

^{vii} An Open Letter to FracFocus. April 30, 2014. <http://www.fracktracker.org/2014/04/letter-to-fracfocus/>

^{viii} “I realize there are folks who want to be able to do all sort of comparative analysis, but that is not what this site was originally intended to do,” Mike Paque, executive director of the Ground Water Protection Council, wrote in an email exchange with *EnergyWire*. “We did not set out to build a national environmental analytic tool or website, which some seem to think FracFocus should be. I guess no good deed goes unpunished.” May 21, 2012. <http://www.eenews.net/stories/1059964669>

^{ix} “Lee Fuller, head of the industry group Energy in Depth, notes that opponents would likely use such data to take certain toxic chemicals and add up how much was used in a state or across the country. ‘The reason that industry is concerned about it is that these numbers are not really meaningful, but they’re used to create anxiety in communities,’ Fuller said. ‘It would be used for political purposes.’” May 21, 2012. <http://www.eenews.net/stories/1059964669>

^x White House to mandate machine-readable open data. January 7, 2013. <http://www.federalnewsradio.com/519/3182982/White-House-to-mandate-machine-readable-open-data>

^{xi} Secretary of Energy Advisory Board, Task Force Report on FracFocus 2.0, March 28, 2014. http://energy.gov/sites/prod/files/2014/04/f14/20140328_SEAB_TF_FracFocus2_Report_Final.pdf

^{xii} ‘Full Disclosure’ of Frack Chemicals Urged by Energy Department Advisors. March 7, 2014. <http://www.bloomberg.com/news/2014-03-07/-full-disclosure-of-frack-chemicals-urged-by-energy-department-advisors.html>

^{xiii} “Opening, recording and analyzing the contents of those 17,000 PDFs wouldn’t just be tedious, it might be illegal. It appears to be against the site’s terms of use. ‘Except for a single copy made for personal use only, you may not copy, reproduce, modify, republish, upload, post, transmit, or distribute any documents or information from this site in any form or by any means without prior written permission,’ the terms state. Unauthorized use, it states, ‘could result in criminal or civil penalties.’ May 21, 2012. <http://www.eenews.net/stories/1059964669>