

**Congress of the United States**  
**Washington, DC 20515**

March 25, 2014

Chairman John Deutch  
Task Force on FracFocus 2.0  
The Secretary of Energy Advisory Board (SEAB)

Neil Kornze  
Principle Deputy Director  
Bureau of Land Management

Dear Chairman Deutch, Task Force Members, and Mr. Kornze:

We would like to thank you for your recent draft analysis of the hydraulic fracturing data repository FracFocus (FF).<sup>1</sup> We believe that information about chemicals being injected underground should be as transparent and easily accessible as possible in order to protect public health and safety and allow the American people to know what is going on beneath their feet. We share your conclusion that FF does not meet appropriate transparency, usability, accuracy, or permanence standards. If the States, the Federal Government, and the public hope to provide meaningful oversight and understand the health and safety risks of fracking, we must either require major changes to FF or choose another truly open disclosure tool.

We strongly agree with your recommendations that changes must be made to address the fundamental flaw with FF that much of the uploaded data from hydraulically fractured wells is inaccurate, inaccessible, or incomplete. Specifically:

**Accuracy:** We support your recommendation that “FracFocus should improve the quality of the data entered into the system, especially the accuracy and completeness of reported CAS numbers.” A FF press release confirms that operator data submissions are not verified in any way, saying “...it is true the FracFocus staff does not review the forms for content”.<sup>2</sup> Because of the lack of quality control, well records are incomplete, contain numerous errors, and are in inconsistent formats. For example, a recent review of FF chemical disclosure data found that 29 percent of Chemical Abstract Service (CAS) numbers reported from Texas wells in July 2012 were wrong.<sup>3</sup>

Many government reporting programs have been able to establish procedures to review submissions and develop program specific software, with data quality checks built in, to help filers submit information more quickly and with fewer errors. There are many electronic tools that FF could use to streamline and even partially automate such data quality checks.

**Accessibility:** We support your recommendation that the FracFocus system “include tools for searching and aggregating data by chemical, well, by company, and by geography.” FF states it is only a tool, and that the quality of information that it receives is out of its control.<sup>4</sup> But even in that capacity it is severely inadequate, because FF data cannot be accessed for meaningful analysis. FF has refused to make well data publicly available for full download in aggregate spreadsheet format for research and

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<sup>1</sup> Secretary of Energy Advisory Board, draft [Task Force Report on FracFocus 2.0](#), U.S. DOE, February 24, 2014.

<sup>2</sup> FracFocus, [FracFocus Responds to Harvard Study](#), April 24, 2013.

<sup>3</sup> Scott Anderson, [A Red Flag on Disclosure of Hydraulic Fracturing Chemicals](#), EDF: Energy Exchange, Dec. 12, 2012.

<sup>4</sup> *Ibid.* 2

make well data publicly available for full download in aggregate spreadsheet format for research and analysis. Instead, chemical information is only available to the public by downloading data about a single well at a time in pdf format. This fundamental shortcoming has made it nearly impossible to perform any comprehensive data analysis without resorting to difficult and imperfect third-party workarounds.<sup>5</sup>

**Completeness:** We support your recommendation that industry pursue “complete disclosure rather than protecting trade secrets of uncertain technical merit”. FracFocus does not play any role in verifying the trade secret chemical disclosure exemptions claimed by 84 percent of registered wells.<sup>6</sup> Instead, FF points to regulators’ responsibility to enforce any trade secret limits; FF allows operators to provide no data and to claim the trade secret exemption on any chemical compound they wish. The result is that 16 percent of all chemicals in the database are not disclosed because of claimed trade secret exemptions.<sup>7</sup>

While state and federal regulators obviously have an important role to play in evaluating trade secret claims, certain tasks can only be performed by FF, as the central repository of data. For instance, a Harvard Law School report on FF found that in many instances, chemicals claimed to be trade secret in one state had been disclosed elsewhere.<sup>8</sup> FF can and should crosscheck trade secret claims to alert regulators and the public if trade secret claims are inconsistent with disclosures in other jurisdictions.

In addition, FracFocus takes no responsibility for the quality of any of its data.<sup>9</sup> Given this abrogation, regulators should have no confidence that FF will play any role in data quality control. Therefore, the failure of FF to verify the data will force the States, the Bureau of Land Management (BLM), and any other health and safety officials to be entirely responsible for the accuracy, accessibility, and completeness of fracking operator chemical disclosures. While we are not implying that FF itself should play any direct regulatory role, the data submitted to and housed by FF is in fact what regulators rely on to perform their oversight roles.

In sum, these three fundamental flaws will prevent the public and regulators from providing meaningful oversight and evaluating the health and safety risks associated with hydraulic fracturing.

Finally, the BLM is considering using FracFocus as the data repository for disclosure of hydraulic fracturing operations on public lands. However, given FF’s significant limitations on downloading and aggregating data, using FF would violate President Obama’s executive order, signed on May 9, 2013, which requires government information be available to the public in open, machine-readable formats.<sup>10</sup> Concurrently, the Office of Management and Budget (OMB) released an Open Data Policy, which establishes that the policy applies “to all new information collection, creation, and system development efforts.”<sup>11</sup> The information reporting proposed in the BLM rule clearly qualifies as a “new collection” and therefore must comply with the Open Data Policy.

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<sup>5</sup> Corrie Clark, Robert Horner, and Christopher Harto, Argonne National Laboratory, [“Life Cycle Water Consumption for Shale Gas and Conventional Natural Gas,”](#) Environ. Sci. Technol. 2013, 47, 11829–11836.

On page 11832, the authors describe the shortcomings of FF, “FracFocus data are not available in an aggregated format. Data for each well are stored separately in a portable document format (PDF). This analysis relied upon a data set made available by Skytruth.”

<sup>6</sup> Ibid. 1

<sup>7</sup> Ibid. 1

<sup>8</sup> Kate Konschnik, Harvard Law School, [“Legal Fractures in Chemical Disclosure Laws,”](#) April 23, 2013.

<sup>9</sup> FracFocus, [Terms and Conditions of Use](#)

<sup>10</sup> Executive Order [13642](#) of May 9, 2013.

<sup>11</sup> OMB Memorandum: [Open Data Policy – Managing Information as an Asset](#), May 9, 2013.

We believe that the BLM should incorporate the Task Force’s applicable recommendations, leveraging all of the work that the Secretary of Energy Advisory Board has already completed. The BLM should require any repository database for public lands well disclosure to achieve the standards and recommendations that the Task Force lays out, and the BLM should not rely on FF until it meets those standards and recommendations.

Furthermore, because FracFocus has made clear that it is not responsible for verifying or challenging trade secret exemption claims,<sup>12</sup> the BLM must take responsibility for ensuring the trade secret exemption is not abused. Unfortunately, BLM’s draft rule “does not specify the process by which the BLM would assess or deny the protection, nor a procedure for public challenge of the claim.”<sup>13</sup> And therefore, the Task Force recommends “that any trade secret exemptions permitted by BLM in its regulations for hydraulic fracturing on federal lands include a rigorous process of claiming trade secret exemptions and robust trade secret verification and challenge mechanisms.” We strongly concur with that recommendation.

While we support all the recommendations in the draft report, we urge the Task Force to take a stronger look at the potential and feasibility of incorporating pre-fracking chemical disclosure, water quality data, or other important information into FF. The Task Force notes that adding these features would be challenging when submissions remain largely voluntary. However, with fourteen states now requiring the use of FF, and BLM poised to make it a nationwide requirement for public lands, we believe that a more intensive exploration of the possibilities of expanding FF is warranted.

Falling short in meeting the Task Force’s standards and recommendations is unacceptable: it will jeopardize the public trust, it will slow responsible operators who are following high standards, and most importantly, it will keep the public health and safety officials from performing oversight and preventing harm to our communities when the unexpected does occur.

Sincerely,



Alan Lowenthal  
Member of Congress



Peter DeFazio  
Member of Congress



Matthew Cartwright  
Member of Congress



Keith Ellison  
Member of Congress

<sup>12</sup> Ibid. 9

<sup>13</sup> Ibid. 1



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