

March 24, 2014

Mr. John Deutch, Chair
The Secretary of Energy Advisory Board Task Force on FracFocus 2.0
U. S. Department of Energy
1000 Independence Avenue SW
Washington DC 20586

Dear Mr. Deutch:

On behalf of the Western Organization of Resource Councils (WORC), I am pleased to respectfully submit these comments to the Task Force for its consideration in discharging its mandate to review the effectiveness of FracFocus and recommending improvements to it.

WORC is a regional network of grassroots community organizations that include 10,000 members and 35 local chapters. WORC'S member organizations are Dakota Resource Council (North Dakota); Dakota Rural Action (South Dakota); Northern Plains Resource Council (Montana); Oregon Rural Action; Powder River Basin Resource Council (Wyoming); and Western Colorado Congress. WORC's mission is to advance the vision of a democratic, sustainable, and just society through community action. WORC is committed to building sustainable environmental and economic communities that balance economic growth with the health of people and stewardship of their land, air, and water.

WORC appreciates the work done by the Task Force in evaluating the present usefulness of FracFocus, and in making recommendations for improvement. Should its recommendations be implemented, the usefulness of FracFocus would certainly be enhanced.

That said, WORC remains skeptical that a private system of reporting can ever be as unbiased or thorough as a public system over time. In fact, the current FracFocus website remains weak in several respects. First, use by the impacted public is not easy. Specific fracking data is available only on a well-by-well basis. If a member of the public is interested in finding well data from fracking operations in a particular field (such as the Bakken), it requires wading through well-by-well entries arranged by county, and alphabetically within each county. According to the North Dakota Department of Mineral Resources (DMR), the four top-producing counties (McKenzie, Mountrail, Williams and Dunn) range from about 1,200 to 2,000 producing wells per county, each of which is larger than the state of Rhode Island. This makes for daunting research on the part of residents and landowners who are seeking fracking data for wells drilled through the aquifer that provides their water.

In addition, FracFocus relies on self-reporting on the part of numerous companies. According to the North Dakota Petroleum Council, for example, there are more than 500 drilling companies operating in the state. Absent enforceable federal or state standards, the public cannot be assured of accurate, consistent or timely reporting.

Beginning early in 2013, WORC undertook a research project on water use for fracking in Colorado, Montana, North Dakota and Wyoming, which was published by WORC under the title, *Gone for Good: Fracking and Water Loss in the West*. One aspect of the research was to check the total water use for fracking in North Dakota in 2012. FracFocus did not aggregate the volume, but the non-profit organization SkyTruth had computed the aggregate amount reported to FracFocus as 3.16 billion gallons. By contrast, the North Dakota Water Commission reported the use of 5.4 billion gallons from licensed water depots. DMR told WORC it did not calculate these figures, but it gave WORC its fracking water log for the month of June, 2012, which it said was a typical month. The log listed individual reported usage well-by-well and added up to 353 million gallons, which suggested the annual water use would be approximately 4.2 billion gallons. The disparity of these results was hardly reassuring in terms of the accuracy and comprehensiveness of FracFocus reporting. Based on our 2013 research cited below, it appears that not all drilling companies can necessarily be counted on for accurate and timely reports on water use.

It is also not clear that a consistent standard for trade secrecy is used by reporting companies. FracFocus entries often classify a high percentage of fracking chemicals as “trade secret,” “proprietary,” or “confidential.” For example, WORC pulled the FracFocus file on Petro-Hunt’s Clear Creek 152-96-34A-3H well on March 19, 2014 and found that eight of the 20 fracking constituents reported were classified as “trade secret.”

As to the specific recommendations of the task force, WORC strongly agrees with the task force on several of its recommendations, and has the following comments:

1) Evolution of the operation of FracFocus 2.0 toward timely, complete and accurate data storage.

First and foremost, WORC agrees that the public needs better assurance of the accuracy of FracFocus, and also full disclosure of all chemicals and additives used in fracking. WORC also agrees that because drilling companies obtain fracking water from a variety of sources, the sources of water, whether derived from surface, aquifer or recycling, should be disclosed. This data should be readily available to the public.

In addition, WORC believes that fluids and chemicals used in fracking should be directly disclosed to surface and water well owners within one mile of any portion of a well bore at least 30 days before hydraulic fracturing occurs, particularly if baseline water testing is not required of all water wells within this radius. The report should include the additive type, compound name and Chemical Abstract Service number, and concentration or rate for all drilling and workover chemicals as well as those used in hydraulic fracturing and any other types of well stimulation, as well as the base fluid source.

A final report should be posted on a public website within two weeks of conclusion of fracturing, and should include the additive type, compound name and Chemical Abstract Service number, concentration or rate, and amount of chemical constituents actually

used; maximum pressures; fracture lengths and heights; the type, source and quantity of fluids used; and the quantity of fluid recovered.

Any waivers of disclosure for proprietary information should require a showing of specific economic damages that would be caused directly by public disclosure, include a transparent decision-making process and standard of proof, and provide for appeal.

WORC also strongly agrees that an independent audit should be conducted to “assess the accuracy and compliance” of material disclosed in FracFocus reports. During the past biennium, for example, the state of North Dakota required an external audit of the state Water Commission, whose duties include approving water withdrawals for fracking.

Since FracFocus is charged in many states with providing public information about oil drilling, which is publicly-regulated in every state, FracFocus should also be subject to routine audits.

2) The extent to which state and federal regulatory bodies are using FracFocus to meet regulatory disclosure requirements.

This section of the draft is not very fully articulated. FracFocus reporting, even if mandated, is not a substitute for a properly-funded regulatory system that is directly responsible to the people. It is important to remember that the Ground Water Protection Council and the IOGCC may be useful associations of regulators, capable of making well-founded suggestions for regulatory improvement, but they are not themselves regulatory bodies with the authority to issue or enforce mandatory regulations.

3) Understanding the breadth of data housed in FracFocus, how frequently companies are invoking the trade secret exemption to avoid disclosure of fracturing fluid composition, and the standards for the use of this exemption.

WORC supports full disclosure of all fracking fluids for the purpose of public safety, and is happy to see that the Task Force believes full disclosure is desirable, that “disclosure can be accomplished with little or no risk to disclosing proprietary information,” and that the task force “is challenging FracFocus to operate in a manner that encourages full disclosure with few, if any trade secret exceptions.”

WORC does not necessarily agree, however, with the Secretary of Energy Advisory Board’s 2011 statement that “the risk of fracturing fluid leakage into drinking water sources is through fractures made in deep shale reservoirs is remote.” WORC believes study is needed in regard to our concern that multiple fracking in shale formations is beginning to cause “frack hits,” which could potentially compromise casings and lead to contamination of ground water. Beyond this concern, there have also been many documented accidents involving blowouts at fracked wells, in which there is risk of contamination of surface waters, including some (such as Lake Sakakawea in North Dakota) that provide drinking water. Spills, leaks, and other means of contaminating

water sources with fracking fluids and flowback water are also frequently reported, and justify full disclosure of fluids used in fracking.

4) Understanding the difference in federal data custody requirements and FracFocus practices.

WORC agrees that FracFocus should “formalize a more robust policy” for data retention and “protections against unauthorized alteration or deletion of data,” and “eliminate restrictions on sharing and aggregation of data.”

5) Increasing the utility of FracFocus by maintaining it as a database with tools for analysis by regulatory bodies, companies, and the public.

WORC agrees strongly with this section, especially with regard to allowing batch downloads of PDFs and facilitating searches related to chemicals, companies and geography, which would make it far more useful for public research.

6) Potential for broadening the scope of FracFocus to include any water quality data regarding surrounding water sources before and after hydraulic fracturing drilling activity.

This section appropriately raises concerns about whether and how to expand the base of information now available on FracFocus. Clearly, the genesis of FracFocus lies in growing public criticisms of and concerns about the health and environmental effects of fracking. Just as clearly, the purpose in initiating FracFocus was not so much to provide information as to avoid more stringent regulation. Several states were eager to lean on FracFocus for public information on fracking. Booms in drilling have severely overtaxed state governments in need of expanding their capacity for permitting and enforcement activities. WORC believes the public interest would be served by the creation of a fully public source of information on drilling and fracking. If states are to continue to use FracFocus as a publicly-endorsed source of information, it is not in the public interest for FracFocus to expand its scope to usurp functions that are now the responsibility of state agencies. WORC agrees with the judgment of the task force not to endorse specific extensions of FracFocus at this time.

Sincerely,

Donald Nelson
Chair, WORC Oil and Gas Campaign Team