Concerned Ohio River Residents
FreshWater Accountability Project
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June 28, 2021

Sent by Certified Mail and Email

The Honorable Joseph V. Cuffari
Inspector General
Department of Homeland Security
245 Murray Lane, SW
Washington, D.C. 20528

Dear Inspector General Cuffari,

The undersigned organizations are writing to request a meeting with your office to discuss barging of fracking waste on the Ohio River. As you'll read in the background provided below, strong public opposition stopped an attempt to establish a policy allowing the practice in 2016. Recently, the Coast Guard has circumvented the public participation process and begun issuing permits. A July 21, 2020 work instruction allows the waste to be barged without its contents being tested. This dangerous practice puts communities in the Ohio River Valley at risk and threatens the drinking water of five million people. To date, few permits have been granted. With your intervention, this is a problem that can be stopped before it starts. We will be contacting your office to schedule a meeting. We look forward to the opportunity to discuss this urgent matter with you.

The fracking industry has a toxic, radioactive waste problem. Legislative compromises and regulatory failures have created conditions that permit oil and gas waste to be handled and disposed of as non-hazardous, despite its extreme toxicity. Thirty years ago the U.S. Environmental Protection Agency exempted oil and gas waste from regulation as hazardous waste under the federal Resource Conservation and

Recovery Act (RCRA)--despite admitting then, and since, that certain oil and gas waste would meet hazardous waste criteria without the exemption. Allowing the oil and gas industry to dispose of its hazardous waste as if it is non-hazardous is a huge subsidy for big Oil and Gas, yet the industry still has problems making money.[1] Often, the industry externalizes its true costs onto vulnerable communities and residents, including by disposing of its waste in municipal landfills and publicly owned treatment works. But the fact remains that fracking produces enormous amounts of dangerous waste and its disposal problem is growing. In order to address that issue, yet another special exemption was permitted: the ability to cheaply transport this highly toxic and radioactive material as "produced water" or "brine" via barge on inland waterways that are also needed for public drinking water resources, like the Ohio River and its tributaries.

In 2013, the industry asked the US Coast Guard (USGC) to develop a policy to allow barging of fracking wastewater on the Ohio River[2] into proposed barge locations in Meigs County, Ohio and Ohio County, West Virginia[3]. At that time, USCG suggested a policy that limited load size and required characterization of each barge load of 30,000 barrels of hazardous waste on a case-by-case basis[4]. USCG would protect the industry's claim of "proprietary chemicals," but the chemicals had to be declared and each load characterized to identify its contents. This policy would at least have provided those who would be responsible for any spills and accidents with detailed information on the material carried by each barge. In 2013, the Coast Guard submitted the proposed policy on the barging of waste to public comment.[5] Much controversy surrounded the decision, thousands of public comments were registered, and the proposal was dropped in 2016[6] – until now.

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[1] *See* Deloitte. *The Great Compression: Implications of Covid 19 for the U.S. Shale Industry*, 2020 , https://www2.deloitte.com/us/en/pages/energy-and-resources/articles/covid-19-implications-for-us-shale-industry.html. ("[T]he shale boom peaked without making money for the industry in aggregate. In fact, the US shale industry registered net negative free cash flows of $300 billion, impaired more than $450 billion of invested capital, and saw more than 190 bankruptcies since 2010.")

[2] Gardner, T. "U.S proposal to move fracking wastewater by barge stirs debate" *Reuters.com*. April 3, 2013. https://www.reuters.com/article/us-usa-fracking-wastewater/u-s-proposal-to-move-fracking-wastewater-by-barge-stirs-debate-idUSBRE93216L20130403

[3] "GreenHunter Water Goes Operational on New Disposal Facility in Meigs County, Ohio" *Businesswire.com.* May 30, 2013. https://www.businesswire.com/news/home/20130530005194/en/GreenHunter-Water-Goes-Operational-on-New-Disposal-Facility-in-Meigs-County-Ohio

[4] Mauger, J. "Proposed Policy Letter: Carriage of Conditionally Permitted Shale Gas Extraction Waste Water in Bulk" *U.S Department of Homeland Security USCG*. October 31, 2013. https://www.regulations.gov/document/USCG-2013-0915-0002

[5] Carriage of Conditionally Permitted Shale Gas Extraction Waste Water in Bulk, 78 FR 64905, https://www.federalregister.gov/documents/2013/10/30/2013-25628/carriage-of-conditionally-permitted-shale-gas-extraction-waste-water-in-bulk.

[6] Lantz, J. "Carriage of Conditionally Permitted Shale Gas Waste Water in Bulk" *U.S Department of Homeland Security USCG.* Feb. 17, 2016. federalregister.gov/documents/2016/02/23/2016-03674/carriage-of-conditionally-permitted-shale-gas-extraction-waste-water-in-bulk

The USCG decided to circumvent public input and issue its own internal work instruction that removed the testing of each barge to specifically identify what each load contains.[7] Load contents can vary enormously based upon levels of radioactivity and identities, and amounts of specific proprietary chemicals. Yet the Coast Guard's work instruction generalizes loads based on data furnished by the fracking industry, creating an internal policy with no accountability to the public and that does not reflect the risks to the people of the Ohio Valley. Unknown chemical composition and toxicity levels of the produced water being barged make it impossible to prepare effective emergency and mitigation responses when produced water is inevitably released into drinking water sources through spills or the regular smaller releases incidental to daily operation. . Water treatment facilities along the Allegheny, Monongahela, and Ohio Rivers and its tributaries are not equipped to filter out the radioactive particles present in fracking waste. Barging unknown amounts of radioactive and proprietary chemicals on waterways jeopardizes essential drinking water sources by introducing unknown toxic chemicals near public water intakes, which is an operational practice that only economically benefits the oil and gas industry while putting public resources at risk.

Ohio is the primary destination for the frack waste barges to offload their contents for processing and disposal, jeopardizing a major public drinking water source. It is unclear who is responsible for accident management and spill mitigation on the river – especially since the contents of each barge are not disclosed. In Ohio, Limited Liability Companies are building highly unregulated frack waste processing and disposal facilities all along the Ohio River.[8] Additionally, in Pennsylvania, these same facilities are constructed along the Allegheny and Monongahela Rivers. Many of these facilities are repurposed industrial sites using old, rusting facilities for storage and processing waste. These sites are constructed in flood plains and will become increasingly vulnerable to flash flooding as climate change increases and exacerbates inclement weather.[9]

[7] CG-ENG Work Instruction, Produced Water Classification Under 46 CFR 151, July 21, 2020.

[8] Patterson, B. "Transparency, Environmental Concerns Surround Proposal to Barge Oil and Gas Waste on the Ohio River." August 14, 2020. https://wfpl.org/transparency-environmental-concerns-surround-proposal-to-barge-oil-and-gas-waste-on-the-ohio-river/

[9] James Bruggers, Army engineers warn of brutal future for Ohio River region from climate change, THE COURIER JOURNAL, November 30, 2017, https://www.courier-journal.com/story/tech/science/environment/2017/11/30/ohio-river-valley-climate-change-report/831135001/ (last visited Apr 28, 2020).

The final destination of this waste is disposal into injection wells next to the river. Some of these wells are repurposed conventional wells that were not engineered to withstand the fatigue effect, the repeated pressurization and depressurization,[10] further risking drinking water sources due to the high likelihood of casing failure and waste fluid migration. In 2020, an injection well in close proximity to the Ohio River leaked waste fluid 2,000 feet vertically and approximately 5 miles laterally in the Ohio Shale Formation, impacting producing wells. This migration was discovered only because oil and gas producers operating production wells found unusually high levels of produced water volume. It is unknown how many leaks and migrations are taking place as the ground becomes increasingly pressurized because of all the injection wells being built to take the massive amount of waste that can be carried in by barge. So much frack waste has been produced that despite industry efforts to recycle (which concentrates the toxicity and radioactivity in the waste), Ohio has already disposed of 299,983,751 barrels of oil and gas waste in more than 245 wells since 2012 according to Ohio Department of Natural Resources' Risk Based Data Management System database.

The permitting process that has been undertaken also does not take into account the full extent of the dangers of shipping large amounts of fracking waste. Even assuming that the water is merely salt water, a spill could severely impact local ecosystems. This is especially concerning considering there are several species of endangered mussels along the shipping route, including the Northern Riffleshell, Pink Mucket Pearly Mussel, Sheepnose Mussel, Snuffbox Mussel, Fanshell Mussel, and Rayed Bean Mussel. Habitats for these various endangered species exist all along the Monongahela, Allegheny, and Ohio Rivers. There are also several sections of the shipping route that include threatened and endangered species on the shore.

No studies have been conducted to see what the effect of a spill of large amounts of incredibly salty water would do to those habitats or how localized the effect might be. It is possible that a spill at the start of one of the endangered habitats could flow downstream and completely eradicate an endangered species throughout their entire

[10] Madeiros, et. al. "Effect of the loading frequency on the compressive fatigue behavior of plain and fiber reinforced concrete" August 13, 2014 (https://www.sciencedirect.com/science/article/pii/S0142112314002102)

habitat. Failure to take this into account before issuing permits is reckless and dangerous.

A merger between Fountain Quail and Deep Rock has resulted in injection capacity that is touted to handle 50,000 barrels a day with permits for further expansion[11]. If an injection well leaks – if the water is contaminated – if it results in a huge environmental and public health disaster years from now, who will pay? There is no accountability when LLCs go out of business, making the government (and our taxes) pay for the clean-up, if clean-up is even possible. By bringing in frack waste by barge, the Ohio Valley will be targeted for even more frack waste processing along the Ohio River, which is already consistently ranked as the most polluted inland river in the US[12].

Permitting barging of fracking waste on the Ohio River and its tributaries is a very dangerous operational practice. Circumventing the public participation process is a very dangerous bureaucratic practice. We need your intervention to address them both. We will be contacting your office in a few days to set up a meeting with the below community group leaders so we can talk to you about how you can help us with our concerns.

Respectfully,

Gillian Graber
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[11] Trosclair, K. "DeepRock Disposal / Fountain Quail Energy Services Merger" *FQ Energy Services*. Oct. 15, 2020. https://www.einpresswire.com/article/528427256/deeprock-disposal-fountain-quail-energy-services-merger

[12] Cory, C. "Environmental Protection Agency calls Ohio River the most polluted in country" *TheNewsRecord*. Nov. 24, 2015. https://www.newsrecord.org/news/environmental-protection-agency-calls-ohio-river-the-most-polluted-in-country/article_5d6a04a6-9304-11e5-bf5c-c70efe02bafb.html

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