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Texas EPA Official's E-Mails Show Federal-State Tension Over Sanctions on Natural Gas Drilling

By MIKE SORAGHAN of

The Texas-based U.S. EPA official who overrode state regulators in December to sanction a local driller for water contamination quickly announced the order to an environmental activist and another ally minutes after it was issued.

"We're about to make a lot of news," EPA Region 6 Administrator Al Armendariz wrote in an e-mail. "Time to Tivo Channel 8."

The e-mail [chain](#) (pdf) provides a behind-the-scenes glimpse at the tension between federal and state agencies in the debate about hydraulic fracturing and drilling for gas in shale formations.

A story about EPA's action, quoting Armendariz, had appeared on the website of WFAA-TV, Channel 8, about a minute before an aide notified a top state regulator on Armendariz's behalf, the records show. That regulator, then-Texas Railroad Commission Chairman Victor Carrillo, replied that his agency was still investigating and called the federal action "premature."

Armendariz forwarded Carrillo's reply to EPA headquarters officials with a single-word message: "Stunning."

Industry representatives say the e-mail chain shows that Armendariz, who has clashed several times with state regulators since becoming the regional administrator, was more interested in publicity than in proof.

"What you have here is proof the administrator placed a higher value on managing his media rollout than he did on notifying the state he was about to co-opt its investigation," said Chris Tucker, a spokesman for Energy in Depth, an industry group founded to prevent federal regulation of fracturing.

But a Texas activist said the e-mails show a federal official staying in contact with affected property owners.

"He's just being transparent and communicating with the victims who are suffering abuses from this industry," said Sharon Wilson, an activist and critic of the gas industry who received Armendariz's e-mail.

In the e-mail chain, Wilson replies to Armendariz and several others, saying, "Yee haw! Hats off to the new sheriff and his deputies!"

Another e-mail obtained by *Greenwire* shows a local consultant strategizing with a landowner on ways to sidestep state regulators and get EPA involved.

EPA officials dispute the idea that Armendariz was chasing publicity at the expense of proper procedures. An agency spokeswoman said EPA had discussed the emergency order with the state and gas company "for some time" before the order was issued.

"State agencies and the gas production company knew about the order before we announced it publicly," the spokeswoman said. "As we've done in the past, EPA is committed to open communication with all affected parties, including industry, environmental and conservation groups, and local, state and federal elected officials about significant agency actions."

The spokeswoman said Armendariz's "stunning" comment reflected surprise at the Railroad Commission's reluctance, "given that there were at least two families whose homes were in immediate danger of explosion and who had no safe household water from the aquifer."

On Dec. 9, 2010, Armendariz issued an emergency order against Range Resources Corp., charging that its drilling in the Barnett Shale contaminated at least two water wells with methane and benzene. The order gave Range 48 hours to provide clean drinking water to affected residents and begin taking steps to resolve the problem (*Greenwire*, Dec. 8, 2010).

Range and industry officials say there is little or no data to back up the administrator's claims.

Armendariz's order was a slap at regulators at the Texas Railroad Commission, whom he accused of not doing enough to help the people living near the drilling operations in the Fort Worth area. The allegations inflamed an ongoing fight between Armendariz and Texas officials, including Gov. Rick Perry (R), about whether the state has done enough to regulate air pollution that has grown into a fight over states' rights.

And by taking on regulators and drillers -- on the home turf of the oil and gas industry -- Armendariz has turned up the heat on a long-simmering debate about whether states adequately protect their residents against the dangers of drilling.

The company and the Texas regulators shot back that their investigations, ongoing since last

August, have failed to show any link between the drilling and water contamination. Range said the well water in the area has long contained methane. Texas officials accused EPA of grandstanding and making "false claims" about its actions.

EPA's order mentions "hydraulic fracturing" but does not charge that fracturing fluid contaminated the wells. Instead, it is alleging that methane contaminated the wells. That allegation has arisen in numerous incidents around the country, most notably in northeastern Pennsylvania. Such problems are usually the result of a failure of the cement seal that is supposed to prevent gas from leaking up the side of the wellbore.

Push for EPA involvement

Environmentalists, joined by some congressional Democrats, have pushed for federal regulation of hydraulic fracturing by EPA under the Safe Drinking Water Act. That would reverse an exemption granted by congressional Republicans and President George W. Bush in 2005. Halliburton Co. was the main company lobbying on fracturing at the time, and some call the exemption the "Halliburton loophole."

Environmentalists have pointed to the Texas case as an example of the failure of state regulation.

The industry has long maintained that state regulators have done a good job of regulating fracturing, noting that after hundreds of thousands of fracturing jobs over six decades, state regulators have never documented groundwater contamination from fracturing fluid.

The Texas Railroad Commission has disputed EPA's findings since December saying the well water at issue comes from an aquifer that is 200 feet deep. The commission stated that if it finds that oil-field activities are responsible for the gas found in the water wells, it would require assessment, cleanup and possibly fines or other penalties.

EPA's order said that users of water wells had not produced water with gas before drilling began nearby early last year. Landowners began to complain last August. The order said that tests showed the presence of benzene, toluene and other carcinogens associated with petroleum production. EPA told the residents not to use the water due to contamination and the risk of explosion.

Armendariz's e-mail also thanks his allies "both for helping to educate me on the public's perspective of these issues."

The e-mails also show Alisa Rich, a Texas environmental consultant, strategized with one of the landowners, urging him to do an expensive test to prove problems with the air on his property,

which moves jurisdiction away from the Railroad Commission to the Texas Commission on Environmental Quality and EPA.

"It is worth every penny if we can get jurisdiction to EPA," Rich wrote in her **e-mail** (pdf).

The Railroad Commission has no oversight over railroads but instead regulates oil and gas exploration and production, pipelines, surface mining and natural gas rates.

Rich said she was helping the landowner navigate the different regulatory agencies and avoid a media circus.

"The bureaucracy is confusing to the most educated people," Rich said. "I directed a strategy that was less inflammatory and allowed EPA, the Railroad Commission and TCEQ."

She said it was also important to get EPA involved because she worried that the house was about to explode.

"If you have imminent danger," she said, "you have got to bring in the EPA."

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