July 31, 2013

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Upton,

The Independent Petroleum Association of America (IPAA) represents thousands of independent oil and natural gas explorers and producers, as well as the service and supply industries that support their efforts. Independent producers develop 95 percent of American oil and natural gas wells, produce 54 percent of American oil and produce 85 percent of American natural gas. The average independent has been in business for 26 years and employs 12 full-time the three part-time employees. IPAA's members are truly the face of small business in the oil and natural gas industry and support over 2 million direct jobs in the United States.

Recently, legislation has been introduced as H.R. 2825. Make no mistake, this legislation is intended to imperil production of American oil and natural gas.

Despite being disguised as a bill to improve waste management, it is another in the list of bills crafted by the Natural Resources Defense Council and the Sierra Club in their efforts to end the production of fossil energy – notably natural gas – in the United States. This bill would revisit issues long settled in an effort to suppress American production.

Specifically, H.R. 2825 would require the Environmental Protection Agency (EPA) to develop regulations related to the management of oil and natural gas drilling fluids and produced waters under the Resource Conservation and Recovery Act (RCRA). Congress addressed this issue in 1980 amendments to RCRA when it required EPA to assess regulation of these wastes.

In the 1980 legislation, Congress directed EPA to assess RCRA regulation of production wastes based on three key factors:

1. Whether the RCRA Hazardous Waste regulatory system (Subtitle C) was appropriate for regulation of production wastes;
2. Whether state regulatory programs were effectively regulation these wastes, and;
3. The impact RCRA regulation would have on American oil and natural gas production.

H.R. 2825 would create a regulation mandate that would not consider these critical questions.

Moreover, when EPA conducted its analysis, it reached the following key conclusions:

- Subtitle C contains an unusually large number of highly detailed statutory requirements, some of which are not only extremely costly, but also are unnecessary for the safe management of oil and gas wastes. Subtitle C does not, however, allow the Agency to consider costs where applying these requirements to oil and gas wastes. Consequently, EPA would not be able to craft a regulatory program to reduce or eliminate the serious economic impacts that it has predicted. Thus, in light of Congress' concern for the protection of the nation's future energy supply, Subtitle C regulations must be considered unwarranted.
- Subtitle C regulation of these wastes would subject them to all of the land disposal restriction requirements, including BDAT, and thus could severely strain existing Subtitle C facility capacity.
- The Agency believes that it is impractical and inefficient to implement Subtitle C for all or some of these wastes because of the disruption and, in some cases, duplication of State authorities that administer programs through organizational structures tailored to the oil and gas industry
- It is impractical and inefficient to implement Subtitle C for all or some of these wastes because of the permitting burden that the regulatory agencies would incur if even a small percentage of these sites were considered Treatment, Storage and Disposal Facilities (TSDFs).

Similarly, EPA assessed the cost impact of requiring drilling fluids and produced waters to be subjected to Subtitle C regulation. It concluded that the cost would be significant and the impact on US oil and natural production would be serious. EPA stated:

> Application of RCRA Subtitle C to exploration, development, and production wastes could be extremely costly if large portions of these wastes were hazardous. The Agency estimates that implementation of RCRA Subtitle C on 10 to 70 percent of the large-volume drilling waste and non-EOR produced water would cost the industry and consumers $1 billion to $6.7 billion per year in compliance costs (not including costs for land ban or corrective action regulations mandated by Congress). This would reduce domestic production by as much as 12 percent.

Significantly, these estimates do not include the cost of the additional regulatory requirements mandated as a result of the 1984 Hazardous and Solid Waste Amendments to RCRA.

The Natural Resources Defense Council has attempted to achieve the results of H.R. 2825 through a petition to EPA to reopen the Regulatory Determination that produced the above results. IPAA submitted comments on that petition addressing the current implications.

> These conclusions would not differ if EPA made these judgments using current assessments. As stated earlier, EPA could not determine the amount of waste that would be considered hazardous; consequently, it bookended the analysis by using a 10 percent amount and a 70 percent amount. NRDC argues that EPA should consider all of the E&P waste as hazardous and subject it to Subtitle C requirements. Realistically, because the drilling and production process must

manage wastes that can vary unpredictably, it is reasonable to assess the impact of Subtitle C applied to the entire waste volume. The consequences are dramatic.

Using a method of estimating drilling wastes based on total drilling footage, in 2009 drilling wastes would be about 52 million tons; however, in 2008 – a time of greater activity – the drilling waste generated would be about 84 million tons. As described above, when EPA made its Regulatory Determination, it had not addressed the land ban. In 1998, EPA required that sediments from crude oil tank bottoms to be subjected to management under Subtitle C and required incineration. Because drilling wastes are essentially sediments, it is plausible to assume that incineration would be required for drilling wastes. Since oil field operations are small footprints, diverse and frequently remote, on-site incineration would be implausible. Consequently, these wastes would have to be sent offsite. To put this in perspective, according to The National Biennial RCRA Hazardous Waste Report (Based On 2009 Data) – EPA's biennial summary of hazardous waste management – the national total for hazardous waste managed by offsite incineration was approximately 471,000 tons. In this context, drilling wastes would be 110 to 178 times the offsite incineration volume managed under RCRA Subtitle C.

The other principle E&P waste is produced water. Currently, produced water is primarily managed through the SDWA Class II UIC program. The remainder is managed under the federal Clean Water Act or is recycled for reuse. EPA's latest Class II well inventory (2006) totals 143,951. If the E&P produced water would be classified as hazardous waste, it would have to be managed under the SDWA Class I UIC program. EPA's inventory of Class I hazardous waste wells totals 119, but this is a deceptive number because it includes onsite Class I wells. In the 2009 Biennial Report, EPA shows offsite underground injection facilities total 12.

Clearly, even this cursory consideration of the impact of applying Subtitle C requirements to E&P wastes demonstrates that these wastes would overwhelm the capacity of the Subtitle C management system. Without the option to manage these wastes, the only choice would be widespread shutdown of US oil and natural gas production.

Additionally, the cost of incineration is substantially higher than the management that EPA projected in its Regulatory Determination. In a 2006 analysis for the Department of Energy, *Offsite Commercial Disposal of Oil and Gas Exploration and Production Waste: Availability, Options, and Costs,* Argonne National Laboratory identified the cost of incineration for water-based muds and cuttings. Using a Texas-based incinerator operation, the cost was $0.45/pound or $900/ton. Applying this cost to an average of the 2008 and 2009 estimates of drilling waste estimates (68 million tons), the cost would be $61.2 billion per year (*if capacity existed*). If a price deflator is applied to bring these costs to 2009 dollars, the costs would be $65 billion per year. This same analysis indicates that Class I disposal of produced water would cost approximately $3.00/barrel. An Argonne National Laboratory study in 2009 concluded that US produced water amounted to approximately 21 billion barrels/year. Correspondingly, in 2006, *if capacity existed* and produced water was treated as a hazardous waste, managing in Class I

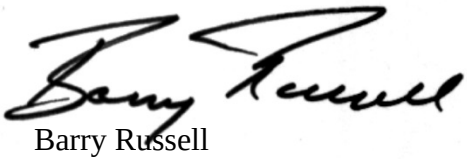
wells would cost $63 billion/year. Estimating the cost in 2009, it would increase to $67 billion/year. Current drilling fluids and produced water management costs are about $3.6 billion for drilling fluids[1] and $4.3 billion for produced water[2] – or $7.9 billion together. Consequently, the increased cost of managing oil and natural gas E&P drilling fluids and produced waters – *assuming that capacity existed* – would be about $124 billion/year. Recognizing that this assessment is not as sophisticated as the model used by EPA in 1988, it is nonetheless dramatically above the evaluation used by EPA in the Regulatory Determination. Even escalating those costs and expanding the 70 percent case, the estimated annual increased cost would be in the range of $31 billion/year.

Clearly, the application of Subtitle C requirements to the American oil and natural gas industry would cause significant and pervasive harm. While the cost of waste management under Subtitle C would be staggering, the wholly inadequate capacity to manage drilling fluids and produced water under Subtitle C will compel the agency to recognize that Subtitle C regulation would be crippling.

Crippling American oil and natural gas production is the intended result of H.R. 2825 – a result that runs counter to the important energy future that can build a strong America through expanded production of US oil and natural gas. Congress should summarily reject H.R. 2825.

If IPAA can provide additional information regarding the potential implications of H.R. 2825, please contact Lee Fuller at lfuller@ipaa.org or by phone at 202-857-4731.

Sincerely



Barry Russell
President and Chief Executive Officer

[1] Based on information from the Department of Energy website Drilling Waste Management Information System fact sheet on Onsite Burial (Pits, Landfills) adjusted from 1999 to 2009 costs.
[2] Based on EPA REPORT TO CONGRESS: MANAGEMENT OF WASTES FROM THE EXPLORATION, DEVELOPMENT, AND PRODUCTION OF CRUDE OIL, NATURAL GAS, AND GEOTHERMAL ENERGY Table VI-9 *Weighted Average Unit Costs of Produced Water Management for Model Projects under Alternative Waste Management Scenarios (Dollars per Barrel of Water)* adjusted from 1985 to 2009 costs.