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July 31, 2014

Hal Fitch  
DEQ Office of Oil, Gas, and Minerals  
Box 30256  
Lansing, MI 48909

Re: Comments on proposed new part 615 rules  
On behalf of Ban Michigan Fracking

Dear Hal:

This will formalize the comments I gave orally for Ban Michigan Fracking on July 15 and 16, at DEQ hearings on the proposed new Part 615 rules.

### **Which Side Are You On?**

Many of the other speakers spoke of the hazards of oil-gas production to water. Our opinion is that the greater danger is to climate.

On March 31 as reported by Reuters (attached), Exxon Mobil vice-president William Colton said in a statement: "All of Exxon Mobil's current hydrocarbon reserves will be needed, along with substantial industry investments, to address global energy needs."

Three days later on April 3 the UN's climate chief Christiana Figueres stated that limiting global warming to the agreed UN ceiling "means that three quarters of the fossil fuel reserves need to stay in the ground, and the fossil fuels we do use must be utilized sparingly and responsibly."

According to Reuters, Figueres urged the transformation after a recent warning by top scientists that climate change would damage food supplies, slow economic growth,

and aggravate causes of armed conflicts.

So we have two opposing views. As the old labor anthem asks, “Which side are you on?” What will the DEQ do in response to global warming and climate change?

## **Investigation**

To try to answer this, starting May 10 and continuing, I had several correspondences and a FOIA request with OOGM field operations chief Rick Henderson, AQD department analyst Rachel McLeod, and AQD environmental engineers Annette Switzer and Terry Wright.

The FOIA requested measurements of the 2013 quantities of Encana Utica-Collingwood greenhouse gas (GHG) emissions.

Utica-Collingwood is the nearly-two-mile deep shale layer where Encana has drilled and fracked the monster 30+ million water gallon wells in and around Kalkaska County.

Heat-trapping GHGs are chiefly carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O), ozone (O<sub>3</sub>), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF<sub>6</sub>).

The FOIA came back empty.

The correspondence ended with a conversation with the AQD engineers on July 15, summarized in my attached email of that date.

The sum of the correspondence: AQD provided me a “permit cards detail” and three 2013 Encana permits. The permits concerned tanks, dehydrators, burners, line heaters, and engines, but not wellheads. None of the listed gases (VOC, CO, and NOX) were GHGs, and there was no actual 2013 monitoring data even for those gases.

In our conversation we also noted that the federal EPA also does no monitoring or limiting of GHG emissions from Michigan wells or facilities. Even Encana's Kalkaska wells do not come under EPA scrutiny.

The bottom line is that no governmental agency anywhere at any level is watching

the global warming potential of oil-gas extraction in Michigan. That answers the “which side” question.

### **“Construction of part”**

So can anything significant be changed by tweaking the rules? BMF doesn't think so. The show-stopper is the legislative finding for part 615 (Michigan's oil-gas law), found at MCL 324.61502.

Opaquely, innocuously, and fiendishly titled “construction of part” – meaning “how we construe part 615” – it ends with these words:

It is accordingly the declared policy of the state to protect the interests of its citizens and landowners from unwarranted waste of gas and oil and to foster the development of the industry along the most favorable conditions and with a view to the ultimate recovery of the maximum production of these natural products. To that end, this part is to be construed liberally to give effect to sound policies of conservation and the prevention of waste and exploitation.

Binding on judges, juries, and DEQ regulators, this is special-interest industry legislation, on the books since 1939.

Most government agencies treat regulated industries neutrally. Not so with DEQ and oil-gas. Fostering the industry means fostering oil-gas profits. Maximizing oil-gas production means maximizing Michigan's contribution to fossil-fuel-driven global warming.

“Construction of part” does provide that we are to be protected from unwarranted “waste,” and “waste” is defined in MCL 324.61501(q)(ii)(B) to include “surface waste,” which in turn includes:

unnecessary damage to or destruction of the surface; soils; animal, fish, or aquatic life; property; or other environmental values from or by oil and gas operations.

But air and climate are not on this list. They are not at the surface.

The list does include “environmental values.” Do air and climate come under that? No. As just seen, neither DEQ nor EPA is looking after them when it comes to oil

and gas.

## Conclusion

The straight environmental groups in Michigan have made their peace. They have not taken up arms against “construction of part.” They are content with fostering and maximizing oil and gas.

Ban Michigan Fracking is only a non-profit educational group. But we spun off a ballot question committee, the Committee to Ban Fracking in Michigan. CBFM is working to provide voters with a ballot option in 2016 to ban horizontal fracking and waste in the state, and delete the pro-industry terms from “construction of part.” For the exact language, go to <http://letsbanfracking.org> and click on “Ballot Language.” To see how it will be done, click on tab for “Resources” and then “Brochure.”

Michigan Oil & Gas Association, in the person of Bill Myler who testified for the industry on July 16, shares DEQ's goal of “fostering the industry along favorable lines.” His talk was re-printed in the MOGA News. MOGA supports the proposed changes.

So the industry has sealed the deal.

But perhaps there will be one benefit of the proceeding. Perhaps it will demonstrate to people of good will – as the Sierra Club comment on July 16 suggested – the futility of compromise and appeasement. Perhaps these people will then come over to our side, and today's “construction of part” will fade into history.

Very truly yours,



Ellis Boal

c: BMF

Encl: Reuters: “UN climate chief urges radical clean-up of oil, gas industry,” 4/3/14  
Email, “Re: FOIA 4149-14/Clarification needed” Ellis Boal to Rachel McLeod, cc  
Rick Henderson, 7/15/14

## Top News

### **CORRECTED-UN climate chief urges radical clean-up of oil, gas industry**

Thu, Apr 03 07:44 AM EDT

(Corrects paragraph 11 to "trillion tonnes" from "billion tonnes")

\* Figueres says three quarters of reserves may have to stay in ground

\* UN wants "urgent transformation" towards greener future

By Alister Doyle, Environment Correspondent

OSLO, April 3 (Reuters) - The U.N.'s climate chief called on the oil and gas industry on Thursday to make a drastic shift to a clean, low-carbon future or risk having to leave three-quarters of fossil fuel reserves in the ground.

"The time for experimentation, for marginal changes and for conditional response is now over," Christiana Figueres told the International Petroleum Industry Environmental Conservation Association (IPIECA) in a speech in London.

She urged an "urgent transformation" to greener production after top scientists warned on Monday that climate change would damage food supplies, slow economic growth and aggravate the underlying causes of armed conflicts.

Limiting global warming to an agreed U.N. ceiling "means that three quarters of the fossil fuel reserves need to stay in the ground, and the fossil fuels we do use must be utilized sparingly and responsibly," she said.

Oil and gas firms say they are addressing global warming, for instance by focusing on energy efficiency and low-carbon technologies.

In a report on climate change risks on March 31, Exxon Mobil said that all energy sources, including fossil fuels, had to be exploited to meet growing world demand.

"All of Exxon Mobil's current hydrocarbon reserves will be needed, along with substantial industry investments, to address global energy needs," William Colton, vice president of corporate strategic planning, said in a statement.

Figueres has become more outspoken in criticising the fossil fuel industry in recent months as part of efforts to promote renewable sources such as solar or wind power. In November, she

called on the coal industry to clean up.

## CARBON CAPTURE

She said oil and gas firms should start by reporting risks to their business after governments agreed in 2010 to limit warming to less than 2 degrees Celsius (3.6 Fahrenheit) above pre-industrial times.

Temperatures are heading to breach the ceiling.

Figueres, the head of the U.N.'s Climate Change Secretariat in Bonn, noted the U.N.'s Intergovernmental Panel on Climate Change says the world has already burnt more than half a budget of a trillion tonnes of carbon if it wants to stay below 2C.

Companies should also take measures such as cutting methane leaks, lobby for an effective price on carbon emissions and invest in carbon capture and storage (CCS), she said.

CCS, which includes technologies to strip carbon dioxide from the flue gases of power plants, would allow continued output by eliminating most carbon emissions.

So far, however, there are few projects.

Saskatchewan Power in Canada will start its \$1.35 billion Boundary Dam coal-fired CCS project this year, capturing a million tonnes annually of carbon dioxide in what it says is the world's first post-combustion coal-fired CCS project.

(Reporting By Alister Doyle, editing by David Evans)

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**Subject:** Re: FOIA 4149-14/Clarification needed  
**From:** Ellis Boal <ellisboal@voyager.net>  
**Date:** 7/15/2014 3:08 PM  
**To:** "McLeod, Rachel (DEQ)" <McLeodR1@michigan.gov>  
**CC:** Rick Henderson <HENDERSONR2@michigan.gov>

Rachel,

I finally conferenced with Terry Wright and Annette Switzer of the Air Quality Division today. Thank you for setting that up.

They stated that any GHG emissions which DEQ might monitor or limit at the wellhead would be handled by OOGM not AQD. As you know I first directed my questions about this to Rick Henderson of OOGM in May. When he had no data to provide concerning 2013 Encana Utica-Collingwood GHG emissions, on May 28 I sent him a FOIA. He forwarded it to you for handling.

On June 6, you sent me sample 2013 Encana permit information available from AQD, but it was only about non-wellhead facilities. Further it concerned limitations only on non-GHG emissions (VOC, CO, NOX).

Terry and Annette said today that any monitoring AQD does is of non-wellhead structures such as glycol dehydrators. I asked Terry if he would look to see if AQD does any monitoring or limiting of GHG emissions in non-wellhead facilities. He said he didn't think so, but would check further to be sure.

Terry and Annette added that any monitoring or limiting of GHG emissions from the wellhead itself would be available only from OOGM. I explained that OOGM and Rick Henderson was where my inquiry started and came up empty.

Accordingly unless Terry gets back to me with data about AQD monitoring or limiting of GHG in 2013, I conclude from all this that no one anywhere in DEQ makes any attempt to monitor or limit oil-or-gas-related GHG emissions, whether from wellheads or from associated surface structures.

I reminded them that EPA also does no monitoring or limiting of GHG emissions from wells or facilities. The bottom line is that no governmental agency anywhere at any level is watching the global warming potential of oil-gas extraction in Michigan.

I will be addressing DEQ on this issue (and other issues) at public hearings this evening and tomorrow, and will relate this inquiry and the results. I expect Rick will be there. I am cc'ing this to him. Please also forward it to Terry and Annette, who indicated they probably would not be at the hearings.

Thank you again for facilitating the conversation.

Ellis

On 7/15/2014 12:34 AM, Ellis Boal wrote:

Rachel,

My landline phone is 231-547-2626. However I will be out Tuesday, Wednesday, and the first half of Thursday.

Try me Thursday afternoon, or sometime Friday. Thanks.

Ellis

On 7/14/2014 8:06 AM, McLeod, Rachel (DEQ) wrote:

Good Morning Ellis, it has come to my attention that we do not have a phone number listed for you. Would you like to forward to me so I can get the engineers to contact you that way? I believe they should have emailed you last week. I was out on Friday, so I am following up.

Thank you!

Rachel R. McLeod  
Departmental Analyst  
DEQ-AQD-Enforcement Unit  
Phone: 517-284-6770  
[mcleodr1@michigan.gov](mailto:mcleodr1@michigan.gov)

-----Original Message-----

From: Ellis Boal [<mailto:ellisboal@voyager.net>]  
Sent: Thursday, July 10, 2014 6:20 PM  
To: McLeod, Rachel (DEQ)  
Subject: Re: FOIA 4149-14/Clarification needed

Rachel,

No need to apologize. Thanks for keeping on this. I will look forward to a call in the next couple of days.

Ellis

On 7/10/2014 11:31 AM, McLeod, Rachel (DEQ) wrote:

Dear Mr. Boal:

I apologize for my delay, but I am the messenger and simply send documents due to my other duties and placement in the AQD. I have worked it out that someone will follow up with you on the phone. I am out of the office tomorrow and have scheduled a few permit engineers



to follow up with you on this FOIA request tomorrow. If you do not hear from someone this week, please let me know on Monday when I return to the office. Thank you for your patience.

Regards,

Rachel R. McLeod

Departmental Analyst

DEQ-AQD-Enforcement Unit

Phone: 517-284-6770

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\*From:\* Ellis Boal [<mailto:ellisboal@voyager.net>]  
\*Sent:\* Monday, June 30, 2014 3:03 PM  
\*To:\* DEQ-AQD-FOIA; McLeod, Rachel (DEQ)  
\*Cc:\* Henderson, Rick (DEQ); LuAnne Kozma  
\*Subject:\* Re: FOIA 4149-14/Clarification needed

Rachel,

Finally I am home and have had time to review the materials you kindly provided on June 6:

\* "4149-14 Encana Permit Cards.pdf", query results.

\* "40-13.pdf", a 7/12/13 AQD permit for Encana, location on Naples Road in Fife Lake, 21 pages, # P0433. The permit shows two condensate storage tanks, two water storage tanks, a glycol dehydrator with gas-fired burner, a flash tank with gas-fired burner, a line heater with gas-fired burner, and a gas-fired reciprocating engine. The limited pollutants are VOC, CO, and NOX. The dehydrator is limited to .5 a ton a year for VOC, the engine to 25 tons for NOX and 22 tons for CO, and the condensate tanks to 6 tons for VOC each. The query results also note other pieces of equipment: a regenerator, condenser, and reboiler. The permit itself says nothing about these. I take it

these are different words describing the same complex -- storage tanks, dehydrator, flash tank, line heater, and engine.

\* "74-13.pdf", a 11/4/13 AQD permit for Encana, location on Wood Road in Kalkaska, 23 pages, # P0442. The equipment here is the same as the previous except there are two dehydrators, flash tanks, and heaters. The limited pollutants are the same. The limits are the same except the dehydrators are limited to .4 tons for VOC, and the engine to 19 tons for NOX and 17 tons for CO. The query results note only a regenerator and reboiler.

\* "48-13A.pdf", a 9/20/13 AQD permit for Encana, location on King Road in Grayling, 22 pages, # P0435. The equipment and the limits here are the same as # P0442. The query results note dehydration skids and heaters.

The query results also show "48-13" which you did not send, I assume because it is included within 48-13A.pdf which has the same "P" registration number.

The query results show equipment permitted for # P0278 in 2012 located on Sunset Trail in Kalkaska County, but the actual permits were not provided.

My FOIA request of May 28 via Rick Henderson asked for "the quantities of GHG emissions for Encana's producing Utica-Collingwood wells in 2013." What you have given me shows quantities of pollutants permitted for facilities in 2013, but not:

\* monitoring reports showing the quantities actually emitted (whether above or below the limits),

\* anything about greenhouse emissions (water vapor, CO2, methane, N2O, O3, and CFCs),

\* anything about emissions from the facilities' associated wells, as distinguished from above-ground processing facilities.

I take this to mean DEQ does not limit GHG emissions for oil-gas wells or related facilities, and makes no effort to monitor them. If I am mistaken about this or anything else above please advise.

Finally, though AQD permits for the Sunset Trail facilities were not included in my FOIA of May 28, I now request them. I believe there are at least two (including # P0278), north and south of M-72 in Kalkaska County.

Thank you again for your assistance and forbearance.

Ellis

On 6/12/2014 6:18 PM, Ellis Boal wrote:

Rachel,

Thanks very much. Will be in contact approx June 24.

Ellis

On Mon, June 9, 2014 8:44 am, DEQ-AQD-FOIA wrote:

Ellis,

Not a problem, I can hold it open. I know that OOGM had nothing for your

request and the permits may hold information you need. Just let me know

once you review the information.

Rachel R. McLeod

Departmental Analyst

DEQ-AQD-Enforcement Unit

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From: Ellis Boal [<mailto:ellisboal@voyager.net>]

Sent: Friday, June 06, 2014 5:21 PM

To: DEQ-AQD-FOIA

[Cc:ellisboal@voyager.net](mailto:ellisboal@voyager.net) [<mailto:ellisboal@voyager.net>](mailto:ellisboal@voyager.net)

Subject: Re: FOIA 4149-14/Clarification needed

Rachel,

Thank you for your close attention to my request. I am out of my office

till about June 24. I check email occasionally but have no phone till I

return. I am hoping you can hold this inquiry till then, when I will have

a chance to review your attachment to see if it is the type of information

I am looking for.

Thank you again.

Ellis

On Fri, June 6, 2014 2:13 pm, DEQ-AQD-FOIA wrote:

Dear Ellis Boal:

SUBJECT: Request for Disclosure of Official Files from  
Air  
Quality  
Division (AQD)

This notice is issued in response to your May 28, 2014,  
request for  
information under the Freedom of Information Act, 1976  
PA  
442, as  
amended  
(FOIA), received by the AQD on May 30, 2014.

The AQD-Lansing Central Office has the original air  
permit  
files

associated with "Encana" in Michigan. I have attached a  
Permit Cards

detail for your review. I am not sure if you are  
interested in these

permit files. I estimate about 50.00 or more to scan the  
files for a

2013

issue date given in your request. Your FOIA stated  
Utica-Collingwood,

but

I am not positive of this location without giving you the  
permit files.

The Permit Engineer is out of the office until next week  
and I was only

able to find 3 permits issued in 2013 and one did make

mention of GHG as

a

pollutant. Please let me know if you are interested in the permit files.

The Permit Conditions are attached for your review. I have another staff

member to ask, but need to find out if you know the address of the wells

for Encana.

If you have any questions, need further explanation or would like to

cancel your request for any reason for AQD, please feel free to contact

me.

Sincerely,

Rachel R. McLeod, FOIA Liaison

Departmental Analyst

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Air Quality Division, Enforcement Unit

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All FOIA requests are submitted to the DEQ FOIA Coordinator

E-mail address:

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Office of Environmental Assistance: 1-800-662-9278

\*Electronic correspondence is generally subject to public disclosure

under

the Michigan Freedom of Information Act, 1976 PA 442,  
as  
amended (FOIA)\*