



**Committee on Transportation and Infrastructure  
U.S. House of Representatives**

**Bill Shuster**  
Chairman

Washington, DC 20515

**Nick J. Rahall, III**  
Ranking Member

August 14, 2014

Christopher P. Bertram, Staff Director

James H. Zoia, Democrat Staff Director

**BACKGROUND MEMO**

**TO:** Members, Subcommittee on Economic Development, Public Buildings and Emergency Management  
**FROM:** Staff, Subcommittee on Economic Development, Public Buildings and Emergency Management  
**RE:** Roundtable Policy Discussion on “FEMA’s Fracking Ban: How Anti-Fracking Policies are Putting People and Property at Risk”

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**PURPOSE**

On Wednesday, August 20, 2014, at 2:00 p.m., at the Wyoming County 911 Center, 3880 SR6E, in Tunkhannock, Pennsylvania, Members of the Subcommittee on Economic Development, Public Buildings and Emergency Management will participate in a roundtable discussion on “FEMA’s Fracking Ban: How Anti-Fracking Policies are Putting People and Property at Risk.” The purpose of the roundtable is to examine the Federal Emergency Management Agency’s (FEMA’s) Mitigation Policy, “Limits on Subsurface Uses of Hazard Mitigation Assistance Acquired Lands,” provide a forum to discuss the justification and impact of FEMA’s policy on state and local government, individuals and the industry, and to explore opportunities and solutions for moving forward. Participants will include FEMA, state and local emergency management officials, representatives of the oil and gas industry, and experts from the private sector.

**BACKGROUND**

*FEMA’s New Hazard Mitigation Assistance Policy Banning Fracking below Acquired Properties*

On May 5, 2014, FEMA issued the policy “Limits on Subsurface Uses of Hazard Mitigation Assistance Acquired Lands” (FP 302-405-46-1). The policy deals with an emerging issue in Pennsylvania and across the country—FEMA’s prohibition on using Hazard Mitigation Grant Program (HMGP) dollars to buy out repetitively-damaged properties where there are separate underground mineral rights leases or separate owners, particularly where hydraulic fracturing or “fracking” may occur.

## *FEMA Hazard Mitigation Grant Program*

FEMA's HMGP grants are directed to states and local governments to implement long-term hazard mitigation measures after a major disaster declaration in an effort to reduce the loss of life and property due to natural disasters and to enable mitigation measures to be implemented during the immediate recovery from a disaster. The program's purpose and objectives are to 1) significantly reduce or permanently eliminate future risk to lives and property from natural hazards; 2) provide funds to implement projects in accordance with priorities identified in state, Tribal, or local hazard mitigation plans; and 3) enable mitigation measures to be implemented during the recovery from a disaster.

The HMGP can be used to fund projects like acquiring and relocating structures from hazard-prone areas, retrofitting structures to protect them from floods, high winds, earthquakes, or other natural hazards, constructing certain types of minor and localized flood control projects, and constructing safe rooms inside schools or other buildings in tornado-prone areas. When properties are acquired under this program, they are required to be maintained as open space in perpetuity.

### *Impacts of the New Policy*

FEMA's new policy will not allow the acquisition of property to be converted and maintained as open space where there are separate subsurface or mineral property rights. This policy, which was finalized without input from key governmental and industry stakeholders, directly impacts Pennsylvania and other states with high risk flood properties that also have subsurface mineral opportunities. It makes states choose between removing a structure from a flood plain or allowing the potential mineral extraction under the property, even if surface access does not occur on the bought-out property. It is also retroactive in that it applies to any property purchased in the past with FEMA mitigation funds (and potentially other federal block grant funds, such as the U.S. Department of Housing and Urban Development's (HUD) Community Development Block Grants, which generally follow FEMA's guidance on hazard mitigation). Additionally, the policy could unfairly require bifurcated property owners to relinquish their subsurface rights without fair compensation. For example, while FEMA will require property owners to transfer two distinct property interests – both surface and subsurface mineral rights – the landowner will only be compensated for the surface interests.

The policy seems inconsistent with the basic premise of the HMGP program—to remove structures from hazard-prone areas, reducing or eliminating future risk, damage, and cost. There is concern that landowners who have current subsurface leases but want to move out of a severely flooded area will not be able to sell their property to the government because the landowner is unable to get out of the lease. Moreover, traditionally, FEMA's property buy out programs have encouraged local governments to generate income (through the use of property consistent with open space such as a parking lot or sports field) to help defray the costs of maintaining the property. The disincentive for potential income in this case appears to run counter to that practice, as the policy removes the ability of local government to generate income through subsurface leases.

FEMA has stated that it is concerned with the impact of hydraulic fracturing on “floodplain resources,” as well as the risks associated with the disposal of fluid wastes, even when not occurring on the property to be purchased with HMGP funds. They have also expressed concerns regarding possible environmental reviews under the National Environmental Policy Act (NEPA). FEMA officials say they will wait on findings from pending studies being conducted by the Environmental Protection Agency and the Bureau of Land Management on the effects of hydraulic fracturing before reassessing this policy.

On June 5, 2014, Chairman Shuster and Subcommittee Chairman Barletta sent a letter to FEMA asking for responses to specific questions regarding the impact and rationale behind this policy. The letter also requested that the policy be rescinded. In response, FEMA explained that they are primarily concerned about the general risk to floodplain resources from hydraulic fracturing and the disposal of fluid wastes. They also explained that property owners may participate in mitigation programs other than buyouts, such as elevation, construction of safe rooms, and structural retrofits. The policy remains in effect.

### *Direct Impacts in Pennsylvania*

This policy is of particular concern in Pennsylvania where subsurface oil and mineral rights are often owned or leased by someone other than the owner of the surface property rights. For example, following Hurricane Irene and Tropical Storm Lee (2011), the state of Pennsylvania identified 21 properties for mitigation buy-out with underground leases. Thirteen of the properties were cleared and funds obligated. Eight properties (including three in Wyoming County) will have to be reassessed and will not be allowed to move forward unless underground leases are terminated. To date, these remaining beneficial, cost-effective mitigation projects intended to protect lives and property have been halted due to this policy, and will continue to be a burden on the taxpayer.

Floods are the most prevalent type of natural disaster occurring in Pennsylvania. Floods have been the cause of millions of dollars in annual property damages, loss of lives, and disruption of economic activities. In Pennsylvania, floods cause over \$1 billion worth of property damage annually. Over 94 percent of Pennsylvania’s municipalities, including Philadelphia, have been designated as flood prone. FEMA’s new policy would have the potential of halting the buy-out program in Pennsylvania, which would remove structures from flood-prone areas. Failing to remove these repeatedly flooded properties could cause increased damage costs and a greater burden on taxpayers.

Virtually every state deals with damages from floods, and many states have bifurcated surface and subsurface property rights. Most, if not all, states recognize the potential of separate mineral rights. FEMA’s policy is retroactive and may affect previously-received FEMA funds and other federal grant funds. The breadth of the effects of this policy may be great and should be considered.

### *Conclusion*

FEMA’s policy could have widespread impacts across Pennsylvania and numerous states. This policy seems to conflict with the goals of mitigation and could cost taxpayers in the long

run—when the federal government is on the hook for repeatedly paying for damage on the severely flooded properties.

The roundtable will be an opportunity to discuss the policy’s unintended consequences, as well as to afford FEMA the opportunity to respond to lingering questions about how this ban forwards mitigation goals, and what solutions there may be in resolving any issues.

### **ATTENDEE BIOGRAPHIES**

#### **Roy E. Wright; Deputy Associate Administrator for Mitigation**

Federal Emergency Management Agency (FEMA)

- Roy E. Wright serves as FEMA's Deputy Associate Administrator for Mitigation. He is responsible for FEMA’s risk analysis and risk reduction programs. These include FEMA's Stafford Act authorities for mitigation, the National Earthquake Hazards Reduction Program, the National Dam Safety Program, and the National Flood Insurance Program. Collectively, these programs promote a risk-conscious culture and address long-term vulnerabilities in communities across the Nation.
- Mr. Wright led the interagency development of the National Mitigation Framework required by the Presidential Policy Directive on National Preparedness (PPD-8). In the Directive the President said, “Mitigation stands as a critical linchpin to reduce or eliminate the long-term risks to life, property, and well-being.”
- Mr. Wright joined FEMA in 2007, and was appointed to the Federal Senior Executive Service in 2013. He holds a Master of Public Administration from The George Washington University and a Bachelor of Arts in Political Science from Azusa Pacific University. A native of California, Roy and his family live in northern Virginia.

#### **Robert A. Full, Chief Deputy Director**

Pennsylvania Emergency Management Agency

- Robert A. Full is Chief Deputy Director for the Pennsylvania Emergency Management Agency (PEMA). Prior to his appointment at PEMA, Chief Full served as Chief of Emergency Services, Fire Marshal and Emergency Management Coordinator for Allegheny County for 13 years.
- Chief Full’s public safety background, with both career and volunteer services, spanned 41 years, 23 of which were with the City of Pittsburgh’s Department of Public Safety He has served as a volunteer firefighter in Forest Hills Borough, Allegheny County since January 1973.
- Chief Full holds numerous certifications, instructorships, committee assignments, awards, and honors as a responder, manager, and incident commander in fire, emergency medical services, rescue, hazardous materials, emergency management incidents and other related matters, is published and has presented regularly at local, regional, and national

conferences on that knowledge base and experiences. He is a member of several professional associations and various other fire and associated associations. Chief Full has received numerous awards and commendations throughout his career, and recently Chief Full received the 2009 national award given to one civilian on “Emergency Management” from the U.S. Environmental Protection Agency, and the 2010 S.W. PA American Red Cross Professional Responder of the Year Award.

- Chief Full is a lifelong resident of Allegheny County and lives in the City of Pittsburgh with his wife, along with his daughter, son, and two grandsons.

**Gene Dziak, Director**

Wyoming County Emergency Management Agency

- Gene Dziak has 43 years of experience in the area of emergency services, and has served as the Director of the Wyoming County Emergency Management Agency for the past 11 years. He has been involved in seven Presidential Disaster Declarations during his career.
- Mr. Dziak has been certified nationally as a firefighter and a hazardous materials technician, and by the State of Pennsylvania as a rescue technician and emergency medical technician.

**Richard Green, Director for Unconventional Oil & Gas**

DNV-GL

- Richard E. Green is Director and Segment Lead for the Unconventional Oil and Gas practice of DNV GL in Houston. Mr. Green has over 37 years of experience delivering environmental, health, and safety services to a number of industrial sectors including municipal government, pharmaceuticals, automotive, environmental services and conventional and unconventional oil and gas. He has significant operational experience in industrial waste water treatment operations, management systems, regulatory affairs, and waste management.
- He is currently leading DNV GL’s unconventional oil and gas practice in North America and is focused on providing risk management approaches to mitigate operational, regulatory, community, EHS, logistics, permitting, and other risks to sustainable development of shale gas/oil and oil sands.
- Mr. Green has been involved in the development of the DNV GL Recommended Practice for Risk Management of Shale Gas Developments and Operations which was released in January 2013, and he is active in developing joint stakeholder projects examining water treatment technology options for produced and flow back water from shale gas operations, quantifying fracking risk and working to examine well cement failure frequencies.
- Mr. Green holds a B.Sc. and M.Sc. in Environmental Sciences from the University of Wisconsin with a focus on water and wastewater engineering, environmental

microbiology and the chemistry of hazardous materials. He also completed DNV GL's Top Tech Program at U. C. Berkeley in 2011.

**William desRosiers**

Cabot Oil & Gas Corporation

- Raised in Highland Falls, New York, Mr. desRosiers learned about responsible resource development, firsthand, as a part of his family's mining business. He received his B.S. in Management, B.A. in History and MBA from Misericordia University.
- Mr. desRosiers currently serves in External Affairs for Cabot Oil & Gas Corporation. His primary responsibilities include strengthening media relationships, managing company-run fundraising programs, building better community relations and representing Cabot every chance he has.
- Mr. desRosiers also spent two years as a Field Director for Energy In Depth: Northeast Marcellus Initiative.