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EPA's "Yee Haw" Moment in Texas

Sworn statements from key players involved in controversial EPA order shed new light on how it all went down, and why it shouldn't have

The administrator had already had quite a day up until that point on December 7, 2010, and [in an email](#) sent at 4:54 that afternoon, he indicated it was about to get even better. "We're about to make a lot of news," EPA Region 6 administrator Al Armendariz wrote to friends and allies representing some of the most active anti-shale organizations in Texas. "There'll be an official press release in a few minutes ... time to Tivo channel 8."

But over on Channel 8's website, the news [had already broke](#): "The Environmental Protection Agency has issued an emergency order after it determined that a natural gas company's operations caused or contributed to the contamination of drinking water in Parker County," read the lead. Dr. Armendariz was quoted in the story, which was posted online before his office had even notified the state of Texas that EPA was about to take over its investigation. "Yee haw!" the director of the Texas Oil & Gas Accountability Project (OGAP), Sharon Wilson, [wrote](#) in reply. "Hats off to the new Sheriff and his deputies!" A Texas-style round-up was officially underway.

Fast-forward a month-and-a-half. Rejected by the court after filing at least three separate motions requesting that any attempt to gather sworn testimony from its staff be blocked, EPA Regional 6 official John Blevins finally sat for a court-ordered deposition in New Orleans, where he was asked a series of straightforward questions. [Questions like](#): Did EPA have prior knowledge of the fact that methane had been detected in water wells in Parker County long before Range ever arrived on the scene? Blevins: "[Y]es, we were aware of those facts." Did you include those facts in the administrative record? "[W]e do not believe those facts were ... germane or relevant to the issue at hand."

Ok. But at least EPA took a look at the Strawn Formation, right? The shallower, non-producing, higher-in-nitrogen formation [that most experts now believe](#) was the actual source of the natural gas in the Parker Co. wells? Blevins: "Not related to this case, no." But obviously the nitrogen profile of the methane is an important factor in determining where the methane originated, right? "It's a factor, yes." So you're saying no one at EPA even looked at it? "I don't believe that I could say EPA has an expert to opine on the nitrogen levels within any gas source." Then how were you able to determine the pathway? "That was not what we needed to issue the order on." What, EPA just couldn't do the work? "The Agency could do the work. The Agency doesn't believe that we need to do the work." Come again?

Thanks to the transcripts, we now know that not everyone at the agency believed EPA had compiled a sufficiently strong case to warrant the issuance of an emergency order. "[T]his is **not conclusive evidence** because of the limited data set," Dr. Doug Beak, an EPA scientist, wrote in a memo to his colleagues ([p. 271](#)). "The only way now to compare the data would be to make assumptions **to fill in data gaps** and I don't believe we have enough experience at this site or data to do this at this time." The political folks, as we know, disagreed. The rest, as they say, is history.

The full EPA deposition transcript, all 327 pages of it, is available [here](#) – but if this was simply another story about EPA jumping the gun on an investigation, it wouldn't be half as interesting as it has actually turned out to be. Indeed, the color here comes not from shaky foundation upon which the order was issued – but the circumstances under which the order was issued in the first place. A piece in Friday's edition of [The New York Times/E&E News](#) hints at one of the possibilities:

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

Of course, in Alisa Rich's [sworn deposition](#), she categorically denies ever offering this strategy up to the landowner. But according to the [transcripts](#) (page 257), not only did she recommend that EPA get involved – she actually made that recommendation **without having access to a single shred of testing data to back it up**. Turns out, the test results hadn't even been returned from the lab yet. "I – that's exactly right," Rich told investigators. "We did not have [the tests] back by August 12" – the date on which [she sent the email](#) to the landowner counseling him to bring in EPA, and stating that it would be "worth every penny" if they were successful in doing so.

So now we know how EPA moseyed into this little situation – but how is it that Alisa Rich ended up getting together with the landowner to set the wheels in motion in the first place? Ms. Rich, for her part, doesn't really address that question in her testimony. But the landowner, in his sworn statement to the court, absolutely does. [From his transcript](#) (pp. 85-87):

Q: How did you come about hiring Alisa Rich at Wolf Eagle Environmental?

A: Called back to the [Tarrant County] Health Department. **The woman there told me to watch Gasland**, watch Gasland, and then someone referred me to [Ms. Rich] and others.

Q: And do you recall who gave you the name of Alisa Rich, or Wolf Eagle Environment?

A: It was a woman, yeah, but I can't remember her name. ... **I think she's in Texas**, though.

Q: What context did you know her?

A: She – I – contacted me, again, I think through the website "Gasland," because I made a note on there. And I got referrals of numbers for EPA, Railroad Department [sic.] ... It was a whole list of names ... And the EPA and everything else, yes. It was a whole list of people.

Starting to see how all the pieces fit together here? According to the [landowner](#), someone at the county health department told him to watch Gasland (which is troubling in itself), he did, and then afterward found his way over to the film's social media page to offer up a message. He even attended a screening of the film – in the transcripts, he says he went to the October 26 showing in Fort Worth, at which, according to [this invite](#), Texas OGAP director Sharon Wilson was also in attendance. But he didn't go to watch the film, he says in his sworn statement -- he'd already seen it. He went there to meet some folks. Soon after or just before – the record isn't clear – a woman "in Texas" gave him a list of everyone he'd need to get EPA into the case.

Naturally, Alisa Rich was on that list; she had done [plenty of work for OGAP](#) in the past, and had [long been](#) an acquaintance of Dr. Armendariz stretching back to his time at SMU. Ms. Rich would handle the "tests," such as they were. And Ms. Wilson would handle the rest, drawing on her [personal relationship](#) with the administrator to ensure the ducks were all lined up and ready to go just as soon as EPA decided to pull the trigger.

As we know, that trigger was officially pulled on December 7, and shortly after making the move, Armendariz couldn't have been more effusive in thanking Wilson for her efforts. "Thank you both for helping to educate me," the Ph.D. environmental engineer wrote to Wilson and her allies. "And thank you all for your continued support and friendship. Its [sic.] been a crazy few days."

Crazier still they might soon become. In a filing [posted](#) Feb. 10, Range asked the court for permission to interview a few more EPA staff to help get to the bottom of this thing – and maybe gain access to a few

more EPA emails while they're at it. EPA, for its part, would prefer that everyone just stop asking questions and accept its findings as fact, notwithstanding its own sworn admissions that it did not evaluate the geology below the landowner's well; did no research to determine possible pathways the methane could have taken to get there; and had at least two scientists on its team (one in-house, the other a consultant) who, if the transcripts are right, appear to have disagreed with EPA on everything from method, to execution, to conclusion.

How deep this rabbit hole actually goes in anyone's guess – but with additional depositions on the horizon, and lots more emails to unearth, smart money says we're about to find out a lot more, and soon, about how this thing all went down. And to that we say: Yee haw.

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