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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

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September 2, 2010

The Honorable Lisa P. Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Jackson:

I have been closely following EPA Region 8's evaluation of groundwater contamination in Pavillion, Wyoming. This is a serious issue for the residents affected, one that demands proper attention and use of the best available science to understand the nature of any contamination and its possible sources.

From my vantage point as Ranking Member of the Senate Committee on Environment and Public Works, I would like EPA to focus on the following: 1) For the sake of the livelihoods of local residents, it is imperative that any problems are resolved as expeditiously as possible; and 2) EPA staff conducting this evaluation should adhere to your policy on transparency and openness, ensuring that the public, including interested members of Congress, are fully informed about EPA's activities, especially the science it is relying on to make key decisions.

As to keeping Congress informed, I know this is a priority of yours, for as you noted at the beginning of your tenure, you "recognize the importance of Congressional oversight" and "encourage our programs to provide Congress with the information necessary to satisfy its oversight and legislative interests to the extent possible and consistent with our Constitutional and statutory obligations." I presume this means providing full and complete information—in this case, to the Senate EPW Committee—in a timely and transparent fashion.

With this in mind, then, it is discouraging that staff from EPA Region 8 leading efforts at Pavillion are either uninformed of your policy, or, worse, know of it but refuse to abide by it. A case in point occurred on Monday, August 30th, when Region 8 staff conducted a conference call with my staff. During that call, it was apparent that certain Region 8 staff were either badly misinformed about essential details of its evaluation—e.g., not knowing the precise number of wells EPA sampled or the number of residents directly impacted, or the extent of the agency's legal authority under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)—or were unwilling to divulge them.

As to the latter, EPA did not convey, as it should have, that it was planning to release, and did in fact release, an 88-page report ("Analytical Results Report, Pavillion Area Groundwater Investigation, Pavillion, Fremont County, Wyoming") on its Phase II sampling results during the public meeting in Pavillion on August 31st. That this report, which appeared

to be finalized on August 30th, was not conveyed during the August 30th conference call raises unfortunate questions about EPA Region 8's motives for refusing to disclose this information.

Moreover, on the conference call, Region 8 staff provided only vague characterizations of the contaminants they found, leaving open EPA's interpretation of the data it collected. Region 8 staff indicated, too, that hydraulic fracturing was not a focus as to the source of the contamination (in fact, after 18 months of examining the matter, EPA Region 8 apparently has no definitive basis, or refuses to reveal evidence supporting a basis it may have, as to the source or sources of contamination). Yet Nathan Wiser, an EPA scientist, has publicly stated that, "It starts to finger-point stronger and stronger to the source being somehow related to the gas development, including, but not necessarily conclusively, hydraulic fracturing itself." He said further that EPA's efforts "could certainly have a focusing effect on a lot of folks in the Pavillion area as a nexus between hydraulic fracturing and water contamination."

Along with my concern about the agency's lack of transparency, I am concerned that EPA Region 8's effort appears to be open-ended—that is, when pressed, EPA Region 8 staff could provide no sense as to what the next steps would be, with no apparent plan to solve this problem as expeditiously as possible. Meanwhile, Pavillion residents are left to wonder about the status of their drinking water.

All of this is unacceptable. I hope that, with your guidance, EPA Region 8 will be more forthcoming with Congress about its testing and the agency's plans for additional testing. The agency should have a specific plan, with a timeline that includes specific milestones and a final end point. This will give residents of Pavillion reasonable assurance that they can secure safe drinking water from their wells in a reasonable period of time. Otherwise EPA Region 8 will merely create a cloud of uncertainty that leaves a serious problem unresolved.

As Ranking Member of the Senate EPW Committee, I will be investigating this matter thoroughly in the weeks and months ahead. I look forward to working with you on this and improving the relationship between EPA Region 8 and Congress.

Sincerely,



James M. Inhofe

Ranking Member

Senate Committee on Environment and Public Works