United States Senate
WASHINGTON, DC 20510

May 8, 2014

Arthur A. Elkins, Jr.
Inspector General
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Mr. Elkins:

The Environmental Protection Agency (EPA) Office of Inspector General (OIG) recently announced that it is conducting "preliminary research on the EPA's and states' ability to manage potential threats to water resources from hydraulic fracturing."[1] Given that a review of this nature – focusing on the abilities and practices of state regulators – is well outside the mission and expertise of the OIG, not to mention duplicative of numerous other federal efforts, we find even the consideration of such a review wholly inappropriate.

The mission of the EPA OIG is principally to "prevent and detect fraud, waste, and abuse…of the programs and operations of the Environmental Protection Agency" through "audits, evaluations, and investigations of EPA and its contractors."[2] It is outside the scope of OIG's core mission and authority to investigate either the states themselves or the efficacy of their regulatory programs. This view is confirmed by the Department of Justice (DOJ) which stated that the Inspector General Act of 1978 "does not generally vest in the Inspector General authority to conduct investigations pursuant to regulatory statutes administered" by a federal agency.[3]

The DOJ document further states that "Congress intended the Inspector General to be an objective official free from general regulatory responsibilities who investigated the employees and operations of the Department" and "thus, the Inspector General has an oversight rather than a direct role in investigations conducted pursuant to regulatory statutes…He may investigate the Department's conduct of regulatory investigations but may not conduct such investigations himself."[4] Thus, this current inquiry lies outside the scope of the OIG's mission and authority.

As you are aware, the EPA has conducted a number of indisputably flawed and unscientific investigations attempting to link hydraulic fracturing to water contamination and has continued

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[1] Memorandum from Dan Engelberg, Dir., Water Issues, Office of Program Evaluation, U.S. Envtl. Prot. Agency, to Nancy Stoner, Acting Assistant Adm'r, Office of Water, U.S. Envtl. Prot. Agency (Feb. 5, 2014) *available at* http://www.epa.gov/oig/reports/notificationMemos/newStarts_02-05-14_HyraulicFracturing.pdf.
[2] *About OIG*, http://www.epa.gov/oig/about.html#Who_What_Why (last visited Apr. 28, 2014).
[3] Inspector Gen. Auth. to Conduct Regulatory Investigations, 13 Op. O.L.C. 54, 54 (1989).
[4] *Id.* at 55.

to come up empty handed. One of those studies – EPA's massively flawed investigation in Parker County, Texas – was the subject of an investigative request we made to your office. Unfortunately, the OIG's response was unsatisfactory and largely ignored our serious inquiries. This flawed investigation only exacerbates our concerns with your latest efforts to link hydraulic fracturing to water resource contamination and subjectively examine the adequacy of state regulations.

The potential impacts of hydraulic fracturing have been extensively studied at the federal level by multiple agencies, including the Department of Energy, the Department of Interior, the Government Accountability Office, and of course the EPA, which is in the midst of a multi-year study looking into the potential for impacts on drinking water resources. Despite these prior and ongoing studies by agencies purported to have more substantive knowledge than the OIG's office, it appears your staff is attempting to further EPA's longstanding goal of manufacturing a need for new regulations on a production technique that has been safely and effectively regulated at the state level for the better half of a century. The Obama Administration's insistent attempt to link hydraulic fracturing to groundwater contamination in an effort to satisfy radical activists and justify greater federal regulations on the oil and gas industry is not only improperly motivated, but it is an example of the waste and abuse of government resources that is the OIG's very mission to expose and protect against. As such, the fact that the EPA OIG is now inserting itself into the debate further calls into question your independence from the Agency.

Moreover, the fact that the OIG would be pursing an inquiry outside of its mission during tight fiscal times further calls your judgment into question. In a March 14, 2014, interview with *Inside EPA*, you noted that your office is suffering from a "very challenging budget environment" and that tight budgets and staffing reductions could limit the OIG's ability to conduct future work.[5] In the interview, you highlighted the OIG's mission, which is to prevent and detect fraud, waste, and abuse, but noted "you can't do that when you don't have somebody in an office."

While the OIG claims to be struggling to find the resources to conduct meaningful investigations, the wise course of action would be to properly prioritize legitimate projects in order to fulfill the actual OIG mission. Using the funds already allocated to this particular project for a more worthwhile and appropriate investigation is an easy and sensible way to quickly free up vital resources and ensure taxpayer dollars are being spent by the OIG appropriately.

The memorandum announcing the start of this investigation into such an exhausted topic notes that part of the agenda is to "evaluate what regulatory authority is available to EPA and the states." As we have pointed out before, hydraulic fracturing has been successfully regulated at the state level without EPA interference since the technique was first performed over half a century ago. One reason that states have so successfully managed and facilitated this practice is that each state is uniquely qualified to tailor regulatory programs to address their own individual

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[5] *EPA IG Touts Independence But Warns Tight Budget May Limit Investigations*, INSIDE EPA, Mar. 14, 2014, http://insideepa.com/Inside-EPA/Inside-EPA-03/14/2014/epa-ig-touts-independence-but-warns-tight-budget-may-limit-investigations/menu-id-153.html.

needs at a local level. State regulators have specific knowledge and expertise concerning the geology, ecology, hydrology, and many other local factors within their states, and they have a vested interest in protecting drinking water supplies from contamination.

The OIG is reaching beyond its authority and attempting to justify wresting the current, successful control of fracturing out of the states' hands. We urge you to end this investigation and refocus any staff, funds, or resources associated with it to a more relevant and needed inquiry into fraud, abuse, and waste at the EPA, which is properly aligned with your mission.

In addition to our request that you immediately end this investigation, we respectfully request your complete and thorough response to the questions below by no later than May 27, 2014:

1. Before launching this inquiry, did the OIG consider DOJ's legal opinion cited in this letter? Please provide all documents referring or related to the scope of the OIG's mission as it relates to this inquiry. As Inspector General of EPA, how do you interpret the scope of EPA OIG authority, and do you disagree with DOJ's legal opinion cited in this letter?

2. Who requested the OIG conduct this investigation? When was the initial request made?

3. Has the OIG estimated a budget for this inquiry? If so, how much will this investigation cost? How much time and money has already been spent? How many staff have been assigned to this investigation? Please provide the names and titles of all OIG staff who have been assigned to this inquiry. How does the OIG justify expending this time and money while indicating that the office does not have sufficient funds for investigating fraud, waste, and abuse at EPA?

4. Which states does the OIG plan on investigating? How exactly does the OIG plan to investigate them? How many states does the OIG plan to investigate, and if more than nine states are selected, when does the OIG plan to file an information collection to the Office of Management and Budget?

5. Has the EPA OIG already started to collect information from any states? If so, which states? Did the OIG inform states they were under investigation when they were contacted? Were the proper state notice procedures followed?

6. The Project notification memorandum states that the EPA OIG "will contact environmental groups." What is the purpose for the OIG's contact with such groups? What groups does the OIG plan to contact? Has the OIG already contacted such groups, if so, which ones? What criteria and processes were used to select such groups?

7. Since the EPA OIG has no authority or technical expertise to determine whether the EPA or the states has the ability to properly manage hydraulic fracturing; and since the issues surrounding the risks and safety of hydraulic fracturing have been examined by the EPA, the states and other entities; this study appears to use taxpayer dollars to duplicate work

that has already been conducted. As such, please explain how this study by the EPA OIG is an effective use of the OIG's apparently scarce resources and does not itself constitute waste?

Sincerely,

David Vitter
U.S. Senator

James M. Inhofe
U.S. Senator

Tom Coburn
U.S. Senator

John Cornyn
U.S. Senator

Ted Cruz
U.S. Senator