BARBARA BOXER, CALIFORNIA, *CHAIRMAN*

MAX BAUCUS, MONTANA
THOMAS R. CARPER, DELAWARE
FRANK R. LAUTENBERG, NEW JERSEY
BENJAMIN L. CARDIN, MARYLAND
BERNARD SANDERS, VERMONT
SHELDON WHITEHOUSE, RHODE ISLAND
TOM UDALL, NEW MEXICO
JEFF MERKLEY, OREGON
KIRSTEN GILLIBRAND, NEW YORK

JAMES M. INHOFE, OKLAHOMA
DAVID VITTER, LOUISIANA
JOHN BARRASSO, WYOMING
JEFF SESSIONS, ALABAMA
MIKE CRAPO, IDAHO
LAMAR ALEXANDER, TENNESSEE
MIKE JOHANNS, NEBRASKA
JOHN BOOZMAN, ARKANSAS

BETTINA POIRIER, *MAJORITY STAFF DIRECTOR*
RUTH VAN MARK, *MINORITY STAFF DIRECTOR*

United States Senate
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON, DC 20510–6175

January 20, 2011

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Jackson:

On December 8, 2011, EPA released the draft report on Region 8's two year investigation of groundwater near Pavillion, Wyoming. This draft report contains preliminary findings that have given rise to tremendous controversy as this is the first time a federal agency has inferred that hydraulic fracturing is the likely cause of groundwater contamination.

EPA has indicated that it is prepared to move forward with a peer review of the draft report, despite the many concerns raised regarding the inadequacy of the quantity and quality of data and the delay in developing additional information. We ask that the agency fully address the problems that have been identified by the State of Wyoming and others, including data gaps and the timing and process of all evaluations, reviews, and conclusions prior to initiating the peer review process. Because of the significance of this report, and the potential impacts on regulatory decision making, other EPA assessments, and a large sector of the economy, it is critical that adequate and appropriate samples and data are collected and carefully reviewed before any final reviews or actions are taken. Furthermore, it is imperative that any analysis be based on the complete and best available science.

As EPA proceeds, we ask that this investigation be considered a highly influential scientific assessment and that any related, generated report is subject to the most rigorous, independent, and thorough external peer review process.

OMB's "Final Information Quality Bulletin for Peer Review" states that a scientific assessment is considered "highly influential" if the agency or the OIRA Administrator determines that the dissemination could have a potential impact of more than $500 million in any one year on either the public or private sector or that the dissemination is novel, controversial, or precedent-setting, or has significant interagency interest.[1] The information generated in this investigation satisfies all these requirements.

[1] http://www.whitehouse.gov/sites/default/files/omb/assets/omb/memoranda/fy2005/m05-03.pdf

PRINTED ON RECYCLED PAPER

First, the potential economic impact of this investigation is certainly more than the $500 million threshold. Natural gas development is estimated to contribute hundreds of billions of dollars to the United States economy, and hydraulic fracturing is estimated to be used in almost 90% of gas wells drilled today. [2] Any assessment linking hydraulic fracturing with drinking water contamination will have a clear economic impact on the natural gas development industry, natural gas users, and other economic sectors. Additionally, given the extensive media involvement initiated by EPA, it appears that the methods developed in the report could form the basis for national testing and monitoring and result in compliance requirements for virtually every well.

Also, this information is not only novel, but also controversial, as well as precedent setting. The draft report's supposition that the groundwater contamination contains compounds associated with gas production, including hydraulic fracturing, is the first time that a federal agency has posed a connection between hydraulic fracturing and groundwater contamination. In addition, the draft report has generated a tremendous amount of controversy among those in favor of and against natural gas development, and its testing methodologies and the quantity of data collected have been called into question by Wyoming state officials, industry experts, and others.[3] Moreover, as a part of its hydraulic fracturing study, EPA is currently conducting separate investigations of five retroactive sites where complaints of groundwater contamination are believed to be caused by hydraulic fracturing, which we view as precedent setting.

Finally, this investigation will have significant interagency interest. The Department of Energy[4] and the Department of Interior[5] are both engaged in the study and potential regulation of hydraulic fracturing. In addition, agencies like the Centers for Disease Control and Prevention[6] and the U.S. Securities and Exchange Commission[7] have expressed interest in further study of hydraulic fracturing or disclosure.

Any peer review for this investigation, therefore, should be external, independent, rigorous, and thorough. The OMB peer review bulletin applies stringent peer review requirements to highly influential scientific assessments. The Agency "must ensure that the peer review process is transparent by making available to the public the written charge to the peer reviewers, the peer reviewers' names, the peer reviewers' report(s), and the agency's response to the peer reviewers' report(s)…This Bulletin requires agencies to adopt or adapt the committee selection policies employed by the National Academy of Sciences (NAS)."[8] EPA's own peer review policy states that for highly influential scientific assessments, external peer review is the expected procedure, and for influential scientific assessments, external peer review is the approach of choice.[9]

---

[2] http://www.prnewswire.com/news-releases/anga-statement-on-the-ihs-shale-gas-economic-study-135202123.html

[3] http://trib.com/news/state-and-regional/epa-report-pavillion-water-samples-improperly-tested/article_99512ef4-6d23-5c9b-9038-c676eedd33c2.html

[4] http://www.shalegas.energy.gov/

[5] http://www.doi.gov/news/doinews/Forum-on-Natural-Gas-Hydraulic-Fracturing-on-Public-Lands.cfm

[6] http://fuelfix.com/blog/2012/01/05/cdc-scientist-tests-needed-on-gas-drilling-impact/

[7] http://online.wsj.com/article/SB10001424053111904009304576528484179638702.html

[8] http://www.whitehouse.gov/sites/default/files/omb/assets/omb/memoranda/fy2005/m05-03.pdf

[9] http://www.epa.gov/peerreview/pdfs/peer_review_policy_and_memo.pdf

Thank you for your attention to this matter. We look forward to EPA continuing this investigation in close coordination with the State of Wyoming, while using the highest scientific standards, following the OMB memoranda on information quality and peer review, and ensuring that complete data is subject to an external, rigorous, and independent peer review process.

Sincerely,