



**US Oil & Gas Association**  
ADVOCATE FOR THE OIL & GAS INDUSTRY



Sent by Email

October 20, 2011

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

Dear Administrator Jackson:

We, the undersigned organizations, write today to express our great concern about the protocol U.S. Environmental Protection Agency's (EPA) is apparently using in its planned study on the relationship between hydraulic fracturing and drinking water resources (the "Study"). This Study has the potential for enormous impacts on citizens, government agencies, non-governmental organizations (NGOs), and all economic sectors. It is for this reason that, in Fiscal Year 2010, Congress directed EPA to conduct such a study "using a credible approach that relies on the best available science, as well as independent sources of information." Our organizations support the Congressional request and the corresponding mandate to use "a transparent, peer-reviewed process" as that is the only approach that can produce deliverables based on sound science and "ensure the validity and accuracy of the data." Furthermore, we believe if the study is conducted in this way, it will finally put to bed the public questions and concerns that initiated the perceived need for the Study originally.

However, we understand that the Agency has moved forward with data collection for the Study, ignoring both its commitment to and a Congressional direction to ensure transparency and stakeholder input, as discussed below. In light of this lack of transparency, we urge you to finalize and make public the Study plan and related quality assurance plans before moving ahead with the Study. As we discuss further below, because samples gathered before the time that the Study plan is made final will not have been gathered according to a publicly available Study plan or testing procedures, and therefore the validity of the data will be in question, we urge you either postpone such sampling or prohibit the use of any such samples.

We appreciate your express commitment to transparency and scientific integrity as articulated during your confirmation hearing, pledging that under your leadership EPA would “operate with unparalleled transparency and openness.” We also echo the sentiment of the Agency’s Draft Scientific Integrity Policy of August 5, 2011 (the “Scientific Integrity Policy”) that “[t]he ability to pursue the Agency’s mission...depends upon the integrity of the science on which we rely.” Of course, the Agency’s commitment to transparency and stakeholder input is not only general in nature, in its draft study plan released on February 7, 2011 (the “Draft Study Plan”), EPA made the following commitment related to stakeholder input:

*“Stakeholder input has played, and will continue to play, an important role in the development of the hydraulic fracturing study plan and the research it will involve. EPA has implemented a strategy that engages stakeholders in dialogue and provides opportunities for input on the study scope and case study locations. The strategy also provides a means for exchanging information with experts on technical issues.”*

In response to this commitment, various stakeholders have supported EPA’s Study effort and expended significant resources in an attempt to provide EPA with the best available information that could be used to conduct their research. We understand that participation has included, but has not been limited to, the following activities:

- Participation in early stakeholder meetings;
- Delivering presentations and abstracts during the Study’s technical workshops;
- Submittal of Draft Study Plan comments;
- Submittal of Science Advisory Board (SAB) Draft Study Plan Review comments;
- Volunteering prospective study sites, coordinating with EPA’s contractors, and assisting in the current development of the associated Quality Assurance Project Plan (QAPP).

Transparency and stakeholder input are particularly important as the Draft Study Plan calls for both retrospective and prospective case studies which will include sampling of pre- and post-treatment produced waters at fracking sites. The Draft Study Plan indicates that, for each case study, “EPA will write and approve a QAPP before the start of any new data collection[.]”

We are deeply concerned that, despite the directive from Congress and EPA’s statements in its Draft Study Plan, actions currently being undertaken by Agency staff are in direct opposition to these commitments. Importantly, despite the lack of a final study plan, Agency officials began data collection as early as August 2011 by issuing a data request letter to nine (9) operators and collecting field samples at a number of retrospective study sites, including Bradford County, Pennsylvania. This issue is crucial to the integrity of the Study since, without an approved and appropriate protocol and, more importantly, without clear Study goals, it will be difficult to ascertain the quality and appropriateness of any of the data collected, samples obtained, and conclusions reached.

The EPA has stated that the risks identified above are mitigated in the development and approval of project specific QAPPs. However, it is our understanding that the EPA views the QAPPs as “dynamic” documents subject to change at their discretion, which is why the Agency has not

released the documents to the public or stakeholders. In this, EPA appears to be acting against internal guidance documents and Congress' request for the Study to be conducted using peer reviewed processes. EPA's actions belie the Scientific Integrity Policy's core principle of "ensuring that scientific studies used to support policy or regulatory decisions undergo appropriate levels of independent peer review." Moreover, EPA's Peer Review Handbook clearly acknowledges benefit of a peer review process throughout the life cycle of the work product, stating:

*"There may be substantial incremental benefit to conducting more than one peer review during the whole process of work product development, particularly where it involves complex tasks, has decision branching points, or could be expected to produce controversial findings. In addition, early review could be beneficial at the stage of research design or data collection planning where the product involves extensive primary data collection."*

Appropriate peer review might show, for example, that a majority of the methods the EPA has proposed for use during the retrospective and prospective studies are not approved or promulgated EPA methods, or other scientific protocol, which make it impossible for stakeholders to independently validate and ensure the accuracy of the data. When stakeholders attempted to raise these concerns with EPA staff and get access to EPA's testing procedures, the stakeholders were informed that this information will not be released nor will it be subject to any external peer review. In addition to blocking access to EPA's testing procedures, EPA staff also made clear the following:

- Analysis of samples collected at fracking sites will occur at EPA testing facilities as opposed to independent third-party laboratories, using unapproved protocol;
- For retrospective study sites, sampling locations are being selected based on homeowner complaints with no public explanation as to how such a selection process might bias the results; and
- Landowner agreements for access to testing sites are restricted to EPA officials and may prevent operators from obtaining duplicate samples to perform their own duplicate testing.

Clearly, the actions outlined above call EPA's claims of commitment to the scientific process, public transparency, and stakeholder input into question. Stakeholders are cooperating to the best of their ability. However, utilizing a case study approach without appropriate quality assurance and independent testing severely jeopardizes the credibility of any ultimate findings. We request that the Agency honor its public commitments and halt any data collection or field activity until a final study plan is approved and appropriate peer review and public comment on testing protocols and the QAPPs have taken place. The undersigned will continue to support EPA's effort to conduct a balanced study based on sound scientific principles and, to that end, we appreciate your attention to these critical matters so the credibility of this project isn't put into question at the initial stages.

Sincerely,



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Cc: Paul T. Anastas, PhD.  
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