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August 3, 2012

To: Environmental Protection Agency

From: Elisabeth MacNamara, President

Re: Permitting Guidance for Oil and Gas Hydraulic Fracturing
Activities Using Diesel Fuel
Docket ID No. EPA-HQ-OW- 2011-1013

The League of Women Voters of the United States (LWVUS) is encouraged that the Environmental Protection Agency (EPA) has issued draft guidance for the use of diesel in hydraulic fracturing and is accepting public comment regarding these changes. We believe it is imperative that existing requirements be further clarified in order to provide regulatory certainty, improve compliance with the Safe Drinking Water Act (SDWA) requirements and strengthen environmental protections. As you may know, the League advocated for the passage of this law based on our national, long-standing position on natural resources.

The League of Women Voters of the United States believes that natural resources should be managed as interrelated parts of life-supporting ecosystems. Resources should be conserved and protected to assure their future availability. Pollution of these resources should be controlled in order to preserve the physical, chemical and biological integrity of ecosystems and to protect public health.

With regard to our national position specifically on water issues, the League supports

- *water resource programs and policies that reflect the interrelationships of water quality, water quantity, ground-water and surface water and that address the potential depletion or pollution of water supplies;*
- *measures to reduce water pollution from direct point-source discharges and from indirect nonpoint sources;*
- *policies to achieve water quality essential for maintaining species populations and diversity, including measures to protect lakes, estuaries, wetlands and in-stream flows;*
- *stringent controls to protect the quality of current and potential drinking-water supplies, including protection of watersheds for surface supplies and of recharge areas for groundwater.*

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Based on information accompanying the May 2012 draft guidance documents, the EPA has specifically requested input regarding: diesel fuels description; diesel fuels usage information; permit duration and well closure; area of review; information submitted with the permit application; and monitoring. However, our review, done with reference to the sequence in which the document is drafted, has prompted a series of general questions rather than specific comments.

Background:

• ***Underground Injection Control (UIC) Program Implementation –***

Is regulatory authority stemming from different states and the federal level in the best interest of the stakeholders and the environment? Will there be confusion over jurisdiction given that water resources are not subject to state, territorial or tribal boundaries? Since contamination can flow downstream or up-well from distant sources, would there be greater consistency and accountability if it were centralized at the EPA rather than dependent on sharing and coordination?

• ***Regulation of Hydraulic Fracturing in the UIC Program/Diesel Fuel***

Recognizing the evolving nature and definitional problems of “diesel fuel” and related petroleum distillates whose composition may be deemed proprietary, will on-going monitoring and permitting remain problematic? Would tracers that could be put into all fracking fluids promote greater compliance as well the ability to hold “bad actors” accountable? Is adequate consideration being given to potential changes in the material injected into a well and pre-existing substances with which this mix may interact within the given strata? What requirements will be put in place to monitor chemical changes as flow back hazards may not be evident as part of the injection process? What procedures will be used to identify, monitor, and regulate unidentified “diesel fuel” contained in flow back fluids that will be reused for fracking or refracking wells?

Guidance for Wells that Use Fluids Containing Diesel Fuels for Hydraulic Fracturing

Can Multiple UIC Class II Wells Using Diesel Fuels for HF Be Authorized by One Permit?

Is adequate consideration being given to not only multiple wells within a given area but also multiple fracking of the same well? The cumulative impact of such processes requires monitoring. Are not all wells that are re-using flow back water and/or acid mine drainage actually using wells to “inject hazardous waste?” We concur with the EPA recommendation that applicable public notice for such permits should be enacted and widely distributed throughout applicable watershed/resource areas.

How Should EPA UIC Permit Writers Establish a Permit Duration and Apply UIC Well Closure Requirements After Fracturing at a Well Ceases?

While shorter timeframes are commendable, will permit durations be subject to on-going, periodic review given the changing scientific knowledge base about the fracking process and its implications?

Given that regulatory agencies and their employees are, at times, subject to political influences and considerations provided by industries, is there cause for concerns regarding permits issued on a “case-by-case” basis through reviewer discretion? Will there be safeguards to insulate parties from the appearance of a conflict of interest or potential ethical issues? Should wells that have used high volume, slick water, horizontal fracturing with diesel fuel be subject to closure requirements consistent with EPA deep injection wells for toxic wastes given the unknown, hazardous nature of their contents?

What Are Considerations for the Diesel Fuels HF Permit Application Submission and Review Process?

What incentives or meaningful penalties are in place to insure compliance for HF permits when diesel fuels are involved in the process? Given that some states are considering and may have outside contractors reviewing permits, what standards and criteria will be enforced to promote consistency and accountability for document submission and review?

How Do the Area of Review (AoR) Requirements at 40 CFR 146.6 Apply to Wells Using Diesel Fuels for HF?

Given the many unknowns, will the area of review be subject to further assessment with revisions made every five years to set reasonable boundaries for permitting? Realizing the limitations of current knowledge and procedures, can tracers and/or other processes be used to monitor and establish meaningful zones of endangered influence based on continual oversight and review by EPA? Will revisions of these overall guidelines be developed as needed or at pre-determined intervals?

What Information Should Be Submitted with the Permit Application?

While the nature and quantity of required data has expanded, would the use of tracers be added to verify actual consequences beyond those that might be anticipated? Can test areas be established with expanded areas for baseline testing given the potential of migration and upwelling? Would flexibility in permitting to account for local conditions and practices be allowed only to strengthen regulations in areas of high consequence and not to reduce regulatory guidelines? In addition to plugging and/or abandonment plans, should site-specific emergency plans be filed with each permit to control, mitigate, and remediate any potential individual and cumulative problems that might stem from diesel fuel contaminating water under SDWA?

How Do the Class II Well Construction Requirements Apply to HF Wells Using Diesel Fuels?

Given the importance of the casing and cement to well integrity, should long-term testing be conducted to evaluate and remediate potential contamination pathways? Because failures in the concrete tend to occur over time and are stimulated by multiple fracking processes, will EPA provide requirements for annual testing of wells? Will there be spot-checking of requirements through on-

site testing by regulators to verify information provided by the drilling companies and/or their subcontractors?

How Do the Class II Well Construction Requirements Apply to Already Constructed Wells Using Diesel Fuels HF?

While some “retro” upgrades may increase protection of water supplies, what processes and procedures – beyond consultation - are in place to ensure compliance? Will on-site visitations, monitoring, and enforcement through meaningful penalties enhance protection of our water beyond the data provided by company logs? What level of bonding or superfund contributions might be required so that the projected costs of potential remediation are not passed on to taxpayers? Will “best practices” be periodically updated over time to safeguard water resources?

Monitoring and Reporting

Although it appears that reducing the nature and timing of updates is appropriate given well activity, what requirements will be enacted to recognize and reduce long term consequences of migration paths that develop slowly over time? What essential types of data will be continually collected and reviewed relative to baseline findings?

How Do the Class II Financial Responsibility Requirements Apply to Wells Using Diesel Fuels for HF?

Is consideration of costs for plugging and abandonment adequate? What will you do to prevent such costs being passed on to taxpayers? What safeguards will be put into place to prevent subcontracting and consolidation of corporations from terminating their financial responsibility for negative impacts? What comprehensive plan will be formulated to assess liability when multiple parties are involved in a contamination event? Can clean-up, remediation, and restoration cost be held for potential use given that profitable companies of today may go bankrupt in the future? What liability, if any, will be borne by those who have leased mineral rights?

What Public Notification Requirements or Special Environmental Justice (EJ) Considerations are Recommended for Authorization of Wells Using Diesel Fuels for HF?

Should notices go out to landowners and municipal agencies beyond one-quarter mile – particularly given the length of the horizontal bore and the potential for extensive contamination of water sources – be they for residential, agricultural, recreational, or industrial use? What will EPA do to ensure that environmental justice considerations are implemented?

Does this Guidance Apply to States, Tribes, and Territories with Primacy?

Is there any mechanism by which this guidance might be applicable to all states, tribes and territories as recognition of the growing importance of adequate and safe drinking water? Can consistency be promoted to encourage compliance and public understanding? Can EPA suggest more restrictive



regulations, as needed, to specific states, tribes, and territories based on relevant data, experience, and specific requirements of historical, cultural, and/or environmentally sensitive areas?

Thank you for your consideration of our input as you continue to safeguard and sustain our vital water resources.