UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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OFFICE OF
RESEARCH AND DEVELOPMENT

Mr. Jeff E. Wojahn
President, Encana Oil and Gas (USA), Incorporated
370 17th Street
Suite 1700
Denver, CO 80202

Dear Mr. Wojahn:

Thank you for your letter of January 10, 2012, to Lisa P. Jackson, Administrator of the U.S. Environmental Protection Agency, in which you raised several concerns about the external peer review process for the EPA's draft report, "Investigation of Ground Water Contamination near Pavillion, Wyoming." Because the peer review of the draft report is being arranged by the Office of Research and Development, your letter was referred to me. I would also like to respond to the letter of January 6, 2012, that was sent to me by Mr. John Schopp, Vice President of the North Rockies Business Unit of Encana.

The EPA is fully committed to meeting the highest standards of scientific integrity, objectivity and transparency in conducting our investigation in Pavillion. This commitment also applies to the peer review of the draft report. Responses to the specific concerns that you raised in your letter about the peer review are found below:

1. *Peer review and classification of the draft report.* I share your view that the peer review of the draft report should be conducted in a highly rigorous manner by an independent group of experts. The Agency has determined that the draft report best meets the definition of Influential Scientific Information (ISI), and as such should be subjected to a higher degree of peer review than information that may not have a clear and substantial impact on decision making. Although the draft report has not been classified as a Highly Influential Scientific Assessment (HISA), which is an assessment that synthesizes information from multiple studies or analyses, it is being treated by the EPA as if it were a HISA for the purpose of the peer review. The Agency is following the requirements for a HISA, as described in the Office of Management and Budget's Peer Review Bulletin, with respect to the expertise, balance, conflict of interest and independence of the reviewers; transparency; and public involvement (i.e., providing opportunities for the public to nominate reviewers, submit written comments on the report, and attend a public meeting where oral presentations on scientific issues can be made to the peer reviewers). Although not required by the Peer Review Bulletin, the EPA is also providing an opportunity for the public to provide comments on the draft charge.

2. *Technical comments and charge to the peer reviewers.* The EPA fully intends to provide all comments submitted during the public comment period and at the peer review meeting to the panel for their consideration. Comments submitted during the public comment period are

Exhibit 2

publicly available in the docket.[1] The charge to the reviewers will indeed include questions relating to data quality, scientific uncertainties and interpretation of the results.

3. *Technical disciplines represented on the panel.* The EPA considers the disciplines listed in the *Federal Register* notice requesting public nominations of peer reviewers[2] to be sufficiently broad to ensure that the panel has the requisite experience for a thorough and rigorous review of the draft report.

The letter from Mr. Schopp raised two related concerns, each of which is addressed below:

1. *Scope of the review and charge to the reviewers.* The EPA is interested in receiving comments on the technical aspects of the investigation, including the collection and analysis of data, and the conclusions. Regarding the charge to the peer reviewers, the panel will be asked to opine on issues relating to data quality, scientific uncertainties, and interpretation of the results, as well as on the methods used. As noted above, the public has the opportunity to comment on the draft charge.

2. *Public availability of data.* Mr. Schopp questioned the integrity of the EPA's methods and the quality of the data used in reaching its conclusions, noting that only selected data had been released during the EPA's discussions with stakeholders. He also stated that Encana had not yet received a response to a series of Freedom of Information Act (FOIA) requests submitted by the company in mid-December to obtain all information available to the Agency in preparing the report, as well as copies of all internal and external communications relating to the study.

   As I indicated at the beginning of this letter, the EPA stands firmly behind the scientific integrity of the Pavillion investigation. With respect to transparency, we have already shared a considerable amount of information in direct communications with Encana, the State of Wyoming, and other parties. The EPA's Pavillion website contains volumes of information from the investigation, including raw laboratory data and reports, standard operating procedures, monitoring well drilling and sampling information, and quality assurance documents. The public comment period was extended for an additional 45-day period to March 12, 2012. In addition, stakeholders can provide comments on the draft charge to the reviewers, as well as oral and written comments at the public peer review meeting. We are confident that the public has sufficient time and information to provide meaningful comments on the EPA's draft report.

   Regarding the FOIA requests, in December, 2011, Encana sent four FOIA requests regarding the "Pavillion Field Area" to multiple EPA offices: Region 8, Region 3, Robert S. Kerr Environmental Research Center, and the Office of Research and Development. The requests seek a broad range of documents related to the EPA's investigation of ground water contamination in the Pavillion area.

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[1] http://www.regulations.gov/#!docketDetail;D=EPA-HQ-ORD-2011-0895

[2] Petroleum engineering (natural gas, oil), petroleum geology (particularly in hydraulic fracturing and well testing mechanical integrity), hydrology/hydrogeology (in or near drilling areas), geophysics, environmental engineering (related to drilling and its effects), water quality (studies of contaminated ground water, etc.), organic/inorganic chemistry and geochemistry (chemical fate and transport, oxidation/reduction reactions, hydraulic fracturing chemistry and/or gas-liquid exchange and solubility), laboratory and/or field research on physical and biogeochemical processes in subsurface environments, computer-based research on physical and biogeochemical processes in subsurface environments, laboratory and/or field-based research in hydraulic fracturing.

Exhibit 2

The EPA has already provided to Encana and publicly posted[3] an extensive amount of information relating to Pavillion, including information responsive to many of Encana's requests. The EPA plans on a "rolling release" of documents responsive to your FOIA requests. When clearly releasable documents are identified before a final response is ready, the EPA will release these documents in stages.

To complete the response to the FOIA requests, however, will involve searches by as many as 150 people in numerous EPA offices. Our rough estimate is that there will be from 100,000 to 200,000 responsive documents that span over a four year period. Collecting, reviewing, and producing the remaining responsive material will take a significant amount of time.

Because the requests seek voluminous records, and because responding will involve search and review efforts in multiple EPA offices by many personnel, "unusual circumstances" exist so that responding will require significantly more than 20 business days [*See* 40 C.F.R. §§ 2.104(c) and (d)]. Additionally, the EPA anticipates that its costs of responding to the requests will substantially exceed $250.00, and that estimated costs will be required as provided per 40 C.F.R. § 2.107(j). For these reasons, we have advised Encana's attorneys that we will contact them as soon as practicable regarding the time frame for response, the EPA's estimated cost of the response, and the prepayment that we require.

Since December 16, 2011, Region 8 legal staffers have been in frequent contact with Encana's attorneys regarding the FOIA requests in an effort to clarify the scope of the requests and to consolidate the requests to permit the EPA to respond as if they were a single request. This approach is designed to ensure consistency and efficiency, reduce duplication of effort, and provide the responsive records to Encana as soon as practicable. The EPA still awaits final clarification from Encana as to the scope of the requests.

In closing, I would like to emphasize that we take very seriously our responsibility to meet the highest standards of scientific integrity and transparency in conducting our investigation. We look forward to a rigorous and independent peer review of our draft report, and we welcome comments on the draft report from Encana and our other stakeholders.

Sincerely,

Paul T. Anastas

Paul T. Anastas
Assistant Administrator

[3] http://www.epa.gov/region8/superfund/wy/pavillion/

Exhibit 2