

EARTHWORKS

INADEQUATE REGULATION OF HYDRAULIC FRACTURING

The Halliburton loophole

Despite the widespread use of the practice, and the risks hydraulic fracturing poses to human health and safe drinking water supplies, the U.S. Environmental Protection Agency (“EPA”) does not regulate the injection of fracturing fluids under the Safe Drinking Water Act. The oil and gas industry is the only industry in America that is allowed by EPA to inject known hazardous materials -- unchecked -- directly into or adjacent to underground drinking water supplies.

This exemption from the SDWA has become known as the “Halliburton loophole” because it is widely perceived to have come about as a result of the efforts of Vice President Dick Cheney’s Energy Task Force. Before taking office, Cheney was CEO of Halliburton -- which patented hydraulic fracturing in the 1940s, and remains one of the three largest manufacturers of fracturing fluids. Halliburton staff were actively involved in review of the 2004 EPA report on hydraulic fracturing.

State regulation

Several oil and gas producing states have regulations governing some aspects of hydraulic fracturing, but they rarely, if ever, require companies to provide detailed information on types and quantities of chemicals being used, and whether the amount injected underground returns to the surface or remains underground. Additionally, in most states companies do not have to prove that fractures have stayed within the target formations. Nor do companies have to monitor water quality when there are drinking water formations in close proximity to areas where hydraulic fracturing occurs.

The history of federal regulation

In 1997, the U.S. Court of Appeals for the 11th Circuit (Atlanta) ordered the EPA to regulate hydraulic fracturing under the Safe Drinking Water Act. This decision followed a 1989 CBM fracturing operation in Alabama that landowners say contaminated a residential water well.

In 2000, in response to the 1997 court decision, the EPA initiated a study of the threats to water supplies associated with the fracturing of coal seams for methane production. The primary goal of the study was to assess the potential for fracturing to contaminate underground drinking water supplies.

Meanwhile, in 2001, a special task force on energy policy convened by Vice President Dick Cheney recommended that Congress exempt hydraulic fracturing from the Safe Drinking Water Act.

[The EPA completed its study in 2004](#), finding that fracturing “poses little or no threat” to drinking water. The EPA also concluded that no further study of hydraulic fracturing was necessary. The 2004 EPA study has been called “scientifically unsound” by EPA whistleblower Weston Wilson. [In](#)

[an October 2004 letter to Colorado's congressional delegation](#), Wilson recommended that EPA continue investigating hydraulic fracturing and form a new peer review panel that would be less heavily weighted with members of the regulated industry. In March of 2005, EPA Inspector General Nikki Tinsley found enough evidence of potential mishandling of the EPA hydraulic fracturing study to justify a review of Wilson's complaints.

The Oil and Gas Accountability Project (OGAP) has conducted a review of the EPA study. As reported in [Our Drinking Water at Risk](#), we found that EPA removed information from earlier drafts that suggested unregulated fracturing poses a threat to human health, and that the Agency did not include information that suggests fracturing fluids may pose a threat to drinking water long after drilling operations are completed.



OGAP's review of relevant data on hydraulic fracturing suggests that there is insufficient information for EPA to have concluded that hydraulic fracturing does not pose a threat to drinking water. [Our Drinking Water at Risk Cover](#)

Efforts to close the Halliburton loophole

In 2005, a national energy bill included the exemption of hydraulic fracturing from the Safe Drinking Water Act. This bill passed, with the exemption, although it left the door open for the EPA to regulate the use of diesel in hydraulic fracturing operations.

In October 2008, Representatives DeGette, Salazar and Hinchey introduced legislation to protect drinking water from oil and gas development -- including ending hydraulic fracturing's exemption to the Safe Drinking Water Act.

In June 2009, [DeGette, Hinchey and Polis in the House of Representatives, and Casey and Schumer in the Senate](#) introduced the [Fracking Responsibility and Awareness of Chemicals Act \(FRAC ACT\)](#).

Local governments have written [resolutions and letters](#) supporting ending the hydraulic fracturing exemption to the Safe Drinking Water Act and requiring public disclosure of hydraulic fracturing chemicals.

FOR MORE INFORMATION

2009 legislation to end the Halliburton Loophole

- Text of the [Fracking Responsibility and Awareness of Chemicals Act](#) (FRAC ACT)
- [EARTHWORKS's press release](#)
- [DeGette's press release](#)

Halliburton Loophole fact sheets & etc.

- FACT SHEET: [Congress should close the Halliburton Loophole](#). Joint fact sheet by Earthjustice, EARTHWORKS, Natural Resources Defense Council, Western Organization of Resource Councils (May 2009).
- FACT SHEET: [Safe drillers don't need the Halliburton Loophole](#) (June 2009).
- FACT SHEET: [Frack fluids -- injected and left behind](#) (June 2009).
- FACT SHEET: [Safe Drinking Water Act should cover hydraulic fracturing](#), Environmental Working Group, EARTHWORKS/OGAP (June 2009).
- [Untested Waters: the rise of hydraulic fracturing in oil and gas production and the need to revisit regulation](#) by Hannah Wiseman in Fordham Environmental Law Review (Spring 2009)

Local resolutions supporting stronger regulation of hydraulic fracturing (asterisked resolutions explicitly support ending the Halliburton loophole)

Colorado

- [City of Durango](#)*
- [City of Glenwood Springs](#)*
- [County of Huerfano County](#)*
- [County of La Plata](#) *
- [County of Pitkin](#) *
- [County of San Miguel County](#)*
- [County of Saguache](#)*
- [County of Saguache, Baca Grande Water District](#)*
- [Town of Carbondale](#)*

New York

- [City of New York](#)
- [County of Otsego](#)
- [County of Tompkins](#)*
- [Town of Cherry Valley](#)

Pennsylvania

- [Township of Nockamixon](#)*

Texas

- [City of Dish](#)*

Wyoming

- [Teton County](#)*

Recent news stories dealing with the Safe Drinking Water Act Exemption (the Halliburton loophole)

- [Fed explores the big fracking deal](#), Marketplace, 6/8/2009
- [Industry Defends Federal Loophole for Drilling Before Packed Congressional Hearing](#), ProPublica, 6/5/2009.

- [Colorado, New York Representatives Want Regulation of “Fracking”](#), AP, 6/5/2009.
- [Face-off Over ‘Fracking’: Water Battle Brews On Hill](#),” NPR, 5/27/09.
- [“EDITORIAL: Is the West’s water supply at risk?”](#), Denver Post, 11/19/2008.

2005 news stories surrounding the Safe Drinking Water Act Exemption (the Halliburton loophole)

- [“Exemption Likely to Drilling Rules: Fracturing, used by energy firms to extract oil and gas, is set to get a House panel’s OK despite concerns that it imperils drinking water,”](#) Los Angeles Times, 04/14/2005.
- [EDITORIAL: Flip the switch on fossilized thinking](#),” Philadelphia Inquirer, 04/20/2005.
- [“Enviros urge regulation of hydraulic fracturing,”](#) Greenwire, 04/15/2005 (subscription required).
- [“Group says feds should be tracking ‘fracking’,”](#) Glenwood Springs Post Independent, 04/15/2005.
- [“Fracking regulation may undo energy bill,”](#) United Press International, 04/14/2005
- [“Group: Extraction process threatens water,”](#) Denver Post, 04/14/2005.
- [“Groups seeks more “fracing” controls,”](#) Casper Star-Tribune, 04/14/2005.
- [“Fracturing regs reach breaking point“,](#) Telluride Planet, 04/14/2005
- [“Fracturing exemption opposed by local interests,”](#) Grand Junction Sentinel, 04/14/2005
- [“Group disputes gas drilling method,”](#) Durango Herald, 04/14/2005

EPA 2004 Halliburton Loophole study and EARTHWORKS/OGAP response

- [Environmental Protection Agency’s 2004 study declaring hydraulic fracturing poses “little or no threat”](#)
- [EPA whistleblower Weston Wilson’s 2004 letter declaring the EPA fracking study “scientifically unsound”](#)
- [OGAP Comments on EPA draft study](#) Evaluation of Impacts to Underground Sources of Drinking Water by Hydraulic Fracturing of Coalbed Methane Reservoirs. (October 2002)
- [REPORT: Our Drinking Water at Risk.](#) OGAP’s review of the EPA’s final study on Evaluation of Impacts to Underground Sources of Drinking Water by Hydraulic Fracturing of Coalbed Methane Reservoirs. (April, 2005)

[More general information on fracking and its impacts](#)

EARTHWORKS | 1612 K St., NW, Suite 808 | Washington, D.C., USA 20006
 202.887.1872 | info@earthworksaction.org | [Privacy Policy](#)