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## The Watcher

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### In This Issue

#### Fiscal Stewardship

[Conservatives' Tax Strategy: Use Economic Fears to Cut Taxes for the Wealthy](#)

#### Government Openness

[Scaling Up Transparency: New Approaches Could Yield Greater Openness](#)  
[Fracking Continues to Expand Rapidly Despite New Evidence of Health Risks](#)

#### Protecting the Public

[Government Accountability Office Report Debunks Industry Criticism of New Federal Fracking Rules](#)  
[No Movement on Coal Ash Protections Despite Mounting Evidence of Danger](#)

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## Conservatives' Tax Strategy: Use Economic Fears to Cut Taxes for the Wealthy

Congressional conservatives have revealed their negotiating strategy for dealing with the fiscal cliff slope: scare the public and congressional Democrats into a deal that reduces the deficit through spending cuts alone. [These fears have been blown out of proportion](#). A fiscal Armageddon will not happen on Jan. 1, 2013.

Senate Majority Leader Mitch McConnell (R-KY) and House Speaker John Boehner (R-OH) tipped their strategy when they responded to [a speech by Sen. Chuck Schumer](#) (D-NY), who called on Democrats to fight to retain Clinton-era income tax levels for upper-income households. Schumer urged Democrats to allow the top two income tax brackets to revert back to 36 and 39.6 percent (from their current levels – 33 and 35 percent) and to increase the capital gains tax rate to some level below 40 percent (from today's 15 percent).

McConnell quickly responded in a [press release](#) accusing Schumer of endorsing "Thelma & Louise economics" and of "hold[ing] the economy hostage to massive, job-killing tax hikes." In a [column](#) posted on his website, Boehner repeated McConnell's charge that Democrats' insistence that tax rates on the wealthy return to Clinton-era levels is a "Thelma & Louise" approach to economics.

McConnell's and Boehner's reference to "Thelma and Louise," a movie that ends with the titular characters driving off a cliff, is intended to escalate fear. The "fiscal cliff" is a term invented to describe the combined impact of allowing tax rates to rise across all income levels while \$110 billion in across-the-board federal spending cuts (or "sequestration") kick in on Jan. 1, 2013. However, because of the way tax and spending policies work, sequestration and the expiration of tax cuts can be reversed, and the impact felt in January could be minimal. The fiscal "cliff" is more like a fiscal slope.

In a recent [report](#), the Center on Budget and Policy Priorities (CBPP) asserts that it would be a "serious mistake and an unnecessary step" to respond to the fiscal cliff rhetoric "by simply extending current policies and postponing the hard decisions needed to restore long-term fiscal stability." CBPP notes that if all the Bush tax cuts were allowed to expire, the impact on workers' take home pay would be limited; the average \$900 higher tax withholding would be spread out over twelve months. Other analysts, including former OMB official Barry Anderson, [have publicly noted](#) that the Obama administration could choose not to adjust tax withholding rates, further limiting the impact of the scheduled income tax increase.

On the spending side, while a full-year sequester would produce significant cuts in defense and many non-defense programs, OMB has significant latitude to delay much of this impact if the administration chooses to do so. The administration could continue to operate many federal programs at the non-sequestered rate of spending, so services like the National Parks and the Federal Bureau of Investigation (FBI) might not experience any interruption in funding for several weeks. If a new budget agreement is reached in early 2013, it will likely retroactively cancel sequestration, negating the impact of the required cuts.

Federal contractors may not feel the impact of reduced budget authority for "several months," according to the Defense Department. For federal contracts signed in fiscal year (FY) 2012, contractors would receive payment for those contracts in 2013. [In a letter to the National Defense Industrial Association](#), Richard Ginman, the Director of the Pentagon's Defense Procurement and Acquisition Policy wrote:

Most department contracts are fully funded; because they are obligated from FY 2012 and prior year funding, they would not be affected by sequestration. For contracts in place that are incrementally funded, any action to adjust funding levels would likely occur, if it occurred at all, several months after sequestration.

On Jan. 1, 2013, there will be no drop from a fiscal policy cliff. There may be a slow rolling down a hill, but we can return to its crest through appropriate fiscal policies. The overheated rhetoric of McConnell and Boehner's reactions are designed to create an atmosphere of crisis in order to push panicked Democrats into a deficit-cutting deal that minimizes revenue increases and maximizes spending cuts. Congressional dealmakers should recognize that Jan. 1, 2013 will not bring economic calamity if a deficit deal has not been reached.

## Scaling Up Transparency: New Approaches Could Yield Greater Openness

Two reforms launched by federal agencies this month represent new approaches to more efficiently releasing government information. New websites to publish declassified documents and records released under the Freedom of Information Act (FOIA) could set new precedents and improve on older practices by making the information available to everyone online.

On Oct. 3, the National Archives and Records Administration (NARA) established a new [portal on declassification activities at the Archives](#), including for the first time publishing [documents released through the Interagency Security Classification Appeals Panel \(ISCAP\)](#). Similarly, on Oct. 1, a group of agencies launched [FOIAonline](#), which publishes documents released under FOIA by participating federal agencies. Both sites transform older processes into modern, open ways of releasing information that could lay the foundation for further reforms.

### Opening the Declassification Process

The democratic principles of our country require that the people be informed of the activities of our government. However, in order to protect national security operations, it is necessary for government to sometimes withhold certain information from the public. President Obama's 2009 [executive order on classified national security information](#) acknowledged these competing values and provided a framework for balancing them.

To strike the proper balance, classification has to be temporary and narrowly limited. Open government experts have complained for years that agencies needlessly "overclassify" information and fail to promptly declassify information, harming both the public's right to know and agencies' ability to protect truly sensitive information.

Obama's 2009 order included [several reforms](#) intended to reduce overclassification and speed declassification. One of those reforms took effect this month with the release of the new ISCAP website.

ISCAP makes the final decision on what materials will be declassified after members of the public request that information be declassified. Like FOIA requests, agency decisions on these requests and any documents released in response to a request have traditionally been delivered only to the requester, not the general public.

The new ISCAP website changes this. To implement the executive order requiring ISCAP to inform the public of its decisions, the website contains documents that have been declassified and released, as well as a brief description of the released documents, the documents' date, and affiliated agency, along with an identification number.

## **Opening the FOIA Process**

FOIAonline, a new website launched recently by several federal agencies, moves the FOIA process in a similar direction. Like the ISCAP website, FOIAonline allows participating agencies to publish released documents online, making them available to the general public.

FOIAonline also provides information about requests themselves, including a description, the affiliated agency, and a tracking number. In addition, FOIAonline identifies the requester, the date the request was received, and the date the request was closed. The site also includes information about cases that are still underway, not just those that have been closed.

## **Further Opportunities**

Both sites lay the foundation for greater openness of their respective processes. Realizing additional opportunities could further advance transparency and efficiency; an important next step would be to publish actual decisions on the ISCAP site and FOIAonline. Publishing released documents provides greater access to information, but it does not explain the rationale behind the decision.

Obama's executive order directs agencies to consider the ISCAP's decisions in conducting their own actions. However, this cannot be fully implemented without publishing those decisions, as the Federation of American Scientists' [Steven Aftergood](#) and the National Security Archive's [Lauren Harper](#) point out.

Similarly, agency response letters to FOIA requests and appeals often contain detailed explanations of the agency's rationale for its decision, but so far, agencies do not appear to be publishing any rationale for their decisions on FOIAonline.

Publishing FOIA and ISCAP decisions would help future requesters understand how agencies decide certain types of requests, which could help in preparing their own requests and appeals. In this sense, a published record of decisions could be seen as a kind of administrative case law to inform future decisions. For instance, the Brennan Center for Justice's Elizabeth Goitein has called for [giving ISCAP decisions precedential value](#).

Applying the power of precedent, whether formally or informally, could support greater efficiencies in these systems by reducing the need to "re-litigate" past decisions. Instead, requesters and agencies could more easily be informed by these decisions. If the precedents set are good – and ISCAP appeals have a higher success rate than appeals to individual agencies – the overall result would be a rising tide for openness.

## **Fracking Continues to Expand Rapidly Despite New Evidence of Health Risks**

Another public interest report has confirmed that shale gas extraction is creating new public health risks. However, the fracking boom grows unabated, and drilling is occurring near schools and other

locations. This could lead to increased chemical exposures among children and other vulnerable populations.

Natural gas fracking is an extraction process in which a well is drilled and sand and fluids are pumped underground at very high pressure to cause fissures in the shale rock that contains methane gas. Every well drilled brings an increase in air and noise pollution, as drilling equipment, water, sand, and chemicals are trucked in and gas is piped out of local communities. New [studies](#) confirm that fracking is linked to contaminated groundwater, air pollution, and health problems in animals and humans.

### **Public Health Impacts in the Marcellus Shale**

The Marcellus Shale is a geological formation that runs through parts of New York, Pennsylvania, Ohio, and West Virginia. Exploration and extraction of natural gas from the shale formation has been expanding rapidly in recent years. According to state records, more than 3,000 natural gas wells have been drilled in Pennsylvania in the past two years, mostly in the Marcellus Shale. This number will continue to increase, as Pennsylvania has issued [almost 2,000 permits](#) for natural gas fracking since January 2012.

According to a new report released on Oct. 18 by Earthworks, this expansion has led to increasingly negative health impacts to residents living near these wells. The [report](#), *Gas Patch Roulette: How Shale Gas Development Risks Public Health in Pennsylvania*, surveyed 108 residents across 14 Pennsylvania counties and conducted air and water tests at more than half of the 55 households surveyed. The report documented that dangerous carcinogenic chemicals associated with fracking are present in the air and water in communities where the drilling occurs. These chemicals include benzene (a known carcinogen), toluene, ethylbenzene, xylene, and other harmful substances, which are associated with many of the health symptoms reported in the surveys.

After gas drilling began, residents in these communities developed new health problems, known to be related to exposure to these chemicals. Respondents reported nasal and throat irritation, burning eyes, breathing difficulties, nausea, joint pain, and frequent nosebleeds. Close to 70 percent of participants surveyed reported an increase in throat irritation, and almost 80 percent have had more sinus problems after being exposed to natural gas extraction.

Those living closer to gas wells reported higher rates and greater severity of symptoms. For instance, when residents were 1,500-4,000 feet away from facilities, 27 percent reported throat irritation; this increased to 63 percent at 501-1,500 feet, and 74 percent at less than 500 feet. Children living near gas development developed health problems "atypical in the young," such as severe headaches, joint pain, and forgetfulness. Children living closest to oil and gas facilities had the highest occurrence of frequent nosebleeds of all the age groups surveyed.

Though this report focused specifically on the Marcellus Shale in Pennsylvania and the small communities affected by the extraction process, "the process for all shale gas extraction is very similar and so it has the same potential impacts on any community," said Wilma Subra, the president of Subra Company, an environmental consulting firm.

## **Implications for Other Communities**

Despite confirmation of these serious health impacts, recent news reports indicate that fracking continues to expand and is now being conducted at unexpected locations. This could lead to additional populations being exposed to fracking chemicals and emissions.

For example, many states are allowing fracking in state parks. Ohio has proposed guidelines for drilling in state parks, requiring that companies stay at least 300 feet (the length of a football field) from campgrounds, waterways, and historical sites. Cemetery owners have begun leasing their mineral rights to oil and gas companies to allow fracking. Chesapeake Energy has worked with more than a dozen cemeteries in the Fort Worth region of Texas alone. It is unclear how or if these arrangements will protect the health of those who visit the gravesites of their deceased loved ones or if visitors will even be informed about potential exposures.

Drilling is also occurring near schools. In July, the Encana Corporation began drilling across the street from an elementary school and within a mile of two secondary schools in Erie, CO. The drilling sites' proximity to the schools sparked numerous protests and petitions from local residents and parents because children are particularly susceptible to health problems from pollution and exposure to toxic chemicals.

Universities are also leasing their land to fracking companies. The University of Texas, which allows natural gas well pads on campus, approved the installation one of a well just 400 feet away from a daycare center at its Arlington campus. As a result, the daycare center moved. Houston-based Carrizo Oil & Gas, Inc. has drilled more than 20 natural gas wells on the campus and [has provided](#) \$1.12 million for construction of a new daycare facility.

Texas isn't the only state where drilling is moving forward on college grounds. Last week, Pennsylvania Governor Tom Corbett (R) [signed](#) the Indigenous Mineral Resource Development Act (Senate Bill 367), which allows 14 of the state's public universities to execute contracts with gas and oil companies to allow fracking on university lands. The law will also allow oil drilling and coal mining on university property. Advocates at Delaware Riverkeeper and other organizations are concerned that such activities will put the health and well-being of Pennsylvania college students at risk.

## **Rules are Inadequate to Protect Public Health**

As a [companion Watcher article discusses](#), two reports released last month (one from the [U.S. Government Accountability Office](#) (GAO) and one from [Earthworks](#)) concluded that federal and state rules on fracking do not protect citizens from the health impacts of oil and gas drilling. GAO found that federal and state regulators are unable to keep pace with rapidly expanding shale oil and gas development, and Earthworks noted that states are inadequately enforcing the rules that they do have on the books.

The reports' findings confirm those [reported](#) by OMB Watch in July. OMB Watch found that while state governments have begun establishing disclosure rules for fracking, they are spotty and incomplete, and essential safeguards are missing.



## **Recommendations**

Though the GAO report fails to provide recommendations for federal and state regulators, the Earthworks reports offer several practical recommendations to strengthen public protections. The primary recommendation is for states to refuse to permit new gas development until they can "assure affected communities that they" fully understand the public health risks and "have taken all necessary steps to prevent those health risks."

Similar to what the OMB Watch report recommended in July, Earthworks asserts that states should conduct health impact assessments on gas development, develop new measurements for testing air and water quality, and strengthen regulations.

To strengthen enforcement, Earthworks recommends that states establish a minimum inspector-to-well ratio and annual inspection-per-well requirements for each stage of development. States should also establish formal notice-of-violation procedures to use when rules are broken and ensure penalties are significant enough to deter violations. States should also document the violations consistently and make this information available to the public.

## **Government Accountability Office Report Debunks Industry Criticism of New Federal Fracking Rules**

As of Oct. 15, oil and gas operators must notify the U.S. Environmental Protection Agency (EPA) via e-mail two days in advance of extracting natural gas from a hydraulically fractured or refractured well. This notification requirement is part of EPA's new Clean Air Act (CAA) standards, which will reduce emissions from volatile organic compounds (VOCs) released during natural gas production by requiring "green completions" after January 2015. Industry opposes the standards, but a new report shows they are crucial to protecting the public.

The oil and gas industry appears to be ramping up its lobbying efforts to dismantle the new rule, beginning with criticism of the advance notice requirement that went into effect last week. In particular, drillers are upset that they must send the advance notice to EPA, preferring state regulation of hydraulic fracturing.

However, a new Government Accountability Office (GAO) [report](#) explains that states lack the resources necessary to effectively protect the public from environmental pollutants and safety concerns associated with fracking. Given the rapid pace of natural gas development, states need EPA's help with collecting information needed to conduct inspection and enforcement activities. That is why EPA's advance notice requirement is an important first step.

## **Background on Hydraulic Fracturing Regulation**

[Hydraulic fracturing](#), commonly referred to as fracking, is a process used by drillers to stimulate the flow of oil and natural gas from tight rock formations thousands of feet beneath the earth's surface.

Fracking occurs by injecting a fluid mixture of sand and chemicals, called "proppant," into a well at high pressure to cause fissures in the rock formation and force the natural gas to the surface.

The fracking process produces more greenhouse gas emissions over time than traditional methods of oil drilling or coal mining, due to tanker trucks hauling in millions of gallons of water to pump into the wells. Significant emissions, like methane and propane, are also released from the wells themselves. Fracking also poses health risks to workers at wells who may breathe in vapors from fracking operations or from flowback wastes stored in pits or tanks.

The [Clean Air Act](#) is the primary federal law responsible for protecting air quality in the United States. Under the act, EPA sets air quality standards, but states typically implement these standards in accordance with a state implementation plan (SIP) approved by EPA. Until recently, the emissions from oil and gas wells remained largely unregulated by federal law, and only some states had regulations that applied to hydraulically fractured wells.

In 2009, several environmental groups [filed suit](#) against EPA for failing to review and revise its Clean Air Act rules related to the oil and natural gas sector. In response, EPA issued New Source Performance Standards and National Emissions Standards for Hazardous Air Pollutants in April 2012.

The primary purpose of these new standards is to reduce emissions by requiring operators to capture emissions released into the atmosphere as the fracking fluid pumped into the well flows back out into a surface containment area. Without this requirement, emissions are released into the atmosphere and contribute to the greenhouse effect. The new standards also require drillers to notify their regional EPA office by e-mail at least two days prior to extracting natural gas from a hydraulically fractured or refractured well. The notice must include the name of the owner or operator of the well and the geographical coordinates of the well site.

### **Industry Criticism of New EPA Rule Debunked**

On Oct. 9, E&E reporter Mike Soraghan published an [article](#) about drillers' opposition to EPA's new air emissions standards. Many drillers would prefer to notify state regulatory agencies instead of EPA. Soraghan quoted the Vice President of Louisiana Oil and Gas Association, Gifford Briggs, who said, "This is as close as [EPA's] ever gotten to regulating hydraulic fracturing." Briggs also questioned the purpose of sending the notice to EPA directly, asking, "Why does EPA need to be involved when it's regulated by the state already?"

A GAO report on unconventional oil and gas development published last month explains why it is imperative for EPA to get involved with oil and gas regulations. The report reviewed eight federal environmental laws and six states' oil and gas regulations and identified agencies' largest challenges in overseeing unconventional oil and gas activities (i.e., fracking). EPA's biggest challenges are its lack of clear legal authority and the limited information it has about well-site locations, practices taking place at the sites, and equipment being used for drilling. States report that their biggest challenge is not having enough staff to perform inspection and enforcement activities. Another challenge for states is the lack of resources and staff needed to promptly respond to information requests and provide educational materials to local communities because of the overwhelming public interest in fracking.



The challenges GAO identified mirror concerns addressed by an [OMB Watch report](#) released in July and a recent study by [Earthworks](#). (For a synopsis of the Earthworks report, [click here](#) to visit our blog, *The Fine Print*.)

The gas industry fears EPA notification will be the first step toward stronger federal regulation of fracking hazards, something the industry has been lobbying against for years. For instance, the [Energy Policy Act of 2005](#) exempts fracking from EPA rules under the [Safe Drinking Water Act](#). This was a victory oil and gas lobbyists worked hard to secure.

Industry often prefers state regulation and enforcement of health and environmental rules because they are often more lax and less comprehensive than federal oversight. Of six states reviewed by the GAO report, for example, just five had notification, reporting, or monitoring rules pertaining to hydraulic fracturing, and these regulations varied significantly.

States need help protecting the public, workers, and wildlife habitats near well sites from the dangers of hydraulic fracturing, especially the contaminants released into the air. With few resources and less expertise, states need EPA's support.

## **Conclusion**

The new notification rules established by EPA provide the agency with a new opportunity to track fracking well locations and compile information about the operators responsible for complying with health and environmental standards. However, where state oil and gas rules also include an advance notification requirement, EPA's new rules permit the well owner or operator to notify the state agency only and do not require any notification to be sent to EPA. Thus, the new advance notice requirement is an important first step away from the existing patchwork of state regulations and toward a set of comprehensive, uniform federal protections.

## **No Movement on Coal Ash Protections Despite Mounting Evidence of Danger**

This December will mark the four-year anniversary of a massive spill in Tennessee that sparked new calls for the regulation of coal ash, a toxic waste produced when coal is burned. Although the U.S. Environmental Protection Agency (EPA) [proposed options](#) for regulating coal ash in 2010, little progress has been made toward issuing comprehensive national standards. Environmental groups have asked the courts to [force the agency](#) to act while bills attempting to thwart new standards have been moving through Congress. This impasse may continue until after the upcoming elections. The failure to provide adequate standards for coal ash is increasingly alarming as [new studies](#) continue to highlight its dangers.

In December 2008, an embankment holding wet coal ash ruptured at the Tennessee Valley Authority's Kingston plant, releasing 5.4 million cubic yards of coal ash sludge that buried a community and severely contaminated a nearby river. Coal ash can contain arsenic, lead, chromium, and other heavy metals, all of which poison humans.

In 2010, EPA proposed [two options for regulating coal ash](#) under the Resource Conservation and Recovery Act (RCRA):

- The first option would designate coal ash as a hazardous waste, requiring special handling, transportation, and disposal, and would closely monitor any potential reuse. This option would be far more protective of Americans' health and the environment.
- The second option would regulate coal ash in the same way less toxic wastes like household garbage are regulated. This option would limit EPA's responsibility and authority over coal ash management.

Two years later, no final rules have been issued, and the U.S. House of Representatives has passed bills which, if enacted into law, would limit federal oversight over coal ash.

Last week, *The Washington Post* published an [article](#) noting that election-year politics are likely delaying a decision on coal ash protections. The outcome of the November elections could determine the future of coal ash regulation: House-passed legislation to weaken federal authority over coal ash has so far been blocked by the Democratically controlled Senate. In the absence of regulatory action by the executive branch, the future of coal ash protections will depend on whether Congress enacts legislation to prevent certain new rules or the courts mandate that new rules be established by the EPA.

A new peer-reviewed [study](#) led by Duke University provides fodder for advocates' demands for action. It found high levels of arsenic and other toxins in coal ash waste flowing into lakes and rivers in North Carolina. According to one researcher, some of the highest levels of contamination were found in coal ash waste streams that flow into a lake that is a primary drinking water source for Charlotte. Samples collected from that lake during the summers of 2010 and 2011 contained arsenic at levels about 25 times higher than the current EPA standards for drinking water. The researcher also noted that "there are no systematic monitoring or regulations to reduce water-quality impacts from coal ash ponds because coal ash is not considered as hazardous waste."

These findings support those of [a report](#) by the Environmental Integrity Project and Earthjustice, which uncovered dozens of cases in which ponds of toxic coal combustion waste leaked into nearby wetlands, streams, and groundwater supplies.

The stakes are high for environmentalists and residents living near coal ash production and storage operations. The U.S. generates roughly 140 million tons of coal ash every year, about half of which is kept in storage ponds and landfills. Many of these storage locations have received "high hazard potential" ratings, yet there is still no comprehensive federal policy for controlling the storage and disposal of coal ash waste.

The evidence of the health and safety risks posed by coal ash helps make the case for more stringent standards. Even those who disagree on the specifics of new rules acknowledge that inaction is problematic and that standards are needed. The lack of uniform standards only adds to regulatory uncertainty for businesses that store or recycle coal ash, and nonexistent or weak standards do nothing to protect the public.

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