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The Administration's New Fracking Rule Has a Few Catches

by Amanda Frank

The Bureau of Land Management (BLM) just released a long-awaited rule that regulates fracking on federal and tribal lands, the first revision to federal fracking standards in almost 30 years. BLM currently manages over 100,000 oil and gas wells – over 90 percent of which are fracked. The rule establishes minimum safeguards that must be followed when drilling occurs on federal or tribal lands.

The Rule Does Not Establish a Clear Right-to Know

The new rule requires companies to disclose the chemicals used during fracking. While the data is officially reported to BLM, the bureau directs companies to file the information through FracFocus, an industry-funded database. Numerous states already mandate reporting through the website.

This raises right-to-know concerns. Since FracFocus is not a federal agency, the Freedom of Information Act (FOIA) would not apply and the website could refuse requests to share data. However, BLM will be notified of reports from wells on public land, and stated in the rule that it will retain this information in its records. If so, these bureau-held records would be accessible under FOIA.

Public interest groups and environmental organizations urged the agency *not* to use FracFocus for chemical disclosure. The website posts PDFs of chemical reports, making it difficult to run searches and to download and analyze data. The bureau noted that a Memorandum of Understanding (MOU) being finalized with FracFocus will ensure improvements to the website will be made.

Since many states already require operators to report to FracFocus, any improvements to the website would advance public access to fracking data. However, the BLM rule goes into effect in 30 days, and FracFocus has yet to be updated. There is no indication of when these changes will occur or whether they will be a substantial improvement over the current website. It is not clear what the Bureau will do if FracFocus fails to make the promised improvements.

Trade secrets exemptions could allow oil and gas companies to withhold information about toxic chemicals.

The rule allows operators to withhold certain chemical information by seeking “trade secret” exemptions. Although BLM requires operators to substantiate trade secret claims (unlike some states) and maintains the right to investigate these claims, this could slow down public access to information and result in information being withheld from the public. In Wyoming, for instance, regulators routinely accepted trade secrets claims without sufficient scrutiny. Public interest advocates had to take the state's oil and gas agency to court to establish a stronger review process. CEG was involved in the law suit, which took three years to reach a final ruling.

The BLM rule doesn't allow affected communities to identify potentially damaging chemicals *before* fracking occurs.

The new rule requires companies to disclose the toxic chemicals used within 30 days of *completing* the hydraulic fracturing process. But community groups and public interest advocates want to know the chemicals companies intend to use *before* any fracking occurs so that they can conduct baseline testing of water and soil. Not knowing what chemicals are going to be used makes it difficult to carry out efficient, targeted testing. Maryland’s proposed fracking regulations require drillers to report the name of every chemical brought on-site – even if a chemical isn't injected into a well. BLM ignored this model.

Moreover, how often and over what period operators will be required to file reports is unclear. The rule specifies that the 30 day deadline for reporting does not start until the *last stage* of fracking is completed. So if operators plan multi-stage fracking operations over an extended period of time, no chemicals have to be reported until all the fracking is completed. This could easily be misused by drilling companies to significantly delay reporting.

On the plus side, the rule does include several improvements over current BLM regulations, last revised in 1988. For instance, operators must submit to BLM detailed information about the well site before drilling, including the location of fault lines. Operators must also test well integrity before drilling and manage any flowback fluids (fluids that come to the surface during drilling). Flowback fluids must be stored in sealed, above-ground tanks – not the open pits permitted in some states.

But the disclosure choices BLM made are troubling. The oil and gas industry has a poor track record of providing information to the public on the toxins used in its operations. This is public land. The Bureau’s mission is to protect it for the American people and future generations.

Collecting chemical records on a public website – managed by public employees with the primary goal of protecting public land – is a better choice than relying on an inadequate, industry-sponsored website. The American people deserve better.

Oregon Officials Want to Ban Toxins from Children's Products. A Federal Bill Could Stop Them.

by Amanda Frank, 3/17/2015

See our related interactive maps of state chemical policies and our report, *Reducing Our Exposure to Toxic Chemicals*.

Leaded gasoline. Lead-based paint chips. Bisphenol A (BPA) in baby bottles. These are a few things parents no longer have to worry about, thanks to government standards and safeguards. But we still have a long way to go in protecting our children from hazardous chemicals. Manufacturers can still use toxins in children's products – without disclosing them to consumers.

A new bill in Oregon would keep toxins out of children's products sold there.

Under the proposed legislation, the Oregon Health Authority would create a list of chemicals of high concern. Any manufacturer of children's products using these chemicals would have to report to the Health Authority and eventually phase out the use of those substances.

Here's what makes this a strong bill:

- **It creates a priority list of chemicals that manufacturers are required to report.** This includes toxins like cadmium, a heavy metal linked to learning disabilities in children, and bisphenol A (BPA), which can affect children's developing brains. The Oregon Health Authority would add additional hazardous chemicals to the priority list every three years.

- **It establishes a searchable database of chemicals.** Parents, child care workers, and other concerned citizens will be able to learn what chemicals are dangerous, how they affect children, and which manufacturers use them.

- **It broadly defines "children's product" to include any product designed for, or marketed to, children under 12.** Manufacturers have previously skirted limits on toxic chemicals in products like children's jewelry by successfully arguing they don't qualify as "children's products." Oregon's bill specifically covers children's jewelry and several other categories like clothing and kitchen accessories.

- **It gives the Oregon Health Authority the authority to penalize manufacturers who do not comply with the law.** This includes fines up to $5,000 for the first violation and $10,000 for subsequent offenses.

Oregon's bill is modeled on similar legislation in neighboring Washington State. Maine, Minnesota, and California also have laws restricting toxic chemicals in children's products. And this January, Albany County, New York enacted a law that bans seven toxic chemicals from children's products.

The scary truth is that our primary federal chemical safety law is ineffective and inadequate in testing and restricting thousands of high-risk chemicals in commercial use today.

The law that gives the U.S. Environmental Protection Agency (EPA) the authority to regulate chemicals – the Toxic Substances Control Act (TSCA) – is almost 40 years old. In that time, EPA has required testing for about 250 of the 20,000 new chemicals being used in commercial products and restricted a mere nine. (There are over 84,000 chemicals registered for use on the TSCA inventory.)

TSCA was poorly written; public agencies have to show "substantial evidence" of "unreasonable risk" in order to regulate a chemical. Thus, safety assessments and rules are routinely challenged by big chemical companies, and conservative courts have allowed them to endlessly delay restrictions on the most dangerous chemicals. By way of example, an EPA rule in 1989 called for a complete phase-out of asbestos, but the industry took EPA to court, arguing that the rule was too costly to businesses, and the ban was overturned. Today, the U.S. is one of the only industrialized nations without a complete ban on asbestos – a deadly substance with no safe level of exposure.

Congress is divided on how to reform TSCA; two opposing reform bills were introduced last week.

A bill to revise TSCA introduced by Sen. Tom Udall (D-NM) and David Vitter (R-LA) on March 10 threatens to undermine state chemical policies. Whenever EPA identifies a new chemical to review, states would be prevented from taking action on the same chemical. Vitter and Udall claim this is needed to prevent duplicate efforts by state and federal authorities. But it takes EPA seven or more years to issue regulations on a chemical. Blocking state action during this long delay would put people in harm's way and benefits no one except chemical companies. This bill is supported by the American Chemical Council, the trade association and lobbying arm of big chemical companies.

What would passage of the Udall-Vitter bill mean for Oregon?

The 2015 Udall-Vitter bill would grandfather in some state chemical regulations enacted prior to Jan. 1, 2015. Most state chemical laws passed after this date would be at risk of being overturned. This means that Oregon's new proposed regulations could be at risk even if they are in effect before the TSCA reform bill is enacted. The Albany County law mentioned above, which prohibits certain toxic metals and benzene (a cancer-causing chemical) in children's products and apparel, would also be at risk.

States like Washington and California would retain their current chemical restrictions, but they would be unable to add any chemicals to their priority "chemical of concern" lists once EPA decides to review them. This would prevent states from taking action on toxic chemicals and leave the public at risk for several years while awaiting EPA review.

Finally, Oregon and other states would be prohibited from co-enforcing any state violations if they also violate federal law. In these instances, states would be prevented from collecting fines from manufacturers that ignore restrictions, which also cuts a source of funding for their chemical programs.

A bill that would improve chemical safety in the country, without undermining state standards, awaits action in the Senate.

Sens. Barbara Boxer (D-CA) and Edward Markey (D-MA) introduced the Alan Reinstein and Trevor Schaefer Toxic Chemical Protection Act on March 12. **The Boxer-Markey bill would correct major weaknesses in TSCA and preserve the ability of state and local officials to continue to protect their residents by adopting and enforcing stronger laws and rules.** Significantly, the bill would require all chemicals be proven to pose "a reasonable certainty of no harm" – the same standard required for pesticides on fruits and vegetables and chemicals used in food.

After almost 40 years of largely failing to address the impact of toxic chemicals, and more than a decade of effort to address this problem, it's time for Congress to act and adopt a bill that advances the public's interest, not industry's interests, and protects people and the environment from the risks of toxic chemicals.

Progressives Present Alternative Budget: A Raise for America

by Jessica Schieder, 3/19/2015

Investing in our nation's future requires funding. This week, the Congressional Progressive Caucus (CPC) revealed its vision of a public investment agenda that will get Americans working and give more people the opportunity to succeed. It pays for these investments through a series of progressive tax proposals, in which wealthy Americans and prosperous corporations would pay a fair share toward building the nation's economic strength.

The CPC's plan would invest $820 billion in our nation's infrastructure and transportation, create an estimated 8.4 million family-supporting jobs by 2018, and avoid draconian cuts in domestic programs. It would also reduce the national debt by $4.3 trillion.

The key to "The People's Budget" is strategic investment. Here is a very brief overview of the investments proposed in select areas:

- **Infrastructure and Transportation**: The nation will need to increase infrastructure and transportation spending by more than $1 trillion over the next decade, just to make required repairs to our nation's roads, bridges, levees, and other infrastructure. The CPC budget recognizes this existing need and views it as an opportunity to create family-supporting jobs. It increases funding for our nearly-broke National Highway Trust Fund by responsibly raising the gas tax by 15 cents – a tax that has been unchanged since 1993 despite our growing infrastructure needs.

- **Education**: To educate the workforce of tomorrow, the CPC budget makes access to a quality preschool education a reality for all children and reaffirms our nation's commitment to provide all students with a good education from kindergarten through high school. The budget would also reduce the cost of higher education at state schools through a matching program and offers debt relief to students.

- **Social Security**: Americans are by and large inadequately prepared for retirement. Stagnating wages, a tough job market, and the decline of employer-sponsored retirement plans have increased

Americans' reliance on Social Security when they retire. While the budget does express support for proposals to expand Social Security and tie benefits to a more accurate measure of inflation, changes to Social Security are not included in the budget. The plan recommends paying for an expansion of Social Security by eliminating the cap on Social Security contributions.

- **Hunger**: Approximately 46.5 million Americans live in poverty today; one in five children in the United States are poor. The CPC budget fights hunger by undoing cuts to the SNAP nutrition program that lowered the average value of the food benefits that households can receive by $216 per month in 2014. An additional $10 billion in new funding will go to children's nutrition programs – including school meals, preschool meals, snacks for children in long-term care, and investments in school kitchens.

- **Environment**: The sustainable investments proposed by the budget not only grow the economy and create jobs but also protect the environment. The plan cuts off polluters and fossil fuel companies from tax breaks and subsidies, saving $118 billion over the course of a decade. Additionally, the plan imposes a tax on carbon pollution, with funding used to invest in renewable energy, thereby reducing our ecological footprint.

In order to make needed investments, the budget raises revenues in several areas, including:

- **Taxing the Wealthy Fairly**: The budget increases taxes on households making more than $250,000 per year to Clinton-era levels. Additionally, individuals making more than $1 million per year will be asked to pay rates that are higher (but still lower than those under the Reagan administration). For households making less than $250,000 per year, tax rates won't rise; in fact, additional tax breaks for many working families are made available. The Earned Income Tax Credit (EITC) and Child Tax Credit (CTC) will be enhanced.

- **Stopping Subsidies for CEOs**: Corporations currently receive tax breaks for bonuses given to CEOs (as long as they can claim the bonuses are "performance-based"). The CPC budget eliminates tax breaks for executive bonuses.

- **Keeping Jobs and Corporate Profits at Home**: The budget closes a loophole in the tax code called "deferral" that allows corporations to stash money offshore and avoid paying taxes on those profits indefinitely. Additionally, the plan discourages corporate inversions, whereby American corporations unpatriotically claim to be foreign corporations to lower their tax bill.

- **Taxing Wall Street**: In order to raise revenue and discourage excessive speculation on Wall Street, the budget imposes a Financial Transactions Tax (FTT), a feature found in more than 30 countries. Additionally, the plan proposes a Financial Crisis Responsibility Fee on the biggest banks to discourage excessive borrowing.

- **Rationalizing Defense Spending**: The CPC budget reduces the Overseas Contingency Operations (OCO) fund, a temporary fund created to direct wartime funding to Afghanistan and Iraq, and finds additional savings in reducing the portion of Defense jobs that are outsourced to private business, and retiring some Cold War-era weapons systems.

You can learn more about the budget by visiting "The People's Budget: A Raise For America".

The Congressional Progressive Caucus' vision for America's future is one of several being presented by lawmakers during this year's budgeting process. Competing visions include the House Republicans' budget, the Senate Republicans' budget, and the president's budget request.

The People's Budget reduces carbon pollution, while the House Republican budget encourages more fracking and oil production in the United States while reducing regulations – a potentially lethal combination. The People's budget provides a very concrete approach to paying for necessary infrastructure investment; the House Republican budget says it supports "sensible reforms to ensure the solvency of the Highway Trust Fund," but fails to provide details about these reforms. The People's budget discourages corporations from sending jobs and profits abroad, while the House Republican budget denounces financial regulations as "onerous" less than a decade after the big banks triggered a financial crisis that nearly destroyed our economy.

Budget battles are often painted as black-and-white disagreements over "boring" numbers. But the results of the federal budget discussions touch every face, family, and zip code in the country. The dignity workers have on the job, the food that is served on dinner tables, and the financial security of working families are all dependent on budget decisions made by lawmakers.

Working families have been largely left out of our recovery from the financial crisis, so it is refreshing to have a vision for an economy that focuses on ensuring the prosperity of average working people. The People's Budget provides exactly this.

General Electric Lets a Little Democracy into its Boardroom

by Scott Klinger, 3/11/2015

In a surprising move last month, General Electric (GE) announced that it would give large shareholders a role in nominating an alternative slate of directors for board elections. GE is not the first large company to adopt such measures, but it is the most prominent. Even more remarkable is the fact that the company put forth this measure voluntarily.

Big business CEOs have long opposed competitive elections for members of their boards.

A corporation's directors play a vital role in setting the strategic direction of the company. They hire and oversee the company's chief executive officer (CEO). They review the audit of the company's financial records, and they set the pay of the CEO and other senior executives. Failing to perform these duties well and with accuracy can have significant impacts, not just for the company, but for the entire U.S. economy.

Shareholders, in theory, own and control a corporation, but this control has always been limited because American corporations have no real elections for their boards. Candidates for directors are put forth by the board itself, and shareholders are ritualistically presented with a slate of directors equal to the number of seats to be filled. They can vote "no" for any candidate, but given there are only as many candidates as there are seats on the board, even a candidate failing to win a majority of votes still is placed on the board.

Over the last decade, a growing number of institutional investors have pressed to change the way directors are elected. They asked the Securities and Exchange Commission (SEC) to adopt new measures of what was called “proxy access” – the right of shareholders with a large enough stake in the company to nominate directors directly to the proxy ballot.

In August 2010, the SEC adopted such a measure, allowing shareholders or groups of shareholders owning three percent of a company’s stock continuously for more than three years to nominate alternative directors for shareholders to consider when they vote.

The move angered the nation’s CEOs. The Business Roundtable, a powerful lobbying organization representing prominent CEOs, and the U.S. Chamber of Commerce, the nation’s largest business lobby, sued the SEC to block the measure. They won, and the measure was struck down in 2011.

Following a disheartening court ruling, persistent shareholders did not give up.

Undeterred, a group of concerned shareholders took proposals for the right to nominate directors directly to their fellow shareholders, company by company. And they’ve slowly been winning those fights. Proxy access has been adopted at several public corporations, including Hewlett Packard and Verizon.

GE entered the fray last fall, when one of its shareholders, Kevin Mahar, introduced a shareholder proposal asking the company to broaden the role of shareholders by adopting proxy access.

Under SEC rules, any shareholder who has owned $2,000 worth of stock for more than one year has the right to introduce a proposal asking the company to report on a specific business practice or to change some policy. The SEC considers these votes advisory, not binding, and as such, even when resolutions receive a majority of shareholder’s votes, companies are not legally obligated to follow shareholder direction on issues like disclosing their political contributions or reporting on the effects of climate change.

General Electric’s decision was a surprising change in direction, and Citigroup is likely to follow suit.

Once a company receives a shareholder proposal, the corporation has the right to challenge the proposal for a range of reasons. GE challenged the Mahar proposal. The SEC rejected GE’s assertions and ordered the company to allow a shareholder vote on it.

But rather than put the matter to a vote, GE simply adopted the rule. Mary Shapiro, former chair of the SEC when the agency rule allowing shareholders to nominate directors was issued in 2010, currently sits on GE’s board.

GE is a politically powerful company, and its CEO, Jeff Immelt, is a member of the Business Roundtable’s Executive Committee. That GE defied the early loud objections of the Business Roundtable to adopt this proposal signals a major change in corporate governance.

GE’s proxy access policy allows shareholders owning three percent of the company’s stock or a group of less than 20 shareholders who have owned GE stock for more than three years to nominate up to 20 percent of the board.

These requirements set a high bar. Only three shareholders – BlackRock, Vanguard Group and State Street – own more than three percent of the company's stock; one of those investment firms could nominate new directors.

GE had more than 70 shareholders as of the end of last year who each owned more than 0.15 percent of the company's stock. A combination of these firms could also meet the requisite hurdle.

In the week after GE's announcement, Citigroup's board urged its shareholders to vote in favor of a proxy access proposal – ensuring that following their annual meeting, Citigroup's shareholders will also be able to nominate board candidates.

As attitudes change, it is time for the SEC to reconsider proxy rules.

Nearly 100 shareholder proposals on proxy access have been submitted to U.S. corporations in the last year. In 2014, the 17 proxy access resolutions that were voted on received, on average, 33.9 percent of the votes cast.

In the 2010 court ruling that killed the original SEC rule, the U.S. Chamber of Commerce and Business Roundtable argued that allowing shareholders to nominate directors would impede business competitiveness and capital formation. The D.C. Circuit Court of Appeals agreed. But when the court ruled, there were no companies that allowed shareholders a right to nominate. Today, with more than a dozen companies allowing shareholders a voice (and after this proxy season, perhaps dozens more), it is hard to make the case that such a rule will harm companies. Now GE, Citigroup, Verizon, Staples, and many others will testify that it won't. We encourage the SEC to take another crack at creating uniform voting rights for the owners of corporations.

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