# Government Matters

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## Banning Fracking Bans: The Paradox of Local Control

**by Amanda Frank**

There is a new paradox emerging in the fracking debate.

The oil and gas industry firmly opposes federal fracking standards, claiming that states know best how to govern their own lands. States are currently responsible for the majority of industry oversight, and rules can vary significantly among them.

But this staunch support for local control doesn't extend to counties and cities. At least, it doesn't when those locals are not interested in having fracking in their backyard. Drilling companies have supported state efforts to strip communities of their rights to ban fracking and repeatedly challenged local fracking bans and restrictions in court. The justification? Local restrictions lead to a "patchwork of regulations" that inhibits industry growth. Of course, differing state standards also create a patchwork of policies, but oil and gas companies don't mind this because most states have rules or practices that favor the industry.

**Local control is championed until industry profits are at stake. What the oil and gas industry actually wants is "industry control."**

Four state legislatures introduced bills this spring that would prevent local communities from regulating fracking, and other states have taken recent action against local control:

- This week, Texas Governor Greg Abbott signed a bill that prohibits communities from voting to ban fracking. The law also blocks any local rules that deal with subsurface activity or prevent drilling from taking place.

- The same week that Oklahoma's government acknowledged that fracking is linked to the surge in earthquakes, state lawmakers passed two bills to limit cities and counties from directly regulating the oil industry. One of these bills would make ordinances that limit fracking a theft and would enable owners of mineral rights to seek monetary compensation. Both bills now go to Governor Mary Fallin for signature.

- Additional bills in Florida and New Mexico would have prevented communities from banning fracking, but they failed to advance. A Colorado bill that would have made communities liable for lost mineral royalties due to fracking bans also failed.

- The Ohio Supreme Court ruled last February that municipalities cannot restrict drilling practices if the state allows them.

- Oil and gas companies in Colorado sued in court to overturn at least three local fracking bans.

These bills and court actions come in response to the hundreds of cities and counties that have banned or restricted fracking in recent years, including four in Texas and 12 in Florida.

**These bans on fracking bans threaten to override the rights of communities to govern themselves.**

In Texas, the state constitution allows cities to adopt home rule charters when they have more than 5,000 residents. But apparently those charters cannot be used to ban fracking.

By contrast, the New York High Court upheld local townships' rights to ban fracking in 2014, and the state banned fracking a few months later. But it appears more and more states are moving to squash the authority of local communities to decide for themselves whether to allow fracking.

**How could a state like Texas, which has repeatedly fought against federal oversight, enact laws that trample local authority?**

Financial ties to the oil and gas industry certainly play a role. Last year, the Center for Public Integrity noted that nearly one quarter of Texas legislators (or their spouses) receive mineral royalties or own stock in drilling companies. In New Mexico, the oil and gas industry represents one of the largest sources of campaign contributions.

These financial ties mean that lawmakers often have a vested interest in backing the oil and gas industry, which helps explain why they support industry interests over the preferences of community members living with the noise and pollution that fracking brings.

Some state legislators also have deep ties to the American Legislative Exchange Council (ALEC), which brings state legislators and corporate representatives together annually to privately draft model legislation. Over 2,000 out of America's nearly 7,400 state legislators belong to ALEC, which receives support from corporations like Koch Industries, DuPont Chemical Company, and ExxonMobil that have clear interests in expanding oil and gas drilling.

Phil King, a Texas state legislator, is the national chair of ALEC. He also happens to be one of the key sponsors of the bill outlawing fracking bans. New Mexico House Majority Leader Nate Gentry, who sponsored his state's bill outlawing local control of fracking, is also an ALEC member.

In recent years, ALEC has pushed numerous state bills to prevent local governments from enacting ordinances on issues like paid sick leave and minimum wage. The flurry of bills prohibiting local control of fracking is one more example of ALEC-inspired laws that protect corporate interests at the expense of community interests and democratic processes.

Fracking brings environmental and health risks to local communities, from increased methane releases and other air pollution to groundwater contamination to earthquakes. Proponents argue the economic benefits to those who lease or own wells are worth the risks. We believe the residents of local communities – not state lawmakers or the energy companies who support their political campaigns – should decide whether the trade-offs make sense. This is the essence of self-governance.

## Final Clean Water Rule Will Protect Millions of Americans, Keep Our Water Clean

**by Ronald White**

Growing up next to the Hudson River in New York City in the 1950s and 1960s, it was clear to me even as a child that the smelly, dirty brown water containing floating debris and animal carcasses was in dire need of clean up. The Clean Water Act, passed by Congress in 1972, has resulted in significant improvements in the health of our nation's rivers, lakes, and streams. The Hudson River is substantially cleaner now and is included as part of the Manhattan Island Marathon Swim.

But the real surprise for me came when I camped out next to a small stream in upstate New York, which was a tributary to the Hudson River. The stark contrast between the pristine stream and the polluted Hudson I knew highlighted the importance of protecting the small bodies of water that feed the much larger rivers and lakes.

**Protecting the small streams and wetlands that feed into our nation's lakes, rivers and coastal waters is at the core of the Environmental Protection Agency's recent Clean Water Rule, announced on May 27.**

Almost a decade in development, the rule clarifies the types of water bodies covered under Clean Water Act standards. The agency issued the rule in response to U.S. Supreme Court decisions in 2001 and 2006 that created uncertainty regarding exactly which types of small water bodies were related to downstream traditional navigable waters such as rivers and thus were covered under the Clean Water Act. In developing the rule, EPA and the Army Corps of Engineers reviewed over 1,000 scientific studies, held over 400 meetings with stakeholders, and reviewed over 1 million comments on the 2014 proposed rule.

**The final rule provides clarity and certainty for businesses and industry, and more importantly, ensures protection for the 117 million Americans who get drinking water from streams that previously lacked clear protection standards.**

It will also help protect the sensitive ecosystems that provide essential wildlife habitat, and it will provide healthy places for people to fish and swim. And clean water is essential for the manufacturing, farming, tourism, recreation, and other engines of the economy.

The rule creates no new permitting requirements and expands the exemptions and exclusions for the agricultural industry that were in the old and proposed rules. Despite this, the agriculture, forestry, and ranching industries, as well as the U.S. Chamber of Commerce and their proxies in Congress, have engaged in a major campaign to oppose and challenge the rule. However, as my colleague Amanda Frank noted in her May 21 blog post, 80 percent of American voters, including 94 percent of Democrats and 68 percent of Republicans, strongly support the rule.

**While we have made substantial progress over the past four decades in reducing water pollution, much more needs to be done.**

EPA estimates that more than one-half of our rivers and streams and almost 70 percent of lakes, reservoirs, and ponds that have been assessed qualify as "impaired" or "threatened" due to pollution. The Clean Water Rule is an essential part of the national effort to ensure that the water we drink and enjoy is safe – for Americans today and future generations. Those in Congress intent on undermining the rule should heed the public's strong support for these protections, not industry's self-interest.

## Government Wins Protection for 33.8 Million Drivers in Largest Product Recall in U.S. History

**by Scott Klinger**

Imagine you're hit from behind while driving. Your vehicle's airbags deploy, but instead of cushioning you, bits of metal shrapnel are sent flying. That's what has happened to more than 100 drivers since 2007.

Six deaths and more than 100 injuries have been attributed to defects in the small component that inflates the airbag. It seems humidity degrades the casing around the chemicals, causing the inflator to sometimes explode. The components' Japanese manufacturer, Takata, has been slow to accept responsibility for this defective product.

The National Highway Traffic Safety Administration (NHTSA), created in 1966, oversees vehicle safety standards and ensures that vehicles, vehicle components like tires, and vehicle accessories like child safety seats comply with U.S. safety standards. NHTSA gathers information about problems from a variety of sources, including from citizens who report safety concerns. Go to its SaferCar.gov website or call the Vehicle Safety hotline (1-866-327-4236) to let NHTSA know if you've had a vehicle-related safety problem or to determine if your car has a Takata airbag or other recall issue.

When the agency sees patterns emerge that indicate widespread problems, they contact the manufacturers of the products in question. If a manufacturer agrees there is a problem and offers a remedy to correct the defect, NHTSA works with the company to initiate a voluntary recall. Since its founding in 1966, NHTSA has overseen the recall and repair of more than 400 million motor vehicles, 46 million tires, and 42 million child safety seats.

When companies are unwilling to assume responsibility for defects, NHTSA can issue a formal finding that the product is defective. This action informs consumers that there is a problem with the product and is the first step to requiring companies to take responsibility. NHTSA issued its findings on the dangers of Takada's airbags last November. If Takata had not agreed to assume responsibility as it did earlier this week, NHTSA's next move would have been to take its findings to U.S. District Court and seek a court order for Takata to address its defective products.

Tuesday's recall involves 33.8 million vehicles, 13 percent of the vehicles on America's roads today. It is the largest product recall of any kind in U.S. history, surpassing Johnson and Johnson's 1982 voluntary recall of 31 million bottles of Tylenol after some of its products were criminally poisoned on store shelves.

Now that the airbag recall has been undertaken, NHTSA's now moves to making sure the repairs are undertaken in a timely fashion. A major challenge is the shortage of replacement kits needed to fix the problem. Takata is currently making 450,000 kits a month and expects to double its production by September. In the meantime NHTSA is working with Takata to transfer the knowledge necessary for others to manufacture the kits, so cars can be repaired more quickly.

**The National Highway Transportation Safety Administration is one of a network of government agencies that oversee consumer product safety.**

A number of government agencies have responsibility for establishing product safety standards and assuring that products that fail to meet those standards are either removed from the market or are recalled and repaired. Each of these agencies relies on consumer reporting of problems in order to help prioritize their efforts to protect the public.

- The Consumer Product Safety Commission oversees consumer products, including things like children's toys, household appliances, and clothing.
- The Food and Drug Administration protects our nation's food (other than meat) and drug supplies, including cosmetics.
- The EPA oversees pesticides and other chemicals used in the home.
- The Coast Guard oversees pleasure boats and boating equipment, like life preservers and lifeboats.
- The US Department of Agriculture oversees the nation's meat supply.

In 2003, the federal government brought these six agencies together in a common web portal called Recalls.gov as a one-stop shop for government recalls. At the site you can report a problem or concern about a product and look up information on current recalls, including what to do if you own or use a recalled product.

While Recalls.gov was an important initiative, it is not as easy to use or helpful as it could or should be. The Center for Effective Government has previously identified several problems with the website. Visitors have to know which agency to select to get information on the product of concern. Instead of drawing all recall information into one central database, users are taken to each of the agency's individual sites. In the 18 months since our original analysis, we see few signs of improvement in Recalls.gov's functionality. This is a pity, as the shared website concept is an important one. To learn about CEG's evaluation of this portal, see E-Gov Spotlight: Centralized Product Recall Portal Needs Significant Improvement.

## Meet the 25 Hedge Fund Managers Whose $2.2 Billion Tax Break Could Pay for 50,000 Highway Construction Jobs

**by Scott Klinger**

Congress is trying to figure out how to come up with $10 billion to extend funding for the nation's Highway Trust Fund for a year. Without action, it will run dry at the end of this month.

Here's a suggestion: tax hedge fund managers in the same way we tax other rich Americans. The 25 top hedge fund managers who made Institutional Investors annual "Rich List" in 2014 took home $11.62 billion. And thanks to the hedge fund pay loophole, known in Washington D.C. as the "carried interest" loophole, these top twenty-five managers saved an estimated $2.2 billion on their tax bills. The carried interest loop hole allows hedge fund and private equity managers, two of the highest-paid job categories in America, to pay a tax rate of only 20 percent instead of the income tax rate they would otherwise pay (39 percent). They justify this low rate by claiming their earnings are related to investment gains, not the time they spend managing other peoples' money.

Several thousand people work in jobs that allow them to take advantage of the carried interest exemption.

Closing the hedge fund pay loophole would give Congress a down payment on transportation funding that must be made to keep road crews operating through the end of the year.

So what's stopping this seemingly logical move? Ideology and money. Republicans have promised they will not raise taxes – on anyone. And though their numbers are few, hedge fund managers influence is outsized. In the 2014 election cycle, the hedge fund industry provided more than $50 million in campaign contributions to Congressional candidates; one-third of their money went to Democrats and two-thirds to Republicans.

The average hedge fund manager on the Rich List makes $179,615 an hour; a highway paving machine operator makes $42,460 a year. If we asked just these 25 hedge fund managers to pay taxes at the same rate of other Americans more than 50,000 highway construction workers could stay on the job for the next year.

How about it Congress? Let's pave our roads with a little tax fairness.

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