

# FRACK EU: UNCONVENTIONAL INTRIGUE IN POLAND



## A Preliminary Investigation of the Fracking Assault on Poland



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## 9. MR. SMITH'S MISSION: THE INTERSTATE OIL AND GAS COMPACT COMMISSION COMES TO EUROPE

*In reference to how state regulators in the US are regulating the shale gas industry Mr. Smith's talk at the Global Shale Gas Summit in Warsaw, Poland centered around the main risk issues for state regulators in the US. He pledged to show how his organization is addressing those and how they're evolving, in hopes that the Polish shale gas industry could learn from the US example.*

*Mr. Smith explained that the Commission is comprised of 38 states, as well as associate member states. "And we also have international affiliate members," he explained, "who participate with us but can't vote. We are the regulators."*

*In the US, he said, **the states are the ones that have jurisdiction over shale gas**; the federal government regulates operations on federal and tribal lands, but everything else is handled by the states.*

*"We're on the cutting edge," said Smith, "as we work with landowners and other interested groups to make sure the regulations are fair and sound."*

*(NGFE Reports: Risky Business - North American regulator pledges to address risks in shale gas development, July 25, 2010, in Natural Gas Europe website)*

Mike Smith, one of the conference speakers in Warsaw on April 8, 2010 who appeared alongside U.S. government representatives, is the executive director of the Interstate Oil and Gas Compact Commission (IOGCC). Smith's inaugurating presence on the European continent ushered a new symbolic threat to the EU in the wake of the unconventional fracking invasion. It concerns the EU's primacy directive to implement and police consistent EU-wide policies on fracking, and how the government of Poland became a strong lobbyist in 2011 against EU interference on Poland's pro-fracking position, especially during Poland's ascendancy to the EU's Presidency in 2011.

Smith was appointed the high ranking and executive decision-making position of the IOGCC on March 18, 2008. The following resume from the IOGCC's news release:

*Smith will be responsible for providing advocacy, coordination, education and strategy to the IOGCC's 30 member and eight associate states on key domestic energy issues.*

*"Michael Smith brings to the IOGCC extensive leadership and expertise rooted in energy issues at both the state and national level," said Alaska Gov. Sarah Palin, IOGCC 2008 chairman. "I am confident that Mr. Smith is well prepared to advance the interests of IOGCC's member states, which are to conserve and maximize the nation's oil and natural gas resources that are so vital to the country's energy, economic and national security."*



Mike Smith and Sarah Palin

*From 2002 to 2004 Mr. Smith served as assistant secretary of fossil energy for the U.S. **Department of Energy**. He served as the primary policy advisor to Secretary Spencer Abraham on federal coal, petroleum, and natural gas programs, including extensive research and development efforts. Smith's responsibilities included overseeing an organization of nearly 1,000 scientists, engineers, technicians and administrative staff in two national laboratories, four field offices and at DOE's headquarters in Washington, D.C. He was responsible for several high-priority presidential initiatives ....*

*Mr. Smith's international experience includes service with the secretary general, Ministry of Science and Technology, People's Republic of China as a co-chair of the US-China Oil and Gas Forum and as chairman of the policy group, Carbon Sequestration Leadership Forum (CSLF). CSLF is a Bush Administration initiative with a 21 country membership seeking technical solutions to the capture and storage of carbon dioxide from energy generating facilities. Additionally, he led U.S. bilateral fossil energy protocols in Australia, India, Norway and Russia.*

*From 1995 to 2002, Mr. Smith served as **Oklahoma's secretary of energy** in the cabinet of former Gov. Frank Keating. He was responsible for fossil energy policy and oversight of seven major state energy agencies and commissions. He served as the **governor's official representative to the IOGCC, the Southern States Energy Board, the Interstate Mining Compact Commission and the Governors' Ethanol Coalition**. He served IOGCC as its vice chairman in 1999.*

*Mr. Smith served as **president of the Oklahoma Independent Petroleum Association**<sup>1</sup> in 1994 and operated an independent oil and gas exploration company based in Oklahoma City. He practiced energy law and earned Bachelor of Arts and law degrees from the University of Oklahoma.*

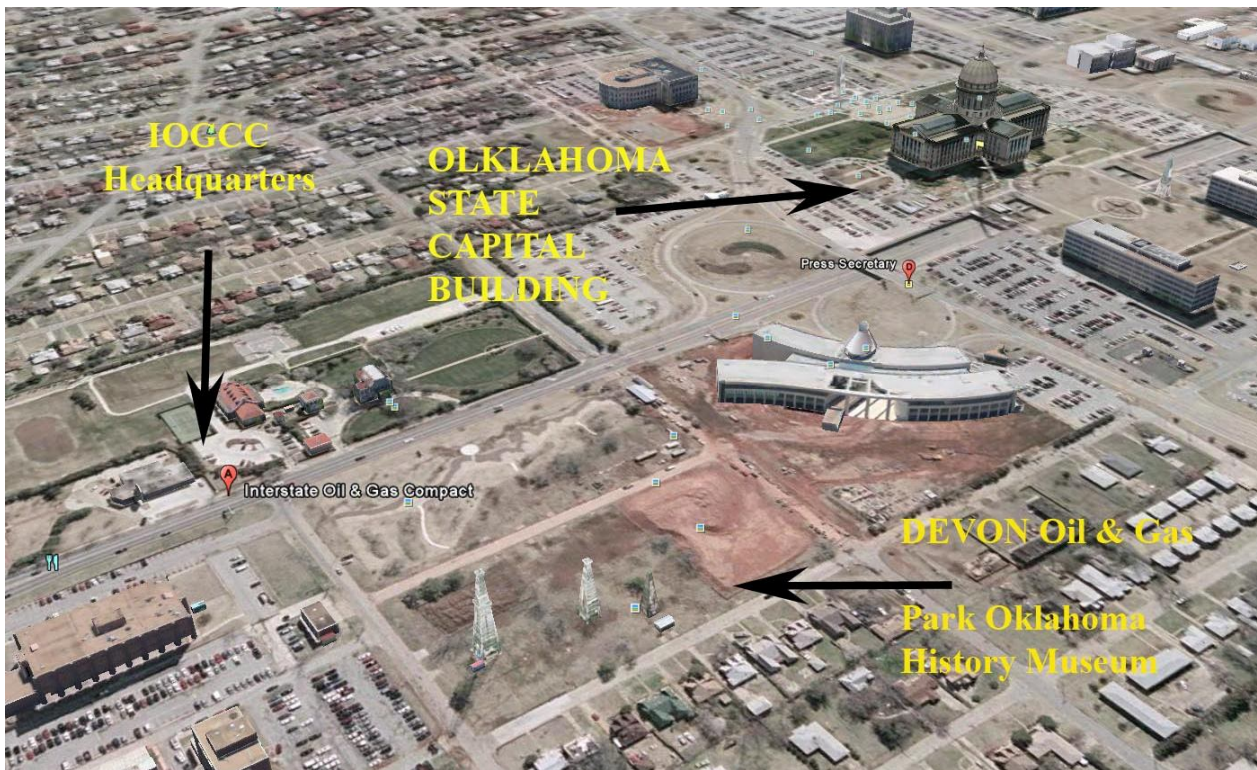
Texas Republican Governor Rick Perry, who was nominated as IOGCC chair on November 9, 2009, summed his scripted version of IOGCC's role in his press statement of October 5, 2009:

*IOGCC was founded in 1935 as a multi-state agency to protect states' rights, especially the right for state regulation of oil and gas resources, with a different governor from each member state serving as chairman each year. The commission works to ensure that the nation's oil and gas resources are conserved and maximized **while protecting health, safety and the environment**. IOGCC also acts as an advocate for the states in Washington D.C., and is **heavily involved in setting national energy policy**. Currently, the IOGCC is focused on keeping the regulation of carbon sequestration and hydraulic fracturing at the state level, as a one size fits all approach would not be successful.*

*Texas' energy industry fuels the nation, supplying 20 percent of the nation's oil production, one-fourth of the nation's natural gas production, a quarter of the nation's refining capacity, and nearly 60 percent of the nation's chemical manufacturing.*

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<sup>1</sup> An article, *OIPA's Leadership Spans Decades, Changes Legislation*, included in a 2007 publication by the Oklahoma Energy Resources Board, *Oklahoma - Where Energy Reigns*, describes Smith belonging to "a group of oil and gas "young lions" that would shape the organization's policy and political positions for more than two decades."



The image (from Google Earth) shows the location of the IOGCC's headquarters, close to Oklahoma's State capital building, and across the street from Devon Energy's oil and gas museum.

In lieu of the public controversies related to fracking in the U.S., a December 13, 2010 investigative article by ProPublica, *Some Appointees to Oil and Gas Commission Are Industry Execs, Lobbyists*, asked some hard questions about the internal politics of the IOGCC concerning industry lobbyists within the inter-state organization, straight-forward questions which made some of the members feel rather uneasy about being in the media spotlight.

*The 38-state commission was created in 1935 to promote the efficient harvesting of oil and gas. Its mission was later expanded to acknowledge the need to protect health, safety and the environment while accomplishing that goal. It is funded by government grants and fees from the states. The commission members are appointed by the member governors. Most are state regulators who oversee gas and oil drilling, but at least seven states have representatives who are either lobbyists or energy executives.*

(Joseph) **Petty** (owner of **Petty Oilfield Services Inc.**) is the official representative for West Virginia (and a third-generation driller who lobbies the government on behalf of energy companies); (Thomas E.) **Stewart** is an associate representative for Ohio; lobbyist **Robert W. Harms** is an associate representative for North Dakota; **James R. Daniels**, the general manager of **Murfin Drilling Company**, is an associate representative for Kansas; **William S. Daugherty**, CEO of natural gas company **NGAS**, is Kentucky's official representative and **D. Michael Wallen**, also of **NGAS**, is its associate representative; **Rick Calhoon** of **Pruet Oil** and **Charlie Williams Jr.** of oil and gas production company **Vaughey & Vaughey** are associate representatives for Mississippi; and **Steven C. Agee** of **Agee Energy LLC** is an associate representative for Oklahoma.

*Both official and associate representatives participate in committees, said commission executive director Mike Smith, although associate representatives vote on policy recommendations only if the official representative isn't available.*

*The commission's recommendations have enjoyed substantial credibility in the debate over hydraulic fracturing, or fracking, the controversial natural-gas extraction technique that the commission has deemed to be safe. The IOGCC authored an oft-cited 2002 survey that determined that nearly 1 million wells had used fracking "with no documented harm to groundwater" in its member states.*



*When asked by ProPublica if he felt his dual affiliations presented a conflict of interest, Stewart, the associate representative from Ohio, answered with a one-word e-mail: "No." A few minutes later he sent a second e-mail asking this reporter if she felt it was a conflict of interest to present herself as a journalist.*

*Harms, the lobbyist who is the associate representative for North Dakota, said that while he believes that government agencies should avoid "even the appearance of impropriety," he doesn't think his participation in the IOGCC counts as such. "The organization is not an advocate for the industry," said Harms. "It primarily contains state regulators, and those are the people who run the show."*

*Agee, the Agee Energy president who is an associate representative for Oklahoma and also an economics professor at Oklahoma State University, echoed Harms' statement. "I don't think it's a conflict," he wrote in an e-mail. "The governor chooses well-informed representatives that act in the best interest of the state."*

*The other official and associate representatives contacted for this article did not respond to requests for comment.*

*Exactly how the presence of gas and oil interests might affect the agency's resolutions is difficult to determine, because little information about the organization's inner workings is accessible to the public. When Smith was asked whether having industry representatives on the commission raised potential conflicts of interest, he referred that question to the member governors.*

*A spokeswoman for Gov. Mark Parkinson of Kansas said in an e-mail that "it is beneficial to appoint members to boards or commissions with related experience in the industry or field to help bring perspective." She also noted that the decision to appoint a drilling company manager to fill one of the Kansas slots was not made by Gov. Parkinson.*

*The six other governors with representatives known to be industry executives or lobbyists did not respond to requests for comment.*

Last year I began investigating the IOGCC's history as a multi-state government agency and its key strategic role behind the "Halliburton Loop-Hole", the exemption of unconventional hydraulic fracturing from the U.S. federal *Safe Drinking Water Act* and the *Clean Water Act* legislations through the controversial passage of the July 29, 2005 *Energy Policy Act* (Public Law 109-58). As an IOGCC representative stated in 2005 regarding the inter-state Commission's involvement behind the staging of the Loop-Hole exemption, it involved "several years of hard work".<sup>2</sup>

I became more interested in the IOGCC and its role in this, in part, because Canada's three western provincial governments of British Columbia (the B.C. Oil and Gas Commission),<sup>3</sup> Alberta (ERCB),<sup>4</sup> and Saskatchewan, along with other eastern provinces, Newfoundland, Labrador, and Nova Scotia, are affiliated with the IOGCC, and their affiliation therefore involves them in cooperative sharing of, promoting, and practice of the IOGCC's policies.

On the IOGCC's website in 2010, under *Hydraulic Fracturing*, was the following assessment of the term (more commonly substituted by the world-popular and now most cited internet word, "fracking") and a rather skewered interpretation of its more recent history:

*Hydraulic fracturing is regulated by the states. IOGCC member states each have comprehensive laws and regulations to provide for safe operations and to protect drinking water sources, and have trained personnel to effectively regulate oil and gas exploration and production.*

*On March 5, 2009, the IOGCC hosted two briefings on Capitol Hill to explain state regulation of oil and natural gas. The presentation included an explanation of hydraulic fracturing and how existing state regulations prevent contamination of drinking water resources during hydraulic fracturing operations.*

### ***Is Hydraulic Fracturing Safe?***

*In 2004, the U.S. Environmental Protection Agency completed a study of the environmental risks associated with the hydraulic fracturing of coal bed methane wells. The EPA concluded that the injection of hydraulic fracturing fluids poses little or no threat to underground sources of drinking water.*

*Although thousands of wells are fractured annually, the EPA did not find a single incident of the contamination of drinking water wells by hydraulic fracturing fluid injection.*

*Additionally, IOGCC member states have all stated that there have been no cases where hydraulic fracturing has been verified to have contaminated drinking water.*

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<sup>2</sup> *Congress Passes IOGCC's Legislative Fix for Hydraulic Fracturing: Historical Overview*, in the IOGCC's September 2005 newsletter edition of *Compact Comments*. The quotation and reference is also cited in Hanna Wiseman's Spring 2009 Fordham Environmental Law Review article, *Untested Waters: The Rise of Hydraulic Fracturing in Oil and Gas Production and the Need to Revisit Regulation*.

<sup>3</sup> The **BC Oil and Gas Commission** (which regulates the oil and gas industry in British Columbia) was listed as an official conference sponsor, alongside the other sponsors Enbridge, Marathon, BP, ExxonMobil, Penn Virginia Corporation, Rex Energy, IOGA West Virginia, in the IOGCC's May 23-25, 2010 *Midyear Issues Summit* conference held in Lexington, Kentucky.

<sup>4</sup> Alberta (not surprisingly) became the first such affiliate in 1996, and thereby dragged in the other Canadian members. The timing of Alberta's membership is just when the petroleum industry began strategic lobbying for the development of Alberta's tar sands, through the efforts of the petroleum industry's and Eric Newell's Oil Sands Task Force.

## ***Congressional Action***

*The Energy Policy Act of 2005 (EPACT), section 322, amended the Safe Drinking Water Act (SDWA) to change the definition of “underground injection” to exclude “the underground injection of fluids or propping agents (other than diesel fuels) pursuant to hydraulic fracturing operations. The amendment exempted hydraulic fracturing from federal law and gave jurisdiction and authority over hydraulic fracturing operations to the states. Bills were introduced into the House and Senate in June of 2009 to repeal this exemption and place the regulatory jurisdiction in the hands of the federal government.*

*The IOGCC passed a resolution in December of 2008 urging Congress to refrain from taking such action maintaining that SDWA was never intended to grant the federal government authority to regulate oil and gas drilling operations and production operations, such as hydraulic fracturing, under the **Underground Injection Control Program**. Since that time, several states have followed suit and filed their own resolutions including Alabama, Louisiana, North Dakota, Oklahoma, Utah and Wyoming.*

*“As the head regulator of oil and natural gas development in the state of North Dakota and an officer of the IOGCC representing all oil and natural gas producing state regulators, I can assure you that we have no higher priority than the protection of our states’ water resources,” said Lynn Helms, director of North Dakota’s Department of Mineral Resources in a House Energy and Mineral Resources Subcommittee hearing in June of 2009. **“It is my firmly held view and that of the IOGCC that the subject of hydraulic fracturing is adequately regulated by the states and needs no further study.”***

The IOGCC’s mission statement about its members caring for the “environment” was essentially negated, trashed in a statement made by S. Marvin Rogers, chairman of Alabama’s State Oil and Gas Board, and member of the IOGCC Legal and Regulatory Affairs Committee, in a 2009 document, *History Of Litigation Concerning Hydraulic Fracturing To Produce Coalbed Methane*. In it Rogers states on page 5: **“Coalbed methane resources and oil and gas resources are too valuable to this country to be burdened by unnecessary environmental laws that prevent oil and gas production.”**



Not only did that statement contradict the IOGCC’s land and public stewardship identity, it also called into question the **U.S. Department of Energy’s** partnership with the IOGCC. On the DOE’s website, under *Oil & Natural Gas Projects: Collaborative Streamlining with States*, was the following statement in 2010: *“IOGCC has been a partner with DOE on a great many projects. These two entities share many common goals. Two principal IOGCC foci are conservation and environmental protection—goals shared by DOE.”*

The caring-about-our-environment-and-public-water-resources facade was featured in a testimony by Lynn Helms on June 4, 2009, presented before the House Committee on Energy and Commerce.

*I am the Director of the Department of Mineral Resources of the Industrial Commission of the State of North Dakota. I am here today representing the Industrial Commission, the State of North Dakota, and other member states of the Interstate Oil and Gas Compact Commission (IOGCC) to express my views as a state regulator on*



*development of shale gas in the United States and as to the outstanding job that states are doing in regulating the development of this most important national resource.*

*The 30 member states of the IOGCC are responsible for more than 99% of the oil and natural gas produced onshore in the United States. Formed by Governors in 1935, the IOGCC is a congressionally chartered interstate compact. The organization, the nation's leading advocate for conservation and wise development of domestic petroleum resources, includes 30 member and 8 associate states. The mission of the IOGCC is two-fold: to conserve our nation's oil and gas resources and to protect human health and the environment. Our current chairman is Governor Brad Henry of Oklahoma.*

*The highlight of IOGCC meetings since 1988 has been the **Council of State Regulatory Officials**. At meetings of this group, the top oil and gas regulatory official of every member state and every oil and gas producing **Canadian province**, or their designee, shares with the group the top issues in their state or province. Recommendations from other states that have or are working with similar issues are frequently solicited. This forum allows state regulators to respond to new issues very quickly, consistently, and collaboratively.... Another example of the efficacy of such a program is the frequent updates on the LEAF lawsuit and group discussions of the issues surrounding hydraulic fracturing in the United States that ensued.*

*As the head regulator of oil and natural gas development in the State of North Dakota and an officer of the IOGCC representing all oil and natural gas producing state regulators, I can assure you that we have no higher priority than the protection of our states' water resources – let me repeat no higher priority.*

*It is my firmly held view and that of the IOGCC that the subject of hydraulic fracturing is adequately regulated by the states and needs no further study.*

The stranglehold of the petroleum industry over oil and gas laws, regulations and policies in the United States is deeply entangled in the IOGCC. Ever since the introduction of national laws on energy and the environment in the 1960s and 1970s, the IOGCC has been there beside the petroleum corporations keeping a tight reign over and watch on environmental regulations, all for the almighty buck.

*In June 1965, the IOCC established its position on environmental issues through a resolution that favored regulatory development and enforcement “under the guidance of the **local regulatory authority** most directly involved and most familiar with local conditions and needs.”*

*Throughout the 1960s, the IOCC became the leading advocate for limiting oil imports; opposing certain wilderness designations; and favoring natural gas import limitations, price deregulation, and **state regulation of the resource**.<sup>5</sup>*

*An IOGCC publication entitled **Making A Difference, A Historical Look at the IOGCC** documents this early history of the organization. As stated in the booklet, at the time of*

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<sup>5</sup> *Making A Difference Interstate Oil and Gas Compact Commission - a historical look at the IOGCC, January 2006, pages 15, 16.*



*the creation of the IOGCC, “It quickly became clear that **strong opposition existed to any form of federal control of the oil industry.**” Id. at page 6. In fact, the member-states of the IOGCC worked diligently through its history to ensure that the states would regulate oil and gas operations. From the earliest days of the IOGCC, state oil and gas regulatory commissions regulated all aspects of oil and gas operations, and when secondary recovery operations were commenced, it was the state commissions that regulated those oil and gas operations.*<sup>6</sup>

In 1991, the former name of this organization, the **Interstate Oil Compact Commission (IOCC)**, morphed into becoming the IOGCC to have the Compact incorporate and embrace the rising exploration and development of unconventional natural gas from Coal Bed Methane (CBM), and the speedy construction of new inter-state gas infrastructure pipelines and new pipeline company associations that resulted from the CBM developments.

*The “regulatory void” that surrounds the management of wastes associated with E&P (Exploration & Production) operations is the result of a myriad of factors, including numerous political and historical influences. There is no doubt that this void is largely the result of intense lobbying by the oil-and-gas industry that has occurred over the decades since our nation first began to codify environmental law. Nor is there any question that the oil-and-gas production industry enjoys unique regulatory exemptions that result in significant risks to human health and the natural environment. These risks have nevertheless been tolerated in the name of protecting the economic viability of an industry whose solvency can hardly be seen as being threatened.*<sup>7</sup>

### **9-(1). Alabama’s and Colorado’s/New Mexico’s Unconventional Legacies**

The unconventional CBM horizontal fracking technology and discoveries began in Alabama and in the Colorado/New Mexico San Juan Basin in the early 1980s where citizens had their well water contaminated/ poisoned from CBM fracking later that decade, and where enormous volumes of untreated formation water was being recklessly dumped onto lands and into streams and rivers. This experimental fracking period is when petroleum companies operating there, and those that were about to operate elsewhere, were most likely getting key internal legal instructions and advice about public liabilities and possible legal suits, and is when a number of non-disclosure (confidentiality) agreements occurred with affected parties in aid of keeping a tight sealed lid on the controversial problems about fracking that were about to escalate throughout America. In general, the CBM era unleashed a new hell upon many Americans and the ecology. I.e.:



<sup>6</sup> Part 1: Analysis of the U.S. Safe Drinking Water Act Relating To Carbon Capture and Geologic Storage. Prepared by S. Marvin Rogers, IOGCC Task Force on Carbon Capture and Geologic Storage. Undated.

<sup>7</sup> James R. Cox, *Revisiting RCRA’s Oilfield Waste Exemption as to Certain Hazardous Oilfield Exploration and Production Wastes*, 14 Villanova Environmental Law Journal, 1, 2 - 2003.

*My name is Ed Swartz, I am a third generation rancher, who has successfully operated a cattle ranch in Wyoming's Powder River Basin. I hope to pass this ranch onto my son and grandson to continue operating this great ranch, unfortunately, myself and other ranchers and landowners in the Powder River Basin are facing very real and destructive impacts from CBM development. The Powder River Basin of Wyoming is, according to industry, **the site of the largest gas development in the country**. Unfortunately, there has been nothing orderly about this development, with the possible exception of the collection of revenues. While I and fellow ranchers have faced bad economic times, drought and other mining booms, nothing has presented the kind of challenges and damaging impacts to our soil, water and lifestyle as the CBM development.*

*The extraction of coalbed methane development is mostly experimental and the Powder River Basin has actually been referred to by industry representatives as a laboratory. Why should we, who call this place our home be guinea pigs? We are watching our homes and ranches transformed into an industrial gas field. There are about 14,000 CBM wells permitted, around 6,000 producing and the BLM predicts up from 80,000 to 100,000 wells by 2010. The development of CBM is primarily being carried out on the backs of landowners that have essentially no say in how the development can proceed. We are being required to sacrifice our ranches, our water resources, our soil, our privacy, the wildlife—which also provides an income to many landowners - and our livelihoods. The direct, indirect and potential impacts to landowners is requiring us to spend thousands of dollars on attorneys and experts to try and protect our property.*

*I am not the only one that is having this problem. There are other ranchers that are having problems with water coming down the creek. It has killed some of their meadows. It has killed several hundred-year-old cottonwood trees on Bill and Marge West's places. There are all these other problems, too. There is the noise problem, compressor noise put out, a compressor built 8 miles in the country where there is a large subdivision, and it ruined those people's peace and quiet. It is just kind of like there was a jet motor running 24 hours a day, 365 days a year, that they had to sit and listen to. One retired gentleman, a retired school administrator named Ron Moss, has everything he has invested in there. He wanted to have a peaceful, quiet place in the country, and then here comes the methane and the compressor. It has really bothered him.*<sup>8</sup>

Alabama was heavy-handedly, politically influenced by, and in the iron grips of **U.S. Steel Corporation** (later renamed as **USX Corporation**), a large and powerful American corporation with extensive private land holdings of coal reserves which it leased to petroleum companies, like Amoco Production Co., which experimented with and developed CBM.<sup>9</sup> In the early 1980s, Alabama had “the largest number of privately owned municipal gas distributors in the United States.”<sup>10</sup> The practices and technologies that developed in Alabama, New Mexico and Colorado, along with all the attending environmental cumulative effects problems, were exported to other

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<sup>8</sup> *The Orderly Development of Coalbed Methane Resources from Public Lands*, September 6, 2001, pages 42-45. Oversight Hearing before the Subcommittee on Energy and Mineral Resources of the Committee on Resources, U.S. House of Representatives, 107th Congress, First Session.

<sup>9</sup> U.S. Steel Corporation had been drilling experimental methane gas wells in Alabama's Jefferson County since 1976 through federal government assistance.

<sup>10</sup> Tuscaloosa News, *Alabama's abundant energy resources not tapped*, March 14, 1982.

American States and internationally.<sup>11</sup>

In 1988, Alabama Tuscaloosa County resident Rubin McMillian and his wife had their well water poisoned. McMillian's lawyer, David Ludder, stated in a report he released in 1999, *A Decade of Efforts to Protect Alabama's Underground Sources of Drinking Water from Contamination by the Methane Industry*, that toxic-based stimulation fluids began to be used in Alabama for fracking operations in 1988. In his report, he included a table of 50 fracking fluid chemicals with assessments on toxicities. Since 1988:

*approximately three-quarters of the coalbed methane wells completed in Alabama have been stimulated with cross-linked gel. Gel is a mixture of water, thickener, and breaker, whereas cross-linked gel is a mixture of thickener and another substance, generally sodium borate or boric acid. Polymers are mixed with water Breaker fluids, such as enzymatic compounds and sodium persulfate, are used.*

Ludder, a lawyer with Tallahassee, Florida-based **Legal Environmental Assistance Foundation (LEAF)**, was the former acting head of Alabama's Department of Environmental Management's legal division in the early 1980s. He summarized McMillian's complaint:

*In 1988, Ruben DeVaughn McMillian, a LEAF member, complained that immediately after the injection of hydraulic fracturing fluids at a nearby coalbed methane well, his private water well, which had always produced abundant and clean water, became contaminated. Long "strings" of a black oily substance flowed from his tap. A strong sulphur smell emanated from the hot shower head. His wellhouse rumbled and hissed. Eventually, Mr. McMillian had to purchase and install a \$3,000 water filter system to ensure that his water was safe to drink.*

*At least a dozen other Alabama residents have complained that coalbed methane production activities have caused a degradation in the quality of the water produced from their drinking water wells. To silence others, landowners often evicted or threatened to evict those that complained. Complaints have also been made in Virginia and Colorado where coalbed methane production is practiced.*

Rubin McMillian was concerned and outspoken on environmental issues in Alabama, and had the courage and wherewithal to make the controversial CBM fracking operations public. Others chose not to, and others were silenced.

One of the "others" in Alabama in the late 1980s included Peggy Hocutt from Jefferson County, who lived some 10 miles east of where the McMillians got their aquifer fracked/contaminated. Her ill health infections and ordeal from well water contamination was later summarized in a long testimonial letter sent to New Mexico Senator Jeff Bingamen, the former chairman of the US Energy & Natural Resources Committee, wherein she urges the Senator "**not to sponsor the Bill to exempt the oil and gas industry from *The Safe Drinking Water Act*:**"

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<sup>11</sup> Some of the early initiating environmental concerns were raised in a legal article in 1984 by the late Alabama law professor Harry Cohen, *Developing and Producing Coalbed Gas: Ownership, Regulation, and Environmental Concerns*.

*The oil and gas industry is not telling the truth about well contamination resulting from coalbed methane development. Just because the industry does not document cases, is no reason to believe they don't exist. The main reason that most of the general public is not aware of well contamination due to coalbed methane development, is because most people don't have the slightest idea of what a methane gas well is, or an underground aquifer, or the important part it plays in a water well, especially when a methane gas well is fractured.*

*Our problems started when **The State Oil & Gas Board**, Tuscaloosa, Alabama, issued Permit #5946-C., to **USX-Amoco Oil Production**, in September, 1988. The water used in fracturing this gas well was drawn from an abandoned strip mining lake, which had been used for a landfill for years. Everything from old roofing, trash, creosote lumber, raw household garbage, industrial wastes, junk cars, tires, batteries, paint and oil cans, herbicide and pesticide containers, and dead animals, was dumped in the lake. During the fracture of this particular gas well, I saw trucks there many times filling their tanks and delivering the water to the methane gas well site I am going to tell you about.*

*This gas well was hydraulically fractured with **radioactive sand proppant**, and tagged with radioactive material. The Board's approval was primarily based on the absence of water wells in the immediate area, but our house and our water well were located at 720 Big Bend Trail, Adger, Alabama 35006, which was well within the immediate area. This well was fractured in the fall and winter of 1988-1989. The men who worked in the test laboratory at the drilling site, wore special clothing, and their laboratory bore a radioactive logo.*



This image from Google Earth (aerial photo dated June 21, 2006) shows the locations (marked in yellow pins) of the Hocutt and McMillian residences in Jefferson and Tuscaloosa Counties (respectively), and the dammed Black Warrior River in the upper portion. Tuscaloosa City is located beyond the upper right hand corner of the photo. The distance of geologic separation between the Hocutt and McMillian residences is about 8 miles as the crow flies, and the area of the photo map is 10.8 by 6.8 miles, or some 73.5 square miles. Notice the small white dots that permeate the photo area. These are the locations of about 300 coalbed methane well sites.

*We had 65 feet of water in a 110 foot well that had always been wonderful, but within a short time, it turned the same Coca Cola rusty brown, with long slimy tags of gunk that floated in a pitcher, when I filled one. It ruined everything it touched. We had to buy our drinking water and send our clothes to the laundry. Every shower bath left us feeling like we were covered in an oil slick.*

*By 1989, I was experiencing episodes of severe stomach cramps, vomiting, diarrhea, fevers and unexplained rashes which sent me to the emergency room and to the hospital several times. I was finally diagnosed with **diverticulosis**. I also experienced sudden and unusual, urinary infections. My urologist was baffled. He told me that something had traumatized my bladder, just what, he did not know.*

*My neighbor had the same experience with her water well. She said it smelled so much like petroleum, she was afraid it was going to explode. She called and officials from the Oil and Gas Board came. They accused her of pouring crude oil in her drinking water well. A reporter interviewed her and made a photograph of her holding a jar of her water. She mentions a neighbor who is having the same problems. I am that neighbor.*

*The equipment at the gas well sat idle from July 1989, until the pre-dawn hours one morning in March, 1991, when I awoke to the sound of voices, and heavy equipment, motors and the clanking of chains and metal against metal, coming from the gas well site. The next morning, when I looked in that direction, all of the equipment was gone....including a 500 gallon tank of diesel fuel, used to run a generator. Shortly afterward, I turned my dishwasher, and faucets on, and got huge globs of black, jellied grease, bearing the strong odor of petroleum. I no longer wondered, but knew at once, that my suspicions were correct, and that the underground aquifer, which supplied our drinking water well was affected by the fracture of the gas well and that I, and my family, were the innocent victims of drinking and bathing in water, contaminated with toxic chemicals and radioactive materials, plus the filthy, bacteria filled water, drawn from the strip mining lake. A nagging fear about our health, was forever imprinted in my mind. It will never go away.*

*Something else happened at the gas well site too. Special efforts were immediately taken to bulldoze the whole area, cover it with a thick layer of soil, and plant grass, then huge piles of rocks and dirt were bulldozed to block the entrance of the road leading to the gas well site, and grass was planted there as well. The USX-Amoco, sign disappeared too.*

***April, 1991.** I had a mammogram with good results, but was still having severe attacks of diverticulosis.*

***February, 1992.** I had breast cancer, a radical mastectomy, and five years of treatment.*

***March, 1992.** My neighbor, who had complained about her well, had breast cancer, and a radical mastectomy. She also had a cancer surgically removed from her nose. Later on, she had a cancerous nodule removed from her breast scar tissue, and took thirty-three radiation treatments. Later on, about 1995, she was hospitalized and in isolation for several weeks before a doctor from CDC, diagnosed her with a very rare Herpes Pneumonia, (Shingles in her lungs). Last year, she expressed to me again, her firm belief, and her fear, was that her cancers, and the Herpes Pneumonia, were caused by drinking her well water, which was contaminated by the fracture of the methane gas well, but that her fear of USX, retaliating*



Photo from an undated pdf document on the internet called "Welcome to Alabama! The Redneck Riviera, a pro-CBM-fracking document, which ridicules the LEAF litigation. The caption next to the above photo taken somewhere in Alabama reads: "public reaction to drilling operations prompts series of community education meetings."

*against her family, like it did ours, was so great, it kept her from trying to do anything about it legally.*

*My brother and my sister-in-law lived across the street from us and also shared our water well. In May, 1992. My sister-in law, had several skin cancers surgically removed. Since then, she has had numerous cancers surgically removed from different areas of her head and body. In August, 1992. My brother was diagnosed with prostate cancer. He had surgery. He later had a cancer removed from his ear.*

***November, 1992.** Another neighbor on my street, had colon cancer. He took a year of therapy. All of us lived well within the immediate area of the USX-Amoco gas well, where the Board said no water wells existed. Since then, there has been five more cases of cancer, with three deaths in the same small area. The neighbors were reluctant then, and they still are, to speak out about contamination and pollution period, because the land they live on is leased from USX Corporation, and some of them either still work, or they are retired from it, and they are afraid of retaliation, and rightly so.*

***September, 1994.** We received a mandatory notice from USX Corporation. "Yes," I want to live on USX Lands, or "No," I do not want to live on USX Lands. Our lease did not expire until December 31, 1994, but in October, 1994, we received a new "License Agreement." The new document was eighteen pages and forty-nine paragraphs of legal jargon, which mainly stated that if we did sign it, we would drop all lawsuits, and we would*

*have no recourse in the event that we, or any member of our family, was injured, or died, due to any operations being carried out by USX Corporation, or it's Agents, on USX Lands, and that we would have no recourse as far as pollution or contamination on USX Lands was concerned, and that we would offer no resistance should USX corporation, with or without reason, inspect our premises at any time, day or night, and that our License Agreement, could be terminated, without reason at any time, and that USX Corporation, had the right to confiscate our personal possessions and sell them.*

*We refused to sign this third world document, and when we didn't, USX, entered a summary judgment against us and the judge agreed that we didn't have the right to live on USX Lands, if we didn't sign the new agreement, so we were given thirty days to move forty-four years of family possessions. We were not allowed to sell our home. We wanted to give our home to a worthy family. We were not allowed to. USX Corporation wanted us and our home, removed from the area period, and intended to use us as an example to show the mighty power it held. We could not move our home, because it was immovable, and if we could have, the financial burden would have been too great. We lost our forty-four year investment. USX also demanded, if we did move our house, that the land be put back into the condition it was when we first leased it in 1952. That task would have been impossible. The new License Agreement was created by USX Corporation lawyers, to use against us and the rest of the people living there, and anyone who might live on it's lands in the future. ...people are not too prone to buy a house there now.*

*You are probably wondering why we didn't move away. We couldn't. That was our home, a part of our life, and we were nearly sixty-five years old and had hoped to be able to spend our retirement years there. We could not just walk away (or thought we couldn't), and leave our investment. Our home was very comfortable, it was the environment around it that was horrible.*

*November, 1996. After our eviction, our house was torn down a board at a time, until nothing remained except the skeleton. It stood for several weeks as a reminder to the other people living there to keep quiet or suffer the same fate. We were publicly ridiculed by a USX Corporation Land Agent, who said we were "deadbeats," and "slackers," who just didn't pay our bills, and that was the real reason we were evicted.*

## **9-(2). LEAF Takes on the Big Petroleum Tree**

Through a series of correspondence letters between LEAF and Alabama's State Oil and Gas Board beginning in April 1989, regarding LEAF's inquiries concerning Alabama's responsibility in adhering to the federal *Safe Drinking Water Act*, the Board replied on May 10, 1989 that hydraulic fracturing is not subject to the Board's regulatory requirements as an "underground injection," even though the agency had an underground injection control program issued to it by the Environmental Protection Agency (EPA) in 1983.

Apparently LEAF had threatened to file a lawsuit on behalf of the McMillians against the State of Alabama, but decided against doing so. Instead, LEAF took another legal route, a journey over the following 13 years that would elicit intense national attention by the petroleum sector and the IOGCC. The behind-the-scenes shenanigans in the LEAF versus EPA case, which evolved during the controversial eruption and onslaught of unconventional CBM developments in the U.S., would eventually force the EPA to conduct two national inquiries into fracking (hydraulic fracturing) from

2000-2004, and 2010 onwards. Ludder was out to crack the proverbial petroleum fracking nut - a politically explosive and sensitive issue - to ultimately make the federal government accountable through the EPA, on being a responsible steward over the nation's water resources that were being fracked.

Almost five years later, on March 4, 1994, LEAF petitioned the EPA to withdraw its permit approval of Alabama's underground injection control program, arguing that the state agency had been deficient in regulating the underground injection of toxic fracking fluids as required by the *Safe Drinking Water Act*. A year after that on May 5, 1995, EPA's Carol Browner wrote LEAF's Ludder denying the McMillian's Petition because the EPA had found that hydraulic fracturing failed to "fall within the regulatory definition of "underground injection" and because the "primary purpose" of coalbed methane wells is not underground injection." " <sup>12</sup> Attached to the letter was a 19-page detailed response by the EPA.

The State of Alabama was not going to help the McMillians, nor any other water-fracked Alabamian, that much was clear. An important question was, why was the EPA, in charge of the *Drinking Water Protection Act*, acting much like the State of Alabama? Why was it quivering in its proverbial boots?

On June 19, 1995, Ludder took it to the next level, and filed a Petition with the U.S. Court of Appeals for the Eleventh Circuit to review EPA's May 5, 1995 order. Over two years later, on August 7, 1997, the U.S. Court of Appeals, Eleventh Circuit, released its findings. <sup>13</sup> On the EPA's website link, *Underground Injection Control Program*, under *Study of Potential Impacts of Hydraulic Fracturing of Coalbed Methane Wells on Underground Sources of Drinking Water*, is the following summary of the Circuit's ruling:

*The 11th Circuit Court of Appeals ruled that hydraulic fracturing of coalbeds in Alabama should be regulated under the SDWA as underground injection.... Since the 11th Circuit Court's decision, EPA has contacted and been contacted by citizens who expressed concern that practices associated with methane gas production from coalbeds has resulted in contamination of USDWs. EPA has been asked to support legislation which would exempt hydraulic fracturing from SDWA. EPA will consider any comments on the data presented in the draft report before making further decisions concerning the potential regulation of hydraulic fracturing.*

Ludder provided the following summary of the Circuit's findings in his report:

- (1) hydraulic fracturing of coal beds to produce methane gas constitutes "underground injection" under Part C of the Safe Drinking Water Act, id. at 1478;*
- (2) all underground injection is required to be regulated (by permit or rule), id. at 1474;*  
*and*
- (3) hydraulic fracturing associated with coalbed methane gas production is not currently*

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<sup>12</sup> *A Decade of Efforts to Protect Alabama's Underground Sources of Drinking Water from Contamination by the Methane Industry*, by David Ludder.

<sup>13</sup> 118 F.3d 1467, 45 ERC 1033, 27 Env'tl. L. Rep. 21,385, 11 Fla. L. Weekly Fed. C335. Legal Environmental Assistance Foundation, Inc., Petitioner, v. United States Environmental Protection Agency, Respondent. No. 95-6501.



*regulated under Alabama's underground injection control program. Id. at 1471.*<sup>14</sup>

What the EPA avoided summarizing to the public on its website about the court ruling is that the federal agency **ignored obeying the court order**, most likely due to continued executive political pressures within the federal government upon the EPA. 15 months after the Eleventh Circuit ruling, LEAF was “frustrated by EPA’s subsequent lack of progress in regulating hydraulic fracturing as underground injection:”

*On November 23, 1998, LEAF filed a petition for writ of mandamus to compel EPA to implement the decision of the court in LEAF v. U.S. EPA. In response to LEAF’s petition and EPA’s opposition to the petition, the Court said: “[T]his Court is not satisfied with EPA’s alleged efforts to comply with the Court’s mandate and is determined to ensure that full and complete compliance is obtained without further delay. Thirteen months is too long, and limited resources is no excuse. Further delay will not be tolerated.”*

*Subsequently, the Court issued a writ of mandamus requiring that EPA adhere to a specified process and schedule to bring hydraulic fracturing in Alabama under regulation.*<sup>15</sup>

### **9-(3). Ground Water Council Grinds the Data with the IOGCC**

What followed the August 1997 Eleventh Circuit decision was a new web of national fracking intrigue in the United States. On one side of the petroleum coin, the State of Alabama’s Oil and Gas Board, a member of the IOGCC, stubbornly resisted EPA’s instructions by the court to revise its underground injection control program, which led LEAF to continue on in the court system until 2002. On the other side of the coin, as the EPA was swamped by U.S. citizens and groups demanding a public review of CBM fracking, the petroleum industry was gearing up its new campaign to stifle the liability questions: ***fracking never caused contamination of groundwater.***

In February 1993, a group of citizens from the Animas River Valley in southern Colorado, with ranches and farms located in a ‘sweet spot’ of the San Juan CBM fracking Basin, launched a multi-party lawsuit on the contamination of their aquifer well waters against four petroleum companies, **Amoco Production Company, Meridian Oil Inc., Southland Royalty Company, and Phillips Petroleum.** It was the first legal action of its kind on fracking in North America, and in the world. (See Chapter 14-(4) for some of the details.) As the knife-edge politics behind this lawsuit wormed its way through four jurisdictional U.S. courts and into top petroleum corporate boardrooms over a period of some five years, it added critical worrisome political spice to the LEAF versus EPA litigation as it evolved through the courts.

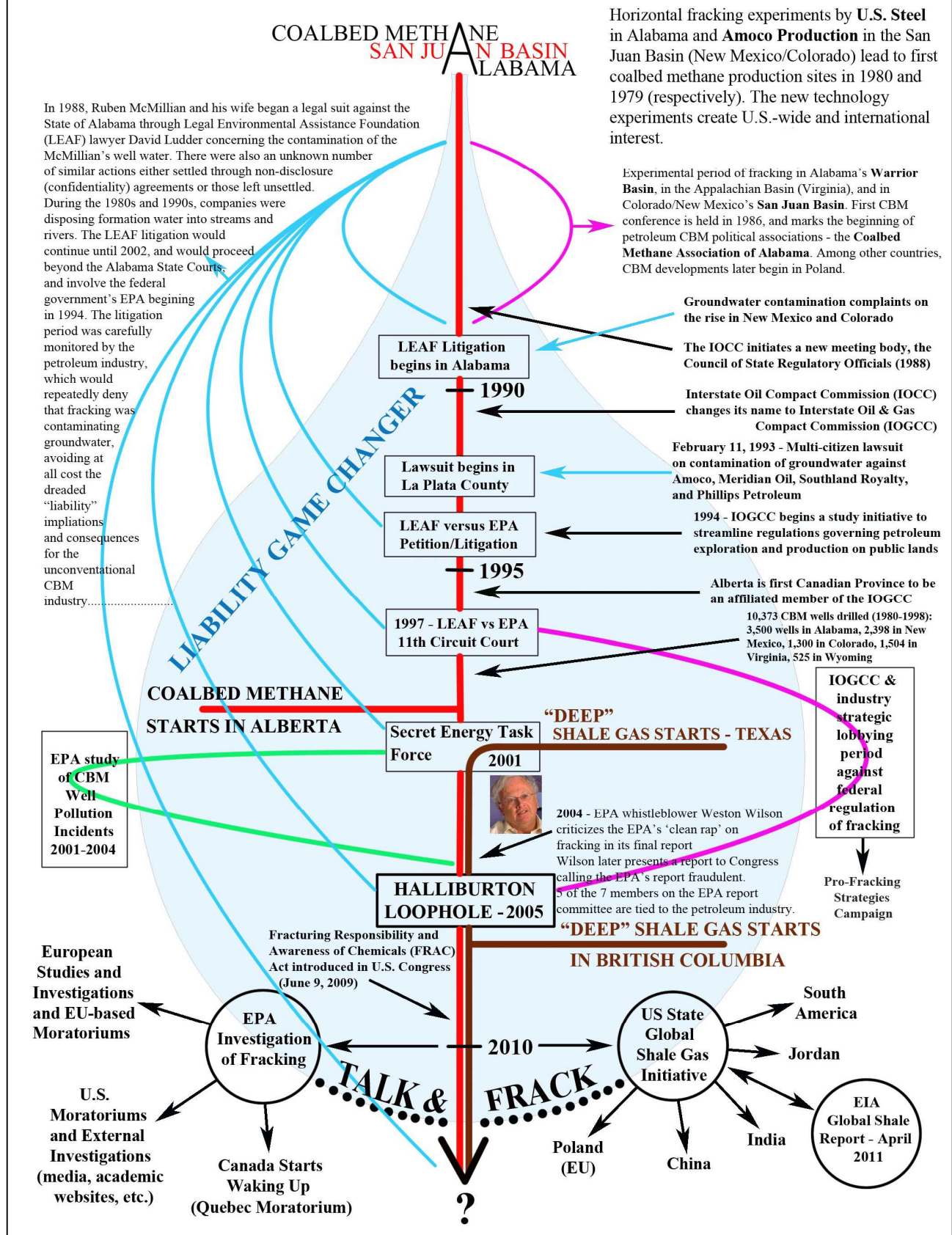
In September 2000, a few months before George W. Bush and Dick Cheney took over the helm of the world’s most powerful administration and the initiation of secret energy task force meetings in early 2001, the EPA released a *Summary of Public Comments* report in advance of formulating its new national *Study of Hydraulic Fracturing*. The first item in the 28-page report was an assessment of the *LEAF vs EPA* litigation by Connie Bosma, who was the acting chief for the EPA, the OGWDW (Office of Ground Water and Drinking Water), and the DWPD (Drinking Water Protection Division):

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<sup>14</sup> *A Decade of Efforts to Protect Alabama’s Underground Sources of Drinking Water from Contamination by the Methane Industry*, by David Ludder.

<sup>15</sup> *Ibid.*

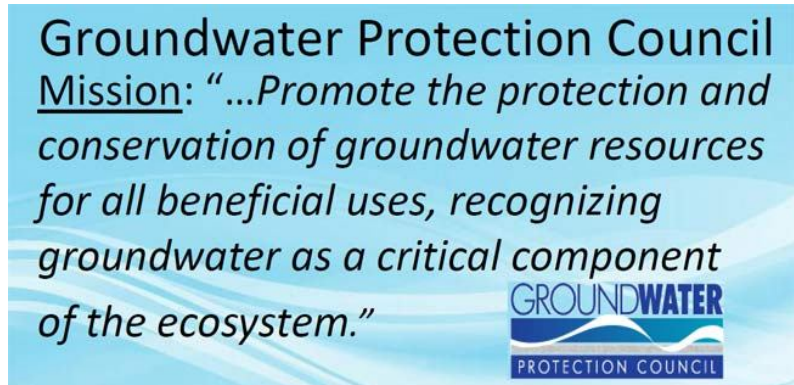
# UNCONVENTIONAL FRACKING TIMELINE - U.S. HISTORY



*All this activity raised the visibility of hydraulic fracturing, and, subsequently, a group began to seek legislative relief on Capitol Hill in the form of legislative changes to exclude HF (Hydraulic Fracturing) from the UIC Program. EPA indicated at numerous Congressional hearings and meetings that it believes further investigation is necessary to evaluate the potential risk before any regulatory decisions are made. EPA is now undertaking a study to help in that determination. EPA has met with industry representatives, states, and Congress. In 1999, the **Ground Water Protection Council (GWPC)** performed a study and a survey of state oil and gas boards on HF, and EPA will be using this study as one of its sources of information.*

The petroleum industry and the IOGCC, which had been cooperatively following and very carefully studying the evolution of the LEAF vs EPA case, saw it all coming, and were frantically trying to control the looming ‘situations’ at the highest political levels.

In the midst of the political fracking skirmish, the **Groundwater Protection Council (GWPC)** stepped up to the political fracking plate in 1998 to conduct a national survey on groundwater issues. The GWPC is an inter-state association and was coincidentally formed in 1983 as the CBM engine began warming up in Alabama, New Mexico, and Colorado. Like the IOGCC, it is headquartered in Oklahoma City.



*Ms. Cronkhite noted that one of the key points in the study design would be surveying drinking water agencies. This work would build on the survey that the GWPC prepared in 1998. GWPC conducted a survey of oil and gas boards in states with coal bed methane wells. EPA wishes to survey state agencies that deal with drinking water specifically, because members of the public may bring complaints and issues with ground water to those agencies. If EPA finds any incidents based on that survey, it would do an investigation into those incidents. EPA may ask to review industry records of reported incidents, in cases where an oil and gas board has handled those incidents. EPA also proposed a literature review. EPA proposed collecting information on state regulations. Once EPA has gathered the necessary information, the agency may conduct a risk characterization.*

Following the Eleventh Circuit LEAF vs EPA decision on August 7, 1997, the EPA filed for a *Petition of Rehearing* with the court. Three parties joined the EPA with *Amicus Curiae* briefs: the **Ground Water Protection Council** (October 6); the **American Petroleum Institute** (October 10); and the **State of Louisiana’s Office of Conservation** (October 10).<sup>16</sup> Given the obvious industry bias of the GWPC to counter the court’s findings against the EPA, it then conducted a national survey to promote its position against federal regulation.

*The GWPC became involved in this matter following a GWPC Board of Directors Resolution in support of the USEPA and it’s position in a lawsuit brought by the Legal*

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<sup>16</sup> *Did the Eleventh Circuit Crack “Frac”?* - Hydraulic Fracturing after the Court’s Landmark LEAF Decision, by Markus G. Puder, 1999, Virginia Environmental Law Journal, 18 Va. Env’tl. L.J. 507.

*Environmental Assistance Foundation (LEAF).*

*The GWPC has not conceded on this issue and will continue to make its position known on a technical basis to the EPA and others as necessary. However, we concurrently took it upon ourselves to conduct a survey of the state oil and gas regulatory agencies that we believe will be useful to the EPA as it responds to the Court's decision.*

*The survey was developed by a team of state agency representatives and sent to twenty-five oil and gas producing states. Among the twenty-five respondents were all of the major coal producing states in which any coalbed methane gas was produced in 1997. The results of that survey follow. Individual state surveys appear in the Appendix.<sup>17</sup>*

The GWPC's survey found that from 1980 to 1998 there had been **10,373** unconventional CBM wells drilled in the United States: 3,500 in Alabama; 1,300 in Colorado; 23 in Indiana; 600 in Kansas; 3 in Kentucky; 4 in Missouri; 2,398 in New Mexico; 3 in Ohio; 250 in Oklahoma; 260 in Utah; 1,504 in Virginia; and 525 in Wyoming. On its survey question put to 25 States on "have you had any complaints attributable to coal bed methane hydraulic fracturing activities in your state," 24 responded with a "no," and one state said "yes." With regard to the single "yes" category, that state responded that it found "**no substantiation to the claim.**"

*Of the twenty-five (25) states surveyed and responding, thirteen reported having any coalbed methane wells. Four of the thirteen had less than ten wells while the remaining nine showed inventories ranging from 23 to 3500 wells. Of the approximately 10,373 wells in the U.S., 10,260 of them are found in eight states: Oklahoma, Wyoming, Colorado, Utah, New Mexico, Kansas, Virginia, and Alabama. **The majority of these wells have already been hydraulically fractured to enhance or stimulate gas production. There were approximately 1130 wells hydraulically fractured in 1997.***

*To date a total of only one drinking water related complaint of contamination from the hydraulic fracturing of coalbed methane wells has been received and reviewed (Alabama). After hydrologic and reservoir investigation and tests, including collection and analysis of water samples by several agencies, none of the claims were substantiated. Based upon this survey, as well as previous technical presentations and open meeting discussions among the various member states, **the GWPC continues to believe that additional federal regulations regarding coalbed methane wells are unnecessary to protect underground sources of drinking water. There is no evidence to support the claims by some that public health is at risk as a result of the hydraulic fracturing of coalbeds used for the production of methane gas.***

By the late 1990s, the LEAF litigation had attracted a lot of attention and concern by the petroleum network, and all the bugs were coming out of the woodwork. In a April 5, 2001 presentation to the Congressional Committee on Environment and Public Works of the U.S. Senate by **Thomas E. Stewart**, representing the **Independent Petroleum Association of America** and the **Ohio Oil and Gas Association**, Stewart stated that the *LEAF v. EPA* litigation was "the most compelling environmental issue currently confronting the oil and natural gas E&P industry." By the year 2000, as the LEAF litigation continued, the **IOGCC**, the **American Petroleum Institute**, **Halliburton**,

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<sup>17</sup> *Survey Results on Inventory and Extent of Hydraulic Fracturing in Coalbed Methane Wells in the Producing States*, Ground Water Protection Council, December 15, 1998.

the **Alabama Methane Association**, the **Independent Producers Association of America**, and Alabama-based **River Gas Corporation** also entered the legal fray with *Amicus Curiae* briefs.<sup>18</sup>

As the EPA study on fracking evolved from 2001 to 2002, the IOGCC was hot to trot on making its case to the American people and to the world that the environmental and health concerns related to unconventional fracking were without merit. In July 2002 it published a document, the *States Experience with Hydraulic Fracturing*, with a long list of statistics from 28 States all of which affirmed there was “No Harm” from fracking. These findings, as the document inferred, supported the “IOGCC’s mission to promote the conservation and efficient recovery of domestic oil and natural gas resources, while protecting health, safety and the environment.”



*Approximately 35,000 wells are hydraulically fractured annually in this country with close to one million wells having been hydraulically fractured in the United States since the technique’s inception with no documented harm to groundwater. Hydraulic fracturing has been regulated by the states since its inception. A principal focus of state oil and gas regulatory programs is on protecting ground and surface water resources. The survey reveals hydraulic fracturing of natural gas and oil wells is a process that is well understood and well regulated by the petroleum producing states.*

Following the release of the EPA’s final and lengthy report in June 2004, *Evaluation of Impacts to Underground Sources of Drinking Water by Hydraulic Fracturing of Coalbed Methane Reservoir*, the IOGCC released a follow-up *Hydraulic Fracturing Study Fact Sheet* in 2004:

*The EPA researched over 200 peer-reviewed publications, interviewed approximately 50 employees from state or local government agencies and communicated with approximately 40 citizens who were concerned that hydraulic fracturing impacted their drinking water wells. The agency searched for confirmed incidents of drinking water well damage and thoroughly reviewed the information collected.*

- *The agency concluded that the injection of hydraulic fracturing fluids poses little or no threat to USDWs.*
- *EPA found no confirmed cases linked to fracturing fluid injection or subsequent underground movement of fracturing fluids.*
- *EPA found that no hazardous constituents were used in fracturing fluids, and hydraulic fracturing did not result in creating a path for fluids to move between isolated formations.*
- *Reported incidents of water quality the degradation were attributed to other, more plausible causes.*

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<sup>18</sup> *History of Litigation Concerning Hydraulic Fracturing to Produce Coalbed Methane*, S. Marvin Rogers, IOGCC Legal and Regulatory Affairs Committee, January 2009.

- *Although thousands of wells are fractured annually, EPA did not find a single incident of the contamination of drinking water wells by hydraulic fracturing fluid injection.*

After the Cheney-Bush administration did the dirty Halliburton Loop-Hole deed, this is what the IOGCC wrote in the September 2005 issue of its *Compact Comments* newsletter:

*In 1997, the U.S. 11th Circuit ruled in the case of LEAF v. U.S. Environmental Protection Agency that hydraulic fracturing be considered injection under the federal Safe Drinking Water Act. Under the decision, hydraulic fracturing operations, which previously had been regulated by the states' oil and gas conservation agencies, were within the Safe Drinking Water Act in Alabama and potentially in all states. The LEAF decision had potentially enormous adverse effects on the oil and gas industry and IOGCC member states.*

*The IOGCC adopted a resolution calling for federal legislation to clarify the **LEAF** decision and for an amendment to the Safe Drinking Water Act. The amendment would state that hydraulic fracturing is not subject to the Act and, therefore, remains under the authority of the states. In its resolution, the Commission noted the states have a long history of ensuring that hydraulic fracturing operations are conducted safely to protect drinking water supplies.*

*The IOGCC appointed a committee to study the issue and assist in the legislative effort. Members of the committee were **Marvin Rogers**, Alabama assistant attorney general, chairman; **Cammy Taylor**, Alaska Oil and Gas Commission; **Kemp Wilson**, Montana IOGCC official representative; **Hal Fitch**, Michigan Geological and Land Division; **Michael Linn**, Pennsylvania; **Kevin Bliss**, IOGCC Washington representative; **Michelle Evans**, IOGCC federal project manager; and **Christine Hansen**, IOGCC executive director.*

*The Inhoff-Sessions bill introduced in 1998 included statutory language that had been proposed by the IOGCC.*

*While the legislation languished, EPA implemented the LEAF decision. The Alabama Oil and Gas Board passed a strict program to regulate hydraulic fracturing of coal beds as directed by the EPA. LEAF appealed the Alabama program to the 11th Circuit Court of Appeals in the case of LEAF v. EPA and Alabama Oil & Gas Board.*

*Alabama intervened in the case and a number of industry groups filed amicus curiae briefs. The IOGCC participated in the court case, filing an amicus curiae brief in support of Alabama's position.*

*In 2001, the Court ruled in favor of EPA and Alabama holding that the state's program complied with the Safe Drinking Water Act. LEAF petitioned the U.S. Supreme Court for certiorari, which was denied.*

*Even though Alabama won its case, **the IOGCC continued to press for a legislative fix.** While the legislation was considered by Congress, EPA began what turned out to be a multi-year national study of hydraulic fracturing. In this effort, the IOGCC and its member states provided EPA with information on hydraulic fracturing in the states. Ultimately EPA found no confirmed cases that drinking water wells had been contaminated by hydraulic fracturing fluid injection into coal bed methane wells.*

*During this period of time, Congress considered various legislative proposals. With support of several industry groups, provisions were included in one version of the energy bill that would have exempted hydraulic fracturing from the Safe Drinking Water Act as long as EPA determined that hydraulic fracturing caused no danger to underground sources of drinking water.*

*The energy bill failed to pass as did other legislative attempts to solve the LEAF problem.*

*With the support of new allies, the legislative version favored by the IOGCC began to gain support. Bill Cooper, counsel for the House Energy and Commerce Committee became an advocate for the IOGCC's original legislative solution.*

Heavy-handed battle lines were drawn by the petroleum sector on the environmental and health liabilities front before and after the *Halliburton Loop-Hole* exemption in mid-2005. More recently, through investigations from 2009 following, some of the voluminous information and data about some of the numerous non-disclosure agreements is being released, and some of the dark secrets by the EPA (Environmental Protection Agency) is being discovered, in part by the New York Times staff and reporter Ian Urbina. And, through the world-wide release and interest in the Josh Fox documentary *Gasland*, the multiple investigations by reporters, non-governmental organizations and citizens, the recent suit in Alberta by **Jessica Ernst** against the **Alberta government** and **Encana Corporation**, and with professionals inside the petroleum industry criticizing and speaking out about the industry, people are now aware of and discovering that the previous, consistent public relations statements made by the IOGCC and the unconventional petroleum sector - *we have conducted a million fracks and no drinking water contamination* - are incredulous and fraught with intrigue and falsehood.

#### **9-(4). Mr. Smith in Europe**

Given the IOGCC's dominant and political role to champion unconventional fracking in the United States, the significance of Mike Smith's participation at the April 8, 2010 conference in Warsaw, Poland, as the head honcho of the IOGCC, and as part of David Goldwyn's Global Shale Gas Initiative European opener, is quite revealing. His participation at the one day conference in Poland, in Panel number 3 under the theme of *Environmental Aspects and Impact on Local Communities of Shale Gas Exploration and Production*, and the private briefing meetings he may have had with Polish officials, with industry, and with members of the American Embassy in Poland, were not scheduled to end there.

Smith was also a guest speaker at the 2010 Global Shale Gas Summit in Warsaw, *Expanding Global Shale Gas Development*, held from July 19 - 20. He spoke on the theme, *Learning from the US Example: What the Real Environmental Risks are & how to Minimize them*. He was also a speaker at the *Gas Markets in Transition - Shale Gas Impact* conference on October 27, 2010 in Stockholm, Sweden.

Smith was also a participant in one of two international workshops organized by the **Atlantic Council** think tank in early 2011. The first Council meeting, called *A Realistic Balanced Perspective on European Unconventional Gas Developments A North American Perspective*, was held on January 25, 2011 in Washington, D.C.



“The states do a superb job of protecting human health and the environment through sound regulation,” said Carl Michael Smith, IOGCC executive director. “An unnecessary shift to federal regulation of hydraulic fracturing could greatly inhibit the production of much-needed oil and natural gas resources at a time when our nation’s energy security is critical.” (Quote from IOGCC June 10, 2009 news release, *States Challenge Attempted Power Grab in Hydraulic Fracturing Issue*. Photo of Smith, center, from IOGCC image archives.)

*With the growing realization that substantial unconventional gas resources have the potential to play a major role in supplementing conventional gas resources in many countries, it has become important to consider the prospects, challenges and regulations necessary to ensure the safe and environmentally sound development of such resources. This will be critical to creating supply options in many countries facing growing energy requirements and tightening supplies of conventional gas supplies. The Energy and Environment Program of the Atlantic Council of the United States, with the support and guidance of the US State Department and Department of Energy is organizing a series of workshops to update European governments and non-governmental thought leaders on the progress that is being made in resolving many of the technical, environmental, and social issues related to unconventional gas production in order to provide a realistic assessment of the challenges remaining and the necessity for additional industry specific regulations.*

*An initial workshop to update a mainly European audience will be held on January 25, 2011 in Washington, DC. This workshop will draw on the experience of North American companies, non-governmental organizations, and government officials to identify the most recent knowledge on the technical, environmental and political challenges associate with*



*unconventional gas production. Ample time will be provided for meeting participants to discuss their observations and concerns with the expert presenters.*<sup>19</sup>

The Atlantic Council's website states in a March 14, 2011 article, *European Unconventional Gas Developments*, that the origins of the two workshops resulted from a EU-US Energy Council agreement in November 2010 "to exchange expertise on environmental issues related to the utilization of unconventional gas resources, including shale gas, especially with a view to addressing the issue of public acceptance." The article also states that "European development of unconventional gas resources, along with the expanded availability of LNG previously destined for the US, will have a significant impact on markets throughout Western, Central and Eastern Europe for a number of decades."

In December 2010, the Atlantic Council published a six-page *IssueBrief* called *Central Europe and the Geopolitics of Energy*, which developed recommendations on EU cooperative and integrated energy development through "United States technical assistance." **John R. Lyman**, who helped write the *IssueBrief*, has been the Atlantic Council's Energy and Environment Program Director since January 1, 2005. The Atlantic Council's website biography of Lyman states that he has been "active in the Council's Energy and Environment program since 1988." He was the former corporate vice president of **Amoco Corporation**, (the international corporation that first co-developed coalbed methane development in the U.S., the company that was named in the February 1993 lawsuit litigation) and was promoted to vice president of planning and administration for Amoco Oil Company in 1990. In 1993, Lyman "was given additional responsibility for Amoco Oil's international operations in China, Russia and Mexico and became accountable for cross subsidiary plans for entering Mexico." He retired from Amoco in 1994 and then became vice president of **Mercer Management Consulting**, and "by 2000 he was regularly engaged to the Atlantic Council's **Energy and Environment Program**."



Smith participated on the January 25th Atlantic Council panel called *National Versus State Perspectives* alongside U.S. Bureau of Land Management representative Nick Douglas and EPA special assistant to the Director of Drinking Water Protection Division's Chitra Kumar. The day's meeting was wrapped up by David Goldwyn, now back in the private petroleum consulting sector who had retired some ten days previous from the U.S. State Department as its Global Shale Gas Initiative salesman.

Smith didn't participate in the second Atlantic Council meeting held on March 14, 2011 in Brussels, an event called *European Unconventional Gas Developments*. Amidst think tank, petroleum company, and EU state officials who spoke at the meeting, Atlantic Council's vice chairman General Richard Lawson spoke on EPA's *Update on Hydraulic Fracturing Study*, U.S. Southwestern Energy's Mark Boling spoke on *Establishing Operating Standards*, former Ground Water Protection Council president Scott Kell spoke on *Environmental Impacts Associated with Infrastructure Requirements and Production*, and U.S. Department of Energy's Sally Kornfeld spoke on *Regulatory Framework in the USA and on the Interactions between the Federal and State Regulators*. Kornfeld no doubt well-represented the views of the IOGCC.

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<sup>19</sup> Atlantic Council meeting program for January 25, 2011.