

Dakota Counsel

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ANOTHER FRACKING SPILL

North Dakota suffered its second spill of hydraulic fracturing fluid in less than three months at an oil well near Lake Sakakawea northwest of New Town November 20.

The spill of at least 25,000 gallons of “fracking fluid” occurred above the Lower Tertiary aquifer.

“I’m astounded and extremely concerned,” said DRC member Jim Stenslie, New Town. “I understand that fracking fluid is toxic. I think the Industrial Commission is being vague and choosing its words carefully because they’re still in the dark about the negative impacts of this spill.”

The well was operated by Whiting Petroleum. The *Bismarck Tribune* reported that workers were evacuated from the site when the spill occurred.

Fracking fluids are believed to contain hundreds of toxic chemicals including benzene, barium, strontium, toluene, 2-BE (2-butoxy ethanol), and diesel fuel.

The fluids are currently exempt from disclosure under the Safe Drinking Water Act thanks to the “Halliburton Loophole” in 2005 federal energy legislation.

The U.S. Environmental Protection Agency is presently reviewing the impacts of fracking fluid on drinking water supplies.

Fracking fluids pose risks to air quality as well, according to Dr. Conrad Volz, Assistant Professor at the University of Pittsburgh Graduate School of Public Health.

Volz says the fluids contain “organic compounds that could volatilize into the environment when brought to the surface.”

Lynn Helms, director of the state Department of Mineral Resources, told press he “plans an in-house review of drilling policies.”

Helms called the rate of spills “too high” and did not rule out a violation against Whiting.

“All I know is that it’s dangerous and they better get it cleaned up,” said DRC member JoAnn Anderson, Keene. “I can’t depend on the Industrial Commission Oil and Gas Division to be transparent. This could destroy our land and our crops.”

NELSON APPOINTED TO BLM COUNCIL

McKenzie County farmer-rancher and long-time DRC leader Donald Nelson was named to the Bureau of Land Management Dakotas Resource Advisory Council by Secretary of the Interior Ken Salazar earlier this month.

Nelson was one of three new appointments to the council, one of 28 such councils in the western United States where most BLM-managed land is located.

Each council “consists of 10 to 15 members with an interest in public land management, such as conservationists, outdoor recreationists, ranchers, tribal officials, state and local government officials, academics, and others,” according to BLM.

“In our area, oil and gas production will have the biggest impact on public land and will be my focus as a member of this council,” said Nelson. “It has to be done right.”



Donny Nelson

“We need to make sure federal oil and gas bonds are sufficient to pay the costs of site reclamation, so the public doesn’t get stuck with the bill,” Nelson added. “The unprecedented demand for water for use in hydraulic fracturing is an additional concern.”

Nelson is a past Chair of both Dakota Resource Council and the Western Organization of Resource Council, and currently serves as Chair of the McKenzie County Energies and Taxation Association.

Nelson’s ranch operation near Keene includes leased public land, and there is federal oil and gas production near his own private land.

“It will be good to have someone from our community represented on the council,” said Nelson.

ORDINARY PEOPLE CAN MAKE A BIG DIFFERENCE

By DRC Board Chair Marie Hoff



Do you remember the stories of Gulliver's Travels? My favorite scene in the book is that of the 6-inch Lilliputians using thousands of tiny threads to tie down the "giant" Gulliver as he lies asleep on the beach, exhausted from his shipwreck. This picture reminds and encourages us that so-called "ordinary" people can take on and win battles with powerful interests in our society. But, like the Lilliputians, we must all work together.

Next month—January—the North Dakota Legislature will begin meeting. We invite and encourage our Dakota Resource Council members to get involved with our legislative efforts. First, let me thank everyone that contributed funds to support our efforts – you have already made a difference. Now, please let staff (or myself if you wish) know what supports you need in order to participate in person with our efforts at the Legislature.

Do you need low or no-cost lodging in Bismarck? An introduction to the Capitol and the legislative process itself? Carpooling or other travel assistance? Practice and support in the sometimes scary process of actually standing up and speaking to a legislative committee? What else do you need from staff and perhaps Board members or other experienced DRC volunteers to help you?

Once we know your needs and requests, staff will work with members to offer support. For example, our sister organization in South Dakota (DRA) holds a lobby day periodically and invites members to come to the capital the night before for a planning/training session. The staff then works with members to talk about objectives and issues to be covered. They decide on a strategy and work together to carry out the established goals. We plan to try to do something similar here in North Dakota.

DRC's legislative committee has identified our main priorities this session as follows: repealing the externalities law, obtaining surface owner's bill of rights, and monitoring the coal industry's efforts. Of course, other issues may arise and we will do our best to keep members informed and involved as concerns arise from unexpected bills or amendments.

Dakota Resource Council is a grassroots democratically-organized group. We need and welcome the participation of our members in order to truly succeed in our efforts to protect and enhance the quality of life in North Dakota. Please consider volunteering to participate in the legislative process in 2011. And, I encourage you to become actively involved with your local DRC affiliate chapter or any of the various issue task forces which address your concerns. We Lilliputians can accomplish a lot!

Call or email DRC Outreach Coordinator Heidi Demars, membership coordinator at 224-8587 or heidi@drcinfo.com to tell us about your needs and interests.

THANKS SO MUCH for all you do for and with Dakota Resource Council.

The Dakota Counsel is published six times a year by Dakota Resource Council, a nonprofit, grassroots activist organization. The mission of Dakota Resource Council is to form enduring, democratic local groups that empower people to influence decision-making processes that affect their lives. DRC is committed to preserving sustainable agriculture and natural resources.

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ANNUAL MEETING REVIEW

DRC held its annual meeting October 23 in Jamestown, re-electing Chair Marie Hoff and several other officers, and hearing about the Land Stewardship Project’s successes in beginning farmer and local food programs.

Vicki Rosenau, a non-profit worker and activist from Valley City was the only new Board member elected. She is serving as an at-large member.

Officers continuing their duties are Roger Brenna, New Town, Past Chair; Leo Walker, Maddock, Vice Chair; Terrence Kardong, Richardton, Secretary; Travis Schulz, Bismarck, Assistant Secretary; Verle Reinicke, Bismarck, Treasurer; and Linda Weiss, Belfield, Assistant Treasurer.

Returning for a second year as at-large members were Bette Stieglitz, Fargo; Steve Merrill, Minneapolis and Mandan; and Bob White, Emerado.

DRC members passed resolutions:

◆ Urging support of pending U.S. Department of Agriculture “undue preference” rules for fairer livestock markets and expansion of the rules to require open public bidding;

◆ Asking for a USDA and Department of Justice inquiry into the regional monopoly on cull cow sales;

◆ Urging state and federal agencies to take action to prevent contamination of U.S. flax by genetically modified Triffid flax seed;

◆ Asking state and federal strip mining agencies to investigate the slow rate of final bond release, and calling for independent soil studies to assess the success of reclamation;

◆ Urging North Dakota utilities not to seek rate increases to recover unrealized profits from the failed Big Stone II power plant, and instead establish effective energy efficiency programs;

◆ Demanding comprehensive testing of pipe safety in the Keystone pipeline.

Guest speaker Mark Schultz of Land Stewardship Project said his Minnesota group has helped 400 farmers

begin new farms, many of them participating in community-based food systems.

He stressed that beginning farmers represent new community leadership, and said local foods initiatives helped build power for farmers and consumers alike.

Panelist Karl Limvere, Medina, noted that the rise of Wal-Mart has paralleled the decline of rural America, and that we need a food system based on the Biblical ideal of justice.

On energy issues, panelist Derrick Braaten, Bismarck, noted that the Big Stone II case illustrated a core problem of North Dakota energy policy—that the “externalities” clause dictates a preference for lignite as a power source.

Panelist Kandi Mosset pointed out that the oil industry is pursuing strategies like extraction of tar sands oil and the use of hydraulic fracturing that place undue impacts on those living in production areas.



THANKS TO OUR SPONSORS

DRC appreciates the support of the following business sponsors who contributed their support to our annual meeting. Please thank those who do business in your part of the state. DRC also thanks the many members who contributed items to the DRC silent auction, which raised another \$1,400.

Major Sponsors~\$200

Ladbury Funeral Service, Dickinson

\$75

Shady’s Restaurant & Lounge
Jamestown,
(afternoon coffee/cookies)

\$100

Hutzenbiler Chiropractic, Dickinson
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Lakeside State Bank, New Town
Prairie Veterinary Hospital, Jamestown
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Ameriprise Financial, Dickinson; Docu Pro/Xerox, Dickinson; Eclectic Industries LLC~DBA EMCATS, Alexandria, MN; Grabinger’s Marine, Inc., Jamestown; Lynn Brakke Organic Beef, Moorhead, MN; Plaza Barber Shop, Jamestown; Quality Quick Print, Dickinson; Quality Welding & Steel Sales, Devils Lake; Ron Martin, Sawyer; Simonson Station Store, Dickinson Southwest Business Machines Inc., Dickinson; Starion Financial, Bismarck; State Bank & Trust, Fargo; Tractor Supply (TSC), Jamestown

MVRC TO MDU: DON'T TAKE THE MONEY

Members of Missouri Valley Resource Council delivered over 450 petition signatures December 9 to Montana Dakota Utilities President Dave Goodin, asking that the utility refuse payments for "return on equity" authorized by the Public Service Commission.

"We ratepayers received no benefit from the Big Stone II fiasco, and now we are expected to pay for not only the expenses but also the return on equity," said MVRC Chair Verle Reinicke.

Reinicke said MVRC hoped to hold further meetings with MDU officials to discuss the matter.

DRC intervened against Big Stone II proponents in PSC hearings on "advance determination of prudence" in 2007.

The PSC ultimately gave MDU and other project partners their "prudence" finding, but Big Stone II fell apart earlier this year when Otter Tail Power pulled out.

The state "prudence" law allows companies to recover costs if the PSC later reverses its decision and finds the project no longer prudent.

In the case of Big Stone II, however, it was the utilities themselves that decided the project was no longer prudent and asked the PSC to agree with their assessment.

MVRC did support MDU recently when it sought rate recovery for wind energy to fulfill renewable energy goals and objectives in Montana and the Dakotas, which PSC advocacy staff opposed.

"I don't understand why the PSC approved rate recovery for a coal project that failed and provided no benefit to ratepayers, yet won't support wind projects that will provide benefits to us all," said MVRC Treasurer Marie Hoff.

ENERGY BURSTS

Mine Permit Still Lacking

The third time was not the charm for the South Heart Coal mining permit.

The Public Service Commission (PSC) found it deficient again November 30, citing 10 areas in which the company needs to provide more detail.

Areas of deficiency in the permit included bonding, reclamation and infrastructure such as haul roads.

Promoters of the project are still claiming they will also build a factory on site to convert lignite into natural gas for the purpose of manufacturing hydrogen, although there is no reference to it in the application.

No permit applications have been submitted for such a facility, no letter of intent filed with the PSC, and the necessary federal funding is not in hand.

Efforts to build a coal shipping facility in Longview, Washington suggest that the company may be considering an export mine.

"I don't think our local farmers and ranchers, the backbone of the Dickinson area economy, should have to sacrifice their livelihoods to send coal to China," said Linda Weiss, Belfield, chair of the Badlands Area Resource Council.

Carbon Storage Project On Hold

Basin Electric announced December 17 it was putting on hold a project to capture carbon dioxide from the Antelope Valley Station.

Despite the project's uncertainty, Willow Grove Carbon Solutions has continued to sign easements with landowners to store carbon dioxide underground in Dunn County.

The proposed project calls for Basin to pay landowners for the storage and in turn to seek paying customers to use the gas to enhance oil and gas recovery.

From Basin's point of view, the project's viability depends on not yet existent federal requirements to control carbon dioxide emissions from power plants and other polluters.

Failure to pass federal carbon dioxide legislation has also curtailed programs awarding credits to farmers for using techniques to reduce emissions. Carbon credit prices have declined from \$7 per metric ton a few years ago to almost nothing today, according to the North Dakota Farmers Union.

Farmers Union said nearly 4,000 farmers in 40 states have earned about \$7.4 million through these programs, but has about six million tons of unsold credits and is not issuing any more.

Keystone Emergency Plans Inadequate

TransCanada's emergency response plan for the Keystone pipeline system is inadequate to respond to a serious spill along thousands of miles of its route through the Great Plains, according to a report issued November 23 by Plains Justice.

See ENERGY, p. 5

STATE URGES PUBLIC TO SUPPORT FRACKING SECRECY

Dakota Resource Council criticized the state Department of Mineral Resources (DMR) in late October for urging North Dakota residents visiting its website to weigh in with the U.S. Environmental Protection Agency against regulation of hydraulic fracturing.

"For our government to not only promote an industry position, but to ask that citizens agree is irresponsible," stated Donny Nelson, Keene, chair of DRC's Oil and Gas Task Force.

The fluids generally contain toxic chemicals such as benzene and toluene (see pp. 1 and 8).

"We have a right to know what's going into our ground and our water.

We need water not only to make a living, but to survive," said DRC member Melvin Wisdahl, Alamo. "Our government's job is to protect the people and our survival, not corporate interests."

The DMR website asks visitors to "take action" by signing a form letter provided by Energy Citizens, a front group funded by the American Petroleum Institute, the largest, most powerful lobbying group for the oil and gas industry in the United States.

North Dakota experienced spills of fracking fluids at oil well sites in September and November.

"It can happen again. Hydraulic fracturing needs to be closely monitored," said former DRC Chair Roger Brenna, New Town. "We need to know what's in it, so we can be safe and protect our land and our livestock."

The Industrial Commission does provide a pop-up disclaimer for those who hit the action link, stating that you will be taken to a site not maintained by state government.

DRC said the disclaimer is not adequate and leaves the impression that the website represents official state policy, especially since there are no links to websites that offer a different view of fracking policy.



ENERGY, from p. 4

The report describes serious flaws in emergency response planning by the federal Pipeline and Hazardous Materials Safety Administration.

In North Dakota, the speed of the emergency response anticipated by TransCanada in its planning documents is unrealistic, according to the report.

That's because in many areas there simply is not emergency equipment available to support the kind of spill response that proved necessary to contain the large Enbridge spill this year in Michigan.

Paying to Fight Clean Energy

North Dakotans are on the hook for up to \$500,000 in legal bills authorized in 2009 by the state legislature to fight for lignite to replace wind energy in Minnesota.

Minnesota law passed in 2007 requires that 25% of electricity in the state come from renewable energy by 2025.

The law also requires the state to consider the possible cost of carbon in permitting new power sources.

That's the part of the law North Dakota Attorney General Wayne Stenehjem wants to challenge in court, according to a December 6 Forum article.

Such a law in North Dakota, however, might have saved millions of dollars that ratepayers now have to fork over to pay for the failed Big Stone II power plant.

Instead, North Dakota's law is a mirror image of Minnesota's, requiring state regulators to ignore possible carbon costs.

Minnesota has no coal. It has some wind.

North Dakota has low-quality lignite coal and abundant, outstanding wind. Go figure.

Keep tabs on your state legislators.

Read the DRC Legislative Update, published each Friday during the session, starting January 7.

The Update is posted on-line weekly at www.drcinfo.com

If you want it mailed or e-mailed directly to you, notify DRC at 483-2851 or aleta@drcinfo.com.

AG & FOOD NEWS

Food Safety Bill Moves

A food safety bill that contains key provisions to protect local food producers and processors is now on the way to President Obama's desk to be signed into law.

The bill contains a key amendment by Sens. Tester (D-MT) and Hagan (R-NC) that eliminated unnecessary regulations that could have prevented consumers from getting the local foods they want.

All three members of North Dakota's delegation supported the amendment, which allows small-scale local producers and processors to operate largely under state oversight.

Agribusiness interests mounted a furious but unsuccessful campaign to kill the bill in the House.

Farms to Schools

President Obama signed into law December 13 the Healthy, Hunger Free Kids Act, which provides incentives to schools in their efforts to boost child nutrition by sourcing fresh ingredients from local producers.

The law includes more resources for schools to purchase from local farms and includes support for school gardens that help teach children the rewards of growing their own food and eating fresh produce, while learning about science, health, math and other subjects.

The law provides \$40 million over 10 years for one-time grants to schools to assist them in making the transition to sourcing local food, which often entails moving from a food service that is out sourced to private contractors to one where meals are prepared from scratch.

Bayer Settles Rice Case

Bayer CropScience will pay eight farmers \$290,000 in damages for contaminating their rice crop with a genetically modified (GM) variety of rice detected in the 2006 harvest.

The case marked the first time Bayer agreed to settle out of court with rice damage plaintiffs.

A jury ordered Bayer to pay a total of \$3.5 million in similar separate cases last December and this February.

More than 7,000 rice producers in five states have filed still unsettled claims for damages.

"After all these years, Bayer appears to be starting to take responsibility," plaintiffs' attorney Adam Levitt said.

The rice variety never received approval for cultivation, but the U.S. Department of Agriculture and Food and Drug Administration issued no fines.

The contamination resulted in lost markets in Japan and the European Union.

Monsanto Loses on Beets

A federal judge ruled December 2 that USDA illegally allowed plantings of GM Roundup Ready beet seedlings, and called for the plants to be destroyed.

U.S. District Judge Jeffrey White called the legality of the plantings "not even... a close question" and blamed USDA and industry for "creating this problem" through delays in following earlier court orders.

The judge ruled in 2009 that USDA violated the law by not conducting a full environmental review before approving the crop in 2005.

USDA Ponders GM Alfalfa

USDA scheduled a forum December 20 to gather input from all sides on "coexistence" between those who want to use GM Roundup Ready alfalfa and those dependent on GM-free markets.

A federal court ordered a ban on the sale and planting of Roundup Ready alfalfa in a 2007 decision that laid the groundwork for the subsequent Roundup Ready beet ban.

Secretary Tom Vilsack called the forum on the heels of USDA's publication of its final court-ordered Environmental Impact Statement on GM alfalfa.

"USDA has finally recognized that contamination from genetically engineered crops unfairly damages farmers who grow organic crops or conventional crops for markets demanding GM-free production," said Todd Leake, Emerado, chair of DRC's Food Safety Task Force.

Leake also expressed his skepticism about preventing contamination of conventional and organic alfalfa, or the spread of glyphosate-resistant weeds, entirely through geographical restrictions and isolation distance requirements.

Secret Bentgrass Escape

Roundup Ready bentgrass has escaped from an eastern Idaho test plot and been found growing in Malheur County, Oregon

The GM bentgrass is not approved for general sale or planting.

An Oregon State University weed scientist discovered the unauthorized bentgrass in October and went public after both USDA and the Oregon Department of Agriculture refused to disclose the spread of the bentgrass.

MARKINGS

by Staff Director Mark Trechock

To write a history of industrial pollution, with a few shining exceptions, is largely to document its denial by both industry and government.

That's just the history Benjamin Ross and Steven Amter have given us in *The Polluters*, an amply footnoted but briskly readable new book published by Oxford University Press.

For me, as for many others, this history of denial is intertwined with personal histories of loss.

In my case, it was the grandfather I never met, a Polish immigrant who went to work in a Pennsylvania coal mine and died of black lung disease 15 years before my birth.

In 1924, around the time my grandfather left mining, the connection between coal dust and lung disease was documented by a federal Bureau of Mines researcher.

Coal companies wanted the studies suppressed, and the bureau's chief surgeon, Royd Sayers, obliged them. They were not published until 1941.

No matter the industry, the strategy of polluters has never changed and has been very successful. Deny any ill effects of pollution and stress jobs and progress. When confronted with evidence, suppress it or criticize it as flawed, and call for further study. When rules or legislation are proposed, claim

that the cost of compliance will put companies out of business.

These strategies prevented comprehensive federal legislation to regulate pollution of air and water until a nationwide protest movement spurred passage of the Clean Air and Clean Water Acts and several other environmental laws in the 1970's.

Even with these laws in place, industry's strategy remains consistent.

Efforts to control carbon dioxide and other greenhouse gases have generated a whole industry dedicated to denying global warming, so that those who merely ask for more study appear reasonable and moderate.

A movement is afoot to prevent regulation under the Clean Air Act, and the argument that it will cost too much is trotted out regularly.

Or take hydraulic fracturing chemicals, whose contents the oil industry (with Dick Cheney's help) legally suppressed through to the 2005 Energy Policy Act.

If you're going to pollute someone's water, it's sure handy if there's no way to trace the pollution back to you.

Sometimes it seems like we have slipped backwards in addressing the harmful effects of industrial pollution, but Ross and Amter's book makes it clear that the public has far more tools for self-protection than my grandfather did.

The book also implies that organized public outcry must precede action to control polluters. Raise your voices.

For ordering information, see your local bookstore or www.disposalsafety.com.



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WHAT'S COOKING?



We have a few remaining copies of the 4th and final printing of the

Dakota Resource Council Commemorative Cookbook and we're selling them for the bargain price of 2 for \$20 plus \$3 postage and handling. **Order yours today before supply runs out and see what you've been missing.**

Send your check to:

Dakota Resource Council~P.O. Box 1095, Dickinson, ND 58602.

DRC ISSUES REPORT ON OIL AND GAS OVERSIGHT

Says State Could Do More to Protect Public

DRC issued a report this month by Carrie La Seur of Plains Justice laying out recommendations for improved regulation of the oil and gas industry to protect water resources.

“DRC offered the report as a resource for developing policies that protect North Dakota residents from damaging spills caused by oil and gas exploitation,” said DRC chair Marie Hoff.

One key recommendation was disclosure of what makes up hydraulic fracturing fluids, which oil and gas companies may withhold from federal agencies under 2005 legislation.

North Dakota has experience two spills of “fracking” fluids in the last four months in Killdeer and New Town (see p. 1). The spills were contained on the surface, but effects on ground water remain unknown.

“To test for contamination of drinking water, you need to know what you’re testing for,” noted La Seur. “It is unconscionable for any agency or governing body to withhold critical information from citizens who may be affected.”

The report notes that “there is no apparent provision for continuous monitoring, pressure testing or other means to

detect” impacts on ground water, “little documentation of compliance activities and no penalty for failure to comply.”

The report also addresses regulations that could have prevented the 2006 Zenergy saltwater spill in McKenzie County, which spilled over a million gallons of water 10 times as salty as seawater into Charbonneau Creek.

“North Dakota needs a regime that will regulate all fluids used or produced by the oil and gas recovery process, including pipelines carrying brine,” according to the report.

“Continuous remote monitoring and comprehensive emergency response planning and training should be part of the regulatory scheme,” it adds.

The state Department of Mineral Resources currently reports that it recommends but does not require continuous monitoring at selected sites.

The report, “Clean Water Act Issues Raised by Saltwater and Oil Pipeline Spills,” is available at www.drcinfo.com.

It was distributed to key state agencies and allies. Anyone who wants a hard copy can contact the DRC office at 483-2851.

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