

The Canadian government and fracking

Regulation for fracking falls largely to the provinces because of their power to issue drilling and water permits. Although former federal Environment Minister Peter Kent has admitted to having the ability to stop fracking, the Canadian government has largely remained silent on the issue. However, the federal government has a responsibility to regulate fracking under the National Pollutant Release Inventory, as well as federal legislation such as the Fisheries Act, the Species at Risk Act, and the Canadian Environmental Protection Act.

However, the Harper government's omnibus budget bills, passed in 2012, weakened several pieces of environmental legislation, essentially greasing the wheels for the oil and gas industry to push through projects without federal oversight. In fact, access to information requests even showed that the scaling back of environmental legislation was made at the request of industry.²⁶

Changes to the Canadian Environmental Assessment Act resulted in the cancellation of 3,000 project reviews across the country, some of which were fracking projects or applications related to fracking. One cancelled review was for an application from energy company Encana that requested permission to withdraw 10 million litres of water per day – roughly the same amount of water used by 30,000 people – from Fort Nelson River for its fracking project. The project will seriously impact the river, which the Fort Nelson First Nations depend on. It has been fervently opposed by the community.

Bill C-45, the second omnibus budget bill, abolished the Hazardous Materials

Information Review Commission (HMIRC) and transferred the commission's responsibilities to the Minister of Health. The HMIRC was an independent agency that safeguarded worker safety by assessing compliance with the Workplace Hazardous Materials Information System. It played a key role in educating workers about health and safety risks, safe handling, proper storage, transportation and disposal of hazardous materials. The arms-length agency also reviewed requests from companies to keep chemical names and quantities as trade secrets. The Council of Canadians raised concerns about the impacts that abolishing the HMIRC would have on the disclosure of fracking chemicals.

The federal government must also regulate fracking under its obligation to uphold the human right to water and sanitation. In July 2010, the United Nations General Assembly passed a resolution recognizing the human right to water and sanitation. The UN Human Rights Council has also passed resolutions outlining governments' obligations concerning the right to water and sanitation. This right is now enshrined in international law and all countries must ensure its implementation.

In the past, the Canadian government had consistently denied that the human right to water and sanitation even existed. But at the 2012 Rio+20 UN Conference on Sustainable Development, Minister Kent finally conceded that the human right to water not only exists, but that it is integral to the right to an adequate standard of living under the International Covenant on Economic, Social, and Cultural Rights. Catarina de Albuquerque, the UN's special rapporteur on the human right to safe drinking water and sanitation, wrote specifically about fracking and its relationship to the human right to water during her visit to the United States in 2011. De Albuquerque's U.S. report notes the concerns raised about the impacts of fracking on water and recommends that countries need to take "a holistic consideration of the right to water by factoring it into policies having an impact on water

²⁶ www.theglobeandmail.com/news/politics/pipeline-industry-pushed-environmental-changes-made-in-omnibus-bill-documents-show/article8894850/; www.theglobeandmail.com/news/politics/fisheries-act-change-guided-by-industry/article13606358/

quality, ranging from agriculture to chemical use in products to energy production activities."

Fracking projects are happening in Indigenous communities, some of which are already struggling with access to clean and safe drinking water. At any given time, there are more than 100 First Nation communities under water advisories due to poor water quality. The environmental assessments cancelled under the Canadian Environmental Assessment Act, and the 99 per cent of lakes and rivers that are left unprotected under the new Navigation Protection Act, will only exacerbate violations of the human right to water.

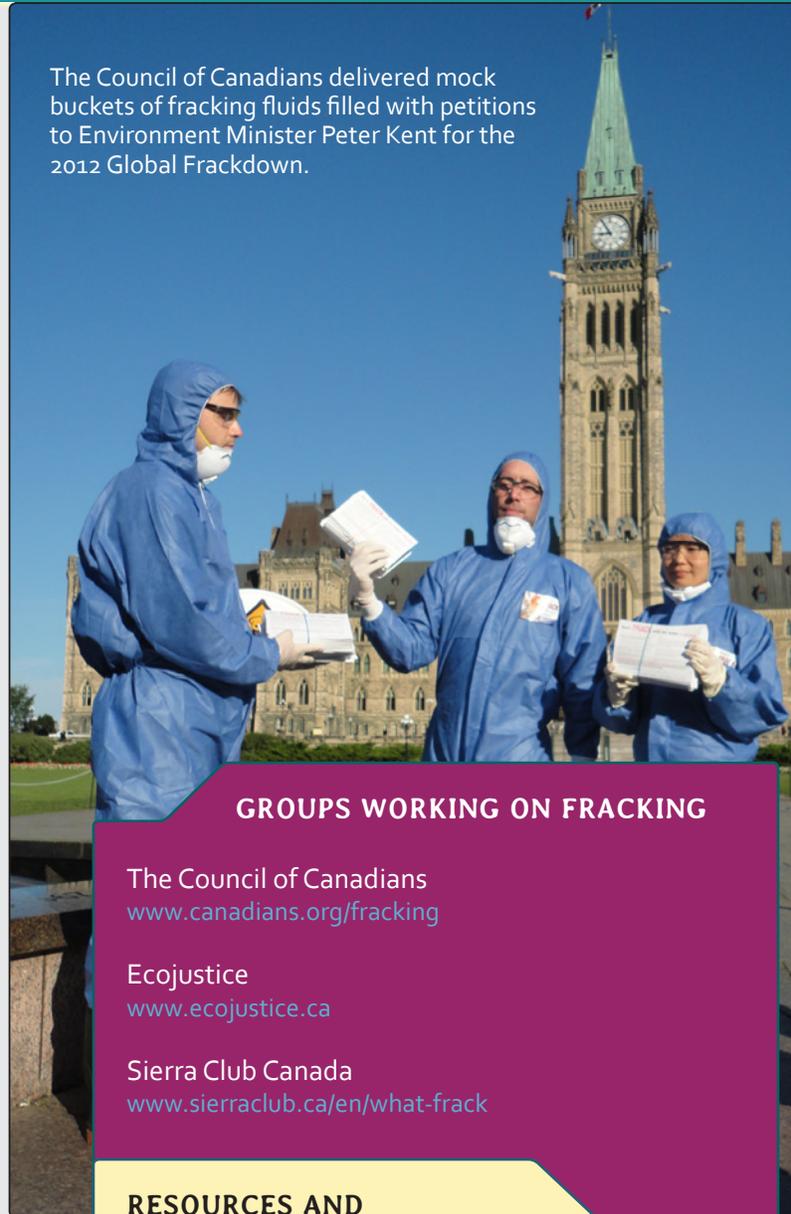
The federal government has initiated federal reviews on fracking through Environment Canada and the Council of Canadian Academies. However, Environment Canada sent a heavily redacted and incomplete plan when the Council of Canadians submitted an access to information request to obtain details about the review. The document shows that Environment Canada's review relies on industry information, which calls the integrity of the review's results into question.

The UN Declaration of the Rights of Indigenous Peoples, which the Canadian government endorsed in 2010, requires that governments obtain "free, prior and informed consent" for projects impacting Indigenous lands and other resources, including water sources. Given that many fracking projects are happening in Indigenous communities, the federal government must ensure that it has the free, prior and informed consent of those Indigenous communities.

The federal government has a clear and pressing responsibility to intervene in fracking projects across the country. The impacts of fracking are already being seen, and will continue to be seen for many years to come.

The federal government needs to take a leadership role and ensure that our water sources, people's health and the environment are protected from unnecessary and dangerous pollution.

The Council of Canadians delivered mock buckets of fracking fluids filled with petitions to Environment Minister Peter Kent for the 2012 Global Frackdown.



GROUPS WORKING ON FRACKING

The Council of Canadians
www.canadians.org/fracking

Ecojustice
www.ecojustice.ca

Sierra Club Canada
www.sierraclub.ca/en/what-frack

RESOURCES AND REGULATIONS

Environment Canada
www.ec.gc.ca

Natural Resources Canada
www.nrcan.gc.ca/home

National Energy Board
www.neb-one.gc.ca/clf-nsi/index.html

Ecojustice's analysis of Bill C-45 and the Navigable Waters Protection Act
www.ecojustice.ca/files/nwpa_legal_backgrounder_october-2012/

Ecojustice's analysis of changes to the Fisheries Act
www.ecojustice.ca/files/fisheries-act