

Jeff Sessions, Trump's Attorney General Pick, Introduced First Bill to Exempt Fracking from Drinking Water Rules

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U.S. Senator Jeff Sessions (R-AL), President-elect Donald Trump's nominee for U.S. Attorney General, introduced the first so-called "Halliburton Loophole" bill back in 1999 before it was ever known as such.

Sessions [co-sponsored the bill \(S.724\)](#) with the climate change-denying [Senator James Inhofe \(R-OK\)](#). The bill called for the U.S. Environmental Protection Agency (EPA) to exempt enforcement of the Safe Drinking Water Act as it relates to [hydraulic fracturing \("fracking"\)](#).

The bill's language eventually became a provision in the Energy Policy Act of 2005, known today as the "[Halliburton Loophole](#)" because the company's ex-CEO and then-Vice President Dick Cheney headed up the [industry-loaded Energy Policy Task Force](#) which helped pen the bill's language.



U.S. Senator Jeff Sessions speaking at a Trump rally in Arizona. Credit: Gage Skidmore, CC BY-SA 2.0

S.724 was introduced in 1999, in the middle of the years-long *Legal Environmental*

Assistance Foundation (LEAF) v. EPA legal battle, which was heard in the U.S. Court of Appeals for the 11th Circuit.

106TH CONGRESS
1ST SESSION

S. 724

To amend the Safe Drinking Water Act to clarify that underground injection does not include certain activities, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 25, 1999

Mr. INHOFE (for himself and Mr. SESSIONS) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend the Safe Drinking Water Act to clarify that underground injection does not include certain activities, and for other purposes.

Image Credit: [U.S. Government Printing Office](#)

LEAF v. EPA centered around whether fracking should be regulated by the EPA as a form of “underground injection” as defined by the Safe Drinking Water Act. The oil and gas industry, which had [legal intervenors](#), including Halliburton, in the *LEAF v. EPA* case, saw Sessions and Inhofe’s Senate bill as a congressional remedy for the sticky legal situation.

Alabama Fracking Water Contamination

Contamination of drinking water originally spurred the lawsuit for LEAF, a now-defunct pro-environmental law firm run at the time by the [Florida-based attorney David Ludder](#).

“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,” [wrote Ludder in a 2000 paper](#). “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.”

McMillian was not alone in having his water contaminated, Ludder went on to explain.

“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,” continued Ludder. “To silence others, landowners often evicted or threatened to evict those that complained.”

In a [letter](#) written to U.S. Senator Jeff Bingaman (D-NM), another Alabama resident, Peggy Hocutt, wrote about her water being contaminated by fracking by Amoco ([now owned by BP](#)) and subsequent personal health impacts she faced.

“I turned my dishwasher, and faucets on, and got huge globs of black, jellied grease, bearing the strong odor of petroleum,” wrote Hocutt. “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.”

“Baseless Lawsuit”

Despite these examples occurring in his own backyard, Sessions pointed to *LEAF* ‘s case as a “[baseless lawsuit](#)” as he introduced S.724 on the Senate floor. He went on to say that fracking “has never been attributed to causing even a single case of contamination to an underground drinking water source.”

Ludder responded to S.724’s introduction and Sessions’ floor statement in an April 1999 letter written to then-Chairman of the U.S. Senate Committee on Environment and Public Works, John Chafee (R-RI).

“The bill is sponsored by Senators Sessions and Inhofe who made statements on the floor of the Senate on March 25 in support of the bill which contain misinformation and half-truths, most likely the result of misinformation and half-truths provided by oil and gas industry lobbyists,” [wrote Ludder](#).

An Oil and Gas Industry Group’s Role

The initial push for a “Halliburton Loophole” didn’t actually begin in the George W. Bush White House or even with the Sessions-Inhofe bill. Rather, according to documents provided to InsideClimate News by DeSmog and Greenpeace USA and [reported in April 2016](#), the [Interstate Oil and Gas Compact Commission \(IOGCC\)](#) actually implemented the first push for such a regulatory cut-out.

IOGCC is a collective of state-level oil and gas regulatory agency heads, coupled with industry executives and lobbyists, which exists due to a 1935 interstate compact signed by Congress and essentially functions as an industry lobbying organization. Its [roster includes Harold Hamm](#), founder and CEO of Continental Resources, who served as an energy adviser

to Trump’s presidential campaign and is [in the running to become U.S. Secretary of Energy](#).

IOGCC’s headquarters is located on property adjacent to the Oklahoma governor’s mansion and just blocks from the Oklahoma State Capitol building. Oklahoma Republican Governor Mary Fallin is [also being considered](#) for the Energy Secretary role, as well as the U.S. Secretary of Interior job, and she has twice chaired the IOGCC.

In a 2005 IOGCC newsletter published after the passage of the Energy Policy Act of 2005, the [compact credited itself with getting](#) “statutory language that had been proposed by IOGCC” included in the Sessions-Inhofe bill.

As early as 1997, [IOGCC had a model resolution on the books](#) calling for language that eventually became what we know as the Halliburton Loophole, which may have come out of the [working group put in place to deal with LEAF v. EPA](#). IOGCC also maintained a [website section](#) in the late-1990s devoted exclusively to the *LEAF v. EPA* litigation.

About two weeks after the introduction of S.724 in 1999, [IOGCC distributed a memorandum](#) to member state governors and official state representatives — obtained via the Alabama Public Records Law — titled, “Needed Federal Legislation” and “Immediate Action Needed.” That memo offered a [sample letter template](#) as an attachment, which IOGCC representatives could send to their state congressional delegations urging them to vote for and pass the bill.

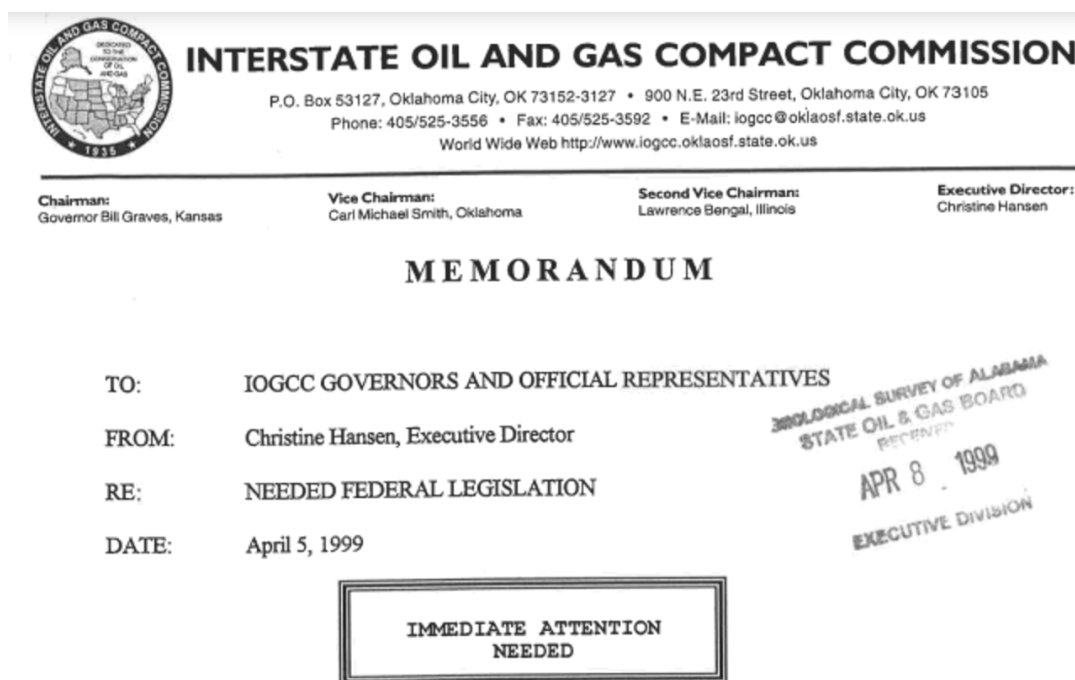


Image Credit: [IOGCC](#)

Also in 1999, IOGCC passed a model resolution [calling for the passage of S.724](#). IOGCC also [legally intervened in LEAF v. EPA](#).

While the bill itself never passed, its language became the law of the land in 2005, tucked into the broader energy policy bill.

“It is stunning that Senator Sessions sided with energy companies against water pollution complaints raised by his own Alabama constituents,” Tyson Slocum, Energy Program Director for Public Citizen, told DeSmog. “A lawmaker that ignores pleas and evidence from the people he is elected to represent should not serve as Attorney General of the United States.”

Like other Cabinet appointees, Sessions must receive U.S. Senate approval to land the job. Nominated for a federal judge position in 1986 by President Ronald Reagan, Sessions [did not receive approval 30 years ago](#) due to what congressional members deemed his troubling record on civil rights issues.

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