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Fracking Fault Lines

University of Dayton

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State courts and legislators should declare hydraulic fracturing and the underground injection of fracking wastewater to be "abnormally dangerous" activities in order to hold companies strictly liable for damages caused by induced earthquakes, University of Dayton environmental law professor Blake Watson contends in an article he wrote for 'Texas Journal of Oil, Gas, and Energy.
The fracking process, especially the underground injection of drilling wastes, has been known to cause "...an astronomical rise in seismic activity across the central and eastern United States," *Science* reported last year. Applying the six-factor test courts use to determine if an activity is abnormally dangerous and subject to strict liability, Watson concludes fracking and fracking wastewater disposal have a high degree of risk and likelihood of harm, and companies cannot eliminate the risk by exercising reasonable care.

Strict liability means a party is legally responsible for damages and losses caused by their acts, regardless of fault, negligence or intention.

Watson, a former U.S. Department of Justice Environment and Natural Resources Division lawyer, said the determination of strict liability is important because most insurance companies do not include earthquake coverage in their policies and homeowners near fracking sites should not be required to prove their homes were damaged by negligence.

"In a letter to the *Denver Post*, on April 26, 2015, Terry Lipstein of Loveland, Colorado, succinctly set forth a common sense argument for strict liability," Watson said. "He wrote: 'I called a couple of insurance companies for a quote. One company has a policy for earthquakes but not if caused by fracking. Another told me they had one for fracking but with a $50,000 deductible. Something is wrong here and I can't reasonably protect myself....Why should the homeowner have to take all the risk? I believe the companies that are causing the problem should have to pay into a fund. Or better yet, why not change the technique so this will not happen?'"

"To borrow from Mr. Lipstein, courts should impose strict liability for earthquake damage in part to compel oil and gas companies to modify their fracking and disposal techniques 'so this will not happen.'"

Courts have been asked since the 19th century to impose strict liability for damages from oil and gas activities. State and federal courts have offered differing opinions in cases based on trespass, negligence and nuisance, according to Watson. Watson found several states allow landowners to recover damages, without proving fault, for surface disturbances caused by oil and gas operations. Some state courts have also imposed strict liability for ground disturbances caused by explosion or other vibrations.

"In no case to date, however, has a court held that either fracking or the injection of fracking wastes is an abnormally dangerous activity," Watson said.
For interviews, contact Shawn Robinson, associate director of media relations, at 937-229-3391 or srobinson1@udayton.edu. Photo credit: Joshua Doubek via Wikimedia Commons.

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