

High Country News



FOR PEOPLE WHO CARE ABOUT THE WEST

Think of pollution as trespassing

Why take the 'harms' approach? Try this instead.

Benjamin Hale | ESSAY | Jan. 19, 2015 | *From the print edition*



Heather McCartin, who lives in Salt Lake City, wears a breathing mask when she rides her bike during days that exceed acceptable pollution levels according to the Clean Air Act. She says driving her car to protect her lungs would only contribute to the problem.

Kristin Murphy

In 2013, Colorado Gov. John Hickenlooper sat before a Senate committee and testified to drinking a glass of fracking fluid, in an attempt to illustrate just how safe hydraulic fracturing can be. He hoped, presumably, to allay growing concerns in what has become one of the West's most contentious energy issues. But in doing so, the former geologist employed a basic assumption about wrongdoing that has long underlain the environmental debate. In my view, this assumption has done far more harm than good to the environmental movement.

Maybe you'd care to join Hick in his swashbuckling imbibition. I certainly wouldn't. Either way, it is easy to see how quickly this kind of discussion can spiral into a futile tug-of-war between two sides: One side insists that the practice is safe, and the other side insists that it's not. Almost all discussions of pollution — oil spills, gas leaks, nuclear contamination, water pollution — end up lost in the same eternal back-and-forth.

Many environmentalists will tell you that we should care about pollution because it threatens to degrade our environment and harm us in some palpable and important way. These statements reflect a much wider tendency within the environmental community to confuse *wrongs* with *harms*.

The so-called "harms view" associates environmental damage with environmental wrongdoing, meaning that the moral complications of pollution can be captured by describing its harmful effects. According to this way of thinking, it is enough to say that it is *wrong* to harm people by adding toxic substances to their drinking water.

But this view, in fact, is not the only way to understand fracking, or any kind of pollution. As far as I'm concerned, it's not even the best way to do so. There is a related but less common position that considers the moral complications of pollution not in terms of doing harm, but in terms of trespassing. And trespassing, particularly in the West, is something we can all understand.

According to the "trespass view," what is wrong with fracking — or any kind of pollution — isn't simply that it causes, or risks causing, harm to me and my family. It is that certain kinds of pollution harm me *without my authorization*, without clear justification.

One might take this even further: It's not necessarily the harm done that does the moral work of distinguishing pollutants from non-pollutants. It is instead whether the introduction of a substance, or the alteration of a situation, impacts my life in a way that I can and will countenance.

Pollution, by its nature, engenders a kind of trespass: It violates the moral space of people without their authorization or good reason.

Most of us would agree that it is wrong to harm people or degrade value, but I believe that understanding pollution as trespass is a more useful way to think of many environmental debates — and it might also help us understand why so many people are so viscerally upset about, say, fracking.

Just because there are some dangers associated with fracking does not mean we need to stop it entirely. There are dangers associated with a lot of things we do. And sometimes we agree that it is OK to inflict harm on a person — as when a surgeon operates to remove a kidney that someone is voluntarily donating to a sick person. Likewise, we sometimes willingly degrade value, as when we cut down trees near our homes to protect ourselves against possible forest fires. The difference is that these harms are deemed permissible by the people who are enduring them. These harms are not a trespass.

Consider the serious downsides of relying on the “harms view.” It is predicated on the idea that one can determine the moral valence of an act by establishing whether its benefits outweigh the costs. Now imagine a scenario in which a fracking company decides to add fructose as one of the many secret ingredients in its fracking fluid. The benefits, after all, are obvious to anyone with a sweet tooth.

How odd would it be to read that Gov. Hickenlooper had not only poured himself a tumbler of the fluid, but also recommended it to his family? “Mmm. Delicious!”

The trespass view doesn't acknowledge this kind of complication. For example, the oil and gas industry recently launched a campaign to raise money for breast cancer by painting its drill bits pink. In principle, supporting breast cancer research is a noble thing to do, but when it comes from the fracking companies, it has the feel of “buying

indulgences”: doing good works in order to offset one’s sins.

The reason that pink drill bits seem ridiculous is that offsetting harms or costs with benefits doesn’t actually offset the moral burden of pollution. The trespass still exists. So the pollution debate is about more than safety. It is also about what kinds of substances we are willing to allow into our bodies, our communities and our environment, and about how we decide who we’ll trust to handle those substances.

Objections to pollution are as often about preventing outsiders from polluting *our* water or *our* air, as they are about who gets to make these decisions. What makes it okay for Hick to pour himself a glass of fracking fluid is that *he* is the one who has authorized such drinking. If instead *I* had poured him a glass of fracking fluid and forced him to drink it against his will, or brewed him a cup of tea with fracking fluid and told him afterwards what I had done — “Gotcha!” — I am fairly certain he would feel differently about it. I might even end up in jail. This would be true, I believe, even if the fracking fluid turned out to be perfectly safe and magnificently delicious. Pollution, by its nature, engenders a kind of trespass: It violates the moral space of people without their authorization or good reason.

Clearly, there are middle-ground options that permit some level of industry activity and energy development in some environments, but also restrict it in others.


What makes the introduction of some “pollutants” permissible depends in large part on whether the public can and does accept those substances. Many people simply do not want anyone putting mysterious chemicals in their water supply. Equally so, many industry actors do not want the general public telling them how to do their business. Ensuring that the affected parties — both industry and private citizens — have space to voice their concerns can help us find some middle ground and develop mutually acceptable policies.

The safety discussion is necessary, for sure, and certainly may go a long way in alleviating any unfounded concerns about some of the substances that enter our environment. But it cannot go all the way. It cannot address the question of who is authorized to put which substances where. In a democracy, we have to hash these questions out through a legitimate, public, transparent decision-making process, determining together what we can countenance.

When Hickenlooper and industry advocates seek to reassure the public that fracking

holds little risk, they miss the point. It's not simply that there are dangers to health, safety and environment, but that somebody somewhere else is making these decisions and altering the environment in ways that affect a lot of people, and the people who are most affected can do nothing about it.

Don't get me wrong. I'm not naive; I understand the practical difficulties of bridging this divide and bringing multiple voices to the table. Nevertheless, if we really want to overcome the current stalemate, we need to drill deep into the presuppositions that guide our thinking. Once we understand pollution as trespass, and see that it is as important to tackling the fracking debate as the concept of harm, we may finally be able to raise our glasses — *chin, chin!* — and drink together. Even if most of us pass on the fracking fluid.

Benjamin Hale is associate professor in the Philosophy Department and the Environmental Studies Program at the University of Colorado, Boulder. His essays have appeared in The New York Times and Slate.  [Follow @BenjaminHale3](#)

This story was originally titled "Poisoning the well" in the print edition.