

Cuomo's Hydrofracking Honeymoon Ends July 1

By **Peter Mantius**, on June 30th, 2011

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Throughout his first legislative session, New York Gov. Andrew Cuomo had the luxury of sitting on the fence on the politically explosive question of whether or not his state can safely open its borders to a controversial natural gas drilling technique.

During that grace period, Cuomo successfully backed gay marriage, watched his approval rating soar above 60 percent and heard buzz about his potential as a 2016 presidential candidate.

But the honeymoon ends July 1 when the state Department of Environmental Conservation releases its latest draft of requirements for permits to use high volume hydraulic fracturing when drilling in New York's Marcellus Shale formation. According to [The New York Times](#), the Cuomo administration will lift what has been a moratorium on hydraulic fracturing.

The governor bought time in the first half of 2011 by insisting that experts at the DEC –not politicians – write the rules for gas drilling. To address criticism that the DEC's previous draft rules on hydrofracking were inadequate, Cuomo, in one of his first acts as governor, gave the agency a quick makeover. He appointed Joseph

Martens as DEC commissioner and then turned his attention to other matters.

"Cuomo made a point of saying that he and Martens had actually never spoken on hydrofracking," said Roger Downs of the Sierra Club's Atlantic Chapter. "He wanted a firewall."

Meanwhile, New York's Republican-controlled Senate took a rigid stance against passing gas drilling legislation in the 2011 session before the DEC issued its latest version of gas drilling rules.

That meant that three bills that passed the Democratically-controlled Assembly – a moratorium on fracking the New York Marcellus until next summer, a "home rule" measure guaranteeing the rights of communities to ban hydrofracking, and a bill to end the oil and gas industry's exemption from rules applying to hazardous waste – all died quietly in the Senate.

Everything was left hanging on the DEC's revised rules, due July 1. Those rules are spelled out in a supplemental generic environmental impact statement, or SGEIS. The agency intends to allow drillers to cite the document instead of developing their own environmental impact statements for each gas well they drill, a process that has the potential to greatly speed up the well permitting process.





The DEC's previous draft of the SGEIS drew criticism from not only environmental groups, but also government agencies such as the federal Environmental Protection Agency, the New York State Department of Health and the New York City Department of Environmental Protection.

Critics tended to focus on the draft's scant attention to the cumulative impact of hundreds, if not thousands, of hydrofracked wells and the failure to comprehensively address the region's lack of capacity to deal with millions of gallons of contaminated well flowback water.

The oil and gas industry generally supported the previous draft SGEIS, which ran more than 800 pages.

Cherie Messoro, a spokeswoman for the Independent Oil and Gas Association of New York, said this week that her members were prepared to accept rules that are "tough but fair."

She said the IOGANY was looking forward to reviewing the latest draft SGEIS to see whether it strikes a "fair balance" between environmental protection and economic development.

Nick Schoonover, chair of the Tioga Landowners Coalition, a pro-drilling group that advocates for property owners who have granted leases to gas drillers, said he is encouraged that Cuomo has taken steps to move the permitting process along.

Late this spring, Martens had sent signals that the DEC would not be finished with its new draft SGEIS until September. But on June 1, Cuomo told Martens to deliver it by July 1. He also ordered the DEC to provide an analysis of a blowout and spill at a Chesapeake Energy gas well in Bradford County, Pennsylvania, just across the

New York State border.

"I think he's doing a job as a statesman to bring a very complicated process to light," Schoonover said.

But Downs of the Sierra Club said the DEC seems to have gotten a late start on addressing one of the key omissions of the 2009 draft SGEIS: the cumulative impact of hydrofracking thousands of wells.

Each well produces up to one million gallons of highly contaminated flowback water that cannot be buried in disposal wells or effectively treated in typical water treatment plants. Heavy truck traffic, extensive pipeline construction and air and noise pollution also threaten to upset rural communities, many of which rely on agriculture or tourism. "They didn't start on the cumulative impacts piece until April," Downs said of the DEC.

Bruce Ferguson, of Catskill Citizens for Safe Energy, said he is concerned not only with the agency's slowness to address gas drilling's cumulative burden on small towns but also with the legislature's failure to pass "home rule" legislation. He said poor communities fear that gas companies with deep pockets will take legal action against them if they attempt to block gas wells near schools, churches or other institutions they seek to protect.

"Home rule is critically important," Ferguson said. "Small towns are scared to death of the gas companies. The current law is ambiguous. The bill the Assembly passed was basically anti-bullying legislation."

The DEC could go a long way toward curing that "bullying" problem, according to Chip Northrup, an anti-drilling activist from Cooperstown with decades of experience in the gas drilling industry in Texas. It could simply state that it will decline to issue permits that do not conform to local land-use ordinances.

He notes that the agency said last year that the SGEIS rules would not apply to land that falls within the New York City and Syracuse watersheds. That means gas wells in those areas would need individual environmental impact statements – and those are typically cost-prohibitive.

Northrup said many in the anti-drilling movement have become cynical about the DEC's commitment to protecting rural communities from the negative effects of gas drilling. He believes the agency has effectively set up two levels of water quality protection: one for the wealthy and politically-connected areas and one for the rural areas.

"People are expecting a lawsuit," Northrup said. "The DEC is not going to do anything until someone sues them. They're basically saying, 'Sue me.'" But pursuing an "equal protection" argument may be tricky unless the plaintiffs can clearly define an "aggrieved" class, he added.





Ferguson noted that in deferring action to the DEC, the state legislature has postponed dealing with critical issues that will continue to stir controversy regardless of action by the DEC, including whether to:

- Impose a state tax on gas drilling. Most states that allow gas drilling collect a “severance tax” of gas as it leaves the wellhead in order to help cover the costs of the negative effects of drilling. New York does not have one.
- Modernize the structure of state environmental regulation. Most other gas drilling states have moved to separate into different agencies the authority to issue well drilling permits and the authority to regulate those wells. In New York, the DEC still does both, creating intra-agency conflicts.
- Continue to allow waste from oil and gas drilling a special exemption to rules that apply to hazardous waste.
- Reform its rules on “compulsory integration,” a state law that grants drillers the authority to force landowners to

participate in hydrofracking under their property. Gas drilling interests wrote New York’s law, which allows the lowest royalties to be paid to landowners who do not voluntarily lease their property for drilling.

Meanwhile, news reports that gas drilling companies may have systematically overstated their reserves and the performance of gas wells has triggered congressional calls for investigations by the U.S. Securities and Exchange Commission, the Energy Information Administration and the Government Accountability Office.

Schoonover of the Tioga Landowners Coalition said he believes the initial reports in **The New York Times** are “irresponsible journalism.”

“I’m dealing with people who are mineral owners,” Schoonover said. “This is no pipe dream.”



Peter Mantius

Peter Mantius is a reporter in New York. He covered business, law and politics at The Atlanta Constitution from 1983-2000. He has also served as the editor of business weeklies in Hartford, CT, and Long Island. He is the author of Shell Game (St. Martin’s Press 1995), a nonfiction book on Saddam Hussein’s secret use of a bank office in Atlanta to finance billions of dollars in arms purchases from Western countries before the 1991 Persian Gulf War.



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