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## Marcellus Watch | 'The toughest regs'

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**Corning Leader**

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Corning, N.Y. —

Now Illinois is stepping forward as the latest pretender to the title: "Toughest fracking regulations in the nation."

It's customary for a state new to fracking to grab for the title. Once, a few brazen drilling proponents even claimed it for New York State until some stickler pointed out that New York's regs are 40 years old and really skimpy to boot. So that fizzled.

Illinois is fracking's fresh new face.

How ironic that the Land of Lincoln is getting all excited about the "New Albany" shale play. It's a 60,000-square-mile area covering parts of Illinois, Indiana and Kentucky that may hold one-tenth of the oil and gas deposits of the Marcellus Shale that has New Yorkers hyperventilating.

Now, we're told, Illinois is drafting what could be a "national model" of fracking regulation worked out by politicians, energy lobbyists and a couple of big environmental groups.

"It pulls together a suite of safeguards that go a long way toward holding industry accountable for the risks inherent in horizontal fracking," a National Resources Defense Council blogger gushed.

Drafts call for "numerous best practices" in the drilling process, well water testing before and after drilling, "financial accountability" and mandatory plugging of abandoned wells. Of course, the bill is destined to be nibbled ferociously by piranha-like industry lobbyists, and only the end product matters.

Early signs are not promising.

Already it's been reported that the Illinois legislation includes language generated by ALEC - a notorious oil and gas-sponsored organization that specializes in crafting artful state loopholes and disseminating them nationwide. ALEC targets provisions requiring full disclosure of chemicals used in fracking.

The problem with the dealmaking process now under way in Illinois is it's almost certain to produce fool's gold. The oil and gas industry continues to insist on socializing the true costs of fracking, and its lobbyists simply roll politicians in state after state.

Effective fracking regulations would include a few basic principles:

- Requiring "responsible" gas drilling. Repeal the federal loophole that exempts fracking waste from being defined and regulated as "hazardous." Hold drillers financially liable for accidents and spills through a combination of bonding, insurance and an industry-financed, state-run natural gas accident fund.
- Providing explicit opt-outs for citizens who oppose drilling. Repeal statutes (like New York's dreadful compulsory integration law) that empower state regulators to act as enforcers in eminent domain procedures on behalf of the energy industry. Enact state legislation that underscores a community's right to ban gas drilling.
- Requiring industry to pay its way. Enact a state tax of at least 5 percent on natural gas as it is extracted - many states, including Texas, collect at a higher rate - to cover drilling-associated road and infrastructure repairs and health care costs and to fund rigorous environmental oversight.
- Establishing and fully funding independent state environmental protection. Guard the independence of environmental regulators from the state officials who award gas drilling permits and promote gas production. Require the state's environmental agency to follow best practices for such state agencies.

Any state that can't manage to enact and enforce those basics needs to stick to a moratorium.

New York State, of course, fails the test by a wide margin. And Gov. Andrew Cuomo - caught between the interests of his political base and the money and power of big energy - has used stalling tactics to extend a de facto moratorium.

But if the industry applies sufficient heat, he may feel compelled to issue drilling permits even before the state has written formal

regulations for fracking.

That would represent an utter capitulation to oil and gas interests and an outright rejection of "best practices" in state environmental regulation. Twenty years ago, independent examiners urged the state Department of Environmental Conservation to immediately rewrite state gas drilling rules. The DEC still hasn't done it.

Meanwhile, the Joint Landowners Coalition of New York Inc. is now prospecting for plaintiffs to sue the state for its botched efforts to regulate fracking.

Members of JLCNY, who've had to wait nearly five years for a chance to cash in on the promised riches under their homes and farms, insist the delays make the state guilty of "a taking of our property rights" granted under the state and federal constitutions.

Their victim's pose would be more convincing if they showed even the slightest concern for the property rights of their anti-drilling neighbors.

In another rich irony, the JLCNY appealed to its members by citing the following recent statement from New York City Mayor Michael Bloomberg: "It is up to the governor, but I personally have said we should be fracking -- not in the watershed -- but we should be fracking."

OK, so how does the JLCNY feel about the "taking of property rights" of millions of people who live in that New York City watershed - Bloomberg's private fracking preserve that extends 1,900 square miles along the Hudson River Valley and into the Catskill Mountains?

As Illinois will soon learn, the devil's in the details.

• Peter Mantius is a freelance journalist from Schuyler County who follows shale gas drilling issues. He is a former reporter at the Atlanta Journal-Constitution and former editor of two business weeklies in the Northeast.

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