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The Marcellus Watch



In an open letter to Andrew Cuomo, the favorite to win election as governor of New York in November, journalist Peter Mantius of Burdett urges specific actions to deal with the prospect of gas drilling in the Marcellus Shale. The letter calls for an overhaul of the state agency charged with protecting the environment.

Left: Peter Mantius

Dear Mr. Cuomo

By Peter Mantius

BURDETT, Sept. 12 -- Looking out on a sun-drenched crowd of 100 or so in front of the Montour House last month, Andrew Cuomo sketched out his plans to clean up Albany and revive the state economy.

He spoke with the aloof confidence of a man who's fairly certain he'll be elected governor of New York in November. As a virtual shoe-in, he could afford to ignore the divisive issue that most of the eager onlookers came to Montour Falls to hear him address -- gas drilling. He saw no need to create a stir in the hinterlands. After all, *The New York Times Magazine*, in a recent cover story on him, never mentioned the brewing storm over whether to grant energy giants the green light to industrialize much of the Finger Lakes.

It has to be awfully tempting for our likely future governor to sit back and allow the issue to wait its turn in line.

I think that would be a mistake, and I offer Mr. Cuomo this open letter.

Dear Mr. Cuomo:

Complacency is dangerous when the stakes are so high.

Magazine articles notwithstanding, gas drilling has a good chance to emerge as the single issue that defines your administration as governor.

A drilling boom promises an enormous economic windfall to the state. At the same time, such a boom represents an unprecedented environmental threat.

The issue urgently needs to be sorted out. In the heat of a pitched battle now raging between the pro-drilling and anti-drilling factions, it's a real challenge to find trustworthy sources. You need to get busy now.

We do know that irresistible financial interests are building to tap the rich gas deposits within the Marcellus Shale. Foreign and domestic energy giants, state and local politicians and local landowners want the green light. That trio will not be held at bay indefinitely. And if those forces seem insistent today, just wait until the market price of natural gas rebounds from its recent slump.

Unfortunately, dollar signs have blinded the pro-drilling camp to the frightening environmental consequences of their most effective method of extracting Marcellus gas. Even worse, the state agency assigned to protect our environment has been gulled into downplaying the monumental risks too.

That favored method of horizontal drilling and hydraulic fracturing (hydrofracking) of each well with sand, toxic chemicals and millions of gallons of water is an imminent threat to our lakes, rivers and private water wells. If you don't see that, you haven't been paying attention -- or you've been uncritically swallowing the gas industry's PR campaign.

You, as governor, and the state Legislature will have to balance the potential financial benefits of Marcellus hydrofracking with the potential environmental costs. The state Department of Environmental Conservation (DEC) has shown it is not up to that task. A major legislative initiative is necessary, and you need to lead it.

This summer the state Senate took an encouraging step by passing a bill to extend a gas drilling moratorium through May 2011. The state Assembly is expected to consider the measure within a few weeks.

But even if that moratorium is enacted and signed into law, it should be only the beginning.

You and the Legislature must work to block any permit for water-intensive hydrofracking of the Marcellus Shale until you have addressed glaring gaps in state environmental oversight.

At a minimum, you will need to:

-- Bring state environmental regulation into the 21st century by splitting up the DEC and establishing a vigorous state environmental regulator. State law now requires the agency to both promote oil and gas development and protect the environment from the effects of that development. Because promoters make miserable enforcers, most states have ditched that pro-industry regulatory structure and created independent environmental enforcement agencies with teeth. The federal government took that step in regulating the nuclear industry decades ago. And in May it belatedly ordered similar action at the Department of the Interior in response to the BP oil spill in the Gulf of Mexico. You must overhaul New York's old, discredited regulatory framework.

-- Ban the DEC's practice of providing tiered levels of environmental protection on the basis of political power. Earlier this year, the agency shielded the New York City and Syracuse watersheds from the risks of hydrofracking while leaving the rest of state exposed. In doing so, the DEC trampled on our rights to equal protection.

-- Overhaul the DEC's environmental impact analysis process. The agency has said it is close to approving a draft generic environmental impact statement (DGEIS) that gas drillers will be able to use to fly through the well permitting process. The industry likes the DGEIS, but both the federal Environmental Protection Agency and the New York City Department of Environmental Protection have harshly criticized it. They say it sidesteps central issues, such as pipeline and radioactivity regulation. Perhaps even worse, it contains virtually no analysis of the cumulative effects of widespread water-intensive hydrofracking or even a study of the region's totally inadequate wastewater disposal capacity. At a minimum, any generic environmental impact statement must honestly address shortcomings raised by the EPA and the New York DEP.

-- Impose a severance tax on gas as it comes out of the wellhead, just like virtually every other gas-producing state. Do it before the first well permit is granted. Texas, the state with the most gas drilling history and activity, collects a 7.5 percent severance tax. That's a good place to start negotiations.

-- Fix the state's compulsory integration statute. This 2005 law heavily favors the energy industry by giving drillers the effective power of eminent domain over resistant landowners. A private company that defines a square-mile drilling unit and obtains leases on at least 60 percent of the property can compel all remaining landowners to participate against their will. Holdouts have no say in stopping horizontal drilling under their property even though that drilling drastically undercuts their ability to ever sell their property. Most lenders and the Federal Housing Administration (FHA) won't touch mortgage loans secured by property that has been drilled. As governor, Mr. Cuomo, you must give landowners the right to reject horizontal drilling under their own homes. The 2005 law revoked that right, and you need to restore it.

-- Require full public disclosure of all chemicals used in water-intense hydrofracking of the Marcellus Shale. Another 2005 law, the so-called "Halliburton loophole," allows drillers to keep these chemicals secret on the grounds that they are a trade secret. Some drillers have given out partial lists, and they include highly toxic substances. This month, the EPA asked nine companies, including Halliburton, to voluntarily disclose -- to the agency at least -- all their hydrofracking chemicals. As governor, you should go a step further: require full disclosure to the general public as a precondition for any well permit. That would give any water well owner an opportunity to test for the hydrofracking chemicals before drilling in order to establish a basis for legal action if contamination occurs.

This is not a complete list of necessary actions to prepare for a gas drilling boom. The DEC's pervasive "see no evil" culture has effectively buried several other important issues.

For two years, agency officials have repeatedly implied that water-intense hydrofracking is similar to other far less invasive forms of gas drilling common in the region for decades. That ignores one huge difference: each hydrofracked well produces one million gallons or more of hazardous flowback that can't be treated effectively in municipal water treatment facilities. Other regulators have said that the absence of regional treatment capacity creates an incentive for "illegal dumping," but the DEC is silent on that point.

Similarly, New York City's environmental cops urged the DEC in a 2008 letter to check the Marcellus Shale for naturally occurring radiation (NORM). When it tested brine from all 12 of the state's existing Marcellus gas wells, it found that several had alarmingly high levels of the very dangerous Radium 226. The DEC said it would look into the matter further after Marcellus hydrofracking gets underway. The city's DEP differed sharply, saying, "Analysis must be completed before any activity that is likely to generate radioactive waste can move forward."

DEC officials have also freely spread the industry canard that gas drilling has not been linked to a single case of water well contamination. If so, why have drillers in Pennsylvania and New York bothered to compensate the owners of ruined water wells who live adjacent to gas drilling operations?

The DEC serves the industry well but falls woefully short of serving the public interest in the face of the potentially ravaging effects of widespread water-intense hydrofracking.

Mr. Cuomo, your administration must demand an environmental enforcement agency with teeth that can act as a counterweight to formidable interests seeking to exploit the Southern Tier's natural resources. If you go along with the status quo, you are assuming responsibility for the unintended consequences to our lakes, rivers and private water wells.

And remember, a recent Cornell poll found that New Yorkers overwhelmingly believe that the risks of gas drilling outweigh the financial benefits of gas drilling. That sentiment was found to be consistent among every demographic category measured.

We will be watching.

Sincerely,

Peter Mantius

Peter Mantius (pmantius@gmail.com) was a financial, legal and political reporter at The Atlanta Constitution for 17 years and editor of two business weeklies in the Northeast.

Note: This is the 13th column by Peter Mantius, To see his first column, click [here](#). To see his second column, click [here](#). To see his third column, click [here](#). To see his fourth column, click [here](#). To see his fifth column, click [here](#). To see his sixth column, click [here](#). To see his seventh column, click [here](#). To see his eighth column, click [here](#). To see his ninth column, click [here](#). To see his 10th column, click [here](#). To see his 11th column, click [here](#). To see his 12th column, click [here](#).

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