

August 02, 2013 2:21PM

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Marcellus Watch: The DEC plays ostrich on radioactive waste

A generation ago, defiant residents of Allegany County blocked the state from establishing a dump licensed to handle the state's radioactive waste in their community. Today, a handful of the same people object to a private company's plan to boost imports of radioactive wastes from Pennsylvania gas drilling to its Allegany landfill.

The state Department of Environmental Conservation is weighing whether to let Casella Waste Systems expand its Hyland Landfill in Angelica by 49 percent.

State officials have not responded to requests for a full environmental review or even a public hearing on the plan. They have reason to tread lightly. The last time Alleghany residents mobilized on this issue, in 1990, they mounted horses to resist state troopers and built barricades with old tractors and manure spreaders.

The state then canceled its planned licensed radioactive waste dump, sending shock waves across the country. Since then virtually every state has scrambled to find any community willing to accept a licensed dump for its "low-level" radioactive waste. Almost all, including New York, have failed.

That has left the oil and gas industry without enough licensed facilities to handle its substantial radioactive waste. In response, the federal government and the states have eased rules for disposal, backtracking on accepted scientific conclusions about the gravity of the risk.

At the federal level, the so-called Halliburton Loophole in the Energy Policy Act of 2005 exempted oil and gas waste from key provisions of the 1972 Clean Water Act and the 1974 Safe Drinking Water Act.

At the state level, the DEC has if anything been even more complicit in denying the risk of radioactive waste so private companies can sidestep the cost of addressing it. The agency now allows Hyland and four other Southern Tier landfills -- none with a license to handle radioactive waste -- to import drill cuttings and other wastes from hydraulic fracturing, or fracking, of Marcellus shale wells in Pennsylvania.

Currently, New York restricts fracking in its Marcellus shale. But if industry wins its long-running bid to frack here, the facilities for the resulting radioactive waste will be waiting.

Shale formations are known to have high levels of naturally occurring radioactive material, or NORM, and the Marcellus is suspected to be the most contaminated of all the nation's shales.

So, to help out, DEC officials adopted an aggressive if not radical legal interpretation. They declared that they had no authority to regulate NORM that had not been "processed and concentrated," and then they interpreted "processed and concentrated" so narrowly that it never applied.

This loophole means the level of radioactivity in fracking waste is legally irrelevant to the DEC. High or low, it doesn't matter, the agency argued in support of a 2010 plan by Casella to import Marcellus wastes to the Chemung County Landfill, which it operates.

An administrative law judge at the DEC agreed, brushing aside arguments by Dr. Earl Robinson, a pulmonologist who lives a mile from the Chemung landfill. Robinson predicted that radon would escape into the air and lethal Radium 226 would leach into groundwater and the nearby Chemung River, raising risks for lung and bladder cancers.

Many Marcellus gas wells are highly contaminated with radium isotopes, particularly Radium 226, a carcinogen that remains radioactive for 1600 years. It decays into Radon, the nation's second-leading cause of lung cancer (after smoking). Both are most dangerous when swallowed or inhaled, and roughly 20 percent of ingested radium reaches the bloodstream. From there, it tends to accumulate in the bones, where it raises risks for bone cancers and leukemia.

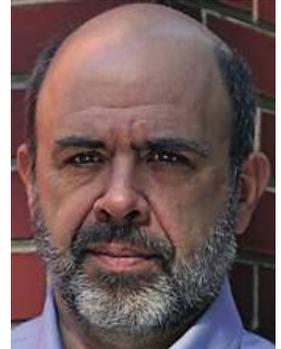
When the DEC conducted tests of brine from all 12 of New York State's conventional Marcellus wells in 2008 and 2009, it found alarmingly high levels of Radium 226 in more than half. Readings were up to 260 times the legal limit for release into the environment.

Those readings -- inadequately labeled and buried in an appendix to a lengthy DEC analysis of gas drilling -- alarmed the New York State Department of Health and the New York City Department of Environmental Protection.

"These data raise serious issues for public health, particularly with disposal of both solid waste (i.e. drill cuttings and equipment) and wastewater," the NYCDEP wrote. One high-ranking city environmental official said further analysis "must be completed before any activity that is likely to generate radioactive waste can move forward."

The DEC disagreed. But it sidestepped a legal confrontation with the city over radiological regulation when it ruled that any gas well within the city's watershed would not qualify for the state's planned fast-track Marcellus drilling permit system. The city, effectively shielded from drilling risk, no longer needed to contest the issue.

The DEC's loophole on NORM has been a gift to Pennsylvania frackers, who are beginning to run out of options. Even that frack-friendly state has announced plans for a comprehensive study of radioactivity in fracking waste.



PHOTO/ PROVIDED

Peter Mantius

New York has made no similar move to educate itself, choosing instead to continue to hide its head in the sand like an ostrich.

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