

N.Y. Gov. Andrew Cuomo Sidesteps Natural Gas Hydrofracking Controversies

By **Peter Mantius**, on January 11th, 2012

[Natural Resources News Service](#) | [Leave a comment](#)

Tweet < 5

Recommend



ALBANY, N.Y. — Ignoring taunts from anti-hydrofracking protestors marching outside, New York Gov. Andrew Cuomo delivered a nearly hour-long State of the State address to lawmakers Jan. 4 without mentioning the hot-button gas drilling technique.

In his speech, the governor skipped over a section of his prepared remarks that had promised to deliver in 2012 both the state's final rules for new gas well permits and recommendations from his own gas drilling advisory panel.

Asked about the omission, Cuomo spokesman Matt Wing said of his boss' hydrofracking policy: "We are still waiting for the facts ... We base everything on facts."

While he's been hunting facts, the governor has been postponing tough decisions on how to adequately fund state environmental regulators and — even more challenging — how to tax the industry.

He has also sidestepped controversial stands on which local and regional bans on hydrofracking are valid and on whether the state needs to set up a damage recovery fund paid for by gas drillers.

If Cuomo has stayed above the fray, the state Department of Environmental Conservation sits squarely in the center of the storm over whether potential economic benefits from hydrofracking the Marcellus Shale outweigh the risks to state water quality. The DEC closes a multi-year comment period on its proposed rules for well permits Jan. 11.

The DEC has received more than 18,000 comments on its latest proposed Supplemental Generic Environmental Impact Statement (SGEIS), which includes conditions for well permits. Energy companies will use the SGEIS as the basis for their applications for permits to conduct water-intensive hydraulic fracturing at new gas wells tapping the Marcellus Shale.



Gov. Andrew Cuomo

The agency will not respond to each comment, but it has promised to respond to each point raised before granting any new permits. And DEC Commissioner Joe Martens, who Cuomo appointed during his first days in office last January, has said permitting will need to move slowly because the DEC remains critically understaffed.

Such regulatory delays frustrate gas drillers and those who have leased land to them, as well as business groups like the Associated General Contractors of New York State.

Pro-drilling advocates argue that New York is sitting on the sidelines while gas drilling booms are lifting states like North Dakota and Pennsylvania out of recession.

Mike Elmendorf, president of Associated General Contractors, says people in New York's Southern Tier look across the border to northern Pennsylvania and "scratch

their heads as they see the sudden influx of jobs and economic growth in areas that have been stuck in neutral or going backwards for years.



Mike Elmendorf

“Right now, the Southern Tier is just getting the scraps, the overflow at their restaurants, hotels, airports.”

Meanwhile, the anti-drilling coalition has broadened considerably beyond environmental advocates to include a host of scientists, physicians and community leaders who worry about threats to water quality and a host of so-far untallied infrastructure and social costs.

“Gov. Cuomo: If you can’t protect NY water, you can’t become president,” one protester’s sign warned the governor as he prepared to deliver his State of the State speech.

Diverse groups have argued that the understaffed DEC is not equipped to handle the unique threats presented by an industrial process as invasive as high-volume fracking.

Martens himself has estimated that the DEC will need at least 200 new employees to oversee gas well permitting and regulation over the next five years. Even advocates of drilling favor big increases in the agency’s handful of inspectors, but the source of the funding to do so hasn’t been identified yet.

One potential source, which is popular across the country, is a state severance tax on natural gas as comes out of the wellhead. Virtually every state with significant gas drilling imposes a severance tax to cover regulatory costs, road repair and in some cases schools. For example, Texas collects at a rate of 7.4 percent.

However, neighboring Pennsylvania does not collect a severance tax, and the industry fiercely opposes one in either Pennsylvania or New York.

If Cuomo decides not to tangle with the industry over the severance tax, he will need to find another major source of funds in order to break with New York’s long tradition of shortchanging the agency charged with protecting the environment.

Martens’ predecessor as Commissioner of the DEC, Pete Grannis, was fired in late 2010 after the leaking of a memo that detailed how budget cuts would cripple his agency’s efficiency.

Grannis’ situation was nothing new. In 1994, an audit team from the Interstate Oil and Gas Compact Commission found the DEC’s “budget and personnel allocations are not commensurate with its program needs, causing substantial deficiency in program effectiveness.”

The Oklahoma City-based IOGCC’s 12-person team also criticized the DEC for failing to codify its conditions for issuing well permits into formal state regulations. The audit group said the agency should begin the rule-writing process “as soon as possible.” Eighteen years later, it still has not happened.

Martens has promised to write formal state regulations that reflect the permit conditions spelled out in the latest SGEIS — eventually — but he has not committed to a timetable. He did say that he expected the DEC to begin issuing Marcellus well hydrofracking permits before the rules are put in place.

That stance has fueled criticism that the DEC is more focused on the financial interests of the gas drilling industry, in which foreign entities hold major stakes, than on citizens of New York.

In October, more than 100 physicians and health care professionals signed a letter to Cuomo to protest the failure of the SGEIS to assess fracking’s impact on human health.

“There is a growing body of evidence on health impacts from industrial gas development,” the letter said. “In Texas, Wyoming, Louisiana, North Dakota, Pennsylvania, and other states, cases have been documented of worsening health among residents living in proximity to gas wells and infrastructure such as compressor stations and waste pits. Symptoms are wide-ranging, but are typical for exposure to the toxic chemicals and air and water pollutants used in oil and gas development and can often be traced to the onset of such operations.”

A month earlier, dozens of scientists signed a letter to Cuomo stating that the DEC’s rationale for banning fracking within the New York City and Syracuse watersheds while allowing it elsewhere in the state had no basis in scientific fact.



The agency said the two watersheds qualified for the ban because their public water supplies lack filtration systems to purify water contaminated by fracking. The scientists’ letter pointed out that the filtration systems that do exist in municipal water facilities in upstate New York where fracking would be allowed are not capable of filtering fracking-related contaminants out water. Therefore, the scientists conclude, since the agency has issued an unsupported justification for treating the regions differently, it should reconsider its policy.

The DEC has not given any public indication it will budge on the points raised by either the doctors or the scientists.



Pete Grannis

New York has 70,000 miles of rivers and streams that you can help keep clean - NY DEC

However, Martens has taken action to address perceived shortcomings in the SGEIS about the socio-economic impacts of fracking the Marcellus Shale.

The analysis by an outside consultant to the DEC, Ecology and Environment Inc., attempted to quantify potential benefits in somewhat greater detail than it quantified potential costs. Martens deemed the consultant's effort "a little thin" and ordered

E&E to go back and try again.

In a followup letter to Martens, economist Jannette Barth noted that E&E failed to adequately analyze fracking's impact on home values, home mortgage and insurance eligibility and the use of eminent domain, as well as the costs of damage to the environment and human health and the costs of repairing highways.

Concerns about those potential costs have led many upstate New York towns to enact local bans or moratoriums on fracking based on their zoning powers granted under the state constitution.

But it is not clear whether they will be enforceable due to a legal challenge. A Colorado-based driller has sued the Town of Dryden over its fracking ban, claiming that the DEC's authority to site gas wells supersedes all local zoning authority. That court case is pending.

Meanwhile, bills in the state legislature attempt to clarify the primacy of local zoning power, but Cuomo has not weighed in yet.

Neither has Cuomo lent his support to a proposal by State Comptroller Thomas DiNapoli for an industry-financed remediation fund that would quickly cover the costs of accidents or damages caused by gas drilling.

DiNapoli, who hired former DEC head Grannis as his No. 2 man early last year, favors using surcharges on well drilling permit fees to finance the fund. DiNapoli has also stated that gas drillers should be required to obtain substantial bonds on each well they drill.

Assemblyman Robert Sweeney, chairman of the New York Assembly's Committee on Environmental Conservation, has taken up DiNapoli's idea and introduced it as **a bill**. Cosponsors include Assembly Speaker Sheldon Silver.

The legislation is targeted to address crises such as the one faced by a group of residents of Dimock, Pa., who blame nearby well drilling by Cabot Oil & Gas Co. for ruining their private well water.

Cabot had supplied the residents with uncontaminated water until November, when it suspended water deliveries to those who declined a settlement agreement, according to Bloomberg News.

But Elmendorf of the Associated General Contractors warned that the state should move cautiously on the mediation fund concept. "There is a limit to what this industry or any industry will accept," he said. "New York has not been a very hospitable place for economic development. You have to weigh the pros and cons for anybody who wants to create jobs."



Thomas DiNapoli



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.

 **Natural Resources News Service** Tags: [Andrew Cuomo](#), [Associated General Contractors of New York State](#), [Cabot Oil & Gas Co.](#), [dec](#), [Department of Environmental Conservation](#), [dimock](#), [Dryden](#), [Ecology and Environment Inc.](#), [Governor Andrew Cuomo](#), [hydraulic fracturing](#), [hydrofracking](#), [Interstate Oil and Gas Compact Commission](#), [IOGCC](#), [Jannette Barth](#), [Joe Martens](#), [marcellus shale](#), [marcellus shale drilling](#), [Matt Wing](#), [Mike Elmendorf](#), [natural gas](#), [New York City watershed](#), [ny dec](#), [NY Governor Andrew Cuomo](#), [Peter Grannis](#), [private well water](#), [public water supply](#), [Robert Sweeney](#), [Sheldon Silver](#), [Syracuse watershed](#), [Thomas DiNapoli](#), [water pollution natural gas](#) —

You may also like:





[New York Wine and Tourism Industry Prepares To Battle Hydrofracking](#)



[Cuomo's Hydrofracking Honeymoon Ends July 1](#)



[DEC Opens Eighty Percent of N.Y. to Fracking](#)



[Marcellus Shale: The Real Price of Compulsory Integration In New York](#)

Like

Showing 0 comments

Sort by popular now

[Subscribe by email](#)  [RSS](#)

Add New Comment

[Login](#)



Trackback URL