

The Marcellus Shale Play: Enviros and Drillers Agree - State Environmental Regulators Can't Protect N.Y.



Tuesday, 09 November 2010

Written by [Peter Mantius](#)

0

Both sides of the raging battle over natural gas drilling in New York State agree that the state agency charged with protecting the environment and issuing drilling permits has been gutted so severely that it's no longer capable of doing its job.

The gas industry, which is poised to sweep into upstate New York to exploit the gas-rich Marcellus Shale, even concedes that the next governor will need to repair the damaged Department of Environmental Conservation before it can fully mobilize drilling crews. "The DEC does not have adequate staff now," said Jim Smith, a spokesman for the Independent Oil and Gas Association of New York. "There will have to be for (Marcellus) drilling. We'll need more staff before siting, before fracking can go forward."

While Gov. David Paterson has ordered the DEC to slash 200 more positions by year's end, the IOGA-NY favors keeping those 200 and adding more staff. The trade group has laid out a plan to use gas well drilling fees to cover all expenses. "Neither side thinks the DEC is up to the job right now," said Rob Moore, executive director of the Environmental Advocates of New York. Moore said the gas industry has a hard time arguing that fracking the Marcellus can be done safely "when so pathetically few are assigned to regulating the industry."

The DEC's dire situation was laid bare Oct. 21, when a top aide to Paterson abruptly fired Pete Grannis, the DEC's respected commissioner. That confrontation was sparked by the leaking of an internal DEC memo that said the agency's mission was in jeopardy after the loss of 16 percent of its workforce during Paterson's two-and-a-half year tenure.

"Cuts to our Minerals Division will mean fewer staff available to review applications and oversee activities related to natural gas drilling in Marcellus Shale," the memo said. "Many of our programs are hanging by a thread. The public would be shocked to know how thin we are ..." Moore said the burden to fix the problem falls squarely on the next governor, Andrew Cuomo, who was elected Nov. 2 and will take office Jan. 1.

During his campaign, Cuomo said he supports fracking in the Marcellus Shale on the condition that it can be done safely. "There's no way you can do it safely with the DEC in its current position," Moore said.

The term fracking has become shorthand for the technique of drilling "horizontally" thousands of feet along a



Photo: Pete Grannis

shale layer and using four to five million gallons of water per well, mixed with sand and chemicals, to flush out the gas. Fracking makes tapping the Marcellus – an exceptionally rich natural gas deposit that runs under New York's Southern Tier, most of Pennsylvania and parts of Ohio and West Virginia – profitable for the gas companies.

Pennsylvania already allows drillers to hydrofrack in the Marcellus. Currently, New York doesn't allow it, but there are plans to begin awarding permits shortly after the DEC completes a generic environmental impact statement for gas wells. That's expected early next year, assuming DEC staff shortages don't derail the process.

Pro-drilling forces are fed up with regulatory delays and are counting on fracking in the New York Marcellus in 2011. Landowners are eager to collect lease and royalty payments. Politicians are eager to see the gas rush spur economic development. Those interests face a fast-growing anti-drilling camp that is alarmed by fracking's nasty side effects.

Even the IOGA acknowledges that the industry needs to be policed with fair rules that are strictly enforced. The IOGA's Jim Smith, who works for the public relations arm of Hinman Straub, an Albany law firm that represents IOGA, said the trade group "fully supports the discipline" that Pennsylvania regulators imposed this year on gas drillers after water wells were ruined in Dimock, Pa.

But re-staffing the DEC to make it a credible enforcement agency won't be Cuomo's only gas-related challenge. Other high-stakes policy controversies await him, including:

-- Whether to accept the DEC's highly controversial draft generic environmental impact statement, which gas drillers would use to fly through the process for winning permits to hydrofrack the Marcellus. The IOGA is pushing to get a GEIS approved as quickly as possible. But the federal Environmental Protection Agency and the New York City Department of Environmental Protection have blasted the document as totally inadequate. The agencies say it fails to analyze the cumulative effects of thousands of new wells and the pipelines needed to support them. It also fails to address the industry's need to dispose of billions of gallons of hazardous fracking flowback. The region lacks the disposal sites to handle it.

-- Whether to let stand the DEC's decision to provide tiered levels of environmental protection across the state based on political and economic power. Earlier this year, the agency said each new gas well in the New York City and Syracuse watersheds would need its own environmental impact statement -- a prohibitive expense -- while gas wells in poorer areas could use the cheaper and faster GEIS process. That ruling would shield the New York City and Syracuse watersheds from the risks of hydrofracking while leaving the rest of the state exposed.

-- Whether to impose a severance tax on natural gas as it comes out of the wellhead. Virtually every state that allows gas to be extracted collects one to help offset the costs that the drilling industry imposes on state and local agencies. The industry routinely kicks and screams over these taxes. Sometimes it wins, as it did in Pennsylvania this year when it derailed legislation to impose a tax. If Cuomo wants this tax in New York -- and he should -- he's in for a fight.

-- Whether to give the green light to hydrofracking the Marcellus in New York's state forests. After a gas well blowout in a Pennsylvania state forest earlier this year, that state's governor issued an executive order banning gas drilling in the forests. Drillers already hold leases and operate more than 100 active wells on New York state forest land. But allowing high-volume hydrofracking would represent an escalation in the industrialization of these

once-protected havens.

Other issues that haven't been widely discussed could emerge. For example, Cuomo has been urged to consider splitting up the DEC and creating an agency with a single clear-cut mandate to enforce environmental laws.

Current state law calls for the agency to "foster, encourage and promote..." oil and gas development and protect the environment from that development. But most promoters make miserable enforcers, so many states have ditched that pro-industry structure and launched enforcement agencies with real teeth.

The federal government took that step in regulating the nuclear industry when it broke up the Atomic Energy Commission decades ago. And in May the Obama Administration belatedly ordered similar action at the Department of the Interior in response to the BP oil spill in the Gulf of Mexico. "The fault here is with the state legislature that has hamstrung the DEC," said Steve Coffman of the Committee to Preserve the Finger Lakes. "The federal government does not task the Environmental Protection Agency to "foster, encourage and promote" the energy, mining and lumber industries. Leave the DEC to its hard-enough job of defending the environment and public health, without also legislating a Trojan Horse into the center of its mission."

Before the election, groups like CPFL and Catskill Mountainkeeper were urging the legislature to overhaul the laws that set up the DEC's awkward dual mission.

Now that Cuomo has notched a decisive election victory and will carry a strong mandate into the governor's office Jan. 1, their lobbying energies will be redirected toward him.

During the campaign, Cuomo managed to avoid being pinned down on specific policy positions related to hydrofracking. But when both the pro-drilling and anti-drilling factions insist on answers, the new governor will find sitting on the fence increasingly uncomfortable.

If Paterson's radical cuts have set the stage for major public policy moves by the new governor, it's unclear why he's taken such a hard-line stance.

He does face enormous pressure to balance the state budget, and that's led him to call for the elimination of 2,000 state positions by the end of the year. But the DEC represents only 2.5 percent of state workers under his control, and he's asking the agency to provide more than 10 percent of his total proposed cuts.

About 75 percent of the DEC's funding comes from either the federal government or special fees such as hunting licenses. Other state agencies that draw funding from outside sources tend to face lighter -- not heavier -- staff reduction burdens than average.

If the cuts are made at the DEC, the agency will drop to 2,926 positions on Dec. 31, down from 3,775, in April 2008 when Paterson became governor in the wake of the Eliot Spitzer call girl scandal. Spitzer, who was elected in November 2006, had started to beef up the agency after it had lost 800 positions during the prior decade, when George Pataki served as governor. Spitzer also appointed the now fired Grannis, a long-term member of the state Assembly and champion of environmental causes, to run the agency.

Paterson's gutting of the agency has been so dramatic that Erin Crotty, Pataki's DEC commissioner from 2001-2005, weighed in with a newspaper opinion piece criticizing the plan. It was printed in early October, two weeks before Grannis was dumped. "If the staff firings are undertaken," Crotty wrote, "DEC's staffing will be at mid-

1980s levels. There has been a significant expansion of the department's authority during the past 25 years... Could you live on what you made in 1984?"

Like

Be the first of your friends to like this.

Like this? Let your friends know now!

Latest articles from Peter Mantius

[Showdown: It's Wind Energy v. Shale Gas for Cavern Storage](#) posted on Monday, 28 March 2011

WATKINS GLEN, N.Y. -- Federal and state agencies are convinced that salt caverns three miles...

[New York Wine and Tourism Industry Prepares To Battle Hydrofracking](#) posted on Thursday, 24 February 2011

A fault line is opening in upstate New York between the established wine and tourism...

[New York State to Require Environmental Impact Statement for Large Scale LPG Storage in NY Watershed](#)
posted on Monday, 07 February 2011

WATKINS GLEN, N.Y. -- Public alarm over plans to store liquefied petroleum gas in salt...

[back to top](#)

[America's Energy Future](#) < Prev

Next > [The Marcellus Shale Play: A Reporter's Peaceful Retreat Becomes A Natural Gas Industry Target](#)

1 person liked this.

Showing 5 comments

Sort by Subscribe by email Subscribe by RSS



CutRedTape 4 months ago

>the state agency charged with protecting the environment and issuing drilling permits has been gutted so severely that it's no longer capable of doing its job.

Simple. Both sides should agree to remove the hydraulic fracturing exemptions from the Clean Air Act, the Clean Water Act, Superfund, and a host of other federal environmental rules already in place. (Including criminal penalties for

willfulness, and attorney fees.) If it is safe, the industry has nothing to fear from the rules. If it is dangerous, we need protection. The Clean Energy Jobs and Oil Company Accountability Act of 2010, currently pending before the Senate, would eliminate the drilling industry's 2005 exemption from the Drinking Water Safety Act and would require producing companies to disclose the chemicals used in their drilling activities. That's a start.

1 person liked this.

Like

Reply



Andy Leahy 4 months ago

Peter,

A couple things:

- 1) Make no mistake, Grannis was fired by Paterson — through an aide, but not by the aide.
- 2) Hydraulic fracturing doesn't "flush out" natural gas; instead it sticks grains of sand in the open cracks, propping them open, and giving the gas space to flow out for years afterwards to the wellbore.
- 3) The federal EPA never criticized NYS's draft study of hydraulic fracturing as inadequate. (I don't think that's their style, but I do recall that a union of certain EPA employees did issue a letter like that.)
- 4) The June 2010 gas well blowout in Clearfield County, PA, was on private hunt club land, near state land, but not on state land. You are the first I've heard to present this event as causal for PA Gov. Ed Rendell's recent decision to put further public lands off limits for future leasing (which is largely symbolic, since he leaves office Dec. 31).

I see that you briefly mentioned this, but you didn't really fairly pass on the main point of IOGA-NY's statement against DEC staff cuts: If shale gas development was finally allowed to move forward in NY, even at a much more cautious pace than in PA, then already established drilling permit fees would largely cover the public costs of regulating, inspecting, and overseeing this industry. (Staffing problem solved, in other words.)

1 person liked this.

Like

Reply



Peter Mantius 4 months ago in reply to Andy Leahy

Andy,

Good comments. Your points:

- 1/ You're probably right. The aide did the deed, but I don't doubt Paterson ordered it.
- 2/ Granted, your description is more detailed & precise than my short-hand "flushed out."
- 3/ I have to disagree with your statement that the EPA "never criticized" the DEC's draft study as "inadequate." In fact, the comments made to the DEC in a letter stamped Dec. 30, 2009 from the EPA Region 2 in New York amount to sweeping criticism of the draft. It said the analysis and discussion of the cumulative impacts of hydrofracking needed to be "significantly expanded." It said the DEC had neglected central issues such as gas pipelines and flowback radioactivity and that other agencies with more direct jurisdiction (the PSC and DOH) needed to be brought into the rule-making process.
- 4/ Media reports were split on whether the blowout itself was in the park or barely outside it. You may be correct (or not), but either way, there's no disputing that the blowout wrecked a lot of forest land. On Rendell, I think it's a stretch to argue that the blowout did not contribute to his decision to ban drilling in the forests.

Peter

Like Reply



Andy Leahy 4 months ago in reply to Peter Mantius

Peter,

On 3, you are right, it was a representative from EPA Region 2, not a union person. (Probably good to correct that it wasn't criticism from the whole nationwide EPA, though.) You can read "sweepingness" into that letter if you like, but I wasn't able to find the word "inadequate" appearing anywhere. To me — once you account for all the glaring yellow highlighting that's evidently been applied by activists — it reads like routine inter-governmental correspondence (but I suppose that could just be me).

On 4, here's a link to the PA DEP's followup reporting:

<http://www.dep.state.pa.us/dep...>

The well was named Punxsutawney Hunting Club 36H, and the blowout occurred on land owned by the club, which was reported to be near PA's Moshannon State Forest, not a State Park.

You are perfectly free to say "the blowout wrecked a lot of forest land." But you lose credibility with me (and hopefully with most of your readers), when you spin things like that, without any supporting evidence. At the time, PA environmental officials characterized damage to the environment as "modest," and I can't find anybody reporting any polluted water was found flowing off the site.

To me, the potential for there having been a worker-killing explosion should be weighed by all as the biggest issue raised by this incident — much bigger than any vaguely asserted "wrecking of the forest." Industry, PA, and other states learned some important technological and operational lessons from this mishap, and I think that's what's supposed to happen. (So you say the system's broke — I say it's working.)

Four months went by between this event, occurring on private land, and PA Gov. Rendell's removal of further state lands from leasing (which is expected to be in place only between Oct. and Dec. 2010, when he leaves office). Most informed observers ascribed Rendell's move to either pique or leverage over the much more contemporaneous (and, in my view, unfortunate) death of PA's proposed tax on shale gas extraction.

Again, I assert your reporting created a cause-and-effect connection between these two separate events — and that this is because of your desire to persuade, not because of your desire to faithfully report events.

Like Reply



Republican Farmer 4 months ago

NYS is faced with a major problems related to the Marcellus Shale region in the southern Tier(Elmira,Binghamton,etc). Economics and politics should not be the biggest agenda items; water quality should be at the top of the list. Keep in mind that the political machines in these areas are looking for income first and foremost. Dumping radioactive cuttings from the hydrofracking sites has been a major problem for Pennsylvania and the PA DEP. Unfortunately for Chemung

County-Elmira NY residents just a few miles over the border, it is not a problem for the County Executive or his "balance the budget by any means" policies. Currently, there are no guidelines for monitoring this radioactive material. NYC and Syracuse leaders determined the importance of clean water in the early stages of the hydrofracking campaign and fired the first shots "across the bow". Because Chemung County sees the hydrofracking as a "cash cow", there was no discussion of the impact of radioactive leachates possibly migrating from the landfill to the Chemung River less than a mile away. Compound the lack of heart on the part of elected officials with the lack of any real investigative reporting in the local newspapers, one ends up with a date with disaster.

It is timely that the EPA subpoenaed Halliburton regarding hydrofracking materials used in the Marcellus Shale drilling. What a novel idea to ask what chemicals a corporation is putting in the ground and possibly in local aquifers.. That would have come in handy at Love Canal. It begs the question: Why did NYS DEC fail to demand the same information in its hearings?

Mr. Mantius' article is a great update to what many people are thinking in the southern tier region of NYS. One of the most picturesque regions in the United States, the Finger Lakes region demands the oversight necessary to avoid ANY contamination of local aquifers, streams, ponds and lakes. "SUNSHINE is the BEST DISINFECTANT."

Like Reply

Add New Comment

Optional: Login below.

Type your comment here.

Post as ...

Trackback URL

blog comments powered by DISQUS