

# Maryland Politics Trumps Science on Fracking

By **Peter Mantius**, on January 17th, 2015

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Two ambitious Democratic governors in the East faced the same tough choice late last year on whether to allow energy companies to extract natural gas from shale formations through high-volume hydrofracking. One said yes. The other said no.

Neither state has much natural gas to tap at current market prices. Even so, the decisions by Gov. Martin O'Malley of Maryland and Gov. Andrew Cuomo of New York have national implications because they sat in judgment of the importance of the latest independent science. While environmental and medical experts were pointing to dozens of new peer-reviewed studies showing explicit health and safety risks, the energy industry was clinging to its assertions that all fracking risks are manageable.

Cuomo said he was letting the science speak when he banned fracking in New York State on Dec. 17. His decision drew wide national attention. In contrast, O'Malley's pre-Thanksgiving decision to allow fracking under "gold standard" regulations had attracted little notice, in part because some 30 other states were already allowing it.

Cuomo's ban has been well received by New Yorkers, based on recent polls. But the recent publication of O'Malley's draft fracking rules has triggered a spirited uprising among environmental groups in Maryland. Inspired by the Cuomo ban, those groups now promise to seek legislation to order a moratorium on fracking. While the heavily Democratic state Legislature is apt to be receptive to their bill, Republican Gov.-elect Larry Hogan would be expected to veto it. Hogan takes office Jan. 21.

With only days left in his eight-year tenure as governor, O'Malley, 51, has tried to distance himself from the fracking issue as he plots his next political move. Last year he ventured on a dozen trips to the early presidential primary states of Iowa, New Hampshire and South Carolina in anticipation of a bid for the 2016 Democratic nomination for president. Since Jan. 1, he's been trying to define his legacy by furiously churning out blog posts titled "Letters to the People of Maryland." In more than 50 posts running more than 20,000 words, O'Malley has never mentioned fracking or natural gas. When asked by [DCBureau.org](http://www.dcbureau.org), he declined to say why he was dodging the issue.

O'Malley gave the green light to fracking on Nov. 25. He said state regulators would start with "best practices" in other states and add new rules to limit water and air pollution. Drew Cobb, executive director of the Maryland Petroleum Council, told reporters O'Malley was laying out "the strictest rules for drilling in the country. The question is whether companies can operate under that. I don't know."

But "best practices" assurances are no proxy for actual protection, according to [PSE Healthy Energy](http://www.psehealthyenergy.org), a group of physicians and academics who wrote O'Malley in December to decry his fracking decision. PSE's leaders have ties to Cornell University, Stanford, UC-Berkeley and the University of Pennsylvania, and several are authors of relevant peer-reviewed studies on fracking.

As the group was successfully lobbying for the ban in New York, it wrote O'Malley on Dec. 8: "Every state with shale oil and gas development has had numerous reports of water contamination, air quality degradation, and self-reported poor health outcomes. There is no reason to believe Maryland would be an exception."

O'Malley had heard even stronger language two months earlier from Robert S. Lawrence, director of the [Johns Hopkins University Center for a Livable Future](http://www.jhu.edu/~environment). In an opinion column in the Baltimore Sun calling for a statewide fracking ban, Lawrence wrote that O'Malley's own advisory commission found that regulations could be used to monitor the health impacts of fracking but not prevent them. "In the medical field, that's akin to human experimentation without informed consent, and it's downright unethical," Lawrence wrote.

O'Malley published his draft regulations in the Maryland Register Jan. 9. The public has 30 days to comment. No public hearings are scheduled.

The fate of those regulations and their enforcement is now in the hands of O'Malley's successor, Hogan, an Annapolis businessman who won a stunning election upset Nov. 4. Democratic Lt. Gov. Anthony Brown had been O'Malley's presumed successor. But Hogan.



Gov. Martin O'Malley



Gov.-elect Larry Hogan



Robert S. Lawrence

promising to cut taxes and promote business, overcame Brown's 4-1 campaign finance advantage and the Democrats' 2-1 statewide voter registration edge.

Although Maryland enjoys only a sliver of the gas-rich Marcellus Shale formation that runs through New York, Pennsylvania, West Virginia, Hogan said the state should not have waited so long to approve fracking, a slap at O'Malley's 2011 moratorium. He also criticized O'Malley for adding regulations "on his way out the door." Hogan did not respond to calls and emailed questions.

To manage the rollout of fracking in Maryland, the governor-elect has chosen Benjamin Grumbles, a former Bush-Cheney Administration official, as his new Secretary of the Maryland Department of the Environment. As a senior water regulator at the Environmental Protection Agency from 2004 to 2009, Grumbles helped lay the groundwork for fracking's exemptions from the federal clean air and water laws.

Specifically, Grumbles oversaw the release of a 2004 water report that concluded that hydraulic fracking in coal bed methane gas wells was safe for drinking water. Congress used that study to bolster the case for a 2005 law prohibiting the EPA from regulating fracking under the Safe Drinking Water Act, an accommodation to then-Vice President Dick Cheney. That exemption from regulation is now known as the Halliburton Loophole, in reference to the Houston-based energy company Cheney ran in the 1990s.



Benjamin Grumbles

Before accepting the post in Maryland, Grumbles served as president of the **U.S. Water Alliance**, a non-profit consortium of utilities and public and private sector leaders concerned with water policies. In a 2011 blog post he wrote titled "Drill, Maybe, Drill," Grumbles advocated "a more thoughtful path, one that can include fracking, even in large amounts, but in the right place, at the right time and with the right amount of government oversight."

Hogan and O'Malley differ on the "right amount" of regulation. Hogan told reporters Dec. 8 that O'Malley's fracking rules go too far. "I'm very opposed to all these important decisions being made in the midnight hour of this administration," Hogan said. "I think it's a mistake. I think the people of Maryland have voted to go in a different direction."

O'Malley's draft fracking rules call for buffers and setbacks from aquifers and occupied buildings. They also include provisions to quantify methane that leaks from the gas drilling process, and drillers would be required to purchase offsets. But the methane rules rely on estimates submitted by the drilling companies rather than actual measurements taken by regulators.

"Each calendar year the operator shall estimate methane emissions from each well pad including emissions from the well or wells on the pad and any other equipment on the pad," the draft regulations say. "If feasible, the operator shall verify the estimates by operations data and from the leak detection and repair program."

O'Malley's draft rules were published more than three years after he had placed a moratorium on fracking and appointed a commission to study it. He developed his fracking regulations last year as he was courting financial support for his future political career from deep pocket sources with a stake in fracking.



America's  
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For example, he met last May with anonymous corporate funders of **NewDEAL**, a national group of "pro-growth progressives" that he co-founded. The meeting was held at the Washington, D.C., headquarters of the **American National Gas Association**, a lobbying group for fracking companies. NewDEAL is an "issue-advocacy non-profit, a tax vehicle which allows campaign activity without disclosure of donors," according to **vice.com**. The website reported in May that it had obtained a NewDEAL "supporter" list that included ANGA, along with Comcast, Fluor, Merck, Microsoft, New York Life, Pfizer, Qualcomm, Verizon, Wal-Mart and the Private Equity Growth Capital Council.

O'Malley also has longstanding ties to Tom Steyer, the San Francisco hedge fund billionaire who, according to the Los Angeles Times, spent \$74 million on congressional and gubernatorial campaigns in 2014. Steyer's top issue is climate change, "the true crisis of our time." The two men attended the 2014 Greenbuild conference in New Orleans in October, where they proclaimed to architects and planners the importance of green approaches before driving off together in a gas-guzzling Chevy Suburban, according to press reports.

Steyer has sent mixed messages on his stance on fracking. But in an opinion column last year, he said, "we must be assured (that fracking) can be performed safely, in each specific geologic location, supported by independent science and proven beyond a realistic doubt."



Tom Steyer

The latest peer reviewed science was not the only factor O'Malley and Cuomo had to weigh before reaching decisions on fracking.

Both had to consider the latest election results, and both had to calculate how their action would position them with future voters in light of Pew Research polls showing that Americans grew decidedly more wary of fracking during 2014. While both O'Malley and Cuomo have had presidential aspirations, Hillary Clinton is the odds-on favorite for the Democratic nomination in 2016. She has supported regulated fracking. Political analysts have said O'Malley is far more likely than Cuomo to challenge to her in 2016

US NEWS SERVICE.

Cuomo cruised to a second term as governor in the November election, but only after being badly bruised in September's Democratic primary by a relatively unknown anti-fracking challenger. Zephyr Teachout lost the primary, but won more than 20 counties. New York voters, long split on the fracking issue, had started tipping against it last year.

In Maryland, Hogan's surprise Republican victory forced O'Malley to reconsider his go-slow approach to fracking, according to Paul Roberts, the citizen member of the governor's Marcellus Shale Advisory Commission.

Roberts, co-owner of the **Deep Creek Cellar Winery** in western Maryland, said O'Malley's office reached out to frightened anti-fracking advocates after the election. "He said he would expedite the regulatory overhaul that his agencies had been working on," Roberts said in an email. "But he made no commitment about whether or not he planned to allow fracking."

Roberts said the governor also agreed to urge to Democrats in the Legislature to enact a law to codify parts of his fracking regulations. "I didn't agree with the governor — never did, and very consistently said so at commission hearings — that there is evidence to show fracking can be effectively regulated," he said. "But at the time I think all of us thought that was the best we could hope for."

But anti-fracking advocates began peeling away from that path in early December, and Cuomo's Dec. 17 announcement of the New York ban firmly established a new approach. "We all agreed, for the first time in five legislative sessions, to come together behind a bill that would prevent fracking in Maryland ... until scientific evidence shows it can be done without harming public health, the environment, or the tourism economy."

David Fraser-Hidalgo, a delegate of the Maryland House of Delegates from Montgomery County, said he is preparing a moratorium bill in response to the "seismic shift in the environmental community" in December. Fraser-Hidalgo is one of 91 Democrats in the Maryland House, which has 50 Republican members. Democrats also dominate the state Senate, by a 33-14 margin.

Fraser-Hidalgo said that even if he is successful at gaining support for his bill from a majority of delegates, he presumes Hogan would veto it. Overriding a veto by the required two-thirds votes in both chambers would be "a big lift" and could take months, he added.



David Fraser-Hidalgo



Gina Angiola

Dr. Gina Angiola, a board member of **Chesapeake Physicians for Social Responsibility**, said a moratorium is necessary because there is virtually no science to support the notion that regulations can mitigate the long-term health effects of fracking. "Other states have moved way too fast," she said. "We're now just starting to see the effects."

Angiola noted that several factors have stymied research. The Halliburton Loophole allows drillers to claim trade secret protection from disclosing hazardous chemicals they use in fracking, which blocks researchers from linking health symptoms to specific chemicals. And drillers have commonly used confidentiality agreements to prevent victims from discussing their fracking-related health symptoms.

Angiola said her top concern is the high well leakage rate identified in a peer-reviewed study of fracked gas wells in Pennsylvania. Tony Ingraffea, a retired Cornell engineering professor and co-founder of PSE Healthy Energy, spearheaded that study.

In its Dec. 8 letter to O'Malley, PSE noted that the Pennsylvania Department of Environmental Protection has reported 248 cases of water contamination caused by natural gas development. The letter also noted that an analysis of more than 400 peer reviewed studies — most published within the past 18 months — shows that strong majorities identified risks of air and water contamination and negative health effects. But there are no long-term studies, because high-volume fracking was not used widely until 2005. "Until research catches up to the rapid growth of this industry," PSE said in its letter to O'Malley, "any regulations promulgated at this time will not be based on sound science."

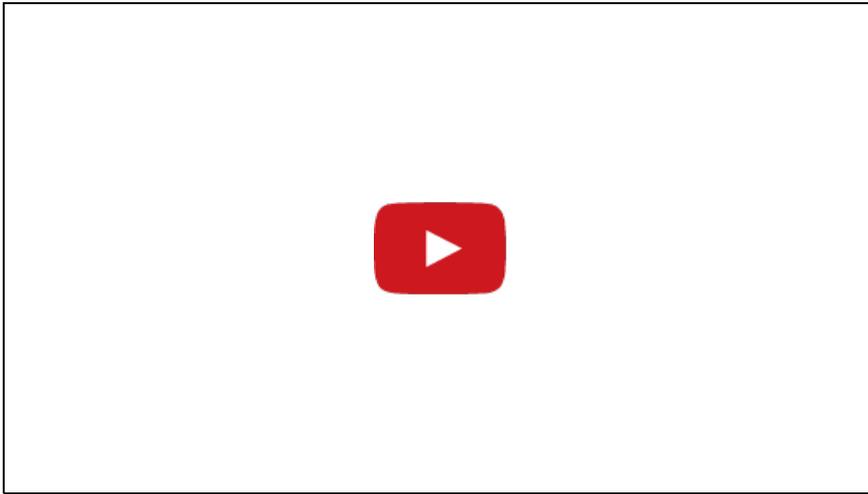
The American Petroleum Institute also has a deep interest in future research into the health effects of fracking. Last August it issued a request for proposals for studies it would fund on the subject. "We anticipate that this work will lead to publications in peer-reviewed journals," the RFP said.

API has received 12 submittals from individual organizations and teams representing a mix of academic, regulatory and commercial entities, API's Patrick Beaty said. The names are confidential, pending final selection, he added.

Nearly four years ago, an energy industry-funded study by the Massachusetts Institute of Technology concluded that natural gas could serve as a "bridge fuel" to the future when renewable energy sources become dominant. Referring to the high-volume fracking process to recover natural gas from shale formations, the MIT study concluded that "the environmental impacts of shale development are challenging but manageable."

President Obama appointed the lead author of the study, Ernest Moniz, as his Secretary of Energy in March 2013. Moniz continues to serve, and the Obama Administration continues to treat the risks of high-volume fracking as "manageable."





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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.

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Specifically, Grumbles oversaw the release of a 2004 water report that concluded that hydraulic fracking in coal bed methane gas wells was safe for drinking water. Congress used that study to bolster the case for a 2005 law prohibiting the EPA from regulating fracking under the Safe Drinking Water Act, an accommodation to then-Vice President Dick Cheney. That exemption from regulation is now known as the Halliburton Loophole, in reference to the Houston-based energy company Cheney ran in the 1990s.

Well... That is a loophole with profound consequences...

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Regardless of the technical merits of the regulations, the fracking industry can not be effectively regulated.

Some impacts of fracking can not be addressed by regulation (e.g. future impacts, economic undermining of renewables, land use impacts, well casing statistiscal probability fail rate, et al)

There are not sufficient state inspectors to regulate.

There are enormous loopholes in law.

Regulation os reactionary as opposed to precautionary.

O'Malley should be ashamed of himself and he clearly OK'd fracking to remain viable as a political fundraiser.

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