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- [People](#)
- [Features](#)
- [Business](#)
- [Govt.](#)
- [Forum](#)
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- [PSA](#)
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The Marcellus Watch



New York City's top environmental regulator says the state's regulation-lite approach to gas drilling is a grave threat to the state's water supply, including Schuyler County wells. In his latest column about drilling in the Marcellus Shale formation, journalist Peter Mantius of Burdett writes about the most serious challenge yet to proposed DEC drilling rules.

Left: Peter Mantius

The Elephant in the Room

By Peter Mantius

BURDETT, Dec. 12 – As the New Year's Eve deadline approaches for final comments on a proposed 800-page rulebook for natural gas drilling, state officials are ignoring the elephant in the room: The agency responsible for supervising the industry is woefully understaffed and ill-equipped to handle the job.

As fiercely divided as the pro-drilling and anti-drilling factions are, they can agree on that point. Even the drillers are asking the state to beef up the inspection staff at the Department of Environmental Conservation.

Meanwhile, the DEC soldiers on, buried in process, as a tsunami of well permit applications builds just over the horizon. If the agency adopts final drilling rules early next year – a distinct possibility – it can expect to be swamped with dozens, if not hundreds, of

applications from eager drillers.

How will a mere 17 inspectors in the DEC's Division of Mineral Resources carry out all these new permitting and on-site inspection duties without slipping into "rubber stamp" mode?

Speaking at a recent conference in Owego, Stuart Gruskin, executive deputy commissioner of the DEC, promised that his agency would never rubber stamp permits. But that's like an unprepared college student promising to ace his final exam.

In fairness to Gruskin, the DEC isn't the primary cause of this impasse. Blame the state Legislature.

It has failed to prepare the state to capitalize on the once-in-a-generation economic opportunity that gas drilling represents.

Why doesn't New York have a severance tax on natural gas as it is produced at the well? Twenty-three gas producing states tax gas at the wellhead, while New York is one of only three states that doesn't. Even Texas, no bastion of high taxation, collects a 7.5 percent gas severance tax.

Revenues from a gas severance tax could be used to support a robust environmental regulator, one with a better chance of rigorously addressing the pressing environmental challenges of horizontal drilling in the Marcellus Shale.

The DEC isn't merely hamstrung by lack of funding. It also operates under muddled marching orders from the Legislature.

As Gruskin noted in his Owego speech, the agency's mandate requires it both protect the environment and promote the extraction of gas and other minerals.

That flawed "protect and promote" mandate is a dead end. It's exactly what doomed the federal Atomic Energy Commission, created in 1946 to manage the development of nuclear power.

The AEC was asked to both promote and regulate the same industrial entities, but it failed. Its focus on environmental protection withered. By 1974, supporters and critics of nuclear power agreed that the AEC's promotional and regulatory duties were incompatible and needed to be assigned to separate agencies.

That led to the creation in 1975 of the Nuclear Regulatory Commission, a protection and enforcement agency. The Department of Energy and others took over promotional duties.

How does the AEC's sad history relate to the present situation in New York State?

The DEC's same dual mission all but assures a similar breakdown in crucial environmental vigilance, particularly if the agency is understaffed.

The DEC now invites comments on its 800-page draft Supplemental Generic Environmental Impact Statement for drilling. Despite its heft, the draft GEIS often falls short.

Consider the issue of naturally occurring radioactive material, or NORM. Varying concentrations of NORM are known to exist in the Marcellus Shale. Hydraulic fracturing,

or fracking, which forces millions of gallons of water into those deep rock formations, could bring NORM to the surface, or at least contaminate drilling equipment.

How has the DEC handled this potential problem?

In 2008 and 2009 it checked the brine from 12 of the then-active Marcellus Shale gas wells in the Southern Tier, six of which are located in Schuyler County.

The tests showed the brine was contaminated with Radium 226 in concentrations ranging from 60 to 260 times the legal limit for discharge into the environment.

To the casual observer, this might seem troubling. After all, in Texas, where drillers have been using the water-guzzling fracking process to extract natural gas from the Barnett Shale for years, 140 sites with high NORM readings had to undergo decontamination between 2005 and 2007, according to the Denton Record Chronicle.

But any curious New Yorker who hunts for a discussion of the implications of the 2008-2009 Marcellus brine testing in the draft GEIS or its appendices is in for frustration. It's not there.

Never mind that brine from gas wells has been routinely spread on Southern Tier roads to deal with ice and snow. Has the DEC weighed in to change that policy this winter season? Who knows?

The agency has said NORM bears watching. It said it plans to do further testing for it after the drillers start boring their holes in the ground.

Instead of taking the DEC's "drill and react" approach, the Legislature should take the lead.

Its goal should not be to halt all Marcellus Shale drilling forever – just the opposite. It should work to regulate the industry thoroughly and intelligently so that communities can coexist with responsible drillers and even partner with them to help them get all the natural gas they can safely get.

Unfortunately, the Legislature continues to sit on its hands as major issues linger unresolved:

--What is the state's plan to deal with the oceans of contaminated wastewater that flows from fracked wells, waste that standard wastewater treatment plants aren't equipped to handle? The industry says it will recycle it. But what about the sludge that constant recycling leaves behind? Will it simply sit in ponds at the well sites awaiting the construction of special treatment plants that are designed to handle it? What is the Legislature doing to promote construction of these special plants?

--What is the state's plan to handle the maintenance of roads that will be punished by frequent and heavy fracking truck traffic? What financial mechanisms will municipalities use to cover this costly new expense?

--The DEC reserves the right to say where a gas well can be drilled. In New York, unlike many other states, the local community has next to no say. Leaving these crucial decisions to state inspectors who are stretched thin and conflicted is a very dangerous idea.

Pipeline, water use and noise regulations as well as disclosure rules for public officials all need further attention.

Members of the public have until the end of the year to comment on the DEC's draft GEIS. Gruskin said the agency is most likely to respond to comments that are specific, rigorous and intellectually honest. Understandably, passion is optional and not encouraged.

Meanwhile, a petition signed by more than 6,000 people calls for the agency to scrap the draft GEIS and start from scratch. They say it's the DEC that needs to get more rigorous.

They're right.

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 his fifth column, 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](#).*

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