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The Marcellus Watch

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The U.S. Environmental Protection Agency and New York City's top environmental regulator say the state's plan to regulate natural gas drilling in the Southern Tier doesn't go nearly far enough in protecting the state's drinking water. In his latest column about drilling in the Marcellus Shale formation, journalist Peter Mantius of Burdett writes that the agencies' comments are the most serious challenges yet to proposed DEC drilling rules.

Left: Peter Mantius

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The links:

EPA:

http://www.epa.gov/region2/spmm/Marcellus_dSGEIS_Comment_Letter_plus_Enclosure.pdf

NYCDEP:

http://www.nyc.gov/html/dep/pdf/natural_gas_drilling/12_22_2009_impact_statement_letter.pdf

Wake-Up Call

By Peter Mantius

Anyone who's on the fence about the adequacy of the state's proposed regulations for natural gas drilling in the Southern Tier needs to check out a stinging critique issued last week by New York City's top environmental regulator.

We also have a [Business Card Page](#). Click [here](#).

While the criticisms specifically address threats to the city's fragile water delivery system, they clearly apply in the Southern Tier and Schuyler County as well.

In a Dec. 22 letter to the state Department of Environmental Conservation, Steven W. Lawitts, acting commissioner of the New York Department of Environmental Protection, wrote that the DEC's proposed drilling rules fall so far short that they need to be scrapped.

Eight days later, the U.S. Environmental Protection Agency said in its own letter to the DEC that it "agrees with the sentiments" of Lawitts.

Although the EPA doesn't go as far as Lawitts in calling for the proposed rules to be thrown out, it offers its own laundry list of analyses it says the DEC still needs to complete. The federal agency recommended that the DEC partner with the state Public Service Commission to analyze pipeline construction and partner with the state Department of Health to tackle threats to the public water supply. It also needs to beef up its review of potential cumulative effects of drilling, the EPA said.

While hundreds of opponents of drilling have mounted a petition campaign against the DEC's controversial draft Supplemental Environmental Impact Statement, the direct challenges from regulatory agencies represent the most serious challenge yet to the proposed rules.

The DEC is accepting comments on the draft through yearend.

After that, the agency plans to make appropriate amendments to the draft and begin accepting applications for permits to drill.

That path could cause major problems for New York City, Lawitts writes in his 13-page letter.

"We firmly believe that the risk to the water supply is significant and unacceptable," Lawitts said.

Nine million people in the city and its immediate northern suburbs rely on clean drinking water from the Catskills/Delaware watershed. The city has a special waiver from the U.S. Environmental Protection Agency that allows it to provide that water unfiltered.

However, if the quality of the water deteriorates significantly, the EPA could be expected to yank the waiver and compel the city to build a filtration system. The estimated price tag on such a plant is \$10 billion, plus \$100 million a year to operate it. The cost of that regulatory failure would be passed along to city residents – hiking their water rates by an estimated 30 percent.

So the stakes are high for the city.

The DEC, in its draft SGEIS, says gas drilling "presents no realistic threat" to the EPA waiver.

Lawitts responds, "This is simply not the case. (Gas drilling) constitutes a ... threat to the (waiver) and the integrity of the city's unfiltered water supply system."

The DEC makes no provision to compensate New York City if its rosy assessment proves to be incorrect.

Lawitts argues that the draft SGEIS is fatally flawed for the following reasons (among others):

-- The draft blurs a critical distinction between traditional vertical drilling in the region and a newer technique designed to tap gas trapped thousands of feet down in the Marcellus Shale

formation. The latest method involves horizontal drilling and hydraulic fracturing with million of gallons of water, sand and chemicals used to crack the shale. Hydrofracking, as it is called, creates far greater underground disturbances and much greater volumes of wastewater than traditional vertical drilling.

-- The draft dodges demands for full public disclosure of the chemicals used in hydrofracking. Lawitts says disclosure is "solely to the DEC" and that drillers would be required to identify additives used, but not necessarily their composition. "The city is ultimately faced with a scenario in which thousands of tons of unknown hazardous chemicals could be introduced into the watershed each year," he writes.

-- The draft fails to analyze the state and regional capacity to handle the millions of gallons of wastewater that hydrofracking produces. Typical waste water treatment plants aren't capable of handling the waste, which tends to be exceptionally salty and is often contaminated with dangerous levels of naturally occurring radioactive elements. Because neither New York nor Pennsylvania has adequate treatment facilities, wastewater is being stored in open brine pools. Lawitts also warns that "the insufficiency of regional waste disposal capacity ... coupled with associated high disposal costs could lead to illegal dumping."

-- The draft fails to address the potential for surface spills of fracking chemicals or toxic wastewater. That includes acute spills, such as a truckload of raw fracking chemicals or a tanker of flowback water entering a reservoir or headwater stream, and chronic minor spills, which are the inevitable result of large-scale drilling.

-- The draft downplays the possibility that hydrofracking will rupture underground rock formations, allowing fracking chemicals and toxic brine to seep into freshwater aquifers. Lawitts notes that hydrofracking can be expected to disturb the many brittle geologic structures in the region. The draft "underestimates the likelihood of vertical migration of contaminants," he says.

-- The draft fails to analyze the documented presence of dangerous levels of naturally occurring radioactive elements. The DEC had only tested three Marcellus Shale wells for radioactivity when the city wrote a Dec. 12, 2008 letter calling for further tests. The DEC later tested nine more Marcellus wells and found Radium 226 levels up to 260 times the amount that may be legally released into the environment. The draft SGEIS doesn't analyze these findings, although the DEC has said it intends to study the issue further after it sees whether new wells are contaminated. Lawitts writes, "Such an analysis must be completed before any activity likely to generate radioactive waste can move forward."

In his letter, Lawitts also argues that the draft SGEIS proposes insufficient setback requirements, fails to adequately assess drilling's impact on public health and ducks the question of the cumulative impact drilling may have on roads and infrastructure.

Furthermore, he notes that the DEC lacks authority to exercise crucial oversight of water withdrawals.

In the face of those criticisms, the DEC defends the SGEIS process and the natural gas industry supports it enthusiastically.

"We appreciate the input from NYCDEP," Yancey Roy, a DEC spokesman, said of Lawitts' letter. "At this time we are still taking input from the public and it would not be appropriate to respond to specific comments."

Jim Smith, a spokesman for the Independent Oil and Gas Association of New York, said the

gas industry has no doubt that drilling can be conducted safely in the New York City watershed and the Southern Tier.

“The SGEIS is more than sufficient to assure the public that drinking water and the environment will be protected,” Smith said.

Lawitts isn’t persuaded. He calls for a ban on hydrofracking within the New York City watershed.

Most of his comments on the shortcomings of the DEC’s proposed regulations apply statewide. If New York City is concerned that drilling could contaminate its unfiltered water, Schuyler County needs to be every bit as worried that it will contaminate hundreds, if not thousands, of local wells.

Together, New York City and the EPA have issued the DEC a jarring wake-up call.

It remains to be seen whether the agency will bestir itself or just roll over and hit the snooze button.

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 sixth 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](#). To see his fifth column, click [here](#).*

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