

Green Celebrities Heap Praise on Cuomo While State Turns Blind Eye to Health Risks of 'Radioactive' Drilling Imports

Peter Mantius / January 27, 2020January 29, 2020 / Uncategorized /



ALBANY, Jan. 27, 2020 — Gov. Andrew Cuomo's plan to make the state's fracking ban permanent by enshrining it in law earned due praise last week from a bandwagon (<https://waterfrontonline.files.wordpress.com/2020/01/enviroslikecuomoban.pdf>) of environmentalists.

Sandra Steingraber, co-founder of New Yorkers Against Fracking, called it “exactly the right thing to do.” Actor/activist Mark Ruffalo (right) touted the governor’s “real environmental and climate change leadership.”

The announcement

(<https://waterfrontonline.files.wordpress.com/2020/01/cuomopronfrackban.pdf>) comes six months after former Vice President Al Gore (below) showed up to celebrate the governor’s signing of a state climate bill (<https://www.nysenate.gov/legislation/bills/2019/s6599>) that calls for New York to get 70 percent of its electricity from renewable sources by 2030.

But photo ops with green celebrities that paint Cuomo as an environmental hero do not reflect the full story of his administration’s complex relationship with the oil and gas industry.

For example, Cuomo hasn’t explained how his 2030 renewables target can possibly be achieved after the second of two giant new fracked-gas-powered electric generating plants comes online soon. He’s issued permits for both the 680-megawatt Competitive Power Ventures plant in Orange County and the 1100-megawatt Cricket Valley plant in Dutchess County. CPV already operates, while Cricket is set to be completed this year, creating a major new market for Pennsylvania’s fracked gas.

And while New York prohibits high-volume fracking, it continues to allow landfills in the Southern Tier to accept waste from fracked wells in Pennsylvania despite abundant evidence the lucrative imports are dangerously radioactive.

That outlet for inconvenient waste represents a “lifeline” for Pennsylvania’s gas drillers, said Maya Van Rossum, a lawyer who heads the Delaware Riverkeeper Network.

On the one hand, Van Rossum praised Cuomo for “sending a powerful message” that a fracking ban as policy is not enough — it must be enshrined in law. “That makes it much less likely it can easily be rolled back,” she said.

However, she added, “It does seem (Cuomo) continues to miss the mark on other aspects of the industry that are equally as devastating (as the act of fracking).”

Dr. David Carpenter, director of the Institute for Health and the Environment at the University of Albany, argues that the Cuomo Administration has turned a blind eye for nearly a decade to the health hazards of its policy of allowing drilling waste imports. That stance is shared by Steingraber and most, if not all, of the other green activists who favor making the fracking ban law.

In interviews and sworn affidavits

(<https://waterfrontonline.files.wordpress.com/2020/01/carpenteraffidavitjan2018.pdf>), Carpenter (below) has stated that test results provide ironclad proof of high radioactivity in leachate drawn from the Chemung County Landfill near Elmira and the Hakes C&D Landfill near Corning, both leading recipients of Pennsylvania drilling waste.

While the Cuomo Administration is dismissing Carpenter's warnings today, it used to take him quite seriously.

At least it used a health study he co-authored as a key prop at the December 2014 press conference called to announce the state's fracking ban policy. After Cuomo explained that unacceptable health risks had forced him to impose the ban, his Health Commissioner, Howard Zucker (left), waved the Carpenter report.

Van Rossum said it seemed odd the Cuomo Administration embraced Carpenter in 2014 but now waves off his latest warnings about landfill radiation.

"He's an expert with an impeccable reputation," she said. "One can only surmise, the difference is either ill-informed or the result of some form of politics."

Over the past decade, the administration's concerns about the health aspects of fracking have been intermittent, at best.

In fact, denying the possibility that drilling waste imports are dangerously radioactive has become state policy, as spelled out in a 2015 Department of Environmental Conservation memo

(<https://waterfrontonline.files.wordpress.com/2020/01/a2015policymemodec.pdf>).

At a legislative hearing on water quality in 2016, DEC Commissioner Basil Seggos went so far as to testify: "No fracking waste is being dumped in New York State."

Politifact, which grades the reliability of comments by public officials, rated that Seggos statement as “False.” It cited a report from Environmental Advocates of New York

(http://www.eany.org/sites/default/files/documents/license_to_dump_addendum_0.pdf) that used data from Pennsylvania to detail waste imports by the New York landfills.

Further details are found in reports by Earthworks

(<https://waterfrontonline.files.wordpress.com/2020/01/earthworksnysreportjuly2019.pdf>) and the FracTracker Alliance. (A FracTracker

(<https://waterfrontonline.files.wordpress.com/2020/01/fractracker2019.pdf>) chart, left, shows PA drilling wastes sent to NY facilities, based on data from PA’s Department of Environmental Protection).

When Cuomo was first elected governor in November 2010, the fracking boom was already well underway in Pennsylvania, the heart of the natural-gas-rich Marcellus Shale formation. New York has Marcellus gas too, and pressure was mounting for it to join the drilling party.

Chesapeake Energy was busy leasing thousands of acres across the Finger Lakes and Southern Tier for potential high-volume fracking.

Chesapeake leases extended close to the shore of Seneca Lake, and the Oklahoma company sought state permits to inject hazardous fracking fluid waste into an abandoned well in Pulteney on a steep western slope above Keuka Lake.

The U.S. Environmental Protection Agency worried New York’s fracking rules might not give adequate attention to health issues. So it recommended tasking the state Department of Health with a major role in drafting them. But Cuomo rejected the EPA’s idea and assigned the job to the DEC, which has had close ties (<https://waterfrontonline.files.wordpress.com/2020/01/dmr2013story.pdf>) to the energy industry.

In Albany, lawyer/lobbyist Tom West has advertised his role in helping the DEC draft industry-friendly drilling laws enacted in 2005 and 2008.

In 2012, the agency gave West (left) an early peak at its draft regulations for fracking before they were made public. West, who has represented both Chesapeake, the gas well driller, and Casella, the landfill operator, responded with



an email to senior DEC officials urging the agency to “reduce or eliminate radionuclide testing.”

Meanwhile, between 2011 and 2018, New York landfills were accepting more than 600,000 tons of drill cuttings and other types of drilling waste from Pennsylvania, according to that state’s records.

If all that waste were loaded into 100-ton coal cars for hauling by rail, the job would require about 60 mile-long trains.

The Chemung Landfill has been the chief importer.

Because Marcellus Shale gas wells are often contaminated with radioactive isotopes, including Radium 226 and radon, residents who live near the Chemung dump questioned whether it might be accepting radioactive loads that aren’t permitted.

The DEC has insisted the materials shipped there have never exceeded benign levels of natural “background” radiation (despite the fact that Casella began importing the wastes months before it even informed the DEC).

The agency’s assurances notwithstanding, neighbors of landfill mounted an unsuccessful legal challenge to Casella’s right to import radioactive material.

The group included Dr. Earl Robinson (left), a local pulmonologist, who warned that excess radon in the air around the dump could cause lung cancers to spike, while water-soluble Radium-226 in the landfill’s leachate could seep into the local aquifer and boost lung, kidney and bladder cancers.

DOH statistics

(https://apps.health.ny.gov/statistics/cancer/environmental_facilities/mapping/map/#cancers) from 2011 to 2015 show the landfill sits near the center of a lung cancer cluster east of Elmira. The agency observed 304 lung cancers in the cluster area during the five-year span, 57.7 percent more than the 192 expected within the group of 55,300 people.

Bladder cancer in Chemung County was 27 percent higher than the state average for the 2011-2015 period, according to DOH records.

Robinson (<https://www.youtube.com/watch?v=EynKMe-ztZ0&t=17s>) said last week that drilling waste imports to the landfill probably have little or nothing to do with those higher rates because cancer is a cumulative disease that takes many years, if not decades, to set in. Still, any radioactive materials dumped in the landfill would threaten to sharply exacerbate existing trends, he said.

Casella has paid Chemung County tens of millions of dollars under its long-term contract to run the landfill (Stargazette.com photo above). The company also owns and operates Hakes C&D Landfill and Hyland Landfill in Allegany County, both of which have accepted Pennsylvania drilling wastes.

State Sen. Tom O'Mara (R-Big Flats), who earns controversial legal income outside his state legislative pay, has long been paid to represent Chemung County.

O'Mara's role in the legislature has proven to be important in maintaining cash flows from waste imports to his county.

In 2014, O'Mara (right) provided the deciding vote in the Senate Committee on Environmental Conservation to kill a bill that would have banned New York's drilling waste imports. The following January, O'Mara was appointed chair of that committee, which oversees the DEC and its budget. He gave up the post early last year after the 2018 election gave Democrats control of the Senate and its committees.

(Cuomo had crossed party lines to provide key support to O'Mara during his challenging 2016 re-election campaign. Both men are sons politically powerful fathers. They fit into a broader pattern. At least five New York father-son political duos

(<https://waterfrontonline.files.wordpress.com/2020/01/omarafrackloopholeoct2016.pdf>) have a direct or indirect interest in fracking — Cuomo, O'Mara, Skelos, Libous and Barclay.)

In September of 2015, the DEC wrote a policy memo

(<https://waterfrontonline.files.wordpress.com/2020/01/a2015policymemodec.pdf>) to justify its stance on drilling waste imports.

The memo states that radiation detectors at entrances to landfills ensure that any illegally radioactive loads are turned away and that landfill leachate is screened for certain radionuclides. According to the memo, landfills may not accept accept

drilling waste liquids or any wastes containing naturally occurring radioactive materials that have been “processed and concentrated.”

But Pennsylvania records indicate that New York landfills, including Hakes, have received hundreds of “barrels” of its drilling waste. And state controls over leachate testing have not always inspired confidence.

For example, the DEC continued to accept analyses of landfill leachate prepared by Upstate Laboratories Inc. for many months after armed EPA officials raided its office (<https://waterfrontonline.files.wordpress.com/2017/08/31dcbureau11202013taintedwaterlabflourishedunderlaxregulation.pdf>) and the DOH stripped its state license. The lab later pled guilty to felony charges of doctoring 3,300 test water test results.

The DEC also helped Seneca Meadows, the state’s largest landfill and a one-time drilling waste importer, dispose of its toxic leachate at an industrial site in Endicott under a secret “pilot project” that wasn’t disclosed to Endicott residents.

When locals uncovered the fact that truckloads of hazardous leachate were entering their community and being dumped in the Susquehanna River, they produced a playful YouTube video (<https://www.youtube.com/watch?v=KCg9vu-O0ks&t=39s>) called ‘*Who Put the Stink in Our Drink?*’

The latest flap over Pennsylvania drilling waste arose when Hakes sought a state permit to expand. That triggered a lawsuit filed by the Sierra Club and others against Casella and the DEC, which recently granted the company its expansion permit.

Carpenter, an expert witness for the plaintiffs, claims the presence of high levels of the short-lived uranium chain isotopes Lead-214 and Bismuth-214 in Hakes leachate proves beyond question that “there is a huge reservoir of radioactivity in the landfill.”

The DEC has rejected that assertion, first advanced by Raymond Vaughan (<https://waterfrontonline.files.wordpress.com/2020/01/rayvaughanfeb212019.pdf>) (below), a PhD geologist from Buffalo.

As previously reported in WaterFront, the DEC had squelched public debate (<https://waterfrontonline.blog/2020/01/07/permit-allows-hakes-landfill-to-expand-critics-say-its-highly-radioactive-and-a-health-threat-to-communities-downwind/>) about radiation when considering the Hakes expansion bid by:

- Explicitly excluding discussion of radiation issues when setting the ground rules for an environmental impact statement for the project.
- Allowing the landfill to discontinue testing for the tell-tale isotopes that mark the presence of radon in the leachate (and not requiring tests for radon itself).
- Rejecting requests for a special adjudicatory hearing on factual issues related to radioactivity levels at Hakes.

The DEC's cover letter to Casella announcing that the permit had been granted was courtesy-copied to 18 officials within that agency, as well as to local officials, outside lawyers and engineers.

The list of 29 people officially notified of the DEC's Hakes permit included West, the Casella lawyer, but no one from either the state Health Department or the EPA.

The Sierra Club is asking a Steuben County court to cancel the Hakes permit on the grounds that the DEC failed to follow the law. But courts have been reluctant to second-guess agency decisions in similar cases.

Throughout the decade-long Cuomo Administration, state legislators have introduced various bills relevant to drilling waste imports — without much success. Some have sought to ban the practice, while others have sought to end the oil and gas industry's exemption from rules regulating hazardous waste.

Under both federal and state law, oil and gas waste may not be classified as hazardous regardless of its toxicity, a gaping regulatory loophole.

A bill to close that loophole (S3392) (https://www.nysenate.gov/search/legislation?searched=true&type=f_bill&bill_printno=s3392&page=1) and regulate oil and gas waste according to objective measures passed the state Senate by a 45-17 vote last year, before stalling in the state Assembly's Rules Committee.

O'Mara and all five of the other senators serving districts that touch on the Finger Lakes — all Republicans — voted against the loophole-closing measure.

The bill is back on the legislative calendar this year. Cuomo's press office declined to comment on the pending legislation.

Van Rossum said President Trump's EPA can't be counted on for regulatory relief.

"Not only will the feds not stand up to protect the environment, they are looking at every turn to weaken protections," she said. "It's more critical than ever that the states fill in the gaps. It's vitally important for this (hazardous waste) loophole to get closed at the state level Legislators need to step up."

Published by Peter Mantius

I am a journalist who lives in Watkins Glen, NY. I write about the environment and politics on my website, Waterfrontonline.blog. For more detail on my background, see the "Peter's Bio" section on that site. [View all posts by Peter Mantius](#)

1 Comment

1.

careofny says:[January 27, 2020 at 4:53 pm](#) [Edit](#)

Cuomo wont regulate INDOOR wood boilers that NYSDEC says they have no jurisdiction over . So for eight years of pleading its has been silence. He doesn't care about the water in Hoosick Falls why would he care about the AIR.

Schumer has said in a letter to my family its not a federal problem. Gillibrand is hiding -John _____

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