ENVIRONMENTAL ADVOCATES OF NEW YORK
YOUR GOVERNMENT WATCHDOG

License to Dump: Addendum, June 9, 2017

When *License to Dump* was released in February 2015, Governor Andrew Cuomo had, only two months earlier, announced New York would be banning high-volume hydraulic fracturing (fracking), which was celebrated news across the State. Department of Health (DOH) Commissioner Dr. Howard Zucker declared that the potential risks of fracking were too great for the practice to take place in New York.

The State finalized its ban on June 29, 2015; within its justifications for the ban, the State included the dangers posed by fracking waste generation on page 4 of the DEC's Findings Statement:[1]

"…high-volume hydraulic fracturing requires significantly more water, and chemical additives, which may pose public health hazards through potential exposure. The high volumes of fracturing liquids associated with this type of well completion raise concerns about potential significant adverse impacts to water supplies, wastewater treatment and disposal and truck traffic. Horizontal wells also generate greater volumes of drilling waste (cuttings) than vertical wells drilled to the same target formation."

Then, on Page 5, the DEC states:

"The disposal of flowback water and production brine could cause a significant adverse impact if the wastewater is not properly stored and treated prior to disposal. Residual fracturing chemicals and/or naturally-occurring constituents from the rock formation could be present in production brine and could result in treatment, sludge disposal, and receiving-water impacts. Salts and dissolved solids may not be sufficiently treated by municipal biological treatment and/or other treatment technologies which are not designed to remove pollutants of this nature."

However, more than two years later, despite the precaution that was taken with fracking, that same precautionary approach has not been given to the disposal of fracking waste. New York landfills continue to accept fracking waste in large quantities with no regulations.

And New York's Department of Environmental Conservation (DEC) continues to deny that New York landfills accept this waste despite data from Pennsylvania's Department of Environmental indicating otherwise.[2] At a legislative hearing on water quality in September 2016, DEC Commissioner Basil Seggos stated, "no fracking waste is being dumped in New York State," a statement that was since debunked.[3]

Even though DEC has held firm to Commissioner Seggos' claim, the agency does appear to be taking some steps in the right direction. For instance, *License to Dump* found that New York's Solid

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[1] http://www.dec.ny.gov/energy/75370.html
[2] "Waste report by waste facility state," *PA DEP Oil and Gas Reporting Website*, accessed June 8, 2017, https://www.paoilandgasreporting.state.pa.us/publicreports/Modules/Welcome/ProdWasteReports.aspx
[3] Dan Clark. "Landfills in upstate New York still accept fracking waste,"*Politifact New York*, September 30, 2016, http://www.politifact.com/new-york/statements/2016/sep/30/basil-seggos/fracking-waste-being-dumped-new-york/

Waste Management regulations, NYCRR Part 360, lacks any regulations for the disposal of oil and gas waste. One year after *License to Dump* was released, DEC issued proposed regulatory changes to NYCRR Part 360 that include some regulations for oil and gas waste.[4] Many of the concerns raised in *License to Dump*, and some of the recommendations, are partially addressed in the proposed regulations.

At the time of this writing, the DEC has moved in the correct direction on the following:

The proposed regulations require radiation detectors at all landfills that accept municipal solid wastes.[5] This is a positive step and something we proposed in our report. The required installation of radiation detectors alone, however, overlooks the numerous other potentially hazardous chemicals that may be in fracking waste. Environmental Advocates recommends that testing be expanded to cover other contaminants.

In addition, the proposal adds a new requirement for waste tracking forms concerning the transport and disposal of fracking waste (and other kinds of waste).[6] This will provide the public access to at least somewhat reliable New York data which, for too long, has been unavailable or which we've had to rely on other states to report.

The proposed regulation includes, for the first time, concentration limits for the acceptance of NORM (naturally occurring radioactive material), which include daily background radiation readings, weekly field checks using a known radiation source, annual detector calibration, and staff training.[7] When *License to Dump was released*, DEC had publicly stated that this was already current practice. The proposed regulations are not clear on the increased frequency given the current lack of current requirements.

Where DEC continues to miss the mark:

In announcing the new regulations, the administration described them as changes to NYCRR Part 360. But they also extend to Part 370 (where the existing hazardous waste loophole is within state regulation that exempts oil and gas waste from being defined as hazardous). Unfortunately, the proposed regulations maintain the loophole. To protect public health and the environment, EANY recommends that it be eliminated once and for all.

DEC has stated in the past that landfills are prohibited from accepting any fracking wastes besides drill cuttings (the shale pieces that come up during the drilling phase of well construction). However, the agency has yet to include language in proposed or final regulations that explicitly prohibits the disposal of flowback and produced fluids in landfills. And, as our data in the next section shows, to this day, New York landfills accept more than just drill cuttings.

It's now been over a year since DEC issued their proposed changes to NYCRR Part 360 and regulations have not yet been finalized. While New Yorkers await finalization of regulations, the total volume of fracking waste disposed in New York landfills only continues to grow.

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[4] "Solid Waste Management Facilities (Part 360), Proposed Regulations," *NY DEC*, accessed June 8, 2017, http://www.dec.ny.gov/regulations/81768.html

[5] Proposed NYCRR Part 363 - 8.1 (a)(4) http://www.dec.ny.gov/regulations/81768.html

[6] Proposed NYCRR Part 364-1.2(e)(6) http://www.dec.ny.gov/regulations/81768.html

[7] Proposed NYCRR Part 363-8.1(o) http://www.dec.ny.gov/regulations/81768.html

608,646 Tons of Fracking Waste

As of February 2015, New York landfills had accepted approximately 23,000 barrels of liquid fracking waste, and 460,000 tons of solid fracking waste.

Since then, according to the latest available data from Pennsylvania's oil and gas reporting database, there has been a 32-percent increase, with the total volume of waste topping 608,646 tons as of March 2017. There does not appear to be any additional reported barrels since 2013 – this, however, does not mean liquid fracking waste is not coming into the state. In fact, it underscores the limitations of New Yorkers having to rely on data from the Commonwealth of Pennsylvania.

Three of the five landfills that have accepted fracking waste continue to do so:

- Chemung County Landfill, Lowman, NY (2010 to present) – 323,466 tons
- Hakes C&D Landfill, Painted Post, NY (2010 to present) – 167,238 tons and 332 barrels
- Hyland Facility Association, Angelica, NY (2010 to present) – 35,681 tons and 534 barrels
- Allied Waste Systems, Niagara Falls, NY (2011 to 2013) – 73,275 tons and 21,763 barrels
- Seneca Meadows Landfill, Waterloo, NY (2010 to 2011) – 8,985 tons

As we reported in *License to Dump*, Chemung County Landfill ("Chemung") has continued to accept the most fracking waste, covering a whopping 53-percent of the total volume of fracking waste entering New York State.

DEC continues to state that the only acceptable fracking waste for disposal in New York is drill cuttings; however, reporting indicates otherwise for waste flowing to New York landfills. In addition to flowback and produced fluids, which were reportedly disposed of in New York landfills up until 2013, the latest waste categories reported to be disposed of in New York include: "soil contaminated by oil and gas related spills," "synthetic liner materials," and "servicing fluid."

According to Pennsylvania's DEP, "any soil contaminated by an oil- or gas-related spill more often than not comes in contact with flowback water."[8]

Given the hundreds of chemicals used in fracking and in the waste produced, the latest data emphasizes how important it is to test waste before it enters the landfill. Radiation detectors alone won't determine if waste contains potential carcinogens, like benzene, for example.

In face of water contamination crises arising in New York State, it is critically important that New York act aggressively to prevent the dangers that can arise from fracking waste.

[8] Dan Clark. "Landfills in upstate New York still accept fracking waste,"Politifact New York, September 30, 2016, http://www.politifact.com/new-york/statements/2016/sep/30/basil-seggos/fracking-waste-being-dumped-new-york/