

## Shale Gas Controversy and Environmental Rights, Part 2

In this EnviroLaw Blog Extra, author Michel DesNeiges continues his look at the challenges and implications of shale gas development in New Brunswick. In this blog, he turns his attention to a series of New York Times investigative reports on the shale gas industry that have him wondering about the industry's viability.

Michel DesNeiges' EnviroLaw Blog

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Lately, there seems to be a lull in the debate surrounding shale gas exploration and extraction in New Brunswick. There is less talk about it in the media and no significant announcements have been made by either government or industry.

The debate continues to simmer though, mostly in local community halls and living rooms. I know this because I continue to be invited to them all over southern New Brunswick.

As for developments, if our news media has little to say, a look at our neighbours to the south tells quite a different story. The headline there could read: "Shale Gas Bubble May Be About To Burst";.

As most people know, shale gas development and the controversy surrounding it is not an exclusively New Brunswick phenomenon. Quite the opposite. New Brunswick is a repeat performance, so to speak, of what has been going on and continues to go on in many parts of the United States.

Indeed, most of what people know, fear and cheer about this industry is based on the American experience.

The state of Pennsylvania has been front and center in this controversy. The first horror stories began to emerge from that Mid-Atlantic state less than a decade ago. That is when we first heard about contaminated water, industrial development of rural areas and public uprisings.

Later came stories of public opposition in other states such as New York where a moratorium was placed on shale gas exploitation in 2010.

In New York, public concerns as well as that government's own unanswered questions led to the creation of an advisory panel of experts on shale gas. It continues its work and many New Yorkers eagerly await its findings. Many environmentalists here in New Brunswick are also keeping a close eye on its activities and recommendations.

The panel has been mandated to cut through the entanglement of facts, fears and propaganda coming from both sides of this issue.

In fact, as articulated in my previous article, shale gas extraction has its optimistic supporters, fervent detractors and even cautious proponents in the environmental community.

Those who oppose the industry base their opposition on numerous arguments and facts but also on fears that the industry and government are unable to assure safe extraction of the resource and that they are not really concerned with the public interest.

The cautious proponents offer mostly conditional support based on the willingness and ability of industry and government to protect the public weal and the natural environment.

The unconditional supporters of shale gas development question the "anti-frackers" sources of information and accuse their opponents of being too emotional and sensational.

Everyone, however, claims to want the facts.

One source of information that has provided much food for thought recently is an investigative journalism series done by The New York Times.

The series looked at the claims of the natural gas industry that it is acting responsibly to protect the environment, that it is safeguarding communities from damaging practices, and that it is informing the public about the true risks and benefits of shale gas extraction.

The series has many interesting findings.

Looking into practices in New York State and elsewhere in the U.S., the Times reveals that the industry's worst actors have polluted the environment in myriad ways, impeded public disclosure and bent compliant government regulators to allow exceptions to existing environmental rules and regulations.

On the issue of environmental damages, the Times quotes a study of the federal government's Environmental Protection Agency (EPA) showing, for example, that municipal sewage treatment plants have been accepting millions of gallons of shale gas industry wastewater that the plants are incapable of treating. The study shows that receiving rivers and streams are also unable to consistently dilute this kind of highly toxic effluent. The Times concludes that the industry is routinely making inflated claims about how much of its wastewater is actually being recycled.

The Times investigation also contradicted the industry's claim that there is not a single documented case of drinking water being contaminated by fracking. Referring to documents found in EPA archives, the Times found this claim is false.

The Times showed that the EPA, for its part (and despite its own findings), is essentially caving to industry lobbyists. It is doing this mostly by narrowing the scope of its hydrofracking studies, which leads to widespread exemptions for the industry from environmental assessment requirements. The Times reports that this EPA approach to hydrofracking is being maintained despite protests from agency scientists.

Then there is the revelation that among federal government energy experts there is serious doubt about the economic prospects of shale gas.

It seems many of these officials are expressing grave concerns that their agency's predictions were too heavily influenced by the industry's over-optimism. According to the Times, the gas wells most likely will not produce as much gas as industry is claiming. This raises the prospect that companies may be misleading investors about the financial and economic benefits of shale gas.

The New York Times being the highly regarded journalism institution that it is, this series should bring our own media here in New Brunswick to investigate things for themselves.

Another cue that should be taken by people here is the need for our government to put in place an expert panel to investigate the claims of industry.

New York State Governor Andrew Cuomo's "High Volume Hydraulic Fracturing Advisory Panel" is also charged with developing recommendations regarding rules to safeguard New Yorkers. In New Brunswick, our provincial government's rule making process is already well underway. But it has been done internally and without true public consultations. It is not too late, however, for the government to put in place an oversight committee composed of independent thinkers that could help steer things in a responsible manner once the long awaited regulation is put in place.

The Alward government could be even more proactive by tackling this issue in a more global and systematic fashion. That is, by recognizing that a more permanent body must be put in place in New Brunswick to address all environmental controversies, current and future. That could be accomplished by adopting the NBELS's proposed Environmental Bill of Rights for New Brunswick.

I'll conclude this series of blogs on that issue next month.