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A Vote of “No Confidence” Why Local Governments Take Action in Response to Shale Gas Development

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What is the Issue?

In the United States, natural resource development is regulated through a complex layering of local, state and federal policies whose purposes are to aid resource extraction companies, lessen environmental damage, and ameliorate public costs incurred with resource development. Ideally, this approach enables equitable distribution of the costs and benefits of natural resource development across producing and consuming populations, and flexibility to respond to varied environmental conditions (Sovacool, 2008). This framework may be unworkable, however, if there are no mechanisms to allocate costs and benefits, or if the regions that incur the costs of natural resource development do not trust that they will be treated fairly and that their economic and physical environment will be preserved.

Our research addresses why hundreds of communities in and around the Marcellus and Utica shale “plays” have taken local legislative action when state government has primary authority for regulating high volume hydraulic fracturing (HVHF) shale gas development¹, and responsibility for its effects on local economies, public health, and environmental conservation. In particular, we contrast the response in New York (which has not yet authorized HVHF shale gas development) and Pennsylvania (which has).

What Actions Have Been Taken?

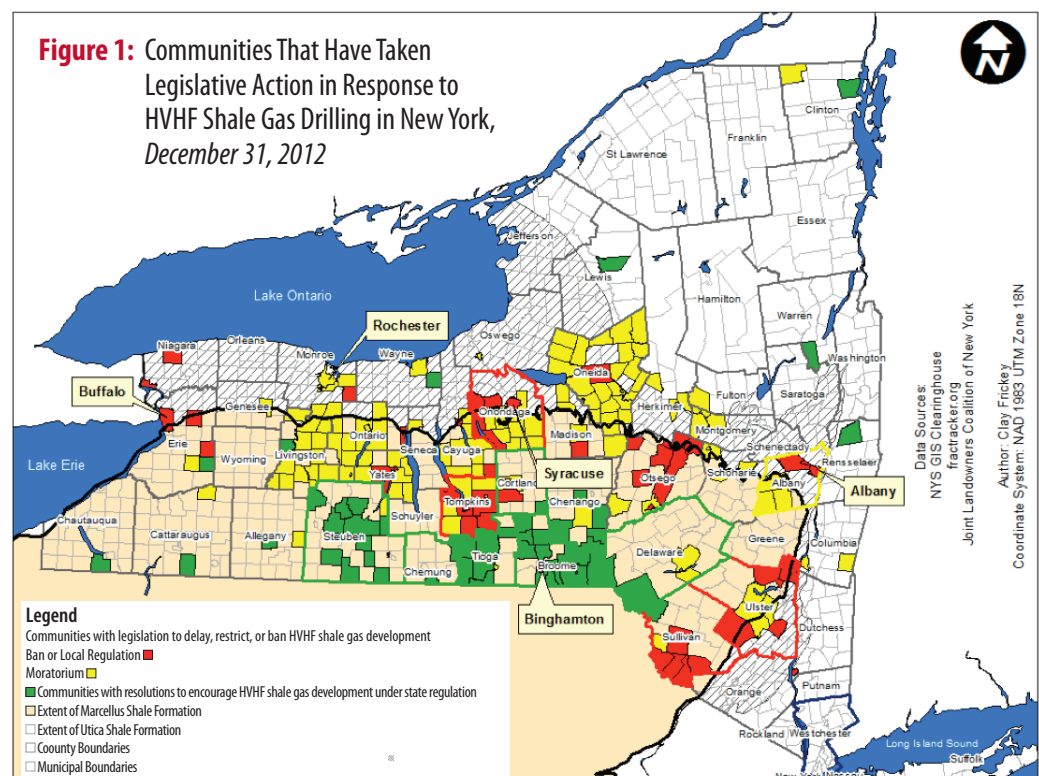
Of 298 “action taking” local governments identified in our 2012 database, the majority (233) were in New York state, including all 54 that took action to support pursuing shale gas development under state regulation. All 33 Pennsylvania communities we identified had acted to restrict or control shale gas development already underway.

The majority of the actions to constrain HVHF shale gas drilling in New York fall into the category of moratoria (123)

-- a delay for further study or to “wait and see.” Only a small number of communities (10) have adopted outright bans on hydraulic fracturing. The other most common action in New York communities (40) was to place zoning restrictions on some aspect of HVHF shale gas development. These include limits on all industrial land uses, or on shale gas drilling by-products (e.g. toxic waste water, tailings, or sludge), facilities (e.g. pipelines, compressor stations, waste disposal facilities), or related activities (e.g. leasing, siting, noise levels, road use). These actions indicate that communities have concerns about the shale gas development process in general, and a range of concerns about its potential impact on their community.

What Did Local Government Leaders Tell Us?

To gather in-depth information on the motivations and public discussion behind local legislative action, we conducted structured interviews with the chief elected official of each locality (or his or her designee) in a stratified sample of the “action taking” communities in



¹ Vertical drilling for natural gas, using another form of hydraulic fracturing, is permitted and has occurred for many years in the Marcellus Shale states. The current controversy is over something different: the combination of horizontal drilling techniques and high volume slickwater hydraulic fracturing (HVHF, also referred to as “hydro-fracking” or just “fracking”) to extract natural gas that is embedded in shale layers – a more intensively industrial process requiring the use of millions of gallons of water per well, the utilization of an array of chemicals, and the disposal of the resulting hazardous waste, all on a scale far in excess of what vertical drilling requires. The two drilling processes are dramatically different in their impact on the regions in which they occur, both environmentally and economically.

New York and Pennsylvania. We selected sample communities whose location, median household incomes and educational attainment rates mirrored all action-taking localities.

Every interviewee answered the same set of questions about their community's public deliberations in response to the prospect of shale gas development and opinions about the role of the State, the natural gas industry, and local government in how natural gas extraction should be regulated.

Deliberative Process: For New York and Pennsylvania communities taking action to restrict HVHF, the deliberative process was extensive. In the communities responding to a question about the extent and content of official public meetings dedicated to discussing shale gas issues since 2008, 49% had between 1 and 3 public meetings or hearings, 20% had between 4 and 8, and 29% had more than 8. By contrast, in the 6 New York communities we interviewed who passed resolutions in favor of state control, 4 had no public meetings. The minimal public involvement in these resolutions is substantiated by press accounts for a larger number of communities (Reilly, 2012).

Community Concerns: In the communities that passed restrictive legislation the primary concern was water quality. However, residents raised a range of other issues -- public health, traffic congestion and how industrialization of the region would affect their quality of life. Not surprisingly, communities that passed resolutions supporting shale gas development focused more on community benefits, although road maintenance and traffic congestion were mentioned as concerns. Benefits discussed included tax benefits, economic benefits to local citizens, economic benefits to local businesses, and increased commercial development.

Trust Issues: The majority of the public officials we interviewed in New York and Pennsylvania indicated that their citizens are skeptical of the willingness or ability of the natural gas industry or their State government to protect affected communities from the impacts of HVHF shale gas drilling on their environment, health and safety, or economic and social stability.

Public Costs and Local Capacity: Respondents expressed significant doubts about local government capacity to respond to the needs and expectations of the public and of gas companies during the drilling phase. Communities are unsure about how costs related to shale gas development (including increased demand for local services) will be covered.

Regulatory Preferences: Our research signals that the issue of shale gas development is important to local decision-makers, but equally important is the ability of the community to control its own destiny.

Asserting Local Control

In Pennsylvania, shale gas development is already underway and communities are taking action to control the effects on their communities, the majority via zoning regulation. Their initiatives were prompted by public dissatisfaction with the State's regulation of HVHF development, or by the passage (in February 2012) of Act 13, a Commonwealth of Pennsylvania statute designed to create consistent land use regulations across communities, strengthen some environmental regulations, and minimally compensate communities for damages connected with HVHF development. The most important purpose of that statute, however, was to exert State power to govern all aspects of HVHF shale gas development in the state regardless of local government preferences.

Several Pennsylvania communities sued the State over Act 13, contending that it takes away their ability to control shale gas related operations through local zoning, and prevents local officials from carrying out their duty to protect the health and welfare of their citizens. Numerous other Pennsylvania communities, environmental groups, and "good government" organizations supported the suit against Act 13. While Act 13 was overturned by lower Pennsylvania

state courts, the decision is currently being appealed to the State Supreme Court by the Commonwealth.

In New York, the movement toward use of a home rule argument has been slower to emerge. The state moratorium encouraged communities to learn about the environmental, social and economic issues related to HVHF, and to comment on drafts of a Supplemental Generic Environmental Impact Statement (SGEIS). This learning process, including learning from the experience of Pennsylvania communities, has evolved as local officials and environmental leaders interacted with the State of New York over the SGEIS and the development of HVHF regulations. According to our interviews, experience with state officials has *decreased* confidence in the willingness or capacity of state government to address the short-term and long-term effects of HVHF shale gas development on localities.

The move to exercise "home rule" has emerged in response to a concern that the State of New York was likely to approve HVHF and enforce State preemption of local authority over land use. In New York, suits against communities asserting the right to local jurisdiction over land use have pitted landowners or oil and gas companies against local governments. In these cases, too, lower courts have upheld community rights to local jurisdiction over industrial activities. But significantly, the legal arguments in favor of some level of local control accept that jurisdictions who favor natural gas drilling would be able to approve it under whatever limitations or regulations they stipulate.²

Conclusions

What began as a protest movement among environmental groups concerned with the environmental impact of shale gas development has drawn wider interest from local government policymakers and individual citizens. The movement challenging the current regimen for regulating shale gas development has matured through the mobilization of internet-based information networks, community outreach, dialogue with government agencies, opportunities to vet industry and state produced information, and specialized expertise on social and economic as well as environmental aspects of natural gas development.

In New York, local resistance has only been compounded by threats from the industry to sue localities. In Pennsylvania, support for communities seeking to regulate HVHF has expanded in the wake of attempts by the Commonwealth to deny communities that had challenged Act 13 in court any impact fees from drilling in their localities.

Our research results indicate that caricatures of "pro-drilling" and "anti-drilling" communities misrepresent the richness of the debate at the local level and the reasons behind local legislative actions. While advocates interpret a moratorium as an indication of a stand against fracking, it often means a community is seeking more information before making a decision. The spectrum of concerns and legislative responses is broad, in sharp contrast with the narrow discourse on HVHF shale gas development reported in the media. Our findings indicate that whether local governments pass legislation to restrict or support shale gas development, many citizens are worried about the consequences, unclear about how the risks and costs will be distributed, or skeptical about the ability and willingness of either the State or the industry to look out for their interests.

For a more detailed account of this research and the results, please download the complete Report of the same title, available at: <http://www.greenchoices.cornell.edu/development/marcellus/reports.cfm>

² Although the natural gas industry opposes local jurisdiction over natural gas drilling, contending that it will create an inefficient patchwork, this is the situation under which they operate in Texas, which is a strong home rule state.

