

Drilling Done Right

It Is Possible

by Martha Goodsell

Broader View Weekly, April 3, 2009

Al Appleton, former NYC Commissioner of Environmental Protection who designed and initiated the New York City-Catskill watershed protection program, addressed a Shaleshock-invited audience on March 26 at the Ithaca High School. Currently a NY citizen activist and independent environmental consultant, Appleton expressed his criticisms of the natural gas industry as it is currently operating, noting that any drilling which is done in an unregulated fashion is a threat not only to the environment but to life as we know it.

“Water, soils, woods, roads, and even the rural economy are at risk with low budget, under-regulated, drilling,” Appleton stated. “Drilling must be done sustainably to protect the environment, the economy and rural communities.”

Things too good to be true often are. The wealth hidden within the Marcellus shale fields proves no exception to that rule. Appleton pointed out that natural gas drilling used to be a benign activity; but fracking he claimed, changed all that.

So did deregulation. Currently, industry operates on the honor system without much oversight or random inspection. The industry is exempt from the Clean Air Act, the Clean Water Act and the Safe Water Drinking Act. According to Appleton, regulations should control the technology, but for now technology is driving regulation, and that’s wrong.

Appleton isn’t looking to shut down the natural gas industry; rather he’s demanding that if drilling be done, it be done right. Appleton isn’t the only voice demanding such accountability. Chemung County Farm Bureau President Ashur Terwilliger is demanding the same.

Appleton’s Suggestions

“If Wyoming, the emptiest area within the US, is now asking for federal help to deal with its ozone containment area, a result of natural gas production, then what do we have to look forward to?” Appleton asked the audience.

Appleton had some suggestions at the ready. His priorities are to protect drinking water, the land, and a community’s welfare. Water protection could be accomplished by inspecting well casings. Appleton pointed out that a majority of casings fail within 15 years, despite wells being used for up to 50 years. Components of fracking fluid must be disclosed, he stated, while lagoon storage must be eliminated, but not in favor of disposal wells, as ground fluids can and do migrate. Appleton suggested water testing before, during and after drilling.

Appleton would like to reduce impacts to the land, and preserve New York’s scenic beauty. He suggested reducing the amount of land impacted. He estimated that 200,000 acres of land would be cleared in a checkerboard pattern, creating an industrial landscape across much of New York. Pads must be located considering winter thaws, spring rains and summer flooding. Impact on agricultural lands must be lessened, while lands used for tourism and recreation should be off limits to drilling, Appleton suggested, adding that unique and delicate areas must be left alone. Any land used in any part of the drilling process must be properly restored, Appleton demanded, including reducing the impact of pipelines. The environment must be protected, including ensuring proper monitoring and handling of radon and other radioactive material. Appleton insisted that this waste be disposed of properly.

Appleton urged that communities must be protected. He pointed out that the process starts by treating leaseholders fairly. Plans of the companies should be revealed up front, before a lease is presented. Property values must also be protected, while not dividing the “have-leased” and the “have-nots”. If a landowner is compulsorily integrated then he should get the highest price paid to any pool member - not the lowest - Appleton suggested. Local zoning may help minimize local impacts, while impact fees might deter or cover damages, such as spill clean up, which Appleton noted was quite common. Road congestion, noise control, and the protection of private wells and public aquifers are other areas that Appleton believes must be addressed.

Appleton would like to hold industry responsible for all the costs of the natural gas business, not just drilling costs. These externalized costs include inspections, community planning and responding to citizen complaints. “Environmental pollution is a taxpayer-supported subsidy for the energy industry. We need to return to the free market principles. We need to demand that the companies internalize all costs of production.” The public must be protected from firms that run from their liability under bankruptcy protection, while shareholders should be granted an independent audit to ensure they are receiving all their royalty payments.

Terwilliger’s Thoughts

Like Appleton, Chemung County Farm Bureau President Ashur Terwilliger also suggests a proactive approach to drilling. “If we want to leave the land to the next generation we need to make sure this is done right,” Terwilliger stated in a recent interview. [Terwilliger did not speak at the March 26 meeting.]

Recently Terwilliger had a private audience with Judith Enck, New York State Assistant to the Governor. Terwilliger encouraged the state to develop a policy on waste water, which would include mandating that the drilling companies take care of their own waste water by building and operating their own waste water treatment plants.

“It’s their waste, and their problem. The taxpayers should not be required to pay to clean up the mess. I’ve laid the foundation in Albany. Now people need to make the phone calls,” Ashur claimed.

In addition, Terwilliger believes that companies should reduce the amount of water used, believing this could be accomplished through closed loop drilling. He stated that fracking fluids should be less toxic as friendlier alternatives are available. Terwilliger believes that open pit evaporation of drilling waste is the most hazardous activity allowed. Instead of creating holding ponds for waste water, he suggests that steel storage tanks be used. Currently, after evaporation, the linings of these pits are folded over the remaining waste, and are buried on site. Terwilliger wants DEC to prohibit pits and on-site burial; in addition, he believes that drill cuttings are toxic and should be designated as hazardous waste and disposed of properly. Terwilliger stated that untreated brine should not be used on the roads. And the roads should be protected by bonding.

Terwilliger suggested that the use of a logger or forester be required, to oversee timber harvesting on behalf of landowners at the gas company’s expense. He believes that timber should be sorted and stacked for market, rather than being destroyed by bulldozing, shredding and chipping. Terwilliger would like to see that all property be reclaimed to the New York State Department of Agriculture and Markets (NYSDAM) standards, not just agricultural land. He believes that laws, regulations and other policies should be written to protect the land and landowners, not the drilling companies. He insists that NYSDAM, who has only two reclamation employees, and the DEC, who has only 18 inspectors, hire additional employees for these positions. Terwilliger remains resolute that businesses should never perform the tests required by the regulatory agency, without an independent, third party, watchful eye.

A Call to Action

“I’ve been speaking out about this since the fall of 1998. Since that time I’ve presented at over a hundred seminars, including addressing national audiences. Regulating the gas industry is too big a job for local

municipalities, that's why it is regulated by the state. It's time for people to call their legislators, it's time for them to demand protective action, not an end to energy extraction," Terwilliger said.

"If an industry earns billions it can afford to do it right. It's not an all or nothing option, like we're currently being told," Appleton explained to the Ithaca crowd. "We're operating with a wild west mentality currently, when gas drilling is subject to less regulation than septic placement. It doesn't have to be that way."

Appleton insists that oversight must be cradle to grave, with sustainability guiding comprehensive legislation which considers the impact of the environment, the people, the economies and the rural communities. "We are in the process of essentially planning our own destruction, unless we look at drilling sustainably."

Like Terwilliger, Appleton pushed individuals to contact their representatives, "This effort must come from the bottom up. Each of you must speak loudly. You must spread the information widely. And you must make your demands known."