FAQs: The Politics of a New York State Fracking Moratorium

Knowing that the whole country, indeed the whole world, is looking to New York State to stop fracking and lead the way for others to piggyback on our success, we find it especially important that we get it right. We can help not only ourselves but also every other citizenry affected, and we can change the course of history. We cannot waste time; too much is at stake. We can’t play games. We must demand what we need to survive. And we must win.

1. What is the effect of calling for a moratorium? Doesn't a moratorium buy us time to organize for an eventual ban?

We understand and are tempted by the respite that a moratorium seems to promise. Who wouldn't like to buy time for rest and recuperation, and to fight more fiercely down the line?

However, after careful examination of the political and economic landscape, we realize that the price of a statewide moratorium is clearly too high — it works against our achieving our ultimate goal of a total and complete ban.

Some pushing a statewide moratorium claim that we will more likely obtain a ban later if we demand a moratorium now. But is this at all realistic?

Let's look more closely at a few facts with which politicians and professional environmental organizations, including some who are promoters of “safe fracking,” are intimately familiar:

- Whether or not a moratorium bill is passed, little drilling in New York State is likely to occur in the time frame covered by the moratorium legislation. The demand for fracked gas has been and continues to be very low, in part due to the lack of infrastructure for delivering it to urban and export markets, making prices low and extraction unprofitable — at present.

  However, in two years, when the moratorium would expire, the infrastructure for fracked gas would be in place. This includes LNG storage facilities, compressor stations, export terminals, pipelines -- the Constitution, Marc 1, Rockaway Lateral, and Spectra, among others, water withdrawal facilities, waste facilities, and more. Gas-burning boilers will surely have been installed in NYC, and “natural” gas filling stations would be all over the state. There are already several along the Southern Tier.

  Expanded markets would make moving from moratorium to ban improbable, and fracking in NYS all but inevitable.

- Meanwhile, toxic and radioactive wastes from fracking operations in Pennsylvania are being trucked and shipped by rail into New York State and are being dumped on our roads, in our forests, and in our landfills.
Fracking silica mined in the Midwest for use in Pennsylvania is being shipped in to staging areas in New York’s Southern Tier. The moratorium legislation has no impact on these activities.

• The existing moratorium by executive action has provided the industry with a force majeure, allowing the frackers to extend the leases they need to drill. Another moratorium would extend them even longer, until fracking is again profitable. (See accompanying documents [PDFs] for more on force majeure and its current status, despite a recent court ruling in Aukema et al. v. Chesapeake et al. that some erroneously believe excludes its use to extend leases.)

Year after year we are told to take baby steps, that a ban is “politically impossible.” We are promised that the proposed moratorium and ongoing demands for more hearings would ostensibly facilitate an eventual ban. Thus the ban keeps getting pushed into the misty future, while lessors actually carry out their plans.

A statewide moratorium has serious and quite probable risks. A statewide ban/criminalization does not.

Now is the time to insist on a statewide ban/criminalization of fracking and its ancillary industries in New York State. The vast majority of grassroots activists are clear: They want a total ban, a “ban with teeth,” and when they think about it, they come to recognize that means making fracking a crime in law as it is in practice.

2. So, who would benefit from the proposed moratorium law?

Support for a moratorium by the grassroots simply telegraphs to the industry that its opponents don't really understand the economics or politics of fracking (see above). Of course, the professional “environmental” organizations with lawyers and full-time staff do understand how this works. So who would benefit from a statewide moratorium law?

• The gas industry: The passage of the moratorium legislation would provide drillers with a force majeure, extending leases that would otherwise either expire (as they have during the current “governor’s moratorium”) or require substantial funds to maintain. Promotion of a statewide moratorium also shows them (and their potential investors) that many in our movement will be mollified with delays that the industry itself needs, and that we are neither adamant nor determined to demand what we want and need. This will encourage investment in the gas industry.

• Politicians who pretend to be our allies: State legislators would be given environmental credibility by the institutional "environmental" organizations and play along with them, instead of responding to us and standing only for a statewide ban/criminalization.

Meanwhile, New York City politicians like Mayor Bloomberg and Manhattan Borough president Scott Stringer, utility giants Con Edison and National Grid, and green-
washing NGOS such as NRDC and NYLCV have been promoting the conversion of boilers to gas (PDF). Bloomberg has openly supported fracking upstate to supply the city with shale gas while securing “carve-out” protections for city water supplies. Mayoral frontrunner Christine Quinn pretends that her "intervening" in the Spectra pipeline has been meaningful. But as head of the City Council, she refused to examine the risks radon poses to a public that could soon be exposed to highly radioactive Marcellus gas. So what she has actually done is refuse to oppose effectively the pipeline being built in her own West Village district.

This infrastructure and the other infrastructure these politicians have supported, or opposed half-heartedly and for show, would make gas drilling much more profitable — and much more likely — at the end of the moratorium period.

**Only by demanding what we want and need — a statewide ban, no compromise — will we see where politicians really stand.**

- **Professional "environmentalists"**: promoters of “safe fracking” like the Natural Resources Defense Council (“we need better information”), the National Sierra Club (“let’s secure strong safeguards”), and the National Wildlife Federation (“reasonable compromise”; the parent organization of Environmental Advocates of New York), Environmental Defense Fund (partnering with Chevron, ExxonMobil, Shell, and other industry players in the “Center for Sustainable Shale Development,” PDF), Citizens Campaign for the Environment (pushing for a moratorium, “Let science guide the process”), and New York League of Conservation Voters (whose 2013 spring gala partners included Chesapeake Energy, Scotts Miracle-Gro, and other industry polluters) would like to have an apparent easy win to headline their fundraising letters. Even while many of their staffers recognize the need for a ban, these same staffers have been discouraged from publicly supporting a ban. The grassroots must stand firmly for this position to help these staffers use the courage of their convictions.

Unity behind a statewide ban — and nothing less — would force the industry and politicians to contend with our single demand and show the gas industry (and its investors) that the pipelines, compressor stations, and other infrastructure investments may not actually pay off.

**3. What role have these “professional environmentalists” played in the fight against fracking?**

At the same time they support delays that are strategically far more beneficial to the industry, promoters of a statewide moratorium dilute and thus undermine the ban movement’s clear message — that fracking sickens and kills animals, plants, and people; that fracking causes permanent, irremediable harm to our environment and the precious gifts of water, air, and secure food supply on which we depend for survival; that fracking permanently and irremediably harms personal property, landscapes, open space, public spaces; that any economic gain will come to the
few, not the many, and will be short-term in any case; that exploiting a finite resource while expending so much energy in doing so is foolhardy; that every minute spent in extracting more fossil fuels instead of investing heavily in energy conservation and renewable energy R&D hastens catastrophic climate change and cataclysmic consequences for our entire species.

**Professional “environmental” organizations have played a duplicitous role in the fight against fracking.** Some have been at the forefront of the promotion of fracking by helping to author pro-fracking propaganda. For instance, Sierra Club and NRDC senior staff members served as Advisory Committee (PDF) to the MIT Energy Initiative “Future of Natural Gas” report (PDF, 170 pages), which heralded and encouraged the expansion of fracking in the US and worldwide.

Others have taken actions that closer inspection reveals are diversionary or misguided and wasteful of movement resources. For instance, some organizations have been calling on Governor Cuomo, who is not specifically empowered to ban fracking, to ban it (and who, in any case, wants to wait until after the 2014 election to support it explicitly). At the same time these organizations avoid making effective, focused demands on state legislators who can actually pass a ban/criminalization law. While Cuomo can theoretically withdraw the SGEIS, even that unlikely move would just put the onus on activists once again to spend years trying to force an unelected (and disempowered) regulatory agency to recognize and act upon what we already know: **Fracking is a crime and must be banned absolutely.**

As was recently revealed, for a number of years the Sierra Club (national) even took money secretly from a major gas industry player.

When they claim to be taking action that would lead to the eventual banning/criminalizing of fracking, we must ask them: "How do you expect this position/action to achieve the ends you profess to desire?" There is still a chasm between what these professional “environmental” organizations say and what they do.

**4. Okay. I understand that a moratorium bill is counterproductive, benefiting the fracking industry and letting the politicians off the hook. But why would a ban/criminalization bill be any better?**

If we are perpetually distracted and misguided towards a statewide moratorium, more studies, make-the-industry-pay bonding "requirements," or other "safe fracking" gimmicks/energy wasters, and by calls for us to plead with politicians to pass legislation that does not stop fracking and that actually works against statewide ban/criminalization legislation, then politicians will NEVER deliver such legislation to us.

*Why would they, when they can do less and still claim they are delivering to “environmentalists”?*
State Senator Tony Avella and Assembly member William Colton have sponsored bills (S673 and A1685-2013), that prohibit fracking anywhere in New York State and disposal in NYS of fracking waste from anyplace.

Demanding the passage of S673 and A1685, with the addition of enforcement provisions criminalizing fracking, would show the professional NGOs and politicians that we mean what we say, namely: We don't want it; it's criminal; no studies could show us otherwise; we've seen and learned enough about fracking to know it is incompatible with sound economic or environmental principles.

We believe backing only a law that makes fracking and related activities crimes in the New York State Penal Code, with mandatory penalties for the corporations and their chief officers, would show the professional NGOs and politicians that we mean what we say: We don't want it; we know it's criminal. See draft Public Law No. 1.

Our antifracking movement is already very powerful. If our forces are focused relentlessly on our single demand for a statewide ban/criminalization, we will succeed. If we make it clear that nothing else will earn our vote, financial support, or gratitude, we have a chance at winning this fight.

5. So why are some professional “environmental” organizations pushing for a statewide moratorium? And why are some among the grassroots following their lead?

Who knows? The professional "environmental" organizations know all of the information we shared with you above. We can only guess at their motivations for promoting a counterproductive approach and co-opting our demand for only a statewide ban.

Perhaps they want to:
- build their email database for more donations;
- earn themselves an honored “seat at the table” in the eventual brokering of a “safe fracking”/“best practices” “regulatory framework”;
- protect Democratic Party state legislators who should be voting for a ban but have ties to the industry; and/or
- distract the grassroots.

It is the nature of professional NGOs to require "victories," no matter how hollow or even counterproductive, to raise money, especially from large donors. They have their own infrastructure to support. They have regulatory lawyers on staff and large budgets to play with and maintain. And they are not all bad; some of them do good work on various issues.

But, like the regulatory agencies such as the DEC, many of these professional
"environmental" organizations have become **captured by industry and/or the political parties.**

We know that some of these groups have taken money directly from the gas industry or from the foundations of pro-fracking politicians. Others have worked against grassroots campaigns for a ban in other states and have misinformed the grassroots about key issues relevant to pursuing statewide ban strategies. At the same time, these organizations posture not only as environmental and grassroots organizations, but also pretend to be grassroots and “radically anti-fracking.”

Of course, motivation is somewhat inscrutable. **But we deserve to hear from these professional NGOs their response to all of the above and below.**

The unpaid, all-volunteer grassroots groups that form the majority of the antifracking movement are very different from these well-funded organizations. As part of that grassroots movement, it took us longer, after numerous consultations with our (unpaid) lawyers, to understand and assemble the relevant materials to appeal to other grassroots activists to recognize that the statewide moratorium strategy was a dead end. Why? Because we are all stretched thin with other obligations (making a living, educating our communities, helping neighbors in fracked states, fighting for a ban, defending our homes and loved ones, etc.).

We are not holding our breath waiting for our arguments to convince the big NGOs. **But we do expect that some among the grassroots, truly committed to banning fracking, will recognize the truth of our informed arguments and will stop any efforts toward promoting a statewide fracking moratorium.**

6. **But don’t such professional “environmental” organizations also support a ban?**

If professional “environmental” organizations tout legislation that would make a ban more difficult to achieve, while making halfhearted demands of legislators who are fully capable of delivering a statewide ban law now, which law do you think legislators will champion?

Most legislators will do the bare minimum to obtain “environmentalist credibility.”

**Unless we force them to listen to us** rather than to the duplicitous NGOs, they will opt for the easy way to earn their “enviro cred.” **We must not** give them a way to deliver anything less than a statewide ban.

7. **What is the impact of a statewide moratorium push that delays the moment of reckoning, when politicians will have to decide whether they are going to stand with the grassroots for a ban/criminalization law or to allow “safe fracking” (or blame such on the other big political party)?**
The impact is that we become much weaker relative to the gas industry as time goes by and their infrastructure gets built out. And we become much weaker relative to them as the price and demand for gas rises.

It has therefore become necessary for our statewide ban/criminalization movement to challenge these organizations to explain how their moratorium and other diversionary and delaying tactics “make sense,” given the information we share publicly with them and with grassroots groups.

We hope by sharing this information, we are helping the grassroots to understand some of the motivations and tactics of the big groups and to resist their persuasive abilities to divert people’s energies and resources to futile pursuits.

8. So, if I am committed to a ban, what can I do, and what can my group do?

1. Demand that these organizations explain — given the information above — what their plan for a ban actually is. If they equivocate, don’t let them off the hook. (Include a copy of this FAQ for good measure.)

2. Demand that they stop supporting half-measures, e.g., calls for reports and studies whose outcomes would be delivered only after fracking infrastructure and economies have developed to make the industry much more powerful. (Of course, we might at that time — after a two-year moratorium — have to denounce these same reports as having been produced by dubious, industry-tied vendors, or as having had inadequate funding or scope which biased their outcome in the industry’s favor. But with infrastructure built and markets hungry, we would be in a significantly weaker position to insist on the only action that we now know is necessary — a full and total ban on fracking and related industrial activities.)

3. Tell these organizations to support nothing less than ban/criminalization legislation. Demand that they back the current statewide ban bills, S673 (Avella) and A1685 (Colton), and then push on to criminalize fracking.

4. If they do not agree, withdraw your support, whether it be financial, personal effort, signature signing, sharing their messages via email or social media, or any other action. Tell them why you are doing so.

5. Use our growing grassroots power to push politicians to do the right thing and the big NGOs to live up to their stated mission.

Tell your representatives on every level — local, county, and state — that we don't support any legislation that does not ban/criminalize gas drilling in NYS, because any other legislation:

• accepts that gas companies have the right, in certain circumstances, to poison people and our natural, social, and political environments;
• accepts that the infrastructure for poisoning other states adjacent to NYS is protected by interstate commerce laws;
• leaves the power to protect/not protect these environments in the hands of unelected and unempowered agencies, with their documented history of "revolving door" relations with the industries they “regulate”; and
• allows those committing crimes against people and our environment to get away with murder.

Replace politicians on every level who do not support our call for a total ban on/criminalization of fracking and related activities in New York State.

6. Discuss these documents and their contents with your group.
7. Have your group talk to us. We are happy to meet with you and explain the rationale in person or via teleconference. We want to be all fighting for the same outcome, yes, but even more critical, we believe that we should all be using what at the moment appears to be our best possible winning tactic and overall strategy.
8. Urge your municipality or county legislature to follow the lead of the Town of Woodstock and to pass a resolution in support of Public Law No. 1, which makes fracking and related activities crimes in the New York State Penal Code. This removes the oversight of fracking from the hands of only the broken regulatory system and impermanent legislatures, and adds a judicial component. The more municipalities sign on, the more powerful our movement becomes.
10. Watch for a forthcoming letter from the grassroots to these “environmental” organizations, and sign on with your group.

Let’s demand what we want — what we need to protect our present and our future — and build our movement solely to achieve that.

We don't want to delay fracking. We want it banned/criminalized.

No excuses, no distractions, no pretexts, no compromise.