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Third Times the Charm?

NYT gets three chances to post fair, accurate story about natural gas on its front-page – first two were misses, EID takes a look at #3

It's not every industry in the world that could survive the heavy ordnance that Ian Urbina [dropped on the front-page](#) of *The New York Times* this past week, with the reporter unloading a three-part series targeting natural gas that earned him plenty of praise from the anti-energy crowd, but less than glowing reviews [from independent observers](#) who track the veracity and perspicuity of science and environmental reporting.

A basic evaluation of each of the stories reveals why. [In his first piece](#), Urbina sets the stage by arguing that "there is no way of guaranteeing" the safety of drinking water in Pennsylvania owing to the small (and rapidly declining) percentage of wastewater from the Marcellus that's treated at and discharged from local treatment facilities. Candidly, his story looked a lot more interesting prior to 11:30 a.m. EST today – that's when PA's Department of Environmental Protection (DEP) [released the results](#) of a months-long, in-stream survey analysis of water quality across the state finding that "all samples tested" since the program began last fall "showed levels **at or below the normal naturally occurring background levels** of radioactivity." So much for that.

As former Pa. governor Ed Rendell put it in [a letter to the editor](#) in Sunday's NYT: "If the goal of your report about natural gas drilling was to gratuitously frighten Pennsylvanians, then congratulations on a job well done." Other observers criticized the reporter's decision to outright ignore the role that dilution plays in reducing the potential for hazard. According to [MIT's Charlie Petit](#), "even if the waste were not treated at all, **it would be diluted by a factor of about 3,000** if it were to have been put straight into the pipes to homes. But it was not put in the pipes straight, but put in rivers. So, it was heavily diluted right off the bat and most of it went to the sea. And it was treated before being dumped in. And the water removed for drinking presumably got further treatment."

The [second story](#), which ran above-the-fold, turned out to be (candidly) a bit of a snoozer. In that one, Urbina quibbles with the industry's assertion that nearly 70 percent of Marcellus wastewater in Pennsylvania is reused or recycled – basing his argument on numbers compiled before most major producers in the state had even started their recycling programs. [According to the latest figures](#) from PA DEP, a minimum of 65 percent (and likely much more) of wastewater from the Marcellus is currently being reused or recycled. In the months to come, the goal is for that number to hit 100.

Then came story three, which provided a platform for several unnamed EPA career staff to decry the "politics" at play in blocking their ability to steal regulatory authority over hydraulic fracturing away from the states, notwithstanding [testimony from the head of EPA's drinking water protection](#) division that states are already doing a "good job" at the task. Incidentally, most of those EPA quotes appear to come from Region 3, home base for aquatic biologist Amy Bergdale – otherwise known as the EPA staffer who "actually did a presentation when we screened Gasland for the entire environmental wing of the Department of Justice," [according to](#) Gasland director Josh Fox. Maybe she hasn't heard that that particular film [has been debunked](#).

Speaking of story no. 3, let's see how the reporter's third attempt at fracturing fratricide holds up under a thorough review from EID:

NYT: “Natural gas drilling companies have major exemptions from parts of at least 7 of the 15 sweeping federal environmental laws that regulate most other heavy industries ...”

- Not every section of every environmental statute that’s ever been passed in American history applies to the development of oil and natural gas, that’s true. But it’s also true that each of the seven “sweeping environmental laws” cited by Urbina as ones from which the industry is exempt includes sections and titles **explicitly regulating** the oil and natural gas industry. In other words, the industry is regulated under each and every one of these laws – under sections of each that are relevant to its operations (for additional information, take a look at [this EID fact sheet](#)).
- Let’s take a look at each of these so-called “exemptions”:
 - Emergency Planning and Community Right to Know Act (EPCRA)
 - **EPA disagrees:** “[O]il and gas extraction facilities **are generally responsible for reporting obligations of EPCRA** if the facility stores or manages threshold levels of specified chemicals.” Those materials are listed on Material Safety Data Sheets (MSDS), mandated by EPA via its authority under EPCRA. EPA evaluated whether the industry should report under the Toxic Release Inventory in the 1990s, and concluded that it was unwarranted.
 - Clean Water Act (CWA)
 - **EPA disagrees:** “Onshore exploration and production facilities may be **subject to four aspects of the CWA:** national effluent limitation guidelines, stormwater regulations, and wetlands regulations, and Spill Prevention Control and Countermeasure (SPCC) requirements.”
 - Resource Conservation and Recovery Act (RCRA)
 - Subtitle C of RCRA was designed to regulate “low-volume, **high-toxicity**” hazardous wastes – a category into which most reasonable people (and even EPA itself) agreed drill cuttings, pipe scale and produced water were never intended to fall. But just because rock cuttings aren’t regulated under Section C of RCRA doesn’t mean they aren’t regulated at all.
 - **According to EPA:** “In its report to Congress and in a July 1988 regulatory determination, the Agency stated that regulation as hazardous wastes under Subtitle C was not warranted and that these wastes **could be controlled under other federal and state regulatory programs ...**”
 - Following the 1988 determination, EPA initiated a program to review state regulatory programs to ensure that drilling fluids and produced waters were being effectively regulated. This program – **STRONGER** – conducts reviews of state programs with teams from state regulatory agencies, environmental groups, industry, EPA and other federal agencies. In 2010, the review scope was expanded to address hydraulic fracturing management.
 - Some of the other industrial materials not regulated under Section C but regulated elsewhere in the statute: Electronics, pesticides, automotive wastes, agricultural wastes, coal extraction wastes, aerosols, fluorescent lighting.
 - Clean Air Act (CAA)
 - **EPA disagrees:** “The oil and gas production industry **is subject to ...** National Emission Standards for Hazardous Air Pollutants ... Additional requirements include the installation of air emission control devices, and adherence to test

methods and procedures, monitoring and inspection requirements, and recordkeeping and reporting requirements.” Like other industries, oil and natural gas extraction facilities may be regulated in areas that fail to meet CAA ambient air quality standards if they emit those materials.

- National Environmental Protection Act (NEPA)
 - [EPA disagrees](#): “Federal actions specifically related to oil and gas exploration and production that may require [environmental impact statements] include Federal land management agency approval of **plans of operations for exploration or production** on Federally-managed lands. **All affected media** (e.g., air, water, soil, geologic, cultural, economic resources, etc.) **must be addressed.**”
- Superfund (CERCLA)
 - [EPA disagrees](#): “[S]pecifically listed waste oils (e.g., F010, and K042 through K048) are subject to reporting requirements [under Superfund] if spilled in excess of their established Reportable Quantities.”
 - If Superfund doesn’t apply to oil and gas, how was EPA able to use Superfund authority (and money) to produce [this report](#) on the composition of well water in Wyoming? In reality, EPA has broad authority to respond to releases associated with oil and natural gas operations if the agency deems them to be a threat to human health or the environment.
- Safe Drinking Water Act (SDWA)
 - More on SDWA below, but what’s important to understand here is that hydraulic fracturing has [never in its 60-year history](#) been regulated under this Act. So how could something be considered “exempt” from a law that never even covered it in the first place? As described more fully below, produced water that is managed through underground injection is regulated by SDWA.

NYT: “Ms. Browner ... helped ensure in 1995 that hydrofracking would not be covered by certain parts of the Safe Drinking Water Act.”

- Actually, Congress itself helped ensure that hydraulic fracturing wouldn’t be regulated under SDWA by writing and passing a bill in 1974 (called SDWA) that had nothing at all to do with hydraulic fracturing; at the time of the bill’s passage, fracturing had already been in existence for 25 years.
- But wait a second: [According to Josh Fox](#), “Fracking was made legal by Dick Cheney in 2005 when he pushed the Congress to suspend the ...the Safe Drinking Water Acts.” So if that’s true, what role did EPA administrator Carol Browner play 10 years prior to that?
- Believe it or not, Carol Browner is actually the one who called for an agency study of hydraulic fracturing in the first place. And she’s also the one who [said the following](#) when asked to assess the relationship between the fracturing of coalbeds (which reside thousands of feet closer to the water table than shale formations) and the contamination of aquifers:
 - “There is **no evidence** that the hydraulic fracturing at issue has resulted in any contamination or endangerment of underground sources of drinking water (USDW). ... Moreover, given the horizontal and vertical distance between the drinking water well and the closest methane gas production wells, **the possibility of contamination or endangerment of USDWs in the area is extremely remote.**”

NYT: “An early draft of the [2004 EPA] study discussed potentially dangerous levels of contamination in hydrofracking fluids and mentioned ‘possible evidence’ of contamination of an aquifer. The report’s final version excluded these points, concluding instead that hydrofracking ‘poses little or no threat to drinking water.’”

- The “early draft” of what would become EPA’s 2004 report on use of hydraulic fracturing in the development of coalbed methane was released for comment in August 2002. Here’s how EPA characterized that early draft in a statement submitted in 2002 in the Federal Register:
 - “Based on the information collected, EPA has preliminarily found that the potential **threats to public health posed by hydraulic fracturing** of CBM wells **appear to be small** and do not appear to justify additional study.” (EPA notice in the Federal Register, [Aug. 28, 2002](#))
- In contrast to the reporter’s version of events, the core conclusions found in EPA’s 2002 draft were the **exact same conclusions found in the agency’s 2004 final report**. “I hope you will give full weight to the agency’s conclusions that [coalbed methane] hydraulic fracturing does not pose a risk to drinking water. Additional study, particularly if based on false accusations and misunderstand, has the potential to divert limited resources from real risks and threats to public health and the environment.” (Letter from EPA administrator Christine Todd Whitman to Rep. Henry Waxman, [Oct. 3, 2002](#))

NYT: “Shortly after the study was released, an EPA whistle-blower said the agency had been strongly influenced by industry and political pressure. Agency leaders at the time stood by the study’s findings. ‘It was shameful,’ Weston Wilson, the EPA whistle-blower, said in a recent interview about the study.”

- Mr. Wilson, now retired from EPA, was not part of the team of scientists and engineers that spent nearly five years studying hydraulic fracturing in the context of this report. Wilson, to his credit, has confirmed this to be true [on several occasions](#): “**I was not involved in either the preparation or review of EPA’s report on the hydraulic fracturing.**” Mr. Wilson calls himself a “whistleblower” despite having no direct knowledge or input related to how this particular report came together.
- Had Urbina been interested in providing proper context to his readers, he might have mentioned that Wilson has a long record of using his post at EPA to stop development of oil, gas and minerals throughout the West. [According to the Rocky Mountain News](#), Wilson has personally involved himself in efforts to stop dam construction in Colorado, oil and gas development in Montana, and the mining of gold in Wyoming.
- Wilson also played a starring role in the anti- gas polemic Gasland, [telling interviewer Josh Fox](#) – *remarkably, while he was still on staff at EPA* – that “one can characterize the entire [natural gas] industry as having a hundred year history of purchasing those they contaminate.”

NYT: “Coal mine operators that want to inject toxic wastewater into the ground must get permission from the federal authorities. But when natural gas companies want to inject chemical-laced water and sand into the ground during hydrofracking, they do not have to follow the same rules.”

- Coal mine operators who inject waste fluids underground for permanent disposition live **under the same federal rules** as natural gas operators who do the same. What the reporter is attempting to do here is put forth an apples-to-orangutans comparison – setting up an imbalanced equation in which the permanent, final-stage **disposal** of coal wastewater is falsely compared to the **productive**, first-stage use of water to harvest natural gas.
- For both coal and natural gas underground wastewater disposition, the operable statute is the Safe Drinking Water Act – for coal and mining operators, the relevant [underground injection control \(UIC\) category](#) is Class V; for oil and natural gas producers, it’s Class II.

NYT: “The air pollution from a sprawling steel plant with multiple buildings is added together when regulators decide whether certain strict rules will apply. At a natural gas site, the toxic fumes from various parts of it — a compressor station and a storage tank, for example — are counted separately rather than cumulatively, so many overall gas well operations are subject to looser caps on their emissions.”

- Another wildly misleading comparison. A steel plant, although it may have multiple buildings, is still located on one contiguous block of land. In contrast, a natural gas “facility” can be spread out over hundreds of square miles, spanning several individual counties.
- Of course, those who would like to use the Clean Air Act to restrict natural gas development have even suggested lumping multiple operators -- from different companies, potentially spread across large distances -- into the same “regulatory unit,” all with an eye on creating an artificial, stationary emissions source for the purpose of imposing new regulations.

NYT: “When Congress considered whether to regulate more closely the handling of wastes from oil and gas drilling in the 1980s, it turned to [EPA] to research the matter. ... Some of the recommendations concerning oil and gas waste were eliminated in the final report handed to lawmakers in 1987. ‘It was like the science didn’t matter,’ Carla Greathouse, the author of the study, said in a recent interview. ‘The industry was going to get what it wanted, and we were not supposed to stand in the way.’”

- Here, the reporter implies that Ms. Greathouse actually worked on EPA’s staff. In fact, the author of this study was actually a consultant (that’s [according](#) to Greathouse herself). Even still, Ms. Greathouse testified to being “appalled” that EPA would classify drill cuttings and other wellsite material as industrial wastes. “It’s a very difficult pill to swallow,” Ms. Greathouse [told CBS News](#) in 1997.
- For opponents of responsible energy development, re-writing the RCRA law to re-classify wellsite materials as “hazardous waste” instead of “industrial waste” remains a top priority – with groups such as NRDC ([which recently petitioned](#) EPA to reverse its 20-year-old ruling) well aware that such a reclassification would prevent drill cuttings from being accepted by landfills.
- Although he provides links to other documents throughout the story, Urbina doesn’t link to 368-page report from EPA that served as the basis for the agency’s recommendations with respect to the classification of wellsite wastes – perhaps fearful that his readers would access that report and find out for themselves whether the science “mattered” or not in putting it together. That report, incidentally, is [here](#).
- Among EPA’s core conclusions: “[RCRA] requires the Administrator to determine whether to promulgate regulations under RCRA Subtitle C for wastes from the exploration, development, and production of crude oil, natural gas, and geothermal energy ... The Agency **has completed these activities and has decided that regulation under RCRA Subtitle C is not warranted.**”

NYT: “[EPA] had planned to call last year for a moratorium on the gas-drilling technique known as hydrofracking in the New York City watershed, according to internal documents, but the advice was removed from the publicly released letter sent to New York. ... The EPA has taken strong stands in some places, like Texas, where in December it overrode state regulators and intervened after a local driller was suspected of water contamination. Elsewhere, the agency has pulled its punches, as in New York.”

- Take a look at EPA’s letter to New York’s Department of Environmental Conservation (DEC) [for yourself](#). As you’ll see, the letter’s cover sheet – presumably prepared by the agency’s political folks – strikes a very different tone from the text found in the document’s technical body, which one assumes was written by EPA’s scientists and engineers. In contrast to the narrative put forth by Urbina, EPA Region 2’s technical staff appear to have been much more sanguine on the prospect of Marcellus development in New York than its political class.
- Notably, in lambasting EPA for not moving immediately to ban development in New York City’s million-acre watershed, Urbina fails to mention that DEC **announced nearly a year ago** that the

watershed would be placed in a “special class” with respect to future Marcellus regulations. [According to The New York Times](#), DEC’s April 2010 watershed rules make “it highly unlikely that any drilling would be done there.”

- The reporter also fails to include mention of [Chesapeake’s decision in October 2009](#) to avoid the watershed entirely, essentially imposing a de facto ban owing to the fact that Chesapeake was the only leaseholder in that area.

NYT: “Some EPA scientists say this pattern may be playing out again in the national study of hydrofracking ... Internal documents from early meetings ... provided by E.P.A. officials who are frustrated with how research is being handled, show agency field scientists demanding that certain topics be included in the study. ... For example, the study was to consider the dangers of toxic fumes released during drilling, the impact of drilling waste on the food chain and the risks of this radioactive waste to workers. ... In interviews, several agency scientists and consultants, who declined to be named for fear of reprisals, said the study was narrowed because of pressure from industry and its allies in Congress ...”

- Much further down in his story, Urbina casually informs his readers that Rep. Maurice Hinchey (D-N.Y.), a long-time critic of natural gas, is the one who’s actually responsible [for adding language to the FY2010 Interior appropriations bill](#) ordering Congress to “to carry out a study on the relationship between hydraulic fracturing and drinking water.” In this section, however, Urbina tries to blame this directive on “pressure from industry”; later, the reporter quotes Rep. Hinchey as saying his words to EPA had been “taken out of context” – all 14 of them.

NYT: “The natural gas drilling boom is forcing the EPA to wrestle with questions of jurisdiction over individual states and how to police the industry despite its extensive exemptions from federal law. In Wyoming, for example, the agency is investigating water-well contamination in an area of heavy drilling, even though some EPA officials said in interviews that because of industry exemptions, the agency might not have jurisdiction for such an investigation. In Texas, after an aquifer was contaminated, EPA officials in December ordered a drilling company to provide clean drinking water to residents despite strong resistance from state regulators who said the federal action was premature and unfounded.”

- As demonstrated above, the strength of the reporter’s narrative depends entirely on representing sections in the law without natural applications to oil and gas development as “major exemptions” to the statute. Here, though, Urbina stretches the narrative a bit too far – and puts himself in an awkward situation when forced to explain how EPA was able to intervene in Wyoming and Texas.
- In Wyoming, EPA Region 8 officials engaged in a months-long study focused on accusations of water contamination associated with oil and natural gas development, concluding [in an 87-page report](#) issued last August that “EPA has not reached any conclusions about how constituents of concern are occurring in domestic wells.”
- Notably, EPA cited its authority under Superfund in declaring its ability to conduct the study. To the reporter, that fact is inconvenient – since it flies in the face of his assurances that oil and gas development are exempt from that law. Indeed, Urbina’s only way out of that jam is to blame shadow exemptions for forcing EPA to conjure up authority in this area out of whole cloth – citing an unnamed EPA official as suggesting “the agency might not have jurisdiction for such an investigation.”
- Urbina is forced to deal with the same inconvenient truth in Texas. There, EPA Region 6 administrator Al Armendariz used his authority under the Safe Drinking Water Act (of all things!) to issue an “emergency order” targeting a local producer of natural gas. Since Armendariz issued that directive in December 2010, [evidence has come to light](#) suggesting that his decisions may have been directed less by the science and more by his desire to get press coverage.
- But that’s irrelevant to this particular conversation. The only thing relevant here is that two federal environmental laws from which Urbina argues the oil and gas industry is exempt have somehow,

someway, been used over the past 12 months to do what the reporter argues is impossible: regulate the industry. How do those “exemptions” look to you now?

NYT: “The central question on this issue: Should drillers in Pennsylvania be allowed to dump ‘mystery liquids’ into public waterways? ... ‘Treatment plants are not allowed under federal law to process mystery liquids, regardless of what the state tells them,’ explained one EPA lawyer in an internal draft memo obtained by The Times. ‘Mystery liquids is exactly what this drilling waste is, since its ingredient toxins aren’t known.’”

- First of all, neither “drillers in Pennsylvania” nor anywhere else are “allowed to dump ‘mystery liquids’ into public waterways.” In fact, under the Clean Water Act (by which producers are also bound) operators aren’t allowed to dump a single drop of wastewater into surface waters. And among the volumes of water that are treated and released, “here’s the reality,” according to former DEP secretary John Hanger: **“Every drop of tap water that was publicly treated is required to meet the safe drinking water standard.”** (Allentown Morning Call, [Jan. 5, 2011](#))
- Of course, the other glaring error put forth by the unnamed EPA lawyer and uncritically parroted by Urbina is the notion that produced water is a “mystery liquid” – filled with ingredients that “aren’t known.” But according to DEP, the entire universe of materials that go down into the well are known by state regulators: “Drilling companies **must disclose the names of all chemicals** to be stored and used at a drilling site in the Pollution Prevention and Contingency Plan that must be submitted to DEP as part of the permit application process. ... This information is on file with DEP and is available to landowners, local governments and emergency responders.” (DEP Marcellus fact sheet, accessed [Mar. 6, 2011](#))
- Incidentally, we know what comes back out of the well too (*how do you think NYT was able to write this series in the first place?!).* To wit: “In an interview with Times-Shamrock newspapers last spring, DEP Oil and Gas Bureau director Scott Perry detailed the three-document process the state uses to track the wastewater from each well: the driller records how much waste is produced and where it is sent; the haulers keep a daily log of how much waste they take and where they bring it; and **the treatment facility tracks who brings them waste as well as how much and what it contains.**” (Citizens’ Voice, [Mar. 4, 2011](#))

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