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Environmental LAW

Marcellus Shale: What NY stands to lose

In recent months, development of the natural gas resources in the Marcellus Shale formation across New York's Southern Tier and Pennsylvania has exploded.

The U.S. Environmental Protection Agency held a series of hearings in Binghamton in September regarding the scope of a new hydraulic-fracturing study.

The Marcellus Shale formation is a black Shale formation deep underground in the Southern Tier, extending down through Pennsylvania, Ohio and West Virginia. The formation is estimated to hold between 168 and 516 trillion cubic feet of natural gas.

By comparison, New York state residents use about 1.1 trillion cubic feet per year. Due to the depth and nature of the formation, however, horizontal drilling and hydraulic-fracturing techniques are required to access the gas trapped within the Shale.

In simple terms, hydraulic-fracturing — or “fracking” — involves the placement of a well within the gas-bearing zone, pumping a pressurized fluid (water and chemicals) into the rock, causing a fracture and fission, withdrawing the fluid and allowing the proppant (sand or beads) to remain in the fractures to prop open the Shale fractures so that the natural gas can be extracted.

Although fracking is far from a new technique, the pace and magnitude of the Marcellus Shale gas development has caused the EPA and state agencies to take a cautious approach.

In particular, in October 2009, Congress requested the EPA conduct a new fracking study to assess the environmental impacts of the process. A 2004 EPA study had determined no credible scientific evidence of any environmental risks from fracking.

Although challenged at the time by environmental groups, fracking was exempted from federal regulation under the Safe Drinking Water Act's underground injection control provisions, therefore the 2005 energy reform bill did not address the process. With the tremendous increase in Marcellus Shale gas development, the issue of fracking has landed in the political arena.

Critics of gas development point to potential environmental issues such as air pollution, land-use development, water pollution and traffic matters. In New York, there are about 14,000 producing natural gas wells. To the south, large-scale well exploration and development has occurred in Central Pennsylvania.

In Dimock, Pa., groundwater sampling has revealed the presence of certain industrial solvents used in the fracking process. Last year, residents in that area sued a mining company, claiming the operations caused the contamination of the groundwater. The migration of methane gas into groundwater supplies also is viewed as a concern.

The pace of Marcellus Shale gas development in New York also has caused increased public focus on the fracking issue. New York's Department of Environmental Conservation recently closed the public comment period on a Supplemental Environmental Impact Statement for horizontal drilling and hydraulic-fracturing. The DEC administers New York's well drilling permit program and requires detailed information on the operator, proposed well location and issues, groundwater protection and environmental compliance prior to issuance of permits.

Although no cases of groundwater contamination associated with fracking have been documented in New York, the DEC effectively put the issuance of new gas well permits on hold as additional studies are conducted. Similarly, the state Senate adopted a moratorium on new permits, which if approved by the Assembly will halt the issuance of drilling permits until May 15, 2011.

The scope of the EPA's proposed fracking study includes: identification of potential transport pathways for contaminants into groundwater that may merit further assessment; infiltration from natural fractures or fractures created during the process; leakage from higher in the well, during or after operations due to improper construction, damage or abandonment; and surface leakage from storage pits and spills.

At the outset, the gas industry disputes the risk of deep groundwater impacts since most fracking fluids are withdrawn after the injection and dealt with according to state and federal waste regulations, and the remainder left underground is separated from groundwater sources by impermeable strata. Naturally, environmental groups dispute those positions and want the EPA to issue stringent regulations.

In September, the EPA held a series of four public hearings in the Binghamton area to solicit comments on the proposed study. The hearings brought out hundreds on both sides of the issues,

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including some unusual alliances.

On the side of more intensive study and regulations were environmentalists, residents and groups such as the Natural Resources Defense Counsel and U.S. Rep. Maurice Hinchey, who co-authored the "FRAC Act," which would subject fracking to EPA regulation.

Conversely, the natural gas industry and trade groups such as the American Petroleum Institute and Independent Oil & Gas Association of New York are opposed to further efforts to delay or stop natural gas development efforts.

The industry's position is that the natural gas wells already are subject to intense state regulation, so there is no need for duplicative regulation by the EPA. The trade groups pointed to the financial impact of development in New York, anticipated to produce millions in drilling permit revenues, tax revenues and new jobs. Some estimates suggest the impact could be as many as 30,000 new jobs and \$1.4 billion in annual economic impact.

In what is termed the "Marcellus multiplier," Penn State University study of the gas development now in progress in that state

indicates that for every \$1 gas producers spend, there is a \$1.90 total economic impact. As a result of the potential economic boom for New York, labor unions, the New York-New Jersey African American Chamber of Commerce and other groups provided comments in favor of natural gas development.

The EPA study likely will take a few years and may not be concluded until 2013. Given the billions at stake and the potential economic development potential, it remains uncertain whether the EPA will objectively analyze the scientific information and come up with a report that balances environmental protection with sound energy development.

If BP's Deepwater Horizon disaster, the extensive off-shore drilling moratorium and the EPA's desire to impose regulatory restrictions on coal and energy are any indication, the EPA seems content to favor environmental protectionism over sound energy exploration and development irrespective of the economic problems caused by its regulatory decisions.

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