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DEC issues tougher recommendations for hydrofracking

Revised report bans drilling near some water sources

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Written by Jon Campbell

ALBANY -- In a surprise move Thursday, the state Department of Environmental Conservation issued a long-awaited summary of major, sweeping changes to its ongoing review of hydraulic fracturing for natural gas, a day before a full 900-page report is due to Gov. Andrew Cuomo.

The new recommendations include an outright ban of high-volume hydrofracking in the Syracuse and New York City watersheds and also would prohibit drilling on the surface of state-owned land. That stipulation could have a significant impact on one of the largest of the Southern Tier's landowner coalitions.

In May 2008, the Deposit Coalition in Delaware County leased 47,000 acres to XTO Energy for $110 million. It wasn't clear Thursday whether some or all of the 500 landowners who make up that group are in the New York City Watershed. In December 2009, XTO was purchased by Exxon/Mobil.

Drilling also would be banned within 500 feet of primary aquifers, which provide drinking water for most of the state's urban centers. Though not geographically situated on a primary aquifer, Johnson City, Endwell, Endicott and Vestal are dependent on one for their main water source, according to a Broome County Water Resources fact sheet. Broome's primary aquifer is 26.5 square miles, or about 3.7 percent of the county's 715 square miles.

If the department's requests become final, 15 percent of the state's portion of the Marcellus Shale formation, which stretches across the Southern Tier and a portion of the Hudson Valley, would be off limits to natural gas drillers. The western portion of the New York City water supply sits above the Marcellus in the Catskills region, including part of Ulster County.

"This report strikes the right balance between protecting our environment, watersheds and drinking water and promoting economic development," DEC Commissioner Joseph Martens said in a statement.

State Sen. Thomas W. Libous, who has been a proponent of natural gas drilling in the Tier, called the DEC's recommendations "a very positive step."

"Economically, this should be exciting news for the state. This is exciting news for the Southern Tier, and I think this is courageous," Libous said.

The impending release of the latest draft of the DEC document, called the Supplemental Generic Environmental Impact Statement (SGEIS), is a major step toward tapping into the state's massive natural gas reserves.

A technique that employs a mix of water and chemicals to break up underground shale formations and unlock gas, high-volume hydrofracking has been on hold in New York until a final version of the DEC report -- not this upcoming draft -- is released.

The document has been at the center of an intense, three-year debate. An initial draft was released in 2009.

Debate continues

The full second draft is due to Cuomo's office today and will be posted online for the public July 8, according to the DEC. The department released the summary of changes late Thursday afternoon amid media speculation about what it would contain.

While the revised report is a step toward allowing high-volume fracking, it's far from the last one. After a 60-day public comment period expires, DEC officials have to take those comments into account and make revisions for a final draft.

That process could take months. The first draft review took 14 months to complete, while the second draft took 21 months. This comment period is not expected to start until August.

Under the state's environmental laws -- and reinforced by an executive order from former Gov. David Paterson last year -- permits can't be issued until the final version of the document is finished.

Critics of high-volume fracking point to a number of environmental accidents and mishaps in Pennsylvania and other states that currently allow the practice, saying it can lead to contaminated water supplies and other forms of pollutions.

Walter Hang, an Ithaca-based activist and president of Toxics Targeting, said it's time for citizens opposed to fracking to shout their message louder until Albany gets it.

"Citizens now have had an incredible wake-up call. And if they don't want horizontal hydrofracking in their communities, the only thing that they can do is make sure that the draft SGEIS is not adopted in final form," Hang said. "And I think you're going to be seeing civil disobedience, because I think people believed that this is going to be an honest, open process, that the governor was going to do what he said, which is to revise this document and provide good government. And I think it's like people feel they've been kicked in the teeth.

"This is a call to arms," Hang continued. "People really have to realize that the governor has not heard our message, he is not dealing with the substantive technical concerns, and we've got to make more noise."

The natural gas industry and some landowners and politicians, however, tout the state's gas resources as a way to improve the economy in long-suffering regions such as the Southern Tier.

"Once they actually start drilling, our community will realize the positive impact of economic development that other communities have seen," said Broome County Executive Patrick Brennan, a Democrat. "And with all these rigorous regulations, there should be no to very slight negative impacts."

What report recommends

The revised report would require gas wells to be located at least 500 feet away from private water wells and would ban permits from being issued in 100-year floodplains. The 2009 draft included no such bans, leaving the entire Marcellus formation in play.

Both advocates and opponents of hydrofracking said they were reviewing the DEC's summary, but said they wanted to see the full, 900-page report before offering substantive praise or criticism.

Marcia Bystryn, president of the New York League of Conservation Voters, said the changes outlined by the DEC are an improvement from 2009.

"But as with all studies of this complexity, the devil is in the details," Bystryn said in a statement. "We will be watching closely to make sure that if hydrofracking is allowed in New York, our state has the most rigorous regulatory protocols and enforcement in place to make sure our drinking water and environment are protected."

Members of the natural gas industry, meanwhile, said they hope the full document is fair to both sides of the debate.

"(The state Independent Oil & Gas Association) looks forward to reviewing the SGEIS to determine if the protections outlined by the state Department of Environmental Conservation strike a fair balance between protecting New York's environment and allowing the expansion of natural gas exploration in New York's Southern Tier," said Brad Gill, the group's executive director.

In a change from the 2009 draft, the new version contains a number of new efforts to mitigate concerns about contaminating drinking water, as well as efforts to protect against air pollution. But the summary does not go into extensive detail on those measures.

Drillers would also have to disclose all of the chemicals used in the hydrofracking process, which is another contentious issue.

Permits for gas-well sites would also have to be consistent with local zoning laws, a concern of several lawmakers, including Assemblywoman Barbara Lifton, an Ithaca Democrat.

The DEC will also employ a number of outside consultants to look at the "community and socioeconomic impacts" of high-volume fracking, which the department said was not adequately addressed in the 2009 draft. That includes looking at potential damage to public infrastructure, which would be subject to a sharp increase in heavy industrial traffic if hydrofracking gets the green light.

And finally, the DEC will appoint an "advisory panel" to recommend ways to make sure the state is ready to properly oversee the industry, as well as develop a fee structure for drillers. The DEC would then take their recommendations and push for them to become law.

WHAT THE DEC IS PROPOSING

» High-volume fracturing would be prohibited in the New York City and Syracuse watersheds, including a buffer zone;
» Drilling would be prohibited within primary aquifers and within 500 feet of their boundaries;
» Surface drilling would be prohibited on state-owned land including parks, forest areas and wildlife management areas;
» High-volume fracturing will be permitted on privately held lands under rigorous and effective controls;
» DEC will issue regulations to codify these recommendations into state law.

Fracking on private lands:

» No permits would be issued for sites within 500 feet of a private water well or domestic use spring.
» No permits may be issued for a proposed site within 2,000 feet of a public drinking water supply well or reservoir at least until three years of experience elsewhere have been evaluated.
» No permits will be issued for well pads sited within a 100-year floodplain.

Fracking-Fluid Chemicals must be identified:

» Applicants must fully disclose to DEC all products utilized in the high-volume fracturing process. In addition, applicants must agree to publicly disclose the names of the additives, subject to appropriate protections for proprietary information. The 2011 SGEIS identifies 322 chemicals proposed for use in New York and includes health hazard information for each as identified by the NYS Department of Health.

What's next:

» The complete 2011 SGEIS will be available on the DEC's website — www.dec.state.ny.us — on July 8.
» There will be opportunity for review and comment on the Department's recommendations. DEC plans for a 60-day public comment period commencing in August.