



Environmental Law Information Memo

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Electronic Dispatch

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HYDRAULIC FRACTURING UNLIKELY IN NEW YORK CITY AND SYRACUSE WATERSHEDS

On April 23, 2010, the New York State Department of Environmental Conservation (“DEC”) issued a press release stating that “due to the unique issues related to the protection of New York City and Syracuse drinking water supplies, these watersheds will be excluded from the pending generic environmental review process for natural gas drilling using high-volume horizontal drilling in the Marcellus shale formation.” Instead, any well operator who seeks a permit to drill in these watersheds will be required to undergo “a case-by-case environmental review process to establish whether appropriate measures to mitigate potential impacts can be developed.” This announcement by DEC makes drilling in either of these areas unlikely due to the economic costs associated with conducting site-specific environmental investigations.

Background

The Marcellus Shale is a geologic formation located beneath parts of West Virginia, Ohio, Pennsylvania and New York. It is named after a distinctive outcropping near the village of Marcellus, New York. Geologists have long known about the presence of natural gas in the Marcellus Shale, however, the depth and tightness of this layer of rock made gas exploration and production impractical in the past. Recent advances in gas well drilling technology, including hydraulic-fracturing, have now made the development of this resource economically viable.

The DEC estimates that the Marcellus Shale contains untapped reserves of between 168 and 516 trillion cubic feet of natural gas, making the Marcellus Shale one of the largest gas reserves in the world. In addition, the Marcellus Shale is found in close proximity to high demand gas markets. Thus, the presence of natural gas in the Marcellus Shale offers a unique opportunity for both gas companies and landowners.

DEC Regulation

The DEC Division of Mineral Resources has the authority to issue a permit to drill in the Marcellus Shale pursuant to Article 23 of the Environmental Conservation Law (“ECL”). Prior to issuing any permit, the DEC must consider the environmental impacts of a project. The DEC is currently reviewing comments to a Supplemental Generic Environmental Impact Statement (“SGEIS”) intended to evaluate the environmental impacts of drilling operations which use hydraulic-fracturing to gain access to gas contained in the Marcellus Shale. After the DEC issues its final SGEIS, it is expected that drillers may then utilize that document as part of their permit applications. It is unlikely that any permits will be issued until the DEC has completed the final SGEIS. The recent announcement by DEC means that the final SGEIS may not be used by applicants seeking to drill in the New York City and Syracuse watersheds.

Spacing Units

An applicant must control sixty percent of an area referred to as a “spacing unit” before a well permit may be issued. A spacing unit is the area of land that the DEC assigns to a proposed natural gas well. The size of a spacing unit depends on the depth of the well and the target rock formation. For wells drilled in Marcellus Shale, the ECL requires a minimum size of 40 to 640 acres, depending on whether infill wells are used. The law also requires that gas wells be drilled no less than 460 feet from a spacing unit’s boundary. The most common means by which well operators acquire control over land in a spacing unit is by entering into gas leases with landowners.

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Compulsory Integration

Issuance of a well permit triggers the compulsory integration process for landowners within a spacing unit that have not entered into a lease with the well operator. These “uncontrolled owners” must choose whether to be a participating, non-participating or royalty owner. Each option presents different levels of risk, cost and potential reward. Ultimately, the DEC may hold a compulsory integration hearing to determine the rights of landowners within a spacing unit that do not enter into a lease with the well operator.

Leasing

Many landowners with surface rights to the Marcellus Shale have been approached by landmen and gas companies about leasing their property for drilling. A lease is a contract between a landowner and a well operator that grants exploration and production rights to subsurface gas deposits. Landowners should consult with an attorney before entering into a gas lease.

Contact Information

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