



Fast-tracking Hydrofracking

September 22, 2011

The New York State Department of Environmental Conservation's (DEC) public comment period on its revised draft Supplemental Generic Environmental Impact Statement (SGEIS) released on September 7, 2011 on high-volume hydraulic fracturing will run until December 12, 2011. A copy of the revised draft SGEIS can be found [here](#). In addition, DEC Commissioner Joe Martens announced that the agency will issue its proposed regulations based on its draft SGEIS governing high-volume hydraulic fracturing in early October.

"Throughout this process, DEC's number one priority is to protect the state's drinking water and environment in concert with exploring options to safely and efficiently extract the state's natural gas. This will enable New York's economy to benefit from this resource and the job opportunities that development is expected to bring," Martens said. "We look forward to receiving comments from the public that will help inform the final conditions for high-volume hydraulic fracturing in New York State. The proposed environmental mitigation measures and the regulations that codify those measures go hand in hand. It makes sense to move forward with them together and hold simultaneous public comment periods and hearings."

New Yorkers are deeply divided over whether the state should allow hydrofracking. The fast-tracking of hydrofracking by the DEC will likely intensify the debate, especially against the backdrop of the extensive flooding in upstate New York caused by Hurricane Irene. The areas most affected by the flooding happen to sit on Marcellus Shale.

Environmental groups and some elected officials are advocating for additional time for public comments to the draft SGEIS so that floodplains maps could be updated and remapped. The floodplain maps would be updated so that the placement of well pads and storage for drilling chemicals and waste water will not lie on flood plains. However, there has been no indication from the DEC that an extension of the public comments period will occur.

The DEC's proposed timeline envisions the final regulations being promulgated and new drilling permits issued as early as next year. Once the DEC finalizes its regulations and establishes a hydrofracking permitting paradigm, it is almost certain that litigation over the DEC's permitting process will arise.

Currently, DEC's Mineral Resources staff oversees the permitting process for drilling. The process aims to protect the environment and landowner at all phases of the drilling process: before the permit is issued, during drilling, when the well is plugged and site restoration. The review process includes the following:

Review of each drilling application for environmental compliance before any drilling, which involves:

- Screening of the proposed well location to identify any environmental sensitivities, and
- Review of the proposed well design is to ensure that it is protective and protects fresh water aquifers;
- On-site inspection of actual drilling operations; and
- Enforcement of strict restoration rules when drilling is completed.

Pursuant to Executive Order No. 41, Governor Paterson provided that no permits authorizing high-volume fracturing would be issued until the SGEIS was finalized. Thus, New York has had a “de facto” moratorium in place on hydrofracking since the beginning of the SGEIS process. Permits for Marcellus Shale activity in New York will most likely not be issued by DEC until 2012. In upcoming weeks, we will look at the permitting process as proposed by the SGEIS.