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N.Y. plan promotes fund to cover gas-drilling accidents

Industry criticizes comptroller's proposal

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ALBANY -- The natural gas industry and business groups are pushing back against a bill proposed Tuesday that would create a company-funded reserve to cover the cost of damages from any future gas-drilling accidents.

The bill, proposed by Comptroller Thomas DiNapoli, would allow the state to create the fund by tacking on a surcharge to permit fees for natural gas companies and other production facilities.

The fund would then cover the cost of any cleanup work from accidents during gas drilling or hydraulic fracturing if the cause of the contamination couldn't be immediately identified, or if the responsible party refused to pay. The state Attorney General's Office would later determine who is responsible and sue for damages, with any money recovered going back into the cleanup fund.

DiNapoli said the proposal is modeled after the state's oil spill fund. The bill would allow for leaseholders or other landowners to seek claims if drilling accidents were to occur, he said.

"Unlike protections for those who suffer from an oil spill, we don't have a similar recovery and compensation fund for incidents involving natural gas extraction," DiNapoli said. "So we're trying to provide a level playing field."

But the head of the state Independent Oil & Gas Association called the bill "premature" and said there is "simply no basis for such a fund at this time."

"The proposal does not take into account existing permit requirements, which address bonding for site reclamation, and it does not acknowledge existing environmental, criminal and civil law, which holds businesses accountable on many levels," IOGA Executive Director Brad Gill said in a statement.

The comptroller's proposal comes at a time when the state is readying itself for a sharp increase in natural gas production. In recent years, national scrutiny over the safety of hydrofracking -- a technique in which water, sand and chemicals are injected into shale formations to break rock and unlock natural gas -- has grown.

The state Department of Environmental Conservation is developing permitting guidelines for drilling and high-volume hydrofracking in the Marcellus and Utica shale formations, which sit below the Southern Tier and other parts of the state. Permits for that type of gas extraction are on hold until the DEC's review is complete, which is expected next year.

DiNapoli said it would be up to the DEC to establish the cost to gas companies to enter the fund. He said he has started conversations with lawmakers about the proposal, which would need approval from the Legislature and Gov. Andrew Cuomo. DiNapoli's top deputy is former DEC Commissioner Pete Grannis.

"The issue is often, as we see with the oil spill fund, if you can't locate the responsible party or if they are unwilling to deal with the damage that is done, this sets up a mechanism to provide a remediation and a recovery as well," DiNapoli said.

Ken Pokalsky, senior director of government affairs for the state Business Council, said the bill is too broad and gives the DEC too much leeway.

"It gives regulatory authority almost without parameter to DEC to determine contamination in terms of natural gas exploration and what cleanup expectations are," Pokalsky said. "It's much different than the way cleanup by Superfund, the state oil spill law and even brownfields have been done for decades."

In a statement, the DEC didn't take a stance on the bill. In July, the department launched a hydrofracking advisory panel to make recommendations on issues like permit fees, bonding and severance taxes.

That advisory panel will have its first meeting on Aug. 18, according to DEC spokeswoman Emily DeSantis. A date for the meeting is being worked out, but it won't be open to the public because the panel is not subject to the state's Open Meetings Law.

Gov. Andrew Cuomo said Tuesday that he wanted to wait and see what the panel came up with before responding to individual ideas.

"The DEC has an advisory panel of real experts in the area that I think represent a good cross section and I'm looking forward to their recommendations," he said.

At least one member of the DEC panel voiced support for DiNapoli's proposal, as did a number of environmental groups.

"Given the level of concern about the environmental risks associated with drilling, I am glad Comptroller DiNapoli has proposed this legislation," said Assemblywoman Donna Lupardo, D-Endwell. "It will provide a much needed sense of security by ensuring that the industry is held accountable."

While the measure would likely garner support in the Democratic-controlled Assembly, it would face an uphill climb in the Republican-held Senate.

Sen. Thomas O'Mara, R-Big Flats, Chemung County, said DiNapoli's proposal should wait until the DEC's review is complete.

"It seems to me that the DEC is who we're relying on to set up the regulatory structure for this, and certainly they're being considerate of how we deal with accidents," O'Mara said. "I'm not really sure why it's the comptroller coming out with this."

Another Senate Republican -- Greg Ball of Patterson, Putnam County -- said the fund makes sense and could provide a middle ground for concerned landowners and gas companies eager to drill in parts of the state.
