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Northeast Regulator Eases Proposed Natural Gas Drilling Curbs

By MIKE SORAGHAN of

Regulators charged with protecting the watershed for New York City and the Philadelphia region today backed off from their toughest restrictions on Marcellus Shale drilling, but still proposed measures stricter than existing rules in nearby areas.

The Delaware River Basin Commission (DRBC) released proposed regulations that would allow gas drilling to start in eastern Pennsylvania, and also cover western New York state when its moratorium is lifted.

Under the proposal, drillers in those areas would need to post \$125,000 bonds for each well to cover the costs of pollution and restoration. That's a steep drop from the \$5 million in financial assurance that had been proposed earlier.

Such scaling back could come at the direction of the governors of the four member states -- Pennsylvania, New York, Delaware and New Jersey -- along with the Army Corps of Engineers, which represents the Obama administration on the panel.

Despite the scale-back, the amount is five times higher than the financial assurance required by Pennsylvania state regulators, noted energy analyst Kevin Book.

"DRBC wells will tie up more working capital than wells in other parts of the formation," said Book, managing director of the Washington-based consulting firm ClearView Energy Partners, "making it more attractive to drill other places first."

The amount of financial assurance has been a key sticking point in negotiations about the rules, and has been interpreted by some as an indicator of how welcoming the regulators and the body's member states will be to natural gas development in the Northeast (*Greenwire*, Sept. 16).

Drilling supporters today were generally happy that the process is moving forward, but wary about some of the details, such as the bonding requirement, fees and the scope of the regulations. Tom Shepstone, a landowner and businessman in Honesdale, Pa., who supports

drilling, said the operating requirements in the rules are reasonable, but the commission is asserting itself too deeply into land use.

"It's not practical, and it can be used by overzealous regulators or protestants to stop almost anything unless there is a better definition," Shepstone said.

One industry group says the regulations send a mixed message, indicating that the four states involved do want development, while making it financially difficult for it to occur.

"Unfortunately, while a lot of the words in here sound good, a lot of the numbers sound like a swift kick to the stomach," said Chris Tucker, spokesman for a group of independent drilling companies called Energy in Depth. "I've never seen bonding and fee requirements this high. They very well might prove prohibitive."

Drilling opponents disliked the regulations, furious that the commission is not waiting on a full "cumulative impacts" study before moving forward with the regulations.

"On bonding, \$125,000 is a joke, and the terms of the bonding are inadequate," said Jill Wiener of Catskill Citizens for Safe Energy. "If and when a water source is contaminated, there is no reliable way to clean it and make it whole again."

Public awareness rises

The producers most affected by the DRBC regulations are Hess Corp. and Newfield Exploration Co., which have acquired most of the rights to gas from property owners in Wayne County, the heart of Pennsylvania's portion of the Delaware Basin.

The regulations are subject to a 90-day public comment period, during which the commission plans three public hearings. The dates and places for those hearings have not yet been announced.

The long-delayed regulations have emerged as public awareness of "hydraulic fracturing" has increased. Enhancements in the fracturing process -- injecting millions of gallons of chemical-laced water deep underground at high pressure -- are what has opened up the formation in Pennsylvania, New York and surrounding states.

Hundreds of people attended U.S. EPA hearings this summer in Pennsylvania and New York on fracturing. Most of them were critical of the process and said current regulation of it is insufficient. The process has also been the subject of a segment on the CBS news show "60 Minutes" and a full episode on the popular network television show "CSI: Crime Scene Investigation."

The gas drilling industry says fracturing is an established, safe technology that has long been well-regulated by the states. Supporters say the gas in the Marcellus Shale formation under Pennsylvania, New York and adjacent states could power the country for years and allow a switch from coal to a cleaner-burning fuel.

Many farmers have reaped big windfalls by allowing drilling on and under their land. And many see gas development as a significant job creator in the region (*Greenwire*, Sept. 13).

But drilling has contaminated creeks and ruined the water wells of homes near well sites. New York City and Philadelphia have rallied against drilling out of concern it could contaminate their water supply. Many are also concerned that the immense water needs of the industry could lower river levels and restrict water supplies.

The commission oversees development, water quality and water quantity in a 13,539-square-mile watershed that covers portions of all four member states. But drilling is most likely in two - upstate New York and Pennsylvania. Drilling is already in high gear in Pennsylvania but has largely been blocked in New York.

The fracturing process uses millions of gallons of water for each well and produces toxic and salty wastewater, so it could affect downstream member states such as New Jersey and Delaware.

The regulations were expected to be done in September, but the process was repeatedly delayed. Drilling opponents such as Damascus Citizens for Sustainability and the Delaware Riverkeeper Network had interpreted the delays as signs that their protests were effective.

But commission Executive Director Carol Collier has said her agency was trying to find the best way to protect the Delaware watershed without encroaching on state regulatory prerogatives. She also said that bonding amounts came down as state leaders became more engaged.

"We started off very high," Collier said in September. "We're coming down a bit. ... Right now, the states are in motion. The regulations are changing. Some things will be stricter, and some things will be less strict."

States weigh in

The administration of New Jersey Gov. Chris Christie (R) and outgoing New York Gov. David Paterson (D) wrote the commission in recent days, asking it to hold off on allowing more drilling in the watershed.

New Jersey Environmental Protection Commissioner Bob Martin told Collier, "New Jersey

continues to oppose any drilling in the Delaware River Basin until appropriate regulations and safeguards are in place."

Paterson, who recently signed a short-term moratorium on fracturing, said the rulemaking process should wait until New York officials finish a study they have been working on and give Gov.-elect Andrew Cuomo (D), time to weigh in on the process.

"Your proposed program, covering only a small portion of New York State, could well conflict with the technical and regulatory protocols adopted in New York," Paterson wrote to Collier, "causing confusion, duplication, redundant regulatory fee assessments, differing regulations in different locations and possible mismanagement."

Paterson's representative on the board spoke out against releasing the regulations at a commission meeting Wednesday, citing those same concerns.

Gen. Peter "Duke" DeLuca of the Army Corps, the federal representative on the panel, had already rebuffed a request from Rep. Maurice Hinchey (D-N.Y.), who is fighting drilling in upstate New York, to delay drilling until a full environmental analysis can be performed (*Greenwire*, Oct. 10). DeLuca said the panel had to balance environmental and economic interests.

Not long after, President Obama spoke about increasing natural gas development as a possible area of common ground with congressional Republicans (*Greenwire*, Nov. 4).

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