

Paterson Splits the Difference

Vetoes moratorium, then bans fracking until July

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On Saturday, December 11 Governor David Paterson vetoed the recently passed moratorium bill that would have banned hydraulic fracturing statewide. The bill, while well intentioned, would have placed a moratorium on conventional vertical drilling as well as horizontal hydro-fracking, said Paterson.

He then issued an Executive Order that prohibits Department of Environmental Conservation (DEC) from issuing permits for high-volume horizontal hydro-fracking until July 1, 2011, at the earliest.

Executive Order number 41 directs DEC to intensify its study of the horizontal fracturing process and identify regulatory measures to protect public health and the environment. It also directs the agency to publish a Revised Draft SGEIS, accept public comment on those revisions, and suggests holding public hearings on the revised draft.

In comments prepared for the press, the governor emphasized that before drilling requiring high-volume horizontal hydro-fracking begins, there must be absolutely no doubt that the technique is safe.

“The enormous revenues that could eventuate from such drilling would not be worth the cost of serious environmental harm,” Paterson said. He added that he wants DEC to examine all available evidence, including data from other states.

Moratorium was Flawed

Brad Gill, executive director of the Independent Oil and Gas Association of NY (IOGA-NY) praised Paterson’s decision to veto the moratorium bill.

“We are very pleased that the governor saw the bill for what it was – a flawed piece of legislation replete with unintended and dire consequences for the people and businesses in our industry,” Gill told the press. IOGA claims that a moratorium could jeopardize close to 5,000 jobs. Paterson’s actions, they hope, will set the stage for “a more reasoned and rationale public discussion about these issues going forward.”

New York Farm Bureau (NYFB) also opposed the moratorium. They posted an “action alert” making it easy for farmers to send emails to the governor lobbying for a veto. Within a week, close to 600 people sent anti-moratorium letters to the governor from the NYFB website.

“This illustrates the urgency of the issue,” Jeff Williams said. Williams is the manager of government relations for the farm bureau.

The problem isn’t the intent of the moratorium bill, but the language. It’s not specific enough, Williams said. The bill would suspend issuing new permits for hydro-fracking in “low permeability natural gas reservoirs, such as the Marcellus and Utica shale formations”, but doesn’t limit it to just those formations, he said.

Landowners had another concern as well. Ever since Paterson directed DEC to develop a Supplemental Generic Environmental Impact Statement (SGEIS), some gas companies have claimed that they can't drill in the state. Last year Chesapeake and Fortuna mailed letters threatening to invoke "force majeure" in order to extend their leases.

Force majeure literally means "superior force" and allows the terms of a lease to be extended under unforeseen circumstances, such as hurricanes or union strikes that prevent normal gas drilling operations.

"The veto was the best idea yet from the governor," said Chris Denton, an oil and gas attorney in Elmira. "The SGEIS will not be available until after May 1st anyway, and the [moratorium] bill would have created a true force majeure."

Executive Order Offers Time-Out

While environmental groups hoped to see the moratorium signed into law, they applauded Paterson's actions. By imposing a formal ban on fracking, NY set a national precedent and provides the state with a time-out on horizontal hydro-fracked wells.

Should governor-elect Andrew Cuomo allow Paterson's Executive Order to stand, this would be essentially a 7-month moratorium, said Katherine Nadeau of Environmental Advocates of NY. "He's given us more time to evaluate the critical issue of high-volume horizontal hydro-fracking."

Nadeau could think of no other case in which a state has stood up to gas industry lobbying. "The only reason this happened," she said, "is because of the tens of thousands of voices of people going against this gigantic industry."

As good as the Executive Order is, it's second best, says Assemblywoman Barbara Lifton. A statute would be stronger, with no risk of being rescinded by the next man to sit at the governor's desk.

"There was also a lot of misinformation from the industry," Lifton said, citing IOGA's lobbying efforts. Regardless of how safe people insist the current drilling technology is, Lifton says there are problems with vertical wells. Indeed, it was vertical Marcellus wells that contaminated the drinking water wells in Dimock, PA.

Read for Yourself

You can read the full text of the moratorium bill at
http://assembly.state.ny.us/leg/?default_fld=&bn=A11443&Text=Y

You'll find the text of Executive Order 41 at
http://www.state.ny.us/governor/executive_orders/xeorders/EO41.html