

From: Alison Crocker
To: yeh@westfirmlaw.com
CC: Spreitzer, Carin; Maglienti, Jennifer; Russo, Steven; Crisafulli, Scott; Berkman, Thomas; Garlick, Sandra
Date: 8/15/2011 12:58:09 PM
Subject: Summaries of Regulatory Revisions

Dear Yvonne - Attached you will find summaries prepared by the Divisions of Mineral Resources, Water, Lands and Forests and Fish, Wildlife and Marine Resources, to guide our discussion this afternoon. Please forward these to all the attendees, particularly those participating by telephone (apologies for short turnaround time). I will also have paper copies available.

As all participants are most likely aware, the Department is seeking input from the regulated industry regarding the costs of complying with the regulatory restrictions and protections on high-volume hydraulic fracturing.

Alison H. Crocker, Esq.
Deputy Counsel
New York State Department of Environmental Conservation
Office of General Counsel
625 Broadway
Albany, NY 12233-1500
Tele: (518) 402-9185
Fax: (518) 402-9018 or (518) 402-9019
E-Mail: ahcrocke@gw.dec.state.ny.us

Attachments: Summary of DLF and DFWMR Regulations_1_1_1.pdf, Rulemaking Proposal, Outreach.pdf, 081511 DOW reg summary.pdf

Summary of Proposed Regulations addressing HVHF on State Lands

Consistent with the proposal set forth in the July 2011 preliminary DSGEIS, the Division of Lands and Forests and the Division of Fish, Wildlife and Marine Resources will propose regulations that would prohibit surface activity associated with HVHF on State owned lands administered by these two Divisions. Specifically, the regulation would prevent the issuance of a permit for HVHF when the well pad is proposed to be located on State owned lands, notwithstanding the existence of a mineral rights lease executed by the State.

OIL AND GAS RULEMAKING

STAKEHOLDER OUTREACH

August 15, 2011

The Department proposes to adopt the following regulations in Part 550-558:

Part 550, Promulgation and Enforcement of Rules and Regulations

- Part 550 will receive a new heading and Section 550.2 will be revised to reflect to current organizational structure of the Division of Mineral Resources.
- Several new definitions will be added to Section 550.3 including hydraulic fracturing, true measured depth and true vertical depth.

Part 551, Reports and Financial Security

- Minor changes will be made to paragraph 551.1(a) to clarify that organizational reports are needed for any company that deepens, plugs back or converts a well, and further will clarify that drilling of wells applies to storage, stratigraphic and geothermal wells.
- Section 551.6 will be revised to conform the regulations to statutory language.

Part 552, Permits to Drill, Deepen, Plug Back or Convert Wells

- Section 552.1 will be clarified to indicate that a permit is required before construction of the well pad begins. Other regulations refer to the “commencement of operations” and this has caused confusion in the regulated community.
- A new permit will be required to re-fracture a well.
- Section 552.2 will be modified to extend the permit term from six months to two years.
- Section 552.2 will also include language to clarify that once an operator commences operations, the permit remains valid for the life of the well.
- Section 552.3 will be revised to allow the department to re-issue a permit for the same location when there is a change in operator. The existing regulation allows the department to re-issue the same permit for a different location, however, review of a permit application for a different location would require a significant amount of staff time. Reissuance of a permit for a new location was also rare, so the proposed change would be more consistent with current practice.

Part 553, Well Spacing

- Since the 2005 legislative changes to ECL Article 23, Title 5, the regulatory definition of “statewide spacing” continued to reflect the pre-2005 method of establishing spacing units. The statutory definition of statewide spacing will be incorporated into Part 553, verbatim.
- For wells in pre-1995 gas wells, the regulations will be conformed to ECL Article 23, Title 5 and for wells exempt from Title 5, the default setbacks for well spacing will remain at 660 feet from any boundary line of the lease and 1,320 from any other well in the same pool.
- Section 553.3, which currently refers to spacing orders, will reflect that permit issuance establishes the spacing unit. The proposed regulations will also remove the requirement for a public hearing prior to adoption of the spacing unit, since spacing orders are no longer required for wells that meet statewide spacing. The regulations will retain the Department’s authority to issue spacing orders, since on occasion, there are wells drilled in pre-1981 oil fields and pre-1995 gas fields. The statutory language in ECL Article 23, Title 5 for non-conforming units is not currently part of the department’s proposed rulemaking.
- Section 553.3 will also incorporate verbatim, a portion of Title 5 that allows the Department to modify statewide spacing units.
- Changes will be made to Part 553.4 to conform the variance process to current practice. As written, the existing rule required a hearing on any request for an exception to the setbacks listed in Sections 553.1, 553.2 and 553.3 of Title 6. The proposed rulemaking will convert this to a notice and public comment period, and will instead give department staff the ability to schedule a hearing if substantive and significant issues are raised. Current practice is to request the assignment of an ALJ from OHMS after a substantive and significant issue has been raised, so the change will not significantly alter how the department presently handles variances.

Part 554, Drilling Practices and Reports

- A requirement will be added to subdivision (a) to require submission of a plan for disposal of drill cuttings.
- The regulation will also be modified to remove the sentence which indicates that drilling muds are not polluting fluids.
- Section 554.5, which concerns deviation from the surface location, will be modified to describe the deviation of a horizontal well. Existing regulations also do not reflect current drilling practices, in that the regulations required specific approval and application requirements for intentionally deviated wells. The department’s current Application to Drill, Deepen, Plug Back and Convert already provides the means for operators to notify the department of their intent to drill a horizontal well, so some of the application requirements in 554.5 are unnecessary.
- Section 554.7 will be modified to require an interim completion report, where the regulations now provide for a report 30 days after well completion.

Part 555, Plugging and Abandonment

- The minimum plugging requirements will be updated to reflect more modernized plugging practices by increasing the length of required plugs and will require that uncemented casing be pulled as low as practical. The regulation will also provide more specificity to what is considered heavy, mud-laden fluid.

A new Part 560 will be added, tentatively titled, “Drilling, Operation and Stimulation of Low-Permeability Reservoirs.”

- The proposed rulemaking contains seven new sections, addressing applicability, providing new definitions, application requirements, setbacks, recordkeeping requirements, well construction and reclamation.
- Part 560 will contain virtually all of the mitigation measures outlined in Appendix 10 of the preliminary Revised Draft SGEIS, with some limited exceptions.
- Part 560 will promulgate private well testing requirements, and will promulgate many of the environmental assessment form addendum requirements in Appendix 6 of the preliminary Revised Draft SGEIS.
- Part 560 will also include the protocols for chemical additive disclosure, and will specifically reference an operator’s ability to apply for trade secret protection. The draft rule will also make clear that information on chemical additives will not be considered a well record.

Proposed Changes
to
6 NYCRR Part 750

- * 750-1 text added for clarity, ex. New York State law provides authority greater in scope than the federal Clean Water Act.

A new section is created to gather all of the existing ECL Article 17 and Parts 750-1 and 750-2 requirements for groundwater and surface water resource protection and clarify the conditions that specifically apply to high volume hydraulic fracturing (HVHF). Currently, these requirements must be met by everyone who proposes an activity that may result in a discharge of pollutants to ground or surface water resources of the State, and who plans construction that will disturb more than one acre of land. The new Subpart clarifies in regulation the measures described in Chapter 7 of the draft Supplemental Generic Environmental Investigation Statement (dSGEIS) to avoid or mitigate potential impacts from HVHF upon water resources. The new section adds to the list of prohibitions in 750-1.3 by providing that no SPDES permit will be issued for HVHF activities and discharges within 4000 feet of unfiltered surface water supply watersheds, within 500 feet of a primary aquifer, within 100 year floodplains, or within 2000 feet of any public water supply.

The new section requires HVHF drillers to provide a written evaluation of the additive products they intend to use and the applicant must utilize additive products, which exhibit the least aquatic toxicity and pose the least risk to water resources and the environment, or provide documentation that the applicant has demonstrated to the Department's satisfaction, that some of the available alternative products are not equally effective or feasible.

Finally, the new section allows an eligible applicant to obtain a new SPDES general permit to cover all potential discharges associated with HVHF activities during construction of the wellpad, drilling and stimulation of wells including a plan for disposal of flowback, production of oil or gas including disposal of brine, and completion of the well. If an applicant is not eligible for the new general permit because the applicant proposes to build a wellpad within certain setback areas such as within 500 feet of a principal aquifer, for example, the new section provides that the applicant could be eligible for an individual SPDES permit.