

Natural Gas Development Team Meeting 07/29/10
Natural Gas Drilling Development Questions & Answers

QUESTION: Is there a moratorium on natural gas drilling in New York State?

ANSWER: No. New York State Department of Environmental Conservation (DEC) is preparing a Supplemental Generic Environmental Impact Statement (SGEIS) to study the impacts of high volume water hydraulic fracking in low permeable geological formations (like the Marcellus Shale). During this process there has been an informal moratorium on fracking wells using more than 80,000 gallons of water.

QUESTION: Have any vertical or horizontal wells been drilled since DEC started the SGEIS review process?

ANSWER: Yes. During this time at least four vertical wells have been drilled in Tioga and Broome County. There have been numerous horizontal wells drilled in Madison County and Chenango County. These wells generally targeted various geological formations.

QUESTION: Why is there so much interest in potential Marcellus Shale natural gas wells in Broome County?

ANSWER: The Marcellus is an organic rich shale with natural gas potential that underlies much of PA, OH, WV and NY, including Broome County. The amount of gas in place in any specific location, however, depends on a number of geologic factors. These factors suggest more gas in place in southern Broome than in northern Broome. Presently there are no proven fields of production in Broome County.

QUESTION: How many acres of land in Broome County are currently leased to natural gas companies?

ANSWER: More than 85,000 acres of land in Broome County are currently leased to natural gas companies. This information is compiled from leases and memorandum of leases filed in the Broome County Clerk's Office since 2003.
<http://www.bcgis.com/website/gisweb/mapcollection.htm?cnty21>

QUESTION: How many acres of land in Broome County are currently included in private coalitions formed for the purpose of securing natural gas leases?

ANSWER: According to information from coalitions, more than 150,000 acres.

QUESTION: How many acres of land does Broome County own?

ANSWER: Broome County owns between 5,500 to 6,000 acres of land. (The total acreage varies by reason of tax foreclosure properties.) The primary acreage is located at the Binghamton Metropolitan Airport and the County Landfill. In addition the County owns parkland, defined flood control water shed properties, land under county facilities, Broome Community College, and miscellaneous acreage.

QUESTION: Does Broome County have the power to decide whether or not natural gas drilling will take place on any of the acreage owned by third parties?

ANSWER: No. New York State has preempted localities like Broome County on all issues regulating the natural gas industry (except roads and property assessments). A natural gas company must obtain a permit from DEC before drilling activities commence; it must also obtain a permit from the Susquehanna River Basin Commission (SRBC) or the Delaware River Basin Commission (DRBC). The natural gas company, however, does not need to obtain a permit from the County of Broome.

QUESTION: Does Broome County have the power to decide whether or not there will be natural gas development activities on property owned by the County?

ANSWER: Yes. The County can decide whether or not to allow a company to conduct surface operations for natural gas development on this acreage. The terms would be according to a lease executed between the County as owner and the natural gas company as lessee. County property, however, even without a lease can be subjected to compulsory integration under the laws of the State of New York.

QUESTION: Have other Counties in NYS leased property to natural gas companies?

ANSWER: Yes. As one example, Chemung County signed a natural gas lease several years ago that covers more than 1,500 acres. It also has some land that has been subjected to compulsory integration.

QUESTION: What is compulsory integration?

ANSWER: Whenever a natural gas company files a permit application with DEC to drill a natural gas well, it must include a map showing the area that will be assigned to the well, called a spacing unit. This area will include primarily acreage that has been leased for natural gas development, but it may also include acreage that has not been leased. After DEC issues a well permit for that spacing unit, owners of land that has not been leased will be given three options on how the un-leased acreage will be integrated with other properties in the unit. This is a compulsory process. If the company controls 100% of the land in a proposed spacing unit, there is no need for compulsory integration.

QUESTION: How much property in a proposed spacing unit must a natural gas company control by lease before it asks DEC to designate a spacing unit?

ANSWER: 60%.

QUESTION: Can leased County property be used by a natural gas company to comprise a portion of that 60%?

ANSWER: Yes.

QUESTION: Can un-leased County property be subjected to compulsory integration if it is included in a spacing unit?

ANSWER: Yes. If that occurred (and the county elected the royalty option) the royalty received by the County would be equal to the lowest royalty in an existing lease in the spacing unit, but no less than one eighth.

QUESTION: What are the three options available to an un-leased land owner under compulsory integration?

ANSWER: “If your acreage remains un-leased but it is in a spacing unit, you must choose one of the following: integration as a royalty owner; integration as a non-participating owner; integration as a participating owner.” *New York State DEC Landowner Option Guide*. The DEC web site, including the above guide, contains an excellent discussion of the three options.

QUESTION: Why has New York State adopted compulsory integration rules?

ANSWER: The law is designed to protect the correlative rights of landowners, including the right to receive the benefit of minerals under your own property. Historically the old law of capture applied to natural gas development. That common law stated that the first party to extract oil or gas from a geological formation owned the oil or gas. Theoretically, this meant that oil or gas under someone’s property could be drained without the owner receiving any compensation. The compulsory integration rules are designed to prevent this inequity, and to prevent haphazard development.

QUESTION: Does New York State have a significant volume of gas drilling incidents that call into question the effectiveness of DEC oversight?

ANSWER: During the recent public hearing several speakers, including Walter Hang, Ithaca New York, spoke about gas drilling incidents in New York State. Mr. Hang had previously compiled data from DEC records. The Binghamton Press & Sun Bulletin ran an article on November 8, 2009 regarding Mr. Hang’s findings. Pete Grannis, DEC Commissioner, responded in a letter to Assemblyman Bill Parment dated December 30, 2009. The letter concludes as follows, “I think it is clear that when put into the proper context and perspective the reported information shows that the incidents of spills and other pollution events at modern natural gas well sites is exceedingly low and, in fact, the very data that Walter (Hang) cites supports a conclusion that New York State’s regulatory program is highly effective.” A copy of Mr. Grannis’ letter is attached:
<http://www.theithacajournal.com/assets/pdf/CB149868111.PDF>.

QUESTION: What steps have been taken in Broome County to avoid and mitigate the consequences of adverse incidents in connection with natural gas development?

ANSWER: There are various types of potential incidents that could occur at natural gas development sites. Although many of these are addressed by DEC in the draft SGEIS, the final SGEIS has not been released. It is anticipated that the final document will be even more comprehensive. Nevertheless local response to some circumstances may be required, including public safety and land disturbance issues. Public safety issues include possible hazmat incidents, confined space rescue, explosion/fires, high angle rescues, location/access issues, etc. Land disturbance issues include, among other things, mitigation of possible adverse consequences associated with municipal roads, private access roads, well pads and pipeline rights of way. Broome County representatives have worked on all these issues. Some examples are as follows:

Public safety. Broome County Department of Emergency Services has worked with Planning/GIS to ensure that well pad sites have 911 addresses; three local career departments are equipped and trained for high angle rescue; there are two HazMat Response teams maintained by local municipalities.

Land Disturbance. Broome County Department of Public Works and the Law Department have worked with other local municipalities on developing a local law to protect roads. The Administration has also reached out to the NYS Department of Agriculture and Markets for recommended guidelines for pipeline construction, well pad construction and land reclamation.

QUESTION: What is the rule against alienation?

ANSWER: Municipal parkland may not be used for non parkland purposes without permission of the NYS Legislature. This has also been called the public trust doctrine. NYS courts have repeatedly stated that parks can only be used for recreational type purposes. Consequently no natural gas development activities may take place in a county park. Those activities include drilling, pipelines, compressors, staging areas, etc.

The NYS Comptroller previously opined that a municipality may enter into agreements whereby parkland could be in a spacing unit as long as there was no surface activity. *NYCPTN Opn 77-430*. (This opinion apparently pertained to a vertical well in a conventional natural gas field.)

QUESTION: Does NYS County Law 215 prevent Broome County from entering into a natural gas lease?

ANSWER: No. This law states that a County may lease property for a term not exceeding five years. NYS law also states that this prohibition may be pre-empted by a County Charter. *NYS County Law § 2*. The Broome County Charter permits the lease of County property upon the approval of the legislature. *Broome County Charter & Code, Chapter 28, section 5*. There is no five year limitation in the County Charter or Code.

QUESTION: Where can individuals learn more about natural gas development issues?

ANSWER: During the last three years the “Marcellus Shale” has become part of the public lexicon. Three years ago geologists and energy industry representatives dominated the discussion of natural gas development in the northeast. Today everyone has an opinion. This dynamic is reflected online. Many web sites have been developed in the last three years to educate the public and advance a pro drilling or anti drilling position. It is virtually impossible to sift personally through all these sites. There are, however, some institutional sites that both educate and discuss gas development issues (with minimal bias). These include NYS DEC <http://www.dec.ny.gov/energy/205.html>, Cornell Cooperative Extension <http://cce.cornell.edu/EnergyClimateChange/NaturalGasDev/Pages/default.aspx>,

Penn State Cooperative Extension <http://extension.psu.edu/naturalgas>,
Pennsylvania Department of Environmental Protection
http://www.dep.state.pa.us/dep/deputate/minres/oilgas/new_forms/marcellus/marcellus.htm,
and Interstate Oil and Gas Compact Commission <http://www.iogcc.state.ok.us/>.