

Hydraulic Fracturing and Public Participation

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Tip of the Mitt Watershed Council and National Wildlife Federation

This is the fifth and final information sheet in a bi-weekly series that will be provided to Michigan legislators on hydraulic fracturing or “fracking,” a natural gas and oil extraction technique.

Public Participation in Drilling Permitting Process

Environmental agencies are usually required to notify the public about a permit application, give the public an opportunity to comment, and in some cases, hold a public hearing. But the opportunity for the public to participate in the permitting process for oil and gas wells has traditionally been much more limited. Some environmental nonprofits recommend allowing members of the public to voice their opinions regarding gas exploration on public and private lands via a public comment process, particularly for decisions that potentially impact state land and state waterways.¹ However, well operators and service providers can be resistant to public participation, in part because the drilling process is subject to change over the life of a well.

In Michigan, permits for oil and gas drilling operations are granted by the Office of Oil, Gas, and Minerals (OOGM) of the Department of Environmental Quality (DEQ), with limited public participation. There is no general public review and comment on permit applications. OOGM must notify the county of a proposed application for an oil or gas well, but cities, villages, and townships only are notified if the population is 70,000 or more. A city, village, township, or county may provide written comments and recommendations on a permit application to OOGM.² A well operator drilling an oil or gas well within 450 feet of a residential building located in a city or township of 70,000 people or more must notify the clerk; a permit may only be issued if the owner of any such residential buildings gives written consent, or a public hearing is held and the OOGM determines that the well location will not cause waste and there is no reasonable alternative.³

Public Knowledge of Drilling Operations

Requirements governing public disclosure of drilling sites and well information vary by state. Some states, such as West Virginia, require the applicant to disclose intended drilling operations. Under an executive order issued in July 2011, applicants who wish to drill within municipality boundaries in the Marcellus Shale in West Virginia must publish sufficient public notice of the well permit application.⁴

In Michigan, upon request, anyone can obtain information about the name and address of a permitting applicant, the location of a proposed well, the proposed depth and targeted formation of a well, the surface owner, and whether hydrogen sulfide gas is expected.⁵ A database is available online with the locations of oil and gas wells. Upon request of the owner of a well, all well data must be held confidential for 90 days after completion of drilling.⁶ The OOGM does not provide information on the location of these confidential wells in its online

¹ University of Maryland School of Public Policy, *Marcellus Shale Gas Development: Reconciling Shale Gas Development With Environmental Protection, Landowner Rights, and Local Community Needs* 60 (July 2010).

² Mich Comp. Laws § 324.61525(4) (2006).

³ Mich Comp. Laws § 324.61506b(1)-(2) (2006).

⁴ Tomblin, Earl Ray, Governor, State of West Virginia Executive Department, Executive Order No. 4-11(4)(g), at www.governor.wv.gov/Documents/20110713150559476.pdf.

⁵ Mich. Comp. Laws § 324.61525 (2006).

⁶ Mich Comp. Laws § 324.61506(d) (2006).

database.⁷ There is an exception for information related to releases, spills, or leaks of gas, brine, crude oil, or products and chemicals used in association with oil and gas exploration, such as fracking fluid.⁸ However, there is no formal process for reporting this information.

Under the DEQ's recent permitting instructions, well operators are required to install a monitor well between any water withdrawal well and the nearest freshwater well.⁹ The DEQ has stated that if a monitoring well shows a potential significant impact on another freshwater well, the well operator will be required to either "curtail the withdrawal or negotiate an agreement with the owner of the freshwater well to resolve the issue."¹⁰ However, the instruction does not require that all well owners who are potentially impacted by a well operator's water withdrawal be notified of the problem.

Local Zoning

One way in which the public can participate in land use decisions is through local zoning. Michigan's local units of government have broad regulatory authority to protect the health of their residents, the environment, and the local economy. However, the Zoning Enabling Act (ZEA) expressly preempts regulation of the "drilling, completion, or operation of oil or gas wells or other wells drilled for oil or gas exploration purposes" by counties or townships.¹² Counties and townships are also prohibited from exercising jurisdiction over the issuance of permits for location, drilling, completion, operation, or abandonment of wells. Cities and villages are not restricted by the express preemption provision in the ZEA. But cities and villages can only regulate wells, including those that use fracking, if the ordinance does not directly conflict with detailed state and federal requirements, other environmental laws do not preempt local action, and the ordinance is not considered exclusionary.

⁷ Department of Environmental Quality, Locations – Oil & Gas wells, *available at* http://www.michigan.gov/deq/0,1607,7-135-3311_4111_4231-97870--,00.html.

⁸ Mich Admin. Code r. 324.416(3) (2006).

⁹ Michigan DEQ, Office of Geological Survey, Supervisor of Wells Instruction 1-2011.

¹⁰ Letter from Harold R. Fitch, Chief, Resource Management Division of the Office of Geological Survey, to the DEQ, to Grenetta Thomassey, Program Director, Tip of the Mitt Watershed Council (July 6, 2011).

¹² Mich Comp. Laws § 125.3205(2).

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