

Landowners threaten to sue New York

Group says it will act if DEC misses deadline

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Albany Bureau

ALBANY — A statewide group of pro-drilling landowners says it will sue New York state if the Department of Environmental Conservation misses a fast-approaching deadline for its proposed hydraulic fracturing rules.

In a newsletter distributed to its members Friday, the head of the Joint Landowners Coalition of New York said the group is "laying the ground work for a lawsuit against New York State" if the state doesn't finalize its fracking regulations by Feb. 27. If not finished by then, the regulations would expire.

"We sincerely hope this will not be necessary as the (environmental impact statement) and regulations are done and ready

to be released," Dan Fitzsimmons, the group's president, wrote. "It is obvious that decisions to delay release are being made for purely political reasons. This must be stopped."

The Binghamton-based group represents a collection of local coalitions that pooled together their acreage to gain greater bargaining power with natural-gas companies that seek to lease their oil-and-gas rights. The potential class-action suit would claim an illegal government taking under the Fifth Amendment, which prevents private property from being taken for public use "without just compensation."

Scott Kurkoski, the group's Broome County-based attorney, said the coalition's members have been talking about filing a

lawsuit for two years. He said the research is already completed and the landowners would be in a position to sue shortly after a potential blown deadline.

"As long as the state has been looking at legitimate issues, it has been difficult to commence a takings claim. But that's not true anymore," Kurkoski said. "We are very hopeful that everything moves forward next Wednesday and everything comes out on (Feb. 27), but if not it's going to be a clear signal to us that this is not going to happen for political reasons."

High-volume hydrofracking — the method used to help release gas from the resource-rich Marcellus Shale formation — has been on hold in New York since the DEC first launched a review of

the process in 2008.

The DEC declined comment Friday. At a budget hearing Monday, DEC Commissioner Joe Martens cast doubt on whether the agency would be able to meet the end-of-February deadline. Martens told lawmakers his agency is on "no particular timeline" when it comes to the deadline, and is still waiting on analysis from the Department of Health.

The DEC has been bracing for lawsuits about its fracking review since the process began. In September, Martens said it was "highly likely" that groups would "pursue litigation following the conclusion of the (DEC's) process if they do not agree with the outcome."

Environmental groups have been closely watching the DEC's moves as they relate to state laws governing the review and rule-making processes.

Katherine Nadeau, wa-

ter and natural resources program director of Environmental Advocates of New York, said it would "create a humungous problem" for Gov. Andrew Cuomo if his administration tries to meet the end-of-February deadline. The DEC was flooded with public comments in December and January and must offer a response to any substantive issues raised before finalizing fracking rules.

"It would bring into question the credibility of the health review and the final regulations," Nadeau said. The DEC must finalize a lengthy environmental review — known as the Supplemental Impact Statement — by Wednesday if it hopes to meet the late-February regulatory deadline.

"We hope that the SGELS will be out on Wednesday leading to completion of related reg-

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DAN FITZSIMMONS

JOINT LANDOWNERS COALITION OF NEW YORK

ulations on February 27," Fitzsimmons wrote in his newsletter. "Albany's lack of firm leadership has needlessly delayed progress on this issue."

If the DEC does miss the deadline, the rule-making process would have to restart, further delaying a decision on whether large-scale fracking can proceed in New York. That would require a public-comment period of at least 45 days and possibly a public hearing on the proposed rules.

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