

Fracking rules to disappoint environmentalists

By Jim Nowlan

Fracking opponents hope the state of Illinois will adopt rules to implement fracking so onerous that oil companies will not proceed to drill. The opponents will likely be disappointed.

Illinois was a major oil producer up to World War II, then the oil fields of southeastern Illinois began to play out. Now, however, the New Albany Shale Formation, which surrounded the Illinois oil, is thought to hold large amounts of oil and gas that can be extracted by hydraulic fracturing, or fracking.

This technology uses sand, chemicals and water, or nitrogen, to open shale and create escape routes for oil and gas trapped inside.

For more than a year, the oil industry and environmental groups arm wrestled over the development of a bill to authorize fracking.

The Environmental Law and Policy Center, the Natural Resources Defense Counsel and other such negotiators undoubtedly felt it better to be at the table rather than see a bill drafted without their input.

The resulting 123-page bill was negotiated in minute detail and all sides seemed satisfied with what legislators hailed as the most stringent legislation in the nation.

But no legislation in Illinois can be implemented without rules.

An obscure yet powerful committee of the Illinois legislature called the Joint Committee on Administrative Rules (better known as JCAR) will determine by November 15 the final shape of rules for fracking.

Legislation is often written in general terms, with words like “reasonable” and “appropriate.” Rules provide the critical detail that defines reasonable as “a setback 1,000 feet from another’s property line.” Or should it be 5,000 feet? What is reasonable? This is why the rules are so important to affected groups.

The Illinois Department of Natural Resources (IDNR) has been responsible for drafting the rules for the fracking bill, as it will administer the law.

Rules were drafted, and the public had 45 days to comment. More than 30,000 comments came in from around the country from opponents of fracking, apparently a record.

Then in early September, IDNR came out with a second, significantly revised set of rules, in 150 pages plus 361 pages of commentary.

Environmental groups were generally pleased that IDNR had been responsive to its concerns. Writing in her blog for the Natural Resources Defense Council, Ann Alexander called them “thorough, thoughtful and exhaustively researched.”

But industry went ballistic, claiming the revised rules in many places “went way beyond” the governing statute.

As one industry representative declared: “The legislature passed a bill that allowed fracking, and now we have draft rules that don’t allow fracking.”

Industry has at least 67 objections to the rules.

Brad Richards, executive director of the Illinois Oil and Gas Association, says the rules add eight new criteria to the permit application that are not in the statute.

Mark Denzler of the Illinois Manufacturing Association notes that the statute says a permit “shall” be issued if all requirements are met, but the revised rules add that such permitting is up to the discretion of IDNR.

Industry also contends that several items that failed to make it into the negotiated bill are now in the rules.

At the September meeting of JCAR, Rep. David Leitch (R-Peoria) sponsored a motion adopted unanimously by the group's 12 members, reinforcing to IDNR that the overriding responsibility of JCAR is to see that rules comport with the statute.

“This bill was negotiated with all at the table over more than a year,” says Leitch. “Every line in the bill is there for a reason. It doesn't matter whether we are pro or anti-fracking. It is not our job to decide the issue.”

The draft rules are now with JCAR staff, which has a staff of 14 generalists. They will talk with IDNR, technical experts from the Illinois Geological Survey, and industry and environmental representatives.

I am not enthusiastic about fracking, yet the legislature has spoken by enacting a detailed bill on a bipartisan vote. I expect JCAR will roll back any rules that go beyond the statute and its intent, which will disappoint environmentalists, and that fracking will begin in Illinois in a couple of years.

