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MASSACHUSETTS CHAPTER

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Ban Fracking in Massachusetts

Formal Title: An Act Related to Restricting Class II Wells

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New file

This bill would

- Create a legislative ban on hydraulic fracturing, the process for extracting shale gas by injecting water, sand, and chemicals deep underground via Class II drilling wells.. Although it is unlikely that energy companies will target the thin shale deposits in the Pioneer Valley any time soon, this bill serves as a strong deterrent.

Background

There is an existing administrative ban on "Class II Wells" in Massachusetts, however this supposed ban is weak and dangerously ambiguous. The applicable regulation states: "(1) No person shall inject fluids into or through an injection well and no person shall construct, install, operate or maintain any Class I, II or III injection well, *except as authorized by 310 CMR 27.00.*"¹ The final phrase "except as authorized by 310 CMR 27.00" creates a loophole. Another paragraph in the same regulations constitutes a clear and unqualified ban: "(5) No person shall construct, install, operate or maintain a Motor Vehicle Waste disposal well in the Commonwealth."² First, therefore, the ban on Class II wells is conditional, whereas the ban on Motor Vehicle Waste disposal wells is not. Industry lawyers could argue that this difference between paragraphs (1) and (5) means that the regulation does not completely prohibit Class II wells.

The federal regulation that gives primary enforcement over Class II wells to the Massachusetts DEP relies on a Massachusetts statute, namely MGL. c.21, §§27, 43, and 44. Industry lawyers would contend that the intent of the Legislature in enacting this statute was simply to authorize the DEP to regulate discharges of pollutants into the commonwealth's waters, not to completely close off the one and only method of extracting natural gas from underground shale deposits.

The DEP's enforcement authority does not extend to Indian lands in Massachusetts. In those areas the EPA has sole jurisdiction, and its role is to enforce the Underground Injection Control (UIC) program. But in 2005 Congress specifically exempted fracking from the UIC. So industry lawyers would have grounds for arguing that fracking is legal on Indian lands.

Is there any natural gas in Massachusetts?

We don't know yet. Without exploration geologists cannot tell us whether the formations in the Hartford Basin that *might* contain natural gas actually do. The State Geologist has said that the conditions are "not optimum for shale gas development.... [so] extraction of hydrocarbons [is] economically not feasible with today's technology at current market price... However, more data need to be collected to completely rule out that possibility"³

There is little immediate or short-term prospect of natural-gas extraction in Massachusetts. But in view of the pace of progress in drilling technology and fluctuations in fossil-fuel prices, it seems wise to act now rather than later. This bill is a preventive measure that would deter energy companies from even thinking about fracking in Massachusetts.

¹ 310 C.M.R. 27.04(1).

² 310 C.M.R. 27.04(5).

³ <http://www.geo.umass.edu/stategeologist/frame_shalegas.htm?shalegas.htm>