

## Looking Under Fracking's Surface: Part 3

*Law360, New York (April 09, 2015, 10:55 AM ET) --*

New York and California recently conducted environmental analyses of hydraulic fracturing and other well-stimulation activities to inform potential regulations of these operations. Both outlined the exact same potential impacts to air, water, seismic activity, communities and human health. Both recognized the lack of certainty as to the likelihood of those impacts actually occurring. Yet, despite the similarities in their findings, the two states ultimately adopted very different approaches to regulating fracking: New York has chosen a restrictive approach, banning the practice within its boundaries, while California has chosen a pragmatic approach that allows fracking, subject to certain restrictions.

Comparison of New York's and California's approach offers a revealing example of how the regulation of fracking is guided not solely by science and data, but also by economic and political realities. Comparison of these two states offers an ideal set of evaluative points given their similarities in demographics and consumption levels. Thus, by isolating their differences, the factors actually driving regulation can be observed.



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### Background

In 2009, the New York State Department of Environmental Conservation was directed by Gov. Andrew Cuomo to determine the suitability of fracking and to prepare a supplemental generic environmental impact statement. A GEIS can be used to prevent the need for an individual impact statement for each natural gas well permit application. In 2012, as part of this process, the NYSDEC requested an opinion from the New York State Department of Health on the health risks associated with fracking. The NYSDOH's report was released in December 2014.

In September 2013, on the opposite side of the country, California Gov. Jerry Brown signed S.B. 4 into law, which regulated, for the first time, fracking operations within California. S.B. 4 directed the Department of Conservation Division of Gas and Geothermal Resources to evaluate well-stimulation technologies (including potential impacts of fracking) and the most effective regulatory frameworks to mitigate the impacts. On Jan. 14, the DOGGR released its draft environmental impact report.

## Findings of Potential Impacts and Uncertainties

Neither the New York report nor the California report could establish with specificity what, if any, impacts fracking would actually have on the environment and human health in their respective states. Instead, the reports detailed potential impacts and were remarkably consistent on that note. The parallels in the following excerpts are notable:

	NY	CA
Air	" <b>potential</b> to contribute to community odor problems, respiratory health impacts such as asthma exacerbations, and longer-term climate change impacts from methane accumulation in the atmosphere"	" <b>Potentially</b> high levels of methane emissions at wells before pumping output is stabilized, during well operation, and during the transportation of natural gas"
Water	"These contaminants have the <b>potential</b> to affect drinking water quality"	Contamination of drinking water supplies "could <b>potentially</b> occur from subsurface or surface migration of fracturing fluids during and after well completion"
Seismic	"Although the <b>potential</b> public health consequence of these relatively mild earthquakes is <b>unknown</b> , this evidence raises new concerns about this <b>potential</b> HVHF [High Volume Hydraulic Fracturing] impact"	" <b>Potential</b> increase in seismic activity due to injection of used wastewater from oil drilling and well stimulation activities"
Community	"Environmental impacts and health outcomes <b>potentially</b> associated with HVHF activities . . . [include c]ommunity impacts associated with boom-town economic effects"	"population growth within rural communities from new fields possibly developed could <b>potentially</b> impact existing public service ratios and performance objectives when coupled with project activities."
Health	" <b>possible</b> exposure concern for residents living close to HVHF operations"	"The use of such hazardous materials <b>may</b> pose a threat to human health"
Uncertainties	"the relationships between HVHF environmental impacts and public health are complex and not fully understood"	"Whether some of these cumulative effects come to pass depends on the timing, intensity, and location of future well stimulation treatments, including whether they lead to the development of new oil and gas fields and the timing of other major projects in their vicinity"

As is evident from these excerpts, both reports identified the same areas of potential impact, the nature of the potential impact and the remaining uncertainties regarding those potential impacts. However, their respective recommendations couldn't have been further apart.

## Ban vs. Enhanced Regulatory Oversight

### *New York*

New York chose to ban fracking. At a year-end cabinet meeting, the acting health commissioner announced he could not support fracking. The New York report concludes that "[u]ntil the science provides sufficient information to determine the level of risk to public health from [high-volume hydraulic fracturing] and whether the risks can be adequately managed, HVHF should not proceed in New York State." NYSDEC Commissioner Joseph Martens said that a five-year study by NYSDEC on fracking will be released the following year. Martens stated, "I will then issue a legally binding findings statement prohibiting [hydraulic fracturing] in New York State."

### *California*

California concluded that the development and implementation of effective regulations are the solution

to mitigating the risks of such potential impacts. The California report explains that “new and increased drilling in Pennsylvania, New York, Wyoming, North Dakota, and other states has led to environmental controversies in those states, especially because in several of the states, regulations for oil and gas development were not previously in place.” In fact, according to the report, banning fracking would be worse than implementing proper regulations. “Until such time that California can reduce its dependence on hydrocarbon resources, a reduction in the State’s production of oil and gas resources in response to a ban would inherently require greater levels of their importation, either from other parts of the country or from foreign sources (e.g., Iraq and Saudi Arabia). This scenario ... would also have other social, political and economic consequences at both State and national scales.”

## **Economics and Politics**

New York and California have much in common. Each state is politically and economically split between a few large liberal-leaning, economically dominant cities and vast stretches of conservative-leaning, agriculturally driven rural economies. Both feature incredible diversity, high levels of education and the presence of strong, well-established environmental advocacy groups. Perhaps most interestingly, New York and California are the second and third lowest energy consumers per capita in the country![1]

The problem, however, is not consumption, but supply. California has long struggled with securing sufficient energy resources to meet the demands of its citizens and businesses. Few Californians can forget the electricity crisis of the prior decade and the resulting price increases, shortages and blackouts. Much of it was blamed on severe drought, permitting delays, market manipulations (e.g., Enron) and capped retail electricity prices. The state remains vulnerable, subject to the effects of power plant shutdowns, water shortages and rising demand. A ban on fracking would create serious problems.

By contrast, New York is bounding with energy. In 2013, New York produced more hydroelectric power than any other state east of the Rocky Mountains.[2] The state has also had above average rainfall in 13 of the last 14 years.[3]

While New York may have closed off access to the trillions of cubic feet of natural gas recoverable within its boundaries, New York remains open to importing some of the hundreds of trillions of cubic feet recoverable from other states such as Pennsylvania to Kentucky, neither of which have banned fracking. California imports its gas from resource-poor states (e.g., Arizona, Nevada and Oregon) and Wyoming (i.e., whatever is left over after it is piped through Oregon).[4] Whereas New York can rely on others to provide it with natural gas, California largely must depend on itself.

## **Conclusions**

The decisions made in New York and California are not the end of the story. Most recently, on April 6, the Maryland State Senate sent a bill to Gov. Larry Hogan that would impose a two-year moratorium on fracking in the state. Notably, the state senate removed language from the Maryland House of Delegate’s version that would have required the Maryland Department of the Environment to form a panel of experts to study the environmental and health impacts of fracking and instead cleared the path for a more expedited rulemaking to be completed by October 2016.

As technologies continue to advance and additional reserves are located, states will continue to wrestle with the question of what role, if any, that environmental impact studies should play in guiding their regulations. Will these states make decisions based on the science and data or will economic realities and political agendas shape future regulations?

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*The authors wish to thank Jeremy Esterkin for his contribution to this article.*

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[1] <http://www.eia.gov/state/?sid=US>

[2] <http://www.eia.gov/state/?sid=NY>

[3] [http://www.nrcc.cornell.edu/impacts/Impacts\\_06-13.html](http://www.nrcc.cornell.edu/impacts/Impacts_06-13.html)

[4] <http://www.eia.gov/state/analysis.cfm?sid=CA>