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## ALBANY WHITEBOARD

### Federal court orders DEC to reconsider decision blocking Northern Access pipeline

By **MARIE J. FRENCH**

A panel of federal judges has directed the New York Department of Environmental Conservation to expand on its permit decision that blocked National Fuel's Northern Access pipeline project.

The 97-mile pipeline, vehemently opposed by environmental advocates, would carry natural gas extracted using hydraulic fracturing from Pennsylvania to New York. The DEC, in April 2017, denied a water quality permit for the project, effectively blocking it.

The U.S. Second Circuit Court of Appeals panel found that the denial letter issued by DEC "insufficiently explains any rational connection between facts found and choices made." Because of that, the judges vacated DEC's denial and sent the matter back to the agency for further explanation.

"We express no opinion as to whether there is substantial evidence in the record to support the Department's denial," the decision states. "Accordingly, we do not remand for the record to be supplemented, but instead for the limited purpose of giving the Department an opportunity to explain more clearly — should it choose to do so — the basis for its decision."

Gov. Andrew Cuomo's administration has repeatedly used its authority under the federal Clean Water Act to block pipelines approved by federal authorities and other states, and is facing several legal challenges as a result.

The court directed National Fuel to take its argument about DEC having run out the statutory, one-year clock for a decision to FERC. The time-limit issue has allowed one pipeline, a short lateral to supply a controversial gas power plant, to move forward.

The summary judgment does not set any precedent for future cases, according to the ruling.