

November 14, 2011

NYS DEC, Attention dSGEIS Comments
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12223-6510

Dear Sir,

Topic: Local government's role according to the SGEIS/ and how that fits with Home Rule/zoning/comp plan

Main Statement: The draft SGEIS that has come out this summer and fall does not give local communities much, if any, role in the development of shale gas in their respective areas.

In Chapter 3 of the draft SGEIS, regarding the SEQRA process, there is a discussion of the EAF required of the gas drilling companies. It states:

“The EAF addendum will require the applicant to identify whether the location of the well pad or any other activity under the jurisdiction of the Department, conflicts with local land use laws, regulations, plans or policies. The applicant will also be required to identify whether the well pad of located in an area where the affected community has adopted a comprehensive plan or other local land use plan and whether the proposed action is inconsistent with such plan(s). (Section 3.2.3.9 Planning Documents.)

The SGEIS does not state in this section what it will do when this situation occurs, when a local community has comprehensive plans or other zoning laws that prohibit heavy industrial projects in any of their zones, or when the local municipality has identified vulnerable areas within its boundaries, including aquifers, steep slopes, rare plant species, etc.

In Chapter 8, regarding the permitting process, the SGEIS states that under ECL section 23 – 0305(13) the permittee (the gas company) must notify “any affected local government and surface owner prior to starting operations.” Then we are told that the DEC has an updated database where local residents can look for permit requests. The implication is that we are the ones who will need to check on whether there are any permits in our area, since there are no deadlines for notification and no penalties for non- or late notification by the gas drilling companies.

In Section 8.1.1.5 Local Planning Documents, it states:

“The Department’s exclusive authority to issue well permits supersedes local government authority relative to well siting. However, in order to consider potential significant adverse impacts on land use and zoning as required by SEQRA, the EAF Addendum would require the applicant to identify

whether the proposed location of the well pad, or any other activity under the jurisdiction of the Department, conflicts with local land use laws or regulations, plans or policies. The applicant would also be required to identify whether the well pad is located in an area where the affected community has adopted a comprehensive plan or other local land use plan and whether the proposed action is inconsistent with such plan(s). For actions where the applicant indicates to the Department that the location of the well pad, or any other activity under the jurisdiction of the Department, is either consistent with local land use laws, regulations, plans or policies, or is not covered by such local land use laws, regulations, plans or policies, Department would proceed to permit issuance unless it receives notice of an asserted conflict by the potentially impacted local government.

Applicants for permits to drill are already required to identify whether any additional state, local or federal permits or approvals are required for their projects. Therefore, in cases where an applicant indicates that all or part of their proposed project is inconsistent with local land use laws, regulations, plans or policies, or where the potentially impacted local government advises the Department that it believes the application is inconsistent with such laws, regulations, plans or policies, the Department would, at the time of permit application, request additional information so that it can consider whether significant adverse environmental impacts would result from the proposed project that have not been addressed in the SGEIS and whether additional mitigation or other action should be taken in light of such significant adverse impacts.”

The SGEIS has stated that no drilling be allowed in certain areas of NYS because of potential adverse impacts. Local governments usually know quite a lot about their local community--by the creation of Comprehensive Plans, zoning regulations, the creation of Critical Environmental Areas and Unique Natural Areas, and the local highway department’s pavement management plans. Local communities would benefit by the ability to request site-specific EIS's in locations where they have clearly identified vulnerable areas that would be inappropriate for gas drilling and especially HVHF. In the above quote about the contradiction between local community planning and the site plans of the gas drilling industry, there is no respect given to the knowledge of the local town and county regarding the areas that would be too vulnerable to allow drilling.

According to Home Rule Law in New York State, in Article IX, it states that “every local government shall have the power to adopt and amend local laws not inconsistent with the provisions of this constitution ... “ a local municipality has powers and responsibilities, including “the government, protection, order, conduct, safety, health and well-being of persons or property therein.” Local governments, especially towns, villages, and counties, are the closest to the local residents of any level of government. Local town board members are neighbors, and their homes and businesses are known to people in the community. They are the last bastion of direct democracy in New York State, and their knowledge of their local community, and the attitudes and experiences of its residents is vast.

In our community of Danby, New York, in response to the impending industrialization of our town by gas drilling companies, the Town Board was quite proactive. A Gas Drilling Task Force was formed in 2009 with its primary purpose being to educate the local community about gas drilling, in all its facets. For more than two years, this group has held forums, invited speakers, sent out bulletins about occasions for further education, etc. It would be fair to state that these local residents, for the most part, are fairly well educated about the positive and negative impacts of gas drilling. There has been enormous pressure on town board members by residents to protect them from the frightening experiences of the people who live south of them in Pennsylvania. Many of them have family and friends living in Bradford County, Pennsylvania, and they are quite familiar with what has occurred. They are reading articles in various publications about issues that have not even been well considered nationally, like mortgage difficulties, etc. A petition drive, encountering almost almost no negative response urged the town to use its zoning laws to prohibit high impact industrial activity, including gas drilling. This petition gathered over 500 signatures (better than 20% of the town voting population. The town has spent a considerable amount of

money to have the US Geological Survey map out our water resources, and the results of this study confirm that most of our aquifers are sand and gravel covered, and relatively thin, and therefore more vulnerable to contamination than others. There are areas of the town that have not enough water for further residential, much less industrial, development.

The DEC did not involve any municipalities or counties in any drafts of the SGEIS. While we are glad to have the notification prior to issuing a well permit, the local government should be able to exercise all of its powers over shale gas industrialization. This is the norm in other states. At the least, the local government should be allowed to enact laws and ordinances that protect their residents from probably harm. Their knowledge and expertise about their local area should be used to construct regulations that take into consideration what is useful and beneficial to the community, and what is not. We hope that you will revise the draft SGEIS, before regulations are created that govern this industry, so that it respects local needs and characteristics, and where necessary imposes more requirements, such as a site-specific EIS, for permits to drill to be issued.

Sincerely,
The Town Board of the Town of Danby:

FREDRIC DIETRICH
Town Supervisor

LESLIE CONNORS
Councilperson

KATHY HALTON
Councilperson

DAN KLEIN
Councilperson

DYLAN RACE
Councilperson