

TOWN OF ITHACA COMMENTS ON THE REVISED DRAFT SUPPLEMENTAL GENERIC ENVIRONMENTAL IMPACT STATEMENT (sGEIS) ON OIL, GAS AND SOLUTION MINING

ADOPTED NOVEMBER 21, 2011

Note: The comments submitted are only those feasible within the time period allowed for comments. Limited staff and elected officials' time was inadequate to fully digest the 1000 plus pages of material. Thus, the comments submitted are not comprehensive and reflect those elements of the sGEIS that, for the most part, most directly affect the Town of Ithaca. Numerical notes in parentheses refer to specific sections of the sGEIS.

MUNICIPAL WATER

Of overwhelming concern to the Town of Ithaca is the threat to municipal surface water supplies. Well water in this area is often difficult to obtain in sufficient quantity and is of spotty quality. The Town is home to the three biggest municipal water supplies in Tompkins County: the City of Ithaca (Six Mile Creek), Cornell University (Fall Creek) and the Southern Cayuga Lake Intermunicipal Water Commission (aka Bolton Point), which serves the Town of Ithaca, the Town of Dryden, the Town of Lansing, the Village of Cayuga Heights and the Village of Lansing. Additional water is provided to the southern end of the Town of Ulysses. Any pollution of these water supplies would be a calamity of unparalleled proportions and no amount of remediation or compensation could replace the loss of these drinking water sources. Surface water – and the contaminants carried by it – flows downhill and therefore the entire watershed must be considered. Furthermore the rationale that the New York City and Syracuse water supplies are unfiltered and thus different is odd on its face: none of the municipal water plants are capable of filtering or otherwise removing potential contaminants resulting from gas drilling activity. Besides, the setbacks proposed for these two water supplies are not sufficiently protective. Therefore the setback provisions for drilling (7.1.12.1, Page 7-75 and 7.1.12.2 page 7-76 and Page 7-78) are wholly inadequate. Any gas industry activity within the watersheds of any municipal water supply must be prohibited.

HOME RULE

The DEC should expressly support the right of local municipalities under Home Rule to determine land use within municipal borders, including where or whether natural gas development occurs, consistent with zoning and comprehensive planning. (8.1.1) The DEC should explicitly state that if the applicant for a gas drilling permit encounters local laws, regulations and policies that are inconsistent with their proposal, the DEC will respect the municipality's position and deny the permit. (8.1.1.5)

REGULATIONS AND THE sGEIS

New York State's SEQRA law provides for the gathering of environmental information to inform the creation of regulations and prior to the implementation of projects. DEC's proposal to write and perhaps promulgate regulations concurrently with the SEQRA review certainly violates the intent of the law and may invite legal challenge.

EXTRACTION AND AD VALOREM TAXES

All other states other than New York and Pennsylvania have an extraction tax of between 7% and 25%. Local municipalities (not to mention NYS) have already expended hundreds of thousands – if not millions – of dollars preparing for the expansion of the gas industry. An extraction tax of at least 12% must be imposed in order to pay for NYS's regulation, inspection and enforcement of the gas industry and local municipalities' costs as a result of the impact of gas drilling. The 12% tax should be evenly divided between the state and the local municipalities. The ad valorem tax should be increased to at least 8% and at least 4% go to towns, which are the level of government which must absorb most of the costs of gas drilling.

HEALTH

- The sGEIS does not require or refer to an analysis of public health impacts despite the fact that fracking-related air pollution and the potential for water contamination may have serious effects on people-especially the elderly and children - and communities downwind and downstream of proposed fracking operations. There is growing evidence of negative health impacts related to gas extraction in other states. The DEC in its sGEIS must undertake further review of fracking and the impacts of horizontal drilling to ensure that all environmental and public health impacts are mitigated or avoided.
- As suggested by the United States Environmental Protection Agency (USEPA) in its 12/30/2009 commentary on the dSGEIS, the DEC should actively involve the NYS Department of Health in the review process. Local departments of health should also be involved. Indeed, the problems associated with shale gas development near housing have only recently been catalogued as drilling has moved into suburban locations and farming communities.

DEC STAFFING AND MANAGEMENT

- The DEC has an inherent conflict of interest since it is charged to "conserve, improve and protect New York's natural resources and environment and to prevent, abate and control water, land and air pollution, in order to enhance the health, safety and welfare of the people of the state and their overall economic and social well-being," but it also issues gas drilling permits which has been shown in other areas to likely harm the environment. These functions must be separated.
- New York State DEC has been subject to steep budget and staff cuts and does not have adequate staff or resources to properly oversee fracking, even if every possible protection were in place This reality raises the possibility that the DEC will be forced to cut corners with its reviews or fast-track permits despite the risks. Therefore permitting must not take place until the DEC is fully staffed with a clear funding stream to support that staff.
- The thousands of miles of pipelines (and compressor stations required for drilling) to get the resulting gas to market will be reviewed by a different agency under a different process. Without an accounting of such impacts, New York's environmental assessment is incomplete and the full impact of fracking is unknown. The Public Service Commission (PSC) has jurisdiction over gas infrastructure. As such, Governor Cuomo should direct state agencies to coordinate their efforts in order to protect our air, water and communities. It should be stated explicitly in the regulations that any gathering lines

not regulated by the PSC are under the jurisdiction of local municipalities (8.1.2.1, page 8-4).

CUMULATIVE IMPACTS FOR WATER WITHDRAWALS

The sGEIS addresses cumulative impacts for water withdrawals by using the pass-by flow determinations; however, the sGEIS needs to address cumulative impacts on water resources in all areas. Although the Water Resources Bill passed in 2011 would address cumulative impacts of groundwater and surface water withdrawals when and if regulations are developed, rules governing water withdrawal permits must be developed before permits are issued for drilling. Without the permitting framework for water withdrawals, it is not possible to determine if there are adequate safeguards for surface water and groundwater.

CUMULATIVE IMPACTS FOR ALL INTERCONNECTED DRILLING ACTIVITIES

In its 12/30/2009 comments USEPA suggested that analysis of cumulative impacts be “greatly expanded.” A process needs to be established to address impacts from all interconnected activities, including drilling operations, that are regulated by DEC and pipelines and compressor stations that are regulated by the Public Service Commission (PSC). An Environmental Impact Statement for the gas lines and compressor stations must be performed by the PSC to assess the cumulative impacts on water resources, community infrastructure and quality of life issues such as noise, road damage and air quality from the additional pipelines and compressor stations that will be needed to transport the gas from the thousands of individual well pads to the regional pipelines. Compressor stations will be needed, with pipelines from each well to the compressor station, and additional pipelines from the compressor station to the main transmission line. However, the sGEIS does not address the impacts of the pipelines or compressor stations necessitated by well drilling operations. The impact of the vast network of access roads, pipelines and compressor stations must be addressed by the sGEIS. The sGEIS identifies the PSC as the responsible agency to oversee construction and protection of the environment for pipeline construction. This segmentation of the environmental impact assessment makes it difficult for decision makers and the public to adequately assess the total environmental impacts anticipated from gas drilling activities.

PROGRAM TO MONITOR AND PROTECT DRINKING WATER RESOURCES

Proper monitoring and assessment strategies must be in place to protect the State’s water resources, and sufficient laboratory capabilities for analysis must be in place prior to drilling. The state currently does not have a strategy in place for data collection and analysis. Such a strategy is key to developing a comprehensive regulatory process that must be in place prior to drilling. All stakeholders (regulatory personnel, drilling companies, and the public) need to be ensured that valid data are being collected and disseminated in a cost effective manner. Considering the volume of environmental and public health data that will be generated by gas drilling, it is essential that NYS Department of Health develop and manage comprehensive databases in order to facilitate effective, comprehensive oversight and public protection during gas drilling. A program must be developed for electronic sharing of monitoring data and must be shared with local health departments as they will be the agency first contacted if any contamination is detected.

PERMIT RE-EVALUATION

The NYSDEC re-evaluation of specified permit conditions in two or three years should involve public review and comment.

OTHER LOW PERMEABILITY SHALE FORMATIONS

The scope of the sGEIS includes all low permeability shale formations where high volume hydro-fracturing gas drilling will be employed. However, many sections of the document only reference the Marcellus Shale. Environmental impacts associated with other low permeability gas reservoirs where the hydrogeochemistry is different from the Marcellus shale are not addressed in the sGEIS. The sGEIS must be expanded to include potential impacts from other formations.

LOCAL GOVERNMENT NOTIFICATION

Local Governments need to be involved and informed in all aspects of the drilling process and a procedure for this needs to be in place before drilling begins. Each municipality must receive copies of gas drilling permit applications, including parcel tax map numbers, before any permits are issued by NYSDEC. The NYSDEC should also be required to provide each local municipality and county government with 1) accurate Environmental Inspector contact information for permit coordination between agencies as well as emergency and spill response coordination, and 2) written notification to each municipality of the location of each well-plugging permit application, including tax map parcel number and mapping coordinates.

ACCIDENTS AND VIOLATION REPORTING

Currently the DEC does not have an adequate electronic record-keeping system of violations, accidents, and spills which makes aggregating problems and notifying local governments and residents so difficult as to be nearly impossible. The DEC must bring their violations reporting system into the 21st century by making them easily available to the public electronically.

PROPRIETARY CHEMICALS

- The sGEIS allows any “proprietary” chemical constituents not to be subject to public disclosure. It appears that the companies can avoid disclosure if they simply claim the additive is a “trade secret.” The DEC must require full disclosure of all chemicals and additives, including chemical composition of each, used in the hydro-fracturing process. (8.1.3.2,)
- The sGEIS only weakly suggests operators “evaluate the use of alternative fracturing additive products that pose less risk.” The DEC must require that the least toxic alternatives be used and then only if proven to not be a danger to the public and the environment.

FLOWBACK WATER DISPOSAL

- The state must not allow municipal sewage treatment plants to treat drilling wastes because such plants are not capable of handling the toxic elements in such wastes. (7.1.8.1)

- Some components of drilling waste would normally qualify as hazardous waste under state and federal law, but have been exempted from these laws. The DEC must not allow any waste that would qualify as hazardous waste in any other settings to be sent to municipal sewage treatment facilities unable to properly treat it or to disposal wells (here or in other states), putting the health and safety of our waters and communities at grave risk. (1.7.9)

MANAGEMENT OF DRILL CUTTINGS

The plan by the DEC to track the solid and liquid wastes generated in connection with fracking is positive; however tracking of these wastes is said to be the responsibility of the gas industry operators. The DEC must take a more active role in tracking waste that in other settings qualifies as hazardous. The gas industry must not be allowed to oversee itself in this area. (1.7.10)

COMMUNITY AND SOCIOECONOMIC IMPACTS

- The DEC needs to do a comprehensive, focused plan to review and analyze the consequences of a full build out of many wells on a community. (1.7.15)
- A monetary value must be assigned to potential degradation of the environment in a comprehensive review of community and environmental impacts from drilling.
- As proposed, the DEC staff will review the well applications one at a time, without considering the impact of many wells being permitted in close proximity. Impacts on communities must be considered from the standpoint of multiple wells being introduced to an area not one at a time since the industry profits from a high drilling density within an area.
- In its considerations of the economics of drilling, the DEC and the State must acknowledge that:
 - Relatively few local jobs will be produced by the gas companies. Many of the higher paying jobs associated with HVHF go to employees who are residents of other states and will not be paying state income taxes. Likewise, most of the technical field jobs go to transient workers with no social or other connection to the local community. The experience in other communities has demonstrated an increase in crime, local housing costs, and a strain on health care resources (see Sayre Health report).
 - Small businesses will face higher labor costs as a result of competing with wages paid by the gas companies in order to keep their employees on the job
- The sGEIS is incomplete because it does not yet contain the socio-economic analysis of whether there is a balance between risk/reward.

PUBLIC WATER SYSTEMS

Primary and Principal Aquifers

Prohibit HVHF near all primary aquifers. The DEC is proposing to prohibit fracking in primary aquifers that serve as public drinking water supplies, but this “prohibition” is only limited to a couple of years after which the state could “reconsider” the bans. In addition, the DEC does not lay out the conditions under which “reconsideration” would be reviewed. The DEC needs to prohibit HVHF near all primary aquifers. 2.4.4.1

Sunset date for buffers

The preliminary draft proposes to place some areas of the state off limits to gas drilling, but upon closer examination, many of the restrictions have sunset dates and some of the protective buffers only call for site-specific individual environmental review, rather than clear restrictions. The DEC needs to strengthen and clarify restrictions and the requirements for buffers and site-specific environmental review.

Mapping of aquifers is Inadequate.

In order to determine a 500 foot buffer to a principal aquifer, the aquifer must be mapped at least to the scale of 1:24,000 feet but many aquifers are only mapped at the 1:250,000 foot scale. The DEC must increase buffer requirements overall but particularly when mapping of the aquifers is inadequate. Part of the fee structure for permitting should go to funding better maps of aquifers throughout the state.

NATURALLY OCCURRING RADIOACTIVE MATERIALS (NORM)

According to James W. Ring, Professor Emeritus of nuclear physics from Hamilton College, the draft sGEIS does not include adequate study of radon in its review of issues. This is a subject which deserves further study before supplies of Marcellus gas are delivered to households where it may endanger the health of citizens. (4.6)

ROAD SPREADING

The DEC has already failed to protect NY drinking water by allowing produced water from PA to be spread on roads in New York State, within Tompkins County, without SEQR review. Road spreading of produced water and brine must be expressly prohibited. (5.13.3.4)

IMPOUNDMENTS

Given the recent history of “100 year rains” occurring every few years and the inherent long-term instability of impoundments, only closed-loop systems for all hydrofracking operations must be permitted. (8.2.2.2)

ROAD PERMITS

The DEC must require, not merely encourage, gas companies to make road use agreements with local municipalities. (8.1.1.4)

COMPULSORY INTEGRATION

New York State is one of the few states to allow compulsory integration and possibly the only one to allow it against individual homeowners. NYS must rescind compulsory integration to respect the rights of its homeowners.

NO ACTION ALTERNATIVE

Based on the sGEIS analysis the No Action Alternative is the preferred outcome. Given the clear dangers to the environment and public health of high volume hydraulic fracturing using the current technologies, the lack of significant financial gain for the overwhelming majority of the citizens of New York State and the assured decades-long damage to the way of life of those residing in the gas-drilling regions, the No Action Alternative is the logical and proper finding resulting from this SEQRA study. (9.1)

END