

RESOLUTION NO. 250 - COMMENTS TO NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION ON DRAFT SUPPLEMENTAL GEIS

MOVED by Ms. Mackesey, seconded by Ms. Chock.

WHEREAS, the New York State Department of Environmental Conservation (NYSDEC) has released the *Draft Supplemental Generic Environmental Impact Statement on the Oil, Gas and Solution Mining Regulatory Program: Well Permit Issuance for Horizontal Drilling and High-Volume Hydraulic Fracturing to Develop the Marcellus Shale and Other Low-Permeability Gas Reservoirs* (hereinafter referred to as the “Document”), and

WHEREAS, the deadline for submitting comments on the Document is December 31, 2009, and

WHEREAS, the Tompkins County Health Department, the Tompkins County Planning Department, the Tompkins County Environmental Management Council, and the Tompkins County Water Resources Council, among others, are planning to submit comments to the Department of Environmental Conservation on the Document, and

WHEREAS, in addition to the important technical comments provided by those groups, the Tompkins County Legislature (hereafter “Tompkins County”) has a duty to both provide leadership to the community and help reflect community concerns in evaluating the possible impacts associated with the proposed drilling of the Marcellus Shale, and

WHEREAS, many entities, including Tompkins County, are now striving for at least an 80% reduction in greenhouse gas emissions by 2050, and it is understood that natural gas could serve as a lower-emissions fuel source as the nation transitions to renewable sources of energy (provided that in the course of its development it is not a net eCO₂ emitter), and

WHEREAS, it is also recognized that natural gas is a finite resource and that total extraction of New York State’s natural gas resources will only meet national energy needs for a limited period of time that will be measured in years or decades, yet environmental damage, particularly to water, arguably New York State’s most valuable finite resource, could be permanent, and

WHEREAS, Tompkins County does not believe that the Document establishes adequate specific conditions, criteria, and thresholds to allow drilling permits to be issued without extensive additional environmental review needing to be conducted for each permit issued, and

WHEREAS, Tompkins County and its municipalities have a responsibility to preserve and protect water resources and other natural resources, highway infrastructure, economic development in many other sectors, public health, and quality of life for our residents now and in the future, now therefore be it

RESOLVED, on recommendation of the Health and Human Services Committee and the Planning, Development and Environmental Quality Committee, That the Tompkins County Legislature submits the following comments on the Document:

1. New York State taxpayers should not be required to bear the financial costs of implementing the natural-gas water-well monitoring and tracking described in the Document. This cost should be paid for by the natural-gas industry. In describing the proposed approach to tracking the results of private well monitoring and responding to complaints concerning private well water quality, the Document states the NYSDEC’s intention to rely on county health departments, potentially requiring a large commitment of County resources to undertake such an unfunded mandate. Should the final regulations continue with this approach, New York State should provide 100% funding to county health departments in order to fully provide the staffing and other resources

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needed to track well monitoring results and to respond to public complaints and concerns. Funds for implementing this program should be provided to local health departments through gas well permitting fees. Fees cannot be raised directly by the local health departments since the NYSDEC has sole regulatory authority over gas wells.

2. Groundwater monitoring needs to be conducted near Marcellus shale gas wells; however, the program proposed by the NYSDEC is inadequate to detect and remediate contamination of drinking water aquifers. Water quality monitoring programs should focus on monitoring the groundwater resource, not just existing drinking water wells. Water supply wells should not be the sole means of determining if groundwater contamination has occurred near a Marcellus shale gas well due to the unknown or varying construction, operation, and availability of these wells. The permit applicant should be required to install and monitor groundwater wells to detect groundwater contamination before it reaches individual or public supply wells. At least 3 monitoring wells should be installed around each well pad and each centralized flowback water surface impoundment and these wells should be sampled and analyzed at the same frequency as the private water supply wells. The NYSDEC (in conjunction with the NYS Department of Health) should establish what is required to be tested for and what are the acceptable levels. Sharing the results of all sampling programs with the public should be a requirement.
3. Prevention of pollution is better and less costly than attempts at remediation. NYSDEC must analyze the existing lists of chemicals the gas developers use in their fracking fluids (Sections 5.4 and 9.3, Tables 5-6 and 6-1) and forbid the use of any substances that are, or whose breakdown products or metabolites are known or suspected to be carcinogenic, mutagenic, or endocrine disrupters.
4. In many places throughout the Document, specific mitigation measures are “proposed,” “encouraged,” “suggested,” etc. Regulations must require the most protective mitigation measures or best management practices available to assure the protection of the public health and welfare and the natural environment.
5. The Document, in several places, most notably page 7-64, identifies additional mitigation measures for well-drilling operations in the New York City Watershed. Such standards must apply equally to all watersheds with municipal water supplies. In Tompkins County this would include the entirety of the Cayuga Lake watershed.
6. To alleviate adverse road use impacts, the Document (page 7-109) requires operators to “attempt to obtain a road use agreement with the municipality or document the reasons for not obtaining one.” The Document should require, not just the attempt, but the development and execution of binding road use agreements. Operators should be required to notify all local municipalities, including villages, towns, cities, and counties, that their vehicles will travel through, even if there is no drilling operation in the municipality itself. Operators should then be required to sign binding road-use agreements for those municipalities, as well as with municipalities where the drilling operation is located to hold municipalities harmless for damage to roads and other infrastructure by drilling-related traffic.
7. Tompkins County has established a policy to “Reduce community greenhouse gas emissions by at least 2 percent of 2008 base year emissions per year to reach, at a minimum, an 80% reduction from 2008 levels by 2050.” [Tompkins County Comprehensive Plan: Energy and Greenhouse Gas Emissions Element, 2008] In response to a request from the NYSDEC Tompkins County reiterated this commitment by signing on to the DEC’s Climate Smart

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Communities Pledge in April 2009. According to the Document, over the 30-year well lifetime, emissions from 100 one-well projects will more than double all community emissions in Tompkins County over that same 30-year time period. The result is that the proposed gas drilling, if implemented, will make it impossible for Tompkins County to meet its greenhouse gas emissions goals. The cumulative impact of drilling in the Marcellus Shale may make it impossible for New York State to meet its greenhouse gas emissions goals. This cumulative impact should be clearly evaluated in the Document. The Document should require operators to detail how their drilling operation will meet specific emissions thresholds, and what mitigation measures will be implemented to accomplish those emissions levels.

8. EAF Addenda should be required before drilling permits are issued. Furthermore, EAF Addenda should be required to be submitted to local, county, and regional planning boards for review and comment to the DEC prior to drilling permits being issued. Page 7-2 of the Document proposes that EAF Addenda be submitted for all permits. In addition, page 7-23 of the Document states that many adverse impacts may be avoided by planning a drilling operation to fit site characteristics, like avoiding steep slopes and maintaining sufficient separation from environmentally sensitive features, such as streams and wetlands. Finally, Page 7-111 of the Document indicates that “the EAF Addendum submitted with each well permit application will require the applicant to attest to having reviewed any existing comprehensive, open space and/or agricultural plan or similar policy document(s).” Such EAF Addenda should require that well permit applicants comply with the existing plans and the addenda should be submitted to local, county, and regional planning boards for review and comment as such agencies are in the best position to identify the potential site-by-site environmental impacts of proposed drilling operations and are best suited for determining the consistency of proposed drilling operations with existing plans and policies.
9. The method described in the Document for disposal of flowback water and fracking fluids is totally inadequate. Although methods of disposal are discussed in the Document, it is also stated that flowback water must be characterized before the suitability of a treatment option can be determined. The problem is that the constituents of the flowback water cannot be known until after drilling activity has occurred and the wastewater produced. The document acknowledges that some potential constituents of the flowback water could make it unsuitable for treatment at a previously designated treatment plant. In addition, the type and concentrations of flowback-water constituents can vary daily, which makes the entire concept of characterizing flowback water suspect for use by waste water treatment plants. We face the prospect of holding ponds of toxic wastewater scattered across our landscape indefinitely. No drilling can be permitted until it is determined that a safe method for disposal of flowback water and other wastes is in place. It should be required that storage facilities for such wastewater be enclosed, covered tanks, not open ponds.
10. It is essential that all of the requirements to mitigate impacts of this activity, as described herein and in other comments, be incorporated in formal regulations issued by the NYSDEC after an additional formal comment period. This is the only way to assure compliance with, and consistency in the administration of, those requirements. The Document does not propose, and it is our understanding that NYSDEC does not intend to issue, specific regulations regarding drilling in the Marcellus Shale. NYSDEC must undertake a formal rulemaking, rather than just trying to add to the existing forms, application documents, and conditions that NYSDEC has been using for decades, and use state-of-the-art scientific standards as a basis for such rulemaking. The NYSDEC must take the time to conduct the necessary research (and to make use of results from the upcoming Environmental Protection Agency’s review) prior to proposing regulations.

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11. The Document does not address in any meaningful way the cumulative impacts of Marcellus Shale development on a substantial region of New York State. And yet every EIS is supposed to focus on cumulative impacts rather than allowing segmentation. We recognize the challenges of this requirement, but that does not mean it should be brushed off as “difficult”.

- Industrial use. Permitted development in Tompkins County could result in a cumulative area of industrial land use equal to or greater than the entire current amount of industrially developed land in Tompkins County. In virtually every instance, existing industrial land use was sited after years of careful planning at the municipal level and review of site plans for specific activities and sites. This planning process assured that industrial land uses were located in areas that have infrastructure sufficient to support the activity, including major highways and public water and sewer infrastructure, and that do not conflict with the protection of valued natural resources. Gas drilling, by contrast, is likely to occur in areas that are not designated or suitable for industrial land uses, that have little or no infrastructure adequate to support the activity, and that have not been subjected to a comprehensive planning process to evaluate impacts of this development.
- Local landscapes. Furthermore, local authority to review gas drilling activity has been precluded by the State of New York. The result will almost certainly be the degradation and fragmentation of our natural areas and rural landscape with serious negative impacts on a rural way of life and the function of some of our natural and wildlife resources. Invasive species of plants and animals thrive particularly at the “edges” of forests and fields, and the proliferation of drilling pads and centralized impoundment areas will introduce significantly more land with such edges.
- Water resources. Water withdrawals are insufficiently regulated and the cumulative effects of removing billions of gallons of water from the ecosystem, effectively permanently, are barely addressed in the document.
- Air quality. The document does not sufficiently address threats to air quality and public health from drilling operations, including emissions of nitrogen oxide (NOX) and volatile organic compounds that contribute to creation of ground-level ozone. These and other impacts on air quality and public health must be identified and prevented.
- Gas processing and transmission. Pipelines and compression stations are not addressed by the Document; the NYSDEC must establish a mechanism to coordinate with the Public Service Commission, including regulating gathering lines that are below the size regulated by PSC, and requiring that cumulative effects of the entire industry are considered together.
- Thresholds. In sum, there is no attempt in the Document to establish thresholds of activity that the environment could sustain without permanent damage. In the Document, the spacing unit is the only limiting factor on development. The NYSDEC must establish a pace and level of development that it deems the human and natural environment could tolerate, rather than leaving the pace and extent of development to be determined by the industry (e.g., by the number of drill rigs available).

The failure to address cumulative impacts on the landscape and on communities is a fatal flaw that undermines everything else in the Document.

12. The Document does not address the potential negative impact on other sectors of the economy that depend on our existing environment, clean water, and viewsheds. In Tompkins County these sectors include higher education, high-tech spin-off industry, grape growing and wine production, agriculture, and tourism, each of which receives costly New York State economic development support.

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RESOLVED, further, That the only conclusion that can be drawn from the Document in its current form is that it does not comply with the SEQRA requirement to evaluate the impacts of Marcellus Shale drilling on the environment and public health, and does not propose mitigation measures that sufficiently protect the public health and environment to allow permitting of drilling in the Marcellus Shale to proceed. The many flaws in the Document, including failure to assess the life cycle analysis of greenhouse gas emissions from natural gas, as well as the fact that the EPA will soon begin a study of the risks of hydrofracturing, the results of which should be included in the New York State review, require that no new horizontal drilling involving the use of hydrofracturing be permitted until and unless an adequate environmental review is complete,

RESOLVED, further, That copies of this resolution shall be sent to Director Jack Dahl of the NYSDEC Division of Mineral Resources, Governor David A. Paterson, NYSDEC Commissioner Peter Grannis, NYSDEC Executive Deputy Commissioner Stuart Gruskin, Chair of the Senate Committee on Environmental Conservation Antoine Thompson, New York State Senators John Sampson, Malcom Smith, Dean Skelos, Thomas Libous, George Winner, James Seward, Michael Nozzolio, Bill Perkins, and Eric Schneiderman, Chair of the Upstate Caucus Senator Darrel Aubertine, NYS Assembly Speaker Sheldon Silver, Assemblywoman Barbara Lifton, Chair of the Assembly Committee on Environmental Conservation Robert Sweeney, Chair of the Assembly Energy Committee Kevin Cahill, Attorney General Andrew Cuomo, United States Senators Charles Schumer and Kirsten Gillibrand, U.S. Representatives Diana DeGette, John Salazar, Maurice Hinchey, and Michael Arcuri, and the New York State Association of Counties, the New York Association of Towns, and the New York Conference of Mayors.

SEQR ACTION: Not a SEQR Action

STATE OF NEW YORK)
) ss:
COUNTY OF TOMPKINS)

I hereby certify that the foregoing is a true and correct transcript of a resolution adopted by the Tompkins County Legislature on the 15th day of December, 2009.



IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Legislature at Ithaca, New York, this 16th day of December, 2009.

, Clerk
Tompkins County Legislature