



EXECUTIVE SUMMARY
COMMENTS OF OTSEGO 2000 IN OPPOSITION TO
THE dSGEIS FOR GAS DRILLING IN THE MARCELLUS SHALE

The draft Supplemental Generic Environmental Impact Statement (dSGEIS) for natural gas extraction in the Marcellus Shale is severely premature, incomplete, and riddled with improper delegations of regulatory authority to other state and local agencies, and the drilling companies themselves. The document is so lacking in evidentiary support that it calls into question the objectivity and competence of the DEC to regulate these dangerous activities, which threaten the health and safety of all of New York's residents.

This regulatory failure is exacerbated by the fact that the DEC is now severely understaffed as a result of recent budget cuts imposed by Governor Paterson. In addition the DEC has a conflict of interest because it is charged with both advancing mineral rights development, while at the same time protecting the environment. The dSGEIS must be withdrawn for two reasons. First, so that data, which are missing or misleading can be corrected and supplied for public comment. Second, to allow time for the legislature to eliminate the understaffing and the conflict of interest under which the DEC is now operating.

I. THE DATA ON WHICH THE DEC RELIES ARE INCOMPLETE OR HAVE BEEN DELEGATED TO OTHERS TO SUPPLY.

A. Chemicals added to fracking fluids and toxicity data are not disclosed. The DEC claims that as many as 260 chemical additives could be used in the fracturing process, most known dangerous carcinogens. Yet, the composition of more than 40 compounds has **not** been disclosed by drilling companies and is not required by the DEC. Responsibility for response to and investigation of complaints regarding exposure to these chemicals is delegated to county health departments without comment by the DEC as to how these departments can respond when the chemicals themselves have not been identified.

B. Contaminated flow-back fluids have not even been identified or tested by the DEC, and water treatment facilities in New York State or elsewhere do not exist to handle this waste. Each well-pad will produce millions of gallons of flow-back fluids laced with the chemicals added to the fracturing fluid, as well as brine and radioactive components found in the Marcellus formation. The DEC admits that it does not yet know the composition of these toxic flow-back fluids or how much radiation they will contain. Even more significantly, treatment facilities in New York State or neighboring states, sufficient to handle the quantity and quality of these wastes, contaminated with

dangerous chemicals and radioactive materials, have not been identified because they do not exist. If this is not corrected before drilling begins, New York could be faced with millions of gallons of contaminated hazardous wastes standing in open holding pits or loaded in tanker trucks with nowhere to send them.

C. Based on the DEC's projections, hydraulic fracturing in New York State will consume *billions* of gallons of fresh-water resources *annually*. The impacts of such massive fresh-water withdrawals on aquifers, wetlands, fish habitats, and fresh-water drinking supplies are also not discussed by the DEC. This analysis is left respectively to the Susquehanna River Basin Commission and the Delaware River Basin Commission, even though the DEC admits these Commissions do not have the cumulative data of projected withdrawals on which to base their conclusions. This is another serious omission, which dooms the dSGEIS and requires its withdrawal.

D. The DEC estimates that 60-90% of the fracking fluids contaminated with carcinogenic chemicals will never be brought up to the surface. However, the DEC has failed to conduct tests to determine how long such fluids can remain trapped, where they may migrate as a result of seismic activity occurring either naturally or caused by further fracturing, and what effects such migration may have. The DEC's plan to allow tens of thousands of new wells to enter production and to cap them at the end of production, without retesting or monitoring them for underground fracking fluid migration is obviously flawed. Moreover, there is no stated remedy for remediation or containment should such fracking fluid migration be discovered.

E. The DEC admits that drilling in floodplains requires further analysis. The DEC then admits that floodplain maps for most of New York State are seriously out of date. In many instances the maps are as much as 20-30 years old. However, the DEC proposes to issue drilling permits for well-pads in floodplains without waiting until the floodmaps can be updated. The DEC does not explain why it purports to act in such haste and with such disregard for the safety of New York's citizens.

F. The DEC admits that each respective well-pad will require thousands of heavy truck trips to deliver chemicals, millions of gallons of fresh water, drilling machinery and the removal of millions of gallons of contaminated flow-back fluids. The impact of such heavy truck traffic on local and country roads, overpasses and bridges, and its effect on agriculture, schools, hospitals, and community activities is neither evaluated nor addressed by the DEC. Responsibility for road use is delegated to local authorities, although local authorities are provided neither notice of all drilling applications nor funds to assess, improve, or repair their roads.

G. Impacts of extensive infrastructure construction associated with natural gas extraction, including installation of transmission pipelines, compressor stations, and related facilities are not addressed by the DEC except to note that this analysis is delegated to the PSC. Even if another agency has jurisdiction over aspects of the proposed installations, New York Law requires the DEC, in its role as lead agency under SEQRA, to compile and analyze such data. Permitting cannot begin unless the impacts

of such infrastructure construction on a statewide, regional, and local basis are considered.

II. INFORMATION PROVIDED BY THE DEC IS FALSE AND MISLEADING.

A. The DEC's claim that there is no evidence of contamination from hydraulic fracturing in New York State or elsewhere is incorrect. Evidence of serious contamination in New York State has recently been disclosed based on a review of the DEC's own files (see Natural Gas Quest: "State Files Show 270 Drilling Accidents in Past 30 Years," November 8, 2009, citing a survey by Walter Hang of Toxics Targeting, www.toxicstargeting.com). As to other states, statements attached to the DEC's draft at appendix 15, actually confirm that extensive claims of contamination were reported in other states. The declarants simply "attributed" these events to operator error, or well-casing failure, or other accidents, rather than to the pressurized stage of "fracturing." Thus, the referenced statements were prepared using a contrived definition of the process of fracturing and one which is inconsistent with the DEC's own usage in the dSGEIS. Such word games should have no place in a statutorily proscribed public hearing process.

B. The claim by the DEC that its drilling setback requirements of 150 feet from reservoirs, lakes, streams, and wells generally, and 300 feet from reservoirs, lakes, and streams in the New York City watershed, are based on a rational investigation are similarly misleading. These setback requirements are in fact taken from recommendations developed by the NYSDOH for siting of fresh-water wells away from "fertilizer mixing" and "chemical storage" areas. The DEC has simply adopted these guidelines, without further analysis, for millions of gallons of hydraulic fracturing fluids injected adjacent to fresh-water supplies. Similarly, the 1,000-2,000 foot setback from "municipal water wells" referenced by the DEC, is a holdover from vertical gas well development regulations contained in the original GEIS, issued in 1992, and was **not** developed by the DEC for horizontal hydraulic fracturing. Thus, there was no actual independent testing or consideration by the DEC of appropriate setback requirements for operations in the unique topography of New York State for horizontal hydraulic fracturing. This is inexcusable and casts doubt on every aspect of the DEC's work product.

C. The DEC's estimates of financial benefits to New York State are equally flawed and misleading. Benefits are projected without any reference to the true, externalized financial impacts to New York State's economy. New York is one of only three states (including Iowa and Pennsylvania) that do not impose any severance tax with respect to its mining operations. As a result New York State and its taxpayers (already financially in crisis) will be asked to bear the costs of regulation, enforcement, remediation, health costs, road repairs, real property losses, negative impacts on agriculture, tourism, and historic assets and countless additional expenses. At the very least, the DEC must consider these externalized costs and how they will be paid.

D. The DEC fails to disclose that with only 19 employees in its entire Division of Mineral Resources, due to severe budget cuts imposed recently by Governor Paterson, the Division will be unable to conduct the inspection, regulation and enforcement that will be required if horizontal drilling with high water volume hydraulic fracturing is commenced in New York State. These circumstances also explain why the DEC has been unable to enforce existing laws and perform clean up of existing spills previously reported in New York State. In addition the DEC is in a conflict of interest position. The DEC is charged with both advancing mineral rights development, while at the same time protecting health and the environment.

As a result of these budgetary constraints and the inherent conflict of interest, the DEC relied too extensively on industry lobbyists and consultants in the preparation of the dSCEIS and was unable to develop and review the information necessary for meaningful SEQRA review. These conflicts and budgetary constraints require resolution by legislative and political action before the process of effective environmental review with the DEC as lead agency can take place.

III. THE DSCEIS DOES NOT TAKE A “HARD LOOK” AT ALTERNATIVES AS REQUIRED BY NEW YORK LAW.

The DEC admits that there are several alternatives to the plans for immediate massive drilling. Yet, the dSCEIS rejects each of these alternatives without meaningful discussion or analysis. The alternatives prematurely dismissed include drilling based on site-specific environmental review, phased drilling where drilling operations are commenced slowly and in limited areas to measure impacts and test regulations, and use of newly developed green drilling technologies. Also, the DEC fails to mention, let alone consider, that there are methods by which legal protections can be put in place through performance and clean-up bonds, and strict liability laws to protect the public.

The attempt by the DEC to proceed without even discussing these protections is inexplicable and casts doubt on its objectivity. It is particularly troubling because the natural gas reserves trapped in the Marcellus Shale constitute a non-diminishing asset which has been present for at least hundreds of thousands of years and which will remain in place for however long it takes to develop a responsible extraction program. There is no reason, except misplaced greed, to rush to commence drilling on this record, which threatens the health, water, agriculture, and historic assets of New York State.

For all of these reasons, the dSCEIS must be withdrawn and a ban on hydraulic fracturing in New York State must be imposed until responsible environmental review, on a complete and accurate record, can be accomplished.