

December 30, 2009

Bradley J. Field, Director

Attn. Draft Final SGEIS Comments

Bureau of Oil & Gas Regulation

NYS DEC Division of Mineral Resources

625 Broadway, Third Floor
Albany, NY 12233-6500

Dear Director Field;

I am writing today on behalf of the Schuyler County Environmental Management Council [hereafter referred to as the Council] to comment on the Draft for the Final Supplemental Generic Environmental Impact Statement [DSGEIS] on the Oil, Gas and Solution Mining Regulatory Program, released on September 30, 2009.

While the Council recognizes that the Marcellus Shale has been identified as a potentially large source of natural gas, especially through utilization of the new combination of the technologies of horizontal drilling and slick-water hydraulic fracturing, a pairing not previously utilized in the state, and that the leasing of land and the removal and sale of this natural gas may provide an economic stimulus to the region, and is supported in this respect, the Council has significant concerns regarding the overall long-term danger this mining development may pose to public and environmental health and safety, water quality, property values and quality of life. The Council's purpose, therefore, in writing to you is to not only comment on the Final Draft, but to articulate these concerns which may, indeed do, extend beyond the range of the draft document.

Before beginning, though, the Council wishes to recognize the immense pressure DEC staff was under to complete this document. As someone who attended many meetings concerning this process over the past year, I communicated to the rest of the Council how nearly physically palpable I sensed the pressure. As a telling sign, it seems the document is unfinished and was, in a sense, released prematurely [e.g.; Chapter 5 heading "Internal Review Draft Work In Progress Not For Release"]. So, just as the Council would have wished for another 30 or 60 days to review the DSGEIS, it would have wished for you and your staff another six months to a year to do the document the justice it deserved and which the Council has confidence you are capable of.

First, and most significantly, since this new marriage of drilling technologies, coupled with the proposed scope of the "play," elevates the process to a heretofore unprecedented scale, far beyond anything considered by the original 1992 Generic Environmental Impact Statement for the Oil, Gas and Solution Mining Regulatory Program, it is the Council's opinion that simply tweaking and supplementing the existing regulations is wholly inadequate. Instead the entire regulatory structure needs to be re-examined. Indeed, though the Council appreciates the consideration given in the DSGEIS to removal, use and contamination of large volumes of fresh water far in excess of amounts dealt with in the original 1992 GEIS, as well as the sensitivity given to areas that have seen little to no natural gas development to-date, it still feels the DEC is too reliant on the original 1992 GEIS. It is the opinion of the Council that both it and the DSGEIS be set aside and the DEC begin anew to generate a comprehensive, cohesive and firm regulatory structure to govern all levels, types and scales of oil, gas and solution mining in the state.

With that being said, **second**, the failure of the document to include cumulative impact assessments of natural gas drilling on a regional basis is unacceptable. The claim that it is impossible to estimate the rate and location of build up is untenable. The DEC should develop low, medium and high rate scenarios and propose mitigation strategies for each level rather than resorting to a pad by pad or compressor by compressor analysis. This fails to evaluate the additive impacts of noise and air pollution, or the significant visual impact of spider-webbing trails of access roads and feeder lines crisscrossing rural hillsides.

Third, it is the Council's opinion that there is very little of a definitive or restrictive nature in the DSGEIS. The document seemingly purports to regulate natural gas development on a permit by permit basis with a series of "mays," "coulds," "shoulds," "strongly encourages," and "recommends." It also appears to be excessively reliant on voluntary compliance on the part of the gas companies, the waste haulers, the water treatment facilities, and the various Divisions of DEC and yet none of these various entities boasts a stellar track record of transparent, timely communication. The Council finds this less than reassuring and certainly not designed to inspire public confidence.

Fourth, with the absence of any viable treatment option for the returned fluids whether fracking water or produced water from the formation in New York State, especially with the radium-226 levels identified in Appendix 13 of the DSGEIS, among other toxic or hazardous substances, the Council feels proceeding ahead with permitting and drilling is more than premature. It would be tantamount to creating a huge waste stream with no disposal plan in sight. Until a truly well-documented and independently tested technology exists for adequately treating the billions of water contaminated through this natural gas mining, the Council believes moving forward would be at best irresponsible and at worst grossly negligent.

Fifth, in light of the current economic situation in New York and the hiring freeze imposed not just on the DEC, juxtaposed against the heightened pressure from industry lobbyists, various government representatives and landowner coalitions, the Council does not believe the DEC will be able to hold to its stated intention that permits will only be given at a rate able to be effectively monitored by the current staff of [16 +/-] inspectors. The more extensive the number of wells each mine inspector must cover, the less comprehensive and thorough will be the monitoring at each well site. Over-extending inspectors will only invite inadvertent carelessness and error.

Sixth, in light of the recent directive given to EPA Director Lisa Jackson to revisit the issue of slick-water hydraulic fracturing technology safety, legislation being brought before Congress to rescind some of the federal exemptions the gas industry has enjoyed from environmental regulations, as well as new, more environmentally friendly, procedures being developed by the gas industry itself, it is the opinion of the Council that postponing drilling in the Marcellus by six months to a year until some of these in-process items might be accomplished would not be unreasonable.

Seventh, the DSGEIS is incomplete. There is no Executive Summary. It does not include all the material the DEC committed to prepare in its Final Scope. There is no analysis of water withdrawals. The "Pump Test Procedures for Water Supply Applications" is still being reviewed and is thus missing from the draft. Other promised areas of analysis missing from the document are noise, traffic and emergency response. In addition, if this document is meant to apply to Marcellus and other low-permeability gas reservoirs, a new DSGEIS needs to be prepared for each of those reservoirs because, apart from a brief section on the Utica Shale, this document is silent about any other low-permeability formations.

The Council now wishes to comment on the Draft Supplemental Generic Environmental Impact Statement, as presented, section by section, beginning with Section 2.0.

COMMENTS

2.0 DESCRIPTION OF PROPOSED ACTION

2.2: Public Benefit & Need

The Council recognizes the national drive toward energy independence and the goal of the Governor's 2009 Energy Plan to ensure that New York State benefits from development of this apparently bountiful natural resource. The Council is also aware that, contrary to the glitzy marketing campaigns, it's doubtful that all this natural gas produced from unconventional formations in the United States is going to stay in the U.S. to heat homes, propel vehicles, etc. Similarly, the Council is very much aware of what a great economic boon this development can be for Schuyler County and New York State in terms of personal incomes, jobs, businesses, state and local taxes, etc. However, there can be a dark side to this rosy picture, and the Council is disappointed in the DEC's failure to consider that in this analysis.

With natural gas drilling and development some property values will increase but some will decrease dramatically as well. Should any spills or contamination events occur, those properties become virtually worthless. Natural gas development may promote some types of business and industry, but it may detrimentally impact other businesses and industries that are already flourishing in a region. Schuyler County lies in the heart of the Finger Lakes Region. Tourism, agriculture, outdoor recreation, wineries, timber, salt and lakes are the prime sources of economic sustainability here and these industries are growing. The Council wants to see calculations included in the DSGEIS indicating the risks to these industries posed by the benefits of Marcellus Shale development. Both sides must be explored.

2.4.7: Regulated Drainage Basins

It is the Council's opinion that every effort be made to develop and coordinate consistency among the SRBC the DRBC and the Great Lakes St. Lawrence River Basin in terms of regulating withdrawals, consumptive use permits, tracking, and all manner of record keeping, especially since it is currently the DEC's task to be drawing up just these guidelines for the Great Lakes St. Lawrence River Basin now that the Compact is in effect. Additionally, until those regulations are in place, the Council recommends against water withdrawals within the Great Lakes Basin.

Water withdrawals or diversions from any of these watersheds must be regulated consistent with recognition of wildlife and habitat impacts upstream and downstream of the site, as well as cumulative impact along the tributary.

2.4.9: Floodplains

Because of the risk of transporting/contaminants offsite contaminants that might reasonably be expected to be removed through final reclamation during the active life of the well, the Council strongly urges against any permitting of drilling within a 100-year flood plain, however delineated or designated.

2.4.10: Freshwater Wetlands

The Freshwater Wetlands Act only protects wetlands larger than 12.4 acres in size, certain smaller wetlands of local significance, and those that have been mapped. It is the Council's opinion that DSGEIS must require natural gas companies to provide detailed aerial photos of each drilling unit, including demarcation of any and all wetlands, bogs, swamps, streams, vernal pools, etc. The Council also recommends that the DSGEIS require that the DEC inform the Army Corps of Engineers of any potential wetlands conflicts, since the ACOE regulates most of the wetlands in New York State, and that the DEC withhold any drilling permits until the ACOE is satisfied the proposed well complies with federal wetland protection laws.

2.4.11: Visual Resources

According to the DSGEIS, the DEC's guidance document, DEP-00-2 "Assessing and Mitigating Visual Impacts" provides an inventory of aesthetic resources. What would be more accurate is to say it provides an inventory of categories of aesthetic resources basically the same ones listed in the DSGEIS and a far more detailed development of mitigation strategies. It is the desire of the Council that the DSGEIS provide a far more detailed and thorough explanation of how these areas are "red-flagged," so to speak in the permitting process. Who is responsible for ensuring that areas along the Finger Lakes Trail, the North Country Scenic Trail, all areas along the Erie Canal Heritage Corridor, the Catharine Valley Trail, and the newly designated Bird Conservation Area and Critical Environmental Area in Schuyler County are afforded special consideration in the drilling permit process? And is it an automatic function of the application procedure that the Office of Parks Recreation and Historic Preservation be consulted to determine if the drill site might overlap into potentially archeologically sensitive areas? If that's not part of the procedure, the Council encourages the DEC to add it to the permitting process.

3.0 PROPOSED SEQRA REVIEW PROCESS

3.2.2.7: Invasive Species Survey & Map

The Council sees many difficulties associated with expecting each individual well operator to prepare a comprehensive survey of the entire project site to document the presence, expanse and identity of any invasive plant species. First, it should also include invasive fauna Emerald ash borer, Asian long-horn beetle because both will readily travel on drilling equipment. Second, the likelihood of actually obtaining such inventories from the drillers is truly unrealistic. It would virtually mandate the employment of a botanist and entomologist by the driller not necessarily a bad thing but the Council wonders how likely this is to occur.

3.2.3: Projects Requiring Site-Specific SEQRA Determinations

The Council is pleased to see so many hydrological features and concerns triggering site-specific SEQRA review, along with proposed disposal wells and disturbances greater than 2.5 acres in Agricultural districts. What the Council would like to see fleshed out more thoroughly is how Critical Environmental Areas, Areas of Special Significance or Unique Natural Habitat might also warrant site-specific review. Also, given the sensitive populations involved, the Council would think proximity to hospitals, schools and nursing homes would warrant site-specific consideration and that failure to do so might fall under the purview of Environmental Justice.

4.0 GEOLOGY

4.5: Seismicity in New York State

4.5.4: Seismic Events

Whether or not hydro-fracking will trigger minor seismic events in New York State is not really the Council's concern it probably will, given the record of other seismic events likely triggered by human activities [DSGEIS, page 4-33]. The Marcellus is a Middle Devonian black, gas-producing shale ranging in depth in New York State from surface outcroppings to 8,000 feet underground. Rock layers above the Marcellus include limestones, siltstones, shales, conglomerates and sandstones there is no hard rock cap layer between the Marcellus Shale and the surface as there is in Western gas fields. High pressure hydraulic fracturing is intended to generate vertical fractures in the shale formation fractures that may extend into other rock formations above and

below the Marcellus Shale. There, these human generated fractures can very easily meet up with naturally occurring faults or fractures or even abandoned wells. What concerns the Council is the likelihood of natural gas, fracking fluids or flow back water traveling along one of these and contaminating private wells, public water supplies and larger water resources. Therefore the Council asks that the DEC require a thorough geologic survey of each site be conducted by the gas companies and that it be made public prior to any drilling in order to assess the potential for establishing connectivity to existing faulting or fracture systems, as well as their proximity to local aquifers or any capped abandoned wells

5.0 NATURAL GAS DEVELOPMENT ACTIVITIES & HIGH-VOLUME HYDRAULIC FRACTURING

5.4: Fracturing Fluid

While the Council realizes that the EPA had published a report indicating that hydraulic fracturing “poses little or no threat to drinking water supplies,” and that it was largely on the basis of this report that this mining technology was rendered exempt from regulation by the Clean Water Act, the Clean Air Act, and the Safe Drinking Water Act, the Council is also aware that the current Administration has issued a Directive charging EPA Director Lisa Jackson to revisit the alleged “safety” of this technology.

As for the agency’s assertion that it has no documentation of any instance of groundwater contamination caused by hydraulic fracturing despite over 50 years of use in New York State, the Council refers to Walter Hang’s website: www.ToxicsTargeting.com, on which he posts 270 oil and gas spill profiles from the DEC’s own databases recorded from 1970 to the present, many of which have yet to be cleaned up or remediated. While this may seem a small number over a long period of time, it is informative to consider Cabot Oil & Gas’s recent track record in Pennsylvania over a very short period of time three spills in nine days. The Council encourages any measures possible by the DEC to discourage the gold-rush feeding frenzy mentality that can result in carelessness, haste, and short-cutting safety.

The listing of 197 potential fracturing fluid components both alphabetically and by category in the DSGEIS is a great start. And, while it is true that MSDSs are public information and that anyone with any sort of patent savvy could probably figure some of the other formulations out, it is still the Council’s stance that these chemicals and precise formulations at specific sites be made available to the DEC and to hospitals and Emergency Responders in the area. By minimizing the release of specifics to those who would have immediate need for the information, the Council feels the gas companies be more amenable.

5.4.1: Properties of Fracturing Fluid

It is still difficult for the Council to reconcile one of the stated desirable fracking fluid properties minimal environmental effects with a number of chemicals listed. Under no conditions could benzene, ethyl benzene, formaldehyde, kerosene, naphthalene, toluene or xylene be considered environmentally friendly. Nor could any of the petroleum distillates listed, even though the DSGEIS refuses to consider impacts from petroleum distillates.

5.4.3.1: Chemical Categories & Health Information

The Council appreciates the DEC reaching out to the NYSDOH for assistance to identify potential exposure pathways and constituents of concern relative to high-volume hydraulic fracturing in the Marcellus and other low-permeability shale formations. This type of inter-agency cooperation and support is what the Council believes will be necessary more and more as this play proceeds. Although exposure to these chemicals would require some operational failure, a spill or other abnormal incident, the potential health impacts a sufficient to raise concern among Council members. And while the DEC did not see any qualitatively new exposure situations associated with high-volume hydraulic fracturing that weren’t present in the original 1992 GEIS, the Council

would submit that the quantity is vastly different. It's the difference between a 10 gallon spill and a 1,000 gallon spill, or a 500 gallon underground migration versus a 50,000gallon one. That's worrisome especially with some of these chemicals. BTEX cocktail anyone?

With this in mind, it is the recommendation of the Council that the DEC mandate pre-drilling baseline studies of all surface water sources and drinking water supplies [including individual dug wells] within the entire area encompassed by each proposed well [including its underground horizontal component] and extending out beyond the boundary of proposed development by at least 1,000 feet. These studies would be the responsibility of the gas companies and should include tests for the following: BTEX, amides, amines, arsenic, barium, calcium, chlorides, iron, lead, magnesium, manganese, potassium, sodium, strontium, sulfate, total dissolved solids [TDS], methane/ethane, pH, and bacteria, formaldehyde, as well as testing for other hydrocarbons, heavy metals, and alpha and beta radiation. With this information on record, any post-drilling assessment or reported contamination investigation should be far more efficient and conclusive.

The Council would add that these studies are especially important since, once a well is in place, there are no restrictions placed on the companies to prohibit gas exploration in other geologic formations off the same drill pad. However, the Council requests that the DEC require that gas companies declare any and all additional formations they may wish to explore via each individual well pad.

5.7.2.1: Impoundment Regulation

As a matter of record, the Council wishes to note that Figure 5-4 "Protection of Waters Dam Safety Permitting Criteria" is missing from page 5-81 of the DSGEIS. How essential that figure is to understanding the remainder of the section is not clear, but whatever benefit it would have added is moot.

5.11.2: Flowback Water Handling at the Wellsite

The Council notes internal inconsistencies in the DSGEIS with this section. In one portion of the DSGEIS, it is required that all flowback water be stored in metal tanks [7.1.3.4], yet this section contradicts that clear distinction. And yet again, in section 6.7 dealing with centralized flowback water surface impoundments, appears to leave open the possibility of, under appropriate circumstances, allowing such open surface storage. The Council requests definitive clarification of these inconsistencies.

5.11.3.2: NYSDOH Chemical Categories

The Council wonders why the DOH did not test the flowback water for certain categories of chemicals that it did analysis for when assessing potential health impacts of fracturing fluid constituents. Is there an explanation for this? Were these compounds known to degrade underground or were they too volatile to persist long enough to be detected? It is the Council's opinion that an explanation for the omission from testing is needed to lend credibility to this section of the DSGEIS

5.13: Waste Disposal

One of the more significant concerns surrounding the magnitude of this natural gas development and its method centers around responsible disposal of the cuttings, spent fracking fluids and flowback water generated.

5.13.1: Cuttings from Mud Drilling

Here again is another indicator of why the Council believes the DEC needs to start from scratch with this regulatory process, waiting until all the many exemptions the oil and gas industry has enjoyed are eliminated. The cuttings and tailings from this gas play, given the levels of heavy metals and other remnants of fracturing chemicals, need to be transported via a Part 364 Waste Transporter and disposed of in a hazardous waste landfill. Some loads may even, depending on

their radiation level, need to wend their way to a low level nuclear waste facility. On site burial must never be considered an option.

5.13.3: Flowback Water

The Council's first request is that the DEC mandates a closed-loop recycling of spent fluids whenever possible, both to minimize the amount of fresh water removed from regional watersheds and aquifers and to likewise reduce the volume of waste fluids that must be removed and either disposed of or decontaminated.

As for disposal of this flowback water, the Council finds many issues for concern. According to the drilling industry, used fracking fluid and flowback water can be safely processed at a waste water treatment plant. This is inaccurate if the additives believed to be portions of the fracking fluid are present. Nor is it true if many of the TDS, heavy metals, and radioactive elements present in flowback water are detected. According to waste water facility operators, any industrial waste received must undergo chemical tests and, if any of the additives are present, the waste must be taken to a hazardous waste processor instead.

And then there is the issue of radioactivity. The Marcellus Shale is considered to be, in comparison to other gas shales, highly radioactive, containing uranium, thorium, and their daughter products radium 228 and radium 226. In addition, the Marcellus Shale is a known source of radon, which will decay to lead 210, bismuth 210, polonium 210 and finally to stable lead 206. These decay products can coat the processing equipment, posing exposure risk for workers. Consequently, it can be argued that the presence of NORM [Normally Occurring Radioactive Minerals] in used fracking mud and produced water necessitates disposal in a low level radioactive waste facility.

The Marcellus Shale is also known to contain acid producing minerals pyrites and sulfides. The acids they produce when exposed to air and water, in turn dissolve toxic metals such as arsenic, cobalt, chromium, molybdenum, nickel, vanadium and zinc [all found in the Marcellus Shale] to contaminate the flowback water.

So, for disposal options, the injection wells would require site-specific review by both the New York State Pollutant Discharge Elimination System [SPDES] and the EPA's Underground Injection Control Program [UIC]. The out-of-state industrial treatment facilities, all but one of which are in Pennsylvania, are only proposed they have yet to agree to the idea and may already be overburdened by demands in their own states.

The Council feels the municipal waste water treatment facilities are the weak link in protecting the state's waters. At this point in time, no municipal treatment facility in the state is equipped to handle this type of waste it requires industrial grade distillers, ion exchanges, etc. To think that any municipal treatment plant could adequately treat this waste is ridiculous and dangerous to both public and environmental health. Because of this, it is very important that the DEC require the drillers to report where produced water is going for disposal. Also, wastewater quantities from each well should be reported, especially when traveling out of state. At one point, when all drilling waste was being transferred to Pennsylvania for treatment, that state did not require out-of-state haulers to declare the point of origin of the transported waste. New York State DEC needs to mandate that all haulers of this mining waste declare the origin of the waste to the receiving treatment facility.

The Council is delighted to see that road spreading of flowback water is no longer a permissible means of disposal. Cheers one that!

5.16.8.1: Regulation of Gas Gathering & Pipeline Systems

The Council questions how the Public Service Commission is going to adequately oversee the burgeoning expanse of gathering lines, compressor stations and feeder lines since there is no evidence that it has done any cumulative impact analysis for this level of development in the

Marcellus. But somewhere somehow someone must have some idea of cumulative impacts since now it appears a gathering line must be in place even before drilling commences lest the well sit idle and the clay compress and close of the fractures, thus necessitating a re-frack. The Council is confused.

The Council also finds it difficult to understand why neither the DEC nor the PSC is willing to accept the need for a cumulative impact analysis of the expanding network of access roads and gathering lines when one need only look south to Pennsylvania, then further to Texas, Colorado, Montana and Wyoming to see the fragmentation of the landscape. Now the Council asks that one imagine that network overlain on the farmlands of the Southern Tier and Finger Lakes on the corn and wheat and oat fields, the vegetable crop acres, the vineyards, the pastures, the orchards, the forests it's not an attractive picture. It's altering the character of the land and perhaps changing a way of life. The problem is, many of those people are not in favor of that change.

6.0 POTENTIAL ENVIRONMENTAL IMPACTS

6.1: Water Resources

The Council questions whether a more detailed look at potential environmental impacts to water resources might have been called for given the vast number of comments related to water issues received during the last round of public participation. And again, it's wonderful to list the possible sources of contamination, but what are the mitigating strategies? And are we allowing pits, not allowing pits, regulating how they are constructed? >From section 6.1.7 it certainly appears they are being permitted with a rather laissez-faire attitude about what, if any, parameters exist for liner construction. Is this from the GEIS, the DSGEIS, or some other document?

6.4: Ecosystems & Wildlife

Once again the specter of cumulative impact rears its ugly head. It is the Council's opinion that the proliferation of access roads and feeder lines sufficiently fragments habitat so as to impact mating cycles, migratory patterns, and feeding strategies of any number of varied species. Increased traffic will endanger movements of turtles and amphibians during mating season. Reduction in undisturbed habitat will limit numbers of each and types of species an area can support. A full biological inventory must be conducted, identifying all endangered, threatened and species of concern in all kingdoms. Sensitive and critical habitats must be protected. This inventory must also identify all invasive species already present terrestrial flora and fauna and aquatic flora and fauna that means the insects and mollusks, too. Emerald ash borers and Asian long-horn beetles, as well as the spiny water flea and bloody red shrimp can travel in water trucks and on drilling rigs [or on trucks hauling out logs cleared to create access roads].

A protocol must be developed to guard against destruction of sensitive areas and transmission of invasive species from site to site throughout the development region. Coupled with this regimen, the Council believes some fine should be levied against companies failing to either protect sensitive habitats or prevent the spread of invasive species. Monies collected could go to NNIS eradication efforts and/or habitat restoration programs.

6.8: NORM

The Council believes the DSGEIS inadequately addresses the issue of Naturally Occurring Radioactive Materials in the Marcellus. The Council is especially concerned because of the production brine readings in Appendix 13, given that six of those 13 wells [coincidentally the ones with the highest radium-226 and radium-228 readings] were from Schuyler County. The Council wishes to see a far more detailed accounting of what can and will be done to protect workers on site and waste handlers; how contaminated equipment will be disposed of, as well as contaminated waste; and whether development of this resource will pose any minor or major public health concern to the community.

6.9; 6.10 & 6.12: Visual Impacts; Noise Impacts & Community Character

It is impossible to separate visual impact and community character as far as the Council is concerned. Much of the appeal of the Southern Tier and Finger Lakes Region lies in its rolling hills, vineyards, scenic vistas, seemingly unspoiled open spaces, fresh air and pristine watersheds. Major natural gas development, as witnessed in other parts of the United States, would be ruinous to those factors that so enrich this region and render it an attractive place in which to live and to visit unless the DEC takes this regional impact into account in the DSGEIS. It is for this reason that the Council urges the DEC to reconsider its assessment to include cumulative impact of the required secondary infrastructure demanded by successful large-scale natural gas development in order to minimize degradation of regional character and quality of life.

It is also impossible for the Council to understand why the DEC fails to accept that noise pollution will not be temporary when compressor and sometimes decompressors are running around the clock, spread out on multiple pads across the country side. Perhaps that may seem less than consequential if one is used to living in suburbia, but out here in Schuyler County, there are many places where the loudest noise on a summer evening is the neighbors dog barking or peeper outside the window. Noise becomes VERY significant then.

6.12.2: Environmental Justice

The Council is not certain that the EPA's intent of ensuring Environmental Justice is truly being achieved with the DSGEIS. There is no indication in the document of any steps being taken to consult with the Haudenosaunee as required by DEC policy. Though the Council is aware of the Haudenosaunee's opposition to drilling, still the DSGEIS should have noted efforts to make contact and dialogue.

The Council also believes the level to which this issue has pitted neighbor against neighbor, and left some benefiting while others reap only the negative environmental impacts could be construed as Environmental Justice issues. In some cases there are absentee landowners who will never be bothered by what happens to their property juxtaposed against the struggling farmer barely getting by financially who has more to lose if something goes wrong or the well isn't successful? And, truly, only those able to own property benefit those who live in the same area, but can't afford to own, will endure the same noise levels, the same traffic volume, the same air quality degradation, and the same alteration in quality and character of life they just don't reap the fiduciary rewards.

In addition, the Council would contend that the special concern afforded the New York City watershed, seemingly to the detriment of other areas of the state, would warrant examination under the rubric of a failure of Environmental Justice. The number of citizens should not be equated with a value. The waters upstate are just as precious as those downstate and are invaluable in producing the milk, cheese, vegetables, fruits and wines that find their way to down state dining tables. The Council believes the DEC needs to re-examine this document thoroughly with Environmental Justice in the forefront of the lens.

7.0 MITIGATION MEASURES

7.1.4.1: Private Well Testing

The Council has two questions: who is paying for the testing and who is collecting the samples? Mention is made of involvement by a county health department many counties do not have a county health department and the Council doubts the NYSDOH wants to be sending people out all across the state to accomplish this task. Since the 1992 GEIS is being quoted on page 7-42 of the DSGEIS, perhaps it becomes clearer why so many spills and contaminant incidents were so

unfamiliar to DEC officials until Toxics Targeting assembled them the infrastructure for reporting them was fundamentally flawed. This is not within the mission or the budget of the NYSDOH it is, however, the responsibility of the NYSDEC. Nice try.

7.8.2: Regulation of NORM in NYS

While it was edifying and somewhat disturbing in the case of Texas to learn what other states do with NORM waste streams from oil and natural gas production, the Council sees no clear and detailed plan for what is planned in New York State for that waste stream. Again, as mentioned before, it seems Schuyler County's brine is well above that 60 pCi/l limit for Ra-226 at least in the six wells tested. Where will that flowback water go? And how will the equipment that handled it or the pipes that may have built up radioactive scale from it, be dealt with? The Council believes far more work needs to be done on this portion of the DSGEIS's Mitigation Measures.

CONCLUSION

In all the delving into detail, squabbling over regional issues or partisan concerns, pitting haves against have-nots, neighbor against neighbor, this Marcellus issue has driven some of us to recognize the true invaluable natural resource in which we are immersed in New York State while it has pushed others of us to the brink of threatening its existence. New York State's real bounty lies in its fresh waters. The Council knows we too often take the abundance of water for granted but other areas of the globe, even other parts of our own country, are experiencing water shortages on a massive scale. And these are not temporary shortages. Future wars will be fought for water not gas or oil and you can't live without water.

In conclusion, the Council hopes you will thoroughly consider these comments and suggestions in the spirit in which they are offered that of striving to ensure the greatest degree of diligence be given to development of the Marcellus Shale to minimize negative impacts on New York State waters, forests, wildlife and citizens on its quality of life. Though the Council is not unaware of or insensitive to the economic ramifications posed by natural gas development, its charge is to offer advice and counsel on environmental impacts and concerns. The Council thanks you for your time and attention.

Respectfully,

Kate Bartholomew

Kate Bartholomew, Chairperson

Schuyler County Environmental Management Council

Cc. Governor David Paterson

N.Y.S.D.E.C. Commissioner Pete Grannis

N.Y.S. Senator George H. Winner, Jr.

N.Y.S. Legislator Thomas F. O'Mara

U.S. Congressman Eric Massa

U.S. Senator Kirsten Gillibrand

U.S. Senator Charles E. Schumer