

RESOLUTION NO. 252 - TOMPKINS COUNTY COMMENT ON NYSDEC *DRAFT SCOPE FOR DRAFT SUPPLEMENTAL GENERIC ENVIRONMENTAL IMPACT STATEMENT (dSGEIS) ON THE OIL, GAS, AND SOLUTION MINING REGULATORY PROGRAM FOR THE MARCELLUS SHALE*

MOVED by Ms. Robertson, seconded by Mr. Proto.

WHEREAS, compared to other fossil fuels, natural gas is a relatively clean, relatively low-impact source of energy that could replace the use of coal and other fuels that emit more greenhouse gases in a transition to a more sustainable energy future, and

WHEREAS, there has been gas drilling in New York State for more than 100 years in deposits that can be recovered by conventional means, but recent advancements in technology and increases in the price of energy have now made the extensive natural gas reserve in the Marcellus Shale potentially recoverable, and

WHEREAS, gas production from the Marcellus Shale is expected to be done using horizontal hydraulic fracturing (“fracking”), a technique that requires pressurized injection of millions of gallons of water containing certain proprietary chemicals into the underground shale to release the gas, but the sweeping 2005 Energy Policy Act exempted hydro-fracking from monitoring and regulation under the Safe Drinking Water Act, and

WHEREAS, if done in an environmentally responsible manner, development of the gas resources of Upstate New York could be of great economic benefit to landowners, municipalities, and New York State, and

WHEREAS, during the summer of 2008, Governor Paterson directed the New York State Department of Environmental Conservation (NYSDEC) to supplement the existing 1992 Generic Environmental Impact Statement governing drilling to specifically address the specific techniques used to tap the natural gas in the Marcellus Shale, and

WHEREAS, on October 6, 2008, the NYSDEC Division of Mineral Resources, Bureau of Oil and Gas Regulation, released the *Draft Scope for Draft Supplemental Generic Environmental Impact Statement (dSGEIS) 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*, and

WHEREAS, the deadline for public comment on the scoping document of the Draft Supplemental GEIS (dSGEIS) is December 15, 2008, and

WHEREAS, Tompkins County and its municipalities have a responsibility to preserve and protect our natural resources, water resources, highway infrastructure, and quality of life for our residents, and

WHEREAS, New York State law clearly places land-use authority in the hands of its towns, villages, and cities, and

WHEREAS, the Tompkins County Planning Department and the Legislature’s advisory boards are reviewing and preparing comments on the draft scope that will be submitted to NYSDEC separately, now therefore be it

RESOLVED, on recommendation of the Planning, Development, and Environmental Quality Committee, That the Tompkins County Legislature urges the New York State Department of Environmental Conservation to consider the following issues in its dSGEIS:

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1. *The Scoping Document refers to NYSDEC's consideration of impacts on groundwater and surface water. We applaud NYSDEC for addressing these impacts and we emphasize the following concerns:* (a) surface water going into the deep shale forever or otherwise permanently being taken out of the water cycle, just as limited water resources are becoming a bigger issue worldwide, (b) surface water becoming more saline over time as the high-salinity water from the shales are added to our surface waters, (c) capacity limits of local wastewater treatment plants to handle the amount of salty and contaminated water (including total dissolved solids) proposed to be sent to them, and (d) disposal of produced water, and methods of dealing with the radioactivity and heavy metals in the formation water;
2. Section 4.1.1 (Noise Impacts) of the Scoping document identifies the need to mitigate some noise impacts. The dSGEIS should identify limits on noise allowed during drilling, pumping, and compression, as well as traffic of trucks and other heavy equipment, including hours of operation, particularly within proximity to homes, schools, hospitals, and other sensitive sites;
3. Section 4.2.3.3 (Erosion and Sediment Control) of the Scoping Document should address compliance with Stormwater Pollution Prevention Regulations, particularly in MS4 areas, for drilling sites, compression sites, and pipelines all of which should be governed by the same regulations at least as stringent as those required for other construction sites;
4. Section 4.7 (Cumulative Impacts) mentions that "water withdrawals are addressed by the Susquehanna and Delaware River Basin Commissions." However, some water withdrawals may occur within the Great Lakes Basin. A process for review of water withdrawals in the Great Lakes Basin should be established and should be as stringent as the review process for the Susquehanna River Basin Commission (SRBC). Specifically, review of water withdrawals must evaluate the cumulative amount of water intended to be used;
5. Section 4.7 (Cumulative Impacts) of the Scoping Document discusses cumulative surface disturbance impacts only in relation to individual sites. The dSGEIS should also address the cumulative impacts of drilling sites, compression sites, pipelines, and roads, on the fragmentation of the landscape, forests, and natural habitat, for the region as a whole, and over time (expected to last decades).

RESOLVED, further, That the Tompkins County Legislature urges the NYSDEC to consider the following additional factors when reviewing its regulatory program:

1. All relevant divisions of NYSDEC and other State agencies should be involved in evaluating the dSGEIS and writing the resulting regulations, including but not limited to the NYSDEC Divisions or Offices of Mineral Resources; Water Resources; Air Resources, Climate Change, and Energy; and Solid and Hazardous Materials;
2. All chemicals introduced into wells must be identified and the information shared with the public before use of such chemicals is permitted;
3. NYSDEC must regulate use of fracking chemicals, disposal of produced water, and methods of dealing with heavy metals in the formation water. These regulations must be reviewed annually, and revised if necessary, to ensure that they are kept up to date with the most current research and practice;
4. Well drillers should (a) be required to test wells at an appropriate distance from drill pads to ensure water quality, before, during, and after drilling, and (b) be required to go beyond the basic water testing and test for the chemicals they plan on using in the water for hydraulic fracturing of the shale as well as elements or compounds that could be brought to the surface from formation water;
5. NYSDEC should regulate traffic of trucks and other heavy equipment, including hours of operation, without precluding local regulation of local roads;
6. NYSDEC regulations must be available for public comment before going into effect;

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7. NYSDEC should realistically calculate how many inspectors will be needed to adequately oversee all subject operations and request adequate funding or impose adequate fees on drilling companies before permitting is allowed to proceed; and
8. Local fire departments will need to have the capability to respond to accidents and spills; gas companies should be required to provide necessary training and resources.

RESOLVED, further, That since the burdens that will be placed on local communities' infrastructure and natural resources by extensive gas drilling will be borne by local governments, they should have the ability to tax such operations through an ad valorem tax on the value of the gas produced, or other taxing mechanism,

RESOLVED, further, That the Tompkins County Legislature urges the New York State Legislature to support H.R. 7231, a bill intended to repeal the exemption for hydraulic fracturing in the Safe Drinking Water Act,

RESOLVED, further, That, since adequate regulation and oversight by New York State Department of Conservation will cost significant State funds, New York State should enact a severance tax on gas drilling companies to pay the costs of such regulation and oversight,

RESOLVED, further, That a copy of this resolution shall be sent to Governor Paterson, Senators Skelos, Malcolm Smith, Winner, Seward, and Nozzolio, Speaker Silver, Assemblywoman Lifton, Chair of Senate Committee on Environmental Conservation Marcellino, Chair of Assembly Committee on Environmental Conservation Sweeney, Attorney General Cuomo, Representatives DeGette, Salazar, and Hinchey, New York State Association of Counties, and Town Supervisors and Clerks.

SEQR ACTION: TYPE II-20

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cc: Administration - via Network
Finance
Public Works
Planning Department
Governor Paterson
Senator Skelos
Senator Smith
Senator Winner
Senator Seward
Senator Silver
Assemblywoman Lifton
Senator Marcellino
Assemblyman Sweeney
Attorney General Cuomo
Representative DeGette
Representative Salazar
Representative Hinchey
NYSAC
Town Supervisors
Town Clerks

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 2nd day of December, 2008.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Legislature at Ithaca, New York, this 3rd day of December, 2008.

, Clerk
Tompkins County Legislature