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Deep Drilling, Deep Pockets

**Expenditures of the Natural Gas Industry in
New York to Influence Public Polciy**

PART I— Lobbying Expenditures

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INTRODUCTION

What impact does nearly three-quarters of a million industry dollars spent lobbying in one year have on the officials setting public policy? That's the question which New Yorkers should be asking their elected representatives and appointed officials as New York State determines whether to permit, and how to regulate, natural gas exploitation using the controversial hydraulic fracturing technique. Research and analysis by Common Cause/New York reveals that shaping the state's policies may come down to a contest between industry dollars – more than \$650,000 spent lobbying in 2009 and nearly that amount already spent in just the first 4 months of 2010 - and public outcry.

The use of the hydraulic fracturing technique to unlock the immense natural gas reserves found in New York State as part of the Marcellus and Utica Shales geologic formations presents significant potential for domestic energy production and unprecedented challenges for environmental conservation. As the Legislature, the Department of Environmental Conservation, and the Governor determine what New York State's laws, regulations and policies governing natural gas extraction should be, New Yorkers want to be assured that the decisions made are fair and objective, not driven by industry dollars or special interest pressure.

This is the first in a series of reports by Common Cause/New York looking at factors that may influence New York's policies regarding natural gas extraction. In this report we examine lobbying expenditures by the natural gas industry, to identify the pressures which are placed on our representatives as they try to arrive at a final policy. Later reports will examine campaign contributions and officials' financial disclosures so that the public can more fully understand the decision-making process and hold their representatives accountable to ensure that it is fair and objective.

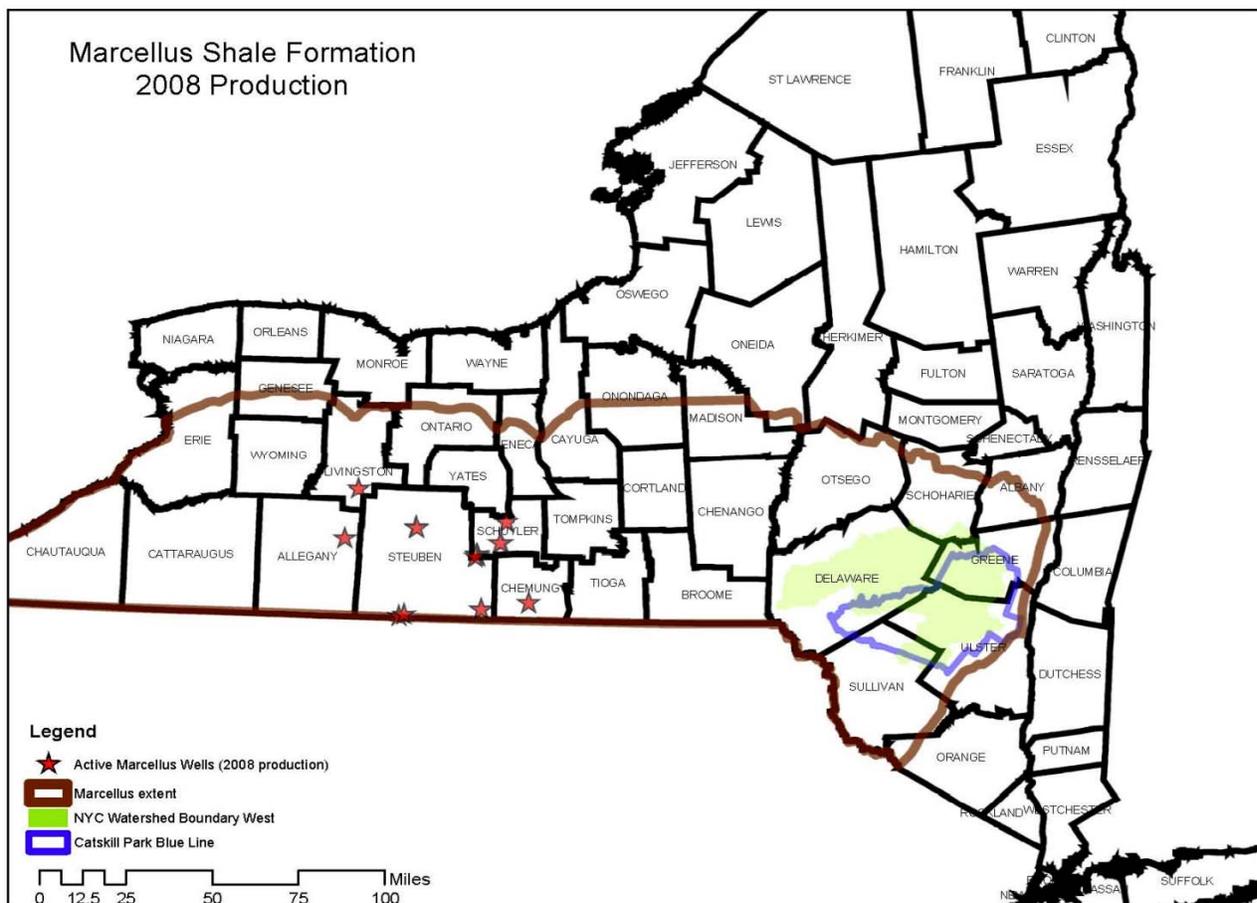
SUMMARY OF FINDINGS

Our state is engaged in a debate between job creation during difficult economic times and ensuring environmental stewardship; a conversation weighing the exploitation of domestic energy sources and providing meaningful assurances that the public drinking water supply is clean. Regardless of what the final state regulations say regarding hydrofracking, this debate is likely to rage on. There are no easy answers and passions run high. For that reason, it is critical that New Yorkers consider who the decision-makers are, how the decisions are being made and how outside interests might be influencing their elected and appointed officials and the regulatory and legislative process that they conduct.

Common Cause/New York's analysis of lobbying filings shows that the natural gas industry has begun to pull out the stops, using its significant financial resources to try to shut down attempts to regulate or slow the head-long rush to quickly exploit the "Marcellus Shale Play." Natural gas industry lobbying expenditures total more than \$2 million from the beginning of 2005 through the first 4 months of 2010, with the lion's share spent in the past 2 years. Industry expenditures have increased more than *six-fold* since 2007, landing natural gas giant Chesapeake Energy among New York State's top 50 lobbying spenders for 2009, the only energy company on the list.

WHAT'S AT STAKE?

New York State sits atop significant quantities of natural gas. There are more than a half-dozen gas-bearing formations under New York State, varying in size and location, with the Marcellus and the Utica Shales being by far the largest. The Marcellus Shale, a deep underground formation stretching from Eastern Ohio through to the Catskill Mountains of New York and down through northern and western Pennsylvania to West Virginia, is one of the largest natural gas fields in the U.S. It is estimated that it may contain from 168 trillion to more than 500 trillion cubic feet of natural gas, an amount which is estimated to provide enough natural gas for all U.S. energy needs for at least two years. The Utica Shale is one of the oldest and most widespread black shales. It covers thousands of square miles, with the most productive potential in Central New York. Both the state and individuals who own property in these areas stand to reap substantial financial rewards from leasing land and receiving production royalties for successful wells, an attractive proposition in times of financial hardship. This has led to a rush by gas companies to obtain leases on lands within the Marcellus Shale region, and to begin to consider the Utica Shale region. According to the NYS Department of Environmental Conservation, Marcellus Shale drilling operations are already underway in Chemung, Steuben, Schuyler, Allegheny and Livingston Counties (see map).ⁱ



To extract the natural gas found in shale, drilling companies utilize techniques known as hydraulic fracturing (fracking or hydro-fracking) and horizontal drilling. After drilling a well over a mile deep, the drill turns nearly 90 degrees and drills for miles through the shale. A mixture of water, sand and chemical additives is pumped into the well at high pressure, causing the fragile shale to fracture, releasing the natural gas trapped in the rock. While America's Natural Gas Alliance (ANGA) is quick to point out that 99.5% of the mixture is water and sand, if each well requires between 2 and 8 million gallons of water per well, that is still 100,000 to 400,000 gallons of chemical additives used *per well*. In addition to chemical additives, as the water travels through the well, it picks up large amounts of salt from the walls of the well so that the waste water takes the form of a brine.

While the exact mixture of chemicals used for extraction is unknown, the chemical cocktails include diesel fuel, ethyl benzene, methanol, formaldehyde, hydrochloric acid and sodium hydroxide. These chemicals include biocides that prevent bacterial growth that leads to contamination of the natural gas, gelling agents that increase viscosity to prevent water loss, acids to prevent mud from collecting on the wellbore, scale inhibitors to prevent carbonate precipitation, and surfactants to prevent the mixture from sticking to the walls of the well.ⁱⁱ Even so, as much as 80% of the water pumped into the well is left unrecovered. While hydraulic fracturing drilling has existed for over fifty years as a secondary drilling technique to maximize extraction from an exhausted conventional natural gas well, in the last four to five years with the rise in natural gas prices and the improvement in horizontal drilling technology, fracking has become a profitable primary drilling technique.

Environmental concerns about shale drilling include the contamination of drinking water and waste water treatment capacity, the impact on local fish, wildlife, and the water supply, given the amount of water that is being withdrawn, as well concerns regarding air quality.

According to the gas companies, drilling in the shale is deep below any ground water, eliminating the potential for the chemicals used in drilling to contaminate the watershed. Nevertheless, according to an article by the investigative reporting service, Pro Publica, "more than 1,000 other cases of contamination have been documented by courts and state and local governments in Colorado, New Mexico, Alabama, Ohio and Pennsylvania. In one case, a house exploded after hydraulic fracturing created underground passageways and methane seeped into the residential water supply. In other cases, the contamination occurred not from actual drilling below ground, but on the surface, where accidental spills and leaky tanks, trucks and waste pits allowed benzene and other chemicals to leach into streams, springs and water wells."ⁱⁱⁱ

In a 2008 study, benzene, a carcinogen, was found in water near a shale drilling site in Wyoming. In Dimock, PA, a major site of shale drilling, state regulators found that the water was contaminated with methane.^{iv} In April, 2010, Pennsylvania suspended Cabot Oil and Gas from drilling for natural gas within the state until the company plugs three natural gas wells believed to have contaminated the drinking water in Dimock Township.^v Spilled fracking fluid has contaminated streams in Pennsylvania and West Virginia, resulting in fishkills.^{vi} Just 2 weeks ago, a natural gas well blowback in Clearfield, PA shot natural gas and toxic chemical-laden wastewater 75 feet into the air for 16 hours until the blowback was controlled.^{vii}

The concern about ground water contamination is especially serious in the New York City watershed. If the drilling indeed puts toxic chemicals into the groundwater, drilling in the NYC watershed would mean the contamination of the water supply of 9 million people. Today, the NYC watershed is the largest unfiltered water supply in the United States. While New York is already investing \$2 billion in the construction of a water filtration facility in the Bronx, when complete in 2012, it will only have a capacity of about 10% of NYC's water supply. Contamination of the watershed would require New York to invest billions in a comprehensive filtration system that would take a decade to build. Similar concerns have been raised about Syracuse's water supply, which has also received a federal filtration waiver.

The second prominent environmental concern is wastewater disposal. While as much as 80% of the water is lost in the drilling process, the brine that is recovered requires proper disposal. The two primary means of disposal at the moment are dilution in local rivers and ponds and processing in water treatment plants. No state has sufficient capacity in water treatment plants to handle the amount of brine produced by the drilling, so for now, shale drilling means disposal in rivers and lakes. Based on a revision in the application of the Clean Water Act proposed in 2003 by the Bush Administration and approved in 2008, the law now only protects "navigable waters" to the exclusion of wetlands, streams, ponds etc. giving drilling companies permission, under federal law, to dispose of the brine into local waters.^{viii} After a 2004 EPA study suggested that hydraulic fracturing drilling was sufficiently safe to proceed, a provision in the 2005 Energy Policy Act exempted the chemical mixture from federal regulation under the Clean Air Act (CAA), Safe Drinking Water Act (SDWA) and CERCLA (Superfund).^{ix} Proposed in 2009, the Fracturing Responsibility and Awareness of Chemicals (FRAC) Act would repeal these exemptions. For now, exempt from federal regulations, shale drilling companies have been able to proceed with drilling without any federal oversight for the chemicals lost into the ground during drilling or for the chemicals deposited into rivers and ponds, threatening fish and wildlife, in addition to drinking water.

While there are serious questions about the environmental impact of shale drilling, there are countervailing pressures supporting drilling in New York State. Industry-friendly studies in Pennsylvania project the creation of more than 100,000 jobs, more than \$10 billion in value added, and state and local tax revenues in the tens of billions in the next ten years. Drilling proponents argue that New York, which also sits on a large source of natural gas, could see similar scale economic growth from the expansion of this industry. The gas drilling companies are primarily leasing land from local land owners who stand to make a substantial amount of money from drilling on their land. Since many of these land owners are in low-income, farming regions, the revenue from leasing the land for drilling is a welcome economic boost, of course only if the drilling is done safely (and after the BP oil spill, can we ever expect that everything will always go according to a drilling plan again?). Also, because natural gas produces between 25 and 50% less carbon dioxide emissions when burned than coal and lacks the sulfur problems of coal, it is seen by some as a transition energy source in the move from fossil fuels to alternative energy, allowing the United States to decrease its dependence on foreign oil, another factor placing pressure on elected officials and regulators when they set drilling policies.

A. Current Regulatory and Legislative Status

With the sweeping federal regulatory exemptions to the CWA, SDWA, CAA, and CERCLA, regulation of natural gas drilling has fallen entirely to the states. There is widespread concern that New York's current laws and regulations are inadequate to protect our communities and water resources from hydraulic fracturing and horizontal drilling. In July, 2008, Governor David Paterson signed a bill to streamline the application process for drilling in New York's Marcellus Shale, but he also ordered the state's Department of Environmental Conservation (DEC) to update its 1992 generic environmental impact statement in the process. That statement would set statewide standards for the use of hydro-fracking. Shortly after, New York City officials demanded a ban on natural gas drilling near upstate reservoirs because of fear that the drilling could contaminate the city's drinking water.

DEC released its draft Supplemental Generic Environmental Impact Statement in September 2009, and solicited public comments by November 30, later extended to December 31, 2009.

In late October, 2009, Chesapeake Energy Corporation, the only company then seeking leasehold for natural gas drilling within the New York City watershed, declared that it would not drill within the New York City watershed. During the comment period, New York City urged DEC to rescind the draft sGEIS, pointing to omissions in the draft statement and the grave consequences of allowing drilling with the New York City watershed.

In mid-March, the U.S. Environmental Protection Agency (EPA), in recognition of criticism of an earlier flawed study supporting the Halliburton Loophole, announced that it will conduct a comprehensive research study to investigate the potential adverse impact that hydraulic fracturing may have on water quality and public health. On April 23, 2010, the New York DEC stopped short of an outright ban on drilling in the New York City and Syracuse watersheds, announcing that drilling in those areas would be exempt from the sGEIS, requiring drilling applications within those areas to receive a case-by-case environmental review.

Currently, DEC is evaluating the more than 14,000 comments received on the sGEIS. DEC's Commissioner, has indicated that the review process may be completed by this fall and that applications for drilling might then be accepted. Drilling could then start as early as 2011.

Basic environmental policy is set by the Legislature, which has oversight responsibility over DEC and which can pre-empt or preclude regulations. While little has been signed into law in terms of regulation of shale drilling in New York, there have been a number of bills proposed, taking a range of approaches to addressing the environmental concerns about drilling. Currently, there are over thirty (30) bills that have been proposed in this legislative session, including bills which look to create various panels, commissions and task forces to investigate everything from environmental impact to economic benefit. Another group of bills look to more tightly regulate drilling operations including, A.0542 which seeks to ban drilling under the waters of Lake Ontario and Lake Erie and The Clean Water Protection and Flood Prevention Act (A.7133/S.3835) which seeks to protect freshwater wetlands under state regulation. This latter bill was passed in the Assembly twice, most recently in 2008, but has not passed in the Senate. The final group of bills is a moratorium on drilling. S8129, proposed by Sen. Antoine Thompson (D- Buffalo) would place a one year moratorium on the awarding of new drilling permits. A.10490/S.7592-A proposed by Assembly Member Englebright (D-Suffolk) and

Addabbo (D-Queens) would place a moratorium on the awarding of new drilling permits until 120 days after the release of a pending EPA study on the environmental impact of hydraulic fracturing drilling.

METHODOLOGY

Common Cause/New York conducted research and consulted with Environmental Advocates of New York and other environmental protection groups to identify the companies active in natural gas drilling in New York State and any related trade associations. Our research revealed that there are a range of companies involved in the natural gas industry, including drillers and suppliers, distributors and truck drivers, real estate attorneys and lobbyists. The most active drilling companies in New York State include ExxonMobil/XTO, Chesapeake Energy, Cabot Oil and Gas, Talisman (formerly Fortuna) Energy, and Statoil. Other companies, such as National Oil Well Varco, provide machinery being used in the Marcellus Shale, though it is unclear if its equipment is used in New York's portion of the Marcellus Shale.

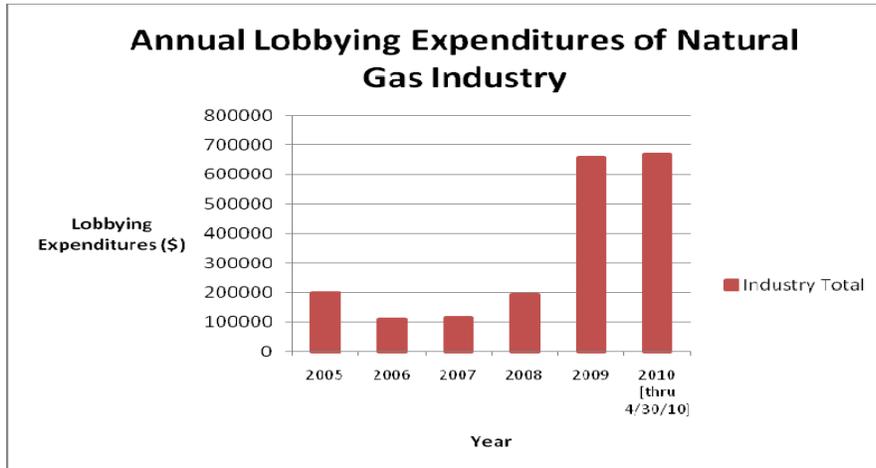
Many of these companies have pooled their efforts to form a trade association, the Independent Oil and Gas Association of New York.^x The IOGA of NY also formed a Political Action Committee in 2004 which, it explains on its website, "out of a desire to support legislators who were friends of our industry." Common Cause/New York will release an analysis of campaign contributions made by IOGA of NY and other industry players later in 2010.



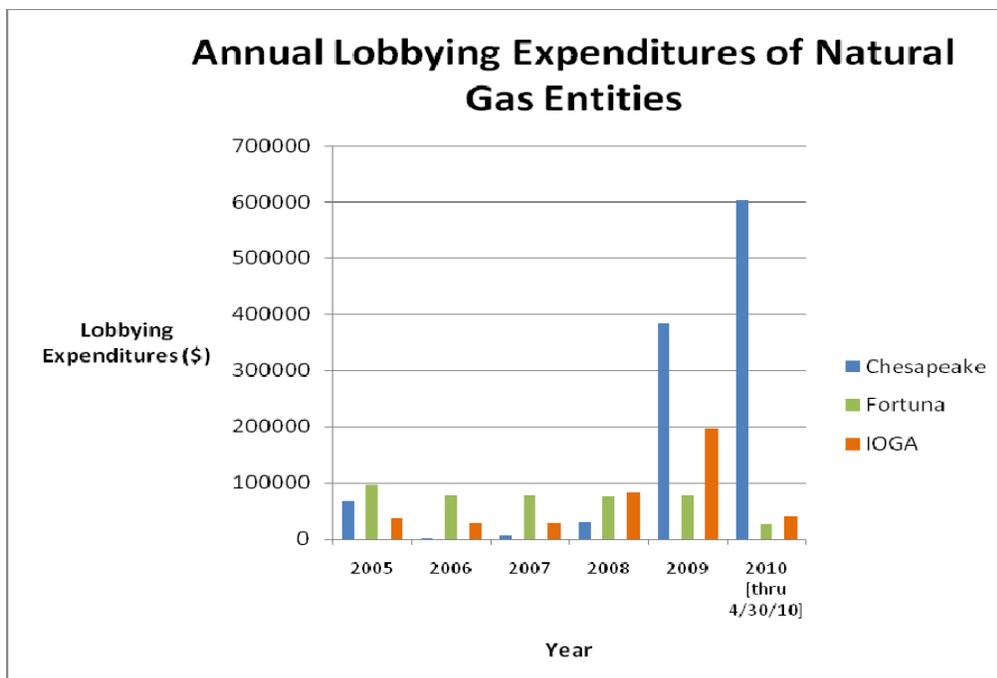
We accessed and obtained copies of the bi-monthly lobbying reports filed by any of the companies we had identified and by IOGA of NY for the years 2005 to 2008 and all reports available for 2010 on the NY Commission for Public Integrity website^{xi} to compile the lobbying data for each company and IOGA for those years. We then reviewed the lobbying data compiled by the NY Public Interest Research Group (NYPIRG) for 2009^{xii} from bi-monthly lobbying reports obtained by NYPIRG from the Commission on Public Integrity and made available through the Internet to identify relevant lobbying expenditures for 2009.

ANALYSIS OF LOBBYING EXPENDITURES

As our state government has turned its attention to the challenges of regulating natural gas drilling in New York State, the amount of money spent by the natural gas industry in lobbying has jumped dramatically, as the chart below illustrates.



From 2006 to 2009, natural gas industry lobbying expenditures jumped from \$109,747 to \$668,984, a more than 6-fold increase. Our research revealed three natural gas entities with lobbying expenditures: IOGA of NY, Fortuna Energy (now Talisman) and Chesapeake. While lobbying expenditures by the trade association, IOGA of NY, jumped from \$30,000 in 2007 to \$196,565 in 2009, the increase in spending by Chesapeake Energy was even more dramatic, increasing from \$7,962 in 2007 to \$383,708 in 2009, and totalling \$658,273 in the first 4 months of 2010 alone:



Chesapeake’s 2009 lobbying expenditures were large enough to catapult it into the top 50 lobbying interest groups, as calculated by NYPIRG. Chesapeake Energy is the only oil and gas entity to make the top-50 list, which is dominated by health-related, education and telecommunications entities

Fortuna(Talisman) did not employ an outside lobbyist during the 5 years we have examined. Its lobbying was conducted by its own employees. The two entities which do employ outside lobbyists switched lobbyists during the time period we examined.

IOGA, which had retained E-3 Communications from 2005-2007, from 2008 to the present have retained Corning Place Consulting and Hinman Straub, LLC, an Albany law firm that is in the top 10 income-generating lobbyists in 2009. The following chart shows the total annual amounts paid by IOGA-NY to each of its lobbyists.

Firms Lobbying for IOGA-NY

Year	Lobbying Firm	Lobbying Expenses (\$)	Yearly Total (\$)
2005	E-3	36,000	36,000
2006	E-3	30,000	30,000
2007	E-3	30,000	30,000
2008	Corning	44,417	
2008	Hinman	39,653	84,070
2009	Corning	126,409	
2009	Hinman	63,514	189,923
2010 [4/30/10]	Corning	12,254	
2010 [4/30/10]	Hinman	27,418	39,672

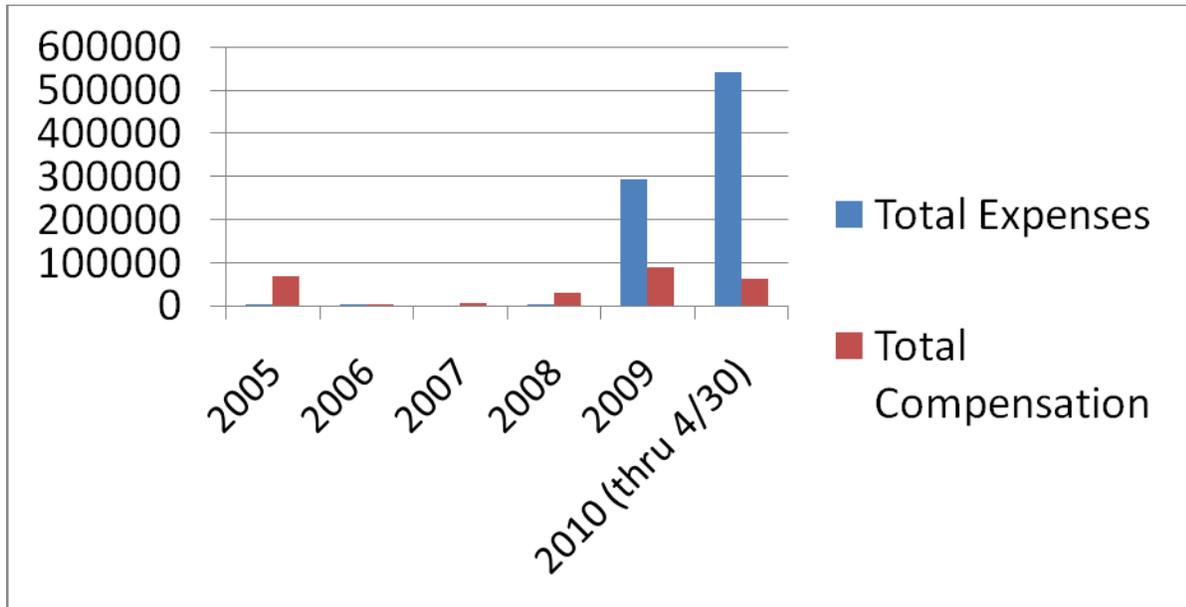
Chesapeake has retained outside firms to lobby on its behalf, as well as reporting lobbying conducted by its own employees. From 2007 to the present, Thomas West of The West Group, an Albany law firm specializing in the oil and gas and environmental fields, has lobbied on its behalf. In 2009 and 2010, Public Strategy Group, a Rochester firm which describes itself on its website as “a public affairs firm that specializes in grassroots campaigns of all types” lobbied for Chesapeake. The following chart shows the annual amounts paid to each its lobbyists by Chesapeake.

Firms Lobbying for Chesapeake

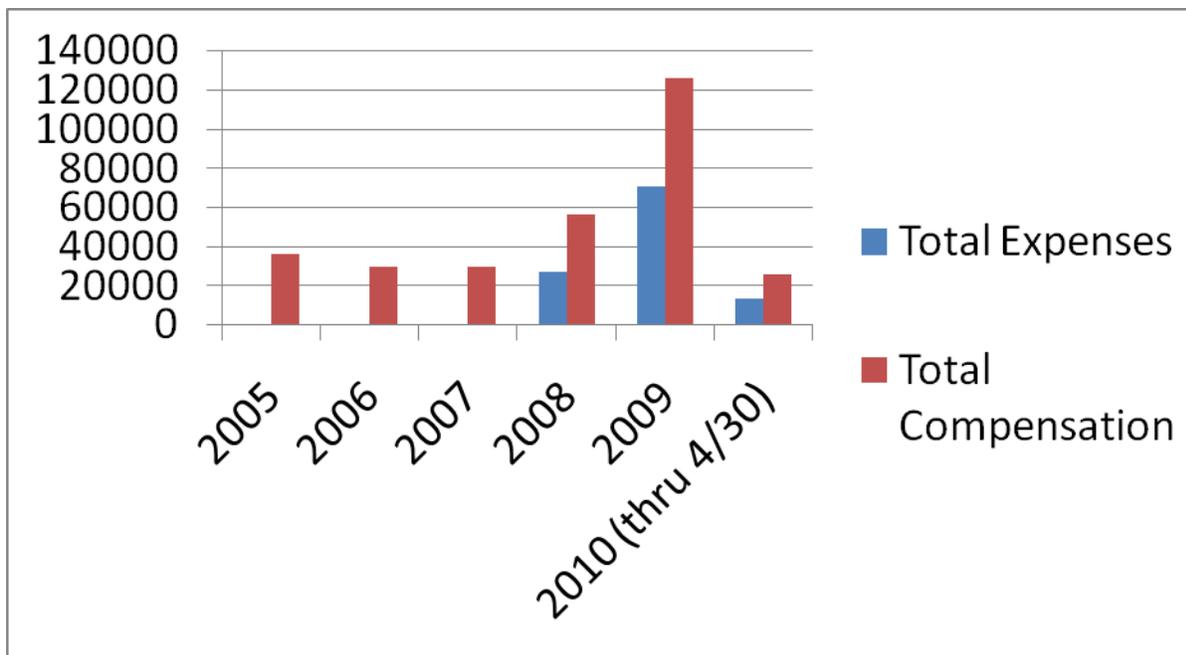
Lobbying Firm	Year	Total (\$) Expenditures	Yearly Total \$
Leboeuf	2005	68,402	68,402
Leboeuf	2006	340	340
Chesapeake	2008	1,131	
West, Thomas	2008	30,228	31,359
Chesapeake	2009	288,475	
Charles Lattuca	2009	9,000	
Public Strategies	2009	9,000	
West, Thomas	2009	77,233	383,708
Chesapeake	2010 [thru 4/30]	544,274	
Charles Lattuca	2010 [thru 4/30]	18,000	
Public Strategies	2010 [thru 4/30]	18,000	
West, Thomas	2010 [thru 4/30]	22,083	602,357

Examining these figures in greater detail shows that the upsurge in amounts spent lobbying has been from a significant rise in expenses incurred by Chesapeake.

Annual Lobbying Compensation and Expenses paid by Chesapeake



Annual Lobbying Compensation and Expenses paid by IOGA



CONCLUSION

In the process of determining our state's policies towards the use of hydro-fracking to extract natural gas from shale formations, New York's elected representatives and appointed officials, whether drafting an sGEIS or evaluating potential legislation, must strike the right balance, weighing potential economic benefits against potential environmental catastrophe. The influence of private interest money on the part of the natural gas companies stands to unduly tip the balance. If large lobbying expenditures by the natural gas industry and contributions from industry PACs and gas company executives to state legislatures' campaigns become a deciding factor in legislative action on shale drilling, it poses a serious problem for the state's ability to impartially determine the best interests of the people.

In reporting on the millions spent in lobbying the Legislature and the Governor by natural gas industry entities, Common Cause/New York seeks to provide information to help create a political environment where our representatives are empowered to act in the best interest of all of the people of New York, irrespective of the flood of lobbying money.

ⁱ The NYS DEC website has a host of background information, and is the source of the map reproduced here. See www.dec.ny.gov/energy/46288.html.

ⁱⁱ <http://pubs.acs.org/doi/abs/10.1021/es903811p>

ⁱⁱⁱ <http://www.propublica.org/feature/buried-secrets-is-natural-gas-drilling-endangering-us-water-supplies-1113>

^{iv} <http://thetimes-tribune.com/news/robert-kennedy-jr-environmentalists-hear-of-gas-woes-in-dimock-1.830189>

^v <http://www.pressconnects.com/article/20100430/NEWS01/4300333/Pa-clamps-down-on-Cabot-Oil-for-ignoring-DEP-orders>

^{vi} <http://www.post-gazette.com/pg/09287/1005306-113.stm>

^{vii} http://www.pittsburghlive.com/x/pittsburghtrib/news/s_684495.html

^{viii} <http://www.nrdc.org/media/pressreleases/030203.asp>

^{ix} This is popularly known as the "Halliburton Loophole".

^x To see the full list of IOGA of NY members and info about its PAC, see: www.iogany.org

^{xi} www.nyintegrity.org. Lobbying reports for the first 2 bi-monthly reporting periods of 2010 (through April 30) are available.

^{xii} www.nypirg.org