



Draft Supplemental Generic Environmental Impact Statement
NY State Department of Environmental Conservation Hearing
October 28, 2009, Sullivan County
Verbal Comment
Tracy Carluccio, Deputy Director
Delaware Riverkeeper Network

Delaware Riverkeeper Network requests an extension of the public comment period to 120 days minimum. November 30 is simply not reasonable considering the size of the Draft Supplemental Generic Environmental Impact Statement (“Draft”) and the depth of the issues involved. Also, many hearings should be held throughout the Marcellus shale communities, including at least one downstream on the Delaware River to give the 8 million Delaware River Watershed residents who drink the downstream waters that flow from New York the opportunity to weigh in at a more accessible location.

Tonight I will touch on a couple of issues that we will cover in more depth in our written comment, which we will be filing during the public comment period. First, one of the largest problems that has emerged in Pennsylvania where gas drilling is proceeding at a manic pace is the degradation of the State’s streams. Pennsylvania’s Clean Streams Law may be stronger than New York’s existing and pending regulations, but the effects of gas development there overwhelmed any protections. Basically, the streams and rivers are being trashed.

Most recently, the death of Dunkard Creek from gas drilling wastewater, the fish kill in Stevens Creek in Dimock, PA from hydraulic fracturing fluid, and the current and recurrent water quality health advisory on the gas drilling wastewater clogged Monongahela River that advised over 325,000 people to go on bottled water and compromised industries and businesses, are all the result of inadequate protections for the Commonwealth’s waterways from natural gas development. DEC is walking the same path with the inadequate measures proposed in the Draft.

First, the stream setbacks provided, not as a regulation that all must follow, but a condition of the drilling permit that may conceivably be eliminated, is not large enough, does not prohibit floodplain construction, and doesn’t place a needed “no disturbance” buffer on streams, only a minimal setback distance for some drilling components. The proposed 150 foot setback from the well pad and 500 foot setback from an open pit to a stream is not protective of water quality, stream structure, aquatic life and the hydrology of the stream. DEC is actually proposing that gas wells be drilled in the floodplain because the floodplain can extend far

beyond 150 feet from a stream, even further than 500 feet. This is outrageous and makes our streams sitting ducks in regards to natural gas development.

In New Jersey for instance, based on extensive scientific analysis, a 300 foot minimum buffer is required for all high quality streams for all activities and prohibited within the buffer is vegetation disturbance (except for invasive removal and stream restoration), any fill whatsoever, or any soil disturbance in order to preserve the high water quality and aquatic ecosystem of their best streams. Many of New York's streams, including in the Catskills and Upper Delaware River, are high quality streams yet no extra protection is afforded and for streams that are not classified as high quality, there is no protection for their present uses, despite the proposed measures discussed in the Draft. And DEC's claims that existing stormwater rules will protect from erosion and runoff is incorrect—water quality is minimally addressed and water volume not addressed at all in New York's stormwater regulations.

DEC doesn't even take responsibility in the Draft for regulating incursions into the Special Flood Hazard Area, which is allowed with a floodplain development permit. This is passed off to "local and state permitting processes" which leaves the floodplain open to uncoordinated, piecemeal management—one of the existing failed regulatory approaches that has led to increases in volume of runoff due to changed land use that contributes to the catastrophic flooding we all experience in the Delaware River Watershed and other New York watersheds.

Without comprehensive regulation through the SGEIS by DEC that places all floodplains and an additional buffer area off limits to any component of a gas development site, natural gas activities will be adding to the persistent, increasing, and presently poorly controlled floods that plague us, resulting in horrific flood damages. Add projected climate change impacts that are increasing storm flows and sea level rise, the problem becomes degenerative. It is an aspect of public safety and preventive regulation that the State can so easily justify; it is hard to understand why DEC would avoid it. It is simply irresponsible on the part of DEC. The lack of any attempt by DEC to conduct a cumulative impact analysis further exacerbates this problem. (It's "too hard to do" is no excuse.)

Further, the lack of adequate stream flow protections in New York's streams through existing regulation and the Draft means that water resource depletion and stream flow disruption will occur. The lack of state regulation of industrial or commercial water withdrawals makes over-withdrawals and lack of healthy stream flow regimes a problem in New York wherever an area is not covered by other agencies such as the Delaware River Basin Commission (DRBC) or Susquehanna River Basin Commission (SRBC). And inadequate wetlands, groundwater and aquifer, and threatened and endangered species rules make it worse for New York's streams.

DEC proposes through the Draft to employ the Natural Flow Regime Method as an "interim measure" until the State promulgates regulations to implement a recently enacted water quality standard for the 'designated best use' of a stream. DEC needs to WAIT until those rules are in place before allowing any withdrawals. In fact the Clean Water Act mandates that the State protect the best designated uses of its waterways anyway, so allowing withdrawals to move ahead before those rules are implemented would seem to be in violation of EPA anti-degradation requirements—New York should already doing that. A policy quickly developed for gas drilling development on an "interim" basis is not good enough.

But also the devil is in the details on the application of protective flow regimes. The proposed Natural Flow Regime Method is a step in the right direction, but how pass-by flows will be

calculated based on this method is unclear. We advocate for an ecologically-based stream flow regime. It is not clear if the method being considered will accomplish that.

This is not a simple technical issue but requires extensive scientific analysis and vetting. Even agencies striving for more protective minimum flow requirements are not “getting it right” when it comes to how those policies are being applied. For instance, the DRBC approach to setting a protective pass-by flow still exposed the West Branch of the Delaware River to over withdrawal by Chesapeake Gas who wanted to use the Q710, a historic low, as a pass-by flow in their permit application for a withdrawal of 1 million gallons of water per day. That application was revised by DRBC with a higher pass-by flow and then Chesapeake withdrew it.

The DRBC is re-examining its approach in its gas-specific regulations it is developing and its Subcommittee on Ecological Flows has been working on a protective flow regime method for years. DEC cannot expect to slap together a pass-by method that requires extensive stream habitat data and flow data that may not exist. Reference streams, mentioned in the Draft, are not necessarily accurate. If there is no flow gauge and no habitat data on a waterway, then no withdrawal should be permitted and this should be stated in the Draft. New York’s streams and rivers need flows protected based on an ecological flow regime that considers habitat that is verifiable and best use, applied across the board to all waterways. Otherwise, New York’s streams will look like the degraded streams of Pennsylvania and worse.

Getting back to the destruction of Pennsylvania’s streams and rivers, I have one more issue I want to highlight. DEC simply cannot ship its gas drilling wastewater to Pennsylvania as it is stated in the Draft. Most of the Commonwealth’s waterways are already too compromised by the disgraceful legacy of coal mining and the current breakneck speed of natural gas development there. 63% of Pennsylvania is underlain by Marcellus shale and the industry is exploiting it full throttle. Pennsylvania has the largest land mass in the Delaware River Watershed and contributes the most water to the Delaware River. Irresponsible wastewater disposal from natural gas has led to the current pollution incidents that are plaguing Pennsylvania. The Delaware River will be directly harmed by New York’s wastewater passed through Pennsylvania’s inadequate systems.

Unfortunately, even with Pennsylvania’s newly begun rulemaking process to address gas drilling wastewater disposal, the State has not made treatment of the hydraulic fracturing chemicals and flowback waste a goal – only dilution and the removal of some materials. They have not even set a Total Dissolved Solids (TDS) interim standard that is protective of aquatic life and their TDS stakeholders group is made up mostly of industry. Don’t contribute to Pennsylvania’s water quality problems. It’s already a mess. They tried themselves to send their waste out of state to West Virginia but that didn’t work very well when Dunkard Creek and the Monongahela River carried it back in state. New York must take responsibility for its own waste.

At this, the only hearing in the Delaware River Watershed, please take a moment to envision the outstanding resources, habitats and unique features of the Upper Delaware River Watershed and think with respect about the 15 million people that depend on the River for drinking water. Then imagine that gone. That’s what will happen if we don’t get this right here and now in New York State. The Draft doesn’t do that. Shale gas has been under our feet for more than 300 million years, until we can get it out without risk, it should just stay there.

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