



**TESTIMONY BEFORE THE
ENVIRONMENTAL CONSERVATION
COMMITTEE OF THE
NEW YORK STATE ASSEMBLY**

October 15, 2008

OVERVIEW

Catskill Citizens for Safe Energy is a grassroots not-for-profit organization founded earlier this year in response to the recent interest in extracting natural gas from the Marcellus Shale. We recognize that gas extraction has the potential to bring important economic benefits to the New York State as well as to individual landowners, but we are also aware that, if the process is poorly regulated, it could have a devastating impact on our environment, our health and other important sectors of our economy.

In other parts of the country communities have been destroyed and vast areas of the land have been laid waste by unfettered drilling activity. Our own Department of Environmental Conservation assures us that 'it can't happen here'. It insists that the horror stories emanating from Colorado, New Mexico, Wyoming, Texas, West Virginia and Pennsylvania could never be repeated in New York State with little evidence to support this claim and has signaled its intent to disregard the various reports of environmental degradation from those states.

The DEC points to New York's own safety record as proof that we have nothing to worry about, but in fact we have had our own environmental accidents in recent years. And to some extent the DEC's safety record may reflect not a standard of excellence but a dearth of information. Unfortunately, there is little to suggest that the Department has ever systematically attempted to *find* evidence of environmental harm from drilling and unless an accident is reported to the DEC, it is not likely to appear in the Department's database. Because gas companies operate with little oversight and because drilling often occurs in rural areas, isn't it reasonable to assume that environmental accidents are more frequent than the DEC's record indicate?

Moreover, New York has never experienced anything like the Marcellus gas play. Its scale will be unprecedented. Fewer than 700 gas well permits were issued statewide last year; it is currently anticipated that there may be as many as 1,500 new Marcellus gas wells each year for the foreseeable future.

Developing the Marcellus Shale will also force New York to confront new technological challenges. Today about 10% of the new gas wells in the state utilize horizontal drilling, but so far this technique has been employed mainly if not exclusively in sandstone or cavern formations. It's not clear if there have ever been *any* hydraulically fracked shale gas wells in New York, but this technology will be the mainstay of Marcellus Shale gas extraction.

THE ROLE OF THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION NEEDS TO BE RECONSIDERED

By law the DEC is charged with preventing the waste of oil and gas resources and providing for greater ultimate recovery of these resources. The Department interprets this as a mandate to promote gas extraction, and it seems determined to do just that. During the last legislative session, it successfully backed an amendment to the Oil, Gas and Solution Mining Law that did away with public hearings and facilitated horizontal drilling in the Marcellus Shale, but did nothing to protect New Yorkers from the potential adverse effects of drilling.

This “DEC-backed” legislation was rushed through the Assembly and the Senate in a matter of days, and passed at 9:30 at night on the last day of the session. Both legislators and private citizens complained that there had been little opportunity to scrutinize the bill. James F. Gennaro, Chairman of the New York City Council Committee on Environmental Protection, publicly stated that the New York City Department of Environmental Protection had only twenty-four hours to offer comments. Citizens who contacted their legislators about the issue were assured, just days before passage, that the bill “needed work” and would be carried over to the next session.

We think it’s fair to say that in this instance the DEC clearly favored the interests of out-of-state gas companies over those of New York State residents. And this raises a fundamental question: Should the state agency charged with protecting our environment also be in the business of promoting the very industrial activity that might threaten it? This dual role pits the interests of the most powerful corporations in the world against those the ordinary citizens, and, to my mind, the results seem all too predictable.

We urge this Committee to consider whether or not the DEC’s mandate needs to be clarified, or redefined, to assure that the protection of our environment, and not economic development, is the Department’s top priority.

NEW YORK STATE LAWS NEED TO BE AMENDED

RESTORE HOME RULE

New York is a ‘home rule’ state, but when it comes to the oil and gas industry, the regular rules don’t apply. Just as these powerful corporations have gained exemption from most federal environmental statutes, state laws have been written to exempt them from virtually every aspect of home rule. Our towns have almost no ability to regulate gas extraction activities within their jurisdictions.

We believe our towns need to have the authority to:

- Declare legally enforceable moratoriums while studying the impact of gas extraction.
- Create no-drill zones in areas where industrial activity could damage the environment or harm important cultural assets or other economic interests.
- Enforce zoning and regulate setbacks from residences, schools and places of worship.
- Regulate noise levels and hours of operation.
- Require drillers to publicly disclose *all* the chemicals they use so that this information can be provided to emergency care workers, fire departments and residents whose water sources could be adversely impacted by drilling and hydraulic fracturing.
- Require adequate bonding to cover the costs of repairing roads, and any increased costs of law enforcement and emergency medical care associated with drilling operations.

OTHER NECESSARY LEGISLATION:

Require gas companies to pay for drinking water tests.

Water testing is a necessary component of safe gas extraction. The DEC's Bureau of Oil & Gas Regulation Director John K. Dahl has recommended that drinking water sources within one mile of a gas well be tested for evidence for contamination. That fact alone should give all of us pause. For the testing to be meaningful, there must be baseline testing prior to drilling and a second test after the well has been drilled and hydraulically fractured. These tests must measure all of the chemicals that are used in drilling and fracking, as well as the many contaminants that can be introduced into aquifers from deep underground. Chloride, magnesium, manganese, barium, potassium, strontium, methane, and ethane are just some of the contaminants that need to be quantified.

This kind of water testing isn't cheap. An official with the Pennsylvania Department of Environmental Protection has estimated that a comprehensive water test could cost as much a thousand dollars. Under current law, gas companies can, and routinely do, pass this expense onto hapless New Yorkers. It's a burden that few people can afford, and no one should have to shoulder. There is an urgent need for legislation to address this inequity. This cost of doing business should, by law, be borne by the companies that profit from gas extraction, not by private citizens.

Require companies to use the "best industrial practices".

Hydraulic fracturing of even a single gas well can require millions of gallons of fracking fluid that may be laced with dozens of toxic chemicals. Often these fluids are kept in open pits gouged out of the ground and lined with plastic. This practice that has caused numerous instances of land and groundwater contamination in Western states where open pit drilling has been extensively used in recent years.

Moreover when these open pits are used to store the 'produced water' extracted from the wells after fracking; they permit the air-borne release of cancer-causing volatile organic compounds. Bear in mind,

too, that the area targeted for drilling is not the wide open West, but a scenic, vacation area that is far more densely populated, near New York City's water supply.

There is absolutely no reason why we should tolerate pollution and the risk of environmental catastrophe posed by open pits when affordable and safer alternatives are readily available. There is widespread agreement that enclosed steel containers, or 'closed-loop-drilling' systems, are much safer ways to handle fracking fluids and produced water. Some Western jurisdictions already prohibit open pits and New York State should follow suit.

The DEC claims it can require the use of enclosed steel containers, but it has repeatedly indicated that it is unwilling to exercise this authority. And one company, Cabot Oil & Gas has already indicated that it will not use steel containers when they drill, even though they will be working in an area that has had three major floods in the past four years. Therefore we call on the legislature to enact legislation that would require the use of 'best industrial practices' in each phase of gas extraction, including the management of toxic fluids.

Require 'strict liability' for damages.

Gas extraction is inherently dangerous and individuals who suffer damage, such as land or water pollution, should not have to prove a precise casual chain if the harm can reasonably be assumed to be the result of drilling or hydraulic fracturing. For example if a drinking water source is contaminated with chemicals that have been used to frack a nearby well, that fact alone should be the basis for collecting damages.

It should be noted that domestic energy production is expressly exempted from the CERCLA and thus resultant environmental damage cannot tap into the "Superfund."

Impose drilling fees to pay for more well inspectors.

At present the DEC has only 19 well inspectors who are responsible for over 13,000 thousand wells throughout the state. There is no doubt that the Department is stretched thin and will be incapable of properly overseeing the thousands of new wells that are projected to come on line in the years ahead. Fees for gas and oil well permits should be increased to enable the DEC to hire more inspectors to handle what is sure to be an increased workload.

Reform gas leasing

To some, it might seem strange that an organization like Catskill Citizens is concerned with the deceptive and predatory leasing practices of the gas industry; and it may seem inappropriate to bring this matter to the attention of this Committee. However gas leases are not just about dollars; they can and should be the

first line of defense against environmentally unsound practices that put our air, land and water at risk. All too often landmen and gas company reps induce unwary landowners to sign leases without legal representation or negotiation. Needless to say these boilerplate leases offer little in the way of environmental protection.

We believe that every gas lease should contain clear language that:

- Advises property owners that they should consult an attorney before signing a lease.
- Informs them that there is no such thing as a 'standard lease' and that each and every term of a lease is negotiable.
- States that gas companies cannot extract gas without compensating the landowner, and that landowners do not necessarily have to sign to a lease to receive gas royalties.
- States that gas companies cannot acquire drilling rights, feeder pipeline rights, or road rights by eminent domain.
- Declares a lease null and void unless the landowner is provided with a copy signed by both parties at the time the contract is executed.