

**New York State Department of Environmental Conservation
Division of Mineral Resources, 3rd Floor**

625 Broadway, Albany, New York, 12233-6500

Phone: (518) 402-8076 • Fax: (518) 402-8060

Website: www.dec.ny.gov



Joe Martens
Commissioner

May 26, 2011

Mr. Bruce Ferguson
Catskill Citizens for Safe Energy
P.O. Box 103
Fremont Center, NY 12736

Dear Mr. Ferguson:

I agreed at our meeting on April 21, 2011 with Eugene Leff and Jill Wiener that I would have staff investigate the claims in your letter to Commissioner Martens dated April 19, 2011. Your letter alleges that high volume hydraulic fracturing (HVHF) is occurring now in vertical wells in New York. You further state that this is contrary to both the spirit and the letter of former Governor Paterson's directive to the Department to withhold permits for HVHF until a Supplemental Generic Environmental Impact Statement (SGEIS) could be completed on the use of this technology.

Staff has investigated the claims contained in your letter. I trust that the following will set the record straight on drilling and hydraulic fracturing operations being permitted by the Department while we complete the SGEIS process.

On July 23, 2008, former Governor Paterson directed the Department to prepare an SGEIS to address horizontal drilling and HVHF of the Marcellus Shale and other low permeability reservoirs. This directive required a site-specific Environmental Impact Statement (EIS) to advance an individual drilling permit application pending completion of the SGEIS process. While staff continues to issue drilling permits for GEIS-consistent hydraulic fracturing operations using 80,000 gallons of water or less, the Department has not permitted any HVHF operations in horizontal or vertical wells since July 23, 2008.

You allege that the Webster T1 well was hydraulically fractured with 646,000 gallons in September 2008, an apparent contravention of the former Governor's directive. This treatment did not take place. Staff has inspected the well site, searched well records and confirmed via direct communication with the operator Talisman, successor to Fortuna Energy, that the only hydraulic fracturing treatment of the Webster T1 well occurred in 2006.

You claim that there is a regulatory gap between the 1992 GEIS and Executive Order 41 and this gap allows HVHF to occur now in vertical wells. This is not the case. As stated previously, the Department has not issued a drilling permit for any well, vertical or horizontal, that proposes to use HVHF since July 23, 2008. There is no Executive Order 41 loophole for vertical wells nor will HVHF treatments take place in any well until the SGEIS is finalized.

As you know, the Department is taking a deliberative look at the potential impacts from HVHF and assessing necessary mitigation through the SGEIS process. This will ensure that any development using HVHF will occur in an environmentally safe manner.

Please let me know if you have any further questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'B. Field', written in a cursive style.

Bradley J. Field, Director
Division of Mineral Resources

c: Commissioner Martens
Eugene Leff
Jennifer Maglienti



P. O. Box 103
Fremont Center, NY 12736

April 19, 2011

Hon. Joe Martens, Commissioner
Department of Environmental Conservation
625 Broadway
Albany, NY 12233-1011

Dear Commissioner Martens:

I am writing you on behalf of the more than five thousand members of Catskill Citizens for Safe Energy, an all-volunteer grassroots organization concerned about the energy decisions that will affect our health, our environment and our regional economy.

As you know, in July of 2008 Governor Paterson ordered the DEC to prepare a Supplemental Generic Environmental Impact Statement to address the new technology known as "horizontal high-volume hydraulic fracturing" (HVHF). Concurrently he ordered the department to withhold permits for HVHF wells until the SGEIS was complete. These actions were necessary because the existing GEIS on oil and gas extraction was ill-equipped to address new technologies that had been developed by the industry. That 1992 document only discusses "water-gel" and "foam" fracturing; it does not reference "slickwater" fracturing, or discuss fracturing operations utilizing more than twenty thousand to eighty thousand gallons of fluid.

We had assumed that the gas industry was respecting both the spirit and the letter of Governor Paterson's 2008 directive by holding off on high-volume fracking operations until the DEC had the opportunity to study the matter, but we recently found out this is not the case.

Documents obtained under FOIL indicate that the industry has largely abandoned the foam and water-gel operations described in the GEIS, and have been developing vertical wells using high-volume "slickwater" fracturing. We obtained information on the types and volumes of fluid used in eleven of New York's vertical Marcellus wells. Of the eleven, ten had been slickwater fractured utilizing, on average, almost a half million gallons of fluid – approximately ten times the amount of fluid discussed in the GEIS. At least one well (Fortuna's Webster T1) was fractured with 646,000 gallons of fluid *after* Governor Paterson issued his July 2008 directive regarding HVHF.

It appears that there may be a regulatory gap between the 1992 GEIS (which makes no mention of “high-volume” or “slickwater” fracturing) and Executive Order 41, which bars the permitting of high-volume horizontal wells, but makes no mention of vertical wells. We have asked Governor Cuomo to close this apparent loophole by amending Executive Order 41 so that it bars all “high-volume” and “slickwater” fracking operations until the DEC has completed its work and issued a final SGEIS.

We are asking you to look into whether or not high-volume (more than 80,000 gallons) fracturing is ongoing in New York and, if need be, move to halt it until the SGEIS has been completed. We also ask you to publicly disclose the extent to which high-volume vertical fracturing and slickwater fracturing has been undertaken in New York State, and determine if any of these high-volume operations have violated the governor’s 2008 directive.

Respectfully,

Bruce Ferguson
Catskill Citizens for Safe Energy

Cc:



PO Box 103
Fremont Center, NY 12736

June 7, 2011

Mr. Bradley J. Field
Director of Mineral Resources
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-1011

Dear Mr. Field:

Your letter dated May 26th astonishes me.

First, my letter to Mr. Martens did not, as you claim, “allege” that high-volume vertical fracturing “is now occurring in vertical wells in New York.” What I actually wrote was:

Documents obtained under FOIL indicate that the industry has largely abandoned the foam and water-gel operations described in the GEIS, and have been developing vertical wells using high-volume “slickwater” fracturing. We obtained information on the types and volumes of fluid used in eleven of New York’s vertical Marcellus wells. Of the eleven, ten had been slickwater fractured, utilizing, on average, almost a half million gallons of fluid—approximately ten times the amount of fluid discussed in the GEIS.

The letter also *asked* Mr. Martens “to look into whether or not high-volume (more than 80,000 gallons) fracturing is ongoing in New York.”

Any literate individual can distinguish between past and present tense, as well as between a question and an allegation; I can only conclude that you deliberately mischaracterized what I wrote for your own purposes.

Second, you write that I “allege” that the gas well known as Webster T1

“was hydraulically fractured with 646,000 gallons in September 2008, an apparent contravention of the former Governor’s directive. This treatment did not take place. Staff has inspected the well site, searched well records and confirmed via direct communication with the operator Talisman, successor to Fortuna Energy, that that the only hydraulic fracturing treatment of the Webster T1 well occurred in 2006.”

Once again, I am not “alleging” anything at all. As you well know, I accurately restated what I found in a document obtained under the Freedom of Information Law from your division. The “Well Information Summary” for “Webster T1–Slickwater Frac” shows a “Frac Date” of “Sep, 08,” and “Volume of Water (gals)” as “646,000.”

It is incredible to me that you claim to have “searched well records” and determined this frack job never took place, yet you fail to acknowledge the existence of this document, even though I provided you with a copy of it at our meeting. If this document is inaccurate you should at least explain why that is the case, rather than giving the misleading impression that it simply doesn’t exist.

Third, my letters to Commissioner Martens and Deputy Commissioner Leff concluded by asking the DEC “

To look into whether or not high-volume (more than 80,000 gallons) fracturing is ongoing in New York and, if need be, move to halt it until the SGEIS has been completed. We also ask you to publicly disclose the extent to which high-volume vertical fracturing and slickwater fracturing has been undertaken in New York State, and determine if any of these high-volume operations have violated the governor’s 2008 directive.

This was the most important issue raised in my letter, but on this point your letter to me was non-responsive. As noted above, an examination of records for eleven Marcellus wells uncovered ten instances of high-volume slickwater fracturing. You have disputed the facts contained in the document concerning the Webster T1 well. Do you also dispute the accuracy of all the documents that indicate high-volume fracking has taken place in other Marcellus wells? Please answer the following questions:

- Was the Frost 2 well fracked with more than 640,550 gallons of fluid on July 18, 2008?
- Was the Bush S#1 well fractured with more than 580,190 gallons of fluid on or before October 15, 2008? Was this frack job conducted before or after Governor Paterson issued his July 23 directive?
- Was the Carpenter 1 well fractured with more than 568,008 gallons of fluid on or about June 18, 2008?
- Was the Zinck 1 well fractured with more than 446,000 gallons of fluid on or about June 18, 2008?
- Was the Cookl 1 well fracked with more than 442,512 gallons of fluid before May 1, 2008?
- Was the Maxwell 1C well fractured with more than 436,000 gallons of fluid on or about August 26, 2008—more than one month *after* Governor Paterson issued his July 23 directive barring HVHF?

- Was the Beagell 2-B well fractured with more than 336,924 gallons of fluid on or before April 9, 2009? What was the date of the frack job? Was it before or after Governor Paterson issued his directive?
- Was the Bender 1 well fracked with approximately 270,000 of fluid after August 11, 2008, and after Governor Paterson issued his directive?
- Was the McDaniels #1 well fracked with more than 150,000 gallons of fluid on March 6, 2008? Also, how much fluid was used in the “unsuccessful” frack of the same well on February 7th?
- Was the WGI 10 well fracked with more than 111,720 gallons of fluid on or before May 27, 2009? Was this frack job done before or after Governor Paterson issued his directive?
- How many wells have been fractured in New York State with more than 80,000 gallons of fluid? What are the names of these wells, and when did these frack jobs occur?

Fourth, you accuse me of “claim[ing] that there is a regulatory gap between the 1992 GEIS and Executive order 41” and offer your unsolicited opinion that this is not the case. Once again this is a distortion of what I actually wrote, which was “there *may be* a regulatory gap . . .” I choose my words carefully and I don’t appreciate you changing them for you own ends. I have read the Executive Order carefully and I am aware that it specifically references “horizontal drilling.” This is a concern to me and, I daresay, many other New Yorkers. I certainly don’t expect you to address what may or may not be a loophole in EO 41, but I would hope that Governor Cuomo and Commissioner Martens would look to see if this is an issue that needs to be addressed.

Finally, you close your letter by assuring me that the department “will ensure that any development using HVHF will occur in an environmentally safe manner. I wish I could believe that. The disingenuous, misleading and non-responsive character of your letter does *not* inspire confidence in the Division of Mineral Resources.

Sincerely,

Bruce Ferguson
Catskill Citizens for Safe Energy

Cc: The Hon. Andrew Cuomo
Commissioner Joe Martens
Senator John Bonacic
Assembly Member Aileen Gunther
Senator David Carlucci
Senator Thomas K. Duane
Assembly Member Robert K. Sweeney