



EARTHJUSTICE



**Preliminary Suggestions for Comments on the
Draft Supplemental Generic Environmental Impact Statement (“DSGEIS”)
on Gas Development in the Marcellus Shale
October 25, 2009**

Comment Period

- 60 days is not enough time in which to review an 800-page, poorly organized, and technical DSGEIS.
- The comment period should be extended for at least another 60 days.

Formal Rulemaking

- DEC has been relying on permit applications, forms, and conditions to supplement regulations that have not been updated since 1985.
- By avoiding formal rulemaking, DEC keeps discretion to grant exceptions from its usual standards on a case-by-case basis, without any public oversight.
- Discretionary standards are inadequate measures to mitigate potentially significant adverse environmental impacts from high-volume hydraulic fracturing.
- We need a formal rulemaking to ensure transparent, consistent, state-of-the-art, and enforceable standards that will provide an environmental floor below which the gas development industry may not operate.

State and Local Agency Resources

- DEC does not have adequate resources with which to review permit applications, investigate facts, prepare environmental analyses, develop permits, conduct inspections, review forms and reports, respond to complaints, and enforce regulatory requirements and permit conditions.
- DEC should not be imposing administrative duties on local governments, such as local health departments, without ensuring that permit fees cover the localities' costs.
- Through severance taxes, permit fees, and other mechanisms, the gas development industry should fully finance the costs of all administrative and enforcement activities.

Environmental Justice

- There is no analysis whatsoever of the potential for siting facilities with adverse environmental impacts, such as compressor stations and wastewater treatment

facilities, in low-income communities or communities of color where polluting facilities are already over-represented.

- The DSGEIS should describe what steps have been taken to consult with Indian Nations, as required by DEC policy.

Cumulative Impacts

- The DSGEIS improperly fails to evaluate the potential cumulative impacts of gas drilling throughout the Marcellus Shale, claiming, in effect, that it is too difficult to estimate the rate at which drilling will proceed on a regional or statewide basis.
- Although it may be difficult to predict precisely the rate and location of development throughout the Marcellus, DEC must develop and evaluate a reasonable worst-case scenario and identify mitigation measures to address any significant adverse impacts.
- Instead of following this established practice, the DSGEIS evaluates potential impacts on a “unit”, i.e., well pad, basis. This results in a gross underestimation of the potential regional or statewide impacts that could result from full development of the shale.
- One example is the failure to consider regional ozone impacts, although we know that localities in other states in which similar technologies are being employed (e.g., TX, WY) is the observance of first-time violations of national ozone emission standards.
- Another example is the failure to consider the potential regional water quality impacts from stormwater discharges from multiple drilling sites within a single watershed.

Alternatives

- The DSGEIS fails to evaluate any meaningful alternatives as required by law.
- DEC must provide a real analysis of one or more alternatives that would phase (and possibly cap) permitting over time and in certain locations, particularly with an eye toward mitigating cumulative impacts.
- DEC should also give more serious consideration to an alternative that would mandate the use of non-toxic fracking fluids. It can use its regulatory authority to compel provision of the necessary information to evaluate such an alternative.
- DEC should consider an alternative that requires the industry to prove the safety of any additives before they are used for drilling or hydraulic fracturing.

Induced Growth and Secondary Impacts

- The DSGEIS fails to evaluate any growth induced by the project or any secondary impacts, even though the draft explicitly recognizes that a huge new Schlumberger

Water

- DEC must require that industry disclose all of the chemicals in each additive, and which additives are used at each well, so that meaningful groundwater testing and monitoring can be done and health impact assessments can be conducted.
- DEC must provide an assessment of the cumulative impacts of modifying and expanding current wastewater treatment plants or constructing new plants.
- No drilling should be permitted until DEC can establish that there is adequate capacity for legal and safe treatment and disposal of all wastewater.
- The land area targeted for drilling by gas companies in the Marcellus region include the Catskill and Delaware River watersheds, which serve as the drinking water source for over 15 million people.
- The DSGEIS falls short of ensuring adequate watershed protection throughout New York State. In particular, DEC has left open the possibility of drilling within the New York City Watershed, the unfiltered drinking water supply for more than 9 million New Yorkers that is recognized around the globe as the model for watershed protection.

Air

- DEC does not conduct an assessment of regional ozone impacts from drilling, nor does it conduct a regional (or cumulative) assessment of emissions of any other criteria pollutant under the Clean Air Act.
- DEC relies on air modeling that assumes that only one drilling rig would be on a site at a time, but, in other parts of the DSGEIS, states that there could be multiple rigs operating at the same time to drill wells on a single well pad. DEC must either model the potential air quality impacts associated with operation of more than one rig per well pad or expressly prohibit simultaneous use of multiple rigs.

Traffic

- DEC has provided no analysis of traffic impacts, even though it recognizes that gas development will vastly increase usage of heavy trucks.
- It is not good enough to tell localities to negotiate a road plan with industry.

Noise

- DEC must provide a quantitative analysis of noise impacts.

Community Character

- Industrial gas drilling brings with it a whole host of activities that would be inconsistent with protecting the social character of upstate communities, including impacts that will result from deforestation, roadbuilding, wastewater disposal, surface water runoff, air pollution, noise, and truck traffic.
- Reports from around the country show that industrial gas drilling operations have the potential to permanently change the face of rural towns, creating “fractured communities” where the traditional way of life has been transformed by industrialization and environmental contamination.

Economic Costs

- The DSGEIS fails to assess the economic *value* of preserving community character, including the benefits derived from intact forest and wetland ecosystems, including the services such ecosystems provide in terms of clean air, clean water, tourism, fishing, and a whole host of other recreational activities.
- The DSGEIS does not adequately address the wide range of economic *costs* associated with possible environmental contamination from industrial gas drilling, such as the potential costs of constructing, operating, and maintaining a filtration system for the Catskill-Delaware drinking water supply system in the event that contamination threatens New York City’s current filtration avoidance determination.