



EARTHJUSTICE



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**Selected Recommendations for Comments on the
Draft Supplemental Generic Environmental Impact Statement
on Gas Development in the Marcellus Shale
November 18, 2009**

Formal Rulemaking

- DEC has been relying on permit applications, forms, and conditions to supplement regulations that have not been updated since 1991.
- 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 for the gas development industry.

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.

Cumulative Impacts

- The DSGEIS improperly fails to evaluate the potential cumulative impacts of gas drilling throughout the Marcellus Shale.
- 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.

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.
- The recent announcement by Chesapeake that it plans not to drill in the Watershed does not change anything. We need a permanent solution, which we will get only if DEC sets the Watershed off limits, and the Legislature bans drilling there. Otherwise, Chesapeake can sell its leases to other companies that will drill, and those companies also can purchase leases in other parts of the Watershed.

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.