



**Testimony for the Committee for Environmental Protection  
New York City Council  
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**By Matthew Wallach, Hudson Valley Program Coordinator  
Citizens Campaign for the Environment**

Citizens Campaign for the Environment (CCE) is an 80,000 member non-profit, non-partisan advocacy organization that works to protect public health and the natural environment.

CCE thanks the Committee for holding this public hearing on the draft Supplemental Generic Environmental Impact Statement for Oil, Gas, and Solution Mining in New York State.

CCE is concerned about the effects of high volume hydraulic fracturing, or hydro-fracking, across New York State.

New York City is blessed with access to amazing freshwater resources that are unfiltered. The Filtration Avoidance Determination saves New York City millions of dollars and emphasizes the importance of protecting New York State's environment as a necessity for sustainability in the City. New York City is not the only city in New York with a Filtration Avoidance. The City of Syracuse receives its water from Skaneateles Lake and also operates under filtration avoidance. In addition, our state has many aquifers, lakes, rivers, and streams that provide access to clean fresh drinking water for residents everywhere. CCE is committed to preserving New York's freshwater resources, because **New Yorkers everywhere should not have to choose between clean water and energy—we need both.**

The DEC's draft SGEIS was issued to specifically address the inclusion of high-volume hydraulic fracturing, or high-volume hydro-fracking, in the Marcellus, Utica, and related shales. High-volume hydro-fracking in combination with multi-well pads presents a new challenge to protecting New York's land, air, and water. The multi-well pad sites require larger acreage dedication, and because there will be multiple wells, the temporary on-site storage for wastes such as drill cuttings, flowback fluid, and production brine is larger. The drill cuttings are contaminated with Normally Occurring Radioactive Materials, or NORMs, and the DEC has acknowledged that the concentration of these NORMs

requires that they be disposed of as hazardous waste. Additionally, the flowback water and production brine contain high levels of total dissolved solids (TDS) and threats to air quality such as NOx.

CCE will be providing comprehensive and detailed comment, which it will copy to this Committee. However, in the interest of the Committee's time, CCE would like to outline the following overarching issues:

**1. Agency Jurisdiction.** CCE is concerned with the discrepancies and lack of coordination in agency jurisdiction. The NYS DEC Division of Mineral Resource is the lead agency for well-siting in accordance with the law, however the NYS Public Service Commission is charged with all infrastructure siting. The NYS PSC has a separate process for siting gathering and transmission lines that could potentially result in the "flaring" of natural gas until the lines are in place. There must be a clear process for line siting in conjunction with well-pad siting that mitigates land disturbance and does not allow for excessive flaring of the natural gas.

**2. DEC findings on Water.** CCE is alarmed that the DEC is seeking to maintain findings from 1992 which allow drilling on or near sensitive watersheds including sole source aquifers and unfiltered drinking water sources. CCE disagrees with the original findings, and in light of the planned intense drilling with high-volume hydro-fracing the DEC should reassess watershed impacts based on more recent documented findings. On October 11, 2009 the Denver Post published a story entitled "Fears of tainted water well up in Western Colorado."<sup>1</sup> The following shows the impacts to water wells and groundwater from drilling: "*State records show BTEX has seeped into water wells when the casings designed to keep oil and gas wells from contaminating groundwater have given way. Methane, the most common contaminant found in water wells, has blown a pump house off its foundation, forced the evacuation of homes and turned tap water flammable. In Prather's part of the country, a Garfield County hydrogeologic study shows chloride is rising in many springs besides his, indicating they are being affected by drilling.*" Additionally, the Scientific American published a story on August 26, 2009 and Reuters published a story on August 27, 2009 discussing the fact that the EPA found water wells in Wyoming contained at least three chemicals found in hydro-fracing.<sup>2</sup>

Finally, on the issue of freshwater, the DEC needs to enforce the Great Lakes-St. Lawrence River Basin Compact. The DEC has committed to working with the Delaware River and Susquehanna River Basin Commissions, but the law that governs water withdrawals from America's largest freshwater resource is summarily dismissed in the proposed regulations. Even though, NYS has not passed implementing legislation for the

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<sup>1</sup> [http://www.denverpost.com/news/ci\\_13535728](http://www.denverpost.com/news/ci_13535728)

<sup>2</sup> <http://www.scientificamerican.com/article.cfm?id=chemicals-found-in-drinking-water-from-natural-gas-drilling> & <http://www.reuters.com/article/environmentNews/idUSTRE57Q4BD20090827?pageNumber=2&virtualBrandChannel=11604&sp=true>

Compact, this does not erase NYS's obligation to abide by the Compact and make a good faith effort to enforce key provisions in the Compact.

**3. Centralized Impoundments.** The DEC proposes to allow the industry to site multi-acreage impoundments for storage of flowback water from the high volume hydraulic fracturing process. The dSGEIS clearly outlines the challenges associated with storage of this fluid in an open centralized impoundment, yet, does not take the precautionary step of denying the ability for industry to store these in an open impoundment. CCE believes that at the very least, covers must be mandated, and prefers the use of tanks. CCE believes open impoundment poses threats to air quality, the potential for spillage, and a threat to wildlife.

**4. Requiring Covers for Temporary on-site storage.** The DEC outlined the potential contaminants from temporary on-site storage of flowback water, production brine, and drill cuttings. The DEC has clearly stated that these must either be treated or disposed, however the DEC is not mandating that these potential contaminants be covered while storing on-site and instead makes covers an option. **CCE believes that DEC's acknowledgment of the potential for contamination and mandating that flowback water, production brine, and drill cuttings be treated and/or disposed of as hazardous waste then the DEC must mandate that permittees cover these contaminants while they are stored on-site.** Spills and leaks of raw chemicals or oil and gas wastes may affect land, water and air. The Colorado Oil and Gas Conservation Commission reported that between June 2002 and June 2006, there were approximately 924 spills of oil and gas chemicals and wastes. Spilled products included: crude oil, condensate, produced water, and "other" products. The other products included diesel fuel, glycol, amine, lubricating oil, hydraulic fracturing fluids, drilling muds, other chemicals, and natural gas leaks. Of the 924 oil and gas industry spills, 20% of them contaminated water: 14% of the spills affected groundwater; and 6% of all spills affected surface water.

**5. DEC findings on drilling in State Parks & Forests.** Stakeholder organizations across the state have fought to protect public lands from exploitation by private, short-term interests for decades. CCE will continue to fight to protect the spaces set aside for the people of New York, and believes the DEC's dismissal of the clear environmental and public health impacts, that the DEC itself lays out in the dSGEIS, is an affront to the intent of preserving and protecting these places. Therefore, CCE believes that, at a minimum, drilling in state parks and forests should not be subject to inclusion in the generic environmental impact statement because these are public lands and the public should have the opportunity to weigh in on this issue on a case by case basis.

**6. Spreading production brine and/or flowback water on roads.** Due to potential for contaminating water, land, and air from run-off, CCE is opposed to spreading these contaminated and hazardous wastes on roads. The Pennsylvania State University Cooperative Extension states on its website regarding natural gas production that *"Groundwater pollution can result from flooded or leaking brine holding pits that*

*contain bottom-hole stimulation and production fluids from direct discharge of brines to the land surface.*<sup>3</sup>”

**7. Cumulative Impacts.** The dSGEIS acknowledges that multi-well pads will be used for high-volume hydraulic fracturing, and that high-volume hydraulic fracturing uses significantly more land and water than current natural gas drilling practices in place today. The multi-well pads centralize the impacts of natural gas drilling so that the well-pads are spread out further. Unfortunately, there is still a cumulative impact associated with these wells, whether they be spread out over 40 acres or 640 acres. Last week, the EPA issued a ruling to Colorado that there are cumulative impacts to air from natural gas wells. However, the DEC only plays lip service to the issue of cumulative impacts on air, land, and water. There is an inconsistent approach for making assumptions of impacts from multi-well pads, most notably as it pertains to public comment and review. **The DEC openly acknowledges that it does not know exactly what high volume hydraulic fracturing in unconventional shale plays will entail. In light of this CCE believes that the DEC should move forward slowly, with many opportunities for public review and a commitment to protecting New York’s air, water, and public health.** The potential economic gain associated with natural gas drilling must be weighed against the costs, including water contamination, increased climate change pollution, impacts to air quality, and the impacts to NY’s infrastructure as outlined below. NYS should learn from the people of Pennsylvania, an example being the Pennsylvania DEP’s shutdown of Cabot Oil’s production in Dimock from spills.<sup>4</sup>

**8. Stressors on Infrastructure and Local Municipalities—who pays?** New York State has an infrastructure problem. DEC has issued reports quantifying a \$36 billion funding gap over the next twenty years for necessary upgrades to sewage treatment plant and collection pipe. It is well known that SPDES reviews happen infrequently, at best, due to a lack of DEC staff and funding. The dSGEIS states that if flowback water is to be treated at an existing publicly-owned treatment facility, the facility must upgrade its SPDES permit and receive approval from Division of Water. CCE agrees that this must happen if treatment facilities are to accommodate this need, however *CCE begs one question- Who Pays?* On October 5, 2009 Scientific American ran an article entitled “With Natural Gas Drilling Boom Pennsylvania Faces Flood of Wastewater<sup>5</sup>” This article details the problems associated treating production brine and flowback water at publicly owned treatment works. According to the article and a quote from the head of Pennsylvania DEP’s water program

*“Oil and gas wells disgorge about 9 million gallons of wastewater a day in Pennsylvania, according to industry estimates used by the DEP. By 2011 that figure is expected to rise to at least 19 million gallons, enough to fill almost 29 Olympic-sized swimming pools every day. That’s more than all the state’s waterways, combined, can safely absorb, DEP officials say. ‘I don’t know that even our [water] program people had any idea about the volumes of water that would be used,’ said Dana Aunkst, who heads the DEP’s water program.”*

<sup>3</sup> <http://naturalgas.extension.psu.edu/306.htm>

<sup>4</sup> <http://www.allbusiness.com/government/government-bodies-offices-regional-local/13048372-1.html>

<sup>5</sup> <http://www.scientificamerican.com/article.cfm?id=wastewater-sediment-natural-gas-mckeesport-sewage>

Additionally, DEC is shifting the burden of monitoring local water quality to local Department of Health officers and maintaining existing Soil & Water Conservation District jurisdiction as is applicable. Again- who pays? SWCD are struggling and making tough staffing decisions, as they have not received funding the legislature approved in the budget for the current fiscal year, because the administration has put a stop payment on all EPF recipients. If SWCD are lucky, they received payments from FY08-09, however many have not. The result is that these critical programs, are cut and the programs in place are falling to the wayside with an end result of no real monitoring or protection. **CCE believes the New York State Legislature must demand that if oil and gas companies are to place these burdens upon the people of the state of New York, they must pay.** There must be an insurance for the people of New York that these companies are willing to pay to be here and make a profit off of our land, air, and water. And there must be an insurance that as they dump chemicals into our air, land, and water that they are willing to compensate us for the profits they are sure to incur at our expense. Furthermore, unforeseen consequences from unconventional drilling are real possibilities. The Legislature should mandate the establishment of a Public Water Protection Fund to ensure that taxpayers are not saddled with paying for cleaning up the legacy of spills, leaks, or accidents from high-volume hydro-fracing in New York State.

**9. Compulsory Integration.** The DEC explains the practice of compulsory integration on its website *“Effective August 2, 2005, an applicant for a permit to drill an oil or gas well in New York State must include, in the permit application, a map showing the area that will be assigned to the well. This area, called a spacing unit, may include some or all of your acreage even if you haven't signed an oil and gas lease. This practice does not allow the public to make the decision of whether or not it will allow gas drilling on private lands. If a majority of landowners in any given area allow for gas drilling then the remaining landowners are integrated.”*<sup>6</sup> This is a violation of environmental justice and individual rights to make their own land-use decisions within a given regulatory framework.

**In conclusion, CCE again thanks the Committee for its time today to take public comment.** CCE looks forward to working with the Committee to address these issues and to push for robust and transparent environmental protection practices in New York State.

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<sup>6</sup> <http://www.dec.ny.gov/energy/1590.html>