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Testimony of: James L. Simpson, Staff Attorney, Riverkeeper, Inc.

New York City Council

Committee on Environmental Protection Hearing:

Oversight - The Draft Supplemental Generic Environmental Impact Statement Relating to Drilling for Natural Gas in New York State Using Horizontal Drilling and Hydraulic Fracturing.

Proposed Resolution 1850-A: Calling on the New York State Legislature, the New York State Department of Environmental Conservation, and New York State Governor David Paterson to prohibit drilling for natural gas within the boundaries of the watershed of the New York City drinking water supply.

October 23, 2009

As one of the signatories to the 1997 New York City Watershed Memorandum of Agreement (“MOA”), and in keeping with our mission to safeguard the ecology integrity of the Hudson River and the New York City Watershed, Riverkeeper welcomes the opportunity to participate in this hearing.

First, I would like to acknowledge and thank Councilman James Gennaro for his continued leadership on this and other important environmental issues.

On September 30, 2009 the New York State Department of Environmental Protection (“DEC”) released its draft Supplement Generic Environmental Impact Statement on its Oil and Gas Regulatory Program (“Draft EIS”).

While we are still reviewing the details of this 805-page document, our initial review shows there are many problems with it. In general, this is a pro gas drilling document. It is evident that the DEC’s Division of Mineral Resources wants nothing more than to issue drilling permits as soon as possible. Riverkeeper and its experts are reviewing the details of this document and will provide extensive comments before the comment deadline. That said, I have 6 specific comments at this point.

1. **Insufficient public comment period.** A mere 60 days (including Thanksgiving weekend) is a woefully inadequate timeframe for the public to digest and comment upon this 805-page document. This amounts to over 13 pages a day, seven days a week. The Draft EIS states that DEC’s 1992 EIS on this issue was “the culmination of a 12-year effort.” (Draft EIS, p. 1-4). If the 1992 EIS was a 12 year effort, why is DEC only giving the public 60 days to review this document? As the NY Times editorialized, this is “dangerously irresponsible”

given what is at stake. DEC should extend the comment period by at least an additional 60 days. After all, the gas isn't going anywhere.

2. **No new regulations proposed.** Even though this Draft EIS is a supplemental analysis of DEC's "regulatory program" there are a grand total of zero new regulations proposed in this Draft EIS. DEC's existing regulatory structure was adopted over two decades ago. Moreover, the very reason for this supplemental Draft EIS is new technology using substantial amounts of water and chemicals and proposed drilling in areas, like the NYC Watershed, with no prior history of gas drilling. Rather than propose any new regulations to govern this new type of drilling, DEC wants to address all of the impacts through its permitting procedures. DEC should go back to the drawing board and propose statewide regulations, incorporating best management practices, to regulate this activity.
3. **DEC should ban drilling within the NYC Watershed and other surface water drinking supplies throughout the State.** Rather than propose any real mitigation measures, the Draft EIS says that existing regulations, such as NYC's Watershed Rules & Regulations, provide enough protections for the NYC Watershed. The City's Regulations, however, do not regulate industrial gas drilling. The Draft EIS's treatment of the NYC Watershed is completely unacceptable.
4. **Lack of protection for NYC Water Supply Infrastructure.** The Draft EIS claims that fracturing zones are "thousands of feet deeper" than any tunnel or aqueduct. (Draft EIS, 6-41). This is a false statement. NYCDEP's recent Rapid Impact Assessment Report found that (i) portions of the Catskill Aqueduct and the Delaware Aqueduct are in "direct contact" with the Marcellus Formation, and (ii) two reservoirs and substantial portions of aqueducts and tunnels are as close as 500 vertical feet from the Marcellus Formation. Rather than propose any new rules, the Draft EIS proposes to continue existing protocols between DEC and NYCDEP regarding drilling near aqueducts and tunnels. This is unacceptable and fails to account for this new drilling technology.
5. **Lack of clarity on fracking chemicals.** In Chapter 5, the Draft EIS lists many fracking product names and, separately, constituent chemicals used in those products. However, DEC does not link the constituent chemicals to product names because it has deemed the product compositions and formulas to be trade secrets and therefore exempt from public disclosure (Draft EIS, page 5-52). What is lacking is any analysis of the environmental impact of these chemicals to, say, drinking water. We are still studying this issue but are deeply concerned with what we have learned so far.
6. **Failure to Study Cumulative Impacts.** The Draft EIS contains no real analysis of the cumulative impacts associated with industrial gas drilling. Lawyers and policy-makers refer to this concept as the tragedy of the commons; it is also known as "death by a thousand cuts." Rather than analyze each well individually,

as DEC does in the Draft EIS, DEC must study the cumulative impacts from hundreds or thousands of wells throughout the NYC Watershed, the Catskills, and beyond.

Background – Natural Gas Drilling – The Process and Impacts

Hydraulic fracturing involves the high-pressure injection of millions of gallons of water, sand and toxic chemicals into horizontal wells. After the “fracking” process, the water and chemicals must be recovered and delivered to a suitable treatment center. While we need to learn more about the “fracking” process to understand its environmental impacts fully, we already know that industrial gas drilling brings with it a whole host of activities and apparatus that are unacceptable within the NYC Watershed and other surface water drinking supplies throughout the State. A web of pipelines to transport the gas and noisy compressors to push gas from wells through the pipeline system will be needed; large drilling pads capable of handling up to 16 wells will be constructed; hundreds of tanker trucks will be used to haul in water and to remove waste water; and large open pits are necessary to hold contaminated wastewater. All of this upheaval and disruptive surface activity that would accompany any drilling process, occurring in a watershed infamous for heavy flooding and where all surface runoff flows into New York City’s unfiltered water supply, is not acceptable. Moreover, allowing this activity would be reckless in the context of the filtration avoidance determination (“FAD”) and the prospect of the City paying for a \$10 billion filtration plant (with \$300 million in annual operating costs) should the U.S. Environmental Protection Agency (“U.S. EPA”) revoke the FAD.

Industrial Gas Drilling Inconsistent with 1997 MOA

As the Council knows, New York City, New York State, U.S. EPA, several state agencies (including DEC), dozens of watershed counties and towns, and several environmental organizations including Riverkeeper all signed the 1997 New York City Watershed Memorandum of Agreement (“MOA”). The MOA set the stage for the City to receive the FAD and is the product of years of extensive negotiations and has been hailed internationally as the model for watershed protection.

In the MOA all the parties (including DEC) agreed that “the New York City water supply is an extremely valuable natural resource that must be protected in a comprehensive manner.”¹

All the parties also agreed that economic development within the watershed communities must be consistent with watershed protection.² However, no economic development could be less consistent with watershed protection than this.

¹ 1997 NYC Watershed Memorandum of Agreement, ¶ 5, *available at*, <http://www.nysefc.org/home/index.asp?page=295>.

² MOA, ¶ 6.

All parties also agreed to maintain and enhance the social character of the watershed towns.³ Industrial gas drilling brings with it a whole host of activities that would be incongruent with the social character of the watershed towns.

DEC must ensure its actions are consistent with its obligations under the MOA.

Conclusion

New York City is the trustee for the New York City Watershed. This unfiltered water supply is the State's greatest natural resource and, perhaps, the City's greatest capital asset. As the trustee, the City has the duty to protect the water supply not just for this generation but for our children and our children's children.

Riverkeeper supports Councilman Gennaro's Resolution No. 1850-A and urges the full City Council to pass it immediately.

I thank the City Council for the opportunity to participate in today's hearing.

³ MOA, ¶ 6.