



Testimony of:
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New York City Council
Committee on Environmental Protection

**Oversight: The Revised Environmental Impact Statement on Hydraulic Fracturing and
New York City's Upstate Drinking Water Supply Infrastructure**

September 22, 2011

Thank you to the New York City Council Committee on Environmental Protection for giving Riverkeeper an opportunity to testify on the New York State Department of Environmental Conservation's ("DEC's") revised draft Supplemental Generic Environmental Impact Statement ("SGEIS"), the document that it has prepared to guide shale gas extraction by means of horizontal drilling and hydraulic fracturing or "hydrofracking" in New York.

Riverkeeper is a member-supported watchdog organization whose mission includes safeguarding the environmental, recreational and commercial integrity of the watershed that provides New York City its drinking water. Riverkeeper is actively involved in advocacy and public education surrounding the issue of shale gas extraction via horizontal drilling and hydrofracking, in particular because of its potential impacts on New York's water supply.

As you know, DEC issued the complete version of its 1,000+ page revised draft SGEIS on September 7, 2011. Riverkeeper has not yet had an opportunity to review this document in full; it will be doing so in the coming months with the assistance of a team of technical experts. Accordingly, we have focused our testimony today on our criticisms to DEC's procedure and a few of our preliminary reactions to the document itself.

I. DEC's Rush to Fracking

Chief among our concerns is that DEC continues to rush this process, seriously limiting the public's opportunity to express their legitimate concerns and have those concerns actually influence DEC's decision-making regarding hydrofracking in New York.

DEC indicated in its press release for the SGEIS that it will issue draft regulations governing shale gas extraction and fracking sometime in October, with Commissioner Martens stating that: "It makes sense to move forward with [the SGEIS and regulations that codify these measures] together and hold simultaneous public comment periods and hearings." DEC Begins 90-Day Public Comment Period on Draft Hydraulic Fracturing Study (Sep. 7, 2011), *available at* <http://www.dec.ny.gov/press/76892.html>. However, a core principle of the state's environmental review process is that DEC finalizes impact statements such as the SGEIS after incorporating

public input, and prior to drafting regulations so that the impact statement findings inform the regulatory process. By issuing regulations before the environmental review process is complete, DEC is depriving New Yorkers of the opportunity for their comments to be considered in the development of those draft regulations.

Equally disturbing, DEC has still not committed to wait to begin permitting until regulations have been finalized. If DEC is truly committed to the principle that mitigation measures and the regulations that codify them must go “hand in hand,” then why move forward with issuing permits before regulations are in place? This is a backwards approach – DEC should process permit applications only after it promulgates detailed regulations that adequately protect against the environmental, public health and safety risks associated with horizontal drilling and fracking.

Finally, Riverkeeper remains concerned with the length of the public comment period, which began September 7, 2011 and will conclude December 12, 2011 – less than 90 days from now. This is an improvement over the original 60-day period for public review proposed by DEC, which Riverkeeper, its members, and its environmental colleagues, pushed DEC to extend. However, DEC now expects the public to, at the same time, review and comment on draft regulations that will not be released until sometime in October. Riverkeeper believes this rush to complete the regulatory review process to pave the way for permitting as soon as possible is unfair and unreasonable to the public. The public deserves a separate comment period to review and comment on this critical update of 40-year-old drilling regulations. DEC should offer a comment period for the SGEIS first and then issue draft regulations giving those their own comment period and hearings.

II. DEC’s Staffing Needs

DEC declares in its August 16, 2011 report to the State Advisory Panel on High-Volume Hydraulic Fracturing that shale gas extraction in this state will only be successful, i.e. safe, environmentally protective, and economically beneficial, through a “vigilant environmental regulatory program” backed by staff and other resources to ensure “rigorous permitting, inspections and compliance.” Advisory Panel on High-Volume Hydraulic Fracturing: State Resource Needs, at 2 (August 16, 2011). In that same report, DEC admits that it does not have the necessary resources to accomplish those goals, and presents in significant detail its staff needs: 140 new positions in the short term, and over 200 new positions in the first 5 years. DEC also admits that it does not have the funds to hire new staff and, is therefore, counting on the next state budget process. DEC projects that even if it is completely successful in achieving its budget request in this fiscal climate, it will likely not have the necessary staff in place before January 2013, at which time it will begin the time consuming process of training that new staff.

In light of DEC’s own statement of its staff needs and the time required to meet those needs, how can it possibly be ready to begin issuing permits in the spring of 2012? DEC should not rush the permitting process and begin accepting permit applications until it has the necessary resources in hand and fully trained staff in place. To do otherwise invites duplicating Pennsylvania’s failure to adequately regulate hydrofracking.

III. Preliminary Flaws with the SGEIS

Riverkeeper will work over the next few months to develop a comprehensive set of formal comments on the SGEIS, while advocating DEC to address the procedural flaws identified above. In the meantime, our two preliminary criticisms are:

- **DEC proposes inadequate protections for water supply infrastructure.** Much of New York City's water supply infrastructure is west-of-the-Hudson and falls outside of the City's watershed itself. Despite the well-known susceptibility of this aging and already leaking infrastructure, DEC has proposed virtually no protection – the revised SGEIS still calls for only a site-specific review for any well pad proposed within a 1,000-foot wide corridor surrounding a water tunnel or aqueduct. Riverkeeper fears that these tunnels will be threatened by vibrations and shaking from drilling activities and susceptible to contamination from migrating fracking fluids. The City's Department of Environmental Protection ("DEP"), which is responsible for this infrastructure, has previously called for a buffer of seven-miles to protect this water supply infrastructure, based on analysis of its own scientists. It is crucial that DEC prohibit drilling anywhere near all infrastructure that falls outside watershed limits to adequately protect the drinking water supply of New York citizens.
- **New York currently does not have any wastewater treatment plants equipped to treat wastewaters from fracking operations.** The SGEIS remains unacceptably vague on how the tens of millions of gallons of toxic wastewaters that will be produced in New York if fracking operations move forward will be disposed of without contaminating New York waters in the same way that Pennsylvania's have been.

In conclusion, it remains Riverkeeper's position that DEC should not move forward with permitting fracking unless and until it can demonstrate that health and environment of New Yorkers will be protected.

Riverkeeper thanks the City Council for the opportunity to participate in today's hearing and for the important role that the City Council continues to play on the issue of hydrofracking in New York State. We look forward to continuing to work with the Council on this area of significant environmental concern.

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