

Congressman Lists 10 Problems with Regulations

Washington, DC - Congressman Maurice Hinchey (D-NY) today urged Governor Andrew Cuomo to withdraw the revised draft Supplemental Generic Environmental Impact Statement (dSGEIS) on high-volume horizontal drilling and hydraulic fracturing in the Marcellus Shale and other areas of New York State. Hinchey says the current form of the dSGEIS fails to address many of his concerns with the initial draft and also does not account for new information that has been discovered about the environmental, public health and economic risks associated with the natural gas drilling activity.

In a letter to Governor Cuomo, Hinchey wrote that "Despite the hard work and sincere efforts by the New York State Department of Environmental Conservation (DEC) to update the dSGEIS, I believe this document falls far short of what is needed to protect local communities from the risks posed by shale gas drilling and does not fully mitigate potential threats, including those to public health, drinking water, air quality, and municipal infrastructure."

Hinchey highlighted 10 specific problems with the current dSGEIS that he said must be addressed before the state permits any drilling:

1. The lack of a cumulative impact analysis of natural gas drilling in the Marcellus formation to understand the full impact drilling could have on our water resources, air quality, local roads and other public infrastructure.
2. The lack of a full assessment of the public health impacts of gas drilling through an independent Health Impact Analysis, as called for by more than 250 health care professionals in an October 2011 letter to Governor Cuomo.
3. The lack of a comprehensive wastewater treatment plan that details where and how large amounts of flowback and produced water will be treated or disposed, including how toxic or radioactive contaminants will be removed.
4. The failure to prohibit the use of toxic chemicals in all fracturing fluids in order to prevent groundwater and surface water contamination.
5. No requirement to publicly disclose all chemicals used in hydraulic fracturing fluid at each well site, including a proposed list of chemicals made public before drilling operations begin and the final list of chemicals and quantities used made public no later than 30 days after drilling operations are completed.
6. The absence of a plan to identify New York areas prone to higher seismic activity and measures to prevent earthquakes potentially associated with horizontal hydraulic fracturing.

7. The failure to require a dramatic increase in DEC resources and staffing devoted to the permitting and oversight activities related to high-volume hydraulic fracturing.
8. No complete ban on land spreading of shale gas drilling waste fluids or prohibition on the use of reserve pits or centralized impoundments for fracking fluids and flowback water.
9. No alignment of DEC's gas drilling permit rules with the requirements of secondary lending institutions covering oil and gas activity on mortgaged properties. These include pre-approval from banks and other lenders before signing gas leases, minimum setback requirements from residential structures, prohibition on certain drilling and process equipment, title insurance requirements, property assessments, and more.
10. A failure to provide for an enhanced role for local governments to prohibit gas development that is incompatible with local land-use and zoning regulations.

In December 2009, Hinchey provided comments on the initial draft of the SGEIS. The new draft partially addressed some of his initial concerns. Since that time, new information about the environmental and public health risks associated with hydraulic fracturing has come to light.

Hinchey is a leader in the effort to protect drinking water and the environment from the risks of hydraulic fracturing. He is a co-author of the FRAC Act, which would mandate public disclosure of chemicals used in frack fluid and allow the EPA to regulate fracking activities under the Safe Drinking Water Act. The congressman also authored the appropriations language that led to the current EPA study on hydraulic fracturing.

A copy of Hinchey's letter to Governor Cuomo can be found [here](#). The full text of Hinchey's comments on the dSGEIS follows:

January 9, 2012

The Honorable Andrew M. Cuomo
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

Dear Governor Cuomo:

I am writing to provide my formal comments on the revised draft Supplemental Generic Environmental Impact Statement (dSGEIS) on high-volume horizontal drilling and hydraulic fracturing in the Marcellus Shale and other areas of the state. As someone who has dedicated his career to protecting public health and the environment, first as Chairman of the New York State Assembly's Environmental Conservation Committee for 14 years and now as a senior member of the U.S. House of Representatives' Appropriations Subcommittee on Interior and Environment for the last 12 years, I have deep concerns about the dSGEIS and the state's ability to mitigate the serious risks posed by hydraulic fracturing.

Despite the hard work and sincere efforts by the New York State Department of Environmental Conservation (DEC) to update the dSGEIS, I believe this document falls far short of what is needed to protect local communities from the risks posed by shale gas drilling and does not fully mitigate potential threats, including those to public health, drinking water, air quality, and municipal infrastructure.

In addition, as you know, the U.S. Environmental Protection Agency (EPA) is currently conducting a comprehensive scientific study of hydraulic fracturing's risks to water resources. This study is analyzing the full lifecycle of water throughout the hydraulic fracturing process, providing the first comprehensive and independent examination of water acquisition, mixing of chemicals, well fracturing, and the management and disposal of flowback and produced water. The first results of this study are scheduled to be released by the end of 2012. New York must use sound science to guide its decisions on this critically important issue, and it would be irresponsible and premature for the state to approve the dSGEIS before the EPA releases its findings.

Two years ago, in response to the first draft SGEIS, I provided 11 detailed recommendations to mitigate the risks of shale gas drilling. These included a cumulative impact study; a ban on the use of toxic chemicals in fracking fluids; a requirement for full public disclosure of all chemicals used in the fracking process; a comprehensive wastewater plan for high-volume gas drilling in New York; significantly increased DEC staffing to oversee and inspect drilling operations; phased-in development of new well pads; and more. Unfortunately, these recommendations are not included in the new dSGEIS and others are only partially addressed.

In addition, we have continued to learn much more about hydraulic fracturing since I submitted my recommendations in 2009. A recent study by researchers at Duke University found a statistically significant correlation between methane contamination of drinking water wells and their proximity to shale gas drilling sites. We have also learned shale gas drillers are still injecting diesel fuel into the ground during hydraulic fracturing, despite a specific industry

promise not to do so. And we have learned of communities like DISH, Texas, that have had their air polluted by toxic emissions from gas drilling operations and related infrastructure. In Pennsylvania, The New York Times reported that radioactive materials brought up with drilling waste were dumped into public waterways. There is also new attention being placed on the potential links between hydraulic fracturing, as well as disposal of fracturing waste fluids in injection wells, to increased seismic activity. A 4.0 magnitude earthquake two weeks ago in Youngstown, Ohio, near an underground injection disposal site for gas drilling wastewater, forced officials to halt this risky procedure until scientists could examine this troubling phenomenon. Additionally, just last month, the EPA determined that hydraulic fracturing contaminated a water well in Pavillion, Wyoming. These incidents, along with others, raise serious new concerns that are not addressed by the revised SGEIS. It is vital that New York State avoid the problems that other states are now facing by addressing all concerns prior to any commencement of drilling rather than after groundwater or surface waters are contaminated.

Despite some improvements from the 2009 dSGEIS, additional analyses must be conducted and greater protections should be added in order to live up to the spirit and letter of the State Environmental Quality Review Act. These should include, but not be limited to, the following items:

1. A cumulative impact analysis of natural gas drilling in the Marcellus formation to understand the full impact drilling could have on our water resources, air quality, local roads and other public infrastructure. This should also include a more thorough analysis of the potentially negative economic consequences of drilling, such as impacts on tourism and agriculture.
2. A full assessment of the public health impacts of gas drilling through an independent Health Impact Analysis, as called for by more than 250 health care professionals in an October 2011 letter to Governor Cuomo.
3. A comprehensive wastewater treatment plan that details where and how large amounts of flowback and produced water will be treated or disposed, including how toxic or radioactive contaminants will be removed. The state should thoroughly consider whether flowback or produced water deserves to be classified as a hazardous waste.
4. A prohibition on the use of toxic chemicals in all fracturing fluids in order to prevent groundwater and surface water contamination. The revised draft calls for operators to "consider"

less toxic fracking additives. The State should mandate the use of non-toxic fracking additives and ban the use of carcinogenic and endocrine-disrupting compounds.

5. Public disclosure of all chemicals used in hydraulic fracturing fluid at each well site. Disclosure should include a proposed list of chemicals made public before drilling operations begin and the final list of chemicals used, and their quantities, made public no later than 30 days after drilling operations are completed.

6. Identification of New York areas prone to higher seismic activity and measures to prevent earthquakes potentially associated with horizontal hydraulic fracturing.

7. A dramatic increase in DEC resources and staffing devoted to the permitting and oversight activities related to high-volume hydraulic fracturing.

8. A complete ban on land spreading of shale gas drilling waste fluids and a prohibition on the use of reserve pits or centralized impoundments for fracking fluids and flowback water.

9. Alignment of DEC's gas drilling permit rules with the requirements of secondary lending institutions covering oil and gas activity on mortgaged properties. These include pre-approval from banks and other lenders before signing gas leases, minimum setback requirements from residential structures, prohibition on certain drilling and process equipment, title insurance requirements, property assessments, and more.

10. An enhanced role for local governments to prohibit gas development that is incompatible with local land-use and zoning regulations.

Thank you for the opportunity to provide these comments. Shale gas drilling has been proliferating rapidly across the country and, unfortunately, too many states have not taken the necessary steps to protect our communities, water resources, air quality, and public health. New York must not follow this path, and I urge you to withdraw the revised draft SGEIS and restart this process to ensure that end product fully addresses the scope of the challenges hydraulic fracturing presents.

Best regards.

Sincerely,

Maurice D. Hinchey

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