

Binghamton Regional Sustainability Coalition:

Working Position Paper on Gas Drilling of the Marcellus Shale

Do we currently have the proper regulatory mechanisms in place—with dedicated resources for enforcement—to protect the health and safety of our families, our water sources, and our communities from the impacts of unprecedented, large-scale gas and oil drilling along the Marcellus Shale? The answer is no.

The 2005 Energy Policy Act exempted oil and gas industries from the following regulations:

- Clean Water Act
- Clean Air Act
- Safe Drinking Water Act (gas/oil is the only industry allowed by EPA to inject hazardous chemicals into or adjacent to underground drinking supplies)
- Storm Water Rules

Additionally, Section 23 of the NYS Environmental Conservation Law grants authority to State over local zoning laws relating to land use and planning when dealing with gas and oil industries, severely undermining Home Rule Law. In other words, local municipalities have virtually **no control or oversight** of this industry, except when it comes to roads or those provisions as prescribed by Real Property Law.

Therefore, the regulatory responsibility lies almost entirely with DEC and the appropriate River Basin Commissions (the latter must approve permits whenever a certain volume of water is to be withdrawn from the river for industrial use or otherwise).

Unfortunately, an independent review of the DEC regulations by Bruce Baizel, Oil and Gas Accountability Project (OGAP) lawyer who has worked closely with Counties and States (Colorado and New Mexico) to upgrade gas and oil regulations, noted many shortcomings. Based on Baizel's observations, and after attending a series of informational sessions on the gas drilling issue, members of BRSC recommend the following:

1. **DEC must commit to a thorough analysis and update of the Generic Environmental Impact Statement, an outdated document that does not account for the new drilling techniques and volume of activity expected with the Marcellus Shale formation.**
2. **NYS regs must be changed to clearly prohibit use of open pits for “produced water.”** After finding leakage of nearly every open pit in Wyoming and Colorado, as well as contamination of adjacent water sources, both states have either mandated or strongly recommended steel storage tankers. Colorado has experienced over 1,500 instances of contaminated groundwater. Steel tankers do not in any way impair or compromise drilling operations, however, they do add slightly higher costs for the industry. Mandating the industry to absorb additional costs to properly protect our water supplies is an obvious and reasonable preventative measure the DEC should implement.
3. **NYS regs must outline without ambiguity a clear strategy on how to store, use and dispose of the unprecedented volumes of frac'ing fluid this new wave of drilling will produce.** Based on

experiences of communities in Wyoming, New Mexico and Colorado, the DEC should forbid on-site burial of “produced water” and frac’ing fluids.

4. **DEC must force industry to reveal the chemical make-up of the frac’ing fluid.** Industry studies of these fluids have shown them to include substances such as benzene, naphthalene, and heavy metals such as cadmium and arsenic, which are linked to severe human health effects. OGAP was able to obtain samples and found 7-15 different federally classified hazardous chemicals in the frac’ing fluid.
5. **DEC should prohibit use of all potentially toxic materials unless the levels are proven safe by EPA standards due to the sheer volume of frac’ing fluid required for deep, horizontal drilling.**
6. **New York State must hold gas and oil operators accountable to Storm Water rules so drilling does not further exacerbate the storm water challenges this region already faces.** Upstate municipalities, particularly those above the Marcellus Shale, have experienced traumatic flooding in the last few years, and are in the process of developing and implementing a range of flood mitigation strategies. A possible approach would be to modify Section 23 of the Environmental Conservation Law (which virtually eliminates Home Rule Law) to provide municipalities an opportunity to comment on storm water concerns for all permits issued within their jurisdiction.
7. **The State should pass legislation requiring a boilerplate gas drilling lease, which could be drafted by the Attorney General’s Office, to protect all New Yorkers against “predatory leasing.”** The DEC is charged with protecting community resources. However, individual rural property owners experiencing real financial hardship may enter too quickly into an ineffective lease that endangers the owner’s land and health, as well as a wider community’s water source. The template lease needn’t be exhaustive, but could include strong water and land protection clauses that recognize a community’s need for safe, clean water supplies.
8. **Increase the amount of bonding per well from \$5,000 to an amount that would truly cover the costs of capping and remediating a well site (between \$50,000-\$250,000).** Based on field data from Colorado and New Mexico, costs to cap and remediate abandoned wells generally exceed \$100,000.
9. **The DEC should freeze all well permit applications in order to establish a baseline of data, particularly regarding water and roads, to monitor and track the industry’s impacts.** Either independently or in conjunction with local and County governments, DEC must:
 - a. Complete pre-drilling testing of all adjacent water wells, underground aquifers, and wetlands
 - b. Conduct road assessments and develop a methodology for charging road-impact use fees, a tactic being used by other communities (Texas and Colorado) to prevent the cost of road repair from being passed on to the already overburdened taxpayer. Sullivan County Commissioner of Planning is taking a lead on this issue and would be a great person to consult.

Ultimately, the freeze would allow sufficient time to comprehensively study the impacts of this activity and to make the necessary changes to regulatory instruments and agencies, zoning, legal, tax and fee structures. What’s more, the freeze would allow municipalities and first responders to prepare emergency responses particular to the chemicals identified in the frac’ing fluid. NYS is

beginning a 20-40 year more-intensive relationship with the gas industry—more proactive safeguards at the front end are essential.

10. **DEC should consider limiting number of permits in a phased-development in order to better protect against and address unforeseen challenges or circumstances.** As an alternative, DEC could consider allowing more permits to those companies practicing “clustered development,” which reduces traffic and impact on land, and for those companies that are willing to publicly negotiate well siting and set-backs with local officials and residents. Noise and light pollution, as well as safety hazards posed by intensive heavy-vehicle traffic on rural and suburban roads, are some of the many concerns here.
11. **The State should adopt and charge an “annual well registration fee” (\$5,000 initial fee, ongoing fee equal to .5% of royalties) for every bore well, the revenue of which could be used to hire more DEC inspectors to ensure proper enforcement.** Repeated budget cuts have crippled the DEC’s capacity to regulate this industry with a severe lack of field inspectors and professional staff, and an effective ratio of inspectors to wells could be maintained by these “well registration fees” instead of further burdening the taxpayer.
12. **The DEC and Susquehanna River Basin Commission (SRBC) must develop and implement an integrated data system that results in seamless coordination, regulation and enforcement of water withdrawals, use and quality.** Both agencies have admitted at public meetings that coordination between the two agencies is “good but needs work.” However, the anticipated volume of well permits and the unprecedented need for water suggests the two agencies need to improve their coordination.
13. **The State must develop a plan to offset the prodigious amount of greenhouse gases produced by these new wells, as well as the health and environmental effects of increased ozone emissions.** Any previous promises to curb greenhouse gases are rendered nearly meaningless with the anticipated activity around the Marcellus Shale.
14. **The State must protect against damage to farmlands and wildlife habitat in order to preserve biodiversity as well as key parts of the upstate economy: agriculture, hunting and fishing.** Colorado and Wyoming experienced losses in tourism dollars as the gas industry advanced on key recreational tourism land.
15. **The State must be more proactive in helping municipalities understand and prepare for the rapid and profound socio-economic impacts invariably experienced from the rapid expansion of gas industry and drilling activity.** Previous cases show impacts that include but are not limited to: increased crime (e.g. drugs and prostitution) requiring expanded jail facilities; social services and policing budgets; inflated rents which drive out low-wage workers; and unsustainable demands on emergency services (fire and hospitals), water and sewage systems.

CONCLUSION: BRSC is advocating a statewide moratorium to study the social, economic and environmental impacts of drilling; to revise and strengthen current regulations accordingly so that our communities and resources are protected; and to bolster enforcement agencies and mechanisms to guarantee the long-term economic, social and environmental health of Upstate New York.