

June 13, 2012

Honorable Andrew M. Cuomo  
Governor  
The New York State Capitol  
Albany, NY

Dear Governor Cuomo:

We, the undersigned, write to request that you take immediate action **to fully review** and resolve six critical issues before permitting horizontal hydraulic fracturing to extract natural gas from New York's Marcellus Shale formation. **As you know, many of us have additional objections, but we wanted to formally express our consensus on these six critical issues.**

### **SEQR Review Requirements**

New York's Environmental Quality Review Act (SEQR) requires that:

"All agencies (or applicants as hereinafter provided) shall prepare, or cause to be prepared by contract or otherwise an environmental impact statement on any action (emphasis added) they propose or approve which may have a significant effect on the environment (emphasis added)." (Section 8-0109 of the New York Code of Rules and Regulations).

#### **1) Require SEQR Review Regarding Hydraulic Fracturing Utilizing LPG**

A proposal was recently announced to lease approximately 135,000 acres in Tioga County for natural gas extraction utilizing horizontal drilling and high-volume hydraulic fracturing using Liquid Petroleum Gas (LPG). This proposal is reportedly intended to skirt New York's current moratorium on horizontal hydrofracturing and could result in the establishment of more than 3,300 gas wells.

Hydraulically fracturing those wells could require the use of billions of gallons of LPG and could cause irreparable harm to water, air and land resources as well as to the health of local residents. LPG is highly toxic as well as flammable and poses extraordinary explosion hazards.

LPG hydraulic fracturing has neither been addressed by a) New York's 1992 Generic

Environmental Impact Statement (GEIS) on Oil, Gas and Solution Mining nor b) the 2011 Supplemental Generic Environmental Impact Statement On The Oil, Gas and Solution Mining Regulatory Program nor c) any other SEQR EIS review whatsoever.

As a result, New York has totally failed to assess or mitigate the potentially significant effect on the environment of using LPG to extract natural gas from New York's tight shale formations.

We believe the current moratorium on horizontal high-volume hydraulic fracturing in Marcellus Shale must apply equally to LPG fracturing. We request that the RD SGEIS be immediately withdrawn and its scope expanded to address horizontal LPG fracturing. Until that request is fulfilled, all horizontal LPG hydraulic fracturing well permit applications must require individual EIS review.

## **2) Require SEQR Review for All New York State Mortgage Lending Programs**

A wide range of lenders have voiced grave concerns about the impact of mineral rights leasing and horizontal hydraulic fracturing activities on mortgage lending in New York State, including the devaluation and reduced marketability of real property.

Local government authorities have also voiced concerns about the impact of this issue on tax revenue generation.

New York State's many mortgage lending programs have neither been included in the scope of the above-referenced 1992 GEIS nor the 2011 RD SGEIS nor subjected to any SEQR EIS review whatsoever.

We request that the RD SGEIS be withdrawn and its scope expanded to address the environmental impact of New York State mortgage lending programs with regard to shale gas extraction. Until that request is fulfilled, state mortgage lending programs must require individual EIS review, including, but not limited to the following:

State of New York Mortgage Agency (SONYMA),  
The Housing Development Fund,  
The Rural Area Revitalization Program,  
The Rural Preservation Companies Program,  
The New York State Home Program,  
The Housing Finance Agency,  
The Affordable Housing Corporation,  
The Division of Housing and Community Renewal and  
The Housing Trust Fund Corporation.

## **3) Rescind New York's Natural Gas Hazardous Waste Regulatory Exemption**

Horizontal hydraulic fracturing can generate highly toxic, corrosive and reactive wastes that could qualify as hazardous waste. Nevertheless, DEC regulations exempt from

hazardous waste regulation: "drilling fluids, produced waters, and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal energy..."

This exemption has not been addressed on a comprehensive basis by either the above-referenced 1992 GEIS or the 2011 RD SGEIS.

Given that more than 50,000 entities across New York have been regulated for hazardous waste activity, we request that DEC immediately rescind its hazardous waste exemption because natural gas and other extraction mining firms must not receive special treatment that threatens New York's public health and environment.

#### **4) Ban "Recycling" of Natural Gas Drilling Wastewater That Exceeds GA Effluent Limitations**

Natural gas "flowback" as well as "produced" a.k.a "brine" wastewaters are documented to be contaminated with a wide spectrum of toxic metals, petroleum hydrocarbons and radionuclides that can contaminate public drinking water sources.

Nevertheless, gas drilling wastewaters are allowed to be injected into wells "to facilitate production of oil, gas, salt or geothermal resources" even though contaminant concentrations are documented to exceed GA (groundwater that provides drinking water) effluent limitations adopted to safeguard drinking water in New York State.

Current safeguards regarding this practice have failed to prevent numerous government-documented incidents where fluids injected into the ground for gas and oil production have caused major uncontrolled discharges to land surfaces, groundwaters and surface waters.

This issue has not been addressed on a comprehensive basis by either the above-referenced 1992 GEIS or the 2011 RD SGEIS.

We request that DEC immediately enforce GA effluent limitations with regard to gas drilling wastewaters injected into the ground for any purpose in New York State, including deep well disposal that has recently been associated with causing earthquakes.

#### **5) Ban Natural Gas Drilling Wastewater Land Spreading and Dumping in Municipal Wastewater Treatment Plants**

Contaminated natural gas wastewaters have been routinely spread on land in New York State for dust control, de-icing and roadbed stabilization. In addition, gas drilling wastewaters have been discharged into municipal treatment plants that are not designed, constructed, maintained or regulated to remove toxic metals, petroleum constituents or radionuclides. A wide variety of contamination concerns associated with these practices are documented by government data.

Landspreading of natural gas wastewaters and disposal in municipal treatment plants have not been addressed on a comprehensive basis by either the above-referenced 1992 GEIS or the 2011 RD SGEIS. We request that DEC immediately ban natural gas wastewater landspreading as well as disposal in municipal treatment plants.

## **6) Independent Health Impact Study**

The U. S. Environmental Protection Agency as well as numerous physicians and public health professionals have repeatedly documented that DEC's Draft and Revised Draft SGEIS proposals would fail to safeguard the health of residents in New York's Marcellus Shale region. We request that Governor Cuomo require an independent health impact study of hydraulic fracturing for natural gas to be undertaken.

## **Conclusion**

SEQR requires that:

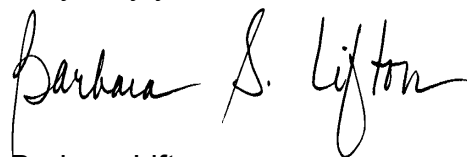
"Agencies shall use all practicable means to realize the policies and goals set forth in this article, and shall act and choose alternatives which, consistent with social, economic and other essential considerations, to the maximum extent practicable, minimize or avoid adverse environmental effects, including effects revealed in the environmental impact statement process."

We believe that this legal requirement cannot be fulfilled until DEC performs the Environmental Impact Assessments we have requested. We also believe rescinding the regulatory exemptions we identified and banning improper disposal of natural gas drilling wastewaters would help fulfill the letter, as well as the spirit, of SEQR.

Until these legal requirements have been fulfilled, we request that you maintain New York's current moratorium on horizontal hydraulic fracturing in Marcellus Shale.

Thank you for your consideration.

Very truly yours,

A handwritten signature in black ink that reads "Barbara S. Lifton". The signature is written in a cursive style with a large, looped initial 'B'.

Barbara Lifton  
Member of Assembly  
125th District

William Cotton

Henry Smith

Paul Hill

Steven Erdbricht

Margaret Parker

Carl Hill

Carmen E. Arago

Dennis A Gabryszak

Anthony J. Brindici

James F. Brennan

George J. Stamer

Nick D. L. Gresham

Adrian J. Russell

Mitchell Schimmel

Mark Hill

Tom Tully

Michael Hill

Charles M. Rohr

Mark Linares

Philip R.

Inez Barson

Annella Amato

Debra J. Hill

Frank J. Amato

Joe Hill

Ellen C. Jaffer

John J. Amato

Daniel O'Donnell

Phoebe Jones

Walter Jones

Catherine T. Holman

John Millman

Mark Johns

Queen M. Butler

Harvey Weissberg

Kevin A. Cahill

U7H

Robert J. Robinson

Joe Bental

William J. Cook

Linda Rosenthal

Amy R. Pauline

John J. [Signature]

Liz Kemp

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[Signature]

Manoj [Signature]  
Manoj Crespo

[Signature]

Jose Rivera

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Didi Buxant

Michel [Signature]

~~Samuel J. Ryan~~  
to Kansas

William W. Small

Evelene Souper

V. de Gottfried

~~John T. Titow~~  
M. TITOWE

R. M. Ryan

John W. McHenry

Michael Miller

William Boyland

Sam Roberts

~~Grant~~

Jan Masel

Ed M. Jr

Michael S. Marshall

Joseph D. Morelle

T. Wells

Joe Allen

Tom Duane

Suzi Oppenheimer

Ruth Hassell-Thompson  
Ruth Hassell-Thompson

Ida A. Stawes