



**DEPARTMENT OF
ENVIRONMENTAL
PROTECTION**

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Commissioner**

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July 18, 2008

Honorable Alexander B. Grannis
Commissioner
New York State Department of Environmental Conservation
625 Broadway
Albany, NY 12233-7012

Re: S.8169-A/A – Oil and Gas Spacing Bill

Dear Commissioner Grannis:

Thank you for the recent letter your staff sent DEP regarding the intent and potential implications of Senate Bill 8169-A, the "Oil and Gas Spacing Bill." Although the letter clarified many aspects of the proposed legislation, DEP still has several significant questions and concerns about the legislation as well as the regulation of gas mining within the New York City watershed.

As you know, the entirety of the City's West-of-Hudson Watershed sits atop a portion of the large, multi-state Marcellus Shale formation, a mineral reserve that some have estimated to hold enough natural gas to supply the entire country for two years. As the proposed legislation recognizes, horizontal drilling has seen significant technological advances in recent years, and access to these substantial reserves is now more feasible – both technically and economically – than ever before.

Given the current interest in the Marcellus Shale formation, and the high potential for the introduction of exploratory natural gas drilling in the watershed, aspects of the legislation are of concern to DEP. In addition, we have listened to significant concerns from environmental advocates and stakeholders statewide. Both our own analysis of the potential risks associated with this activity, and questions raised by the environmental community, lead us to have remaining concerns about this bill.

We understand DEC's desire to streamline the administrative process necessary to determine the appropriate size of the spacing units from which wells recover natural gas. We also understand the potential economic benefits increased mining and drilling could have for New York State. We are not advocating a veto of the bill; rather we seek to work with DEC to ensure that the New York City watershed is recognized as a unique resource requiring special protection before this activity is authorized within the City's watershed. By so doing, the concerns of all parties, including the environmental advocates, can be adequately addressed.



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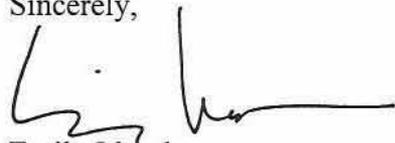
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We ask that you agree to the following specific recommendations and concerns:

- 1) Formation of a technical working group to develop permit conditions that would apply to natural gas exploration activities in the watershed. The membership should include DEP, DEC, the New York State Department of Health, USEPA, and watershed and environmental groups. There is precedent for this type of "regional condition" in the State's Municipal Separate Storm Sewer System (MS4) SPDES program.
- 2) A commitment, memorialized in an MOU, to consult DEP when reviewing drilling permit applications in the watershed and incorporate DEP's concerns into an enforceable DEC permit.
- 3) A commitment from DEC to provide adequate staffing to undertake cooperative inspections of well sites in the watershed with DEP.
- 4) Creation of a drilling exclusion zone within a 1-mile buffer to all NYC water supply infrastructure including reservoirs, tunnels, shafts and other appurtenances.
- 5) Confirmation that all proposed drilling projects will continue to go through the State Environmental Quality Review Act (SEQRA) process, and that there will be opportunity for public review and comment of any determinations made under SEQRA. Though the July 15, 2008 letter from DEC Deputy Commissioner Gruskin suggested that all proposed drilling projects will continue to go through the SEQRA process, it is New York City's understanding that while applicants must prepare a DEC Division of Mineral Resources well permitting environmental assessment form ("EAF"), there is no opportunity for public review and comment on that EAF. If this is correct, we seek an additional level of review for the permitting of this activity within the City's watershed.
- 6) Disclosure by applicants for drilling permits of all chemicals used in drilling activities in the watershed.
- 7) Clarification from DEC whether SPDES permits are required for drilling activities. A July 15, 2008 letter to DEP from DEC Deputy Commissioner Gruskin implied that SPDES permits would be required, but that is not the current understanding of DEP staff.
- 8) An affirmation from DEC or the Attorney General that the natural gas exploration and extraction are not exempt from the City's Watershed Rules and Regulations.

I know you share our concern for protecting the water supply system that provides drinking water to more than nine million New Yorkers, so I am optimistic that we can resolve these issues. I will contact you next week to discuss next steps.

Sincerely,



Emily Lloyd

c: Stuart F. Gruskin