

January 11, 2012

Commissioner Joe Martens
New York State Department of Environmental Conservation
625 Broadway
Albany, NY 12233-6510

Dear Commissioner Martens and DEC staff:

Thank you for the opportunity to submit written comments on the Revised Draft Supplemental Generic Environmental Impact Statement (dSGEIS) on the Oil, Gas, and Solution Mining Regulatory Program.

The Woodstock Land Conservancy (WLC) is a non-profit organization serving the Town of Woodstock and surrounding communities in the eastern Catskills. For a quarter-century, we have worked to protect and preserve open lands, natural resources, scenic areas, and historic sites. To achieve our goals, we work closely with private landowners and local communities and rely on partnerships with other land trusts and public agencies, including the Department of Environmental Conservation. Among the protective tools at our disposal are acquisition of land in fee (by WLC and/or our partners, often for conveyance to DEC) as well as acquisition of conservation easements, which themselves must adhere to U. S. Treasury Regulations and the Internal Revenue Code to qualify as non-cash charitable contributions.

WLC recognizes the monumental task that the DEC faces in evaluating the risks and impacts of deep shale gas development using high-volume hydraulic fracturing (HVHF) and horizontal drilling—a new type of industrial activity for New York State. We appreciate the time and resources DEC has invested in the development of the dSGEIS and improvements over the previous version issued in 2009.

With this in mind, WLC submits the following comments on the dSGEIS and aspects that we believe must be addressed before the State Environmental Quality Review Act (SEQRA) process can be considered complete. These are based on our general concerns with the overall impact of HVHF in the Marcellus and Utica Shale region, as well as with specific parts of the dSGEIS related to land, ecosystem, wildlife, noise, and visual impacts.

1. The DEC should have waited until the completion of the final SGEIS to issue draft regulations. New York should not be fast-tracking drilling by issuing regulations prematurely, but instead should be making sure any regulations are the most protective possible. The final SGEIS will be informed by public comments and more in-depth analysis and findings than the current draft. This could result in potentially different analyses of impacts and proposed mitigation measures that could, in turn, guide development of regulations, and would ensure that all necessary regulations are developed—not just selected

aspects, as is the case with the current dSGEIS. The DEC should not consider the regulations complete upon issuance of the final SGEIS, but instead should extend and expand the regulation review and development process, including allow for additional public comment.

2. DEC has neglected to take into account the agency's own guidelines under the New York State Open Space Conservation Plan. According to a letter from the Land Trust Alliance New York Advisory Board to Commissioner Martens, dated 12/8/2011 (see enclosed), "It appears that the DSGEIS does not reference the New York State Open Space Conservation Plan. Nor does the DSGEIS appear to provide an assessment of the potential impacts that these activities could have on priority conservation areas and resources identified in the New York State Open Space Conservation Plan."

DEC must address this critical oversight by providing an analysis of the full range of impacts that may occur on or near priority conservation areas and the natural resources highlighted in the Open Space Conservation Plan. WLC concurs with the Advisory Board's assessment that these lands are vital to New York's economic future and represent an essential part of the state's infrastructure. Consideration of the Open Space Plan is also essential to ensure that policies and public-private investments that support natural resource conservation and open space projects across New York will continue to be upheld.

3. The dSGEIS does not include a cumulative impacts analysis to fully assess the impacts of gas development under different scenarios pertaining to the number and extent of wells and infrastructure across the landscape. Such an analysis is essential for the DEC to determine how to pace and adequately monitor gas development in order to minimize impacts on land and air and water quality.

In addition, the environmental impacts associated with the loss of open space and wildlife habitat and air and water pollution become worse over time; this "additive effect" can only be determined through a cumulative impacts analysis. Such an analysis would also help determine whether certain activities should be limited or prohibited in particular areas because of the risk for long-term damage to land, natural resources, air and water quality, and wildlife species.

4. The socioeconomic analysis report by Ecology & Environment (E&E) for the dSGEIS is seriously deficient. We appreciate Commissioner Martens' recent request to E&E for analysis of additional factors. However, this analysis must include environmental costs, given the crucial contribution that attributes such as intact forests, scenic views, healthy fish and game populations, and clean air, water, and soil make to New York's economy through tourism, agriculture, outdoor recreation, and vacation homes. The E&E report is based on a simple "input-output" model that assumes benefits will grow spatially and over time; this does not take into account the many ancillary costs of industrial gas development on economic sectors such as those driven by open space and

natural resource protection.

5. The analysis of impacts on ecosystems and wildlife and associated proposed mitigation measures in the dSGEIS are insufficient to ensure long-term protection. This is in large part because DEC has used the unitization of gas operations (e.g., acreage developed and well site spacing unit size) rather than ecologically-based parameters (e.g., habitats and migratory corridors) as the basis for analysis. This approach could result in the maximization of gas production being given priority over the protection of entire, interconnected ecosystems.

For example, the DEC recognizes in Section 6.4 of the dSGEIS that the proposed actions would result in widespread land conversion and fragmentation as areas are cleared to develop well pads, facilities such as compressor stations and waste tanks, and roads. Yet the mitigation measures proposed in Section 7.4 for the most sensitive areas (e.g., rare interior forest and grasslands) are based only on “Best Management Practices” at particular times (e.g., bird nesting and migration seasons) and “avoidance” of site disturbance. The DEC should consider prohibitions on activities or development of locations that could result in a loss or significant degradation of the habitat itself over time, as well as require certain practices, rather than rely on the voluntary actions of gas operators.

6. The dSGEIS does not provide sufficient protection for state-owned land. In Section 6.4.4, DEC emphasizes that industrial shale gas development would significantly diminish key purposes of state-owned land, including public recreation, intact ecosystems, open space, and wildlife habitat. Yet the related mitigation measures in Section 7.4 are inadequate to address such serious concerns.

While the DEC’s recommended prohibition on surface disturbance is vital, there are also risks posed by underground activities and at the distances facilitated by horizontal drilling and extraction (e.g., methane migration, chemical contamination of groundwater, and runoff from surface spills). The DEC should consider requiring extensive setbacks for gas development activities on private land that border state land.

In addition, given the far greater impacts of HVHF and horizontal drilling than past drilling practices, DEC should consider not leasing land for deep shale gas development from State Forests, Wildlife Management Areas, and State Parks to elevate these areas to the same protective status as Forest Preserve land.

Finally, while Section 6.10 assesses the many detrimental impacts of noise generated by gas facilities and equipment on wildlife and people—which would interfere with key purposes of state lands, e.g., species protection and outdoor recreation—no mitigation measures to address these risks are included in Section 7.10, which should be expanded.

Given the large amount of land, water, and toxic chemicals that HVHF requires, and the large volumes of solid and liquid waste it generates, there is very real potential for long-term and irreversible damage to landscapes and natural resources across the state should Marcellus and Utica shale development be pursued. For this reason, WLC questions whether expanding industrial gas development can ever be compatible with the other uses of land so critical to New York State's economy, its environment, and the well-being of its residents.

These uses include purposes that are central to both the mission of land trusts and their constituents statewide and to the DEC's mandate: open space and wildlife habitat protection, air and water quality, and public recreation. With so much at stake, the DEC must fix the critical flaws in the dSCEIS and proceed with the next stages of the SEQRA process with the time, caution, and commitment to environmental protection that all New Yorkers expect and deserve.

Sincerely,

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Enclosure (12/8/2011 letter from Land Trust Alliance New York Advisory Board to Commissioner Martens)