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January 10, 2012

Commissioner Joseph Martens
New York State Department of Environmental Conservation
625 Broadway
Albany, NY 12233-6500

Re: Comments on the 2011 Draft Supplemental Generic Environmental Impact Statement for Natural Gas Drilling in the Marcellus Shale

Dear Commissioner Martens:

New York Farm Bureau is the State's largest farm advocacy organization with nearly 30,000 farmers and landowners stretching from the east end of Long Island to Erie and Chautauqua counties in the western part of the state. We appreciate the opportunity to provide comments on the Department of Environmental Conservation (DEC) most recently released Draft Supplemental Generic Environmental Impact Statement (dSGEIS) for natural gas drilling and exploration in the Marcellus Shale in New York State. We are pleased to see that many of our comments on the original dSGEIS were addressed by the Department in this current document.

As we stated in our comments on the previous version of the dSGEIS, our members and other landowners have seen the natural gas industry dramatically increase its presence in New York during the last decade as the industry has invested heavily in leasing activities, gas exploration and production. With the exploration of the Trenton Black River natural gas play and the current interest in the Marcellus and Utica Shale gas formations, considerable attention has been given to landowners who lease the rights to the natural gas beneath their property.

This investment by gas companies should be considered as great news from an upstate economic development perspective. Allowing natural gas drilling in the Marcellus and Utica Shale formations will create jobs in a region that has seen scant economic development and a migration of people and New York businesses for the past several decades.

Farms located in Central and the Southern Tier are struggling to pay taxes, overcome weather events and comply with costly regulations at the both the state and federal levels. If drilling is allowed in the Marcellus and Utica Shale formations, these farms will have the money to re-invest in their farm operations. For farms, development of the Marcellus Shale formation means the ability to again invest in farm infrastructure; building new barns, adding cows to allow the next generation to stay on the farm and purchasing a new tractor to replace the 40-year-old model.

These on-farm investments will ripple through the local economy and grow community businesses – from the general contractor to the livestock auction or the farm machinery salesman and seed dealer. The importance of revitalizing these communities and local economies can not be overstated.

However, New York Farm Bureau also looks to the Draft Supplemental Environmental Impact Statement to ensure that our natural resources are not depleted or compromised and impacts on our communities are not onerous. In finalizing the dSGEIS, we depend upon DEC to provide a comprehensive assessment of the potential impacts on the environment and human health in having full scale drilling activities in the Marcellus Shale. It is critical that all alternatives for drilling practices be explored to ensure that natural resources, especially the ones that our agricultural industry are dependent upon, are not compromised and rural, community character is protected.

While natural gas exploration and production is incredibly important to the economic success of upstate New York, we must ensure that the water resources needed for farm production and municipal daily needs are not negatively impacted by the water intensive drilling process. It is imperative that DEC ensures that water resources are plentiful enough to serve community and industry purposes or, in the absence of these resources, help to find viable alternatives prior to drilling permit approval.

We believe that DEC should prohibit the use of water from aquifers for any drilling or hydrofracking activities and fully monitor surface water resources to make certain they are not overly taxed by gas drilling companies during the water-intensive drilling process. We also encourage the Department to coordinate and consult with the Susquehanna and the Delaware River Basin Commissions on questions of water consumption and use for well drilling within the state.

In the end, our members have investigated the impact of drilling on farms in Pennsylvania, as they have toured drilling sites and spoken with many landowners in that state. As a result, our comments, below are based on practical experiences and opportunities provided to our neighbors in the state just below our southern border.

Water Well Testing and Groundwater Setbacks

Based on our industry's need for quality water reserves, New York Farm Bureau has previously commented on our concerns and vigilant with regard to the need for water well testing as part of the final SGEIS document. We believe that every private well within a spacing unit should be tested before drilling, between drilling operations and after drilling and hydraulic fracturing operations. An ongoing monitoring schedule should be established for sampling and analysis. We believe the private water well testing regime in the dSGEIS does exactly this.

The dSGEIS requires that every private well within 1000 feet of a well pad should be tested before drilling, between drilling operations and after drilling or hydraulic fracturing operations, and an ongoing monitoring schedule be established for sampling and analysis. In addition, expenses for the testing activities will be paid for by the drilling operator.

Further, if there are no private wells located within 1,000 feet of a drilling site, this monitoring regime should be extended to any wells within 2,000 feet of the drilling site.

New York Farm Bureau also supports DEC's plan to require that any water well samples be taken by an objective third party, preferably the water quality testing company, to ensure scientific credibility of the testing program. Testing results should be provided to the landowner and the local Department of Health. In the final SGEIS, DEC should also require a tracer substance be added to any hydrofracturing fluid that would help identify the source of any water quality contamination.

New York Farm Bureau supports and recommends that well operators, prior to permit approval, be required to determine the existence of public or private water wells and domestic-supply springs within at least one half a mile of any proposed drilling locations. Further, we believe that the same protections should exist for public and private water wells in New York State with regard to the drilling permit process.

Composition of Hydrofracturing Fluids

New York Farm Bureau supports the Department requiring gas drilling companies to disclose their specific proprietary mix for hydraulic fracturing fluid to the Agency. DEC should then disclose to the public a more general list of chemicals used in the company's recipe, without disclosing information about the exact composition. New York Farm Bureau believes that this information should also be provided to local emergency management officials to enable them to best respond to environmental and human health exposures. Lastly, we believe that DEC should establish a list of possible alternatives to currently used hydrofracturing chemicals and provide incentives to drilling companies for voluntarily using the safer chemicals during the drilling process.

Transport of Hydraulic Fracturing Additives

Hydrofracturing fluids, or flowback waters, brine waters and drilling muds associated with the drilling process should be considered hazardous fluids to both the environment and human health.

DEC, as part of the final SGEIS, should ensure that any drilling permit require haulers of these fluids to handle, load, transport and disposal of these materials in a manner which is compliant with all state and federal transportation regulations, as well as all applicable DEC and/or local regulations. It should also be incumbent upon the hauler to document the handling, testing, transportation and disposal of the drilling and hydrofracturing fluid prior to any permit approval. We believe the tracking system proposed by the Department in the recent dSGEIS does exactly this, by mandating that drilling companies gain approval of transportation routes as a condition of the drilling permit and track the deliveries to the disposal site, much like UPS or FedEx tracks packages for delivery.

Setback from the New York City Watershed

The Department's plan to prohibit high volume hydrofracturing in both the New York City and Skaneateles Lake watersheds presents a problem with regard to the application of the planned 4,000-foot buffer area surrounding these watersheds.

The most obvious problem associated with this plan is that in a number of cases the 4,000 foot buffer area leaves the Delaware River Basin and crosses into the Susquehanna River Basin. An example of this happens in the Town of Meredith in Delaware County. We believe that the Department did not intend for this to happen. As a result, we recommend that the language in the final SGEIS be changed to correct this issue.

Centralized Flowback Surface Water Impoundments

With regard to centralized flowback surface water impoundments, New York Farm Bureau believes DEC should aggressively monitor all such impoundments within New York State. We believe that DEC should require the use of closed loop steel tank systems on all drilling sites in New York State. Failing this, closed loop systems should be required on agricultural lands and any site that drains into agricultural land.

DEC should monitor and ensure that fluids are removed from any centralized flowback surface water impoundments within seven days of completing drilling or immediately if drilling operations are suspended for all drilling projects as part of the SGEIS.

Any centralized flowback surface water impoundments that are permitted should be constructed to comply with all pertinent dam safety permitting procedures and be double lined, pursuant to established Title 6 NYCRR Part 360 regulatory requirements. Certified inspectors should be required to be on-site during impoundment construction to ensure and verify proper construction. DEC should require that these liners be disposed of in an approved landfill, rather than being buried on site.

New York Farm Bureau believes that a critical component of the final SGEIS is a practical plan for the disposal of waste water generated by hydraulic fracturing of numerous horizontal gas wells. This plan must include the disposal hydrofracturing fluids in flowback water and any Naturally Occurring Radioactive Material (NORMs) that are derived from the drilling process. Once again, this provision demonstrates the need for increased DEC staffing dedicated to oversight of natural gas drilling activities in the Marcellus Shale.

It is critical that greater numbers of staff be on hand to review permit applications and ensure that waste water is not only disposed of in a timely fashion from drilling sites, but also are transported and safely disposed of in an appropriate waste water treatment facility. It is our understanding that very few treatment facilities in the region meet the necessary standards needed to process waste water from horizontally drilled gas wells.

As a result, we support DEC's requiring drilling permits to not be approved unless the permit applicant can fully demonstrate that the waste water will be disposed of appropriately-- either in a treatment facility or by employing new technologies that recycle or separate and encapsulate the waste.

Source Water Impoundments

DEC should ensure that any source water impoundments should be engineered and constructed pursuant to pertinent dam safety permitting regulations in New York State. Any source water impoundments must comply with DEC storm water construction permit regulations.

Protecting Floodplains

The agricultural industry in New York State has seen major flooding events in agricultural regions of the state. Most notably, major flooding occurred in the Binghamton area in 2005 and 2011 that majorly impacted farm operations. As a result, we support DEC's plans to prohibit drilling in a 100-year floodplain as part of the final SGEIS. DEC should also prevent the storage of hydrofracturing materials and diesel fuel, along with other drilling-related operations within such floodplains.

Ensuring Proper Oversight by NYSDAM in Well Siting and Permitting

Preparation of gas drilling sites, including well pads, centralized flowback water impoundments and roads for truck access will disturb acres of land, including viable farmland. We recommend that DEC require drilling companies to consult with the Department of Agriculture and Markets and Soil and Water Conservation Districts (SWCD's) to best locate access roads, drill pads, impoundments, staging areas and pipeline routes associated with drilling operation on active farmland. DEC should also be required to consult with the Department of Agriculture and Markets and SWCD's and require drilling companies to restore disturbed lands to prior conditions following project completion. We also recommend drilling companies develop, implement and maintain a comprehensive Stormwater Pollution Prevention Plan, in consultation with Soil and Water Conservation District in the project area.

Gas Gathering Lines and Compression

DEC should require that all natural gas gathering lines, regardless of size or length, be installed according to New York State Public Service Commission and NYSDAM guidelines for both agricultural and non-agricultural lands. Because these siting guidelines are currently unstructured, due diligence must be taken to ensure that agricultural use of lands that contain gathering lines will not be impacted by shallow-buried lines.

DEC should also require that all installed gathering lines should be able to be located by Global Positioning Systems. This information should be provided to local governments to alleviate any potential problems from work associated with future development, construction or agricultural use.

Lastly, the Public Service Commission and companies that construct natural gas pipelines, should be required to consult with NYSDAM and SWCD's to ensure that pipelines are placed in a manner that minimizes impacts to crop production and farm operation.

Staffing Requirements

From a farm perspective, one of the most critical pieces of the dSGEIS puzzle is obtaining the needed staff at DEC, the Department of Agriculture and Markets (NYSDAM), Department of Health, Soil and Water Conservation Districts and Public Service Commission that will undertake permit reviews, oversee operations at drill sites, ensure proper remediation of farmland following drilling and undertake environmental enforcement activities. It is no secret that New York State is under considerable financial strain and staff at DEC and NYSDAM has been cut dramatically over the past decade.

As we move forward with drilling in the Marcellus Shale, the economic benefits of natural gas production will surely help to bring New York State back to a position of strength economically. It is critical, however, to invest in the proper staffing to ensure that drilling is done safely to protect human health and the environment. Clearly, the staffing levels at these agencies – especially in DEC’s Divisions of Mineral Resources and Water and NYSDAM – are pitifully low to ensure timely and aggressive scrutiny of drilling permit applications AND monitor activities in the field.

New York State’s agencies must vigorously “staff up” to ensure the natural gas drilling industry is developed in an environmentally responsible manner. Business development, protection of our considerable natural resources and defense of public health in the Marcellus Shale region must be uniformly achieved by the state.

Mitigating Potential Significant Impacts on Ecosystems and Wild

We believe that the final SGEIS should apply the same regulations to landowners with regard to threatened and endangered species that would apply to any other construction project. An investigation of a site for threatened and endangered species should be conducted using the Department’s current, and recently strengthened, regulatory process. Through this process the permit applicant will review available information from the New York State Natural Heritage Program for records of state or Federal threatened or endangered species within the project area or near vicinity. If records exist, they then will conduct a field survey to determine the presence or absence of the named species in the project area. If a named species is found at the proposed project site then appropriate steps must be taken to avoid negative impact. New York Farm Bureau is confident that the Department’s already strong regulatory requirements will prevent major impacts to these species in New York.

In addition, the dSGEIS states that the main reasons for a declining grassland bird population in New York State is modern agricultural harvesting methods and the encroachment of housing and support infrastructure. As a result, it must be pointed out that almost 80,000 natural wells have been drilled in the state over the years and drilling for natural gas is not listed as a contributing factor bird population decline.

Historically, drilling for natural gas has allowed farms to stay in business and expand their working acreage. This expansion of farm operations has helped to preserve grasslands that otherwise would have reverted ultimately into forests. Well pads and pipelines actually help create the environment for more and better habitat, not the opposite as suggested in the latest dSGEIS. Birds, deer and other forms of wildlife have flourished in the Alaskan National Wildlife Refuge, Trans-Alaskan Pipeline for example.

Of great concern is the proposed dSCEIS Best Management Practice (BMP) in Section 7.4 which would “Limit mowing to one cutting per year or less after the construction phase of well pads is completed. Mowing would not occur during the nesting season for grassland birds (April 23rd – August 15th).”

This particular provision would severely limit the ability of a farmer to produce enough hay and forage to feed his or her animals and/or make a living on the open market. It is imperative that farmers have at least three cuttings of hay per season and typically the best quality hay or forage comes before August 15th each year.

In addition, the BMP prohibiting construction and drilling activities on large patches of grassland habitat (greater than 30 acres) located in a Grassland Focus Area during the same time period, April 23rd – August 15th, would have a serious impact on animal habitat and farmland, as construction and drilling would then occur during the wettest months of the year. This could ultimately lead to agricultural land being taken out of production for longer periods of time and current and potential habitat being disrupted even further.

As a result, we strongly believe that Section 7.4 should be eliminated in total.

Community Character Mitigation Measures

A great number of farms in New York are not located in an Agricultural District. As a result, the proposed mitigation measures intended to protect agricultural land resources outlined in this section must go well beyond those resources located in a Agricultural District, as currently required in the dSCEIS.

New York Farm Bureau proposes to expand these mitigation measures to also include agricultural operations on properties with substantial concentrations of prime soils and/or soils of statewide importance. In addition, the measures should be expanded to farm properties enrolled in the state’s Agricultural Assessment Program.

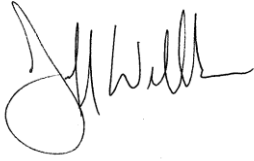
Interagency Coordination

It is also critical that the DEC require consultation with potentially impacted municipalities to ensure the disposal of return fluids from the hydraulic fracturing process and traffic impacts to road infrastructure are considered appropriately prior to permit approval. DEC should also ensure the proper disposal of drilling waste material to protect the environment and public health through coordination with the Departments of Transportation and Health.

It is our expectation that New York will capture and sustain the economic investment benefits provided by natural gas exploration for our farms and communities, while actively protecting the state’s environment and natural resources. Farm Bureau believes that we have the plentiful gas resources, emerging technologies, and strengthening regulatory safeguards to properly do so.

Thank you, again, for allowing New York Farm Bureau to offer these comments on the Draft Scope for the Supplemental Generic Environmental Impact Statement. Should you have any questions or concerns, please feel free to contact me at (518) 431-5618.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Williams". The signature is fluid and cursive, with a large initial "J" and "W".

Jeff Williams
Manger of Governmental Relations
Division of Public Policy
New York Farm Bureau