

# Testimony to the DEC at Oneonta December 2, 2008

Good afternoon. Thank you for coming to Oneonta. My name is Richard Downey and I represent the Unatego Area Landowners Association. As of today we are a group of about 70 landowners in the Otego/Unadilla area and still growing. Our mission is to negotiate a lease with a gas drilling company that is safe for the community and which respects our individual property rights. Given our mission, naturally our prejudice is toward gas drilling and production. However, we want that production done in as safe and responsible manner as possible and practical. That 's the reason we're testifying today..

Six months ago, the very concept of this meeting would have been unimaginable to most of us in this room. If you had told me I would be testifying before a DEC committee, that I would be calling strangers to warn them of soft talking landmen, that I'd be joining a group of neighbors to discuss gas leases, using terms like spud fees, shut-in royalties, pool unitizing under compulsory integration, well head prices, Pugh clauses, and well tract designations I'd be checking your pockets to see what you were smoking. And If you said Marcellus Shale, I'd have asked "Who?" instead of reminding you that the target formation in our area is the Utica formation.

Gas drilling caught this area unaware. We had no idea what was under our feet nor the intensity of the drilling companies to secure leases. It has been a sharp learning curve and I suspect the sweep of the gas industry into New York caught the Department of Environmental Conservation unaware as well. Back in August there was supposed to be a symposium right here at SUCO featuring the Department. The DEC didn't show. I applaud the person who made that decision. Just showing up and offering bromides wasn't going to cut it. The subsequent actions of the Department have been most encouraging.

The Department has issued a draft Supplement to the General Environmental Impact Statement. It is a 42 page paper which outline 62 areas of inquiry in categories from well

site operations to water withdrawal to final disposal. It considers the watershed area, the cumulative impacts, the effects on community character and the permit process with special emphasis on local government coordination. DEC Commissioner Peter Grannis addressed these concerns and presented the draft's scope in testimony before the State Assembly's Environmental Protection Committee. Review of this document is the reason we're here today. I hope that the presenters who speak today have read the document carefully and address their concerns to their perceptions of its weaknesses and strength. A careful reading should reveal that the Department has learned from the experiences in other states. With just this process of being thorough and proactive, I don't believe that we will have some of the negatives that have been experienced by New Mexico, Wyoming, and parts of Colorado.

In testimony today I just want to give you the facts I know. My readings might serve as background, but the following I know are facts:

FACT #1:

- The primary environmental concern of our membership is the effect of horizontal drilling on the quality of our water supply. Please understand that our membership wants to drill but, to a household, every member is concerned about the water. To that end we are requiring water testing in our leases, before and after completion of operations with remediation measures written in.

FADT #2:

- As an Association we've tried to educate ourselves to conditions at the drill site by making several trips to operating sites within a radius of 200 miles. A concern was the leakage of flowback from retention ponds. At a capped well in Oxford, we found the remnants of a retention pond liner sticking out of the ground. The pond had been bulldozed and graded with the liner left in place. Please observe the thickness of the liner. It is 10 mil high density polyethylene (HDPE). Also for your observation I have a piece of 40 mil HDPE. I'm presenting as evidence the main portion of that liner that we picked up. You'll notice the perforations where the fluid could have leaked. The State of Michigan requires 50 mil HDPE. We suggest the DEC consider a minimum of 40 mil.

### **FACT #3**

- Every spring the Susquehanna seems to flood. It is not the Nile or the Ganges but you don't have to go far out of town to see the cornfields under water. We suggest that there be no open retention ponds in the flood plain. We also ask that you rethink the 50 foot setback from streams and rivers. Neglect to have an adequate setback was a contributing factor in the pollution of a river in Colorado.

### **FACT #4**

- Finally, we have concerns about the final destination of of the fracking fluids that are carted away after fracing operations. We asked the Susquehanna River Basin Commission at their hearing in Binghamton on Oct. 22 about the adequacy of treatment plants in Pennsylvania to handle the New York wastes. Commission Member Michael Brownell was refreshingly candid about this matter. He said Pennsylvania was barely able to handle its own wastes, much less handle the anticipated wastes from New York. He said the SRBC would control growth through the permitting process. The driller must tell the Commission where it expects to dispose of its wastes before the permit is granted to withdraw the water necessary for the hydrofracing. Our question is this: who checks on the waste treatment plants? How do we know they are adequate to the job of processing the ever increasing volume of waste that the industry projects will be produced?

In conversation after the meeting, Commission Member Brownell suggested that the waste "log jam" would bring about industry solutions -portable centrifuges were mentioned- some are already in production at GE. We've seen other products on the internet -the NOMAD 2000 by a company named Aqua-Pure uses MVR evaporation But the question remains. Who is responsible for the nasty remains and how do they check the final disposition of toxic waste?

In summary, from what we've learned from talking to industry representatives, lawyers, government officials and others familiar with the industry, the DEC is our communities' first line of defense. Our leases may address our individual concerns but the DEC protects the entire community. There is a mantra out there that we keep hearing over and over. We've

got to get this right and we've got to get it right the first time. So, take your time and get it right. The gas isn't going anywhere. We fully support your efforts and look forward to your final report. Good luck and keep us informed.

A final word. This is out of the scope of these hearings and the decisions to be made are beyond the pay grade of anyone in this room, but please bring this message back to the home office. As I understand it, the DEC is the agency responsible for negotiating royalties for the mineral rights with private companies seeking extraction privileges. These royalties should be at market value, not the minimum allowed by law. The State is putting out to bid large parcels (20,00/30,000 acres). These parcels are highly desirable to the gas drilling companies because they are contiguous acres, relatively unrestricted, and immediately available. Given the fact that the market was 15% in the Hancock/Deposit area and higher in Pennsylvania, accepting 12 1/2 % minimum royalty seems to be leaving money on the table. In times like these I hope this hefty revenue stream for the State's treasury is not ignored.

Thank you.

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