

Tompkins County Council of Governments  
Comments submitted to the Department of Environmental Conservation on the  
draft Supplemental General Environmental Impact Statement (dSGEIS)  
(High-Volume Hydraulic Fracturing)

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Affiliation, if any \_\_\_\_\_

Deadline to submit comments to the DEC is Dec. 12<sup>th</sup>. Comments being included in the TCCOG packet to the DEC must be received by 5 p.m. on Dec. 5<sup>th</sup>. Comments can be delivered to the Legislature Office (320 N. Tioga Street, Ithaca) or by e-mail: [TCCOG@tomkins-co.org](mailto:TCCOG@tomkins-co.org)

The opposition to HVHF in NYS is not a lunatic fringe movement. It is a deeply felt, broad-based, grassroots initiative that involves all levels of NYS socio-economic strata. The negative environmental consequences of HVHF that are the understood targets for opposition can be endlessly argued away with issues such as individual property owner rights, development of domestic natural resources, and failing local economies, and as such, is easily regarded as a "wacko environmentalist" movement. But it is not. Here are two points to consider. First, ARTICLE IX, Section 2 of the NYS Constitution provides broad "home rule" authority for municipalities to adopt local laws that relate to the "property, affairs or government of the local government." The Statute of Local Governments confers to local governments the rights to comprehensively plan and adopt zoning regulations. Municipalities

(continued on separate sheet)

I understand that my comments will be submitted to the Department of Environmental Conservation as an official public comment in response to the NYS Department of Environmental Conservation's draft Supplemental General Environmental Impact Statement regulating the use of hydrofracturing in the natural gas drilling process.

Signature Edgar A. Brown  
(Please use back or additional sheets if necessary)

November 30, 2011

dSGEIS Comments  
New York State Department of Environmental Conservation  
625 Broadway  
Albany, NY 12233-6510

Dear Commissioner Martens:

I am opposed to High Volume Hydraulic Fracturing (HVHF) of the Marcellus and Utica shale formations in New York State for several reasons. This letter will address New York State's Home Rule Law.

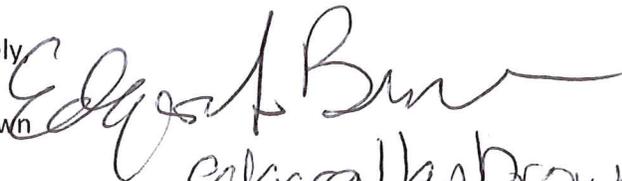
The draft SGEIS, Proposed HVHF Regulations and Proposed SPDES General Permit should confirm the authority of local towns and municipalities to prohibit the heavy industrialization and undesirable changes to a community resulting from natural gas drilling and mineral extraction activities and related activities by the use of local zoning laws and ordinances. There is no legal precedent allowing NYSDEC to supersede the rights of a local community to enact zoning laws and ordinances to protect its citizens from heavy industrialization and its consequences in their community.

To date, a number of communities in the Finger Lakes region have enacted moratoriums on HVHF drilling for natural gas or have created zoning ordinances prohibiting heavy industrialization within their communities. To avoid significant litigation for towns in the Finger Lakes region that are attempting to preserve the agricultural and tourism characteristics of their communities, NYSDEC in the SGEIS, the Proposed HVHF Regulations and Proposed SPDES General Permit should affirm the right of towns under NYS Home Rule to use zoning ordinances to prohibit undesirable activities in their local communities. Since NYSDEC has not quantified the short and long term social and economic impacts of HVHF drilling for natural gas on the established and growing agricultural and tourism economy of the Finger Lakes region, HVHF drilling for natural gas should not be permitted if such activities run counter to a town's comprehensive plan and/or zoning ordinances.

The town of South Bristol, where I live, is located at the southern end of Canandaigua Lake and includes significant agricultural and tourism industries that depend on the pristine quality of our land, air, and water. The South Bristol comprehensive plan is dedicated to preserving this rural character. HVHF drilling for natural gas will negatively impact the quality of life for thousands of people who depend on this rural character for their livelihoods.

Most sincerely,

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continued from EDGAR BROWN

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Municipalities have the legal authority to adopt zoning laws that specify land use, such as the prohibition of HOFF and related activities such as exploration, extraction, and production of natural gas or petroleum, underground storage of natural gas, and the waste disposal of natural gas drilling activities.

Second, ENVIRONMENTAL CONSERVATION Law 23-0901 allows for the controversial practice of compulsory integration, or forced pooling. It forces an unwilling property owner into a drilling spacing unit if the drilling company controls 60% or more of the drilling spacing unit acreage. This is a form of eminent domain and forces unwilling homeowners into accepting drilling activities and the industry's right to further industrialize private property. "...the updated statute's effects eliminates the homeowner's right to control the homestead, creates financial risk for the driller's acts by not expressly holding the driller responsible, and jeopardizes access to a mortgage or the ability to sell the property." SOURCE: Radow, E.N., "Homeowners and Gas Drilling Leases: Boom or Bust?", JOURNAL of the NYS Bar Association, NOV/DEC 2011, pg. 18

NYSDEC, as a regulatory agency, should affirm in the SGEIS the rights of local towns and municipalities to prohibit industrial activities like natural gas drilling within their communities under NYS's Home Rule Law.

Edgar Brown