



January 11, 2012

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

Subject: High Volume Hydraulic Fracturing Regulatory Proposals

Dear Commissioner Martens:

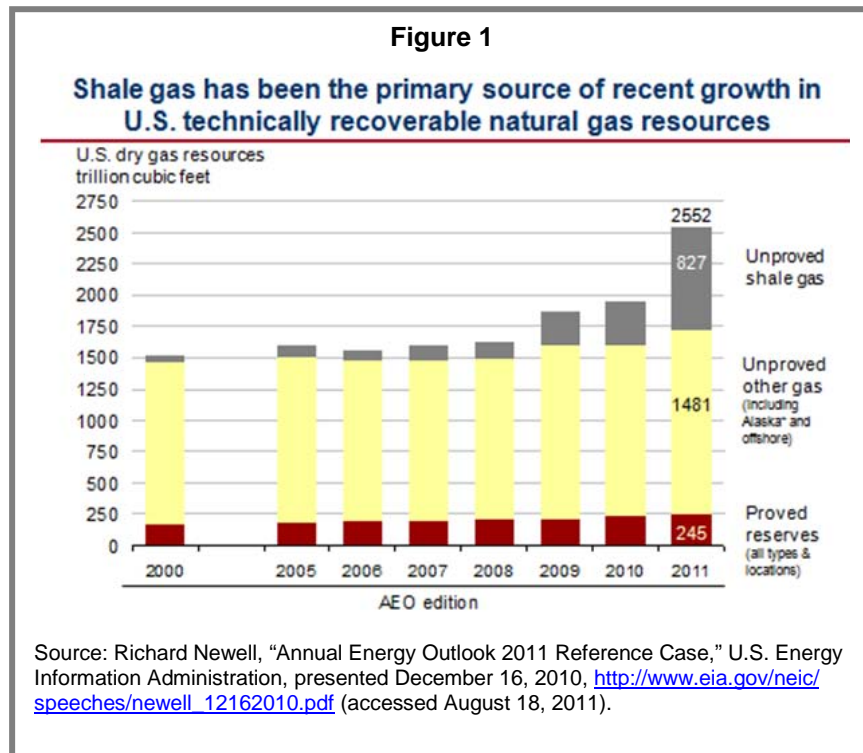
The Independent Oil and Gas Association of New York (“IOGA”) respectfully submits the following comments regarding the revised draft Supplemental Generic Environmental Impact Statement (“rdSCEIS”), the associated rule-making, and the parallel effort to expand the general permit program relative to stormwater discharges from natural gas drilling and completion activities. From an organizational standpoint, IOGA’s comments are set forth as attachments to this letter. The first tab is an analysis of Critical Issues to the Oil and Gas Industry in New York State. The second tab includes comments on the rdSCEIS. The third tab includes comments on the proposed regulations, including suggested textual revisions to those regulations. The last tab includes comments on the proposed General Permit for Stormwater Discharges from High-Volume Hydraulic Fracturing. The remainder of this letter sets forth important issues for New York State to consider as it finalizes these regulatory proposals if we are to achieve the shared objective of ensuring the environmentally responsible development of clean burning natural gas resources in New York State and the many economic, environmental and energy security benefits that would come from New York State taking full advantage of this extraordinary opportunity.

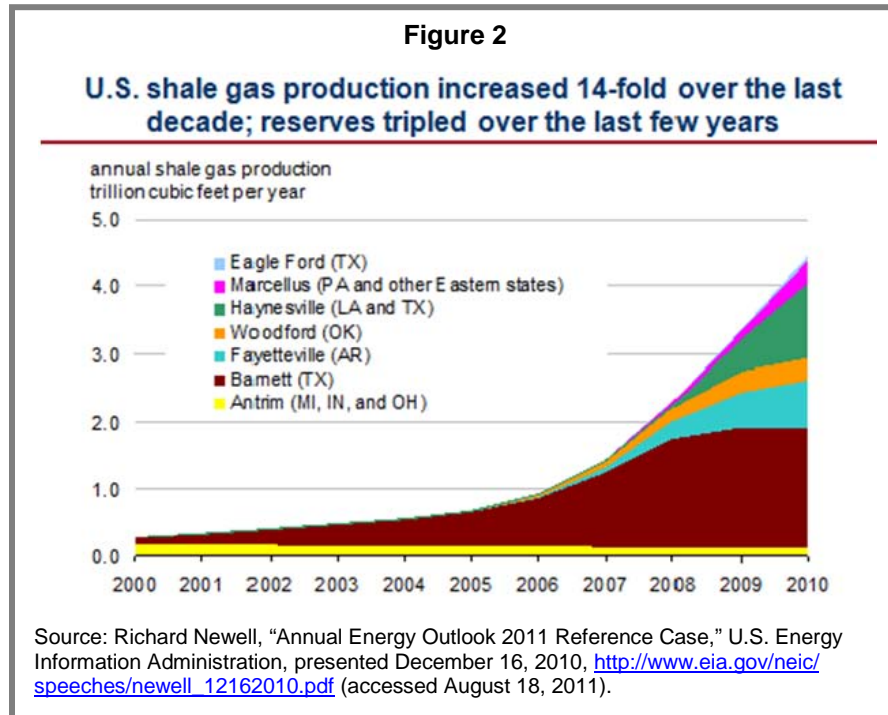
At the outset, it is important to stress that IOGA supports a high environmental bar in New York State. IOGA believes that industry’s outstanding track record in New York State coupled with the heightened scrutiny required by a modernized regulatory framework will lead to the safe and responsible development of valuable indigenous natural gas resources in New York State without compromising environmental quality. That being said, regulatory requirements must take care not to unduly burden the public and private sector with requirements that do not have any corresponding benefit to environmental quality or public safety. There are many such examples that are detailed in the attachments to this letter, which we urge the DEC to carefully consider as it finalizes these regulatory initiatives.

IOGA estimates that if every one of the innumerable mitigation measures required in the revised draft regulations is put into place that the cost to apply for and obtain permits in New York State will exceed those in neighboring states by as much as \$1 million per wellbore. While we fully share the DEC’s commitment to safe and responsible development, we feel that many of the requirements do not serve this objective, which will put New York at a significant competitive disadvantage. Our attached, detailed comments identify a number of proposed mitigation measures that are not currently used, not readily available and/or have no documented ability to deliver any additional needed layer of environmental protection. In short, in their current state, the DEC’s proposals to regulate high-volume hydraulic fracturing (“HVHF”) will put New York at a competitive disadvantage to neighboring states and cost New York State and its residents billions of dollars in lost economic opportunity. It is our distinct hope that the public comment process will lead to reasonable and balanced improvements to the regulatory proposals in order to ensure that New York can achieve its dual objectives—protecting natural resources while reaping the many benefits of responsible natural gas development in our state.

Shale Gas Economics

According to the U.S. Energy Information Administration (EIA), the majority of recent increases in natural gas production and potential are resulting from the emerging shale gas plays (see **Figures 1 and 2**).⁶





Currently (December 30, 2011), the Henry Hub average spot price for natural gas is \$3.043 per million British thermal units (MMBtu). The average spot price in 2012 is expected to be roughly similar. For the last several years, the market prices have been low and are continuing to track at low levels because of high rates of production.⁷ EIA's current outlook for natural gas prices does not rise above \$5.00/MMBtu until approximately 2020 (see AEO 2011 curve on **Figure 3**). Furthermore, for the past three years EIA's long-term projections have predicted lower and lower prices with each year's revisions (see AEO 2009, AEO 2010, and AEO 2011 curves on **Figure 3**).

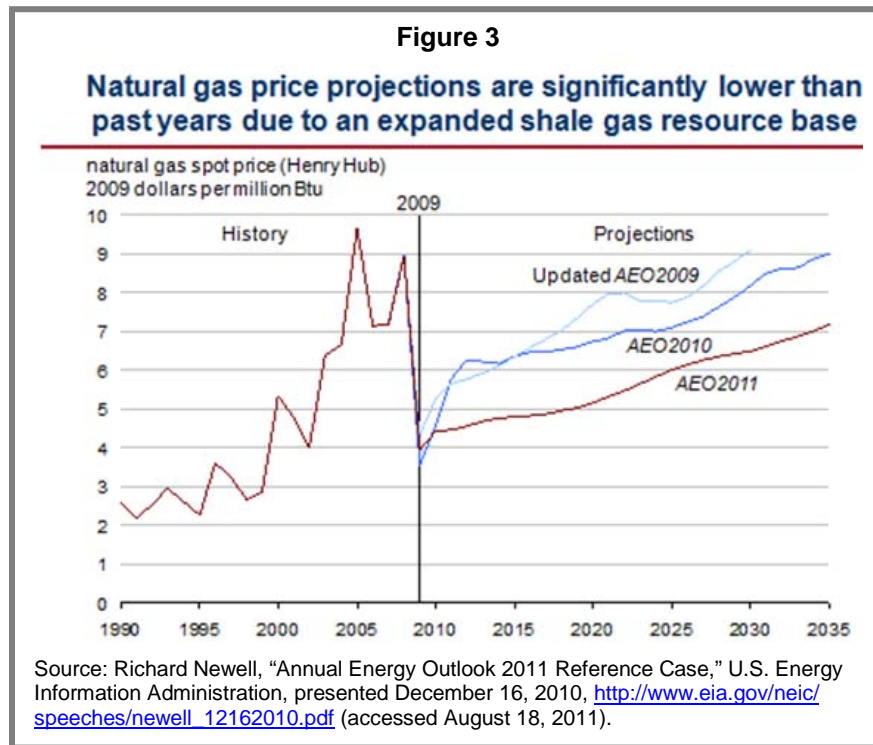


Figure 2 also demonstrates that there is significant unconventional gas drilling activity in a variety of plays under different state regulatory regimes. Without reasonable modifications to the proposed regulations, there is likely to be a significantly higher cost for operating in New York versus other shale gas states. This risks placing New York State at a competitive disadvantage, without—as noted above—delivering any meaningful additional safeguards. This would deny New York State the full economic and other benefits that natural gas abundance offers.

In the face of a challenging economic environment, operators will take into consideration where (geographically) their exploration budgets are best allocated. Shale plays such as the Bakken (oil) in Montana and North Dakota, the Eagle Ford Shale (condensate) in Texas, and the Utica Shale (oil) in Ohio, are rich in liquid hydrocarbons, which significantly improve the drilling economics for these plays in comparison to a dry gas play, such as is expected for the Marcellus in New York.

Compounding these economic realities is the fact that the productivity of the shale resources in New York remains unproven. There are many factors that can affect future development of the shale resources in New York, not the least of which are depth, thickness, organic content, and thermal maturity of the formation. In fact, many operators anticipate that the intersection of these critical geologic factors will be less favorable in New York than they are in neighboring Pennsylvania based upon core data and other geologic indicators.

Both for its environment and its economy, New York State has an extraordinary stake in getting the rules right. All parties share a powerful and compelling stake in ensuring the resource is developed responsibly and local natural resources are protected. And, if we do not embrace rules that allow for responsible, cost-effective development, the burden is shared broadly:

- For operators:
 - Leases would be lost at great cost because wells could not be drilled in time to satisfy lease requirements due to delays in finalizing the SGEIS.
 - Leases would be lost at great cost because of excessive setbacks and unnecessary prohibitions on drilling.
 - Leases would be lost because there will not be enough contiguous acreage that can be assembled to provide the necessary reserves for economically viable prospects.
- For mineral rights owners:
 - With no production from their mineral rights, owners would be denied their royalties, which is estimated to total more than \$19 billion in a four county area.
 - Many mineral rights owners would lose potential bonus payments because of the prohibitions and setbacks and the noncompetitive nature of New York State's regulatory environment, which is estimated to total more than \$2 billion in the same four county area.
- For business owners:
 - Hotels, restaurants and other 'main street' businesses would be unable to participate in the substantial economic gains witnessed in other shale-rich parts of the country. Some of the development areas are already economically challenged and in desperate need of these revenues.
 - Companies providing direct services to the gas industry would continue to be reluctant to establish offices in New York to support an industry with an uncertain local future, particularly when the opportunities are much more attractive and certain in neighboring states where drilling and production are already occurring in more favorable regulatory and economic climates.
- For local and state governments:
 - New York has already lost major economic opportunities as operators and service companies have already established permanent offices/facilities in the Northern Tier of Pennsylvania.
 - New York State would continue to lose income taxes on bonus and royalty payments for mineral rights and the substantial income that would come from direct and secondary expenditures associated with the companies and businesses providing services to natural gas industry.

- New York State and municipalities would lose revenue from bonus and royalty income associated with minerals leasing of state and municipal mineral rights.
- Municipalities and school districts would lose the tax revenues that result from the robust *ad valorem* tax system applicable to oil and gas development in New York State that would be lost at a time when it is most needed. Cumulatively, the lost income and ad valorem taxes are estimated to total more than \$5.8 billion in the same four county area.
- For the citizens of New York:
 - All citizens would lose the benefits of tax revenues that would be reinvested in state and community infrastructure and services.
 - All citizens would lose the benefits of participating in the potential economic growth that would come with gas development.
 - All citizens would lose the tax revenues from bonus payments, royalty payments and the sales of goods and services.
 - All citizens would lose the benefits of an expanded supply of a clean burning, indigenous resource to offset coal and foreign oil.

These are but a few of the examples of opportunities that have been and/or will be lost without an opportunity for timely and economically viable development of shale gas resources. Of course, the exact opposite could be true: all of these opportunities would open to New York at a critical time if a more appropriate and balanced path forward can be constructed through the remainder of this process. As New York State moves forward, we urge you to engage constructively with our community to reach a workable outcome that opens New York State up to the opportunities of natural gas development. We believe the ultimate objective should be to establish the nation's most effective rules that protect the environment while still promoting economic development, and we stand ready to work with New York State to achieve this goal.

Summary

IOPA shares DEC's desire for a well-informed regulatory framework that is simultaneously protective of the environment while encouraging the investment of capital and the creation of jobs and wealth. Many of the safeguards imposed by the rdSGEIS are appropriate and effective. However, without improvement, the more excessive, unproven and unnecessary limitations run the substantial risk of making the exploration and development of unconventional natural gas in New York non-economic. As a result, New York's regulations and requirements, if finalized without amendment, will be viewed by industry as too challenging and restrictive to allow for cost-competitive development in the current and forecast natural gas market.

The regulatory proposals currently being put forth by the DEC do not yet send the signal that New York State is receptive to working with all parties for the safe and responsible development of its natural resources or that New York is open for business. It is imperative that DEC effectively safeguard its environment and people. Likewise, it is imperative that New York State do so in a manner that allows New York to capitalize on the extraordinary opportunities

presented by the state's natural gas resources. And, it is imperative that New York demonstrate to the nation that its people do not have to choose between environmental protection and economic development. Through appropriate oversight and the strong commitment of the natural gas industry to responsible development, the people of New York can indeed have both.

The natural gas community stands ready to work with New York State in good faith to ensure that such a timely and appropriate balance is struck in the final standards.

Sincerely,

Independent Oil and Gas Association of New York,



Brad Gill Executive Director

cc: Andrew M. Cuomo, Governor (with only Tab 1 enclosed)
Joseph Martens, Commissioner (with only Tab 1 enclosed)
Marc Gerstman, Executive Deputy Commissioner (with only Tab 1 enclosed)
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