

April 11, 1983, at which time production was temporarily interrupted due to major repairs to a gas pipeline used to transport the gas produced and owned by the purchaser of the gas. *Id.* Production resumed by September 23, 1983. After a bifurcated trial, based upon the jury's finding that the lapse in production did not constitute a force majeure, the court declared the leases terminated. In reversing the trial court, the Texas Court of Appeals found that the court erred in instructing the jury that the defendant was required to exercise due diligence to avoid, remove, and overcome the effects of the force majeure, emphasizing that this "was not intended by the parties, given the language in their agreement." *Id.* at 284. In doing so, the court found only that the duration of the leases as stated in their habendum clauses may be affected by other provisions in the document, including a force majeure clause, emphasizing repeatedly, however, that the meaning and scope of such clause is "utterly dependent" upon the terms of the contract in which it appears. *See generally id.*

Defendants' reliance upon *Frost National Bank v. Matthews*, 713 S.W.2d 365 (Tex. Ct. App. 1986) is equally misplaced and somewhat curious. There, the trial court, *inter alia*, granted summary judgment terminating the plaintiff's oil and gas lease, which had extended beyond its

primary term. The gas producing wells on the defendant's property were shut-in pursuant to an order of the Texas Railroad Commission. During the period of the shut-in, the plaintiff made royalty payments – even though apparently not required to do so under the agreement – and production of gas subsequently resumed. On appeal, the Texas Court of Appeals found that the order of the railroad commission fell within the scope of the force majeure clause of the lease, and that the lease should not have been terminated, noting also that the plaintiff made all of the required shut-in royalty payments. *Id.* at 368. Nothing in the court's decision in that case suggests that the force majeure clause in that instance triggered the secondary term. To the contrary, the facts show that the lease at issue had entered the secondary term even before the force majeure occurred. Similarly, the court's observation that the shut-in royalty payments did not appear necessary to avoid termination of the lease, which was extended under the force majeure clause, is inapposite to the issue here presented.

The third case relied upon by defendants, *Hunter Co. v. Vaughn*, 46 So. 2d 735 (La. 1950), similarly lends no support to their position. In *Hunter*, the plaintiff brought an action to cancel an oil, gas, and mineral lease based upon the defendants' alleged failure to drill a well on the

leased premises within the primary term. The defendants asserted that they were prevented from drilling upon or producing from the property by a force majeure. The plaintiff appealed after a trial ended in defendants' favor. The appellate court found that the force majeure clause plainly covered the order issued by the commissioner of conservation, which prevented the defendants from drilling or producing. Significantly, the court in *Hunter* described the relevant provisions at issue as follows:

if [the] lessee is prevented from drilling or producing any well by reason of *force majeure*, lessee would be relieved of all obligations to drill on the leased premises and the lease would not be subject to cancellation in such event. Paragraph 12(c) also provide[d] that if after the expiration of the primary term and while the lease is in force, lessee could not maintain the same in effect because prevented by force majeure, then the lease would nevertheless continue but lessee should pay to the owners, or to the credit of the owners in the depository bank, as royalty an amount equal to \$1.00 per year for each acre retained thereunder during the period the lease was so continued in effect after the primary term.

*Id.* at 736. In other words, in contrast to the force majeure clause in the instant action, the specific force majeure provision at issue in *Hunter* expressly contemplated that the lease would continue beyond the primary term in the event of a force majeure.

In sum, defendants have cited no authority or contractual provision supporting their constrained construction of the terms of the leases in

question. In view of the foregoing, the court rejects defendants' contention that the force majeure, which occurred during the leases' primary terms, catapulted the parties to those contracts into the secondary term.<sup>15</sup>

## 2. Notice of Default

Alternatively, relying on paragraph 14 of the leases, the defendants urge the court to deny plaintiffs' motion on the ground that plaintiffs did not provide notice of default. At first blush, this position is facially appealing.

Paragraph 14 of the leases states that "[n]o default shall be declared

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<sup>15</sup> It is also worth noting that some courts have distinguished between occurrences of limiting conditions in the primary term and those that happen in the secondary lease terms, reasoning that,

[o]ccurrences of limiting conditions in the secondary lease term are treated differently. The habendum clause enumerates the conditions of continuation of the lease from the primary fixed term into a secondary term of indefinite duration. It directs continuation of the lease so long as production is maintained for the mutual benefit of the lessee and lessor. No automatic termination of the lessee's estate can be tolerated at this stage in the life of the lease, because the lessee has proved a valuable asset and has established a right to develop that asset. The interest the lessee has, after drilling and proving hydrocarbons, can be likened to a vested estate, the loss of which can only be effected through an action for forfeiture. Consequently, at law, the lessee in the secondary term must be given a reasonable opportunity to develop the asset without unreasonable fear of forfeiture.

*Danne*, 883 P.2d at 214. That same concern does not exist here where defendants never conducted drilling operations on the property, and the leases therefore remained in the primary term.

against the Lessee for failure to make payment or perform any conditions provided for herein unless the Lessee shall refuse or neglect to pay or perform the same for thirty (30) days after having received written notice from Lessor.” Hennessey Decl. (Dkt. No. 31-4) Exh. A at ¶ 14. On its face, the language of this provision may appear ambiguous or contradictory in light of the terms of the delay rental clause stating that the lease will “become null and void and all rights hereunder shall cease and terminate” unless the lessee shall pay delay rentals. See *id.* at ¶ 6. When reading the agreements as whole in the context in which they were made and avoiding any interpretation that would render any individual clause superfluous, as the court must, *Law Debenture Trust*, 595 F.3d at 468, the two provisions can be reconciled.

The overarching principle guiding the court’s interpretation of oil and gas leases is one that defendants do not dispute; in general, “unless” leases terminate automatically. *Rice*, 766 P.2d at 159; *Phyfer*, 884 F.2d at 238; *Petroleum Engineers Producing Corp.*, 350 P.2d at 604; *Phillips*, 182 F.2d at 125. “Such [leases] do not obligate the lessee to either drill or pay delay rentals, but if he does neither, the lease terminates without any action being required by the lessor or the lessee. In other words, its

termination is automatic and self-operating.” *Valentine Oil*, 59 N.W.2d at 159. As a result, if by their very terms the leases in question terminate when the lessee fails to pay delay rentals, to require any further action on the part of the lessor would seemingly render the language in the “unless” clause, to the effect that the leases “become null and void and all rights hereunder shall cease and terminate”, superfluous, and would likewise be inconsistent with the notion of automatic termination to the extent that it would allow the lessee an opportunity to cure the purported default.

On the other hand, the notice of default provision can be given full effect and interpreted consistently with the “unless” clause by limiting its application to the lessee’s failure to perform other conditions set forth in the agreements, such as the duty to make royalty payments (§ 4), gas storage payments (§ 9), and shut-in royalty payments (§ 11). Indeed, such a construction of the leases clearly would effectuate the apparent intent of the parties in entering into the leases, without doing violence to any other provision of the leases, or rendering any portion of the default provision meaningless. Pursuant to the “unless” clause, the defendants were not required, but had the option or privilege, to pay delay rentals, without any liability for the failure to do so. *See Williams v. Ware*, 31 P.2d 567, 569

(Okla. 1934). Simply stated, it was not intended that defendants would be contractually obligated to make delay rental payments, or that plaintiffs would be entitled to declare the agreement in default, or in breach, as a result of their failure to do so.<sup>16</sup>

In this context, applying the governing principles of contract interpretation, I have concluded that when read as a whole, the leases automatically terminated upon defendants' failure to make delay rental payments and did not require that plaintiffs give notice of default, a conclusion that appears to be consistent with the weight of authority on this issue. See, e.g., *Richfield Oil Corp. v. Bloomfield*, 229 P.2d 838 (Ca. Dist. Ct. App. 1951) (finding that the "unless" lease retains its character even where the lease contains a provision requiring notice of default upon breach of any term); accord *Woodside v. Lee*, 81 N.W.2d 745 (N.D. 1957); *Fremont Lumber Co. v. Starrell Petroleum Co.*, 364 P.2d 773 (Or. 1981); *Clovis v. Carson Oil & Gas Co.*, 11 F. Supp. 797 (E.D. Mich. 1935); see

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<sup>16</sup> It has been observed that,

[t]he lessee who has this benefit of automatic termination of the lease should have no standing to claim relief from the automatic termination when he is responsible for a failure to make timely payment of a rental.

*Rice*, 766 P.2d at 159 (quoting 3 Williams, OIL AND GAS LAW § 606.2, p. 160 (1986)).

also Nancy Saint-Paul, SUMMERS OIL AND GAS § 20.3 (citing cases); *Waddle v. Lucky Strike Oil Co., Inc.*, 551 S.W.2d 323 (Tenn. 1977) (refusing to apply a no termination or forfeiture clause for failure to pay to an “unless” clause in an oil and gas lease). This interpretation of the leases gives full effect to all of the provisions at issue, and it is consistent with the intent of the parties as well as the early expressed principle of law in New York that “[w]hile, ordinarily, forfeiture or abandonment is not looked upon with favor, that rule is not applicable to ... oil leases.” *Conkling*, 127 A.D. 761, 112 N.Y.S. at 17.

#### IV. SUMMARY AND CONCLUSION

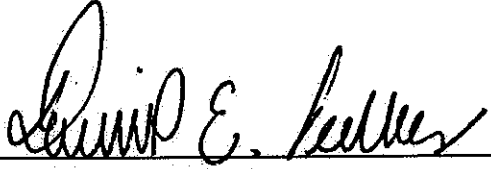
The state’s moratorium on horizontal high-volume hydro-fracking for recovery of gas from the Marcellus Shale formation, assuming that it qualifies as a force majeure, has the effect of extending the primary term of each of the plaintiff’s leases. That event, however, does not effectuate a transition into the secondary term of the leases, since drilling has not yet occurred and yielded gas or oil in paying quantities on any of the lessors’ properties, and there is no lease provision which suggests that the existence of a force majeure results in a shift into the secondary terms of the leases.

Turning to the second issue raised, I find that the existence of a force majeure and the corresponding extension of the primary terms of plaintiffs' leases does not have the effect of depriving the lessors of the right to receive delay rental payments to which they are entitled under the leases for so long as drilling is postponed. And, since defendants did not make the required delay payments in 2009, during the primary terms of the leases, the leases at that point became automatically null and void notwithstanding the notice and default provision of the leases, a provision that is inapplicable to the non-payment of delay rentals under the "unless" leases at issue.

Based upon the foregoing, it is therefore hereby

ORDERED that plaintiffs' summary judgment motion (Dkt. No. 31) is GRANTED, and defendants' cross-motion for summary judgment (Dkt. No. 33) is DENIED, and the clerk is directed to enter judgment in plaintiffs' favor declaring that by virtue of defendants' failure to make the required delay rental payments beginning in 2009 the leases between the parties have become null and void and are no longer in effect.

Dated: March 22, 2011  
Syracuse, NY

  
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David E. Peebles  
U.S. Magistrate Judge



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## Hydraulic Fracturing Background Information

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Hydraulic fracturing (HF) is a well stimulation process used to maximize the extraction of underground resources; including oil, natural gas, geothermal energy, and even water. The oil and gas industry uses HF to enhance subsurface fracture systems to allow oil or natural gas to move more freely from the rock pores to production wells that bring the oil or gas to the surface.

The process of hydraulic fracturing begins with building the necessary site infrastructure including well construction. Production wells may be drilled in the vertical direction only or paired with horizontal or directional sections. Vertical well sections may be drilled hundreds to thousands of feet below the land surface and lateral sections may extend 1000 to 6000 feet away from the well.

Fluids, commonly made up of water and chemical additives, are pumped into a geologic formation at high pressure during hydraulic fracturing. When the pressure exceeds the rock strength, the fluids open or enlarge fractures that can extend several hundred feet away from the well. After the fractures are created, a propping agent is pumped into the fractures to keep them from closing when the pumping pressure is released. After fracturing is completed, the internal pressure of the geologic formation cause the injected fracturing fluids to rise to the surface where it may be stored in tanks or pits prior to disposal or recycling. Recovered fracturing fluids are referred to as flowback. Disposal options for flowback include discharge into surface water or underground injection.

Surface water discharges of the flowback are regulated by the National Pollutant Discharge Elimination System (NPDES) program, which requires flowback to be treated prior to discharge into surface water or underground injection prior to discharge.

Treatment is typically performed by wastewater treatment facilities. Underground injection of flowback is regulated by either EPA Underground Injection Control (UIC) program or a state with primary UIC enforcement authority. Injection of natural gas production wastes would be considered a Class II injection well.

### EPA Hydraulic Fracturing of Coalbed Methane Reservoirs Study (2004)

Prior to 1997, EPA considered hydraulic fracturing to be a well stimulation technique associated with production and therefore not subject to UIC. The Legal Environmental Assistance Foundation (LEAF) challenged EPA's opinion on hydraulic fracturing regulation in 1994, and the 11th Circuit Court of Appeals ruled that hydraulic fracturing of coalbed methane wells was indeed subject to the SDWA and UIC regulations under Alabama's UIC program in 1997.

EPA began a study on hydraulic fracturing used in coalbed methane reservoirs in 1999 to evaluate the potential risks to USDWs. The study focused on coalbed methane reservoirs because they are typically closer to the surface and in greater proximity to USDWs compared to conventional gas reservoirs. EPA published the coalbed methane study, entitled Evaluation of Impacts to Underground Sources of Drinking Water by Hydraulic Fracturing of Coalbed Methane Reservoirs (EPA 816-R-04-003) in 2004. The published study received both internal and external peer review, and public comment on study design and incident information. EPA concluded that there was little to no risk of fracturing fluid contaminating underground sources of drinking water during hydraulic fracturing of coalbed methane production wells. EPA retained the right, however, to conduct additional studies in the future. As a precautionary measure, the Agency also entered into a Memorandum of Agreement in 2003 with companies that conduct hydraulic fracturing of CBM wells to eliminate use of diesel fuel in fracturing fluids.

- [Evaluation of Impacts to Underground Sources of Drinking Water by Hydraulic Fracturing of Coalbed Methane Reservoirs Study \(2004\)](#)

The Energy Policy Act passed by Congress in 2005 amended SDWA to exclude hydraulic fracturing fluids (except diesel fuel) related to energy production from regulation under the UIC program. States may choose to regulate hydraulic fracturing, however.

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formation contains between 168 trillion to 516 trillion cubic feet of natural gas throughout its entire extent. It is not yet known how much gas will be commercially recoverable from the Marcellus in New York. To put this into context, New York State uses about 1.1 trillion cubic feet of natural gas a year.

### Why all the interest in the Marcellus Shale now?

Although geologists have long known about the natural gas resources of the Marcellus Shale formation, the depth and tightness of the shale made gas exploration and extraction very difficult and expensive. Interest has increased significantly of late due to:

- recent enhancements to gas well development technology, specifically horizontal drilling and hydraulic fracturing,
- the proximity of high natural gas demand markets in New York, New Jersey and New England and
- the construction of the Millennium Pipeline through the Southern Tier.

Questions have been raised about possible environmental and community impacts. Most concerns are related to water use and management and the composition of the fluids used for fracturing the shale. These are discussed below.

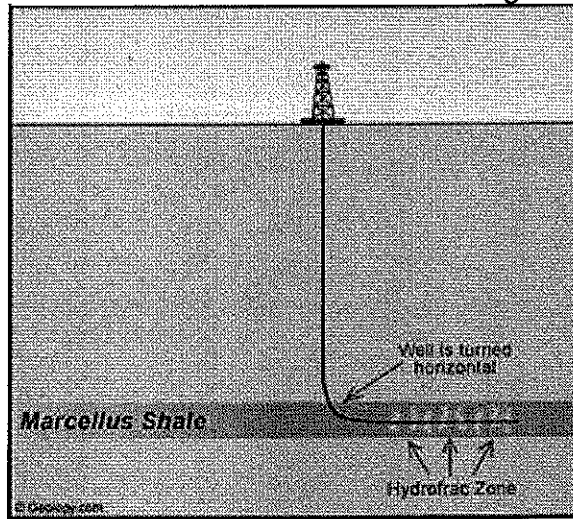
Landowners have been approached by energy and land management companies about leasing their land. Although leasing is not regulated by the Department, information about leasing gas well rights is available on our website.

### What are horizontal drilling and hydraulic fracturing?

Horizontal drilling and hydraulic fracturing are legal and common in New York. The majority of wells in the Marcellus Shale will be hydraulically fractured.

**Horizontal drilling** has been used in New York since the

1980s. A "horizontal well" is first drilled down vertically to a depth above the target gas-bearing rock formation.



*A horizontal gas well. Image courtesy Brad Cole, Geology.com*

Special tools are then used to curve the well so that the hole is drilled horizontally within the gas-bearing rock for up to several thousand feet. Ten percent of DEC's 2007 well drilling permits were for directional and horizontal wells.

Except for special tools used underground, horizontal drilling is performed using the same equipment and technology as vertical drilling, with the same protocols in place for aquifer protection, fluid containment and waste handling.

**Benefits of horizontal drilling:**

- Maximum contact with the gas-bearing rock formation, so that more gas can be produced from a single well.
- Multiple horizontal wells can be drilled laterally from the same surface location, so that less of the ground surface is disturbed compared to using vertical wells to produce the same amount of gas.

**Hydraulic fracturing** consists of pumping a fluid and a propping material such as sand down the well under high pressure to create fractures in the gas-bearing rock. The propping material (usually referred to as a "proppant") holds the fractures open, allowing more gas to flow into the well than would naturally. No blast or explosion is created by the hydraulic fracturing process, which has been used in New York since at least the 1950s. Hydraulic

fracturing technology is especially helpful for "tight" rocks like shale.

#### **Quantity of water needed for hydraulic fracturing**

Hydraulic fracturing of the Marcellus Shale will require large volumes of water to fracture the rocks and produce the desired amount of gas. Each well may use more than one million gallons of water.

**The hydraulic fracturing fluid** typically contains compounds added to the water to make the hydraulic fracturing process more effective. These may include a friction reducer, a biocide to prevent the growth of bacteria that would damage the well piping or clog the fractures, a gel to carry the proppant into the fractures, and various other agents to make sure the proppant stays in the fractures and to prevent corrosion of the pipes in the well. The Department is assessing the chemical makeup of these additives and will ensure that all necessary safeguards and best practices are followed.

More information, including general information about fracturing fluid additives, is available in the report Hydraulic Fracturing Considerations for Natural Gas Wells in the Marcellus Shale released in September 2008 at the Ground Water Protection Council's Annual Forum.

#### **Disposal of hydraulic fracturing fluid**

Fluid removed from the well is required by law to be handled, transported and disposed of properly.

**Did New York recently approve a new type of drilling?**

No. In July 2008 Governor David A. Paterson approved a bill that extends uniform gas well spacing rules and establishes boundary setbacks to protect the interests of adjacent property owners. This new law has been widely misreported as allowing a new type of drilling, or somehow making it easier to get the environmental permits necessary for drilling. In fact, the new law only addresses well spacing. It authorizes nothing new nor in any way does it reduce the environmental review needed before a drilling permit is issued.

## **Protecting the Environment, Water**

## **Resources and Public Water Supplies**

### **DEC's Regulatory Program and Permitting Process**

New York State's well-established regulatory program oversees drilling. DEC's Mineral Resources staff - averaging 22 years of experience per person - conducts a rigorous permitting process which protects the environment and landowner before the permit is issued, during drilling, when the well is plugged and when the site is restored. This includes:

- Review of each drilling application for environmental compliance before any drilling, which involves:
  - Screening of the proposed well location to identify any environmental sensitivities, and
  - Review of the proposed well design is to ensure that it is protective. (See Related Links at right.) This ground water protection diagram (PDF, 204 KB) illustrates how the required well casing and cement protects fresh water aquifers;
- On-site inspection of actual drilling operations; and
- Enforcement of strict restoration rules when drilling is completed.

Municipal water wells are protected by the requirement for a full environmental assessment if a proposed oil or gas well is within 2,000 feet of the municipal well and a supplemental environmental impact statement if within 1,000 feet. All groundwater, including private wells, is protected by strict construction requirements for oil and gas wells.

As a result of New York's rigorous regulatory process, the types of problems reported to have occurred in states without such strong environmental laws and rigorous regulations haven't happened here. No known instances of groundwater contamination have occurred from previous horizontal drilling or hydraulic fracturing projects in New York State.

### **The Environmental Impact Review Process**



*An active natural gas well in Chemung County after the drilling and completion work is done and the site has been reclaimed*

A Generic Environmental Impact Statement (GEIS) provides a comprehensive review of the potential environmental impacts of oil and gas drilling and production and how they are mitigated. The Department is preparing a supplemental GEIS to assess issues unique to horizontal drilling and high-volume hydraulic fracturing of the Marcellus and other low permeability reservoirs. Governor Paterson directed DEC to supplement the GEIS when he signed the spacing bill.

While the process of preparing the Supplemental GEIS is ongoing, any entity that applies for a drilling permit for horizontal drilling in the Marcellus Shale and opts to proceed with its permit application will be required to undertake an individual, site-specific environmental review. That review must take into account the same issues being considered in the Supplemental GEIS process and must be consistent with the requirements of the State Environmental Quality Review Act and the state Environmental Conservation Law.

Use our on-line data base to find information about existing wells and permit applications.

#### **The Final Scope**

The final scope for the Supplemental GEIS was released on February 6, 2009.

#### **The Draft SGEIS**

The Draft Supplemental GEIS was released on September 30, 2009 and the public comment period ended on December 31, 2009.

### **Other Agencies with Jurisdiction**

The Susquehanna River Basin Commission (SRBC) and the Delaware River Basin Commission (DRBC) regulate the rate and volume of water withdrawals within their respective basins. These regional water authorities must review and approve water used for hydraulic fracturing projects in the Marcellus Shale. DEC has representatives on both Commissions and also regularly communicates with the New York City Department of Environmental Protection regarding the city's upstate water reservoirs.

### **Executive Order No. 41: Requiring Further Environmental Review**

WHEREAS, the 2009 New York State Energy Plan supports the development of in-State energy resources, including natural gas, to achieve the Plan's multiple public policy objectives; and

WHEREAS, low-volume hydraulic fracturing, or conventional fracking, has been used successfully and safely in New York State for many years to extract natural gas consistent with the Generic Environmental Impact Statement (GEIS) for Oil, Gas and Solution Mining Regulatory Program promulgated by the New York State Department of Environmental Conservation (Department) in 1992; and

WHEREAS, new technologies have emerged, and are being deployed in other states, to extract natural gas more efficiently through a process known as high-volume hydraulic fracturing combined with horizontal drilling; and

WHEREAS, there is a need for further study of this new technology prior to deployment in New York State; and

WHEREAS, in 2008, I directed the Commissioner of Environmental Conservation to initiate a formal public process to update the 1992 GEIS to ensure that any new technologies deployed in New York State are first thoroughly analyzed and regulated to ensure that all

environmental and public health impacts are mitigated or avoided; and

WHEREAS, the Department issued a draft scope for an updated GEIS on October 6, 2008, held public meetings in the Marcellus shale region, received more than 3,000 written comments, and issued a final scope for the Supplemental Generic Environmental Impact Statement (SGEIS) on February 6, 2009. The Department released the Draft SGEIS for public review and comment on September 30, 2009, held four public hearings in the region and New York City, and received more than 13,000 written comments during a public comment period that closed December 31, 2009; and

WHEREAS, tens of thousands of citizens, landowners, local governments, large and small businesses, non-governmental organizations, and other stakeholders have expressed their heartfelt support for or opposition to the new technology, but most agree that an objective, science-based analysis is the best approach to setting new policy.

NOW, THEREFORE, I, David A. Paterson, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and laws of the State of New York, do hereby order as follows:

1. The Department shall complete its review of the public comments, make such revisions to the Draft SGEIS that are necessary to analyze comprehensively the environmental impacts associated with high-volume hydraulic fracturing combined with horizontal drilling, ensure that such impacts are appropriately avoided or mitigated consistent with the State Environmental Quality Review Act (SEQRA), other provisions of the Environmental Conservation Law and other laws, and ensures that adequate regulatory measures are identified to protect public health and the environment; and
2. On or about June 1, 2011, the Department shall publish a Revised Draft SGEIS, accept public comment on the revisions for a period of not less than thirty days, and may schedule public hearings on such revisions to be conducted in the Marcellus shale region

3. Recognizing that, pursuant to SEQRA, no permits may be issued prior to the completion of a Final SGEIS, the Department, subsequent to the conclusion of the public comment period, shall report to the Governor on the status of the Final SGEIS and the regulatory conditions that are necessary to include in oil and gas well permits to protect public health and the environment.

G I V E N under my hand and the Privy Seal of the State in the City of Albany this thirteenth day of December in the year two thousand ten.

BY THE GOVERNOR

Secretary to the Governor

## **More about Marcellus Shale :**

Large Map of Marcellus Shale Formation - A map showing the extent of the Marcellus Shale formation in New York State and recently drilled wells which produced natural gas from this formation in 2007

Commissioner's Testimony at NYS Assembly Hearing on Oil and Gas Drilling for DSGEIS - Commissioners Testimony at NYS Assembly Hearing on Oil and Gas Drilling for the Draft SGEIS.

Commissioner's Testimony at NYS Assembly Hearing on Oil and Gas Drilling October 15, 2008 - Commissioner Grannis assured full environmental review of proposals to use horizontal drilling and hydraulic fracturing to develop natural gas reserves in the Marcellus Shale and other shale formations.

Commissioner's Testimony at NYC Council Hearing on Natural Gas Drilling in the New York City Drinking Water Watershed - Commissioner Grannis assured full assessment of any future applications to drill for natural gas in the watershed.

Commissioner's Editorial on Marcellus Shale - An editorial from DEC Commissioner Pete Grannis concerning natural gas exploration and drilling in Marcellus Shale.  
Effect of Federal Safe Drinking Water Act, Clean Water

Act and Emergency Planning and Community Right-to-Know Act - Certain exemptions or exclusions in these federal laws do not hinder the Department from regulating any aspect of Marcellus Shale development or from requiring that information about the composition of hydraulic fracturing fluid be submitted to the Department

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