



May 22, 2015

Commissioner Joseph Martens
New York State Department of Environmental Conservation
625 Broadway
Albany, NY 12233-6510

Re: Final Supplemental Generic Environmental Impact Statement (FSGEIS) on High Volume Hydraulic Fracturing (HVHF)

Dear Commissioner Martens:

Earthworks commends the Department of Environmental Conservation for taking the No Action Alternative, which according to the FSGEIS means the “denial of permits to drill where high-volume hydraulic fracturing is proposed and a prohibition on development of the Marcellus Shale and other low-permeability reservoirs using this method.”

We particularly appreciate DEC’s foresight in recognizing that this position would eliminate the inevitable environmental risks of HVHF activities, as well as a significant and costly burden on the Department. Several years into the shale gas and oil boom, experiences in states nationwide underscore that both established mitigation measures and oversight and enforcement capacities can quickly be overwhelmed by the scale and impacts of development activities.

We also applaud DEC for concluding that allowing HVHF to go forward would contradict the essential goals of New York’s Energy Plan to reduce greenhouse gas emissions, move away from fossil fuels, and expand clean energy sources. New York is a leader in the renewable energy transition, and should remain so going forward.

For the last several years, Earthworks and many other organizations have asked DEC to consider the cumulative impacts of HVHF. We therefore strongly support the approach taken in Chapter 6 of the FSGEIS to assess potential environmental impact with regard to direct and indirect changes over time (e.g., on water quality and wildlife or resulting from waste generation).

Together with partner organizations, Earthworks encourages DEC to clarify in the Final Findings Statement that:

1. The adoption of the No Action Alternative means that any reconsideration of HVHF by future administrations would, as a matter of law, require a new process under the State Environmental Quality Review Act (SEQRA), taking into account the information and mitigations contained in the FSGEIS issued in 2015.

2. The water use threshold for HVHF established in the 2009 draft SGEIS would also apply to the 2015 FSGEIS, i.e., that well permit applications would be considered to be high-volume if they propose to use between 80,001 and 299,999 gallons, as well as over 300,000 gallons. This would avoid confusion with regard to permit applications and fill a regulatory gap, while also providing additional protection for water resources under SEQRA.

In addition, Earthworks requests that DEC takes steps to strengthen New York's oversight of oil and gas waste. As DEC recognizes in the FSGEIS, there is a strong potential for pollution from oil and gas waste. Since some of the proposed changes (such as a tracking system) would only have applied to HVHF, the state currently remains with regulations dating back decades. In the meantime, New York continues to produce waste from conventional drilling and New York landfills increasingly accept shale gas waste from other states—waste that in many instances would likely qualify as hazardous. (Please see our comprehensive research report on these concerns, *Wasting Away: four states' failure to manage gas and oil field waste from the Marcellus and Utica Shale*, at <http://wastingaway.earthworksaction.org>.)

Thank you for the Department's hard work, consideration of science and the precautionary principle, and commitment to protecting New York's water, air, land, and communities.

Sincerely,



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