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ATLANTIC CHAPTER

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

IN THE MATTER OF THE APPLICATION, PUBLIC LEGISLATIVE HEARING
AND ISSUES COFERENCE OF:
EAST RESOURCES, INC., 301 Brush Creek Road, Warrendale, Pennsylvania 15086.

Project Number: DEC Project Number DMN 08-V-04.

SIERRA CLUB ATLANTIC CHAPTER'S PETITION FOR PARTY STATUS

July 8, 2008

James T. McClymonds
Chief Administrative Law Judge
New York State Department of Environmental Conservation
Office of Hearings and Mediation Services
625 Broadway Avenue
Albany, New York
12233-1550

Dear Mr. McClymonds,

The Sierra Club Atlantic Chapter formally requests full party status in the application of EAST RESOURCES, INC (DEC Project Number DMN 08-V-04) in accordance with 6NYCRR 624.5(b)(1).

(i) Identity of party and Representatives: Sierra Club Atlantic Chapter is a New York State based organization of 42,000 members, many who live in Steuben and Allegany counties, committed to environmental protection and enjoyment. Our Chapter representatives for these proceedings:

Scott Lauffer
513 Pleasant Hill Road
Port Crane, NY 13833
(607) 341-3746

Roger Downs
Sierra Club Atlantic Chapter
353 Hamilton Street
Albany, NY 12210
(518)-426-9144

(ii) Sierra Club Atlantic Chapter's Environmental Interest in this Proceeding

EAST RESOURCES, INC proposes to produce oil and associated natural gas from the Fulmer Valley sandstone in the Whitesville Field. The area proposed for drilling is approximately 20,000 acres in size, including approximately 440 acres in the southeast corner of the Town of Willing, Allegany County, 7,880 acres in the southern portion of the Town of Independence, Allegany County, and 11,720 acres in the southwest portion of the Town of West Union, Steuben County.

Wells will be developed on leasehold acreage within 501 spacing units in the Whitesville Field, using a grid pattern of 40-acre spacing units. Wells will be located a minimum of 100 feet from a unit boundary and 350 feet between wells.

In addition, applicant proposes to establish a maximum gas-oil ratio of 165,000 cubic feet of gas for each barrel of oil produced from the Whitesville Field.

The Sierra Club Atlantic Chapter has seen no justification for moving these spacing requirements, which traditionally have been 660 feet from a unit boundary, now reduced to 100 feet. This proposed spacing suggests an extreme density of about 10 wells per 40 acres (4 acres per well), which comes with concentrated environmental impacts. We perceive that the reduced setback will increase the conflict with the adjoining community, as condensed air emissions, noise, traffic, and water degradation impact local infrastructure and natural resources.

In addition, we believe that EAST RESOURCES, INC fully intends to extract natural gas from Marcellus Shale after it has exhausted the Fullmer Valley Sandstone Formations. We are concerned that the reduced spacing requirement and the increased density of these vertical wells will lead to, at a future date, the deepening and horizontally fracturing of the same wells into the Marcellus layer. Not to include this likelihood in the application constitutes segmentation, which is explicitly impermissible under SEQRA. Once the infrastructure is in and a gas field is established future variances are more likely.

Future Drilling in Marcellus Shale Should Be Considered

Sierra Club Atlantic Chapter is concerned that natural gas extraction in New York State, especially in the Marcellus sheet formation, will increase exponentially as soaring energy prices converge with technological advancements without any proportional improvement in environmental protection or enforcement. We are concerned that the method of extraction for this formation, horizontal hydraulic fracturing, has been insufficiently examined by the Department of Environmental Conservation (DEC) Division of Mineral Resources and without proper planning the region could face severe, and unnecessary environmental consequences.

Hydraulic fracturing or "fracing" involves injecting water, sand, and chemical additives into shale at extremely high pressure, separating rock fissures and allowing the gas to

flow out the drill bore while the sand holds the cracks open. Because these shale formations are so deep, millions of gallons of water are required and subsequently millions of gallons of contaminated water are produced.

While much of the contamination comes from naturally occurring chlorides, heavy metals and radioactivity, tens of thousands of industrial chemicals that make up the frac fluids also need remediation, but their exact composition is unknown for proprietary reasons. Under DEC regulation, this contaminated production water is stored in lined open pits, where it can remain for up to 45 days before being trucked away to local wastewater treatment facilities. Tailings and solids are land filled on site. We do not believe that most wastewater treatment facilities are up to the task of remediating these contaminants especially as many of the contaminants remain unknown.

Currently, there is no clear plan for where the millions of gallons of water will come from to support this industry, Whitesville Field included. It is our understanding, based on interviews with drillers and water haulers that the majority of the water used in gas well production comes from local streams, ponds and wetlands. This strategy will not be sustainable as the demand for deep formation wells increases.

While water quality and quantity issues are of primary importance in looking at this application, we ask that the Department not overlook equally significant land use issues. In our conversations and meetings with local municipal leaders and land planners of the Southern Tier we have learned of the extraordinary work that many communities have undertaken to adopt comprehensive plans that embrace smart growth principles as well as aggressive zoning to control and shape harmonious development. It is these same leaders that express dismay at the notion that the Environmental Conservation Law supersedes all zoning and that this heavily industrialized land use can be sited anywhere, without local oversight, regardless of how incompatible it is with established zoning. ECL 23-303 (2) *The provisions of this article shall supersede all local laws or ordinances relating to the regulation of the oil, gas and solution mining industries; but shall not supersede local government jurisdiction over local roads or the rights of local governments under the real property tax law.*

The Sierra Club Atlantic Chapter is concerned not only with the effect that the Whitesville Field and Marcellus shale gas production has upon community health and planning but also the impact upon wildlife. The Catskills and adjacent lands in the Southern Tier contain some of the largest contiguous blocks of open space east of the Mississippi River. This area acts as an important wildlife corridor between the Allegany State forest, the Catskill Park, the Shawangunk Ridge, and the Hudson Highlands. Multiple rare and endangered species depend upon this unique matrix of habitat and the potentially vast grid work of roads and pipelines needed to support the industry will fragment and diminish the viability of this natural corridor.

(iii) Sierra Club Atlantic Chapter's Interests Relating to NYSDEC-Administered Statutes:

The Department of Environmental Conservation relies on the *1988 Generic Environmental Impact Statement (GEIS) On the Oil, Gas and Solution Mining Regulatory Program* and a 1992 *findings statement* to justify its declarations of non-significance, as it has in this case, for various oil and gas extraction operations. In twenty years much of the oil and gas technology has changed along with the context of environmental protection. To put it plainly, the GEIS is significantly out of date and no longer can serve as a substitute for the "hard look" mandated by the State Environmental Quality Review Act. As an Example:

Global climate change is the primary concern of the NYDEC and a critical issue that guides most of its actions. The concept of climate change or global warming is not mentioned once in the 1988 GEIS or the 1992 findings statement even though the oil and gas industry plays a sizable role in the proliferation of green house gases. In spite of the fact that methane produces less carbon dioxide than other fossil fuels when burned, the gas itself is at least twenty times more potent as a green house gas than CO2. Vast quantities of methane and deposited CO2 are released during the gas extraction process without any regulatory consideration by the DEC for avoidance or mitigation. No variance should be approved for DMN 08-V-04 until a SGEIS is conducted to consider New York State's gas extraction's impacts upon global climate change.

In addition, the 1988 GEIS dismissed the necessary "hard look" at cumulative impacts as insignificant, when of course the Whitesville Gas Field combined with the emerging wave of Marcellus applications could create the largest industrial project in New York State with commensurate and collective impacts not considered in an individual application.

Atlantic Chapter of the Sierra Club urges that the New York State Department of Environmental Conservation delay consideration of (DEC Project Number DMN 08-V-04.) in the Whitesville Field until the Department or the Applicant:

Prepares a Supplemental Generic Environmental Impact Statement to the 1992 GEIS On the Oil, Gas and Solution Mining Regulatory Program in accordance with the State Environmental Quality Review Act that would include but not be limited to:

A) A full build out model of the potential Marcellus gas field as well as other Gas extraction projects like the Whitesville Field, including temporary roadways, pipelines, well pads and staging areas based upon spacing requirements and geographical constraints.

B) Mapping overlays of the potential Marcellus gas field that include: ground water resources, aquifers, wetlands, critical habitats, naturally occurring radioactive deposits,

air quality attainment areas as well as waste water infrastructure, transportation infrastructure, community infrastructure and cultural resources.

C) An analysis based on these maps and overlays of how collective natural and community resources would be affected by the entirety of the full gas well build out, including the impact of increased water withdrawals, waste water disposal, habitat fragmentation, increased truck traffic, accidental spills or releases, air emissions, noise and secondary growth.

D) An evaluation of all chemicals and materials used in the Hydraulic fracturing process with no exemptions to proprietary privilege as well as an assessment of all possible naturally occurring sources of contamination. In addition, an analysis of best available practices should be conducted for onsite operations to include banning of open waste pits, on site water remediation, independent water testing (pre and post drilling), non-toxic frac fluids, and emissions control including CO₂.

E) An additional and emphasized analysis of gas well development within the New York City watershed.

We are on the verge of a new gas-drilling epoch, one that has the potential to transform much of rural New York into a profitable grid work of roadways and pipelines. The proposed variance on spacing requirements for EAST RESOURCES, INC (DMN 08-V-04.) represents an unexamined allowance that sets precedence for an industry that the Sierra Club Atlantic Chapter believes is under regulated by the DEC. Please consider the necessary regulatory changes before advancing a destructive precedence.

Thank you for your consideration of our request for full party status.

Sincerely,

A handwritten signature in cursive script that reads "Roger Downs". The signature is written in black ink and is positioned above the typed name and contact information.

Roger Downs
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