

Adirondack Mountain Club Comments on Governor David Paterson's Draft 2009 Energy Plan

August 24, 2009

Governor Paterson's Draft Energy Plan encourages private investment in drilling in the Marcellus Shale natural gas reserves.¹ The Marcellus Shale covers a vast area in New York, from the Catskills to the Niagara Frontier, so this plan could eventually result in widespread drilling operations across the state.

A supporting brief released with the plan endorses hydraulic fracturing as "the best means for producing economic volumes of natural gas from the Marcellus Shale."²

Hydraulic fracturing, or hydro-fracking, is currently the energy industry's preferred method of gas extraction and almost certainly would be widely used in energy projects in the Marcellus Shale. Hydro-fracking involves pumping fracking fluid under pressure into wells in order to fracture the underground formation and increase the flow of natural gas. The process involves vast amounts of water, in some cases 3 or 4 million gallons, for each well being developed. This water must be trucked to the well site and be trucked out and disposed of after the process is completed.

While fracking fluids consist mostly of water and sand, they also contain chemicals that act as lubricants and surfactants. Unfortunately, chemicals used in gas-well drilling and hydraulic fracturing are considered proprietary by the energy companies and they have refused to release the contents of their fracking fluids. The Adirondack Mountain Club believes that New York residents have a right to know what chemicals are being used in these operations. Without this information, it would be difficult, if not impossible, for the state Department of Environmental Conservation to properly monitor these operations and protect drinking-water wells from contamination. Any plan that does not require full disclosure of these chemicals is unacceptable.

In 2005, under the so-called Halliburton Exemption, hydro-fracking was exempted from provisions of the Safe Drinking Water Act, based on industry assurances that the process is safe. Recent incidents in Wyoming and Colorado have caused many to question those assurances. Congress is currently considering legislation to repeal the exemption and restore EPA oversight. The bill's sponsors include New York Senator Chuck Schumer and New York Congressman Maurice Hinchey.

¹ *Natural Gas Assessment, New York State Energy Plan 2009*, p. 14.

² *Natural Gas Assessment, New York State Energy Plan 2009*, p. 14.

Even without hydro-fracking, gas production is an industrial activity with a number of potential environmental consequences. It requires cutting trees, clearing land, building roads and moving heavy equipment. It creates numerous opportunities for spillage of waste and pollutants and the contamination of surface and groundwater. It is noisy and dirty. Even with no environmental mishaps, each gas-well site will leave a sizable scar on the landscape that will take years to heal.

Because of the actual and potential environmental impacts, ADK believes that gas exploration and extraction is inconsistent with state parkland. We are encouraged that the plan does not recommend natural gas extraction on state-owned parklands³ because that activity would be inconsistent with the public trust state parkland doctrine.⁴ Under this doctrine, the state holds state parkland in trust for the people of New York and cannot use it for any commercial or industrial purpose inconsistent with its use as a public park without the express approval of the Legislature. We take this as a commitment by this administration to firmly resist any claims to drilling rights in the Allegany State Park and to protect other state parks from exploitation.

However, we are concerned that the plan recommends the study of potential private gas exploration on state-owned land not protected under the public trust state parkland doctrine.⁵ This includes thousands of acres of state forests scattered across central New York, western New York and the Southern Tier. In particular, state forest lands traversed by the Finger Lakes Trail and the North Country National Scenic Trail should be off limits to gas exploration and drilling.

³ *Draft 2009 New York State Energy Plan*, p. 51.

⁴ Williams v. Gallatin, 229 N.Y. 248; Friends of Van Cortlandt Park v. City of New York, 95 N.Y.2d 623.

⁵ *Draft 2009 New York State Energy Plan*, p. 51.