

Resolution of the Cherry Valley Town Board

Resolution # 2008-8

December 11, 2008

A RESOLUTION OF THE TOWN OF CHERRY VALLEY ENTITLED “COMMENTS TO NYSDEC ON THE ON THE DRAFT SCOPE FOR DRAFT SUPPLEMENTAL GENERIC ENVIRONMENTAL IMPACT STATEMENT ON THE OIL, GAS AND SOLUTION MINING REGULATORY PROGRAM FOR WELL PERMIT ISSUANCE FOR HORIZONTAL DRILLING AND HIGH-VOLUME HYDRAULIC FRACTURING FOCUSING ON THE DEVELOPMENT OF THE MARCELLUS SHALE AND OTHER LOW-PERMEABILITY GAS RESERVOIRS.”

WHEREAS, the Town of Cherry Valley recognizes the need to develop domestic sources of energy and their potential for economic development in upstate New York; and

WHEREAS, the Town of Cherry Valley is located in the Marcellus shale field and other gas bearing formations; and

WHEREAS, the Town of Cherry Valley is located at the shallow, northern edge of the Marcellus Shale Field where it outcrops along U.S. Rte 20 in northern Otsego County; and

WHEREAS, there are numerous natural gas leases signed between private land owners and gas exploration companies within the Town on file with the Otsego County Clerk; and

WHEREAS, aspects of hydraulic fracturing include the potential impacts of (1) water withdrawals, (2) transportation of water to the site via town roads, (3) the use of additives in the water to enhance the hydraulic fracturing process, (4) space and facilities required at the well site to ensure proper handling of water and additives, and (5) removal of spent fracturing fluid from the well site and its ultimate disposition.

WHEREAS, due to the technological advances of horizontal drilling and hydraulic fracturing, the Marcellus shale and others gas bearing formations in the Town of Cherry Valley, these gas bearing formations have become economically feasible to exploit; and

WHEREAS, the Town of Cherry Valley has identified the pollution of groundwater as a major concern in its comprehensive plan, adopted by the Cherry Valley Town Board in 2007; and

WHEREAS, the karst topography, limestone bedrock and shallow depth to the Marcellus shale which underlie the Village and the Town of Cherry Valley make our water bearing formations especially vulnerable to pollution; and

WHEREAS, groundwater is the sole source of all public and private water use in the Town and Village of Cherry Valley; and

WHEREAS, the Department of Environmental Conservation is solely responsible for regulating the exploration, development and production of oil and gas resources in New York; and mineral rights owners and exploration companies are interested in developing a potentially significant gas resource in the Town of Cherry Valley through the use of horizontal drilling and hydraulic fracturing; and

WHEREAS, the New York State Department of Environmental Conservation is accepting written comments from ALL interested parties on the Draft Scope for Draft Supplemental Generic Environmental Impact Statement on the Oil, Gas and Solution Mining Regulatory Program for Well Permit Issuance for Horizontal Drilling and High-Volume Hydraulic Fracturing focusing on the Development of the Marcellus Shale and Other Low-Permeability Gas Reservoirs; and

WHEREAS, the Town of Cherry Valley is a local unit of government that has afforded the citizens an opportunity to comment and provide input in the Draft Scope and the actions therein; and

WHEREAS, the oil and natural gas industries are exempt from Federal Clean Water Act, Federal Clean Air Act, Safe Drinking Water Act, and are exempt from local planning review under the New York State Environmental Conservation Law (ECL Section 23-0303); and

WHEREAS, the New York State Environmental Conservation Law (ECL Section 23-0303) preempts towns from regulating land use by the Oil and Natural gas industries except over roads or the rights of local governments under the real property tax law; and

WHEREAS, drilling and hydraulic fracturing involves the use of heavy equipment, millions of gallons of water, all delivered to the well site by heavy trucks, the potential for the degrading of Town roads is possible; and

WHEREAS, the Town of Cherry Valley has reviewed the Draft Scope and affirms that the Draft Scope and the Supplement to the Generic Environmental Impact Statement must include measures to afford adequate protection for the Town's citizens, water resources, public health, environment and roads.

NOW, BE IT RESOLVED THAT THE TOWN BOARD OF CHERRY VALLEY APPROVES THAT THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION (NYSDEC) TAKE ACTION TO ADDRESS IMPACTS TO THE HEALTH, SAFETY AND WELFARE OF THE CITIZENS OF THE TOWN REGARDING THE OIL, GAS AND SOLUTION MINING REGULATORY PROGRAM FOR WELL PERMIT ISSUANCE FOR HORIZONTAL DRILLING AND HIGH-VOLUME HYDRAULIC FRACTURING BY INCLUDING THE FOLLOWING IN THE DRAFT SCOPE AND SGEIS:

(1) Notify the Town of Cherry Valley upon receipt of an application to drill within the Town and notify the Town of issued permits and permit conditions enacted by the NYSDEC for each well, and

(2) Require representatives (company) of the oil and natural gas industry operating in the Town of Cherry Valley to provide the Town a comprehensive list of all substances and their concentrations (chemical and inert) used in drilling, hydraulic fracturing and recovery processes a minimum of six months prior to the start of drilling or hydraulic fracturing so an adequate water quality baseline for our water supplies can be established prior to drilling/hydraulic fracturing; and

(3) Prohibit the use of all hydraulic fracturing fluid constituents that are known to pose a significant risk to human health, and

(4) Require all oil and natural gas exploration in the Town of Cherry Valley use closed loop systems to avoid open pits and potential of contamination of surface and ground water by hydraulic fracturing fluid due to the sensitive nature of the karst topography and shallow depth to the water bearing formations within the Town, to safeguard our drinking water, public health and the environment; and

(5) Notify the Supervisor of the Town of Cherry Valley of violations to permit conditions that occur at any drilling/hydraulic fracturing site within the Town within 24 hours of the violation; and

(6) Require representatives (company) of the oil and natural gas industry operating in the Town of Cherry Valley to fund completely, water tests for residues of drilling/hydraulic fracturing fluids before and after drilling/hydraulic fracturing for any public or private potable water source (well or surface) within 10,000 feet of the water source to be repeated annually at the expense of the representatives of the oil and natural gas industry for 3 years post drilling/hydraulic fracturing; and

(7) Require representatives (company) of the oil and natural gas industry operating in the Town of Cherry Valley to fund completely, radon tests for any home within 10,000 feet of the proposed well to be repeated annually at the expense of the representatives of the oil and natural gas industry for 3 years post drilling/hydraulic fracturing; and

(8) Make the results of the aforementioned tests available to the Cherry Valley Town Board and every owner of the water source or home within that area, and

(9) Require each representative (company) of the oil and natural gas industry operating in the Town of Cherry Valley to post an Environmental Quality Bond to the Town of Cherry Valley while operating in the Town, the amount of this bond to be determined in consultation with NYSDEC, and

(10) Require representatives (company) of the oil and natural gas industry operating in the Town of Cherry Valley to provide the Town a comprehensive list of all substances used in hydraulic fracturing and their concentrations (chemical and inert) moved off site, including a final destination for these substances to insure proper disposal, and

(11) File a transportation plan with the Town Supervisor and Highway Supervisor to insure Town roads and bridges will accommodate this industrial use, and

(12) Require each representative (company) of the oil and natural gas industry operating in the Town of Cherry Valley to post a Performance Bond to the Town of Cherry Valley for potential damages to Town roads, the amount of this bond to be determined in consultation with NYSDOT and Otsego County DPW, and

BE IT FURTHER RESOLVED that this industry should result in NO additional tax burden whatsoever on the citizens of the Town of Cherry Valley; and

BE IT FURTHER RESOLVED that the certified copy of this resolution be filed with the New York State Department of State, Office of the Assembly, Office of the NYS Senate, and the Governor's Office to convey that necessary action is needed to update New York Environmental Conservation Law (ECL) Section 23-0303 to allow for more local influence in protecting the health and welfare of residents.