

Anna K. Sears
3021 Elmwood Avenue
Rochester, NY 14618

January 3, 2012

Commissioner Joseph Martens
Department of Environmental Conservation
625 Broadway
Albany, NY 12233-1010

Re: 2011 Revised Draft SGEIS Comments

Dear Commissioner Martens:

Thank you for this opportunity to submit comments regarding the revised draft SGEIS. It is an honor to be able to participate in the democratic process. This letter specifically concerns **IMPACTS OF FRACKING ON REAL ESTATE AND PROPERTY VALUES**.

It has been seen in PA and other states that high volume, slick water, horizontal hydrofracking creates massive disturbance to the land, leading to a cascade of issues beyond the environmental hazards, one of which is the impact on mortgages and real estate values. As Greg May, VP for Residential Lending at Tompkins Trust Company, stated at a meeting in Dryden, NY on November 14, 2011, gas leasing and home mortgages are incompatible.

Following are five simple shortcomings and omissions in the Revised Draft SGEIS that are reason enough to disallow fracking in our beautiful state.

1. **Properties with gas leases may not qualify for refinancing or mortgage loans.** Several lending institutions have already stopped refinancing or giving mortgages for properties with leases or bordering properties with leases, eliminating 90% of potential purchasers. Per the Tompkins Trust Company and others, Wells Fargo, First Place Bank, FHA, Provident Funding, GMAC, FNCB, Fidelity, Visions Federal Credit Union, First Liberty and Bank of America all consider financing such mortgages excessively risky. Will this lead us to another housing crisis?

The lawyer, Elisabeth Radow wrote in her article 'Homeowners and Gas Drilling Leases: Boon or Bust?', *"It is worth noting that Wells Fargo...stands among national lenders that do not grant mortgage loans to homeowners with gas leases."*¹

¹ Radow, Elizabeth N., 2011. P. 17

In his extensive research for the New York Times article ‘Rush to Drill for Natural Gas Creates Conflicts with Mortgages’, Ian Urbina found that “*A credit union in upstate New York has started requiring gas companies to promise to pay for any damage caused by drilling that may lead to devaluation of its mortgaged properties. Another will make home loans only to people who expressly agree not to sign a gas lease as long as they hold the mortgage.*”²

The Tompkins County Council for Governments Task Force on Gas Drilling states, “*Standard gas leases provide the gas company with permanent easements on the property to drill, maintain, operate, plug, use roads, electric, construct pipelines...etc. Such rights survive the term of the lease and would impact the ability for potential future owners to secure traditional financing for the reasons noted above.*”³

2. Lease signers are technically in default of their mortgage:

“*More generally, bankers are concerned because many leases allow drillers to operate in ways that violate rules in landowners’ mortgages. These rules also require homeowners to get permission from their mortgage banker before they sign a lease — a fact that most landowners do not know.*”⁴

“*When you decide to sell your house you may find it difficult to do so because many banks, here and elsewhere, will not mortgage properties with gas leases, which, in turn, limits the number of buyers willing and able to buy your property,*” wrote Linda Hirvonen, an agent in Ithaca, N.Y., in a newsletter last month.”⁵

A lawyer from the Congressional Research Service explains in a memo from September 15, 2011: “*...Fannie Mae and Freddie Mac require borrowers to ask for their consent before signing a gas lease. If borrowers fail to get permission from Fannie Mae or Freddie Mac before they sign a gas lease on their mortgaged property, they risk foreclosure, the memo says. This report was requested by Representative Carolyn Maloney, of New York.*”⁶

Additionally: “*The Congressional researcher says that, in general, if a borrower signs a gas lease without first getting approval from Fannie Mae or Freddie Mac, the borrower has defaulted on the mortgage and Fannie Mae or Freddie Mac would have the right to demand immediate payment or foreclose if the borrower cannot pay the balance in full.*”⁷

² Urbina, Ian, 2011. P 1

³ Tompkins County Council of Governments 2011. P. 2

⁴ Urbina, Ian, 2011. P.1

⁵ Urbina, Ian, 2011. P. 2

⁶ Urbina, Ian, 2011. Documents: 2011.

<http://www.nytimes.com/interactive/us/drilling-down-documents-8.html#document/p1/a33455>

⁷ Urbina, Ian, 2011. Documents: 2011.

3. Homeowners Insurance is put in jeopardy if the homeowner signs a gas lease:

“Homeowners can be confronted with uninsurable property damage for activities that they cannot control.”⁸

“Absent negotiation, gas leases contain no insurance and no indemnification.”⁹

“Homeowners suffering irreparable property damage, such as well water contamination, structural damage or casualty from a gas explosion, won’t have coverage from homeowner’s insurance and may have no recourse against the gas company holding the lease. This is so even if homeowners sue and succeed in court since the gas companies’ own disclosure statements state they are underinsured.”¹⁰

“Traditional home owners insurance (fire insurance) generally would exclude coverage if a property has active commercial operations occurring on the property. In addition, some companies are now adding “pollution exclusion” language that would not cover seepage or leakage damage coverage as a result of commercial activities.”¹¹

4. Title Insurance is also invalidated by a gas lease.

Greg May states in his report, *“A title insurance comprehensive endorsement in NYS contains the following restrictions which would likely result in the title insurance coverage being void if they occurred. Typical gas leases allow gas companies to perform these activities. The loss or inability to provide title insurance would restrict lending on properties with gas leases if title insurance was not available.*

a. No structure shall be erected on the premises which exceeds three (3) stories or thirty five (35) feet in height...

b. The premises shall not be used for the storage of any material, machinery, equipment or supplies of any kind ...

c. The premises shall not be used for any commercial purpose of any kind ...”¹²

5. Property values impacted: Living next to an unconventional gas well pad is akin to living next to a garbage dump.

Tompkins County Legislator, Carol Chock is quoted, *“Economic development is expected to be the upside of this activity; we’ve been told if we’re willing to take the risk, the reward for the county and our municipalities should be an enhanced tax base overall,” she added. “Instead, we are finding a current negative impact on land*

⁸ Radow, Elizabeth N., 2011. P. 12

⁹ Radow, Elizabeth N., 2011. P. 16

¹⁰ Radow, Elizabeth N., 2011. P. 20

¹¹ Tompkins County Council of Governments 2011. P. 2

¹² May, Greg, 2011. P. 3

*values, real estate transactions and our ability to perform appraisals. We believe these issues need to be addressed before further permits are issued in New York state."*¹³

The SGEIS E&E's Socio-Economic review of several studies about impacts from shale development on property values, Section 4.4.4, states: *"In conclusion, the above literature review suggests that being in proximity to a well could reduce the value of a property..."*¹⁴

If horizontal fracking comes to New York, communities will see decreases in local property values, eroding the tax base and leaving towns without funds to keep their citizens safe, maintain their infrastructure, etc. This in turn will lower the tax base for the state fueling a vicious downward spiral.

Why has the RD SGEIS ignored such a potentially devastating economic disaster to homeowners, real estate investors, financial institutions and Wall Street?

After much consideration of just this one this potentially disastrous impact on our communities' and state's economies, I believe that natural gas drilling using slick water high volume horizontal hydrofracking should not be allowed in New York State. Then when you add the above real estate issues to the risks to public health, water, land, and air, agriculture, vineyards, tourism, outdoor recreation, roads, and lack of disposal solutions for toxic wastewater, risks of earthquakes, cracked cement casings, etc., fracking absolutely makes no sense, especially in a state that is blessed with clean air and water that will hold more value in the future than natural gas ever will.

Sincerely yours,

Anna Sears

CC:
Attorney General Eric Schneiderman
The Honorable Andrew Cuomo
Commissioner Dr. Nirav Shah
Senator Joseph Robach
Assemblyman Joseph Morelle

¹³ Chaisson, Bill, 2011.P. 1.

¹⁴ New York State Department of Environmental Conservation, 2011. P. 4-114

References (enclosed):

Chaisson, Bill, 2011. "Tompkins County Study: Effect of gas leases on real estate still unclear". The Ithaca Times, June 15-21, 2011.

http://www.ithaca.com/news/article_f4be17a0-9775-11e0-a5db-001cc4c002e0.html

May, Greg, 2011. "Gas and Oil Leases Impact on Residential Lending." VP – Residential Mortgage Lending, Tompkins Trust Company, Ithaca, NY. March 24, 2011.

New York State Department of Environmental Conservation, 2011. "Economic Assessment Report for the Supplemental Generic Environmental Impact Statement on New York State's Oil, Gas, and Solution Mining Regulatory Program". August 2011. Section 4.4.4 Property Values pages 4-112-114.

Radow, Elizabeth N., 2011. "Homeowners and Gas Drilling Leases: Boon or Bust?" New York State Bar Association Journal, November/December 2011, Vol. 83, No. 9.

Tompkins County Council of Governments – Task Force on Gas Drilling, Assessment and Land Valuation Subcommittee, 2011: "Gas and Oil Leases as They Relate to Residential Lending". November 29, 2011. TCCOG requests this notice be included with the above quote: *The information in this presentation relates to the impact of gas and/or oil leases on residential mortgage lending. Consult with a Real Estate Attorney to address specific issues as they relate to a specific property or lease.*

No opinion is being expressed or implied on the practice of leasing mineral rights, environmental impact or regulations surrounding gas and/or oil leases (referred to as gas leases or leases hereafter) by the members or presenters of these findings. The issues listed are summarized to highlight potential conflicts for residential mortgage lending in an effort to facilitate consideration of these issues.

Urbina, Ian, 2011. "Rush to Drill for Natural Gas Creates Conflicts with Mortgages". The New York Times, October 19, 2011. Plus the relevant on-line links contained within the article: <http://www.nytimes.com/2011/10/20/us/rush-to-drill-for-gas-creates-mortgage-conflicts.html>

Urbina, Ian, 2011. Documents: "Mortgages and Gas Leases: Borrowers Must Get Written Consent Before Leasing or Risk Foreclosure." Overview and An Act of Default. October 7, 2011.

<http://www.nytimes.com/interactive/us/drilling-down-documents-8.html#document/p1/a33455>