

TO: Three Parks Independent Democrats

FROM: Daniele Gerard, Bruce Markens, Mary Ann Marks, Lynn Max, Steve Max, Merle McEldowney, Milivoy Samurovich, and Judy Wood

DATE: December 12, 2011

RE: Meeting 12/9/11 re: fracking and Indian Point with Thomas Congdon, Governor Cuomo's Assistant Secretary for Energy and the Environment

We explained that Three Parks Independent Democrats is in favor of a statewide ban on fracking and that we did not want to discuss that or the DEC hearing but that we wanted to know the basis for the Governor's contention that fracking can be done safely. The meeting was to last a half hour, so we consolidated some of our prepared questions.

SAFETY OF FRACKING

Steve asked if New York State had conducted studies to determine how long New York City might have to go without water under various scenarios, including pipes' being broken by blasting or seismic activity, water being poisoned, or a filtration plant's becoming necessary. After stating that DEC was the "technical agency" dealing with studies, Congdon replied that he was "not aware of any such studies."

Steve asked if the state was prepared to pay if any contamination occurs to NYC water or any other water supply in the state. Congdon explained that there is a "longstanding state policy that the polluter pays." Steve asked if the state can determine whether any particular drilling company actually has the finances to pay; Congdon said he was "not sure," but allowed as how there was "no financial guarantee."

Several of us pressed Congdon on this issue: how could we know if the polluter could pay if, as he stated, the state does not have cost estimates of damage that could occur? We asked if fracking companies had insurance and what level of insurance they would be required to have to cover contamination of NYC's or Syracuse's reservoirs or of individual landowners' water supplies. Judy pointed out that companies go bankrupt and avoid liability.

We asked if it might make more sense to build (1) filtration systems for wells and watersheds and (2) plants that could actually treat wastewater before beginning to frack anywhere in the state. (We explained that this was merely hypothetical, as Three Parks does not believe fracking can ever be done safely; the club would still advocate for a ban.) We asked if any cost estimates had been prepared for such items.

Congdon stated he would share our concerns about how to make companies pay for damage they cause, the requisite level of insurance, the absence of cost estimates, and the lack of financial guarantees.

(At one point, Congdon said that the reason for the restrictions on drilling in the watershed involved federal requirements for filtration avoidance and concerns about trucking, not the risks of drilling itself.)

Steve also asked if the state would pay medical bills for anyone who had health problems as a result of fracking. Congdon responded that the principle is that the polluter would be held responsible.

MONITORING

Merle asked about hiring monitors; Congdon replied that there was an advisory panel set up to review staffing needs of the DEC and other agencies like Health & Human Services and the Public Service Commission that would have responsibilities regarding fracking. He referred a few times to Commissioner Martens's statement that the DEC "will not process permits that exceed capacity"; that the DEC would "only permit for what they'll oversee." [This seemed meaningless to us, as they could just state arbitrarily that a certain number of inspectors could monitor a certain number of wells.]

In response to questions from Lynn, Judy, and Bruce, Congdon said there was "no timeframe for the advisory panel to issue recommendations," that there was "no timetable" for fracking to start, and that it would take "months and months" after the January 11th comment deadline to "review and respond to each and every comment." He told us that the staffing recommendations made by the advisory panel will not be subject to public comment during the dSGEIS comment period; any recommendations would be subject to the legislative and budget process. We asked if permitting could begin without the monitors' being in place; Congdon said there was "no way to comment on the advisory panel."

Congdon told us that the DEC will issue regulations sufficient to protect New York State from "realistic" accidents. He had no sense of what "realistic risk" would be.

CLIMATE CHANGE

Milivoy asked if there were any requirement that an emergency plan be in place in the event of a hurricane or flooding that caused wastewater to enter water supplies. Congdon said that fracking companies would be responsible for this kind of planning. We asked incredulously if the MTA were knocked out, as it was by Hurricane Irene, would it be industry's responsibility to pay for cleanup that involved contamination? Milivoy asked again what the state's vetting process is to determine the financial stability of companies with drilling rights.

We pointed out that companies would be quick to include and point to "force majeure" clauses in their contracts and that taxpayers would end up subsidizing industry's activities during years of costly litigation to determine liability—all while there would be no water to drink for thousands or even millions of people.

INDIAN POINT

Daniele asked if the DEC would continue to deny Entergy a water permit in the current appeal proceedings that Entergy brought following the DEC's April 2010 denial of a water permit. Congdon said it was unclear what would happen during the appeal, but that DEC had definitively denied the permit. He also pointed to the need for a "consistency determination" regarding coastlines and waterways that Entergy has not yet even filed and explained that the feds have denied these in the past.

SUMMARY

Merle said that if fracking is permitted in NY State, when an accident occurs, it will be known far and wide as “Cuomo’s spill.”

We pointed out that we are not the policy people, but volunteers who stand on street corners and at subway stops handing out leaflets when Democrats run for office. We told Congdon that at the 11/30 DEC hearing, we submitted copies of nearly 2,000 letters gathered on Manhattan’s Upper West Side calling on the Governor to issue an outright ban on fracking in New York State. We said that if the Governor allows fracking, the club would have a hard time endorsing him in a primary; his constituents are so concerned about fracking that they might also withhold their votes.

TO: The Membership of Three Parks Independent Democrats

RE: **Meeting on Hydraulic Fracturing and Indian Point, 5/10/10**, between Three Parks, other Upper West Side Clubs and District Leaders and Staff of Governor Paterson—Thomas Congdon, Deputy Secretary of Energy, and Peter Iwanowicz, Deputy Secretary for the Environment

In response to our letters to Governor Paterson and Lieutenant Governor Ravitch, their deputies scheduled this meeting to learn about our concerns regarding the safety of our food, water, and energy supply in the face of increasing reports of pollution and potential terrorist attacks around the country and in New York.

Congdon and Iwanowicz assured us that the Governor shares our public health and safety concerns; he has consistently stated they will not be sacrificed as the State moves ahead on hydraulic fracturing. At the same time, however, after repeated questioning, the Governor’s staff admitted that there is no contingency plan for the case of either small- or large-scale pollution of the State’s water supply. There is no plan for when or how quickly a filtration system could be built or for backup supplies of potable drinking water or, indeed, for how the voluminous amounts of water required for hydrofracking could be replaced, stored, purified or disposed of. Apparently, the State plans to leave much of this to the individual industry applicants/permittees.

In response to another question, Congdon and Iwanowicz told us they are unaware of the inclusion in any five-year budget plan of any anticipated revenue from the issuance of permits or drilling; only a modest amount of revenue is projected for FY 2011. Although individual permits to drill will generate a “couple of thousand” dollars each for the State, the only tax provided for thus far is an income tax on property owners’ royalties. Any other statewide taxes would require further legislation or approval. Any revenue will be influenced by the actual cost of natural gas at the time.

The Governor’s staff reiterated that the draft environmental impact statement was not final and that the 14,000 comments received had to be addressed before a final EIS is issued. It seems New York City and Syracuse require additional analysis for a final EIS; the State may consider letting industry perform its own EIS. This seemed to indicate that drilling in those watersheds (“filtration avoidance determination” areas) is still possible once industry supplies additional information. This is so because, according to the Governor’s staff, the extra caution about

drilling in those areas is driven less by fracking than by potential pollution caused by construction, truck traffic and runoff.

In response to concerns about why the State was in such a hurry to begin drilling, even before the federal EPA has completed its proposed two-year study of the impact of hydrofracking in New York State, staff responded that states typically “set the bar,” are the “leaders in the area of environmental protection,” and that New York State wants to “get the rules right” before drilling begins—that the feds follow suit. We were unsure of the validity of this proposition given the rush to begin hydrofracking in the face of problems in Pennsylvania and Texas and the lack of reference to any of these problems in the draft EIS.

Congdon and Iwanowicz did not know how many leases had been granted. No permits have been issued, although 60 applications have been received. They will be returned and the companies told to resubmit them under the final EIS rules. Although we were assured that the State would demand to know the exact chemicals used by companies before they are permitted to drill, the chemicals will not be made public due to industry concerns about proprietary information. We were also told that the State Department of Environmental Conservation (to whom we were referred for answers to several of our questions) shares our concerns over the lack of funding for additional inspectors and staff to analyze permit applications and monitor the drilling process. Apparently, DEC requested funds that were subsequently cut from the budget.

Regarding Indian Point, Congdon said that if Entergy, the plant’s owner, could not meet water certification standards, its license renewal application would be denied. Congdon indicated that with conservation and known energy alternatives, there remain an additional 700 megawatts necessary to replace IP’s energy output. We thought this should be publicized to encourage potential providers to step forward. He also told us that the State is attempting to qualify for \$900 million in federal stimulus funds for alternative energy projects that would generate jobs.

We requested that the State do the following:

1. Not issue drilling permits until all safety issues are addressed.
2. Issue a complete life cycle plan for each well that specifies how the toxic water will be dealt with in perpetuity.
3. Develop contingency plans to provide potable drinking water to localities.
4. Wait until the federal EPA completes its statewide study before the State makes any further determinations about hydraulic fracturing.
5. Come out forcefully now against relicensing Indian Point to encourage the development of additional alternatives for replacement power to be available during decommissioning and when the plant is closed.

We would also like the State to:

1. Require that all chemicals used in fracking be available for public review.
2. Provide much more funding for inspectors, testing, and oversight.
3. Create response plans for all worst-case scenarios, *e.g.*, spills, seismic activity, explosions of trucks or pipes, etc.