



BUFFALO NIAGARA RIVERKEEPER®

January 11, 2013

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**Attn: Draft HVHF Regulations Comments**

New York State Department of Environmental Conservation  
625 Broadway  
Albany, NY 12233-6510

Dear Commissioner Martens:

Buffalo Niagara RIVERKEEPER is Western New York's only science-based, community-focused, advocacy organization that is dedicated to protecting and restoring the quality and quantity of our water. We are committed to improving the legacy we leave for future generations while protecting our region's blue economy.

The regulations released by NYSDEC in November 2012 will not adequately safeguard the health of the people of the state, nor protect the water, land, or air. The proposed regulations must consider the health study commissioned by the Department of Environmental Conservation and this health study must be made public. There must be adequate time to publicly review, analyze, and comment on both the study and the independent or commissioned analyses of the study.

More relevant is the request for the comment period to be extended an additional 60-90 days after the health study is released. The extremely short comment period that fell within the Christmas and New Year's national holidays, does not allow for meaningful or adequate public process.

**Comments on Section 560.4(a) and 560.4(5)**

- The regulation on setbacks 560.4(a) related to residential wells, springs or water supplies used for livestock and crops does not specifically offer any protection for rivers, lakes, wetlands and streams.
- The regulation on setbacks 560.4(5) does not preclude a HVHF well from being drilled under any of the identified public water supply resources, and there are no setbacks for any other bodies of water including lakes, rivers, wetlands and streams.

**Comments on Section 560.3(d)(1)**

- The industry is not required to release the identity of the chemicals used in HVHF. RIVERKEEPER supports the full disclosure of all chemical constituents expected to be contained in recovered wastewater (including but not limited to "flowback fluid" or "production brine") and at any point that the water use or wastewater discharge could potentially impact a publicly-owned treatment plant, waterway, groundwater, or aquifer. Even though the industry is obligated to provide complete disclosure of all chemical constituents to NYSDEC, the public participation in the permitting process and public disclosure of chemical additives is virtually eliminated.

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### Comments on Section 560.7

- HVHF wastewater, known to contain radioactive materials, heavy metals, solvents, salts and biocides, is NOT classified as hazardous waste, but rather industrial waste leaving it outside of DEC's regulatory structure. The rules that do exist for managing HVHF wastewater identify only when and how the waste should be handled, and does not regulate where. **In New York State, there are no municipal or industrial wastewater facilities in existence that currently have the ability to accept, adequately process or treat hydrofracking wastewater.** In addition, there is a failure to address risks to New York State's environment from out-of-state transport of HVHF wastewater, and deference to other states' standards and regulations. RIVERKEEPER has already submitted extensive written comments about this issue in our January 10, 2012 memo regarding the "Revised Draft Supplemental Generic Environmental Impact Statement" (dSGEIS).
- Specific to radiological analysis, it is of great concern that HVHF companies are required to test for radioactive agents but not to track them or prevent their release into the environment in the first place.
- In Western New York, we live on the largest and most significant fresh water resources in the world, our Great Lakes. The volume of water that could potentially be permanently removed, and/or contaminated and discharged into the Basin must be transparently managed by the state with full public knowledge of what materials are being released and or treated, and when and where. Without detailed and transparent oversight of this water cycle by the state, we find that the state is not engaging in adequate or good stewardship of the precious water, wildlife, and ecosystem resources of our state and this region. This presents an unjust burden on the citizens of New York State and on our neighboring states and on the Canadian communities that rely on the Great Lakes for clean water.

Sincerely,



Jill Jedlicka  
Executive Director &  
Riverkeeper

