

I. EXECUTIVE SUMMARY

In early 1988, the Department of Environmental Conservation (DEC) released a draft Generic Environmental Impact Statement (GEIS) on the oil, gas and solution mining regulatory program. This final GEIS was prepared after thorough review and consideration of the extensive public comments on the draft GEIS. A minimum of ten days after release of the final GEIS, DEC must issue its Findings under the State Environmental Quality Review (SEQR) Act.

Together, the draft and the final GEIS and SEQR Findings will provide the groundwork for revisions to Parts 550 through 559 of the Department's regulations. These regulations (6NYCRR Parts 550-559) are being updated to more accurately reflect and effectively implement the current Oil, Gas, and Solution Mining Law (ECL Article 23). The draft GEIS included suggested changes to the regulations in bold print throughout the document. All regulation changes, however, must be promulgated in accordance with the State Administrative Procedure Act (SAPA) requiring separate review, public hearings, and approval. Further public input during the final rulemaking process may cause some of the new regulations, when they are eventually adopted, to differ from those proposed in the draft GEIS and discussed in this document.

A. PURPOSE AND NEED

The primary purposes of this document are to clearly establish the basis for environmental review and approval of DEC actions subject to the Oil, Gas, and Solution Mining Law and to facilitate implementation of needed regulatory changes. The goals of both the draft and final GEIS include the following:

- 1) **Comprehensively review the oil, gas, underground gas storage and solution mining regulatory program.**
- 2) **Analyze the environmental, social, and economic impacts of the regulated industries.**
- 3) **Develop guidelines for environmentally acceptable oil and gas drilling and development, solution salt mining, underground storage of gas, geothermal development, and drilling of stratigraphic and brine disposal wells in New York State.**
- 4) **Establish thresholds under which these regulated activities can continue with minimal adverse environmental impacts.**
- 5) **Eliminate the need for a site-specific environmental impact statement (EIS) for individual well-sites with respect to matters that are not unique to each particular site.**
- 6) **Establish criteria for those actions which will require additional detailed site-specific environmental impact statements. Specific conditions or criteria are set forth under which future actions will be undertaken.**
- 7) **Recommend appropriate modifications to the regulations as proposed in the draft GEIS.**

B. BACKGROUND

This document includes some background information on the development of the draft GEIS. It also contains responses to all comments received during public review of the draft. The frequency of comment on seven policy issues necessitated the development of topical responses to these issues. These are included, as is a listing of errata in the draft GEIS.

1) Contents of the Final GEIS

This document includes the following:

- Executive Summary
 - Purpose and Need
 - Background
- SEQR Conclusions
 - Proposed SEQR Requirements and Determinations
 - Future SEQR Compliance
 - Parameters for Future SEQR Reviews
- Public Involvement
 - Albany Public Hearing Record
 - Topical Responses
 - Comment-Response Table
 - Summary
- Errata to the Draft GEIS

The "Conclusions" chapter is very important. The Findings Statement that the Department will issue no sooner than 10 days after publication of the final GEIS will be based largely on the Conclusions chapter. The Findings Statement will contain the Department's determinations under the State Environmental Quality Review Act with respect to the regulated activities. General criteria against which projects will be reviewed and a summary of actions that the Department undertakes will be presented in the Findings Statement.

2) Contents of the Draft GEIS

Because of the size of the draft GEIS, it was necessary to divide it into three volumes as follows:

Volume I (Chapters 1 - 11)

- Chapters 1 and 2 were introductory chapters.
- Chapter 3 was a summary on the application of SEQR to the Oil, Gas and Solution Mining Law.
- Chapters 4 through 7 contained background information on the State's history, geology, environmental resources and the oil, gas and solution mining permitting program.
- Chapters 8 through 11 focused on the procedures followed for each major phase of a well's development (i.e. siting, drilling, production and abandonment). The environmental factors and regulatory measures needed to mitigate the impacts of each phase of development were detailed.

Volume II (Chapters 12 - 21)

- Chapters 12 through 14 covered the existing and proposed regulatory programs for enhanced oil recovery, solution salt mining, and underground gas storage operations.
- Chapter 15 detailed the complex interagency coordination involved in the brine disposal, underground injection, and oil spill response programs.
- Chapters 16 and 17 summarized the adverse environmental impacts which can result from all of the activities described in Chapters 8 through 15 and the mitigation measures applied through the State's regulatory program.
- Chapter 18 discussed the economic benefits derived from oil, gas, solution mining and underground gas storage activities and the projected cost of environmental regulation of these activities.

- Chapters 19 through 21 detailed unavoidable adverse impacts, irreversible and irretrievable commitments of resources and alternate actions, all topics which must be examined in any environmental impact statement.
- A glossary of technical terms and the references used in the preparation of this document were also included in Volume II.

Volume III (Appendices 1 -8) - Appendices on the following subjects were included in

Volume III:

- 1. **Underground Storage: Certificate of Public Convenience and Necessity--**
Explains Federal Energy Regulatory Commission (FERC) requirements for underground gas storage.
- 2. **Freedom of Information Law--**Explains how a citizen may request access to information on file with the Department.
- 3. **Movement of Contaminants in Aquifers--**Gives technical description of potential worst case aquifer contamination.
- 4. **Mineral Ownership and Leasing Summary--**Explains oil and gas leasing practices and nomenclature.
- 5. **Environmental Assessment Form (EAF)--**Shows the April 1, 1986 version of the EAF. The EAF has since been revised with SEQOR Committee approval.
- 6. **Gathering Lines--**Explains NYS Public Service Commission requirements for gathering lines that collect gas from individual wells.
- 7. **Brine Disposal Well Permitting Guidelines--**Explains Department requirements for brine disposal wells.

8. Forms used in Oil, Gas and Solution Mining Program--Briefly describes the major forms used in the Oil, Gas and Solution Mining regulatory program.

3) Areas of Controversy

As was expected, various aspects of the draft GEIS proved to be controversial during the public review process. Several frequently raised issues that pertain to general policy rather than to specific GEIS statements or proposals are addressed in depth in Topical Responses, contained herein just before the Comment-Response Table.

One such concern is the issue of public taking without compensation. Department regulations or permit conditions may under some circumstances prevent an oil or gas well from being drilled in the most desirable location with regard to geology or spacing. However, to demonstrate that a government "taking" had occurred in such a case, the minerals owner would have to demonstrate that the land was rendered unsuitable for any purpose. The proofs required are listed in the Topical Response on public taking without compensation.

A second issue addressed topically is that of visual resources and their assessment. While the Department realizes that most visual impacts of oil, gas, and solution mining activity are minor and/or short-term, the protection of visual resources is mandated by State law. The Topical Response describes how this is accomplished objectively and uniformly.

The Environmental Assessment Form (EAF) and site-specific permit conditions are thought by many operators to be onerous and unnecessary. They cannot, however, be completely eliminated. The Department's position with respect to the EAF has changed since the draft GEIS was published. Details of this determination and the reasoning behind it can be found herein in the Conclusions section as well as in the Topical Response.

Inclusion of access road construction in the project review is addressed topically because the oil and gas industry argues that construction of access roads is a contractual matter between

the landowner and operator. Construction of an access road, however, can disturb a much greater area than the actual drill site. Possible environmental impacts and how they are evaluated for each site are discussed in the Topical Response.

Proposed regulations were listed in the draft GEIS in order to provide the impetus for public discussion. Much discussion centered on whether or not this was appropriate. The Department believes, as explained in the Topical Response, that inclusion of proposed regulations was not only appropriate but necessary to meet the requirements of SEQR. **Adoption of this final GEIS does not in any way constitute promulgation of any regulations proposed in the draft GEIS, although many of the recommendations are routinely included as permit conditions in order for the Department to issue a negative declaration stating the project has non-significant environmental impacts under SEQR.**

Another area of controversy discussed topically is that of conflicts between the surface owner and minerals owner and their respective rights. Local governments and agricultural organizations advocate more protection for the surface rights owner, while industry commentators contend that Department regulations often interfere with contractual agreements between landowners and well operators. The Department's regulatory program plays an important role in protecting the environment for all parties, including landowners, lessees, and the people of New York State. This is further discussed in the Topical Response on surface/mineral owner lease conflicts.

The final issue addressed by a Topical Response involves the concept of soil as a "public natural resource." Soil disturbance is a likely environmental impact of any oil, gas, or solution mining operation and must be evaluated as such. This is true whether or not soil is a public natural resource subject to the same kind of regulation as air and water. The reasons soil

disturbance is regulated as an environmental impact are described more fully in the Topical Response.

Specific operational recommendations in the draft GEIS that generated some controversy included those on:

1. information required on well plats submitted with drilling applications,
2. well setback requirements,
3. pit construction, lining, and maintenance,
4. tank overflow/leakage prevention and control,
5. site reclamation deadlines, and
6. notification/approval requirements for changes in wellbore configuration.

Debate on these issues is more technical in nature, so each comment is addressed separately within the Comment-Response Table. Some recommendations were reevaluated based on the public comments; these are discussed in the summary which follows the Comment-Response Table.

Issues outside the jurisdiction of the Division of Mineral Resources that generated frequent comments included:

1. archeological reviews,
2. wetland and stream protection permits, and
3. regulation of water well drillers.

With respect to the first two items, industry commentators generally advocated giving jurisdiction to the Division of Mineral Resources, thus facilitating a "one-stop shopping" approach to the application, review, and issuance of drilling permits. As noted in our responses, the Department has worked with the Office of Parks, Recreation and Historic Preservation (OPRHP) to significantly shorten the turnaround time for archeological reviews. OPRHP continues to

maintain the maps necessary for accurate archeological review. Regarding wetlands and stream protection permits, the Division of Mineral Resources does not have the technical expertise to evaluate these issues, so they will remain outside our jurisdiction.

As stated in the draft GEIS and the Comment-Response Table, the Department has supported proposals for regulation of water well drillers. Regulation of water well drillers would require legislative changes outside the scope of the Oil, Gas, and Solution Mining Law.

An additional issue that industry commentators claim is outside Department jurisdiction involves safety concerns. No exclusive safety regulations without environmental impact are proposed in the GEIS. Non-regulatory recommendations are made with the intent of encouraging and promoting safe practices. In circumstances such as blowout prevention and control, where failure to regulate safety could have adverse environmental impacts, the Department must retain an active role in enforcing regulations that protect the environment as well as worker and public safety. Also note that neither the federal Occupational Safety and Health Administration (OSHA) nor the New York State Department of Labor perform drilling rig safety inspections in New York State.

There were many written and oral comments about the length of time it has taken to prepare the GEIS and additional discussion about the cost of the GEIS took place at the public hearing in Wellsville. Two major reasons for the length of time it took to prepare the GEIS are: 1) its expanded scope to serve as a public information and educational document and 2) limited staffing resources. The thorough scope of the draft GEIS required extensive research efforts. After the draft was released, a great deal of effort was given to providing detailed responses to more than 850 comments received during public review. None of those involved in preparing the GEIS were able to work on it full time.

Benefits to the taxpayer include the assurance that regulated activities are carried out in an environmentally sound manner, in compliance with the State Environmental Quality Review Act. Although environmental compliance does increase industry's cost of doing business, there are substantial savings realized by negating the need for separate, detailed environmental impact statements and lengthy environmental reviews for each and every single well drilled.

4) Status of Proposed Regulations

Proposed additions and changes to 6 NYCRR, Parts 550-559, were included in the draft GEIS. Department staff are presently preparing new and revised regulations to implement the current Oil, Gas, and Solution Mining Law. Authority to implement these regulations will be found in both ECL Article 23, the Oil, Gas, and Solution Mining Law, and Article 8, the State Environmental Quality Review Act. The proposed regulations will undergo the public review process mandated by the State Administrative Procedure Act (SAPA).

5) Promulgation of Emergency Regulations

Chapter 846 of the 1981 Amendments to the Oil, Gas, and Solution Mining Law eliminated the distinction between new and old field areas so that all oil and gas wells in New York State became subject to the same environmental protection restrictions. The actual text of the regulations was not modified to conform to the statute, but the Department uniformly and consistently implemented the legislation in accordance with the amendments.

The Allegany County Supreme Court ruled in June 1990 that the regulatory distinction between old and new fields continued in force and effect. There is no environmental basis for a distinction between old and new fields in terms of necessary and appropriate measures to protect against possible adverse impacts. Although the court decision is being appealed, the Department promulgated emergency regulations in August 1990 to correct the discrepancy between the text of

the statute and the text of the regulations. The emergency regulations implemented the explicit legislative intent of ECL 23-0305 by removing the outmoded references to old field and new fields. These emergency regulations were adopted as final regulations in September 1991.