

## Proactive Municipal Response to Gas Development

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Around 150 people converged upon the Student Center at Morrisville State College last Saturday, June 20 for a discussion of proactive measures municipalities can take in order to be ready for the predicted upsurge in gas drilling activity. Speakers at the forum included environmental and municipal attorney Kimberly Rea, environmental engineer Mark Millspaugh, and a panel of town supervisors. Following the discussion people were invited to tour well sites around the towns of Lebanon and Smyrna.

Jim Goldstein, Supervisor for the Town of Lebanon, organized the event in part, he noted, because gas drilling is not new to Lebanon. The town has 55 wells drilled with 30 more in the permitting stage. Last year, Goldstein said the damage to roads from gas activities totaled \$325,000 – a sum equal to the town's entire tax levy.

"Every time we start to think that we've got handle on this [gas drilling] information, something new comes up," Goldstein said, emphasizing the importance for municipal officials to become educated on gas issues. There are things the town of Lebanon could have done differently, and Goldstein hoped that other town supervisors might take home some lessons.

"The impact on our town has set us behind about 15 years with respect to our taxes and funding," Goldstein said.

Rea noted that it's not the state or federal government but rather the towns that are key to instituting road regulations. "Under the Environmental Conservation Law you have the authority to enact local laws that require a permit system," she said. Rea suggested that in addition to creating a category for industrial driveway permits that towns require gas companies to insure the towns as "additionally insured". She also said towns should require disclosure of fracking chemicals used in drilling.

"Enact ordinances," Rea said, "but then make sure you enforce them." She emphasized that once a town becomes a permitting agency, even if it is driveway permits, the town automatically becomes an "involved agency" under State Environmental Quality Review (SEQRA) laws. Rea urged towns to move forward quickly to establish this status as it will be increasingly important as the Marcellus Shale develops.

Towns also need to record their critical environmental areas, Rea said. These include wetlands, agricultural areas, historical and recreational "sensitive areas" that are important to the community. If these areas are recorded they will trigger "site specific" review under SEQRA, Rea said.

### **Fuel Production Taxes**

Goldstein addressed the issue of fuel production or severance taxes. Both Chenango and Madison counties have suggested the use of severance taxes to cover the impacts of drilling activities. The proposal in the state legislature has gone nowhere, though, due to the pressure from industry lobby groups.

“Having a fuel severance tax has not had any impact on driving out industry in states where they have such taxes,” Goldstein said. The taxes would be shared by state and local governments.

At the heart of the severance tax question is whether the “real” cost of energy is borne by the companies benefiting from the extraction of gas. One way to make developers pay for damages would be to require companies to post escrow to pay for all the things they need to do, said Rea. Alternatively, severance tax funds could go to fund road repairs and other damages.

### **Ten Things Towns Can Do**

Caroline Town Supervisor Don Barber spoke about the impact drilling will have on Tompkins County. “Local officials need to be informed and get involved,” he said. Barber listed specific actions that towns can take, similar to the list below which he provided earlier in the week to participants at a gas forum held in Binghamton.

“Let the state know that we need more time to comment once the Department of Environmental Conservation (DEC) publishes their recommendations,” Barber said. He urged every town to write a letter to DEC and request that the comment period for the Supplemental Generic Environmental Impact Statement (SGEIS) be extended from 30 days to 90 days.

Like Rea, Barber thinks it vital for town officials to develop a list of critical environmental areas to protect including those of sensitive environmental, cultural, and historic concerns.

Barber encouraged towns to support NY Assembly Bill 8748 which prohibits natural gas drilling near the NYC watershed or anywhere that is a recharge area of a sole source aquifer. It also requires disclosure of frack chemicals, holds drillers accountable for damages, and limits the amount of water that may be extracted permanently from the watershed.

“Demand that the Great Lakes Watershed International Treaty be recognized,” Barber said. That treaty will prevent water from being removed from the watershed that encompasses much of Tompkins County.

Barber urged town officials to support HR 2766, the “Fracturing Responsibility and Awareness of Chemicals Act of 2009” (FRAC Act) which will hold companies accountable to the federal Safe Water Drinking Act. This bill will also require drilling companies to reveal fracking fluid components.

Make sure private and municipal water supplies are protected, Barber suggests. Demand that water treatment plants be industry-funded.

Like Goldstein and others, Barber would like to urge the state to institute a severance tax so that money is available and used to support DEC monitoring.

Ask that the Environmental Conservation Law (ECL) 23 section 0303.2 be repealed. The way the law currently reads, local governments have no voice in the drilling process. The

law supersedes all local laws except those relating to roads and real property tax and also codifies compulsory integration.

“Work together,” Barber said. Town boards need to work with other towns and counties to develop a permitting process that will protect all local roads. Require a maintenance bond or some other assurance so that tax payers aren’t left paying for road damages.

Most important, though, is to keep on talking. “This is the biggest change coming to our area and people have got to start paying attention,” Barber said.

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