



Public Health
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Cortland County Health Department

CORTLAND COUNTY HEALTH DEPARTMENT

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December 28, 2012

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

Dear Mr. Martens:

Thank you for the opportunity to comment on the proposed regulations for High Volume Hydraulic Fracturing in New York State, 6 NYCRR Parts 52, 190, 550-556, 560, and 750.

Although we commented on the regulations in January of 2012, the following represent separate and new comments. Previous comments were responded to in the proposed regulations.

To date, drilled wells under the regulatory authority of the NYSDEC have contaminated approximately 20 households in the Harford Mills area of Cortland County with chlorides.

The water wells of these households were replaced in 1971 by a public water system, paid for by the company doing the drilling under State of New York Department of Environmental Conservation Water Supply Decision No. 5969 (attached). Please note Finding of Fact number 3 which determines the contamination and Conditions C and D which denote prevention of further contamination by adoption of Health Department rules and regulations.

This portion of the aquifer is still contaminated and the "new" public wells have recently increased in chlorides beyond the EPA and NYSDOH MCL of 250 mg/l for chloride. We understand that the DEC is currently looking into the issue. The occurrence of the new chlorides could be from the liquid propane / brine operation, the injection well recently fined by EPA in 2011 (attached), or an additional unknown condition in the sparse replacement aquifer. Regardless of the source of the new contamination, the real issue is the initial contamination of the aquifer's watershed which took away this portion of the aquifer.

This contamination was related to the permitted discharge of brines, not to the injection wells, but to a local stream in the watershed. If this had been in a location such as in the sole source aquifer upstream of the City of Cortland, the City would now have a serious water supply issue for 20,000 customers.

The discharges were all in accordance with the best available technology (BAT) of the day. The unknowns of BAT's, and the potential to repeat actions which affect generations within our community are why we make this single request.

Our one specific request is to include a Sole Source Aquifer watershed boundary that is sufficient to protect our County's water supply from any potential surface disturbances and continued contamination which could result from surface drilling operations.

We believe the Sole Source Aquifer must not be looked at as a subset of a primary aquifer but the exact opposite. It is the defining feature of a federally designated and New York State recognized irreplaceable water source upon which a community's existence is dependent. We ask for the following specific addition to proposed Regulation 750:

750-3.3 Prohibited Activities and Discharges

(a) The prohibitions in this section are in addition to those listed in section 750-1.3 of this Part, unless in conflict, superseded or expressly stated otherwise in this section. Well pads for HVHF operations are prohibited, and no SPDES permit will be issued authorizing any such activity or discharge:

(1) within 4,000 feet of, and including, an unfiltered surface drinking water supply watersheds;

(1a) within 4,000 feet of, and including, Sole Source Aquifer watersheds ;

(2) within 500 feet of, and including, a primary aquifer;

(3) within 100-year floodplains;

The key protection enhancement asked for is to concretely define the boundary in terms of an enforceable and indisputable boundary designation for both the aquifer and its recharge area. This area is the watershed of the Sole Source Aquifer.

As noted above, there is a well thought out and defined precedent in this regard in the proposed regulations set forth under 750. Namely, the restrictions proposed by the NYSDEC to be set upon the New York City and City of Syracuse watershed boundaries.

Title 55 of New York State Environmental Conservation Law specifically addresses the aspects of an aquifer that need to be protected in order to protect the drinking water source. This area is defined in this law to be the **watershed** of the aquifer. This legislation addresses specifically sole source aquifers which serve more than one million residents, but in all other respects we are identical in our dependence upon our federally designated sole source aquifer. It would be discriminatory to differentiate the needs of approximately 30,000 Cortland County residents from that of downstate New York based solely upon population.

Our community has worked hard for decades to adhere to the Sole Source Aquifer regulations promulgated by the Environmental Protection Agency in partnership with the New York State Department of Health and the New York State Department of Environmental Conservation. Failure to recognize the designation and its purpose is contrary to the program's intent.

The EPA's longstanding recognition of Sole Source Aquifers (SSA) is published on the EPA website as follows:

The SSA protection program is authorized by section 1424(e) of the Safe Drinking Water Act of 1974 (Public Law 93-523, 42 U.S.C. 300 et seq.).

SSA designation is one tool to protect drinking water supplies in areas where there are few or no alternative sources to the ground water resource and where, if contamination occurred, using an alternative source would be extremely expensive. The designation protects an area's ground water resource by requiring EPA to review certain proposed projects within the designated area. All proposed projects receiving federal funds are subject to review to ensure that they do not endanger the water source.

The advantages to inclusion of our requested watershed boundary delineation are as follows:

-Exclusion of the aquifer's watershed would allow any existing or proposed Federal funding (even if tangentially related to drilling operations and gas development) from any Federal agency to be utilized without the mandated restrictions listed specifically under the above stated Federal law.

-The comprehensive recognition of drinking water as a protected source by the NYSDEC would be readily apparent to the public and other involved regulatory agencies. These aquifers are already protected to a degree under the proposed regulations. This is merely an extension of the perimeter of protection.

-The nearest acceptable water supply for Cortland County is the Skaneateles Lake supply itself. If Cortland's aquifer is contaminated, the only feasible replacement would be a massive effort in terms of engineering, cost, and policy that would unnecessarily encumber huge volumes of federal, state and local resources not only from an economic standpoint, but from the necessity of revising transfer of water across drainage basins.


-It would show a good faith effort to uphold and support policies which were put into effect with the cooperation of the NYSDEC, the USEPA and the NYSDOH for the health benefits of New York State residents.

-It would prevent possible future contamination of Cortland County water supplies like the already contaminated Harford Mills Water District or other vulnerable supplies within the Sole Source Aquifer.

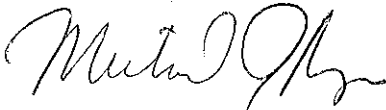
The Sole Source Aquifers in NYS are few in number and overall land area. They are fiercely protected by the people that they service, and rightly so. These are the core resources on which these communities exist.

We strongly encourage, support and request consideration of this most important public health request on behalf of our citizens.

Sincerely,



Catherine Feuerherm
Public Health Director
Cortland County Health Department



Michael J. Ryan, P.E.
Public Health Engineer
Cortland County Health Department

/mjr

Cc: USEPA
New York State Department of Health
Cortland County Board of Health
Cortland County Legislature

Attachments:

NYSDEC Water Supply Decision No. 5969 – Harford Mills Water District
EPA violation – SDWA – 02 - 2011- 8902