

**Testimony of Steven W. Lawitts
Acting Commissioner
New York City Department of Environmental Protection
before the New York City Council
Committee on Environmental Protection
concerning the Draft Supplemental Generic Environmental Impact
Statement governing natural gas drilling
Friday, October 23, 2009
City Hall – Committee Room**

Good morning Chairman Gennaro and Members. I am Steven W. Lawitts, acting commissioner of the New York City Department of Environmental Protection (DEP). I am joined by Paul Rush, P.E., deputy commissioner of the Bureau of Water Supply. Thank you for the opportunity to testify on natural gas drilling, a subject of vital interest to the City of New York. I have a short prepared statement, after which I will ask Paul to make a presentation highlighting the work of our consultant and describing the potential for natural gas drilling to adversely affect our system.

Clean water is essential to public health. The regional water supply system operated by DEP is the primary source of drinking water for approximately one-half of the State's residents. It provides approximately 1.1 billion gallons of water to 8.4 million residents of New York City, one million consumers outside of New York City in Westchester, Putnam, Orange and Ulster counties (including New Paltz, Newburgh, Tarrytown, Peekskill, White Plains, Scarsdale, New Rochelle, Yonkers, and other major towns in those counties), and millions of commuters and visitors every day. In addition, other residents from these upstate counties have the right to tap into this water system. In an average year about 90% of our water is provided by two watersheds in the Catskills region which are known as "the Catskill"

and “the Delaware” watersheds. Virtually all of these watersheds lie directly over the Marcellus Shale formation. It is no exaggeration to say that this clean water system allows for the future development of the entire downstate region and the economic engine that it provides for New York State.

Hydro-fracturing drilling in the watershed creates the potential to jeopardize public health. Natural gas drilling of any sort is an industrial activity that can pollute the ground and surface waters that form an integral part of New York City’s drinking water system. Hydro-fracturing drilling operations require the clearcutting of forest, the construction of new roads and drilling pads, the storage and use of chemicals that can include benzene and other carcinogens, and surface impoundments or tanks to store those chemicals and briny flowback liquid. In addition, drilling and fracturing with pressurized solution can damage aqueducts and other subsurface facilities, cause settling, and contaminate groundwater. Because New York City has an unfiltered system serving nine million customers, the potential for contamination is especially alarming.

That is why DEP has vigorously sought to protect its customers from any public health risks and unnecessary costs. In a July 2008 letter, then-Commissioner Emily Lloyd expressed the Administration’s grave concern to New York State Department of Environmental Conservation (DEC) Commissioner Grannis at the prospect of natural gas drilling in the watershed and made several recommendations. When Commissioner Grannis made a determination to issue a Supplemental Generic Environmental Impact Statement (SGEIS) on natural gas drilling, DEP submitted comments on the scope of the SGEIS to underscore the need for

the State to carefully analyze those issues that most affect the watershed and our customers. In September 2009, I again wrote to Commissioner Grannis to express DEP's alarm at the potential impact of natural gas drilling on our unfiltered watersheds. I also requested that he obtain from the New York State Department of Health (NYSDOH) an assessment of the public health impacts of drilling in our unfiltered watershed. As the primary regulator of drinking water quality in the State, NYSDOH is uniquely qualified to identify the risks to public health that natural gas drilling presents, and whether those risks can be sufficiently addressed over the long term.

DEP has engaged a joint venture of engineering firms to provide independent, expert advice on the subject of natural gas exploitation via hydro-fracturing and risks to our drinking water supply. I have asked Commissioner Grannis to extend the draft SGEIS comment period by approximately 45 days so that we will have time to complete the consultant's study. Although we have not received a response from Commissioner Grannis, we are sure he will give the extension request due consideration.

If our study or NYSDOH review should conclude that gas drilling currently proposed by the State will create risks to our watershed, then the price tag for this proposal will be at least \$10 billion, which will have to be paid for by someone. The U.S. Environmental Protection Agency (EPA) and NYSDOH allow DEP to operate the Catskill-Delaware water systems without filtration only because those watersheds retain much of their rural and agricultural land uses and because DEP, together with upstate landowners, has created a vigorous system of land use controls. This waiver

is possible only because the City is meeting very stringent criteria, and only four other large cities in the country have received it. New York City could not avoid filtration for the Croton system, which supplies 10% of our water annually, and as a consequence is now spending more than \$2 billion to build a filtration plant. If the EPA's Filtration Avoidance Determination is revoked because of the impacts from natural gas drilling, a much larger filtration plant for the Catskill-Delaware system will have to be built that we estimate could cost \$10 billion to construct and \$100 million per year to operate. That translates to a 30% increase in the price of water and sewer service currently paid by New York City residents.

While we are still assessing whether drilling in the watershed can be done safely under any circumstances, if the State decides to permit this activity, then it must include and account for the cost of a filtration plant and its operation in any regulatory framework that would allow drilling in the watershed. Failure to do so would impose a massive unfunded mandate on the City and its water rate payers, who are already bearing the cost of several billion-dollar projects that are driven by such mandates. In recognition of this growing problem, Governor Paterson recently mandated in Executive Order 17 that "the fiscal impact of any legislative or regulatory proposal that imposes a mandate should be evaluated to the fullest extent possible to consider the cost to local governments." The significant potential costs of allowing drilling in the watershed cannot simply be passed onto New York City, and must not be ignored as this process moves forward.

In view of the potential costs of repairing any damage caused by natural gas drilling, the Catskill-Delaware watersheds deserve State protection. In the

past the State has enacted special protections for the residents who rely on surface water from the Great Lakes by closing the beds of Lakes Ontario and Erie to gas exploration. This precautionary approach is appropriate for the Catskill-Delaware watersheds. The nine million New York residents who depend upon Catskill-Delaware water deserve the same amount of protection as those New Yorkers who depend upon Great Lakes surface waters.

I appreciate that Commissioner Grannis is concerned about the impacts of natural gas drilling on New York City's watershed. DEP's strong working relationship with Commissioner Grannis and his staff is reflected in the fact that the draft SGEIS responds to some of the comments we submitted on the proposed scope of the document. I hope that Commissioner Grannis will favorably consider our request for an extension of the draft SGEIS comment period to allow time for stakeholders such as New York City to submit more detailed comments. We recognize and appreciate that Commissioner Grannis has already scheduled a hearing in New York City on November 10th. We would welcome additional hearings.

In closing, the high stakes involved when considering natural gas drilling in our unfiltered watersheds mean that DEC must consider very seriously all of the comments and suggestions DEP has made to date on this issue and will make in the future, and carefully weigh the risks and consequences. That completes my part of the presentation. With the Chairman's permission, I would ask Paul Rush to complete our testimony this morning.