

PHWG-1

MR. GUNNER: Thank you, Judge. Good afternoon, ladies and gentlemen. I am so happy to be here in the Howell Library in Allegany County.

Those of you who have read this document know my references here.

(Laughter)

I do have some comments and they are philosophical in nature rather than particular to the types of regulations that are proposed by this document. I think that others have addressed those issues in more detail, I believe, than I can.

First of all, I feel the reasons for and purposes of the Draft Generic Environmental Impact Statement should be specified in the document itself, something which has not been done with sufficient clarity.

The State Environmental Quality Review Act (SEQRA) was enacted in 1976 for the purpose of encouraging "productive and enjoyable harmony between man and his environment".

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Environmental Conservation Law (ECL) Section 8-0101. The method chosen by the state legislators to meet this objective was in the form of a mandate to the state agencies and political subdivisions to administer their programs in accordance with the concerns voiced in SEQRA, as follows:

"All agencies which regulate activities ... which are found to affect the quality of the environment shall regulate such activities so that due consideration is given to preventing environmental damage." ECL Section 8-0103(9).

Furthermore, "All agencies shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions (of SEQRA)."

As such, SEQRA essentially provides that state agencies such as the Department of Environmental Conservation's Division of Minerals (DEC-DMN) are to assess the activities conducted under their jurisdiction vis-a-vis the environmental impact and potentially damaging results of such activities.

STATE OF WEST VIRGINIA

17 As it relates to DEC-DMN specifically, the  
18 SEQRA mandate is for an assessment of the environ-  
19 mental impact of and possible environmental damage  
20 resulting from activities conducted in drilling,  
21 operating and plugging oil, gas, storage and solution  
22 mining wells, at least to the extent these activities  
23 fall under DEC-DMN regulatory authority.

24 SEQRA provides for the preparation of  
25 environmental impact statements (EIS's) by agencies  
1 such as DEC-DMN on any actions under their juris-  
2 diction which "may have a significant impact on the  
3 environment." ECL Section 8-0109(2). Emphasis is  
4 added heré to the term "action" and the term  
5 "significant" since it is felt that the DEC-DMN Draft  
6 GEIS goes far beyond dealing with "actions" and  
7 "significant" impacts on the environment.

PHWG-1 The purposes of the GEIS are extensively discussed throughout the document and they are listed on page 2-2. The determination of "significant" and "non-significant" actions cannot be made without a complete discussion and assessment of the entire regulatory program.

8 Under SEQRA, these EIS's are to be pre-  
 9 pared so as to be "clearly written in a concise  
 10 manner capable of being read and understood by the  
 11 public, (they) should deal with the specific signifi-  
 12 cant environmental impacts which can be reasonably  
 13 anticipated and (they) should not contain more detail  
 14 than is appropriate considering the nature and magni-  
 15 tude of the proposed action and the significance of  
 16 its potential impacts." ECL Section 8-0109(2).

17 Also, such EIS's are to be prepared so as  
 18 to comply with the legislature's mandate that "social,  
 19 economic, and environmental factors shall be consider-  
 20 ed together in reaching decisions on proposed activi-  
 21 ties." ECL Section 8-0103(7)

22 It is submitted that the DEC-DMN Draft  
 23 GEIS does not follow the mandate of being clear and  
 24 concise, that it deals with numerous hypothetical  
 25 impacts that are insignificant and that it does not  
 1 address the social and economic benefits attributable  
 2 to the oil and gas industry but only emphasizes the  
 3 alleged adverse environmental impacts of the industry.

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4 Over the past century, the oil and gas  
 5 industry has contributed very substantially to the  
 6 social and economic well-being of numerous citizens of  
 7 the State and the public in general and it is antici-  
 8 pated that this will continue in the future, yet  
 9 these facts have been totally ignored in the DEC-DMN  
 10 Draft GEIS.

11 The Legislature approved in SEQRA that  
 12 agencies should avoid duplication of EIS reporting wh  
 13 feasible by combining or consolidating proceedings.  
 14 ECL Section 8-0107.

15 In the case of DEC-DMN, this mandate was  
 16 followed by the preparation of the Draft GEIS which  
 17 constitutes a generic environmental impact statement  
 18 designed to cover all oil, gas, storage and solution  
 19 mining activity rather than requiring an EIS for  
 20 each individual well or project.

21 This is a well conceived endeavor to the  
 22 limited extent that the environmental impact or  
 23 non-impact of drilling an oil or gas well is very  
 24 much the same for most wells drilled and individual  
 25 EIS's would be highly duplicative and wasteful of

1 industry resources.

2 It is not a well conceived endeavor,  
3 however, in that DEC-DMN has attempted to go far  
4 beyond their legislative mandate and authority in the  
5 preparation of the Draft GEIS.

6 II. THE DRAFT GEIS SHOULD SERVE A VERY  
7 LIMITED PURPOSE AS DEFINED IN SEQRA,  
8 WHICH IS TO ASSESS ENVIRONMENTALLY "SIG-  
9 NIFICANT ACTIONS". INSTEAD, DEC-DMN HAS  
10 USED THE OPPORTUNITY OF PREPARING THEIR  
11 DRAFT GEIS TO ESPOUSE THE ALLEGED VIRTUE  
12 OF NEW, MORE RESTRICTIVE, REGULATIONS AND  
13 ATTEMPTING TO EXPAND THE APPLICATION OF  
14 EXISTING REGULATIONS BY INNUENDO. THERE  
15 IS NO RATIONAL BASIS FOR THESE ADDITIONS  
16 AND EXPANSIONS EXCEPT TO PERPETUATE AND  
17 EXPAND THE DEC-DMN BUREAUCRACY.

18 It is quite important to emphasize that  
19 EIS's in general and the Draft GEIS in particular are  
20 only asked by SEQRA to address issues which involve  
21 "actions" that may have a "significant impact" on  
22 the environment.

23 "Action" is defined in SEQRA as including  
24 only those activities or projects requiring the  
25 issuance of an entitlement such as a permit by a  
state agency. ECL Section 8-0105(4).

Specifically excluded from the definition  
of "action" are activities involving, among other  
things, "maintenance or repair involving no sub-  
stantial changes in existing structure or facility."

PHWG-2. Other commentators have praised the GEIS as being a clearly written document. The length is a result of its expansion to serve a public education function.

The environmental impacts of oil, gas, and solution mining activities and the existing and proposed mitigation measures are concisely summarized in Chapters 16 and 17.

The social and economic benefits attributable to the oil and gas industry are detailed in Chapter 18.

Mr. Gunner has misinterpreted and misapplied citations from Article 8-the State Environmental Quality Review Act. The citations used are appropriate for a site-specific EIS. The guidelines for preparation of a Generic Environmental Impact Statement can be found in 6NYCRR Part 617.15. "Generic EIS's may be broader, and more general than site or project specific EIS's and should discuss the logic and rationale for the choices advanced." See 617.15(4)(d).

See Topical Response Number 5 on Reasons for Including the Proposed Regulations in the GEIS.

PHWG-3

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1 ECL Section 8-0105(5).

2 As such, it is submitted that SEQRA does  
3 not authorize or require review or regulation of  
4 pre-existing oil and gas operations or prospective  
5 operations except to the extent that DEC-DMN permits  
6 are required for particular activities. No doubt  
7 this protection was included in SEQRA to avoid the  
8 prohibition against ex post facto laws.

9 The Draft GEIS does not draw this dis-  
10 tinction between new and pre-existing operations,  
11 however, and it appears that DEC-DMN would like  
12 statements and regulations promulgated under the  
13 guise of the Draft GEIS to be retroactive to oper-  
14 ations commenced prior to enactment of SEQRA in 1976  
15 or even prior to enactment of the Conservation Law  
16 in 1963.

17 DEC-DMN has consistently asserted that the  
18 power conferred upon them at ECL Section 23-0305(8)(d)  
19 to regulate operations means that the "existing pool"  
20 distinction has evaporated.

21 This is not true, however, since DEC-DMN  
22 has never enacted new regulations on notice and  
23 public hearing, as required, that would eliminate  
24 this distinction. The DEC-DMN, in not making this  
25 distinction in the Draft GEIS, is attempting to

1 gloss over and eliminate the distinction ex post facto  
2 and confer upon themselves an ad hoc lawmaking power  
3 repugnant to the principle of due process of law  
4 contained in the state and federal constitutions.

5 The Draft GEIS should not be used as a  
6 subterfuge in an effort to avoid lawful procedures  
7 in adopting new regulations and it is not the proper  
8 medium for espousing the virtue of proposed new  
9 regulations.

10 The preceding comment applies not only to  
11 the existing pool distinction but to the "other than  
12 existing pool" regulations as well.

13 Proposed new regulations have no place in  
14 the Draft GEIS and must be compiled in a separate  
15 document and adopted only after notice and public  
16 hearing.

PHWG-4

17 SEQRA gives some authority for review of  
18 existing regulations but to propose regulatory changes  
19 within the Draft GEIS document only serves to confuse  
20 the issue. Assessment of "significant impacts"  
21 should not be posed in a manner so as to suggest that  
22 new regulations are necessary to avoid significant  
23 environmental impact.

24 Instead of assessing real and significant  
25 impacts in the Draft GEIS under current regulations,

PHWG-3 The law takes precedence over rules and regulations. Rules and regulations cannot convey any authority above that given in law or legislation. The Oil, Gas, and Solution Mining Law of 1981 clearly eliminated the distinction between old and new oil and gas fields, and the draft GEIS cannot draw any distinction between the old and new oilfields because that distinction has not existed since 1981.

The proposed regulations, many of which are part of the current regulatory program as permit conditions and guidelines, are critical to environmental protection and do have a place in this draft GEIS. See Topical Response Number 5 on Reasons for Including Proposed Regulations in the GEIS.

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1 DEC-DMN has compiled a laundry list of hypothetical  
2 impacts upon the basis of which it hopes to have new  
3 regulations adopted.

4 . It is submitted that this is, in fact,  
5 a thinly-veiled effort to expand and perpetuate the  
6 DEC-DMN bureaucracy and that it has nothing whatever  
7 to do with real and significant potentialities for  
8 environmental damage.

9 Since many of the hypothetical environ-  
10 mental impacts upon which DEC-DMN predicates its  
11 goal of adopting new and more restrictive regulations  
12 are dealt with at length in other commentaries,  
13 attention will be focused here on several of the  
14 more glaring examples.

PHWG-5

15 The first example is DEC-DMN commentary  
16 in the Draft GEIS on access roads. Roads have never  
17 been regulated under the ECL and to propose such a  
18 thing for oil and gas operators only is manifestly  
19 unfair. Building an access road may have some mini-  
20 mal impact on the environment, but if such impact is  
21 deemed by the State to be of significant proportions,  
22 then homeowners building driveways, farmers, loggers,  
23 and everyone else who builds a road must be subjected  
24 to the same restrictions. To do otherwise consti-  
25 tutes an invidious discrimination against those

PHWG-4

It is not suggested through thinly veiled innuendo in the GEIS that revision of the current regulations is necessary to avoid significant adverse environmental impact. It is stated very clearly many times. The proposed regulations are not based on hypothetical situations and/or impacts, but in response to documented cases of environmental pollution.

CR-192

PHWG-6

1 attempting to develop the oil and gas resources of  
2 the State.

3 Another example of DEC-DMN's hypothetical  
4 environmental impacts are visual and auditory impacts.  
5 Such things must be regulated uniformly and not on  
6 an industry basis. If drilling rigs or other oil and  
7 gas equipment truly pose a significant danger to the  
8 environment because they make noise, consequently  
9 requiring sound barriers to be constructed around  
10 them, then so too must bridges and highways have  
11 sound barriers during the construction phase.

12 Moreover, if visual and auditory impacts  
13 pose a significant threat to the environment, then  
14 it naturally follows that olfactory pollution must  
15 be also eliminated.

16 With respect to farming operations, an  
17 olfactory impact regulation could take the following  
18 form: "All pigs and cows must henceforward wear  
19 appropriate perfume so as not to offend the  
20 olfactory senses of the People of the State of  
21 New York."

22 The list goes on and on, but since others  
23 more qualified to do so have devoted substantial  
24 time and attention to the itemized treatment of the  
25 supposed environmental impacts of each stage of

PHWG-5 Under SEQRA, access roads are considered part of the project. The oil and gas industry has not been singled out for over-regulation. See Topical Response Number 4 on Access Roads as Part of the Project.



1 drilling and production activities, the foregoing  
2 comments will suffice as an illustration of the  
3 laundry list of hypothetical impacts prepared by  
4 DEC-DMN.

PHWG-7 5 III. DEC-DMN SHOULD NOT ATTEMPT TO  
6 INTERFERE WITH LANDOWNER-OPERATOR  
7 NEGOTIATIONS OR RIGHTS IN THE LEASING  
8 OR DEVELOPMENT PHASES OF OIL AND GAS  
9 OPERATIONS.

10 There are numerous references in the  
11 Draft GEIS to landowner/operator negotiations, all  
12 of which attempt to characterize operators as devious  
13 and evil and landowners as their innocent victims.

14 DEC-DMN should not make efforts to disturb  
15 the well-established doctrines of the dominance of  
16 the mineral estate over the surface estate and the  
17 reasonable rights of development implicit to owner-  
18 ship of the OGM or a lease.

19 These doctrines have been established by  
20 the courts throughout this nation over the period of  
21 the last hundred years and they are very well-founded.

22 DEC-DMN should no more propose conditions  
23 on operators designed to protect the surface owner  
24 subsequent to the lease or purchase negotiation than  
25 they should propose that landowner royalties be  
reduced to protect the profits of operators. If

DEC-DMN persists in this effort, they must offer just  
compensation to the affected lessees or OGM owners.

PHWG-6 Under SEQR guidelines visual and noise impacts must be assessed. The  
conclusion made in the GEIS as a result of that assessment was that for most  
routine oil and gas operations, the noise and visual impacts are minor and  
temporary. See Topical Response Number 2 on Visual Resources and  
Assessment Requirement.

PHWG-7 Providing information to the public on the factors and provisions that a  
landowner should consider before signing a lease cannot be reasonably  
construed as interference with landowner/operator negotiations. See Topical  
Response Number 6 on Surface/Mineral Owner Lease Conflicts.

2 IV. CONCLUSIONS

PHWG-8

3 1. Rather than assess the existing regu-  
4 lations regarding significant impacts to the environ-  
5 ment, DEC-DMN is attempting to characterize most all  
6 impacts of oil and gas drilling and development as  
7 significant unless their new regulations are enacted;

PHWG-9

8 2. In their commentary in the Draft GEIS,  
9 they are attempting to characterize their power to  
10 attach conditions to drill permits for unusual  
11 circumstances not encompassed in their regulations as  
12 an ad hoc rule-making power which would allow them to  
13 promulgate discriminatory rules for different oper-  
14 ators on a prejudicial basis;

PHWG-10

15 3. They are attempting in their comment-  
16 ary to avoid distinctions between pre-SEQRA and post-  
17 SEQRA activities just as they have attempted to  
18 enforce their existing regulations as though there  
19 were no "existing pool" - "other than existing pool"  
20 distinction;

PHWG-11

21 4. They are proposing that they should  
22 somehow be involved in arms-length lease or purchase  
23 negotiations to protect the lessor or surface owner  
24 even though such an idea is highly repugnant to the  
25 fundamental precepts of democratic capitalist  
society; and

PHWG-8

The GEIS clearly states throughout the text that most impacts from oil and gas drilling and development are minor, temporary and/or insignificant under the current regulatory program.

PHWG-9

DEC routinely attaches conditions to permits for all its regulatory programs (Wetlands, Stream Disturbance, SPDES), whenever, they are necessary to declare any action non-significant. These conditions are not applied prejudicially. In fact, many of them are standard and that is why they are being proposed for formalization into regulations.

PHWG-10

Clearly, it is not possible to apply SEQRA to actions which have occurred in the past. SEQRA applies to future or planned actions which now require a DEC permit. There is no distinction in the law between old and new pools.

PHWG-11

Statement of opinion is noted.

PHWG-12

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5. All of the foregoing is done with the purpose of expanding and perpetuating their bureaucracy. In support of this premise citation is made to the suspected growth in staff and finances of DEC-DMN since its inception although industry has actually contracted. Actual figures are not available, however, since they are so reluctant to let anyone know how many taxpayer dollars they really are consuming.

MR. HUNGERFORD: My name is Thomas E. Hungerford. I am President of the New York State Oil Producers Association. We would like to offer the comments here as written.

The Association contends, and has long believed, that a Generic Environmental Impact Statement, or site specific environmental impact statement are not necessary for the protection of the environment and certainly not for the environmental impacts recited in the Generic Environmental Impact Statement.

The environmental impacts resulting from routine oil and gas operations are minimal and surely anyone who observes the lush vegetation and excellent water supplies in Western New York sees evidence of an undamaged area. This is true even in intensely drilled old oil areas which have been producing over one hundred years.

PHWG-12 Statement of opinion is noted.

PHTH-1

Mr. Hungerford's verbal testimony corresponds very closely to the written comments submitted by the New York State Oil Producers Association. Please see responses OPA-1 to OPA-20.

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MR. SCHAFFNER: Your Honor, I am told that these hearings have been sparsely attended up to this point. So, therefore, I am delighted and thank you people for showing up as concerned citizens to this important meeting.

I have been in the oil field supply business for 54 years. I have worked in Pennsylvania, Illinois, Indiana and Kentucky, but except for three and a half years helping win World War II, most of my time has been spent in New York State, specifically Allegany County. That is spelled A-l-l-e-g-a-n-y.

(Laughter)

I comment today as a private citizen who is concerned about probable destruction of an industry that has contributed so mightily to the well being of our community. Oil production taxes have built most of our schools and highways.

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Energy people have been hard-working, tax-paying citizens, contributors to our society, not the Dallas types at all, and I will be sorry to have them disappear.

And they will disappear if the Generic Environmental Impact Statement as presented in this second draft is approved. I have lived in Allegany County except for out-of-state work and Air Force Service since 1923. Oil has been produced in this county since 1879 and it is still a verdant place.

I find it hard to accept the Division of Mineral Resources claiming that ours is a disaster area, that they have a tremendous backlog of work to correct alleged disaster areas. I live here and I would be the first to protest any activity that would damage my environment, but over the long years this has not happened.

In their SEQRA, the Environmental Impact Statements are to be prepared so as to be "clearly written in a concise manner capable of being read and understood by the public".

Well, here is the second draft. Clearly written? Concise? Capable of being read and understood by the public? I don't think so.

Incidentally, the first draft which was

PHMS-1

The GEIS does not refer to the old oilfields as a disaster area. The GEIS does detail some of the current and historic practices that have resulted in environmental damage, but the document also points out that little of this damage is in evidence today.

PHMS-2

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1 produced almost two years ago was about half the size  
2 of the second draft and it took almost an act of  
3 Congress to secure a copy.

4 . Many of my colleagues have labored long  
5 and hard to review and comment on this draft. If  
6 their suggestions are not followed, the energy industry  
7 in New York will die an unnatural death.

8 My sources tell me that over 1 million  
9 taxpayer dollars have been spent so far on the  
10 Generic Environmental Impact Statement Study; so,  
11 therefore, Greg, let's spend another \$100,000 and get  
12 it right this time.

PHMS-3 13 My main concern is intensely practical.  
14 I refer to the loss of jobs in our area, the results  
15 of which I believe is our harsh regulatory climate.  
16 Regulation is acceptable, but not a police state!

17 Last December I prepared for our Congress-  
18 man an informal study of jobs lost in the 34th  
19 Congressional District, jobs related to the energy  
20 industry. This report indicates that in the 18  
21 months preceding December 1987, 178 jobs were lost and  
22 an estimated payroll of almost \$4 million.

23 A random sample of oil and gas operators  
24 in the Southern Tier, the 34th Congressional District,  
25 indicated a drop in jobs and in payroll dollars in

PHMS-2

The original GEIS outline was expanded to include those topics requested by both the public and industry at the scoping hearings. We believe the public is capable of reading and understanding this document. The GEIS draft referred to was the second draft which was distributed to the Oil, Gas, and Solution Mining Board for their technical review before distribution to the public. Review by the Advisory Board is part of the Department's internal review process. Copies of this draft were made and distributed without the Department's knowledge and consent.

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1 the last 18 months.

2 I suggest that if one considers shut  
3 down drilling rigs, service companies that have  
4 eliminated jobs, and other allied industries, the  
5 above figures could be increased by 100%. The  
6 ripple effect resulting from these job losses is  
7 troubling.

8 Certainly the depressed economic situation  
9 has had its effect on the energy-producing area, but  
10 I suggest that a large portion of these losses can  
11 be attributed to the draconian measures of the  
12 Environmental Protection Agency and the Department of  
13 Environmental Conservation.

14 In conclusion, we accept that the DEC  
15 people are God's children, too, and we must love  
16 them, but in their approach to our alleged problems  
17 they are wrong, wrong, wrong, as wrong as whiskey for  
18 breakfast.

19 Now, are there any press people here  
20 besides Joan? Any press people? No. How about  
21 representatives of Houghton or Hoffstra? Good to  
22 see you. I have got some stuff for you, Gloria.  
23 Thank you very much.

PHMS-3

Adverse market conditions for the United States' oil and gas industry have resulted in lost jobs and severe economic hardship nationwide, even in those states that are not undergoing regulatory reform. The oil and gas industry has not been singled out for increased environmental regulation. Because of increased awareness of pollution and its damaging effects, all segments of society, including other industries, private citizens, and local governments are experiencing restrictions and increased costs for environmental protection.

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MR. PFEIFLE: My name is James J. Pfeifle.

I work for National Fuel Gas. I did work as a storage engineer.

What I would like to address is the specific Section 14 and the comments addressed there.

One comment that I have is as to the regulation of an abandonment of a storage field. I feel that that is not part of the Department of Environmental Conservation's regulations because an abandoned storage field becomes a production field at that time and, therefore, the actual abandonment of the facilities may be thirty or forty years down the future. They can deal with the abandonment at that time.

The final thing that I have to say is about the gas loss provisions that they have addressed in there. I feel that that is a very simplistic approach to a very complex problem and that it should be deleted. Thank you.

PHJP-1

Mr. Pfeifle's oral testimony corresponds very closely to the written submission from National Fuel Gas. Please refer to responses NF-1 to NF-7.



PHPP-1

1 MR. PLANTS: My name is Paul Plants.

2 I would just like to make a couple of comments.

3 First of all, as for my qualifications.

4 I was born and raised on a dairy farm from which  
5 the mineral rights or the royalty rights had been  
6 sold. So, I was well aware of an environment long  
7 before the Department of Environmental Conservation,  
8 the Environmental Protection Agency, the Sierra Club,  
9 Greenpeace, Friends of Animals or any of the other  
10 ones were in existence.

11 I am still a beef farmer. I own and  
12 operate an oil lease in Allegany County. To me the  
13 statement that a drilling rig setting on a hillside  
14 is aesthetically impractical to the public, I think  
15 the public that they are talking about are the  
16 people that are driving around on taxpayer dollars  
17 in taxpayers' cars and on public assistance.

PHPP-2 18 I think that my second point is that if  
19 the Department of Environmental Conservation would  
20 like to expand their responsibility, I would suggest  
21 that they accept the responsibility of the injection  
22 wells in New York State and thereby relieving the  
23 operator of double indemnity because he has to bond  
24 two wells, one with the State and one with the  
25 Environmental Protection Agency because the EPA will

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not accept bonds that are currently used and endorsed  
2 by the Department of Environmental Conservation.

3 Since it is impossible to plug a well  
4 twice, I submit that we are being unduly regulated  
5 in this area.

6 My last point is that if the Department of  
7 Environmental Conservation would accept this respon-  
8 sibility, it would return to the State a large chunk  
9 of taxpayer dollars. Thank you.

PHPP-1 Statement of opinion is noted.

PHPP-2 The money put up for bond is not money given to the federal or State  
government. This money is held by the bonding company until the well is  
plugged and abandoned; it is then returned to the operator. The New York  
oil and gas industry declined to support State implementation of the UIC  
program in 1981.

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MR. GUNNER: Judge, if we have other questions that we would like to have answered, do we have to make official Freedom of Information Act requests or will they be answered for us forthrightly by the Department?

JUDGE DICKERSON: Perhaps maybe Mr. Sovas can address this question. Why don't you toss the question out?

MR. GUNNER: There are a number of questions that have come to my mind and they increase as each person gets up to speak. A very important question is: How much did it cost to make this study?

JUDGE DICKERSON: I can't give you an answer because I don't know.

MR. GUNNER: I am not asking you, Judge. I am asking Mr. Sovas. I suspect that in this age of information, Mr. Sovas knows exactly how much it costs.

MR. SOVAS: I don't know.

JUDGE DICKERSON: The only comment that I can make is just knowing how the government works maybe a little closer than some people.

MR. GUNNER: Thank you, Judge.

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JUDGE DICKERSON: I had a very interesting comment at another hearing last week where somebody commented that the government agencies are like bosses and they will only tell you what was wrong, but not what was right. That comment brought the house down.

I can say that it is fairly easy in the State budgeting process to come up with time and fairly easy to come up with some aspect on printing costs because contract costs are recorded. As far as anything else, I am not sure that it would be possible to come up with an accurate answer.

You might get some ballpark answers. Just to lay it out fairly, you might get some approximations, but just to nail it down as you would or I would in our checkbook as to the closest dollar fifty or whatever, I don't know if it could be done. I don't know if it could be done. There are too many accounts involved.

MR. GUNNER: I think that is fair, Judge, as long as they are willing to make some effort to address the question.

15 JUDGE DICKERSON: You have to go through  
16 the Freedom of Information Act request. I would  
17 encourage that you discuss it gently with the  
18 Department's staff.

19 Now, if there are any additional comments  
20 on the GEIS, we are going to keep the record open  
21 until July the 8th for second thoughts, afterthoughts  
22 or whatever. The last thing is, there will be one  
23 more session this evening at 7:00 p.m. back here  
24 at the Library. That is about it. I did see one  
25 more hand up.

1 MR. SCHAFFNER: Your Honor, very gently  
2 did I hear Greg Sovas say he did not know what the  
3 cost was?

4 MR. GUNNER: Yes, you did, Mr. Schaffner.

5 JUDGE DICKERSON: I gave a straight answer  
6 Exactly how much, who knows? By the same token,  
7 approximation I don't know. It is not something like  
8 you and I running a checkbook because there are too  
9 many accounts involved.

10 Whether that can be determined, whether it  
11 can be determined to the nearest buck or fifty bucks,  
12 I don't know. I am just telling you that there would  
13 be a lot of work involved in digging it out.

PHGCQ-1 The speculated \$1,000,000 cost for GEIS preparation far exceeds the actual preparation cost calculated by the Department.

The GEIS was prepared in-house by DMN staff. The estimated total cost, which includes the printing and distribution of the final GEIS is approximately \$275,000. Staff in the Program Development Section responsible for preparation of the GEIS do not work on it full time. In addition to the responsibility of keeping DMN in compliance with SEQRA, SAPA, and the State Coastal Zone Management (CZM) Act, they have other duties which include: regulation of underground gas storage and solution mining activities, coordination of State and Federal UIC program, and protection of New York State's interest under the federal Outer Continental Shelf (OCS) oil and gas leasing program.

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1 MR. SCHAFFNER: Yes.

2 JUDGE DICKERSON: Just give us your name  
3 again for the record.

PHMS-4 4 MR. SCHAFFNER: Mike Schaffner from  
5 Bolivar. You were kind enough to allow comments  
6 and questions this afternoon. Thank you. I have a  
7 comment.

8 As you pointed out, this meeting was widely  
9 advertised, but yet I see no one or I have heard no  
10 one coming in here and complaining about their bad  
11 water and about the destruction of their property  
12 by the oil and gas industry. I find it strange  
13 unless these people do not exist.

PHMS-5 14 I have a question. The question was  
15 raised this afternoon, Greg, about the annual budget  
16 for your Department, the cost of the Generic Environ-  
17 mental Impact Statement. You said that you didn't  
18 know what that was. Am I permitted to ask you what  
19 is your annual budget for the Department?

20 JUDGE DICKERSON: I am not sure that we  
21 even know right now given the present budget situa-  
22 tion.

23 MR. SCHAFFNER: I will be very helpful  
24 and tell you what it is.

25 JUDGE DICKERSON: Given what is happening

PHMS-4 Recorded in the DMN files for the 1985-1986 year were 125 complaints. Complaint investigations determined that 62 percent were related to oil and gas activities, 18 percent were found unrelated, and for 16 percent the problem causing the complaint was apparently temporary and disappeared before field staff could investigate.

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1 in Albany, I wouldn't bet on it.

2 MR. SCHAFFNER: Well, this Greg Sovas is  
3 a great salesman because he asked for \$3.3 million.  
4 He got \$3.7 million. It is interesting how I came  
5 about this. Even your Department wouldn't tell our  
6 Assemblyman what these figures were.

7 I invoked the Freedom of Information Act  
8 and this came from your people up there. Just for  
9 the record, \$3.7 million is a lot of dough of our  
10 dollars. Thank you.

11 (Applause)

12 JUDGE DICKERSON: Mr. Schaffner, let's be  
13 fair just so we understand each other given what is  
14 happening. I have only been reading it in the news-  
15 papers.

16 MR. SCHAFFNER: I read that, too. I read  
17 the newspapers.

18 JUDGE DICKERSON: In any event, we don't  
19 know what is happening. I am accepting information  
20 that you have provided.

21 MR. SCHAFFNER: This comes from their  
22 Department.

23 JUDGE DICKERSON: But that was before the  
24 recent revelations of the budget. We are \$900 million  
25 in the hole.

PHMS-5

The additional funds were added to the budget request for accounting purposes only. The oil and gas account funds designated for the plugging of hazardous abandoned wells are added and subtracted every year in the accounting books.

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14 MR. GUNNER: Yes, Judge. I am just  
15 wondering what is the procedure from here for  
16 approval of this Draft Generic Environmental Impact  
17 Statement?

18 JUDGE DICKERSON: As prescribed in Part  
19 617 and 6NYCRR and in Article 8 of the Environmental  
20 Conservation Law, basically in a nutshell and in  
21 layman's language, all of the comments have to be  
22 compiled and considered; and then the Draft Environ-  
23 ment Impact Statement considered in light of those  
24 comments. A Final Environmental Impact Statement  
25 has to be prepared and accepted and Noticed that the  
1 Final Environmental Impact Statement is available.

2 As I recall, although it doesn't directly  
3 apply in this case, it is very similar, but there is  
4 at least a ten-day waiting period before anything  
5 can be done about it after that notice is issued.  
6 There will be a Notice of Availability and Comple-  
7 tion of a Final Environmental Impact Statement as  
8 prescribed in the law and rules.

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9 MR. GUNNER: Okay. Judge, you said that  
10 had to be accepted?

11 JUDGE DICKERSON: Yes.

12 MR. GUNNER: Who does it have to be accepte  
13 by?

14 JUDGE DICKERSON: By the Department. Now,  
15 it depends who's the lead agency. Normally the lead  
16 agency has to make those determinations. This docu-  
17 ment plus the comments, just to put it again in  
18 layman's language, have to be reworked into a final  
19 document. Only when that is done is that legal  
20 notice then published.

21 MR. GUNNER: There is no more comment  
22 period then?

23 JUDGE DICKERSON: Speaking very frankly,  
24 some agencies do allow an additional comment period.  
25 The law does not, however, require it. I haven't

1 found anything that recognizes an additional comment  
2 period.

3 There is, as I said, a ten-day waiting  
4 period between the notice of availability of a Final  
5 Environmental Impact Statement and any action that  
6 can be taken. Whether that was built in to allow  
7 for comments or not, the law and the regulations are  
8 silent.

9 Some agencies will allow receipt of add-  
10 itional comments in that period of time. Some agencies  
11 don't. I can't call that shot ahead of time.

12 However, the law has the ten-day waiting  
13 period expressed but it is silent on the question of  
14 additional comments. I know that certain local  
15 agencies have said that they will accept additional  
16 comments on the Final Environmental Impact Statement  
17 during that period of time, but the law is silent on  
18 that.

PHWG-14 19 MR. GUNNER: Also, Judge, is a transcript  
20 of all of the Public Hearings going to be available  
21 before the deadline for written comments?

22 JUDGE DICKERSON: I hope so. However, I  
23 can't guarantee it. We will probably have it in that  
24 time period.

25 MR. GUNNER: How will this be obtained by

PHWG-13 Judge Dickerson has accurately responded to Mr. Gunner's question.

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1 the members of the general public?

2 JUDGE DICKERSON: Either directly through  
3 the court reporter as a purchase or as a request  
4 through the Department. It is a public record, Mr.  
5 Gunner.

6 MR. GUNNER: So, therefore, we don't have  
7 to pay the court reporter but we can request a copy  
8 from Mr. Sovas? I would like to request one now on  
9 the record, Judge.

10 JUDGE DICKERSON: I would suggest the  
11 following. First of all, you can make your own  
12 deal with the court reporter for the extra copy.  
13 If you catch him tonight, it will probably be cheaper.

14 Secondly, you can then request access to  
15 the transcript because it is a public document.  
16 However, you may not want to make a copy of the  
17 whole thing but just consult it and make copies of  
18 certain pages. I wouldn't buy the whole thing.

19 MR. GUNNER: My question is, Judge, whether  
20 or not we can actually get a copy at the Department's  
21 expense before we have to make our written comments?

22 JUDGE DICKERSON: Mr. Gunner, there is no  
23 way that you can get a copy of the transcript at the  
24 Department's expense. As I said, you can have access  
25 to the transcript at the Department.



1 MR. GUNNER: That doesn't seem to be fair,  
2 Judge.

3 JUDGE DICKERSON: I am going to lay it out  
4 very directly. It is available to you and accessible  
5 to you.

6 We have another unfortunate situation  
7 where we used to provide copies of a limited number  
8 of pages free. If you want them now, you have to  
9 pay the copying price because that is the way that  
10 the government is doing business now. It is 25 cents  
11 a page.

12 I was trying to level with you and say  
13 look at it very carefully. I am sure that you don't  
14 want to copy my opening remarks at every hearing.  
15 You may want the last five or ten pages of comments.  
16 It is available to you. Don't buy the whole thing  
17 unless you want it.

18 MR. GUNNER: Thank you, Judge.

19 MR. PFEIFLE: Judge, I just have a question.

20 JUDGE DICKERSON: Identify yourself for  
21 the record, please.

22 MR. PFEIFLE: James J. Pfeifle, National  
23 Fuel Gas. Is there going to be a written response to  
24 all of the points raised, the comments raised?

25 JUDGE DICKERSON: That should be included

PHWG-14 Judge Dickerson has accurately responded to Mr. Gunner's question.

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PHWP-2

1 by regulation in the Environmental Impact Statement.

2 The practice is to require that the Final Environmental

3 Impact Statement by regulation incorporate the

4 comments and the considerations given to you. Some-

5 times the Final Environmental Impact Statement grows

6 a little bit. That is part of the process.

7 Now, whether you are going to get an indi-  
8 vidual written letter back, I wouldn't guarantee it.

9 The requirement is that the comments be addressed in  
10 the Final Environmental Impact Statement.

11 Now, that goes for any Environmental  
12 Impact Statement across the board whether the lead  
13 agency is the Town, County, City or the State.

14 I will get a little philosophical for  
15 about thirty seconds. The SEQR Quality Review process  
16 sort of forces attention to the comments. They have  
17 to be incorporated in the Final Environmental Impact  
18 Statement when it comes out.

19 MR. PFEIFLE: Thank you.

PHJP-2 Judge Dickerson has accurately responded to Mr. Pfeifle's questions.