

**Haudenosaunee Environmental Task Force
Statement on Hydraulic-Fracturing
March 4, 2009**

Haudenosaunee View on the Environment

The Haudenosaunee consist of the Mohawk, Oneida, Onondaga, Cayuga, Seneca and Tuscarora Nations. The Haudenosaunee Nations and its people have a unique spiritual, cultural, and historic relationship with the land, which is embodied in *Gayananshogowa*, the Great Law of Peace. This relationship goes far beyond federal and state legal concepts of ownership, possession, or other legal rights. The Haudenosaunee people are one with the land and all that depends on the land, and consider themselves apart of it. It is the duty of the Nations' leaders to work for a healing of the land, to protect it, and to pass it on to future generations.

The Haudenosaunee know that every part of the natural world is important and interrelated; when humans tinker more and more with the natural balance, we do so at the peril of our grandchildren. The Haudenosaunee Environmental Task Force engages in extensive environmental work on behalf of its people and all people, in the hope that it may hasten the process of reconciliation and bring lasting justice, peace and respect among all living beings – animal, bird, fish, plant and people – who live on Turtle Island.

Clean and abundant water is now the highest priority for human survival. The natural world is the distributor of water, according to the great systems that control our earth and its climate. It belongs to no one person, corporation, or nation. Privatization and pollution of water are fundamental violations of our human rights, and the rights of the natural world. The balance of life is predicated on sharing the Earth's natural resources.

Our ability to live in unity and in balance with the Earth depends on each and every person at every level, from governmental departments, to property owners, to children volunteering to help plant urban trees. To be a human being carries with it a responsibility to understand our impact on the world around us and the future

generations, and to act in ways to make the world better, not worse. Finding solutions that work with nature, instead of against her, is the only rational course of action to meet the challenges of our time.

The Haudenosaunee Environmental Task Force believes that the process of hydraulic-fracturing will devastate the natural environment over a large area and for many generations into the future. We also understand that even though the New York State Department of Environmental Conservation (DEC) is able to justify moving forward with this process based on a presumption of the soundness of its written policy, by requiring permits for certain activities and providing regulatory disincentives for violations to its permitting requirements, there will be unintended consequences that DEC cannot prevent.

We need only look so far as the Tully Valley, south of the Onondaga Nation Territory, and we see the unintended consequences of 100 years of solution salt mining on that valley. We look near Parachute, Colorado where a mine sprang a leak, allowing some 1.6 million gallons of fluid to soak into the arid earth. According to state records, the spill migrated underground until it seeped from a cliff side and froze into a gray pillar of ice more than 200 feet tall. When it melted, the fluids dripped into the torrid currents of Parachute Creek and finally dumped into the Colorado River. Colorado state records show that of some 1,500 spills in drilling areas since 2003, more than 300 have seeped into water. In one case, a truck carrying drilling fluids crashed into the Colorado River, where it remained partially submerged for more than three weeks.

In neighboring Wyoming, the Bureau of Land Management found a 28-mile-long plume of benzene contamination in an aquifer beneath a gigantic gas field, caused by hydraulic-fracturing. The aquifer is near a tributary to the Green River, which in turn flows into the Colorado River. More than 1,000 other cases of contamination due to hydraulic-fracturing have been documented by courts and state and local governments in Colorado, New Mexico, Alabama, Ohio and Pennsylvania.

The Haudenosaunee Environmental Task Force has not been able to create a scenario by which the economic and energy benefits of hydraulic-fracturing will outweigh its known dangers and risks. DEC is one entity delegated the authority to protect our Earth and waters against contamination caused by hydraulic-fracturing by refusing to allow our Earth and its waters to be exploited in this way. We ask that the DEC partner with us to find other energy sources that do not destroy our grandchildren's ability to live long and healthy lives.

Haudenosaunee Mineral Rights

The Marcellus and Utica shale formations and other shale formations lie beneath Haudenosaunee lands, which are protected by the Treaty of Fort Stanwix of 1768 between the Haudenosaunee and the British Crown, by the Treaty of Fort Stanwix of 1784 between the United States and the Six Nations (7 Stat. 15), by the Treaty of Fort Harmar of 1789 between the United States and the Six Nations (7 Stat.33), and by the Treaty of Canandaigua of 1794 between the United States and the Six Nations (7 Stat. 44). Under the Constitution, Treaties are the “supreme law of the land.” U.S. Const. art. VI.

All of the mineral resources above and below the surface of Indian lands are governed by these Treaties, and those mineral resources have been specifically retained as a beneficial incident of Indian Nations’ reserved lands. US v. Shoshone Tribe, 304 U.S. 111 (1938) (holding that Indian Nations are the beneficial owners of the natural resources located on and under their lands).

In addition, the United States government has promised to “appropriately manag[e] the natural resources located within the boundaries of Indian reservations and trust lands.” 25 U.S.C. § 162a(d). The United States has a “trust responsibility to protect the [Indian Nations’] mineral estate. Included in this trust responsibility is the duty to prevent mineral trespass.” Shoshone Indian Tribe of Wind River Reservation, Wyoming v. U.S., 52 Fed.Cl. 614, 628 (2002); 43 C.F.R. § 3590.2(I).

Moreover, the United States government must ensure, among other things, that – as to any mining affecting Indian Nation lands – all environmental studies are prepared as required by NEPA and its regulations (40 CFR parts 1500 through 1508); all necessary surveys are performed and clearances obtained in accordance with 36 CFR parts 60, 63, and 800 and with the requirements of the Archaeological and Historic Preservation Act (16 U.S.C. 469 et seq.), the National Historic Preservation Act (16 U.S.C. 470 et seq.), the American Indian Religious Freedom Act (42 U.S.C. 1996), and Executive Order 11593, Protection and Enhancement of the Cultural Environment (3 CFR, 1971 through 1975 Comp., p. 559). The Energy Policy Act of 2005 did not eliminate the federal review of mining activities within Indian Nation Territories.

Thus, the DEC does not have the authority to regulate mining activity on Indian Nation lands and the federal government is bound to fulfill its Treaty and statutory obligations to protect Indian Nation mineral resources from such activities.

Protection of Haudenosaunee History and Sacred Places

The Haudenosaunee used to inhabit the entirety of the area that will be impacted by this drilling, and there are hundreds of former pre- and postcontact sites and tens of thousands of unmarked graves of ancestors that require protection from disturbance. Federal law requires consultation with Indian Nations concerning any potential disturbance of archeological sites. However, the DEC has failed to consult with Indian Nations about protection of Haudenosaunee history and sacred places, and its scoping documents ignore these issues altogether.

This oversight is particularly problematic, insofar as it is well documented in the scholarly literature that substantial cultural resources are present throughout the geographic area underlain by the Marcellus and Utica shale formations. These cultural resources and sacred places and are likely to be damaged or destroyed by these mining activities unless avoided by prior documentation and study.

Renewable Energy

There are many means of harnessing energy, which have less damaging impacts on our environment. DEC must consider every viable alternative to hydrofracking and protect the environment that we all share.

Alternatives to hydrofracking include investments in alternative energy production and energy-efficient technologies that would equal or even surpass the total energy benefits realized by hydrofracking. Renewable energy production from wind, biomass, geothermal, and solar sources must be analyzed against the currently preferred alternative, including the long-term social, economic, cultural, and environmental impacts.

Hydrofracking will ultimately require significant investments of energy, land, water, materials, labor and capital to locate, drill, refine, store, transport, and distribute natural gas from its source to the point of consumption. Alternative energy systems are often built, installed, operated, and maintained by local workers, in stark contrast to the permanent hydrofracking wells sending natural gas out-of-state to be burned and released as greenhouse gases into the atmosphere. This type of net energy analysis is becoming increasingly important as fossil fuel scarcity and prices begin to drive untested and unproven energy production proposals.

Using fossilized fuel to extract even harder-to-reach fossilized fuel may be an easy decision to make in the short-term, but it is the unborn generations who will bear the weight of the devastating environmental impacts, and the failures of our generation. Our ancestors treated the ground springs of oil as a valuable and sacred medicine for thousands of years before they were exhausted by American industry in less than a century. We are taught to have a special respect for those rare and powerful elements of Mother Earth provided by our Creator for this reason. The careful acquisition, thanksgiving, and circumspect use of the Natural World to sustain human life is the natural law for all humans, not just the Haudenosaunee.