

EXECUTIVE ORDERS

Executive Order No. 41: Requiring Further Environmental Review of High-Volume Hydraulic Fracturing in the Marcellus Shale.

WHEREAS, the 2009 New York State Energy Plan supports the development of in-State energy resources, including natural gas, to achieve the Plan's multiple public policy objectives; and

WHEREAS, low-volume hydraulic fracturing, or conventional fracking, has been used successfully and safely in New York State for many years to extract natural gas consistent with the Generic Environmental Impact Statement (GEIS) for Oil, Gas and Solution Mining Regulatory Program promulgated by the New York State Department of Environmental Conservation (Department) in 1992; and

WHEREAS, new technologies have emerged, and are being deployed in other states, to extract natural gas more efficiently through a process known as high-volume hydraulic fracturing combined with horizontal drilling; and

WHEREAS, there is a need for further study of this new technology prior to deployment in New York State; and

WHEREAS, in 2008, I directed the Commissioner of Environmental Conservation to initiate a formal public process to update the 1992 GEIS to ensure that any new technologies deployed in New York State are first thoroughly analyzed and regulated to ensure that all environmental and public health impacts are mitigated or avoided; and

WHEREAS, the Department issued a draft scope for an updated GEIS on October 6, 2008, held public meetings in the Marcellus shale region, received more than 3,000 written comments, and issued a final scope for the Supplemental Generic Environmental Impact Statement (SGEIS) on February 6, 2009. The Department released the Draft SGEIS for public review and comment on September 30, 2009, held four public hearings in the region and New York City, and received more than 13,000 written comments during a public comment period that closed December 31, 2009; and

WHEREAS, tens of thousands of citizens, landowners, local governments, large and small businesses, non-governmental organizations, and other stakeholders have expressed their heartfelt support for or opposition to the new technology, but most agree that an objective, science-based analysis is the best approach to setting new policy.

NOW, THEREFORE, I, David A. Paterson, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and laws of the State of New York, do hereby order as follows:

1. The Department shall complete its review of the public comments, make such revisions to the Draft SGEIS that are necessary to analyze comprehensively the environmental impacts associated with high-volume hydraulic fracturing combined with horizontal drilling, ensure that such impacts are appropriately avoided or mitigated consistent with the State Environmental Quality Review Act (SEQRA), other provisions of the Environmental Conservation Law and other laws, and ensures that adequate regulatory measures are identified to protect public health and the environment; and

2. On or about June 1, 2011, the Department shall publish a Revised Draft SGEIS, accept public comment on the revisions for a period of not less than thirty days, and may schedule public hearings on such revisions to be conducted in the Marcellus shale region and New York City; and

3. Recognizing that, pursuant to SEQRA, no permits may be issued prior to the completion of a Final SGEIS, the Department, subsequent

to the conclusion of the public comment period, shall report to the Governor on the status of the Final SGEIS and the regulatory conditions that are necessary to include in oil and gas well permits to protect public health and the environment.

(L.S.)

GIVEN under my hand and the Privy Seal of the State in the City of Albany, this thirteenth day of December in the year two thousand ten.

BY THE GOVERNOR

/S/ David A. Paterson

/s/ Lawrence Schwartz

Secretary to the Governor

Executive Order No. 42: Establishing an Executive Chamber Records Management Policy.

WHEREAS, there is great historic and educational value in many records and communications of the Executive Chamber; and

WHEREAS, historians, journalists, educators and the general public can gain a greater understanding of the manner in which New York State is governed by having access to gubernatorial records, so long as such access is consistent with the protection of applicable privileges and privacy concerns, and does not unduly burden the Office of the Governor; and

WHEREAS, governors and their staff would benefit from having critical records of prior administrations available to them upon taking office; and

WHEREAS, electronic and digital technologies are rapidly transforming government records management, and must be taken into account in the process for preserving records in an orderly, comprehensive manner; and

WHEREAS, the process and standards by which the records of the Executive Chamber are preserved should be open and transparent to the public, and consistent with the practices that are observed by other state agencies; and

WHEREAS, it is appropriate that the Executive Chamber comply with the objectives of § 57.05 of the Arts and Cultural Affairs Law, which provides for state agencies to compile a retention schedule and preserve records in accordance with that schedule; and

WHEREAS, the purposes of § 57.05 of the Arts and Cultural Affairs Law can be achieved either through providing records of historical value to the State Archives or to another appropriate and publicly accessible archiving facility;

NOW, THEREFORE, I, David A. Paterson, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and the Laws of the State of New York do hereby order as follows, with respect to records of my administration:

1. The Executive Chamber shall develop and implement a records management policy, which shall include a retention schedule (the "Retention Schedule"), and shall periodically review and revise such Retention Schedule consistent with this Order. For purposes of this order, the term "Archive" shall mean an institution that archives records, and provides a means for public access and review of such records, including a research university, that is selected by the Governor for record retention in accordance with this Order.

2. A member of the Executive Chamber Counsel's Office shall be designated the Records Retention Officer. The Records Retention Officer shall:

- a. Coordinate Executive Chamber staff's record retention activities;
- b. Answer staff inquiries on record retention; and
- c. Review the Retention Schedule to determine if changes are necessary as new series of documents are located.

3. All staff members of the Executive Chamber, prior to the termination of their employment with the Chamber, but in all events before the commencement of a new administration, shall categorize records in their possession and control into types of records in accordance with the Retention Schedule. Such records will be retained for a period set forth in the Retention Schedule, and will be disposed of in accordance with the disposition set forth in that Schedule.

4. A staff member of each unit of the Executive Chamber, including the Offices of the Secretary, Governor's Counsel, Intergovernmental Affairs, Press and Appointments shall be designated to oversee the categorization, segregation and collection of records, and shall assist staff in complying with the terms of this Order and with the Retention Schedule.

5. The Counsel to the Governor shall consult with the Archive with respect to the retention schedule, and, in good faith, shall negotiate a memorandum of understanding with said Archive. Such memorandum shall contain a protocol with respect to the maintenance of all legal privileges of the Governor, e.g. attorney/client privilege. Such memorandum also shall specify the schedule when records preserved by the Executive Chamber shall be provided to the Archive, and the process for making such records available to the public, when appropriate. Should the Chamber amend the Retention Schedule as a result of such discussions, or otherwise during the process of records collection, it shall post the revised Schedule on the Governor's website.

6. Counsel to the Governor shall provide such assistance as is necessary to the staff of the Executive Chamber in complying with this Order, and in identifying (a) records subject to legally recognized privileges; and (b) records relevant to litigation, in order to ensure the preservation of the appropriate documents.

7. The Office of Information Technology in the Executive Chamber shall propose and develop a protocol for the preservation of electronic records which shall include:

- a. A process by which senders and recipients of electronic mail can categorize such mail into records that will be retained, and those that will be subject to procedures for regular disposition of such records in the ordinary course of business;
- b. The delineation of such other standards or procedures which will assist in the identification and preservation of electronic records; and
- c. The identification of software and other technological aids that would facilitate records preservation and review, and which may be purchased within available resources.

8. Nothing in this order shall bar:

- a. Any employee from destroying or otherwise disposing of records that are duplicative, non-record material, not deemed to be of historical value, or subject to a recognized privilege and whose preservation is not required by law, ongoing or anticipated litigation, pending Freedom of Information Law request or other grounds.
- b. Any employee from maintaining a record slated for destruction under the Retention Schedule, or from providing such record to a gubernatorial agency, if such record is relevant to an ongoing matter, and such disclosure would not violate any privilege or confidentiality interest.
- c. The continuation of any policy or practice for the regular timed deletion of electronic mail.
- d. The maintenance of specific records in the Executive Chamber that are relevant to ongoing matters, or the provision of such records to executive agencies or public benefit corporations to the extent they will be helpful with ongoing matters.

(L.S.)

GIVEN under my hand and the Privy Seal of the State in the City of Albany, this thirteenth day of December in the year two thousand ten.

BY THE GOVERNOR

/S/ David A. Paterson

/s/ Lawrence Schwartz

Secretary to the Governor

Executive Order No. 43: Continuing the Lower Manhattan Construction Command Center.

WHEREAS, the Lower Manhattan Construction Command Center ("the Command Center") was jointly created by New York State Executive Order No. 133 of 2004 and New York City Executive Order No. 53; and

WHEREAS, the Command Center was created to coordinate construction in Lower Manhattan and ensure that projects move forward expeditiously and with the utmost integrity, while minimizing the impact of such construction on residents, businesses, workers, commuters, pedestrians, and vehicles; and

WHEREAS, all parties involved in the rebuilding recognize the continuing need for an entity to coordinate construction projects in Lower Manhattan; and

WHEREAS, all agencies involved in the rebuilding must maintain the ability to manage their own projects and an entity coordinating the projects improves their ability to successfully manage their own projects;

NOW, THEREFORE, I, DAVID A. PATERSON, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and Laws of the State of New York, do hereby order as follows:

1. Continuation of the Lower Manhattan Construction Command Center. The Lower Manhattan Construction Command Center, established by Executive Order No. 133, shall continue. The Command Center shall coordinate all construction located in Lower Manhattan. Lower Manhattan is defined as the area on the island of Manhattan south of Canal Street and southwest of Rutgers Street from the Hudson River to the East River. Construction includes all construction work requiring governmental action or permit, and any construction requiring work directly in City or State streets or highways.

2. Lower Manhattan Construction Command Center Executive Director. The Command Center shall be managed by the Lower Manhattan Construction Command Center Executive Director ("the Executive Director"). Such Executive Director shall be appointed in a manner to be determined jointly by, and shall report directly to, the Governor and the Mayor of the City of New York. The Executive Director, and one or more deputies, shall be charged with the day-to-day responsibility for coordinating construction work in Lower Manhattan with a focus on mitigating impacts on mobility, maintaining and improving access, and alleviating congestion of any kind related to construction.

3. City Operations. A Director of City Operations, appointed by the Mayor, after consultation with the Command Center Executive Director, shall ensure the quality of life of residents and businesses of Lower Manhattan, coordinate City services as they interface with the construction projects and ensure that logistics and traffic management plans are appropriately enforced. The Director of City Operations shall serve as the liaison between the Executive Director of the Command Center and all City agencies.

4. Participation by Public and Private Partners. The Command Center shall coordinate with high level construction personnel from the key participants in the rebuilding process including the New York City Department of Transportation, the New York City Department of Design and Construction, the New York City Department of Buildings, the New York City Economic Development Corporation, the New York City Department of Environmental Protection, the New York City Department of Sanitation, the New York City Police

Department (“NYPD”), the New York City Fire Department, the New York City Office of Emergency Management, the Port Authority of New York and New Jersey, the Metropolitan Transportation Authority, the New York State Department of Transportation, the Lower Manhattan Development Corporation, Silverstein Properties, Verizon, Con Edison, the Alliance for Downtown New York, the Battery Park City Authority, the Real Estate Board of New York, other public and private partners, and representatives of such other entities as the Executive Director shall determine appropriate in carrying out the duties and responsibilities of the Command Center.

5. Lower Manhattan Construction Executive Committee. The Lower Manhattan Construction Executive Committee, which includes senior managers designated by the heads of the New York City Department of Transportation, the New York City Economic Development Corporation, the New York City Department of Environmental Protection, the Port Authority of New York and New Jersey, the Metropolitan Transportation Authority, the New York State Department of Transportation, and the Lower Manhattan Development Corporation (each in a number to be determined by the Command Center Executive Director) shall advise and consult with the Command Center Executive Director on the management of the Command Center. This group shall meet as determined by the Command Center Executive Director (in any event no less than quarterly) and shall be chaired by the Command Center Executive Director.

6. Traffic Coordination. The New York City Department of Transportation Lower Manhattan Office, working in consultation with the New York State Department of Transportation and the NYPD, shall be responsible for all traffic coordination issues and shall provide all required Lower Manhattan construction and lane closure permits in a manner consistent with law. The Borough Commissioner of the New York City Department of Transportation Lower Manhattan Office shall coordinate directly with the Executive Director with regard to traffic management, street permitting, and enforcement.

7. Functions of the Command Center. The Command Center shall work collaboratively with public agencies and the private sector to set strategy, facilitate decision-making, provide technical assistance and resolve conflicts to ensure effective coordination, project completion, and construction mitigation. The functions of the Command Center shall include:

A. Construction Coordination: To ensure effective construction coordination the Command Center shall:

(1) Collaborate with City, State, and Federal regulatory agencies and management, as well as with private sector construction management owners and firms, to develop a construction coordination plan that addresses: traffic and pedestrian flow, utility work and outages, construction staging and access, material deliveries, and construction mitigation for numerous construction projects;

(2) Work with implementing agencies and construction managers to review and recommend sequencing of construction and resolution of problems and conflicts to minimize costs and enable concurrent progression on jobs;

(3) Facilitate communication and decision-making between key agencies to address project issues, permitting, and site logistics;

(4) Conduct high-level master scheduling, including tracking major monthly milestones, with an emphasis on notice to proceed dates, contractual completions and phasing plans, and adjustments to project milestones and sequencing;

(5) Evaluate project schedules to determine if there are impediments to progress and completion, anticipate and resolve potential problems based on project schedules, and provide recommendations and facilitate collaborative discussion on the most efficient construction sequencing and resolution on technical issues; and

(6) Hold regular Lower Manhattan Construction Progress meetings, facilitated by a top-level engineering and construction management consultant and including relevant construction managers, owners, agencies and utility companies to address progress of jobs and resolve conflicts.

B. Expedite Construction Completion. To facilitate progress and completion of future and ongoing construction projects the Command Center shall:

(1) Monitor the implementation and completion or ongoing construction in Lower Manhattan according to scope, schedule and mitigation plan;

(2) Provide technical assistance on project issues including construction planning, field conditions or permitting in order to expedite projects and to address possible delay;

(3) Highlight critical issues on projects and recommend a course of action to State and City managing agencies; and

(4) Publicly recognize project milestones to promote the overall development and increase agency accountability.

C. Construction Impact Mitigation. To mitigate the impact of construction on Lower Manhattan the Command Center shall:

(1) Assist with the development, implementation, and oversight of construction mitigation plans. Mitigation plans shall address: site conditions, dust control, noise, traffic, quality of life, utilities, public notices, signage, air quality and other issues;

(2) Conduct frequent site inspection with regulatory agencies to monitor site conditions and address issues;

(3) Hold regular meetings of the Construction Permit Enforcement Task Force, which includes supervisors from the New York City Department of Buildings, the New York City Department of Transportation, the New York City Department of Environmental Protection, the NYPD, the New York City Fire Department, and the New York City Department of Sanitation, to coordinate permit, enforcement, mitigation and quality of life issues in Lower Manhattan.

(4) Receive, investigate, and respond to citizen complaints and inquiries regarding site conditions, cleanliness, signage, pedestrian access, traffic, noise, air quality, safety, and other issues, and make referrals to appropriate regulatory agencies;

(5) Work with managing agencies to hold informal training workshops with prospective contractors to address ways to mitigate construction impacts on the job sites and to highlight aspects of working in lower Manhattan; and

(6) Assist contractors on ways to comply with regulations or performance specifications and establish a “tool box” of mitigation strategies to be used as a resource.

D. Communicate and Report. To communicate to the Governor’s Office, the Mayor’s office, public and private partners, and the general public, the Command Center shall:

(1) Maintain and update a public website with updated construction information, progress, and advisories;

(2) Give regular presentations and updates on the status of planning, design, and construction progress;

(3) Draft regular progress reports on projects and identify recommendations made and implemented by State and City agencies or private contractors; and

(4) Attend Community Board meetings to address construction progress and related concerns.

8. Agency assistance and Cooperation. All departments and units of State government are directed to cooperate fully with the Command Center Executive Director and to provide such assistance as is agreed to by all parties as reasonable and necessary in fulfilling the obligations of the Command Center, including but not limited to participation in the construction mitigation and construction coordination task forces, and the provision of information on project scope, budget, schedule, status of permitting, and mitigation plans.

9. Project Responsibility. The existence of the Command Center does not relieve any agency or public or private entity from its responsibility for full management of its construction project or projects in Lower Manhattan. All aspects of each project shall be the responsibility of the entity building that project.

10. Powers and duties of agencies. Nothing in this Order shall serve as a limitation on the powers and duties of any State or City agency.

11. Effective Date. This order shall take effect immediately and shall replace Executive Order 133 of 2004, which is hereby rescinded. This Order shall expire on December 31, 2013.

(L.S.) GIVEN under my hand and the Privy Seal of the State in the City of Albany, this fifteenth day of December in the year two thousand ten.

BY THE GOVERNOR
/S/ David A. Paterson
/s/ Lawrence Schwartz
Secretary to the Governor

Executive Order No. 44: Directing the Reallocation of Deemed Waived Recovery Zone Facility Bond Allocations.

WHEREAS, the Federal government enacted the American Recovery and Reinvestment Act of 2009 (“ARRA”) in order to stimulate the national economy and increase employment; and

WHEREAS, the ARRA created the Recovery Zone Facility Bond (“RZFB”) program in order to support private business development projects and trade activity in designated economically distressed areas termed “Recovery Zones”; and

WHEREAS, pursuant to the ARRA and as described in Notice 2009-50 of the Internal Revenue Service (Notice 2009-50), the State of New York (“State”) received an allocation of RZFB Volume Cap of \$555,147,000; Notice 2009-50 further required that such allocation be initially allocated among counties and certain large municipalities (“Original Allocation Recipients”) in the amounts as provided therein (“Original Allocations”); and

WHEREAS, to advance the State’s economic development efforts, Empire State Development Corporation (“ESDC”) and the Department of Economic Development (“DED”) distributed a memorandum on December 29, 2009 requesting information from Original Allocation Recipients about their issuance plans for RZFBs and use of the Original Allocations and requested the delivery of express and affirmative waivers to ESDC of all or part of their Original Allocations in the event such allocations would not be used, attaching a form to be used for such purpose; and

WHEREAS, under ARRA, RZFB’s must be issued before January 1, 2011 (the “Expiration Date”); and

WHEREAS, the State, through the efforts of ESDC and DED, has provided extensive guidance about RZFBs to Original Allocation Recipients, including outreach and assistance to elected officials and economic developers related to projects and reallocation requests; and

WHEREAS, in November 2010, the Chair of the New York State Economic Recovery and Reinvestment Cabinet, which I created to manage the development of State and local infrastructure projects financed through ARRA, issued a request for RZFB waivers, which noted ESDC’s authorization to act for State regarding RZFB guidance and included the waiver form previously distributed by ESDC; and

WHEREAS, it is critical that the State and its localities take advantage of the RZFB program to create jobs, foster economic development, and develop critical infrastructure, and therefore, to the extent any Original Allocations will not be used by the Original Allocation Recipients, it is imperative to provide for the re-allocation of such unused allocations to projects that would promote economic recovery of the State prior to the Expiration Date; and

WHEREAS, there is no reasonable basis to assume that such Expiration Date will be extended by the Federal government; and

WHEREAS, the ARRA and Notice 2009-50 provide that all or any portion of the Original Allocations may be waive or deemed waived by the Original Allocation Recipients and upon such waiver, a state shall be authorized to re-allocate the waived allocation in any reasonable manner as it shall determine in good faith in its discretion;

NOW, THEREFORE, I, David A. Paterson, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and Laws of the State of New York do hereby order as follows:

1. Original Allocations which have not been utilized for the issuance of RZFBs shall be deemed waived by an Original Allocation Recipient unless such Original Allocation Recipient delivers to ESDC on

or before December 21, 2010, a written report detailing the RZFB issuance plans of such Original Allocation Recipient, specifying amounts and projects.

2. ESDC shall reallocate such deemed waived Original Allocations, together with allocations heretofore waived by Original Allocation Recipients, in any reasonable manner for use for eligible costs for qualified Recovery Zone purposes.

(L.S.) GIVEN under my hand and the Privy Seal of the State in the City of Albany, this seventeenth day of December in the year two thousand ten.

BY THE GOVERNOR
/S/ David A. Paterson
/s/ Lawrence Schwartz
Secretary to the Governor