

**Freedom of Information Law request  
by The New Franklin Register  
to Department of Environmental Conservation  
for the draft regulations resulting from the GEIS on Oil, Gas and  
Solution Mining Regulatory Program (1992)**

**Backstory**

While following the developments of gas drilling in Pennsylvania, The New Franklin Register found mention of a review of the PA DEP oil and gas regulatory program. In tracking-down this lead, we found that there had been a similar review of the NYS DEC program by IOGCC and US EPA in 1994 -- available at <http://strongerinc.org/content/new-york> . Also available on their website was a sixteen page history of the program, which revealed that, unlike several states, New York undertook no follow-up review in the intervening 15 years. (Pennsylvania had two follow-up reviews in that time.) After a presentation in 2004 to DEC by STRONGER Inc. (the subsidiary of IOGCC that took over the review process), DEC agreed to a follow-up review in 2005, which was postponed to 2006 and then cancelled (James Erb, consultant to STRONGER Board of Directors, personal communication, 5/6/11). We were referred to Director Field of DMN for an explanation of this cancellation, but received no response.

As a consolation, DEC agreed to self-evaluate how well they had responded to the 37 recommendations of the 1994 review. This Q&A is not available on the STRONGER web site, but we were sent a copy. In addition to whether the IOGCC/EPA recommendations were implemented or not, in some cases DEC provided comments on their efforts. For the primary recommendation:

*Recommendation I.1. DMN should establish and adhere to a schedule for completing its rule revisions as soon as possible, and incorporate the relevant recommendations contained throughout this report into the rulemaking. (1990 Guidelines sections 3.1 and 5.1.)*

*Has this recommendation been implemented? Partially*

*Comments: Mineral Resources prepared regulations and held hearings in the fall of 1997 to collect public comments. These regulations were not promulgated; however, Mineral Resources has implemented many regulatory changes through other means, including permit conditions and guidance documents.*

With this revelation, The New Franklin Register began our attempt to obtain a copy of those draft regulations.

Unlike the GEIS, there is no record on the DEC website of the IOGCC/EPA review, the draft regulations, or the STRONGER questionnaire. This despite that the DEC is still a member of the Interstate Oil and Gas Compact Commission, as is listed on their website <http://www.dec.ny.gov/about/805.html> , with the Director of DMN, Bradley J. Field, the official voting representative.

# FOIL Request for Draft GEIS Regulations

## Chronology

- 6/11 The New Franklin Register e-mailed a FOIL request to Ms. Earl at DEC (Records Access <foil@gw.dec.state.ny.us>) for the draft GEIS regulations.
- 6/11 Division of Mineral Resources (DMN) notified us that, due to their work completing the revised draft SGEIS, the usual 10 day response would instead be two months.
- 8/11 Days before the two month deadline, DMN denies request because this document is “an internal draft” and as “inter-agency or intra-agency materials” may be denied.
- 8/11 The NFR consulted Committee on Open Government in Albany (<http://www.dos.ny.gov/coog/index.html>) and a local lawyer (MJL) concerning grounds for appeal and proper procedure.
- 8/11 Within the 30 day deadline, the NFR sends a register letter to the FOIL Appeals Officer in the Office of General Council, DEC appealing our denial.
- 9/11 An Associate Counsel in DEC office of General Counsel investigates and explains that DMN claims that they could find no copy of the 1997 draft regs, but they did find a copy of a 2000 edit. Because of the edits, DMN claims that it is “an internal draft”.
- 9/11 AC finds in the Environmental Notice Bulletin announcement of public workshops held by DMN on the draft regs, thereby confirming that 1997 draft regs were a public document.
- 9/11 AC is unable to locate even one copy of those draft regs anywhere in New York government system.
- 10/11 AC rules that DMN must release the 2000 edited version, but may redact the text added in 2000.
- 11/11 After reading through the document, NFR decides not to make a judicial appeal for an unredacted copy. Redacted text is mostly punctuations, words, and section headings.

from: Brian Brock <thenewfranklinregister@gmail.com>  
to: foil@gw.dec.state.ny.us  
cc: "marjorie bradley kellogg, editor" <email@redacted>  
date: Sat, Jun 4, 2011 at 3:37 PM  
subject: Proposed DMN regulations ca. 1997

After the finalization by DMN of the GEIS on Oil, Gas, and Solution Mining Regulatory Program in July 1992, the DMN began the process of codifying the findings of this GEIS. As I understand, regulations were proposed and public hearings were held in 1997. I request a copy of those proposed regulations.

Brian Brock  
Associate Editor  
The New Franklin Register

from: Records Access <foil@gw.dec.state.ny.us>  
to: thenewfranklinregister@gmail.com  
date: Tue, Jun 7, 2011 at 3:41 PM  
subject: FOIL 11-1415

Please see the attached. A hard copy will not follow.

Ruth Earl  
Records Access Officer  
NYSDEC  
625 Broadway  
Albany, NY 12233-1500  
ph: 518-402-9522  
fax: 518-402-9018

**New York State Department of Environmental Conservation**

**Office of General Counsel, 14<sup>th</sup> Floor**

625 Broadway, Albany, New York 12233-1500

Fax: (518) 402-9018 or (518) 402-9019

Website: [www.dec.ny.gov](http://www.dec.ny.gov)



Joe Martens  
Commissioner

JUN - 7 2011

*Via electronic mail only*

Mr. Brian Brock [thenewfranklinregister@gmail.com](mailto:thenewfranklinregister@gmail.com)

Dear Mr. Brock:

This is to acknowledge receipt of your Freedom of Information Law (FOIL) request seeking a copy of the 1997 regulations that were proposed to codify the findings of the Generic Environmental Impact Study on Oil, Gas and Solution Mining.

Governor Cuomo has directed the Department to complete revisions to the Supplemental Generic Environmental Impact Statement by July 1, 2011. Due to the demand placed on staff to meet the July 1 deadline, the Department will not be able to respond to your FOIL request within twenty business days. Consequently, I expect to make the documents available to you by August 5, 2011.

If you have any questions in the interim, please call me at (518) 402-9522 and reference FOIL 11-1415.

Sincerely,

Ruth L. Earl  
Records Access Officer

from: Brian Brock <thenewfranklinregister@gmail.com>  
to: Records Access <foil@gw.dec.state.ny.us>  
date: Tue, Jun 7, 2011 at 7:23 PM  
subject: Re: FOIL 11-1415

Ruth Earl,

Thank you. Our article is will require considerable research. Early August for a copy of proposed regulation ca. 1997 will suffice. We expect to be busy reading the SGEIS when it comes out in July.

Brian Brock  
Associate Editor  
The New Franklin Register

from: Brian Brock <thenewfranklinregister@gmail.com>  
to: Records Access <foil@gw.dec.state.ny.us>  
date: Thu, Jul 28, 2011 at 12:42 PM  
subject: Re: FOIL 11-1415

Ms. Earl,

Just a reminder that you had promised the documents for my FOIL 11-1415 by Friday the 5th of August, which is just over a week away.

Thank you,

Brian Brock  
Associate Editor  
The New Franklin Register

**New York State Department of Environmental Conservation**  
**Division of Mineral Resources**  
Bureau of Oil & Gas Permitting and Management, 3<sup>rd</sup> Floor  
625 Broadway, Albany, New York, 12233-6500  
Phone: (518) 402-8056 • Fax: (518) 402-8060  
Website: [www.dec.ny.gov](http://www.dec.ny.gov)



Joe Martens  
Commissioner

Certified Mail

August 3, 2011

Mr. Brian Brock  
The New Franklin Register  
P.O. Box 258  
Franklin, NY 13775

**Re: Freedom of Information Law Request 11-1415**

Dear Mr. Brock:

The purpose of this letter is to inform you of the Department's denial of access to the "proposed DMN regulations ca. 1997" you requested in the subject Freedom of Information Law (FOIL) request received by the Department on June 6, 2011.

Notice of denial of access to these records is hereby provided as the records are an internal draft and are therefore considered intra-agency materials. This denial is made in accordance with Article 6 of the Public Officers Law §87.2(g) which states, in part, that each agency shall make available for public inspection and copying all records, except that such agency may deny access to records or portions thereof that are inter-agency or intra-agency materials which are not: i) statistical or factual tabulations or data, ii) instructions to staff that affect the public, and iii) final agency policy or determinations.

In accordance with 6 NYCRR §616.8, you may appeal the denial to access these records within thirty days of receipt of this notice. Any such appeal must be made in writing and should be directed to FOIL Appeals Officer, Office of General Counsel, NYSDEC, 625 Broadway, 14<sup>th</sup> Floor, Albany, NY 12233-1500.

If you have questions or concerns regarding this matter, please contact this office at (518) 402-8056.

Sincerely,

Carrie W. Friello  
Mineral Resources Specialist 3

CF/tj  
c: R. Earl

from: Brian Brock <thenewfranklinregister@gmail.com>  
to: Records Access <foil@gw.dec.state.ny.us>  
cc: "marjorie bradley kellogg, editor" <email@redacted>  
date: Mon, Aug 8, 2011 at 9:53 AM  
subject: Re: FOIL 11-1415

Ms. Earl,

I have just received a denial of my FOIL request 11-1415 from Carrie W. Friello of DMN.

Needless to say I am disappointed. However I am annoyed that you had said "... I expect to make the documents available to you by August 5th, 2011." (Granted that you did say "expect".) These documents are particularly timely to the proposed SGEIS by DMN. It seems that the last two months have been a delaying tactic by someone.

I will be appealing this decision.

Just to make sure that there is no misunderstanding, I am requesting copies of proposed regulation codifying the 1992 GEIS, which were, to my understanding, the basis for public hearings ca. 1997. Therefore I am puzzled how they can be considered "internal draft ... intra-agency materials" (the stated ground for this denial) as they must have been available to the public before the hearings.

Brian Brock  
Associate Editor  
The New Franklin Register

from: Brian Brock <thenewfranklinregister@gmail.com>  
to: Records Access <foil@gw.dec.state.ny.us>  
date: Tue, Sep 6, 2011 at 11:39 AM  
subject: Appeal of DMN denial of FOIL 11-1415

Ms. Earl,

Attached is our appeal of FOIL 111-1415, which has been sent to FOIL Appeals Officer by certified mail.

Brian Brock  
Associate Editor  
The New Franklin Register

P.S. If this is a duplicate, please excuse. My **Sent Mail** file did not have a record of this e--mail.



The New Franklin Register  
P.O. Box 258  
Franklin NY 13775  
August 30, 2011

**Certified Mail**

FOIL Appeals Officer  
Office of General Counsel  
New York State Department of Environmental Conservation  
625 Broadway, 14<sup>th</sup> Floor  
Albany NY 12233-1500

**Re: Appeal of Freedom of Information Law request 11-1415**

On June 4, 2011, we made a FOIL request to Records Access at [foil@gw.dec.ny.us](mailto:foil@gw.dec.ny.us) for a copy of regulations – and only the regulations -- proposed by Division of Mineral Resources to codify their GEIS (1992).

On August 3, 2011, our request was denied by Carrie W. Friello (MRS 3) via certified mail. She cited as the basis of her denial Article 6 of the Public Officers Law §87.2(g) “except that such agency may deny access to records or portions thereof that are inter-agency or intra-agency materials”.

We hereby appeal the denial of our request for the following and for other unspecified reasons.

“Mere characterization of records requested as inter-agency or intra-agency material” has been held by the Committee on Open Government to be “inappropriate”, FOIL Advisory Opinions 4666, 4680, and 10170.



In so far as these proposed regulations have been distributed to the public or disclosed at a public meeting, there is no basis for denial of access under §87.2(g), FOIL AO-9378. These proposed regulations were the basis of “hearings in the fall of 1997 to collect public comments” according to a response by the Division of Mineral Resources to the STRONGER questionnaire concerning DMN’s implementation of Recommendation I.1 by the IOGCC/EPA Review of Oil and Gas Exploration and Production Waste Management Regulatory Programs (1994). Unfortunately the Environmental Notices Bulletin on the DEC website begins in November 1999, and therefore the details of these public meetings are not available.

Where the record of proposed regulations contains inter-agency or intra-agency material, agency must redact from the record such portions, FOIL AO-4907.

Note that this denial was made nearly two months after our request, rather than the required 10 business days. To explain: at the time of our request, we were asked by Ruth L. Earl (Record Access Officer) to allow the delay because of the pressing workload of DMN for revision of the SGEIS. Ms. Earl stated: “Consequently I expect to make the documents available to you by August 5, 2011.” We thought their request was reasonable because we assumed that a search of files was involved. However saying no should not have taken months. These proposed regulations are relevant to timely commenting on the SGEIS.

We hope that this appeal can be expedited so that DMN will fulfill our request before the end of the comment period for the current version of the SGEIS (ca. October 30), before DMN again finds reason to delay their response by months.

Also note that FOIL requires that all appeals and resulting determinations be copied to: Committee on Open Government, Department of State, 41 State Street, Albany, NY 12231.

Brian Brock  
Associate Editor

c: M. B. Kellogg, Editor  
Mary Jo Long, Esq.  
R. Earl  
C. Friello  
COOG, DoS

from: Deborah Christian <dwchrist@gw.dec.state.ny.us>  
to: thenewfranklinregister@gmail.com  
date: Thu, Sep 8, 2011 at 12:04 PM  
subject: DEC FOIL request 11-1415

Mr Brock,

I will be responding to your recent appeal of the Department staff's denial of your June 4 FOIL request. Please give me a call at your convenience. My desk phone is [518 402-2918](tel:5184022918); just leave a voice mail if I'm not at my desk.

I look forward to speaking with you.

Deb Christian

from: Brian Brock <thenewfranklinregister@gmail.com>  
to: Deborah Christian <dwchrist@gw.dec.state.ny.us>  
date: Sat, Sep 10, 2011 at 1:53 PM  
subject: Re: DEC FOIL request 11-1415

Deborah

I will give you a call Monday morning. Has been a bit busy here what with the rains.

Thank you,  
Brian Brock

from: Brian Brock <thenewfranklinregister@gmail.com>  
to: Deborah Christian <dwchrist@gw.dec.state.ny.us>  
cc: "marjorie bradley kellogg, editor" <email@redacted>  
date: Tue, Sep 13, 2011 at 9:05 PM  
subject: FOIL Appeal 11-1415, Thank You

Ms. Christian,

Thank you for bring me up to speed on the NFR FOIL appeal. If only the denial letter from Minerals had been as informative.

If nothing else, our newspaper now has confirmation that GEIS regulations were proposed and that public meeting on them were held.

Despite Minerals having moving to 625 Broadway since these regulations were written, I doubt that they could have lost all copies. The whole point of the GEIS (1992), which took several years to write, was to produce these regulations. What is more, these regulations must have served as the basis for permit conditons that were eventually used in their stead. I suspect the DMN does not want the resurfacing of proposed GEIS regulations that were never finalized, and certainly not before the proposed SGEIS regulations are released this October.

I am heartened by your optimism that a copy exists elsewhere in the system or that DMN's only draft copy can be redacted of comments.

Brian Brock  
Associate Editor  
The New Franklin Register

P.S. Though you are unlikely to need it, in case you do not have caller ID, my cell phone is [518-706-0612](tel:518-706-0612).

from: Deborah Christian <dwchrist@gw.dec.state.ny.us>  
to: Brian Brock <thenewfranklinregister@gmail.com>  
date: Fri, Sep 23, 2011 at 4:50 PM  
subject: Re: FOIL Appeal 11-1415, Thank You

Just to let you know I haven't forgotten and I'm still searching .....the attached page from the August 27, 1997 Environmental Notice Bulletin is confirmation that regulations were drafted although since "informal workshops" were scheduled rather than "public hearings" as required by the State Administrative Procedure Act, it appears likely that no formal rulemaking process was underway.

**AG&M:** (for farmland preservation) Robert Somers, Chief, Agricultural Protection Unit, NYS Department of Agriculture and Markets, 1 Winners Circle, Albany, NY 12235; telephone 518-457-2715; fax 518-457-2716

(for agricultural nonpoint source) James McCardell, Acting Director, State Soil and Water Conservation Committee, NYS Department of Agriculture and Markets, 1 Winners Circle, Albany, NY 12235; telephone 518-457-3738; fax 518-457-3412

**DEC:** Aimee Kea, Bond Act Office, NYSDEC, 50 Wolf Road, Albany, NY 12233-1040; telephone 518-485-8300; fax 518-457-6996

**DOS:** Kevin Millington, NYS Department of State, 41 State Street, Albany, NY 12231-0001; telephone 518-474-6000; fax 518-473-2464

**OPRHP:** Kevin Burns, Chief of Grants, NYS Office of Parks, Recreation and Historic Preservation, Empire State Plaza, Agency Building #1, 16th Floor, Albany, NY 12238; telephone 518-474-0427; fax 518-486-7377

**HRVG:** Maggie Vinciguerra or David Sampson, Hudson River Valley Greenway, Capitol Building, Capitol Station, Room 254, Albany, NY 12224; telephone 518-473-3835; fax 518-426-0330

## Public Workshops on Oil, Gas and Solution Mining Regulations

### Proposed revisions to 6 NYCRR Parts 550 - 559

Sponsored by New York State Department of Environmental Conservation Division of Mineral Resources

The New York State Department of Environmental Conservation will hold a series of informal workshops on the draft revised Oil, Gas, and Solution Mining Regulations. Major changes to the current regulations are being considered in many areas including production pits, well setbacks, permit applications, waste disposal and plugging requirements. The proposed revisions are the first major changes to the regulations since they were promulgated in 1972. Copies of the draft regulations, as well as general information on the workshops, will be available from DEC's web site at <http://www.dec.state.us/website/pollution/mines.html> after December 5. Paper copies will be available after September 15 at DEC's Region 8 Office, Avon; Region 9 Office, Buffalo; Olean Sub-Office; and Falconer Sub-Office. Copies will also be available by mail by calling (518)457-0100.

Workshops will be held in Batavia, Jamestown and Olean on **October 14, 15 and 16**, respectively. Pre-registration brochures are available by calling (518)457-0100 or by writing DEC, Division of Mineral Resources, 50 Wolf Rd, Rm 290, Albany, NY 12233-6500. The pre-registration deadline is **September 15**. On-site registration is also available, but space may be limited.

Contact **Laura Snell** with questions on the regulation, or **Chris Reed** for workshop information at the above number or address.

## COASTAL ZONE MANAGEMENT

Date of Issuance - August 27, 1997

The New York State Department of State (DOS) is required by Federal regulations to provide timely public notice for the activities described below, which are subject to the consistency provisions of the **Federal Coastal Zone Management Act of 1972**, as amended.

In each case, the applicant has certified that the proposed activity complies with and will be conducted in a manner consistent with the approved New York State Coastal Management Program. The applicants' consistency certification and accompanying public information and data are available for inspection at the New York State Department of State offices.

In **F-97-507**, **Thomas Schwarz**, 919 3rd Avenue 43-30, New York, NY 10022, has applied to the U.S. Army Corps of Engineers, New York District, for a permit to install a 4' x 53' wooden dock. The stated purpose is to provide access to navigable water. The project is located on Great South Bay at Fire Island, Town of Islip, Suffolk County, New York.

In **F-97-544**, **Zizzi Construction Corp.**, P.O. Box 1551, Quogue, NY 11959, has applied to the U.S. Army Corps of Engineers, New York District, for a permit to construct a 4' x 300' fixed elevated walk with steps at either end. At the southerly end, access will be by walking on grade to MHW where there will be 4' x 8' steps and a platform, a 3' x 15' hinged ramp, and 6' x 20' float secured by two 8" diameter pilings. The stated purpose is to provide pedestrian access and private boat dockage. The project is located on Pennimans Creek, Village of Quogue, Suffolk County, New York.

In **F-97-547**, **Scot B. Workman**, 38 Brockmeyer Drive, Massapequa, NY 11758, has applied to the U.S. Army Corps of Engineers, New York District, for a permit to install a 4' x 100' dock with a 4' x 9' "T" end section. The stated purpose is private residential use for boat docking. The project is located on South Oyster Bay at Massapequa, Town of Oyster Bay, Nassau County, NY.

In **F-97-576**, **Pure Shellfish, Inc.**, 112 Woodside Road, Mastic Beach, NY 11951, has applied to both the U.S. Army Corps of Engineers, New York District, and the U.S. Coast Guard for permits to place up to 600 wire mesh shellfish cages, each measuring 4' x 8' x 6" high. The stated purpose is shellfish cultivation. The project is located in Long Island Sound, Suffolk County, New York.

In **F-97-577**, **Mark Bogin**, 3146 Ann Street, Baldwin, NY 11510, has applied to the U.S. Army Corps of Engineers, New York District, for a permit to reconstruct 74' of bulkhead in-kind, dredge 25 cubic yards for back-fill, install a 4' x 6' platform and 8' x 74' boardwalk, remove a deck and use an existing 3' x 6' ramp and two 6' x 18' floats, and install 4 mooring piles. The stated purpose is to stabilize the shoreline and improve mooring. The project is located on Parsonage Creek at Baldwin, Town of Hempstead, Nassau County, New York.

In **F-97-578**, **James Schantz**, 9 Valley View Drive, Penfield, NY 14521, has applied to the U.S. Army Corps of Engineers, Buffalo District, for a permit to replace an extremely deteriorated dock with an 8' x 40' open pile dock and 8' x 10' extension. The stated purpose is boat dockage. The project is located on Port Bay, Town of Huron, Wayne County, New York.

from: Brian Brock <thenewfranklinregister@gmail.com>  
to: Deborah Christian <dwchrist@gw.dec.state.ny.us>  
date: Tue, Sep 27, 2011 at 3:23 PM  
subject: Re: FOIL Appeal 11-1415, Thank You

Ms. Christian,

I was just about to e-mail.

Thank you for this. It adds another piece to the puzzle. I had checked the ENB on line, but it does not go that far back.

As I expected, these hearings generated stacks of paper copies. Any chance that the offices or sub-offices listed might retain a copy?

Also, although less likely, any chance that the Laura Snell listed is still with the state and might have a copy?

Thanks for all your efforts on our behalf,  
Brian Brock

from: Brian Brock <thenewfranklinregister@gmail.com>  
to: Deborah Christian <dwchrist@gw.dec.state.ny.us>  
date: Wed, Oct 5, 2011 at 5:54 PM  
subject: FOIL Appeal 11-1415

Ms. Chriatian,

I was wondering how things our appeal is progressing. The proposed "SGEIS" regulations were released last week, and I have started reading them. Almost half the pages concerning Minerals are revisions, and having those elusive proposed GEIS regs would be a help in writing a critique. Also, while the comments on regs are not due until December 14th, our article on the DEC regulation of drilling is due this month and those GEIS regulations are a part of the story.

My editor would like something to go with that article: a box on our FOIL quest. Would you prefer to be reffered to as Appeals Officer or as Deborah Christian, Appeals Officer? Ours is a community newspaper with a circulation of 2,000 in northern Delaware and southern Otsego Counties.

Brian Brock  
Associate Editor

P.S. I heard that Commissioner Martens will be doing a call-in show in Albany this Friday. If so, do you think that it would help if I could ask him about these elusive GEIS regs?

from: Brian Brock <thenewfranklinregister@gmail.com>  
to: Deborah Christian <dwchrist@gw.dec.state.ny.us>  
cc: "marjorie bradley kellogg, editor" <email@redacted>  
date: Tue, Oct 18, 2011 at 11:30 AM  
subject: FOIL Appeal 11-1415

Ms. Christian,

Deadline for our article on DEC regulation of O&G is the 28th of month. Is there any prospect for our FOIL request by then? When we made the initial request in June 4th, we never expected this long a delay. (While this delay would make an amusing side story of Albany bureacuracy, we would prefer the document.) The initial FOIL request had a deadline of 10 business days. Is there a similar deadline for FOIL appeals?

If you are meeting resistance, would it help if our newspaper involved our legislator's office?

Thank you for all your efforts.

from: Deborah Christian <dwchrist@gw.dec.state.ny.us>  
to: thenewfranklinregister@gmail.com  
date: Tue, Oct 25, 2011 at 8:43 AM  
subject: redacted draft O&G regs (3-9-2000).pdf - Adobe Acrobat Standard

**Attached was the .pdf file**

from: Brian Brock <thenewfranklinregister@gmail.com>  
to: Deborah Christian <dwchrist@gw.dec.state.ny.us>  
date: Fri, Nov 18, 2011 at 2:54 PM  
subject: The New Franklin Register, Winter Issue, RE FOIL 11-1415

Ms. Christian,

Attached is the new issue of our community newspaper. The FOIL document that you aided us in obtaining was used in writing RIGS OR REGS? on the front page. You might be more interested in the accompanying article on the process of obtaining the revised proposed regulations, TALES OF ALBANY, on page 8. The editor chose the headline and made a few changes in my stories that I think made it a bit more sensational than as I wrote it. Please let me know if you read anything that you feel did not reflect events.

Thank you again for all your assistance.

Brian Brock  
Associate Editor

P.S. As I remember, you were going to send us a letter summing-up our appeal process.

from: Brian Brock <thenewfranklinregister@gmail.com>  
to: Deborah Christian <dwchrist@gw.dec.state.ny.us>  
date: Thu, Dec 8, 2011 at 9:50 AM  
subject: FOIL Appeal, 11-1415

Ms. Christian,

I hope you had time to read my article in The New Franklin Register that included the FOILED proposed O&G regs, which you were able to obtain for us.

As I remember, you said that you would be sending us a letter summing-up your work on the appeal. No rush, but would be good to get it by the end of the year.

Thanks again for all you efforts.

Brian Brock  
Associate Editor  
The New Franklin Register

from:

Deborah Christian

from: Deborah Christian <dwchrist@gw.dec.state.ny.us>

to: thenewfranklinregister@gmail.com

date: Fri, Dec 23, 2011 at 5:37 PM

subject: brianbrock.pdf - Adobe Acrobat Standard

Dear Mr. Brock,

Attached is the long overdue letter I owe you. The delay is inexcusable and I apologize. I usually send these letters by certified mail (if the recipient wants to bring an Article 78 against the Dept, it's an easy way to measure the date of receipt and so the statute of limitations) but I assume that your office is not always staffed when the mail comes so it will only be aggravating.

Happy Holidays!

Deb Christian



**New York State Department of Environmental Conservation**

**Office of General Counsel, 14<sup>th</sup> Floor**

625 Broadway, Albany, New York 12233-1500

Fax: (518) 402-9018 or (518) 402-9019

Website: [www.dec.ny.gov](http://www.dec.ny.gov)



Joe Martens  
Commissioner

December 23, 2011

Brian Brock, Associate Editor  
The New Franklin Register  
P.O. Box 258  
Franklin, New York 13775

Re: Freedom of Information Law Request # 11-1415; Appeal Determination

Dear Mr. Brock:

This is in response to your appeal of the Department Staff's denial of your Freedom of Information Law (FOIL) request for regulations proposed by the Division of Mineral Resources subsequent to the July 1992 *Final Generic Environmental Impact Statement for Revisions to the Oil, Gas and Solution Mining Regulations*. Department Staff denied your request on the basis that the "records are an internal draft and are therefore considered intra-agency materials" in accordance with Public Officers Law (POL) § 87(2)(g). You then appealed the denial of the FOIL request, questioning the characterization of the requested records as intra-agency materials when they had apparently been distributed for public comment in conjunction with public hearings held late in 1997.

POL § 87(2)(g) authorizes the denial of access to records or portions thereof that are intra-agency or inter-agency materials which are not: (i) statistical or factual tabulations or data; (ii) instructions to staff that affect the public; (iii) final agency policy or determinations; or (iv) external audits, including but not limited to audits performed by the comptroller and the federal government. Intra-agency and inter-agency materials are exempted from disclosure "to protect the deliberative process of the government by ensuring that persons in an advisory role would be able to express their opinions freely to agency decision makers." See *Matter of Sea Crest Constr. Corp. v. Stubing*, 82 AD2d 546; *Xerox Corp. v. Town of Webster*, 65 NY2d 131, 480 NE2d 74, 490 NYS2d 488. "The point of the intra-agency exception is to permit people within an agency to exchange opinions, advice and criticism freely and frankly, without the chilling prospect of public disclosure." *The New York Times Co. v. City of New York Fire Department*, 4 NY3d 477, 829 NE2d 266, 796 NYS2d 302.

The records that were withheld by Department Staff and referred to as "an internal draft" were not actually the records that you requested. Rather, Department Staff's denial letter referred to a marked up version of draft regulations dated March 9, 2000 that had apparently been created after the public comment period in 1997; since that version had numerous notations



from: Brian Brock <thenewfranklinregister@gmail.com>  
to: Deborah Christian <dwchrist@gw.dec.state.ny.us>  
cc: "marjorie bradley kellogg, editor" <email@redacted>  
date: Mon, Dec 26, 2011 at 2:53 PM  
subject: Re: brianbrock.pdf - Adobe Acrobat Standard

Deborah Christian,

Thank you for this. A certified letter is unnecessary. The delay caused no problem, just wanted to wrap up the file on proposed O&G regs.

Best wishes for the new year,  
Brian Brock

P.S. I plan to ask DMN for their historic levels of staffing in the new year. Hopefully you will not need to be bothered again.

## Bonus

The draft GEIS (1988), GEIS (1992), draft regulations (1997), and revised draft regulations (2000) were overseen by Gregory H. Sovas, first as Chief of the Bureau of Mineral Resources and then as Director of Division of Mineral Resources.

On 11<sup>th</sup> January 2012, the former Chief/Director appeared at the Wednesday night Round Table in Andes, Delaware County NY. After talking for 15 minutes, Mr Sovas took questions. Mark Pezzati asked about these draft regulations.

**Mark:** I'd like to ask you something about the 1992 GEIS.

**Greg Sovas:** Yes go ahead.

**Mark:** I'd like to know, why did the Division of Mineral Resources under your administration repeatedly fail to codify the 1992 GEIS?

**Greg Sovas:** That's a great question.

**Audience member:** I don't understand the question.

**Greg Sovas:** Yeah, he's saying, 'the 1992 GEIS, why didn't you take, why didn't you codify the rules and regulations of what's in there.'

**Mark:** Right.

**Greg Sovas:** The GEIS is a legal document. It is a legal document that has gone through public hearings, gone through public notice, public review, comment, and what you get in the

end is you have uhh, you have, a list of categories, and and that category says that if you're drilling a vanilla well, a regular well, and it doesn't need any other DEC permits, and you follow the guidelines written in the GEIS, and you have casing and cementing guidelines, uhh, and if you use these cementing, casing and cementing guidelines that are in there, then you get a negative declaration. Actually you don't even get a negative declaration but you... yeah you do. You get a negative declaration... you get your permit, ok? So all of the conditions for the GEIS are in the document and it, and doesn't matter whether it's in the rules and regs, or, or not, because it's in, it's in the document, the legal document. The reason why you don't want to do this, and this is exactly why everyone in the environmental groups and in the industry is upset at DEC for going forward with rules and regs at the same time as the SGEIS is because you may change something. You may at any, at any, in our, and our thought process was always that, these casings and cementing guidelines we would, uh conditions, we would change them as we found out. Uh shortly after we put that in place there were a couple of companies that said, 'well, there was a couple of incidents that, we're we're cementing the well all the way down to the, to the, to the formation, all the way, all the way down, because it's not the common practice at the time, and that's more protective of the environment, and therefore we should, we should be, we should get our negative depth,' uh we should have them follow exactly the guidelines. So we changed the conditions to accommodate that. We said, ok if you're doing something as, as protective of, or more protective than, the existing conditions you'll get you negative declaration. So our thought process was, and and the right way to do it is to leave the GEIS and to have get some experience on how it's gonna operate before you codify things. And so this is a major mistake by moving ahead with rules and regulations at the same time. Because there are already a million different mistakes, and a million different, uh, if you look at, if you look at the water rights for example, a hundred and seven pages for a [salt water?] permit? twenty-eight pages for a, a, for a, what do you call it, a fact [or, pack?] sheet? I mean there are some in there that are absolutely crazy, and so to, to codify that at this point while they're deciding on the SGEIS I think they've opened up a, you know, another whole other can of worms. It makes no sense.

**Mark:** Now one more related question. What happened to the records of that uh proposed, of those proposed regulations?

**Greg Sovas:** The records of the...

**Mark:** Well what I mean is, what happened to the records of the 1997 proposed regulations?

**Greg Sovas:** I don't know, uh... have you asked...

**Mark:** I mean are those available for public review?

**Greg Sovas:** Um, um... um I don't know... if they're drafts, if they're drafts they probably are. But um they weren't, there wasn't anything... I don't remember to be honest with you what we had. I can tell you, I can tell you this, when the department moved down to 50 Wolf Road, I mean from 50 Wolf Road to downtown and Broadway, we were told that we could only take, we only have space for fifty percent of the, of the cabinets. Therefore there was a lot of stuff thrown out. And that's how it [inaudible word or two]. And so uh, remember that a lot of this was done well before computers so, if you lost it you lost it. So uhhh, now let me, let me answer... you have a question..