

March 6, 2012

Records Access Officer
Executive Chamber
State Capitol
Albany, NY 12224

Records Access Officer
New York State Department of Environmental Conservation
625 Broadway
Albany, NY 12233

Re: Freedom of Information Law Request for Electronic Communication Records

Dear Sir or Madam:

Under the provisions of the New York Freedom of Information Law (“FOIL”), N.Y. Pub. Off. §§ 84-90, the Environmental Working Group (“EWG”) hereby requests copies of the following records¹ located within the Office of New York Governor Andrew Cuomo and the New York Department of Environmental Conservation (“DEC”):

All correspondence and communications since Jan. 1, 2011, among Gov. **Andrew Cuomo**; **Marc Gerstman**, DEC executive deputy commissioner; **Howard Glaser**, director of state operations for Gov. Cuomo; **Robert Hallman**, N.Y. deputy secretary of energy and the environment and former attorney at Cahill Gordon & Reindel; **Joseph Martens**, DEC commissioner; **Lawrence Schwartz**, secretary to Gov. Cuomo; and/or **Steven Russo**, DEC general counsel, and the following oil and natural gas companies, and/or representatives of oil and natural gas companies:

- **Anschutz Exploration Corporation** (including its predecessor Ansbro Petroleum Company and The Anschutz Corporation) (e.g., domain names: tac-denver.com, anschutz-exploration.com, and ansbropetroleum.com);
- **Cabot Oil & Gas Corporation** (e.g., domain name: cabotog.com);
- **Cahill Gordon & Reindel** (e.g., domain name: cahill.com);
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- **CONSOL Energy Inc.** (e.g., domain name: consolenergy.com);
- **Corning Place Communications** (e.g., domain name: corningplace.com);
- **Hinman Straub** (e.g., domain name: hinmanstraub.com);
- **Hiscock & Barclay** (e.g., domain name: hb1aw.com);

¹ For purposes of this FOIL request, “records” *only* means electronic communications such as e-mails, subject lines, the names of recipients and e-mail addresses, and any attachments, and online calendar entries, including the names of invitees and e-mail addresses, and any attachments.

- **Independent Oil & Gas Association of New York** (e.g., domain name: iogany.com);
- **Levene Gouldin & Thompson** (e.g., domain name: binghamtonlaw.com);
- **Norse Energy Corp** (including its subsidiary Norse Energy Corp USA, formerly Nornew Inc.) (e.g., domain names: norseenergycorp.no and norseenergy.com);
- **Range Resources Corporation** (e.g., domain name: rangeresources.com);
- **Southwestern Energy Company** (e.g., domain name: swn.com);
- **The West Firm** (e.g., domain name: westfirm.com);
- **Mark Boling**, executive vice president, general counsel, and secretary of Southwestern Energy Company;
- **Brad Gill**, president of Earth Energy Consultants and executive director of Independent Oil and Gas Association of New York;
- **Yvonne Hennessey**, attorney and partner at The West Firm;
- **Paul Hartman**, director of N.Y. government relations for Chesapeake Energy Corporation;
- **John Holko**, president of Lenape Resources Inc., and secretary of Independent Oil and Gas Association of New York;
- **Scott Kurkoski**, attorney and partner at Levene Gouldin & Thompson;
- **Sen. Tom Libous**, N.Y. State Senate deputy majority leader and member of Gov. Cuomo's High-Volume Hydraulic Fracturing Advisory Panel;
- **Steve Palmatier**, natural gas consultant to Chenango County, N.Y.;
- **Gregory Sovas**, former director of the DEC Division of Mineral Resources;
- **Nancy Testani**, senior business advisor at Hiscock & Barclay; and
- **Tom West**, managing partner at The West Firm.

EWG is a non-partisan, non-profit organization dedicated to using the power of information to protect public health and the environment.² As part of that mission, EWG conducts original research and reports on U.S. oil and natural gas drilling. EWG has given particular attention to a method known as hydraulic fracturing in which drilling companies inject a mix of water, sand, and chemicals (some of them toxic) under high pressure into natural gas and oil wells. The fluid breaks open underground rock formations and allows natural gas and/or oil to flow to the surface. In view of current science, EWG believes lawmakers and regulatory agencies need to learn more about the risks of high volume hydraulic fracturing and how to manage them in a way that does not compromise water resources and public health. That is why EWG

² See Env'tl. Working Group, <http://www.ewg.org> (last visited Mar. 6, 2012).

submitted comments in January 2012 on the DEC's draft environmental impact statement ("EIS") and corresponding regulations on high-volume hydraulic fracturing in New York.³

EWG's analysis of the draft EIS and regulations demonstrates that the record before the DEC does not support claims that drilling can be conducted safely.⁴ Moreover, the jobs generated by high-volume hydraulic fracturing are likely to be modest,⁵ especially when compared to the practice's potential impact on public health and the environment. That is why EWG asked the DEC to conduct its own rigorous scientific research before opening the door to high-volume hydraulic fracturing in New York. EWG also asked the DEC to wait for the U.S. Environmental Protection Agency ("EPA") to complete its review of the practice, especially in light of recent findings in Pavillion, Wyo., where EPA officials found groundwater contamination that is likely caused by nearby drilling and fracturing operations.⁶

The DEC received more than 60,000 public comments on its draft EIS and regulations and now is reading through them before making a final decision on whether to allow high-volume hydraulic fracturing in New York.⁷ EWG believes that a careful review of the public comments will reinforce our conclusion that the practice is simply too risky to allow at this point in time. For example, the U.S. Geological Survey, widely regarded as impartial and authoritative on drilling issues, warned the DEC that its plan to allow drilling and hydraulic fracturing for natural gas in the Marcellus Shale could endanger private water wells, municipal aquifers, and New York City's drinking water supply.⁸

In November 2011, Gov. Cuomo pledged to "let the science and the facts" settle New York's debate over shale gas drilling — "not emotion and not politics."⁹ EWG seeks the requested records to evaluate whether Gov. Cuomo will make good on his promise, or whether the oil and gas industry will convince him to overlook concerns identified by institutions such as the U.S. Geological Survey. The public has a right to know. After all, "a free society is maintained when government is responsive and responsible to the public, and when the public is aware of government actions." N.Y. Pub. Off. § 84.

³ Env'tl. Working Group, New York State Not Prepared to Cope with Fracking Risks, <http://ewg.org/report/new-york-state-not-prepared-cope-fracking-risks> (last visited Mar. 6, 2012).

⁴ E.g., Dusty Horwitt, Env'tl. Working Group, Drilling Around the Law (2010), <http://static.ewg.org/files/EWG-2009drillingaroundthelaw.pdf>; Dusty Horwitt, Env'tl. Working Group, Cracks in the Façade: 25 Years Ago. EPA Linked 'Fracking' to Water Contamination (2011).

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⁵ Richard A. Oppel, Jr., Perry Presents a Jobs and Energy Proposal With an Oil and Gas Industry Sound, N.Y. Times, Oct. 15, 2011, at A12.

⁶ U.S. Env'tl. Prot. Agency Office of Research & Dev., Investigation of Ground Water Contamination Near Pavillion, Wyoming xi (Draft 2011),

http://www.epa.gov/region8/superfund/wy/pavillion/EPA_ReportOnPavillion_Dec-8-2011.pdf.

⁷ Fred LeBrun, A Lull. But a Need for Vigilance, Albany Times Union, Feb. 12, 2012, <http://www.timesunion.com/local/article/A-lull-but-a-need-for-vigilance-3305535.php>.

⁸ See Dusty Horwitt, Env'tl. Working Group, Federal Scientists Warn NY of Fracking Risks (2012), <http://www.ewg.org/report/federal-scientists-warn-ny-fracking-risks>.

⁹ Thomas Kaplan, Millions Spent in Albany Fight to Drill for Gas, N.Y. Times, Nov. 26, 2011, <http://www.nytimes.com/2011/11/26/nyregion/hydrofracking-debate-spurs-huge-spending-by-industry.html?pagewanted=all>.

Therefore, EWG requests that the Office of the Governor and the DEC make every reasonable effort to provide the requested records within the 5-day window prescribed by the FOIL. N.Y. Pub. Off. § 89(3)(a). Copies of responsive records should be mailed within 5 days of receipt of this request to:

Thomas Cluderay
Assistant General Counsel
Environmental Working Group
1436 U Street NW, Suite 100
Washington, DC 20005

EWG understands that New York charges a \$0.25/page fee to duplicate the records requested. N.Y. Pub. Off. § 88(1)(c). However, please contact me before making copies if you estimate the fee to exceed \$100.00.

Should you determine that portions of the requested records are exempt from disclosure under the FOIL, please segregate those portions and mail the remaining records within the statutory time limit. For any records or portions of records that you determine to be exempt, please provide a specific description of the record or portion of the record exempted along with a particularized description of the exemption. Also provide the name and address of the person or body to whom an appeal should be directed.

Thank you for consideration. If you require further clarification about this FOIL request or anticipate any problems with releasing the requested documents, please contact me at (202) 667-6982.

Sincerely,



Thomas Cluderay
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² EWG also requests copies of any records located on personal and/or political campaign computers and phones created by the public officials identified in this FOIL request, to the extent that such records were created for the purposes of conducting official state business.

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Sincerely,



Thomas Cluderay
Assistant General Counsel
Environmental Working Group



STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY 12224

March 13, 2012

Mr. Thomas Cluderay
Assistant General Counsel
Environmental Working Group
1436 U Street NW, Suite 100
Washington, DC 20005

Dear Mr. Cluderay:

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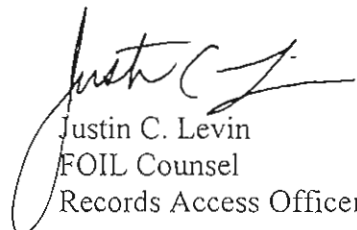
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- Gregory Sovas, former director of the DEC Division of Mineral Resources;
- Nancy Testani, senior business advisor at Hiscock & Barclay; and
- Tom West, managing partner at The West Firm.

We are performing a diligent search for the records you request. We will notify you of our progress within 20 business days.

If any documents are located that respond to your request, you will be charged \$.25 per page. If the response to your request will be provided in another media, we will notify you of any charges.

Very truly yours,



Justin C. Levin
FOIL Counsel
Records Access Officer



STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY 12224

March 13, 2012

Mr. Thomas Cluderay
Assistant General Counsel
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1436 U Street NW, Suite 100
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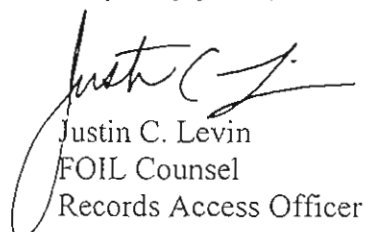
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April 10, 2012

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Assistant General Counsel
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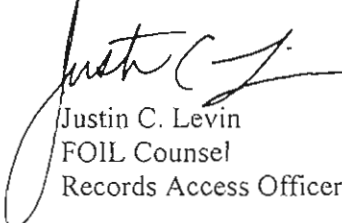
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- Nancy Testani, senior business advisor at Hiscock & Barclay; and
- Tom West, managing partner at The West Firm.

In a footnote, you explained: "For purposes of this FOIL request, 'records' *only* means electronic communications such as e-mails, subject lines, the names of recipients and e-mail addresses, and any attachments, and online calendar entries, including the names of invitees and e-mail addresses, and any attachments."

We have performed a diligent search for the records you request and have found one (1) page that responds to your FOIL request. The document is enclosed with this letter.

Pursuant to Public Officers Law § 89(4), you have thirty (30) days to make a written appeal of this determination. You may make an appeal by writing: FOIL Appeals Officer, Executive Chamber, State of New York, Albany, New York, 12224.

Very truly yours,



Justin C. Levin
FOIL Counsel
Records Access Officer

Enclosure

Thomas Irvin

Subject: Chesapeake Energy
Location: 245 Conference Room

Start: Thu 3/1/2012 2:00 PM
End: Thu 3/1/2012 2:45 PM
Show Time As: Tentative

Recurrence: (none)

Meeting Status: Not yet responded

Organizer: Caron Palladino

UPDATE: Meeting Subject Matter

Topic:

1. Recent Home Rule Decisions
2. Hazardous Waste Classification Legislation

Day/Date: Thursday, March 1
Time: 2:00 – 2:45pm
Location: 245 Conference Room

Attendees:

Robert Hallman – Executive Chamber
Tom Congdon – Executive Chamber
Tom West – The West Firm
w/client: Paul Hart – Chesapeake Energy

Executive Chamber Contact:
Tracy Prevratil: 473-5442

WE WORK FOR THE PEOPLE
Performance * Integrity * Pride

New York State Department of Environmental Conservation

Office of General Counsel, 14th Floor

625 Broadway, Albany, New York 12233-1500

Phone: (518) 402-9185 Fax: (518) 402-9018

Website: www.dec.ny.gov



Joe Martens
Commissioner

MAR 14 2012

Mr. Thomas Cluderay
Environmental Working Group
1436 U Street, NW Suite 100
Washington, DC 20009

Dear Mr. Cluderay:

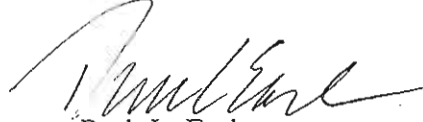
This is to acknowledge receipt of your Freedom of Information Law (FOIL) requests seeking all correspondence and communications since January 1, 2011 among Governor Cuomo, Marc Gerstman, Howard Glaser, Robert Hallman, Joseph Martens, Lawrence Schwartz and/or Steve Russo and the following companies or their representatives:

- Anschutz Exploration Corporation, including predecessors;
- Cabot Oil & Gas Corporation;
- Cahill Gordon & Reindel;
- Chesapeake Energy Corporation;
- CONSOL Energy, Inc.;
- Corning Place Communications;
- Hinman Straub;
- Hiscock & Barclay;
- Independent Oil & Gas Association of New York;
- Levene Gouldin & Thompson;
- Norse Energy Corp;
- Range Resources Corporation;
- Southwestern Energy Company;
- The West Firm;
- Mark Boling;
- Brad Gill;
- Yvonne Hennessey;
- Paul Hartman;
- John Holko;
- Scott Kurkoski;
- Sen. Tom Libous;
- Steve Palmatier;
- Gregory Sovas;
- Nancy Testani, and
- Tom West.

I have referred your requests to appropriate staff that may have responsive records. You may expect responses to your requests by April 11, 2012. The responses may be combined as the Department's FOIL program construes the term "record" to include electronic records.

If you have any questions in the interim, please call me at (518) 402-9522 and reference FOILs 12-647 and 12-648.

Sincerely,

A handwritten signature in black ink, appearing to read "Ruth L. Earl". The signature is fluid and cursive, with a large initial "R" and "E".

Ruth L. Earl
Records Access Officer



STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY 12224

April 10, 2012

Thomas Cluderay
Assistant General Counsel
Environmental Working Group
1436 U Street NW, Suite 100
Washington, DC 20005

Dear Mr. Cluderay:

This letter responds to your correspondence dated March 6, 2012 which, pursuant to FOIL, requested:

copies of the following records located within the Office of New York Governor Andrew Cuomo and the New York Department of Environmental Conservation ("DEC"): All correspondence and communications since Jan. 1, 2011, among Gov. Andrew Cuomo; Marc Gerstman, DEC executive deputy commissioner; Howard Glaser, director of state operations for Gov. Cuomo; Robert Hallman, N.Y. deputy secretary of energy and the environment and former attorney at Cahill Gordon & Reindel; Joseph Martens, DEC commissioner; Lawrence Schwartz, secretary to Gov. Cuomo; and/or Steven Russo, DEC general counsel, and the following oil and natural gas companies, and/or representatives of oil and natural gas companies:

- Anschutz Exploration Corporation (including its predecessor Ansbro Petroleum Company and The Anschutz Corporation) (e.g., domain names: tac-denver.com, anschutz-exploration.com, and ansbropetroleum.com);
- Cabot Oil & Gas Corporation (e.g., domain name: cabotog.com);
- Cahill Gordon & Reindel (e.g., domain name: cahill.com);
- Chesapeake Energy Corporation (e.g., domain name: chk.com);
- CONSOL Energy Inc. (e.g., domain name: consolenergy.com);

- Corning Place Communications (e.g., domain name: corningplace.com);
- Hinman Straub (e.g., domain name: hinmanstraub.com);
- Hiscock & Barclay (e.g., domain name: hblaw.com);
- Independent Oil & Gas Association of New York (e.g., domain name: iogany.com);
- Levene Gouldin & Thompson (e.g., domain name: binghamtonlaw.com);
- Norse Energy Corp (including its subsidiary Norse Energy Corp USA, formerly Nornew Inc.) (e.g., domain names: norseenergycorp.no and norseenergy.com);
- Range Resources Corporation (e.g., domain name: rangeresources.com);
- Southwestern Energy Company (e.g., domain name: swn.com);
- The West Firm (e.g., domain name: westfirmlaw.com);
- Mark Boling, executive vice president, general counsel, and secretary of Southwestern Energy Company;
- Brad Gill, president of Earth Energy Consultants and executive director of Independent Oil and Gas Association of New York;
- Yvonne Hennessey, attorney and partner at The West Firm;
- Paul Hartman, director of N.Y. government relations for Chesapeake Energy Corporation;
- John Holko, president of Lenape Resources Inc., and secretary of Independent Oil and Gas Association of New York;
- Scott Kurkoski, attorney and partner at Levene Gouldin & Thompson;
- Sen. Tom Libous, N.Y. State Senate deputy majority leader and member of Gov. Cuomo's High-Volume Hydraulic Fracturing Advisory Panel;
- Steve Palmatier, natural gas consultant to Chenango County, N.Y.;
- Gregory Sovas, former director of the DEC Division of Mineral Resources;
- Nancy Testani, senior business advisor at Hiscock & Barclay;
- and
- Tom West, managing partner at The West Firm.

We have performed a diligent search for the records you request and have found eighty-six (86) pages and a DVD that respond to your FOIL request. If you would like to receive the documents and the DVD, please send a business check, certified check or money order in the amount of \$21.50 made payable to the New York State Executive Chamber. You may mail the payment to: FOIL, State of New York, Executive Chamber, Albany, New York 12224. We will mail the documents and the DVD to you after we receive your payment. If you fail to remit payment by May 25, 2012, your request will be considered withdrawn.

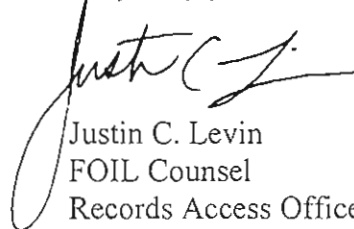
Mr. Cluderay

Page 3

Certain portions of the responsive records are redacted because they are exempt from disclosure pursuant to the Public Officers Law. Public Officers Law § 87(2)(a) precludes access to records that are “specifically exempted from disclosure by state or federal statute.” Accordingly, certain portions of the records that respond to your request are exempt from production pursuant to Civil Practice Law and Rules 4503(a) and 3101(c) because they constitute confidential communications made between an attorney and his or her client or attorney work product. Additionally, certain portions of the records are exempt from production because they are inter-agency or intra-agency materials as defined in section 87(2)(g).

Pursuant to Public Officers Law § 89(4), you have thirty (30) days to take a written appeal of this determination. You may make an appeal by writing: FOIL Appeals Officer, Executive Chamber, State of New York, Albany, New York, 12224.

Very truly yours,



Justin C. Levin
FOIL Counsel
Records Access Officer

New York State Department of Environmental Conservation

Office of General Counsel, 14th Floor

625 Broadway, Albany, New York 12233-1500

Phone: (518) 402-9185 Fax: (518) 402-9018

Website: www.dec.ny.gov



Joe Martens
Commissioner

APR 1 2 2012

Mr. Thomas Cluderay
Environmental Working Group
1436 U Street, NW Suite 100
Washington, DC 20009

Dear Mr. Cluderay:

This is in response to your Freedom of Information Law (FOIL) requests seeking all correspondence and communications since January 1, 2011 among Governor Cuomo, Marc Gerstman, Howard Glaser, Robert Hallman, Joseph Martens, Lawrence Schwartz and/or Steve Russo and the following companies or their representatives:

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CONSOL Energy, Inc.;	Yvonne Hennessey;
Corning Place Communications;	Paul Hartman
Hinman Straub;	Scott Kurkoski;
Hiscock & Barclay;	Sen. Tom Libous;
Independent Oil & Gas Association of New York;	Steve Palmatier;
Levene Gouldin & Thompson;	Gregory Sovas;
Norse Energy Corp;	Nancy Testani, and
Range Resources Corporation;	Tom West
Southwestern Energy Company;	

I have enclosed a CD that maintains copies of all documents identified as responsive.

If I can be of further assistance, please call me at (518) 402-9522 and reference FOILs 12-647 and 12-648.

Sincerely,

Ruth L. Earl
Records Access Officer

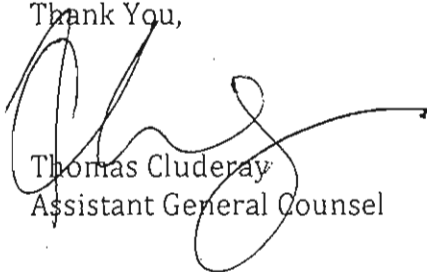
Enclosure (CD)

April 18, 2012

FOIL
State of New York
Executive Chamber
Albany, New York 12224

I have received your letter dated April 10, 2012, in response to my FOIL request. I would like to receive the eighty-six (86) pages and the DVD that you found and have enclosed a check for the amount specified in your letter. I look forward to receiving the documents and the DVD. If you have any questions or otherwise need to speak with me, please contact me at (202) 667-6982.

Thank You,



Thomas Cluderay
Assistant General Counsel