

Citizen Lawsuit Challenges Horsehead's Approval of Schlumberger Project by Sue Smith-Heavenrich *Broader View Weekly*, November 20, 2009

Throughout the months of board meetings and public hearings regarding the Schlumberger project, residents expressed concern about the lack of environmental scrutiny over the project. Last Thursday, a group of citizens took action that they hope will force Horseheads Village to take a second, "hard" look at the environmental issues related to development of the Schlumberger Technology Corporation's 88-acre site at Horseheads Center.

On November 12 a group calling itself People for a Healthy Environment filed the legal challenge in the Chemung County Supreme Court. The lawsuit claims that the Village of Horseheads' approval of the Schlumberger project was "illegal, arbitrary and capricious" and asks the court to repeal the project approvals.

The group's attorney, Helen Slottje, asserts that the Village of Horseheads' approvals for the Schlumberger project are unlawful under state and local law. In particular, the petition challenges the negative declaration that the village made in October.

On September 30, the Horseheads Village Board of Trustees conducted the first phase of a State Environmental Quality Review (SEQR) on Schlumberger's proposed building project. At that meeting the board identified twelve out of the 20 items listed on the SEQR as having an impact on the environment and surrounding community. In particular they determined that the Schlumberger facility could potentially impact ground and surface water quality, air quality, wildlife and public health and safety.

Less than a week later, the village determined that there was no need for further environmental review, and they issued a "negative declaration." The decision outraged residents who, since July, had raised the question of whether the project was already a "done deal".

According to Slottje, Horseheads Village wasn't just giving a deaf ear to the people. They – and Schlumberger – apparently ignored demands from the state Department of Environmental Conservation (DEC) that Schlumberger cease activity on the site until certain requirements had been met.

On September 30 DEC issued a Notice of Violation to Schlumberger for failure to obtain proper permits for stormwater discharges. State law requires that before commencing industrial – and construction – activities that an entity must obtain the proper State Pollutant Discharge Elimination System (SPDES) permit. Schlumberger did not.

DEC issued the notice because stormwater from the Schlumberger site discharges into a NY State freshwater wetland and into Catherine Creek, which eventually spills into Seneca Lake. This is precisely the concern raised by residents over and over again at board meetings and public hearings – and even on the final hearing October 13, only two days before Horseheads Village gave Schlumberger the final go-ahead for the project.

At issue, noted Dixon Rollins, DEC's regional water engineer, is that without the proper information required for the SPDES permit, DEC could not determine whether Schlumberger was in compliance with state regulations. "Since you have begun such activities without coverage under a SPDES permit, you must immediately stop all activities on site... until such time as the Department notifies you in writing that these activities can re-commence," Rollins wrote.

DEC directed Schlumberger to: discontinue all chemical and material storage; discontinue all construction support, maintenance and storage operations; and discontinue all storage and maintenance for vehicles providing oil and gas field services. Under the Environmental Conservation Law, Schlumberger could be liable for a civil penalty of up to \$37,500 for each violation and an additional penalty of up to \$37,500 for each day the violation continued.

According to materials obtained by Slottje through a FOIL request, Schlumberger's response to the Notice of Violation was to continue their activities at the site. Apparently they told DEC that they had been "unaware" of the violations – despite their professional consultants being asked these very questions at an earlier public hearing and at the September 3 open house in Elmira.

Schlumberger has repeatedly claimed that no wetlands would be impacted by their project. Meanwhile they continue trenching a 24-inch outfall pipe that will discharge water from the stormwater detention ponds directly into the wetlands and Catherine Creek.

Despite the Notice of Violation and the potential for polluted discharges to flow into the aquifer serving Elmira and the two watersheds, Schlumberger continues to operate without required permits at the site, says Slottje. Neither Horseheads Village nor the DEC has required Schlumberger to cease operations.

The lack of response from DEC does not engender confidence, said Slottje. The fact that Schlumberger continues to operate "calls into question the willingness of DEC to enforce the law when it comes to natural gas drilling and related industries."

It also makes residents question whether their municipal officers are doing their job. Horseheads Mayor Donald Zeigler did not return calls asking for comment.

Broader View's coverage of the Schlumberger project is archived online at <http://www.tiogagaslease.org/broaderviewweekly.html>

Sidebar:

A Condensed History of the Schlumberger Project

(from the petition filed in Chemung County Supreme Court on November 12, 2009)

Schlumberger Technology Corp. has proposed 400,000 square feet of buildings that would include chemical and explosives storage, truck wash bays, chemical mixing areas, a fueling station, and office space.

September 18, 2008 – a Schlumberger representative meets with Horseheads Village Mayor Marc Whitney to discuss development of the project.

January 2009 – Schlumberger purchases the site at Horseheads Center.

February 17, 2009 – Horseheads Village writes to Southern Tier Economic Group that they want to see this project come to fruition.

March 25, 2009 – DEC approves request for Horseheads Village to be Lead Agency and lists the following areas to be addressed in the SEQRA review: bird habitat, Elmira aquifer, stormwater prevention plan and a need for a “comprehensive and robust spills prevention control plan”.

June 18, 2009 – Village board holds workshop on the approval process for Schlumberger project. Next day they write a letter to Schlumberger representative to welcome them to the village.

July 7, 2009 – First public meeting on the Schlumberger project.

July 9, 2009 – First public hearing on SEQRA and site plan review.

July 30, 2009 – Village passed resolution seeking financial assistance from federal government for E-street reconstruction. At that same meeting members of the public raise concerns that the Schlumberger project is a “done deal”.

August 11, 2009 – Schlumberger agrees to submit additional data missing from their Environmental Assessment Form (EAF).

September 9, 2009 – Public hearing scheduled, but information from Schlumberger not made available until following day.

September 22, 2009 – Village cancelled their planned joint workshop with planning board and commenced review of the site plan.

September 30, 2009 – Horseheads Village board meets and completes part II of the EAF, finding 12 potentially significant impacts from the Schlumberger project.

October 5, 2009 – Village receives Notice of Violation from DEC.

October 6, 2009 – Horseheads village makes finding of “no significant environmental impact”.

October 15, 2009 – Horseheads board of trustees give final site plan approval to Schlumberger project.