

3 December 2012

Honorable Andrew M. Cuomo  
State Capital  
Albany, NY 12224

Honorable Joseph Martens, Commissioner  
New York State Department of Environmental Conservation  
Albany, NY 12233

Nirav Shah, MD, Commissioner  
New York State Department of Health  
Albany, NY 12202



Dear Governor Cuomo, Commissioner Martens, and Commissioner Shah,

As local elected officials from across New York State, we have heard significant confusion from our constituents in recent days about the DEC's actions, in particular the release of revised fracking regulations before the health review is complete, and before the SGEIS is final. The confusion is such that DEC spokesperson Emily DeSantis had to issue a "clarification" over the weekend. We're pleased that DeSantis reiterated that no decision is yet made on whether to allow fracking, and that Dr. Shah's health review must be completed before DEC will decide. However, that still leaves significant problems with DEC's performance in carrying out its duty to New Yorkers.

We are left to wonder why public comment is being sought on an irrelevant set of regulations. According to DeSantis, if DEC decides that fracking can't be safely done, "these regulations will not have any practical effect and the process will not go forward." On the other hand, if DEC does decide that the process can be done safely, "...these regulations would be adjusted in accordance with the health and safety requirements and issues addressed in the Supplemental Generic Environmental Impact Statement." We would hope so, in order that the final health and environmental will impact the final regulations. But this means that, by the DEC's own admission, there is no circumstance under which the newly-released regulations will be the actual regulations that DEC would use. **The November 29 regulations are simply a place-holder. Will the public be allowed to comment later, on the actual regulations?** If so, please tell us. If not, then it is clear the December 12-January 11 comment period is just a fig leaf, to make it appear that the DEC is being transparent and open, and following the law.

What about the DEC's and DOH's internal health review, upon which so much now rides? On November 13th, DEC Commissioner Joe Martens, Deputy Commissioner Gene Leff, and Bob Chinerey of the Health Department met with a group of local leaders representing the 550 members of Elected Officials to Protect New York (EOPNY). They insisted that the Department of Health has been integrally involved with DEC in the SGEIS process from the beginning. If that is true, what is there for Dr. Shah to review? Has he not approved his own department's work to date on this critical issue? If he has, then isn't this like a student checking his own homework?

Further, evidence suggests that the review by the outside experts will be grossly inadequate. The DOH contracted with three public health professionals to review what they have done, but they have each been given only 25 hours to review the review. Based on impacts explored in the now 4,000-page SGEIS, have the DEC and DOH done so little to evaluate the public health impacts of fracking that it can be reviewed in 25 or fewer hours? The public also deserves to know how narrow or broad is the task: Will these experts be allowed to raise any concerns not present in the DOH's document? Or will they be limited in their comments to evaluating what's put before them?

Of still greater concern are statements by Lynn Goldman, one of the three outside experts, on December 1st. She says that "What I think this exercise is about is can New York do this in a way that is safe — understanding that safety has to be in the context of 'in comparison to what?'" and notes that, "We know that emissions from burning

coal cause tremendous damage to health. A decision not to frack is a decision to use more coal." This statement indicates that she is making a judgment call about the comparative health impacts of fracking versus coal, and would seem to contradict DEC Commissioner Martens' statement that "Obviously if there was a public health concern that could not be addressed we would not proceed." **The public was led to believe that the purpose of this review was to determine the health impacts of fracking on public health in New York, not to compare the impacts of gas with other energy sources.** By Commissioner Martens' standard, if there are health concerns that cannot be addressed, fracking would not proceed.

Goldman's inherently false choice would require a comprehensive analysis of the impacts of the entire life-cycle of coal and natural gas, as well as conservation and other sources of energy. Most contaminants from coal enter into the environment during combustion, whereas the greatest concerns from fracking stem from the extraction process. Goldman's false choice puts into question both her and the DOH's priorities. It is strikingly in contradiction to Governor Cuomo's promises to New Yorkers and against the best interests of our constituents.

To reiterate our core concern about the recent developments, the DEC has released revised regulations prior to completion of the health review, raising serious concerns that politics rather than science is driving the process. **These concerns lead us to urge that the current draft of the SGEIS and health review be made public and re-opened for public comment.** In the November 13 meeting with EOPNY, Commissioner Martens said there have been substantial changes to and expansions of the SGEIS. They admitted that the 80,000 public comments on the first two drafts raised important issues and led to improvements in their understanding and in the document. Therefore we think the DEC should want the public's perspectives on the new and revised sections of the SGEIS. Beyond being good policy, we believe it is the law. Under the State Administrative Procedures Act, the public must have an opportunity to see and weigh in on such significant changes.

The best interests of our constituents across the state demand that the shroud of secrecy around New York's review of fracking be lifted. Our constituents deserve to see and weigh in on the health review that determines the fate of their families and communities, and it is high time that New York's medical community be included in this process. The Commissioner acknowledged to Elected Officials to Protect New York that there is great fear of fracking among New Yorkers. Commissioner Martens – and the Governor - owe to the people of New York every opportunity to have their concerns heard and thoroughly considered. A process that New Yorkers don't trust can only yield a decision that New Yorkers don't trust.

Sincerely,

On behalf of Elected Officials to Protect New York

Kathie Arnold, Cortland County Legislator

James Dean, Cooperstown Village Trustee

Kathleen Joy, Syracuse City Council Chair

Jean Kessner, Syracuse City Councilmember

Martha Robertson, Chair of Tompkins County Legislature