

Elected Officials to Protect New York
10 Bailor Road
Brooktondale, NY 14817

January 28, 2013

Commissioner Joe Martens
Department of Environmental Conservation
625 Broadway
Albany, NY 12233-1010



Dear Commissioner Martens,

On behalf of Elected Officials to Protect New York's 602 members from all 62 counties, thank you for your letter of January 3, 2013. It was an honor to meet with you and Deputy Commissioner Leff on November 13 and we deeply appreciate the extended time you gave to our meeting.

Before responding to specific points in your letter, we wish to comment on the state's decision-making process for fracking. As elected officials, we appreciate your position and have been in similar situations many times ourselves: facing determined and frustrated constituents; deciding among competing interests; and experiencing process fatigue. Yet, we deeply respect the democratic process and are dedicated to earning and keeping the public trust in every decision we make.

The fracking issue is particularly complex, with advocates on conflicting sides and each side claiming that evidence supports their position. In our experience, in these complex situations, the best public servants gather as much information as possible, and ask questions such as the following:

Whose information do you trust? Does one side have a financial interest in the outcome? If you were a "civilian" instead of a "decider," which side would you be on? If many of your constituents are on one side and not the other, can they all be wrong? Which decision is most in the public interest? **Which decision comports with the precautionary principle, to first do no harm?** If the wrong decision is made, how costly and irreversible are the detrimental outcomes?

We appreciate the hard work by the Department of Environmental Conservation and Department of Health to review the potential impacts of fracking. Yet, each week brings new questions, such as this recent [Associated Press report](http://www.businessinsider.com/epa-backtracks-on-range-resources-finding-2013-1) on water contamination (<http://www.businessinsider.com/epa-backtracks-on-range-resources-finding-2013-1>):

"...the EPA had scientific evidence against the driller, Range Resources, but changed course after the company threatened not to cooperate with a national study into a common form of drilling called hydraulic fracturing. Regulators set aside an analysis that concluded the drilling could have been to blame for the contamination."

Back to our first question above: Whose information can you trust?

We believe that you do *not* have enough information to say yes to fracking in New York, but you do have enough information to say no. It could take years to answer all the questions about this process. Since June 2012, we have built EOPNY's membership based on a request for three studies that still have not been done: a comprehensive health impacts analysis, a cumulative (not site-specific) environmental analysis, and a socioeconomic analysis that examines the costs as well as the benefits of fracking. We remain convinced these are the minimum analyses that New Yorkers deserve, to have their most pressing questions answered. But if you feel you must make a decision now – if you or the Governor believe the time has come to make a decision for New York – we believe there is only one defensible answer: no.

To respond specifically to your letter:

We agree that the three outside experts reviewing the health information in the SGEIS were excellent choices. **But we believe that a health review done in secret, with no public participation whatsoever, is insufficient to address the significant concerns to public health from fracking.** Such a level of secrecy prevents essential feedback from health professionals and citizens from informing the report and undermines the public's trust.

Our questions include:

- What materials were the outside experts asked to review?
- What tasks were given to them? Were they constrained to a narrow evaluation of the material they were given, or could they raise issues the DEC and DOH had not included in the document?
- Did they have access to the information about fracking provided to the DEC by medical professionals, scientists, and other experts from across the state, country, and world?
- Will the health experts review the literature on health threats from:
 - heightened radon levels in Marcellus gas;
 - seismic activity and earthquakes;
 - ozone and other air pollutants;
 - water contamination (e.g., from cement failures, spills, underground fluid migration)
 - industrial accidents and explosions;
 - cumulative effects of consumptive use of billions of gallons of water;
 - exacerbated climate change from methane's dangerous heat-trapping capacity (102 times worse than CO₂ on the 20-year time scale); and
 - stress and community degradation, from increased traffic, noise, homelessness, and crime.
- Why can't the public see the correspondence between the consultants and the DEC or any of the documents they are using? All of these materials were paid for by us, the taxpayers.

DEC has said there is no deadline to finalize the documents and begin permitting, and that the goal is the best possible regimen for drilling. In our November 13 meeting, Mr. Leff acknowledged that the public's comments on the first dSGEIS had helped the DEC improve the document. If that is so, **logic dictates that DEC and DOH should welcome – even solicit – the public's participation on the health review *before* the SGEIS is finalized.**

Science - including the field of public health - performs best with the highest level of inclusion and transparency. The body of scientific evidence and data relating to the health impacts of fracking has grown tremendously since the close of the comment period on the second SGEIS. Moreover, that was a comment period based on what the DEC had produced, which at the time did not include a review of health impacts.

We believe that your statement on September 20, 2012 that, "**obviously if there was a public health concern that could not be addressed we would not proceed**" must be the standard to meet. We believe that at present that the DEC and DOH cannot in good faith tell the public it can meet this standard. When it comes to our health, "mitigation" should have no place in the discussion.

We question the validity of the statement in your third paragraph: "If HVHF is allowed to proceed in New York, it will be done pursuant to the most stringent and protective regulations and requirements in the nation." For example, while DEC has increased the setback from well pads to a dwelling or place of assembly from 100 to 500 feet, Maryland's setback from a home is twice that -- 1,000 feet. In addition, New York has no seismic testing regulations and one of the worst compulsory integration laws in the country. These are but a few examples where the proposed regulations are not the most stringent in the nation. Additionally, New York State is fundamentally different from most places where fracking is already taking place. For instance, our state is more densely populated, a tremendous number of citizens in all parts of the state rely on unfiltered groundwater, and our upstate economy is built on agriculture, tourism, and non-industrial small-businesses.

On another subject, **the state's review does not fulfill SEQRA requirements by failing to analyze the negative socioeconomic impacts of fracking.** As you publicly acknowledged about a year ago, the economic analysis in the draft SGEIS is insufficient. The analysis that E&E did for the 2011 document is completely one-sided and neglects negative impacts to municipal governments and local economies.

Our questions about this report include:

- What is the status of the additional review you indicated that DEC would have E&E perform?
- Will their report be revised to incorporate the August 2011 USGS estimates of the Marcellus reserves, which were 80% lower (<http://www.businessinsider.com/wow-us-slashes-marcellus-shale-gas-estimate-by-80-2011-8>) than the earlier estimates that E&E used? All estimates of jobs and taxes are based on an estimate of reserves. Therefore it is essential that the best, most current information be used or the entire analysis is unreliable, and in this case, the benefits are greatly overstated.
- We are concerned about fracking's impact on local departments of health, law enforcement, and emergency response; property values; residents' ability to get mortgages and insurance; driving out existing businesses; and impacts on our roads and bridges. We have a fiduciary responsibility to understand these costs and try to prepare for them. **If DEC leaves these questions unanswered, by definition you cannot propose mitigations to these impacts.** You will be adding to the local burden at a time when the state imposes a tax cap without meaningful mandate relief on local governments and school districts.
- Why has the public been left in the dark on this part of the SGEIS also, with no opportunity to see or comment on E&E's revised report? When it comes to municipal governments and local economies, certainly the input of local officials should be included as valuable contributions to the DEC's review process.

Finally, as we have brought to your attention before, we remain deeply concerned about the climate impacts of fracking. We have carried the heavy burden levied by Lee, Irene, and Sandy. As the governor sets out to lead on climate change, it is imperative that the DEC thoroughly consider how fracking would impact those goals. Carbon dioxide is not the only greenhouse gas; **we ignore the heat-trapping power of methane at our peril.** HVHF is so new that the science is just beginning to

emerge, such as the recent [report in Nature \(http://www.nature.com/news/methane-leaks-erode-green-credentials-of-natural-gas-1.12123\)](http://www.nature.com/news/methane-leaks-erode-green-credentials-of-natural-gas-1.12123) from the National Oceanic and Atmospheric Administration, which measured a 9% fugitive emissions rate, more than twice as high as previously thought. It is absolutely essential that New York State to give full consideration to this evidence in its review of fracking.

When all is said and done, what will your legacy be?

We believe that New York State has not met its legal responsibility or its good government responsibility to thoroughly study all concerns related to fracking, allow public participation, and give adequate consideration to concerns raised by the public. For these reasons **we believe the state does not have the grounds to allow fracking. If you must make a decision at this time, the precautionary principle dictates that your agency must choose to prohibit it.**

Sincerely,

On behalf of the 602 Elected Officials to Protect New York,

Kathie Arnold, Cortland County Legislator

James Dean, Cooperstown Village Trustee, Otsego County

Jean Kessner, City of Syracuse At-Large Councilor and President Pro-Tempore, Onondaga County

Kathleen Joy, City of Syracuse At-Large Councilor

Martha Robertson, Chairperson of Tompkins County Legislature

CC: Governor Andrew Cuomo

Department of Health Commissioner Nirav Shah, M.D.

Department of Environmental Conservation Deputy Commissioner Eugene Leff