www.nyelectedofficials.org

February 8, 2013

To: Interested Parties
Fr: ELECTED OFFICIAL(S) NAME
Elected Officials to Protect New York
Re: Municipal and economic impacts of fracking, need for further delay and study

Summary Statement: New York State must not meet the coming February fracking deadlines for finalization of the sGEIS and the revised regulations. Although the state has spent years reviewing fracking, major questions and concerns remain unanswered; in fact, new issues arise weekly. In addition to the health impacts of fracking, which are chief among those concerns and reasons why the deadlines must not be met, the costs of fracking need significantly more attention before a well-informed decision can be made.

Elected Officials to Protect NY, a nonpartisan and geographically diverse group of 613 local elected officials from all 62 New York State counties, has been actively calling on the state to study the socioeconomic impacts of fracking as required by state environmental law. In December of 2011, DEC Commissioner Martens acknowledged that the state's economic review - consulted out to Ecology & Environment, Inc. - was inadequate. That review detailed potential benefits of fracking, but included no analysis or consideration of potential costs, even though it noted that local governments would experience "some significant negative fiscal impacts" due to fracking. All the report does is list impacts including "road construction, improvement, and repair expenditures...expenditures on emergency services such as fire, police, and first aid...additional expenditures on public water supply systems...local governments would be required to increase expenditures on other services, such as education, housing, health and welfare, recreation, and solid waste management to serve the additional population".

To public knowledge, these impacts have still not been quantified or analyzed and no mechanisms exist to address them. For local municipalities and local economies, the costs of fracking could prove crippling; fracking would be a new unfunded mandate for local governments. Meanwhile, the promise of jobs and revenues are based on outdated and vastly overstated shale gas reserve estimates. Jobs numbers and production data from other states including neighboring Pennsylvania have not lived up to promises, and an influx of out-of-state workers and heavy industry can be a heavy burden on municipalities. New York State must miss the upcoming arbitrary deadlines and address the serious economic questions, as well as public health and environmental concerns, before making a decision.

Elected Officials to Protect NY Details Costs of Fracking and Concerns

On Wednesday, February 6, 2012, Elected Officials to Protect NY held a press conference in Albany at the State Capitol that served to detail concerns about municipal, economic, health and environmental costs of fracking. See the press release here. **The transcript from that press conference serves as a summary of Elected Officials to Protect NY's arguments about the municipal and economic costs of fracking.**

On behalf of 613 members, the following comes from:

Doug Bullock, Albany County Legislator
Dominick Calsolaro, Albany Common Council
Carl Chipman, Town of Rochester Supervisor (Ulster County)
Bryan Clenahan, Albany County Legislator
James Dean, Village of Cooperstown Trustee (Otsego County)
Julie Huntsman, Town of Otsego Councilmember (Otsego County)
Kevin Millar, Village of Owego Mayor (Tioga County)
Martha Robertson, Chair of the Tompkins County Legislature
Matt Ryan, City of Binghamton Mayor (Broome County)
Jane Russell, Town of Pulteney Supervisor (Steuben County)
Susan Skidmore, City of Elmira Mayor (Chemung County)
Damian M. Ulatowski, Town of Clay Supervisor (Onondaga County)

Elected Officials to Protect New York includes 612 members from all 62 counties in the state, including the mayors of all the major Southern Tier cities. The boards on which we serve represent more than 13.5 million New Yorkers, or 70% of the state's population. We appreciate the opportunity we had to meet with DEC Commissioner Joe Martens and Deputy Commissioner Leff on November 13, but we still have not met with Governor Cuomo.

In fact, we received an explicit rejection of our request last week, despite the fact that the Governor has personally met at least once with representatives of the out-of-state gas industry. The public record shows that on May 9, 2012, Brad Gill of the Independent Oil and Gas Association and Karen Moreau of the New York State Petroleum Council met with the Governor, Director of State Operations Howard Glaser, and Tom Congdon, Assistant Secretary for Energy and Environment. We are very disappointed that the Governor has time to meet with representatives of the fracking industry but not to meet with the representatives of our mutual constituents, the people of New York.

We do not intend to criticize those who must make the decision on fracking in New York. We only seek to respectfully speak for our constituents back home, to be the conduits for their questions and concerns.

In your press packets you will find a copy of our formal rejection from the governor's office, a copy of the letter Commissioner Martens sent to us in January, our response to him, and a letter

we are delivering to Governor Cuomo today raising concerns about speculation that the state is considering allowing ten to forty fracking wells potentially described as a demonstration project.
.
Our communications with the governor's office and the DEC and DOH commissioners have been frustrating, with a level of secrecy that leaves us doubtful that our substantive concerns have been heard. As the elected partners of state government, we would hope for better
.
In our experience as elected officials, in making complex decisions such as the choice that is now before the DEC and the Governor, we evaluate the information we have by asking questions such as:

1. Whose information do you trust?
2. Does one side have a financial interest in the outcome?
3. Which decision is most in the public interest?
4. We've heard so much about the benefits. What are the potential costs?
5. If the wrong decision is made, how costly and irreversible are the detrimental outcomes?
6. Which decision comports with the precautionary principle, to first do no harm?

Whose information do you trust?

The real risks of fracking never see the light of day, because non-disclosure agreements are the price of compensation for a family whose drinking water has been permanently fouled. Even the EPA has run into the roadblock of non-disclosure agreements. As reported in the *New York Times* in August 2011, "Researchers...were unable to investigate many suspected cases (of drinking water contamination) because their details were sealed from the public when energy companies settled lawsuits with landowners…officials say this practice continues to prevent them from fully assessing the risks of certain types of gas drilling."

Do we permit non-disclosure agreements when the FDA evaluates a new drug for the market? Absolutely not. Hydrofracking is a huge, unevaluated experiment, and the results are being deliberately hidden from the American people. What are they hiding?

Once in a while, the veil is partially lifted. For example in the recent Associated Press report on water contamination:

> "...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 (water) contamination."

Let me repeat: The corporation threatened further non-compliance, and the EPA backed off.

And of course, fracking didn't even start in full bloom in the U.S. until the industry had secured its exemptions from EPA oversight under the Safe Drinking Water Act and the Clean Water Act, which they achieved in 2005. If fracking is so safe, why does the industry need these exemptions? What are they hiding? For decades the tobacco industry lied about the dangers of cigarettes. The gas industry is using the same marketing firms that the cigarette makers did. Will we be fooled again?

Does one side have a financial interest in the outcome of this decision?

YES. Let's take the Town of Dryden as an example. Dryden was sued by Anschutz Exploration in 2011 for zoning out fracking. Forty percent of the town's land was leased at the time, owned by only 6% of the town's population. Phillip Anschutz, ranked by Forbes as the 34th richest person in the U.S., owns the Colorado-based company. Dryden has a part-time attorney and approximately 14,000 residents. Even so, Dryden won the first round of the legal battle and Anschutz has since transferred its legal status in the lawsuit to Norse Energy, based in Norway.

It's true, a few landowners will make money, although not as many as you'd think. Industry data show that only 20% of wells are actually productive, so most wells won't even yield enough profits to spin off royalties. Multi-national corporations will make a lot of money, IF they can export the gas to pricier markets in Europe and Asia.

Any economic benefit from shale gas has to be balanced against losses to other industries, such as tourism, agriculture, hunting and fishing, and logging. Has the DEC done that calculation?

No. We've heard so much about the benefits of fracking. What are the potential costs?

Shockingly, the DEC still hasn't studied the costs to local governments and communities. Or IF they have done this analysis, the public – and even the DEC's own Fracking Advisory Panel – have been kept completely in the dark. What are they hiding?

Commissioner Martens publicly acknowledged a year ago that the socio-economic analysis in the draft SGEIS was insufficient. The analysis that Ecology & Environment did for the 2011 document was completely one-sided and failed to analyze the negative impacts to municipal governments and local economies. Literally the LAST paragraph of E&E's so-called analysis says this:

> "In addition to the positive fiscal impacts discussed above, local governments would also experience some significant negative fiscal impacts as a result of the development of natural gas reserves in the low-permeability shale."

It goes on to say that hydrofracking:

> "...would increase the demand for governmental services and thus increase the total expenditures of local government entities. Additional road construction, improvement, and repair expenditures...expenditures on emergency services such as fire, police, and first aid...additional expenditures on public water supply systems...local governments would be required to increase expenditures on other services, such as education, housing, health and welfare, recreation, and solid waste management to serve the additional population" if large numbers of workers were brought in from other states.

And that is where their report ends. No analysis, no numbers, no information. After pages of serious-looking tables about the jobs and taxes we'll enjoy, there is no analysis that local governments might use to prepare. Worse still, there is no analysis that the Governor or DEC can use to decide whether this industry is going to help or hurt New York's communities. **Fracking is a new unfunded mandate on local governments. The DEC's own report said so.**

We believe that the DEC's review does not fulfill basic SEQRA requirements, because it fails to analyze the negative socioeconomic impacts of fracking. What is the status of the additional review that Commissioner Martens said he would ask E&E to do?

In addition to the local costs E&E *did* mention in their report, stories from other states describe increased demands on local health departments, damage to property values, damage to residents' ability to get mortgages and insurance, crowding out of existing businesses, harassment of women by gas workers, and increased income disparity.

The industry's claims of public benefits boil down to four points: jobs, tax revenues, energy independence, and cleaner energy.

WHAT ABOUT THE JOBS?

The gas industry's claims of job creation are wildly overstated. First, most of the drilling jobs go to non-local workers. If that weren't true, why would every hotel room anywhere near the drilling fields in Pennsylvania be taken up (crowding out actual tourists) and why would the industry have to build "man-camps" for its workers? Permanent residents are pushed out of housing they could previously afford, resulting in increased homelessness and social disruption.

Second, "new hires" ("h-i-r-e-s") are not the same as new jobs. The industry claims a "job" for every new hire, and another "job" if that first person is replaced in their previous job by someone else, and so on. Relying on this method, the industry claimed it had created 48,000 jobs in Pennsylvania between late 2007 and late 2010. However, according to the Pennsylvania Department of Labor and Industry, Marcellus "Core" and "Ancillary" industries actually created only **5,669 net new** jobs during those three years.

Third, all estimates of jobs and tax revenues are based on how much gas is in the ground. The DEC's estimates of reserves are wildly inflated, so the job and tax estimates are overly optimistic too. The DEC's consultant, Ecology and Environment, used outdated reserve estimates in its socioeconomic analysis for the second SGEIS. In August 2011 the U.S. Geological Survey revised its estimate of the Marcellus reserves to be 80% lower than earlier projections. Nevertheless, the DEC still used the higher, discredited estimate. Without the best, most current information, the entire analysis is unreliable.

It is unconscionable that New Yorkers are being asked to accept so much risk based on the pivotal promise of jobs and tax revenues, when the promises appear to be spin and propaganda.

AREN'T THE COSTS COVERED BY NEW TAX REVENUES?

What taxes are paid are too little, too late. Because they are based on the *net profits from production at the end* of the drilling process, taxes aren't paid to local governments until years after the costs have been incurred. Industry data show that only 20% of wells are actually productive, so most wells won't even yield profits to tax. It's true that a few people and the corporations will make money, but most of us will lose.

WHAT ABOUT ENERGY INDEPENDENCE?

Google "export natural gas" and you will find a plethora of articles about the industry's desperate push to export liquefied natural gas, or LNG. In 2012, permit requests to the federal government to export LNG totaled over 60% of current domestic consumption. Every one of these articles proclaims that exports will help "stabilize" the domestic price of gas. We know what this means, and these industry articles are not subtle about it: exporting gas will hike US natural gas prices. And the timing will be perfect for the industry: just after we invest millions in transforming coal plants and vehicle fleets to use gas, based on a price point that will no longer exist, competition with international demand will cause domestic prices to skyrocket. It is a trap. Fracking for the sake of energy independence is a scam. We desperately need to create *real* energy independence, with conservation and clean fuel sources. Fracking is not the way.

IS GAS REALLY "CLEANER" ENERGY?

The final myth around fracking is that natural gas is a cleaner source of energy and its use helps us combat climate change. Tragically, research is showing that the opposite is true. Carbon dioxide is not the only greenhouse gas; **we ignore the heat-trapping power of methane at our peril.** Peer-reviewed research at Cornell University documents that shale gas is more damaging to the planet than coal. This is due to the global warming power of methane, which is 100 times greater than that of carbon dioxide over a 20-year time scale.

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) from the National Oceanic and Atmospheric Administration, which measured a 9% fugitive emissions rate, more than twice as high as previously thought. Just yesterday Al Gore told WAMC radio, "the leaking of methane can wipe out any climate advantages from switching to natural gas." The industry has data on fugitive emissions but it's considered proprietary. What are they hiding? It is absolutely essential that New York State give full consideration to this evidence in its review of fracking.

Fracking undermines actions to lower our carbon footprint. The advent of more plentiful, and therefore cheaper, gas is significantly delaying the transition to renewable energy for economic reasons.

Experts warn that if we actually burn all the fossil fuel we already have at hand, we will blow past the tipping point for the climate and incite an irreversible climate collapse. To quote Energy Secretary Steven Chu, "The Stone Age did not end because we ran out of stones; we transitioned to better solutions."

We need to pursue those better solutions. As the governor sets out to lead on climate change, it is imperative that he and the DEC thoroughly consider how fracking would impact those goals.

If the wrong decision is made, how costly and irreversible are the detrimental outcomes?

Damage to the health of the people of New York should certainly be considered costly and irreversible, and unacceptable.

Many health professionals have raised essential questions on this topic, but the administration has failed to answer them. We believe that a health review done in secret, with no public participation, is insufficient to address the significant concerns to public health from fracking. Such a level of secrecy undermines the public's trust.

As New York's medical and scientific community has documented, there are significant gaps in our knowledge about the pathways of contamination and why people near fracking operations are getting sick. Commissioner Martens told us on November 13 that the DEC's philosophy was to "prevent exposure" and therefore no mitigation would be needed. If we don't know how people are being exposed, how can we prevent it?

These concerns are getting attention in other parts of the country, and new questions arise weekly. For example, the Pennsylvania Department of Environmental Protection just announced plans to study naturally occurring levels of radioactivity in fracking wastewater, despite their earlier claims that there was no evidence that brine contained dangerous levels of radiation.

At the University of Pennsylvania a team of toxicologists is leading a national effort to study the health effects of fracking. Working with researchers at ten other top universities, U Penn will investigate and analyze reports of nausea, headaches, breathing difficulties, and other health concerns of people living near drilling sites, compressor stations, and wastewater pits.

And Maryland's Governor Martin O'Malley's 2014 budget proposal includes $1.5 million to study fracking in the Marcellus Shale in western Maryland. The money would be used for stream sampling, economic analysis, and a review of the potential impacts of gas extraction on public health. The state won't issue drilling permits during this time, until the results are known.

This is the essence of the precautionary principle. Why would we want to move forward on fracking now, while this research and the EPA's study on fracking's effects on water resources are under way?

The gas isn't going anywhere. Does a decision have to be made by an arbitrary deadline at the end of February?

DEC used to say there was no deadline to finalize the documents and begin permitting, and that the goal was to follow the science.

However, it seems that the administration's stars are aligning to make a decision by the end of this month. If that is the plan – if the DEC or the Governor believes the time has come to make a decision on whether to frack New York – **we believe that they do *not* have enough information to say "yes" to fracking in New York, but they do have enough information to say "no".**

Once again, we question the Governor's choice to meet with the gas lobbyists but refuse to meet with the elected representatives of the people of New York.

We believe that New York State has not met its legal responsibility, or the basic standards of transparency and good government, to thoroughly study all concerns related to fracking, allow public participation, and give adequate consideration to the public's concerns. For these reasons we believe the state does not have the grounds to allow fracking; there is no justification for a green light.

There are major costs associated with fracking that the state has acknowledged but not analyzed or planned for. Those costs include municipal, community, economic, public health, and environmental impacts. For nine months now, Elected Officials to Protect New York has been calling for a study of these costs before drilling starts. Municipalities need to know what is coming and how to plan. As it stands, it appears that fracking will be a new unfunded mandate on local governments.

The DEC has failed in its responsibility to properly analyze the socioeconomic impacts of fracking. We urge that Governor Cuomo's Mandate Relief Council take up this issue to fill the gap. The Mandate Relief Council is charged with identifying mandates on local governments and ways to reduce or eliminate them. We respectfully request that the Council begin this analysis as soon as possible – in full consultation with local elected officials from around the state – and that Governor Cuomo delay any decision on fracking until after his council has reported its findings.

Science and the best interests of New Yorkers must drive this decision, not an arbitrary deadline. If the state nevertheless makes a decision at this time, the precautionary principle dictates that New York State must choose to prohibit high volume hydrofracking.

Governor Cuomo, when all is said and done, what will your legacy be? We hope you will be the leader who takes our state and the nation toward a *clean* energy future, with sustainable jobs for New Yorkers, for the sake of our children and their children.