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January 7, 2013

Honorable Andrew M. Cuomo  
Governor of New York  
The Capitol  
Albany, NY 12224

Dear Governor Cuomo:

We, the undersigned, write to express grave concerns about the total lack of public participation for your State Department of Health's (DOH) "Review" of New York's "health impact analysis" of Marcellus Shale gas extraction. This issue is of crucial importance to New Yorkers, now and for future generations.

Last September, New York State Department of Environmental Conservation Commissioner (DEC) Martens announced that Dr. Shah, the Commissioner of the Department of Health (DOH), would work with three outside experts to review DEC's "health impact analysis" of Marcellus Shale gas horizontal drilling combined with hydraulic fracturing.

The scope of the DOH Review and how it would be conducted have never been publicly disclosed despite repeated requests. It has been revealed through news leaks that the outside experts reportedly would work a total of only 25 hours to review more than 4,000 pages of documents that have also not been made public.

Commissioner Martens has stated that neither a Final Supplemental Generic Environmental Impact Statement (SGEIS) nor any Revised Shale Gas Rulemaking proposal would be adopted until the DOH Review is completed. Given its importance, it is imperative that the DOH Review be comprehensive, open and transparent.

To date, no member of the Legislature or the public has seen DEC's "health impact analysis" or any information regarding the intent of the DOH Review or how it is being conducted.

We write today because The New York Times and other media outlets released a, purportedly, year-old document last week that is extremely troubling because it asserts that:

“By implementing the proposed mitigation measures identified and required in this Supplemental GEIS, **the Department expects that human chemical exposures during normal HVHF [High-Volume, Hydraulic Fracturing] operations will be prevented or reduced below levels of significant health concern. Thus, significant adverse impacts on human health are not expected from routine HVHF operations** (emphasis added).”

We are concerned that this dubious claim is the basis of DEC’s plan to safeguard New Yorkers from shale gas extraction hazards. DEC and local health departments in New York’s Southern Tier have documented numerous incidents where citizens have been directly impacted by gas and oil drilling problems. In light of those problems, we doubt that simply asserting that citizens will never be exposed to shale gas fracturing pollutants constitutes a meaningful public health protection strategy.

It is important to point out that DEC has long been criticized repeatedly for its failure to propose adequate public health safeguards for shale gas extraction threats. The Environmental Protection Agency has submitted more than 40 pages of detailed comments about the shortcomings of DEC’s draft and revised draft SGEISs beginning in 2009 and continuing through 2012.

State law and regulation are clear about the reason for environmental impact statements (EISs); New York has an “obligation to protect the environment for the use and enjoyment of this and all future generations.” In defining the word “environment,” “human health” is specifically noted. The statute on environmental impact statements also makes explicit the requirement to “solicit comment” for proposals “that may significantly affect the quality of the environment.” We believe that is clearly the case with DOH’s “health impact analysis” review.

In contrast to that requirement, the DOH Review is being conducted in total secrecy without any opportunity for public review and comment on it. Also, the time allocated for the expert review is far too short and obviously inadequate.

That is why we very respectfully request that you immediately require:

- a) Immediate written public notice regarding the intent and scope of the DOH Review;
- b) Release of DEC’s “Health Impact Analysis” for public review;
- c) At least one public hearing to allow Commissioner Shah and the three outside experts to hear testimony about the proposed DOH Review.
- d) A minimum 30 days for public review and comment by all interested parties of the proposed DOH Review.

These requirements are essential to make sure that the DOH review will be

comprehensive in scope and properly conducted with public engagement. Until these public participation requirements are fulfilled, we request that:

- 1) DOH put on-hold completion of its “health impact analysis” Review;
- 2) DEC withhold adoption of a Final SGEIS; and
- 3) The Revised Shale Gas Rulemaking proposal not be finalized.

The Legislature and the public at-large must have complete faith in the integrity of this crucial proceeding. That is why there must be no rush to complete the DOH Review. As you have repeatedly stated, “We have to let the scientists do their work without interference or arbitrary deadlines.” It is equally important that the scope of their work be adequate to meet the public health protection needs of New Yorkers.

We urge great caution in this crucial matter for the sake of the health of all New Yorkers. Of course, we remain concerned with the other significant outstanding issues that were enumerated in a letter to you on June 13, 2012, signed by 76 legislators, that we feel strongly must be addressed. Until all these legal requirements have been fulfilled, we must request that you maintain New York’s current moratorium on horizontal hydraulic fracturing in Marcellus Shale.

Thank you for your attention to our deep concerns.

Sincerely yours,