



DONNA A. LUPARDO
Member of Assembly
123rd District

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October 7, 2013

Joseph Martens, Commissioner
New York Department of Environmental Conservation
625 Broadway
Albany, NY 12233-1010

Dear Commissioner Martens, *Joe-*

I am writing as a follow up to your February 4, 2013 letter declining my request for a High Volume Hydraulic Fracturing (HVHF) Advisory Panel briefing about the DEC's revised shale fracking rule-making proposal and the DOH health review being conducted by Commissioner Shah.

I am requesting once again that the HVHF Advisory Panel be convened to address the status of the DOH review proceeding that has been on-going for more than a year without any public process. There has been no public notice, opportunity for public review or public hearing to listen to testimony from interested parties.

In order for the public to have confidence in New York State's "health impact analysis" of shale fracking, a comprehensive Public Health Impact Study should be undertaken openly and transparently to resolve all shale fracking concerns once and for all. As you know, the Assembly majority has been pushing this for a number of years.

Honestly, if this sensible approach had been followed when major shale fracking concerns were initially raised by the U. S. Environmental Protection Agency, health professionals, academic researchers, myself and many others, a comprehensive Public Health Impact Study could have been completed by now. The Assembly, as you know, allocated a specific budget appropriation for this, only to see it negotiated away.

Your February letter stated that: "The scope of the regulations and Supplemental Generic Environmental Impact Statement (SGEIS) fall outside of the charge of the panel, whose purpose is limited to developing recommendations on state and local resource needs resulting from HVHF permitting and evaluate the current fees and other revenue streams to meet those needs and to maintain affected infrastructure."

The announcement creating the HVHF Advisory Panel charged the members with the following three key responsibilities:

- “developing recommendations to ensure DEC and other agencies are enabled to properly oversee, monitor and enforce high-volume hydraulic fracturing activities;
- developing recommendations to avoid and mitigate impacts to local governments and communities; and
- evaluating the current fee structure and other revenue streams to fund government oversight and infrastructure related to high-volume hydraulic fracturing.”

The HVHF Advisory Panel cannot fulfill the above responsibilities without understanding how the DEC proposes to “oversee, monitor and enforce HVHF activities.” The revised rule-making proceeding reportedly translated a Final Draft SGEIS into a regulatory proposal. A briefing on that would be appreciated.

Also, concerns around "mitigating impacts to local governments and communities" brings us right to the DOH health review. On 2/12/13 Dr. Shah wrote to you: “The DOH review of the [SG]EIS is on-going. In particular we are focused on the relationship of HVHF to the health impacts of drinking water contamination, but also other areas such as air quality and community impacts.” Clearly, the DOH review is within the HVHF Advisory Panel’s purview.

In addition, Dr. Shah wrote, “In recent weeks, work has been initiated or published by the scientific community to analyze these health impacts and which may help in addressing these areas. These are the first comprehensive studies of HVHF health impacts at either the state or federal level.....”My team and I will be in Pennsylvania and Washington in the coming days for first-hand briefings on these studies and their progress, which will assist in informing the New York review.”

As you know, recent developments make it difficult for Dr. Shah to use the three outside studies to inform his health review. Two out of the three studies (Geisinger and University of Pennsylvania) are not actually underway due to a lack of funding. For example, the Geisinger Study reportedly only received \$1.0 million out of a budget of \$25.0 million. The third study by the U. S. Environmental Protection Agency reportedly will not be completed until 2016.

In light of this, a comprehensive Public Health Impact Study should be undertaken in order to fulfill the mandates specified when you promised on 9/20/12 that the DOH review of New York’s shale fracturing “health impact analysis” would:

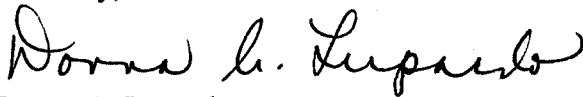
- address "any legitimate request for additional due diligence and study...."
- ensure that "DEC's ultimate decision on hydraulic fracturing is beyond reproach either as a matter of law or as policy;"

- allow DEC to avail "ourselves of the best possible advice from the private and academic sectors;" and
- "... result in the most thorough review of high-volume hydraulic fracturing in the nation...."

With so many questions lingering in the public's mind about health impacts related to HVHF, it makes sense to move ahead in a way that will provide meaningful answers. Therefore, I would request that the health review currently being conducted by the DOH be put on hold and replaced with a transparent and thorough Public Health Impact Study. That study should include an analysis of urban impacts as well.

I am sure that my fellow HVHF Advisory Panel members would welcome the opportunity to weigh in on this and other matters related to our charge. Thanks for your consideration. I look forward to hearing from you.

Sincerely,



Donna A. Lupardo
Member, HVHF Advisory Board

cc. DOH Commissioner Nirav Shah
Assemblyman Bob Sweeney, Chair, Committee on Environmental Conservation