

ADIRONDACK MOUNTAIN CLUB · CATSKILL MOUNTAINKEEPER · CITIZENS CAMPAIGN FOR THE ENVIRONMENT · COMMON CAUSE NY · DELAWARE RIVERKEEPER NETWORK · EARTHJUSTICE · EARTHWORKS OIL AND GAS ACCOUNTABILITY PROJECT · ENVIRONMENT NEW YORK · ENVIRONMENTAL ADVOCATES OF NEW YORK · NATURAL RESOURCES DEFENSE COUNCIL · RIVERKEEPER, INC. · SIERRA CLUB ATLANTIC CHAPTER · WATERKEEPER ALLIANCE · WORKING FAMILIES PARTY

December 18, 2012

Commissioner Nirav R. Shah, MD, MPH  
New York State Department of Health  
Corning Tower  
Empire State Plaza,  
Albany, NY 12237

Commissioner Joseph Martens  
New York State Department of Environmental Conservation  
625 Broadway  
Albany, New York 12233-0001

Dear Commissioners Shah and Martens:

Our groups write today to call on the Administration to commit to conducting a robust, comprehensive and – above all – open process as you proceed in your consideration of the potential health impacts associated with proposed high-volume hydraulic fracturing (fracking) in New York State.

We write in follow up to the letters sent by the Natural Resources Defense Council, Riverkeeper, Inc. and the Waterkeeper Alliance on October 5 and November 21, 2012 (copies of which are attached) making this same request.

We remain deeply concerned that the health review is proceeding under a veil of secrecy and without any opportunity for input by the potentially affected public, state-based health professionals or other key stakeholders. Among other things, the “health impact assessment” purportedly prepared by the Department of Environmental Conservation (DEC) through the ongoing Revised Draft Supplemental Generic Environmental Impact Statement process, and under current review by the Department of Health (DOH) with the aid of three outside experts, has never been publicly released.

To be valid and meaningful, it is absolutely critical that the health review process provide a genuine opportunity for input by local, county and New York State medical and public health

professionals, as well as the community members in potentially affected areas of the state. We therefore call on your agencies to announce a public review process that includes, at a minimum:

- Public release of the scope, substance, and any supporting data or information used to complete the "health impact analysis" conducted by DEC and announced by Commissioner Martens on September 20, 2012.
- Public release of the scope, substance and any supporting data or information used in the DOH review of the analysis, as well as the scope and substance of the outside experts' evaluations of that review.
- No less than a sixty-day public comment period on the scope and substance of the Department of Environmental Conservation's "health impact analysis," the scope and substance of the Department of Health's review, and the scope and substance of the outside experts' review.
- One or more public hearings conducted by DOH throughout the potentially affected parts of the state to receive testimony from interested parties, before DOH and the experts finalize their review.

In addition, we are concerned that the recent decision to release revised draft regulations prior to completion of either the health or environmental review processes will put undue pressure on your agencies to make a final decision on fracking in New York that is not appropriately informed by those processes and that is subject to an arbitrary, unfounded deadline.

Consequently, we also ask that your agencies reiterate your commitment not to make any final decisions related to fracking, including but not limited to finalization of the draft regulations, until this public health review process has been completed and due consideration has been given to the information elicited during that process.

We thank you again for your decision to conduct an evaluation of potential health impacts from proposed new fracking in New York, and we are confident that you will ensure that evaluation is both open and legitimate.

Sincerely,

Neil F. Woodworth  
Adirondack Mountain Club

Wes Gillingham  
Catskill Mountainkeeper

Sarah Eckel  
Citizens Campaign for the Environment

Susan Lerner  
Common Cause NY

Maya van Rossum  
Delaware Riverkeeper Network

Deborah Goldberg  
Earthjustice

Nadia Steinzor  
Earthworks Oil and Gas Accountability Project

Eric Whalen  
Environment New York

Katherine Nadeau  
Environmental Advocates of New York

Kate Sinding and Eric A. Goldstein  
Natural Resources Defense Council

Kate Hudson  
Riverkeeper, Inc.

Roger Downs  
Sierra Club Atlantic Chapter

Robert F. Kennedy, Jr.  
Waterkeeper Alliance

Dan Cantor  
Working Families Party

cc: Governor Andrew M. Cuomo  
Senator Mark Grisanti, Chair, Senate Environmental Conservation Committee  
Senator Kemp Hannon, Chair, Senate Health Committee  
Assembly Member Robert Sweeney, Chair, Assembly Environmental Conservation  
Committee  
Assembly Member Richard Gottfried, Chair, Assembly Health Committee



November 21, 2012

Commissioner Nirav R. Shah, MD, MPH  
New York State Department of Health  
Corning Tower  
Empire State Plaza,  
Albany, NY 12237

Commissioner Joe Martens  
New York State Department of Environmental Conservation  
625 Broadway  
Albany, New York 12233-0001

Dear Commissioners Shah and Martens:

We write in support of the Department of Health's (DOH) recent announcement of the three experts who will be participating in the outside review of the potential health impacts associated with proposed high-volume hydraulic fracturing (fracking) in New York State. Drs. Adgate, Goldman and Jackson are precisely the sort of highly-qualified health professionals that we earlier suggested be appointed.

We understand that the Independent Oil and Gas Association of New York, Energy in Depth, and other representatives of the oil and gas industry have urged you to appoint additional, industry-friendly members to the review team. We strongly urge you to resist such demands. The three experts you have selected cannot reasonably be characterized as "anti-fracking." Rather, they are each nationally-recognized practitioners associated with independent institutions of the highest caliber and repute. To the extent one or more has direct prior experience in evaluating the health impacts of oil and gas development, this is a testament to his or her expertise, rather than any indication of bias. There is, in other words, no need to appoint any further representatives, much less ones hand-picked by the industry, to ensure neutrality in the external review process.

We also wish to reiterate the critical importance of making the health review a public process. To ensure an appropriately robust review – and one that will enhance the public's confidence – the process must provide a meaningful opportunity for input by local, county and

New York State medical and public health professionals, as well as the community members in potentially affected areas of the state. It is crucial that Drs. Adgate, Goldman and Jackson, none of whom is based in New York, have the opportunity to consider the perspectives of state-based medical experts and the potentially affected public.

In light of the Governor's indication just yesterday that your agencies are unlikely to complete their on-going environmental and health reviews before the expiration of the November 29<sup>th</sup> deadline for finalization of regulations pursuant to the State Administrative Procedures Act (SAPA), further public review is likely. This presents a golden opportunity to solicit and consider public input specifically related to the health review (as part of the additional SAPA regulatory review process, or as a separate review focused exclusively on the forthcoming DOH health analysis). Indeed, to do otherwise would be an obvious omission likely to invite public criticism.

Again, we thank you for your decision to undertake what we hope will be an unprecedented examination of potential health impacts from fracking, and your appointment of three highly qualified reviewers to assist in that important endeavor.

Sincerely,



Robert F. Kennedy, Jr.



Kate Sinding and Eric A. Goldstein  
Natural Resources Defense Council



Kate Hudson  
Riverkeeper, Inc.



October 5, 2012

Commissioner Nirav R. Shah, MD, MPH  
New York State Department of Health  
Corning Tower  
Empire State Plaza,  
Albany, NY 12237

Commissioner Joe Martens  
New York State Department of Environmental Conservation  
625 Broadway  
Albany, New York 12233-0001

Dear Commissioners Shah and Martens:

We are writing to you as a follow-up to the Department of Environmental Conservation's (DEC) September 20, 2012 press statement announcing that Health Commissioner Shah will be reviewing DEC's evaluation of health impacts prepared as part of its on-going review of proposed high-volume hydraulic fracturing (fracking) pursuant to the State Environmental Quality Review Act.

As you know, NRDC and Riverkeeper have long urged New York State to commission the preparation of an independent, comprehensive health impact assessment (HIA) that fully evaluates the potential health risks of proposed new fracking. We still believe that preparation of an HIA would be the best way to inform state decision makers regarding the full array of potential adverse health impacts before any decisions are made as to whether to proceed with fracking in New York. And we believe that such a process would most effectively assure the public that these impacts have been fully evaluated by independent medical experts.

You have previously stated that DEC's review of health impacts has been performed with the input of the Department of Health (DOH) and that this effort constitutes the equivalent of what a HIA would provide. Having not reviewed the DEC's revised document, we are unable to evaluate that conclusion. But case studies and site-by-site anecdotal reports from communities located near drilling and fracking operations continue to give us reasons for concern as to the potential health impacts from fracking and fracking-related activities. And we continue to believe that it is in our mutual best interest to produce a systematic health analysis that addresses these concerns.

We respectfully recommend that, to meet the standards of a comprehensive HIA or to perform its equivalent, DOH should incorporate the following elements into its forthcoming review.

First, the DOH study should utilize quantitative analytic methods, aggressively seek out data on health problems reported in communities in regions in which tracking is already underway, consider impacts on both physical and mental health, and evaluate occupation health and safety risks to workers, as well as risks faced by the general public in affected communities and their most vulnerable sub-populations.

Second, consistent with the September 20th commitment to "identify the most qualified outside experts to advise him in his review," we urge DOH to select outside experts who can demonstrate true objectivity and who have the following qualifications:

- Expertise in the specialized field of HIA, as defined by the National Research Council and the World Health Organization.
- Specific knowledge of the particular socioeconomic and land use conditions, demographic data, including but not limited to vulnerable subpopulations, and other relevant characteristics of potentially affected communities.
- Experience with health and other relevant data from affected communities in regions in which fracking is underway, including Pennsylvania.
- Experience with analytic tools for evaluating complex mixtures, multiple routes of exposure, transgenerational effects, epigenetic effects, and cumulative impacts.
- Toxicological and epidemiological expertise in areas including endocrine disruptors, developmental toxicants, neurological toxicants, and carcinogens.

Specifically, we recommend that the following individuals, all of whom meet some or all of the above qualifications, be considered for appointment to advise Commissioner Shah in his review:

1. Aaron Wernham, MD, Director, Health Impact Project, Pew Health Group
2. Ted Schettler, MD, MPH, Science Director, Science and Environmental Health Network and Collaborative on Health and Environment
3. David Carpenter, MD, Dean, School of Public Health, SUNY Albany
4. Simona Perry, PhD, Dickinson College and Rensselaer Polytechnic
5. Julia Brody, PhD, Silent Spring Institute, Newton, MA
6. Philip Landrigan, MD, Mt. Sinai Hospital, NYC
7. Richard Jackson, MD, MPH, Chair, Environmental Health Sciences, UCLA School of Public Health
8. Frederica P. Perera, Ph.D., Director, Columbia Center for Children's Environmental Health, Columbia University Mailman School of Public Health
9. David R. Brown, ScD, Director of Public Health Toxicology for Environment and Human Health, Inc., Southwest Pennsylvania Environmental Health Project
10. Roxana Witter, MD, MSPH, Colorado School of Public Health, University of Colorado

Third, we urge DOH to build into the review process some opportunity for input of concerned stakeholders. Such stakeholders include local, county and New York State medical

and public health professionals, as well as the community members in potentially affected areas of the state. Public scoping or a public comment period is essential to a comprehensive HIA, or to an analysis which is its functional equivalent. We are aware that DEC has already received over 75,000 public comments as part of the SEQRA process and that DEC intends to do another rulemaking, which would solicit public comment on the fracking rules. Nevertheless, soliciting stakeholder input through the particular lens of the specialized HIA methodology, rather than through an environmental review or rulemaking, would yield different and additional feedback that would be critical for the reviewers and decision-makers to consider.

Finally, an HIA or its equivalent focused on fracking in New York would ideally provide an economic analysis of the health effects so identified. The objective would be to put a price tag on the direct and indirect medical costs associated with fracking. And New Yorkers and state decision-makers would benefit from seeing a full accounting of the monetizing of health effects that such an economic disbenefit analysis could provide. We strongly urge DOH to include such an analysis as part of the new health study.

We appreciate the opportunity the Cuomo Administration has provided NRDC, Riverkeeper and other environmental representatives to share with you our concerns as to the importance of comprehensively addressing the legitimate health concerns that have surfaced concerning fracking in New York State. But to accomplish its stated objectives and to meet the Governor's commitment to advance fracking in New York only if it can be done safely and in a way that is protective of public health, the forthcoming health study must be thorough, fair, comprehensive and prepared with significant input from truly independent health experts and an opportunity for review by affected stakeholders.

We look forward to assisting you in this important endeavor in any way we can.

Sincerely,

Handwritten signatures of Kate Sinding and Eric A. Goldstein. The signature on the left is 'KS' and the one on the right is 'Eric A. Goldstein / KS'.

Kate Sinding and Eric A. Goldstein  
Natural Resources Defense Council

Handwritten signature of Kate Hudson.

Kate Hudson  
Riverkeeper, Inc.