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Commissioner Martens Rejects Call for "Independent" Health Study of High Volume Hydraulic Fracturing Announces State Health Commissioner to Assess Health Impacts

Statement of Commissioner Joseph Martens

"DEC has been reviewing approximately 80,000 comments submitted concerning the Department's review of high volume hydraulic fracturing (hydrofracturing). While a wide variety of issues are addressed by the comments, many focus on the potential public health impacts of high volume hydrofracturing.

I have had numerous conversations with many of the parties on all sides of this issue. I have recently met with several of the groups who have raised public health concerns and it is clear they are not satisfied with the Department's effort to address potential public health impacts. The groups would require that DEC conduct an outside health study that would determine the outcome of the final decision. I reject that demand. I believe it is highly likely that some of these groups will pursue litigation following the conclusion of the Departmental process if they do not agree with the outcome.

I believe deferring to an outside group or entity would be an inappropriate delegation of a governmental responsibility. Government is the public's independent reviewer: that is the essence of the current process. To suggest private interests or academic experts bring more independence to the process than government is exactly wrong. Many experts in this field have an opinion - pro or con- which could influence the process. Nor could one ever be sure that there weren't potential conflicts of interest with outside consultants if they were to actually direct the outcome. It is the government's responsibility to ensure objectivity and a review directed by DEC and the Department of Health is without bias.

The Governor's instructions have been clear from the outset - let the science determine the outcome.

Fundamentally, I want to make sure that we have done the most thorough review possible, especially when it comes to public health concerns. In addition, I want to ensure that the Department has the most legally defensible review so that when the Department issues its final determination on this matter, protracted litigation is avoided, whatever the outcome.

Accordingly, I have asked and NYS Health Commissioner Nirav Shah has agreed to assess the Department's health impact analysis. I have also asked Dr. Shah to identify the most qualified outside experts to advise him in his review. While the review will be informed by outside perspectives on the science of hydrofracturing, the decision-making will remain a governmental responsibility.

Only after this evaluation is completed will a decision be made about whether to permit high volume hydraulic fracturing in New York. Obviously if there was a public health concern that could not be addressed we would not proceed. The process to date has been designed to maintain public trust in the

integrity of DEC's review, and Dr. Shah's assessment will assure New Yorkers that we have thoroughly examined all the issues before making a final decision. The review will also ensure the strongest possible legal position for the Department given the near certainty of litigation, whether the Department permits hydrofracking or not.

I believe this action addresses any legitimate request for additional due diligence and study as well as ensuring DEC's ultimate decision on hydraulic fracturing is beyond reproach either as a matter of law or as policy. I believe the action also protects the independence of the DEC while availing ourselves of the best possible advice from the private and academic sectors. While I am sure these actions will not satisfy all parties, I do believe it will result in the most thorough review of high-volume hydraulic fracturing in the nation, regardless of the final decision."