**ASSEMBLY STANDING COMMITTEE ON ENVIRONMENTAL CONSERVATION
ASSEMBLY STANDING COMMITTEE ON HEALTH
ASSEMBLY ADMINISTRATIVE REGULATIONS REVIEW COMMISSION**

**NOTICE OF PUBLIC HEARING**

**SUBJECT:**

The Department of Environmental Conservation's proposed High Volume Hydraulic Fracturing regulations

**PURPOSE:**

To receive comment on the High Volume Hydraulic Fracturing regulations proposed by the Department of Environmental Conservation

**Larysa Dyrszka, MD**

**Albany**
Thursday
January 10, 2013
9:30 a.m.
Hamilton Hearing Room B
Legislative Office Building, 2nd Floor
Albany, New York

**Thank you, Members of Assembly Gottfried, Lavine and Sweeney, for the opportunity to speak.**

**I would like to let you know at the outset that I have submitted my comments to the DEC under protest. The process by which these draft regulations have been prepared and released for final public comment prior to completion of the SGEIS, which is required to inform the subsequent development of regulations, and prior to completion of a credible health impact study, is unethical, and possibly unlawful. Silence would have implied tacit agreement with these regulations, or disinterest in the issue, and since I am neither in agreement with the regulations, nor disinterested in this most major environmental and public health issue of our time, I have sent in comments, and have included several of them at the end of my written testimony.**

**I realize that today’s hearing is an invitation to comment on the regulations. However, because the State Administrative Procedures Act has driven this process, it’s important to comment on that process. The intent of SAPA is clear, “…to provide the people with simple, uniform administrative procedures... this act guarantees that the actions of administrative agencies conform with sound standards developed in this state ... and It insures that equitable practices will be provided to meet the public interest…”. It was not created to befuddle the public with inexact science, to give preference to a particular industry lobby, or to simply be a place holder because time was running out.**

**In comments on the SGEIS and in letters to the Governor, the medical profession has identified significant risks to public health, the environment, and communities. And we have made that peer reviewed literature, reports and testimonies publicly available on the website of Concerned Health Professionals of NY—something that the DEC has failed to do.**

**As a doctor, I found it difficult to comment on rules where health regulations are missing… where rules have been promulgated with an apparent lack of input from the NY State public health experts…and where the guidance document, the SGEIS, is significantly deficient in addressing health impacts. I would like to point out that, despite recommendations by the EPA and the NY medical community that the NYSDOH co-lead the gas drilling EIS because of potential health impacts, the NYSDOH was not given any regulatory powers concerning gas drilling (and that can be found in Table 8.1 in the rdSGEIS, page 1005); and in addition, despite recommendations from the county health departments that because there will be health impacts, the state DOH should prepare, the DOH has not issued any separate health regulations, nor recommended any health studies. And when finally the DEC made a token attempt to look at health and called upon the Commissioner of Health to review some health analysis, he and his panel were not given sufficient time.**

**It is troubling that months ago the DEC concluded that they expect to be able to miraculously prevent adverse human health impacts through mitigation and regulation, as leaked in the press recently. Cavalierly, the DEC wrote that by implementing the proposed mitigation measures identified and required in this SGEIS, the Department expects that human chemical exposures during normal HVHF 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. To have written this statement as a foregone conclusion, and to assume that nothing that is not routine will take place, and add to that the fact that the DEC did not include any of the peer reviewed literature in the SGEIS, and likely not in formulating the regulations, is alarming indeed.**

**There have been two reports, from the University of Texas and the University of Buffalo, now discredited as flawed, which are used by industry in support of its claims of "safety".  There are also the taunts by industry pundits to “prove it” when they knew full well that the road to research would not be smooth since they paved it with exemptions from public health laws and by non-disclosure agreements, and as demonstrated in a recent EPA study, through a lack of cooperation. Despite these difficulties, there are now 30 peer reviewed studies which present scientific evidence on the impacts which adversely affect health.**

**In view of the fact that the DEC has issued regulations without documenting the evidence they used, I was planning in my statement today to request that the Assembly require the DEC to produce their studies, which would be in accordance with**

***SAPA § Section 104 on Access to studies and data.***

*“… An agency, upon request, shall, within thirty days, make available for inspection and copying any scientific or statistical study, report or analysis, including any such study, report or analysis prepared by a person or entity pursuant to a contract with the agency or funded in whole or in part through a grant from the agency that is used as the basis of a proposed rule and any supporting data...”*

**And so I was pleased to read that two days ago you sent a letter calling on the administration to disclose all of its studies of fracking. I hope that they comply because our request for these documents has not been answered.**

**Much of what happens going forward apparently hinges on the secret process which is this “Health Review”.**

**So what is it, because it is certainly not a health Impact Assessment. The leaked eight-page DEC report cites the National Research Council's 2011 report "IMPROVING HEALTH IN THE UNITED STATES - The Role of the Health Impact Assessment" to justify not undertaking an HIA. But DEC used convoluted rationale, clearly not the intent of the NRC paper, to argue against the value of an HIA.**

**A point that the DEC report failed to mention, is the value of conducting an HIA together with an EIS. The National Research Council report clarifies that *"Environmental Impact Assessment(s) (have) traditionally included, at most, only a cursory analysis of health effects…”***

*“As a society, we routinely make decisions and implement a variety of*

*policies, programs, and strategies without knowledge of their health implications.*

*But those actions could substantially affect the health of the population*

*and health disparities. The health consequences can have economic and social*

*costs, which can have multiplying and cumulative effects. Identifying the potential*

*effects in advance is fundamental for disease prevention and could have important*

*consequences for trends in diseases and for social inequalities in a wide*

*variety of health outcomes.”* (pg 34 NRC report on HIA 2011)

**The elements of a Health Impact Assessment, which have been called for by the public, by NY State medical professionals and by this Assembly, for which we thank you, in particular MofA Sweeney, and which are in neither the SGEIS nor the regs, are:**

***• Identification of the population and vulnerable groups that are likely to be affected—such as children, the elderly, minorities, low-income people, and communities.***

***• A description of the data sources.***

* ***Any alternatives to the proposal.***

***• Identification of data gaps … and also research that could be undertaken to address the gaps or a rationale for not undertaking data collection.***

***• Stakeholder engagement throughout all stages of the process, with a discussion of the main issues that the stakeholders raised, and how they will be addressed or why they will not be addressed.***

**Instead of the comprehensive, scientific, inclusive and transparent Health Impact Assessment which could have been completed by now had the DEC heeded our suggestion—yours, the public’s, and the NY medical communities’—over the past two years, the process being undertaken by this administration is unfolding in secret, without the input of the New York public and the medical community, and with rules released before any health studies are completed. This leaves us to conclude that the rules, like the SGEIS, have been informed by politics, not science. New York had a chance to get this right. Of that I’m not so certain any more.**

**Larysa Dyrszka MD**

**January 10, 2013**