November 29, 2012

BY FAX

Hon. Andrew M. Cuomo
Governor
Executive Chamber
State Capitol
Albany, NY 12224

Hon. Joseph Martens
Commissioner
New York State Department of Environmental Conservation
625 Broadway
Albany, NY 12233

Dear Governor Cuomo & Commissioner Martens:

Following the Department of Environmental Conservation’s (DEC) filing of a 90-day extension pursuant to the State Administrative Procedure Act (SAPA) earlier today, I am extremely concerned about the legitimacy of the health impact assessment of high-volume hydraulic fracturing that is being overseen by the New York State Department of Health.

My understanding is that DEC must file an updated set of proposed regulations, and a summary response to thousands of comments that were submitted during the public comment period on the revised Draft Supplemental Generic Environmental Impact Statement on the Oil Gas and Solution Mining Regulatory Program (“dSGEIS”) as part of the filed extension. In addition, once DEC submits these revised regulations, the public will then be given a final 30 days to comment before the final regulations become effective.

Given the stated requirements of SAPA, it makes absolutely no sense for final regulations to be issued by DEC that are incapable of including any consideration of the health impacts assessment that is not expected to be completed until sometime early next year.
The only logical interpretation of DEC’s filing of the 90-day extension under these circumstances is that the outcome of the pending health impact assessment has already been predetermined to be of no consequence on DEC’s decision to allow high-volume hydraulic fracturing despite its potential of serious public health consequences.

As you have repeatedly stated throughout this process, the state’s decision regarding hydrofracking must be based on science. I urge you to maintain your position in earnest by allowing the process of scientific review of the health impacts to be concluded prior to any revised regulations being proposed even if this means that the current regulatory review process expires and a new one is required to begin. We must get this decision right and it must be based on science.

Sincerely,

[Signature]

Tony Avella
State Senator
11th Senatorial District