



BRAD HOYLMAN
SENATOR, 27TH DISTRICT

THE SENATE
STATE OF NEW YORK
ALBANY

PLEASE RESPOND TO:
❑ 322 EIGHTH AVENUE, SUITE 1700
NEW YORK, NEW YORK 10001
PHONE: (212) 633-8052
FAX: (212) 633-8096

❑ ROOM 413
LEGISLATIVE OFFICE BLDG
ALBANY, NY 12247
PHONE: (518) 455-2451
FAX: (518) 426-6846

January 10, 2013

Joseph Martens
Commissioner
New York State Department of Environmental Conservation
625 Broadway
Albany, NY 12233-6510

Re: High Volume Hydraulic Fracturing Proposed Regulations

Dear Commissioner Martens:

I am writing regarding the proposed regulations on high-volume hydraulic fracturing (“fracking”) as a New York State Senator representing more than 300,000 residents and thousands of business owners and employees who rely upon clean and safe tap water.

As you know, fracking is a process by which millions of gallons of water and chemicals, or “frac fluids,” are pumped at high-pressure into wells to access natural gas in dense mineral formations. While DEC has studied the catastrophes associated with natural gas drilling in Pennsylvania and around the nation, the agency has not developed a regulatory framework to ensure that New York will not suffer a similar fate. I strongly believe that all water supplies statewide must be given equal protection and that fracking should be prohibited throughout New York.

Before commenting on the merits of the regulations, I note my disappointment at the haste with which New York State Department of Environmental Conservation (DEC) is conducting this public review process. While I appreciate that the agency heeded the call of advocates and elected officials and ordered a review of the potential public health impacts of fracking, it is extremely troubling that these regulations were drafted prior to the completion of both the health impact analysis and the Supplemental Generic Environmental Impact Statement (SGEIS) ordered by former Governor David Paterson. I am also deeply concerned that the health impact analysis will not be made available for public review. The sequencing and apparent lack of transparency of this process undermines public confidence in our State’s commitment to protect our precious natural resources and public health from the dangers of fracking. DEC has stated that the refile of these draft regulations is merely a procedural move that is legally necessitated by the agency’s extension of the rulemaking process, and that they do not reflect current DEC policy. To assure those who are understandably skeptical that this is true and to ensure a continued, meaningful

public role in this review process, I strongly urge DEC to commit to release the health impact analysis for public review and to formally consider additional public comments on any updated or amended regulations upon the completion of all ongoing analyses.

Although I have many concerns regarding the proposed regulations, I will focus my testimony on a few key issues:

- The selective prohibitions on fracking near certain water sources coupled with the minimal setbacks from other water sources is patently unjust and without scientific merit. For example, 6 NYCRR Section 560.4 establishes a setback of only 500 ft. from private water wells, primary aquifers, private homes and 100-year floodplains. Given that the horizontal segment of a well can be several thousands of feet long, and that air pollutants associated with fracking have been detected nearly as far from the wellhead, this setback seems arbitrary and dangerous. Moreover, in the aftermath of Hurricane Sandy and Tropical Storm Irene, it is clear that weather patterns are changing, and that our floodplain maps need to be updated before any new regulations can safely rely upon them. DEC must protect all water sources.
- I am also deeply concerned that these regulations fail to account for the cumulative impacts of fracking. For example, 6 NYCRR Section 560.3, which governs application requirements, procedures and fees, includes no provisions for disclosing the total number of wells planned for development by applicants. Accordingly, this section, which also governs frac fluid disclosure requirements, does not address the total quantities of toxic chemicals that will be used in wells in close proximity. Likewise, under these regulations, drilling companies would not have to declare the total volume of fresh water they plan to draw from a single source to supply multiple wells. Furthermore, absent explicitly ceding any authority to local governments, DEC is solely responsible for such localized impacts as noise pollution and traffic congestion, both of which depend entirely on the net number of wells in a given area. In fact, these regulations explicitly state that DEC will not even consider comments from local residents about such issues when the agency reviews individual well permits because they will have been included in the generic and supplement environmental impact statements. Without thoroughly analyzing these and other adverse impacts in a realistic context—namely, the unfettered number of wells that DEC could permit—many identified mitigations could fail.
- While the proposed regulations generally require the disclosure of frac fluids, they include dangerous loopholes and fail to prohibit the use of dangerous chemicals, such as carcinogens. Under these regulations, chemical products identified as trade secrets apparently would be exempt from public disclosure. This is unacceptable. DEC must make all information about chemicals used in fracking available on a searchable, public database administered by the agency. It is particularly important that medical professionals and first responders have access to this information. In addition, the final regulations must include a categorical prohibition on the use of certain chemicals that are widely known to be particularly dangerous. For example, the use of benzene in fracking has been linked to air and water contamination in Texas and Wyoming. The EPA has determined that the maximum contaminant level goal—the level of drinking water

contamination at which no adverse health effects are likely to occur—for this carcinogenic chemical is zero. The spillage or migration of this or other highly toxic chemicals into waterways could cause irreparable damage to human health. The health impact analysis must include a study of all chemicals used in fracking and a list of those that should be prohibited. DEC must adopt these prohibitions in its final regulations.

- I am concerned that DEC has not identified existing or planned wastewater treatment plants in New York that would be able to handle the unprecedented quantities of toxic flowback that would be created by the industry. The agency's assurance in its SGEIS that "industrial facilities could be constructed or converted [by private companies] in New York to treat flowback water" is of no comfort. Frankly, I am appalled that the agency continues to defer to drilling companies on this crucial issue, inviting them in the proposed regulations to submit plans for "disposition and/or disposal" of drilling wastes. Wastewater, like drill cuttings and production brine, must be handled as hazardous waste. I urge DEC to verify the capacity of our State's waste treatment industry to handle all of the toxic byproducts that the introduction of fracking to New York would create. We must ensure that new brownfields are not created as a result.

To reiterate, I strongly believe that fracking should be prohibited throughout all of New York State. Should the State decide to proceed with permitting, our state should have the most stringent regulations in the nation with a no-risk policy for protecting our environment and our public health. Thank you for your consideration of my comments.

Sincerely,

A handwritten signature in cursive script that reads "Brad Hoylman".

Brad Hoylman
New York State Senator
27th District