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A GRASSROOTS PERSPECTIVE

Is the DEC Spending Taxpayer Funds on Propaganda to Promote “Safe” Fracking? *A Look at New York Governor Cuomo’s Hydraulic Fracturing Advisory Panel*

Part I: Why Did Governor Cuomo Establish the Hydrofracking Advisory Panel?

Part II: How Appointed "Environmental" Organization Representatives Betray, Rather than Represent the Environmentalist Movement Against Hydrofracking

Part III: Conclusions and Demands

Part I: Why Did Governor Cuomo Establish the Hydrofracking Advisory Panel?

On July 1, Joseph Martens, New York Governor Cuomo's selection for Commissioner of the Department of Environmental Conservation (DEC), announced [his choices](#) for an advisory panel on hydraulic fracturing.

The taxpayer-funded panel’s initial* 13 members were:

Eric A. Goldstein - Senior Attorney, Natural Resources Defense Council

Kate Sinding -Senior Attorney, Natural Resources Defense Council

Mark Brownstein - Chief Counsel, Energy Program, Environmental Defense Fund

Robert Hallman - Board Chair, NY League of Conservation Voters

Robert Moore -Executive Director, Environmental Advocates

Robert F. Kennedy Jr. – President, Waterkeeper Alliance; Honorary member NRDC; Board of LCV

Kathleen McGinty - former Chair of White House Council on Environmental Quality under Pres. Clinton

Stan Lundine - former New York State Lieutenant Governor

Thomas W. Libous – New York State Senator (R, District 52) Deputy Majority Leader

Donna Lupardo – New York State Assembly member (D, 126th District)

Heather Briccetti - Acting President and CEO, Business Council of New York State, Inc.

Robert B. Catell - Chairman, Advanced Energy Research and Technology Center at SUNY Stony Brook

Mark K. Boling - Executive Vice President, General Counsel and Secretary, Southwestern Energy

The declared purpose of the panel (see previous link) is:

- To develop recommendations to ensure DEC and other agencies are enabled to properly oversee, monitor and enforce high-volume hydraulic fracturing activities
- To develop recommendations to avoid and mitigate impacts to local governments and communities
- To evaluate the current fee structure and other revenue streams to fund government oversight and infrastructure related to high-volume hydraulic fracturing.

Within days, Commissioner Martens [claimed](#) that "We've deliberated, we've considered the

[public] comments [to earlier drafts of the Generic Environmental Impact Statement issued by the DEC], we have looked at what's gone on in other states ... and at the end of this stage of the deliberations, ***we've concluded that high-volume hydrofracking can be undertaken safely, along with strong and aggressive regulations.***"

Taken together, both Martens's statement and the assigned purpose of the Governor's advisory panel indicate that, prior to any public comment on the DEC's (the relevant regulatory agency's) final draft regulations, prior to the DEC even having completed its full report, taxpayer funds were being spent to generate propaganda to promote "safe" hydraulic fracturing in New York State.

And this coincides perfectly with the current rule-making process in New York State, which is nominally democratic but in reality treats unpopular 'development' projects as *fait accompli*. This process resulted on July 8, 2011, with the NYSDEC release of the full [Preliminary Revised Draft SGEIS](#), which recognized the unpopular and dangerous nature of hydraulic fracturing by banning it in some watersheds with high population density that have large populations informed about and mobilized against it, while permitting it in other watersheds with dispersed populations, where politicians have done little to inform or reunite the populations around opposition based on sound science and economics

The advisory panel is not being asked to consider whether hydraulic fracturing should or should not be permitted. It is not asking whether methane extraction from shales and tight sands formations, let alone from more permeable formations, can ever be considered safe. This is a quite astounding subversion of the democratic process given the widespread opposition in New York State (and across the country) to any such industrializing process.

How dispassionate or objective can we expect Cuomo's advisory panel to be? Let's examine its composition.

Seven of the original thirteen (and twelve of the current eighteen) panelists **are either politicians, lobbyists or lawyers for politicians, or boosters of methane, all of whom can lay no claim to expertise on the relevant environmental or economic issues.** Of the remaining six panelists, all are **staffers or executives of professional environmental groups, ostensibly chosen to represent the widespread concerns of New Yorkers** about the damaging environmental impacts of proposed shale gas extraction.

But on closer inspection, these groups do not represent the grassroots movement in New York State. Grassroots groups have gathered by far the greatest numbers of proponents for a specific position on hydraulic fracturing, namely, the position that it be banned within New York State. It is they, and not the groups chosen by Governor Cuomo ostensibly to represent environmentalists, who have forced politicians and the media to acknowledge that the rosy picture of "natural" gas as a "clean burning" "bridge" fuel is even less accurate than the industry propaganda regarding "clean coal."

The groups chosen by Cuomo work against the interests and goals of grassroots environmentalists and communities across the state; they do so by advocating "safe" hydrofracking. Following is more information about these misrepresentative professional "environmentalists."

The appointments to Governor Cuomo's Advisory Panel should be [as much a](#)

scandal as the composition of President Obama’s Federal Advisory Panel on hydraulic fracturing. We know that Governor Cuomo receives his “advice” on hydraulic fracturing from a number of sources, one being the lobbyists from this and other hydrocarbon industries who pour millions into the coffers of the Democratic Party. Grassroots Democrats, in large numbers dedicated to protection of the environment, may be forgiven for believing, based on the activities of these lobbyists, that they are indifferent to the degradation of the Gulf of Mexico, the overheating of the planet, and the devastation of entire communities and rich agricultural areas by freakish weather events and abnormal temperatures. Another source of advice to the governor is the leadership of the Democratic Party, which has ignored the climate impacts of methane extraction, underfunded the single EPA study that would look at groundwater contamination risks of this process, allowed the industrial wreckage of nationwide gas extraction to contaminate perhaps billions of gallons of water forever while subverting the competitiveness of renewables, and has established a program to promote hydraulic fracturing worldwide in some of the least regulated and most corrupt countries in the world.

* Five more people were appointed in mid-August, including two elected officials and a representative of the oil and gas industry, and another from a landowners’ association interested in seeing drilling expedited.

Part II: How Appointed "Environmentalism" Organization Representatives Betray, Rather than Represent the Environmentalist Movement Against Hydrofracking

Below are backgrounds of some members of Governor Cuomo’s “advisory panel” who would pretend to speak for us as counterpoints to the industry and the Democratic Party leadership.

If you agree that the panel is a misuse of taxpayer funds for the illegal purpose of propagandizing in favor of “safe” fracking, call or write to your newspaper editors, journalists and elected representatives and demand that Cuomo’s panel be disbanded and replaced by one constituted of independent scientists, engineers, and economists who can advise Governor Cuomo honestly regarding the terrible deal hydraulically fracturing New York State would be for our region’s communities, our economy and our environment.

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A Summary of the panel’s positions, past alliances and actions:

1, 2. Natural Resources Defense Council: Eric A. Goldstein and Kate Sinding, Senior Attorneys

The nineteen pages of concrete, *regulatory* suggestions to the 2008 Draft SGEIS end with NRDC attorney Kate Sinding stating (pdf file), "(W)e are committed to working with the Department to ensure that any development of natural gas from the Marcellus Shale is done only where appropriate and in such a manner as to ensure protection of the environment and public health."

- NRDC supported the Clean Energy Jobs and American Power Act[†] S.1733, which promotes so-called "clean coal" technology (carbon capture and storage, carbon capture and disposal), a system that promotes the myth of clean coal.
- As a founding member of U.S. Climate Action Partnership, NRDC worked closely with

invested industry (including BP, Duke Energy, ALCOA, DuPont, and PG & E) on polluter-friendly cap and trade legislation with offset credits, and gave only lip service to clean sustainable energy in their report.

- NRDC was instrumental in drafting [the FRAC Act](#), which, if passed, would leave unprotected and sacrificed to 'safe' fracking large areas of rural America because much of rural drinking water is drawn from private wells.
- For years, the NRDC has promoted gas as a transitional fuel without any peer-reviewed scientific basis for arguing that it would have a better impact on the climate than coal or oil. This [concise analysis](#) describes how groups, including the NRDC, have misled and misrepresented the environmental movement at great cost to our environment.
- They have worked hand-in-glove with polluting industries, both in [advocating disastrous polluter-friendly climate legislation](#) and in [promoting 'safe' hydrofracking](#).
- In 2009, NRDC spent \$29 million promoting climate policy that was riddled with giveaways to the worst polluters and involved setting up a Wall Street-friendly failed carbon trading scheme that would have delayed effective action on climate change for decades.

[This has not been lost on the grassroots](#), which has demonstrated against the "Natural Resources Destruction Council" for years. See [here](#) and [here](#).

3. NY League of Conservation Voters: Robert Hallman, Board Chair

Robert Hallman is a partner at the law firm Cahill Gordon Reindel, where he also heads the Environmental Practices Group. The firm's [website boasts](#) that they have defended clients against "alleged violations of environmental laws with representation in administrative proceedings, including negotiation of consent decrees and compliance schedules." Additionally, they "are experienced in a wide variety of environmental litigations, and have handled multi-million dollar cost recovery litigation involving hazardous waste sites, claims for natural resource damages, claims arising out of environmental indemnities, governmental enforcement proceedings, and toxic tort and related insurance matters." An [announcement](#) on the law firm's website says that Robert Hallman, a partner for the firm, was **appointed to the Hydraulic Fracturing Advisory Panel tasked with "providing) guidance on natural gas production from shale deposits"** — not to *stop* production.

While it seems at first promising that [an experienced environmental lawyer](#) has been appointed to the panel, a closer examination of [his work](#) and [that of the firm](#), raises serious questions about whose side Mr. Hallman will represent.

Here's [their tepid position](#) on the DEC's release of proposed hydrofracking rules on June 30th, 2011. And here is [their statement](#) in support of the disastrous Free Water Withdrawal bill which grassroots environmentalists, water policy experts and environmental lawyers warned would undermine riparian rights, facilitate large scale withdrawals as a permit-based right, and allow administrative judges and the DEC to supplant access to the courts by plaintiffs harmed by hydrofracking contamination.

Haltman's law firm's website [explains](#) that "Bob has conducted investigations, risk analysis and negotiations in varied corporate transactions in the US and foreign jurisdictions, including... carbon trading transactions, real estate investment (including brownfields development projects), and privatization of governmental projects, and involving many industrial and commercial sectors, such as pulp and paper, vehicle manufacturing, chemical, pharmaceutical,

forest products, oil and gas production and refining, electric power, natural gas transportation, coal mining, shipping, coal gasification, nuclear power and bio-fuels.” Not very reassuring.

- LCV supported the Water Withdrawal Regulation Bill (S.3798), which will facilitate large-scale withdrawals as a permit-based right, undermining riparian rights, and allowing administrative judges and the DEC to block access to the courts by plaintiffs harmed by hydrofracking contamination. Although cloaked as an environmentally sound bill, this legislation actually exposes New York’s rivers, streams, and lakes to depletion and contamination through hydrofracking and other water withdrawal uses.
- LCV [takes the usual accommodating regulation-friendly stance](#), saying it “will be watching closely to make sure that if hydrofracking is allowed in New York, our state has the most rigorous regulatory protocols and enforcement in place to make sure our drinking water and environment are protected.”

[Other NYLCV board members include:](#)

John H. Adams - NRDC's executive director and later president from 1970 – 2006

Richard A. Kassel - Senior Attorney for NRDC

Robert F. Kennedy, Jr. - honorary member of NRDC, also on Cuomo ’DEC panel

Frances Beinecke - honorary member of NRDC

Larry Rockefeller -Trustee of NRDC

Kevin S. Corbett – V.P. of Corporate Development for a subsidiary of [AECOM](#), a major player in the gas industry

Suri Kasirer - [founder](#) of Kasirer Consulting, LLC whose clients include General Electric, manufacturer of a mobile frack fluid evaporator (23) the company hopes to sell under the guise of “recycling” frack wastewater.

Denise M. Richardson - Managing Director of General Contractors Association of New York, a trade association that represents New York City's unionized, heavy construction & public works contractors

4. Environmental Defense Fund: Mark Brownstein - Chief Counsel, Energy Program

The Environmental Defense Fund accommodates the worst-polluting industry (see NRDC link to US Climate Action Partnership) and its leaders are masters at dividing and conquering the grassroots on behalf of corporate polluters. EDF was also a party to the [shameful and frankly revealing Aspen Energy Summit](#), where they too **agreed (alongside the NRDC, the national Sierra Club, and Robert F. Kennedy Jr) to work to promote hydrofracking as “safe” and to work with industry to identify “trusted local intermediaries” to front for this effort to promote, e.g., hazardous waste and water treatment requirements, closed loop water systems, and “best practices” in general.**

On a page from their website titled *Natural Gas Must Be Safe, Sustainable*, the Environmental Defense Fund (EDF) [admits](#) that **“Southwestern Energy (whose Executive VP, Mark Boling, is also a member of Cuomo’s DEC panel) and EDF, among other prominent drilling companies and NGOs, are currently working on a set of model standards for safe drilling that can be utilized by state governments in implementing their own regulatory regimes.”**

Mark Brownstein, EDF’s Chief Counsel for EDF’s Energy Program, is either misled or

misleading or both [in a blog post](#) when he claims that “America is awash in natural gas, and this promises to be a good thing both in terms of national energy security and air quality, at least in comparison to coal, which is America’s other abundant domestic energy resource”. Brownstein thereby perpetuates the unfounded and unsupported claim about methane serving as a 'transitional' fuel more than a year after the only peer-reviewed study comparing hydrocarbons' greenhouse gas emissions showed these claims were empty. Brownstein apparently hasn't read or is ignoring [the important study](#) released in early 2011 by Robert Howarth, et al., of Cornell University.

This quote best clarifies the group’s outlook: **“EDF’s Senior Policy Advisor Scott Anderson and Southwestern Energy’s Executive Vice President Mark Boling [again, on Marten’s DEC panel] teamed up to find common ground on proposed model rules focusing on regulations** that would ensure gas well integrity and underground water source protection. ‘Our philosophy at EDF is that we don’t pick winners,’ Anderson said. ‘We’re not fans of coal; we’re not fans of natural gas. We see our job as making sure that the technology and fuels that are relied on in the marketplace are regulated in a way that minimizes their environmental footprint.’ Anderson also said, **'If natural gas is to fulfill its potential,** we need much cleaner drilling practices. Results will be gauged by the improved health and safety of citizens and the earth in the short and long term'."

But shouldn't results be judged by the current evidence of the ruined health and safety of citizens everywhere drilling has *already* occurred? Sadly, advocacy for what the grassroots are demanding and what climate scientists urgently call for is clearly not on EDF's agenda.

5. Environmental Advocates of New York: Robert Moore, Executive Director

Environmental Advocates (along with the Environmental Defense Fund, and the Sierra Club) are the model of compromised “environmentalist” organizations paving the way for “safe” fracking. On the national level, their parent company, the National Wildlife Federation, was one of the groups featured in in Jonathan Hari's "[The Wrong Kind of Green](#)" in The Nation, about the misdirection and compromise of the environmental movement by such organizations.

For an example of the clear position for 'safe' fracking promoted by Environmental Advocates of New York, listen to [this interview](#) about regulating fracking on the Brian Lehrer show on WNYC from July 1st, 2011.

The organization is exemplary of the sell-out "environmentalist" species. Its spokesperson argues for better regulation of the process: maybe setbacks of 1000 or 1500 feet instead of 500 feet from wells!

- EANY supports the (free) Water Withdrawal Bill
- EANY [believes](#) that fracking can be done safely with regulation (note climate impacts and widespread calls for a ban ignored by EANY).
- EANY is a [member of the Clean Water Not Dirty Drilling network](#) alongside pro-“safe” drilling Citizens Campaign for the Environment, Riverkeeper (with Robert F. Kennedy working as its Director), Catskill Mountainkeeper, Natural Resources Defense Council, Earthjustice and Earthworks.

6. Robert F. Kennedy, Jr, president of†Waterkeeper Alliance; board

member of **NY League of Conservation Voters**; chief prosecuting attorney for **Riverkeeper**; honorary member of **NRDC**, and along with Mark Boling (executive VP of Southwestern Energy/Cuomo DEC panel member) [an active stakeholder of The Aspen Science Center](#).

What has been documented above about NRDC's anti-environmental positions on climate change, the environment, and 'safe' hydrofracking, can be said equally about lead NRDC Counsel and Waterkeeper Alliance President Robert F. Kennedy Jr.

See [here](#) for list of participants and signatories to the “executive summary” of the Aspen Energy Summit. At the meeting, **gas industry reps and environmental NGOs agreed to work together to use the environmental groups to front for gas, “change the frame” to shift public perception of the natural gas industry. The group is setting a national agenda that promotes “natural” gas to replace the coal industry.**

- Robert F. Kennedy has served as a **deal-making shill for the gas industry for years**, his pro-fracking position being [quoted](#) in the February 11, 2009 *New Yorker* magazine advertisement (page 61) by the Clean Skies Foundation, a gas industry front group.
- In a [letter](#) dated March 25, 2010, written to *The Denver Post*, titled “The Nation Should Follow Colorado’s Lead,” Mr. Kennedy showed strong support for the Colorado Clean Air-Clean Jobs Act, which would require Colorado utilities to replace coal fired power plants with facilities fueled by “natural” gas and other lower or non-emitting energy sources. “In the short term, **natural gas, abundant in the Rocky Mountain state, is an obvious bridge fuel** to the ‘new’ energy economy,” he wrote. “Indeed, many large-scale wind, solar and distributed energy projects rely on natural gas to provide stable ‘base loads.’”

Grassroots outrage directed at Riverkeeper has made Kennedy recant some of his outright boosterism of gas, but his actions suggest he believes that, if only we have regulation and enforcement, industrialization of rural areas is acceptable. In an [interview](#) with Maureen Nandini Mitra published July 17, 2011, he says, “the natural gas industry has been reckless and irresponsible and dishonest with the American public and they’ve lost much of their credibility. I think a year or two years ago I would have said that natural gas was a really strong alternative to coal and a very, very good local fuel we’ve found ... But because of the lack of candor by the industry, because of their reckless behavior, it’s unclear whether we can get that natural gas out of the ground without causing cataclysmic environmental damage.”

The corporate media has made RFK Jr. the go-to “environmentalist,” bolstering his credibility among those who are not more informed. This is often done to support “environmental” groups that pursue market-based non-solutions to environmental challenges or retail-level shakedown operations of one polluting corporation after another, leaving by the wayside the possibility of systemic changes. For example, Greenpeace and Rainforest Action Network have been promoting a failed market-based approach to deforestation through their support of and membership in the Forest Stewardship Council, which certifies industrial logging of old growth forests. They are often quoted in the corporate media as “left-leaning” or “radical.” A recent example: the right-wing *New York Post* labeled Robert F. Kennedy a “radical environmentalist” in July, 2011.

Part III: Conclusions and Demands

With the deck this stacked and the agenda so narrowly defined, **how can anyone seriously believe that Governor Cuomo's panel will lead to anything except allowing hydraulic fracturing to become firmly entrenched in New York State?**

Putting a few groups on the panel with the words "environmental" in their name is a cruel and increasingly transparent farce. **For years there has been a massive movement against fracking by many grassroots organizations demanding a statewide ban. But the people whose lives have been devastated by hydraulic fracturing (so far), who have been exposing the industry's destructive practices for years, are unrepresented in this taxpayer-funded propaganda panel. Scientists have studied and broadcast their findings widely, but what the public can expect from this panel of "experts" is promotion of a few regulations and "safe" hydrofracking.**

Trying to regulate the gas drilling industry is like trying to plug the BP oil gusher with a few Band-Aids. Labeling hydraulic fracturing "safe" is not just a Band-Aid approach — it's a state of Orwellian denial. **Regulations cannot protect us. Only by preventing disaster can we protect people, their communities and the land.** Regulations cannot prevent the extraordinary squandering of fresh water, or prevent the waste from going somewhere, or prevent the eventual deterioration of steel and cement casings over decades, or create permanently safe waste disposal systems, or accurately predict the eventual results of earthquakes and toxic plumes emanating from fracturing and waste disposal sites, or recover the billions of gallons of contaminated water lost from the hydrological cycle in underground fractures. Regulations cannot prevent hydraulic fracturing and the lost opportunity costs of investments in hydrocarbon path dependency from contributing to global climate change.

We need to pull the plug on hydraulic fracturing and turn instead to alternative, renewable energy solutions today. This panel will not challenge the short-sighted and irresponsible political elite, hydrocarbon industry, or professional environmentalists to do what is necessary.

We know the Democratic Party will point to their partners in industry and in the Republican Party to justify the push to industrialize, fracture, and destroy New York State agriculture, tourism, rural communities and environment, much as did Energy Department spokesperson Tiffany Edwards when she [defended](#) the [stacked \(and much criticized\)](#) federal 'advisory' committee's composition, saying it is "balanced" and that each member has experience and expertise, including technical and practical knowledge. "Some have said that the panel is too weighted toward industry, while others say it is too weighted towards environmentalists. We think we got it just right, and having a diversity of perspectives will only strengthen the final product."

But the federal advisory committee's role, like its New York State counterpart, is propagandistic and not representative. The findings of both can be summed up by the August 10 [letter](#) (pdf) sent to the Obama administration by **28 preeminent scientists** in which they wrote that the Natural Gas Subcommittee of the Secretary of Energy Advisory Board, "appears to be performing advocacy-based science and seems to have already concluded that hydraulic fracturing is safe."

To summarize: Cuomo's panelists are, in fact, more closely tied to the gas industry, and to each other, than one might at first assume. The "environmentalists" on the panel promote "safe" gas drilling, through regulation and oversight, rather than preventing environmental destruction

in the first place by supporting a statewide ban on fracking. Not a single member of the panel represents the majority of the grassroots environmental movement calling for a ban on fracking and a rapid transition to renewable energy and conservation. The panel does not contain a single member from the coalition of [more than 70 grassroots groups that have called for a ban](#). It is easy to see from the makeup of the panel that the agenda being considered is to what degree the environmental destruction of New York State will be implemented and taxed, and what revenue streams might be developed from the expected damage. For Cuomo's panel, the possibility that drilling not be allowed *at all* is not under consideration.

Furthermore, there is a clear contradiction in the New York State Governor's response to the risks of hydraulic fracturing with his DEC effectively admitting that horizontal hydrofracking in tight shale is inherently unsafe no matter what safeguards the D.E.C. might propose. That's why the governor is saying, 'Don't allow it in the New York City watershed or the Syracuse watershed or on State lands.' Outside of these watersheds, the Governor is using the DEC and the 'advisory' panel to create an entire group of second-class citizens who will be exposed to this practice if he gets his way. That shouldn't be allowed. There should be equal protection for all citizens.

People of New York deserve better than a sham panel whose findings and recommendations are pre-determined: the declaration that hydraulic fracturing can be safely installed in New York. People across the state must stand firm to insist they get what they want: a statewide ban. **Denouncing Cuomo's panel now and any of its pre-ordained findings and recommendations must be a high priority of any responsible environmental organization fighting fracking.**

Activists seeking a statewide ban have their work cut out for them because if they don't make it absolutely clear that these groups not only don't speak for environmentalists but also are facilitating "safe" fracking, our state will not be able to overcome the public relations muscle and access to power (e.g. membership on this panel and regular quotes by pro-'safe' fracking writings of journalists like NYTimes' Andrew Revkin or ProPublica's Abrahm Lustgarten) in opposing fracking.

Write to Cuomo to disband the panel.

Most important, use this information to further organize the resistance to Albany's shortsighted endorsement of fracking. Please consider it as a discussion piece for enlarging your local group. It is a part of unraveling how the voices of individual citizens have been marginalized from the decision-making process on this and so many other issues.

And if you want to see where your legislators really stand, write them and insist they publicly oppose Governor Cuomo's Hydraulic Fracturing Advisory panel and its inevitable pro-fracking findings.