

**Press Release:** from Damascus Citizens for Sustainability - for immediate release  
[www.DamascusCitizens.org](http://www.DamascusCitizens.org)  
**contact:** DCS@mailhosts.net

January 5, 2009

## Local Boards of Health Have Considerable Powers in New York State

According to the lead attorney for Damascus Citizens for Sustainability (DCS), Richard Lippes, local boards of health in New York State have considerable powers to abate a nuisance created by gas drilling.

Lippes explained that in New York State, the powers to examine and abate a nuisance reside in local boards of health, local health officers, or county commissioners of health, pursuant to Article 13 of the New York State Public Health Law. That article of the law gives those entities broad powers to investigate activities that may be harmful to the public's health, and where such a public health hazard is found to exist (called a nuisance), to order the owner or operator who caused the nuisance to clean up and abate the nuisance. If the operator or owner does not clean up and abate, the health boards and officers are permitted to enter the property to clean up and abate the nuisance themselves, and to charge the expense of such clean up or abatement to the owner or operator. New York City has its own special set of rules and is exempt from these provisions which do not apply to them.

These powers reside with any local board of health or health officer. Generally, in New York, this takes place at the county level, but that is not necessarily the case. A local board of health can be created in a city, town or village by local ordinance, and the powers indicated in Article 13 would then reside with that local board or local health officer. The general powers of a local board of health, health officer or county commissioner of health is indicated in Section 1303 of the Public Health Law, That section not only gives those individuals the power to investigate a potential nuisance which would adversely effect the public health, but also **requires** them to investigate any complaint made by any citizen concerning nuisances that might cause danger or injury to health within the district. Moreover, if in fact such a situation exists, this section of the law requires that the local board of health, health officer or county health commissioner order the suppression and removal of the nuisance itself.

Section 1304 indicates that these powers also reside in a local health officer or county health commissioner in those districts having no board of health. Section 1306 of the law is that section of the law which allows the appropriate entity to charge the owner or operator with the expenses of abatement if they have to do the abatement, rather than the owner or operator doing it. Section 1307 allows a lien to be placed on the land if expenses are not collectable. Finally Section 1308 of the Public Health Law provides these entities with the ability to get a temporary restraining order to stop the polluting activity upon a proper showing in court.

It should be pointed out that these provisions of the Public Health Law are not inconsistent with Section 23-0303 of the New York State Environmental Conservation Law, which preempts any local law or ordinance regulating oil or gas drilling, with certain exceptions not applicable to our concerns. Therefore, even though cities, towns and villages in New York State are precluded from passing ordinances to regulate and restrict oil and gas drilling within the state, where oil or gas drilling occurs in a manner that presents a condition that is dangerous to an individual or the community's health and safety, they still have the powers indicated pursuant to the Public Health Law to deal with this situation in an appropriate fashion.