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August 13, 2009

The Hon. David A. Paterson  
Executive Chamber  
State Capitol  
Albany, New York 12224

**Re: Executive Order 25, Establishing A Regulatory Review And Reform Program**

Dear Governor Paterson:

As organizations committed to protecting the environment, public health, consumer rights, workplace safety and labor safeguards, social safety nets, transportation systems, and open government, we are alarmed that you have issued an executive order establishing a review of regulations that are deemed burdensome to businesses. Executive Order 25 was released last Friday afternoon with no advance warning to our groups, who had already communicated our strong concerns to you about this proposal a year ago and were provided assurances at that time that we would be apprised if the proposal went past the discussion stage.

The Executive Order creates a review process that is unnecessary and duplicative, burdensome on state agencies, inherently biased, and subject to undue political influence. It would allow a hand-picked committee of political appointees, chaired by the Secretary to the Governor, to “evaluate, reform, or repeal” legally adopted rules and requirements protecting the health, safety, and welfare of all New Yorkers.

**Accordingly, in order to protect the health and safety of all New Yorkers and preserve the integrity of the state’s longstanding regulatory process, our groups urge you to revoke Executive Order 25.**

Many of the organizations signing this letter shared strong concerns about this proposal last year when the existence of a draft of this Executive Order was reported in the *New York Times*. At a meeting on September 2, 2008, held with Charles O’Byrne, Dennis Whelan, Bob Hermann and other senior members of your Administration, representatives from our groups were assured that the draft document was at a very early stage and that the Administration would make us aware of any further developments regarding this proposal. You and your staff failed to honor that commitment.

### **Executive Order 25 Is Unnecessary And Duplicative**

There has been no compelling rationale advanced for why this executive order is needed. State agencies have long been required under the State Administrative Procedure Act (SAPA) and Executive Order 20 (issued by Governor Pataki in 1995) to consider business impacts in their reviews. Since 1995, the Governor’s Office of Regulatory Reform (GORR) has overseen the state’s regulatory process and conducted final regulatory reviews before draft regulations are published for public comment. In addition, SAPA already requires a review of existing regulations every five years.

In our meeting with senior officials in your administration last year, they were unable to present a single example of a rule or paperwork requirement in need of modification or repeal. Instead, we were given an anecdote about an agency requiring 18 signatures to issue a check – which, even if true, would certainly not require this executive order to correct. After our August 2008 meeting, we submitted a Freedom of Information Law request for records containing input that may have been provided by agency commissioners in the review and development of this proposal. To date, we have received no indication from your Administration that any comprehensive analysis has been performed documenting the need for this executive order.

### **Review Process Is Burdensome On State Agencies**

The review process begins with seven state agencies - the Departments of Agriculture and Markets, Environmental Conservation, Health, Labor, State, and Tax and Finance, and the State Liquor Authority – and would expand from there. These agencies are tasked with “inviting comment on whether any of the agency’s existing regulations are unnecessary, unbalanced, unwise, duplicative or unduly burdensome.” These agencies will also have to review any and all comments they have received over the past three years on current rules and paperwork requirements. An immense amount of staff time and agency resources will be required to undertake this review, at a time when state budget cuts have significantly diminished agency capacity and more agency cuts are all but inevitable due to revenue shortfalls.

### **Review Process Is Biased By Design**

Sections 5 and 6 of the order establish a biased review process whereby the only regulations that will be subject to review are those that have received opposition or criticism from special interests as “unnecessary, unbalanced, unwise, duplicative or unduly burdensome.” There is no provision to look at whether there are regulations that should be strengthened or updated, or where there are gaps in government oversight.

In a nutshell this sets up an “unpopularity contest” for reviewing regulations. Simply because a regulation is unpopular with a regulated entity does not mean it is unnecessary or unlawful. Nor does its

unpopularity mean it lacks public support, something this review process does not seem to take into account. This built-in bias raises serious questions about the intent of this executive order.

### **Policy Decisions Made By Political Appointees**

Executive Order 25 creates a review process by which a small panel of political appointees in the Governor's office can overturn rules and regulations that were formulated by agency issue specialists and adopted after a formal review and public comment process with broad public input. This will allow powerful, well-connected industry lobbyists with access to the Governor's office to get a second chance at weakening regulations that they were unable to stop at the agency level. This undermines the public process and puts the integrity of agency decision-making at risk. Moreover, the Executive Order will work an end-run around the State Legislature by subverting the state's longstanding regulatory review process in statute. Moreover, imposing a radical superstructure for regulatory review upon the existing statutory scheme will create, at a minimum, uncertainty about the legality of any actions that result from this questionable process.

### **Conclusion**

The organizations listed below call on you to immediately rescind Executive Order 25. This Executive Order could have far-reaching and deleterious consequences on critical health, labor and environmental protections that were developed with broad public input, including from the business community, both through the legislative and the rule-making process.

Sincerely,

Neil F. Woodworth  
Executive Director and Counsel  
Adirondack Mountain Club

Rev. Cass L. Shaw  
General Presbyter  
Albany Presbytery

Michael Seilback  
Vice President, Public Policy &  
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American Lung Association of New York

Susan Dooha  
Executive Director  
Center for Independence of the Disabled, NY

Arthur Levin, MPH  
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Center for Medical Consumers

Dave Palmer  
Interim Director  
Center for Working Families

Bobbi Chase Wilding  
Organizing Director  
Clean New York

Geoff Lieberman  
Executive Director  
Coalition of Institutionalized Aged & Disabled

Susan Lerner  
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Common Cause New York

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Keri Powell  
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Kristin Brown Lilley  
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Long Term Care Ombudsman Program of  
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Mark Hannay  
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Joel Tyner  
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Real Majority Project of the Hudson Valley

Judy Braiman  
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Rochesterians Against the Misuse of Pesticides

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