

6244

2009-2010 Regular Sessions

I N S E N A T E

October 23, 2009

Introduced by Sen. DUANE -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the environmental conservation law, in relation to the regulation of the drilling of natural gas resources

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Legislative intent. 1. The legislature finds that the proc-
2 ess used to stimulate natural gas extraction referred to as hydraulic
3 fracturing utilizes components that are often toxic, that are non-biode-
4 gradable, and that are virtually impossible to remove once they enter
5 the natural environment. Thus, they pose such a high level of environ-
6 mental risk that the policy of the state must be to insure they are
7 excluded from any area that is significant for public drinking water
8 resources or any other area that is environmentally sensitive.
9 2. Natural gas drilling is potentially highly transformative of rural
10 landscapes, offering economic benefits to many landowners, but threaten-
11 ing the property values of other local landowners, traditional rural
12 economic activity, the carrying capacity of local infrastructure, the
13 natural habitat of wildlife, and the public health and quality of life
14 of residents in areas where there is natural gas extraction taking
15 place. Unless these resources are protected in the permitting and regu-
16 latory processes of the state, the costs of Marcellus shale natural gas
17 extraction will exceed the benefits and natural gas extraction will
18 become a fundamentally unfair and divisive process in which the profits
19 of some are subsidized by the costs to others.
20 3. The proposed scope of natural gas drilling across the state of New
21 York will present unprecedented challenges of regulatory oversight.
22 Funding for such oversight must be sufficient to meet this challenge and
23 should come from a series of fees paid by the natural gas industry.
24 Similarly, the natural gas industry should pay for all other costs asso-
25 ciated with natural gas extraction. Otherwise, natural gas extraction

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

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1 will be unfairly subsidized, either by the New York state taxpayer or
2 by the impacts on local human and natural resources.

3 4. One of the chief environmental and infrastructure assets of the
4 state of New York is its drinking water systems, which play a fundamen-
5 tal role in the economic productivity and public health of the state.
6 The legislature finds that no risk to these resources and to the public
7 health of their users is acceptable and that the policy of the state
8 with respect to the management of shale gas extraction must be one of no
9 drinking water risk.

10 5. The purpose of this legislation is to insure that the exploitation
11 of shale natural gas resources is conducted in a manner that is consist-
12 ent with and supportive of New York state's commitment to sustainabili-
13 ty, and is consistent with other state economic development, energy and
14 environmental policies.

15 6. Therefore, in light of the many commitments the state of New York
16 has made to more sustainable development and the critical role greening
17 the state's economy will play in the future prosperity of the state, the
18 only acceptable natural gas extraction practices will be sustainable
19 ones. This act is intended to ensure that that goal is met.

20 S 2. Article 23 of the environmental conservation law is amended by
21 adding a new title 29 to read as follows:

22 TITLE 29

23 REGULATION OF NATURAL GAS DRILLING

24 SECTION 23-2901. NATURAL GAS DRILLING; PROHIBITION NEAR WATERSHED.

25 23-2903. DISCLOSURE OF HYDRAULIC FRACTURING MATERIALS.

26 23-2905. PROTECTION OF OTHER ENVIRONMENTAL RESOURCES.

27 23-2907. PROTECTION OF LOCAL RESOURCES.

28 23-2909. WATER WITHDRAWALS.

29 23-2911. ENFORCEMENT AND FINANCIAL SECURITY.

30 23-2913. OTHER PROVISIONS.

31 S 23-2901. NATURAL GAS DRILLING; PROHIBITION NEAR WATERSHED.

32 1. NATURAL GAS DRILLING SHALL NOT BE PERMITTED WITHIN THE NEW YORK
33 CITY WATERSHED OR AT ANY POINT WITHIN FIVE MILES OF ITS BOUNDARY.

34 2. NATURAL GAS DRILLING SHALL NOT BE PERMITTED WITHIN THE WATERSHED OF
35 THE DELAWARE RIVER, IN ANY RECHARGE AREA OF A SOLE SOURCE AQUIFER, IN
36 ANY AREA WHERE GROUNDWATER CONTRIBUTES A SIGNIFICANT BASE FLOW TO
37 SURFACE WATER SOURCES OF DRINKING WATER, AND IN ANY OTHER AREA WHERE THE
38 DEPARTMENT SHALL FIND PRESENTS A SIGNIFICANT THREAT OF HYDRAULIC FRAC-
39 TURING COMPOUNDS ENTERING INTO A SIGNIFICANT SOURCE OF DRINKING WATER.

40 3. NATURAL GAS DRILLING SHALL BE CONDUCTED IN WAYS THAT DO NOT CONTAM-
41 INATE DRINKING WATER WELLS. IN ANY AREA WHERE NATURAL GAS DRILLING TAKES
42 PLACE AND CONTAMINATION OF INDIVIDUAL DRINKING WATER WELLS OCCURS, THERE
43 SHALL BE A PRESUMPTION THAT THE NATURAL GAS DRILLING IS RESPONSIBLE FOR
44 SUCH CONTAMINATION UNLESS THE NATURAL GAS DRILLER CAN SHOW, BY CLEAR AND
45 CONVINCING EVIDENCE, THAT SUCH DRILLER IS NOT THE SOURCE OF THE CONTAM-
46 INATION. UPON RECEIVING A REPORT OF AN INCIDENT OF WELL CONTAMINATION
47 FROM NATURAL GAS DRILLING, THE DEPARTMENT SHALL INVESTIGATE SUCH REPORT
48 WITHIN TWENTY-FOUR HOURS AND SHALL HAVE THE AUTHORITY TO ORDER IMMEDIATE
49 REMEDIAL ACTION, INCLUDING ISSUING IMMEDIATE CEASE AND DESIST ORDERS
50 WITH RESPECT TO THE DRILLING ACTIVITY. IN THE EVENT THAT THE DEPARTMENT
51 IS UNABLE TO INVESTIGATE SUCH REPORT WITHIN TWENTY-FOUR HOURS, IT MAY
52 REQUEST THAT LOCAL OR STATE POLICE AUTHORITIES CONFIRM THE INCIDENT AND
53 REPORT AND, IF CONFIRMED, SHALL ISSUE A CEASE AND DESIST ORDER TO SUCH
54 DRILLER UNTIL IT SHALL MAKE SUCH INVESTIGATION AND DETERMINE THE PROPER
55 COURSE OF INSURING FULL REMEDIATION.

1 4. ANY SPILLS OR PROHIBITED DISCHARGES OF HYDRAULIC FRACTURING
2 COMPOUNDS SHALL BE IMMEDIATELY REPORTED BY THE NATURAL GAS DRILLER TO
3 THE DEPARTMENT, WHICH SHALL ESTABLISH PROCEDURES FOR RECORDING AND
4 REVIEWING SUCH REPORTS AND FOR ORDERING REMEDIAL ACTION TO CONTAIN THE
5 SPILL AND KEEP THE SPILL OR DISCHARGE INCIDENT FROM BEING REPEATED. THE
6 DEPARTMENT SHALL HAVE THE AUTHORITY TO IMPOSE FINES FOR FAILURE TO
7 REPORT SUCH INCIDENTS, TO ORDER IMMEDIATE CLEANUP OF SUCH SPILLS AT THE
8 EXPENSE OF SUCH DRILLER AND, SHOULD SUCH DRILLER FAIL TO DO SO IN A
9 TIMELY FASHION, TO ENTER INTO THE DRILLING AREA AND DO THE CLEANUP
10 ITSELF, AT THE EXPENSE OF SUCH DRILLER. IN ANY INSTANCE WHERE SUCH DRIL-
11 LER SHALL REFUSE TO CARRY OUT A DEPARTMENT CLEANUP OR REMEDIAL ACTION
12 ORDER IN A TIMELY AND APPROPRIATE MANNER, THE DEPARTMENT SHALL ORDER ALL
13 DRILLING ACTIVITY TO CEASE AND DESIST UNTIL SUCH TIME AS THE SPILL HAS
14 BEEN CLEANED UP AND SUCH DRILLER HAS REMEDIATED THE CONDITIONS OR PRAC-
15 TICES THAT CAUSED THE SPILL.

16 5. ANY DRILLER OF NATURAL GAS WHO KNOWINGLY ATTEMPTS TO COVER UP A
17 SPILL OR PROHIBITED DISCHARGE SHALL BE GUILTY OF A CLASS A MISDEMEANOR.
18 ANY DRILLER OF NATURAL GAS WHO KNOWINGLY DISCHARGES HYDRAULIC FRACTURING
19 COMPOUNDS INTO THE SURFACE WATERS OF THE STATE SHALL BE GUILTY OF A
20 CLASS E FELONY.

21 6. NOTHING IN THIS TITLE OR ANY OTHER LAW OR REGULATION SHALL ALTER,
22 LIMIT, IMPAIR OR OTHERWISE AFFECT THE AUTHORITY OF THE STATE OF NEW
23 YORK, OR THE AUTHORITY OF THE CITY OF NEW YORK IN THE NEW YORK CITY
24 WATERSHED, TO TAKE WHATEVER MEASURES ARE NECESSARY UNDER THE LAW TO
25 PROTECT THE QUALITY AND SAFETY OF THE SOURCES OF THE DRINKING WATERS OF
26 NEW YORK STATE.

27 S 23-2903. DISCLOSURE OF HYDRAULIC FRACTURING MATERIALS.

28 1. ALL COMPONENTS OF HYDRAULIC FRACTURING MATERIALS SHALL BE DISCLOSED
29 TO THE DEPARTMENT AT THE TIME OF APPLICATION FOR A WELL PERMIT FOR THE
30 DRILLING OF NATURAL GAS PURSUANT TO THIS ARTICLE.

31 (A) EMERGENCY HEALTH SITUATION. WHEN A HEALTH PROFESSIONAL DETERMINES
32 THAT A MEDICAL EMERGENCY EXISTS RELATED TO A HYDRAULIC FRACTURING OPERA-
33 TION AND THE INGREDIENTS AND SPECIFIC CHEMICAL IDENTITY OF A HYDRAULIC
34 FRACTURING FLUID IS NECESSARY FOR EMERGENCY OR FIRST-AID TREATMENT, THE
35 HYDRAULIC FRACTURING OPERATOR SHALL IMMEDIATELY DISCLOSE THE SPECIFIC
36 CHEMICAL IDENTITY OF A TRADE SECRET CHEMICAL TO THE TREATING HEALTH
37 PROFESSIONAL, REGARDLESS OF THE EXISTENCE OF A WRITTEN STATEMENT OF NEED
38 OR A CONFIDENTIALITY AGREEMENT.

39 (B) NON-EMERGENCY HEALTH SITUATION. WHEN A HEALTH PROFESSIONAL OR
40 GOVERNMENT AGENCY DETERMINES THAT THE INGREDIENTS AND SPECIFIC CHEMICAL
41 IDENTITY OF A HYDRAULIC FRACTURING FLUID ARE NECESSARY FOR MEDICAL
42 TREATMENT, AN OPERATOR SHALL DISCLOSE A SPECIFIC CHEMICAL IDENTITY TO A
43 HEALTH PROFESSIONAL OR GOVERNMENT AGENCY IF A REQUEST HAS BEEN MADE IN
44 WRITING THAT DESCRIBES WITH REASONABLE DETAIL ONE OR MORE HEALTH OR
45 SAFETY NEEDS FOR THE INFORMATION AND INCLUDES A DESCRIPTION OF THE
46 PROCEDURES TO BE USED TO MAINTAIN THE CONFIDENTIALITY OF THE DISCLOSED
47 INFORMATION. THE HEALTH PROFESSIONAL OR GOVERNMENT AGENCY SHALL AGREE IN
48 A WRITTEN CONFIDENTIALITY AGREEMENT THAT THE TRADE SECRET INFORMATION
49 WILL NOT BE USED FOR ANY PURPOSE OTHER THAN THE HEALTH NEEDS ASSERTED
50 AND SHALL AGREE NOT TO RELEASE THE INFORMATION UNDER ANY CIRCUMSTANCES
51 OTHER THAN TO A HEALTH PROFESSIONAL OR GOVERNMENT AGENCY.

52 2. NO NATURAL GAS DRILLER MAY CHANGE THE COMPONENTS OR COMPOSITION OF
53 HYDRAULIC FRACTURING MATERIALS FROM THOSE SPECIFIED IN ITS PERMIT APPLI-
54 CATION WITHOUT FIRST FILING FOR AND RECEIVING A MODIFICATION OF SUCH
55 PERMIT.

1 3. THE DEPARTMENT SHALL ESTABLISH A STANDARD FOR THE COMPOSITION OF
2 HYDRAULIC FRACTURING COMPOUNDS AND REQUIRE NATURAL GAS DRILLERS TO USE
3 SUCH STANDARD. THE DEPARTMENT SHALL HAVE THE POWER TO PROHIBIT THE USE
4 OF SPECIFIC CHEMICALS IN THE COMPOSITION OF HYDRAULIC FRACTURING MATERI-
5 ALS.

6 4. HYDRAULIC FRACTURING LIQUIDS AND LIQUID WASTE FROM DRILLING MAY NOT
7 BE STORED IN OPEN LAGOONS, BUT MUST BE KEPT IN CORROSION PROOF TANKS.

8 5. NOTWITHSTANDING ANY OTHER PROVISION OF LAW OR ADMINISTRATIVE DETER-
9 MINATION, HYDRAULIC FRACTURING MATERIAL SHALL BE REGARDED AS HAZARDOUS
10 WASTE AND TREATED AND DISPOSED OF AS SUCH.

11 6. THE DEPARTMENT SHALL ISSUE REGULATIONS REQUIRING THE TRACKING OF
12 ALL CHEMICAL COMPONENTS OF HYDRAULIC FRACTURING MATERIALS AND SHALL HAVE
13 THE POWER TO ENFORCE SUCH REGULATIONS BY APPROPRIATE FINES AND CEASE AND
14 DESIST ORDERS.

15 S 23-2905. PROTECTION OF OTHER ENVIRONMENTAL RESOURCES.

16 1. DRILLERS OF NATURAL GAS SHALL BE RESPONSIBLE FOR MITIGATING ALL
17 DAMAGE TO ANY REGULATED ENVIRONMENTAL RESOURCES, INCLUDING BUT NOT
18 LIMITED TO AIR, WETLANDS, STREAM CORRIDORS, AND ENDANGERED AND THREAT-
19 ENED SPECIES HABITAT.

20 2. WELL PERMITS FOR THE DRILLING OF NATURAL GAS SHALL NOT BE GRANTED
21 IN ANY AREA WHERE SUCH DRILLING SHALL ADVERSELY IMPACT THE RECOVERY OF
22 THREATENED OR ENDANGERED SPECIES OR WHERE IT SHALL DESTROY OR DEGRADE
23 OTHER UNIQUE NATURAL OR SCENIC RESOURCES. WELL PERMITS FOR THE DRILLING
24 OF NATURAL GAS SHALL NOT BE GRANTED IN ANY AREA THAT IS DESIGNATED AS
25 FOREVER WILD UNDER THE STATE CONSTITUTION OR LAWS, IN STATE PARKS, IN
26 AREAS IDENTIFIED FOR STATE ACQUISITION AND/OR PROTECTION UNDER THE STATE
27 OPEN SPACE PLAN, OR IN STATE FORESTS AND STATE PARKS.

28 3. APPLICATIONS FOR A WELL PERMIT FOR THE DRILLING OF NATURAL GAS
29 SHALL INCLUDE AN ASSESSMENT OF ITS IMPACT ON LOCAL BIODIVERSITY
30 RESOURCES AND A SHOWING THAT SUCH DRILLING SHALL BE WITHIN THE LEASEHOLD
31 AT THE LOWEST IMPACT POINT ON WILDLIFE. TO MINIMIZE IMPACT THROUGH
32 EITHER GROUND DISTURBANCE OR TRAFFIC, ALL EFFORTS SHALL BE MADE TO CLUS-
33 TER WELLS, CENTRALIZE OPERATIONS, AND USE TELEMETRY. IF NECESSARY,
34 SEASONAL RESTRICTIONS SHALL BE IMPOSED TO PROTECT WILDLIFE BREEDING OR
35 MIGRATION.

36 4. APPLICATIONS FOR A WELL PERMIT FOR THE DRILLING OF NATURAL GAS
37 SHALL LIST ALL EXPECTED EMISSIONS OF AIR POLLUTANTS, INCLUDING, BUT NOT
38 LIMITED TO, ALL GREENHOUSE GASES SUCH AS METHANE. THE DEPARTMENT SHALL
39 HAVE THE AUTHORITY TO SPECIFY LIMITS ON ALL SUCH AIR EMISSIONS AS A
40 CONDITION OF GRANTING SUCH PERMIT, TO REQUIRE APPROPRIATE EMISSIONS
41 MONITORING AND CONTROLS BY THE OPERATOR, AND TO DENY ANY PERMIT WHOSE
42 OPERATION SHALL BE INCONSISTENT WITH STATE POLICY AND REGULATIONS WITH
43 RESPECT TO ADDRESSING GLOBAL WARMING.

44 S 23-2907. PROTECTION OF LOCAL RESOURCES.

45 1. THE DEPARTMENT SHALL HAVE THE AUTHORITY TO IMPOSE FEES TO COMPEN-
46 SATE LOCAL GOVERNMENT FOR ANY COSTS OR IMPACTS IMPOSED UPON SUCH GOVERN-
47 MENTS AS A RESULT OF DRILLING FOR NATURAL GAS.

48 2. THE DEPARTMENT, IN ITS PERMITTING DECISIONS, SHALL TAKE CARE TO
49 INSURE THAT NATURAL GAS WELLS ARE SITUATED IN WAYS THAT MAXIMIZE FIELD
50 PRODUCTIVITY WHILE MINIMIZING IMPACTS ON THE LANDSCAPE. FOR THIS
51 PURPOSE, THE DEPARTMENT MAY, WITHIN SPECIFIC REGIONAL AREAS, ESTABLISH
52 PROCEDURES TO REQUIRE PERIODIC BATCH PROCESSING OF PERMIT APPLICATIONS,
53 INCLUDING MANDATORY DATES FOR APPLICATION SUBMISSION, AND MAY IMPOSE
54 WELL CLUSTERING, CENTRALIZED OPERATIONS, AND THE USE OF TELEMETRY.

55 3. ALL SITING OF NATURAL GAS DRILLING ACTIVITY SHALL CONFORM TO LOCAL
56 ZONING.

1 4. ANY PERMIT HOLDER SHALL BE REQUIRED, AT THE END OF ITS DRILLING
2 OPERATIONS, TO FULLY RESTORE THE DRILL SITE TO ITS PREVIOUS NATURAL
3 CONDITION. TO ENFORCE THE PROVISIONS OF THIS SUBDIVISION, BEFORE ANY
4 LAND CLEARING OPERATIONS RELATED TO DRILLING ARE COMMENCED, SUCH PERMIT
5 HOLDER SHALL FILE WITH THE DEPARTMENT, A NON-REVOCABLE AND BANKRUPTCY
6 PROOF BOND SUFFICIENT, UNDER REGULATIONS TO BE ISSUED BY THE DEPARTMENT,
7 TO COVER ALL FORESEEABLE COSTS OF SITE RESTORATION.

8 5. GAS DRILLING OPERATIONS SHALL BE CONDUCTED IN A MANNER THAT SHALL
9 NOT BURDEN ADJACENT LANDOWNERS AND RESIDENTS. NO NOISE AUDIBLE INDOORS
10 IN RESIDENCES LOCATED ON ADJACENT PROPERTY SHALL BE PERMITTED BETWEEN
11 THE HOURS OF 8:00 PM AND 8:00 AM ON WEEKDAYS AND 6:00 PM AND 10:00 AM ON
12 WEEKENDS. SIMILARLY, NIGHT LIGHTING SHALL NOT BE OBTRUSIVE OR DISRUPTIVE
13 OF LIFE FOR SUCH ADJACENT LANDOWNERS AND RESIDENTS. THE DEPARTMENT SHALL
14 ENFORCE THE PROVISIONS OF THIS SUBDIVISION BY APPROPRIATE REGULATIONS
15 INCLUDING A SYSTEM OF FINES, AND SHALL FURTHER HAVE THE POWER TO ISSUE
16 CEASE AND DESIST ORDERS TO ENFORCE THESE PROTECTIONS AND PROTECT THE
17 QUIET ENJOYMENT OF LOCAL RESIDENTS.

18 6. LANDOWNERS FORCED INTO A PRODUCTION POOL SHALL BE ENTITLED TO
19 RECEIVE THE HIGHEST PAYMENT THAT ANY OTHER POOL MEMBER RECEIVES.

20 7. ANY LANDOWNER WHO ENTERS INTO A CONTRACT OR LEASE TO PERMIT THE
21 DRILLING FOR NATURAL GAS ON SUCH LANDOWNER'S PROPERTY SHALL HAVE A THIR-
22 TY DAY RIGHT OF RECISSION WITH RESPECT TO SUCH CONTRACT. DURING SUCH
23 THIRTY DAY PERIOD, SUCH LANDOWNER MAY CANCEL SUCH CONTRACT OR LEASE AT
24 ANY TIME WITHOUT PENALTY.

25 8. NO WELL PERMIT FOR THE DRILLING OF NATURAL GAS SHALL BE GRANTED FOR
26 A PERIOD LONGER THAN TEN YEARS. ANY PERMIT UNDER WHICH ACTUAL NATURAL
27 GAS EXTRACTION IS NOT UNDERTAKEN WITHIN FIVE YEARS SHALL EXPIRE AND BE
28 DEEMED NULL AND VOID.

29 9. THE DEPARTMENT, IN CONSULTATION WITH THE ATTORNEY GENERAL, SHALL
30 ISSUE GUIDANCE DOCUMENTS TO LANDOWNERS, WITH RESPECT TO THEIR RIGHTS
31 WITH RESPECT TO NATURAL GAS DRILLING CONTRACTS AND LEASES. THE DEPART-
32 MENT IS HEREBY AUTHORIZED TO REQUIRE STANDARD PROVISIONS IN SUCH
33 CONTRACTS OR LEASES IN ORDER TO PREVENT UNFAIR TREATMENT OF LANDOWNERS.

34 10. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, NATURAL GAS DRILLERS
35 SHALL BE RESPONSIBLE FOR THE COSTS OF ALL ENVIRONMENTAL DAMAGE WHICH
36 OCCURRED IN THE PROCESS OF DRILLING FOR AND EXTRACTING NATURAL GAS. THE
37 DEPARTMENT MAY REQUIRE THE PROVISION OF APPROPRIATE FINANCIAL SECURITY
38 TO ENSURE LANDOWNERS ARE PROTECTED FROM ANY CONTINGENT LIABILITY. SHOULD
39 DRILLING ACTIVITY LEAD TO DESIGNATION AS A BROWNFIELD SITE, AS DEFINED
40 IN SUBDIVISION TWO OF SECTION 27-1405 OF THIS CHAPTER, SUCH DRILLER, NOT
41 THE LANDOWNER, SHALL BE CONSIDERED TO BE PARTY IN THE CHAIN OF RESPONSI-
42 BILITY.

43 S 23-2909. WATER WITHDRAWALS.

44 ALL SURFACE OR GROUNDWATER WITHDRAWALS OF MORE THAN FIVE THOUSAND
45 GALLONS A DAY FOR NATURAL GAS DRILLING PURPOSES, OR MORE THAN ONE
46 PERCENT OF IN STREAM FLOW, SHALL REQUIRE A PERMIT FROM THE DEPARTMENT.
47 THE DEPARTMENT SHALL ISSUE REGULATIONS GOVERNING SUCH WITHDRAWALS,
48 INCLUDING PROVISIONS TO ASSURE THAT WATER WITHDRAWALS ARE LIMITED TO
49 LEVELS THAT DO NOT HARM STREAM ECOLOGY OR FISHERY RESOURCES.

50 S 23-2911. ENFORCEMENT AND FINANCIAL SECURITY.

51 1. NO PERMIT FOR THE DRILLING OF NATURAL GAS SHALL BE GRANTED IF SUCH
52 APPLICANT HAS FAILED TO MEET HIS ENVIRONMENTAL AND FINANCIAL OBLIGATIONS
53 UNDER A PREVIOUS PERMIT OR IF SUCH APPLICANT HAS UNPAID FINANCIAL
54 LIABILITIES TO EITHER THE STATE, A LOCAL GOVERNMENT OR A PRIVATE LAND-
55 OWNER.

1 2. IN DETERMINING WHETHER OR NOT A PERMIT FOR THE DRILLING OF NATURAL
2 GAS SHALL BE GRANTED, THE DEPARTMENT SHALL CONSIDER THE PRIOR RECORD
3 UNDER PREVIOUS PERMITS OF THE APPLICANT. APPLICANTS WHO HAVE SHOWN A
4 PATTERN OF VIOLATION OF PERMIT CONDITIONS OR A LACK OF A PROPER STANDARD
5 OF CARE IN DRILLING OPERATIONS SHALL NOT BE GRANTED A PERMIT.

6 3. A PERMIT FOR THE DRILLING OF NATURAL GAS SHALL INCLUDE APPLICABLE
7 LEASE DOCUMENTS BETWEEN THE DRILLING COMPANY AND THE LANDOWNER OR LAND-
8 OWNERS FOR THE DRILLING SITE FOR WHICH THE APPLICATION IS MADE.

9 4. A PERMIT APPLICATION SHALL INCLUDE A COMPREHENSIVE HYDROLOGICAL
10 ASSESSMENT OF THE SUBSURFACE STRATA INCLUDING THE POTENTIAL FOR ANY
11 FISSURING THAT WOULD DRAW HYDRAULIC FRACTURING FLUID, NATURAL GAS OR
12 OTHER POLLUTANTS INTO WATER BEARING AQUIFER STRATA.

13 5. THE DEPARTMENT SHALL PROVIDE FOR UNANNOUNCED INSPECTIONS OF ALL
14 NATURAL GAS DRILLING SITES AND FOR THE PROVISION OF SOIL TESTING TO
15 DETERMINE THE PRESENCE OF UNREPORTED SPILLS.

16 6. THE DEPARTMENT SHALL REQUIRE THAT ALL CASING CONSTRUCTION BE
17 CARRIED OUT IN THE PRESENCE OF INDEPENDENT QUALITY CONTROL ENGINEERS.
18 THE DEPARTMENT SHALL HAVE THE AUTHORITY TO SPECIFY STANDARDS FOR CASING
19 CONSTRUCTION, INCLUDING COMPOSITION OF CONCRETE AND OTHER TECHNICAL
20 PARAMETERS FOR DEEP WELL CONSTRUCTION TO INSURE MAXIMUM CASING INTEGRITY
21 AND PREVENT LEAKAGE OF HYDRAULIC FRACTURING COMPOUNDS, NATURAL GAS AND
22 OTHER SUBSURFACE MATERIALS INTO WATER BEARING STRATA. THE DEPARTMENT
23 SHALL, OVER THE LIFE OF THE WELL, CARRY OUT PERIODIC INSPECTIONS TO
24 ENSURE THAT CASING INTEGRITY IS MAINTAINED.

25 S 23-2913. OTHER PROVISIONS.

26 1. THE STATE COMPTROLLER SHALL ANNUALLY AUDIT ALL ROYALTY PAYMENTS TO
27 THE STATE AND LOCAL GOVERNMENTS, INCLUDING THE GAS PRODUCTION AND SALES
28 FIGURES ON WHICH THEY ARE BASED, AND SHALL HAVE THE AUTHORITY TO REQUIRE
29 APPROPRIATE FISCAL REPORTING AND RECORD KEEPING BY BOTH NATURAL GAS
30 PRODUCERS AND OTHER DEPARTMENTS OF STATE GOVERNMENT CHARGED WITH THEIR
31 SUPERVISION.

32 2. THE STATE COMPTROLLER SHALL HAVE THE AUTHORITY TO PERIODICALLY
33 AUDIT PAYMENTS MADE UNDER DRILLING CONTRACTS AND LEASES TO PRIVATE LAND-
34 OWNERS, INCLUDING THE GAS PRODUCTION AND SALES FIGURES ON WHICH THEY ARE
35 BASED, TO DETERMINE THAT THEY ARE IN COMPLIANCE WITH THE PROVISIONS OF
36 THE CONTRACT OR LEASE AND ALL APPLICABLE LAWS.

37 3. THE DEPARTMENT SHALL ESTABLISH AN IMPARTIAL TECHNICAL ADVISORY
38 COMMITTEE, WHOSE RESEARCH AND WORK SHALL BE SUPPORTED BY PERMIT FEES, TO
39 REVIEW AND ISSUE GUIDANCE DOCUMENTS ON GAS DRILLING BEST PRACTICES.
40 SUCH COMMITTEE SHALL INCLUDE AT LEAST ONE REPRESENTATIVE FROM THE
41 FOLLOWING INTEREST GROUPS: THE ENVIRONMENTAL COMMUNITY; THE PUBLIC
42 HEALTH COMMUNITY; AND THE GAS DRILLING INDUSTRY, ALONG WITH PERSONS FROM
43 THE DEPARTMENT OR OTHERS THE DEPARTMENT DEEMS APPROPRIATE. THE DEPART-
44 MENT MAY REQUIRE COMPLIANCE WITH SUCH PRACTICES AS A CONDITION OF PERMIT
45 APPROVAL.

46 S 3. This act shall take effect on the one hundred twentieth day after
47 it shall have become a law, provided, however, that effective immediate-
48 ly, the addition, amendment and/or repeal of any rule or regulation
49 necessary for the implementation of this act on its effective date is
50 authorized to be made and completed on or before such date.