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I N  S E N A T E

May 18, 2010

Introduced by Sen. OPPENHEIMER -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to the testing of water when drilling oil and natural gas wells

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

Section 1. Section 23-0501 of the environmental conservation law is amended by adding five new subdivisions 4, 5, 6, 7 and 8 to read as follows:

4. AFTER RECEIVING A PERMIT PURSUANT TO THIS TITLE AND PRIOR TO COMMENCING ANY DRILLING ON THE SITE, THE PERMIT HOLDER SHALL CAUSE A TEST TO BE PERFORMED ON GROUND AND SURFACE WATER SOURCES WITHIN A ONE THOUSAND FOOT RADIUS OF THE WELLBORE AND ON ALL WATER WELLS IN THE PRODUCTION UNIT UNLESS THE DEPARTMENT DETERMINES THAT CRITERIA, INCLUDING, BUT NOT LIMITED TO SITE HYDROLOGY, REQUIRE AN EXPANDED RADIUS. FOR THE PURPOSE OF THIS SECTION "TEST OF GROUND AND SURFACE WATER SOURCES" SHALL MEAN WATER SAMPLING TO DETERMINE FLOW RATE AND TO IDENTIFY COMPOUNDS OR CONTAMINANTS OF CONCERN. COMPOUNDS OR CONTAMINANTS OF CONCERN SHALL INCLUDE INGREDIENTS CONTAINED IN HYDROFRACTURING FLUIDS AND CHEMICAL TREATMENT, AND ANY OTHER CONTAMINANTS IDENTIFIED BY THE DEPARTMENT. IN DEVELOPING THE LIST OF CONTAMINANTS THE DEPARTMENT SHALL CONSULT WITH THE STATE AND COUNTY DEPARTMENTS OF HEALTH. COPIES OF SUCH TESTS SHALL BE PROVIDED TO LANDOWNERS WITHIN THE TESTING RADIUS. THE COST OF SUCH TEST SHALL BE BORNE BY THE PERMIT HOLDER. ANY LANDOWNER, OTHER THAN THE PERMIT HOLDER OR HIS OR HER EMPLOYEES, MAY REFUSE TO HAVE ANY TESTS REQUIRED BY THIS SUBDIVISION PERFORMED ON HIS OR HER LAND. SUCH REFUSAL SHALL BE IN WRITING AND SHALL RELIEVE THE PERMIT HOLDER OF HIS OR HER TESTING OBLIGATION.

5. UPON WELL COMPLETION AND PRIOR TO ANY PRODUCTION AND ALSO AFTER ANY SUBSEQUENT HYDROFRACTURING AND/OR CHEMICAL TREATMENT THE PERMIT HOLDER SHALL CAUSE A TEST TO BE PERFORMED ON GROUND AND SURFACE WATER SOURCES WITHIN A ONE THOUSAND FOOT RADIUS OF THE WELLBORE AND ALL WATER WELLS IN THE PRODUCTION UNIT UNLESS THE DEPARTMENT DETERMINES THAT CRITERIA,

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

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INCLUDING, BUT NOT LIMITED TO SITE HYDROLOGY, REQUIRE AN EXPANDED RADIUS. ANY LANDOWNER, OTHER THAN THE PERMIT HOLDER OR HIS OR HER EMPLOYEES, MAY REFUSE TO HAVE ANY TESTS REQUIRED BY THIS SUBDIVISION PERFORMED ON HIS OR HER LAND. SUCH REFUSAL SHALL BE IN WRITING AND SHALL RELIEVE THE PERMIT HOLDER OF HIS OR HER TESTING OBLIGATION. COPIES OF SUCH TESTS SHALL BE PROVIDED TO THE LANDOWNERS WITHIN THE TESTING RADIUS. THE COST OF SUCH TEST SHALL BE BORNE BY THE PERMIT HOLDER.

6. PERMIT HOLDERS OF PRODUCING WELLS SHALL CAUSE AN ANNUAL TEST TO BE PERFORMED ON THE QUALITY OF GROUND AND SURFACE WATER SOURCES WITHIN A ONE THOUSAND FOOT RADIUS OF THE WELLBORE AND ON ALL WATER WELLS IN THE PRODUCTION UNIT UNLESS THE DEPARTMENT DETERMINES THAT CRITERIA INCLUDING, BUT NOT LIMITED TO SITE HYDROLOGY REQUIRE AN EXPANDED RADIUS. ANY LANDOWNER, OTHER THAN THE PERMIT HOLDER OR HIS OR HER EMPLOYEES, MAY REFUSE TO HAVE ANY TESTS REQUIRED BY THIS SUBDIVISION PERFORMED ON HIS OR HER LAND. SUCH REFUSAL SHALL BE IN WRITING AND SHALL RELIEVE THE PERMIT HOLDER OF HIS OR HER TESTING OBLIGATION. TEST RESULTS SHALL BE PROVIDED TO LANDOWNERS WITHIN THE TESTING RADIUS. THE COST OF SUCH TEST SHALL BE BORNE BY THE PERMIT HOLDER.

7. IF THE RESULTS OF A TEST PERFORMED PURSUANT TO SUBDIVISION FIVE OR SIX OF THIS SECTION SHOW: (A) THAT THE GROUND OR SURFACE WATER SOURCES CONTAIN COMPOUNDS OR CONTAMINANTS OF CONCERN THAT ARE IN VIOLATION OF THE STATE SANITARY CODE OR THE FEDERAL SAFE DRINKING WATER ACT, OR (B) WITH REGARD TO METHANE OR ANY OTHER COMPOUND OR CONTAMINANT OF CONCERN, THAT THERE HAS BEEN A VIOLATION OF THE STANDARDS PROMULGATED BY THE DEPARTMENT PURSUANT TO SUBDIVISION EIGHT OF THIS SECTION, OR (C) THAT FLOW RATE HAS BEEN ADVERSELY AFFECTED; THEN THE PERMIT HOLDER SHALL BE LIABLE FOR:

(I) ALL COSTS OF REMOVAL OR REMEDIAL ACTION INCLUDING THOSE INCURRED BY THE STATE, MUNICIPALITY, OR ENTITY INVOLVED IN THE CLEAN-UP OF THE WATER SOURCE;

(II) ANY OTHER NECESSARY COSTS OF RESPONSE INCURRED BY THE STATE, MUNICIPALITY, OR ENTITY, OR BY ANY OTHER PERSON ASSOCIATED WITH THE CLEAN-UP OF THE WATER SOURCE;

(III) DAMAGES FOR INJURY TO, DESTRUCTION OF, OR LOSS OF NATURAL RESOURCES, INCLUDING THE REASONABLE COST OF ASSESSING SUCH INJURY, DESTRUCTION, OR LOSS, RESULTING FROM THE CONTAMINATION OF THE WATER SOURCE; AND

(IV) THE COST OF ANY HEALTH ASSESSMENT OR HEALTH EFFECTS STUDY CARRIED OUT UNDER 42 U.S.C. S 9604, OR SIMILAR STATE STATUTE.

8. THE DEPARTMENT, IN CONSULTATION WITH THE DEPARTMENT OF HEALTH, SHALL PROMULGATE RULES AND REGULATIONS ESTABLISHING STANDARDS FOR METHANE AND OTHER COMPOUNDS OR CONTAMINANTS OF CONCERN.

S 2. This act shall take effect on the sixtieth day after it shall have become a law. The department of environmental conservation shall have 120 days to promulgate rules and regulations.