S T A T E O F N E W Y O R K

6488

2011-2012 Regular Sessions

I N A S S E M B L Y

March 21, 2011

Introduced by M. of A. CASTELLI -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to industrial waste from hydraulic fracturing operations

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

Section 1. Section 17-0105 of the environmental conservation law is amended by adding a new subdivision 24 to read as follows:

24. "HYDRAULIC FRACTURING" MEANS A PROCESS USED TO CREATE FRACTURES IN ROCK BY MAN-MADE FRACTURING TECHNIQUES FOR THE PURPOSES OF STIMULATING NATURAL GAS OR OIL WELL PRODUCTION.

S 2. Paragraphs c and d of subdivision 2 of section 17-0808 of the environmental conservation law, as added by chapter 360 of the laws of 1988, are amended and a new paragraph e is added to read as follows:

c. A discharge from a municipal separate storm sewer system serving a population of one hundred thousand or more; [or]

d. A discharge which the commissioner determines contributes to a violation of water quality standards adopted pursuant to section 17-0301 of this article or is a significant contributor of pollutants to the waters of the state[.]; OR

E. A DISCHARGE ASSOCIATED WITH A HYDRAULIC FRACTURING OPERATION.

S 3. The environmental conservation law is amended by adding a new section 17-0833 to read as follows:

S 17-0833. INDUSTRIAL WASTE FROM HYDRAULIC FRACTURING OPERATIONS.

1. NO TREATMENT WORKS SHALL ACCEPT INDUSTRIAL WASTEWATER FROM HYDRAULIC FRACTURING OPERATIONS CONDUCTED BY A PERMIT HOLDER UNDER TITLE FIVE OF ARTICLE TWENTY-THREE OF THIS CHAPTER IF SUCH PERMIT HOLDER HAS REPORTED TO THE TREATMENT WORKS, PURSUANT TO SUBDIVISION FOUR OF SECTION 23-0501 OF THIS CHAPTER, OR IF THE TESTS OR MONITORING CONDUCTED BY THE TREATMENT WORKS PURSUANT TO SUBDIVISION TWO OF THIS SECTION AND THE RULES AND REGULATIONS PROMULGATED THEREUNDER REVEALS THAT SUCH INDUS-

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

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TRIAL WASTEWATER CONTAINS RADIUM AT A LEVEL HIGHER THAN TWELVE TIMES THE MAXIMUM CONTAMINANT LEVEL SET FORTH IN THE FEDERAL SAFE DRINKING WATER ACT.

2. THE COMMISSIONER SHALL, AFTER HOLDING A PUBLIC HEARING WITH DUE NOTICE, PROMULGATE REGULATIONS:

(A) REQUIRING TREATMENT WORKS WHICH TREAT INDUSTRIAL WASTE FROM HYDRAULIC FRACTURING OPERATIONS TO CAUSE BIANNUAL TESTS TO BE PERFORMED ON THE WATER DISCHARGED THEREFROM. FOR PURPOSES OF THIS SECTION, TESTS TO BE PERFORMED ON THE WATER SHALL MEAN WATER SAMPLING TO IDENTIFY COMPOUNDS OR CONTAMINANTS OF CONCERN. COMPOUNDS OR CONTAMINANTS OF CONCERN SHALL INCLUDE INGREDIENTS CONTAINED IN HYDRAULIC FRACTURING FLUIDS AND CHEMICAL TREATMENTS, INCLUDING, BUT NOT LIMITED TO, RADIOACTIVE CONTAMINANTS SUCH AS RADIUM AND ANY OTHER CONTAMINANTS IDENTIFIED BY THE DEPARTMENT.

(B) REQUIRING TREATMENT WORKS WHICH TREAT INDUSTRIAL WASTE FROM HYDRAULIC FRACTURING OPERATIONS TO DEVELOP PLANS FOR THE MONITORING OF COMPLIANCE WITH ALL FEDERAL, STATE AND LOCAL REQUIREMENTS OR, IN THE DISCRETION OF THE DEPARTMENT, REQUIRING THE ASSIGNMENT AN ENVIRONMENTAL MONITOR AUTHORIZED BY THE DEPARTMENT TO INSPECT AND MONITOR THE COMPLIANCE OF SUCH TREATMENT WORKS WITH ALL FEDERAL, STATE AND LOCAL REQUIREMENTS. THE DEPARTMENT IS AUTHORIZED TO SET AND IMPOSE UPON SUCH TREATMENT PLANTS ENVIRONMENTAL MONITORING FEES TO RECOVER ALL COSTS ASSOCIATED WITH SUCH MONITORS.

(C) PROVIDING FOR THE SCHEDULED DISCHARGE OF WASTEWATER CONTAINING RADIOACTIVE ELEMENTS SUCH AS RADIUM AND ANY OTHER CONTAMINANTS IDENTIFIED BY THE DEPARTMENT BY FACILITIES WHICH TREAT WASTEWATER FROM HYDRAULIC FRACTURING OPERATIONS. SUCH FACILITIES SHALL BE REQUIRED TO PROVIDE DISCLOSURE AND NOTICE REGARDING SUCH DISCHARGE AT LEAST TWENTY-FOUR HOURS IN ADVANCE THEREOF TO THE COMMISSIONER, THE COMMISSIONER OF HEALTH, THE CHIEF EXECUTIVES OF THE COUNTY, CITY, TOWN OR VILLAGE IN WHICH SUCH FACILITY IS LOCATED AND TO THE PUBLIC BY WAY OF A TOLL-FREE HOTLINE, TO BE ESTABLISHED BY THE DEPARTMENT. IF THE DISCHARGE OF SUCH WASTEWATER MAY NOT BE SCHEDULED, SUCH DISCLOSURE AND NOTICE SHALL BE PROVIDED AS SOON AS PRACTICABLE, BUT IN NO EVENT LONGER THAN TWENTY-FOUR HOURS AFTER INFORMATION REGARDING THE RELEASE IS OBTAINED BY SUCH FACILITY.

S 4. Section 23-0101 of the environmental conservation law is amended by adding a new subdivision 7-a to read as follows:

7-A. "HYDRAULIC FRACTURING" MEANS A PROCESS USED TO CREATE FRACTURES IN ROCK BY MAN-MADE FRACTURING TECHNIQUES FOR THE PURPOSES OF STIMULATING NATURAL GAS OR OIL WELL PRODUCTION.

S 5. Section 23-0501 of the environmental conservation law is amended by adding a new subdivision 4 to read as follows:

4. A PERMIT HOLDER UNDER THIS TITLE SHALL, AFTER THE COMPLETION OF ANY HYDRAULIC FRACTURING AND/OR CHEMICAL TREATMENT, CAUSE A TEST TO BE PERFORMED ON WASTEWATER TO BE DEPOSITED WITH A TREATMENT WORKS FACILITY AUTHORIZED TO TREAT AND/OR DISCHARGE SUCH WASTEWATER PURSUANT TO A PERMIT ISSUED UNDER TITLE EIGHT OF ARTICLE SEVENTEEN OF THIS CHAPTER. FOR THE PURPOSE OF THIS SECTION, "TEST ON WASTEWATER" SHALL MEAN WATER SAMPLING TO IDENTIFY COMPOUNDS OR CONTAMINANTS OF CONCERN AND THE AMOUNTS THEREOF. COMPOUNDS OR CONTAMINANTS OF CONCERN SHALL INCLUDE INGREDIENTS CONTAINED IN HYDRAULIC FRACTURING FLUIDS AND CHEMICAL TREATMENTS, INCLUDING, BUT NOT LIMITED TO, RADIOACTIVE ELEMENTS SUCH AS RADIUM AND ANY OTHER CONTAMINANTS IDENTIFIED BY THE DEPARTMENT. THE RESULTS OF SUCH TESTS SHALL BE DISCLOSED TO THE TREATMENT WORKS FACILITY AND THE DEPARTMENT. THE COST OF SUCH TEST SHALL BE BORNE BY THE PERMIT HOLDER.

S 6. This act shall take effect on the ninetieth day after it shall have become a law; provided, however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.