

3483

2011-2012 Regular Sessions

I N   S E N A T E

February 23, 2011

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

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 ASSEM-  
BLY, DO ENACT AS FOLLOWS:

1     Section 1. Section 23-0501 of the environmental conservation law is  
2 amended by adding five new subdivisions 4, 5, 6, 7 and 8 to read as  
3 follows:  
4     4. AFTER RECEIVING A PERMIT PURSUANT TO THIS TITLE AND PRIOR TO  
5 COMMENCING ANY DRILLING ON THE SITE, THE PERMIT HOLDER SHALL CAUSE A  
6 TEST TO BE PERFORMED ON GROUND AND SURFACE WATER SOURCES WITHIN A ONE  
7 THOUSAND FOOT RADIUS OF THE WELLBORE AND ON ALL WATER WELLS IN THE  
8 PRODUCTION UNIT UNLESS THE DEPARTMENT DETERMINES THAT CRITERIA, INCLUD-  
9 ING, BUT NOT LIMITED TO SITE HYDROLOGY, REQUIRE AN EXPANDED RADIUS. FOR  
10 THE PURPOSE OF THIS SECTION "TEST OF GROUND AND SURFACE WATER SOURCES"  
11 SHALL MEAN WATER SAMPLING TO DETERMINE FLOW RATE AND TO IDENTIFY  
12 COMPOUNDS OR CONTAMINANTS OF CONCERN. COMPOUNDS OR CONTAMINANTS OF  
13 CONCERN SHALL INCLUDE INGREDIENTS CONTAINED IN HYDROFRACTURING FLUIDS  
14 AND CHEMICAL TREATMENT, AND ANY OTHER CONTAMINANTS IDENTIFIED BY THE  
15 DEPARTMENT. IN DEVELOPING THE LIST OF CONTAMINANTS THE DEPARTMENT SHALL  
16 CONSULT WITH THE STATE AND COUNTY DEPARTMENTS OF HEALTH. COPIES OF SUCH  
17 TESTS SHALL BE PROVIDED TO LANDOWNERS WITHIN THE TESTING RADIUS. THE  
18 COST OF SUCH TEST SHALL BE BORNE BY THE PERMIT HOLDER. ANY LANDOWNER,  
19 OTHER THAN THE PERMIT HOLDER OR HIS OR HER EMPLOYEES, MAY REFUSE TO HAVE  
20 ANY TESTS REQUIRED BY THIS SUBDIVISION PERFORMED ON HIS OR HER LAND.  
21 SUCH REFUSAL SHALL BE IN WRITING AND SHALL RELIEVE THE PERMIT HOLDER OF  
22 HIS OR HER TESTING OBLIGATION.  
23     5. UPON WELL COMPLETION AND PRIOR TO ANY PRODUCTION AND ALSO AFTER ANY  
24 SUBSEQUENT HYDROFRACTURING AND/OR CHEMICAL TREATMENT THE PERMIT HOLDER

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

LBD02910-01-1

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

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

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

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

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

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

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

43 8. THE DEPARTMENT, IN CONSULTATION WITH THE DEPARTMENT OF HEALTH,  
44 SHALL PROMULGATE RULES AND REGULATIONS ESTABLISHING STANDARDS FOR METH-  
45 ANE AND OTHER COMPOUNDS OR CONTAMINANTS OF CONCERN.

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