

5879

2011-2012 Regular Sessions

I N S E N A T E

September 9, 2011

Introduced by Sen. BALL -- 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 regulation of the extraction of natural gas by means of hydraulic fracturing; and to repeal subdivision 2 of section 23-0303 of such law relating to exclusivity of state authority over mining

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

1 Section 1. Article 23 of the environmental conservation law is amended
2 by adding two new titles 15 and 16 to read as follows:

3 TITLE 15

4 DISCLOSURE OF COMPOSITION OF
5 HYDRAULIC FRACTURING FLUIDS

6 SECTION 23-1501. DEFINITIONS.

7 23-1503. INFORMATION SUBMITTED CONSIDERED PUBLIC; POSTING ON
8 INTERNET WEBSITE.

9 23-1505. SERVICE COMPANY DISCLOSURES.

10 23-1507. OPERATOR DISCLOSURES.

11 23-1509. USE OF SERVICES OF NONCOMPLYING SERVICE COMPANY
12 PROHIBITED.

13 23-1511. TRADE SECRET PROTECTION.

14 S 23-1501. DEFINITIONS.

15 AS USED IN THIS TITLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

16 1. "ADDITIVE" MEANS ANY SUBSTANCE OR COMBINATION OF SUBSTANCES FOUND
17 IN A HYDRAULIC FRACTURING FLUID, INCLUDING A PROPPANT, THAT IS ADDED TO
18 A BASE FLUID IN THE CONTEXT OF A HYDRAULIC FRACTURING TREATMENT.

19 2. "BASE FLUID" MEANS THE BASE FLUID TYPE, SUCH AS WATER OR NITROGEN
20 FOAM, USED IN A PARTICULAR HYDRAULIC FRACTURING TREATMENT.

21 3. "CHEMICAL ABSTRACTS SERVICE" OR "CAS" MEANS THE CHEMICAL REGISTRY
22 THAT IS THE AUTHORITATIVE COLLECTION OF DISCLOSED CHEMICAL SUBSTANCE
23 INFORMATION.

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

LBD13392-01-1

1 4. "CHEMICAL CONSTITUENT" MEANS A DISCRETE CHEMICAL WITH ITS OWN
2 SPECIFIC NAME OR IDENTITY, SUCH AS A CAS NUMBER, THAT IS CONTAINED IN AN
3 ADDITIVE.

4 5. "HYDRAULIC FRACTURING FLUID" MEANS THE FLUID USED TO PERFORM A
5 PARTICULAR HYDRAULIC FRACTURING TREATMENT AND INCLUDES THE APPLICABLE
6 BASE FLUID AND ALL ADDITIVES.

7 6. "HYDRAULIC FRACTURING TREATMENT" MEANS THE STIMULATION OF A WELL BY
8 THE FORCEFUL APPLICATION OF HYDRAULIC FRACTURING FLUID INTO THE RELEVANT
9 GEOLOGICAL FORMATION FOR THE PURPOSE OF CREATING FRACTURES IN THE FORMA-
10 TION IN ORDER TO FACILITATE PRODUCTION OF HYDROCARBONS.

11 7. "OPERATOR" MEANS THE PERSON AUTHORIZED TO CONDUCT OPERATIONS ON A
12 WELL.

13 8. "PROPPANT" MEANS SAND OR ANOTHER NATURAL OR MAN-MADE INERT MATERIAL
14 THAT IS USED IN A HYDRAULIC FRACTURING TREATMENT TO PREVENT ARTIFICIALLY
15 CREATED OR ENHANCED FRACTURES FROM CLOSING ONCE THE TREATMENT IS
16 COMPLETED.

17 9. "TRADE SECRET" MEANS ANY CONFIDENTIAL FORMULA, PATTERN, PROCESS,
18 DEVICE, INFORMATION OR COMPILATION OF INFORMATION THAT IS USED IN A
19 PERSON'S BUSINESS AND THAT GIVES THE PERSON AN OPPORTUNITY TO OBTAIN AN
20 ADVANTAGE OVER COMPETITORS THAT DO NOT KNOW OR USE IT.

21 10. "WELL" MEANS A HYDROCARBON PRODUCTION WELL.

22 11. "WELL COMPLETION REPORT" MEANS THE REPORT AN OPERATOR IS REQUIRED
23 TO FILE WITH THE COMMISSION FOLLOWING THE COMPLETION OR RECOMPLETION OF
24 A WELL, IF APPLICABLE.

25 S 23-1503. INFORMATION SUBMITTED CONSIDERED PUBLIC; POSTING ON INTERNET
26 WEBSITE.

27 NOTWITHSTANDING ANY OTHER PROVISIONS OF LAW, UNLESS THE INFORMATION IS
28 OTHERWISE AUTHORIZED TO BE WITHHELD AS A TRADE SECRET PURSUANT TO THIS
29 TITLE, INFORMATION SUBMITTED TO THE DEPARTMENT PURSUANT TO SECTION
30 23-1505 OR 23-1507 OF THIS TITLE IS PUBLIC INFORMATION, AND THE DEPART-
31 MENT SHALL POST THE INFORMATION ON ITS PUBLICLY ACCESSIBLE INTERNET
32 WEBSITE.

33 S 23-1505. SERVICE COMPANY DISCLOSURES.

34 1. A PERSON PERFORMING HYDRAULIC FRACTURING TREATMENTS IN THIS STATE
35 SHALL DISCLOSE TO THE DEPARTMENT AND MAINTAIN AN UPDATED MASTER LIST OF:

36 A. ALL BASE FLUIDS TO BE USED BY THE PERSON DURING ANY HYDRAULIC FRAC-
37 TURING TREATMENT IN THIS STATE;

38 B. ALL ADDITIVES TO BE USED BY THE PERSON DURING ANY HYDRAULIC FRAC-
39 TURING TREATMENT IN THIS STATE; AND

40 C. ALL CHEMICAL CONSTITUENTS TO BE USED BY THE PERSON IN ANY HYDRAULIC
41 FRACTURING TREATMENT IN THIS STATE AND THEIR ASSOCIATED CAS NUMBERS.

42 2. NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH C OF SUBDIVISION ONE OF
43 THIS SECTION, IF THE SPECIFIC IDENTIFY OF ANY CHEMICAL CONSTITUENT TO BE
44 USED IN ANY HYDRAULIC FRACTURING TREATMENT IN THIS STATE IS ENTITLED TO
45 BE WITHHELD AS A TRADE SECRET PURSUANT TO THE CRITERIA PROVIDED BY 42
46 U.S.C. SECTION 11042(A)(2) AND SECTION 23-1511 OF THIS TITLE, THE
47 DEPARTMENT SHALL PROTECT AND HOLD CONFIDENTIAL THE IDENTITY OF THE CHEM-
48 ICAL CONSTITUENT AND ITS ASSOCIATED CAS NUMBER. TO QUALIFY FOR TRADE
49 SECRET PROTECTION, THE PERSON PERFORMING THE HYDRAULIC FRACTURING TREAT-
50 MENT MUST SUBMIT TO THE DEPARTMENT ON AN APPROVED FORM A FORMAL CLAIM OF
51 ENTITLEMENT TO THAT PROTECTION IN THE MANNER REQUIRED BY SECTION 23-1511
52 OF THIS TITLE.

53 3. A PERSON PERFORMING HYDRAULIC FRACTURING TREATMENTS IN THIS STATE
54 SHALL PROVIDE TO THE OPERATOR OF EACH WELL FOR WHICH THE PERSON PERFORMS
55 A HYDRAULIC FRACTURING TREATMENT:

1 A. THE MAXIMUM PUMP PRESSURE MEASURED AT THE SURFACE AND THE TYPE AND
2 VOLUME OF BASE FLUID USED IN EACH STAGE OF THE HYDRAULIC FRACTURING
3 TREATMENT;

4 B. A LIST OF ALL ADDITIVES USED IN THE HYDRAULIC FRACTURING FLUID,
5 SPECIFIED BY GENERAL TYPE, SUCH AS ACID, BIOCIDES, BREAKER, CORROSION
6 INHIBITOR, CROSSLINKER, DEMULSIFIER, FRICTION REDUCER, GEL, IRON
7 CONTROL, OXYGEN SCAVENGER, PH ADJUSTING AGENT, PROPPANT, SCALE INHIBITOR
8 AND SURFACTANT;

9 C. FOR EACH ADDITIVE TYPE LISTED UNDER PARAGRAPH B OF THIS SUBDIVI-
10 SION, THE SPECIFIC NAME OF THE ADDITIVE USED AND THE ACTUAL RATE OR
11 CONCENTRATION OF EACH ADDITIVE, EXPRESSED AS POUNDS PER THOUSAND GALLONS
12 OR GALLONS PER THOUSAND GALLONS AND EXPRESSED AS A PERCENTAGE BY VOLUME
13 OF THE TOTAL HYDRAULIC FRACTURING FLUID USED;

14 D. A LIST OF ALL THE CHEMICAL CONSTITUENTS USED IN THE HYDRAULIC FRACTURING
15 FLUID AND THEIR ASSOCIATED CAS NUMBERS, EXCEPT TO THE EXTENT THAT
16 THE SPECIFIC IDENTITY OF ANY CHEMICAL CONSTITUENT IS ENTITLED TO BE
17 WITHHELD AS A TRADE SECRET AS PROVIDED BY SUBDIVISION TWO OF THIS
18 SECTION; AND

19 E. FOR EACH CHEMICAL CONSTITUENT IDENTIFIED UNDER PARAGRAPH D OF THIS
20 SUBDIVISION, THE ACTUAL RATE OR CONCENTRATION OF EACH CHEMICAL,
21 EXPRESSED AS POUNDS PER THOUSAND GALLONS OR GALLONS PER THOUSAND GALLONS
22 AND EXPRESSED AS A PERCENTAGE BY VOLUME OF THE TOTAL HYDRAULIC FRACTURING
23 FLUID USED.

24 4. THE PROVISIONS OF SUBDIVISIONS TWO AND THREE OF THIS SECTION SHALL
25 NOT BE DEEMED TO AUTHORIZE A PERSON TO WITHHOLD INFORMATION THAT FEDERAL
26 OR STATE LAW, INCLUDING THIS SECTION, REQUIRES TO BE PROVIDED TO ANY
27 HEALTH CARE PROFESSIONAL WHO NEEDS THE INFORMATION FOR DIAGNOSTIC OR
28 TREATMENT PURPOSES. A PERSON PERFORMING A HYDRAULIC FRACTURING TREATMENT
29 SHALL PROVIDE DIRECTLY TO A HEALTH CARE PROFESSIONAL, IMMEDIATELY IN
30 REQUEST, ALL INFORMATION REQUIRED BY THE HEALTH CARE PROFESSIONAL,
31 INCLUDING THE PERCENT BY VOLUME OF THE CHEMICAL CONSTITUENTS OF THE
32 HYDRAULIC FRACTURING FLUID AND THEIR ASSOCIATED CAS NUMBERS. IN A CASE
33 THAT IS NOT A MEDICAL EMERGENCY, THE HEALTH CARE PROFESSIONAL SHALL
34 PROVIDE THE PERSON PERFORMING THE HYDRAULIC FRACTURING TREATMENT A WRIT-
35 TEN STATEMENT OF NEED FOR THE INFORMATION BEFORE THE HEALTH CARE PROFES-
36 SIONAL IS ENTITLED TO RECEIVE THE INFORMATION. IN A MEDICAL EMERGENCY,
37 THE HEALTH CARE PROFESSIONAL SHALL PROVIDE THE PERSON PERFORMING THE
38 HYDRAULIC FRACTURING TREATMENT A WRITTEN STATEMENT OF NEED FOR THE
39 INFORMATION AS SOON AS CIRCUMSTANCES PERMIT.

40 5. A HEALTH CARE PROFESSIONAL TO WHOM INFORMATION IS DISCLOSED PURSU-
41 ANT TO SUBDIVISION FOUR OF THIS SECTION SHALL HOLD THE INFORMATION
42 CONFIDENTIAL, EXCEPT THAT THE HEALTH CARE PROFESSIONAL MAY, FOR DIAGNOS-
43 TIC OR TREATMENT PURPOSES, DISCLOSE SUCH INFORMATION TO ANOTHER HEALTH
44 CARE PROFESSIONAL, A LABORATORY OR A THIRD-PARTY TESTING FIRM. A HEALTH
45 CARE PROFESSIONAL, LABORATORY OR THIRD-PARTY TESTING FIRM TO WHICH
46 INFORMATION IS DISCLOSED BY ANOTHER HEALTH CARE PROFESSIONAL SHALL HOLD
47 SUCH INFORMATION CONFIDENTIAL.

48 S 23-1507. OPERATOR DISCLOSURES.

49 1. FOLLOWING THE COMPLETION OF A HYDRAULIC FRACTURING TREATMENT ON A
50 WELL, THE OPERATOR SHALL INCLUDE IN THE WELL COMPLETION REPORT, ON A
51 FORM APPROVED BY THE DEPARTMENT:

52 A. THE MAXIMUM PUMP PRESSURE MEASURED AT THE SURFACE AND THE TYPE AND
53 VOLUME OF BASE FLUID USED IN EACH STAGE OF THE HYDRAULIC FRACTURING
54 TREATMENT;

55 B. A LIST OF ALL ADDITIVES USED IN THE HYDRAULIC FRACTURING TREATMENT,
56 SPECIFIED BY GENERAL TYPE, SUCH AS ACID, BIOCIDES, BREAKER, CORROSION

1 INHIBITOR, CROSSLINKER, DEMULSIFIER, FRICTION REDUCER, GEL, IRON
2 CONTROL, OXYGEN SCAVENGER, PH ADJUSTING AGENT, PROPPANT, SCALE INHIBITOR
3 AND SURFACTANT;

4 C. FOR EACH ADDITIVE TYPE LISTED UNDER PARAGRAPH B OF THIS SUBDIVI-
5 SION, THE SPECIFIC NAME OF THE ADDITIVE USED AND THE ACTUAL RATE OR
6 CONCENTRATION OF EACH ADDITIVE, EXPRESSED AS POUNDS PER THOUSAND GALLONS
7 OR GALLONS PER THOUSAND GALLONS AND EXPRESSED AS A PERCENTAGE BY VOLUME
8 OF THE TOTAL HYDRAULIC FRACTURING FLUID USED;

9 D. THE INFORMATION PROVIDED PURSUANT TO SUBDIVISION THREE OF SECTION
10 23-1505 OF THIS TITLE TO THE OPERATOR BY THE PERSON WHO PERFORMED THE
11 HYDRAULIC FRACTURING TREATMENT; AND

12 E. IF THE OPERATOR CAUSED ANY ADDITIVES TO BE USED DURING THE HYDRAU-
13 LIC FRACTURING TREATMENT THAT ARE NOT REQUIRED TO BE DISCLOSED PURSUANT
14 TO SUBDIVISION THREE OF SECTION 23-1505 OF THIS TITLE TO THE OPERATOR BY
15 THE PERSON WHO PERFORMED THE HYDRAULIC FRACTURING TREATMENT:

16 (1) A LIST OF THE ADDITIVES USED; AND

17 (2) FOR EACH ADDITIVE LISTED, THE CHEMICAL CONSTITUENTS OF THE ADDI-
18 TIVE AND THEIR ASSOCIATED CAS NUMBERS AND THE ACTUAL RATE OR CONCEN-
19 TRATION OF EACH ADDITIVE OR CHEMICAL, EXPRESSED IN THE MANNER PROVIDED
20 PURSUANT TO SUBDIVISION THREE OF SECTION 23-1505 OF THIS TITLE.

21 2. THE OPERATOR MAY SUPPLY FIELD SERVICE COMPANY TICKETS, EXCLUDING
22 PRICING INFORMATION, AND REPORTS REGARDING THE HYDRAULIC FRACTURING
23 TREATMENT, AS USED IN THE NORMAL COURSE OF BUSINESS, TO SATISFY SOME OR
24 ALL OF THE REQUIREMENTS OF SUBDIVISION ONE OF THIS SECTION.

25 3. NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH E OF SUBDIVISION ONE OF
26 THIS SECTION, IF THE SPECIFIC IDENTITY OF A CHEMICAL CONSTITUENT
27 CONTAINED IN AN ADDITIVE IS ENTITLED TO BE WITHHELD AS A TRADE SECRET
28 PURSUANT TO THE CRITERIA PROVIDED BY 42 U.S.C SECTION 11042(A)(2) AND
29 SECTION 23-1511 OF THIS TITLE, THE DEPARTMENT SHALL PROTECT AND HOLD
30 CONFIDENTIAL THE IDENTITY OF THE CHEMICAL CONSTITUENT AND ITS ASSOCIATED
31 CAS NUMBER. TO QUALIFY FOR TRADE SECRET PROTECTION, THE OPERATOR SHALL
32 SUBMIT TO THE DEPARTMENT ON AN APPROVED FORM A FORMAL CLAIM OF ENTITLE-
33 MENT TO THAT PROTECTION IN THE MANNER REQUIRED BY SECTION 23-1511 OF
34 THIS TITLE.

35 4. THE PROVISIONS OF SUBDIVISION THREE OF THIS SECTION SHALL NOT BE
36 DEEMED TO AUTHORIZE AN OPERATOR TO WITHHOLD INFORMATION THAT FEDERAL OR
37 STATE LAW, INCLUDING THIS SECTION, REQUIRES TO BE PROVIDED TO ANY HEALTH
38 CARE PROFESSIONAL WHO NEEDS THE INFORMATION FOR DIAGNOSTIC OR TREATMENT
39 PROPOSES. AN OPERATOR SHALL PROVIDE DIRECTLY TO A HEALTH CARE PROFES-
40 SIONAL, IMMEDIATELY ON REQUEST, ALL INFORMATION REQUIRED BY THE HEALTH
41 CARE PROFESSIONAL, INCLUDING THE PERCENT BY VOLUME OF THE CHEMICAL
42 CONSTITUENTS OF THE HYDRAULIC FRACTURING FLUID AND THEIR ASSOCIATED CAS
43 NUMBERS. IN A CASE THAT IS NOT A MEDICAL EMERGENCY, THE HEALTH CARE
44 PROFESSIONAL SHALL PROVIDE THE OPERATOR A WRITTEN STATEMENT OF NEED FOR
45 THE INFORMATION BEFORE THE PERSON IS ENTITLED TO RECEIVE THE INFORMA-
46 TION. IN A MEDICAL EMERGENCY, THE HEALTH CARE PROFESSIONAL SHALL PROVIDE
47 THE OPERATOR A WRITTEN STATEMENT OF NEED FOR THE INFORMATION AS SOON AS
48 CIRCUMSTANCES PERMIT.

49 5. A HEALTH CARE PROFESSIONAL TO WHOM INFORMATION IS DISCLOSED PURSU-
50 ANT TO SUBDIVISION FOUR OF THIS SECTION SHALL HOLD THE INFORMATION
51 CONFIDENTIAL, EXCEPT THAT THE HEALTH CARE PROFESSIONAL MAY, FOR DIAGNOS-
52 TIC OR TREATMENT PROPOSES, DISCLOSE SUCH INFORMATION TO ANOTHER HEALTH
53 CARE PROFESSIONAL, A LABORATORY OR A THIRD-PARTY TESTING FIRM. A HEALTH
54 CARE PROFESSIONAL, LABORATORY OR THIRD-PARTY TESTING FIRM TO WHICH SUCH
55 INFORMATION IS DISCLOSED BY ANOTHER HEALTH CARE PROFESSIONAL SHALL HOLD
56 THE INFORMATION CONFIDENTIAL.

1 S 23-1509. USE OF SERVICES OF NONCOMPLYING SERVICE COMPANY PROHIBITED.
2 AN OPERATOR SHALL NOT USE THE SERVICES OF ANOTHER PERSON IN PERFORMING
3 A HYDRAULIC FRACTURING TREATMENT IN THIS STATE UNLESS THE OTHER PERSON
4 IS IN COMPLIANCE WITH THE REQUIREMENTS OF SECTION 23-1505 OF THIS TITLE.
5 S 23-1511. TRADE SECRET PROTECTION.

6 1. A CLAIM OF ENTITLEMENT TO TRADE SECRET PROTECTION PURSUANT TO THIS
7 TITLE SHALL INCLUDE SUBSTANTIATING FACTS IN THE FORM OF THE INFORMATION
8 REQUIRED BY 40 C.F.R. SECTION 350.7(A). IF REQUESTED BY THE TRADE SECRET
9 CLAIMANT, THE DEPARTMENT SHALL TREAT ANY SUCH SUBSTANTIATING FACTS AS
10 CONFIDENTIAL AND SHALL NOT DISCLOSE THEM TO ANY THIRD PARTY OR THE
11 PUBLIC FOR ANY PURPOSE. UNTIL A FINAL DETERMINATION THAT THE INFORMATION
12 IS NOT ENTITLED TO TRADE SECRET PROTECTION IS MADE UNDER THIS SECTION,
13 THE DEPARTMENT SHALL TREAT THE INFORMATION IMPLICATED BY THE CLAIM OF
14 TRADE SECRET ENTITLEMENT AS A CONFIDENTIAL TRADE SECRET, AND THE INFOR-
15 MATION IS NOT SUBJECT TO DISCLOSURE PURSUANT TO ARTICLE SIX OF THE
16 PUBLIC OFFICERS LAW.

17 2. THE COMMISSION SHALL DETERMINE A CLAIM OF ENTITLEMENT TO TRADE
18 SECRET PROTECTION MADE PURSUANT TO THIS TITLE TO BE SUFFICIENT IF THE
19 INFORMATION SET FORTH IN THE CLAIM SUPPORTS ALL THE CONCLUSIONS SET
20 FORTH IN 40 C.F.R. SECTION 350.13(A) AND THE SUPPORTING INFORMATION IS
21 TRUE. IN MAKING A DETERMINATION AS TO A CLAIM, THE DEPARTMENT MAY
22 REQUIRE THE TRADE SECRET CLAIMANT TO SUBMIT ADDITIONAL SUPPLEMENTAL
23 INFORMATION IF THE INFORMATION IS NECESSARY FOR THE DEPARTMENT TO MAKE
24 ITS DETERMINATION UNDER THIS SECTION. IF REQUESTED BY THE TRADE SECRET
25 CLAIMANT, THE DEPARTMENT SHALL TREAT ANY SUPPLEMENTAL INFORMATION
26 PROVIDED AS CONFIDENTIAL AND MAY NOT DISCLOSE THE INFORMATION TO ANY
27 THIRD PARTY OR THE PUBLIC FOR ANY PURPOSE.

28 3. IF THE DEPARTMENT DETERMINES A CLAIM OF ENTITLEMENT TO TRADE SECRET
29 PROTECTION TO BE INSUFFICIENT, THE DEPARTMENT SHALL NOTIFY THE TRADE
30 SECRET CLAIMANT IN WRITING OF THE DETERMINATION BY CERTIFIED MAIL. NOT
31 LATER THAN THE FIFTEENTH DAY AFTER THE DATE THE TRADE SECRET CLAIMANT
32 RECEIVES NOTICE OF THE DETERMINATION, THE CLAIMANT MAY REQUEST ANOTHER
33 REVIEW OF THE CLAIM. THE TRADE SECRET CLAIMANT MUST SHOW GOOD CAUSE FOR
34 THE ADDITIONAL REVIEW. WHAT CONSTITUTES GOOD CAUSE FOR PURPOSES OF THIS
35 SUBDIVISION IS SOLELY WITHIN THE REASONABLE DISCRETION OF THE DEPARTMENT
36 AND MAY INCLUDE THE AVAILABILITY OF NEW SUPPORTING INFORMATION OR A GOOD
37 FAITH ERROR OR OMISSION ON THE PART OF THE TRADE SECRET CLAIMANT IN THE
38 ORIGINAL CLAIM. NOT LATER THAN THE THIRTIETH DAY AFTER THE DATE THE
39 DEPARTMENT RECEIVES THE REQUEST, THE DEPARTMENT SHALL PROVIDE WRITTEN
40 NOTICE TO THE TRADE SECRET CLAIMANT OF THE DEPARTMENT'S ACCEPTANCE OR
41 REJECTION OF THE REQUEST. IF A TRADE SECRET CLAIMANT MAKES A REQUEST FOR
42 REVIEW UNDER THIS SUBDIVISION, THE DEPARTMENT SHALL TREAT THE INFORMA-
43 TION IMPLICATED BY THE CLAIM OF TRADE SECRET ENTITLEMENT AS A CONFIDEN-
44 TIAL TRADE SECRET UNTIL THE DEPARTMENT MAKES A DETERMINATION WITH REGARD
45 TO THE REVIEW REQUEST. IF THE DEPARTMENT REJECTS THE REVIEW REQUEST, THE
46 DEPARTMENT SHALL CONTINUE TO TREAT THE INFORMATION AS A CONFIDENTIAL
47 TRADE SECRET UNTIL THE EARLIER OF THE THIRTIETH DAY AFTER THE DATE THE
48 TRADE SECRET CLAIMANT RECEIVES NOTICE THAT THE DEPARTMENT HAS REJECTED
49 THE REVIEW REQUEST OR THE DATE THE CLAIMANT WITHDRAWS THE DISCLOSURE
50 PURSUANT TO SUBDIVISION FIVE OF THIS SECTION.

51 4. NOT LATER THAN THE THIRTIETH DAY AFTER THE DATE THE TRADE SECRET
52 CLAIMANT RECEIVES NOTICE FROM THE DEPARTMENT THAT THE DEPARTMENT HAS
53 REJECTED THE CLAIM OF ENTITLEMENT TO TRADE SECRET PROTECTION, THE CLAIM-
54 ANT MAY COMMENCE AN ACTION PURSUANT TO ARTICLE SEVENTY-EIGHT OF THE
55 CIVIL PRACTICE LAW AND RULES. IF A TRADE SECRET CLAIMANT COMMENCES SUCH
56 AN ACTION, THE DEPARTMENT SHALL TREAT THE INFORMATION IMPLICATED BY THE

1 CLAIM OF TRADE SECRET ENTITLEMENT AS A CONFIDENTIAL TRADE SECRET UNTIL
2 SUCH ACTION AND ALL APPEALS THEREOF ARE RESOLVED. IF THE ACTION AFFIRMS
3 THE DEPARTMENT'S DETERMINATION OF THE INSUFFICIENCY OF THE CLAIM, THE
4 DEPARTMENT SHALL CONTINUE TO TREAT THE INFORMATION AS A CONFIDENTIAL
5 TRADE SECRET UNTIL THE EARLIER OF THE THIRTIETH DAY AFTER THE DATE THE
6 TRADE SECRET CLAIMANT RECEIVES NOTICE THAT THE ACTION HAS BEEN RESOLVED
7 OR THE DATE THE CLAIMANT WITHDRAWS THE DISCLOSURE PURSUANT TO SUBDIVI-
8 SION FIVE OF THIS SECTION.

9 5. NOT LATER THAN THE THIRTIETH DAY AFTER THE DATE THE TRADE SECRET
10 CLAIMANT RECEIVES NOTIFICATION THAT THE DEPARTMENT HAS REJECTED THE
11 CLAIM OF ENTITLEMENT TO TRADE SECRET PROTECTION OR THE DATE A FINAL
12 JUDGMENT AFFIRMING THE DEPARTMENT'S DETERMINATION OF THE INSUFFICIENCY
13 OF THE CLAIM IS ENTERED, AS APPLICABLE, AND ONLY TO THE EXTENT THAT THE
14 RELEVANT CHEMICAL CONSTITUENT HAS NOT BEEN USED BY OR FOR THE TRADE
15 SECRET CLAIMANT IN ANY HYDRAULIC FRACTURING TREATMENT IN THIS STATE, THE
16 TRADE SECRET CLAIMANT MAY FORMALLY WITHDRAW THE DISCLOSURE OF A CHEMICAL
17 CONSTITUENT BY NOTIFYING THE DEPARTMENT OF ITS INTENT TO WITHDRAW THE
18 DISCLOSURE. IF THE TRADE SECRET CLAIMANT WITHDRAWS THE DISCLOSURE OF A
19 CHEMICAL CONSTITUENT, THE DEPARTMENT SHALL PROTECT AND HOLD CONFIDENTIAL
20 THE IDENTITY OF THE CHEMICAL CONSTITUENT AND ANY CORRESPONDING CAS
21 NUMBER, AND THE INFORMATION IS NOT SUBJECT TO DISCLOSURE PURSUANT TO
22 ARTICLE SIX OF THE PUBLIC OFFICERS LAW. AFTER THE WITHDRAWAL, THE CHEMI-
23 CAL CONSTITUENT SHALL NOT BE USED BY OR FOR THE TRADE SECRET CLAIMANT IN
24 ANY HYDRAULIC FRACTURING TREATMENT IN THIS STATE UNLESS THE TRADE SECRET
25 CLAIMANT SATISFIES THE REQUIREMENTS OF THIS TITLE RELATING TO THE
26 DISCLOSURE OF INFORMATION REGARDING THE CHEMICAL CONSTITUENT.

27 6. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, THE DEPARTMENT
28 MAY:

29 A. DISCLOSE INFORMATION OTHERWISE SUBJECT TO TRADE SECRET PROTECTION
30 UNDER THIS SECTION TO A THIRD-PARTY TESTING FIRM IN CONNECTION WITH THE
31 INVESTIGATION OF A CLAIM OF CONTAMINATION OF SURFACE WATER OR GROUNDWA-
32 TER IF THE FIRM AGREES IN WRITING TO KEEP THE INFORMATION CONFIDENTIAL;
33 AND

34 B. USE THE RESULTS OF A TEST CONDUCTED BY A THIRD-PARTY TESTING FIRM
35 IN CONNECTION WITH AN INVESTIGATION DESCRIBED IN PARAGRAPH A OF THIS
36 SUBDIVISION IN ANY MANNER THE DEPARTMENT CONSIDERS NECESSARY TO PROTECT
37 PUBLIC HEALTH AND THE ENVIRONMENT.

38 TITLE 16

39 REGULATION OF HYDRAULIC FRACTURING

40 SECTION 23-1601. DEFINITIONS.

41 23-1603. CONCESSION OF LIABILITY.

42 23-1605. AGREEMENTS WITH REAL PROPERTY OWNERS.

43 23-1607. DAMAGES.

44 S 23-1601. DEFINITIONS.

45 AS USED IN THIS TITLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

46 1. "HYDRAULIC FRACTURING" MEANS THE USE OF CHEMICALS, WATER AND OTHER
47 SUBSTANCES INJECTED OR PUMPED INTO A NATURAL GAS WELL TO STIMULATE THE
48 EXTRACTION OF NATURAL GAS.

49 2. "PRODUCER" MEANS ANY INDIVIDUAL OR ENTITY ENGAGED IN THE DRILLING
50 FOR OR EXTRACTION OF NATURAL GAS THROUGH THE UTILIZATION OF HYDRAULIC
51 FRACTURING.

52 S 23-1603. CONCESSION OF LIABILITY.

53 1. EVERY PRODUCER, PRIOR TO THE ISSUANCE OF ANY PERMIT, PURSUANT TO
54 THIS ARTICLE, TO ENGAGE IN HYDRAULIC FRACTURING, SHALL EXECUTE AND
55 DELIVER TO THE DEPARTMENT A CONCESSION OF LIABILITY AND WAIVER OF ALL
56 DEFENSES ARISING OUT OF ANY CAUSE OF ACTION RELATED TO PROPERTY,

1 PERSONAL AND WRONGFUL DEATH DAMAGES ALLEGED TO HAVE BEEN CAUSED BY
2 HYDRAULIC FRACTURING CONDUCTED BY SUCH PRODUCER. SUCH CONCESSION AND
3 WAIVER SHALL BE EXECUTED IN SUCH FORM AND MANNER AS SHALL BE DETERMINED
4 BY THE ATTORNEY GENERAL, AND SHALL PROVIDE FOR STRICT LIABILITY TO THE
5 PEOPLE OF THE STATE OF NEW YORK AND EVERY PERSON WITHIN THE STATE FOR
6 ANY AND ALL DAMAGES ARISING FROM THE CONDUCTING OF HYDRAULIC FRACTURING
7 WITHIN THIS STATE.

8 2. EVERY PRODUCER WHICH ENTERS INTO AN AGREEMENT WITH AN OWNER OF REAL
9 PROPERTY IN THIS STATE WHICH PROVIDES FOR THE LEASE, LICENSE OR GRANT
10 OF AUTHORITY TO CONDUCT HYDRAULIC FRACTURING UPON SUCH REAL PROPERTY,
11 SHALL INCLUDE A COPY OF ITS CONCESSION OF LIABILITY EXECUTED PURSUANT
12 TO SUBDIVISION ONE OF THIS SECTION AND A SIMILAR CONCESSION OF LIABILITY
13 EXECUTED IN FAVOR OF THE REAL PROPERTY OWNER. SUCH CONCESSION OF LIABIL-
14 ITY IN FAVOR OF A REAL PROPERTY OWNER SHALL BE IN SUCH FORM AS SHALL BE
15 DETERMINED BY THE ATTORNEY GENERAL.

16 S 23-1605. AGREEMENTS WITH REAL PROPERTY OWNERS.

17 1. NO AGREEMENT FOR THE LEASE, LICENSE OR GRANT OF AUTHORITY TO
18 CONDUCT HYDRAULIC FRACTURING UPON REAL PROPERTY IN THIS STATE, SHALL BE
19 EXECUTED UNTIL THREE INDEPENDENT APPRAISALS OF THE VALUE OF SUCH REAL
20 PROPERTY HAVE BEEN CONDUCTED. SUCH APPRAISALS SHALL BE CONDUCTED AT THE
21 EXPENSE OF THE PRODUCER BY APPRAISERS SELECTED BY THE REAL PROPERTY
22 OWNER. UPON COMPLETION OF SUCH APPRAISALS A COPY OF EACH APPRAISAL SHALL
23 BE PROVIDED TO THE REAL PROPERTY OWNER, THE PRODUCER AND THE DEPARTMENT,
24 AND SHALL BE ATTACHED TO EVERY AGREEMENT PROVIDING FOR HYDRAULIC FRAC-
25 TURING UPON SUCH REAL PROPERTY.

26 2. NO AGREEMENT FOR THE LEASE, LICENSE OR GRANT OF AUTHORITY TO
27 CONDUCT HYDRAULIC FRACTURING UPON REAL PROPERTY IN THIS STATE, SHALL BE
28 EXECUTED UNTIL THE DEPARTMENT SHALL HAVE CONDUCTED WATER AND SOIL
29 CONTAMINATION TESTING UPON SUCH REAL PROPERTY FOR THE PRESENCE OF
30 HYDRAULIC FRACTURING FLUIDS. A REPORT OF THE RESULTS OF SUCH TESTING
31 SHALL BE PROVIDED TO BOTH THE REAL PROPERTY OWNER AND THE PRODUCER.

32 3. EACH PRODUCER SHALL INCLUDE IN EVERY AGREEMENT IT ENTERS INTO WITH
33 THE OWNER OF REAL PROPERTY IN THIS STATE FOR THE LEASE, LICENSE OR GRANT
34 OF AUTHORITY TO CONDUCT HYDRAULIC FRACTURING UPON SUCH REAL PROPERTY:

35 A. A STATEMENT OF THE FINANCIAL, HEALTH AND ENVIRONMENTAL RISKS POSED
36 BY OR POTENTIALLY POSED BY CONDUCT OF HYDRAULIC FRACTURING. SUCH STATE-
37 MENT SHALL BE JOINTLY DEVELOPED AND PERIODICALLY UPDATED BY THE COMMIS-
38 SIONER, THE ATTORNEY GENERAL AND THE COMMISSIONER OF HEALTH;

39 B. A STATEMENT OF THE RISKS OF GROUND SOIL AND GROUND WATER CONTAM-
40 INATION POSED BY OR POTENTIALLY POSED BY THE CONDUCT OF HYDRAULIC FRAC-
41 TURING;

42 C. A STATEMENT OF THE HEALTH RISKS POSED BY SPILLS OF AND CONTAM-
43 INATION BY HYDRAULIC FRACTURING FLUIDS; AND

44 D. A STATEMENT OF THE PRODUCER'S STRICT LIABILITY FOR ANY AND ALL
45 DAMAGES RESULTING FROM THE CONDUCTING OF HYDRAULIC FRACTURING, AND THE
46 DAMAGES THAT WILL BE AWARDED THEREFOR PURSUANT TO THIS TITLE.

47 S 23-1607. DAMAGES.

48 1. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, UPON
49 THE CONTAMINATION OF GROUND SOIL AND/OR GROUND WATER BY ANY PRODUCER,
50 SUCH PRODUCER SHALL BE LIABLE FOR THE FOLLOWING DAMAGES:

51 A. TO THE AFFECTED REAL PROPERTY OWNER, AN AMOUNT EQUAL TO ONE HUNDRED
52 FIFTY PERCENT OF THE REAL PROPERTY VALUE, AS DETERMINED PURSUANT TO
53 SUBDIVISION ONE OF SECTION 23-1605 OF THIS TITLE, AND THE FULL COST OF
54 REMEDIATING THE CONTAMINATED GROUND SOIL AND GROUND WATER; AND

55 B. TO ANY PERSON AFFECTED BY SUCH CONTAMINATION, AN AMOUNT EQUAL TO
56 THE COST OF THE DIAGNOSIS, TREATMENT, MONITORING AND CARE OF SUCH

1 PERSON, FOR LIFE, RELATED TO ANY DISEASE OR CONDITION ARISING OUT OF
2 SUCH CONTAMINATION.

3 2. UNDER NO CIRCUMSTANCES SHALL ANY AMOUNT OF DAMAGES AWARDED OR PAID
4 PURSUANT TO THIS SECTION BE DEEMED TO BE INCOME TO ANY PERSON. ALL SUCH
5 DAMAGES SHALL BE REIMBURSEMENT FOR LOSSES ACTUALLY INCURRED BY THE
6 RECIPIENT THEREOF.

7 S 2. Subdivision 9 of section 8-0109 of the environmental conservation
8 law, as added by chapter 219 of the laws of 1990, is amended to read as
9 follows:

10 9. An environmental impact statement shall be prepared for any action
11 found to have a significant impact on the special groundwater protection
12 area, as defined in section 55-0107 of this chapter OR FOR ANY NATURAL
13 GAS OR OIL DRILLING INVOLVING THE USE OF HYDRAULIC FRACTURING FLUID.
14 Such statement shall meet the requirements of the most detailed environ-
15 mental impact statement required by this section or by any such rule or
16 regulation promulgated pursuant to this section.

17 S 3. Subdivision 2 of section 23-0303 of the environmental conserva-
18 tion law is REPEALED, and a new subdivision 2 is added to read as
19 follows:

20 2. FOR THE PURPOSES STATED HEREIN, THIS SECTION SHALL SUPERSEDE ALL
21 OTHER STATE AND LOCAL LAWS RELATING TO THE OIL, GAS AND SOLUTION MINING
22 INDUSTRIES; PROVIDED, HOWEVER, THAT NOTHING IN THIS SECTION SHALL BE
23 CONSTRUED TO PREVENT ANY LOCAL GOVERNMENT FROM:

24 A. ENACTING OR ENFORCING LOCAL LAWS OR ORDINANCES OF GENERAL APPLICA-
25 BILITY, EXCEPT THAT SUCH LOCAL LAWS OR ORDINANCES SHALL NOT REGULATE
26 OIL, GAS AND SOLUTION MINING REGULATED BY STATE STATUTE, REGULATION OR
27 PERMIT; OR

28 B. ENACTING OR ENFORCING LOCAL ZONING ORDINANCES OR LAWS WHICH DETER-
29 MINE PERMISSIBLE USES IN ZONING DISTRICTS. WHERE OIL, GAS AND SOLUTION
30 MINING IS DESIGNATED A PERMISSIBLE USE IN A ZONING DISTRICT AND ALLOWED
31 BY SPECIAL USE PERMIT, CONDITIONS PLACED ON SUCH SPECIAL USE PERMITS
32 SHALL BE LIMITED TO THE FOLLOWING:

33 (I) INGRESS AND EGRESS TO PUBLIC THOROUGHFARES CONTROLLED BY THE LOCAL
34 GOVERNMENT;

35 (II) ROUTING OF DRILLING AND DRILLING-RELATED TRANSPORT VEHICLES ON
36 ROADS CONTROLLED BY THE LOCAL GOVERNMENT;

37 (III) REQUIREMENTS AND CONDITIONS AS SPECIFIED IN THE PERMIT ISSUED BY
38 THE DEPARTMENT CONCERNING SETBACK FROM PROPERTY BOUNDARIES AND PUBLIC
39 THOROUGHFARE RIGHTS-OF-WAY, NATURAL OR MAN-MADE BARRIERS TO RESTRICT
40 ACCESS, IF REQUIRED, DUST CONTROL AND HOURS OF OPERATION; AND

41 (IV) CONFORMANCE TO ROAD CONSTRUCTION STANDARDS AS MAY BE OTHERWISE
42 PROVIDED FOR BY LOCAL LAW; OR

43 C. ENACTING OR ENFORCING LOCAL LAWS OR ORDINANCES REGULATING OIL, GAS
44 AND SOLUTION MINING NOT REQUIRED TO BE PERMITTED BY THE STATE.

45 S 4. This act shall take effect on the first of June next succeeding
46 the date on which it shall have become a law; provided, that, effective
47 immediately, any actions necessary to implement the provisions of this
48 act on its effective date are authorized and directed to be completed on
49 or before such date.