

5879--A

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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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.

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

LBD13392-04-1

1 3. "CHEMICAL ABSTRACTS SERVICE" OR "CAS" MEANS THE CHEMICAL REGISTRY
2 THAT IS THE AUTHORITATIVE COLLECTION OF DISCLOSED CHEMICAL SUBSTANCE
3 INFORMATION.

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

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

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

14 7. "OPERATOR" MEANS THE PERSON OR ENTITY AUTHORIZED TO CONDUCT OPER-
15 ATIONS ON A WELL.

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

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

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

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

29 S 23-1503. INFORMATION SUBMITTED CONSIDERED PUBLIC; POSTING ON INTERNET
30 WEBSITE.

31 NOTWITHSTANDING ANY OTHER PROVISIONS OF LAW, UNLESS THE INFORMATION IS
32 OTHERWISE AUTHORIZED TO BE WITHHELD AS A TRADE SECRET PURSUANT TO THIS
33 TITLE, INFORMATION SUBMITTED TO THE DEPARTMENT PURSUANT TO SECTION
34 23-1505 OR 23-1507 OF THIS TITLE IS PUBLIC INFORMATION, AND THE DEPART-
35 MENT SHALL POST THE INFORMATION ON ITS PUBLICLY ACCESSIBLE INTERNET
36 WEBSITE.

37 S 23-1505. SERVICE COMPANY DISCLOSURES.

38 1. AN OPERATOR WHICH AUTHORIZES ANY PERSON OR ENTITY TO CONDUCT
39 HYDRAULIC FRACTURING TREATMENTS UPON ANY OF SUCH OPERATOR'S WELLS IN
40 THIS STATE SHALL DISCLOSE TO THE DEPARTMENT AND MAINTAIN AN UPDATED
41 MASTER LIST OF:

42 A. ALL BASE FLUIDS TO BE USED BY SUCH PERSON OR ENTITY DURING ANY
43 HYDRAULIC FRACTURING TREATMENT IN THIS STATE;

44 B. ALL ADDITIVES TO BE USED BY SUCH PERSON OR ENTITY DURING ANY
45 HYDRAULIC FRACTURING TREATMENT IN THIS STATE; AND

46 C. ALL CHEMICAL CONSTITUENTS TO BE USED BY SUCH PERSON OR ENTITY IN
47 ANY HYDRAULIC FRACTURING TREATMENT IN THIS STATE AND THEIR ASSOCIATED
48 CAS NUMBERS.

49 2. NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH C OF SUBDIVISION ONE OF
50 THIS SECTION, IF THE SPECIFIC IDENTIFY OF ANY CHEMICAL CONSTITUENT TO BE
51 USED IN ANY HYDRAULIC FRACTURING TREATMENT IN THIS STATE IS ENTITLED TO
52 BE WITHHELD AS A TRADE SECRET PURSUANT TO THE CRITERIA PROVIDED BY 42
53 U.S.C. SECTION 11042(A)(2) AND SECTION 23-1511 OF THIS TITLE, THE
54 DEPARTMENT SHALL PROTECT AND HOLD CONFIDENTIAL THE IDENTITY OF THE CHEM-
55 ICAL CONSTITUENT AND ITS ASSOCIATED CAS NUMBER. TO QUALIFY FOR TRADE
56 SECRET PROTECTION, THE PERSON PERFORMING THE HYDRAULIC FRACTURING TREAT-

1 MENT MUST SUBMIT TO THE DEPARTMENT ON AN APPROVED FORM A FORMAL CLAIM OF
2 ENTITLEMENT TO THAT PROTECTION IN THE MANNER REQUIRED BY SECTION 23-1511
3 OF THIS TITLE.

4 3. A PERSON OR ENTITY PERFORMING HYDRAULIC FRACTURING TREATMENTS IN
5 THIS STATE SHALL PROVIDE TO THE OPERATOR OF EACH WELL FOR WHICH THE
6 PERSON OR ENTITY PERFORMS A HYDRAULIC FRACTURING TREATMENT:

7 A. THE MAXIMUM PUMP PRESSURE MEASURED AT THE SURFACE AND THE TYPE AND
8 VOLUME OF BASE FLUID USED IN EACH STAGE OF THE HYDRAULIC FRACTURING
9 TREATMENT;

10 B. A LIST OF ALL ADDITIVES USED IN THE HYDRAULIC FRACTURING FLUID,
11 SPECIFIED BY GENERAL TYPE, SUCH AS ACID, BIOCIDES, BREAKERS, CORROSION
12 INHIBITORS, CROSSLINKERS, DEMULSIFIERS, FRICTION REDUCERS, GELS, IRON
13 CONTROL, OXYGEN SCAVENGERS, PH ADJUSTING AGENTS, PROPPANTS, SCALE INHIBITORS
14 AND SURFACTANTS;

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

20 D. A LIST OF ALL THE CHEMICAL CONSTITUENTS USED IN THE HYDRAULIC FRACTUR-
21 ING FLUID AND THEIR ASSOCIATED CAS NUMBERS, EXCEPT TO THE EXTENT THAT
22 THE SPECIFIC IDENTITY OF ANY CHEMICAL CONSTITUENT IS ENTITLED TO BE
23 WITHHELD AS A TRADE SECRET AS PROVIDED BY SUBDIVISION TWO OF THIS
24 SECTION; AND

25 E. FOR EACH CHEMICAL CONSTITUENT IDENTIFIED UNDER PARAGRAPH D OF THIS
26 SUBDIVISION, THE ACTUAL RATE OR CONCENTRATION OF EACH CHEMICAL,
27 EXPRESSED AS POUNDS PER THOUSAND GALLONS OR GALLONS PER THOUSAND GALLONS
28 AND EXPRESSED AS A PERCENTAGE BY VOLUME OF THE TOTAL HYDRAULIC FRACTUR-
29 ING FLUID USED.

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

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

55 S 23-1507. OPERATOR DISCLOSURES.

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

4 A. THE MAXIMUM PUMP PRESSURE MEASURED AT THE SURFACE AND THE TYPE AND
5 VOLUME OF BASE FLUID USED IN EACH STAGE OF THE HYDRAULIC FRACTURING
6 TREATMENT;

7 B. A LIST OF ALL ADDITIVES USED IN THE HYDRAULIC FRACTURING TREATMENT,
8 SPECIFIED BY GENERAL TYPE, SUCH AS ACID, BIOCIDES, BREAKERS, CORROSION
9 INHIBITORS, CROSSLINKERS, DEMULSIFIERS, FRICTION REDUCERS, GELS, IRON
10 CONTROL, OXYGEN SCAVENGERS, PH ADJUSTING AGENTS, PROPPANTS, SCALE INHIBITORS
11 AND SURFACTANTS;

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

17 D. THE INFORMATION PROVIDED PURSUANT TO SUBDIVISION THREE OF SECTION
18 23-1505 OF THIS TITLE TO THE OPERATOR BY THE PERSON OR ENTITY WHO
19 PERFORMED THE HYDRAULIC FRACTURING TREATMENT; AND

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

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

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

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

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

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

1 5. A HEALTH CARE PROFESSIONAL TO WHOM INFORMATION IS DISCLOSED PURSU-
2 ANT TO SUBDIVISION FOUR OF THIS SECTION SHALL HOLD THE INFORMATION
3 CONFIDENTIAL, EXCEPT THAT THE HEALTH CARE PROFESSIONAL MAY, FOR DIAGNOS-
4 TIC OR TREATMENT PROPOSES, DISCLOSE SUCH INFORMATION TO ANOTHER HEALTH
5 CARE PROFESSIONAL, A LABORATORY OR A THIRD-PARTY TESTING FIRM. A HEALTH
6 CARE PROFESSIONAL, LABORATORY OR THIRD-PARTY TESTING FIRM TO WHICH SUCH
7 INFORMATION IS DISCLOSED BY ANOTHER HEALTH CARE PROFESSIONAL SHALL HOLD
8 THE INFORMATION CONFIDENTIAL.

9 S 23-1509. USE OF SERVICES OF NONCOMPLYING SERVICE COMPANY PROHIBITED.

10 AN OPERATOR SHALL NOT USE THE SERVICES OF ANOTHER PERSON OR ENTITY IN
11 PERFORMING A HYDRAULIC FRACTURING TREATMENT IN THIS STATE UNLESS THE
12 OTHER PERSON OR ENTITY IS IN COMPLIANCE WITH THE REQUIREMENTS OF SECTION
13 23-1505 OF THIS TITLE.

14 S 23-1511. TRADE SECRET PROTECTION.

15 1. A CLAIM OF ENTITLEMENT TO TRADE SECRET PROTECTION PURSUANT TO THIS
16 TITLE SHALL INCLUDE SUBSTANTIATING FACTS IN THE FORM OF THE INFORMATION
17 REQUIRED BY 40 C.F.R. SECTION 350.7(A). IF REQUESTED BY THE TRADE SECRET
18 CLAIMANT, THE DEPARTMENT SHALL TREAT ANY SUCH SUBSTANTIATING FACTS AS
19 CONFIDENTIAL AND SHALL NOT DISCLOSE THEM TO ANY THIRD PARTY OR THE
20 PUBLIC FOR ANY PURPOSE. UNTIL A FINAL DETERMINATION THAT THE INFORMATION
21 IS NOT ENTITLED TO TRADE SECRET PROTECTION IS MADE UNDER THIS SECTION,
22 THE DEPARTMENT SHALL TREAT THE INFORMATION IMPLICATED BY THE CLAIM OF
23 TRADE SECRET ENTITLEMENT AS A CONFIDENTIAL TRADE SECRET, AND THE INFOR-
24 MATION IS NOT SUBJECT TO DISCLOSURE PURSUANT TO ARTICLE SIX OF THE
25 PUBLIC OFFICERS LAW.

26 2. THE COMMISSION SHALL DETERMINE A CLAIM OF ENTITLEMENT TO TRADE
27 SECRET PROTECTION MADE PURSUANT TO THIS TITLE TO BE SUFFICIENT IF THE
28 INFORMATION SET FORTH IN THE CLAIM SUPPORTS ALL THE CONCLUSIONS SET
29 FORTH IN 40 C.F.R. SECTION 350.13(A) AND THE SUPPORTING INFORMATION IS
30 TRUE. IN MAKING A DETERMINATION AS TO A CLAIM, THE DEPARTMENT MAY
31 REQUIRE THE TRADE SECRET CLAIMANT TO SUBMIT ADDITIONAL SUPPLEMENTAL
32 INFORMATION IF THE INFORMATION IS NECESSARY FOR THE DEPARTMENT TO MAKE
33 ITS DETERMINATION UNDER THIS SECTION. IF REQUESTED BY THE TRADE SECRET
34 CLAIMANT, THE DEPARTMENT SHALL TREAT ANY SUPPLEMENTAL INFORMATION
35 PROVIDED AS CONFIDENTIAL AND MAY NOT DISCLOSE THE INFORMATION TO ANY
36 THIRD PARTY OR THE PUBLIC FOR ANY PURPOSE.

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

1 TRADE SECRET CLAIMANT RECEIVES NOTICE THAT THE DEPARTMENT HAS REJECTED
2 THE REVIEW REQUEST OR THE DATE THE CLAIMANT WITHDRAWS THE DISCLOSURE
3 PURSUANT TO SUBDIVISION FIVE OF THIS SECTION.

4 4. NOT LATER THAN THE THIRTIETH DAY AFTER THE DATE THE TRADE SECRET
5 CLAIMANT RECEIVES NOTICE FROM THE DEPARTMENT THAT THE DEPARTMENT HAS
6 REJECTED THE CLAIM OF ENTITLEMENT TO TRADE SECRET PROTECTION, THE CLAIM-
7 ANT MAY COMMENCE AN ACTION PURSUANT TO ARTICLE SEVENTY-EIGHT OF THE
8 CIVIL PRACTICE LAW AND RULES. IF A TRADE SECRET CLAIMANT COMMENCES SUCH
9 AN ACTION, THE DEPARTMENT SHALL TREAT THE INFORMATION IMPLICATED BY THE
10 CLAIM OF TRADE SECRET ENTITLEMENT AS A CONFIDENTIAL TRADE SECRET UNTIL
11 SUCH ACTION AND ALL APPEALS THEREOF ARE RESOLVED. IF THE ACTION AFFIRMS
12 THE DEPARTMENT'S DETERMINATION OF THE INSUFFICIENCY OF THE CLAIM, THE
13 DEPARTMENT SHALL CONTINUE TO TREAT THE INFORMATION AS A CONFIDENTIAL
14 TRADE SECRET UNTIL THE EARLIER OF THE THIRTIETH DAY AFTER THE DATE THE
15 TRADE SECRET CLAIMANT RECEIVES NOTICE THAT THE ACTION HAS BEEN RESOLVED
16 OR THE DATE THE CLAIMANT WITHDRAWS THE DISCLOSURE PURSUANT TO SUBDIVI-
17 SION FIVE OF THIS SECTION.

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

36 6. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, THE DEPARTMENT
37 MAY:

38 A. DISCLOSE INFORMATION OTHERWISE SUBJECT TO TRADE SECRET PROTECTION
39 UNDER THIS SECTION TO A THIRD-PARTY TESTING FIRM IN CONNECTION WITH THE
40 INVESTIGATION OF A CLAIM OF CONTAMINATION OF SURFACE WATER OR GROUNDWA-
41 TER IF THE FIRM AGREES IN WRITING TO KEEP THE INFORMATION CONFIDENTIAL;
42 AND

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

47 TITLE 16

48 REGULATION OF HYDRAULIC FRACTURING

49 SECTION 23-1601. DEFINITIONS.

50 23-1603. CONCESSION OF LIABILITY.

51 23-1605. AGREEMENTS WITH REAL PROPERTY OWNERS.

52 23-1607. DAMAGES.

53 S 23-1601. DEFINITIONS.

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

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

4 2. "PRODUCER" MEANS ANY INDIVIDUAL OR ENTITY ENGAGED IN THE DRILLING
5 FOR OR EXTRACTION OF NATURAL GAS THROUGH THE UTILIZATION OF HYDRAULIC
6 FRACTURING.

7 S 23-1603. CONCESSION OF LIABILITY.

8 1. EVERY PRODUCER, PRIOR TO THE ISSUANCE OF ANY PERMIT, PURSUANT TO
9 THIS ARTICLE, TO ENGAGE IN HYDRAULIC FRACTURING, SHALL EXECUTE AND
10 DELIVER TO THE DEPARTMENT A CONCESSION OF LIABILITY AND WAIVER OF ALL
11 DEFENSES ARISING OUT OF ANY CAUSE OF ACTION RELATED TO PROPERTY,
12 PERSONAL AND WRONGFUL DEATH DAMAGES ALLEGED TO HAVE BEEN CAUSED BY
13 HYDRAULIC FRACTURING CONDUCTED BY SUCH PRODUCER. SUCH CONCESSION AND
14 WAIVER SHALL BE EXECUTED IN SUCH FORM AND MANNER AS SHALL BE DETERMINED
15 BY THE ATTORNEY GENERAL, AND SHALL PROVIDE FOR STRICT LIABILITY TO THE
16 PEOPLE OF THE STATE OF NEW YORK AND EVERY PERSON WITHIN THE STATE FOR
17 ANY AND ALL DAMAGES ARISING FROM THE CONDUCTING OF HYDRAULIC FRACTURING
18 WITHIN THIS STATE.

19 2. EVERY PRODUCER WHICH ENTERS INTO AN AGREEMENT WITH AN OWNER OF REAL
20 PROPERTY IN THIS STATE WHICH PROVIDES FOR THE LEASE, LICENSE OR GRANT
21 OF AUTHORITY TO CONDUCT HYDRAULIC FRACTURING UPON SUCH REAL PROPERTY,
22 SHALL INCLUDE A COPY OF ITS CONCESSION OF LIABILITY EXECUTED PURSUANT
23 TO SUBDIVISION ONE OF THIS SECTION AND A SIMILAR CONCESSION OF LIABILITY
24 EXECUTED IN FAVOR OF THE REAL PROPERTY OWNER. SUCH CONCESSION OF LIABIL-
25 ITY IN FAVOR OF A REAL PROPERTY OWNER SHALL BE IN SUCH FORM AS SHALL BE
26 DETERMINED BY THE ATTORNEY GENERAL.

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

28 1. NO AGREEMENT FOR THE LEASE, LICENSE OR GRANT OF AUTHORITY TO
29 CONDUCT HYDRAULIC FRACTURING UPON REAL PROPERTY IN THIS STATE, SHALL BE
30 EXECUTED UNTIL THREE INDEPENDENT APPRAISALS OF THE VALUE OF SUCH REAL
31 PROPERTY HAVE BEEN CONDUCTED. SUCH APPRAISALS SHALL BE CONDUCTED AT THE
32 EXPENSE OF THE PRODUCER BY APPRAISERS SELECTED BY THE REAL PROPERTY
33 OWNER. UPON COMPLETION OF SUCH APPRAISALS A COPY OF EACH APPRAISAL SHALL
34 BE PROVIDED TO THE REAL PROPERTY OWNER, THE PRODUCER AND THE DEPARTMENT,
35 AND SHALL BE ATTACHED TO EVERY AGREEMENT PROVIDING FOR HYDRAULIC FRAC-
36 TURING UPON SUCH REAL PROPERTY.

37 2. NO AGREEMENT FOR THE LEASE, LICENSE OR GRANT OF AUTHORITY TO
38 CONDUCT HYDRAULIC FRACTURING UPON REAL PROPERTY IN THIS STATE, SHALL BE
39 EXECUTED UNTIL THE DEPARTMENT SHALL HAVE CONDUCTED WATER AND SOIL
40 CONTAMINATION TESTING UPON SUCH REAL PROPERTY FOR THE PRESENCE OF
41 HYDRAULIC FRACTURING FLUIDS. A REPORT OF THE RESULTS OF SUCH TESTING
42 SHALL BE PROVIDED TO BOTH THE REAL PROPERTY OWNER AND THE PRODUCER.

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

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

50 B. A STATEMENT OF THE RISKS OF GROUND SOIL AND GROUND WATER CONTAM-
51 INATION POSED BY OR POTENTIALLY POSED BY THE CONDUCT OF HYDRAULIC FRAC-
52 TURING;

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

1 D. A STATEMENT OF THE PRODUCER'S STRICT LIABILITY FOR ANY AND ALL
2 DAMAGES RESULTING FROM THE CONDUCTING OF HYDRAULIC FRACTURING, AND THE
3 DAMAGES THAT WILL BE AWARDED THEREFOR PURSUANT TO THIS TITLE.
4 S 23-1607. DAMAGES.

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

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

12 B. TO ANY PERSON AFFECTED BY SUCH CONTAMINATION, AN AMOUNT EQUAL TO
13 THE COST OF THE DIAGNOSIS, TREATMENT, MONITORING AND CARE OF SUCH
14 PERSON, FOR LIFE, RELATED TO ANY DISEASE OR CONDITION ARISING OUT OF
15 SUCH CONTAMINATION.

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

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

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

30 S 3. Subdivision 2 of section 23-0303 of the environmental conserva-
31 tion law is REPEALED and a new subdivision 2 is added to read as
32 follows:

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

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

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

46 (I) INGRESS AND EGRESS TO PUBLIC THOROUGHFARES CONTROLLED BY THE LOCAL
47 GOVERNMENT;

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

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

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

1 C. ENACTING OR ENFORCING LOCAL LAWS OR ORDINANCES REGULATING OIL, GAS
2 AND SOLUTION MINING NOT REQUIRED TO BE PERMITTED BY THE STATE.
3 S 4. This act shall take effect on the first of June next succeeding
4 the date on which it shall have become a law; provided, that the
5 provisions of title 16 of article 23 of the environmental conservation
6 law, as added by section one of this act, shall apply to every lease,
7 license and grant of authority to conduct hydraulic fracturing which is
8 in effect on or after such effective date; and provided, further that,
9 effective immediately, any actions necessary to implement the provisions
10 of this act on its effective date are authorized and directed to be
11 completed on or before such date.