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

893

2011-2012 Regular Sessions

I N S E N A T E

(PREFILED)

January 5, 2011

Introduced by Sen. KRUEGER -- 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 natural gas exploration and extraction liability act of 2011

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

Section 1. Short title. This act shall be known and may be cited as the natural gas exploration and extraction liability act of 2011.

S 2. Legislative findings. 1. The legislature finds that the process used to stimulate natural gas extraction referred to as high volume hydraulic fracturing, also known as "hydro fracturing" and "fracking," utilizes components that are often toxic, that are non-biodegradable, and that are virtually impossible to remove once they enter the natural environment. Among the chemicals used are volatile organic compounds such as benzene, toluene, ethyl benzene, and xylene. Many of the chemicals used in this process are federally listed hazardous substances, and there is only minimal data about the rest. Many of these hazardous chemicals are known carcinogens and others can cause other life threatening illnesses. As a result of the air and water pollution caused by such exploration and extraction operations people are exposed to endocrine disrupting agents that can cause kidney, liver, heart, blood, and brain damage.

2. High volume hydraulic fracturing requires the construction of large well pads (up to five acres) to support the large number of trucks delivering the fracking chemicals, water trucks, pump trucks and other equipment. Such massive scale industrial activity causes excessive noise, disturbs underground water formations, vibrates surrounding structures, and can result in earthquakes. Millions of gallons of this chemically-laced water returns to the surface laden with salt, heavy metals and radioactive elements. This wastewater is often stored in open pits until transported for ultimate disposal. Wildlife and farm animals that have mistaken these pits for freshwater ponds have been killed. Chemicals may evaporate from these pits, contributing to air pollution.

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

Leaks and spills of fracking chemicals from the trucks and waste pits cause contamination of surface waters. The remainder of the fracking fluid remains underground with the possibility of migrating or seeping through fractures in the underground formations, cracks in the well-bore casing, and through abandoned wells to pollute groundwater.

3. Widespread use of high volume hydraulic fracturing diminishes or destroys the natural beauty of the land, depletes or interferes with the natural sources of water used for domestic and agricultural purposes, disrupts the natural habitat of wildlife, imposes unaffordable costs on municipalities and reduces property values thereby harming both homeowners and the municipalities in which such activities are located.

4. Tourism is a major industry for much of the Marcellus Shale area. The construction and operation of natural gas wells in such area will have a long term negative effect upon such industry that will result in lost profits and diminished business value and lost revenue to the municipalities where such tourism ventures are located.

5. The natural gas industry has embarked upon the procurement in unprecedented numbers of mineral leases from private landowners across a broad section of New York state that overlays the "Marcellus Shale" geological structure for the purpose of utilizing high volume hydraulic fracturing to extract and mine natural gas from the shale. It is not unusual for 40% or more of the land in such areas to be currently under lease (although such land is owned by a small minority of landowners in the region) and, accordingly, the industry is poised to secure billions of dollars in profits from such extraction while potentially causing an even greater amount of damage to non-participating land owners and renters, as well as to municipalities and even visitors to the area.

6. The legislature further finds that the use of high volume hydraulic fracturing techniques constitutes a hazardous practice that will result in large scale damages to innocent parties.

7. The legislature further finds that landowners who, subsequent to the effective date of this act, enter into or extend leases with natural gas exploration, operation, transportation or extraction entities share responsibility with such entities for all damages shown to be caused by such activities and that all responsible parties be held strictly liable for damages resulting from such activities.

S 3. Article 23 of the environmental conservation law is amended by adding a new title 29 to read as follows:

TITLE 29

NATURAL GAS EXPORTATION AND EXTRACTION LIABILITY

SECTION 23-2901. DEFINITIONS.
23-2903. STRICT LIABILITY.
23-2905. JOINT AND SEVERAL LIABILITY.
23-2907. STANDING OF MUNICIPAL CORPORATIONS.
23-2909. ELEMENTS OF DAMAGES; TREBLE DAMAGES.
23-2911. ATTORNEY FEES.

S 23-2901. DEFINITIONS.

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

1. "HIGH VOLUME HYDRAULIC FRACTURING" SHALL MEAN THE USE OF CHEMICALS, WATER AND OTHER SUBSTANCES INJECTED OR PUMPED INTO A NATURAL GAS WELL TO STIMULATE PRODUCTION OF THE WELL IN VOLUMES IN EXCESS OF ONE HUNDRED THOUSAND GALLONS IN A CONTINUOUS TWENTY-FOUR HOUR PERIOD OR IN EXCESS OF TWO HUNDRED FIFTY THOUSAND GALLONS IN ANY CONSECUTIVE THIRTY DAY PERIOD.

2. "PERSON" SHALL MEAN ANY INDIVIDUAL, ASSOCIATION, CORPORATION OR OTHER ENTITY THAT ENGAGES IN NATURAL GAS EXPLORATION, DRILLING, EXTRACTION OR TRANSPORTATION. THE TERM "PERSON" SHALL INCLUDE ANY INDI-

VIDUAL, ASSOCIATION, CORPORATION OR OTHER ENTITY THAT OWNS AN INTEREST IN LAND THAT IS SUBJECT TO A LEASE OR OTHER GRANT THAT PERMITS SURFACE RIGHTS, SUB-SURFACE RIGHTS OR BOTH SURFACE AND SUB-SURFACE RIGHTS FOR THE PURPOSE OF NATURAL GAS EXPLORATION, DRILLING, OPERATION OR EXTRACTION UNLESS SAID LEASE OR GRANT WAS EXECUTED PRIOR TO THE EFFECTIVE DATE OF THIS TITLE.

S 23-2903. STRICT LIABILITY.

NATURAL GAS EXPLORATION, DRILLING, EXTRACTION BY USE OF HIGH VOLUME HYDRAULIC FRACTURING TECHNIQUES AND TRANSPORTATION OF HYDROFRACTURING CHEMICALS AND WASTE PRODUCTS, HAVING BEEN DEEMED HAZARDOUS ACTIVITIES BY THE LEGISLATURE, ENTAIL STRICT LIABILITY ON THE PART OF ANY PERSON, AS DEFINED IN THIS TITLE, THAT UNDERTAKES SUCH ACTIVITIES IN THE STATE. NEITHER COMPLIANCE WITH THE REQUIREMENTS OF THIS TITLE, THE ISSUANCE OF A PERMIT FOR SUCH ACTIVITIES NOR THE EXERCISES OF DUE CARE, SHALL EXCUSE ANY SUCH PERSON FROM LIABILITY FOR PERSONAL, PROPERTY OR OTHER ELEMENTS OF DAMAGE PURSUANT TO THIS TITLE DETERMINED TO BE CAUSED BY SUCH HAZARDOUS ACTIVITIES. DISTINCTIONS BETWEEN DIRECT AND CONSEQUENTIAL DAMAGE SHALL NOT RELIEVE SUCH PERSON OF ABSOLUTE LIABILITY, SUCH PERSON'S INTENT OR NEGLIGENCE FOR ANY PERSONAL, PROPERTY OR OTHER ELEMENT OF DAMAGE PURSUANT TO THIS TITLE NOTWITHSTANDING.

S 23-2905. JOINT AND SEVERAL LIABILITY.

THE LIABILITY OF ANY PERSON AS DEFINED IN THIS TITLE SHALL BE JOINT AND SEVERAL WITH THE LIABILITY OF ALL OTHER PERSONS FOUND LIABLE FOR DAMAGES RESULTING FROM THE SAME INCIDENT, EVENT, NATURAL GAS OPERATION, EXPLORATION OR EXTRACTION OR TRANSPORTATION ACTIVITY.

S 23-2907. STANDING OF MUNICIPAL CORPORATIONS.

FOR THE PURPOSES OF THIS TITLE, ALL MUNICIPAL CORPORATIONS, INCLUDING SCHOOL DISTRICTS, SHALL HAVE STANDING TO PURSUE ALL LEGAL REMEDIES FOR DAMAGES PURSUANT TO THIS TITLE.

S 23-2909. ELEMENTS OF DAMAGES; TREBLE DAMAGES.

1. IN ALL ACTIONS ARISING FROM THE PROVISIONS OF THIS TITLE, EVIDENCE TENDING TO PROVE THE FOLLOWING ELEMENTS OF DAMAGES SHALL BE ADMISSIBLE:

A. PERSONAL INJURY AND WRONGFUL DEATH;

B. PROPERTY DAMAGE;

C. REDUCTION IN PROPERTY VALUE;

D. REDUCTION IN BUSINESS VALUE, LOSS OF PROFITS;

E. ALL OTHER DAMAGES CAUSED BY SUCH ACTIVITIES; AND

F. IN THE CASE OF MUNICIPAL CORPORATIONS:

(1) DAMAGE TO AND MAINTENANCE OF INFRASTRUCTURE;

(2) LOSS OF REVENUE DUE TO REAL PROPERTY TAX REDUCTIONS RESULTING FROM SUCH EXPLORATION, DRILLING, EXTRACTION AND TRANSPORTATION ACTIVITIES;

(3) COSTS INCURRED BY EMERGENCY OPERATIONS NECESSITATED BY SUCH ACTIVITIES; AND

(4) ALL OTHER DAMAGES CAUSED BY SUCH ACTIVITIES.

2. IN ANY ACTION ARISING PURSUANT TO THIS TITLE, IF THE TRIER OF FACT DETERMINES THAT ANY DEFENDANT ACTED WILLFULLY, MALICIOUSLY OR WITH GROSS NEGLIGENCE, THE COURT SHALL AWARD THREE TIMES THE AMOUNT OF DAMAGES ESTABLISHED BY THE TRIER OF FACT.

S 23-2911. ATTORNEY FEES.

IN ANY ACTION ARISING PURSUANT TO THIS TITLE, A PLAINTIFF WHO HAS BEEN AWARDED DAMAGES SHALL ALSO RECOVER REASONABLE ATTORNEY FEES AND EXPENSES OF LITIGATION FROM THE DEFENDANTS, JOINTLY AND SEVERALLY.

S 4. This act shall take effect on the ninetieth day after it shall have become a law.