

# Legislative Update

June 20, 2009

June 22, 2009 is the last scheduled legislative session day.

To read the NYS Senate and Assembly legislation you may visit the State Senate or Assembly websites:

- Senate: [www.senate.state.ny.us](http://www.senate.state.ny.us)
- Assembly: [www.assembly.state.ny.us](http://www.assembly.state.ny.us)

## **A8748 seeks to amend Title 29 to Article 23 of the Environmental Conservation Law entitled "Regulation of Natural Gas Drilling."**

A8748 is sponsored by M. of A. Brennan and has no Senate Companion Legislation. The Legislation Sponsor M. of A. Brennan does not believe this legislation will pass the Assembly this Session. It is currently sitting in the Assembly Environmental Conservation Committee.

The purpose of this legislation is to protect drinking water supplies. This bill prohibits the drilling for natural gas within the NYC watershed or anywhere within 5 miles of its boundaries. It further prohibits drilling within the Delaware River watershed or anywhere that is a recharge area of a sole source aquifer.

Where gas drilling is allowed this legislation requires that it is to be done in such a way as to protect drinking water. If there shall be contamination of water wells, there is a presumption that the natural gas driller is responsible unless they can show by clear and convincing evidence that they are not the contaminator. Any spills or prohibited discharges by the driller which might take place must be reported to DEC, which must have a procedure in place for taking such reports and ordering remedial action. Any driller that knowingly covers up a prohibited discharge shall be guilty of a class A misdemeanor. A driller that knowingly discharges hydraulic fracturing compounds into surface waters shall be guilty of a class E felony.

This legislation would require that all components of hydraulic fracturing fluids must be disclosed to the DEC in the application for a permit to drill a well, and must file amendments to its permit and receive permission to make changes in those components. The bill sets procedures for taking care of emergency and non-emergency health situations related to the use of the hydraulic fracturing compounds. The DEC has the power to prohibit the use of certain chemicals. Storage of these fluids and the waste from drilling must be properly stored, and must be treated as hazardous waste.

Protection of the environment by the drillers extends to mitigation of all damage that may be caused to air, wetlands, stream corridors and endangered and threatened species habitat. DEC has the authority to impose fees to compensate local governments for costs or impacts imposed by the drillers or their activities.

Under the legislation no well permit may be granted for more than 10 years. Any permitted action which is not commenced with five years shall be deemed null and void.

Natural gas drillers would be responsible for costs of any environmental damage which occurs in the process of drilling for natural gas. DEC may require financial security to ensure landowners are protected from any contingent liability. Should the site be designated as a brownfield site, the driller shall be considered to be the party in the chain of responsibility.

Under the legislation any water withdrawals greater than 5000 gal/day or more than one percent of stream flow shall require a permit. No permit shall be issued if applicant has failed to meet environmental or financial obligations under a previous permit or has financial liabilities to the state, a local government, or a private landowner.

The bill sets out certain requirements for DEC to include in the permitting process.

The comptroller shall annually audit all royalty payments and shall have the authority to require appropriate fiscal reporting and record keeping by producers and government.

DEC must establish an impartial technical advisory committee, supported by permit fees, to review and issues guidelines on best practices. This committee shall include representatives from the environmental community, the public health community, the gas drilling industry and others that the department deems appropriate.

**A.8784 seeks to amend the Environmental Conservation Law, in relation to the testing of water when drilling oil and natural gas well.**

A.8784 is sponsored by M. of A. Sweeney and does not have a Senate Companion bill. This bill was reported from the Assembly Environmental Conservation Committee to the Assembly Codes Committee on Tuesday June 16, 2009. With session scheduled to adjourn on June 22, 2009 it is difficult to determine whether this legislation will pass the Assembly this session.

This legislation would require a permit holder to test the quality of ground and surface water sources within a thousand foot radius of the drilling area and on all water wells in the production unit, unless the Department of Environmental Conservation (DEC) determines that an expanded radius is required. The bill further requires such testing to occur prior to drilling, following any hydrofracturing, prior to well completion and annually for producing wells. The legislation defines "compounds or contaminants of concern" to include at a minimum, the ingredients contained in hydrofracturing fluids and chemical treatment. The legislation establishes liability for the permit holder if the postdrilling/hydrofracturing test results indicate contamination or decreased flow rate. Finally, the bill requires DEC to promulgate methane and "compounds or contaminants of concern" regulations.

**A.4614 seeks to amend the Environmental Conservation Law to establish a framework for the process of a landowner's complaint and to provide drillers with a presumptive defense**

A.4614 Sponsored by M. of A. Parment. This legislation has a Senate Companion – S.2997 Sponsored by Senator Valesky. A.4614 is sitting in the Assembly Environmental Conservation Committee and S.2997 is sitting in the Senate Environmental Conservation Committee.

This legislation establishes a framework for the process of a landowner's complaint and provides drillers with a presumptive defense.

The legislation requires that any driller/producer who affects a public or private potable water supply by pollution or diminution shall restore or replace the affected supply with water of adequate quantity and quality. The legislation allows any landowner who feels they have suffered pollution or diminution of their water supply as a result of drilling activity to contact the Department of Environmental Conservation which will conduct an investigation and it outlines the process for the Department to follow.

The legislation establishes five defenses against the presumption of contamination for the driller/producer:

- 1) The pollution existed prior to the drilling or alteration activity as determined by a predrilling or pre alteration survey.
- 2) The landowner, water purveyor refused to allow the driller/producer access to conduct a predrilling or prealteration survey.
- 3) The water supply is not within one thousand feet of the well.
- 4) The pollution occurred more than six months after completion of drilling or alteration activities.
- 5) The pollution occurred as the result of some other causes other that the drilling or alteration activity.

The legislation requires drillers who conduct pretesting of water wells to use an independent certified laboratory and that the results are provided to the Department and the landowner.

This change in law will not prevent any landowner who claims pollution or diminution of a water supply from seeking any other remedy provided by law.

**A.6953 seeks to amend the Environmental Conservation Law to require non-toxic fracing solution**

A.6953 Sponsored by M. of A. Ortiz. This legislation does not have a Senate Companion Bill. A.6953 is sitting in the Assembly Environmental Conservation Committee.

The purpose of this bill is to require companies to use non-toxic fracing solution in this process, as part of a greater initiative to improve and maintain the natural beauty and ecosystem of the State of New York, in addition to safeguarding the health and safety of New York's citizens

**A.1322 seeks to amend the Environmental Conservation Law to establish a moratorium on the issuance of permits for the drilling of wells and prohibits drilling within two mile of the New York City water supply infrastructure.**

A.1322 Sponsored by M. of A. Brennan. There is no Senate Companion Bill. This bill is sitting in the Assembly Environmental Conservation Committee.

This bill will prohibit drilling until the state completes a comprehensive environmental protection policy regarding such development. Furthermore, the bill will provide permanent protection of the New York City watershed by permanently prohibiting this drilling near any of its infrastructure.

**A.2370 seeks to amend the General Obligations Law to extends the cancellation period for a gas or oil lease from 3 days to 5 days**

A 2370 Sponsored by M. of A. Magee. This bill has a Senate Companion Bill S.4683 Sponsored by Senator Young. A2370 is on the Assembly Calendar third reading # 109. S. 2370 is sitting in the Senate Finance Committee.

The purpose of this legislation is to extend the opportunity for landowners to ultimately confirm their contractual agreement with a natural gas exploration company to lease their land with the intent of gas exploration and production.

**Governor's Program Bill #47 seeks to amend the State Tax law to impose a new production tax on natural gas**

The Governor's Program Bill #47 does not currently have a senate or assembly sponsor or bill numbers. This program bill may be viewed on the Governor's Website ([http://www.state.ny.us/governor/bills/pdf/gpb\\_47.pdf](http://www.state.ny.us/governor/bills/pdf/gpb_47.pdf)).

This bill would amend the State Tax Code to establish a new article 16 entitled "a tax on severing natural gas." This bill would require producers of natural gas to pay a severance tax based upon a schedule set forth in the legislation.

**A.3353 seeks to amend the General Municipal Law to supersede the common law vested rights doctrine to allow development rights to vest 6 months after the filing of an application.**

A.3353 Sponsored by M. of A. Bradley has a Senate Companion bill – S.1988 Sponsored by Senator Valesky. A3353 is sitting in the Assembly Rules Committee and S. 1988 is on the Senate Calendar #462.

This legislation sets up a rebuttable presumption that municipal zoning, planning, environmental and all other applicable enactments by a village, town or city regulating the development of land which are applicable to a particular parcel of land as of the one hundred eightieth day after the filing date of a complete application for a project or, at the discretion of the applicant, as of the one hundred eightieth day after the filing date of a draft environmental impact statement, shall remain applicable to the proposed project for a period of six years after such filing date, as long as it is being pursued with reasonable efforts by the applicant.

In order to rebut the presumption, a municipal body must show with a detailed written finding that there has been a change in federal or state law, which alters the relevant requirements; or that there is newly discovered information or changes in circumstances which will establish that the proposed project is likely to harm or endanger public health, safety or biological habitat and is not being prevented by existing laws, codes, ordinances or other governmental entities. Thus, while the property owner will be protected to the extent that his project will be judged according to the laws, codes, and regulations in existence one hundred eighty days from the filing of the application, the municipality will not be prevented from applying a new or amended law in those situations where the application of the new or amended law is warranted due to a change in circumstances or newly discovered information, which establishes a likely harm to public health, safety or biological habitat. Another exception applies where the municipality is already considering a change in the local codes or laws before the filing of the proposed application.