

State's Legislation on Gas Drilling at a Standstill

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Broader View Weekly, July 3, 2009

After last October's hearing by the NY Assembly's Environmental Conservation Committee, a number of state legislators promised to bring bills addressing gas drilling issues to the floor. Since January, Assembly members have proposed at least eight bills that would offer landowners increased protections during gas drilling. Only a few of the bills are supported by companion legislation in the state Senate.

As of the close of the regular legislative session on June 22, most of the bills remain in committee. A couple were voted on and passed on to the Senate where they promptly fell victim to the chaotic upheaval these past weeks.

Protecting the Water

Four bills provide for increased protection of groundwater and drinking water supplies. Assembly bill **8748 (A8748)** would prohibit drilling for natural gas within the NYC watershed or anywhere within 5 miles of its boundaries. It would also prohibit drilling within the Delaware River watershed or anywhere that is a recharge area of a sole source aquifer.

This legislation requires that all components of hydraulic fracturing fluids be disclosed to the Department of Environmental Conservation (DEC) as part of the well application process, and sets forth procedures for taking care of emergency and non-emergency health situations related to the use of the fracking compounds. It gives DEC the power to prohibit the use of certain chemicals and dictates that drilling fluids and waste be treated as hazardous waste.

The bill also seeks to regulate water withdrawals by requiring a permit for any water withdrawals greater than 5000 gal/day, or more than one percent of stream flow. If an applicant has failed to meet environmental or financial obligations under a previous permit, or has financial liabilities to state or local governments or a private landowner, they will not receive a permit for water withdrawal. As of June 5 this bill has been sitting in the Assembly Environmental Conservation Committee.

Assembly Bill A8784 addresses water testing before and after gas drilling. The bill 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 DEC determined that an expanded radius is required. The bill would also require such testing to occur following any fracking, prior to well completion and annually for producing wells.

Assembly bill A4614 (Senate bill 2997) would require that any driller/producer who affects a public or private potable water supply by pollution or diminution, to restore or replace the affected supply with water of adequate quantity and quality.

This legislation also establishes a framework for the process of a landowner's complaint and establishes five defenses against the presumption of contamination for the driller/producer. The law would require that water testing be conducted by a third, independent party.

Another bill, **A6953** would require drillers to use non-toxic fracking solutions and Assembly bill **1322** would establish a moratorium on drilling permits within two miles of the New York City water supply infrastructure.

Revamping Oil & Gas Board

Assemblywoman Donna Lupardo (126th District) would like to see the state's Oil and Gas Board become a true bipartisan resource, one where leaders could draw upon the expertise and interests of the various stakeholders. Lupardo believes that expanding the membership from 13 to 15 would breathe new life into a board that has been inactive since the mid 1990s. The additional seats would be held by landowners and municipalities. The legislation (**A7918**) would allow both majority and minority parties to select the members.

On June 9 the Assembly passed the bill by a vote of 148 to zero and delivered it to the Senate where it now languishes in their "Rules" committee.

In addition to expanding the membership of the Oil and Gas Board, the bill directs the board to provide recommendation about best practices in the gas drilling industry and protect to water supplied.

Other legislation

Landowners currently have three business days to reconsider their decision to sign an oil and gas lease. Assembly bill **2370 (Senate Companion Bill S4683)** would add two more, allowing landowners a total of five business days to withdraw from a lease.

Governor Paterson proposed legislation that would establish a severance tax on natural gas. A number of other states with natural gas exploration and extraction require severance taxes to fund the regulatory oversight of the state.

Assembly bill **3353** would call for local regulations to "freeze" six months after a gas company applies for a permit. This allows a gas company to operate under the municipal zoning, planning, environmental and other laws that were in affect at the time they applied for their permit – not when they received their permit.

To check on the status of bills, read the full text, or find out if your elected representatives are co-sponsoring any of the legislation, go to <http://public.leginfo.state.ny.us/menuf.cgi>.

