

Drilling and Water:

## NY Assembly Proposes Legislation, DEC Still Lacks Oversight

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*Broader View Weekly*, February 27, 2009

Twenty-three years ago New York Assemblyman Bill Parment proposed legislation that would amend the environmental conservation law by requiring that oil and gas companies take action to protect drinking water supplies. The proposed legislation would require a driller/producer who affected a public or private potable water supply (by pollution or diminution) to restore or replace the affected supply.

The proposed legislation also directed Department of Environmental Conservation (DEC) to follow up on landowner reports of water contamination by conducting investigation.

At the core of the bill was the requirement that oil and gas companies conduct pre-testing of water wells and to use an independent certified laboratory, with results provided to both the DEC and the landowner.

After passing the Assembly, the bill died on the Senate floor. "The industry at that time was very much opposed to it," said Amy Abbati in a phone interview earlier this week. Abbati, legislative aid to Parment, explained that back then it was the oil industry and they were worried about oil migrating into drinking water.

Earlier this month Parment brushed the dust off his old bill, spruced it up with a new number (A4614) and teamed up with a co-sponsor, Assemblywoman Barbara Lifton. The bill has been referred to the Assembly's Committee on Environmental Conservation, and Parment is looking for a sponsor in the State Senate.

Lifton, meanwhile, is busy poring over the testimony the environmental conservation committee received during their public hearing last October. At least she is when she's not focusing on state budget issues which, for the next couple months, threaten to consume all of the assemblywoman's time.

"At the hearing many people expressed concern about protecting water quality and called for strong DEC oversight," Lifton said in a telephone interview last Friday. She came away from the hearing with a long list of citizen concerns.

People are concerned about gas well placement too close to drinking water, Lifton said. "It comes down to DEC monitoring the wells." Lifton admitted that it's not easy to clean up contaminated groundwater. "That's why prevention is important," she said.

While the proposed legislation does not address prevention of contamination, Lifton feels it will act as a deterrent. "We need to do the right thing for our future generations," she said. "Clean water is more important than profits."

While the Assembly is crafting legislation to deter drillers from polluting drinking water, the DEC seems to be ignoring potential threats posed by hydraulic fracturing. Last summer the DEC told the NY State legislature that hydraulic fracking had been “used for decades in New York State”. While technically true, fracking has not been used in concert with horizontal drilling as proposed for extracting gas from the Marcellus shale.

Furthermore, DEC assured the legislators that they had surveyed “all states” and had found “not one instance of drinking water contamination in over one million frack jobs” – despite the more than 1,000 incidents of water contamination reported in Colorado and BLM’s documentation of groundwater pollution in a Wyoming gas field.

In December, Dusty Horwitt, a senior analyst with Environmental Working Group, sent a Freedom of Information request to the DEC asking for “records regarding tests and test results for hydraulic fracturing chemicals that were performed in the past 50 years” including any discovery of fracking chemicals in NY water.

DEC’s answer: they hadn’t done any studies. In a letter to Horwitt dated January 14, 2009, Charles Gilchrist of the DEC wrote, “The Division of Mineral Resources does not maintain any records which are responsive to your request.”

Horwitt called Gilchrist immediately. “I wanted to make sure I’d understood correctly and he [Gilchrist] confirmed that the state had done no testing and had no test results,” Horwitt told *Broader View Weekly* earlier this week. “What’s even more disturbing is that this [lack of testing] seems par for the course for hydro-fracking,” Horwitt added.

How can the DEC assure the public that fracking is safe when they haven’t done any testing, Horwitt asks? He believes that landowners have a right to know exactly what happens when a couple million gallons or more of water laden with toxic chemicals are blasted into the earth near their water supplies.

On February 6 the DEC published their final scope document, outlining the scope of what they will cover in their Supplement to the Generic Environmental Impact Statement. Horwitt recommended a couple of things he would like to see DEC do before they begin issuing permits to drill in the Marcellus.

First on his list: requiring natural gas companies to publicly disclose what chemicals they plan to use for drilling and fracturing. Horwitt would also like to see the state conduct water tests to ascertain whether hydraulic fracking has contaminated water supplies. Only then, he said, should DEC consider issuing drilling permits for Marcellus.

DEC did not respond to requests for information.

Further reading:

To read the full text of Assembly bill 4614 go to <http://assembly.state.ny.us/leg/?bn=A04614>

To read the response to Horwitt's request for testing information from the DEC go to <http://www.ewg.org/files/NYStateFracingFOILRequest.pdf>