Memorandum of Support

May 27, 2014

A.3634 (Sweeney)/S.4028 (Libous)/State Comptroller #6

Title: An act to amend the Environmental Conservation Law, in relation to establishing the Natural Gas Production Contamination Response and Compensation Program; and to amend the state finance law, in relation to creating the New York natural gas production contamination damage recovery and remediation fund.

Purpose: The intention of this bill is to provide for the remediation of any contamination associated with natural gas production by authorizing the Department of Environmental Conservation (DEC) to respond quickly to such contamination and effect prompt cleanup and decontamination of such contamination. First priority will be given to protecting public health and minimizing environmental damage by providing for strict liability for damage sustained within the State as a result of such contamination.

Justification: The public awaits a final DEC determination of the Supplemental Generic Environmental Impact Statement (SGEIS) on High Volume Horizontal Hydraulic Fracturing (HVHHF) or “fracking”. Fracking involves injecting water, sand and chemicals into rock formations at extremely high pressure, separating rock fissures and releasing natural gas. Other states that have embraced this form of drilling have experienced contaminated water, polluted air, and adverse human health effects. The determination on whether to approve fracking in New York hinges on an ongoing review by the Department of Health to evaluate the public health risks presented by the proposed regulations. Even though there is a current de facto moratorium on HVHHF, standard vertical well development continues to be permitted in New York, using the same hazardous chemicals and generating the same hazardous waste – though in smaller quantities.

Unfortunately, when there is a spill, accident or contamination event associated with the oil and gas industry in NY, there is no funding structure to ensure an immediate and competent cleanup. If the polluter does not take action, the DEC has little money or recourse to protect the public in a timely manner. Scattered throughout New York State are the remnants of thousands of oil and gas wells – rusting, rotting rigs, lines, tanks and holes left behind by the same industry that wishes to usher in a new era of drilling to the state. Some of these relics have been slowly leaking for decades, sticking state taxpayers with tens of millions of dollars in unfunded cleanup costs. According to the DEC, there are more than 4,700 abandoned oil and gas wells around the state, with more turning up each year.

This bill would provide strict liability for damage sustained within this state as a result of contamination caused by natural gas production, and would require prompt cleanup and decontamination of any affected real or personal property. The legislation would also establish a
fund for the payment of remediation costs of contamination and timely and adequate compensation to any persons damaged by such contamination. The Natural Gas Production Contamination Response and Compensation Program established in this bill is modeled after the New York State Environmental Protection and Spill Compensation Fund (“Oil Spill Fund”), which draws on the expertise and collaborative efforts of the Office of the State Comptroller (OSC), the DEC, and the Office of the Attorney General (OAG). The new program would ensure the timely cleanup of dangerous contamination caused by any element of the natural gas production process, and provide for efficient resolutions to related damage claims and recovery of costs from liable parties. It would also create for the first time a registry of all gas drilling related incidents in New York State.

The Sierra Club Atlantic Chapter finds the current SGEIS proposal before the DEC to expand natural gas development in New York to be deeply flawed. While we support a prohibition on new drilling in favor of pursuing energy efficiency and renewable energy programs, we can recognize that drilling has been ongoing in NY while the issue is debated. The Natural Gas Production Contamination Response and Compensation Program will not stop accidents but it will provide the structure by which we can end the abandonment of contamination sites that can linger for decades as persistent sources of pollution. Comptroller DiNapoli, Assemblyman Sweeney, and Senator Libous should be commended for this effort.

**Sierra Club Atlantic Chapter Strongly Urges Your Support Of A.3634/S.4028/ Comptroller #6**