Memorandum of Support

June 6, 2017

A.2427 (Englebright)/S.1538 (Avella)

Title: An act to amend the environmental conservation law, in relation to the uniform treatment of waste.

Provisions: This bill amends Section 27-0903 of the ECL, adding language that would require all waste resulting from the exploration, development, extraction or production of oil or natural gas to be considered hazardous waste. These wastes would be subject to the same laws and regulations of hazardous waste in terms of generation, transportation, treatment, storage, and disposal.

Statement of Support: Right now, the oil and gas industry is exempt from New York State laws governing hazardous waste transport and disposal. Even though a great deal of the wastewater and drill cuttings generated by hydraulic fracturing, or “fracking” meets the state definition of hazardous, it’s not treated as such. 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.

Fracking chemicals arrive at the drilling site often as regulated hazardous materials, but federal and state exemptions allow drillers that pump these harmful chemicals into the ground to treat the wastes that come back up as standard industrial waste. Carcinogenic benzene, toluene, and formaldehyde are common frack fluid ingredients and the returning flowback water also brings up naturally occurring salts, heavy metals and radioactive particles. Fracking wastewater that enters local sewage treatment plants—sometimes with radiation levels hundreds of times the safe limits for drinking water—goes right back into the rivers and streams that supply water to millions of people.

Although there has been a de facto moratorium on the drilling of horizontal gas wells in New York since 2008, and Governor Cuomo has banned the permitting HFHV indefinitely, the NYS Department of Environmental Conservation (DEC) has issued permits for nearly one thousand new vertical, low volume oil and gas wells, of which 90% have used the fracking process. But
to date, the DEC has not tracked where the millions of gallons of drilling wastes from these wells have gone or whether these potentially hazardous wastes were handled and treated properly. Closing the hazardous waste loophole will mean that fracking waste will be monitored through a manifest system and that extra safeguards will be in place to avoid accidents and ensure proper waste treatment. Such a designation will also keep fracking wastes out of our municipal treatment plants and the waterways that provide our drinking water. To add to this urgency New York is already receiving solid and liquid wastes from drilling operations across our southern border. Since 2011, more than 500,000 tons of potentially radioactive drill cuttings have entered at least 7 NY landfills from Pennsylvanian fracked wells, with little oversight from the DEC because of this loophole in regulation. It is outrageous that New York has demonstrated just precaution for the negative environmental impacts associated with drilling, yet has allowed some of the worst by-products of that process to enter the State’s waste treatment facilities with little scrutiny.

Gas drillers should not be exempt from laws governing the safe treatment and disposal of hazardous waste. A.2427/S.1538 will close the loophole and stop the oil and gas industry from circumventing standard procedures for hazardous waste disposal. If passed, all hazardous fracking waste would be subject to the same regulations for hazardous waste generation, transportation, treatment, storage, and disposal that apply to other industries operating in the state.

**Sierra Club Atlantic Chapter Strongly Urges Your Support Of A.2427/S.1538**