July 13, 2020

A.2655 (Englebright)/S.3392 (May)

**Purpose:** 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 in Support:** 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. These naturally occurring contaminants also can be found in the drill cuttings that are brought up before fracking commences. 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 officially banned HFHV in 2015, the NYS Department of Environmental Conservation (DEC) has issued permits during that time 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.

In April 2019, the Hakes landfill in Steuben County, NY took significant steps to expand its boundaries to accommodate a new influx of drill cuttings from Pennsylvania, after taking tons of the potentially radioactive tailing for years. And as lead agency for the environmental review for the expansion, the NYSDEC failed to adequately explain why the current Hakes landfill’s leachate contains intermittently high levels of the radon and radium breakdown elements lead-214 and bismuth-214. Could this be a result of the landfill’s previous acceptance of drilling waste? Part of the DEC’s apparent lack of curiosity is rooted in how the loophole in regulation ties the agency’s hands from acting upon any concerning properties of the drilling waste – because if it indeed can never be considered hazardous there is no incentive to address the problem.

It is unfortunate that New York has demonstrated just precaution for the negative environmental impacts associated with drilling and banned it from its boarders, 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. S.3392/A.2655 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.

**The Sierra Club Atlantic Chapter urges your support of this important legislation.**