

Lifton Position on Gas Drilling and Actions Taken

April 22, 2010

Since early 2008, I have spent countless hours on the different aspects of the gas drilling issue, including calling for an extension of the comment period for the draft SGEIS, preparing my own comments to the DEC and writing and introducing legislation on strict liability for gas drilling and a bill clarifying the rights of local governments to control land use within their jurisdiction, as explained in more detail below.

I agree with you and many constituents who have contacted me, that ensuring that we will be able to protect our water resources statewide, including here in the Southern Tier – groundwater, lakes, rivers, streams and wetlands, private and municipal wells – is of utmost importance before more gas drilling occurs in New York State.

At every step of the process to formulate new guidelines for drilling in the Marcellus Shale, I have weighed in with DEC Commissioner Grannis and the governor, requesting additional public hearings and asking for an extension of the comment period for the draft SGEIS. To the DEC's credit, they did expand the scope of hearings and extended the comment period from the original 30-days to 90-days, which ended December 31, 2009. I enclose the letters and press releases I sent out on each of those occasions. I have also shared my concerns about the overall impact of industrial-scale drilling with the leadership in the Assembly, as well as many of my colleagues in the Assembly and Senate.

I listened very carefully to several hours of testimony from all parties on drilling in Marcellus at two public hearings conducted by the Assembly Committee on Environmental Conservation, of which I am a member, first on October 15, 2008 and later on October 15, 2009. I have spent hours pouring over analysis from academics, scientists and environmental groups, reading news clips from other parts of the country where this type of drilling is already occurring and watched videos of aggrieved citizens right here in New York State, whose water and land have been contaminated and their lives turned upside down from gas drilling.

In November 2009, as a result of all that information-gathering, I submitted testimony to the DEC, calling for the withdrawal of the dSGEIS and a complete review and revision of the earlier 1992 GEIS which serves as the regulatory foundation for oil and gas drilling. I also summarized my testimony at the hearing in Ithaca on November 19, 2009. I enclose my comments for your perusal. The DEC is currently reviewing the more than 13,000 comments submitted on the dSGEIS. There has been no word yet that they are considering withdrawing that document.

On the legislative front, I introduced A.9414, "The Natural Gas Exploration and Extraction Liability Act of 2010". It imposes strict liability for all damages shown to be caused by activities associated with hydrofracking techniques, including exploration, drilling, extraction and transportation of hydrofracking chemicals and waste products, on anyone that engages in any of those activities or owns an interest in land that is subject to a lease or other grant that permits natural gas exploration, drilling, operation or extraction unless that lease or grant was

executed prior to the effective date of this bill becoming law. Although individuals, businesses and municipalities can, under existing law, recover damages for such activity, it would be necessary for such plaintiffs to prove that negligent conduct caused the damage. This bill will allow recovery once a causal connection between the drilling and/or related activity and the damage has been proven. This "strict liability" is found throughout the law, most notably in the Navigation Law regarding damages that result from petroleum spills. I have now found a Senate sponsor for the bill, Senator Eric Schneiderman, who introduced companion bill S7377.

I also introduced a bill (A.10633) on April 9th that makes clear that local land use ordinances may dictate where oil, gas, and solution mining is allowed. The New York Court of Appeals, in *Frew Run Gravel Products, Inc. v. Town of Carroll*, concluded that local zoning ordinances do not "relate to the regulation" of natural gas development, but rather serve to regulate the location, construction and use of buildings and land within the municipality, as delegated to local government by Article IX of the State Constitution. I have secured a Senate sponsor for the bill, Senator Andrea Stewart-Cousins, Chair of the Senate Committee on Local Government.

I am a co-sponsor of several bills introduced by Assemblyman Robert Sweeney, Chair of the Assembly Committee on Environmental Conservation: A.8806 establishes a water permitting process to allow the DEC to better regulate the use of the state's water resources. A.10088 would prohibit the use of on-site open pits for flowback waters, require those fluids to be contained in steel tanks and strictly regulate the length of time for on-site storage of flowback. A.10090 would prevent drillers from disposing drill cuttings on site. A.10091 would require full-disclosure of fracking chemicals and prohibit the use of chemicals that pose a risk to human health, including chemicals that are persistent, bio-accumulative and toxic, as defined by the EPA, or are mutagens. A.10292 would increase bonding requirements and require permit applicants to submit an approved drilling use plan that includes water usage, fluid storage and disposal measures, a signed contract with a disposal facility, site-specific biological and water quality data and a comprehensive reclamation plan.

I'm also a co-sponsor of A10490 (Englebright), that establishes a moratorium on hydraulic fracturing until 120 days after the federal EPA issues a report on its nationwide study of the effects of fracking on the environment and public health. I also co-sponsor A1322 (Brennan), which establishes a moratorium on issuing new drilling permits for two years, allowing more time to study the effects of hydrofracking. We, in fact, have a de-facto moratorium, as directed by the governor, until such time as the DEC finalizes the dSGEIS.

I co-sponsor A8748 (Brennan), a comprehensive bill regulating several aspects of gas drilling, putting in place provisions to protect our natural resources and placing the cost and burden of mitigating any mistakes, contamination or damage that may be caused to drinking water, air, wetlands, streams or habitat on the appropriate gas drilling company. It prohibits drilling within five miles of the NYC and Delaware River watersheds or anywhere that is a recharge area of a sole source aquifer, requires the disclosure of the chemicals in the fracking fluids, allows DEC to prohibit the use of certain chemicals, gives the DEC authority to impose fees and/or require financial security to cover oversight, compensate local governments for costs due to drilling activity and to ensure landowners are protected from liability, regulates water withdrawals, audits royalty payments and sets out certain requirements for DEC to include in the permitting process.

In addition, I co-sponsored of A.6953 (Ortiz) that prohibits the use of toxic chemicals during the hydraulic fracturing process and mandates the use of non-toxic solutions based on citrus oils and other organic materials. Fracking fluids currently used by energy companies contain diesel, benzene, toluene, xylene and other carcinogens and mutagens.

I also co-sponsored of A.4614 (Parment), which would require drilling companies who have either contaminated or severely diminished public or private water supplies, to restore or replace that supply, as well as A.4542 (Parment), which would allow municipalities to participate in a well as an integrated non-participating owner, without assuming liability for taxes, fees and personal injury or damages, making them eligible to receive higher royalty payments.

I sponsored two forums in October 2008 that I asked the Attorney General's office to conduct in my district on Landowners' Rights, to educate residents about dealing with the oil and gas companies and negotiating leases. I continue to co-sponsor forums organized by local community groups and I speak to as many groups and rallies as my schedule allows. I feel it's critical to make sure that we have as much dialogue and public input on what could well be the largest industrial-scale activity in our state's history.

In June 2009, the Assembly passed a resolution I introduced, urging Congress to pass H.R. 2766, the "FRAC Act", the Fracturing Responsibility and Awareness of Chemicals Act, which would repeal the exemption from the Safe Drinking Water Act that was given to the oil and gas industry in 2005. I enclose the press release I sent out on that.

I hope we are able to stop this dangerous drilling, but if we don't succeed in this effort, I strongly support a severance tax on all gas extracted by the gas companies, to help fund additional DEC staff to oversee drilling operations. It was included in the governor's 2010 budget proposal and the Assembly's budget resolution, and I hope it will be included in the final budget agreement. Adequate staffing levels at DEC will be critical if gas drilling does occur.