



NEW YORK STATE SENATOR

Liz Krueger

20 Senators Urge Closure Of Fracking Waste Loophole

LIZ KRUEGER August 24, 2016

| ISSUE: **FRACKING, FRACKING WASTE, CLEAN WATER, PUBLIC HEALTH, ENVIRONMENT**

New York – Today, State Senators Liz Krueger, Brad Hoylman, and Tony Avella, along with seventeen other Senators, released a letter to Department of Environmental Conservation (DEC) Commissioner Basil Seggos, calling for the closure of the "fracking waste loophole." Although hydraulic fracturing, or fracking, was banned in New York State in 2015, solid and liquid waste from out-of-state fracking facilities is still being deposited in New York landfills. The letter urges Commissioner Seggos to use a rulemaking process currently underway to ban the disposal of all fracking waste in the state. The letter is reprinted below and can also be [viewed here](#).

"When we banned fracking, New York State became a national leader in protecting the health and well-being of our people," said **Senator Liz Krueger**. "But although we shut the front door on fracking, we left the side door wide open. Hundreds of thousands of tons of fracking waste have poured into our state, threatening our land and water, and putting New Yorkers at risk. This loophole must be closed, and it cannot happen soon enough."

New York State enacted a moratorium on fracking in 2008, and Governor Andrew Cuomo banned the practice in 2015, in part due to concerns about the health risks posed by waste materials. Yet according to [a report](#) by Environmental Advocates of New York, at least 570,500 tons of solid fracking waste and 23,000 barrels of liquid waste were dumped in New

York landfills between 2010 and 2015. Fracking waste is also used in some locations for de-icing purposes on roads.

"Even though we've banned hydraulic fracturing in New York, we haven't banned fracking waste," said **Senator Brad Hoylman**, Ranking Member of the Senate Environmental Conservation Committee. "Because of loopholes in the law, poisonous fracking waste from other states can legally be transported across our borders and deposited in landfills, where it could conceivably result in water contamination. The legislature should ban fracking waste by closing the hazardous waste and radioactive waste loopholes, including through legislation I carry (S.48 & S.340). In the meantime, I join Senator Krueger in urging DEC to take action now."

"I urge DEC to heed our advice to finally close the hazardous waste loophole," said **Senator Tony Avella**, Vice-Chair of the Environmental Conservation Committee. "While fracking was effectively banned in the State in December 2014 due to concerns about health risks, the hazardous waste loophole still exists. This is why I continue to seek passage of my bill, S.884, which I have been fighting for since 2011, to finally close this loophole that allows hazardous materials from out of state hydrofracking operations into New York. Failure to close this loophole undermines the giant leap New York State took when it became one of the first states to ban fracking and will continue to put New York residents at risk."

Fracking waste poses several health risks, particularly when it leaches from landfills and enters the water and food supply. Fracking waste contains highly toxic and carcinogenic chemicals such as benzene, formaldehyde, and ethylene glycol. It is also radioactive, containing Radium-226 and 228, which are highly water soluble, not treatable by New York's wastewater treatment plants, and linked to serious diseases such as lymphoma, bone cancer, and leukemia.

The DEC is currently in the process of revising regulations covering solid waste management facilities, including those that accept fracking waste. The Department is [accepting public comments](#) on proposed regulations until 5pm on September 13th.

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August 22nd, 2016

Basil Seggos
Commissioner
New York State Dept. of Environmental Conservation
625 Broadway
Albany, NY 12233

RE: Solid Waste Management Facilities (Part 360) Proposed Regulations

Dear Commissioner Seggos,

As members of the New York State Senate tasked with protecting the health and safety of millions of New Yorkers, we are writing to urge you to use the current rulemaking process for NYCRR Part 360 to ban the disposal of oil and gas waste from high-volume hydraulic fracturing in landfills and water treatment plants, and the application of such waste, currently used for de-icing purposes, to all roads.

We were very pleased when New York State banned hydraulic fracturing, or fracking, in 2015. At the time it was pointed out that fracking posed too great a risk to the health of New

Yorkers to allow it to occur here. Among many other considerations, the Department's final SGEIS Findings Statement cited the dangers of fracking waste as one justification for the ban. Yet between 2010 and 2015, at least 570,500 tons of solid fracking waste and 23,000 barrels of liquid waste were dumped in New York landfills. It is inconsistent, and a risk to public health, to continue to accept from other states fracking waste that has been deemed too dangerous to generate in New York.

The dangers posed by fracking waste and the potential health impacts of waste leachate entering our water and food supply are significant and well documented. Fracking waste contains highly toxic and carcinogenic chemicals such as benzene, formaldehyde, and ethylene glycol. It is also radioactive, containing Radium-226 and 228, which are highly water soluble, not treatable by New York's wastewater treatment plants, and linked to serious diseases such as lymphoma, bone cancer, and leukemia.

Although most of the chemicals in fracking waste meet the definition of hazardous waste and should therefore be subject to stringent regulation, they are in fact specifically exempted from such regulation. As such, fracking waste is treated as construction debris, which is dangerously inadequate. NYCRR part 371.1 (e) (2) (v) states: "the following solid wastes are not hazardous wastes... (v) drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy." This is an inexplicable and unjustifiable loophole, and it must be closed. Similarly, current proposed regulations do not explicitly prohibit the disposal of fracking flowback and produced fluids in landfills – another gap that must be remedied.

Finally, although the proposed regulations place some limitations on the use of fracking waste as a road de-icing agent, they do not go far enough. We continue to have serious concerns about the potential for fracking chemicals to end up in the drinking water and food

supply of New Yorkers. For this reason, we urge you to ban the use of all oil and gas waste from any source as a road spreader anywhere in the state.

We are proud that New York has taken a firm stand to protect our people and our environment from the dangers of fracking. Now we have the opportunity to finish the job. With communities across the state becoming aware of water quality and contamination issues, it is vital that we close these loopholes, and ensure that no New York families are forced to deal with the dangers of fracking waste produced in other states. Thank you for taking the time to consider our recommendations.

Sincerely,

Liz Krueger

Brad Hoylman

Tony Avella

Marc Panepinto

José M. Serrano

Daniel L. Squadron

George Latimer

Joseph P. Addabbo, Jr.

Martin Malavé Dilan

Neil D. Breslin

Timothy M. Kennedy

Jose Peralta

Leroy Comrie

Bill Perkins

Gustavo Rivera

Roxanne J. Persaud

Toby Ann Stavisky

James Sanders, Jr.

Velmanette Montgomery

Kevin S. Parker