

THE CASE FOR CLOSING NEW YORK'S OIL & GAS INDUSTRY WASTE LOOPHOLE:

Why the Legislature Needs to Pass S. 3392 (May) / A. 2655 (Englebright)

New York Prohibits Fracking But Accepts Frack Waste

Governor Cuomo’s ban on shale fracking was a historic step in defense of public health and the environment. But it is not enough to protect New York from the detrimental effects of this dangerous gas extraction method. The fracking ban still allows hazardous shale oil and gas waste, which can contain toxic chemicals and even radioactive materials, to be disposed of in New York landfills and spread on roads.

New York Denies Taking Fracking Waste – The Data Proves Otherwise

For years, the New York State Department of Environmental Conservation has denied that the state has accepted any fracking waste (2).

However, Pennsylvania data reveal otherwise:

- Since 2011, over 638,000 tons of drill cuttings from fracking sites in Pennsylvania have been dumped in New York landfills along with over 458 tons of “Unused Fracturing Fluid Waste.” Most of the majority of unused fracturing fluid waste was deposited in 2019
- Data compiled by the Pennsylvania Department of Environmental Protection shows that New York landfills have accepted over 1,350 tons of “Soil Contaminated by Oil & Gas Spills” since 2016. According to PA DEP, “any soil contaminated by an oil- or gas-related spill more often than not comes in contact with flowback water.” Flowback is a mixture of water and fracking chemicals that comes back to the surface after fracking operations.

New York’s solid waste management regulations allow for the disposal of solid oil and gas waste (e.g. drill cuttings) from unconventional, fracked well sites. These cuttings are part of operations required for fracking, contain chemical additives for drilling, and come from geologic formations that contain radioactive elements.

Solid waste regulations specifically prohibit the disposal of fluid waste from oil and gas operations. However, data from Pennsylvania show that fluids from shale gas operations have been disposed of in New York landfills despite the prohibition.

PA Marcellus Shale Waste Disposal in/by New York Facilities, January 2011 - December 2019										
	TOTALS	2011	2012	2013	2014	2015	2016	2017	2018	2019
Drill Cuttings (Tons)	638,481.84	213,938.44	123,552.49	69,336.33	104,367.97	60,695.23	27,108.08	19,042.27	18,633.63	1,807.40
Drilling Fluid Waste (Barrels)	20,499	8,950	11,547.58	–	–	–	–	1.31	–	–
Fracing Fluid Waste (Barrels)	3,963.48	1,320	–	2,623.20	19	1.28	–	–	–	–
Fracturing Fluid Waste (Tons)	335.22	229.47	55.7	50.05	–	–	–	–	–	–
Produced Fluid (Barrels)	1682.99	445	–	525	82.65	499.43	130.91	–	–	–
Basic Sediment (Barrels)	1.32	–	–	–	–	1.32	–	–	–	–
Other Oil & Gas Wastes (Barrels)	762.8	–	–	–	–	–	167.88	96.22	451.25	47.45
Other Oil & Gas Wastes (Tons)	17.4	–	–	–	–	–	1.76	7.84	3.6	4.2
Servicing Fluid (Tons)	176.85	–	–	–	–	–	114.73	21.81	40.32	–
Soil Contaminated by Oil & Gas Spills (Tons)**	1350.63	–	–	–	–	–	619.89	45.87	682.96	1.9
Synthetic Liner Materials (Tons)	3391.69	–	–	–	–	–	748.12	1,651.30	711.84	280.43
Waste Water Treatment Sludge (in Tons)	54.38	–	–	–	–	–	24.64	14.44	12.64	2.66
Unused Fracturing Fluid Waste (in Tons)	987.69	–	–	–	–	–	–	238.32	291.1	458.27
Transfer/Storage Facility										

SOURCE: PADEP Unconventional Waste Production data summary by Earthworks Policy Analyst Melissa Troutman¹

1. PA DEP Oil & Gas Reporting Website, Unconventional Waste Production Reports: <https://www.paoilandgasreporting.state.pa.us/publicreports/Modules/Welcom/Welcom.aspx>.
 2. During questioning at a legislative hearing on water quality in 2016, New York’s DEC Commissioner Basil Seggos denied that the state has accepted any fracking waste at all.

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CONSEQUENCES OF NEW YORK'S HAZARDOUS WASTE LOOPHOLE FOR OIL & GAS

According to the U.S. Environmental Protection Agency (EPA), some oil and gas wastes "contain a variety of hazardous constituents" even though they are exempt from hazardous waste laws. In New York, "hazardous waste" means a waste or combination of wastes, which because of its quantity, concentration, or physical, chemical or infectious characteristics may:

- Cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness; or
- Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed, or otherwise managed."

Despite the scientific reality that oil and gas waste contains hazardous materials, New York State still excludes oil and gas industry waste from state hazardous waste regulations.

CLOSING THE LOOPHOLE WOULD STOP ROAD SPREADING

Closing the loophole would apply hazardous waste law to all oil and gas wastes that are found to contain hazardous substances, including liquid wastes that are currently spread on roads in New York. Even conventional oil and gas "brine" waste can contain toxic chemicals, metals, excess salts, radioactive materials and carcinogens like benzene, just like fracking waste. Closing the hazardous waste loophole would stop road spreading until conventional oil and gas "brine" is thoroughly tested; if it meets the definition of hazardous, it would be prohibited.

CLOSING THIS LOOPHOLE WOULD MAKE NEW YORK A NATIONAL LEADER

Closing the hazardous waste loophole would make New York State the first state in the nation to apply hazardous waste laws to all of what peer-reviewed science shows are dangerous oil and gas waste sources. Reversing this special exemption would shift the burden of proof for the safety of waste to oil and gas operators who generate it — not the disposal facilities and the public, which is currently the case.

Closing the loophole would:

- Subject oil and gas waste to laboratory analysis to determine whether it has the characteristics of hazardous waste (i.e., ignitability, corrosivity, reactivity, and toxicity);
- Subject wastes to clearer, stronger management regulations like processing, tracking and marking of loads, recordkeeping with a manifest system, reporting to DEC, and specific requirements for clean up in the case of a spill;
- Ensure that waste is disposed of only at facilities equipped to safely handle it.

For more information, please contact any of our organizations:

