

VETO MESSAGE - No. 6837

TO THE SENATE:

I am returning herewith, without my approval, the following bill:

Senate Bill Number 8129-B, entitled:

"AN ACT to suspend hydraulic fracturing; and providing for the repeal of such provisions upon the expiration thereof"

NOT APPROVED

Hydraulic fracturing, or fracking, is a process which involves the pumping of water, sand and chemicals into a wellbore under high pressure to open up an oil or gas bearing formation to permit the release of gas and oil for capture. As most of the geologic formations containing oil and gas in New York are of a low permeability, roughly 90% of oil and gas extraction in the State uses this proven methodology. Accordingly, when DEC promulgated the Generic Environmental Impact Statement (GEIS) for Oil, Gas and Solution Mining Regulatory Program in 1992, it described and set forth parameters for hydraulic fracturing. The 1992 GEIS contemplates that hydraulic fracturing may be done with up to 80,000 gallons of water without requiring any additional environmental review. Consistent with the parameters of the GEIS, hydraulic fracturing has occurred thousands of times in New York for decades under DEC regulation with no documented adverse environmental impacts directly related to the hydraulic fracturing process.

Several developments, however, have raised the profile of hydraulic fracturing within the public consciousness. Proposals to use high-volume, unconventional hydraulic fracturing in horizontal oil and gas well production to extract gas from shale formations, such as the Marcellus shale, have generated concerns about the environmental impact of such practices. Moreover, the United States Environmental Protection Agency has commenced a study of the health and environmental impacts of hydraulic fracking. In response to these concerns, the legislature has passed this legislation, which would declare a moratorium on all hydraulic fracking in the State until May 15, 2011.

I am deeply sympathetic to the sponsors' desire to protect the environment and public health, and I greatly respect the concerns that produced this legislation. But the legislation as drafted does not accomplish this purpose, since the activities at the heart of the moratorium cannot take place until after May 15, 2011. That is because permits for high-volume, unconventional hydraulic fracturing, which would be issued by the Department of Environmental Conservation (DEC), cannot be issued in any case until DEC completes a Supplemental Generic Environmental Impact Statement (SGEIS). As a result, there is already in place a de-facto moratorium on such permits.

At the same time, the expansive definition of hydraulic fracturing in the bill will prevent numerous individuals who have been drilling for oil and gas from obtaining a permit for doing so, costing the State hundreds or perhaps thousands of jobs. That is because - for reasons not entirely clear - the language of the bill goes well beyond its original purpose and would effectively result in a moratorium on all oil and gas well drilling in this State. The cessation of such activity, even for a

limited period, would have substantial negative financial consequences for the State, local governments, landowners and small businesses involved in conventional oil and gas production. In 2008, local government and school districts received more than \$10 million in revenue from ad valorem taxes on well production. In that year, farmers and other landowners received more than \$50 million in royalties, which help preserve working farms and open space. Moreover, the Division of the Budget estimates that the bill would cause a substantial reduction in State revenues from the loss of permit fees alone, not including the loss of tax revenue. With a \$315 million budget gap in the current fiscal year, and a projected gap of nearly \$9 billion in the 2011-12 State fiscal year, we simply can not afford to send hundreds and perhaps thousands of jobs, and millions of dollars in capital investment to Pennsylvania and other states to our south.

The process of conventional, low-volume hydraulic fracturing in vertical wells, in contrast to high-volume fracking in horizontal wells, has been used in oil and gas exploration since the 1940s, and New York's oil and gas drilling regulatory program has been in place since 1972. In any given year, the majority of drilling permits are issued in the late winter/early spring. As of today, 94 permit applications are pending. These applications, and the work they would generate, would be frozen in place were this bill to be signed.

Enacting this legislation, in essence, would put people out of work that results in no demonstrated environmental harm and is not even under DEC review, in order to effectuate a moratorium that is principally symbolic. Symbols can have great importance, but particularly in our current terrible economic straits, I cannot agree to put individuals out of work for a symbolic act.

To address the very real concerns at issue in this bill, I intend to issue an Executive Order calling for further analysis in the SGEIS before any new permits are issued for high-volume hydraulic fracturing in horizontal wells. No permits for unconventional, high-volume, horizontal fracking can be issued until July 1, 2011 at the earliest, if at all. This should allay any fears that unconventional hydraulic fracturing will commence, regardless of this legislation, during the period covered by the legislation. At the same time, the order will not halt productive economic activity at a time when such activity is desperately needed.

The bill is disapproved.

(signed) DAVID A. PATERSON
