



Senate

General Assembly

File No. 12

February Session, 2018

Substitute Senate Bill No. 103

Senate, March 15, 2018

The Committee on Environment reported through SEN. KENNEDY of the 12th Dist. and SEN. MINER of the 30th Dist., Chairpersons of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING HYDRAULIC FRACTURING WASTE IN CONNECTICUT.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 22a-472 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective from passage*):

3 (a) For the purposes of this section:

4 (1) "Dispose" means the discharge, deposit, injection, dumping,
5 spilling, leaking or placing of any waste into or on any land or water so
6 that such waste, or any constituent of such waste, may enter the
7 environment, be emitted into the air or discharged into any waters of
8 the state;

9 (2) "Fluid" means any material or substance that flows or moves
10 whether in semisolid, liquid, sludge, gas or any other form or state;

11 (3) "Gas" means all natural gas, whether hydrocarbon or

12 nonhydrocarbon, including, but not limited to, hydrogen sulfide,
13 helium, carbon dioxide, nitrogen, hydrogen and casinghead gas;

14 (4) "Hydraulic fracturing" means the process of pumping a fluid into
15 or under the surface of the ground in order to create fractures in rock
16 for exploration, development, production or recovery of gas, oil and
17 other subsurface hydrocarbons. "Hydraulic fracturing" does not
18 include the drilling or repair of a geothermal water well or any other
19 well drilled or repaired for drinking water purposes;

20 (5) "Person" means any individual, firm, partnership, association,
21 syndicate, company, trust, corporation, limited liability company,
22 municipality, agency or political or administrative subdivision of the
23 state;

24 (6) "Radioactive materials" means any material, solid, liquid or gas,
25 including, but not limited to, waste that emits ionizing radiation
26 spontaneously;

27 (7) "Store" means holding waste for a temporary period, at the end
28 of which the waste is treated, disposed of or stored elsewhere;

29 (8) "Transfer" means to move from one vehicle to another or to
30 move from one mode of transportation to another;

31 (9) "Treat" means any method, technique or process designed to
32 change the physical, chemical or biological character or composition of
33 any waste, including, but not limited to, the reclaiming or rendering of
34 waste from hydraulic fracturing as suitable for use or reuse; [and]

35 (10) "Waste from hydraulic fracturing" means any wastewater,
36 wastewater solids, brine, sludge, drill cuttings or any other substance
37 used for, associated with, or generated secondarily to the purpose of
38 hydraulic fracturing; [.]

39 (11) "Natural gas extraction activities" means all geologic or
40 geophysical activities related to the exploration for or extraction of
41 natural gas, including, but not limited to, core and rotary drilling and

42 hydraulic fracturing;

43 (12) "Oil extraction activities" means all geologic or geophysical
44 activities related to the exploration for or extraction of oil, including,
45 but not limited to, core and rotary drilling and hydraulic fracturing;

46 (13) "Natural gas waste" means: (A) Any liquid or solid waste or its
47 constituents that is generated as a result of natural gas extraction
48 activities that may consist of water, brine, chemicals, naturally
49 occurring radioactive materials, heavy metals or other contaminants,
50 (B) leachate from solid wastes associated with natural gas extraction
51 activities, (C) any waste that is generated as a result of or in association
52 with the underground storage of natural gas, (D) any waste that is
53 generated as a result of or in association with liquefied petroleum gas
54 well storage operations, and (E) any products or byproducts resulting
55 from the treatment, processing or modification of any of the wastes
56 described in this subdivision;

57 (14) "Oil waste" means: (A) Any liquid or solid waste or its
58 constituents that is generated as a result of oil extraction activities that
59 may consist of water, brine, chemicals, naturally occurring radioactive
60 materials, heavy metals or other contaminants, (B) leachate from solid
61 wastes associated with oil extraction activities, and (C) any products or
62 byproducts resulting from the treatment, processing or modification of
63 any of the wastes described in this subdivision; and

64 (15) "Application" means the physical act of placing or spreading
65 natural gas waste or oil waste on any road or real property located in
66 this state.

67 (b) No person may accept, receive, collect, store, treat, transfer, sell,
68 acquire, handle, process or dispose of natural gas waste or oil waste or
69 waste from hydraulic fracturing, including, but not limited to, the
70 discharge of wastewaters into or from a pollution abatement facility],
71 until the Commissioner of Energy and Environmental Protection
72 adopts regulations, in accordance with the provisions of chapter 54,
73 including approval of such regulations by the standing legislative

74 regulation review committee, to: (1) Eliminate the exemption in the
75 state's hazardous waste management regulations, adopted pursuant to
76 subsection (c) of section 22a-449 for the wastes identified in 40 CFR
77 261.4(b)(5) and to provide that such wastes shall be subject to the
78 state's hazardous waste management regulations, as applicable, as set
79 forth in sections 22a-449(c)-100 to 22a-449(c)-119, inclusive, and section
80 22a-449(c)-11 of the regulations of Connecticut state agencies, (2)
81 ensure that any radioactive materials that may be present in wastes
82 from hydraulic fracturing do not create or will not reasonably be
83 expected to create a source of pollution to the air, land or waters of the
84 state and do not otherwise pose a threat to the human health or the
85 environment of this state, and (3) require disclosure of the composition
86 of the waste from hydraulic fracturing. The commissioner shall not
87 submit regulations authorized by this subsection to the standing
88 legislative regulation review committee earlier than July 1, 2017,
89 provided the commissioner shall submit such regulations to said
90 committee not later than July 1, 2018] or the introduction of natural gas
91 waste or oil waste into any solid waste management facility within or
92 operated by the state.

93 (c) [After the adoption of the regulations, including the approval of
94 such regulations by the legislative regulation review committee,
95 required by subsection (b) of this section, no] No person shall collect or
96 transport waste from hydraulic fracturing for receipt, acceptance or
97 transfer in this state, [unless such person obtains a permit, prior to any
98 such collection or transport, issued in accordance with the provisions
99 of section 22a-454. Such permit shall be required even if such collection
100 or transportation is undertaken by a person whose principal business
101 is not the management of such wastes. In any such permit the
102 commissioner shall require, in addition to any other conditions, that
103 records be maintained concerning the origins and all intermediate and
104 final delivery points of such wastes from hydraulic fracturing.]

105 (d) No person may sell, offer for sale, offer, barter, manufacture,
106 distribute or use any product for anti-icing, de-icing, pre-wetting or
107 dust suppression that is derived from or that contains natural gas or oil

108 waste or waste from hydraulic fracturing. [until the commissioner
109 adopts regulations in accordance with the provisions of chapter 54,
110 including approval of such regulations by the legislative regulation
111 review committee, authorizing such sale, offer, barter, manufacture,
112 distribution or use. Such regulations shall either prohibit any such
113 products or shall contain any conditions that the commissioner deems
114 necessary to protect human health and the environment and to ensure
115 that the sale, offer, barter, manufacture, distribution or use of any such
116 product does not create or will not reasonably be expected to create a
117 source of pollution to the air, land or waters of the state. Such
118 conditions may include, but are not limited to, a written statement to
119 accompany such product indicating that such product contains or is
120 derived from wastes from hydraulic fracturing.]

121 (e) In implementing the provisions of this section, the commissioner
122 shall request of any person information, including, but not limited to,
123 whether and to what extent an anti-icing, de-icing, pre-wetting or dust
124 suppression product is or may be derived from or contain natural gas
125 or oil waste or wastes from hydraulic fracturing, where the materials
126 used to manufacture any such product were obtained, and the
127 chemical composition of such product or waste from hydraulic
128 fracturing. If any person fails to provide the information requested by
129 the commissioner pursuant to this subsection, such failure shall
130 provide a basis for the commissioner to prohibit the sale, offering for
131 sale, bartering, manufacturing, distribution or use of such anti-icing,
132 de-icing, pre-wetting or dust suppression product. [or to not adopt
133 regulations required pursuant to subsection (b) or (d) of this section, as
134 applicable.]

135 (f) Any information acquired by the commissioner under this
136 section shall be subject to disclosure in accordance with the provisions
137 of chapter 14.

138 (g) [Until the adoption of regulations in accordance with subsection
139 (b) of this section, the] The commissioner may approve, in writing, not
140 more than three requests to allow a person, who the commissioner

141 determines to be professionally qualified, to treat waste from hydraulic
142 fracturing, provided such treatment is solely for the purpose of
143 conducting research to determine whether such waste can be treated to
144 make such waste suitable for use or reuse. The commissioner shall
145 prescribe the form to be used for submitting any such request,
146 including any information that the commissioner deems necessary for
147 evaluating any such request. In approving any such request, the
148 commissioner shall prescribe any conditions or requirements the
149 commissioner deems necessary to prevent pollution to the air, land or
150 waters of the state or to protect human health or the environment and
151 shall include requirements regarding the disposal of any waste from
152 any such research. [From July 1, 2014, until the adoption of regulations
153 in accordance with subsection (b) of this section, no] No person whose
154 request is approved pursuant to this section shall: (1) Apply for or
155 obtain more than three such approvals pursuant to this subsection, and
156 (2) treat more than three hundred thirty gallons of natural gas waste or
157 oil waste or waste from hydraulic fracturing in accordance with this
158 subsection, regardless of the number of approvals issued to such
159 person. The commissioner may authorize a single treatment in excess
160 of such gallon limitation by one person provided such authorization
161 allows for the treatment of not more than five hundred gallons of
162 natural gas waste or oil waste or waste from hydraulic fracturing. For
163 the purposes of this subsection, all natural gas waste or oil waste or
164 wastes from hydraulic fracturing shall be considered to be hazardous
165 waste, as defined in section 22a-448, regardless of the state's
166 incorporation by reference of 40 CFR 261.4(b)(5). Prior to approving
167 any such research request, the Commissioner of Energy and
168 Environmental Protection shall adopt regulations, in accordance with
169 the provisions of chapter 54, including approval of such regulations by
170 the standing legislative regulation review committee, to: (A) Eliminate
171 the exemption in the state's hazardous waste management regulations,
172 adopted pursuant to subsection (c) of section 22a-449 for the wastes
173 identified in 40 CFR 261.4(b)(5) and to provide that such wastes shall
174 be subject to the state's hazardous waste management regulations, as
175 applicable, as set forth in sections 22a-449(c)-100 to 22a-449(c)-119,

176 inclusive, and section 22a-449(c)-11 of the regulations of Connecticut
 177 state agencies, (B) ensure that any radioactive materials that may be
 178 present in wastes from hydraulic fracturing do not create or will not
 179 reasonably be expected to create a source of pollution to the air, land
 180 or waters of the state and do not otherwise pose a threat to the human
 181 health or the environment of this state, (C) require disclosure of the
 182 composition of the waste from hydraulic fracturing, and (D) provide
 183 for the maintenance of records concerning the origins and all
 184 intermediate and final delivery points of such wastes from hydraulic
 185 fracturing.

186 (h) Any person exploring for oil or gas [on or after the effective date
 187 of regulations required by this subsection] shall register with the
 188 Commissioner of Energy and Environmental Protection on a form
 189 prescribed by him. The commissioner shall adopt regulations in
 190 accordance with the provisions of chapter 54 setting forth (1) standards
 191 for oil and gas exploration and production wells, including, but not
 192 limited to, standards for the abandonment of exploration and
 193 production activities, and (2) the amount of a fee to be paid by
 194 registrants which shall be sufficient to pay the cost of administering
 195 the registration program.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	22a-472

Statement of Legislative Commissioners:

In Subsection (g), "the commissioner shall require that records be maintained" was changed to "provide for the maintenance of records" for adherence to standard drafting conventions.

ENV *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note***State Impact:*** None***Municipal Impact:*** None***Explanation***

The bill replaces the current moratorium on certain types of fracking waste with a permanent ban, and expands the new ban to include natural gas or oil hazardous waste.

As this is current practice, there is no fiscal impact.

The Out Years***State Impact:*** None***Municipal Impact:*** None

OLR Bill Analysis**sSB-103*****AN ACT CONCERNING HYDRAULIC FRACTURING WASTE IN CONNECTICUT.*****SUMMARY**

This bill, with a limited exception for research, permanently bans accepting, receiving, collecting, storing, treating, transferring, selling, acquiring, handling, processing, and disposing hydraulic fracturing (“fracking”) waste, natural gas waste, or oil waste in Connecticut. Current law imposes a narrower ban that generally applies to accepting, receiving, collecting, storing, treating, transferring, and disposing fracking waste until the Department of Energy and Environmental Protection (DEEP) commissioner adopts regulations to, among other things, control it as hazardous waste.

Before approving a research request, the bill requires the DEEP commissioner to adopt regulations that, among other things, eliminate the exemption in the state’s hazardous management regulations for drilling fluids, produced waters, and other wastes associated with exploring, developing, or producing crude oil, natural gas, or geothermal energy.

The bill also requires anyone exploring for oil or gas to register with DEEP on a form the commissioner prescribes. Under current law, such a person has to register only after the commissioner adopts regulations providing (1) standards for oil and gas exploration and production wells and (2) the registration fee, which must be enough to pay the registration program’s administrative costs.

EFFECTIVE DATE: Upon passage

BAN ON FRACKING, NATURAL GAS, OR OIL WASTE

Under the bill, no person, including an individual, business, or political subdivision or the state, may accept, receive, collect, store, treat, transfer, sell, acquire, handle, process, or dispose of fracking, natural gas, or oil waste (see Expanded Definitions below). The ban also specifically applies to discharging wastewaters into or from a pollution abatement facility or introducing natural gas or oil waste into a solid waste management facility in, or operated by, the state.

The bill eliminates a provision that allows a person to collect or transport fracking waste for receipt, acceptance, or transfer in the state if he or she obtains a DEEP permit before doing so. Consequently, it prohibits the practice.

It also eliminates the DEEP commissioner's authority to adopt regulations allowing the sale, offer, barter, manufacture, distribution, or use of an anti-icing, de-icing, pre-wetting, or dust suppression product derived from or containing fracking waste. Thus, the bill bans these actions and also applies the ban to products derived from natural gas and oil waste.

RESEARCH EXCEPTION

The bill maintains a provision in existing law that allows certain fracking waste research to be conducted in the state, but prohibits the DEEP commissioner from approving such a request until there are applicable regulations. It also broadens the type of waste that a person may conduct research on to include natural gas or oil waste, but does not increase the amount of waste that can be used for research.

Under current law, DEEP may approve up to three requests for a person to treat up to 330 gallons of fracking waste for research purposes or a single request for treating up to 500 gallons. The research is limited to determining whether the waste can be made suitable for use or reuse.

Regulations

Before approving a research request, the bill requires the commissioner to adopt regulations, which the Legislative Regulation

Review Committee must approve. The regulations must:

1. eliminate the exemption in the state's hazardous waste management regulations for drilling fluids, produced waters, and other wastes associated with exploring, developing, or producing crude oil, natural gas, or geothermal energy;
2. ensure that any radioactive materials that may be in fracking waste do not pollute the state's air, land, or waters or threaten human health or the environment;
3. require disclosure of the composition of the fracking waste; and
4. require the maintenance of records on the origins and intermediate and final delivery points of the fracking waste.

EXPANDED DEFINITIONS

Under current law, "hydraulic fracturing" refers to the process of pumping fluid into or under the ground's surface for purposes of fracturing rock to explore for, develop, produce, or recover natural gas. The bill broadens the definition by also applying it to oil and other subsurface hydrocarbons. The bill also provides that "waste from hydraulic fracturing" includes any substances that are associated with, instead of only used for or generated secondarily to, fracking.

Under the bill, "natural gas waste" is:

1. liquid or solid waste, or its parts, from natural gas extraction activity;
2. solid waste leachate associated with the activity;
3. waste from, or associated with, natural gas underground storage;
4. waste from, or associated with, liquefied petroleum gas well storage operations; and
5. products or byproducts from treating, modifying, or processing

these wastes.

The bill defines “oil waste” as (1) liquid or solid waste, or its parts, from oil extraction activity; (2) solid waste leachate associated with the activity; and (3) products or byproducts from treating, modifying, or processing these wastes.

Extraction activity refers to geological or geophysical activities related to exploring for or extracting natural gas or oil, such as core and rotary drilling and fracking.

Lastly, the bill defines “application,” but the term is not used elsewhere in the bill.

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute

Yea 29 Nay 1 (02/28/2018)