Dear Assemblymember:

Re: toxic spills in Le Roy, and New York’s hazardous waste loophole for the oil and gas industry.

From the available records, we know very little about what actually went wrong in Le Roy, but it is disheartening to learn that when the DEC inspector visited the school on July 13, 2011, he discovered not one, but two, leaking brine tanks. In one instance, it appears that the produced water simply overflowed the tank because someone had failed to empty it. The inspector reported that the person charge with emptying the tank “agreed to watch brine levels in tanks more closely” in the future. He also agreed to remove the contaminated soil “when rain starts”, and to cut the dead trees that had been killed by the fluid contamination. No fines were levied and, as you know, these spills were not registered in the department’s spills incident database, nor were they reported to the National Response Center. This meant that parents, students and medical professionals lacked important information that may have helped them determine the cause of the still unexplained illness that subsequently afflicted more than a dozen students who had played on these fields.

Beyond this, many questions remain unanswered. We don’t know how long the tanks had been leaking, how much produced water spilled onto the fields, or whether these instances of contamination have anything at all to do with the students’ illnesses. In fact, we don’t even know the chemical composition of the produced water that killed the surrounding vegetation
because the DEC failed to conduct an analysis of the fluid when the accidents were discovered.

We do know that produced water from gas bearing formations is typically rich in chlorides (hence the euphemism “brine”) and also usually contains high levels of bromides and metalloids, such as arsenic, and heavy metal such as cadmium, which is toxic in trace amounts. (It appears that the concentration of radioactive material in produced water from the Upper Silurian/Medina - the producing formation in Le Roy – may not be as high as in the Marcellus Shale, so this may not be a factor that needs to be considered when assessing the long term consequences of prolonged contact to the contaminants in the produced water in Le Roy.)

It would be easy to blame the individual who failed to empty the brine tanks, or the administration of the Le Roy school district, for needlessly exposing students to chemical contamination, but we’re not sure that would be fair. After all, it could be argued that New York State itself, through its laws, and through the policies of its DEC, contributes to the misimpression that produced water is not a dangerous contaminant requiring careful handling and disposal. Doesn’t the department’s “policy” of not recording spills that kill trees on schoolyard grounds demonstrate a disregard for safety of our children and convey the wrong message to the public? But then the department too can shift blame by pointing to the loophole in state law that declares that drilling wastewater should never be classified as “hazardous”, no matter how toxic it may be.

You note that the spills in Le Roy were not reported because they were “non-petroleum”, but we think it’s also worth noting that if this fluid had been classified according to its actual chemical content, it may well have been deemed “hazardous” and then reporting would have been mandatory.

Earlier this week the Assembly took up A7013, a simple, straightforward bill that would do nothing more than ensure that drilling waste is properly classified based on its actual toxicity. If spent fracking fluid and produced water meet the chemical definition of “hazardous”, then they would have to be treated accordingly. We were disappointed to learn that you were one of just thirty-eight Assembly Members to vote against this bill.

We believe that the hazardous waste loophole enjoyed by the oil and gas industry is indefensible, and I’m very curious as to why you think it needs to
be preserved. Why should this one industry be exempt from a law that governs every other business in the state?

We hope in the future you will carefully reconsider the wisdom of preserving a legal loophole that might lead to the careless and improper handling of dangerous substances.

Very best regards,
Catskill Citizens for Safe Energy