

September 24, 2012

**ASSEMBLY BILL NO. 575
(First Reprint)**

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Assembly Bill No. 575 (First Reprint) without my approval.

This January, I signed into law P.L.2011, c.194, which established a one-year moratorium on hydraulic fracturing ("Fracking") in New Jersey and required the Department of Environmental Protection ("DEP") to conduct an investigation into whether Fracking could have or is likely to have an adverse impact on New Jersey's air and water quality. Although the Legislature had initially presented me a permanent, outright statutory ban on Fracking in New Jersey, such an absolute ban was premature. Further demonstrating that a complete ban of Fracking in New Jersey was an ill-advised rush to judgment was the fact that New Jersey - as well as the rest of the nation - continues to wait for federal guidance on the issue. Indeed, the United States Environmental Protection Agency ("EPA"), then as now, continues its on-going study of Fracking, and a first progress report on the on-going study is expected later this year. A final draft federal report is expected to be released for public comment and peer review in 2014. This bill's outright, statutory ban on the treatment, discharge, disposal, and storage of Fracking waste is premature in view of our collective understanding of Fracking, its waste, and the potential for future advances in these developing and emerging areas.

More importantly, despite the vigorous public debate that surrounded last legislative term's Fracking legislation and the absence of consensus on the merits of the drilling technique,

there was one fact on which there could be no debate and on which the Legislature and I fundamentally agreed, as demonstrated by the express findings enumerated in P.L.2011, c.194: "Hydraulic fracturing is not occurring and is unlikely to occur in New Jersey in the foreseeable future."

The lack of frackable shale formations in New Jersey is directly relevant to Assembly Bill No. 575 and is why, based on advice from the Office of the Attorney General, I must return this bill without my signature due to its unconstitutional nature. Because the nation is one common market in which state lines cannot be barriers to commerce, the Dormant Commerce Clause of the United States Constitution limits a state's ability to regulate interstate commerce. Accordingly, the Dormant Commerce Clause precludes states from enacting parochial, isolationist, and discriminatory laws, such as Assembly Bill No. 575.

Assembly Bill No. 575 seeks to prohibit wastewater, wastewater solids, sludge, drill cuttings, or other byproducts (collectively "Waste") generated from Fracking "in any State" from being treated, discharged, disposed of, or stored in New Jersey. Although the bill is, on its face, neutral in that it seemingly applies to Waste from "any State," the undisputed fact, agreed to by the Legislature, that Fracking "is not occurring and is unlikely to occur in New Jersey," demonstrates beyond a doubt that this ostensible evenhandedness is superficial. Because no Fracking Waste is being produced in New Jersey, nor is it likely to be produced in New Jersey in the foreseeable future, any Waste subject to this bill must be generated out-of-state.

Indeed, throughout the emotional and heated legislative hearings on this bill, the Fracking Waste produced in neighboring states was repeatedly referenced, demonstrating the impermissible, discriminatory intent and effect of Assembly Bill No. 575 to exclude out-of-state Fracking Waste in violation of the Dormant Commerce Clause. By effectively operating as an embargo on out-of-state Fracking Waste, Assembly Bill No. 575 would be subject to strict scrutiny by the courts - a level of scrutiny that is a virtual guarantee of its invalidity.

Accordingly, because the purpose and plain effect of Assembly Bill No. 575 is to economically isolate New Jersey by placing an embargo on out-of-state commerce in violation of the Dormant Commerce Clause, I herewith return Assembly Bill No. 575 without my approval.

Respectfully,

/s/ Chris Christie

Governor

[seal]

Attest:

/s/ Charles B. McKenna

Chief Counsel to the Governor