

STATE OF NEW YORK

7736

2023-2024 Regular Sessions

IN SENATE

November 3, 2023

Introduced by Sens. WEBB, MAY -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the environmental conservation law and the public lands law, in relation to permits and financial security for reclamation for salt mining beneath a lake

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivisions 11 and 12 of section 23-2711 of the environ-
2 mental conservation law, as added by chapter 166 of the laws of 1991,
3 are amended and two new subdivisions 11-a and 14 are added to read as
4 follows:

5 11. Permits issued pursuant to this title shall be renewable. A
6 complete application for renewal shall contain the following:

- 7 (a) completed application forms;
- 8 (b) an updated mining plan map consistent with paragraph (a) of subdi-
9 vision one of section 23-2713 of this title and including an identifica-
10 tion of the area to be mined during the proposed permit term;
- 11 (c) a description of any changes to the mined land-use plan, which
12 shall include, with respect to a permit for salt mining beneath a lake,
13 an updated reclamation plan accounting for any differences in circum-
14 stances since the reclamation plan was last approved by the department;
15 and
- 16 (d) an identification of reclamation accomplished during the existing
17 permit term.

18 11-a. Notwithstanding anything in this section to the contrary, with
19 respect to salt mining beneath a lake, any permit renewal application
20 shall:

- 21 (a) not constitute a minor project within the meaning of article
22 seventy of this chapter;
23 (b) be treated as an application for a new permit;

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 (c) constitute an action requiring environmental quality review pursu-
2 ant to article eight of this chapter; and

3 (d) be deemed an action that is likely to require the preparation of
4 an environmental impact statement pursuant to subparagraph (i) of para-
5 graph (c) of subdivision two of section 8-0113 of this chapter.

6 12. The procedure for transfer of a permit issued pursuant to this
7 title is the procedure for permit modification pursuant to article
8 seventy of this chapter; provided, however, and notwithstanding subdivi-
9 sion thirteen of this section or any other provision of this section to
10 the contrary, any transfer of a permit to engage in salt mining activi-
11 ties beneath a lake shall constitute a material modification of the
12 permit and, if no environmental impact statement has been prepared
13 pursuant to the environmental quality review requirements of article
14 eight of this chapter with respect to such mining within the preceding
15 twenty years, such transfer shall:

16 (a) not constitute a minor project within the meaning of article
17 seventy of this chapter;

18 (b) be treated as an application for a new permit;

19 (c) constitute an action requiring environmental quality review pursu-
20 ant to article eight of this chapter; and

21 (d) be deemed an action that is likely to require the preparation of
22 an environmental impact statement pursuant to subparagraph (i) of para-
23 graph (c) of subdivision two of section 8-0113 of this chapter.

24 14. As soon as practicable and in any event within one hundred eighty
25 days of the effectiveness of this subdivision, the department shall
26 prepare an environmental impact statement in compliance with the envi-
27 ronmental review requirements of article eight of this chapter with
28 respect to any salt mining beneath a lake if no environmental impact
29 statement has been prepared within the preceding twenty years with
30 respect to such mining. Any holder of a permit to mine salt beneath a
31 lake shall comply with all reasonable requests of the department in
32 connection with preparation of such an environmental impact statement.
33 The preparation of such environmental impact statement shall include a
34 comprehensive review of the cumulative effects of such mining, includ-
35 ing consideration of the effects of past mining and their potential
36 future environmental impacts.

37 § 2. Section 23-2715 of the environmental conservation law, as amended
38 by chapter 166 of the laws of 1991, subdivision 6 as amended by chapter
39 60 of the laws of 1993, is amended to read as follows:

40 § 23-2715. Financial security for reclamation.

41 1. Before the department may issue a permit, the applicant, unless
42 exempt, shall furnish financial security (a) to ensure the performance
43 of reclamation as provided in the approved mined land-use plan, (b) to
44 cover any damages directly or indirectly resulting from salt mining
45 activities beneath a lake, including, but not limited to, those result-
46 ing from collapse or water contamination, and (c) naming the state as
47 beneficiary. Financial security shall be in the form of a bond from a
48 corporate surety licensed to do business as such in the state or any
49 other form the department may deem acceptable. Any interest accruing as
50 a result of such security shall be the exclusive property of the permit-
51 tee.

52 2. The department shall determine the amount, condition, and terms of
53 the financial security. The amount shall be based upon the estimated
54 cost of reclaiming the affected land and the estimated liability from
55 potential damages directly or indirectly resulting from salt mining
56 activities beneath a lake, including, but not limited to, those result-

1 ing from collapse or water contamination, which shall be based on infor-
2 mation contained in the permit application, the environmental quality
3 review conducted pursuant to article eight of this chapter and upon such
4 information as an investigation by the department may disclose. At a
5 minimum, the department shall consider the particular circumstances of
6 the mine and mining activities in making determinations pursuant to this
7 subdivision related to financial security amounts required to cover
8 potential damages directly or indirectly resulting from salt mining
9 activities beneath a lake, including, but not limited to, those result-
10 ing from collapse or water contamination. Such consideration shall
11 include, but not be limited to:

12 (a) those factors considered in determining the amount of financial
13 security to ensure performance of reclamation;

14 (b) geologic, hydrologic, and other environmental conditions;

15 (c) the presence of any environmentally sensitive areas or resources;

16 (d) the presence of persons and property; and

17 (e) local economic impacts of potential damages.

18 The department shall engage an independent third party with the neces-
19 sary actuarial and/or other appropriate expertise either to make a
20 determination with respect to such potential damages or to review the
21 determination of the department with respect thereto and, in the case of
22 a review, the department shall incorporate the appropriate recommenda-
23 tions by such independent third-party reviewer into its final determi-
24 nation.

25 3. The financial security shall remain in full force and effect until
26 the department has approved the reclamation and determined that there is
27 no continuing risk of damages directly or indirectly from salt mining
28 activities beneath a lake, including, but not limited to, those result-
29 ing from collapse or water contamination. At the discretion of the
30 department, the permittee may secure the release of that portion of the
31 financial security for affected land on which reclamation has been
32 completed and approved by the department.

33 4. If the financial security shall for any reason be cancelled, within
34 thirty days after receiving notice thereof, the permittee shall provide
35 a valid replacement under the same conditions as described in this
36 section. Failure to provide a replacement bond within such period may,
37 at the discretion of the commissioner, result in the immediate suspen-
38 sion of the mining permit by the department.

39 5. If a permit is suspended or revoked, the department may require the
40 permittee to commence reclamation upon thirty days notice.

41 6. If the permittee fails to commence or to complete the reclamation
42 as required, the department may attach the financial security furnished
43 by the permittee. In any event, the full cost of completing reclamation
44 and any damages directly or indirectly resulting from salt mining activ-
45 ities beneath a lake, including, but not limited to, those resulting
46 from collapse or water contamination shall be the personal liability of
47 the permittee and/or the person engaged in mining and the department,
48 acting by the attorney general, may bring suit to recover all costs to
49 secure the reclamation and damages directly or indirectly resulting from
50 salt mining activities beneath a lake not covered by the financial secu-
51 rity. The materials, machinery, implements and tools of every
52 description which may be found at the mine, or other assets of the
53 permittee and/or the person engaged in mining shall be subject to a lien
54 of the department for the amount expended for reclamation of affected
55 lands, and for making whole any parties suffering any damages directly
56 or indirectly resulting from salt mining activities beneath a lake, and

1 shall not be removed without the written consent of the department. Such
2 lien may be foreclosed by the attorney general in the same manner as a
3 mechanic's lien. Any and all moneys recovered shall be deposited in the
4 environmental regulatory account pursuant to section 72-1009 of this
5 chapter.

6 7. Political subdivisions, municipalities, the United States and any
7 of its agencies and agencies of the state shall be exempt from the
8 requirements of this section.

9 8. Any permittee which has furnished a financial security which is not
10 in compliance with the requirements of this section on the effective
11 date of this subdivision shall be in violation of this section if such
12 financial security is not brought into compliance within six months of
13 such effective date.

14 § 3. Section 81 of the public lands law is amended by adding a new
15 subdivision 3 to read as follows:

16 3. Notwithstanding subdivisions one and two of this section, with
17 respect to a permit, consent, or lease issued with respect to salt
18 mining activities beneath a lake, the duration of such permit, consent,
19 or lease shall not be longer than the duration for which mining is
20 allowable under the permit issued by the department of environmental
21 conservation pursuant to title twenty-seven of article twenty-three of
22 the environmental conservation law in respect of such mining.

23 § 4. Severability. If any provision of this act, or any application of
24 any provision of this act, is held to be invalid, that shall not affect
25 the validity or effectiveness of any other provision of this act, or of
26 any other application of any provision of this act, which can be given
27 effect without that provision or application; and to that end, the
28 provisions and applications of this act are severable.

29 § 5. This act shall take effect on the thirtieth day after it shall
30 have become a law; provided, however, that section two of this act shall
31 take effect on the ninetieth day after it shall have become a law.
32 Effective immediately, the addition, amendment and/or repeal of any
33 rule or regulation necessary for the implementation of this act on
34 its effective date are authorized to be made and completed on or before
35 such effective date.