

STATE OF NEW YORK

11051

IN ASSEMBLY

April 24, 2026

Introduced by M. of A. KELLES -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law and the public lands law, in relation to permits and financial security for reclamation for mining on state-owned lands occurring below or beneath navigable waterways; and to repeal certain provisions of the environmental conservation law relating thereto

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

1 Section 1. Subdivisions 1, 2, 3, 4, 8, 11 and 12 of section 23-2711 of
2 the environmental conservation law, subdivisions 1, 2, 4 and 8 as
3 amended and subdivisions 3, 11 and 12 as added by chapter 166 of the
4 laws of 1991, are amended and two new subdivisions 11-a and 14 are added
5 to read as follows:

6 1. After September first, nineteen hundred ninety-one, any person who
7 mines or proposes to mine from each mine site more than one thousand
8 tons or seven hundred fifty cubic yards, whichever is less, of minerals
9 from the earth within [~~twelve successive calendar months~~] one year or
10 who mines or proposes to mine over one hundred cubic yards of minerals
11 from or adjacent to or under any body of water not subject to the juris-
12 diction of article fifteen of this chapter [~~or to the public lands law~~]
13 shall not engage in such mining unless a permit for such mining opera-
14 tion has been obtained from the department. A separate permit shall be
15 obtained for each mine site.

16 2. Applications for permits and permit renewals may be submitted for
17 annual terms not to exceed five years. A complete application for a new
18 or renewal mining permit shall contain the following:

- 19 (a) completed application forms;
20 (b) a mined land-use plan;
21 (c) a statement by the applicant and local political subdivision in
22 which the proposed mine is to be located that mining is not prohibited
23 at that location; [~~and~~]
24 (d) for a permit for mining on state-owned lands occurring below or
25 beneath navigable waterways, a thirty-year monitoring plan, covering all
26 affected lands, surface and subsurface, for the purpose of monitoring
27 the effects of the mine or mining activities on navigable waterways; and
28 (e) such additional information as the department may require.

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

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3. Upon receipt of a complete application for a mining permit, for a property not previously permitted pursuant to this title, a notice shall be sent by the department, by certified mail, to the chief administrative officer of the local political subdivision in which the proposed mine is to be located [~~hereafter, "local government"~~]. Such notice will be accompanied by copies of all documents which comprise the complete application and shall state whether the application is a major project or a minor project as described in article seventy of this chapter.

(a) The chief administrative officer may make a determination, and notify the department and applicant, in regard to:

(i) appropriate setbacks from property boundaries or public thoroughfare rights-of-way,

(ii) manmade or natural barriers designed to restrict access if needed, and, if affirmative, the type, length, height and location thereof,

(iii) the control of dust,

(iv) hours of operation, and

(v) whether mining is prohibited at that location.

Any determination made by a local ~~[government]~~ political subdivision hereunder shall be accompanied by supporting documentation justifying the particular determinations on an individual basis. The chief administrative officer must provide any determinations, notices and supporting documents according to the following schedule:

(i) within thirty days after receipt for a major project,

(ii) within thirty days after receipt for a minor project.

(b) If the department finds that the determinations made by the local government pursuant to paragraph (a) of this subdivision are reasonable and necessary, the department shall incorporate these into the permit, if one is issued. If the department does not agree that the determinations are justifiable, then the department shall provide a written statement to the local ~~[government]~~ political subdivision and the applicant, as to the reason or reasons why the whole or a part of any of the determinations was not incorporated.

(c) A proposed mine of five acres or greater total acreage, regardless of length of the mining period, shall be a major project. The department shall, by regulation, provide a minimum thirty day public comment period, and, if the project involves mining on state-owned lands occurring below or beneath navigable waterways, provide notice of such comment period to the local political subdivision in which the proposed mine is to be located, on all permit applications and permit renewals for mined land reclamation permits classified as major projects.

4. Upon approval of the application by the department and receipt of financial security as provided in section 23-2715 of this title, a permit shall be issued by the department. Upon issuance of a permit by the department, the department shall forward a copy thereof by certified mail, to the chief executive officer of the ~~[county, town, village, or city]~~ local political subdivision in which the proposed mining operation is to be located. The department may include in permits such conditions as may be required to achieve the purposes of this title.

8. Notwithstanding any other provision of law, ~~[counties, cities, towns and villages]~~ local political subdivisions shall be exempted from the fees for the permit, application, amendment and renewal required by this article.

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

(a) completed application forms;

(b) an updated mining plan map consistent with paragraph (a) of subdivision one of section 23-2713 of this title and including an identification of the area to be mined during the proposed permit term;

(c) a description of any changes to the mined land-use plan, which shall include, with respect to a permit for mining on state-owned lands occurring below or beneath navigable waterways, an updated reclamation plan of surface and subsurface affected land accounting for any differences in circumstances since the reclamation plan was last approved by the department; [and]

(d) an identification of reclamation accomplished during the existing permit term; and

(e) a thirty-year monitoring plan with respect to a permit for mining on state-owned lands occurring below or beneath navigable waterways of all affected lands, surface and subsurface.

11-a. Notwithstanding any provision of this section to the contrary, with respect to mining on state-owned lands occurring below or beneath navigable waterways where an environmental impact statement has not been prepared pursuant to the environmental quality review requirements of article eight of this chapter with respect to such mining within the preceding twenty years and an environmental study pursuant to subdivision fourteen of this section has not been completed, any permit renewal application shall:

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

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

(c) constitute an action requiring environmental quality review pursuant to article eight of this chapter; and

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

12. The procedure for transfer of a permit issued pursuant to this title is the procedure for permit modification pursuant to article seventy of this chapter; provided, however, and notwithstanding subdivision thirteen of this section or any other provision of this section to the contrary, any transfer or modification of a permit to engage in mining activities on state-owned lands occurring below or beneath navigable waterways shall constitute a material modification of the permit and, if no environmental impact statement has been prepared pursuant to the environmental quality review requirements of article eight of this chapter with respect to such mining within the preceding twenty years, such transfer or modification shall:

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

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

(c) constitute an action requiring environmental quality review pursuant to article eight of this chapter; and

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

14. As soon as practicable and in any event within one hundred eighty days of the effective date of this subdivision, the department shall prepare an environmental study with respect to any mining on state-owned lands occurring below or beneath navigable waterways if no environmental impact statement has been prepared within the preceding twenty years with respect to such mining. Any holder of a permit to engage in mining on state-owned lands occurring below or beneath navigable waterways

1 shall comply with all reasonable requests of the department in
2 connection with preparation of such an environmental study. The prepa-
3 ration of such environmental study shall include a comprehensive review
4 of the cumulative effects of such mining, including consideration of
5 the effects of past mining and their potential future environmental
6 impacts, in the short-term and the long-term; any adverse environmental
7 effects which cannot be avoided should the mining continue; alternatives
8 to the continuation of mining; any irreversible and irretrievable
9 commitments of resources which would be involved in the continued opera-
10 tion; mitigation measures proposed to minimize the environmental impact;
11 the present and future effects of continued action on public drinking
12 water supplies; the present and future effects of continued action on
13 the recreational use and economic activity supported by the navigable
14 waterway, and such other information consistent with the purpose of this
15 subdivision as may be appropriate. In conducting such study, the depart-
16 ment shall engage in a robust public participation process to ensure
17 that the concerns of all stakeholders are heard and inform the final
18 study. The initial findings of the study shall be made available to the
19 public on the department's website no later than one hundred twenty days
20 after the effective date of this subdivision, and shall be subject to a
21 thirty day public comment period. The department shall conduct at least
22 one public hearing during the thirty day comment period for review of
23 the initial findings. The final study shall respond to and, if appro-
24 priate, incorporate comments received from the public and be made avail-
25 able to the public on the department's website in unredacted form.

26 (a) If the results of the environmental study show that there are
27 potential significant and unmitigable risks to navigable waterways as a
28 result of any mining on state-owned lands occurring below or beneath
29 navigable waterways, then the department may, in its discretion, issue
30 an order terminating in whole or in part any authorization to engage in
31 such mining on state-owned lands occurring below or beneath navigable
32 waterways. The department may issue such an order after providing the
33 mining operator with reasonable advance written notice and a reasonable
34 opportunity to be heard.

35 (b) Upon completion, the environmental study shall be considered by
36 the department with respect to all future permitting decisions at the
37 respective mining site involving mining on state-owned lands occurring
38 below or beneath navigable waterways, including:

39 (1) whether to issue any permit renewal, transfer or modification;

40 (2) the terms and conditions of any permit renewal, transfer, or
41 modification;

42 (3) whether to change or increase the amount of financial security for
43 mining the site; and

44 (4) any approval, modification, transfer, or change to any mine
45 closure plan or reclamation plan for the mining site.

46 § 2. Subdivision 9 of section 23-2711 of the environmental conserva-
47 tion law is REPEALED.

48 § 3. Section 23-2715 of the environmental conservation law, as amended
49 by chapter 166 of the laws of 1991, subdivision 6 as amended by chapter
50 60 of the laws of 1993, is amended to read as follows:

51 § 23-2715. Financial security for reclamation.

52 1. Before the department may issue a permit, the applicant, unless
53 exempt, shall furnish financial security (a) to ensure the performance
54 of reclamation as provided in the approved mined land-use plan, (b) to
55 cover any damages directly or indirectly resulting from mining on state-
56 owned lands occurring below or beneath navigable waterways, including,

1 but not limited to, those resulting from collapse or water contam-
2 ination, and (c) naming the state as beneficiary. Financial security
3 shall be in the form of a bond from a corporate surety licensed to do
4 business as such in the state or any other form the department may deem
5 acceptable. Any interest accruing as a result of such security shall be
6 the exclusive property of the permittee.

7 2. The department shall determine the amount, condition, and terms of
8 the financial security. The amount shall be based upon the estimated
9 cost of reclaiming the affected land and the estimated liability from
10 potential damages directly or indirectly resulting from mining activ-
11 ities on state-owned lands occurring below or beneath navigable water-
12 ways, including, but not limited to, those resulting from collapse or
13 water contamination, which shall be based on information contained in
14 the permit application, the environmental quality review conducted
15 pursuant to article eight of this chapter and any environmental study
16 conducted pursuant to subdivision fourteen of section 23-2711 of this
17 title and upon such information as an investigation by the department
18 may disclose. At a minimum, the department shall consider the particular
19 circumstances of the mine and mining activities in making determinations
20 pursuant to this subdivision related to financial security amounts
21 required to cover potential damages directly or indirectly resulting
22 from mining on state-owned lands occurring below or beneath navigable
23 waterways, including, but not limited to, those resulting from collapse
24 or water contamination. Consideration in such circumstances shall
25 include, but not be limited to:

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

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

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

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

31 (e) local economic impacts of potential damages.

32 The department shall engage an independent third party with the neces-
33 sary actuarial, conservation finance and/or other appropriate expertise
34 either to make a determination with respect to such potential damages
35 directly or indirectly resulting from mining activities on state-owned
36 lands occurring below or beneath navigable waterways or to review the
37 determination of the department with respect thereto and, in the case of
38 a review, the department shall incorporate the appropriate recommenda-
39 tions by such independent third-party reviewer into its final determi-
40 nation.

41 3. The financial security shall remain in full force and effect until
42 the department has approved the reclamation and determined that there is
43 no continuing risk of damages directly or indirectly from mining on
44 state-owned lands occurring below or beneath navigable waterways,
45 including, but not limited to, those resulting from collapse or water
46 contamination. At the discretion of the department, the permittee may
47 secure the release of that portion of the financial security for
48 affected land on which reclamation has been completed and approved by
49 the department.

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

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

3 6. If the permittee fails to commence or to complete the reclamation
4 as required, the department may attach the financial security furnished
5 by the permittee. In any event, the full cost of completing reclamation
6 and any damages directly or indirectly resulting from mining on state-
7 owned lands occurring below or beneath navigable waterways, including,
8 but not limited to, those resulting from collapse or water contamination
9 shall be the personal liability of the permittee and/or the person
10 engaged in mining and the department, acting by the attorney general,
11 may bring suit to recover all costs to secure the reclamation and
12 damages directly or indirectly resulting from mining on state-owned
13 lands occurring below or beneath navigable waterways not covered by the
14 financial security. The materials, machinery, implements and tools of
15 every description which may be found at the mine, or other assets of the
16 permittee and/or the person engaged in mining shall be subject to a lien
17 of the department for the amount expended for reclamation of affected
18 lands, and for making whole any parties suffering any damages directly
19 or indirectly resulting from mining on state-owned lands occurring below
20 or beneath navigable waterways, and shall not be removed without the
21 written consent of the department. Such lien may be foreclosed by the
22 attorney general in the same manner as a mechanic's lien. Any and all
23 moneys recovered shall be deposited in the environmental regulatory
24 account pursuant to section 72-1009 of this chapter.

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

28 8. Any permittee which has furnished a financial security with respect
29 to mining on state-owned lands occurring below or beneath navigable
30 waterways which is not in compliance with the requirements of this
31 section on the effective date of this subdivision shall be in violation
32 of this section if such financial security is not brought into compli-
33 ance within six months of such effective date.

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

36 3. Notwithstanding subdivisions one and two of this section, with
37 respect to a permit, consent, or lease issued with respect to mining on
38 state-owned lands occurring below or beneath navigable waterways, the
39 duration of such permit, consent, or lease shall not be longer than the
40 duration for which mining is allowable under the permit issued by the
41 department of environmental conservation pursuant to title twenty-seven
42 of article twenty-three of the environmental conservation law in respect
43 of such mining.

44 § 5. Severability. If any provision of this act, or any application of
45 any provision of this act, is held to be invalid, that shall not affect
46 the validity or effectiveness of any other provision of this act, or of
47 any other application of any provision of this act, which can be given
48 effect without that provision or application; and to that end, the
49 provisions and applications of this act are severable.

50 § 6. This act shall take effect on the thirtieth day after it shall
51 have become a law; provided, however, that section three of this act
52 shall take effect on the ninetieth day after it shall have become a law.
53 Effective immediately, the addition, amendment and/or repeal of any
54 rule or regulation necessary for the implementation of this act on
55 its effective date are authorized to be made and completed on or before
56 such effective date.