S T A T E O F N E W Y O R K

3779

2009-2010 Regular Sessions

I N A S S E M B L Y

January 28, 2009

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

AN ACT to amend the environmental conservation law, in relation to requiring the indexing of all rules, regulations, orders, consent orders and amendments thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision 5 of section 17-0303 of the environmental conservation law is amended by adding a new paragraph m to read as follows:

M. ENTER, IN THEIR ENTIRETY, AND INDEX ALL RULES, REGULATIONS, ORDERS, CONSENT ORDERS AND AMENDMENTS THEREOF PROMULGATED, ISSUED OR ADOPTED BY THE DEPARTMENT IN QUARTERLY SUMMARY REPORTS TO BE KEPT BY THE DEPARTMENT FOR THAT PURPOSE, AND SHALL BE PUBLIC RECORDS OPEN FOR INSPECTION AT ALL TIMES DURING REASONABLE OFFICE HOURS. A COPY OF ANY DEPARTMENT RULE OR REGULATION SHALL BE RECEIVED IN EVIDENCE IN ALL COURTS OF THIS STATE WITH THE SAME EFFECT AS THE ORIGINAL, IF CERTIFIED BY A MEMBER OR DULY AUTHORIZED EMPLOYEE OF THE DEPARTMENT.

S 2. The environmental conservation law is amended by adding a new section 19-0508 to read as follows:

S 19-0508. PUBLIC REVIEW MEETING.

ALL RULES, REGULATIONS, ORDERS, CONSENT ORDERS AND AMENDMENTS THERETO MADE BY THE DEPARTMENT SHALL BE IN WRITING AND SHALL BE ENTERED IN FULL AND INDEXED IN QUARTERLY SUMMARY REPORTS TO BE KEPT BY THE DEPARTMENT FOR THAT PURPOSE, AND SHALL BE PUBLIC RECORDS OPEN FOR INSPECTION AT ALL TIMES DURING REASONABLE OFFICE HOURS. A COPY OF ANY DEPARTMENT RULE OR REGULATION SHALL BE RECEIVED IN EVIDENCE IN ALL COURTS OF THIS STATE WITH THE SAME EFFECT AS THE ORIGINAL, IF CERTIFIED BY A MEMBER OR DULY AUTHORIZED EMPLOYEE OF THE DEPARTMENT.

S 3. Section 71-0519 of the environmental conservation law is amended by adding a new subdivision 7 to read as follows:

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

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7. ALL RULES, REGULATIONS, ORDERS, CONSENT ORDERS AND AMENDMENTS THERETO MADE BY THE DEPARTMENT SHALL BE IN WRITING AND SHALL BE ENTERED IN FULL AND INDEXED IN QUARTERLY SUMMARY REPORTS TO BE KEPT BY THE DEPARTMENT FOR THAT PURPOSE, AND SHALL BE PUBLIC RECORDS OPEN FOR INSPECTION AT ALL TIMES DURING REASONABLE OFFICE HOURS. A COPY OF ANY DEPARTMENT RULE OR REGULATION SHALL BE RECEIVED IN EVIDENCE IN ALL COURTS OF THIS STATE WITH THE SAME EFFECT AS THE ORIGINAL, IF CERTIFIED BY A MEMBER OR DULY AUTHORIZED EMPLOYEE OF THE DEPARTMENT.

S 4. Section 71-0523 of the environmental conservation law is amended to read as follows:

S 71-0523. Power of the department to settle or compromise an action.

1. The department shall BE empowered to settle or compromise in its discretion any action or cause of action to recover a penalty under the provisions of this chapter listed in section 71-0501 or under titles 5 through [15] 13 inclusive and title 33 of this article, as it may deem advantageous to the state.

2. ALL RULES, REGULATIONS, ORDERS, CONSENT ORDERS AND AMENDMENTS THERETO MADE BY THE DEPARTMENT SHALL BE IN WRITING AND SHALL BE ENTERED IN FULL AND INDEXED IN QUARTERLY SUMMARY REPORTS TO BE KEPT BY THE DEPARTMENT FOR THAT PURPOSE, AND SHALL BE PUBLIC RECORDS OPEN FOR INSPECTION AT ALL TIMES DURING REASONABLE OFFICE HOURS. A COPY OF ANY DEPARTMENT RULE OR REGULATION SHALL BE RECEIVED IN EVIDENCE IN ALL COURTS OF THIS STATE WITH THE SAME EFFECT AS THE ORIGINAL, IF CERTIFIED BY A MEMBER OR DULY AUTHORIZED EMPLOYEE OF THE DEPARTMENT.

S 5. Subdivisions 1 and 2 of section 71-1307 of the environmental conservation law, subdivision 1 as amended by chapter 166 of the laws of 1991, subdivision 2 as added by chapter 846 of the laws of 1981, are amended to read as follows:

1. Administrative sanctions. Any person who violates any provision of article 23 of this chapter or commits any offense described in section 71-1305 of this title shall be liable to the people of the state for a civil penalty not to exceed five thousand dollars and an additional penalty of one thousand dollars for each day during which such violation continues, to be assessed by the commissioner after a hearing or opportunity to be heard. The commissioner, acting by the attorney general, may bring suit for collection of such assessed civil penalty in any court of competent jurisdiction. Such civil penalty may be released or compromised by the commissioner before the matter has been referred to the attorney general; and where such matter has been referred to the attorney general, any such penalty may be released or compromised and any action commenced to recover the same may be settled and discontinued by the attorney general with the consent of the commissioner. THE DEPARTMENT SHALL ISSUE QUARTERLY SUMMARY REPORTS OF ALL SUCH RELEASES AND COMPROMISES. In addition, the commissioner shall have the power, following a hearing conducted pursuant to rules and regulations adopted by the department, to direct the violator to cease the violation and reclaim and repair the affected site to a condition acceptable to the commissioner, to the extent possible within a reasonable time and under the direction and supervision of the commissioner. Any such order of the commissioner shall be enforceable in any action brought by the commissioner in any court of competent jurisdiction. Any civil penalty or order issued by the commissioner under this subdivision shall be reviewable in a proceeding under article seventy-eight of the civil practice law and rules.

2. Civil sanctions. In lieu of seeking administrative sanctions, the commissioner may refer any violation described in subdivision 1 of this

section to the attorney general who shall be empowered to bring a civil suit to seek any of the sanctions described in subdivision 1 of this section. Any such sanctions imposed may be released or compromised or the action may be settled and discontinued by the attorney general with the consent of the commissioner. THE DEPARTMENT SHALL ISSUE QUARTERLY SUMMARY REPORTS OF ALL SUCH RELEASES AND COMPROMISES.

S 6. Subdivision 4 of section 71-1707 of the environmental conservation law is amended to read as follows:

4. Such civil penalty may be released or compromised by the commissioner before the matter has been referred to the [Attorney General] ATTORNEY GENERAL, and where such matter has been referred to the [Attorney General] ATTORNEY GENERAL, any such penalty may be released or compromised and any action commenced to recover the same may be settled and discontinued by the [Attorney General] ATTORNEY GENERAL with the consent of the commissioner. THE DEPARTMENT SHALL ISSUE QUARTERLY SUMMARY REPORTS OF ALL SUCH RELEASES AND COMPROMISES.

S 7. Subdivision 2 of section 71-1927 of the environmental conservation law is amended to read as follows:

2. Settle or compromise, with the approval of the [Attorney General] ATTORNEY GENERAL, any action or cause of action for the recovery of a penalty under titles 1 through 11 inclusive and title 19 of article 17 OF THIS CHAPTER as he may deem advantageous to the state. THE DEPARTMENT SHALL ISSUE QUARTERLY SUMMARY REPORTS OF ALL SUCH COMPROMISES, SETTLEMENTS AND ORDERS.

S 8. Subdivision 1 of section 71-2303 of the environmental conservation law, as amended by chapter 654 of the laws of 1977, is amended to read as follows:

1. Administrative sanctions. Any person who violates, disobeys or disregards any provision of article twenty-four, including title five and section 24-0507 thereof or any rule or regulation, local law or ordinance, permit or order issued pursuant thereto, shall be liable to the people of the state for a civil penalty of not to exceed three thousand dollars for every such violation, to be assessed, after a hearing or opportunity to be heard upon due notice and with the rights to specification of the charges and representation by counsel at such hearing, by the commissioner or local government. Such penalty may be recovered in an action brought by the attorney general at the request and in the name of the commissioner or local government in any court of competent jurisdiction. Such civil penalty may be released or compromised by the commissioner or local government before the matter has been referred to the attorney general; and where such matter has been referred to the attorney general, any such penalty may be released or compromised, and any action commenced to recover the same may be settled and discontinued by the attorney general with the consent of the commissioner or local government. THE DEPARTMENT SHALL ISSUE QUARTERLY SUMMARY REPORTS OF ALL SUCH COMPROMISES, SETTLEMENTS OR ORDERS. In addition, the commissioner or local government shall have power, following a hearing held in conformance with the procedures set forth in section 71-1709 of this [chapter] ARTICLE, to direct the violator to cease his violation of the act and to restore the affected freshwater wetland to its condition prior to the violation, insofar as that is possible within a reasonable time and under the supervision of the commissioner or local government. Any such order of the commissioner or local government shall be enforceable in an action brought by the attorney general at the request and in the name of the commissioner or local government in any court of competent jurisdiction. Any civil penalty or order issued by the commission-

er or local government pursuant to this subdivision shall be reviewable in a proceeding pursuant to article seventy-eight of the civil practice law and rules.

S 9. Subdivision 1 of section 71-2727 of the environmental conservation law, as amended by chapter 671 of the laws of 1986, is amended to read as follows:

1. The commissioner, after investigation, notice and an opportunity to be heard, may issue, modify and revoke orders AND CONSENT ORDERS prohibiting violations of any of the provisions of THIS article [27 or 71] OR ARTICLE 27 OF THIS CHAPTER or of any rule or regulation promulgated pursuant thereto and requiring the taking of such remedial measures as may be necessary or appropriate. SUCH ORDERS SHALL BE INDEXED IN QUARTERLY SUMMARY REPORTS OPEN FOR PUBLIC REVIEW DURING REASONABLE OFFICE HOURS.

S 10. This act shall take effect on the one hundred twentieth day after it shall have become a law. Effective immediately, any rule or regulation necessary for the timely implementation of this act on its effective date may be promulgated on or before such date.