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

9040--A

I N A S S E M B L Y

January 17, 2012

Introduced by M. of A. JAFFEE -- read once and referred to the Committee on Environmental Conservation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the environmental conservation law and the public health law, in relation to monitoring and notifying residents of the state of water contamination

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

Section 1. Section 15-0107 of the environmental conservation law is amended to read as follows:

S 15-0107. Definitions as used in this article.

1. "CHRONIC SEWAGE CONTAMINATION" MEANS WATER QUALITY THAT FAILS APPLICABLE WATER QUALITY CRITERIA MORE THAN THIRTY PERCENT OF THE TIME OVER A TWELVE MONTH PERIOD.

2. "COMPREHENSIVE PLANNING" AS USED IN TITLE 11 OF THIS ARTICLE SHALL BE DEEMED TO MEAN MULTI-PURPOSE PLANNING FOR AT LEAST TWO, AND AS MANY MORE AS MAY BE FOUND TO BE PRACTICABLE AND REASONABLE, OF THE PURPOSES AND USES AS PROVIDED BY THIS ARTICLE OR BY ANY OTHER STATUTE, THE PROVISIONS OF WHICH AND THE PROCEDURES AUTHORIZED THEREBY ARE TO REMAIN IN FULL FORCE AND EFFECT.

3. "DISPOSAL" MEANS THE DISCHARGE, DEPOSIT, INJECTION, DUMPING, SPILLING, LEAKING OR PLACING OF ANY SUBSTANCE SO THAT SUCH SUBSTANCE OR ANY RELATED CONSTITUENT THEREOF MAY ENTER THE ENVIRONMENT, OR THE ABANDONMENT OF ANY SUBSTANCE.

4. "DISPOSAL SYSTEM" MEANS A SYSTEM FOR DISPOSING OF SEWAGE, INDUSTRIAL WASTE OR OTHER WASTES, AND INCLUDING SEWER SYSTEMS AND TREATMENT WORKS.

5. "EXISTING USES" ARE THOSE USES ACTUALLY ATTAINED IN THE BODY OF WATER ON OR AFTER NOVEMBER 28, 1975, WHETHER OR NOT THEY ARE DESIGNATED USES.

6. "MUNICIPALITY" OR "MUNICIPAL CORPORATION" INCLUDES A COUNTY, CITY, TOWN AND VILLAGE.

7. "Person" means any individual, firm, co-partnership, association or corporation other than the state and a "public corporation."

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

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[2. "Public corporation" means "public corporation"] 8. "PRIMARY CONTACT RECREATION" MEANS RECREATIONAL ACTIVITIES WHERE THE HUMAN BODY MAY COME IN DIRECT CONTACT WITH RAW WATER TO THE POINT OF COMPLETE BODY SUBMERGENCE. PRIMARY CONTACT RECREATION INCLUDES, BUT IS NOT LIMITED TO, SWIMMING, DIVING, WATER SKIING, SKIN DIVING AND SURFING.

9. "CORPORATION" MEANS A CORPORATION as defined in [subdivision one of Section 3 of the General Corporation Law] SUBPARAGRAPH FOUR OF PARAGRAPH (A) OF SECTION ONE HUNDRED TWO OF THE BUSINESS CORPORATION LAW and includes all public authorities, except the [Power Authority] POWER AUTHORITY of the [State] STATE of New York.

[3. "Municipality" or "municipal corporation" includes a county, city, town and village.

4.] 10. "RECREATIONAL ACCESS AREAS" MEANS POINTS OF ACCESS TO WATERS USED BY THE PUBLIC FOR PRIMARY OR SECONDARY CONTACT RECREATION ACTIVITIES.

11. "RELEASE" SHALL MEAN AN OVERFLOW, SPILL, RELEASE OR DIVERSION OF SEWAGE FROM A DISPOSAL SYSTEM TO WATERS, INCLUDING RELEASES FROM SANITARY SYSTEM OVERFLOWS AND COMBINED SEWER OVERFLOWS WHICH ARE NOT OTHERWISE CATEGORIZED AS DISCHARGES.

12. "SECONDARY CONTACT RECREATION" MEANS RECREATIONAL ACTIVITIES WHERE CONTACT WITH THE WATER IS MINIMAL AND WHERE INGESTION OF THE WATER IS NOT PROBABLE. SECONDARY CONTACT RECREATION INCLUDES, BUT IS NOT LIMITED TO, FISHING AND BOATING.

13. "SEWAGE" MEANS THE WATER-CARRIED HUMAN OR ANIMAL WASTES FROM RESIDENCES, BUILDINGS, INDUSTRIAL ESTABLISHMENTS OR OTHER PLACES, TOGETHER WITH SUCH GROUND WATER INFILTRATION AND SURFACE WATER AS MAY BE PRESENT. THE ADMIXTURE WITH SEWAGE AS ABOVE DEFINED OF INDUSTRIAL WASTES OR OTHER WASTES AS HEREAFTER DEFINED, SHALL ALSO BE CONSIDERED "SEWAGE" WITHIN THE MEANING OF THIS ARTICLE.

14. "SEWER SYSTEM" OR "SEWERAGE SYSTEM" MEANS PIPE LINES OR CONDUITS, PUMPING STATIONS, AND FORCE MAINS, AND ALL OTHER CONSTRUCTIONS, DEVICES, AND APPLIANCES APPURTENANT THERETO, USED FOR CONDUCTING SEWAGE, INDUSTRIAL WASTE OR OTHER WASTES TO A POINT OF ULTIMATE DISPOSAL.

15. "SUPPLEMENTARY WATER QUALITY DATA" MEANS DATA COLLECTED BY OR PROVIDED TO THE DEPARTMENT BY MUNICIPALITIES AND COUNTIES OR BY PRIVATE CITIZENS, NON-GOVERNMENTAL ORGANIZATIONS OR EDUCATIONAL INSTITUTIONS PURSUANT TO SUBDIVISION 4 OF SECTION 15-0319 OF THIS ARTICLE IN ORDER TO ACHIEVE THE PURPOSES OF SUCH SECTION, IN ADDITION TO WATER QUALITY DATA WHICH THE DEPARTMENT IS REQUIRED TO COLLECT PURSUANT TO THE FEDERAL CLEAN WATER ACT AND/OR ARTICLE 17 OF THIS CHAPTER.

16. "TREATMENT WORKS" MEANS ANY PLANT, DISPOSAL FIELD, LAGOON, PUMPING STATION, CONSTRUCTED DRAINAGE DITCH OR SURFACE WATER INTERCEPTING DITCH, INCINERATOR, AREA DEVOTED TO SANITARY LAND FILLS, OR OTHER WORKS NOT SPECIFICALLY MENTIONED HEREIN, INSTALLED FOR THE PURPOSE OF TREATING, NEUTRALIZING, STABILIZING OR DISPOSING OF SEWAGE, INDUSTRIAL WASTE OR OTHER WASTES.

17. "Waters" shall be construed to include lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic ocean within the territorial limits of the state of New York, and all other bodies of surface or underground water, natural or artificial, inland or coastal, fresh or salt, public or private, which are wholly or partially within or bordering the state or within its jurisdiction.

[5.] 18. "Water power" shall be construed to mean power developed from falling or flowing water, and all electrical current and other forms of energy into which such power may be transformed.

[6. The term "comprehensive planning" as used in title 11 of this article shall be deemed to mean multi-purpose planning for at least two, and as many more as may be found to be practicable and reasonable, of the purposes and uses as provided by this article 15 or by any other statute, the provisions of which and the procedures authorized thereby are to remain in full force and effect.

7.] 19. Other definitions, applicable to this article, are found in sections 15-1301, 15-1703, 15-1973 and 15-2101.

S 2. The environmental conservation law is amended by adding a new section 15-0319 to read as follows:

S 15-0319. PUBLIC NOTIFICATION OF SEWAGE DISCHARGES AND RELEASES.

1. FOR PURPOSES OF THIS SECTION "BODY OR BODIES OF WATER" MEANS ALL WATERS, AS DEFINED BY SUBDIVISION 17 OF SECTION 15-0107 OF THE ARTICLE, WHICH ARE, OR COULD BE AFFECTED, EITHER DIRECTLY OR INDIRECTLY, BY SEWAGE CONTAMINATION RESULTING FROM A DISCHARGE OR RELEASE FROM A DISPOSAL SYSTEM AND:

(A) WHICH ARE DESIGNATED BY THE DEPARTMENT FOR PRIMARY OR SECONDARY CONTACT RECREATION USES; OR

(B) WHERE PRIMARY OR SECONDARY RECREATION ACTIVITIES ARE EXISTING USES; OR

(C) FROM WHICH DRINKING WATER IS WITHDRAWN.

2. THE DEPARTMENT SHALL IMMEDIATELY NOTIFY THE DEPARTMENT OF HEALTH OF REPORTED SEWAGE DISCHARGES AND RELEASES FROM DISPOSAL SYSTEMS WHICH HAVE THE POTENTIAL TO AFFECT HUMAN HEALTH IN ORDER FOR THE DEPARTMENT OF HEALTH TO ISSUE WATER QUALITY ALERTS AS REQUIRED BY SECTION 224-C OF THE PUBLIC HEALTH LAW.

3. IN ORDER TO ACHIEVE THE PURPOSES OF THIS SECTION AND, IN ADDITION TO WATER QUALITY SAMPLING REQUIRED BY PARAGRAPH (H) OF SUBDIVISION 5 OF SECTION 17-0303 OF THIS CHAPTER AND THE FEDERAL CLEAN WATER ACT, THE DEPARTMENT SHALL MONITOR AND STUDY SEWAGE CONTAMINATION LEVELS IN BODIES OF WATER AT RECREATIONAL ACCESS AREAS IN ORDER TO NOTIFY THE PUBLIC OF LOCAL WATER QUALITY CONDITIONS AND, AS DATA AND DEPARTMENT RESOURCES MAY ALLOW, TO CREATE WATER QUALITY MODELS THAT CAN PREDICT UNACCEPTABLE LEVELS OF SEWAGE CONTAMINATION IN SUCH BODIES OF WATER. THE DEPARTMENT SHALL UTILIZE SUPPLEMENTARY WATER QUALITY DATA PROVIDED PURSUANT TO SUBDIVISION 4 OF THIS SECTION. THE DEPARTMENT SHALL CONDUCT COLLECTION AND ANALYSIS OF WATER QUALITY ANNUALLY DURING THE RECREATIONAL SEASON FROM MAY THROUGH SEPTEMBER. WATER QUALITY COLLECTION AND ANALYSIS MAY ALSO BE PROVIDED BY COUNTY DEPARTMENTS OF HEALTH, MUNICIPALITIES OR AGENCIES TASKED WITH MONITORING WATER CONTAMINATION, PRIVATE LABS AND/OR NON-PROFIT OR CITIZEN GROUPS THAT PERFORM SUCH COLLECTION AND ANALYSIS IN CONFORMANCE WITH THE STANDARDS SET FORTH IN THE NEW YORK STATE VOLUNTEER LAKE MONITORING PROGRAM. MUNICIPALITIES AND THEIR SUBDIVISIONS MAY PETITION THE DEPARTMENT TO INCLUDE ADDITIONAL BODIES OF WATER TO THE MONITORING LIST BASED ON CONSISTENT PUBLIC USE OF SUCH BODY OF WATER FOR PRIMARY OR SECONDARY CONTACT RECREATION.

4. CITIZENS, NON-GOVERNMENTAL ORGANIZATIONS AND EDUCATIONAL INSTITUTIONS, UNDER THE GUIDANCE AND DIRECTION OF THE DEPARTMENT, MAY MONITOR WATER QUALITY TO GATHER DATA ON SEWAGE CONTAMINATION OF BODIES OF WATER AND PROVIDE SUCH DATA TO THE DEPARTMENT AS SUPPLEMENTARY WATER QUALITY DATA IN ORDER TO ASSIST THE DEPARTMENT WITH ACCOMPLISHING THE PURPOSES OF THIS SECTION. SUCH MONITORING SHALL BE CONDUCTED PURSUANT TO PROTOCOLS AND QUALITY ASSURANCE/QUALITY CONTROL REQUIREMENTS AS THE DEPARTMENT MAY PROMULGATE BY REGULATION. SUCH SAMPLING SHALL OCCUR BETWEEN MAY AND SEPTEMBER. SAMPLES MAY BE PROCESSED BY THE VOLUNTEERS AND FORWARDED TO A CONTRACT CHEMISTRY LABORATORY FOR ANALYSIS. CHEMISTRY PARAMETERS

SHALL INCLUDE, BUT ARE NOT LIMITED TO, TESTS FOR ESCHERICHIA COLI, FECAL COLIFORM, TOTAL COLIFORM AND ENTEROCOCCUS BACTERIA. THE COMMISSIONER SHALL ESTABLISH AND FILL A NEW PERMANENT POSITION OF PROGRAM COORDINATOR FOR THE MONITORING PROGRAM WITHIN THE DIVISION OF WATER. QUALITY CONTROL CHECKS SHALL BE CARRIED OUT ON A REGULAR BASIS BY THE PROGRAM COORDINATOR.

5. THE DATA RETRIEVED FROM THE STUDIES REQUIRED PURSUANT TO SUBDIVISIONS 3 AND 4 OF THIS SECTION SHALL BE SHARED WITH THE DEPARTMENT OF STATE, DEPARTMENT OF HEALTH, THE PUBLIC HEALTH AND HEALTH PLANNING COUNCIL AND ANY OTHER DEPARTMENT OR AGENCY WITH AN INTEREST IN SUCH INFORMATION.

6. THE DEPARTMENT, IN CONJUNCTION WITH THE DEPARTMENT OF HEALTH AND THE PUBLIC HEALTH AND HEALTH PLANNING COUNCIL, SHALL ESTABLISH A CODING SYSTEM FOR PUBLIC NOTIFICATION OF THE LEVELS OF SEWAGE CONTAMINATION IN THE WATER. IN ADDITION TO THE CODED NOTIFICATION SYSTEM, ALL WATER QUALITY DATA SHALL BE MADE AVAILABLE TO THE PUBLIC AS IT IS COLLECTED IN AS NEAR TO REAL TIME AS POSSIBLE. WATER BODIES WHERE WATER QUALITY MONITORING IS NOT CONDUCTED SHALL BE LISTED AS SUCH.

S 3. The public health law is amended by adding a new section 224-c to read as follows:

S 224-C. WATER QUALITY INFORMATION. 1. THE PUBLIC HEALTH AND HEALTH PLANNING COUNCIL SHALL PROVIDE ONGOING UPDATES TO RESIDENTS OF THE STATE REGARDING THE QUALITY OF WATER THROUGHOUT THE STATE USING INFORMATION RECEIVED BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION FROM WATER QUALITY MONITORING AND PREDICTIVE WATER QUALITY MODELS, PURSUANT TO SECTION 15-0319 OF THE ENVIRONMENTAL CONSERVATION LAW.

2. INFORMATION SHALL BE DISSEMINATED TO RESIDENTS OF THE STATE THROUGH VARIOUS METHODS, INCLUDING BUT NOT LIMITED TO THE DEPARTMENT'S WEBSITE.

3. THE CODING SYSTEM, ESTABLISHED BETWEEN THE DEPARTMENT, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, AND THE PUBLIC HEALTH AND HEALTH PLANNING COUNCIL, PURSUANT TO SECTION 15-0319 OF THE ENVIRONMENTAL CONSERVATION LAW, SHALL BE MADE AVAILABLE ON THE DEPARTMENT'S WEBSITE, ALONG WITH THE WATER QUALITY SAMPLING DATA AND PREDICTIVE MODEL DATA.

4. IF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION DETERMINES THAT THERE ARE UNACCEPTABLE LEVELS OF SEWAGE CONTAMINATION, THE DEPARTMENT SHALL DISSEMINATE WATER QUALITY ALERTS TO THE PUBLIC. WATER QUALITY ALERTS MUST BE ISSUED AS SOON AS POSSIBLE, AND NO LATER THAN ONE HOUR AFTER THE STATE IS NOTIFIED, IN THE EVENT OF ANY ACCIDENTAL SEWAGE RELEASES SUCH AS SEWER COLLECTION AND CONVEYANCE COMPONENT FAILURE AND UNPLANNED RELEASES FROM WASTEWATER TREATMENT PLANTS. THE PUBLIC MUST BE NOTIFIED IN REAL TIME WHEN EVENTS OR CONDITIONS ARE ANTICIPATED, BASED ON A PREDICTIVE MODEL OR PLANNED RELEASE, TO CAUSE UNACCEPTABLE WATER QUALITY, SUCH AS HEAVY RAIN IN AN AREA WITH COMBINED SEWER OVERFLOWS OR PLANNED WASTEWATER TREATMENT PLANT BYPASSES. THE DEPARTMENT SHALL ISSUE ALERTS TO COMMUNICATIONS OUTLETS, INCLUDING TELEVISION AND RADIO AND CREATE AND UTILIZE RELEVANT SOCIAL MEDIA OUTLETS TO COMMUNICATE ANY SPECIAL ALERTS TO STATE AND LOCAL RESIDENTS. AT LOCATIONS WITH CHRONIC SEWAGE CONTAMINATION, SUCH AS ONGOING CONTAMINATION FROM FAILING SEPTIC SYSTEMS, SIGNS SHALL BE POSTED TO ALERT THE PUBLIC OF UNACCEPTABLE LEVELS OF SEWAGE IN THE WATER. THE SIGNS MUST BE EASILY UNDERSTOOD BY THE PUBLIC AND MUST BE MAINTAINED UNTIL WATER QUALITY IN THE AREA RETURNS TO ACCEPTABLE LEVELS OF SEWAGE.

S 4. This act shall take effect on the sixtieth day after it shall have become a law.