

3798

2011-2012 Regular Sessions

I N S E N A T E

March 4, 2011

Introduced by Sen. GRISANTI -- (at request of the Department of Environmental Conservation) -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to regulating the use of the state's water resources; and to repeal titles 16 and 33 of article 15 of such law relating to Great Lakes water conservation and management and water withdrawal reporting

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

1 Section 1. Section 15-1501 of the environmental conservation law, as
2 amended by chapter 233 of the laws of 1979, is amended to read as
3 follows:
4 S 15-1501. [New or additional sources of water supply] WATER
5 WITHDRAWALS; permit.
6 1. Except as otherwise provided in this title, no person [or public
7 corporation] who is [authorized and] engaged in, or proposing to engage
8 in, the [acquisition, conservation, development, use and distribution of
9 water for potable purposes, for the irrigation of agricultural lands,
10 for projects taken pursuant to Article 5-D of the County Law, or for
11 multi-purpose projects authorized by a general plan adopted and approved
12 pursuant to title 11 of this article,] OPERATION OF A WATER WITHDRAWAL
13 SYSTEM WITH A CAPACITY OF GREATER THAN OR EQUAL TO THE THRESHOLD VOLUME,
14 shall have any power to do the following until such person [or public
15 corporation] has first obtained a permit OR PERMIT MODIFICATION from the
16 department pursuant to this title:
17 a. To [acquire or take] MAKE a water [supply] WITHDRAWAL FROM AN
18 EXISTING OR NEW SOURCE or an [additional] INCREASED water [supply] WITH-
19 DRAWAL from an existing [approved] PERMITTED source; [or]
20 b. To take or condemn lands for THE PROTECTION OF ANY EXISTING SOURCES
21 OF PUBLIC WATER SUPPLY; OR FOR THE DEVELOPMENT OR PROTECTION OF any new

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

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1 or additional sources of PUBLIC water supply [or for the utilization of
2 such supplies]; [or]

3 c. To commence or undertake the construction of any works or projects
4 in connection with the proposed [plans] WITHDRAWAL; or

5 d. [To exercise any franchise hereafter granted to supply water to any
6 inhabitants of the state; or

7 e.] To extend its supply or distribution mains into [a municipality,
8 water district, water supply district, or other civil division of the
9 state wherein it] ANY NEW WATER SERVICE AREA OR EXTENSION THAT has not
10 [heretofore legally supplied water] BEEN APPROVED BY THE DEPARTMENT OR A
11 PREDECESSOR COMMISSION; or

12 [f. To construct any extension of its supply mains except within a
13 service area approved by the department after public hearing; or

14 g. To extend the boundaries of a water district; or

15 h. To supply water in or for use in any other municipality or civil
16 division of the state which owns and operates a water supply system
17 therein, or in any duly organized water supply or fire district supplied
18 with water by another person or public corporation]

19 E. TO MAKE A SIGNIFICANT CHANGE IN THE PRINCIPAL USE OF THE WATER
20 WITHDRAWAL SYSTEM FROM THAT SPECIFIED IN THE PERMIT, OR PERMIT APPLICA-
21 TION.

22 2. [A permit shall not be necessary for the extension of supply or
23 distributing mains or pipes of a municipal water supply plant into and
24 for the purpose of supplying water in any territory within the limits of
25 the municipality owning such plant, including territory which has not
26 been heretofore supplied with water by such plant, nor for the recon-
27 struction or replacement of existing facilities in connection with an
28 existing plant wherein the capacity of the plant is in no way increased,
29 nor for the construction of filtration or other treatment facilities
30 which will not in any way increase the amount of water which can be made
31 available from the present sources of supply. A permit shall not be
32 necessary for the extension of supply or distributing mains or pipes of
33 a county water authority into and for the purpose of supplying water in
34 any territory assigned to such county water authority within the limits
35 of the county but excluding territory specifically assigned to private
36 or other municipal water companies by the department which has not been
37 heretofore supplied with water by such county water authority, nor for
38 the reconstruction or replacement of existing facilities in connection
39 with an existing plant wherein the capacity of the plant is in no way
40 increased, nor for the construction of filtration or other treatment
41 facilities which will not in any way increase the amount of water which
42 can be made available from the present sources of supply, provided,
43 however, that nothing herein contained shall be held to authorize such
44 county water authority to enter into competition with, for the purpose
45 of service in the area served by the mains, the transmission or distrib-
46 ution mains of any other water works system, either publicly or private-
47 ly owned, already legally established in said county for the sale of
48 water at wholesale or retail, or which hereafter may legally be estab-
49 lished for said purpose; or to sell water to any other water works
50 system, either publicly or privately owned, and not now served by said
51 county authority] ALL VALID PUBLIC WATER SUPPLY PERMITS AND APPROVALS
52 ISSUED BY THE DEPARTMENT OR ITS PREDECESSORS SHALL REMAIN IN FULL FORCE
53 AND EFFECT FOR THE PURPOSE OF SATISFYING THE PERMIT REQUIREMENTS OF
54 SUBDIVISION ONE OF THIS SECTION FOR EXISTING WATER WITHDRAWALS FROM A
55 SOURCE AND IN AN AMOUNT AUTHORIZED BY SUCH PERMIT OR APPROVAL. UNTIL
56 THE DEPARTMENT PROMULGATES REGULATIONS PURSUANT TO SUBDIVISION FOUR OF

THIS SECTION, NOTHING CONTAINED IN SUBDIVISION ONE OF THIS SECTION CONCERNING PERMITS FROM THE DEPARTMENT SHALL BE APPLICABLE TO WATER WITHDRAWALS OTHER THAN FOR A PUBLIC WATER SUPPLY SYSTEM.

3. Nothing CONTAINED in this [section provided] TITLE CONCERNING PERMITS FROM THE DEPARTMENT FOR WATER WITHDRAWALS shall be deemed to nullify the requirements [of Regulation 2, Chapter V] of the State Sanitary Code[, as] APPLICABLE TO DRINKING WATER SUPPLIES, INCLUDING PUBLIC WATER SYSTEMS AND BOTTLED WATER FACILITIES, in effect on [January 1, 1960, that plans for a new water treatment plant for the treatment of an existing public water supply or for any addition to or modification of an existing water treatment plant, or for any addition to or modification of a public water supply system which will or may affect the quality of the public water supply, shall be submitted to and approved by the Commissioner of Health, which regulation has no application to a new or additional source or sources of public water supply of a permanent character which require a permit from the Department of Environmental Conservation under the provisions of this article] FEBRUARY 15, 2012, AS MAY BE AMENDED FROM TIME TO TIME. NO SUPPLIER OF WATER SHALL MAKE, INSTALL OR CONSTRUCT, OR ALLOW TO BE MADE, INSTALLED OR CONSTRUCTED, A PUBLIC WATER SUPPLY SYSTEM OR ANY ADDITION OR DELETION TO OR MODIFICATION OF A PUBLIC WATER SUPPLY SYSTEM UNTIL THE PLANS AND SPECIFICATIONS THEREFOR HAVE BEEN SUBMITTED TO AND APPROVED BY THE COMMISSIONER OF HEALTH OR HIS OR HER DESIGNEE AS MAY BE REQUIRED BY THE STATE SANITARY CODE.

4. THE DEPARTMENT SHALL PROMULGATE REGULATIONS TO IMPLEMENT A PERMITTING PROGRAM FOR WATER WITHDRAWALS EQUAL TO OR GREATER THAN THE THRESHOLD VOLUME CONSISTENT WITH THE REQUIREMENTS OF THIS SECTION WHICH SHALL ESTABLISH: (A) MINIMUM STANDARDS FOR OPERATION AND NEW CONSTRUCTION OF WATER WITHDRAWAL SYSTEMS; (B) MONITORING, REPORTING AND RECORDKEEPING REQUIREMENTS; AND (C) PROTECTIONS FOR PRESENT AND FUTURE NEEDS FOR SOURCES OF POTABLE WATER SUPPLY. SUCH REGULATIONS MAY ESTABLISH QUANTITATIVE STANDARDS THAT MAINTAIN STREAM FLOWS PROTECTIVE OF AQUATIC LIFE, CONSISTENT WITH THE POLICY OBJECTIVES OF THIS ARTICLE AND ANY OTHER CONDITIONS, LIMITATIONS AND RESTRICTIONS THAT THE DEPARTMENT, IN CONSULTATION WITH THE DEPARTMENT OF HEALTH, DETERMINES ARE NECESSARY TO PROTECT THE ENVIRONMENT AND THE PUBLIC HEALTH, SAFETY AND WELFARE AND TO ENSURE THE PROPER MANAGEMENT OF THE WATERS OF THE STATE. THE REGULATIONS MAY ESTABLISH EXEMPTIONS FROM PERMITTING REQUIREMENTS IN ADDITION TO THOSE EXEMPTIONS SPECIFIED IN THIS SECTION.

5. THE DEPARTMENT IS AUTHORIZED TO CONSOLIDATE EXISTING WATER SUPPLY PERMITS FOR A PUBLIC WATER SUPPLY SYSTEM INTO ONE PERMIT, AND MAY REQUIRE SUBMISSION OF AN APPLICATION FOR SUCH PERMIT WHERE THE DEPARTMENT DETERMINES THAT SUCH ACTIONS ARE NECESSARY TO PROTECT THE ENVIRONMENT AND THE PUBLIC HEALTH, SAFETY AND WELFARE AND TO ENSURE THE PROPER MANAGEMENT OF THE WATERS OF THE STATE.

6. EACH PERSON WHO IS REQUIRED UNDER THIS SECTION TO OBTAIN A PERMIT SHALL ANNUALLY, ON A FORM PRESCRIBED BY THE DEPARTMENT, REPORT ALL INFORMATION REQUESTED BY THE DEPARTMENT, INCLUDING BUT NOT LIMITED TO WATER USAGE AND WATER CONSERVATION MEASURES UNDERTAKEN DURING THE REPORTING PERIOD. INFORMATION ON WATER USAGE AND WATER CONSERVATION MEASURES SHALL BE POSTED ON THE DEPARTMENT'S WEBSITE.

7. THE FOLLOWING WATER WITHDRAWALS ARE EXEMPT FROM THE PERMIT REQUIREMENTS ESTABLISHED BY THIS SECTION: (A) WITHDRAWALS USED FOR FIRE SUPPRESSION OR PUBLIC EMERGENCY PURPOSES; (B) WITHDRAWALS THAT HAVE RECEIVED AN APPROVAL FROM A COMPACT BASIN COMMISSION WHICH ADMINISTERS A PROGRAM GOVERNING WATER WITHDRAWALS; (C) CLOSED LOOP, STANDING COLUMN,

1 OR SIMILAR NON-EXTRACTIVE GEOTHERMAL HEAT PUMPS; (D) WITHDRAWALS FOR
2 WHICH A PERMIT HAS BEEN ISSUED PURSUANT TO THE REQUIREMENTS OF SECTION
3 15-1527 OF THIS TITLE; (E) EXISTING WITHDRAWALS FOR AGRICULTURAL
4 PURPOSES PROVIDED THE WITHDRAWAL HAS BEEN REGISTERED WITH THE DEPARTMENT
5 PURSUANT TO THE REQUIREMENTS OF TITLE SIXTEEN OF THIS ARTICLE OR
6 REPORTED TO THE DEPARTMENT PURSUANT TO THE REQUIREMENTS OF TITLE THIR-
7 TY-THREE OF THIS ARTICLE ON OR BEFORE FEBRUARY FIFTEENTH, TWO THOUSAND
8 TWELVE; AND (F) WITHDRAWALS AT REMEDIATION SITES CONDUCTED PURSUANT TO A
9 FEDERAL OR STATE COURT ORDER OR FEDERAL OR STATE GOVERNMENT AGENCY
10 AGREEMENT OR ORDER.

11 8. THE DEPARTMENT SHALL ESTABLISH A WATER CONSERVATION AND EFFICIENCY
12 PROGRAM WITH THE GOALS OF (A) ENSURING IMPROVEMENT OF THE WATERS AND
13 WATER DEPENDENT NATURAL RESOURCES, (B) PROTECTING AND RESTORING THE
14 HYDROLOGIC AND ECOSYSTEM INTEGRITY OF WATERSHEDS THROUGHOUT THE STATE,
15 (C) RETAINING THE QUANTITY OF SURFACE WATER AND GROUNDWATER IN THE
16 STATE, (D) ENSURING SUSTAINABLE USE OF STATE WATERS, AND (E) PROMOTING
17 THE EFFICIENCY OF USE AND REDUCING LOSSES AND WASTE OF WATER.

18 9. THE DEPARTMENT SHALL ISSUE AN INITIAL PERMIT, SUBJECT TO APPROPRI-
19 ATE TERMS AND CONDITIONS AS REQUIRED UNDER THIS ARTICLE, TO ANY PERSON
20 NOT EXEMPT FROM THE PERMITTING REQUIREMENTS OF THIS SECTION, FOR THE
21 MAXIMUM WATER WITHDRAWAL CAPACITY REPORTED TO THE DEPARTMENT PURSUANT TO
22 THE REQUIREMENTS OF TITLE SIXTEEN OR TITLE THIRTY-THREE OF THIS ARTICLE
23 ON OR BEFORE FEBRUARY FIFTEENTH, TWO THOUSAND TWELVE.

24 S 2. Section 15-1502 of the environmental conservation law is amended
25 by adding ten new subdivisions 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 to
26 read as follows:

27 7. "AGRICULTURAL PURPOSE" SHALL MEAN THE PRACTICE OF FARMING FOR
28 CROPS, PLANTS, VINES AND TREES, AND THE KEEPING, GRAZING, OR FEEDING OF
29 LIVESTOCK FOR SALE OF LIVESTOCK OR LIVESTOCK PRODUCTS, AND THE ON-FARM
30 PROCESSING OF CROPS, LIVESTOCK AND LIVESTOCK PRODUCTS.

31 8. "COMPACT BASIN COMMISSION" SHALL MEAN AN INTERSTATE COMMISSION
32 HAVING JURISDICTION WITH RESPECT TO THE REGULATION OF WATER RESOURCES
33 WITHIN A BASIN IN THE STATE, CREATED BY INTERSTATE COMPACT OR
34 FEDERAL-INTERSTATE COMPACT, INCLUDING BUT NOT LIMITED TO, THE SUSQUEHAN-
35 NA RIVER BASIN COMMISSION AND THE DELAWARE RIVER BASIN COMMISSION.

36 9. "ENVIRONMENTALLY SOUND AND ECONOMICALLY FEASIBLE WATER CONSERVATION
37 MEASURES" SHALL MEAN THOSE MEASURES, METHODS, TECHNOLOGIES OR PRACTICES
38 FOR EFFICIENT WATER USE AND FOR REDUCTION OF WATER LOSS AND WASTE OR FOR
39 REDUCING A WITHDRAWAL, CONSUMPTIVE USE OR DIVERSION THAT: (I) ARE ENVI-
40 RONMENTALLY SOUND; (II) REFLECT BEST PRACTICES APPLICABLE TO THE WATER
41 USE SECTOR; (III) ARE TECHNICALLY FEASIBLE AND AVAILABLE; (IV) ARE
42 ECONOMICALLY FEASIBLE AND COST EFFECTIVE BASED ON AN ANALYSIS THAT
43 CONSIDERS DIRECT AND AVOIDED ECONOMIC AND ENVIRONMENTAL COSTS; AND (V)
44 CONSIDER THE PARTICULAR FACILITIES AND PROCESSES INVOLVED, TAKING INTO
45 ACCOUNT THE ENVIRONMENTAL IMPACT, AGE OF EQUIPMENT AND FACILITIES
46 INVOLVED, THE PROCESSES EMPLOYED, ENERGY IMPACTS AND OTHER APPROPRIATE
47 FACTORS.

48 10. "INTERBASIN DIVERSION" SHALL MEAN THE TRANSFER OF WATER OR WASTE-
49 WATER FROM ONE NEW YORK MAJOR DRAINAGE BASIN TO ANOTHER DRAINAGE BASIN.

50 11. "PERSON" SHALL MEAN ANY INDIVIDUAL, PUBLIC OR PRIVATE CORPORATION,
51 POLITICAL SUBDIVISION, GOVERNMENT AGENCY, DEPARTMENT OR BUREAU OF THE
52 STATE, MUNICIPALITY, INDUSTRY, CO-PARTNERSHIP, ASSOCIATION, FIRM, TRUST,
53 ESTATE OR ANY OTHER LEGAL ENTITY WHATSOEVER.

54 12. "POTABLE WATER" SHALL MEAN WATER INTENDED FOR HUMAN CONSUMPTION
55 THAT MEETS THE REQUIREMENTS FOR A PUBLIC WATER SYSTEM AS SET FORTH IN
56 THE STATE SANITARY CODE.

13. "PUBLIC WATER SUPPLY SYSTEM" SHALL MEAN A PERMANENTLY INSTALLED WATER WITHDRAWAL SYSTEM INCLUDING ITS SOURCE, COLLECTION, PUMPING, TREATMENT, TRANSMISSION, STORAGE AND DISTRIBUTION FACILITIES USED IN CONNECTION WITH SUCH SYSTEM, WHICH PROVIDES PIPED POTABLE WATER TO THE PUBLIC FOR POTABLE PURPOSES, IF SUCH SYSTEM HAS AT LEAST FIVE SERVICE CONNECTIONS USED BY YEAR-ROUND RESIDENTS.

14. "THRESHOLD VOLUME" SHALL MEAN THE WITHDRAWAL OF WATER OF A VOLUME OF ONE HUNDRED THOUSAND GALLONS OR MORE PER DAY, DETERMINED BY THE LIMITING MAXIMUM CAPACITY OF THE WATER WITHDRAWAL, TREATMENT, OR CONVEYANCE SYSTEM; PROVIDED THAT FOR AGRICULTURAL PURPOSES THE THRESHOLD VOLUME SHALL MEAN A WITHDRAWAL OF WATER OF A VOLUME IN EXCESS OF AN AVERAGE OF ONE HUNDRED THOUSAND GALLONS PER DAY IN ANY CONSECUTIVE THIRTY-DAY PERIOD.

15. "WATER WITHDRAWAL SYSTEM" SHALL MEAN ANY EQUIPMENT OR INFRASTRUCTURE OPERATED OR MAINTAINED FOR THE PROVISION OR WITHDRAWAL OF WATER INCLUDING, BUT NOT LIMITED TO, COLLECTION, PUMPING, TREATMENT, TRANSPORTATION, TRANSMISSION, STORAGE, AND DISTRIBUTION.

16. "WITHDRAWAL" OR "WITHDRAWAL OF WATER" SHALL MEAN THE REMOVAL OR TAKING OF WATER FOR ANY PURPOSE FROM THE WATERS OF THE STATE.

S 3. Section 15-1503 of the environmental conservation law, as amended by chapter 364 of the laws of 1988, is amended to read as follows:
S 15-1503. Permits.

1. A permit application or request for a permit renewal or modification shall be made on forms [provided] PRESCRIBED by the department and shall [be accompanied by] CONTAIN ALL INFORMATION REQUESTED BY THE DEPARTMENT RELATIVE TO THE WITHDRAWAL, USE AND DISCHARGE OF WATER, INCLUDING:

A. WITH RESPECT TO A PUBLIC WATER SUPPLY SYSTEM, proof of adequate authorization for the proposed project[,];

B. such exhibits as may be necessary clearly to indicate the scope of the proposed project[,];

C. a map of any lands to be acquired [and];

D. project plans[. The application shall also indicate];

E. A STATEMENT OF the need for and the reasons why the proposed source or sources of supply were selected among the alternative sources which are or may become available[,] AND the adequacy of the supply selected [and the method proposed to determine and provide for the proper compensation for any direct and indirect legal damages to persons or property that will result from the acquisition of any lands in connection with the proposed project or from the execution of the proposed project. The application shall also contain, in accordance with local water resource needs and conditions,]; AND

F. a description of the applicant's PROPOSED near term and long range water conservation program THAT INCORPORATES ENVIRONMENTALLY SOUND AND ECONOMICALLY FEASIBLE WATER CONSERVATION MEASURES, including implementation and enforcement procedures, effectiveness to date and any planned modifications for the future. [Such] FOR A PUBLIC WATER SUPPLY SYSTEM, THE WATER CONSERVATION program may include but [shall] NEED not be limited to:

[a.] I. the identification of and cost effectiveness of distribution system rehabilitation to correct sources of lost water;

[b.] II. measures which encourage proper maintenance and water conservation;

[c.] III. a public information program to promote water conservation, including industrial and commercial recycling and reuse;

[d.] IV. household conservation measures; and

[e.] V. contingency measures for limiting water use during seasonal or drought shortages. [If the proposed project provides for the use of water for potable purposes, the application shall also include adequate proof of the character and purity of the water supply to be acquired or used and the proposed method of treatment.]

2. In making its decision to grant or deny a permit or to grant a permit with conditions, the department shall determine whether:

A. the proposed [project is justified by the public necessity, whether it] WATER WITHDRAWAL takes proper consideration of other sources of supply that are or may become available[, whether all work connected with the project will be proper and construction safe, whether];

B. the QUANTITY OF supply will be adequate[, whether there will be proper protection of the supply and watershed or whether there will be proper treatment of any additional supply, whether] FOR THE PROPOSED USE;

C. the project is just and equitable to all affected municipalities and their inhabitants [and in particular] with regard to their present and future needs for sources of POTABLE water supply[, whether there is provision for fair and equitable determinations of and payments of any direct and indirect legal damages to persons or property that will result from the acquisition of any lands in connection with the proposed project or from the execution of the proposed project, and whether the applicant has developed and implemented a water conservation program in accordance with local water resource needs and conditions. If the proposed project is a multi-purpose project, in whole or in part authorized by a general plan adopted and approved pursuant to title 11 of this article, the department in addition shall determine if the proposed project is in conformity with the general plan];

D. THE NEED FOR ALL OR PART OF THE PROPOSED WATER WITHDRAWAL CANNOT BE REASONABLY AVOIDED THROUGH THE EFFICIENT USE AND CONSERVATION OF EXISTING WATER SUPPLIES;

E. THE PROPOSED WATER WITHDRAWAL IS LIMITED TO QUANTITIES THAT ARE CONSIDERED REASONABLE FOR THE PURPOSES FOR WHICH THE WATER USE IS PROPOSED;

F. THE PROPOSED WATER WITHDRAWAL WILL BE IMPLEMENTED IN A MANNER TO ENSURE IT WILL RESULT IN NO SIGNIFICANT INDIVIDUAL OR CUMULATIVE ADVERSE IMPACTS ON THE QUANTITY OR QUALITY OF THE WATER SOURCE AND WATER DEPENDENT NATURAL RESOURCES;

G. THE PROPOSED WATER WITHDRAWAL WILL BE IMPLEMENTED IN A MANNER THAT INCORPORATES ENVIRONMENTALLY SOUND AND ECONOMICALLY FEASIBLE WATER CONSERVATION MEASURES; AND

H. THE PROPOSED WATER WITHDRAWAL WILL BE IMPLEMENTED IN A MANNER THAT IS CONSISTENT WITH APPLICABLE MUNICIPAL, STATE AND FEDERAL LAWS AS WELL AS REGIONAL INTERSTATE AND INTERNATIONAL AGREEMENTS.

3. In order to assist the development of local water conservation [plans] PROGRAMS FOR PUBLIC WATER SUPPLY SYSTEMS, the department shall[, by the effective date of this subdivision,] CONTINUE TO publish and distribute a [model local water conservation plan] WATER CONSERVATION MANUAL that includes beneficial near term and long range water conservation procedures which reflect local water resource needs and conditions. Such [plan] MANUAL shall include examples of:

a. methods of identifying and determining the cost effectiveness of distribution system rehabilitation to correct sources of lost water;

b. measures which encourage proper maintenance and water conservation;

c. a public information program to promote water conservation, including industrial and commercial recycling and reuse;

1 d. household conservation measures; and
2 e. contingency measures for limiting water use during seasonal or
3 drought shortages.

4 4. The department may grant or deny a permit or grant a permit with
5 such conditions as may be necessary to provide satisfactory compliance
6 by the applicant with the matters subject to department determination
7 pursuant to subdivision 2 of this section, or to bring into cooperation
8 all persons [or public corporations] that may be affected by the
9 project, but it shall make a reasonable effort to meet the needs of the
10 applicant, with due regard to the actual or prospective needs, interests
11 and rights of others that may be affected by the project.

12 5. The rules and regulations adopted by the department to implement
13 this title and the provisions of article 70 of this chapter and rules
14 and regulations adopted thereunder shall govern permit applications,
15 renewals, modifications, suspensions and revocations under this title.

16 6. A NEW PERMIT FOR A WATER WITHDRAWAL SYSTEM AND ANY SUBSEQUENT
17 RENEWAL THEREOF SHALL BE VALID FOR A PERIOD OF TIME NOT TO EXCEED TEN
18 YEARS FROM THE DATE OF ISSUANCE. A NEW PERMIT OR PERMIT MODIFICATION
19 MUST BE OBTAINED FROM THE DEPARTMENT PRIOR TO ANY TRANSFER OR CHANGE OF
20 OWNERSHIP OF A WATER WITHDRAWAL SYSTEM.

21 S 4. The environmental conservation law is amended by adding a new
22 section 15-1504 to read as follows:

23 S 15-1504. WATER WITHDRAWALS FOR AGRICULTURAL PURPOSES.

24 1. APPLICABILITY.

25 A. THIS SECTION APPLIES TO WITHDRAWALS OF WATER FOR AGRICULTURAL
26 PURPOSES THAT HAVE BEEN REGISTERED WITH THE DEPARTMENT PURSUANT TO THE
27 REQUIREMENTS OF TITLE SIXTEEN OF THIS ARTICLE OR REPORTED TO THE DEPART-
28 MENT PURSUANT TO THE REQUIREMENTS OF TITLE THIRTY-THREE OF THIS ARTICLE
29 ON OR BEFORE FEBRUARY FIFTEENTH, TWO THOUSAND TWELVE.

30 B. ALL PERSONS MAKING A WITHDRAWAL OF WATER FOR AGRICULTURAL PURPOSES
31 SHALL ANNUALLY REGISTER OR REPORT THE WITHDRAWAL TO THE DEPARTMENT UNDER
32 THE PROVISIONS OF THIS SECTION BY MARCH THIRTY-FIRST OF EACH YEAR.

33 2. WHEN USED IN THIS SECTION:

34 A. "GREAT LAKES BASIN" SHALL MEAN THE WATERSHED OF THE GREAT LAKES AND
35 THE ST. LAWRENCE RIVER, UPSTREAM FROM TROIS-RIVIERES, QUEBEC, CONSISTING
36 IN NEW YORK STATE OF THE LAKE ERIE-NIAGARA RIVER, LAKE ONTARIO MINOR
37 TRIBUTARIES, GENESEE RIVER, SENECA-ONEIDA-OSWEGO RIVER, BLACK RIVER, ST.
38 LAWRENCE RIVER AND LAKE CHAMPLAIN DRAINAGE BASINS.

39 B. "GREAT LAKES WATER" SHALL MEAN THE WATER CONTAINED IN THE
40 WATERSHED, INCLUDING THE LAKES AND RIVERS, OF THE GREAT LAKES BASIN.

41 3. REGISTRATION OF WATER WITHDRAWALS IN THE GREAT LAKES BASIN.

42 A. ALL PERSONS WITHDRAWING GREAT LAKES WATER FOR AGRICULTURAL PURPOSES
43 IN EXCESS OF AN AVERAGE OF ONE HUNDRED THOUSAND GALLONS PER DAY IN ANY
44 CONSECUTIVE THIRTY-DAY PERIOD SHALL ANNUALLY REGISTER SUCH WITHDRAWAL
45 WITH THE DEPARTMENT.

46 B. EACH REGISTRATION SHALL BE ON A FORM AND CONTAIN SUCH INFORMATION
47 AS MAY BE PRESCRIBED BY THE DEPARTMENT AND CONSIST OF A STATEMENT OF AND
48 SUPPORTING DOCUMENTATION WHICH SHALL INCLUDE BUT NOT BE LIMITED TO THE
49 FOLLOWING:

50 (1) THE PLACE AND SOURCE OF THE PROPOSED OR EXISTING WITHDRAWAL;

51 (2) THE LOCATION OF ANY DISCHARGE OR RETURN FLOW;

52 (3) THE LOCATION AND NATURE OF THE PROPOSED OR EXISTING WATER USE;

53 (4) THE ACTUAL OR ESTIMATED AVERAGE ANNUAL AND MONTHLY VOLUMES AND
54 RATES OF WITHDRAWAL; AND

55 (5) THE ACTUAL OR ESTIMATED AVERAGE ANNUAL AND MONTHLY VOLUMES AND
56 RATES OF WATER LOSS FROM THE WITHDRAWAL.

C. IN CALCULATING THE TOTAL AMOUNT OF AN EXISTING OR PROPOSED WITHDRAWAL FOR THE PURPOSE OF DETERMINING THE APPLICABILITY OF THIS SUBDIVISION, A PERSON SHALL COMBINE ALL SEPARATE WITHDRAWALS WHICH THE PERSON MAKES OR PROPOSES TO MAKE, WHETHER OR NOT SUCH WITHDRAWALS ARE FOR A SINGLE AGRICULTURAL PURPOSE OR ARE FOR RELATED BUT SEPARATE AGRICULTURAL PURPOSES.

D. REGISTRATIONS SHALL BE VALID FOR A PERIOD OF ONE YEAR.

E. A REGISTRATION MAY BE TRANSFERRED BY SUBMITTING A NOTICE OF TRANSFER TO THE DEPARTMENT PRIOR TO THE DATE OF A TRANSFER OR CHANGE OF OWNERSHIP OF A WATER WITHDRAWAL SYSTEM ASSOCIATED WITH A REGISTERED WITHDRAWAL.

F. THE DEPARTMENT MAY COOPERATE WITH STATE SOIL AND WATER CONSERVATION DISTRICTS FOR THE PREPARATION AND DISTRIBUTION OF INFORMATIONAL MATERIALS TO PERSONS WHO WITHDRAW WATER FOR AGRICULTURAL PURPOSES, REGARDING THE PURPOSES, BENEFITS AND REQUIREMENTS OF THIS SECTION, AND WHICH MAY ALSO PROVIDE INFORMATION ON COMPLYING WITH THE REGISTRATION PROGRAM AND ON ANY GENERAL OR APPLICABLE METHODS FOR CALCULATING OR ESTIMATING WATER WITHDRAWALS OR WATER LOSS.

4. WATER WITHDRAWAL REPORTING.

A. ANY PERSON WHO WITHDRAWS WATER FOR AGRICULTURAL PURPOSES IN EXCESS OF AN AVERAGE OF ONE HUNDRED THOUSAND GALLONS PER DAY IN ANY CONSECUTIVE THIRTY-DAY PERIOD SHALL ANNUALLY REPORT TO THE DEPARTMENT. THE REPORT SHALL BE MADE ON A FORM AND CONTAIN SUCH INFORMATION AS MAY BE PRESCRIBED BY THE DEPARTMENT AND SHALL BE BASED ON THE WATER WITHDRAWALS FOR THE PREVIOUS CALENDAR YEAR, AND SHALL INCLUDE BUT NOT BE LIMITED TO:

(1) THE WATER SOURCE, THE LOCATION OF THE WATER SOURCE AND THE SOURCE CAPACITY IF KNOWN;

(2) THE AMOUNT OF WATER WITHDRAWN FOR THE REPORTING PERIOD, INCLUDING THE AVERAGE OR PEAK WITHDRAWALS FOR INTERVALS SPECIFIED BY THE DEPARTMENT;

(3) A DESCRIPTION OF THE USE OF THE WATER WITHDRAWN; AND

(4) ESTIMATED AMOUNTS OF WATER TO BE RETURNED, IF ANY, THE LOCATIONS OF SUCH RETURNS AND THE METHOD OF SUCH RETURNS.

B. THE FOLLOWING WATER WITHDRAWALS ARE EXEMPT FROM THE REPORTING REQUIREMENTS OF THIS SUBDIVISION:

(1) A WITHDRAWAL REGISTERED WITH THE DEPARTMENT UNDER SUBDIVISION THREE OF THIS SECTION;

(2) A WITHDRAWAL PERMITTED PURSUANT TO SECTION 15-1501 OF THIS TITLE;

(3) A WITHDRAWAL REPORTED TO THE DEPARTMENT UNDER ANY PROGRAM THAT REQUIRES THE REPORTING OF SUBSTANTIALLY SIMILAR DATA, INCLUDING WITHDRAWALS REGULATED BY THE SUSQUEHANNA RIVER BASIN COMMISSION AND THE DELAWARE RIVER BASIN COMMISSION;

(4) A WITHDRAWAL PERMITTED UNDER SECTION 15-1527 OF THIS TITLE;

(5) CLOSED LOOP, STANDING COLUMN, OR SIMILAR NON-EXTRACTIVE GEOTHERMAL HEAT PUMPS; AND

(6) RECLAIMED WASTEWATER WITHDRAWN FOR REUSE.

5. WITHDRAWALS OF WATER FOR AGRICULTURAL PURPOSES REGISTERED OR REPORTED TO THE DEPARTMENT UNDER THE REQUIREMENTS OF THIS SECTION SHALL BE DEEMED TO BE IN COMPLIANCE WITH THE REQUIREMENTS OF TITLE SIXTEEN AND TITLE THIRTY-THREE OF THIS ARTICLE, AS APPLICABLE.

S 5. Section 15-1505 of the environmental conservation law, as amended by chapter 233 of the laws of 1979, is amended to read as follows:

S 15-1505. [Water] INTERBASIN DIVERSIONS AND WATER supply to other states.

1. No person [or public corporation] shall transport or carry through pipes, conduits, ditches or canals the waters of any fresh water lake,

1 pond, brook, river, stream, or creek in this state or any well, subsur-
2 face or percolating waters of this state into any other state for use
3 therein without first obtaining a permit from the department pursuant to
4 this title.

5 2. NO PERSON SHALL MAKE A NEW OR INCREASED INTERBASIN DIVERSION WHICH
6 RESULTS IN A DIVERSION IN EXCESS OF ONE MILLION GALLONS PER DAY, AS
7 DETERMINED BY THE LIMITING MAXIMUM CAPACITY OF THE TREATMENT OR CONVEY-
8 ANCE SYSTEM, OR CONSTRUCT FACILITIES OR EQUIPMENT THEREFOR, UNTIL SUCH
9 PERSON HAS REGISTERED THE DIVERSION WITH THE DEPARTMENT. NO LATER THAN
10 FEBRUARY FIFTEENTH, TWO THOUSAND THIRTEEN, ALL EXISTING INTERBASIN
11 DIVERSIONS IN EXCESS OF ONE MILLION GALLONS PER DAY, AS DETERMINED BY
12 THE LIMITING MAXIMUM CAPACITY OF THE TREATMENT OR CONVEYANCE SYSTEM,
13 SHALL BE REGISTERED WITH THE DEPARTMENT.

14 3. REGISTRATION IS NOT REQUIRED FOR AN INTERBASIN DIVERSION WHICH IS
15 PART OF A WATER WITHDRAWAL SYSTEM FOR WHICH THE DEPARTMENT HAS ISSUED A
16 PERMIT UNDER THIS TITLE, OR WHICH IS OPERATING PURSUANT TO A DULY
17 AUTHORIZED PERMIT ISSUED BY THE DEPARTMENT OR ITS PREDECESSORS.

18 4. REGISTRATION SHALL BE RENEWED EVERY YEAR OR WHENEVER OWNERSHIP OF
19 THE FACILITIES WHICH CREATE AN INTERBASIN DIVERSION IS TRANSFERRED,
20 WHICHEVER OCCURS FIRST. REGISTRATION SHALL BE MADE ON FORMS PRESCRIBED
21 BY THE DEPARTMENT AND SHALL CONTAIN ALL INFORMATION REQUESTED BY THE
22 DEPARTMENT RELATIVE TO THE WATER WITHDRAWAL, USE AND DISCHARGE. EACH
23 PERSON WHO IS REQUIRED UNDER THIS SECTION TO REGISTER SHALL ANNUALLY, ON
24 A FORM PRESCRIBED BY THE DEPARTMENT, REPORT ALL INFORMATION REQUESTED BY
25 THE DEPARTMENT, INCLUDING THE AMOUNT OF WATER DIVERTED. INFORMATION ON
26 INTERBASIN DIVERSIONS SHALL BE POSTED ON THE DEPARTMENT'S WEBSITE.

27 5. NO PERSON SHALL MAKE A NEW OR INCREASED INTERBASIN DIVERSION WHICH
28 RESULTS IN A SIGNIFICANT ADVERSE IMPACT ON THE WATER QUANTITY OF THE
29 SOURCE NEW YORK MAJOR DRAINAGE BASIN.

30 6. DIVERSIONS FROM THE GREAT LAKES-ST. LAWRENCE RIVER BASIN ARE
31 PROHIBITED BY THE GREAT LAKES-ST. LAWRENCE RIVER BASIN WATER RESOURCES
32 COMPACT, AS ENACTED IN TITLE TEN OF ARTICLE TWENTY-ONE OF THIS CHAPTER.
33 LIMITED EXCEPTIONS FOR PUBLIC WATER SUPPLY SYSTEMS WILL ONLY BE CONSID-
34 ERED WHEN IN COMPLIANCE WITH THAT COMPACT.

35 S 6. Section 15-1521 of the environmental conservation law, as amended
36 by chapter 233 of the laws of 1979, is amended to read as follows:
37 S 15-1521. Supply of water to other public water supply systems.

38 On any application for a new or [additional] INCREASED WITHDRAWAL OF
39 WATER FOR A PUBLIC water supply [or source of water supply] SYSTEM, the
40 department may require or authorize [any] THE applicant to make
41 provisions for the supply and to supply water to any area of the state
42 which as determined by the department in its decision on that applica-
43 tion properly should be supplied with water from the source or sources
44 of water supply sought by the applicant. The owner or operator of any
45 existing or proposed [water works] PUBLIC WATER SUPPLY system within
46 such area may apply to the department for a permit to take water from
47 that source of water supply or from any part of the PUBLIC water supply
48 system of the applicant supplied in whole or in part from that source.
49 If the department so requires, or if it grants a permit, it shall be the
50 duty of the applicant so to supply water, subject to such requirements
51 as the department may impose. The PRICE TO BE PAID FOR THE amount of
52 water so to be taken [and the price to be paid therefor] may be agreed
53 upon between the applicant and the taker of the water, or if they cannot
54 agree, fair and reasonable amounts and rates shall be, after due hear-
55 ings thereon, fixed by the [department, provided however, that such
56 department shall have no power to fix rates in any case where the Public

Service Commission has such power, and provided further, that nothing in this section contained shall be construed as diminishing the powers of said Public Service Commission in respect to rates of water works companies subject to its jurisdiction] PUBLIC SERVICE COMMISSION. Any such agreement or determination of the [department] PUBLIC SERVICE COMMISSION may from time to time be modified by further agreement between the parties affected thereby or by the further order of the [department] COMMISSION.

S 7. Section 15-1529 of the environmental conservation law is amended to read as follows:

S 15-1529. [Final approval of work] APPROVAL OF COMPLETED WATER WITHDRAWAL SYSTEMS.

[Before any project authorized to be developed or carried out under this title 15 shall be operated, it must, as completed, have been approved by the department] THE CONSTRUCTION OF ANY NEW OR MODIFIED WATER WITHDRAWAL SYSTEM AUTHORIZED UNDER THIS TITLE SHALL BE UNDER THE GENERAL SUPERVISION OF A PERSON OR FIRM LICENSED TO PRACTICE PROFESSIONAL ENGINEERING IN THE STATE. UPON COMPLETION OF CONSTRUCTION, SUCH PERSON OR FIRM SHALL CERTIFY TO THE DEPARTMENT THAT THE WATER WITHDRAWAL SYSTEM HAS BEEN FULLY COMPLETED IN ACCORDANCE WITH THE APPROVED ENGINEERING REPORT, PLANS AND SPECIFICATIONS, AND THE PERMIT ISSUED BY THE DEPARTMENT PURSUANT TO THIS TITLE. THE OWNER SHALL NOT COMMENCE OPERATION OF THE NEW OR MODIFIED WATER WITHDRAWAL SYSTEM PRIOR TO THE DEPARTMENT RECEIVING SUCH CERTIFICATE AND PRIOR TO APPROVAL OF THE SYSTEM BY THE DEPARTMENT OF HEALTH OR ITS DESIGNEE AS MAY BE REQUIRED BY THE STATE SANITARY CODE.

S 8. Title 16 of article 15 of the environmental conservation law is REPEALED.

S 9. Title 33 of article 15 of the environmental conservation law is REPEALED.

S 10. Subdivision 1 of section 71-1127 of the environmental conservation law, as amended by chapter 640 of the laws of 1977, is amended to read as follows:

1. Any person who violates any of the provisions of, or who fails to perform any duty imposed by article 15 except section 15-1713, or who violates or who fails to comply with any rule, regulation, determination or order of the department heretofore or hereafter promulgated pursuant to article 15 except section 15-1713, or any condition of a permit issued pursuant to article 15 of this chapter, or any determination or order of the former water resources commission or the [Department of Environmental Conservation] DEPARTMENT heretofore promulgated pursuant to former article 5 of the Conservation Law, shall be liable for a civil penalty of not more than TWO THOUSAND five hundred dollars for such violation and an additional civil penalty of not more than [one] FIVE hundred dollars for each day during which such violation continues, and, in addition thereto, such person may be enjoined from continuing such violation as otherwise provided in article 15 except section 15-1713.

S 11. This act shall take effect February 15, 2012; provided, however that section four of this act shall take effect immediately; and provided, further that sections eight and nine of this act shall take effect December 31, 2013, and provided further that any application for an adjudication of water rates pursuant to section 15-1521 of the environmental conservation law that is filed with the department of environmental conservation and for which the department has issued a notice of hearing prior to February 15, 2012 shall remain under the jurisdiction of the department of environmental conservation.