

4834

2011-2012 Regular Sessions

I N   S E N A T E

April 27, 2011

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Introduced by Sen. AVELLA -- 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 and the public health law, in relation to assigning liability to a producer for actions leading to a public water system's failure to meet filtration avoidance criteria

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

1     Section 1. The environmental conservation law is amended by adding a  
2     new section 23-0315 to read as follows:

3     S 23-0315. PRODUCER'S LIABILITY; FILTRATION ARBITRATION DETERMINATION  
4     WAIVERS.

5     1. A PRODUCER, AS DEFINED IN SECTION 23-0101 OF THIS ARTICLE, GRANTED  
6     A PERMIT PURSUANT TO THE PROVISIONS OF THIS ARTICLE, FOR THE EXPLORA-  
7     TION, DRILLING OR DEVELOPMENT OF WELLS THAT PRODUCE OIL, GAS, SALT OR  
8     HYDROCARBON MIXTURE, SHALL BE HELD LIABLE FOR ACTIONS, PERFORMED OR  
9     COMPLETED WHILE IN THE PROCESS OF EXPLORATION, DRILLING OR DEVELOPMENT  
10    OF A WELL, THAT DIRECTLY RESULT IN THE FAILURE OF A PUBLIC WATER SYSTEM  
11    TO MEET ALL OF THE EXISTING FILTRATION AVOIDANCE CRITERIA ESTABLISHED BY  
12    40 C.F.R. S 141.71 AND ANY OTHER FEDERAL OR STATE RULES OR REGULATIONS,  
13    AND FURTHER RESULTS IN THE FAILURE OF SUCH PUBLIC WATER SYSTEM TO  
14    RECEIVE OR RENEW A FILTRATION AVOIDANCE DETERMINATION WAIVER.

15    2. ANY PERSON WHO VIOLATES THE PROVISIONS OF THIS SECTION SHALL BE  
16    LIABLE FOR SUCH CIVIL PENALTIES OR SANCTIONS AS PROVIDED IN SECTION  
17    71-1307 OF THIS CHAPTER, AND FOR ANY ADDITIONAL CIVIL DAMAGES OR FINES  
18    ASSOCIATED TO SUCH VIOLATION.

19    3. THE COMMISSIONER SHALL ORDER AN IMMEDIATE SUSPENSION OF EXPLORA-  
20    TION, DRILLING OR DEVELOPMENT OPERATIONS WHENEVER SUCH ACTIONS ARE IN  
21    VIOLATION OF THIS SECTION. ANY ORDER ISSUED PURSUANT TO THIS SUBDIVISION  
22    SHALL BE REVIEWED UPON APPLICATION OF AN AGGRIEVED PARTY BY MEANS OF AN  
23    ORDER TO SHOW CAUSE WHICH ORDER SHALL BE ISSUED BY ANY JUSTICE OF THE

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

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1 SUPREME COURT IN THE JUDICIAL DISTRICT IN WHICH ANY ORDER APPLIES AND  
2 SHALL BE RETURNABLE ON THE THIRD SUCCEEDING BUSINESS DAY FOLLOWING THE  
3 ISSUANCE OF SUCH ORDER. SERVICE OF SUCH SHOW CAUSE ORDER SHALL BE MADE  
4 UPON THE REGIONAL OFFICE OF THE DEPARTMENT FOR THE REGION IN WHICH SUCH  
5 ORDER APPLIES, AND UPON THE ATTORNEY GENERAL BY DELIVERY OF SUCH ORDER  
6 TO AN ASSISTANT ATTORNEY GENERAL AT AN OFFICE OF THE ATTORNEY GENERAL IN  
7 THE COUNTY IN WHICH VENUE OF THE PROCEEDING IS DESIGNATED, OR IF THERE  
8 IS NO OFFICE OF THE ATTORNEY GENERAL WITHIN SUCH COUNTY, AT THE OFFICE  
9 OF THE ATTORNEY GENERAL NEAREST SUCH COUNTY. EXCEPT AS HEREINABOVE SPEC-  
10 IFIED, THE PROCEEDING TO REVIEW AN ORDER SHALL BE GOVERNED BY ARTICLE  
11 SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES. NOTHING IN THIS  
12 SECTION SHALL BE CONSTRUED TO RESTRICT THE COMMISSIONER'S ABATEMENT  
13 POWERS AS PROVIDED IN SECTIONS 71-0301 AND 3-0301 OF THIS CHAPTER.

14 S 2. The public health law is amended by adding a new section 1170 to  
15 read as follows:

16 S 1170. PRODUCER'S LIABILITY; FILTRATION ARBITRATION DETERMINATION  
17 WAIVERS. 1. A PRODUCER, AS DEFINED IN SECTION 23-0101 OF THE ENVIRON-  
18 MENTAL CONSERVATION LAW, GRANTED A PERMIT PURSUANT TO THE PROVISIONS OF  
19 SUCH CHAPTER, FOR THE EXPLORATION, DRILLING OR DEVELOPMENT OF WELLS THAT  
20 PRODUCE OIL, GAS, SALT OR HYDROCARBON MIXTURE, SHALL BE HELD LIABLE FOR  
21 ACTIONS, PERFORMED OR COMPLETED WHILE IN THE PROCESS OF EXPLORATION,  
22 DRILLING OR DEVELOPMENT OF A WELL, THAT DIRECTLY RESULT IN THE FAILURE  
23 OF A PUBLIC WATER SYSTEM TO MEET ALL OF THE EXISTING FILTRATION AVOID-  
24 ANCE CRITERIA ESTABLISHED BY 40 C.F.R. S 141.71 AND ANY OTHER FEDERAL OR  
25 STATE RULES OR REGULATIONS, AND FURTHER RESULTS IN THE FAILURE OF SUCH  
26 PUBLIC WATER SYSTEM TO RECEIVE OR RENEW A FILTRATION AVOIDANCE DETERMI-  
27 NATION WAIVER.

28 2. ANY PERSON WHO VIOLATES THE PROVISIONS OF THIS SECTION SHALL BE  
29 LIABLE FOR SUCH CIVIL PENALTIES OR SANCTIONS AS PROVIDED IN SECTION  
30 71-1307 OF THE ENVIRONMENTAL CONSERVATION LAW, AND FOR ANY ADDITIONAL  
31 CIVIL DAMAGES OR FINES ASSOCIATED TO SUCH VIOLATION.

32 3. THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION SHALL ORDER AN IMME-  
33 DIATE SUSPENSION OF EXPLORATION, DRILLING OR DEVELOPMENT OPERATIONS  
34 WHENEVER SUCH ACTIONS ARE IN VIOLATION OF THIS SECTION. ANY ORDER ISSUED  
35 PURSUANT TO THIS SUBDIVISION SHALL BE REVIEWED UPON APPLICATION OF AN  
36 AGGRIEVED PARTY BY MEANS OF AN ORDER TO SHOW CAUSE WHICH ORDER SHALL BE  
37 ISSUED BY ANY JUSTICE OF THE SUPREME COURT IN THE JUDICIAL DISTRICT IN  
38 WHICH ANY ORDER APPLIES AND SHALL BE RETURNABLE ON THE THIRD SUCCEEDING  
39 BUSINESS DAY FOLLOWING THE ISSUANCE OF SUCH ORDER. SERVICE OF SUCH SHOW  
40 CAUSE ORDER SHALL BE MADE UPON THE REGIONAL OFFICE OF THE DEPARTMENT OF  
41 ENVIRONMENTAL CONSERVATION FOR THE REGION IN WHICH SUCH ORDER APPLIES,  
42 AND UPON THE ATTORNEY GENERAL BY DELIVERY OF SUCH ORDER TO AN ASSISTANT  
43 ATTORNEY GENERAL AT AN OFFICE OF THE ATTORNEY GENERAL IN THE COUNTY IN  
44 WHICH VENUE OF THE PROCEEDING IS DESIGNATED, OR IF THERE IS NO OFFICE OF  
45 THE ATTORNEY GENERAL WITHIN SUCH COUNTY, AT THE OFFICE OF THE ATTORNEY  
46 GENERAL NEAREST SUCH COUNTY. EXCEPT AS HEREINABOVE SPECIFIED, THE  
47 PROCEEDING TO REVIEW AN ORDER SHALL BE GOVERNED BY ARTICLE SEVENTY-EIGHT  
48 OF THE CIVIL PRACTICE LAW AND RULES. NOTHING IN THIS SECTION SHALL BE  
49 CONSTRUED TO RESTRICT THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION'S  
50 ABATEMENT POWERS AS PROVIDED IN SECTIONS 71-0301 AND 3-0301 OF THE ENVI-  
51 RONMENTAL CONSERVATION LAW.

52 S 3. This act shall take effect immediately.