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

4834

2011-2012 Regular Sessions

I N S E N A T E

April 27, 2011

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:

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

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

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

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

3. THE COMMISSIONER SHALL ORDER AN IMMEDIATE SUSPENSION OF EXPLORATION, DRILLING OR DEVELOPMENT OPERATIONS WHENEVER SUCH ACTIONS ARE IN VIOLATION OF THIS SECTION. ANY ORDER ISSUED PURSUANT TO THIS SUBDIVISION SHALL BE REVIEWED UPON APPLICATION OF AN AGGRIEVED PARTY BY MEANS OF AN 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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SUPREME COURT IN THE JUDICIAL DISTRICT IN WHICH ANY ORDER APPLIES AND SHALL BE RETURNABLE ON THE THIRD SUCCEEDING BUSINESS DAY FOLLOWING THE ISSUANCE OF SUCH ORDER. SERVICE OF SUCH SHOW CAUSE ORDER SHALL BE MADE UPON THE REGIONAL OFFICE OF THE DEPARTMENT FOR THE REGION IN WHICH SUCH ORDER APPLIES, AND UPON THE ATTORNEY GENERAL BY DELIVERY OF SUCH ORDER TO AN ASSISTANT ATTORNEY GENERAL AT AN OFFICE OF THE ATTORNEY GENERAL IN THE COUNTY IN WHICH VENUE OF THE PROCEEDING IS DESIGNATED, OR IF THERE IS NO OFFICE OF THE ATTORNEY GENERAL WITHIN SUCH COUNTY, AT THE OFFICE OF THE ATTORNEY GENERAL NEAREST SUCH COUNTY. EXCEPT AS HEREINABOVE SPECIFIED, THE PROCEEDING TO REVIEW AN ORDER SHALL BE GOVERNED BY ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO RESTRICT THE COMMISSIONER'S ABATEMENT POWERS AS PROVIDED IN SECTIONS 71-0301 AND 3-0301 OF THIS CHAPTER.

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

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

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

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

S 3. This act shall take effect immediately.