1529

2013-2014 Regular Sessions

IN ASSEMBLY

(PREFILED)

January 9, 2013

- Introduced by M. of A. COLTON, MAISEL, STEVENSON, SCARBOROUGH, ROBERTS, WEPRIN, COOK, ROSENTHAL -- Multi-Sponsored by -- M. of A. GIBSON, SCHIMEL -- read once and referred to the Committee on Economic Development
- 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 б A PERMIT PURSUANT TO THE PROVISIONS OF THIS ARTICLE, FOR THE EXPLORA-7 DRILLING OR DEVELOPMENT OF WELLS THAT PRODUCE OIL, GAS, SALT OR TION, 8 HYDROCARBON MIXTURE, SHALL BE HELD LIABLE FOR ACTIONS, PERFORMED OR COMPLETED WHILE IN THE PROCESS OF EXPLORATION, DRILLING OR DEVELOPMENT 9 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 C.F.R. S 141.71 AND ANY OTHER FEDERAL OR STATE RULES OR REGULATIONS, 40 13 AND FURTHER RESULTS IN THE FAILURE OF SUCH PUBLIC WATER SYSTEM TO RECEIVE OR RENEW A FILTRATION AVOIDANCE DETERMINATION WAIVER. 14

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

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

LBD03382-01-3

VIOLATION OF THIS SECTION. ANY ORDER ISSUED PURSUANT TO THIS SUBDIVISION 1 2 SHALL BE REVIEWED UPON APPLICATION OF AN AGGRIEVED PARTY BY MEANS OF AN 3 SHOW CAUSE WHICH ORDER SHALL BE ISSUED BY ANY JUSTICE OF THE ORDER TO 4 SUPREME COURT IN THE JUDICIAL DISTRICT IN WHICH ANY ORDER APPLIES AND 5 SHALL BE RETURNABLE ON THE THIRD SUCCEEDING BUSINESS DAY FOLLOWING THE 6 ISSUANCE OF SUCH ORDER. SERVICE OF SUCH SHOW CAUSE ORDER SHALL BE MADE 7 UPON THE REGIONAL OFFICE OF THE DEPARTMENT FOR THE REGION IN WHICH SUCH 8 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 9 10 THE COUNTY IN WHICH VENUE OF THE PROCEEDING IS DESIGNATED, OR IF THERE OFFICE OF THE ATTORNEY GENERAL WITHIN SUCH COUNTY, AT THE OFFICE 11 IS NO OF THE ATTORNEY GENERAL NEAREST SUCH COUNTY. EXCEPT AS HEREINABOVE SPEC-12 IFIED, THE PROCEEDING TO REVIEW AN ORDER SHALL BE GOVERNED BY ARTICLE 13 14 SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES. NOTHING IN THIS 15 SECTION SHALL BE CONSTRUED TO RESTRICT THE COMMISSIONER'S ABATEMENT POWERS AS PROVIDED IN SECTIONS 71-0301 AND 3-0301 OF THIS CHAPTER. 16

17 S 2. The public health law is amended by adding a new section 1170 to 18 read as follows:

19 S 1170. PRODUCER'S LIABILITY; FILTRATION ARBITRATION DETERMINATION WAIVERS. 1. A PRODUCER, AS DEFINED IN SECTION 23-0101 OF THE ENVIRON-20 21 MENTAL CONSERVATION LAW, GRANTED A PERMIT PURSUANT TO THE PROVISIONS OF SUCH CHAPTER, FOR THE EXPLORATION, DRILLING OR DEVELOPMENT OF WELLS THAT 22 PRODUCE OIL, GAS, SALT OR HYDROCARBON MIXTURE, SHALL BE HELD LIABLE FOR 23 ACTIONS, PERFORMED OR COMPLETED WHILE IN THE PROCESS OF EXPLORATION, 24 25 DRILLING OR DEVELOPMENT OF A WELL, THAT DIRECTLY RESULT IN THE FAILURE OF A PUBLIC WATER SYSTEM TO MEET ALL OF THE EXISTING FILTRATION AVOID-26 27 ANCE 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 28 PUBLIC WATER SYSTEM TO RECEIVE OR RENEW A FILTRATION AVOIDANCE DETERMI-29 30 NATION 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.

35 3. THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION SHALL ORDER AN IMME-36 DIATE SUSPENSION OF EXPLORATION, DRILLING OR DEVELOPMENT OPERATIONS WHENEVER SUCH ACTIONS ARE IN VIOLATION OF THIS SECTION. ANY ORDER ISSUED 37 38 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 39 40 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 41 BUSINESS DAY FOLLOWING THE ISSUANCE OF SUCH ORDER. SERVICE OF SUCH SHOW 42 43 CAUSE ORDER SHALL BE MADE UPON THE REGIONAL OFFICE OF THE DEPARTMENT OF 44 ENVIRONMENTAL CONSERVATION FOR THE REGION IN WHICH SUCH ORDER APPLIES, 45 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 46 47 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 48 49 GENERAL NEAREST SUCH COUNTY. EXCEPT AS HEREINABOVE SPECIFIED, THE 50 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 51 CONSTRUED TO RESTRICT THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION'S 52 ABATEMENT POWERS AS PROVIDED IN SECTIONS 71-0301 AND 3-0301 OF THE ENVI-53 54 RONMENTAL CONSERVATION LAW.