

S T A T E   O F   N E W   Y O R K

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1908

2013-2014 Regular Sessions

I N   A S S E M B L Y

(PREFILED)

January 9, 2013

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Introduced by M. of A. HOOPER -- Multi-Sponsored by -- M. of A. LAVINE,  
SCHIMEL, WEISENBERG -- read once and referred to the Committee on  
Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to  
extending Nassau county's authority to initiate and enforce certain  
actions

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

1     Section 1. Subdivision 1 of section 71-1939 of the environmental  
2 conservation law is amended by adding two new paragraphs c and d to read  
3 as follows:  
4     C. THE HEALTH COMMISSIONER OF NASSAU COUNTY IS HEREBY AUTHORIZED AND  
5 EMPOWERED TO BRING AN ACTION IN ANY COURT OF COMPETENT JURISDICTION FOR  
6 THE RECOVERY OF ANY PENALTY PROVIDED IN SECTION 71-1929 OF THIS TITLE  
7 AND FOR INJUNCTIVE RELIEF PURSUANT TO SECTION 71-1931 OF THIS TITLE, FOR  
8 ANY VIOLATION OF THE PROVISIONS OF TITLES 1 THROUGH 11 INCLUSIVE AND  
9 TITLE 19 OF ARTICLE 17 OF THIS CHAPTER, OR FOR THE VIOLATION OF ANY RULE  
10 OR REGULATION PROMULGATED THEREUNDER, OR ANY PERMIT, CERTIFICATE OR  
11 ORDER ISSUED THEREUNDER BY ANY PERSON, OCCURRING IN THE COUNTY IN WHICH  
12 SUCH HEALTH COMMISSIONER HAS JURISDICTION, EXCEPT NO SUCH ACTION MAY BE  
13 BROUGHT BY SUCH HEALTH COMMISSIONER AGAINST ANY PERSON SUBJECT TO A  
14 NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT AUTHORIZED AND  
15 APPROVED BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY PURSUANT  
16 TO SECTION 402 OF THE FEDERAL WATER POLLUTION CONTROL ACT OF 1972 AS  
17 AMENDED (33 U.S.C. 1342), OR AGAINST THE STATE OF NEW YORK, OR ANY OF  
18 ITS POLITICAL SUBDIVISIONS, OR ANY MUNICIPAL AGENCY OR SEWER OR WATER  
19 DISTRICT WITHIN THE COUNTY. SUCH HEALTH COMMISSIONER MAY, IN HIS OR HER  
20 DISCRETION, COMPROMISE ANY PENALTY SUED FOR IN SUCH ACTION AT ANY STAGE  
21 THEREOF BEFORE JUDGMENT. EXCEPT FOR AN ACTION FOR INJUNCTIVE RELIEF, NO  
22 ACTION MAY BE COMMENCED OR MAINTAINED UNDER THIS PARAGRAPH:

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

LBD01410-01-3

1 (1) PRIOR TO NINETY DAYS AFTER NOTICE HAS BEEN GIVEN TO THE COMMIS-  
2 SIONER AND THE ATTORNEY GENERAL THAT THE ACTION WILL BE COMMENCED; OR

3 (2) IF THE COMMISSIONER OR HIS DELEGATE, AT ANY TIME PRIOR TO THE END  
4 OF THE NINETY-DAY PERIOD PRESCRIBED IN SUBPARAGRAPH ONE OF THIS PARA-  
5 GRAPH, HAS COMMENCED AND IS ACTIVELY PROSECUTING AN ADMINISTRATIVE  
6 ENFORCEMENT PROCEEDING COMMENCED PURSUANT TO THIS TITLE WHICH SEEKS AN  
7 ORDER OR INJUNCTION RELATIVE TO THE VIOLATION WHICH IS ALLEGED TO HAVE  
8 OCCURRED OR TO BE OCCURRING; OR

9 (3) IF THE ATTORNEY GENERAL, AT ANY TIME PRIOR TO THE END OF THE NINE-  
10 TY-DAY NOTICE PERIOD PRESCRIBED IN SUBPARAGRAPH ONE OF THIS PARAGRAPH,  
11 HAS COMMENCED AND IS ACTIVELY PROSECUTING A CIVIL ACTION IN A COURT OF  
12 THE UNITED STATES OR NEW YORK STATE WHICH SEEKS AN ORDER OR INJUNCTION  
13 RELATIVE TO THE VIOLATION WHICH IS ALLEGED TO HAVE OCCURRED OR TO BE  
14 OCCURRING; OR

15 (4) IF THE VIOLATION WHICH IS ALLEGED TO HAVE OCCURRED OR TO BE OCCUR-  
16 RING IS THE SUBJECT OF A SETTLEMENT OR DISPOSITION OF AN ADMINISTRATIVE  
17 ENFORCEMENT PROCEEDING OR CIVIL ACTION COMMENCED PURSUANT TO THIS TITLE.

18 NOTICE PURSUANT TO SUBPARAGRAPH ONE OF THIS PARAGRAPH SHALL INCLUDE  
19 INFORMATION AS IS NECESSARY TO IDENTIFY ANY PERSON ALLEGED TO BE IN  
20 VIOLATION OF TITLES 1 THROUGH 11 INCLUSIVE AND TITLE 19 OF ARTICLE 17 OF  
21 THIS CHAPTER, OR ANY RULE OR REGULATION PROMULGATED THEREUNDER, OR ANY  
22 PERMIT, CERTIFICATE OR ORDER ISSUED THEREUNDER, AND THE ACTIVITY OR  
23 CONDITION COMPLAINED OF, AND SHALL FURTHER SUMMARIZE THE EVIDENCE.

24 ALL ENFORCEMENT ACTIONS BROUGHT PURSUANT TO THIS PARAGRAPH SHALL  
25 COMPLY IN ALL RESPECTS WITH ANY RULE, REGULATION OR POLICY PROMULGATED  
26 OR ISSUED PURSUANT TO THE FEDERAL WATER POLLUTION CONTROL ACT OF 1972 AS  
27 AMENDED (33 USC 1342) AND ARTICLE 17 OF THIS CHAPTER.

28 THE ATTORNEY GENERAL IS HEREBY AUTHORIZED TO INTERVENE IN ANY SUCH  
29 ACTION PURSUANT TO THIS PARAGRAPH IN ORDER TO PROTECT THE INTERESTS OF  
30 THE STATE.

31 D. NOTWITHSTANDING SUBDIVISION ONE OF SECTION 71-0211 ALL FINES AND  
32 PENALTIES RECEIVED PURSUANT TO PARAGRAPH C OF THIS SUBDIVISION SHALL BE  
33 DIVIDED AS FOLLOWS:

34 (1) ALL NECESSARY AND REASONABLE COSTS ACTUALLY INCURRED SHALL BE  
35 RETAINED BY THE COUNTY OF NASSAU.

36 (2) TO THE EXTENT AVAILABLE, ANY BALANCE REMAINING SHALL BE DISTRIB-  
37 UTED WITH ONE-HALF TO THE GENERAL FUND TO THE CREDIT OF THE STATE  
38 PURPOSES ACCOUNT AND ONE-HALF TO THE COUNTY OF NASSAU.

39 S 2. This act shall take effect immediately and shall be deemed to  
40 have been in full force and effect on and after October 1, 2011.