

1836

2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sens. ESPAILLAT, KRUEGER -- 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 monitoring and notifying residents of the state of water contamination

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

1 Section 1. Section 15-0107 of the environmental conservation law is
2 amended to read as follows:
3 S 15-0107. Definitions as used in this article.
4 1. "CHRONIC SEWAGE CONTAMINATION" MEANS WATER QUALITY THAT FAILS
5 APPLICABLE WATER QUALITY CRITERIA MORE THAN THIRTY PERCENT OF THE TIME
6 OVER A TWELVE MONTH PERIOD.
7 2. "COMPREHENSIVE PLANNING" AS USED IN TITLE 11 OF THIS ARTICLE SHALL
8 BE DEEMED TO MEAN MULTI-PURPOSE PLANNING FOR AT LEAST TWO, AND AS MANY
9 MORE AS MAY BE FOUND TO BE PRACTICABLE AND REASONABLE, OF THE PURPOSES
10 AND USES AS PROVIDED BY THIS ARTICLE OR BY ANY OTHER STATUTE, THE
11 PROVISIONS OF WHICH AND THE PROCEDURES AUTHORIZED THEREBY ARE TO REMAIN
12 IN FULL FORCE AND EFFECT.
13 3. "DISPOSAL" MEANS THE DISCHARGE, DEPOSIT, INJECTION, DUMPING, SPILL-
14 ING, LEAKING OR PLACING OF ANY SUBSTANCE SO THAT SUCH SUBSTANCE OR ANY
15 RELATED CONSTITUENT THEREOF MAY ENTER THE ENVIRONMENT, OR THE ABANDON-
16 MENT OF ANY SUBSTANCE.
17 4. "DISPOSAL SYSTEM" MEANS A SYSTEM FOR DISPOSING OF SEWAGE, INDUS-
18 TRIAL WASTE OR OTHER WASTES, AND INCLUDING SEWER SYSTEMS AND TREATMENT
19 WORKS.
20 5. "EXISTING USES" ARE THOSE USES ACTUALLY ATTAINED IN THE BODY OF
21 WATER ON OR AFTER NOVEMBER 28, 1975, WHETHER OR NOT THEY ARE DESIGNATED
22 USES.

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

LBD05339-01-3

1 6. "MUNICIPALITY" OR "MUNICIPAL CORPORATION" INCLUDES A COUNTY, CITY,
2 TOWN AND VILLAGE.

3 7. "Person" means any individual, firm, co-partnership, association or
4 corporation other than the state and a "public corporation."

5 [2. "Public corporation" means "public corporation"] 8. "PRIMARY
6 CONTACT RECREATION" MEANS RECREATIONAL ACTIVITIES WHERE THE HUMAN BODY
7 MAY COME IN DIRECT CONTACT WITH RAW WATER TO THE POINT OF COMPLETE BODY
8 SUBMERGENCE. PRIMARY CONTACT RECREATION INCLUDES, BUT IS NOT LIMITED TO,
9 SWIMMING, DIVING, WATER SKIING, SKIN DIVING AND SURFING.

10 9. "CORPORATION" MEANS A CORPORATION as defined in [subdivision one of
11 Section 3 of the General Corporation Law] SUBPARAGRAPH FOUR OF PARAGRAPH
12 (A) OF SECTION ONE HUNDRED TWO OF THE BUSINESS CORPORATION LAW and
13 includes all public authorities, except the [Power Authority] POWER
14 AUTHORITY of the [State] STATE of New York.

15 [3. "Municipality" or "municipal corporation" includes a county, city,
16 town and village.

17 4.] 10. "RECREATIONAL ACCESS AREAS" MEANS POINTS OF ACCESS TO WATERS
18 USED BY THE PUBLIC FOR PRIMARY OR SECONDARY CONTACT RECREATION ACTIV-
19 ITIES.

20 11. "RELEASE" SHALL MEAN AN OVERFLOW, SPILL, RELEASE OR DIVERSION OF
21 SEWAGE FROM A DISPOSAL SYSTEM TO WATERS, INCLUDING RELEASES FROM SANI-
22 TARY SYSTEM OVERFLOWS AND COMBINED SEWER OVERFLOWS WHICH ARE NOT OTHER-
23 WISE CATEGORIZED AS DISCHARGES.

24 12. "SECONDARY CONTACT RECREATION" MEANS RECREATIONAL ACTIVITIES WHERE
25 CONTACT WITH THE WATER IS MINIMAL AND WHERE INGESTION OF THE WATER IS
26 NOT PROBABLE. SECONDARY CONTACT RECREATION INCLUDES, BUT IS NOT LIMITED
27 TO, FISHING AND BOATING.

28 13. "SEWAGE" MEANS THE WATER-CARRIED HUMAN OR ANIMAL WASTES FROM RESI-
29 DENCES, BUILDINGS, INDUSTRIAL ESTABLISHMENTS OR OTHER PLACES, TOGETHER
30 WITH SUCH GROUND WATER INFILTRATION AND SURFACE WATER AS MAY BE PRESENT.
31 THE ADMIXTURE WITH SEWAGE AS ABOVE DEFINED OF INDUSTRIAL WASTES OR OTHER
32 WASTES AS HEREAFTER DEFINED, SHALL ALSO BE CONSIDERED "SEWAGE" WITHIN
33 THE MEANING OF THIS ARTICLE.

34 14. "SEWER SYSTEM" OR "SEWERAGE SYSTEM" MEANS PIPE LINES OR CONDUITS,
35 PUMPING STATIONS, AND FORCE MAINS, AND ALL OTHER CONSTRUCTIONS, DEVICES,
36 AND APPLIANCES APPURTENANT THERETO, USED FOR CONDUCTING SEWAGE, INDUS-
37 TRIAL WASTE OR OTHER WASTES TO A POINT OF ULTIMATE DISPOSAL.

38 15. "SUPPLEMENTARY WATER QUALITY DATA" MEANS DATA COLLECTED BY OR
39 PROVIDED TO THE DEPARTMENT BY MUNICIPALITIES AND COUNTIES OR BY PRIVATE
40 CITIZENS, NON-GOVERNMENTAL ORGANIZATIONS OR EDUCATIONAL INSTITUTIONS
41 PURSUANT TO SUBDIVISION 4 OF SECTION 15-0319 OF THIS ARTICLE IN ORDER TO
42 ACHIEVE THE PURPOSES OF SUCH SECTION, IN ADDITION TO WATER QUALITY DATA
43 WHICH THE DEPARTMENT IS REQUIRED TO COLLECT PURSUANT TO THE FEDERAL
44 CLEAN WATER ACT AND/OR ARTICLE 17 OF THIS CHAPTER.

45 16. "TREATMENT WORKS" MEANS ANY PLANT, DISPOSAL FIELD, LAGOON, PUMPING
46 STATION, CONSTRUCTED DRAINAGE DITCH OR SURFACE WATER INTERCEPTING DITCH,
47 INCINERATOR, AREA DEVOTED TO SANITARY LAND FILLS, OR OTHER WORKS NOT
48 SPECIFICALLY MENTIONED HEREIN, INSTALLED FOR THE PURPOSE OF TREATING,
49 NEUTRALIZING, STABILIZING OR DISPOSING OF SEWAGE, INDUSTRIAL WASTE OR
50 OTHER WASTES.

51 17. "Waters" shall be construed to include lakes, bays, sounds, ponds,
52 impounding reservoirs, springs, wells, rivers, streams, creeks, estuar-
53 ies, marshes, inlets, canals, the Atlantic ocean within the territorial
54 limits of the state of New York, and all other bodies of surface or
55 underground water, natural or artificial, inland or coastal, fresh or

1 salt, public or private, which are wholly or partially within or border-
2 ing the state or within its jurisdiction.

3 [5.] 18. "Water power" shall be construed to mean power developed from
4 falling or flowing water, and all electrical current and other forms of
5 energy into which such power may be transformed.

6 [6. The term "comprehensive planning" as used in title 11 of this
7 article shall be deemed to mean multi-purpose planning for at least two,
8 and as many more as may be found to be practicable and reasonable, of
9 the purposes and uses as provided by this article 15 or by any other
10 statute, the provisions of which and the procedures authorized thereby
11 are to remain in full force and effect.

12 7.] 19. Other definitions, applicable to this article, are found in
13 sections 15-1301, 15-1703, 15-1973 and 15-2101.

14 S 2. The environmental conservation law is amended by adding a new
15 section 15-0319 to read as follows:

16 S 15-0319. PUBLIC NOTIFICATION OF SEWAGE DISCHARGES AND RELEASES.

17 1. FOR PURPOSES OF THIS SECTION "BODY OR BODIES OF WATER" MEANS ALL
18 WATERS, AS DEFINED BY SUBDIVISION 17 OF SECTION 15-0107 OF THE ARTICLE,
19 WHICH ARE, OR COULD BE AFFECTED, EITHER DIRECTLY OR INDIRECTLY, BY
20 SEWAGE CONTAMINATION RESULTING FROM A DISCHARGE OR RELEASE FROM A
21 DISPOSAL SYSTEM AND:

22 (A) WHICH ARE DESIGNATED BY THE DEPARTMENT FOR PRIMARY OR SECONDARY
23 CONTACT RECREATION USES; OR

24 (B) WHERE PRIMARY OR SECONDARY RECREATION ACTIVITIES ARE EXISTING
25 USES; OR

26 (C) FROM WHICH DRINKING WATER IS WITHDRAWN.

27 2. THE DEPARTMENT SHALL IMMEDIATELY NOTIFY THE DEPARTMENT OF HEALTH OF
28 REPORTED SEWAGE DISCHARGES AND RELEASES FROM DISPOSAL SYSTEMS WHICH HAVE
29 THE POTENTIAL TO AFFECT HUMAN HEALTH IN ORDER FOR THE DEPARTMENT OF
30 HEALTH TO ISSUE WATER QUALITY ALERTS AS REQUIRED BY SECTION 224-C OF THE
31 PUBLIC HEALTH LAW.

32 3. IN ORDER TO ACHIEVE THE PURPOSES OF THIS SECTION AND, IN ADDITION
33 TO WATER QUALITY SAMPLING REQUIRED BY PARAGRAPH H OF SUBDIVISION 5 OF
34 SECTION 17-0303 OF THIS CHAPTER AND THE FEDERAL CLEAN WATER ACT, THE
35 DEPARTMENT SHALL MONITOR AND STUDY SEWAGE CONTAMINATION LEVELS IN BODIES
36 OF WATER AT RECREATIONAL ACCESS AREAS IN ORDER TO NOTIFY THE PUBLIC OF
37 LOCAL WATER QUALITY CONDITIONS AND, AS DATA AND DEPARTMENT RESOURCES MAY
38 ALLOW, TO CREATE WATER QUALITY MODELS THAT CAN PREDICT UNACCEPTABLE
39 LEVELS OF SEWAGE CONTAMINATION IN SUCH BODIES OF WATER. THE DEPARTMENT
40 SHALL UTILIZE SUPPLEMENTARY WATER QUALITY DATA PROVIDED PURSUANT TO
41 SUBDIVISION 4 OF THIS SECTION. THE DEPARTMENT SHALL CONDUCT COLLECTION
42 AND ANALYSIS OF WATER QUALITY ANNUALLY DURING THE RECREATIONAL SEASON
43 FROM MAY THROUGH SEPTEMBER. WATER QUALITY COLLECTION AND ANALYSIS MAY
44 ALSO BE PROVIDED BY COUNTY DEPARTMENTS OF HEALTH, MUNICIPALITIES OR
45 AGENCIES TASKED WITH MONITORING WATER CONTAMINATION, PRIVATE LABS AND/OR
46 NON-PROFIT OR CITIZEN GROUPS THAT PERFORM SUCH COLLECTION AND ANALYSIS
47 IN CONFORMANCE WITH THE STANDARDS SET FORTH IN THE NEW YORK STATE VOLUN-
48 TEER LAKE MONITORING PROGRAM. MUNICIPALITIES AND THEIR SUBDIVISIONS MAY
49 PETITION THE DEPARTMENT TO INCLUDE ADDITIONAL BODIES OF WATER TO THE
50 MONITORING LIST BASED ON CONSISTENT PUBLIC USE OF SUCH BODY OF WATER FOR
51 PRIMARY OR SECONDARY CONTACT RECREATION.

52 4. CITIZENS, NON-GOVERNMENTAL ORGANIZATIONS AND EDUCATIONAL INSTI-
53 TUTIONS, UNDER THE GUIDANCE AND DIRECTION OF THE DEPARTMENT, MAY MONITOR
54 WATER QUALITY TO GATHER DATA ON SEWAGE CONTAMINATION OF BODIES OF WATER
55 AND PROVIDE SUCH DATA TO THE DEPARTMENT AS SUPPLEMENTARY WATER QUALITY
56 DATA IN ORDER TO ASSIST THE DEPARTMENT WITH ACCOMPLISHING THE PURPOSES

1 OF THIS SECTION. SUCH MONITORING SHALL BE CONDUCTED PURSUANT TO PROTO-
2 COLS AND QUALITY ASSURANCE/QUALITY CONTROL REQUIREMENTS AS THE DEPART-
3 MENT MAY PROMULGATE BY REGULATION. SUCH SAMPLING SHALL OCCUR BETWEEN MAY
4 AND SEPTEMBER. SAMPLES MAY BE PROCESSED BY THE VOLUNTEERS AND FORWARDED
5 TO A CONTRACT CHEMISTRY LABORATORY FOR ANALYSIS. CHEMISTRY PARAMETERS
6 SHALL INCLUDE, BUT ARE NOT LIMITED TO, TESTS FOR ESCHERICHIA COLI, FECAL
7 COLIFORM, TOTAL COLIFORM AND ENTEROCOCCUS BACTERIA. THE COMMISSIONER
8 SHALL ESTABLISH AND FILL A NEW PERMANENT POSITION OF PROGRAM COORDINATOR
9 FOR THE MONITORING PROGRAM WITHIN THE DIVISION OF WATER. QUALITY CONTROL
10 CHECKS SHALL BE CARRIED OUT ON A REGULAR BASIS BY THE PROGRAM COORDINA-
11 TOR.

12 5. THE DATA RETRIEVED FROM THE STUDIES REQUIRED PURSUANT TO SUBDIVI-
13 SIONS 3 AND 4 OF THIS SECTION SHALL BE SHARED WITH THE DEPARTMENT OF
14 STATE, DEPARTMENT OF HEALTH, THE PUBLIC HEALTH AND HEALTH PLANNING COUN-
15 CIL AND ANY OTHER DEPARTMENT OR AGENCY WITH AN INTEREST IN SUCH INFORMA-
16 TION.

17 6. THE DEPARTMENT, IN CONJUNCTION WITH THE DEPARTMENT OF HEALTH AND
18 THE PUBLIC HEALTH AND HEALTH PLANNING COUNCIL, SHALL ESTABLISH A CODING
19 SYSTEM FOR PUBLIC NOTIFICATION OF THE LEVELS OF SEWAGE CONTAMINATION IN
20 THE WATER. IN ADDITION TO THE CODED NOTIFICATION SYSTEM, ALL WATER
21 QUALITY DATA SHALL BE MADE AVAILABLE TO THE PUBLIC AS IT IS COLLECTED IN
22 AS NEAR TO REAL TIME AS POSSIBLE. WATER BODIES WHERE WATER QUALITY MONI-
23 TORING IS NOT CONDUCTED SHALL BE LISTED AS SUCH.

24 S 3. The public health law is amended by adding a new section 224-c to
25 read as follows:

26 S 224-C. WATER QUALITY INFORMATION. 1. THE PUBLIC HEALTH AND HEALTH
27 PLANNING COUNCIL SHALL PROVIDE ONGOING UPDATES TO RESIDENTS OF THE STATE
28 REGARDING THE QUALITY OF WATER THROUGHOUT THE STATE USING INFORMATION
29 RECEIVED BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION FROM WATER
30 QUALITY MONITORING AND PREDICTIVE WATER QUALITY MODELS, PURSUANT TO
31 SECTION 15-0319 OF THE ENVIRONMENTAL CONSERVATION LAW.

32 2. INFORMATION SHALL BE DISSEMINATED TO RESIDENTS OF THE STATE THROUGH
33 VARIOUS METHODS, INCLUDING BUT NOT LIMITED TO THE DEPARTMENT'S WEBSITE.

34 3. THE CODING SYSTEM, ESTABLISHED BETWEEN THE DEPARTMENT, THE DEPART-
35 MENT OF ENVIRONMENTAL CONSERVATION, AND THE PUBLIC HEALTH AND HEALTH
36 PLANNING COUNCIL, PURSUANT TO SECTION 15-0319 OF THE ENVIRONMENTAL
37 CONSERVATION LAW, SHALL BE MADE AVAILABLE ON THE DEPARTMENT'S WEBSITE,
38 ALONG WITH THE WATER QUALITY SAMPLING DATA AND PREDICTIVE MODEL DATA.

39 4. IF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION DETERMINES THAT
40 THERE ARE UNACCEPTABLE LEVELS OF SEWAGE CONTAMINATION, THE DEPARTMENT
41 SHALL DISSEMINATE WATER QUALITY ALERTS TO THE PUBLIC. WATER QUALITY
42 ALERTS MUST BE ISSUED AS SOON AS POSSIBLE, AND NO LATER THAN ONE HOUR
43 AFTER THE STATE IS NOTIFIED, IN THE EVENT OF ANY ACCIDENTAL SEWAGE
44 RELEASES SUCH AS SEWER COLLECTION AND CONVEYANCE COMPONENT FAILURE AND
45 UNPLANNED RELEASES FROM WASTEWATER TREATMENT PLANTS. THE PUBLIC MUST BE
46 NOTIFIED IN REAL TIME WHEN EVENTS OR CONDITIONS ARE ANTICIPATED, BASED
47 ON A PREDICTIVE MODEL OR PLANNED RELEASE, TO CAUSE UNACCEPTABLE WATER
48 QUALITY, SUCH AS HEAVY RAIN IN AN AREA WITH COMBINED SEWER OVERFLOWS OR
49 PLANNED WASTEWATER TREATMENT PLANT BYPASSES. THE DEPARTMENT SHALL ISSUE
50 ALERTS TO COMMUNICATIONS OUTLETS, INCLUDING TELEVISION AND RADIO AND
51 CREATE AND UTILIZE RELEVANT SOCIAL MEDIA OUTLETS TO COMMUNICATE ANY
52 SPECIAL ALERTS TO STATE AND LOCAL RESIDENTS. AT LOCATIONS WITH CHRONIC
53 SEWAGE CONTAMINATION, SUCH AS ONGOING CONTAMINATION FROM FAILING SEPTIC
54 SYSTEMS, SIGNS SHALL BE POSTED TO ALERT THE PUBLIC OF UNACCEPTABLE
55 LEVELS OF SEWAGE IN THE WATER. THE SIGNS MUST BE EASILY UNDERSTOOD BY

1 THE PUBLIC AND MUST BE MAINTAINED UNTIL WATER QUALITY IN THE AREA
2 RETURNS TO ACCEPTABLE LEVELS OF SEWAGE.
3 S 4. This act shall take effect on the sixtieth day after it shall
4 have become a law.