

1529

2013-2014 Regular Sessions

I N A S S E M B L Y

(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
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

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

LBD03382-01-3

1 VIOLATION OF THIS SECTION. ANY ORDER ISSUED PURSUANT TO THIS SUBDIVISION
2 SHALL BE REVIEWED UPON APPLICATION OF AN AGGRIEVED PARTY BY MEANS OF AN
3 ORDER TO SHOW CAUSE WHICH ORDER SHALL BE ISSUED BY ANY JUSTICE OF THE
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
9 TO AN ASSISTANT ATTORNEY GENERAL AT AN OFFICE OF THE ATTORNEY GENERAL IN
10 THE COUNTY IN WHICH VENUE OF THE PROCEEDING IS DESIGNATED, OR IF THERE
11 IS NO OFFICE OF THE ATTORNEY GENERAL WITHIN SUCH COUNTY, AT THE OFFICE
12 OF THE ATTORNEY GENERAL NEAREST SUCH COUNTY. EXCEPT AS HEREINABOVE SPEC-
13 IFIED, THE PROCEEDING TO REVIEW AN ORDER SHALL BE GOVERNED BY ARTICLE
14 SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES. NOTHING IN THIS
15 SECTION SHALL BE CONSTRUED TO RESTRICT THE COMMISSIONER'S ABATEMENT
16 POWERS AS PROVIDED IN SECTIONS 71-0301 AND 3-0301 OF THIS CHAPTER.

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

31 2. ANY PERSON WHO VIOLATES THE PROVISIONS OF THIS SECTION SHALL BE
32 LIABLE FOR SUCH CIVIL PENALTIES OR SANCTIONS AS PROVIDED IN SECTION
33 71-1307 OF THE ENVIRONMENTAL CONSERVATION LAW, AND FOR ANY ADDITIONAL
34 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
37 WHENEVER SUCH ACTIONS ARE IN VIOLATION OF THIS SECTION. ANY ORDER ISSUED
38 PURSUANT TO THIS SUBDIVISION SHALL BE REVIEWED UPON APPLICATION OF AN
39 AGGRIEVED PARTY BY MEANS OF AN ORDER TO SHOW CAUSE WHICH ORDER SHALL BE
40 ISSUED BY ANY JUSTICE OF THE SUPREME COURT IN THE JUDICIAL DISTRICT IN
41 WHICH ANY ORDER APPLIES AND SHALL BE RETURNABLE ON THE THIRD SUCCEEDING
42 BUSINESS DAY FOLLOWING THE ISSUANCE OF SUCH ORDER. SERVICE OF SUCH SHOW
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
46 ATTORNEY GENERAL AT AN OFFICE OF THE ATTORNEY GENERAL IN THE COUNTY IN
47 WHICH VENUE OF THE PROCEEDING IS DESIGNATED, OR IF THERE IS NO OFFICE OF
48 THE ATTORNEY GENERAL WITHIN SUCH COUNTY, AT THE OFFICE OF THE ATTORNEY
49 GENERAL NEAREST SUCH COUNTY. EXCEPT AS HEREINABOVE SPECIFIED, THE
50 PROCEEDING TO REVIEW AN ORDER SHALL BE GOVERNED BY ARTICLE SEVENTY-EIGHT
51 OF THE CIVIL PRACTICE LAW AND RULES. NOTHING IN THIS SECTION SHALL BE
52 CONSTRUED TO RESTRICT THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION'S
53 ABATEMENT POWERS AS PROVIDED IN SECTIONS 71-0301 AND 3-0301 OF THE ENVI-
54 RONMENTAL CONSERVATION LAW.

55 S 3. This act shall take effect immediately.