

447

2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

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:

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
21 VIOLATION OF THIS SECTION. ANY ORDER ISSUED PURSUANT TO THIS SUBDIVISION
22 SHALL BE REVIEWED UPON APPLICATION OF AN AGGRIEVED PARTY BY MEANS OF AN

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

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

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

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

29 2. ANY PERSON WHO VIOLATES THE PROVISIONS OF THIS SECTION SHALL BE
30 LIABLE FOR SUCH CIVIL PENALTIES OR SANCTIONS AS PROVIDED IN SECTION
31 71-1307 OF THE ENVIRONMENTAL CONSERVATION LAW, AND FOR ANY ADDITIONAL
32 CIVIL DAMAGES OR FINES ASSOCIATED TO SUCH VIOLATION.

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

53 S 3. This act shall take effect immediately.