S T A T E O F N E W Y O R K

9073

I N A S S E M B L Y

January 21, 2016

Introduced by M. of A. STECK -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the public health law, in relation to enacting the "drinking water protection law"

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

Section 1. Article 11 of the public health law is amended by adding a new title 5 to read as follows:

TITLE V

DRINKING WATER PROTECTION LAW

SECTION 1170. SHORT TITLE.
1171. LEGISLATIVE FINDINGS.
1172. DEFINITIONS.
1173. NOTIFICATION.
1174. BLAST RECORDS.
1175. RULES AND REGULATIONS.
1176. PRE-BLAST PRIVATE DRINKING WATER SUPPLY SAMPLING AND ANALYSIS.
1177. POST-BLAST PRIVATE DRINKING WATER SUPPLY SAMPLING AND ANALYSIS.
1178. PENALTIES.
1179. POWER TO SUSPEND OR MODIFY.
1180. MINES AND WATER WELL DRILLERS.
1181. PREEMPTION.

S 1170. SHORT TITLE. THIS TITLE SHALL BE KNOWN AND MAY BE CITED AS THE "DRINKING WATER PROTECTION LAW".

S 1171. LEGISLATIVE FINDINGS. THE LEGISLATURE HEREBY FINDS AND DETERMINES THAT THE STATE MUST PROTECT SURFACE AND GROUNDWATER WITHIN ITS BORDERS, PARTICULARLY SURFACE AND GROUNDWATER USED FOR DRINKING WATER.

THE LEGISLATURE HEREBY FURTHER FINDS THAT RECENT DISCLOSURES REGARDING THE POSSIBLE CONTAMINATION AND/OR THE REDUCTION IN VOLUME/YIELD OF WELL-WATER THROUGHOUT PARTS OF THE STATE MAY RESULT FROM INDUSTRIAL ACTIVITIES, INCLUDING BLASTING, AND RAISE CONCERNS THAT UNSUSPECTING RESIDENTS IN THE STATE UTILIZING PRIVATE WATER SYSTEMS MAY BE ENDANGERED UNLESS WELL-WATER SAMPLING AND ANALYSIS IS COMPLETED IN ORDER TO IDENTIFY AREAS OF WATER CONTAMINATION AND/OR A REDUCTION IN WATER VOLUME/YIELD.

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

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THE PURPOSE OF THIS TITLE IS TO PROTECT PUBLIC HEALTH AND SAFETY BY REQUIRING THE COMPLETION OF WELL-WATER SAMPLING AND ANALYSIS PRIOR, AND SUBSEQUENT, TO ANY BLASTING WITHIN THE STATE THAT MAY AFFECT THE QUALITY OR VOLUME/YIELD OF SURFACE AND GROUNDWATER DRINKING WATER SUPPLIES WITHIN A ONE MILE RADIUS OF THE BLASTING LOCATION.

S 1172. DEFINITIONS. AS USED IN THIS TITLE;

1. "BLASTER" MEANS A PERSON HOLDING A CERTIFICATE OF COMPETENCE ISSUED PURSUANT TO SECTION FOUR HUNDRED EIGHTY-TWO OF THE GENERAL BUSINESS LAW.

2. "BLAST" MEANS THE RAPID RELEASE OF HEAT AND LARGE QUANTITIES OF HIGH-PRESSURE GASES THAT EXPAND RAPIDLY WITH SUFFICIENT FORCE TO OVERCOME CONFINING FORCES RESULTING FROM THE VERY RAPID DECOMPOSITION OF A CHEMICAL COMPOUND OR MIXTURE INITIATED BY HEAT, SHOCK, IMPACT, FRICTION OR A COMBINATION OF SUCH CONDITIONS.

3. "BLASTING ENTITY" MEANS A PERSON, A CORPORATION OR OTHER LEGAL BUSINESS ENTITY THAT BLASTS OR ENGAGES A BLASTER TO BLAST EITHER ON ITS OWN BEHALF OR ON BEHALF OF ANOTHER PERSON, CORPORATION OR OTHER ENTITY.

4. "BLAST EFFECT AREA" MEANS ALL PROPERTIES WITHIN A ONE MILE RADIUS OF A BLAST.

5. "BLASTING NOTIFICATION" MEANS THE WRITTEN NOTICE IN WHICH BLAST INFORMATION IS PROVIDED BY A BLASTER OR BLASTING ENTITY TO INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING: THE BLASTING AREA, THE DATES AND TIMES OF BLASTING, HOW ACCESS TO THE BLASTING AREA WILL BE CONTROLLED AND THE TYPES AND PATTERNS OF BLAST WARNINGS, AND SIGNALS THAT WILL BE USED.

6. "INDEPENDENT PROVIDER" MEANS ANY PERSON, CORPORATION OR OTHER LEGAL BUSINESS ENTITY CERTIFIED BY THE DEPARTMENT TO CONDUCT PRE-BLAST AND POST-BLAST WATER QUALITY SAMPLING AND ANALYSIS, AND REPORTING THEREON FOR ANY PROPERTY OWNER.

7. "QUALITY", "VOLUME/YIELD", "RECHARGE RATE" AND "PRIVATE DRINKING WATER SUPPLY AND ANALYSIS" MEAN THE DEFINITIONS OF SUCH TERMS AS PROVIDED IN THE RULES AND REGULATIONS OF THE COMMISSIONER.

S 1173. NOTIFICATION. 1. (A) ANY BLASTER OR BLASTING ENTITY WHO INTENDS TO BLAST SHALL PUBLISH A BLASTING NOTIFICATION IN NEWSPAPERS THAT HAVE GENERAL CIRCULATION WITHIN THE COUNTY IN WHICH THE BLAST IS TO OCCUR AT LEAST SIXTY DAYS IN ADVANCE OF THE BLASTING. ADDITIONALLY, A COPY OF THE SCHEDULE SHALL ALSO BE SENT BY CERTIFIED MAIL TO THE COMMISSIONER AND TO ALL PROPERTY OWNERS WITHIN THE BLAST EFFECT AREA AT LEAST SIXTY DAYS IN ADVANCE OF THE BLASTING. THE SCHEDULE SHALL INCLUDING THE FOLLOWING INFORMATION: (I) THE SPECIFIC LOCATION OF THE BLAST; (II) THE DATE AND TIME WHEN EACH BLAST WILL OCCUR; (III) A DESCRIPTION DETAILING HOW ACCESS TO THE BLAST EFFECT AREA WILL BE CONTROLLED TO PREVENT PROPERTY DAMAGE AND PERSONAL INJURY; AND (IV) THE TYPES AND PATTERNS OF BLAST WARNINGS AND SIGNALS THAT BLASTING HAS BEEN COMPLETED AND PASSAGE THROUGH THE BLAST EFFECT AREA IS SAFE.

(B) ANY BLASTER OR BLASTING ENTITY WHO INTENDS TO BLAST SHALL NOTIFY PROPERTY OWNERS WITHIN THE BLAST EFFECT AREA OF ITS INTENTION IN WRITING BY CERTIFIED MAIL AT LEAST SIXTY DAYS BEFORE ANY BLASTING OCCURS. THE DEPARTMENT SHALL PROVIDE A FULL DESCRIPTION OF THE CONTENT REQUIRED FOR THE MAILED NOTIFICATION IN ITS RULES AND REGULATIONS. THE BLASTER OR BLASTING ENTITY SHALL, AT A MINIMUM, INCLUDE THE FOLLOWING INFORMATION IN ITS MAILED NOTIFICATION TO PROPERTY OWNERS WITHIN THE BLAST EFFECT AREA: (I) AN OFFER TO PROVIDE FREE OF CHARGE TO ANY PROPERTY OWNER AND AT THE BLASTER'S OR BLASTING ENTITY'S EXPENSE PRE-BLAST PRIVATE DRINKING WATER SUPPLY SAMPLING AND ANALYSIS CONDUCTED AND REPORTED BY AN INDEPENDENT PROVIDER; (II) CONTACT INFORMATION IN ORDER TO SCHEDULE THE PRE-BLAST PRIVATE DRINKING WATER SUPPLY SAMPLING AND ANALYSIS; AND (III) THAT A REPORT DETAILING THE RESULTS OF THE PRE-BLAST PRIVATE DRINKING

WATER SUPPLY SAMPLING AND ANALYSIS SHALL BE PROVIDED TO THE DEPARTMENT AND TO THE PROPERTY OWNER WITHIN THIRTY DAYS OF COMPLETION OF THE SAMPLING AND ANALYSIS.

(2) PROPERTY OWNERS WITHIN THE BLAST EFFECT AREA WHO REQUIRE GUIDANCE REGARDING THE PRE-BLAST PRIVATE DRINKING WATER SUPPLY SAMPLING AND ANALYSIS MAY CONTACT THE DEPARTMENT AT ITS OFFICE IN ALBANY.

S 1174. BLAST RECORDS. RECORDS OF ALL BLASTS SHALL BE MAINTAINED BY THE BLASTERS OR BLASTING ENTITIES FOR A PERIOD OF AT LEAST FIVE YEARS FROM THE DATE OF THE BLAST OR THE DATE OF THE LAST BLAST, IF MORE THAN ONE BLAST OCCURS IN A BLASTING PROGRAM. THESE RECORDS SHALL BE MADE AVAILABLE FOR INSPECTION, UPON WRITTEN REQUEST BY AND AT NO COST TO, THE PUBLIC.

S 1175. RULES AND REGULATIONS. THE COMMISSIONER IS AUTHORIZED AND DIRECTED TO PROMULGATE ANY RULES AND REGULATIONS, AND TAKE ANY AND ALL ACTIONS NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS TITLE.

S 1176. PRE-BLAST PRIVATE DRINKING WATER SUPPLY SAMPLING AND ANALYSIS. BLASTERS OR BLASTING ENTITIES SHALL BE RESPONSIBLE FOR THE REASONABLE COSTS OF THE PRE-BLAST PRIVATE DRINKING WATER SUPPLY SAMPLING AND ANALYSIS REQUESTED BY PROPERTY OWNERS AND CONDUCTED BY AN INDEPENDENT PROVIDER PURSUANT TO PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION ELEVEN HUNDRED SEVENTY-THREE OF THIS TITLE.

S 1177. POST-BLAST PRIVATE DRINKING WATER SUPPLY SAMPLING AND ANALYSIS. 1. PROPERTY OWNERS WITHIN A BLAST EFFECT AREA WHO SUSPECT POST-BLAST PRIVATE DRINKING WATER SUPPLY CONTAMINATION OR A REDUCTION IN WATER VOLUME/YIELD MAY FILE A FORMAL COMPLAINT WITH THE DEPARTMENT WITHIN SIX MONTHS OF THE DATE OF A BLAST, OR THE DATE OF THE LAST BLAST, IF MORE THAN ONE BLAST OCCURS IN A BLASTING PROGRAM.

2. THE COMMISSIONER IS AUTHORIZED TO INITIATE AN INVESTIGATION UPON RECEIPT OF A FORMAL COMPLAINT FROM A PROPERTY OWNER WITHIN A BLAST EFFECT AREA AND TAKE ANY AND ALL REASONABLE SUPPRESSION, ABATEMENT AND REMEDIATION ACTIONS THAT HE OR SHE DEEMS NECESSARY AND PROPER TO PROTECT AN INDIVIDUAL OR PUBLIC HEALTH AND SAFETY. BLASTERS OR BLASTING ENTITIES SHALL MAKE THEIR BLAST RECORDS AVAILABLE TO THE DEPARTMENT FOR ANY PROPERTY OWNER WHO HAS FILED A FORMAL COMPLAINT.

3. UPON RECEIPT OF A FORMAL COMPLAINT FROM A PROPERTY OWNER WITHIN A BLAST EFFECT AREA, THE DEPARTMENT MAY REQUIRE THE BLASTER AND/OR BLASTING ENTITY TO PAY FOR POST-BLAST PRIVATE DRINKING WATER SUPPLY SAMPLING AND ANALYSIS TO BE PERFORMED WITHIN THIRTY DAYS OF THE REQUEST DATE, AND REPORTED, BY AN INDEPENDENT PROVIDER. THE REPORT DETAILING THE RESULTS OF THE POST-BLAST PRIVATE DRINKING WATER SUPPLY SAMPLING AND ANALYSIS SHALL BE PROVIDED TO THE DEPARTMENT AND TO THE PROPERTY OWNER WITHIN THIRTY DAYS OF COMPLETION OF THE SAMPLING AND ANALYSIS.

S 1178. PENALTIES. 1. IF THE DEPARTMENT FINDS AND DETERMINES THAT ANY BLASTER OR BLASTING ENTITY FAILED TO MEET THE PRE-BLAST NOTIFICATION REQUIREMENTS IN PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION ELEVEN HUNDRED SEVENTY-THREE OF THIS TITLE, SUCH VIOLATION SHALL BE PUNISHABLE BY A CIVIL PENALTY NOT TO EXCEED FIFTEEN THOUSAND DOLLARS PER VIOLATION.

2. (A) NO BLASTER OR BLASTING ENTITY SHALL CONDUCT A BLAST THAT REDUCES THE QUALITY OF A DRINKING WATER SUPPLY, RESULTS IN THE PRESENCE IN A DRINKING WATER SUPPLY OF ANY HAZARDOUS SUBSTANCE, AS DEFINED IN THE RULES AND REGULATIONS OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, OR WHICH SHALL INCREASE THE TURBIDITY OF SUCH DRINKING WATER SUPPLY.

(B) NO BLASTER OR BLASTING ENTITY SHALL CONDUCT A BLAST THAT RESULTS IN THE RECHARGE RATE IN ANY WELL USED FOR DRINKING WATER BY A PROPERTY OWNER TO DECREASE.

(C) UNLESS PROVEN OTHERWISE BY CLEAR AND CONVINCING EVIDENCE, A BLAST SHALL BE CONSIDERED THE CAUSE OF THE PRESENCE IN A DRINKING WATER SUPPLY OF ANY HAZARDOUS SUBSTANCE, AS DEFINED IN THE RULES AND REGULATIONS OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, AND, IN THE CASE OF A WELL PROVIDING DRINKING WATER, THE CAUSE OF ANY REDUCTION IN THE RECHARGE RATE OF ANY SUCH WELL, OR AN INCREASE IN THE TURBIDITY OF SUCH DRINKING WATER SUPPLY.

(D) AFTER AN INVESTIGATION AND UPON A FINDING BY THE DEPARTMENT THAT ANY BLASTER OR BLASTING ENTITY CAUSED BY ITS BLASTING CONTAMINATION OF A PROPERTY OWNER'S DRINKING WATER, A FUNCTIONAL REDUCTION IN THE RECHARGE RATE/YIELD OF A GROUNDWATER WELL SUPPLYING DRINKING WATER TO A PROPERTY OWNER, OR AN INCREASE IN TURBIDITY OF SUCH DRINKING WATER SUPPLY, SUCH VIOLATION SHALL BE PUNISHABLE BY A CIVIL PENALTY NOT TO EXCEED FIFTEEN THOUSAND DOLLARS PER VIOLATION. IN ADDITION, THE BLASTER SHALL BE REQUIRED TO ABATE EACH VIOLATION AND PROVIDE ALTERNATE WATER SUPPLIES TO AN AFFECTED PROPERTY OWNER AT THE BLASTER'S EXPENSE UNTIL THE CONTAMINATION OR TURBIDITY IS FULLY ABATED AND THE RECHARGE RATE IS RESTORED TO PRE-BLAST CONDITIONS.

3. CIVIL PENALTIES COLLECTED BY THE DEPARTMENT PURSUANT TO THIS TITLE MAY BE USED FOR ABATEMENT PURPOSES FOR ANY WELLS USED TO PROVIDE DRINKING WATER TO PROPERTY OWNERS WITHIN THE STATE THAT HAVE BEEN COMPROMISED AS A RESULT OF BLASTING.

4. NOTHING IN THIS TITLE SHALL BE CONSTRUED TO PREVENT OR PROHIBIT THE COMMENCEMENT OF ANY CIVIL OR ADMINISTRATIVE ACTION OR PROCEEDING TO ENJOIN ANY CONDUCT CONSTITUTING A VIOLATION OF THIS TITLE OR TO RECOVER ANY PENALTY THEREFOR OR ANY DAMAGES OCCASIONED THEREBY.

S 1179. POWER TO SUSPEND OR MODIFY. THE COMMISSIONER MAY, IN HIS OR HER DISCRETION, SUSPEND OR MODIFY THE REQUIREMENTS OF THIS TITLE:

1. WHEN HE OR SHE DEEMS IT NECESSARY TO DO SO TO PROTECT THE HEALTH, SAFETY AND WELFARE OF THE PUBLIC; OR

2. FOR STATE OR MUNICIPAL PROJECTS IF, IN HIS OR HER OPINION, ADEQUATE SAFEGUARDS HAVE BEEN IMPLEMENTED TO PREVENT WELL CONTAMINATION.

S 1180. MINES AND WATER WELL DRILLERS. THE PROVISIONS OF THIS TITLE SHALL NOT APPLY TO:

1. MINES SUBJECT TO THE PROVISIONS OF TITLE TWENTY-SEVEN OF ARTICLE TWENTY-THREE OF THE ENVIRONMENTAL CONSERVATION LAW; AND

2. WATER WELL DRILLERS SUBJECT TO THE PROVISIONS OF TITLE FIFTEEN OF ARTICLE FIFTEEN OF THE ENVIRONMENTAL CONSERVATION LAW.

S 1181. PREEMPTION. 1. IF ANY PART OR PROVISION OF THIS TITLE IS INCONSISTENT WITH ANY FEDERAL LAW, RULE OR REGULATION, THEN SUCH LAW, RULE OR REGULATION SHALL PREVAIL. IF ANY PART OR PROVISION OF THIS TITLE OR THE APPLICATION THEREOF TO ANY PERSON OR CIRCUMSTANCE BE ADJUDGED INVALID BY A COURT OF COMPETENT JURISDICTION, SUCH JUDGMENT SHALL BE CONFINED IN ITS OPERATION TO THE PART OR PROVISION OF OR APPLICATION DIRECTLY INVOLVED IN THE CONTROVERSY IN WHICH SUCH JUDGMENT SHALL HAVE BEEN RENDERED AND SHALL NOT AFFECT OR IMPAIR THE VALIDITY OF THE REMAINDER OF THIS TITLE, OR THE APPLICATION THEREOF TO OTHER PERSONS OR CIRCUMSTANCES.

2. THE PROVISIONS OF THIS TITLE SHALL BE NULL AND VOID ON THE DATE THAT ANY FEDERAL LAW, RULE OR REGULATION TAKES EFFECT, INCORPORATING EITHER THE SAME OR SUBSTANTIALLY SIMILAR PROVISIONS ARE AS CONTAINED IN THIS TITLE.

S 2. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.