STATE OF NEW YORK

2972

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IN ASSEMBLY

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Introduced by M. of A. ENGLEBRIGHT, COLTON, LIFTON, JAFFEE, TITONE, CRESPO, GOTTFRIED, ROSENTHAL, M. G. MILLER -- Multi-Sponsored by -- M. of A. COOK, SIMON, SOLAGES, THIELE -- (at request of the State Comptroller) -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to establishing the natural gas production contamination response and compensation program; and to amend the state finance law, in relation to creating the New York natural gas production contamination damage recovery and remediation fund

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Article 23 of the environmental conservation law is amended by adding a new title 29 to read as follows:

TITLE 29

NATURAL GAS PRODUCTION CONTAMINATION RESPONSE AND COMPENSATION PROGRAM

Part 1. General Provisions.

2. Natural gas production contamination cleanup and decontamination.

3. Liability; third party compensation.

4. Miscellaneous.

PART 1

GENERAL PROVISIONS

Section 23-2901. Legislative intent.

23-2902. Purposes.

23-2903. Definitions.

§ 23-2901. Legislative intent.

The legislature finds and declares that New York's lands and waters constitute a unique and delicately balanced resource; that the protection and preservation of these lands and waters promotes the

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

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health, safety and welfare of the people of this state; that the state is the trustee, for the benefit of its citizens, of all natural resources within its jurisdiction; and that contamination from incidents or accidents that result from natural gas production pose a threat to the economy and environment of this state. The legislature intends by the passage of this title to exercise the powers of this state to provide strict liability for damage sustained within this state as a result of contamination caused by natural gas production, require prompt cleanup and decontamination of any affected real or personal property, and establish a fund for the payment of remediation costs of contamination and timely and adequate compensation to any persons damaged by such contamination.

§ 23-2902. Purposes.

It is the purpose of this title to ensure a clean environment and healthy economy for the state by providing for the remediation of any contamination associated with natural gas production which may result in damage to lands, waters or natural resources of the state by authorizing the department of environmental conservation to respond quickly to such contamination and effect prompt cleanup and decontamination of such contamination, giving first priority to protecting public health and minimizing environmental damage, and by providing for strict liability for damage sustained within the state as a result of such contamination.

§ 23-2903. Definitions.

For the purposes of this title, unless the context clearly indicates otherwise, the following terms shall have the following meanings:

1. "Administrator" means the chief executive, within the department of audit and control, of the New York natural gas production contamination damage recovery and remediation fund established in section ninety-two-t of the state finance law;

2. "Claim" means, for purposes of part three of this title, any claim of the fund or any claim by an injured person who is not responsible for the contamination seeking compensation for cleanup and decontamination costs incurred or damages sustained as a result of contamination that results from natural gas production;

3. "Cleanup and decontamination" means activities undertaken to permanently eliminate, remove, abate, control or monitor health and/or environmental hazards or potential hazards in connection with natural gas production;

4. "Cleanup and decontamination costs" means all costs associated with the cleanup and decontamination of contamination including relocation costs pursuant to section 23-2907 of this title incurred by the state or its political subdivisions or their agents or any person with approval of the department;

5. "Contamination" means any damage to any property or the environment, including, but not limited to, a public or private water supply, any threat to public health, or any hazardous condition that prevents the use of property or that requires relocation of people or property to prevent harm resulting from natural gas production, or the release of any substance used in or associated with processes related to natural gas production, including, but not limited to, the development of natural gas wells; activities associated with drilling, stimulating, completing, or operating a natural gas well; activities associated with the construction or operation of facilities for the collection and/or processing of natural gas or for the transmission of natural gas from gas wells to consumers of natural gas; and the transportation of materials associated with a natural gas well site or natural gas production;

6. "Environment" means any water including, but not limited to, a stream, pond, lake, river, water course, aquifer, wetland or reservoir, any land including, but not limited to, a land surface or subsurface, air, fish, wildlife, biota and all other natural resources;

7. "Fund" means the New York natural gas production contamination damage recovery and remediation fund established by section ninety-two-t of the state finance law;

8. "Natural gas production" or "gas production" means all activities associated with the exploration and production of natural gas, including, but not limited to, (a) development of natural gas wells; (b) activities associated with drilling, stimulating, completing, or operating a natural gas well; (c) activities associated with the construction or operation of facilities for the collection and transmission of natural gas from gas wells to consumers of natural gas; and (d) the transportation of materials associated with a natural gas well site or natural gas production whether or not such gas is re-injected into the subsurface of the earth, from a geological formation and the transportation of such natural gas to another location;

9. "Owner" or "operator" means with respect to natural gas production any person owning or operating by lease, contract or other form of agreement any natural gas production sites, facilities, equipment, or development rights; with respect to abandoned or derelict sites, facilities, equipment, or development rights, the person who owned or operated such sites, facilities, equipment or development rights immediately prior to such abandonment, or the owner, or operator at the time of contamination;

10. "Person" means public or private corporations, companies, associations, societies, firms, partnerships, joint stock companies, individuals, the United States, the state of New York and any of its political subdivisions or agents.

PART 2
NATURAL GAS PRODUCTION CONTAMINATION CLEANUP AND DECONTAMINATION

Section 23-2904. Contamination caused by natural gas production; prohibition.
23-2905. Cleanup and decontamination of contamination caused by natural gas production.
23-2906. Notification by persons responsible for contamination.
23-2907. Cleanup and decontamination of prohibited contaminations.
23-2908. Emergency natural gas production contamination control network and emergency natural gas production contamination relocation network.
23-2909. Right to enter and inspect.
23-2910. Registry of reports of contamination.

§ 23-2904. Contamination caused by natural gas production; prohibition.

Contamination of the environment caused by natural gas production is prohibited.

§ 23-2905. Cleanup and decontamination of contamination caused by natural gas production.

1. The commissioner shall promulgate regulations governing the cleanup and decontamination of any contamination resulting from natural gas production.

2. No person shall supervise, aid or participate in any cleanup or decontamination method which is inconsistent with any rule or regulation promulgated pursuant to this section.

§ 23-2906. Notification by persons responsible for contamination.

Any person responsible for causing contamination shall immediately notify the department pursuant to rules and regulations established by the department, but in no case later than two hours after the contamination. Failure to so notify shall make such person liable pursuant to the penalty provisions of section 23-2932 of this title.

§ 23-2907. Cleanup and decontamination of prohibited contaminations.

1. Any person causing contamination prohibited by section 23-2904 of this part shall immediately undertake to contain such contamination. Notwithstanding the above requirement, the department, pursuant to regulations promulgated for such purpose, may undertake the decontamination of such contamination and may retain agents and contractors who shall operate under the direction of such department for such purpose.

2. (a) Upon the occurrence of contamination resulting from natural gas production, pursuant to regulations promulgated for such purpose, the department shall respond promptly and proceed to cleanup and remove the contamination in accordance with environmental priorities or may, at its discretion, direct the person responsible for such contamination to promptly cleanup and remove the contamination. The department shall be responsible for cleanup and decontamination or, as the case may be, for retaining agents and contractors who shall operate under the direction of that department for such purposes. Implementation of cleanup and decontamination procedures of each contamination shall be conducted in accordance with environmental priorities and procedures established by the department.

(b) Section eight of the court of claims act or any other provision of law to the contrary notwithstanding, the state shall be immune from liability and action with respect to any act or omission done in the discharge of the department's responsibility pursuant to this title; provided, however, that this subdivision shall not limit any liability which may otherwise exist for unlawful, willful or malicious acts or omissions on the part of the state, state agencies, or their officers, employees or agents or for contamination in violation of section 23-2904 of this part.

3. Any unexplained contamination caused by natural gas production within state jurisdiction or contamination caused by natural gas production occurring beyond state jurisdiction that for any reason penetrates within state jurisdiction shall be removed by or under the direction of the department. Except for those expenses incurred by the party causing such contamination, any expenses incurred in the decontamination of contamination shall be paid promptly from the New York natural gas production contamination damage recovery and remediation fund pursuant to section ninety-two-t of the state finance law and any reimbursements due such fund shall be collected in accordance with the provisions of such section.

4. Cleanup and decontamination of contamination and actions to minimize damage from such contamination shall be, to the greatest extent possible, permanent remedies to the contamination, in accordance with applicable federal and state environmental laws, rules and regulations.

5. The department, in consultation with the state comptroller and the attorney general, shall develop a standard contract form to be used when contracting services for the cleanup and decontamination of a contamination.

6. Whenever the department acts to remove contamination or contracts to secure prospective decontamination services, the department is authorized to draw upon the money available in the fund, paid out on the

audit and warrant of the comptroller. Such moneys shall be used to pay promptly for all cleanup and decontamination costs incurred by the department. Whenever the department acts to remove contamination or contracts to secure prospective decontamination services to address contamination that is associated with an owner or operator, it shall first draw on the bond or other financial security required by paragraph (c) of subdivision three of section 23-2915 of this title paid out on the audit and warrant of the comptroller. If such bond or financial security is insufficient to fully discharge cleanup and decontamination costs, the department is authorized to draw on money available in the fund, paid out on the audit and warrant of the state comptroller.

7. (a) Nothing in this section is intended to preclude cleanup and decontamination by any person threatened by such contamination, who, as soon as is reasonably possible, coordinates and obtains approval for such actions with ongoing state or federal operations and appropriate state and federal authorities. Notwithstanding any other provision of law to the contrary, the liability of any contractor for such person, where such person obtains approval from appropriate state and federal authorities for such cleanup and decontamination, and the liability of any person providing services related to the cleanup or decontamination of contamination, under contract with the department, for any injury to a person or property caused by or related to such services shall be limited to acts or omissions of the person during the course of performing such services which are shown to have been the result of negligence, gross negligence or reckless, wanton or intentional misconduct. Notwithstanding any other provisions of law, when (i) a verdict or decision in an action or claim for injury to a person or property caused by or related to such services is determined in favor of a claimant in an action involving a person performing such services and any other person or persons jointly liable, and (ii) the liability of the person performing such services is found to be fifty percent or less of the total liability assigned to all persons liable, and (iii) the liability of the person performing such services is not based on a finding of reckless disregard for the safety of others, or intentional misconduct, then the liability of the person performing such services to the claimant for loss relating to injury to property and for non-economic loss relating to injury to a person shall not exceed the equitable share of the person performing such services determined in accordance with the relative culpability of each person causing or contributing to the total liability for such losses; provided, however, that the culpable conduct of any person not a party to the action shall not be considered in determining any equitable share herein if the claimant proves that with due diligence the claimant was unable to obtain jurisdiction over such person in said action. As used in this section, the term "non-economic loss" includes, but is not limited to, pain and suffering, mental anguish, loss of consortium or other damages for non-economic loss. However, nothing in this subdivision shall be deemed to alter, modify or abrogate the liability of any person performing such services for breach of any express warranty, limited or otherwise, or an express or implied warranty under the uniform commercial code, or to an employee of such person pursuant to the workers' compensation law, or to relieve from any liability any person who is responsible for contamination in violation of section 23-2904 of this part.

(b) No action taken by any person to contain or remove contamination shall be construed as an admission of liability for such contamination. No person who gratuitously renders assistance in containing or removing

contamination shall be liable for any civil damages to third parties resulting solely from acts or omissions of such person in rendering such assistance except for acts or omissions of gross negligence or willful misconduct. In the course of cleanup and decontamination, no person shall discharge any detergent or other substance into the waters of this state without prior authorization of the commissioner.

(c) A person may, without admission of responsibility for a contamination and with the consent of the commissioner, commence clean up and decontamination of the contamination and upon the recommendation of the commissioner of health and with the consent of the fund undertake the relocation of persons affected by contamination. Upon determination by the fund that the person is not responsible for the contamination, the person shall be reimbursed by the fund for the actual and necessary expenses incurred.

8. Notwithstanding any other provision of law to the contrary, including but not limited to section 15-108 of the general obligations law, every person providing cleanup, decontamination of contamination or relocation of persons pursuant to this section shall be entitled to contribution from any other responsible party.

§ 23-2908. Emergency natural gas production contamination control network and emergency natural gas production contamination relocation network.

The commissioner shall, by regulation, establish an emergency natural gas production contamination control network and an emergency natural gas production contamination relocation network.

§ 23-2909. Right to enter and inspect.

The department is hereby authorized to enter and inspect any property or premises for the purpose of inspecting sites, facilities, or equipment and investigating either actual or suspected sources of contamination or violation of this title or any rule or regulation promulgated pursuant to this title. The department is further authorized to enter on property or premises in order to assist in the cleanup or decontamination of the contamination. Any information relating to secret processes or methods of manufacture shall be kept confidential.

§ 23-2910. Registry of reports of contamination.

1. The department shall maintain and post on a publicly available internet website a registry of all reports of contamination pursuant to section 23-2906 of this part. Reports shall be added to the registry on an ongoing basis as soon as possible after the date on which they are reported, but no later than thirty days after such date. Such registry shall include, but not be limited to, the following items:

(a) a general description of the site consisting of:

(i) the name, if any, of the site and the address of the site, including the town and county;

(ii) the contamination at the site, including, but not limited to, a description of the natural gas production activity resulting in contamination, the date on which this activity occurred and all inspections, tests and other measures employed in assessing the contamination;

(iii) the owner or operator of the natural gas production activity at the time of contamination; and

(iv) the name of the current owner of the site;

(b) an assessment by the department of harm to the environment resulting from contamination at the site;

(c) an assessment prepared by the department of health of public health problems at the site resulting from contamination at the site; and

(d) a description of cleanup and contamination activities undertaken at the site.

2. Periodically, but no less than annually, the department shall update the registry to reflect the status of cleanup and decontamination measures.

3. When a permanent remedy of contamination has been achieved, the department may, at the request of the site owner, remove the name of the site owner and the site address information except for the town and county of the site from the registry. All other items shall remain as permanent records on the registry.

PART 3

LIABILITY; THIRD PARTY COMPENSATION

Section 23-2914. Administrator of the New York natural gas production damage recovery and remediation fund.

23-2915. Liability.

23-2916. Environmental lien.

23-2917. Environmental lien notice; contents.

23-2918. Filing of notice of environmental lien; filing of release.

23-2919. Enforcement of environmental lien.

23-2920. Amounts received to satisfy lien.

23-2921. Claims against the fund.

23-2922. Settlements.

23-2923. Settlements when source of contamination is unknown.

23-2924. Hearings for persons on claims filed with the administrator.

23-2925. Subrogation of rights.

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23-2927. Claims against insurers.

23-2928. Application of title.

§ 23-2914. Administrator of the New York natural gas production damage recovery and remediation fund.

The state comptroller shall appoint and supervise an administrator of the New York natural gas production damage recovery and remediation fund for the purposes of this part referred to as "the fund". The administrator shall be the chief executive of the fund and shall have the following powers and duties:

1. To represent the state in meetings with the alleged person responsible for a contamination and claimants concerning liability for the contamination and amount of the claims;

2. To determine if hearings are needed to settle particular claims filed by injured persons;

3. To convene hearings;

4. To certify the amount of claims and names of claimants to the state comptroller; and

5. To disburse moneys from the fund for cleanup and decontamination costs pursuant to a certification of claims by the commissioner.

§ 23-2915. Liability.

1. Any person who has caused contamination shall be strictly liable, without regard to fault, for all cleanup and decontamination costs and all direct and indirect damages, no matter by whom sustained, as defined in this section. In addition to cleanup and decontamination costs and damages, any such person who is notified of such contamination and who did not undertake relocation of persons residing in the area of the contamination in accordance with paragraph (c) of subdivision seven of section 23-2907 of this title, shall be liable to the fund for an amount

equal to two times the actual and necessary expense incurred by the fund for such relocation pursuant to regulations authorized by section 23-2908 of this title.

2. The fund shall be strictly liable, without regard to fault, for all cleanup and decontamination costs and all direct and indirect damages, no matter by whom sustained, including, but not limited to:

(a) Cleanup and decontamination costs including, but not limited to the cost of restoring, repairing, or replacing any real or personal property damaged or destroyed by contamination, any income lost from the time such property is damaged to the time such property is restored, repaired or replaced, any reduction in value of such property caused by such contamination by comparison with its value prior thereto;

(b) The cost of restoration and replacement, where possible, of any natural resource damaged or destroyed by contamination;

(c) Loss of income or impairment of earning capacity due to damage to real or personal property, including natural resources destroyed or damaged by contamination; provided that such loss or impairment exceeds ten percent of the amount which claimant derives, based upon income or business records, exclusive of other sources of income, from activities related to the particular real or personal property or natural resources damaged or destroyed by such contamination during the week, month or year for which the claim is filed;

(d) Loss of tax revenue by the state or local governments for a period of one year due to damage to real or personal property proximately resulting from contamination; and

(e) Interest on loans obtained or other obligations incurred by a claimant for the purpose of ameliorating the adverse effects of a contamination pending the payment of a claim in full as provided by this title.

3. (a) The owner or operator which has caused contamination shall be strictly liable for the full amount of cleanup and decontamination costs and damages, without regard to fault, subject to the defenses enumerated in subdivision four of this section, for all cleanup and decontamination costs and all direct and indirect damages paid by the fund.

(b) (i) The commissioner in consultation with the superintendent of financial services shall promulgate regulations requiring the owner or operator of a drilling site to establish and maintain evidence of financial responsibility.

(ii) Financial responsibility under this paragraph may be established by any one or a combination of the following methods acceptable to the commissioner in consultation with the superintendent of financial services: evidence of insurance, surety bonds, guarantee, letter of credit, qualification as a self-insurer, or other evidence of financial responsibility.

(iii) The liability of a third-party insurer providing proof of financial responsibility on behalf of a person required to establish and maintain evidence of financial responsibility under this section is limited to the type of risk assumed and the amount of coverage specified in the proof of financial responsibility furnished to and approved by the department. For the purposes of this section, the term "third-party insurer" means a third-party insurer, surety, guarantor, person furnishing a letter of credit, or other group or person providing proof of financial responsibility on behalf of another person; it does not include the person required to establish and maintain evidence of such financial responsibility.

(c) Any owner or operator engaging in or seeking to engage in natural gas production shall provide a bond or other financial security acceptable to the department in an amount established by rule or regulation in consultation with the administrator of the fund conditioned on performance of such owner's or operator's cleanup and decontamination responsibilities in the event of contamination as defined in this section. The bond shall be in an amount sufficient to fully discharge such owner's or operator's cleanup and decontamination responsibilities. The failure of any owner or operator to prevent prohibited contamination shall be deemed a breach of the responsibilities of this title and entitle the department to claim the proceeds of the bond or other financial security authorized by this paragraph. In the event the department acts or remove contamination or contracts to secure prospective decontamination services pursuant to subdivision six of section 23-2907 of this title to address contamination that is associated with an owner or operator, the department shall draw on the bond or other financial security authorized by this paragraph to pay promptly for cleanup and decontamination costs incurred by such department.

4. (a) The only defenses that may be raised by a person responsible for causing contamination are: (i) an act or omission caused solely by war, sabotage, or governmental negligence or (ii) an act or omission of a third party other than an employee or agent of the person responsible, or a third party whose act or omission occurs in connection with a contractual relationship with the person responsible, if the person responsible establishes by a preponderance of the evidence that the person responsible exercised due care with respect to the natural gas concerned, taking into consideration the characteristics of natural gas and in light of all relevant facts and circumstances; and

(b) took precautions against the acts or omissions of any such third party and the consequences of those acts or omissions. These defenses shall not apply to a person responsible who refuses or fails to (i) report the contamination, or (ii) provide all reasonable cooperation and assistance in cleanup and decontamination activities undertaken on behalf of the fund by the department. In any case where a person responsible for contamination establishes by a preponderance of the evidence that the contamination and the resulting cleanup and decontamination costs were caused solely by an act or omission of one or more third parties as described in this paragraph, the third party or parties shall be treated as the person or persons responsible for the purposes of determining liability under this title.

(c) Nothing set forth in this subdivision shall be construed to hold a lender liable to the state as a person responsible for the contamination caused by natural gas production at a site in the event: (i) such lender, without participating in the management of such site, holds indicia of ownership primarily to protect the lender's security interest in the site, or (ii) such lender did not participate in the management of such site prior to a foreclosure, and such lender:

(1) forecloses on such site; and

(2) after foreclosure, sells, re-leases (in the case of a lease finance transaction), or liquidates such site, maintains business activities, winds up operations, or takes any other measure to preserve, protect or prepare such site for sale or disposition; provided however, that such lender shall take actions to sell, re-lease (in the case of a lease finance transaction), or otherwise divest itself of such site at the earliest practicable, commercially reasonable time, on commercially

reasonable terms, taking into account market conditions and legal and regulatory requirements.

(d) This exemption shall not apply to any lender that has caused or contributed to the contamination caused by natural gas production from or at the site.

The terms "participating in management," "foreclosure," "lender" and "security interest" shall have the same meaning as those terms are defined in paragraph (c) of subdivision one of section 27-1323 of this chapter.

5. Any claim by any injured person for the costs of cleanup and decontamination and direct and indirect damages based on the strict liability imposed by this section may be brought directly against the person who has caused contamination, provided, however, that damages recoverable by any injured person in such a direct claim based on the strict liability imposed by this section shall be limited to the damages authorized by this section.

§ 23-2916. Environmental lien.

1. The fund shall have a lien for the costs incurred by the fund for the cleanup and decontamination of contamination and for the payment of claims for direct and indirect damages as a result of contamination upon real property located within the state:

(a) owned by a person liable to the fund for such costs under section 23-2915 of this part at the time a notice of environmental lien is filed; and

(b) upon which the contamination occurred.

2. An environmental lien shall attach when:

(a) cleanup and decontamination costs and damage costs are incurred by the fund;

(b) the person referred to in subdivision one of this section fails to pay such costs within ninety days after a written demand therefor by the administrator is mailed by certified or registered mail, return receipt requested; and

(c) a notice of environmental lien is filed as provided in section 23-2918 of this part; provided, however, that a copy of the notice of environmental lien is served upon the owner of the real property subject to the environmental lien within thirty days of such filing in accordance with the provisions of section eleven of the lien law.

3. An environmental lien shall continue against the real property until:

(a) the claim or judgment against the person referred to in subdivision one of this section for cleanup and decontamination costs and damage costs is satisfied or becomes unenforceable;

(b) the lien is released by the administrator pursuant to this subdivision;

(c) the lien is discharged by payment of moneys into court; or

(d) the lien is otherwise vacated by court order.

Upon the occurrence of any of the foregoing, except where the lien is vacated by court order, the administrator shall execute the release of an environmental lien and file the release as provided in section 23-2918 of this part. The administrator may release an environmental lien where:

(i) a legally enforceable agreement satisfactory to the administrator has been executed relating to cleanup and decontamination costs and damage costs or reimbursing the fund for cleanup and decontamination costs and damage costs; or

(ii) the attachment or enforcement of the environmental lien is determined by the administrator not to be in the public interest.

4. An environmental lien is subject to the rights of any other person, including an owner, purchaser, holder of a mortgage or security interest, or judgment lien creditor, whose interest is perfected before a lien notice has been filed as provided in section 23-2918 of this part.

§ 23-2917. Environmental lien notice; contents.

A notice of environmental lien must state:

1. That the lienor is the New York natural gas production contamination damage recovery and remediation fund;

2. The name of the record owner of the real property on which the environmental lien has attached;

3. The real property subject to the lien, with a description thereof sufficient for identification;

4. That the real property described in the notice is the property upon which contamination occurred and that cleanup and decontamination costs and damage costs have been incurred by the lienor as a result of such contamination;

5. That the owner is potentially liable for cleanup and decontamination costs and damage costs pursuant to section 23-2915 of this part; and

6. That an environmental lien has attached to the described real property.

§ 23-2918. Filing of notice of environmental lien; filing of release.

1. A notice of environmental lien shall be filed within six years from the time a disbursement is made by the fund for cleanup and decontamination costs and damage costs incurred by the fund in the clerk's office of the county where the property is situated. If such property is situated in two or more counties, the notice of environmental lien shall be filed in the office of the clerk of each of such counties. The notice of lien shall be indexed by the county clerk in accordance with the provisions of section ten of the lien law.

2. A release of an environmental lien shall be filed in the clerk's office of each county where the notice of environmental lien was filed and shall be indexed in the manner prescribed for indexing environmental liens.

§ 23-2919. Enforcement of environmental lien.

An environmental lien may be enforced against the property specified in the notice of environmental lien, and an environmental lien may be vacated or released, as prescribed in article three of the lien law; provided, however, that nothing in this article or in article three of the lien law shall affect the right of the fund to bring an action to recover cleanup and decontamination costs and damage costs under section 23-2915, 23-2926, 23-2927 or 23-2928 of this part.

§ 23-2920. Amounts received to satisfy lien.

Amounts received by the administrator to satisfy all or part of an environmental lien shall be deposited in the state treasury and credited to the natural gas production damage recovery and remediation fund.

§ 23-2921. Claims against the fund.

Claims shall be filed with the administrator not later than three years after the date of discovery of damage nor later than ten years after the date of the incident which caused the damage. The administrator shall prescribe appropriate forms and procedures for such claims, which shall include a provision requiring the claimant to make a sworn verification of the claim to the best of his knowledge. Any person who knowingly gives or causes to be given any false information as a part of

any such claim shall, in addition to any other penalties herein or elsewhere prescribed, be guilty of a misdemeanor punishable by a fine of up to one thousand dollars or up to one year imprisonment. Upon receipt of any claim, the administrator shall as soon as practicable inform all affected parties of the claim.

§ 23-2922. Settlements.

The administrator shall attempt to promote and arrange a settlement between the claimant and the person responsible for the contamination. If the source of the contamination can be determined and liability is conceded, the claimant and the alleged person responsible for the contamination may agree to a settlement which shall be final and binding upon the parties and which will waive all recourse against the fund.

§ 23-2923. Settlements when source of contamination is unknown.

If the source of the contamination is unknown or cannot be determined, the claimant and the administrator shall attempt to arrange a settlement of any claim against the fund. The administrator is authorized to enter and certify payment of such settlement subject to such proof and procedures contained in regulations promulgated by the administrator.

§ 23-2924. Hearings for persons on claims filed with the administrator.

1. The administrator shall grant a hearing when persons alleged to be responsible for the contamination contest the validity or amount of damage claims or claims for cleanup and decontamination costs presented by injured persons to the fund for payment or when injured persons who have filed a claim against the fund contest the validity or amount of the settlement proposed by the administrator.

2. One hearing may be granted to hear and determine all claims arising from or related to a common contamination.

3. The burden of proof with respect to the validity or amount of damage claims or claims for cleanup and decontamination costs shall be upon the persons contesting such claims or the claimants contesting the settlement proposed by the administrator.

4. At least twenty days notice of such hearing shall be given by the administrator to the claimants and, if known, the alleged person responsible for the contamination.

5. Upon the return day of such notice the person so notified shall file with the administrator a statement setting forth the position of the person so notified. Pertinent and relevant testimony of witnesses shall be received in support of or opposition to such statement. The claimants or alleged persons responsible for the contamination may appear in person or by attorney, present witnesses, submit evidence and be given full opportunity to be heard.

6. The administrator shall have the power to order testimony under oath and may subpoena attendance and testimony of witnesses and the production of such documentary materials pertinent to the issues presented at the hearing. Each person appearing at the hearing may be represented by counsel.

7. Within sixty calendar days from the close of such hearing and after due consideration of the written and oral statements and testimony and arguments filed pursuant to this section, or on default in appearance on said return day, the administrator shall make his final determination on the validity or amount of the damage claims or claims for cleanup and decontamination costs filed by the injured persons. The administrator shall notify the claimant and, if known, the alleged person responsible for the contamination thereof in writing by registered mail.

8. Determinations made by the administrator after such hearing shall be final and conclusive. Any action for judicial review shall be filed

pursuant to the provisions of article seventy-eight of the civil practice law and rules.

9. Upon a determination by the administrator that provides for an award to the claimants, the administrator shall certify the amount of the award and the name of the claimant to the state comptroller, who shall pay the award from the fund. In any case in which a person responsible for the contamination seeks judicial review, reasonable attorney's fees and costs shall be awarded to the claimant if the determination of the administrator is affirmed.

§ 23-2925. Subrogation of rights.

Payment of any cleanup costs or damages by the fund arising from a single incident shall be conditioned upon the administrator acquiring by subrogation all rights of the claimant to recovery of such costs or damages from the person responsible for the contamination or other responsible party. The administrator shall then seek satisfaction from the person responsible for the contamination or other responsible party in the supreme court if the person responsible for the contamination or other responsible party does not reimburse the fund. In any such suit, except as provided by section 23-2915 of this part, the administrator need prove only that an unlawful contamination occurred which was the responsibility of the person responsible for the contamination or other responsible party. The administrator is hereby authorized and empowered to compromise and settle the amount sought for costs and damages from the person responsible for the contamination or other responsible party and any penalty arising under this title.

§ 23-2926. Awards exceeding current balance.

In the event that the total awards for a specific occurrence exceed the current balance of the fund, the immediate award shall be paid on a prorated basis, and all claimants paid on a prorated basis shall be paid as determined by the administrator, a pro rata share of all moneys received by the fund until the total amount of the proven damages is paid to the claimant or claimants. The administrator may also provide through regulation to fix the priority for the payment of claims based on extreme hardship.

§ 23-2927. Claims against insurers.

Any claims for costs of cleanup and decontamination, civil penalties or damages by the state and any claim for damages by any injured person, may be brought directly against the bond, the insurer, or any other person providing evidence of financial responsibility.

§ 23-2928. Application of title.

For purposes of cleanup and decontamination of any public or private ground water supply system contaminated by any contamination occurring either before or after the effective date of this title, all relevant provisions of this title shall apply.

PART 4

MISCELLANEOUS

Section 23-2931. Joint rules and regulations.
23-2932. Enforcement of title; penalties.
23-2933. Availability of additional remedies.
23-2934. Construction.
23-2935. Reports.
23-2936. Effect of federal legislation.

§ 23-2931. Joint rules and regulations.

The commissioner and the state comptroller are authorized to adopt, amend, repeal, and enforce such rules and regulations pursuant to the

state administrative procedure act, as they may deem necessary to accomplish the purposes of this title.

§ 23-2932. Enforcement of title; penalties.

Any person who knowingly gives or causes to be given any false information as a part of, or in response to, any claim made pursuant to this title for cleanup and decontamination costs, direct or indirect damages resulting from contamination, or who otherwise violates any of the provisions of this title or any rule promulgated thereunder or who fails to comply with any duty created by this title shall be liable to a penalty of not more than twenty-five thousand dollars for each offense in a court of competent jurisdiction. If the violation is of a continuing nature each day during which it continues shall constitute an additional, separate and distinct offense.

§ 23-2933. Availability of additional remedies.

Nothing in this title shall be deemed to preclude the pursuit of any other civil or injunctive remedy by any person. The remedies provided in this title are in addition to those provided by existing statutory or common law, but no person who receives compensation for damages or cleanup and decontamination costs pursuant to any other state or federal law shall be permitted to receive compensation for the same damages or cleanup and decontamination costs under this title.

§ 23-2934. Construction.

This title, being necessary for the general health, safety and welfare of the people of this state, shall be liberally construed to affect its purposes.

§ 23-2935. Reports.

The commissioner and the administrator shall make an annual report to the legislature and the governor which shall describe the quantity and degree of contamination caused by natural gas production, the costs and damages paid by and recovered for the fund, and the economic and environmental impact on the state as a result of the administration of this title.

§ 23-2936. Effect of federal legislation.

If the United States congress enacts legislation providing compensation in the event of contamination caused by natural gas production, the commissioner shall determine to what degree such legislation provides the needed protection for our citizens, businesses and environment and shall make the appropriate recommendations to the legislature for amendments to this title.

§ 2. Section 23-1903 of the environmental conservation law is amended by adding a new subdivision 3 to read as follows:

3. The commissioner is hereby authorized to establish a surcharge pursuant to regulation on the permit fees on gas wells, authorized by subdivision one of this section, to be credited to the New York natural gas production contamination damage recovery and remediation fund established in section ninety-two-t of the state finance law. The surcharge shall be established to provide sufficient funds to meet the obligations of the fund.

§ 3. The state finance law is amended by adding a new section 92-t to read as follows:

§ 92-t. New York natural gas production contamination damage recovery and remediation fund. 1. There is hereby established in the joint custody of the state comptroller and the commissioner of taxation and finance a special fund to be known as the "the New York natural gas production contamination damage recovery and remediation fund".

2. The fund shall consist of revenues collected by the department of environmental conservation pursuant to subdivision three of section 23-1903, section 23-2915, section 23-2920, and section 23-2932 of the environmental conservation law and all other moneys appropriated, credited or transferred thereto from any other fund or source pursuant to law.

3. Moneys in the fund shall be kept separate and not commingled with any other moneys in the custody of the commissioner of taxation and finance and the state comptroller.

4. Moneys of the fund, following appropriation by the legislature, may be expended for the following purposes:

(a) damages as defined in section 23-2915 of the environmental conservation law;

(b) research on the prevention and the effects of contamination from natural gas production on the environment and on the development of improved cleanup and decontamination operations; provided, however, that the cost of such research shall not exceed the amount of interest which is credited to this fund;

(c) general administration of the fund, equipment and personnel costs of the department of environmental conservation, the state comptroller and any other state agency related to the enforcement of title twenty-nine of article twenty-three of the environmental conservation law;

(d) research and demonstration programs concerning the causes and abatement of contamination from natural gas production; provided, however, that the cost of such research and demonstration programs shall not exceed the amount of interest which is credited to this fund.

5. The comptroller may invest and reinvest any moneys in such fund in obligations in which the comptroller is authorized to invest pursuant to the provisions of section ninety-eight-a of this article. Any income or interest derived from such investment shall be included in the fund.

6. Moneys, shall be payable from the fund on the audit and warrant of the comptroller on vouchers approved and certified by the comptroller and the commissioner of environmental conservation.

7. The administrator of the fund, as established in section 23-2914 of the environmental conservation law, shall recover to the fund moneys disbursed for the following purposes:

a. costs incurred by the fund in the cleanup and decontamination of contamination when the person responsible for causing a contamination has failed to promptly clean up and remove the contamination to the satisfaction of the department of environmental conservation;

b. costs incurred by the fund in the payment of claims for direct and indirect damages, as defined in section 23-2915 of the environmental conservation law; and

c. all penalties assessed pursuant to title twenty-nine of article twenty-three of the environmental conservation law.

§ 4. Severability. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, the judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which the judgment shall have been rendered.

§ 5. This act shall take effect on the one hundred twentieth day after it shall have become a law; provided, however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date is authorized to be made and completed on or before such date.