STATE OF NEW YORK

7954

IN SENATE

March 13, 2018

Introduced by Sen. O'MARA -- (at request of the Department of Environmental Conservation) -- 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, in relation to the regulation of water well drillers; and to amend the executive law, in relation to water wells

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

Section 1. Section 15-1501 of the environmental conservation law is amended by adding a new subdivision 10 to read as follows:

10. Beginning January first, two thousand eighteen, no public water supply water withdrawal permittee shall sell or otherwise provide, or allow any person to use potable water for the purpose of once-through heat exchange cooling or heating systems unless such water remains in or is returned to the public water supply subject to the department of health approval and conditions.

§ 2. Subdivisions 3, 4, and 5 of section 15-1502 of the environmental conservation law, subdivisions 3 and 5 as amended by section 1 of part F of chapter 59 of the laws of 2006 and subdivision 4 as added by chapter 395 of the laws of 1999, are amended and two new subdivisions 17 and 18 are added to read as follows:

3. "Water well" shall mean any groundwater excavation for the purpose of obtaining **or withdrawing** water **but shall not include the following: temporary dewatering wells less than fifty feet deep, removed and decommissioned within one hundred eighty days of installation; wells regulated pursuant to article twenty three of this chapter; and monitoring, driven, or direct push wells less than fifty feet deep and less than three inches in diameter**.

4. "Water well drilling" or "water well drilling activities" shall mean the construction and reconstruction of water wells, the establishment or repair of a connection through the well casing and the repair of water wells including repairs**, or installation or repair of pumps,** which require the opening of the well casing.

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

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5. "Water well driller" shall mean a person who, for compensation or as part of property development and sale, engages**, advertises, or offers for sale services** in water well drilling activities; provided, however, that, for the purposes of this subdivision, the term "person" shall not include a public corporation, political subdivision, government agency, department, or bureau of the state or a municipality.

17. "Flowing artesian well" shall mean a water well in which the pressure in the aquifer is sufficient to continuously or intermittently force water out of the well at the ground surface without requiring a pump.

18. "Water well decommissioning" shall mean permanent closure so that: the well casing at the surface no longer exists; the former drilled hole no longer serves as a conduit for movement of groundwater; loss of hydrologic pressure is not allowed in confined formations; groundwater of differing quality is not allowed to intermingle; and the entry or discharge of contaminated and polluted water, including surface water runoff and surface erosion, is precluded.

§ 3. Section 15-1525 of the environmental conservation law, the section heading and subdivision 1 as amended and subdivision 6 as added by chapter 395 of the laws of 1999 and subdivisions 3 and 5 as amended by section 2 of part F of chapter 59 of the laws of 2006, is amended to read as follows:

§ 15-1525. Water well drillers in New York state to obtain certificates of registration.

1. No person shall engage in**, advertise, or offer for sale services in** the business of water well drilling in the state of New York without first obtaining [~~a~~] **an annual** certificate of registration from the department as hereinafter provided. All water well drilling shall be performed in accordance with the rules and regulations promulgated by the commissioner of health pursuant to subdivision eighteen of section two hundred six of the public health law. **The department may promulgate regulations to implement a program for water well drilling, annual registration, and reporting, and for water well maintenance and decommissioning, in accordance with this article.**

2. **a.** Application for [~~a~~] **an annual** certificate of registration shall be made upon a form prescribed and furnished by the department [~~providing~~]**, whereon the applicant shall provide** such information as the department deems necessary for the purposes of issuance of a certificate of registration. **Such application information shall include, but not be limited to, a statement as to all persons who will be responsible for the on-site supervision of water well drilling activities, and evidence that all such persons have passed, with at least a seventy percent score, a two-part certification exam, for the specified method or methods of drilling to be supervised, by the national ground water association or an equivalent exam offered or approved by the commissioner. Such application information shall include, but not be limited to, a statement as to all persons who will be responsible for the on-site supervision of the repair or installation of water pumps, requiring the opening of the well casing, and evidence that all such persons have passed, with at least a seventy percent score, a certification exam developed by the national ground water association or the water systems council, or an equivalent exam offered or approved by the commissioner.**

b. The business activities authorized by a well driller certificate of registration are subject to the provisions of article thirty-six-A of the general business law which, in part, require a written contract between a water well driller and customer.

3. [~~The certificate of registration shall require that, before~~] **Before** the commencement of drilling of any **water** well [~~or wells, the~~]**, a** water well driller shall file a preliminary notice with the department[~~; it shall also provide that upon~~] **using a form provided by the department.**

4. Upon the completion of the drilling of any water well [~~or~~]**, a** water [~~wells,~~] **well driller shall prepare** a completion report [~~be filed with the department, giving~~] **and file the completion report with the department within thirty days of the completion of the drilling of the well. A water well driller shall include the following information in the completion report:** the log of the well, the size and depth thereof, the capacity of the pump or pumps attached or to be attached thereto, and such other information pertaining to the withdrawal of water and operation of such water well [~~or water wells~~] as the department [~~by its rules and regulations~~] may require. The water well driller shall provide a copy of such completion report to the water well owner. The number of the certificate of registration must be displayed on the well drilling machinery of the registrant. [~~The certificate of registration shall also contain a notice to the certificate holder that the business activities authorized by such certificate are subject to the provisions of article thirty-six-A of the general business law.~~] The fee for such **annual** certificate of registration shall be [~~ten dollars annually~~] **established by regulation promulgated by the department. The water well driller shall also produce a copy of the completion report upon demand of the department and, or including an enforcement officer**. The [~~commissioner~~] **department** shall [~~promulgate~~] **provide** a water well completion report form which shall be utilized by all water well drillers in satisfying the requirements of this section and any other provision of state or local law which requires the submission of a water well completion report or water well log.

[~~4.~~] **5.** The department may **deny an application for a certificate of registration or** revoke [~~any~~] **a** certificate of registration for violation of any of the provisions of this section, or violation of rules made by the department pertaining thereto. [~~A~~] **An application for a certificate of registration may be denied or a** certificate of registration may be revoked by the department regardless of the criminal provisions with regard to this section found in section 71-1115.

[~~5.~~] **6.** a. On and after January first, two thousand three, any individual who is responsible for the on-site supervision of water well drilling activities must have passed, with at least a seventy percent score, a two-part certification exam by the national ground water association or an equivalent exam offered or approved by the commissioner. Evidence of having passed such exam shall be provided by the person responsible for the on-site supervision of water well drilling activities upon demand of **the department or** any enforcement officer.

b. Notwithstanding the provisions of paragraph a of this subdivision any individual, who is responsible for the on-site supervision of the repair or installation of water pumps, requiring the opening of the well casing, must have passed, with at least a seventy percent score, a certification exam developed by the national ground water association or the water systems council, or an equivalent exam offered or approved by the commissioner. Evidence of having passed such exam shall be provided by the person responsible for the on-site supervision of the repair or installation of water pumps, requiring the opening of the well casing, upon demand of **the department or** any enforcement officer.

[~~6.~~] **7.** Except as otherwise provided by law, nothing in this section shall be deemed to preempt any provision of local law which requires the

license or registration of water well drillers or which otherwise regulates the practice of water well drilling, provided that the provisions of such local law are at least as comprehensive as the provisions of this section.

§ 4. The environmental conservation law is amended by adding a new section 15-1526 to read as follows:

§ 15-1526. Water well protection and decommissioning.

1. Any owner of a water well must at all times either maintain or decommission the water well in accordance with this title.

2. A water well that has not been decommissioned must have a protective casing and a secured, locked well cap in good condition or a steel cover welded in place. The water well must be maintained in a way to prevent surface water, other liquids, sediment, debris or materials from entering the casing.

3. The owner of a water well that has been deemed a health or safety hazard by a state or local government department, agency or authority with jurisdiction, shall, within ninety days of the issuance of written notice thereof, complete the decommissioning of the water well in accordance with state health department standards or as the department may require.

4. The decommissioning of a water well shall only be performed by a water well driller with a valid annual certificate of registration. A water well driller who decommissions a water well shall file with the department a water well decommissioning report on a form provided by the department, and provide a copy to the well owner, within thirty days of completion of the decommissioning. The water well decommissioning report shall describe and provide the: location of the well, both by street address and GPS coordinates; size and depth of the well; legal name and address of the owner of the water well; equipment, materials, and debris, removed from the well; remaining obstructions; disinfection; grout material, amount, and placement method; a statement describing the casing or casings; method of permanent capping; and any other information required by the department.

§ 5. The environmental conservation law is amended by adding a new section 15-1530 to read as follows:

§ 15-1530. Flowing artesian wells.

A water well shall be adequately controlled so that it is not a flowing artesian well that discharges to the surface in an unrestricted manner either by over-topping the well casing or flowing beyond the well casing. This is to be accomplished through the upward extension of the well casing, using well drilling industry established mechanical or grouting methods, or by decommissioning the well. A water well driller shall ensure that a new water well is adequately controlled. An owner of a water well may not maintain a water well that is not adequately controlled.

§ 6. Subdivision 1 of section 38-0107 of the environmental conservation law is amended by adding a new paragraph (e) to read as follows:

(e) On and after January first, two thousand eighteen, no portion of any system installed below ground surface shall contain or make use of chlorofluorocarbon compounds excluding activities regulated pursuant to article twenty-three of this chapter.

§ 7. Section 71-1115 of the environmental conservation law, as amended by chapter 640 of the laws of 1977, is amended to read as follows:

§ 71-1115. Enforcement of section 15-1525.

Any person violating the provisions of section 15-1525**, 15-1526, 15-1530, or a provision in a certificate of registration** shall be guilty

of a violation punishable by a fine of not more than one thousand dollars, and in addition thereto, shall be liable for a civil penalty of not more than fifteen hundred dollars **for each day during which such violation continues**.

§ 8. Subdivision 1 of section 71-1127 of the environmental conservation law, as amended by chapter 401 of the laws of 2011, is amended to read as follows:

1. Any person who violates any of the provisions of, or who fails to perform any duty imposed by article 15 except section 15-1713, or who violates or who fails to comply with any rule, regulation, determination or order of the department heretofore or hereafter promulgated pursuant to article 15 except section 15-1713, or any condition of a permit **or certificate of registration** issued pursuant to article 15 of this chapter, or any determination or order of the former water resources commission or the department heretofore promulgated pursuant to former article 5 of the Conservation Law, shall be liable for a civil penalty of not more than two thousand five hundred dollars for such violation and an additional civil penalty of not more than five hundred dollars for each day during which such violation continues, and, in addition thereto, such person may be enjoined from continuing such violation as otherwise provided in article 15 except section 15-1713.

§ 9. Subdivision 7 of section 372 of the executive law, as amended by chapter 309 of the laws of 1996, is amended to read as follows:

7. "Equipment" means plumbing, heating, electrical, ventilating, air conditioning, refrigerating equipment, elevators, dumb waiters, escalators**, water wells** and other mechanical additions or installations.

§ 10. Section 378 of the executive law is amended by adding a new subdivision 5-e to read as follows:

5-e. Standards for installation of water wells:

a. prior to the installation of any water well at any dwelling used as a residence, the owner thereof, or his or her agent, shall first secure a building permit from the appropriate local government official;

b. an appropriate and qualified inspector, as determined by the local government, shall cause an inspection to be made of the water well and water quality at a time when such inspection will best determine conformity of such installation with the uniform code, provided, however, that the local government official may waive such inspection for good cause shown;

c. upon approval of such installation, the appropriate local government official shall issue a certificate evidencing compliance with the appropriate provisions of the uniform code;

d. no owner of any dwelling used as a residence shall operate, or cause to be operated, any water well, until such installation has been approved and a certificate indicating such approval obtained from the appropriate local government official;

e. the issuance of such certificate of compliance shall not be deemed to give rise to any claim or cause of action for damages against the local government or local official for damages resulting from operation or use of such water well; and

f. the local government in which such property is located may establish and collect a reasonable fee for such inspection from the owner of such property or his or her agent;

g. any violation of this subdivision shall be deemed a violation and be punishable by a fine not to exceed two hundred fifty dollars;

h. notwithstanding the foregoing provisions of this subdivision, in the event of an emergency, where a delay occasioned by the requirement

of securing a building permit could reasonably be expected to cause irreparable damage to the property, hardship or serious personal injury to the occupants or other person, the owner or his or her agent may commence such installation without first obtaining such building permit provided application therefore is filed within three business days after such work is commenced.

§ 11. This act shall take effect immediately, provided, however, the amendments to subdivision four of section 15-1525 of the environmental conservation law made by section three of this act regarding registration fees shall be deemed to be in effect upon promulgation of regulations by the department.