STATE OF NEW YORK

3449

2019-2020 Regular Sessions

IN SENATE

February 7, 2019

Introduced by Sen. STAVISKY -- 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 penalties for violations related to solid waste transportation, facilities and disposal

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

Section 1. Subdivisions 1, 2 and 3 of section 71-2703 of the environmental conservation law, subdivisions 1 and 2 as amended by chapter 508 of the laws of 1995, paragraph a of subdivision 1 as amended by section 25, subparagraphs i and ii of paragraph b of subdivision 1 as amended by section 26, paragraph a and subparagraphs i and ii of paragraph b of subdivision 2 as amended by section 27, subparagraphs i and ii of paragraph c of subdivision 2 as amended by section 28 and subdivision 3 as amended by section 29 of part C of chapter 62 of the laws of 2003, are amended to read as follows:

1. Civil and administrative sanctions. a. Any person who violates any of the provisions of, or who fails to perform any duty imposed by title 3 or 7 of article 27 of this chapter or any rule or regulation promulgated pursuant thereto, or any term or condition of any certificate or permit issued pursuant thereto, or any final determination or order of the commissioner made pursuant to this title shall be liable for a civil penalty not to exceed seven thousand five hundred dollars for each such violation and an additional penalty of not more than one thousand five hundred dollars for each day during which such violation continues, to be assessed by the commissioner after an opportunity to be heard pursuant to the provisions of section 71-1709 of this article, or by the court in any action or proceeding pursuant to section 71-2727 of this title, and, in addition thereto, such person may by similar process be enjoined from continuing such violation and any permit or certificate

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

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issued to such person may be revoked or suspended or a pending renewal application denied.

b. i. Any person who violates any of the provisions of, or who fails to perform any duty imposed by, title 3 or 7 of article 27 of this chapter, or any rule or regulation promulgated pursuant thereto, or any term or condition of any certificate or permit issued pursuant thereto and thereby causes the release of solid waste into the environment, shall be liable for a civil penalty not to exceed eleven thousand two hundred fifty dollars for each such violation and an additional penalty of not more than eleven thousand two hundred fifty dollars for each day during which such violation continues, to be assessed by the commissioner after an opportunity to be heard pursuant to the provisions of section 71-1709 of this article, or by the court in any action or proceeding pursuant to section 71-2727 of this title, and, in addition thereto, such person may by similar process be enjoined from continuing such violation and any permit or certificate issued to such person may be revoked or suspended or a pending renewal application denied.

ii. Any person who violates any of the provisions of, or who fails to perform any duty imposed by, title 3 or 7 of article 27 of this chapter, or any rule or regulation promulgated pursuant thereto, or any term or condition of any certificate or permit issued pursuant thereto and thereby causes the release of more than ten cubic yards of solid waste into the environment, shall be liable for a civil penalty not to exceed twenty-two thousand five hundred dollars for each such violation and an additional penalty of not more than twenty-two thousand five hundred dollars for each day during which such violation continues, to be assessed by the commissioner after an opportunity to be heard pursuant to the provisions of section 71-1709 of this article, or by the court in any action or proceeding pursuant to section 71-2727 of this title, and, in addition thereto, such person may by similar process be enjoined from continuing such violation and any permit or certificate issued to such person may be revoked or suspended or a pending renewal application denied.

iii. Any person who violates any of the provisions of, or who fails to perform any duty imposed by, title 3 or 7 of article 27 of this chapter, or any rule or regulation promulgated pursuant thereto, or any term or condition of any certificate or permit issued pursuant thereto and thereby causes the release of more than ten cubic yards of solid waste into the environment, after a violation of this subdivision within the preceding five years, may be enjoined from continuing such violation and any permit or certificate issued to such person shall be revoked or suspended or a pending renewal application denied.

c. The court in any action or proceeding pursuant to section 71-2727 of this [~~chapter~~] **title** may exercise all powers exercisable by the commissioner.

2. Criminal sanctions. a. Any person who, having any of the culpable mental states defined in section 15.05 of the penal law, shall violate any of the provisions of or who fails to perform any duty imposed by title 3 or 7 of article 27 of this chapter, or any rules and regulations promulgated pursuant thereto, or any final determination or order of the commissioner made pursuant to this title shall be guilty of a violation and, upon conviction thereof, shall be punished by a fine of not less than one thousand five hundred dollars nor more than [~~fifteen~~] **thirty** thousand dollars per day of violation or by imprisonment for not more than fifteen days or by both such fine and imprisonment.

b. i. Any person who shall violate paragraph a of this subdivision and thereby causes or attempts to cause the release of more than ten cubic yards of solid waste into the environment shall be guilty of a class B misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than three thousand seven hundred fifty dollars per day nor more than [~~twenty-two thousand five hundred~~] **forty-five thousand** dollars per day of violation, or by imprisonment for a term in accordance with the penal law, or by both such fine and imprisonment.

ii. Any person who shall violate paragraph a of this subdivision and thereby causes or attempts to cause the release of more than ten cubic yards of solid waste into the environment, after having been convicted of a violation of this subdivision within the preceding five years, shall be guilty of a class A misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than [~~three thousand seven hundred fifty~~] **seventy-five thousand** dollars per day nor more than thirty-seven thousand five hundred dollars per day of violation, or by imprisonment for a term in accordance with the penal law, or by both such fine and imprisonment.

c. i. Any person who shall violate paragraph a of this subdivision and thereby causes or attempts to cause the release of more than seventy cubic yards of solid waste into the environment shall be guilty of a class A misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than [~~three thousand seven hundred fifty~~] **seventy-five thousand** dollars per day nor more than thirty-seven thousand five hundred dollars per day of violation, or by imprisonment for a term in accordance with the penal law, or by both such fine and imprisonment.

ii. Any person who shall violate paragraph a of this subdivision and thereby causes or attempts to cause the release of more than seventy cubic yards of solid waste into the environment, after having been convicted of a violation of this subdivision within the preceding five years, shall be guilty of a class E felony and, upon conviction thereof, shall be punished by a fine of not less than seven thousand five hundred dollars per day nor more than [~~seventy-five~~] **one hundred fifty** thousand dollars per day of violation, or by imprisonment for a term in accordance with the penal law, or by both such fine and imprisonment.

3. Additional sanctions. Any person who violates any of the provisions of, or who fails to perform any duty imposed by title **3 or** 7 of article 27 **of this chapter**, with regard to **the transportation of construction and demolition debris or** the construction and operation of facilities for the disposal of construction and demolition debris or any rule or regulation promulgated pursuant thereto, or any term or condition of any certificate or permit issued pursuant thereto or any final determination or order of the commissioner made pursuant to this title shall be liable for a civil penalty not to exceed fifteen thousand dollars and each day of such deposition shall constitute a separate violation and said civil penalty is in addition to any other fines or penalties which may be applied pursuant to this title.

§ 2. This act shall take effect on the ninetieth day after it shall have become a law.