STATE OF NEW YORK

6349

2019-2020 Regular Sessions

IN SENATE

June 6, 2019

Introduced by Sen. KAMINSKY -- (at request of the Department of Environmental Conservation) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the environmental conservation law, in relation to the regulation of water well contractors

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 twenty-two, no person shall use water from a public water supply system in or as part of a once-through heat exchange cooling or heating system or supply water from a public water supply system to another person for use in or as part of such a once-through system.

§ 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 five new subdivisions 17, 18, 19, 20, and 21 are added to read as follows:

3. "Water well" **or "well"** shall mean any [~~groundwater~~] excavation for the purpose of obtaining [~~water~~] **or withdrawing groundwater or accessing groundwater, including a geothermal well as defined in subdivision twenty of this section**.

4. "Water well [~~drilling~~] **contracting**" or "water well [~~drilling~~] **contracting** activities" shall mean**:**

a. the construction [~~and~~]**,** reconstruction**, deepening, or decommissioning** of **a** water [~~wells,~~] **well;**

b. the installation, replacement, maintenance, or repair of a water well pump that requires the opening of the well casing;

c. the establishment or repair of a connection through the well casing [~~and the repair of water wells including repairs which require~~]**;**

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

LBD09096-06-9

d. any other activity that requires the opening of the well casing, with the exception of activities consisting solely and exclusively of a water level or water well depth measurement conducted by the owner or operator of a public water supply well and activities, other than those described in paragraph a of this subdivision, conducted at remediation sites otherwise regulated by state or federal court order or agency agreement or order;

e. the on-site supervision of any of the activities set forth in paragraphs a, b, c and d of this subdivision; or

f. the distribution to anyone or placement before the public of any of the following, by any means, in furtherance of any of the activities set forth in paragraphs a, b, c, and d of this subdivision: (i) an offer of services for sale; (ii) an advertisement or marketing material; (iii) an internet website; or (iv) a social media presence or other internet presence.

5. "Water well [~~driller~~] contractor" shall mean a person who, for compensation, employment or as part of property development and sale, engages in water well [~~drilling~~] contracting 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 such that water discharges at the ground surface by over-topping or flowing beyond the well casing without use of a pump.

18. "Dewatering well" shall mean a water well installed to locally control groundwater levels.

19. "Water well decommissioning" or the "decommissioning of a water well" shall mean the permanent closure of a water well so that it is not capable of obtaining or withdrawing groundwater or accessing groundwater for heat transfer purposes.

20. "Geothermal well" shall mean any excavation for obtaining, withdrawing, or accessing groundwater for heat transfer purposes.

21. "Water well emergency" shall mean a situation in which an in-service potable water well is no longer capable of producing an adequate quantity of potable water.

§ 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~~] contractors in New York state to obtain certificates of registration[~~.~~]; required notices and reports.

1. No person shall engage in [~~the business of~~] water well [~~drilling~~] contracting in the state of New York without first obtaining or being listed on a certificate of registration from the department as hereinafter provided unless supervised pursuant to paragraph a of subdivision five of this section. All water well [~~drilling~~] contracting 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 and such standards as may be established by the department, and provided further that the construction of a geothermal well shall be in accordance with best practices applicable to the geothermal well industry. Pursuant to article

thirty-six-A of the general business law, water well contracting activities shall only be performed in accordance with a contract between a water well contractor and customer, evidenced by a writing signed by all parties to the contract.

2. Application for a certificate of registration shall be made upon a form prescribed [~~and furnished~~] by the department providing such information as the department deems necessary for the purposes of issuance of a certificate of registration. A water well contractor shall obtain a certificate of registration through the submission to and approval by the department of such form, become listed on the valid registration of another water well contractor through which he or she is employed, or else shall be supervised on-site throughout the performance of all water well contracting activities by a duly registered water well contractor. In order to obtain a certificate of registration or to be named in the certificate of registration of another water well contractor, each such water well contractor must satisfy the exam requirement set forth in subdivision five of this section. A certificate of registration shall expire two years from the date issued by the department, and the fee for a certificate of registration shall be three hundred dollars. A water well contractor's registration number and the current registration period must be displayed on the well drilling machinery of the registrant at all times in the form of a decal furnished by the department. A water well contractor must provide proof of a valid registration upon demand of any enforcement officer.

3. [~~The certificate of registration shall require that, before the commencement of drilling of any well or wells, the water well driller shall file a preliminary notice with the department; it shall also provide that upon the completion of the drilling of any water well or water wells, a completion report be filed with the department, giving 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 certificate of registration shall be ten dollars annually. The commissioner shall promulgate 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.~~] A water well contractor shall satisfy the following notice and reporting requirements:

a. Before commencement of the water well contracting activities consisting of construction, deepening, or decommissioning of a water well or the installation or replacement of a water well pump, or the on-site supervision thereof, a water well contractor shall prepare and submit a preliminary notice to the department upon a form prescribed by the department. In the counties of Nassau, Suffolk, Kings, and Queens, these water well contracting activities shall not commence unless the department approves such activities as are specified in a preliminary notice and has so notified the water well contractor in writing of the approval. When these water well contracting activities occur in

response to a water well emergency anywhere in the state, the preliminary notice must be submitted within three calendar days of the commencement of the water well contracting activity with a signed statement detailing the water well emergency.

b. Within one hundred twenty days of having completed the water well contracting activities consisting of construction or deepening of a water well or the installation or replacement of a water well pump, or the on-site supervision thereof, a water well contractor shall submit to the department and water well owner a water well completion report upon a form prescribed by the department. Such completion report shall include the legal names and addresses of the owner of the water well and the water well contractor, the well location by both street address and GPS coordinates, the log of the well, the size and depth of the well, the capacity of the pump or pumps attached to the well, and any other information as specified by the department. For water well decommissioning, a water well contractor shall not be required to submit such completion report and shall complete the reporting requirements set forth in section 15-1526 of this title.

c. The reporting requirements set forth in paragraphs a and b of this subdivision shall not apply to water well contracting activities involving dewatering wells, unless otherwise specified in a water withdrawal or Long Island well permit issued by the department pursuant to section 15-1501 or 15-1527 of this title, or wells at remediation sites otherwise regulated by state or federal court order or agency agreement or order.

4. The department may revoke [~~any~~] a certificate of registration for violation of any [~~of the provisions of~~] provision in this section, [~~or~~] section 15-1526, 15-1527, 15-1528, 15-1531, or 38-0107 of this chapter, for violation of [~~rules~~] any rule or regulation made by the department pertaining thereto, violation of a decision or order issued by the department, or for obtaining a certificate of registration through fraud, deceit, or the submission of false information. 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 of this chapter.

5. 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,~~]Prior to engaging in water well contracting activities, a water well contractor shall either satisfy the exam requirement set forth in this subdivision or shall be supervised on-site throughout the performance of any water well contracting activities by a water well contractor who has: (i) satisfied the exam requirement for the water well contracting activities being performed; and (ii) obtained, or is listed in, a valid certificate of registration as set forth in subdivision two of this section. The exam requirement is to pass, with at least a seventy percent score[~~, a two-part certification exam~~] the following exams as offered by the national ground water association or [~~an~~] equivalent [~~exam~~] exams 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 any enforcement officer.~~]:

i. for water well contracting activities involving the construction, reconstruction, deepening, or decommissioning of a water well, including an open loop geothermal well, standing column geothermal well, or geothermal diffusion well, or the on-site supervision thereof: a general well drilling exam and a specialty well drilling exam;

ii. for water well contracting activities involving the installation, replacement, maintenance, or repair of a water well pump, or the on-site supervision thereof: a water systems general exam and a specialty pump exam;

iii. for water well contracting activities involving the installation, reconstruction, deepening, or decommissioning of a closed loop geothermal well, or the on-site supervision thereof: a vertical closed loop drilling exam; and

iv. for any other water well contracting activities, not otherwise specified in subparagraph i, ii, or iii of this paragraph: a general well drilling exam and a specialty well drilling exam, or a water systems general exam and a specialty pump exam.

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~~] Documentation from the national groundwater association or other issuing authority of having passed such exam shall be provided by a water well contractor, including the person responsible for the on-site supervision of [~~the repair or installation of water pumps, requiring the opening of the well casing,~~] water well contracting activities upon demand of any enforcement officer.

6. 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~~] contractors or which otherwise regulates the practice of water well [~~drilling~~] contracting, provided that the provisions of such local law are at least as comprehensive as the provisions of this section.

7. The department is authorized to adopt or amend regulations as necessary to effectuate the purposes of this section, provided however that the department shall adopt regulations establishing a continuing education requirement as a condition to maintaining registration to lawfully engage in water well contracting in the state of New York. The department may establish exemptions from notice and reporting requirements in addition to those exemptions specified in this section.

8. The requirements of this section shall not apply to a water well contractor or water well contracting activities otherwise regulated pursuant to article twenty-three of this chapter.

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

§ 15-1526. Water well protection, maintenance, and decommissioning.

1. A person who owns a water well shall protect and maintain the water well at all times or decommission the water well in accordance with this section.

2. a. Upon the completion of any water well contracting activities that require the opening of the well casing, a water well contractor shall ensure that the water well has a competent casing and either a secured, effective, vented, and locked well cap in good condition or a vented steel cover welded in place.

b. A person who owns a water well shall ensure that the water well at all times has a competent casing and either a secured, effective, vented, and locked well cap in good condition or a vented steel cover welded in place. Such owner shall maintain the well in good working order, including its casing and cap, and shall prevent surface water, including

stormwater, other liquids, sediment, debris, vermin, or materials from entering the well casing.

3. a. Water well decommissioning 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 and such standards as may be established by the department.

b. A water well contractor who decommissions a water well shall ensure that the decommissioned well meets the following standards:

i. the water well is no longer capable of obtaining or withdrawing groundwater or accessing groundwater for heat transfer purposes;

ii. the well casing is cut off at least twenty-four inches below grade and removed;

iii. the remaining casing is filled with industry-standard sealing materials with a bearing strength sufficient to prevent subsidence and support traffic or building loads;

iv. the water well does not serve as a conduit for the movement of groundwater or the loss of water pressure from confined geologic formations;

v. groundwater of differing quality does not intermingle in or along the casing of the well;

vi. a pollutant, contaminated or polluted groundwater or surface water, or surface water runoff does not enter or discharge from the well; and

vii. ground surface erosion does not occur.

c. Within one hundred twenty days of having completed the decommissioning of a water well, a water well contractor shall prepare and submit to the department a complete and accurate water well decommissioning report upon a form prescribed by the department and provide a copy of the report to the owner of the decommissioned well. Such report shall include the well location by both street address and GPS coordinates, the size and depth of the well, the legal name and address of the owner of the water well, the equipment, materials, and debris removed from the well, any remaining obstructions, the disinfection performed, the type, amount, and placement method of any grout material used, the method of permanent capping, the names and registration numbers of all water well contractors who performed the water well decommissioning and any on-site supervisors thereof, a statement explaining how the decommissioning standards set forth in this section were achieved, and any other information required by the department.

d. A person who owns a water well that has been deemed a health, safety, or environmental hazard by a state or local government department, agency, or authority shall decommission the water well within ninety days of the issuance of written notice thereof.

4. The department is authorized to adopt or amend regulations as necessary to effectuate the purposes of this section.

5. The requirements of this section shall not apply to a water well contractor or water well contracting activities involving dewatering wells, unless otherwise specified in a water withdrawal or Long Island well permit issued by the department pursuant to section 15-1501 or 15-1527 of this title, wells at remediation sites otherwise regulated by state or federal court order or agency agreement or order, or wells otherwise regulated pursuant to article twenty-three of this chapter.

§ 5. Subdivision 6 of section 15-1527 of the environmental conservation law, as amended by chapter 773 of the laws of 1986, is amended and a new subdivision 8 is added to read as follows:

6. The provisions of this section shall not apply to the installation [~~of~~] or operation of the following:

a. a fire well to which no pumping equipment is permanently attached when such well is installed by a municipal corporation, fire district or duly organized fire company or fire department[~~.~~]; or

b. a closed loop, standing column or similar non-extractive geothermal system or geothermal diffusion well.

8. The department is authorized to adopt or amend regulations as necessary to effectuate the purposes of this section.

§ 6. The environmental conservation law is amended by adding a new section 15-1531 to read as follows:

§ 15-1531. Flowing artesian wells.

1. To prevent water well contracting activities from resulting in a flowing artesian well, a water well contractor shall:

a. implement the industry best practices that prevail at the time of the activities for methods of well drilling and grouting;

b. make all reasonable efforts to control a flowing artesian well so that the water well does not discharge water to the ground surface by over-topping or flowing beyond the well casing; and

c. comply with the rules and regulations of the department, as may be promulgated to effectuate the purposes of this section, and with the rules and regulations of the department of health pursuant to subdivision eighteen of section two hundred six of the public health law.

2. If a water well becomes a flowing artesian well during the course of water well contracting activities, a water well contractor shall promptly complete one of the following activities:

a. implement the industry best practices that prevail at the time of the activities to control the water well so that over-topping or flowing beyond the well casing no longer occurs at that well;

b. decommission the water well in accordance with section 15-1526 of this title; or

c. obtain a written waiver from the department in accordance with subdivision three of this section.

3. The department may waive or modify the control or decommissioning requirements set forth in paragraphs a and b of subdivision two of this section upon a written application by a water well contractor or a person who owns a water well to the department that includes a certified statement from the water well contractor describing the measures taken toward, or all conditions prohibiting, compliance with paragraph a or b of subdivision two of this section and any effects of the well on the surrounding environment.

4. The department is authorized to adopt or amend regulations as necessary to effectuate the purposes of this section.

5. The requirements of this section shall not apply to a water well contractor or water well contracting activities otherwise regulated pursuant to article twenty-three of this chapter.

§ 7. 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 twenty-two, it is prohibited for the below ground portion of any system to contain or make use of chlorofluorocarbon compounds. This prohibition shall not apply to a well that is regulated pursuant to article twenty-three of this chapter.

§ 8. 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~~] sections 15-1525, 15-1526, 15-1527, and 15-1531.

Any person [~~violating the provisions~~] **who violates a provision** of section 15-1525**, 15-1526, 15-1527, or 15-1531 of this chapter 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 each and every such violation continues**.

§ 9. 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~~] **fifteen** 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~~] **fifteen** except section 15-1713, or any condition of a permit **or certificate of registration** issued pursuant to article [~~15~~] **fifteen** 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 **each and every** such violation [~~and~~] **where every violation shall be a separate and distinct offense, and, in the case of a continuing violation, for** an additional civil penalty of not more than five hundred dollars for each day during which **each** such **separate and distinct** violation continues, and, in addition thereto, such person may be enjoined from continuing **each and every** such violation as otherwise provided in article [~~15~~] **fifteen** except section 15-1713.

§ 10. This act shall take effect one year after it shall have become a law. Effective immediately the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such date.