STATE OF NEW YORK

10188--A

R. R. 270

IN ASSEMBLY

May 5, 2022

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Pheffer Amato) -- read once and referred to the Committee on Environmental Conservation -- reported and referred to the Committee on Ways and Means -- reported and referred to the Committee on Rules -- amended on the special order of third reading, ordered reprinted as amended, retaining its place on the special order of third reading

AN ACT to amend the environmental conservation law, in relation to the filling of borrow pits in Jamaica Bay; to amend chapter 288 of the laws of 2014 amending the environmental conservation law relating to the filling of borrow pits in Jamaica Bay, in relation to making the provisions of such chapter permanent; in relation to directing the department of environmental conservation to conduct a study on ecological restoration needs in Jamaica Bay; and providing for the repeal of certain provisions upon expiration thereof

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

Section 1. Legislative intent. Due to the increase in vessel size in recent years, New York State waterways such as channels, berthing areas and harbors are being excavated in a process known as dredging to maintain sufficient depth for safe and efficient vessel operation.

Dredged material is naturally accumulated sediment, much of the dredged material does contain some contaminants at varying concentrations.

Jamaica Bay was dredged to supply soil for a number of construction projects. This process created borrow pits in the bay. These borrow pits have been identified as an attractive alternative for the disposing of dredge material.

§ 2. Subdivisions 1 and 3-a of section 15-0505 of the environmental conservation law, subdivision 1 as amended by chapter 233 of the laws of 1979 and subdivision 3-a as added by chapter 288 of the laws of 2014, are amended to read as follows:

1. No person, local public corporation or interstate authority shall excavate or place fill below the mean high water level in any of the navigable waters of the state, or in marshes, estuaries, tidal marshes

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

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and wetlands that are adjacent to and contiguous at any point to any of the navigable waters of the state and that are inundated at mean high water level or tide, without a permit issued pursuant to subdivision 3 of this section. For the purposes of this section, fill shall include, but shall not be limited to, earth, clay, silt, sand, gravel, stone, rock, shale, concrete (whole or fragmentary), ashes, cinders, slag, metal, **dredged material** or any other similar material whether or not enclosed or contained by (1) crib work of wood, timber, logs, concrete or metal, (2) bulkheads and cofferdams of timber sheeting, bracing and piling or steel sheet piling or steel H piling, separated or in combination. Nothing contained in this section is intended to be, nor shall be construed to limit, impair or affect the memorandum of understanding which any state department enters into with the Department of Environmental Conservation or the general powers and duties of the Department of Transportation relating to canals or the general powers and duties of the Department of Environmental Conservation relating to flood control.

3-a. [~~The department may only grant a permit for the filing of the Jamaica Bay borrow pits if the proposed sediments and fill materials:~~

~~(1) have been tested and the test results are in accordance with the requirements set forth in the department's technical operational guidance series 5.1.9 for the in water management of sediment and dredge material; and~~

~~(2) meet the department's class a criteria~~] **In filling the Jamaica Bay borrow pits the department may only grant a permit if the proposed sediments and fill materials meet the following criteria:**

(1) comply with federal unrestricted ocean dumping criteria;

(2) have been tested and test results indicate no unacceptable toxicity or bioaccumulation in biological test systems;

(3) has no potential short-term (acute) impacts or long-term (chronic) impacts; and

(4) requires no special precautionary measures are required during disposal.

§ 3. Section 3 of chapter 288 of the laws of 2014 amending the environmental conservation law relating to the filling of borrow pits in Jamaica Bay, as amended by chapter 499 of the laws of 2016, is amended to read as follows:

§ 3. This act shall take effect immediately [~~and shall expire and be deemed repealed June 30, 2022~~].

§ 4. (a) The department of environmental conservation shall conduct a beneficial use pilot study to determine ecological restoration needs in Jamaica Bay. Such study shall include, but not be limited to:

(i) a description of the bathymetry of target areas of Jamaica Bay and a map of the borrow pits;

(ii) the ecological service quality of the borrow pits over multiple weather seasons at multiple depths;

(iii) the geotechnical conditions of all pit bottoms;

(iv) an analyzation of the difference between department of environmental conservation standards and federal unrestricted ocean dumping criteria; and

(v) any other policy recommendations regarding the ecological restoration of Jamaica Bay.

(b) The department of environmental conservation shall consult with affected community-based groups, including but not limited to the Jamaica Bay Ecowatchers and the American Littoral Society, at least quarterly on the scope, progress, and findings of such pilot study. Such community-based groups shall have the right to consult with the department of

environmental conservation and any other individuals or groups involved in conducting such study. A report with the findings of such study shall be provided to all involved community-based groups, who shall have the opportunity to comment on such findings. Comments on the findings of such study shall be reviewed by the department of environmental conservation and shall be addressed in writing prior to the issuance of the report on the findings of such study. The department of environmental conservation shall issue a report on the findings of such study to the governor, the temporary president of the senate and the speaker of the assembly no later than March 30, 2025.

§ 5. This act shall take effect immediately; provided, however, that paragraph 1 of subdivision 3-a of section 15-0505 of the environmental conservation law, as added by section two of this act, shall expire and be deemed repealed June 30, 2025.