

STATE OF NEW YORK

8816--A

Cal. No. 1378

IN SENATE

April 20, 2022

Introduced by Sen. ADDABBO -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation -- committee discharged and said bill committed to the Committee on Rules -- ordered to a third reading, amended and ordered reprinted, retaining its place in the 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:

1 Section 1. Legislative intent. Due to the increase in vessel size in
2 recent years, New York State waterways such as channels, berthing areas
3 and harbors are being excavated in a process known as dredging to main-
4 tain sufficient depth for safe and efficient vessel operation.
5 Dredged material is naturally accumulated sediment, much of the
6 dredged material does contain some contaminants at varying concen-
7 trations.
8 Jamaica Bay was dredged to supply soil for a number of construction
9 projects. This process created borrow pits in the bay. These borrow pits
10 have been identified as an attractive alternative for the disposing of
11 dredge material.
12 § 2. Subdivisions 1 and 3-a of section 15-0505 of the environmental
13 conservation law, subdivision 1 as amended by chapter 233 of the laws of
14 1979 and subdivision 3-a as added by chapter 288 of the laws of 2014,
15 are amended to read as follows:
16 1. No person, local public corporation or interstate authority shall
17 excavate or place fill below the mean high water level in any of the
18 navigable waters of the state, or in marshes, estuaries, tidal marshes
19 and wetlands that are adjacent to and contiguous at any point to any of

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

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

16 3-a. [~~The department may only grant a permit for the filling of the
17 Jamaica Bay borrow pits if the proposed sediments and fill materials:~~

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

22 ~~(2) meet the department's class a criteria]~~ In filling the Jamaica Bay
23 borrow pits the department may only grant a permit if the proposed sedi-
24 ments and fill materials meet the following criteria:

25 (1) comply with federal unrestricted ocean dumping criteria;

26 (2) have been tested and test results indicate no unacceptable toxici-
27 ty or bioaccumulation in biological test systems;

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

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

32 § 3. Section 3 of chapter 288 of the laws of 2014 amending the envi-
33 ronmental conservation law relating to the filling of borrow pits in
34 Jamaica Bay, as amended by chapter 499 of the laws of 2016, is amended
35 to read as follows:

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

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

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

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

45 (iii) the geotechnical conditions of all pit bottoms;

46 (iv) an analyzation of the difference between department of environ-
47 mental conservation standards and federal unrestricted ocean dumping
48 criteria; and

49 (v) any other policy recommendations regarding the ecological restora-
50 tion of Jamaica Bay.

51 (b) The department of environmental conservation shall consult with
52 affected community-based groups, including but not limited to the Jamai-
53 ca Bay Ecowatchers and the American Littoral Society, at least quarterly
54 on the scope, progress, and findings of such pilot study. Such communi-
55 ty-based groups shall have the right to consult with the department of
56 environmental conservation and any other individuals or groups involved

1 in conducting such study. A report with the findings of such study shall
2 be provided to all involved community-based groups, who shall have the
3 opportunity to comment on such findings. Comments on the findings of
4 such study shall be reviewed by the department of environmental conser-
5 vation and shall be addressed in writing prior to the issuance of the
6 report on the findings of such study. The department of environmental
7 conservation shall issue a report on the findings of such study to the
8 governor, the temporary president of the senate and the speaker of the
9 assembly no later than March 30, 2025.

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