

STATE OF NEW YORK

8250--A

2023-2024 Regular Sessions

IN ASSEMBLY

November 15, 2023

Introduced by M. of A. KELLES, GALLAGHER, ARDILA, DAVILA -- read once and referred to the Committee on Environmental Conservation -- recommitted to the Committee on Environmental Conservation in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the environmental conservation law and the public lands law, in relation to permits and financial security for reclamation for salt mining beneath a lake

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

- 1 Section 1. Subdivisions 11 and 12 of section 23-2711 of the environ-
2 mental conservation law, as added by chapter 166 of the laws of 1991,
3 are amended and two new subdivisions 11-a and 14 are added to read as
4 follows:
- 5 11. Permits issued pursuant to this title shall be renewable. A
6 complete application for renewal shall contain the following:
- 7 (a) completed application forms;
- 8 (b) an updated mining plan map consistent with paragraph (a) of subdivi-
9 sion one of section 23-2713 of this title and including an identifica-
10 tion of the area to be mined during the proposed permit term;
- 11 (c) a description of any changes to the mined land-use plan, which
12 shall include, with respect to a permit for salt mining beneath a lake,
13 an updated reclamation plan of surface and subsurface affected land
14 accounting for any differences in circumstances since the reclamation
15 plan was last approved by the department; [~~and~~]
- 16 (d) an identification of reclamation accomplished during the existing
17 permit term; and
- 18 (e) a thirty-year monitoring plan with respect to a permit for salt
19 mining beneath a lake of all affected lands, surface and subsurface.

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

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1 11-a. Notwithstanding anything in this section to the contrary, with
2 respect to salt mining beneath a lake, any permit renewal application
3 shall:

4 (a) not constitute a minor project within the meaning of article
5 seventy of this chapter;

6 (b) be treated as an application for a new permit;

7 (c) constitute an action requiring environmental quality review pursu-
8 ant to article eight of this chapter; and

9 (d) be deemed an action that is likely to require the preparation of
10 an environmental impact statement pursuant to subparagraph (i) of para-
11 graph (c) of subdivision two of section 8-0113 of this chapter.

12 12. The procedure for transfer of a permit issued pursuant to this
13 title is the procedure for permit modification pursuant to article
14 seventy of this chapter; provided, however, and notwithstanding subdivi-
15 sion thirteen of this section or any other provision of this section to
16 the contrary, any transfer of a permit to engage in salt mining activ-
17 ities beneath a lake shall constitute a material modification of the
18 permit and, if no environmental impact statement has been prepared
19 pursuant to the environmental quality review requirements of article
20 eight of this chapter with respect to such mining within the preceding
21 twenty years, such transfer shall:

22 (a) not constitute a minor project within the meaning of article
23 seventy of this chapter;

24 (b) be treated as an application for a new permit;

25 (c) constitute an action requiring environmental quality review pursu-
26 ant to article eight of this chapter; and

27 (d) be deemed an action that is likely to require the preparation of
28 an environmental impact statement pursuant to subparagraph (i) of para-
29 graph (c) of subdivision two of section 8-0113 of this chapter.

30 14. As soon as practicable and in any event within one hundred eighty
31 days of the effectiveness of this subdivision, the department shall
32 prepare an environmental impact statement in compliance with the envi-
33 ronmental review requirements of article eight of this chapter with
34 respect to any salt mining beneath a lake if no environmental impact
35 statement has been prepared within the preceding twenty years with
36 respect to such mining. Any holder of a permit to mine salt beneath a
37 lake shall comply with all reasonable requests of the department in
38 connection with preparation of such an environmental impact statement.
39 The preparation of such environmental impact statement shall include a
40 comprehensive review of the cumulative effects of such mining, includ-
41 ing consideration of the effects of past mining and their potential
42 future environmental impacts.

43 § 2. Section 23-2715 of the environmental conservation law, as amended
44 by chapter 166 of the laws of 1991, subdivision 6 as amended by chapter
45 60 of the laws of 1993, is amended to read as follows:

46 § 23-2715. Financial security for reclamation.

47 1. Before the department may issue a permit, the applicant, unless
48 exempt, shall furnish financial security (a) to ensure the performance
49 of reclamation as provided in the approved mined land-use plan, (b) to
50 cover any damages directly or indirectly resulting from salt mining
51 activities beneath a lake, including, but not limited to, those result-
52 ing from collapse or water contamination, and (c) naming the state as
53 beneficiary. Financial security shall be in the form of a bond from a
54 corporate surety licensed to do business as such in the state or any
55 other form the department may deem acceptable. Any interest accruing as

1 a result of such security shall be the exclusive property of the permit-
2 tee.

3 2. The department shall determine the amount, condition, and terms of
4 the financial security. The amount shall be based upon the estimated
5 cost of reclaiming the affected land and the estimated liability from
6 potential damages directly or indirectly resulting from salt mining
7 activities beneath a lake, including, but not limited to, those result-
8 ing from collapse or water contamination, which shall be based on infor-
9 mation contained in the permit application, the environmental quality
10 review conducted pursuant to article eight of this chapter and upon such
11 information as an investigation by the department may disclose. At a
12 minimum, the department shall consider the particular circumstances of
13 the mine and mining activities in making determinations pursuant to this
14 subdivision related to financial security amounts required to cover
15 potential damages directly or indirectly resulting from salt mining
16 activities beneath a lake, including, but not limited to, those result-
17 ing from collapse or water contamination. Such consideration shall
18 include, but not be limited to:

19 (a) those factors considered in determining the amount of financial
20 security to ensure performance of reclamation;

21 (b) geologic, hydrologic, and other environmental conditions;

22 (c) the presence of any environmentally sensitive areas or resources;

23 (d) the presence of persons and property; and

24 (e) local economic impacts of potential damages.

25 The department shall engage an independent third party with the neces-
26 sary actuarial and/or other appropriate expertise either to make a
27 determination with respect to such potential damages or to review the
28 determination of the department with respect thereto and, in the case of
29 a review, the department shall incorporate the appropriate recommenda-
30 tions by such independent third-party reviewer into its final determi-
31 nation.

32 3. The financial security shall remain in full force and effect until
33 the department has approved the reclamation and determined that there is
34 no continuing risk of damages directly or indirectly from salt mining
35 activities beneath a lake, including, but not limited to, those result-
36 ing from collapse or water contamination. At the discretion of the
37 department, the permittee may secure the release of that portion of the
38 financial security for affected land on which reclamation has been
39 completed and approved by the department.

40 4. If the financial security shall for any reason be cancelled, within
41 thirty days after receiving notice thereof, the permittee shall provide
42 a valid replacement under the same conditions as described in this
43 section. Failure to provide a replacement bond within such period may,
44 at the discretion of the commissioner, result in the immediate suspen-
45 sion of the mining permit by the department.

46 5. If a permit is suspended or revoked, the department may require the
47 permittee to commence reclamation upon thirty days notice.

48 6. If the permittee fails to commence or to complete the reclamation
49 as required, the department may attach the financial security furnished
50 by the permittee. In any event, the full cost of completing reclamation
51 and any damages directly or indirectly resulting from salt mining activ-
52 ities beneath a lake, including, but not limited to, those resulting
53 from collapse or water contamination shall be the personal liability of
54 the permittee and/or the person engaged in mining and the department,
55 acting by the attorney general, may bring suit to recover all costs to
56 secure the reclamation and damages directly or indirectly resulting from

1 salt mining activities beneath a lake not covered by the financial secu-
2 rity. The materials, machinery, implements and tools of every
3 description which may be found at the mine, or other assets of the
4 permittee and/or the person engaged in mining shall be subject to a lien
5 of the department for the amount expended for reclamation of affected
6 lands, and for making whole any parties suffering any damages directly
7 or indirectly resulting from salt mining activities beneath a lake, and
8 shall not be removed without the written consent of the department. Such
9 lien may be foreclosed by the attorney general in the same manner as a
10 mechanic's lien. Any and all moneys recovered shall be deposited in the
11 environmental regulatory account pursuant to section 72-1009 of this
12 chapter.

13 7. Political subdivisions, municipalities, the United States and any
14 of its agencies and agencies of the state shall be exempt from the
15 requirements of this section.

16 8. Any permittee which has furnished a financial security which is not
17 in compliance with the requirements of this section on the effective
18 date of this subdivision shall be in violation of this section if such
19 financial security is not brought into compliance within six months of
20 such effective date.

21 § 3. Section 81 of the public lands law is amended by adding a new
22 subdivision 3 to read as follows:

23 3. Notwithstanding subdivisions one and two of this section, with
24 respect to a permit, consent, or lease issued with respect to salt
25 mining activities beneath a lake, the duration of such permit, consent,
26 or lease shall not be longer than the duration for which mining is
27 allowable under the permit issued by the department of environmental
28 conservation pursuant to title twenty-seven of article twenty-three of
29 the environmental conservation law in respect of such mining.

30 § 4. Severability. If any provision of this act, or any application of
31 any provision of this act, is held to be invalid, that shall not affect
32 the validity or effectiveness of any other provision of this act, or of
33 any other application of any provision of this act, which can be given
34 effect without that provision or application; and to that end, the
35 provisions and applications of this act are severable.

36 § 5. This act shall take effect on the thirtieth day after it shall
37 have become a law; provided, however, that section two of this act shall
38 take effect on the ninetieth day after it shall have become a law.
39 Effective immediately, the addition, amendment and/or repeal of any
40 rule or regulation necessary for the implementation of this act on
41 its effective date are authorized to be made and completed on or before
42 such effective date.