STATE OF NEW YORK

7736--B

2023-2024 Regular Sessions

IN SENATE

November 3, 2023

Introduced by Sens. WEBB, MAY, HARCKHAM -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- recommitted to the Committee on Environmental Conservation in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- 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:

Section 1. Subdivisions 11 and 12 of section 23-2711 of the environmental conservation law, as added by chapter 166 of the laws of 1991, are amended and two new subdivisions 11-a and 14 are added to read as follows:

11. Permits issued pursuant to this title shall be renewable. A complete application for renewal shall contain the following:

(a) completed application forms;

(b) an updated mining plan map consistent with paragraph (a) of subdivision one of section 23-2713 of this title and including an identification of the area to be mined during the proposed permit term;

(c) a description of any changes to the mined land-use plan**, which shall include, with respect to a permit for salt mining beneath a lake, an updated reclamation plan of surface and subsurface affected land accounting for any differences in circumstances since the reclamation plan was last approved by the department**; [~~and~~]

(d) an identification of reclamation accomplished during the existing permit term**; and**

(e) a thirty-year monitoring plan with respect to a permit for salt 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.

LBD13509-09-4

11-a. Notwithstanding any provision of this section to the contrary, with respect to salt mining beneath a lake where no environmental impact statement has been prepared pursuant to the environmental quality review requirements of article eight of this chapter with respect to such mining within the preceding twenty years, any permit renewal application shall:

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

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

(c) constitute an action requiring environmental quality review pursuant to article eight of this chapter; and

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

12. The procedure for transfer of a permit issued pursuant to this title is the procedure for permit modification pursuant to article seventy of this chapter; provided, however, and notwithstanding subdivision thirteen of this section or any other provision of this section to the contrary, any transfer or modification of a permit to engage in salt mining activities beneath a lake shall constitute a material modification of the permit and, if no environmental impact statement has been prepared pursuant to the environmental quality review requirements of article eight of this chapter with respect to such mining within the preceding twenty years, such transfer or modification shall:

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

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

(c) constitute an action requiring environmental quality review pursuant to article eight of this chapter; and

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

14. As soon as practicable and in any event within one hundred eighty days of the effective date of this subdivision, the department shall prepare an environmental study with respect to any salt mining beneath a lake if no environmental impact statement has been prepared within the preceding twenty years with respect to such mining. Any holder of a permit to mine salt beneath a lake shall comply with all reasonable requests of the department in connection with preparation of such an environmental study. The preparation of such environmental study shall include a comprehensive review of the cumulative effects of such mining, including consideration of the effects of past mining and their potential future environmental impacts, in the short-term and the long-term; any adverse environmental effects which cannot be avoided should the mining continue; alternatives to the continuation of mining; any irreversible and irretrievable commitments of resources which would be involved in the continued operation; mitigation measures proposed to minimize the environmental impact; the present and future effects of continued action on public drinking water supplies; the present and future effects of continued action on the recreational use and economic activity supported by the lake, and such other information consistent with the purpose of this subdivision as may be appropriate. In conducting such study, the department shall engage in a robust public participation process to ensure that the concerns of all stakeholders are heard and inform the final study. The initial findings of the study shall be made available to the public on the department's website no

later than one hundred twenty days after the effective date of this subdivision, and shall be subject to a thirty day public comment period. The department shall conduct at least one public hearing during the thirty day comment period for review of the initial findings. The final study shall respond to and, if appropriate, incorporate comments received from the public and be made available to the public on the department's website in unredacted form.

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

§ 23-2715. Financial security for reclamation.

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

2. The department shall determine the amount, condition, and terms of the financial security. The amount shall be based upon the estimated cost of reclaiming the affected land and the estimated liability from potential damages directly or indirectly resulting from salt mining activities beneath a lake, including, but not limited to, those resulting from collapse or water contamination, which shall be based on information contained in the permit application, the environmental quality review conducted pursuant to article eight of this chapter and any environmental study conducted pursuant to subdivision fourteen of section 23-2711 of this title and upon such information as an investigation by the department may disclose. At a minimum, the department shall consider the particular circumstances of the mine and mining activities in making determinations pursuant to this subdivision related to financial security amounts required to cover potential damages directly or indirectly resulting from salt mining activities beneath a lake, including, but not limited to, those resulting from collapse or water contamination. Consideration in such circumstances shall include, but not be limited to:

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

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

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

(d) the presence of persons and property; and

(e) local economic impacts of potential damages.

The department shall engage an independent third party with the necessary actuarial, conservation finance and/or other appropriate expertise either to make a determination with respect to such potential damages directly or indirectly resulting from salt mining activities beneath a lake or to review the determination of the department with respect thereto and, in the case of a review, the department shall incorporate the appropriate recommendations by such independent third-party reviewer into its final determination.

3. The financial security shall remain in full force and effect until the department has approved the reclamation and determined that there is

no continuing risk of damages directly or indirectly from salt mining activities beneath a lake, including, but not limited to, those resulting from collapse or water contamination. At the discretion of the department, the permittee may secure the release of that portion of the financial security for affected land on which reclamation has been completed and approved by the department.

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

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

6. If the permittee fails to commence or to complete the reclamation as required, the department may attach the financial security furnished by the permittee. In any event, the full cost of completing reclamation and any damages directly or indirectly resulting from salt mining activities beneath a lake, including, but not limited to, those resulting from collapse or water contamination shall be the personal liability of the permittee and/or the person engaged in mining and the department, acting by the attorney general, may bring suit to recover all costs to secure the reclamation and damages directly or indirectly resulting from salt mining activities beneath a lake not covered by the financial security. The materials, machinery, implements and tools of every description which may be found at the mine, or other assets of the permittee and/or the person engaged in mining shall be subject to a lien of the department for the amount expended for reclamation of affected lands, and for making whole any parties suffering any damages directly or indirectly resulting from salt mining activities beneath a lake, and shall not be removed without the written consent of the department. Such lien may be foreclosed by the attorney general in the same manner as a mechanic's lien. Any and all moneys recovered shall be deposited in the environmental regulatory account pursuant to section 72-1009 of this chapter.

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

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

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

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

§ 4. Severability. If any provision of this act, or any application of any provision of this act, is held to be invalid, that shall not affect the validity or effectiveness of any other provision of this act, or of any other application of any provision of this act, which can be given

effect without that provision or application; and to that end, the provisions and applications of this act are severable.

§ 5. This act shall take effect on the thirtieth day after it shall have become a law; provided, however, that section two of this act shall take effect on the ninetieth day 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 effective date.