

# 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:

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 subdi-  
9 vision 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 any provision of this section to the contrary,  
2 with respect to salt mining beneath a lake where no environmental  
3 impact statement has been prepared pursuant to the environmental quali-  
4 ty review requirements of article eight of this chapter with  
5 respect to such mining within the preceding twenty years, any permit  
6 renewal application shall:

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

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

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

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

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

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

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

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

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

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

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

8 § 2. Section 23-2715 of the environmental conservation law, as amended  
9 by chapter 166 of the laws of 1991, subdivision 6 as amended by chapter  
10 60 of the laws of 1993, is amended to read as follows:

11 § 23-2715. Financial security for reclamation.

12 1. Before the department may issue a permit, the applicant, unless  
13 exempt, shall furnish financial security (a) to ensure the performance  
14 of reclamation as provided in the approved mined land-use plan, (b) to  
15 cover any 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, and (c) naming the state as  
18 beneficiary. Financial security shall be in the form of a bond from a  
19 corporate surety licensed to do business as such in the state or any  
20 other form the department may deem acceptable. Any interest accruing as  
21 a result of such security shall be the exclusive property of the permit-  
22 tee.

23 2. The department shall determine the amount, condition, and terms of  
24 the financial security. The amount shall be based upon the estimated  
25 cost of reclaiming the affected land and the estimated liability from  
26 potential damages directly or indirectly resulting from salt mining  
27 activities beneath a lake, including, but not limited to, those result-  
28 ing from collapse or water contamination, which shall be based on infor-  
29 mation contained in the permit application, the environmental quality  
30 review conducted pursuant to article eight of this chapter and any envi-  
31 ronmental study conducted pursuant to subdivision fourteen of section  
32 23-2711 of this title and upon such information as an investigation by  
33 the department may disclose. At a minimum, the department shall consider  
34 the particular circumstances of the mine and mining activities in making  
35 determinations pursuant to this subdivision related to financial securi-  
36 ty amounts required to cover potential damages directly or indirectly  
37 resulting from salt mining activities beneath a lake, including, but not  
38 limited to, those resulting from collapse or water contamination.  
39 Consideration in such circumstances shall include, but not be limited  
40 to:

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

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

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

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

46 (e) local economic impacts of potential damages.

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

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

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

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

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

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

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

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

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

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

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

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

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