

# STATE OF NEW YORK

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2825

2023-2024 Regular Sessions

## IN ASSEMBLY

January 27, 2023

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Introduced by M. of A. PHEFFER AMATO -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to the filling of borrow pits in Jamaica Bay; 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. Subdivision 1 of section 15-0505 of the environmental conserva-  
13 tion law, as amended by chapter 233 of the laws of 1979, is amended and  
14 a new subdivision 3-a is added to read as follows:

15 1. No person, local public corporation or interstate authority shall  
16 excavate or place fill below the mean high water level in any of the  
17 navigable waters of the state, or in marshes, estuaries, tidal marshes  
18 and wetlands that are adjacent to and contiguous at any point to any of  
19 the navigable waters of the state and that are inundated at mean high  
20 water level or tide, without a permit issued pursuant to subdivision 3  
21 of this section. For the purposes of this section, fill shall include,  
22 but shall not be limited to, earth, clay, silt, sand, gravel, stone,

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

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1 rock, shale, concrete (whole or fragmentary), ashes, cinders, slag,  
2 metal, dredged material or any other similar material whether or not  
3 enclosed or contained by (1) crib work of wood, timber, logs, concrete  
4 or metal, (2) bulkheads and cofferdams of timber sheeting, bracing and  
5 piling or steel sheet piling or steel H piling, separated or in combina-  
6 tion. Nothing contained in this section is intended to be, nor shall be  
7 construed to limit, impair or affect the memorandum of understanding  
8 which any state department enters into with the Department of Environ-  
9 mental Conservation or the general powers and duties of the Department  
10 of Transportation relating to canals or the general powers and duties of  
11 the Department of Environmental Conservation relating to flood control.

12 3-a. In filling the Jamaica Bay borrow pits the department may only  
13 grant a permit if the proposed sediments and fill materials meet the  
14 following criteria:

- 15 (1) comply with federal unrestricted ocean dumping criteria;  
16 (2) have been tested and test results indicate no unacceptable toxici-  
17 ty or bioaccumulation in biological test systems;  
18 (3) has no potential short-term (acute) impacts or long-term (chronic)  
19 impacts; and  
20 (4) requires no special precautionary measures are required during  
21 disposal.

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

- 25 (i) a description of the bathymetry of target areas of Jamaica Bay and  
26 a map of the borrow pits;  
27 (ii) the ecological service quality of the borrow pits over multiple  
28 weather seasons at multiple depths;  
29 (iii) the geotechnical conditions of all pit bottoms;  
30 (iv) an analyzation of the difference between department of environ-  
31 mental conservation standards and federal unrestricted ocean dumping  
32 criteria; and  
33 (v) any other policy recommendations regarding the ecological restora-  
34 tion of Jamaica Bay.

35 (b) The department of environmental conservation shall consult with  
36 affected community-based groups, including but not limited to the Jamai-  
37 ca Bay Ecowatchers and the American Littoral Society, at least quarterly  
38 on the scope, progress, and findings of such pilot study. Such communi-  
39 ty-based groups shall have the right to consult with the department of  
40 environmental conservation and any other individuals or groups involved  
41 in conducting such study. A report with the findings of such study shall  
42 be provided to all involved community-based groups, who shall have the  
43 opportunity to comment on such findings. Comments on the findings of  
44 such study shall be reviewed by the department of environmental conser-  
45 vation and shall be addressed in writing prior to the issuance of the  
46 report on the findings of such study. The department of environmental  
47 conservation shall issue a report on the findings of such study to the  
48 governor, the temporary president of the senate and the speaker of the  
49 assembly no later than March 30, 2025.

50 § 4. This act shall take effect immediately; provided, however, that  
51 paragraph 1 of subdivision 3-a of section 15-0505 of the environmental  
52 conservation law, as added by section two of this act, shall expire and  
53 be deemed repealed June 30, 2026.