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OIL, GAS AND SOLUTION MINING LEGISLATION IN NEW YORK

As Amended Through November 1981

Compiled by
Kenneth V. Gardner

Department of Agricultural Economics
New York State College of Agriculture and Life Sciences
A Statutory College of the State University
Cornell University, Ithaca, New York 14853

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OIL, GAS AND SOLUTION MINING

LEGISLATION IN NEW YORK STATE

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Since the oil embargo of the early '70's, there has been a heightened interest in the oil and gas resources of New York State. Abrupt increases in energy prices combined with the uncertainty caused by continued dependence upon foreign supplies inevitably turned attention to developing new domestic sources of energy.

New York has produced oil and gas for more than a century. Traditionally, most of the oil and gas activity has been concentrated in the southwestern portion of the state. Before 1970 New York was primarily an oil rather than gas producing state. However, because of the increasing prices of foreign oil and the increasing price of natural gas due, in large part, to the Natural Gas Policy Act of 1978, natural gas drilling has greatly accelerated. Recently, new activity is occurring in the central and eastern areas of New York. The new interest has resulted in leasing and exploratory activity from Sullivan to Washington counties in the so-called Eastern Overthrust Region. By contrast in 1970, only eight natural gas wells were drilled. In 1980, over 400 new gas wells were completed, and production rose to over 15 billion cubic feet or over 2.6% of our natural gas needs.

In 1981, Governor Hugh Carey proposed a series of reforms to better manage the development of the oil and gas resources of the state. These changes were warranted by a number of factors including the demands for services by the industry and the public concern for the wise and environmentally safe management of the state's oil and natural gas resources.

Agreement was reached with legislative leaders on a compromise package that was eventually signed into law by the Governor with an effective date of August 26, 1981. These amendments to the oil, gas and solution mining law were the first major changes since 1963.

These legislative developments, coupled with increasing concern over demand - supply relationships for petroleum products within the state, make it imperative that all interests and groups are involved in deliberations over energy policy. Information bearing on these policy issues must be widely disseminated if orderly and environmentally sound solutions are to be found for promoting the development of oil and gas resources.

This educational publication is intended to provide interested people an introduction to the oil, gas and solution mining laws operating in New York State. It is not intended as a "do-it-yourself" legal guide. Hopefully, the user of this publication will be able to become more familiar with the definitions, provisions and resources provided by the law.

However, any person involved either as a private citizen, elected official, appointed official or agency representative is advised to seek legal counsel before consummating any action related to these laws.

Oil, Gas and Solution Mining Legislation

in New York

Summary of Provisions:

Environmental Conservation Law:

Section 23-0301 states that..."It is hereby declared to be in the public interest to regulate the development, production and utilization of natural resources of oil and gas in this state in such a manner as will prevent waste; to authorize and to provide for the operation and development of oil and gas properties in such a manner that a greater ultimate recovery of oil and gas may be had, and that the correlative rights of all owners and the rights of all persons including landowners and the general public may be fully protected, and to provide in similar fashion for the underground storage of gas and the solution mining of salt."

To achieve this stated policy, the Environmental Conservation Law provides the following mechanisms:

- . Treats all oil and gas fields in the state in the same manner.
- . Provides for a single state law to regulate the development of the oil and gas resources.
- . Mandates the plugging of abandoned oil and gas wells.
- . Maintains production records.
- . Requires security bonding of all new wells.
- . Requires notification of landowners and local government officials by drillers of intention to begin drilling operations.
- . Creates an eleven member New York State oil, gas and solution mining advisory board.
- . Establishes procedures for well spacing in oil and natural gas pools and fields.
- . Establishes procedures for both voluntary and compulsory integration and unitization in oil and gas pools and fields.
- . Establishes procedures for leasing state lands for the production and storage of oil and natural gas.
- . Collects regulation and reclamation fees to pay for administrative costs.
- . Enforces the oil, gas and solution mining law.

State Finance Law:

Article 6 of the State Finance Law is amended to provide for:

- . The establishment of an oil and gas fund to be administered by the state comptroller to receive penalties, fines and a portion of the drilling permit fees.
- . The payment for reclamation expenses of plugging abandoned wells.
- . The payment for abatement of adverse effects of the industry that constitute a danger to the public health, safety or general welfare.
- . Reimbursement for local governments for adverse effects of the industry on municipal lands.

For additional information concerning provisions of the Oil, Gas and Solution Mining Law, the reader is referred to the nearest office of the Department of Environmental Conservation. The counties served and location of the D.E.C. offices are shown on the back cover of this publication.

Your local county Cooperative Extension office can also provide additional assistance. The location of Cooperative Extension offices is printed on the inside of the back cover.

TEXT OF THE NEW YORK STATE ENVIRONMENTAL

CONSERVATION LAW AS AMENDED*

ARTICLE 23 - MINERAL RESOURCES

Title 1 - DEFINITIONS

Sec. 23-0101. Definitions.

Sec. 23-0102. Short Title.

§ 23-0101. Definitions

As used in this article, unless the context otherwise requires:

1. "Buffer zone" means all that area outside and surrounding the underground gas storage reservoir but within thirty-five hundred linear feet of the boundary thereof.
2. "Cavity" means an open or partially open space left after a salt has been solution mined.
3. "Commissioner" means the commissioner of environmental conservation.
4. "Department" means the department of environmental conservation.
5. "Fund" means the oil and gas fund as established in section eighty-three-a of the state finance law.
6. "Field" means the general area underlaid by one or more pools.
7. "Gas" means all natural, manufactured, mixed, and byproduct gas, and all other hydrocarbons not defined as oil in this section.
8. "Local agency" means any local agency, board, authority, school district, commission or governing body, including any county, city, town, village or other political subdivision of the state.
9. "Metered" means the physical measurement of gas by means acceptable to the department.
10. "Oil" means crude petroleum oil and all other hydrocarbons, regardless of gravity, that are produced at the well head in liquid form by ordinary production methods and that are not the result of condensation of gas.
11. "Owner" means the person who has the right to drill into and produce from a pool or a salt deposit and to appropriate the oil, gas or salt he produces either for himself or others, or for himself and others.
12. "Person" means and includes any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind; and includes any department, agency or instrumentality of the state or any of its governmental subdivisions.
13. "Plug and abandon" means the plugging, replugging if necessary, and abandonment of a well bore including the placing of all bridges, plugs, and fluids therein and the restoration and reclamation of the surface in the immediate vicinity to a reasonable condition consistent with the adjacent terrain.
14. "Pool" means an underground reservoir containing a common accumulation of oil or gas or both; each zone of a structure which is completely separated from any other zone in the same structure is a pool.
15. "Producer" means the owner of a well or wells capable of producing oil, gas, or salt; or any salt or hydrocarbon mixture.
16. "Product" means any commodity made from oil or gas and includes refined crude oil, crude tops, topped crude, processed crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, fuel oil, treated crude oil, residuum, gas oil, casinghead gasoline, natural-gas gasoline, kerosene, benzine, wash oil, waste oil, blended gasoline, lubricating oil, blends or mixtures of oil with one or more liquid products or by-products derived from oil or gas, and blends or mixtures of two or more liquid products or by-products derived from oil or gas, whether herein enumerated or not.
17. "Reservoir" means any underground reservoir, natural or artificial cavern or geologic dome, sand or stratigraphic trap, whether or not previously occupied by or containing oil or gas.

18. "Salt" means sodium chloride, evaporite or other water soluble minerals, either in solution or as a solid or crystalline material in a pure state or as a mixture.

19. "Solution mining" means the dissolving of an underground salt by water to produce a brine for transport to another underground or surface location for sale, processing or storage.

20. "Waste" means

a. Physical waste, as that term is generally understood in the oil and gas industry;

b. The inefficient, excessive or improper use of, or the unnecessary dissipation of reservoir energy;

c. The locating, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner which causes or tends to cause reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations, or which causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas;

d. The inefficient storing of oil or gas; and

e. The flaring of gas produced from an oil or condensate well after the department has found that the use of the gas, on terms that are just and reasonable, is, or will be economically feasible within a reasonable time.

L. 1972, C. 664, Sec. 2. As Amended L. 1973, C. 922, Sec. 1. L. 1981, C. 846, Sec. 3.

Sec. 23-0102. Short Title.

This article shall be known and may be cited as the "oil, gas and solution mining law."

Added L. 1973, C. 922, Sec. 2.

Title 3 - GENERAL PROVISIONS

Sec. 23-0301. Declaration of Policy.

Sec. 23-0303. Administration of Article.

Sec. 23-0305. Powers and duties of the commissioner and the department.

Sec. 23-0307. Judicial review.

Sec. 23-0309. Severability.

Sec. 23-0311. New York State oil, gas and solution mining advisory board.

§ 23-0301. Declaration of Policy

It is hereby declared to be in the public interest to regulate the development, production and utilization of natural resources of oil and gas in this state in such a manner as will prevent waste; to authorize and to provide for the operation and development of oil and gas properties in such a manner that a greater ultimate recovery of oil and gas may be had, and that the correlative rights of all owners and the rights of all persons including landowners and the general public may be fully protected, and to provide in similar fashion for the underground storage of gas and the solution mining of salt.

L. 1972, C. 664, Sec. 2. L. 1973, C. 922, Sec. 3. L. 1978, C. 396, Sec. 1.

§ 23-0303. Administration of article

1. Except to the extent that the administration of this article is specifically entrusted to other agencies or officers of the state by its provisions, such administration shall be by the department. Geological services for the department in connection with the administration of this article shall be provided by or in cooperation with the state geologist. Within appropriations therefor the department is authorized to employ such personnel as may be necessary for the administration of this article and may also employ or secure the services of such engineering, technical and other consultants as it may require from time to time.

2. The provisions of this article shall supersede all local laws or ordinances relating to the regulation of the oil, gas and solution mining industries; but shall not supersede local government jurisdiction over local roads or the rights of local governments under the real property tax law.

3. a. The commissioner shall accept from municipalities requests for funds from the oil and gas fund to reimburse the municipality for costs incurred in repairing damages to municipal land or property. Such requests shall include such explanatory material and documentation as the commissioner may require.

b. The commissioner and director of the budget, may recommend payment to the municipality to satisfy the request for reimbursement upon finding that:

(1) The municipality has made a bona fide effort to seek relief and recover its costs from those deemed to be responsible and any other appropriate avenues, but has been unsuccessful;

(2) The damage was a direct result of activities regulated under this article and that the amount of funds requested is reasonable in view of such damages; and

(3) The costs were incurred after the effective date of this subdivision.

L. 1972, C. 664, Sec. 2. L. 1981, C. 846, Sec. 4.

§ 23-0305. Powers and duties of the commissioner and the department

1. The provisions of this section shall apply only to rules, regulations, orders and hearings made or conducted in the administration of this article.

2. No rule, regulation, order or amendment thereof, except in an emergency, shall be made by the department without a public hearing upon at least ten days' notice, exclusive of the date of service. The public hearing shall be held at such time and place as may be prescribed by the department and any interested person shall be entitled to be heard.

3. When an emergency requiring immediate action is found to exist, the department may make an emergency order without notice or hearing, which shall be effective when made. No emergency order shall be effective for more than fifteen days.

4. Any notice required by this article shall be given by the department by any one or more of the following methods: (a) personal service, (b) publication in one or more issues of a newspaper of general circulation in the county where the land affected or some part thereof is situated, or (c) by registered or certified mail addressed, postage prepaid, to the last known mailing address of the person or persons affected. The date of service shall be the date on which service was made in the case of personal service, the date of first publication in the case of notice by publication, and the date of mailing in the case of notice by mail. The notice shall specify the style and number of the proceeding, the time and place of the hearing, and shall briefly state the purpose of the proceeding. Should the department elect to give notice by personal service, such service may be made by any officer authorized to serve process, or by any agent of the department in the same manner as is provided by law for the service of process in civil actions in the courts of the state.

5. All rules, regulations and orders made by the department shall be in writing, shall be entered in full and indexed in books to be kept by the department for that purpose, and shall be public records open for inspection at all times during reasonable office hours. A copy of any department rule or regulation shall be received in evidence in all courts of this state with the same effect as the original, if certified by a member or duly authorized employee of the department.

6. The department may act upon its own motion or upon the application of any interested person. On the filing of an application concerning any matter within the jurisdiction of the department, pursuant to this article, the department shall promptly fix a date for a hearing thereon, and shall cause notice of the hearing to be given. The hearings shall be held without undue delay after the filing of the petition. The department shall make its order within sixty days after the conclusion of the hearing.

7. To aid in the administration of this article, the commissioner may issue subpoenas in his name requiring the attendance and giving of testimony by witnesses and the production of books, papers and other documentary evidence for any hearing, proceeding or investigation conducted or to be conducted by or before the department. Service of such a subpoena, enforcement of obedience thereto, and punishment for disobedience thereof shall be had as and in the manner provided by the Civil Practice Law and Rules relating to enforcement of a subpoena issued by a board or committee except that in the case of hearings, proceedings or investigations before or conducted by the department neither the holder of a permit or lease issued pursuant to this article, nor an employee of such permit holder or lessee, nor an officer or stockholder in a permittee or lessee corporation, when required to attend as a witness, shall be entitled to any subpoena fee or mileage. Any member of the department or

any person who may be designated by the department to hold hearings may administer oaths to witnesses. The department also may provide for the taking of depositions of witnesses for the purpose of any such hearing. In such case such officer, employee or other person may administer oaths to the witnesses whose depositions are to be taken. Each deposition shall be reduced to writing and subscribed by the deponent. The provisions of this subdivision shall apply only to the administration of this article.

8. With respect to oil pools or fields and natural gas pools or fields the department shall have power to:

a. Make such investigations as it deems proper to determine whether waste exists or is imminent.

b. Require identification of ownership of producing leases, tanks, plants, structures and facilities for the transportation and refining of oil and gas.

c. Classify and reclassify pools as oil or gas pools, or wells as oil or gas wells, including the delineation of boundaries for purposes material to the interpretation or administration of this article.

d. Require the drilling, casing, operation, plugging and replugging of wells and reclamation of surrounding land in accordance with rules and regulations of the department in such manner as to prevent or remedy the following, including but not limited to: the escape of oil, gas, brine or water out of one stratum into another; the intrusion of water into oil or gas strata other than during enhanced recovery operations; the pollution of fresh water supplies by oil, gas, salt water or other contaminants; and blowouts, cavings, seepages and fires.

e. Enter, take temporary possession of, plug or replug any abandoned well as provided in the rules and regulations, whenever any owner or operator neglects or refuses to comply with such rules and regulations. Such plugging or replugging by the department shall be at the expense of the owner or operator whose duty it may be to plug the well and who shall hold harmless the state of New York for all accounts, damages, costs and judgments arising from the plugging or replugging of the well and the surface restoration of the affected land. Primary liability for the expense of such plugging or replugging and first recourse for the recovery thereof shall be to the operator unless a contract for the production, development, exploration or other working of the well, to which the lessor or other grantor of the oil and gas rights is a party, shall place such liability on the owner or on the owner of another interest in the land on which the well is situated. When an operator violates any provision of this article, any rule or regulation promulgated thereunder, or any order issued pursuant thereto in reference to plugging or replugging an abandoned well, he may not transfer his responsibility therefor by surrendering the lease. Prior to the commencement of drilling of any well, the operator shall be required to furnish to the department a bond acceptable to it conditioned upon the performance of said operator's plugging responsibilities with respect to said well. Upon the approval of the department, in lieu of such bond, the operator may deposit cash or negotiable bonds of the United States Government of like amount in an escrow account conditioned upon the performance of said operator's plugging responsibilities with respect to said well. Any interest accruing as a result of the aforementioned escrow deposit shall be the exclusive property of the operator. The aforementioned bonding requirements shall remain the obligation of the original operator regardless of changes in operators unless a subsequent operator has furnished the appropriate bond or substitute as herein provided acceptable to the department and approval for the transfer of the well plugging responsibilities to the subsequent operator has been granted by the department. The cost of plugging or replugging any well, where such action is necessary or incident to the commencing or carrying on of storage operations pursuant to sections 23-1103 or 23-1301 shall be borne by the operator of the storage facility.

f. Require that every person who produces, sells, purchases, acquires, stores or transports oil or gas in this state shall keep and maintain complete and accurate records of the quantities thereof. True copies or duplicates shall be kept or made available for examination within this state by the department or its agents at all reasonable times and every such person shall file with the department such reports concerning production, sales, purchases, transportation or storage on a form acceptable to the department. Any such records or reports, and any information obtained therefrom shall be only for the confidential use of the department and other departments, agencies and officers of the state government until six months after the period to which said records or reports apply, unless the person

furnishing the same shall expressly agree to their earlier publication or availability to the general public. Nothing herein shall be construed to prevent the use of such records, reports or information obtained therefrom by any department, agency or officer of the state government in compiling or publishing analyses or summaries relating to the general condition of the industry, the economy, or the condition of the natural resources of this state, provided that such analyses or summaries do not involve the publication of records, reports or information relating to a single firm or business enterprise.

g. In addition to the powers provided for in titles 1, 3, 5 and 13 of article 71, order an immediate suspension of drilling or production operations whenever such operations are being carried on in violation of this article or any rule or regulation promulgated thereunder or order issued pursuant thereto. Any order issued pursuant to this paragraph may be reviewed upon application of an aggrieved party by means of an order to show cause which order shall be issued by any justice of the supreme court in the judicial district in which any order applies and shall be returnable on the third succeeding business day following the issuance of such order. Service of such show cause order shall be made upon the regional office of the department for the region in which such order applies, and upon the attorney general by delivery of such order to an assistant attorney general at an office of the attorney general in the county in which venue of the proceeding is designated, or if there is no office of the attorney general within such county, at the office of the attorney general nearest such county. Except as hereinabove specified, the proceeding to review an order under this paragraph shall be governed by article seventy-eight of the civil practice law and rules.

h. Require the immediate reporting of any non-routine incident including but not limited to casing and drill pipe failures, casing cement failures, fishing jobs, fires, seepages, blowouts and other incidents during drilling, completion, producing, plugging or replugging operations that may affect the health, safety, welfare or property of any person. The department may require the operator, or any agent thereof, to record any data which the department believes may be of subsequent use for adequate evaluation of a non-routine incident.

i. Require the taking and making of well logs, well samples, directional surveys and reports on well locations and elevations, drilling and production, and further require their filing pursuant to the provisions of this article. Upon the request of the state geologist, the department shall cause such duplicate samples or copies of records and reports as may be required pursuant to this article to be furnished to him.

j. Give notice to persons engaged in underground mining operations of the commencement of any phase of oil or gas well operations which may affect the safety of such underground mining operations or of the mining properties involved. Rules and regulations promulgated under this article shall specify the distance from underground mining operations within which such notice shall be given and shall contain such other provisions as in the judgment of the department shall be necessary in the interest of safety. The department shall not be required to furnish any notice required by this paragraph unless the person or persons engaged in underground mining operations or having rights in mining properties have notified the department of the existence and location of such underground mining operations or properties.

k. (1) Notwithstanding the provisions of paragraph e of this subdivision, and except as to the production of gas from lands under the waters of Lake Erie, the bonding requirements specified therein are suspended, as they pertain to any new well permits granted after the effective date of this paragraph. The suspension of bonding requirements shall not in any way affect any obligation to plug a well.

(2) The department pursuant to rules and regulations adopted to implement this subparagraph may require an operator applying for a new well permit after the effective date of this paragraph to meet financial security requirements of not more than two thousand dollars per well, provided that an operator shall not be required to provide financial security under this paragraph exceeding fifteen thousand dollars regardless of the number of new well permits granted, provided, however, that in the case of new wells in excess of six thousand feet in depth or which pose extraordinary hazards to the environment, the operator may be required to provide additional financial security consistent with criteria contained in rules and regulations to be adopted to implement this subparagraph.

(3) The department may require an operator to meet financial security requirements pursuant to rules and regulations adopted to implement this paragraph upon making a determination that an operator has failed to comply with any terms or conditions of a permit or has not complied with any provisions of this chapter or any rule or regulation promulgated thereunder. Notice of such determination shall be delivered by certified mail to the operator, who shall have thirty days from the date of receipt of the notice in which to request a hearing. A determination that a financial security is required shall not be effective until after the expiration of the period in which a hearing may be requested or a final determination has been issued following hearing, whichever is later.

9. With respect to solution mining areas the department shall have the power to:

a. Require identification of ownership of producing leases and solution mining equipment such as structures, tanks, gathering systems and facilities for the transportation of salt brine.

b. Require the drilling, casing, operation and plugging of wells in accordance with rules and regulations of the department in such a manner as to prevent the loss or escape of oil or gas reserves to the surface or to other strata; the intrusion of brine or water into commercial oil or gas reserves; the pollution of fresh water supplies by oil, gas or salt water, and to facilitate the efficient use of ground and surface waters in solution mining.

c. Give notice to persons engaging in underground mining operations of the commencing of any phase of solution mining well operations which may affect the safety of such underground mining operations or of the mining properties involved. Rules and regulations of the department adopted pursuant hereto shall specify the distance from such underground mining operations within which such notice shall be given and shall contain such other provisions as in the judgment of the department shall be necessary in the interest of safety. The department shall not be required to furnish any notice pursuant hereto unless the person or persons engaged in underground mining operations or having rights in mining properties have notified the department of the existence and location of such underground mining operations or properties.

d. Require metering or other measuring of brine produced by solution mining, and the maintenance of the records from each cavity or group of interconnected cavities until the wells in a cavity have been abandoned and plugged. These records shall be given to the department on request and shall not be released by the department for publication or be available to the general public without consent of the producer.

e. Enter, take temporary possession of, plug or replug any abandoned well as provided in the rules and regulations, whenever any operator neglects or refuses to comply with such rules and regulations. Such plugging or replugging by the department shall be at the expense of the owner or operator whose duty it shall be to plug the well and who shall hold harmless the state of New York for all accounts, damages, costs and judgments arising for¹ the plugging or replugging of the well and the surface restoration of the affected land. Primary liability for the expense of such plugging or replugging and first recourse for the recovery thereof shall be to the operator unless a contract for the production, development, exploration or other working of the well, to which the lessor or other grantor of the solution salt rights is a party, shall place such liability on the owner or on the owner of another interest in the land on which the well is situated. When an operator violates any provision of this article, any rule or regulation promulgated thereunder, or any order issued pursuant thereto in reference to plugging or replugging an abandoned well, he may not transfer his responsibility therefor by surrendering the lease. Prior to the commencement of drilling of any well to which this subdivision applies, the operator shall be required to furnish to the department a bond acceptable to it conditioned upon the performance of said operator's plugging responsibilities with respect to said well. Upon the approval of the department, in lieu of such bond, the operator may deposit cash or negotiable bonds of the United States Government of like amount in an escrow account conditioned upon the performance of said operator's plugging responsibilities with respect to said well. Any interest accruing as a result of aforementioned escrow deposit shall be the exclusive property of the operator. The aforementioned bonding requirements shall remain the obligation of the original operator regardless of changes in operators unless a subsequent operator has furnished the appropriate bond or substitute as herein provided acceptable to the department and approval for the transfer of the well plugging responsibility to the subsequent operator has been granted by

¹So in original. Probably should read "from."

the department. Any order issued pursuant to this paragraph may be reviewed upon application of an aggrieved party by means of an order to show cause which order shall be issued by any justice of the supreme court in the judicial district in which any such order applies and shall be returnable on the third succeeding business day following the issuance of such order. Service of such show cause order shall be made upon the regional office of the department for the region in which such order applies, and upon the attorney general by delivery of such order to an assistant attorney general at an office of the attorney general in the county in which venue of the proceeding is designated, or if there is no office of the attorney general within such county, at the office of the attorney general nearest such county. Except as hereinabove specified, the proceeding to review an order under this paragraph shall be governed by article seventy-eight of the civil practice law and rules.

f. (1) Notwithstanding the provisions of paragraph e this subdivision, the bonding requirements specified therein are suspended, as they pertain to any new well permits granted after the effective date of this paragraph. The suspension of bonding requirements shall not in any way affect any obligation to plug wells.

(2) The department pursuant to rules and regulations adopted to implement this paragraph may require an operator applying for a new well permit after the effective date of this paragraph to meet financial security requirements of not more than two thousand dollars per well, provided that an operator shall not be required to provide financial security under this paragraph exceeding fifteen thousand dollars regardless of the number of new well permits granted, provided, however, that in the case of new wells which pose extraordinary hazards to the environment, the operator may be required to provide additional financial security consistent with criteria contained in rules and regulations to be adopted to implement this subparagraph.

(3) The department may require an operator to meet financial security requirements pursuant to rules and regulations adopted to implement this paragraph upon making a determination that an operator has failed to comply with any terms or conditions of a permit or has not complied with any provisions of the environmental conservation law or rule and regulation promulgated thereunder. Notice of such determination shall be delivered by certified mail to the operator, who shall have thirty days from the date of receipt of the notice in which to request a hearing. A determination that a financial security is required shall not be effective until after the expiration of the period in which a hearing may be requested or a final determination has been issued following a hearing, whichever is later.

10. In the case of any well legally plugged pursuant to subdivision nine hereof, the responsibility for the cost of replugging or reinforcing the plugging of any well, whenever such replugging or reinforcing is made necessary by reason of the commencement or expansion of storage operations, shall be borne by the operator of the storage facility.

11. The department may use any of its powers for the purpose of cooperating with any other state or jurisdiction in regulating or otherwise affecting the development or production of oil, gas or salt at any location where such development or production may have a physical effect on development or production in such other state or jurisdiction.

12. With respect to the production of gas from lands under the waters of Lake Erie:

a. This state shall indemnify all municipalities adjacent to Lake Erie within the state of New York for expenses of restoration of fresh water supplies, cleanup of beaches, piers, and similar facilities, and for liability claims arising from any discharge or spill occasioned by exploration, drilling or production of operations.

b. If any oil or other hazardous substance is discharged in the course of drilling for or piping natural gas so as to pollute the waters or endanger other natural resources of the state, the department shall immediately act to remove or arrange for the removal of such substance and to terminate or arrange for the termination of such discharge, unless the department determines that such removal or termination will be done properly and expeditiously by the lessee, owner or operator of the drilling or piping operation.

c. Whenever the department acts to remove or arrange for the removal of any substance, or terminates or arranges for the termination of any discharge, the department may draw upon moneys that may be set aside for the department for such purposes from the governmental emergency fund, under such terms and conditions as the governor and the legislature have established for use of such moneys.

d. No action taken by any person to contain or remove a discharge shall be construed as an admission of liability for said discharge. Provided that any person who undertakes removal or cleanup operations shall, at the request of the department or an appropriate federal agency, coordinate his actions with ongoing state or federal operations. No person who renders assistance in containing or removing a discharge shall be liable for any civil damages to third parties resulting solely from acts or omissions in rendering such assistance except for acts or omissions of gross negligence or willful misconduct. In the course of cleanup operations, no person shall discharge any detergent into the waters of this state without prior authorization of the commissioner.

13. Every person granted a permit to drill pursuant to this section shall give notice by certified mail to any local government affected of the location of the drilling site prior to the commencement of drilling operations. Such prior notice shall also be given by certified mail to any landowner whose surface rights will be affected by drilling operations.

As amended L. 1973, C. 400, Secs. 51-55; L. 1973, C. 922, Secs. 4-7; L. 1977, C. 722, Sec. 3. L. 1981, C. 846, Sec. 5., Sec. 6.

¹So in original. Probably should read "effect."

§ 23-0307. Judicial review

Any act, omission, or order of the department or of any of its officers or employees, pursuant to or within the scope of this article, may be reviewed in accordance with article 78 of the Civil Practice Law and Rules, but application for such review must be made not later than sixty days from the date of such action, omission or order.

L. 1972, C. 664, Sec. 2.

§ 23-0309. Severability

The provisions of this article shall be severable and if any phrase, clause, sentence or provision of this article, or the applicability thereof to any person or circumstance shall be held invalid, the remainder of this article and the application thereof shall not be affected thereby.

L. 1972, C. 664, Sec. 2.

§ 23-0311. New York state oil, gas and solution mining advisory board

1. An eleven member New York state oil, gas and solution mining advisory board shall be created within the department to advise and assist the commissioner and other state agencies on activities and policies related to the development, operation and regulation of the oil, gas and solution mining industry. The members shall be appointed by the governor, with a majority representative of the respective industries. Three of the members shall be appointed upon recommendation of the majority leader of the senate and three of the members shall be appointed upon recommendation of the speaker of the assembly. Appointments shall be made for three-year terms. The governor shall select a chairman from among the members. The board shall meet at least twice yearly and the members shall receive reimbursement for expenses. The department shall provide the board with secretarial services.

2. The chairman of the public service commission, the commissioner of the energy office, the state geologist, and the commissioner of environmental conservation shall serve the board in an ex-officio capacity.

3. The commissioner shall seek the views of the board on matters within their scope of concern and shall specifically request the board's participation at an early developmental stage of any new rules, regulations and policies being contemplated or developed. In addition to such other duties as the commissioner may suggest or the board on its own volition may choose to undertake, the board shall:

a. Review and comment on the criteria to be used by the department in selecting abandoned wells for plugging or replugging.

b. Review and comment on proposed rules and regulations and department activities affecting the industry.

c. Recommend to the governor, the commissioner, and other state agencies program directions or modifications related to the development, operation, and regulation of the oil, gas, and solution mining industry.

Added L. 1981, C. 846, Sec. 7.

Title 5 - WELL SPACING IN OIL AND NATURAL GAS POOLS AND FIELDS

Sec. 23-0501. Well spacing in oil and natural gas pools and fields.

§ 23-0501. Well spacing in oil and natural gas pools and fields

1. Well spacing in oil pools or fields and in natural gas pools or fields shall be subject to the provisions of this section.

2. Whenever the department finds after notice and hearing that the spacing of wells in any field is necessary to carry out the policy provision of section 23-0301, it shall promptly establish spacing units for each pool in the field, except in those pools that have been developed to such an extent that it would be impracticable or unreasonable to establish spacing units at the existing stage of development. Oil fields or pools which have been discovered, developed and operated prior to January first, nineteen hundred eighty-one, shall be considered to have been developed to such an extent that it would be impracticable or unreasonable to establish spacing units.

3. Spacing units shall be of approximately uniform size and shape for the entire pool, except that where circumstances reasonably require, the department may grant exceptions to the size or shape of any spacing unit or units, provided that in so doing the department shall, if necessary, make such adjustment of the allowable production from the well or wells drilled thereon so that the owners of each spacing unit shall receive their just and equitable shares of the production from the pool. The department may, where circumstances reasonably require and in accordance with criteria established therefor, grant variances without conducting a hearing. The department shall not issue a variance without a hearing unless reasonable efforts have been made to notify, and an opportunity for comment has been provided to all owners whose interest would be affected by the proposed variance, and a finding has been made that no facts are in dispute.

4. An order establishing spacing units shall specify the size and shape of the units, which shall be such as will, in the opinion of the department, result in the efficient and economical development of the pool as a whole, and no unit shall be smaller than the maximum area that can be efficiently and economically drained by one well.

5. An order establishing spacing units shall specify the location for the drilling of a well thereon, in accordance with a reasonably uniform spacing pattern, with necessary exceptions for wells drilled or drilling at the time of the issuance of the spacing order. If the department finds that a well drilled at the prescribed location would not produce in paying quantities, or that surface conditions would substantially add to the burden or hazard of drilling such well, or for other good cause shown, the department is authorized to make an order permitting the well to be drilled at a location other than that prescribed by the spacing order, provided that in so doing the department shall, if necessary, make such adjustment of the allowable production from the well drilled so that the owners of such spacing unit shall receive no more than their just and equitable shares of the production from the pool.

6. An order establishing spacing units for a pool shall cover all lands determined or believed to be underlaid by such pool, and may be modified by the department from time to time to include additional lands subsequently determined to be underlaid by such pool.

7. An order establishing spacing units may be modified by the department to change their size, or to permit the drilling of additional wells on a reasonably uniform pattern.

8. After the date of the notice for a hearing called to establish spacing units, no additional well shall be commenced for production from the pool until the order establishing spacing units has been made, unless the commencement of the well is authorized by order of the department.

9. An order establishing spacing units shall, unless the spacing be related to unit operation of an entire pool or part thereof pursuant to the provisions of subdivisions 4 through 12 of section 23-0901, specify the procedure to be followed for compulsory integration of interests within the individual spacing units. Such procedure shall be consistent with the provisions of subdivisions 2 and 3 of section 23-0901. The order also shall provide for a time interval of not less than ninety days, nor more than that which the department regards as consistent with the objectives of well spacing and unitization, during which voluntary integration pursuant to section 23-0701 shall be permitted before the compulsory integration procedure of subdivision 3 of section 23-0901 becomes effective.

10. The department, without considering correlative rights, may grant a drilling permit to those entities described in paragraphs b and c of subdivision 3 of section 23-1901 of this article for the purposes of natural gas development if the department determines, after notice and hearing, that the natural gas resource would not be developed by any other entity within twelve months of the close of the hearing record. In making its determination the department shall require that the entity described in paragraphs b and c of subdivision 3 of section 23-1901 of this article submit a finding made by such entity that such drilling is likely to be economically sound, and that the entity in question utilize the resource for its exclusive use when granting such a permit and exception.

L. 1972, C. 664, Sec. 2. L. 1981, C. 846, Sec. 8, Sec. 9.

Title 7 - VOLUNTARY INTEGRATION AND UNITIZATION IN OIL AND NATURAL GAS POOLS AND FIELDS

Sec. 23-0701. Voluntary integration and unitization in oil and natural gas pools and fields.

§ 23-0701. Voluntary integration and unitization in oil and natural gas pools and fields

Voluntary integration and unitization in oil pools or fields and in natural gas pools or fields shall be subject to the provisions of this section. When two or more separately owned tracts are embraced within a spacing unit, or when there are separately owned interests in all or a part of a spacing unit, the interested persons may integrate their tracts or interests for the development and operation of the spacing unit. An agreement for the unit or for the cooperative development and operation of a field, pool, or part thereof, may be submitted to the department for approval as being in the public interest or reasonably necessary to prevent waste. Such approval shall constitute a complete defense to any suit charging violation of any statute of this state relating to trusts and monopolies on account thereof or on account of operations conducted pursuant thereto. Failure to submit such an agreement to the department for approval shall not for that reason imply or constitute evidence that the agreement or operations conducted pursuant thereto are in violation of laws relating to trusts and monopolies.

L. 1972, C. 664, Sec. 2. L. 1981, C. 846, Sec. 10.

Title 9 - COMPULSORY INTEGRATION AND UNITIZATION IN OIL AND NATURAL GAS POOLS AND FIELDS

Sec. 23-0901. Compulsory integration and unitization in oil and natural gas pools and fields.

§ 23-0901. Compulsory integration and unitization in oil and natural gas pools and fields

1. Compulsory integration and unitization in oil pools or fields and in natural gas pools or fields shall be subject to the provisions of this section with subdivision 3 to be specifically applicable to integration within individual spacing units and subdivisions 4 through 12 to be specifically applicable to unit operation of an entire pool or part thereof.

2. The department shall not make any order requiring the integration of interests in any spacing unit or requiring the development or operation of any field, pool or part thereof as a unit unless it finds, after detailed study and analysis, notice and hearing, that the integration of interests in spacing units, under conditions then existing in this state, or in the field or pool to be affected, is necessary to carry out the policy provisions of section 23-0301. The hearing may be coincidental with that required prior to the spacing of wells as provided in subdivision 2 of section 23-0501.

3. In the absence of voluntary integration as permitted by section 23-0701 and after finding as required by subdivision 2 of this section, the department shall make an order integrating all tracts or interests in the spacing unit for development and operation. Each such integration order shall be upon terms and conditions that are just and reasonable. All operations including, but not limited to, the commencement, drilling, or operation of a well upon any portion of a spacing unit covered by an integration order shall be deemed for all purposes the conduct of such operations upon each separately owned tract in the spacing unit by the owner or several owners thereof. That portion of the production allocated to each tract included in a spacing unit covered by an order of integration shall, when produced, be deemed for all purposes to have been produced from such tract by a well drilled thereon. Each such integration order shall authorize the drilling, equipping and operation or operations of a well on the spacing unit, and make provision for the payment of the reasonable actual cost thereof, plus a reasonable charge for supervision and interest. If there is any dispute as to such costs, the department shall determine the proper costs. If one or more of the owners shall drill, equip and operate, or operate, or pay the expenses of drilling, equipping and operating, or operating, a well for the benefit of another person as provided for in an order of integration, then such owner or owners shall be entitled to the share of production from the spacing unit accruing to the interest of such other person, exclusive of a royalty not to exceed one-eighth of the production, until the market value of such other person's share of the production, exclusive of such royalty, equals twice such other person's share of the reasonable actual cost of drilling, equipping and operating, or operating the well, including a reasonable charge for supervision and interest.

4. The department upon its own motion may, and upon the application of any interested person shall, hold a hearing to consider the need for the operation as a unit of an entire pool or part thereof.

5. The department shall make an order providing for the unit operation of a pool or part thereof if it finds that such operation is reasonably necessary to increase substantially the ultimate recovery of oil and gas, and the value of the estimated additional recovery of oil or gas exceeds the estimated additional cost incident to conducting such operation. The order shall be upon terms and conditions that are just and reasonable and shall prescribe a plan for unit operations that shall include:

- a. A description of the unitized area, termed the unit area.
- b. A statement of the nature of the operations contemplated.
- c. An allocation to the separately owned tracts in the unit area of all the oil and gas that is produced from the unit area and is saved, being the production that is not used in the conduct of operations on the unit area or not unavoidably lost. The allocation shall be in accord with the agreement, if any, of the interested parties. If there is no such agreement, the department shall determine the value, from evidence introduced at the hearing, of each separately owned tract in the unit area, exclusive of physical equipment, for development of oil and gas by unit operations, and the production allocated to each tract shall be the proportion that the value of each tract so determined bears to the value of all tracts in the unit area.
- d. A provision for the credits and charges to be made in the adjustment among the owners in the unit area for their respective investments in wells, tanks, pumps, machinery, materials, and equipment contributed to the unit operations.
- e. A provision providing how the expenses of unit operations, including capital investment, shall be determined and charged to the separately owned tracts and how said expenses shall be paid.
- f. A provision, if necessary, for carrying or otherwise financing any person who is unable to meet his financial obligations in connection with the unit, allowing a reasonable interest charge for such service.

g. A provision for the supervision and conduct of the unit operations, in respect to which each person shall have a vote with a value corresponding to the percentage of the expenses of unit operations chargeable against the interest of such person.

h. The time when the unit operations shall commence, and the manner in which, and the circumstances under which, the unit operations shall terminate.

i. Such additional provisions as are found to be appropriate for carrying on the unit operations, and for the protection or adjustment of correlative rights.

6. No order of the department providing for unit operations shall become effective unless and until the plan for unit operations prescribed by the department has been approved in writing by the owners of sixty per cent or more in interest as the costs of such unit operations are shared under the order of the department, and by owners of record of a like percentage of a one-eighth royalty interest in and to the unit area, and the department has made a finding, either in the order providing for unit operations, or in a supplemental order, that the plan for unit operations has been so approved by the required number of owners and royalty owners. If the plan for unit operations has not been so approved by owners and royalty owners at the time the order providing for unit operations is made, the department shall upon application and notice hold such supplemental hearings as may be required to determine if and when the plan for unit operations has been so approved. If the owners and royalty owners, or either, owning the required percentage of interest in the unit area do not approve the plan for unit operations within a period of six months from the date on which the order providing for unit operations is made, such order shall cease to be of force and shall be revoked by the department.

7. An order providing for unit operations may be amended by an order made by the department, in the same manner and subject to the same conditions as an original order providing for unit operations, provided

a. if such an amendment affects only the rights and interests of the owners, the approval of the amendment by the royalty owners shall not be required, and

b. no such order of amendment shall change the percentage for allocation of oil and gas as established for any separately owned tract by the original order, except with the consent of all persons owning interest in such tract.

8. The department, by an order, may provide for the unit operation of a pool or a part thereof that embraces a unit area established by a previous order of the department. Such order, in providing for the allocation of unit production, shall first treat the unit area previously established as a single tract, and the portion of the unit production so allocated thereto shall then be allocated among the separately owned tracts included in such previously established unit area in the same proportions as those specified in the previous order.

9. Oil and gas allocated to a separately owned tract shall be deemed, for all purposes, to have been actually produced from such tract, and all operations, including, but not limited to, the commencement, drilling, or operation of a well upon any portion of the unit area shall be deemed for all purposes the conduct of such operations upon each separately owned tract in the unit area by its several owners. The operations conducted pursuant to the order of the department shall constitute a fulfillment of all the express or implied obligations of each lease or contract covering lands in the unit area to the extent that compliance with such obligations cannot be had because of the order of the department.

10. Oil and gas allocated to any tract, and the proceeds from the sale thereof, shall be the property and income of the several persons to whom, or to whose credit, the same are allocated or payable under the order providing for unit operations.

11. No division order or other contract relating to the sale or purchase of production from a separately owned tract shall be terminated by the order providing for unit operations, but shall remain in force and apply to oil and gas allocated to such tract until terminated in accordance with the provisions thereof.

12. Except to the extent that the parties affected so agree, no order providing for unit operations shall be construed to result in a transfer of all or any part of the title of any person to the oil and gas rights in any tract in the unit area. All property, whether real or personal, that may be acquired in the conduct of unit operations hereunder shall be acquired for the account of the owners within the unit area, and shall be the property of such owners in the proportion that the expenses of unit operations are charged.

Title 11 - LEASES FOR PRODUCTION AND STORAGE OF OIL AND GAS
ON STATE LANDS

Sec. 23-1101. Procedure for obtaining oil and gas production lease.

Sec. 23-1103. Procedure for obtaining gas storage lease.

§ 23-1101. Procedure for obtaining oil and gas production lease

1. The department may make leases on behalf of this state, upon such terms and conditions including consideration as to the department seem just and proper for:

- a. The exploration, development and production of gas in state owned lands, except state park lands and the lands under the waters of Lake Ontario or along its shoreline; and
- b. The exploration, development and production of oil in state owned lands, except state park lands and the lands under the waters of Lake Erie and Lake Ontario or along their shorelines.

2. All oil and gas leases shall:

a. Be limited in duration to a period not to exceed ten years and as long thereafter as oil and gas is produced in commercially paying quantities;

b. Provide for payment to the agency having jurisdiction over the leased lands of such consideration, royalties, rentals, bonuses and other compensation as shall, in the discretion of the department, be in the best interests of the people of the state of New York;

c. Provide for prompt exploration followed within a reasonable time by operations for the production of oil and gas, if such be found, and shall also contain provisions for the termination of such lease by reason of the lessee's failure to so explore or operate;

d. Be invalid unless they shall have the prior approval of such state department, division, bureau or agency thereof, or state agency having jurisdiction over the land in question; and authority to give such consent is hereby conferred upon the head of any such state department, or a division, bureau or agency thereof, or any state agency, and with respect to lands under water held by the state in its sovereign capacity, jurisdiction is deemed to be in the Commissioner of General Services; and

e. Be inapplicable to any state park lands and to any lands the leasing of which is prohibited by the State Constitution.

3. In addition to the requirements contained in paragraphs a, c and e of subdivision two of this section, all gas leases with respect to the lands under the waters of Lake Erie shall:

a. Provide for payment to the general fund of the state such consideration, royalties, rentals, bonuses or other compensation as shall, in the discretion of the department, be in the best interests of the people of the state of New York.

b. Require that no well shall be permitted nearer than one-half mile from the shore, two miles from public water intake areas, and one thousand feet from any other structure or installation in or on Lake Erie.

e. Require that the following procedures be established if there is evidence suggesting that liquid hydrocarbons may exist in a stratum penetrated by the well bore:

(i) Drilling or completion operations shall cease immediately.

(ii) The department shall be notified of the evidence indicating the presence of liquid hydrocarbons, pursuant to such notification arrangements as the department shall prescribe.

(iii) A formation test shall be conducted in the presence of a department representative.

(iv) If the formation test indicates the presence of appreciable liquid hydrocarbons, the well bore shall be permanently plugged and abandoned from total depth to the lake bottom with cement.

(v) If the formation test does not indicate the presence of appreciable liquid hydrocarbons, drilling may be resumed after an intermediate string of casing has been set, cemented and tested.

(vi) If there is any further indication of liquid hydrocarbons the procedures outlined in paragraphs one through five hereof shall be repeated.

d. Require that each lessee, or other person desiring to install a pipeline, bury the most shoreward portion of each pipeline, in accordance with rules and regulations which shall be promulgated by the department, to obviate the risk of damage from ice, wave and wind conditions.

e. Be conditioned upon the posting by the responsible parties of a liability bond or liability insurance coverage in such form as the department may by regulation require and in such amount as the department shall deem to be reasonably sufficient to correct, repair or remedy to the satisfaction of the department any environmental damage or hazardous discharge resulting from gas exploration or recovery.

f. Provide that each lessee shall be strictly liable to the state for all reasonable expenses involved in the restoration of fresh water supplies, cleanup of beaches, piers and other similar facilities, which may be required as a result of exploration, drilling or production operations, and for liability claims arising therefrom.

g. Require each lessee to immediately notify the department of any discharge of oil or other pollutant, to act expeditiously to terminate such discharge and to remove the substance discharged.

h. Provide for the use and regular inspection of modern anti-pollution devices, including blow-out preventors on every drilling rig.

i. Provide that when a well is permanently abandoned for any reason it shall be permanently plugged by filling the well bore for its total depth, with cement or other suitable material.

j. Provide that, where in the department's opinion, damage to the environment is imminent or an emergency exists, the department shall order the immediate plugging and abandonment, either temporary or permanent, of any well on lands beneath Lake Erie.

4. Any such oil, gas, or oil and gas lease or leases made and granted pursuant to this section shall be awarded to the highest responsible bidder after advertisement for sealed bids. Such advertisements for bids shall be published in the official newspaper or newspapers, if any, or otherwise in a newspaper or newspapers designated for such purpose. Such advertisement shall contain a statement of the time and place where all bids received pursuant to such notice will be publicly opened and read. All bids received shall be publicly opened and read at the time and place specified. At least thirty days shall elapse between the first publication of such advertisement and the date specified for the opening and reading of bids. Bids shall be submitted on forms provided by the department, which forms shall indicate the method or methods for computing compensation to the state for the lease and shall contain such other directions as may be appropriate to secure comparability of bids submitted for any given lease. The department, in its discretion, shall determine the highest bid after taking into consideration the anticipated compensation to be returned to the state under any such lease by way of royalty payments, delayed lease rental payments, bonuses or other compensation or consideration, or by a combination of any or all of the same. In cases where two or more responsible bidders submit identical bids, the department in its discretion, may award the lease involved to any of such bidders. The department in its discretion, may also reject any or all bids and readvertise for new bids. The department may disallow any bid if the bidder upon request fails to furnish satisfactory evidence of responsibility.

5. Notwithstanding the requirements contained in subdivision four of this section, the department may negotiate and grant an oil or gas lease on small parcels of stateowned land without public bid in order to consolidate large drilling or production units controlled by a single entity. The department shall make a determination that public bid of such property is unreasonable or impracticable and publish such determination in the state register prior to the granting of any such lease.

As amended L. 1974, C. 707, Sec. 2; L. 1977, C. 722, Secs. 1, 2. L. 1981, C. 846, Sec. 11.

§ 23-1103. Procedure for obtaining gas storage lease

1. The department may make leases on behalf of this state for the storage of gas, and liquefied petroleum gas, in state owned lands upon such terms and conditions including consideration as to it shall seem just and proper.

2. All leases made pursuant to this section shall:

a. Provide for payment to the agency having jurisdiction over the leased lands of adequate and reasonable consideration;

b. Be invalid unless they shall have the prior approval of such state department, division, bureau or agency thereof, or state agency having jurisdiction over the land in question, and authority to give such consent is hereby conferred upon the head of any such

state department, or a division, bureau or agency thereof, or any state agency; and with respect to lands under water held by the state in its sovereign capacity, jurisdiction is deemed to be in the Commissioner of General Services;

c. Contain such other terms and provisions as may be necessary or appropriate in order to promote the purposes of this article and the public policy of this state; and

d. Be inapplicable to any lands the leasing of which is prohibited by the State Constitution.

L. 1972, C. 664, Sec. 2.

Title 13 - UNDERGROUND STORAGE OF GAS

Sec. 23-1301. Procedure for obtaining underground storage permit.

Sec. 23-1303. Authority to acquire property.

Sec. 23-1305. Procedure for abandoning storage reservoir.

Sec. 23-1307. Ownership of storage gas and storage rights.

§ 23-1301. Procedure for obtaining underground storage permit

1. No underground reservoir shall be devoted to the storage of gas, or liquefied petroleum gas unless the prospective operator of such storage reservoir shall have received from the department, after approval in writing of the state geologist, an underground storage permit which shall be in full force. The application for said permit shall include the following:

a. A map showing the location and boundaries of the proposed underground storage reservoir.

b. A report containing sufficient data to show that the reservoir is adaptable for storage purposes.

c. An affidavit signed by the prospective operator to the effect that he has acquired by grant, lease or other agreement at least seventy-five percent of the storage rights in said reservoir and in the buffer zone established to protect the reservoir as approved by the department, calculated on the basis of surface acreage; and such affidavit shall also set forth that the applicant will agree as a condition to the issuance of such permit that it will thereafter within a reasonable time either acquire by negotiation, or file and proceed with condemnation proceedings to acquire, any outstanding storage rights in the remaining reservoir and buffer zone acreage.

d. Such other information as the department may require.

2. The permit shall be granted within ninety days of application unless the department finds that the application and the information submitted with it do not meet the requirements of this section. The department may revoke or suspend any underground storage permit in force hereunder for failure to comply with any of its provisions or for failure to comply with subdivision 4 of this section.

3. Subdivisions 1 and 2 of this section shall not apply to underground storage reservoirs or the storage of gas therein provided that such reservoirs have been placed in operation prior to October 1, 1963 and so long as such operation is not abandoned.

4. Every operator shall file with the department on or before December 31 of each year, a report with respect to each underground storage reservoir operated by him showing any change in:

a. The estimated size in surface acreage or shape of the reservoir and the buffer zone if any;

b. His estimate of total capacity of the reservoir;

c. His estimate of working capacity of the reservoir; and

d. Any other engineering, geological or operational data that may be requested by the department.

5. No permit issued hereunder and no provision of this article shall be construed to diminish or impair the jurisdiction of the Public Service Commission with respect to regulation of the manufacture, transportation, distribution or sale of gas.

L. 1972, C. 664, Sec. 2; L. 1981, C. 846, Sec. 12.

§ 23-1303. Authority to acquire property

1. Any corporation empowered to produce, transport, distribute or store gas within this state for ultimate public use, which holds an underground storage permit from the department or which is otherwise lawfully operating an underground storage reservoir and its buffer zone, and which after reasonable effort is unable to obtain rights in real property and wells thereon necessary for activation, operation, or protection of the storage reservoir and its buffer zone shall, subject to the applicable provisions of the eminent domain procedure law, have the authority to acquire such rights as may be required adequately to examine, prepare, maintain, operate and protect, and for access to such underground storage reservoir and its buffer zone; provided that no right of acquisition under this section shall extend to any lands or interests therein which have been acquired, or, in the hands of the present holder, could have been acquired by acquisition; and, provided further, that any acquisition of cemetery lands or burial grounds shall be in the sound discretion of the court and with due provision for the relocation of human remains.

2. Underground gas storage operators authorized by this section to maintain acquisition proceedings before filing a suit for such acquisition shall have filed with the department a map showing the location, boundaries and estimated size of surface acreage of the underground storage reservoir and its buffer zone.

3. Any operator of an underground gas storage reservoir who at any time controls less than one hundred per cent of the storage rights within that reservoir and its buffer zone and is authorized by this section to maintain a proceeding shall acquire the storage rights remaining in the reservoir and its buffer zone acreage by negotiation or file and proceed with acquisition proceedings within a reasonable time but not to exceed a two year period after the first injection of gas, or after the effective date of this section, whichever is later or within any extension granted by the department.

4. Any operator who seeks to acquire underground gas storage and buffer zone rights as authorized by this section shall name as parties defendant all the owners of all the parcels of property located within the boundaries of the reservoir and its buffer zone from whom storage rights have not previously been legally acquired by grant, lease, or other voluntary agreement; provided, however, that a failure to join the owners of any parcel in the reservoir and its buffer zone due to inadvertence shall not constitute a jurisdictional defect in any proceeding of acquisition.

5. The value of any property acquired pursuant to this section shall include the value of any commercially recoverable native oil and gas in place to the extent that the holder of the property interest being acquired has a right thereto. The same provision shall apply to the holder of salt rights.

6. The cost of, or possible necessity for, plugging any well or wells, when such plugging or replugging is or may be made necessary by reason of the storage use made possible or facilitated by acquisition shall not be considered in computing the value of property or any interest therein taken under this section.

7. The use of salt cavities for the storage of gas or other petroleum products or byproducts shall be at the discretion of the owner of the salt deposits at the location of the cavity. Salt cavities may be used for salt recovery and storage with the consent and agreement of the owners of the salt cavity and the stored material. Conversion of any salt cavity for the storage of gas or other petroleum products or byproducts shall be in accordance with section 23-1103 or 23-1301 of this article.

L. 1972, C. 664, Sec. 2; L. 1973, C. 922, Secs. 8, 9; L. 1977, C. 840, Sec. 26; L. 1981, C. 846, Sec. 13.

§ 23-1305. Procedure for abandoning storage reservoir

In connection with the abandonment of any underground storage reservoir for which a permit has been granted pursuant to this article or in connection with the revocation of any such permit, the department shall require the premises to be placed in a condition which, to the extent practicable, shall assure the continuance of the same in a condition which does not constitute a menace to the present or future health or safety of persons, or safety or value of property. In case the operator shall fail to put the premises in a satisfactory condition prior to any such abandonment or immediately upon revocation of a permit, the department may do or cause to be done all things necessary to place the premises in satisfactory condition and the operator shall be liable for the cost.

§ 23-1307. Ownership of storage gas and storage rights

1. All gas and liquefied petroleum gas, which has previously been reduced to possession, and which is lawfully injected into an underground storage reservoir, shall be deemed the property of the injector, his heirs, successors or assigns, provided that the injector, his heirs, successors or assigns, shall have no right to reserves of native gas or oil remaining in any stratum or portion thereof which have not been condemned hereunder or otherwise acquired by such injector, his heirs, successors or assigns. Nothing contained in this subdivision shall be construed to confer on any operator any storage rights not otherwise acquired or held by him.

2. No production lease shall be construed to include rights to store oil or gas unless the lease includes a provision granting such storage rights. The rule of construction provided in the subdivision is not intended to alter any law or rule of construction applicable to leases made prior to October 1, 1963 or to imply any rule of construction for such leases.

L. 1972, C. 664, Sec. 2.

Title 19 - OIL, GAS AND SOLUTION MINING REGULATION
AND RECLAMATION FEE

Sec. 23-1901. Construction of title.

Sec. 23-1903. Imposition of oil, gas and solution mining regulation and reclamation fees.

§ 23-1901. Construction of title

1. Nothing contained herein shall release a person from any obligation imposed by the provisions of this article or rules and regulations promulgated thereunder.

2. This title shall supersede all other laws enacted by local governments or agencies concerning the imposition of a fee relating to circumstances described in this title. Nothing in the preceding sentence or in this title shall be construed as superseding or in any way limiting the right of any local government to impose real property taxes pursuant to the real property tax law.

3. Except as otherwise provided in subdivision 4 of this section, the following owners shall not be subject to the fees imposed in this title:

- a. The United States of America or any of its agencies or instrumentalities;
- b. The state of New York or any of its agencies; and
- c. Local Agencies.

4. Agencies shall be subject to the fees imposed in this title when such agencies produce oil or gas, or engage in solution mining, for sale or exchange.

§ 23-1903. Imposition of oil, gas and solution mining regulation and reclamation fees

1. When a permit is granted to a person by the department pursuant to section 23-0305 of this article, to drill a natural gas, oil or solution mining well, such person shall pay to the department;

a. A one hundred dollar fee to be credited to the oil and gas fund pursuant to section eighty-three-a of the state finance law; and

b. A fee in accordance with the depth expected to be drilled as set forth below:

0-500ft.	- \$ 125
501-1000ft.	- \$ 250
1001-1500ft.	- \$ 375
1501-2000ft.	- \$ 500
2001-2500ft.	- \$ 625
2501-3000ft.	- \$ 750
3001-3500ft.	- \$ 875
3501-4000ft.	- \$1000
4001-4500ft.	- \$1125
4501-5000ft.	- \$1250
5001-5500ft.	- \$1375
5501-6000ft.	- \$1500
6001-6500ft.	- \$1625

6501-7000ft. - \$1750
7001-7500ft. - \$1875
7501-8000ft. - \$2000
8001-8500ft. - \$2125
8501-9000ft. - \$2250
9001-9500ft. - \$2375
9501-10,000ft.-\$2500
over 10,000ft.-\$2625

In the event the actual depth drilled exceeds the depth expected to be drilled, an additional amount shall be paid such that the total fee paid shall be in accordance with the schedule set forth in this paragraph.

2. Upon requesting from the department any determination under the Natural Gas Policy Act, such person shall pay a fifty dollar fee per well for each such determination.

L. 1981, C. 846, Sec. 14.

Article 71 - ENFORCEMENT

Title 13 - ENFORCEMENT OF ARTICLE 23

- Sec. 71-1301. Applicability of this title.
- Sec. 71-1303. Subpoenas, testimony and enforcement thereof.
- Sec. 71-1305. Offenses.
- Sec. 71-1307. Sanctions.
- Sec. 71-1309. Aiders and abettors.
- Sec. 71-1311. Injunction against violations.

§ 71-1301. Applicability of this title

In addition to the provisions of sections 71-0101 and 71-0301 of this article, the provisions of this title shall be applicable to the enforcement of article 23 of this chapter except as otherwise provided in article 23 of this chapter.

L. 1972, C. 664, Sec. 2; L. 1981, C. 846, Sec. 15.

§ 71-1303. Subpoenas, testimony and enforcement thereof

1. To aid in the administration of article 23, the commissioner or any person designated by him may issue subpoenas in his name requiring the attendance and giving of testimony by witnesses and the production of books, papers and other evidence for any hearing, proceeding or investigation conducted or to be conducted by or before the department. Service of such a subpoena, enforcement of obedience thereto, and punishment for disobedience thereof shall be had as and in the manner provided by the civil practice law and rules relating to enforcement of any subpoena issued by a board or committee except that in the case of hearings, proceedings or investigations before or conducted by the department neither the holder of a permit or lease issued pursuant to article 23, nor an employee of such permit holder or lessee, nor an officer or stockholder in a permittee or lessee corporation, when required to attend as a witness, shall be entitled to any subpoena fee or mileage. Any member of the department or any person who may be designated hereunder by the department to hold hearings may administer oaths to witnesses. The department also may provide for the taking of depositions of witnesses for the purpose of any such hearing. In such case such officer, employee or other person may administer oaths to the witnesses whose depositions are to be taken. Each deposition shall be reduced to writing and subscribed by the deponent.

2. The provisions of this section shall apply only to the administration of article 23.

L. 1972, C. 664, Sec. 2; L. 1981, C. 846, Sec. 16.

§ 71-1305. Offenses

It shall be unlawful for any person to:

1. Waste oil or gas.
2. Violate any of the provisions of or fail to perform any duty imposed by article 23 of this chapter or any rule or regulation promulgated thereunder or any order or condition of any permit of the department made pursuant thereto.
3. Abandon a mine without the approval of the department before all affected land has been reclaimed. A mine shall be considered as abandoned when mining and reclamation activities shall cease on land affected by mining without prior notification to the department or without describing such cessation in a mined land use plan approved by the department.
4. Commence operations for the drilling of a well for oil or gas, or an intake well, or for the storage of oil or gas or solution mining without first giving the department notice of intention to drill or obtaining a permit from the department as required.
5. Abandon any oil, gas or salt well without first notifying the department.
6. Store gas underground in any manner, unless the storage operator has received such right by grant, lease or other agreement or is operating in compliance with section 23-1301 of this chapter and is authorized to maintain condemnation proceedings pursuant to section 23-1303 of this chapter.

L. 1981, C. 846, Sec. 17.

§ 71-1307. Sanctions

1. Administrative sanctions. Any person who violates any provision of article 23 of this chapter or commits any offense described in section 71-1305 of this title shall be liable to the people of the state for a civil penalty not to exceed one thousand dollars and an additional penalty of five hundred dollars for each day during which such violation continues, to be assessed by the commissioner after a hearing or opportunity to be heard. The commissioner, acting by the attorney general, may bring suit for collection of such assessed civil penalty in any court of competent jurisdiction. Such civil penalty may be released or compromised by the commissioner before the matter has been referred to the attorney general; and where such matter has been referred to the attorney general, any such penalty may be released or compromised and any action commenced to recover the same may be settled and discontinued by the attorney general with the consent of the commissioner. In addition, the commissioner shall have the power, following a hearing conducted pursuant to rules and regulations adopted by the department, to direct the violator to cease the violation and reclaim and repair the affected site to a condition acceptable to the commissioner, to the extent possible within a reasonable time and under the direction and supervision of the commissioner. Any such order of the commissioner shall be enforceable in any action brought by the commissioner in any court of competent jurisdiction. Any civil penalty or order issued by the commissioner under this subdivision shall be reviewable in a proceeding under article seventy-eight of the civil practice law and rules.

2. Civil sanctions. In lieu of seeking administrative sanctions, the commissioner may refer any violation described in subdivision 1 of this section to the attorney general who shall be empowered to bring a civil suit to seek any of the sanctions described in subdivision 1 of this section. Any such sanctions imposed may be released or compromised or the action may be settled and discontinued by the attorney general with the consent of the commissioner.

3. Criminal sanctions. Any person who, having any of the culpable mental states defined in sections 15.05 and 20.20 of the penal law, violates any provision of article 23 of this chapter or commits any offense described in section 71-1305 of this title shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed one thousand dollars for each day during which such violation continues or by imprisonment for a term of not more than one year, or by both such fine and imprisonment. If the conviction is for a subsequent offense committed after a first conviction of such person under this subdivision, punishment shall be by a fine not to exceed five thousand dollars for each day during which such violation continues or by imprisonment for a term of not more than one year, or by both such fine and imprisonment.

4. This section shall not affect the rights of any other person seeking damages arising out of a violation.

L. 1981, C. 846, Sec. 17.

§ 71-1309. Aiders and abettors

Any person knowingly aiding or abetting any other person in the violation of any provision of article 23, or any rule, regulation, or order of the department made pursuant thereto shall be subject to the same punishment and penalty as that prescribed by this title for the violation by such other person.

L. 1972, C. 664, Sec. 2.

§ 71-1311. Injunction against violations

1. Whenever it appears that any person is violating or threatening to violate any provision of article 23 of this chapter or is committing any offense described in section 71-1305 of this title, the department, acting by the Attorney General, may bring suit against such person in any court of competent jurisdiction to restrain such person from continuing such violation or from carrying out the threat of violation. In any such suit, the court shall have jurisdiction to grant to the department without bond or other undertaking, such prohibitory or mandatory injunctions as the facts may warrant, including temporary restraining orders and preliminary injunctions.

2. If the department, acting by the Attorney General, shall fail to bring suit to enjoin a violation or threatened violation of any provision of article 23, or any rule, regulation, or order of the department made pursuant hereto, within ten days after receipt of written request to do so by any person who is or will be adversely affected by such violation, the person making such request may bring suit in his own behalf to restrain such violation or threatened violation in any court in which the department might have brought suit. The department shall be made a party in such suit in addition to the person violating or threatening to violate a provision of article 23, or a rule, regulation, or order of the department, and the action shall proceed and injunctive relief may be granted to the department without bond, or other undertaking in the same manner as if suit had been brought by the department.

L. 1972, C. 664, Sec. 2; L. 1981, C. 846, Sec. 18.

STATE FINANCE LAW

ARTICLE 6 - FUNDS OF THE STATE

Sec. 83-a. Oil and gas fund.

§ 83-a. Oil and gas fund

1. There is hereby established in the custody of the state comptroller a nonlapsing revolving fund to be known as the "oil and gas fund".

2. Such fund shall be credited with all penalties, fines and other sums recovered for violations of the oil, gas and solution mining law contained in article twenty-three of the environmental conservation law. Such fund shall also be credited with a fee of one hundred dollars for each new well to be drilled, such fee to be paid by the operator at the time of issuance of a drilling permit for such well.

3. Moneys in such fund shall be kept separate from and shall not be commingled with any other moneys in the joint or sole custody of the state comptroller.

4. Moneys of such fund, except as provided in subdivision seven of this section, following appropriation by the legislature, shall be allocated upon the certification of approval of availability by the director of the budget solely for the following purposes:

a. to pay for reclamation expenses associated with the plugging and abandonment of oil, gas, gas storage, observation, water injection or solution mining wells which have not been plugged and abandoned pursuant to the oil, gas and solution mining law or rules and regulations promulgated thereunder.

b. to pay for up to one-half the reclamation expenses associated with plugging and abandonment of oil, gas, gas storage, observation, water injection or solution mining wells drilled on or prior to October first, nineteen hundred sixty-three which the commissioner of the department of environmental conservation determines will correct an existing hazard to health, life or property or will abate an unacceptable environmental impact; provided that the total of any such payments shall be limited to the amount of interest earned on and credited to the fund not previously appropriated for this purpose.

c. to pay for expenses associated with the abatement or prevention of the adverse effects of oil, gas or solution mining activities which constitute a danger to the public health, safety or general welfare.

d. to reimburse local governments for costs incurred in repairing damages to municipal property stemming from oil, gas, or solution mining activities pursuant to section 23-0303 of the environmental conservation law.

5. The total amount of this fund shall not exceed one million five hundred thousand dollars. If revenues from the fees payable into the fund under the oil, gas and solution mining law are expected in any subsequent fiscal year to cause the total of the fund to exceed that amount, the commissioner, in consultation with the budget director, shall reduce the fees herein established for such subsequent year.

6. Any moneys in such fund, at the discretion of the state comptroller, may be invested in securities and obligations defined by sections ninety-eight and ninety-eight-a of this article. Any income or interest derived from such investment shall be included in such fund.

7. Moneys may be withdrawn from the fund upon the certification of the commissioner of the department of environmental conservation and the approval of the division of the budget, to mitigate unforeseen adverse public safety or environmental conditions arising from oil, gas, and solution mining activities regulated under article twenty-three of the environmental conservation law.

L. 1981, C. 846, Sec. 2.

ADDITIONAL PROVISIONS OF THE

LAWS OF 1981, CHAPTER 846

Chapter 846 of the Laws of 1981 made modifications in other laws of the state. Among the laws amended are:

- 1) The Real Property Tax Law.
- 2) The State Tax Law.
- 3) The Agriculture and Markets Law.

In addition, other provisions included:

§ 25. The sum of two hundred fifty thousand dollars (\$250,000), or so much thereof as may be necessary, is hereby appropriated in the first instance from any moneys in the state treasury in the general fund to the credit of the state purposes fund not otherwise appropriated as an advance to the department of environmental conservation for the purposes of carrying out the provisions of this act, including payment for personal services and the purchase of automobiles and transportation. The amount hereby appropriated shall be payable on the audit and warrant of the comptroller on vouchers approved by the commissioner of the department of environmental conservation. Such appropriation shall be repaid to the state purposes fund from any revenues derived from the administration of the provisions of this act pursuant to a repayment schedule established by the state director of the budget.

§ 26. The sum of one hundred twenty-five thousand dollars (\$125,000), or so much thereof as may be necessary, is hereby appropriated to the state board of equalization and assessment out of any moneys in the state treasury in the general fund not otherwise appropriated for the purpose of staffing an oil and gas valuation unit. The amount hereby appropriated shall be payable on the audit and warrant of the comptroller on vouchers approved by the chairman of the state board of equalization and assessment.

§ 27. This act shall take effect on the thirtieth day after it shall have become a law.

The reader is reminded that for additional information concerning these additional provisions of Chapter 846 of the Laws of 1981 he can refer to McKinney's Consolidated Laws of New York.

Additional sources of information include:

*New York State Department of Environmental Conservation
50 Wolf Road
Albany, New York 12233

*New York State Department of Law
The Capitol
Albany, New York 12224

*New York State Division of Equalization and Assessment
Agency Building # 4, Empire State Plaza
Albany, New York 12223

*New York State Department of Agriculture and Markets
Building 8, State Campus
Albany, New York 12235

*New York State Department of Audit and Control
Alfred E. Smith State Office Building
Albany, New York 12236

*Department of Agricultural Economics
New York State College of Agriculture and Life Sciences
Cornell University
Ithaca, New York 14853

County Cooperative Extension Offices

ALBANY Martin Rd. Voorheesville 12186	518-765-2331	HAMILTON P.O. Box 112 Lake Pleasant 12108	518-548-6191	ROCKLAND 87 Maple Ave. New City 10956	914-425-5500
ALLEGANY Court St. Belmont 14813	716-268-7644	HERKIMER P.O. Box 271 Herkimer 13350	315-866-7920	ST. LAWRENCE Univ. Shopping Center Canton 13617	315-379-2311
BROOME 840 Front St. Binghamton 13905	607-772-8953	JEFFERSON 1240 Coffeen St. Watertown 13601	315-788-8450	SARATOGA 50 W. High St. Ballston Spa 12020	518-885-8995
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CAYUGA 248 Grant Ave. Auburn 13021	315-255-1183	LIVINGSTON 158 S. Main St. Mount Morris 14510	716-658-4110	SCHOHARIE 41 S. Grand St. Cobleskill 12043	518-234-4303
CHAUTAUQUA R.D. 2, Turner Rd. Jamestown 14701	716-664-9502	MADISON Farm & Home Center Morrisville 13408	315-684-3001	SCHUYLER 208 Broadway Montour Falls 14865	607-535-7161
CHEMUNG 225 N. Chemung Rd. Breesport 14816	607-739-0347	MONROE 249 Highland Ave. Rochester 14620	716-461-1000	SENECA Mill & Williams Sts. Waterloo 13165	315-539-9252
CHENANGO 99 N. Broad St. Norwich 13815	607-334-9971	MONTGOMERY Old Court House Fonda 12068	518-853-3471	STEBEN 119 E. Steuben St. Bath 14810	607-776-2127
CLINTON Court House Plattsburgh 12901	518-561-7450	NASSAU 1425 Old Country Rd. Plainview 11803	516-454-0900	SUFFOLK 246 Griffing Ave. Riverhead 11901	516-727-7850
COLUMBIA Rt. 66, R.D. 1 Hudson 12534	518-828-3346	NIAGARA 4487 Lake Ave. Lockport 14094	716-433-8839	SULLIVAN 59 N. Main St. Liberty 12754	914-292-6180
CORTLAND County Office Bldg. Cortland 13045	607-756-7587	ONEIDA 1 Oxford Rd. New Hartford 13413	315-724-7131	TIOGA 56 Main St. Owego 13827	607-687-4020
DELAWARE P.O. Box 184 Hamden 13782	607-865-6531	ONONDAGA 1050 W. Genesee St. Syracuse 13204	315-424-9485	TOMPKINS 225 S. Fulton St. Ithaca 14850	607-272-2292
DUTCHESS Rt. 44 Millbrook 12545	914-677-5006	ONTARIO 480 N. Main St. Canandaigua 14424	716-394-4110	ULSTER 74 John St. Kingston 12401	914-331-1680
ERIE 21 S. Grove St. East Aurora 14052	716-652-5400	ORANGE 239 Wisner Ave. Middletown 10940	914-343-1105	WARREN 17 Hudson S. Warrensburg 12885	518-623-3291
ESSEX Agricultural Center Westport 12993	518-962-8291	ORLEANS P.O. Box 150 Albion 14411	716-589-5561	WASHINGTON Co. Office Bldg. Annex Hudson Falls 12839	518-747-2861
FRANKLIN 11 Brewster St. Malone 12953	518-483-6767	OSWEGO Main St. Mexico 13114	315-963-7286	WAYNE P.O. Box 217 Alton 14413	315-483-6918
FULTON P.O. Box 911 Gloversville 12078	518-725-6441	OTSEGO 123 Lake St. Cooperstown 13326	607-547-2536	WESTCHESTER 216 Central Ave. White Plains 10606	914-682-3370
GENESEE 420 E. Main St. Batavia 14020	716-343-3040	PUTNAM 179 East Lake Blvd. Mahopac 10541	914-628-0454	WYOMING 401 N. Main St. Warsaw 14569	716-786-2251
GREENE Extension Center Cairo 12413	518-622-9820	RENNSELAER Court House Troy 12180	518-270-5376	YATES 110 Court St. Penn Yan 14527	315-536-3381

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

Central Office

Bureau of Mineral Resources
50 Wolf Road
Albany, New York 12233-0001
(518) 457-7480

Regional Offices

Region 1
Building 40
State University of New York
Stony Brook, N. Y. 11790
(516) 751-7900
(Nassau, Suffolk)

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Watertown State Office Bldg.
317 Washington Street
Watertown, N. Y. 13601
(315) 782-0100
(Herkimer, Jefferson, Lewis,
Oneida, St. Lawrence)

Region 9
584 Delaware Avenue
Buffalo, N. Y. 14202
(716) 842-5828
(Allegany, Cattaraugus,
Chautauqua, Erie, Niagara,
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