

# LONG ISLAND MINING BILL

## A.10001 THIELE /S.8026 KAMINSKY — FACT SHEET

### INTRODUCTION/OVERVIEW

There is no scientific evidence that legal/permitted mine sites have a negative effect on groundwater quality. Permitted mine sites are heavily regulated and already sample groundwater quality and report the findings to DEC.

The bill is seriously flawed – expertise of DEC oversight should not be usurped by 113 county and municipal governments (2 counties, 2 cities, 13 towns, 96 villages).

If enacted, decisions might be driven by local politics and motivations rather than science.

The co-sponsors of this harmful legislation are conflating the environmental impact of landfilling with sand mining.

### ECONOMIC / ENVIRONMENTAL CONSIDERATION

Mining in New York State is a \$5 Billion industry with a payroll of over \$1.3 Billion, employing roughly 30,000 people.

Mined Land Reclamation Law (MLRL) of 1975 – is when the State recognized and declared that its mineral resources were of statewide significance and that in order to foster a stable mining industry it was necessary for the State, rather than the municipalities, to regulate these activities.

Sand, gravel and crushed stone (collectively “aggregates”) are a finite resource that must be extracted from suitable sites. The DEC permitting process is typically a multi-year, multi-million dollar process, meaning applicants must have a level of regulatory predictability to justify the costs.

Shutting down the mining industry on Long Island will mean that construction aggregates will need to be imported, most likely from New Jersey or Upstate New York. That will dramatically increase truck traffic and congestion in the metro New York region and increase greenhouse gases emissions as well as fuel consumption. The cost of trucking sand equals the value of the material in the truck after only 20 miles. Therefore, hauling materials long distances to the island will also dramatically increase construction costs.

The quality of Long Island sand meets or exceeds both ASTM, NYSDOT and DEP standards.

Long Island mines serve regional demand at JFK and LaGuardia Airport, the Freedom Tower, Eastside Access Tunnels, the Governor Mario M. Cuomo Bridge and many other high profile projects. As well as local demand on the LIE, parkways, various bridges, sewer systems, sewage treatment plants and water distribution systems.

USGC (United States Geological Survey) estimates that 44% of construction sand and gravel was used for concrete aggregates, and 25% was utilized for road base, road coverings, and road stabilization. This bill would have tremendous cost implications for public works, affordable housing and private construction projects.

Recent studies show the increase of transportation costs for materials from other locations following mine closures would cause a 59% cost increase for New York State Thruway projects. This will further exacerbate truck traffic in the downstate region.

### LEGAL ANALYSIS

#### Existing Groundwater Monitoring Authorization

The proposed legislation is coming just two years after towns on Long Island were granted the authority to establish groundwater monitoring for impacts resulting from mining or reclamation.

Authority is already in place to address groundwater contamination (CERCLA, RCRA, Navigation Law, CWA) many of which also provide for citizen suit enforcement.

This proposed legislation would apply to far more businesses than traditional mining operations. Eliminating the exclusion for construction and agriculture from the definition of mining means Long Island construction projects and agricultural improvements would also be subject to the MLRL and the power granted to local governments under the proposed law. (23-2705(8) Definition of Mining).

**Subparagraph 23-2703(3)(c):** The proposed law empowers local governments to prohibit DEC from taking any action on permit applications or renewals based on a naturally occurring contaminant in groundwater. This will likely permanently close pre-existing, non-conforming mines (with constitutionally protected vested property rights).

The proposed law does nothing to address contamination discovered other than shutter a business that may have no relationship to the contamination.

**Subparagraph 23-2703(3)(d):** Towns would be allowed to regulate or prohibit the storage, processing and sales of construction aggregates (e.g., sand) from the mine site.

In effect, no justification whatsoever is required to simply shut down a mine if the town chooses – eliminating vested property rights, without due process and in violation of equal protection.

**Claim of Concurrent Jurisdiction -** The sponsors of the legislation assert that it is merely providing concurrent jurisdiction to local governments – that isn't the case.

Town authority overrides DEC's determinations:

- **23-2703 4a.** – if a locality exercises its authority granted under the proposed law DEC is prohibited from acting.
- **23-2711** – plainly states that the local government's determinations under the authority granted in 23-2703 are not reviewable by the DEC and are therefore binding on the DEC.

Recognizing the problems created by local control, born mostly of political consideration, the legislature in 1991 amended the MLRL to strengthen its supersedure provision.

The MLRL currently provides localities with significant input, but through the uniform state system of regulation, rather than through local laws.

## LABOR CONCERNS

If enacted, this legislation would increase project costs and put at risk the jobs of 65,000 hard-working skilled tradespeople working within the jurisdiction of the Building and Construction Trades of Nassau and Suffolk and 100,000 additional workers within the jurisdiction of the Building and Construction Trades of Greater New York.

Trades are already challenged with the reduction of permitted sand mining facilities on Long Island from 78 down to 23 sites.

Operating Engineers would eliminate an immediate 54 direct jobs. The total direct and indirect job loss is estimated at 175 positions, costing more than \$75.5 million in salaries and reducing the Suffolk County GNP by over \$36 million.

Loss of local aggregate material will jeopardize major projects of significance for the region, such as Brookhaven Labs, Gateway Project (Northeast Corridor), Nassau Hub, Ronkonkoma Hub, and Port Authority airport revitalization projects.

## SCIENTIFIC NOTES

Hydrogeologic and geologic study of sites are already part of the mine permitting process. There has never been any evidence of groundwater contamination from strictly mining sites or sites storing inert construction materials.

Iron and manganese are commonly found occurring naturally in Long Island groundwater and are not introduced by the mining process.

Mining permits require groundwater quality and flow directions be monitored for the future life of the project. If another industrial or commercial facility was located at the mine site, there are no requirements for investigating groundwater quality.

Detailed restoration and reclamation plans are required to ensure future use of the site is environmentally responsible. In addition, the mine operators maintain surety bonds to guarantee financial resources are available to achieve a reclamation in line with approved plans.

