§ 17-0301. Classification of waters and adoption of standards.

1. It is recognized that, due to variable factors, no single standard of quality and purity of the waters is applicable to all waters of the state or to different segments of the same waters.

2. In order to attain the objectives of this article, the department after proper study, and after conducting public hearing upon due notice, shall group the designated waters of the state into classes. Such classification shall be made in accordance with considerations of best usage in the interest of the public and with regard to the considerations mentioned in subdivision 3 hereof.

3. In adopting the classification of waters and the standards of purity and quality above mentioned, the department shall give consideration to:

a. The size, depth, surface area covered, volume, direction and rate of flow, stream gradient and temperature of the water;

b. The character of the district bordering said waters and its peculiar suitability for the particular uses, and with a view to conserving the value of the same and encouraging the most appropriate use of lands bordering said waters, for residential, agricultural, industrial or recreational purposes;

c. The uses which have been made, are being made or may be made, of said waters for transportation, domestic and industrial consumption, bathing, fishing and fish culture, fire prevention, the disposal of sewage, industrial waste and other wastes, or other uses within this state, and, at the discretion of the department, any such uses in another state on interstate waters flowing through or originating in this state;

d. The extent of present defilement or fouling of said waters which has already occurred or resulted from past discharges therein.

4. The department, after proper study, and after conducting public hearings upon due notice, shall adopt and assign standards of quality and purity for each such classification necessary for the public use or benefit contemplated by such classification. Such standards shall prescribe what qualities and properties of water shall indicate a polluted condition of the waters of the state which is actually or potentially deleterious, harmful, detrimental or injurious to the public health, safety or welfare, to terrestrial or aquatic life or the growth and propagation thereof, or to the use of such waters for domestic, commercial, industrial, agricultural, recreational or other reasonable purposes, with respect to the various classes established pursuant to subdivision 2 hereof.

5. In establishing such standards, consideration shall be given to the following factors: a. The extent, if any, to which floating solids may be permitted in the water;

b. The extent to which suspended solids, colloids or a combination of solids with other substances suspended in water, may be permitted;

c. Organisms of the coliform group or any other organisms from wastes of animal or human origin shall not exceed the following prescribed standards for usage of the classified waters of the state:

(1) Sources of water supply for drinking, culinary or food processing purposes which, if subjected to approved disinfection treatment, with additional treatment if necessary to remove naturally present impurities, meet or will meet New York State Health Department drinking water standards and any other usages: For such sources the monthly median coliform value for one hundred ml of sample shall not exceed fifty from a minimum of five examinations and provided that not more than twenty percent of the samples shall exceed a coliform value of two hundred forty for one hundred ml of sample.

(2) Sources of water supply for drinking, culinary or food processing purposes which, if subjected to approved treatment equal to coagulation, sedimentation, filtration and disinfection, with additional treatment if necessary to reduce naturally present impurities, will meet New York State Department of Health drinking water standards; bathing, fishing,

boating, and any other usages: For such sources the monthly median coliform value for one hundred ml of sample shall not exceed five thousand from a minimum of five examinations and provided that not more than twenty percent of the samples shall exceed a coliform value of twenty thousand for one hundred ml of sample.

(3) Sources of water for bathing, fishing, boating, and any other usages except shellfishing for market purposes in tidal salt waters: For such sources the monthly median coliform value for one hundred ml of sample shall not exceed two thousand four hundred from a minimum of five examinations and provided that not more than twenty percent of the samples shall exceed a coliform value of five thousand for one hundred ml of sample and provided further that surface waters receiving treated sewage discharges which pass through residential communities where there is a potential exposure of population to the surface waters shall be protected by the requirement that all effluents from sewage treatment plants shall be adequately disinfected prior to discharge into the surface waters in order that the monthly median coliform value for one hundred ml of sample shall not exceed two thousand four hundred from a minimum of five examinations and provided that not more than twenty percent of the samples shall exceed a coliform value of five thousand for one hundred ml of sample.

(4) Sources of water for shellfishing for market purposes and any other usages of tidal salt waters: Median MPN not to exceed seventy coliform organisms per one hundred milliliter sample in a series of four or more samples collected during any thirty-day period in the waters of a shellfishing area, and not exceeding in more than ten percent of the samples collected during the period an MPN of two hundred thirty coliform organisms per one hundred milliliters for a five-tube, or an MPN of three hundred thirty per one hundred milliliters for a three-tube decimal dilution test in those areas most probably exposed to fecal contamination during the most unfavorable hydrographic conditions.

(5) All samples shall be collected, analyzed, and reported in a manner satisfactory to the commissioner.

(6) When the above prescribed standards are exceeded the commissioner shall make an investigation to determine the source or sources of pollution. When it shall appear to the commissioner after investigation, that there has been a violation of any of the provisions of titles 1 to

11, inclusive, and title 19 of this article he shall take further proceedings as provided in section 17-0905.

(7) The department may adopt and assign more restrictive standards for the best usages of the waters of the state.

d. The extent of the oxygen demand which may be permitted in the receiving waters;

e. Such other physical, chemical or biological properties necessary for the attainment of the objectives of this article, as set forth in section 17-0101.

6. The adoption, alteration or modification of the standards of quality and purity, above prescribed, shall be made by the department only after public hearing on due notice.

7. The "Rules and Classifications and Standards of Quality and Purity for Waters of New York State," hitherto adopted by the former New York water pollution control board by order made and entered October 23, 1950 effective October 25, 1950, as duly amended in the manner provided by law, are hereby approved and adopted as the general system and plan of the classification of the waters of the state and the standards of quality and purity thereof applicable to such general classification of the waters and are hereby deemed established and adopted by the department.

8. All classifications and standards of quality and purity hitherto assigned, by the former New York Water Pollution Control Board, or by the former Water Resources Commission by order, duly and respectively made and entered, to designated and specified waters of the state, are hereby approved and adopted as the classification and standards of quality and purity for such specified waters so respectively hitherto classified and are hereby deemed established, adopted and so assigned by the department.

9. The "Rules and Classifications and Standards of Quality and Purity for Waters of New York State," so hitherto adopted by the former Water

Pollution Control Board and by the former Water Resources Commission and hereinabove readopted may from time to time be altered or modified by the department after public hearing thereon. Any classification of the specified waters of the state, so hitherto assigned by the former Water Pollution Control Board or by the former Water Resources Commission and hereinabove readopted may from time to time be altered or modified by the department after public hearing thereon.

10. Notices of public hearing for the consideration, adoption, modification, alteration and/or amendment of the general classification-standards system or of the classification of waters and the standards of purity and quality thereof shall:

a. Be published at least twice in a newspaper regularly published or circulated in the county or counties bordering or through which the waters sought to be classified, or for which standards are sought to be adopted, flow, the first date of publication of which shall be at least thirty days before the date fixed for such hearing, and

b. Be mailed at least thirty days before such hearing to the chief executive of each municipal corporation bordering or through which said waters, for which standards are sought to be adopted, flow, and to such other persons as the department has reason to believe may be affected by the proposed standards.

11. The fact that an application for the modification or alteration of classifications and standards of quality and purity has been made pursuant to this section shall not of itself constitute a sufficient ground for an injunction against, or a stay of, any proceeding or order authorized by this article.

12. In all hearings in connection with the modification or alteration of classifications and standards of quality and purity heretofore assigned by the former Water Pollution Control Board or the former Water Resources Commission or hereafter assigned by the department by order, duly and respectively made and entered, to designated and specified waters of the state, except as provided in paragraphs a and b of

subdivision 10 of this section, the administrative procedures to be followed shall be governed by article two of the state administrative procedure act.

13. The department shall not require the expense of any public hearing initiated by petition of any person or public corporation in connection with the adoption, modification or alteration of classification of waters or standards of purity and quality thereof to be paid by such person or public corporation.

14. The classification of waters and standards of quality and purity thereof, upon adoption, shall, before becoming effective, be filed with the Secretary of State for publication in the "Official Compilation of Codes, Rules and Regulations of the state of New York" published pursuant to section 102 of the Executive Law.