**§ 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, the operator may not transfer the operator's 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, and continuously maintain, 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 failure of any operator to maintain a bond or other financial security as prescribed herein shall be deemed a breach of plugging responsibilities and entitle the department to claim the proceeds of the bond or other financial security. 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 section 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 injects oil or gas and associated fluids and every person who transports oil or gas in this state shall keep and maintain complete and accurate records of the quantities thereof. Quantities of associated fluids injected or produced may be reported as estimated volumes. 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, acquisitions, injection,

transportation or storage on a form provided by the department or approved by the department prior to submittal.

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) Except as to production of gas from lands under the waters of Lake Erie, in order to satisfy the financial security requirements contained in paragraph e of this subdivision for wells less than six thousand feet in depth for which the department either shall have issued or shall issue permits to drill such wells or, on or after June fifth, nineteen hundred seventy-three, shall have issued acknowledgements of notices of intention to drill such wells, without any way affecting any obligations to plug such wells, the operator shall provide a bond or other financial security acceptable to the department in the following amount:

(i) for wells less than two thousand five hundred feet in depth:

(a) twenty-five hundred dollars per well, provided that the operator shall not be required to provide financial security under this item exceeding twenty-five thousand dollars for up to twenty-five wells;

(b) for twenty-six to fifty wells, twenty-five thousand dollars, plus twenty-five hundred dollars per well in excess of twenty-five wells, provided that the operator shall not be required to provide financial security under this item exceeding forty thousand dollars;

(c) for fifty-one to one hundred wells, forty thousand dollars, plus twenty-five hundred dollars per well in excess of fifty wells, provided that the operator shall not be required to provide financial security under this item exceeding seventy thousand dollars;

(d) for over one hundred wells, seventy thousand dollars, plus twenty-five hundred dollars per well in excess of one hundred wells, provided that the operator shall not be required to provide financial security under this item exceeding one hundred thousand dollars.

(ii) for wells between two thousand five hundred feet and six thousand feet in depth:

(a) five thousand dollars per well, provided that the operator shall not be required to provide financial security under this item exceeding forty thousand dollars for up to twenty-five wells;

(b) for twenty-six to fifty wells, forty thousand dollars, plus five thousand dollars per well in excess of twenty-five wells, provided that the operator shall not be required to provide financial security under this item exceeding sixty thousand dollars;

(c) for fifty-one to one hundred wells, sixty thousand dollars, plus five thousand dollars per well in excess of fifty wells, provided that the operator shall not be required to provide financial security under this item exceeding one hundred thousand dollars;

(d) for over one hundred wells, one hundred thousand dollars, plus five thousand dollars per well in excess of one hundred wells, provided that the operator shall not be required to provide financial security under this item exceeding one hundred fifty thousand dollars.

(2) In the event that an operator shall have wells described in clauses (i) and (ii) of subparagraph (1) of this paragraph, in lieu of providing financial security under the provisions of each such clause, such operator may file financial security as if all such wells were between two thousand five hundred feet and six thousand feet in depth.

(3) For wells greater than six thousand feet in depth, 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.

8-a. The department shall include consideration of future physical climate risk due to sea level rise, and/or storm surges and/or flooding, based on available data predicting the likelihood of extreme weather events, including hazard risk analysis data if applicable, to permits issued pursuant to title five of this article.

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 plugged and abandoned. These records shall be given to the department on request.

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 for 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, the operator may not transfer the operator's 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, and continuously maintain, 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 the department. The failure of any operator to maintain a bond or other financial security as prescribed herein shall be deemed a breach of plugging responsibilities and entitle the department to claim the proceeds of the bond or other financial security. 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) In order to satisfy the financial security requirements contained in paragraph e of this subdivision for all wells for which the department either shall have issued or shall issue permits to drill such wells or, on or after June fifth, nineteen hundred seventy-three, shall have issued acknowledgements of notices of intention to drill such wells, without in any way affecting any obligation to plug such wells, the operator shall provide a bond or other financial security acceptable to the department in the following amount:

(i) for wells less than two thousand five hundred feet in depth:

(a) twenty-five hundred dollars per well, provided that the operator shall not be required to provide financial security under this item exceeding twenty-five thousand dollars for up to twenty-five wells;

(b) for twenty-six to fifty wells, twenty-five thousand dollars, plus twenty-five hundred dollars per well in excess of twenty-five wells, provided that the operator shall not be required to provide financial security under this item exceeding forty thousand dollars;

(c) for fifty-one to one hundred wells, forty thousand dollars, plus twenty-five hundred dollars per well in excess of fifty wells, provided that the operator shall not be required to provide financial security under this item exceeding seventy thousand dollars;

(d) for over one hundred wells, seventy thousand dollars, plus twenty-five hundred dollars per well in excess of one hundred wells, provided that the operator shall not be required to provide financial security under this item exceeding one hundred thousand dollars.

(ii) for wells between two thousand five hundred feet and six thousand feet in depth:

(a) five thousand dollars per well provided that the operator shall not be required to provide financial security under this item exceeding forty thousand dollars for up to twenty-five wells;

(b) for twenty-six to fifty wells, forty thousand dollars, plus five thousand dollars per well in excess of twenty-five wells, provided that the operator shall not be required to provide financial security under this item exceeding sixty thousand dollars;

(c) for fifty-one to one hundred wells, sixty thousand dollars, plus five thousand dollars per well in excess of fifty wells, provided that the operator shall not be required to provide financial security under this item exceeding one hundred fifty thousand dollars;

(d) for over one hundred wells, one hundred thousand dollars, plus five thousand dollars per well in excess of one hundred wells, provided that the operator shall not be required to provide financial security under this item exceeding one hundred fifty thousand dollars.

(2) In the event that an operator shall have wells described in clauses (i) and (ii) of subparagraph (1) of this paragraph, in lieu of providing financial security under the provisions of each such clause, such operator may file financial security as if all such wells were between two thousand five hundred feet and six thousand feet in depth.

(3) For wells greater than six thousand feet in depth, the operator may be required to provide additional financial security consistent with criteria contained in rules and regulation to be adopted to implement this subparagraph.

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.

14. With respect to wells drilled deeper than five hundred feet below the earth's surface for the purpose of conducting stratigraphic tests, for finding or producing hot water or steam, for injecting fluids to recover heat from the surrounding geologic materials, which shall not include closed-loop boreholes installed for the purpose of facilitating a geothermal heating or cooling system, or for the disposal of brines, the department shall have the power to:

a. Require all exploration, drilling and development operations to be conducted in accordance with standards promulgated by the department in rules and regulations.

b. Conduct investigations to determine the extent of compliance with this section and all rules, regulations and orders issued pursuant thereto.

c. Classify a well as one subject to this section and require its identification as a geothermal, stratigraphic or brine disposal well.

d. Require the drilling, casing, operation, plugging and replugging of wells subject to this section and reclamation of surrounding land in accordance with rules and regulations of the department.

e. Enter, take temporary possession of, plug or replug any abandoned well subject to this section as provided in the rules and regulations, whenever the well's 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 shall 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.

f. Require that the operator furnish to the department, and continuously maintain, a bond or other financial security conditioned upon the satisfactory performance of the operator's plugging responsibilities with respect to said well. The failure of any operator to maintain a bond or other financial security as prescribed herein shall be deemed a breach of plugging responsibilities and entitle the department to claim the proceeds of the bond or other financial security. Such bond or other financial security shall be for an amount as determined pursuant to the provisions of paragraph k of subdivision eight of this section.

g. In addition to the powers provided for in titles one, three, five and thirteen of article seventy-one of this chapter, order an immediate suspension of operations carried on in violation of the oil, gas and solution mining law or any rule or regulation promulgated thereunder or order issued pursuant thereto.

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 or which may be injurious to plants or animals. The department may require the operator or any agent thereof to record and provide any data which the department believes may be of use for adequate evaluation of a non-routine incident.

i. Require the taking and making of logs, samples, directional surveys and reports on locations, elevations, drilling and production, and further require filing of such information pursuant to the provisions of the oil, gas and solution mining law. Upon the request of the state

geologist, the department shall cause such samples or copies of records and reports to be furnished to the state geologist.

j. Give notice to persons engaged in underground mining operations of the commencement of any phase of geothermal, stratigraphic and brine disposal well operations which may affect the safety of such underground mining operations or of the mining properties involved. 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.

15. The department is authorized to regulate for the purposes of protecting natural resources and the environment or public health and safety, closed-loop boreholes deeper than five hundred feet below the earth's surface installed for the purpose of facilitating a geothermal heating or cooling system and no later than December thirty-first, two thousand twenty-four shall promulgate regulations relating to such boreholes, and may update such regulations from time to time. When regulating such closed-loop boreholes, the department shall consider relevant prevailing industry standards.