§ 27-1205. Mitigation of contaminants in drinking water.

1. Whenever the commissioner of health has required a public water system to take action to reduce exposure to an emerging contaminant or emerging contaminants and has determined that the concentration of the emerging contaminant constitutes an actual or potential threat to public health based on the best available scientific information pursuant to section eleven hundred twelve of the public health law, the department in conjunction with the department of health, may, pursuant to the Clean Water Infrastructure Act of 2017 and within the up to one hundred thirty million dollars appropriated for such purposes, undertake all reasonable and necessary additional mitigation measures in any area of the state in which contamination is known to be present. The department shall employ feasible measures that can be successfully carried out with available, implementable and cost effective technology. Such area shall include, at a minimum, all properties served by the public water system, any individual onsite water supply systems impacted by the contamination, and any land and any surface or underground water sources impacted by the contamination. Such approved measures shall be protective of public health and may include but not be limited to the installation of treatment systems or the provision of alternative water supply sources to ensure that drinking water meets applicable standards, including maximum contaminant levels, notification levels, maximum residual disinfectant levels, or action levels established by the department of health.

2. If the department or the department of health, as applicable, determines that a drinking water contamination site poses a significant threat to the public health or environment from a hazardous waste, the department shall refer the site to the inactive hazardous waste disposal site remedial program pursuant to title thirteen of this article.

3. Whenever the commissioner of health has required a public water system to take action to reduce exposure to emerging contaminants and has determined that the concentration of the emerging contaminant constitutes an actual or potential threat to public health based on the best available scientific information pursuant to section eleven hundred

twelve of the public health law:

a. the department shall have the authority to undertake directly in conjunction with the department of health, the development and implementation of all necessary and reasonable mitigation and remediation measures of drinking water contamination, as approved by the department of health, to address emerging contaminants in public water supplies;

b. the commissioner may order, after notice and opportunity for a hearing, the owner and/or operator of the drinking water contamination site and/or any person responsible for such contamination to undertake all reasonable and necessary mitigation and remediation, as approved by the department of health, to ensure that drinking water meets applicable standards, including maximum contaminant levels, notification levels, maximum residual disinfectant levels, or action levels established by the department of health, and employ feasible measures that can be successfully carried out with available, implementable and cost effective technology, subject to the approval of the department and the department of health, at such site, and to implement such program within reasonable time limits specified in the order. Provided, however, that in the event the commissioner of health shall issue an order pursuant to subdivision three of section one thousand three hundred eighty-nine-b of the public health law, such order of the commissioner of health shall supersede any order issued hereunder.

4. The department shall have the authority a. to delegate responsibility for a specific drinking water contamination site to the municipality in which such site is located and b. to contract with any other person to perform necessary work in connection with such sites.

5. Section eight of the court of claims act or any other provision of law to the contrary notwithstanding, the state shall be immune from liability and action with respect to any act or omission done in the discharge of the department's aforesaid responsibility pursuant to this title; provided, however, that this subdivision shall not limit the liability which may otherwise exist for unlawful, willful, or malicious

acts or omissions on the part of the state, state agencies, or their officers, employees or agents; or for the ownership or responsibility for the disposal of such contaminant, including liability for the cost of remediation, pursuant to this section.

6. Whenever the commissioner of health, after investigation, finds:

a. that a public drinking water contamination site represents an actual or potential threat to the public health; and

b. the threat makes it prejudicial to the public interest to delay action until a hearing can be held pursuant to this title, the department may, pursuant to paragraph a of subdivision three of this section and within the funds available to the department from the drinking water response program, develop and implement, in conjunction with the department of health, all reasonable and necessary mitigation and remedial measures to address drinking water contamination for such site to ensure that drinking water meets applicable standards, including maximum contaminant levels, notification levels, maximum residual disinfectant levels or action levels established by the department of health. Findings required pursuant to this subdivision shall be in writing and may be made by the commissioner of health on an ex parte basis subject to judicial review.

7. Any order issued pursuant to paragraph b of subdivision three of this section shall be issued only after notice and the opportunity for a hearing is provided to persons who may be the subject of such order. The commissioner or the commissioner of health shall determine which persons are responsible pursuant to said subdivision according to applicable principles of statutory or common law liability. Such persons shall be entitled to raise any defense set forth in section 27-1211 of this title or common law defense at any such hearing and such defenses shall have the same force and effect at such hearings as they would have in a court of law. In the event a hearing is held, no order shall be issued by the commissioner under subdivision three of this section until a final decision has been rendered. Any such order shall be reviewable pursuant to article seventy-eight of the civil practice law and rules within

thirty days after service of such order. The commissioner or the commissioner of health may request the participation of the attorney general in such hearings.

8. The commissioner shall make all reasonable efforts, in accordance with the requirements of subdivision six of section ninety-seven-b of the state finance law, to recover all mitigation costs incurred pursuant to subdivisions one and three of this section from the owner and/or operator of the drinking water contamination site.

9. When a municipality develops and implements remediation to address a drinking water contamination site, determined pursuant to subdivision four of this section, and the plan is approved by the department, in conjunction with the department of health, which is owned or has been operated by such municipality or when the department, in conjunction with the department of health, pursuant to an agreement with a municipality, develops and implements such remediation, the commissioner shall, in the name of the state, agree in such agreement to provide from the drinking water response program, within the limitations of appropriations therefor, seventy-five percent of the eligible design and construction costs of such program for which such municipality is liable solely because of its ownership and/or operation of such site and which are not recovered from or reimbursed or paid by a responsible party or the federal government.

10. Nothing contained within this section shall be construed as impairing or in any manner affecting the right or jurisdiction of the attorney general to seek appropriate relief pursuant to his or her statutory or common law authority.

11. Moneys for actions taken or to be taken by the department, the department of health or any other state agency pursuant to this title shall be payable directly to such agencies from the drinking water response program pursuant to section ninety-seven-b of the state finance law.

12. a. Every person shall, upon the written request of the

commissioner or a designee, permit a duly designated officer or employee of the department at all reasonable times to have access to and to copy all books, papers, documents and records pertinent to an ongoing investigation of drinking water contamination identified in section 27-1203 of this title.

b. The commissioner may sign and issue subpoenas in the name of the department requiring the production of books, papers, documents and other records and may take testimony by depositions under oath of any person relating to the ongoing investigation of a drinking water contamination identified in this title. Such subpoenas and depositions shall be regulated by the state of New York's civil practice law and rules. The commissioner may invoke the powers of the supreme court of the state of New York to compel compliance with any such subpoena or any request to take such depositions.

c. When the department has substantial evidence that such drinking water contamination site is causing or substantially contributing to the contamination of drinking water, and subject to the applicable notice provisions set forth in paragraph d of this subdivision, any duly designated officer or employee of the department, or of any state agency, and any agent, consultant, contractor, or other person, including an employee, agent, consultant, or contractor of a responsible person acting at the direction of the department, so authorized in writing by the commissioner, may enter any drinking water contamination site and areas near such site and inspect and take samples of wastes, soil, air, surface water, and groundwater. In order to take such samples, the department or authorized person may utilize or cause to be utilized such sampling methods as it determines to be necessary including, but not limited to, soil borings and monitoring wells.

d. The department or authorized person shall not take any samples involving the substantial disturbance of the ground surface of any property unless it has made a reasonable effort to identify the owner of the property and to notify such owner of the intent to take such samples. If the owner can be identified, the department shall provide such owner with a minimum of ten days' written notice of the intent,

unless such owners and occupants consent to an earlier date, to take such samples, unless the commissioner makes a written determination that such ten day notice will not allow the department to protect the environment or public health, in which case two days' written notice shall be sufficient. Any inspection of the property and each such taking of samples shall take place at reasonable times and shall be commenced and completed with reasonable promptness. If any officer, employee, agent, consultant, contractor, or other person so authorized in writing by the commissioner obtains any samples prior to leaving the premises, he or she shall give to the owner or operator a receipt describing the sample obtained and, if requested, a portion of such sample equal in volume or weight to the portion retained. If any analysis is made of such samples, a copy of the results of such analysis shall be furnished promptly to the owner or operator. Upon the completion of all sampling activities, the department or authorized person shall remove, or cause to be removed, all equipment and well machinery and return the ground surface of the property to its condition prior to such sampling, unless the department or authorized person, and the owner of the property shall otherwise agree.

e. The expense of any such mitigation by the department or the department of health shall be paid by the drinking water response program, but may be recovered from any responsible person in any action or proceeding brought pursuant to the state finance law, this title, other state or federal statute, or common law if the person so authorized in writing is an employee, agent, consultant, or contractor of a responsible person acting at the direction of the department, then the expense of any such sampling and analysis shall be paid by the responsible person.

f. Any duly designated officer or employee of the department or any other state agency, and any agent, consultant, contractor, or other person acting at the direction of the department, authorized in writing by the commissioner, may enter any drinking water contamination site and areas near such site to undertake all reasonable and necessary mitigation and remediation for such site, provided: (a) the commissioner has sent a written notice to the owners of record or any known occupants

of such site or nearby areas of the intended entry and work at least ten days prior to such initial entry unless such owners and occupants consent to an earlier date; and (b) the department has substantial evidence that such drinking water contamination site is causing or substantially contributing to the contamination of drinking water. In the event the commissioner of health makes a written determination that such ten day notice will not be sufficient to protect public health, two days' written notice shall be sufficient.