§ 27-1431. Access to sites.

The department, by and through the commissioner, shall be authorized to:

1. Require that any person permit a duly designated officer or employee of the department or of a municipal corporation, or any agent, consultant, or contractor of the department or of a municipal corporation, or any other person, including an employee, agent, consultant, or contractor of an applicant acting at the direction of the department, so authorized in writing by the commissioner, to enter upon any property which has or may have been the site of the disposal or discharge of contaminants, and/or areas near such site, for the following purposes:

a. to inspect and take samples of such contaminants and/or environmental media, utilizing such sampling methods as may be necessary or appropriate, including without limitation soil borings and monitoring wells; provided, that no sampling methods involving the substantial disturbance of the ground surface of such property may be utilized until after a minimum of ten days' written notice thereof shall have been provided to the owner and operator and occupant of such property, if identifiable by reasonable efforts, unless the commissioner makes a written determination that such notice will not allow the protection of the public health or the environment, in which case two days' written notice shall be sufficient;

b. to implement the investigation and/or remediation of contamination and/or environmental media; provided that no such work may be undertaken until after a minimum of ten days' written notice thereof shall have been provided to the owner and operator and occupant of such property, if identifiable by reasonable efforts, unless the commissioner makes a written determination that such notice will not allow the protection of the public health or the environment, in which case two days' written notice shall be sufficient.

(i) If any designated officer or employee of the department or of a municipal corporation, or any agent, consultant, or contractor of the

department or of a municipal corporation, or any other person, including an employee, agent, consultant or contractor of a responsible person acting at the direction of the department obtains any samples prior to leaving the premises they shall give to the owner 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. Upon the completion of all sampling or subsequent remediation activities, the department 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 and the owner of the property shall agree otherwise.

(ii) the expense of any such sampling and analysis shall be paid by the department, but may be recovered from any responsible person in any action or proceeding brought pursuant to this title or common law.

c. to inspect for compliance with the site management plan approved by the department, including (i) inspection of the performance of maintenance, monitoring and operational activities required as part of the remedial program for the site, (ii) inspection for the purpose of ascertaining current uses of the site, and (iii) taking samples in accordance with paragraph (a) of this subdivision.

2. a. Require that any person furnish to the department, in a form and manner as prescribed by the department, information relating to the current and past contaminant generation, treatment, storage, disposal, and/or transportation activities of such person or any other person now or formerly under the control of such person; in the event such person cannot comply therewith, in whole or in part, such person shall furnish to the department information describing all efforts made by such person to comply therewith; any information so furnished to the department shall be considered a "written instrument" as defined in subdivision three of section 175.00 of the penal law;

b. Require that any person 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 relating to the

current and past contaminant generation, treatment, storage, disposal, and/or transportation activities of such person or any person now or formerly under the control of such person;

c. Require, by subpoena issued in the name of the department, the production of books, papers, documents, and other records, and the rendition of testimony by deposition under oath of any person relating to the current and past contaminant generation, treatment, storage, disposal, and/or transportation activities of such person or any person now or formerly under the control of such person; such subpoenas and depositions shall be regulated by the civil practice law and rules; the commissioner may invoke the powers of the supreme court of the state of New York or any other court of competent jurisdiction to compel compliance therewith.