§ 3-0301. General functions, powers and duties of the department and the commissioner.

1. It shall be the responsibility of the department, in accordance with such existing provisions and limitations as may be elsewhere set forth in law, by and through the commissioner to carry out the environmental policy of the state set forth in section 1-0101 of this chapter. In so doing, the commissioner shall have power to:

a. Coordinate and develop policies, planning and programs related to the environment of the state and regions thereof;

b. Promote and coordinate management of water, land, fish, wildlife and air resources to assure their protection, enchancement, provision, allocation, and balanced utilization consistent with the environmental policy of the state and take into account the cumulative impact upon all of such resources in making any determination in connection with any license, order, permit, certification or other similar action or promulgating any rule or regulation, standard or criterion;

bb. Prescribe the qualifications for operators of public sewage treatment plants.

c. Provide for the propagation, protection, and management of fish and other aquatic life and wildlife and the preservation of endangered species;

cc. Prescribe and certify the qualifications for operators of solid waste management facilities as defined in section 27-0701 of this chapter; provided, however, that the commissioner shall not require the certification of operators until the commissioner shall have identified or established programs of training within the state that satisfy such qualifications;

d. Provide for the care, custody, and control of the forest preserve;

e. Provide for the protection and management of marine and coastal

resources and of wetlands, estuaries and shorelines;

f. Foster and promote sound practices for the use of agricultural land, river valleys, open land, and other areas of unique value;

g. Encourage industrial, commercial, residential and community development which provides the best usage of land areas, maximizes environmental benefits and minimizes the effects of less desirable environmental conditions;

gg. Develop a plan to maximize the use of telecommuting to conserve energy otherwise used by the personnel of the department in commuting to their assigned workplace. Within one year of the effective date of this paragraph, the department shall submit a report to the governor and the legislature on the impact of such plan to include, but not be limited to, energy conservation, air quality, workforce acceptance, office costs and potential cost savings.

h. Assure the preservation and enhancement of natural beauty and man-made scenic qualities;

hh. Cooperate with the office of probation and correctional alternatives by identifying appropriate worksites where persons performing community service as part of a criminal disposition may be assigned to provide cleanup and other maintenance services in order to preserve and enhance the state's natural beauty and human-made scenic qualities. Such sites may include but are not limited to the state's shorelines, beaches, parks, roadways, historic sites and other natural or human-made resources.

i. Provide for prevention and abatement of all water, land and air pollution including, but not limited to, that related to hazardous substances, particulates, gases, dust, vapors, noise, radiation, odor, nutrients and heated liquids;

j. Promote control of pests and regulate the use, storage and disposal of pesticides and other chemicals which may be harmful to man, animals,

plant life, or natural resources;

k. Promote control of weeds and aquatic growth, develop methods of prevention and eradication, and regulate herbicides;

l. Provide and recommend methods for the recovery, recycling and reuse; or, where recycling and reuse are not possible, the disposal of solid wastes, including domestic and industrial refuse, junk cars, litter and debris consistent with sound health, scenic, environmental quality, and land use practices;

m. Prevent pollution through the regulation of the storage, handling and transport of solids, liquids and gases which may cause or contribute to pollution;

n. Promote restoration and reclamation of degraded or despoiled areas and natural resources;

o. Encourage recycling and reuse of products to conserve resources and reduce waste products;

p. Administer properties having unique natural beauty, wilderness character, or geological, ecological or historical significance dedicated by law to the state nature and historical preserve;

q. Formulate guides for measuring presently unquantified environmental values and relationships so they may be given appropriate consideration along with social, economic, and technical considerations in decision-making;

r. Encourage and undertake scientific investigation and research on the ecological process, pollution prevention and abatement, recycling and reuse of resources, and other areas essential to understanding and achievement of the environmental policy;

s. Assess new and changing technology and development patterns to identify long-range implications for the environment and encourage

alternatives which minimize adverse impact;

t. Monitor the environment to afford more effective and efficient control practices, to identify changes and conditions in ecological systems and to warn of emergency conditions;

u. Encourage activities consistent with the purposes of this chapter by advising and assisting local governments, institutions, industries, and individuals;

v. Undertake an extensive public information and education program to inform and involve other public and private organizations and groups and the general public in the commitment to the principles and practices of environmental conservation and develop programs for the teaching by others of such principles and practices;

w. Cooperate with the executive, legislative and planning authorities of the United States, neighboring states and their municipalities and the Dominion of Canada in furtherance of the policy of this state as set forth in section 1-0101;

x. Exercise and perform such other functions, powers and duties as shall have been or may be from time to time conveyed or imposed by law, including, but not limited to, all the functions, powers and duties assigned and transferred to the department from the Department of Health, Conservation Department, Department of Agriculture and Markets, and Office for Local Government in the Executive Department by chapter 140 of the laws of 1970.

y. To prevent and control air pollution emergencies, as defined in subdivision 1 of section 1-0303 hereof. In exercising such prevention and control the department and the commissioner may limit the consumption of fuels and use of vehicles, curtail or require the cessation of industrial processes and limit or require the cessation of incineration and open burning, and take any other action he may deem necessary to prevent and/or control air pollution emergencies. The department and commissioner shall adopt and implement by rule and

regulation a plan designed to prevent and control such air pollution emergencies.

z. Within amounts appropriated to the department, to contract, outside the city of New York, with federally-funded nonprofit organizations that are organized for the purpose of beautification of highways, parks and recreation areas and employ persons sixty years of age or older whose net annual income does not exceed one thousand dollars to carry out such activities. The contract shall name the organization, the amount and manner of payment for the service to be rendered, nature of such service, the rendering of a verified account of the disbursements and verified or certified vouchers therefor attached, a refund of any unused amount, and such other conditions upon the use thereof as may be deemed proper.

2. To further assist in carrying out the policy of this state as provided in section 1-0101 of the chapter the department, by and through the commissioner, shall be authorized to:

a. Adopt, amend or repeal environmental standards, criteria and those rules and regulations having the force and effect of standards and criteria to carry out the purposes and provisions of this act. Any such environmental standard, criterion, rule or regulation or change thereto shall become effective thirty days after being 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 one hundred two of the Executive Law. This provision shall not in any way restrict the commissioner in the exercise of any function, power or duty transferred to him or her and heretofore authorized to be exercised by any other department acting through its commissioner to promulgate, adopt, amend or repeal any standards, rules and regulations. No such environmental standards, criterion, rule or regulation or change thereto shall be proposed for approval unless a public hearing relating to the subject of such standard shall be held by the commissioner prior thereto not less than sixty days after date of notice therefor, any provision of law to the contrary notwithstanding. Notice shall be given by public advertisement of the date, time, place and purpose of such hearing.

aa. (1) A "construction emergency" is damage to or an imminent danger of failure, or the malfunction of buildings, structures or property caused by a sudden and unexpected occurrence which involves a pressing necessity for immediate repair, reconstruction or maintenance in order to permit the safe continuation of necessary public use or function, or to protect the property of the state of New York, or the life, health or safety of any person.

(2) Whenever the commissioner determines and declares that a construction emergency exists, the commissioner may have immediate work performed to protect life, limb, property, public health or safety, or essential services by utilizing the services of a contractor selected in accordance with procedures developed by the department and approved by the state comptroller.

(3) Such procedures shall provide for consideration of solicitation of sufficient competition to the extent practicable, from responsible contractors representative of the contracting community by inviting at least five contractors who are capable of performing such work; permitting said contractors to examine the site and submit bids for the required emergency restoration work at a time and place to be determined by the commissioner; and submission of a notice of emergency award for publication in the procurement opportunities newsletter as soon as practicable after the award.

(4) Such emergency work shall reasonably be expected to be completed within a period of thirty days and emergency contracts shall be let only for work necessary to remedy or alleviate a construction emergency.

(5) If the selected contractor is already under contract to the department such work may be undertaken as additional work on the existing contract, notwithstanding the existing scope of work.

(6) The commissioner shall promptly notify the office of the state comptroller, the office of the attorney general, and the office of the division of the budget, and shall provide an estimate of the cost and duration of the emergency work.

b. Enter into contracts with any person to do all things necessary or convenient to carry out the functions, powers and duties of the department.

bb. Develop and implement an "I Love New York Fishing" passbook program to encourage additional fishing in this state. The program shall be administered according to the provisions of subdivision five of section 11-1307 of this chapter.

c. Review and appraise programs and activities of state departments and agencies in light of the policy set forth in section 1-0101 of this chapter for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy and to make recommendations to such departments and agencies with respect thereto, including but not limited to, environmental guidelines for their use.

cc. Cooperate with the department of agriculture and markets, the environmental facilities corporation, and other state agencies and public authorities to establish methods to facilitate loans to eligible borrowers to prevent and control non-point source water pollution and to develop educational materials for potential borrowers, including, without limitation, members of the agricultural community, about the low-interest loans available through the water pollution control linked deposit program and to develop an application form to be provided to lenders for the linked deposit loan requests. The department may promulgate rules and regulations necessary and reasonable for the operation of the program.

d. Consult with and co-operate with:

(1) Officials of departments and agencies of the state having duties and responsibilities concerning the environment;

(2) Officials and representatives of any public benefit corporation in the state;

(3) Officials and representatives of the federal government, of other states and of interstate agencies on problems affecting the environment of this state;

(4) Persons, organizations and groups, public and private, utilizing, served by, interested in or concerned with the environment in the state;

(5) The appropriate committee or committees of the Legislature.

e. Appear and participate in proceedings before any federal regulatory agency involving or affecting the purposes of this department.

f. Undertake any studies, inquiries, surveys or analyses it may deem relevant through the personnel of the department or in co-operation with any public or private agencies, including educational, civic and research organizations, colleges, universities, institutes or foundations, for the accomplishment of the purposes of the department.

g. Enter and inspect any property or premises for the purpose of investigating either actual or suspected sources of pollution or contamination or for the purpose of ascertaining compliance or noncompliance with any law, rule or regulation which may be promulgated pursuant to this chapter. Any information relating to secret processes or methods of manufacture shall be kept confidential.

h. Conduct investigations and hold hearings and compel the attendance of witnesses and the production of accounts, books, documents, and nondocumentary evidence by the issuance of a subpoena.

i. Advise and cooperate with municipal, county, regional and other local agencies and officials within the state, to carry out the purposes of chapter 140 of the laws of 1970.

j. Act as the official agency of the state in all matters affecting the purposes of the department under any federal laws now or hereafter to be enacted, and as the official agency of a county, town, city, village or authority in connection with the grant or advance of any federal or other funds or credits to the state or through the state to its local governing bodies for the purposes of chapter 140 of the laws of 1970.

k. Report from time to time to the Governor and make an annual report to the Governor and the Legislature.

l. Formulate and execute contracts, keep accounts, record personnel

data, acquire real or personal property, including acquisition by condemnation, appropriation, gift grant, devise or bequest, adjust claims, compile statistics and engage in research opportunities; all according to the statutes or department orders and regulations in such cases made and provided.

m. Adopt such rules, regulations and procedures as may be necessary, convenient or desirable to effectuate the purposes of this chapter.

n. Study, monitor, control and regulate pollution from motor vehicle exhaust emissions.

o. When requested to do so by another state with which New York has reciprocally agreed to provide personnel and equipment, provide such personnel and equipment for use in suppression of forest fires upon lands within such other state.

p. Notwithstanding any other provision of this chapter, delegate to municipal health or environmental departments or agencies or other appropriate governmental entities including the state soil and water conservation committee and the soil and water conservation districts, any of which shall meet such qualifications relating to adequate authority, expertise, staff, funding and other matters as may be prescribed, such functions of review, approval of plans, issuance of permits, licenses, certificates or approvals required or authorized by this chapter as the commissioner may deem appropriate in order to expedite the review of matters within the jurisdiction of the department, to provide for better coordination among different levels of government or to enhance environmental protection, subject to such conditions as he may establish. The powers delegated pursuant to this part may be withdrawn by the commissioner, at any time, upon thirty days written notice to the department, agency or other governmental entity including the state soil and water conservation committee and the soil and water conservation districts holding such powers by virtue of this paragraph.

q. Require that a written instrument submitted pursuant to this

chapter or a rule or regulation adopted pursuant hereto contain a form notice to the effect that false statements made therein are punishable pursuant to section 210.45 of the penal law.

r. Notwithstanding the provisions of article six of the public officers law, deny access to inspection of records which identify locations of habitats of species designated endangered pursuant to section 11-0535 of this chapter, protected pursuant to section 9-1503 of this chapter or any other species or unique combination of species of flora or fauna where the destruction of such habitat or the removal of such species therefrom would impair their ability to survive provided, however, that the commissioner may, in his discretion permit access to such inspection to persons engaged in legitimate scientific and academic research.

s. Coordinate and conduct Arbor day ceremonies on the last Friday of April in cooperation with the department of education and the department of agriculture and markets.

t. Establish a program, in consultation with the conservation fund advisory council for the sale of limited edition prints of fish and wildlife paintings with the proceeds to be credited to the conservation fund established pursuant to section eighty-three of the state finance law.

u. Notwithstanding any other provisions of this chapter, establish a program to offer for sale to the public of items symbolic of contributions made to support department activities performed as steward of lands under its jurisdiction. The terms upon which such items will be available and the relevant donations for such items shall be set forth in regulations to be promulgated by the commissioner provided, however, that no such item shall be offered unless the amount of such donation exceeds the value of the item. All receipts of the department from such contributions shall be deposited in and separately accounted for in an account in the miscellaneous state special revenue fund, expenditures from which shall be limited to the activities of the department pursuant to this paragraph and activities performed as steward of lands under its

jurisdiction.

v. Except for the forest preserve which is under the care, custody and control of the department pursuant to paragraph d of subdivision one of this section and subdivision one of section 9-0105 of this chapter, administer and manage the real property under the jurisdiction of the department for the purpose of preserving, protecting and enhancing the natural resource value for which the property was acquired or to which it is dedicated, employing all appropriate management activities.

w. Shall prepare and submit to the federally appointed "Aquatic Nuisance Species Task Force" two comprehensive management plans, after notice and opportunity for public comment, for funding of New York state activities under the Federal Non-indigenous Aquatic Nuisance Prevention and Control Act of 1990, Public Law 101-646, by January 1, 1992. One such plan shall identify those areas or activities within the state, other than those related to public facilities, where technical and financial assistance is needed within the state to eliminate or reduce environmental, public health and safety risks and to mitigate the financial impact upon the state associated with non-indigenous aquatic species, particularly zebra mussels. The other plan shall be a "public facility management plan" which is limited solely to identifying those public facilities within the state for which technical and financial assistance is needed to reduce infestations of zebra mussels. Each plan shall identify the management practices and measures that will be undertaken to reduce infestations of aquatic nuisance species, especially zebra mussels, and include the following: (1) a description of the state and local programs for environmentally sound prevention and control of the target species; (2) a description of federal activities that may be needed for environmentally sound prevention and control of aquatic nuisance species and a description of the manner in which those activities should be coordinated with state and local government activities; and (3) a schedule for implementing the plan, including a schedule of annual objectives. In developing and implementing these management plans, the department shall, to the maximum extent practicable, involve local governments, regional entities and public and private organizations that have expertise in the control of aquatic

nuisance species. Copies of these plans shall also be submitted to the temporary president of the senate and the speaker of the assembly, and the department shall annually, on or before January first, submit to the temporary president of the senate and speaker of the assembly a report on the activities of the department under these plans.

x. Consistent with paragraph v of subdivision 1 of this section, offer for sale advertising or corporate sponsorship space in various departmental publications, including but not limited to "The Conservationist", the annual compilation and syllabus of laws, rules and regulations governing fish and wildlife as required by section 11-0323 of this chapter, and offer for sale informational and promotional material related to lands, facilities and resources under the jurisdiction of the department. Any proceeds realized from the sale of advertising or corporate sponsorships shall be deposited in a special revenue account to be selected by the department and the division of the budget except that proceeds from advertising or corporate sponsorship in "The Conservationist" shall be deposited in the environmental conservation special revenue fund, "The Conservationist" magazine account, and proceeds from advertising or corporate sponsorship in the annual compilation and syllabus of laws, rules and regulations governing fish and wildlife as required by section 11-0323 of this chapter shall be deposited in the conservation fund.

* y. The department, by contract or otherwise, is hereby authorized to engage in games, contests or other promotions or advertising schemes or plans, hereinafter referred to as "an event or events," which are intended to increase, improve, stabilize or otherwise assist in development of the subscriber base of "The Conservationist" in accordance with the following:

(1) An event may include sweepstakes and other similar marketing techniques intended to heighten public awareness, interest and participation in department programs including but not limited to purchasing of subscriptions, licenses, or camping permits.

(2) The department is authorized to offer the opportunity to receive gifts, prizes or gratuities, as determined by chance, without any consideration therefor.

(3) The department shall develop a statement, which shall be included

in any and all promotions of an event, which shall contain the following information:

(i) the minimum number of entry forms to be made available;

(ii) the minimum number of prizes that shall be included in the event;

(iii) the proportionate opportunity of winning prizes;

(iv) the minimum value of prizes to be made available;

(v) the rules pertaining to the event, which shall include the period of time and the geographic area to be covered by the event and which shall not be subject to the rulemaking procedures of the state administrative procedure act; and

(vi) such additional information as may be deemed in the best interests of the state as determined by the commissioner.

(4) The department is authorized to accept donations for the purposes of providing publicity, prizes, incentives or other inducements for participation in the event. Donations may be of goods and services, shall not exceed five thousand dollars in value, per donor per contest, and must be of a nature consistent with the purposes of the department, and in the best interests of the state as determined by the commissioner.

* NB Repealed August 1, 2027

z. Issue and amend guidance memoranda and similar documents of general applicability which are to be relied upon by department personnel for implementation of this chapter, and rules and regulations promulgated pursuant thereto, and for guidance to the general public in complying with the requirements of this chapter; provided, however, that (1) in no event shall any such document be issued by the department in violation of the state administrative procedure act where and to the extent that a duly promulgated rule or regulation would be required, and (2) no such document shall be implemented until thirty days after the full text, or a summary thereof, along with information on how the full text may be obtained, has been published in the environmental notice bulletin, as defined in section 70-0105 of this chapter. At a minimum, the full text of each such document shall be made available by the department on and after the date of such publication to the public upon request, and, in addition, at least one copy shall be made available in the department's main office and in each regional office for public inspection. The

department shall publish and invite public comment on a draft version of any such document, unless it determines that to do so would delay or otherwise impede compliance with the underlying statute or regulation, provided that, when a document is issued without making provisions for public comment, the department shall also publish its reason or reasons for deeming such provisions inappropriate. This paragraph shall not apply to (i) declaratory rulings issued pursuant to section two hundred four of the state administrative procedure act or (ii) documents which only concern the internal management of the agency and which do not have any effect on the rights of or procedures or practices available to the public. Each January, the department shall publish in the environmental notice bulletin an index of its existing guidance documents, and indicate how the full text thereof may be obtained; provided, however, that the secretary of state may exempt the department from compliance with this publication requirement upon a determination that the department has published on its website the full text of all guidance documents on which it currently relies. The secretary of state shall publish a notice of such determination identifying the website in the state register.

2-a. a. To further assist in carrying out the policy of this state as provided in section 1-0101 of this chapter, the department, by and through the commissioner shall:

(1) authorize and encourage the use of nature-based solutions as the preferred alternative, where appropriate, for stabilizing tidal shorelines in the state when promulgating and implementing rules and regulations relating thereto, specifically including, but not limited to, those promulgated and implemented for articles fifteen, twenty-five and thirty-four of this chapter. The department shall consult with the United States army corps of engineers to ensure the minimization of conflicts with federal law and regulation.

(2) continue developing integrated guidance for the management of tidal shoreline systems to provide a technical basis for the coordination of permit decisions required by any regulatory entity exercising authority over a shoreline management project. Such guidance shall:

(i) communicate to stakeholders and regulatory authorities that it is

the policy of the state that some shorelines shall remain natural unless stabilization is necessary, and when stabilization is deemed necessary, it shall support nature-based solutions as the preferred alternative for stabilizing tidal shorelines;

(ii) identify preferred shoreline management approaches for the shoreline and community types found in the state;

(iii) explain the risks and benefits of protection provided by various shoreline system elements associated with each management option; and

(iv) recommend procedures to achieve efficiency and effectiveness by the various regulatory entities exercising authority over a shoreline management project.

(3) give preference to a permit application for a shoreline management project based on nature-based solution design unless an alternative analysis containing a review of nature-based solutions that have been evaluated using the best available information shows that such approaches are not suitable. If this analysis shows that a nature-based solution approach is unsuitable or inconsistent with land-use regulations, the department shall require the applicant to incorporate, to the maximum extent possible, elements of a nature-based solution that are suitable for the project where appropriate.

b. (1) For the purposes of this subdivision, "nature-based solution" shall have the same meaning as defined in subdivision twenty-six of section 1-0303 of this chapter and shall specifically mean techniques applied within the tidal zone that incorporate natural, native living features.

(2) When considering a nature-based solution the department should prioritize techniques, including but not limited to those that:

(i) control or reduce shoreline erosion while maintaining benefits comparable to the natural shoreline including, but not limited to, allowing for natural sediment movement;

(ii) improve, restore, or maintain the connection between the upland and water habitats; and

(iii) incorporate habitat enhancement and natural elements, including but not limited to native re-vegetation or establishment of new vegetation consistent with a natural shoreline typical of the current site location either:

(A) under current conditions, or

(B) as adjusted for science-based state sea-level rise projections, utilizing the appropriate projection scenario at a time interval appropriate for the anticipated lifespan of the project but not less than twenty years after the anticipated project completion, pursuant to section 3-0319 of this title for such location.

3. The department shall not alter the boundaries of any of the nine administrative regions from the boundaries existing on January first, nineteen hundred seventy-seven without first holding public hearings in each region affected.

4. The commissioner shall cooperate with the commissioner of the state department of health, district attorneys and the department of law in providing assistance in the investigation and prosecution of violations of article twenty-seven of this chapter.

5. To facilitate the practice of forestry by electing to comment upon proposed local laws or ordinances that may restrict the practice of forestry.