

CHAPTER 664

An ACT to repeal and reenact chapter forty-three-B of the consolidated laws, to amend the public health law, and to repeal certain articles, titles, parts and sections of the conservation law, the public health law, the agriculture and markets law, the executive law, and chapter seven hundred one of the laws of nineteen hundred fifty-two, entitled "An act providing for joint action by the states of Delaware, New Jersey and New York and the commonwealth of Pennsylvania in developing, utilizing, controlling, and conserving the water resources of the Delaware river basin in order to assure an adequate water supply; authorizing the governor, for these purposes, to enter into a compact on behalf of the state of New York with the states of Delaware and New Jersey and the commonwealth of Pennsylvania and to apply on behalf of the state of New York to the congress of the United States for its consent thereto; creating the Delaware River basin water commission and specifying the powers and duties thereof, including the power to finance projects by the issuance of bonds; providing for the appointment of the state of New York members of the said commission; approving an integrated water project; requiring the commission to prepare and report plans and specifications for specific projects; and requiring certain prior approvals by the legislature of the compacting states," in relation to environmental conservation generally

Became a law May 31, 1972, with the approval of the Governor. Passed by a majority vote, three-fifths being present

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

CHAPTER 43-B OF THE CONSOLIDATED LAWS

ENVIRONMENTAL CONSERVATION LAW

- Article 1. General provisions (§ 1-0101 to 1-0303).
3. Department of environmental conservation; general functions, powers, duties and jurisdiction (§ 3-0101 to 3-0321).
6. State smart growth public infrastructure policy act (§ 6-0101 to 6-0111).
7. Council of environmental advisors (§ 7-0101 to 7-0109).
8. Environmental quality review (§ 8-0101 to 8-0117).
9. Lands and forests (§ 9-0101 to 9-2304).

11. Fish and wildlife (§ 11-0101 to 11-2503).
13. Marine and coastal resources (§ 13-0101 to 13-0705).
14. New York ocean and Great Lakes ecosystem conservation act
(§ 14-0101 to 14-0113).
15. Water resources (§ 15-0101 to 15-3305).
16. Flood control (§ 16-0101 to 16-0119).
17. Water pollution control (§ 17-0101 to 17-2105).
19. Air pollution control (§ 19-0101 to 19-1105).
21. Pollution control compacts (§ 21-0101 to 21-1707).
22. Mining of uranium (§ 22-1010 to 22-1070).
23. Mineral resources (§ 23-0101 to 23-2723).
24. Freshwater wetlands (§ 24-0101 to 24-1305).
25. Tidal Wetlands (§ 25-0101 to 25-0601).
27. Collection, treatment and disposal of refuse and other
solid waste (§ 27-0101 to 27-3321).
28. Pollution prevention (§ 28-0101 to 28-0113)
29. Low-level radioactive waste facilities
(§ 29-0101 to 29-0703).
33. Pesticides (§ 33-0101 to 33-1503).
34. Coastal erosion hazard areas (§ 34-0101 to 34-0113).
35. Detergents and other household cleansing products
(§ 35-0101 to 35-0109).
36. Participation in Flood Insurance Programs
(§ 36-0101 to 36-0115).
37. Substances Hazardous or Acutely Hazardous to Public
Health, safety or the Environment
(§ 37-0101 to 37-1101).
38. Chlorofluorocarbon compounds (§ 38-0101 to 38-0111).
39. Sewage system cleaners and additives used in restricted
geographical areas (§ 39-0101 to 39-0107).
40. Hazardous Substances Bulk Storage Act
(§ 40-0101 to 40-0123).
41. Powers and duties of the department applicable only to the
sixth park region (§ 41-0101 to 41-0107).
42. Historic Saratoga-Washington on the Hudson Partnership
(§ 42-0101 to 42-0117).
43. Lake George park commission (§ 43-0101 to 43-0125).

- 44. Hudson River Valley Greenway (§ 44-0101 to 44-0121).
- 45. State nature and historical preserve trust
(§ 45-0101 to 45-0117).
- 46. Albany Pine Bush preserve commission
(§ 46-0101 to 46-0115).
- 47. County and regional environmental management councils
(§ 47-0101 to 47-0117).
- 48. Environmental justice (§ 48-0101 to 48-0113).
- 49. Protection of natural and man-made beauty
(§ 49-0101 to 49-0505).
- 51. Implementation of Environmental Quality Bond Act of 1972
(§ 51-0101 to 51-1105).
- 52. Implementation of Environmental Quality Bond Act of 1986
(§ 52-0101 to 52-0911).
- 53. Tree conservation and urban forestry
(§ 53-0101 to 53-0307).
- 54. Environmental protection act (§ 54-0101 to 54-1523).
- 55. Sole source aquifer protection (§ 55-0101 to 55-0119).
- 56. Implementation of the clean water/clean air bond act of
1996 (§ 56-0101 to 56-0611).
- 57. Long Island Pine Barrens Maritime Reserve Act
(§ 57-0101 to 57-0213).
- 58. Implementation of the environmental bond act of 2022
"restore mother nature" (§ 58-0101 to 58-1301).
- 70. Uniform procedures (§ 70-0101 to 70-0121).
- 71. Enforcement (§ 71-0101 to 71-4412).
- 72. Environmental regulatory program fees
(§ 72-0101 to 72-1011).
- 73. New York state canal flood mitigation task force
(§ 73-0101 to 73-0107).
- 75. Climate change (§ 75-0101 to 75-0119).
- 76. Climate change adaption cost recovery program
(§ 76-0101 to 76-0105).

ARTICLE 1
GENERAL PROVISIONS

Title 1. Declaration of policy

3. Short title; general definitions

TITLE 1

DECLARATION OF POLICY

Section 1-0101. Declaration of policy.

§ 1-0101. Declaration of policy.

1. The quality of our environment is fundamental to our concern for the quality of life. It is hereby declared to be the policy of the State of New York to conserve, improve and protect its natural resources and environment and to prevent, abate and control water, land and air pollution, in order to enhance the health, safety and welfare of the people of the state and their overall economic and social well being.

2. It shall further be the policy of the state to improve and coordinate the environmental plans, functions, powers and programs of the state, in cooperation with the federal government, regions, local governments, other public and private organizations and the concerned individual, and to develop and manage the basic resources of water, land, and air to the end that the state may fulfill its responsibility as trustee of the environment for the present and future generations.

3. It shall further be the policy of the state to foster, promote, create and maintain conditions under which man and nature can thrive in harmony with each other, and achieve social, economic and technological progress for present and future generations by:

a. Assuring surroundings which are healthful and aesthetically pleasing;

b. Guaranteeing that the widest range of beneficial uses of the environment is attained without risk to health or safety, unnecessary degradation or other undesirable or unintended consequences;

c. Promoting patterns of development and technology which minimize adverse impact on the environment;

d. Preserving the unique qualities of special resources such as the Adirondack and Catskill forest preserves;

e. Providing that care is taken for the air, water and other resources that are shared with the other states of the United States and with Canada in the manner of a good neighbor.

TITLE 3

SHORT TITLE; GENERAL DEFINITIONS

Section 1-0301. Short title.

1-0303. General definitions.

§ 1-0301. Short title.

This chapter shall be known as the "Environmental Conservation Law," and may be cited as "ECL."

§ 1-0303. General definitions.

Whenever used in this chapter, unless a different meaning clearly appears from the context or unless a different meaning is stated in a definition applicable to only a portion of this chapter:

1. "Air pollution emergency" means a combination of circumstances which requires immediate action to reduce the quantity of contaminants in the atmosphere due to danger to public health and welfare, injury to agricultural crops and livestock, damage to and deterioration of property, hazards to air and ground transportation or impairment of environmental quality.

2. "Article," "title," "section" and "subdivision" shall mean such article, title, section or subdivision of this chapter.

4. "Commissioner" shall mean the state Commissioner of Environmental Conservation.

5. "Consolidated health district" shall mean a health district established under section 390 of the Public Health Law.

6. "Council" shall mean the Council of Environmental Advisers.

7. "County department of health" shall mean that division of the county government having jurisdiction over the public health of a county or part-county health district.

8. "County health commissioner" shall mean the executive officer of a county department of health.

9. "County health district" shall mean a health district comprising the entire county heretofore or hereafter established.

10. "County legislative body" shall mean the board of supervisors, or the elected county legislative body, if the county has one.

11. "Department" shall mean the state Department of Environmental Conservation.

12. "Health district" shall mean a county health district, part-county health district, city, town, village or consolidated health district having a separate board of health.

13. "Local board of health" shall mean the board of health of a county, part-county, city, village, town or consolidated health district.

14. "Local health officer" shall mean the health officer of a county, part-county, city, village, town or consolidated health district.

15. As used in sections 3-0109 through 3-0115, inclusive, and sections 3-0305 and 3-0307 of article 3; articles 9, 11, 13 and 15; titles 7, 9, 11 and 13 of article 21; article 23; title 3 of article 27; articles 43, 45 and 47; and titles 1 through 13 inclusive and title 33 of article 71 applicable to these provisions, "local public corporation" shall mean any "municipal corporation" or "district corporation" as defined in subdivisions two and three of section sixty-six of the general construction law.

16. As used in articles 17 and 19 of this chapter, "municipality" shall mean a city, village, town or consolidated health district.

17. "Part-county health district" shall mean all that part of a county outside of a city or cities having a population of fifty thousand or more heretofore or hereafter established as a health district.

18. "Person" shall mean any individual, public or private corporation, political subdivision, government agency, department or bureau of the state, municipality, industry, co-partnership, association, firm, trust, estate or any other legal entity whatsoever. Provided, however, that for purposes of sections 3-0109 through 3-0115 inclusive, and sections 3-0305 and 3-0307 of article 3; articles 9, 11, 13 and 15; titles 7, 9, 11 and 13 of article 21; article 23; articles 43, 45 and 47; sections 57-0121 and 57-0123 of article 57; and titles 1 through 13 inclusive and title 33 of article 71 applicable to these provisions, "person" means any individual, firm, co-partnership, association or corporation other than the state and a "public corporation".

19. "Pollution" shall mean the presence in the environment of conditions and or contaminants in quantities of characteristics which are or may be injurious to human, plant or animal life or to property or which unreasonably interfere with the comfortable enjoyment of life and property throughout such areas of the state as shall be affected thereby.

20. As used in sections 3-0109 through 3-0115 inclusive, and sections

3-0305 and 3-0307 of article 3; articles 9, 11, 13 and 15; titles 7, 9, 11 and 13 of article 21; article 23; title 3 of article 27; articles 43, 45 and 47; and titles 1 through 15 inclusive and title 33 of article 71 applicable to these provisions, "public corporation" shall mean "public corporation" as defined in subdivision 1 of section 3 of the General Corporation Law and includes all public authorities.

21. As used in sections 3-0109 through 3-0115 inclusive, and sections 3-0305 and 3-0307 of article 3; articles 9, 11, 13 and 15; titles 7, 9, 11 and 13 of article 21; article 23; title 3 of article 27; articles 43, 45 and 47; and titles 1 through 15 inclusive and title 33 of article 71 applicable to these provisions, "state public corporation" shall mean public benefit corporation to which the Governor appoints a majority of the members. A person who is a member of a public corporation by virtue of holding another state office shall be deemed to be selected as a member of the public benefit corporation in the manner in which he was selected for such other office.

22. "Infant" or "minor" shall mean any person who has not attained the age of eighteen years.

23. "Arbor day" shall mean the last Friday of April.

24. "Sole source aquifer" shall mean an aquifer system that the United States environmental protection agency, pursuant to Public Law 93-523 which is known as the federal Safe Drinking Water Act of 1974, has designated as the sole or principal drinking water source for an area and which, if contaminated, would create a significant hazard to public health.

25. "Telecommuting" shall mean the conservation of energy through the reduction of travel by employees of the department to and from their designated workplace through the use of telecommunication and computer technology in tasks including, but not limited to, information transfer and processing.

26. "Nature-based solution" shall mean a project that utilizes or

mimics nature or natural processes and functions and that may also offer environmental, economic, and social benefits, while increasing resilience. Nature-based solutions include both green and natural infrastructure.

ARTICLE 3

DEPARTMENT OF ENVIRONMENTAL CONSERVATION; GENERAL FUNCTIONS, POWERS, DUTIES AND JURISDICTION

Title 1. Department of environmental conservation

3. General functions, powers, duties and jurisdiction

TITLE 1

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Section 3-0101. Continuation of department.

3-0103. Commissioner of environmental conservation.

3-0105. Offices of department.

3-0107. Organization of department; officers and employees.

3-0109. Eligibility for certain offices.

3-0113. The New York State Conservationist.

3-0115. Establishment of forestry and wildlife management areas
by United States; consent of state.

3-0117. Activities of local governmental agencies.

3-0119. Laboratory tests.

§ 3-0101. Continuation of department.

The Department of Environmental Conservation, which was established by chapter 140 of the Laws of 1970, is hereby continued, and all the powers, functions, duties and obligations possessed by the department pursuant to such chapter immediately preceding the effective date of this chapter are hereby continued.

§ 3-0103. Commissioner of environmental conservation.

The head of the department shall be the Commissioner of Environmental Conservation, who shall be appointed by the Governor, by and with the advice and consent of the Senate, and hold office at the pleasure of the Governor by whom he was appointed and until his successor is appointed and has qualified.

*** § 3-0105. Offices of department.**

The principal office of the department shall be in the County of Albany.

* NB Effective prior to Dept. of Environmental Conservation moving to the city of Albany

*** § 3-0105. Offices of the department.**

The principal office of the department shall be in the city of Albany.

* NB Effective upon Dept. of Environmental Conservation moving to the city of Albany

§ 3-0107. Organization of department; officers and employees.

1. Notwithstanding any inconsistent provision of law the commissioner may, from time to time, create, abolish, transfer and consolidate divisions, bureaus, field offices and other units within the department, including those transferred to the department by chapter 140 of the laws of 1970, as he may determine necessary for the efficient operation of the department, subject to the approval of the Director of the Budget.

2. The commissioner may appoint such deputies, directors, assistants and other officers and employees as may be needed for the performance of his duties and may prescribe their powers and duties and fix their compensation within the amounts appropriated therefor, subject to the approval of the Director of the Budget.

§ 3-0109. Eligibility for certain offices.

No person shall be eligible for or shall continue to hold the office of commissioner, deputy commissioner, secretary to the department, if any there be, or head of a division who is engaged in the business of lumbering in any forest preserve county or who is engaged in any business in the prosecution of which hydraulic power is used or in which water is distributed or sold under any public franchise or who is an officer or holder of stocks or bonds of any corporation engaged in such business within the state.

§ 3-0113. The New York State Conservationist.

1. To the end that there shall be promoted a wider understanding of the problems affecting conservation of natural resources in this state, it is declared advisable to authorize the agents who issue hunting, fishing and trapping licenses to sell annual subscriptions to the official magazine of the department, "The New York State Conservationist."

2. Any entity which is authorized by section 11-0713 of this chapter to sell hunting, trapping and fishing licenses is hereby authorized, but not required, to sell annual subscriptions to the department's official magazine, "The New York State Conservationist." The fee to be charged for a subscription to such magazine shall be such fee as the commissioner may, after consultation with the division of the budget, deem necessary for the best interest of the state. Such fee shall be collected from each subscriber at the time of receiving application for subscription. All collected fees, minus a 5.5 percent commission, shall be remitted monthly, on a schedule to be determined by the department. All receipts of the department from subscriptions shall be deposited in an account in the miscellaneous special revenue fund-other. The comptroller is authorized and directed to permit interest earnings on any balances to accrue to the benefit of this account.

§ 3-0115. Establishment of forestry and wildlife management areas by United States; consent of state.

1. To implement and supplement federal statutes now in effect and to authorize the acquisition by the United States of America of upland area for conservation purposes, the consent of the State of New York is hereby granted to the United States of America:

a. To acquire, on or before July 1, 1940, by means of purchase, devise, gift or condemnation such upland areas in the State of New York and outside the statutory boundaries of the Adirondack and Catskill parks as are necessary and suitable for forestry and wildlife management areas; and

b. To forest or reforest such areas and to construct or erect upon such lands, such truck trails, bridges, ditches, fire lanes, water holes, service structures and similar improvements as are necessary for the protection and administration of these lands as forestry or wildlife management areas; and

c. To hold title to such upland areas herein described and heretofore acquired for the foregoing purposes, reserving, however, to the State of New York, full and complete jurisdiction and authority over all such areas not incompatible with the administration, maintenance, and protection thereof by the United States of America; provided, however, that the United States of America shall make no regulations governing such areas which shall be in conflict with the provisions of the Conservation Law, as amended or as may hereafter be amended, or those provisions of the Environmental Conservation Law of the State of New York which were derived from the Conservation Law.

2. Such lands as are under contract of purchase by the United States of America, or to acquire which condemnation proceedings have been commenced on or before July 1, 1940 shall be deemed acquired within the meaning of paragraph a of subdivision one of this section.

§ 3-0117. Activities of local governmental agencies.

1. Activities of local health boards, departments and officers and other local government agencies pertaining to functions, powers and duties which were transferred pursuant to chapter 140 of the Laws of 1970, from the Department and Commissioner of Health to the Department and Commissioner of Environmental Conservation shall be eligible for aid under the provisions of titles 1, 2, and 3 of article 6 of the Public Health Law to the same extent such activities were eligible for such aid if conducted immediately prior to the effective date of chapter 140 of the Laws of 1970. The Commissioner of Environmental Conservation shall exercise the same powers of approval and supervision with respect to such activities as were exercised by the Commissioner of Health immediately prior to the effective date of that chapter.

2. Counties and cities shall be eligible for aid for other environmental conservation activities pertaining to functions, powers and duties other than those which were so transferred pursuant to chapter 140 of the Laws of 1970. Such other activities shall be described under rules and regulations adopted pursuant to subdivision four of this section.

3. A county or city shall be eligible for aid whenever it shall appropriate or otherwise make funds available and expend monies for the purpose of defraying expenses incurred in undertaking environmental conservation activities under this section. The appropriations made or to be made by the legislature for the purpose of carrying out the provisions of this section shall be apportioned and made available by the director of the budget to the Commissioner of Environmental Conservation. The rate of aid shall be set annually by the Commissioner of Environmental Conservation, provided however, that except as otherwise provided in the public health law, the rate shall not exceed fifty percentum of the amount expended annually by a county or city. In the event that the amount appropriated by the legislature is insufficient to make full payment of all state aid to which eligible counties and cities would otherwise be entitled under this section, the amounts appropriated shall be apportioned in proportion to the amounts

to which such counties and cities would otherwise be entitled.

4. The Department of Environmental Conservation shall adopt rules and regulations to implement the provisions of this section, which shall include, but not be limited to the establishment of the following: information and reporting requirements; activity, facility, construction, equipment, service, administration and work eligibility requirements and standards; department inspection, examination and approval procedures; qualifications for persons engaged in environmental conservation activities; and minimum criteria for the composition of county and city government bodies that may be authorized to engage in activities for which aid may be sought.

§ 3-0119. Laboratory tests.

Any laboratory tests or sample analysis required pursuant to article seventeen, nineteen or twenty-seven of this chapter for which the commissioner of health issues certificates of approval pursuant to section five hundred two of the public health law shall be conducted by a laboratory which has been issued a certificate of approval.

TITLE 3

GENERAL FUNCTIONS, POWERS, DUTIES AND JURISDICTION

- Section 3-0301. General functions, powers and duties of the department and the commissioner.
- 3-0302. Review of state-owned lands.
- 3-0303. Statewide environmental plan.
- 3-0304. The department shall compile and maintain an inventory of educational resources for teaching the principles of environmental conservation in New York state.
- 3-0305. Acquirement of real property by purchase or appropriation.
- 3-0306. Registry of public agencies and private organizations; notice of department hearings.
- 3-0307. Acquisition of federal lands.

- 3-0309. Stand-by contracts.
- 3-0311. Municipal notification of environmental violations.
- 3-0311*2. State agency environmental audits.
- 3-0313. Adopt-a-beach stewardship program.
- 3-0315. Geographic information system.
- 3-0317. Cancer incidence and environmental facility maps project.
- 3-0319. Sea level rise projections.
- 3-0321. Gifts, donations, capital improvements.

§ 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, enhancement, 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.

§ 3-0302. Review of state-owned lands.

Within amounts appropriated therefor, by January first, nineteen hundred ninety-five, the commissioner, in consultation with the New York

state biodiversity research institute created pursuant to section two hundred thirty-five-a of the education law, shall conduct a review of lands currently in state-ownership and under the department's jurisdiction to identify lands and waters that harbor plants, animals, and ecological communities that are rare in New York state.

§ 3-0303. Statewide environmental plan.

1. The department shall formulate and from time to time revise a statewide environmental plan for the management and protection of the quality of the environment and the natural resources of the state, in furtherance of the legislative policy and purposes expressed in chapter 140 of the laws of 1970.

2. The department shall submit such plan to the Governor and to the Department of State on or before October first, nineteen hundred seventy-five, and thereafter shall submit periodic revisions of such plan to the governor and to the Department of State. The Department of State shall review such plan and such revisions and shall submit a report thereon together with such recommendations within sixty days as it may deem appropriate to the Governor. The governor shall approve, approve with modifications, or reject such plan within sixty days.

3. In formulating such plan and any revisions, the department shall:

a. Conduct one or more public hearings;

b. Consult with and cooperate with:

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

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

(3) Officials and representatives of local government in the state;

(4) Officials and representatives of science, industry, and education;

(5) Persons, organizations and groups, public or private, utilizing,

served by, interested in or concerned with the environment of the state;
and

c. Request and receive from any department, division, board, bureau, commission or other agency of the state or any political subdivision thereof or any public authority such assistance and data as may be necessary to enable the department to carry out its responsibilities under this section.

§ 3-0304. The department shall compile and maintain an inventory of educational resources for teaching the principles of environmental conservation in New York state.

Inventory of educational resources for teaching the principles of environmental conservation in New York state. 1. Legislative findings. The people of the state of New York, through the temporary state commission on youth education in environmental conservation, have expressed the need for resource information assistance if they are to improve their local programs in environmental education.

The legislature hereby affirms this need and declares that a regionally responsive system for identifying resources through a statewide inventory and for referring inquiries to appropriate sources must be developed if we are to maintain and improve the quality of our environment.

The department, in consultation with the department of education and the office of parks, recreation and historic preservation shall compile and maintain an inventory of education resources for teaching the principles of environmental conservation in New York state.

2. This information shall be used as the basis for a clearing house for materials pertaining to environmental conservation education which shall be available for public use. A revised and up-to-date inventory shall be available to the public and widely distributed on or before September 1, 1991. The clearinghouse shall maintain information on, but

not limited to, the following:

- a. Natural resources and facilities which can be used for educational purposes.
- b. Conservation and environmental organizations, both public and private.
- c. Resource personnel.
- d. Curriculum resources.
- e. A calendar of environmental education activities.

§ 3-0305. Acquirement of real property by purchase or appropriation.

1. The commissioner when moneys therefor have been appropriated by the legislature or are otherwise available, may acquire any real property which he deems necessary for any of the purposes or functions of the department, by purchase or as provided in the eminent domain procedure law. Title to such real property shall be taken in the name of and be vested in the people of the state of New York. No real property shall be so acquired by purchase unless the title thereto is approved by the attorney general. The terms "property" or "real property" as used in this section shall mean "real property" as defined by section one hundred three of the eminent domain procedure law.

2. Whenever real property is to be so acquired pursuant to the provisions of the eminent domain procedure law, by appropriation, the commissioner shall cause to be made an accurate acquisition map as so provided in said law.

3. On the approval of such map by the commissioner, the original tracing of map shall, pursuant to the eminent domain procedure law, be filed in the main office of the department.

4. If the commissioner shall determine, prior to the filing of a copy of such acquisition map in the office of the county clerk, that changes, alterations or modifications of such map as filed in the main office of the department should be made, he or she shall, subject to the provisions of article two of the eminent domain procedure law, if applicable, direct the preparation of an amended map. On the approval of such amended map by the commissioner, it shall be filed in the main office of the department in the same manner as the original map was filed and the amended map shall thereupon in all respects and for all purposes supersede the map previously filed.

5. If the commissioner shall determine prior to filing a copy of an acquisition map in the office of the county clerk, as provided in section four hundred two of the eminent domain procedure law, that such map should be withdrawn, he or she shall file a certificate of withdrawal in the offices of the department and of the department of law. Upon the filing of such certificate of withdrawal, the map to which it refers shall be cancelled and all rights thereunder shall cease and determine.

6. The commissioner shall deliver to the attorney general a copy of such acquisition map, whereupon it shall be the duty of the attorney general to advise and certify to the commissioner the names of the owners of the real property described in the said acquisition map, including the owners of any right, title or interest therein, pursuant to the requirements of section four hundred three of the eminent domain procedure law.

7. If, at or after the vesting of title to such property in the people of the state of New York in the manner provided for in the eminent domain procedure law, the commissioner shall deem it necessary to cause the removal of an owner or other occupant from such property, he may cause such owner or occupant to be removed therefrom by proceeding in accordance with section four hundred five of such law. The proceeding shall be brought in the name of the commissioner as agent of the state and the attorney general shall represent the petitioner in the proceedings. No execution shall issue for costs, if any, awarded

against the state or the commissioner, but they shall be part of the costs of the acquisition of the real property and be paid in like manner. Proceedings may be brought separately against one or more of the owners or occupants of any such property, or one proceeding may be brought against all or several of the owners or occupants of any or all such property within the territorial jurisdiction of the same court, justice or judge; judgment shall be given for immediate removal of persons defaulting in appearance or in answering, or withdrawing their answers, if any, without awaiting the trial or decision of issues raised by contestants, if any.

8. Upon making any agreement provided for in section three hundred four of the eminent domain procedure law, the commissioner shall deliver to the comptroller such agreement and a certificate stating the amount due such owner or owners thereunder on account of such appropriation of his or their property and the amount so fixed shall be paid out of the state treasury after audit by the comptroller from moneys appropriated for the acquisition of such real property, but not until there shall have been filed with the comptroller a certificate of the attorney general showing the person or persons claiming the amount so agreed upon to be legally entitled thereto.

9. Application for reimbursement as provided in section seven hundred two of the eminent domain procedure law, shall be made to the commissioner upon forms prescribed by him and shall be accompanied by such information and evidence as the commissioner may require. Upon approval of such application, the commissioner shall deliver a copy thereof to the comptroller together with a certificate stating the amount due thereof, and the amount so fixed shall be paid out of the state treasury after audit by the comptroller from moneys appropriated for the acquisition of property under this section.

10. The commissioner with the approval of the director of the budget, shall establish and may from time to time amend rules and regulations authorizing the payment of actual reasonable and necessary moving expenses of occupants of property acquired pursuant to this section; of actual direct losses of tangible personal property as a result of moving

or discontinuing a business or farm operation, but not exceeding an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the commissioner; and actual reasonable expenses in searching for a replacement business or farm, or in hardship cases for the advance payment of such expenses and losses. For the purposes of making payment of such expenses and losses only the term "business" means any lawful activity conducted primarily for assisting in the purchase, sale, resale, manufacture, processing or marketing of products, commodities, personal property or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted. Such rules and regulations may further define the terms used in this subdivision. In lieu of such actual reasonable and necessary moving expenses, any such displaced owner or tenant of residential property may elect to accept a moving expense allowance, plus a dislocation allowance, determined in accordance with a schedule prepared by the commissioner and made a part of such rules and regulations. In lieu of such actual reasonable and necessary moving expenses, any such displaced owner or tenant of commercial property who relocates or discontinues his business or farm operation may elect to accept a fixed relocation payment in an amount equal to the average annual net earnings of the business or farm operation, except that such payment shall be not less than two thousand five hundred dollars nor more than ten thousand dollars. In the case of a business, no such fixed relocation payment shall be made unless the commissioner finds and determines that the business cannot be relocated without a substantial loss of its existing patronage, and that the business is not part of a commercial enterprise having at least one other establishment, which is not being acquired by the state or the United States, which is engaged in the same or similar business. In the case of a business which is to be discontinued but for which the findings and determinations set forth above cannot be made, the commissioner may prepare an estimate of what the actual reasonable and necessary moving expenses, exclusive of any storage charges, would be if the business were to be relocated and enter into an agreed settlement with the owner of such business for an amount not to exceed such estimate in lieu of such actual reasonable and necessary moving

expenses. Application for payment under this subdivision shall be made to the commissioner upon forms prescribed by him and shall be accompanied by such information and evidence as the commissioner may require. Upon approval of such application, the commissioner shall deliver a copy thereof to the comptroller together with a certificate stating the amount due thereunder, and the amount so fixed shall be paid out of the state treasury after audit by the comptroller from moneys appropriated for the acquisition of property under this section. As used in this subdivision the term "commercial property" shall include property owned by an individual, family, partnership, corporation, association or a non-profit organization and includes a farm operation. As used in this subdivision the term "business" means any lawful activity, except a farm operation, conducted primarily for the purchase, sale, lease and rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property; for the sale of services to the public; or by a non-profit organization.

11. The commissioner pursuant to section three hundred five of the eminent domain procedure law, may make agreements on such terms, condition and consideration as he deems beneficial to the state with respect to any property heretofore or hereafter acquired, whereby such property may be used and occupied by the former owner, tenant or by any other party from a date specified in said agreement, until such time as the state requires and obtains actual physical possession. The agreements for the use and occupancy of such property may be managed, supervised and enforced (1) by the staff, forces and equipment of the department of environmental conservation; or (2) by the commissioner of environmental conservation contracting for the management, supervision and enforcement thereof with any person, firm or corporation; or (3) by a combination of such methods.

The use and occupancy of such property under the provisions of this section and the right of the state or its duly authorized agent to recover possession thereof shall not be subject to the emergency housing rent control law.

Expenses which are determined by the commissioner to have been incurred in connection with the use and occupancy of such property may be paid out of the state treasury after audit by the comptroller from moneys appropriated for the duly authorized project for which the property was acquired. However, such expenses incurred under a contract for management and supervision of such property may be paid out of the gross revenue therefrom. All moneys received by the commissioner for such use or occupancy shall be paid into the treasury of the state to the credit of the capital construction fund.

12. Authorization is hereby given to the commissioner to make supplemental relocation payments, separately computed and stated, to displaced owners and tenants of residential property acquired pursuant to this section who are entitled thereto, as determined by him. The commissioner with the approval of the director of the budget, may establish and from time to time amend rules and regulations providing for such supplemental relocation payments. Such rules and regulations may further define the terms used in this subdivision. In the case of property acquired pursuant to this section, which is improved by a dwelling actually owned and occupied by the displaced owner for not less than one hundred eighty days immediately prior to initiation of negotiations for the acquisition of such property, such payment to such owner shall not exceed fifteen thousand dollars. Such payment shall be the amount, if any, which, when added to the acquisition payment equals the average price, established by the commissioner on a class, group or individual basis, required to obtain a comparable replacement dwelling that is decent, safe and sanitary to accommodate the displaced owner, reasonably accessible to public services and places of employment and available on the private market, but in no event shall such payment exceed the difference between acquisition payment and the actual purchase price of the replacement dwelling. Such payment shall include an amount which will compensate such displaced owner for any increased interest costs which such person is required to pay for financing the acquisition of any such comparable replacement dwelling. Such amount shall be paid only if the dwelling acquired pursuant to this section was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than one hundred eighty days prior to the

initiation of negotiations for the acquisition of such dwelling. Such amount shall be equal to the excess in the aggregate interest and other debt service costs of that amount of the principal of the mortgage on the replacement dwelling which is equal to the unpaid balance of the mortgage on the acquired dwelling, over the remainder term of the mortgage on the acquired dwelling, reduced to discounted present value. The discount rate shall be the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the replacement dwelling is located. Any such mortgage interest differential payment shall, notwithstanding the provisions of section twenty-six-b of the general construction law, be in lieu of and in full satisfaction of the requirements of such section. Such payment shall include reasonable expenses incurred by such displaced owner for evidence of title, recording fees and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses. Such payment shall be made only to a displaced owner who purchases and occupies a replacement dwelling which is decent, safe and sanitary within one year subsequent to the date on which he is required to move from the dwelling acquired pursuant to this section or the date on which he receives from the state final payment of all costs of the acquired dwelling, whichever occurs later, except advance payment of such amount may be made in hardship cases. In the case of property acquired pursuant to this section from which an individual or family, not otherwise eligible to receive a payment pursuant to the above provisions of this subdivision, is displaced from any dwelling thereon which has been actually and lawfully occupied by such individual or family for not less than ninety days immediately prior to the initiation of negotiation, for the acquisition of such property, such payment to such individual or family shall not exceed four thousand dollars. Such payment shall be the amount which is necessary to enable such individual or family to lease or rent for a period not to exceed four years, a decent, safe, and sanitary dwelling of standards adequate to accommodate such individual or family in areas not generally less desirable in regard to public utilities and public and commercial facilities and reasonably accessible to his place of employment, but shall not exceed four thousand dollars, or to make the down payment, including reasonable expenses incurred by such individual or family for evidence of title,

recording fees, and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses, on the purchase of a decent, safe and sanitary dwelling of standards adequate to accommodate such individual or family in areas not generally less desirable in regard to public utilities and public and commercial facilities, but shall not exceed four thousand dollars, except if such amount exceeds two thousand dollars, such person must equally match any such amount in excess of two thousand dollars, in making the down payment. Such payments may be made in installments as determined by the commissioner. Application for payment under this subdivision shall be made to the commissioner upon forms prescribed by him and shall be accompanied by such information and evidence as the commissioner may require. Upon approval of such application, the commissioner shall deliver a copy thereof to the comptroller, together with a certificate stating the amount due thereunder, and the amount so fixed shall be paid out of the state treasury after audit by the comptroller from moneys appropriated for the acquisition of property under this section.

13. Any owner may present to the court of claims, pursuant to section five hundred three of the eminent domain procedure law, a claim for the value of such property appropriated and for legal damages, as provided by law for the filing of claims with the court of claims. Awards and judgments of the court of claims shall be paid in the same manner as awards and judgments of that court for the acquisition of lands generally and shall be paid out of the state treasury after audit by the comptroller from moneys appropriated for the acquisition of such real property.

14. Expenses incurred in the acquisition of the real property, including the cost of making surveys, and preparing maps of property to be acquired, serving notices, making appraisals and agreements and of searches ordered and examinations and readings of title made by the attorney general, and expenses incurred by the commissioner or attorney general in proceedings for removal of owners and occupants, shall be deemed to be part of the cost of the acquisition of such real property.

15. If the commissioner shall determine subsequent to the acquisition

of a temporary easement in any real property that the purposes for which such easement right was acquired have been accomplished and that the exercise of such easement is no longer necessary, the commissioner shall make a certificate that the exercise of such easement is no longer necessary and that such easement right is therefore terminated, released and extinguished. The commissioner shall cause such certificate to be filed in the main office of the department and upon such filing all rights acquired by the state in such real property shall cease and determine. The commissioner shall cause a certified copy of such certificate as so filed in the main office of the department to be mailed to the owner of the property affected, as certified by the attorney general, if the place of residence of such owner is known or can be ascertained by a reasonable effort and such commissioner shall cause a further certified copy of such certificate to be filed in the office of the recording officer of each county in which the property affected or any part thereof is situated. On the filing of such certified copy of such certificate with such recording officer, it shall be his duty to record the same in his office in the books used for recording deeds and to index the same against the name of the people of the state of New York as grantor.

16. The commissioner may, by official order filed in the department and subject to such limitations as he may prescribe, authorize the exercise of any of his powers or the performance of any of his duties under this section by such deputy commissioners as he may designate; and any act performed pursuant to such authorization shall be as valid and effectual as if performed by the commissioner pursuant to this section.

§ 3-0306. Registry of public agencies and private organizations; notice of department hearings.

1. The commissioner shall develop and maintain a registry of government agencies and officials and of private organizations of statewide, regional, county and local scope, with interests in the regulatory and other programs of the department for the purpose of providing written notice to such agencies and organizations of the time,

date, place, subject and nature of hearings on rules and regulations under consideration by the department, or on applications to the department for permits relating to the use, improvement, construction, change or any modification whatsoever of the air, land, or water resources within the state, or in relation to any other business before the department for which issuance of a public notice is required or is appropriate and desirable in accord with the interests of public participation in environmental planning and decision-making.

2. To aid in the compilation of the registry, the commissioner shall advertise its purposes no less than annually to governmental agencies and the public through news releases and other media available to the department, stating that interested agencies and organizations may apply to be listed in the registry by completing forms requiring such information as may be prescribed by the commissioner. Said registry shall be prepared by the department to be as comprehensive as possible and the entries contained therein shall not be limited to those obtained in response to advertisement by the department of the purposes of the registry.

3. The commissioner shall publish and distribute or cause to be published and distributed said registry, not less frequently than annually and in whole or in part as deemed appropriate and desirable by the commissioner, for the purpose of providing a directory to assist with communications between public agencies and private organizations in all manner of environmental affairs.

4. Notices, as described herein, shall, at the discretion of the commissioner, be published not less frequently than once every two weeks in a departmental publication which shall be mailed to registered agencies and organizations in the area to be affected by the subject of said notices and to other persons subscribing to such publication; provided that the commissioner may require the payment of a subscription fee not to exceed the reasonable costs of such publication; and provided further that the commissioner may in lieu of publishing any such notice mail a copy thereof to registered agencies or organizations. In setting such fee the commissioner shall take into account the purposes of this

section to provide broad public notice of department actions. Unless otherwise provided by statute or regulation, failure to provide notice as herein described shall in no way affect the ordinary proceedings of the department.

§ 3-0307. Acquisition of federal lands.

The State of New York may acquire from the United States of America by gift, lease or purchase or otherwise, and subject to such conditions as may be prescribed by the United States of America, lands suited for reforestation, game management, fish propagation, park purposes and/or any other activities permitted by sections 3-0109 through 3-0115 inclusive, and sections 3-0305 and 3-0307 of article 3; articles 9, 11, 13 and 15; titles 7, 9, 11 and 13 of article 21; article 23; title 3 of article 27; articles 43, 45 and 47; and titles 1 through 15 inclusive and title 33 of article 71 applicable to these provisions and may by written order of the commissioner filed in the office of the department, assign and transfer at anytime, wholly or in part, the direct jurisdiction and control of any such lands to one or more divisions of the department to be administered in connection with any of the various activities permitted by such provisions. Upon the assignment of such lands to a division and notwithstanding any other provision of law, such division may expend any funds appropriated for such activities in the development, maintenance and operation of lands so acquired.

§ 3-0309. Stand-by contracts.

1. Consistent with the commissioner's authority to undertake such activities pursuant to this chapter, the state public health law, the public authorities law and the state finance law, the commissioner may enter into stand-by contracts for the purpose of achieving timely and effective remedies in a cost-effective manner for:

a. services related to a release or a suspected release of a hazardous substance as defined in section 40-0105 of this chapter and regulations

promulgated thereunder;

b. other than for major physical construction associated with permanent remedial actions, the cleanup or return to its original state of any area where hazardous wastes were disposed, possessed, or dealt in unlawfully in violation of section 27-0914 of this chapter;

c. emergency response action to clean up spills or abate other public health or environmental hazards involving hazardous wastes; and

d. other than for major physical construction associated with permanent remedial actions, all services related to the investigation in support of, or to the development, implementation and oversight of the program for remediation of inactive hazardous waste disposal sites pursuant to article 27 of this chapter.

2. For the purposes of this section, a stand-by contract shall mean a contract which provides for services and goods to be rendered to the department, at prenegotiated rates or predetermined unit prices, with such services or goods to be supplied by the contractor only when and where directed to do so by the commissioner. All such contracts shall be subject to the approval of the state comptroller in accordance with section one hundred twelve of the state finance law; however, such approval shall not obligate to any particular contract any specific amount of funds, but shall obligate on an individual basis, as such contracts are utilized, the actual amount required to pay for work performed pursuant to such contracts except that a maximum dollar amount shall be placed on each such contract. Any necessary approvals of availability of funds for a particular project in accordance with any provision of the state finance law shall be made as soon as possible after any activity identified in subdivision one of this section is ordered by the commissioner, or undertaken by the contractor.

3. Nothing in this section shall be deemed to alter the authority conferred upon the commissioner to conduct the activities identified in subdivision one of this section, or to modify the requirements which are established by this chapter, the state public health law, the public

authorities law, or section ninety-seven-b of the state finance law and are applicable to such activities.

4. The department in cooperation with the state comptroller shall as soon as practicable and prior to the execution of stand-by contracts pursuant to this section develop and implement a stand-by contract management protocol system. Such system shall provide for but not be limited to:

a. guidelines for selecting contractors based upon section one hundred thirty-six-a of the state finance law, if applicable, and upon other factors which shall include but are not limited to past performance, reasonableness of prices charged for specific tasks, and overall qualifications of the contractor;

b. departmental bid or proposal analysis and negotiation documentation requirements;

c. contractor reporting and documentation requirements;

d. formal procedures for inspecting contractor work and reviewing payment requests;

e. maintenance of equipment inventory with location; and

f. requirements and controls for subcontractors.

5. The department shall submit to the director of the division of the budget, the temporary president and minority leader of the senate, the speaker and minority leader of the assembly, the chairman and ranking minority member of the senate finance committee and the chairman and ranking minority member of the assembly ways and means committee an evaluation and audit of the department's use of stand-by contracts pursuant to this section prepared by an entity independent of the department. Such entity may be the office of the state comptroller. Such evaluation and audit shall be submitted by September first, nineteen hundred ninety and by September first, every two years

thereafter.

*** § 3-0311. Municipal notification of environmental violations.**

Notwithstanding any other provision of law and except when any criminal investigation is pending, the commissioner shall notify the chief executive officer of the municipality together with the chief executive officer of the county where any violations of article 17, 19, 24, 25 or 27 of this chapter are found to exist within the boundaries of such municipalities including, but not limited to, any municipal landfill or municipal solid waste disposal or recovery facility within seventy-two hours of determining that sufficient evidence exists to commence an enforcement action.

* NB There are 2 § 3-0311's

*** § 3-0311. State agency environmental audits.**

1. Each state agency as defined in subdivision five of this section shall annually audit the environmental problems created by its operations or the operations of contractors it has hired and over whom it has exercised or is required to exercise direct oversight, acting in fulfillment of their contracts. Such audit shall identify the extent to which these operations are in violation of this chapter, or regulations adopted thereunder. Each such state agency shall submit a report to the department on or before April first of each year. The report shall:

a. describe:

(1) each identified violation, including the year each violation was first reported to the department;

(2) the progress made in remedying any identified violations, and in remedying the violations identified in the previous year's audit and the past problems previously identified in the department's report dated "January 1990" titled "Past Practices Assessment Report";

(3) disbursements to remedy individual violations or past problems made during the previous year and disbursements recommended to be made

or made during the current fiscal year; and

(4) the steps being taken to assure future compliance with state laws and regulations, including any new policies developed to address patterns of violations identified by the audit.

b. rank each violation and past problem based on the threat each poses to the public health or the environment, so that each is placed into one of the following classifications:

(1) presents an imminent substantial threat to the public health or the environment;

(2) presents a potential substantial threat to the public health or the environment;

(3) presents a discernible but not substantial threat to the public health or the environment; or

(4) no evidence of discernible threat to the public health or the environment.

c. include a remedial plan for the correction of all existing identified violations and uncorrected past environmental problems previously identified in the "Past Practices Assessment Report". Such remedial plan shall specify:

(1) the actions the agency intends to take to remedy each violation or problem;

(2) an estimate of the costs, if any, of bringing each violation or problem into compliance, and a total cost estimate for remedying all violations and uncorrected past problems; and

(3) a projected time schedule for remedying each violation or problem.

2. In addition to the audit prepared pursuant to subdivision one of this section, each state agency shall report to the department any violation of this chapter, or regulations adopted thereunder, that presents an imminent substantial, potential substantial, or discernible threat to the public health or the environment, which has been committed on agency property by the agency's lessees or other persons and of which the agency has become aware.

3. The department shall, before September first of each year, submit

an annual report to the governor, the director of the budget, the temporary president of the senate, the speaker of the assembly, the chairman of the senate environmental conservation committee, the chairman of the assembly environmental conservation committee, the chairman of the senate finance committee, the chairman of the assembly ways and means committee, and the chairman of the assembly committee on oversight, analysis and investigation.

The report shall include:

a. a summary of the major categories of violations or uncorrected past problems previously identified in the "Past Practices Assessment Report" dated January, nineteen hundred ninety;

b. a description of each violation or uncorrected past environmental problem, including an indication of the year each violation was first reported to the department and an identification of the rank as determined by each agency, pursuant to paragraph (b) of subdivision one of this section, with any reordering of rankings as determined by the department;

c. a description of the progress made in remedying any reported violations or past environmental problems, and in remedying the violations identified in the previous year's audit, and a listing of disbursements to remedy violations or past problems made during the previous year and disbursements recommended to be made or made during the current fiscal year;

d. a description of enforcement efforts which the department has completed to remedy violations noted in the current or previous year's audit report, including whether the department has taken administrative, civil, or criminal enforcement actions;

e. if the department and the agency have entered into a consent decree regarding the violation or problem, the date the violation or problem was first identified by the department; the date the consent decree was signed; the date by which, according to the consent decree, the

violation or problem is to be remedied; and if the remedy date has been extended, the date such extension was granted and the revised remedy date;

f. a description of each agency's remedial plan for the correction of all existing identified violations and uncorrected past environmental problems, specifying:

(1) the actions the agency intends to take to remedy each violation or past problem;

(2) the agency's estimate of the costs, if any, of bringing each violation or problem into compliance, and a total estimate for each agency of the costs of remedying all violations and uncorrected past problems; and

(3) the agency's projected time schedule for remedying each violation or past problem;

g. a determination by the department of the adequacy of each agency's proposed remedial plan:

(1) for violations and past problems that pose an imminent substantial threat to the public health or the environment;

(2) for violations and past problems that pose a potential substantial threat to the public health or the environment; or

(3) that the department has been required to review pursuant to subdivision four of this section prior to the disbursement of any appropriation for such purpose.

If the department determines that the agency's plan is inadequate, the department shall provide a statement explaining this determination. No determination of adequacy need be included in the report for remedial plans that are the subject of a pending enforcement action or permit proceeding. Remedial plans that are included as part of a completed enforcement action or permit proceeding shall be deemed to have been determined to be adequate; and

h. a listing of violations committed by lessees or other persons reported by each state agency pursuant to subdivision two of this section, and the actions the department has taken to cause each such

violation to be remedied.

i. The department may, at its discretion, include any of the information listed in paragraphs (b) through (h) of this subdivision or any additional appropriate material within appendices to the report.

4. Within its requested budget, each state agency shall set forth in the aggregate all proposed appropriations for the purposes of remedying its violations of the environmental conservation law or regulations adopted thereunder. The amount requested to remedy each functional category of violation as well as project specific information for each functional category of violation shall also be set forth. A priority criterion to be considered in determining such proposed appropriations shall be the ranking of such violations as determined by the agency pursuant to paragraph (b) of subdivision one of this section, with any reordering of rankings as determined by the department. Amounts appropriated shall be disbursed for remediation of the violation or environmental problem only upon review and determination by the department of the adequacy of the remedial plan for correction of any such violation or environmental problem.

5. As used in this section, the term "state agency" or "agency" shall mean:

a. each state department;

b. Division of Military and Naval Affairs, Division of State Police, Division of Housing and Community Renewal, Division for Youth, Office of General Services, Office of Parks, Recreation and Historic Preservation, and State University of New York;

c. any other division, board, commission, office, or bureau of the state which is required to obtain a permit or approval from the department or which undertakes an activity for which it must register with the department;

d. Albany Port District Commission, Battery Park City Authority,

Capital District Transportation Authority, Central New York Regional Transportation Authority, Dormitory Authority of the State of New York, Facilities Development Corporation, Metropolitan Transportation Authority (including the operations of all of its operating units), New York State Energy Research and Development Authority, New York State Environmental Facilities Corporation, New York State Olympic Regional Development Authority, New York State Thruway Authority, New York State Urban Development Corporation, Niagara Frontier Transportation Authority, Ogdensburg Bridge and Port Authority, Port Authority of New York and New Jersey, Port of Oswego Authority, Power Authority of the State of New York, Rochester-Genesee Regional Transportation Authority; and

e. any other major agency, public authority or public benefit corporation which performs a state function and which is identified by the commissioner for the purpose of complying with this section.

6. On or before February fifteenth, nineteen hundred ninety-two and thereafter as may be necessary, the department shall develop guidelines for the preparation of environmental audits by state agencies and for the ranking of violations and problems based on the threat each poses to the public health or the environment, pursuant to paragraph (b) of subdivision one of this section.

* NB There are 2 § 3-0311's

§ 3-0313. Adopt-a-beach stewardship program.

1. The commissioner may enter into stewardship agreements with any person or persons for the purposes of preserving, maintaining, or enhancing a state-owned beach, shoreline area or portion thereof in accordance with the policies of this chapter.

2. The stewardship agreement shall provide that the beach or shoreline area be preserved and maintained in its natural state or managed to enhance or restore the natural values it provides, consistent with the provisions of this chapter. Activities may include: remediating

vandalism and storm damage, picking up litter and trash, establishing or maintaining access or nature trails, providing interpretive services for school groups and other citizens, and otherwise providing positive benefits to the beach or shoreline area.

3. Stewardship agreement with any person or persons may provide for assistance of personnel, facilities and supplies of the department for the purposes of supporting appropriate activities under such stewardship agreement, in accordance with the provisions of this chapter.

4. The department shall establish procedures by which a person or persons may apply for a stewardship agreement, and shall be responsible for working with such persons to identify specific sections of a state-owned beach or shoreline area and specific activities deemed appropriate for such stewardship agreement. The department may consider factors such as safety, environmental sensitivity, need, cost and other factors deemed relevant in determining which beach or shoreline areas or activities may be eligible or appropriate for a stewardship agreement.

5. The department shall provide recognition of the stewardship activities by appropriate signage on or near the adopted beach or shoreline area, and may provide recognition by such other measures as it may determine to be appropriate, including but not limited to press releases, certificates, and newsletters.

6. The stewardship agreement may be modified in scope or altered in any other manner at the sole discretion of the department, not inconsistent with the provisions of this section. The person or persons shall have the option of renewing the agreement subject to the approval of the department and the continuation by the department of the adopt-a-beach stewardship program. The department may immediately remove the signs and it may terminate the agreement upon thirty days notice, if in its sole judgment it finds and determines that the person or persons are not meeting the terms and conditions of the agreement.

7. Notwithstanding any inconsistent provision of law, the state and its employees shall not be liable for damages suffered by any person

resulting from the actions or activities of such volunteers.

§ 3-0315. Geographic information system.

1. The department in conjunction with the commissioner of health shall create and maintain a geographic information system, and associated data storage and analytical systems for purposes of collecting, streamlining, and visualizing integrated data, permits, and relevant sites about drinking water quality including, but not limited to, incorporating supply well and monitoring well data, emerging contaminant data, water quality monitoring data, pertinent data from remediation and landfill sites, permitted discharge locations and other potential contamination risks to water supplies. Such system shall also incorporate information from the source water assessment program collected by the department of health, data from annual water supply statements prepared pursuant to section eleven hundred fifty-one of the public health law, information from the database pursuant to title fourteen of article twenty-seven of this chapter, and any other existing data regarding soil and groundwater contamination currently gathered by the department, as well as data on contamination that is readily available from the United States geological survey and other sources determined appropriate by the department. In addition to facilitating interagency coordination and predictive analysis to protect water quality, such system shall provide state agency information to the public through a website, within reasonable limitations to ensure confidentiality and security.

2. The department shall make reasonable efforts to include additional data, including data from well logs currently required to be filed with the department pursuant to section 15-1525 of this chapter.

3. Parties required to submit data pursuant to any reporting requirements set forth in this section shall, upon request of the department, submit such data in an electronic format acceptable to the department.

*** § 3-0317. Cancer incidence and environmental facility maps project.**

1. For purposes of this section, "environmental facility" shall mean a facility or site which is:

- (a) permitted as an industrial or municipal facility pursuant to titles 7 or 8 of article 17 of this chapter;
- (b) registered pursuant to title 10 of article 17 of this chapter;
- (c) permitted pursuant to article 19 of this chapter;
- (d) permitted or registered pursuant to title 7 or 9 of article 27 of this chapter;
- (e) required to file an annual report pursuant to subdivision 6 of section 27-0907 of this chapter;
- (f) regulated pursuant to title 13 or 14 of article 27 of this chapter;
- (g) regulated as a vehicle dismantler pursuant to title 23 of article 27 of this chapter;
- (h) permitted pursuant to article 29 of this chapter;
- (i) a holder of a commercial permit pursuant to section 33-0901 of this chapter;
- (j) registered pursuant to article 40 of this chapter;
- (k) the subject of an environmental restoration project pursuant to title 5 of article 56 of this chapter;
- (l) subject to corrective action pursuant to section 71-2727 of this chapter;
- (m) participating in the department's voluntary cleanup program; or
- (n) licensed pursuant to article 12 of the navigation law as a major oil storage facility.

2. The department shall, pursuant to established security protocols, provide to the department of health the GPS coordinates, category of license or permit, facility identification number, and address on current environmental facilities that are necessary for the department of health to develop and maintain cancer incidence and environmental facility maps required pursuant to section twenty-four hundred one-b of the public health law, and shall provide any technical assistance necessary for the development of such maps. The department, in consultation with the department of health, shall update such data not

less than once every five years.

3. The department shall work with the office of homeland security to establish security protocols regarding the disclosure of data on current environmental facilities.

* NB Repealed May 1, 2028

§ 3-0319. Sea level rise projections.

The department shall, no later than January first, two thousand sixteen, adopt regulations establishing science-based state sea level rise projections. In adopting such regulations, the department shall consider information including, but not limited to, reports of the Intergovernmental Panel on Climate Change, the National Oceanic Atmospheric Administration Climate Assessment, the Sea Level Rise Task Force report created pursuant to chapter six hundred thirteen of the laws of two thousand seven, projections prepared by the New York City Panel on Climate Change and any other relevant regional, state and local reports. The department shall update such regulations no less than every five years.

§ 3-0321. Gifts, donations, capital improvements.

1. Notwithstanding the provisions of the state finance law, or any other state law to the contrary, and subject to approval of the director of the budget, the commissioner is authorized to accept an unconditional grant, gift, devise or bequest, either absolutely or in trust, from persons and entities for the maintenance of any educational or recreational facilities or for programs that promote the use or stewardship of state owned lands under the department's jurisdiction or management; establish a special fund or funds consisting of monies so acquired and administer such fund or funds; and expend such monies.

2. Notwithstanding the provisions of the state finance law, or any other state law to the contrary, the commissioner is authorized to:

(a) receive, hold and administer personal property and any income thereof, acquired by grant, unconditional gift, devise or bequest, either absolutely or in trust, for the maintenance of any educational or recreational facilities or for programs that promote the use or stewardship of state owned lands under the department's jurisdiction or management; establish a special fund or funds consisting of monies so acquired and administer such fund or funds; and expend such monies; and

(b) seek investment from private philanthropic interest or not-for-profit corporations for capital improvements at state owned facilities under the department's jurisdiction or management.

3. For purposes of this section, educational or recreational facilities or programs that promote the use or stewardship of state-owned lands under the department's jurisdiction or management shall include, but not be limited to, campgrounds, fish hatcheries, historic areas and facilities, kiosks, signage, programs for maintenance and development of roads and trails, and programs to improve access for persons with disabilities.

4. The commissioner shall not accept any grant, gift, devise or bequest from or enter into any contract or agreement authorized pursuant to subdivisions one, two, and, three of this section with persons or entities:

- (a) named in a pending lawsuit by or against the department;
- (b) under investigation by the department;
- (c) with a permit or license application pending before the department or currently holding a department-issued permit or license, except for permits or licenses that are ministerial in nature, such as sporting licenses, use of state land permits, or general permits;
- (d) engaged in settlement negotiations with the department regarding any civil, criminal or administrative matter; or
- (e) subject to a consent order issued by the department.

ARTICLE 6

STATE SMART GROWTH PUBLIC INFRASTRUCTURE POLICY ACT

Section 6-0101. Short title.

6-0103. Definitions.

6-0105. State smart growth public infrastructure policy.

6-0107. State smart growth public infrastructure criteria.

6-0109. Smart growth advisory committees.

6-0111. Private right of action.

§ 6-0101. Short title.

This article shall be known and may be cited as the "state smart growth public infrastructure policy act".

§ 6-0103. Definitions.

As used in this article:

1. "Criteria" shall mean the state smart growth public infrastructure criteria provided in section 6-0107 of this article.

2. "State infrastructure agency" shall mean the department, the department of transportation, the department of education, the department of health, the department of state, the New York state environmental facilities corporation, the New York state housing finance agency, the housing trust fund corporation, the dormitory authority, the thruway authority, the port authority of New York and New Jersey, the empire state development corporation, the New York state urban development corporation and all other New York authorities. Any subsidiary of, or corporation with the same members or directors as, a public benefit corporation identified in this subdivision shall also be deemed to be within the definition of state infrastructure agency under this article.

3. "Municipal centers" shall mean areas of concentrated and mixed land uses that serve as centers for various activities, including, but not limited to, central business districts, main streets, downtown areas, brownfield opportunity areas, downtown areas of local waterfront

revitalization program areas, transit-oriented development, environmental justice areas, and hardship areas. Municipal centers shall also include: areas adjacent to municipal centers, as defined in this subdivision, which have clearly defined borders, are designated for concentrated development in the future in a municipal or regional comprehensive plan, and exhibit strong land use, transportation, infrastructure and economic connections to a municipal center; and areas designated in a municipal or comprehensive plan, and appropriately zoned in a municipal zoning ordinance, as a future municipal center.

§ 6-0105. State smart growth public infrastructure policy.

It is the purpose of this article to augment the state's environmental policy by declaring a fiscally prudent state policy of maximizing the social, economic and environmental benefits from public infrastructure development through minimizing unnecessary costs of sprawl development including environmental degradation, disinvestment in urban and suburban communities and loss of open space induced by sprawl facilitated by the funding or development of new or expanded transportation, sewer and waste water treatment, water, education, housing and other publicly supported infrastructure inconsistent with smart growth public infrastructure criteria.

§ 6-0107. State smart growth public infrastructure criteria.

1. In addition to meeting other criteria and requirements of law governing approval, development, financing and state aid for the construction of new or expanded public infrastructure or the reconstruction thereof, no state infrastructure agency shall approve, undertake, support or finance a public infrastructure project, including providing grants, awards, loans or assistance programs, unless, to the extent practicable, it is consistent with the relevant criteria specified in subdivision two of this section.

2. The following are the state smart growth public infrastructure

criteria:

- a. to advance projects for the use, maintenance or improvement of existing infrastructure;
- b. to advance projects located in municipal centers;
- c. To advance projects in developed areas or areas designated for concentrated infill development in a municipally approved comprehensive land use plan, local waterfront revitalization plan and/or brownfield opportunity area plan;
- d. to protect, preserve and enhance the state's resources, including agricultural land, forests, surface and groundwater, air quality, recreation and open space, scenic areas, and significant historic and archeological resources;
- e. to foster mixed land uses and compact development, downtown revitalization, brownfield redevelopment, the enhancement of beauty in public spaces, the diversity and affordability of housing in proximity to places of employment, recreation and commercial development and the integration of all income and age groups;
- f. to provide mobility through transportation choices including improved public transportation and reduced automobile dependency;
- g. to coordinate between state and local government and intermunicipal and regional planning;
- h. to participate in community based planning and collaboration;
- i. to ensure predictability in building and land use codes; and
- j. to promote sustainability by strengthening existing and creating new communities which reduce greenhouse gas emissions and do not compromise the needs of future generations, by among other means encouraging broad based public involvement in developing and

implementing a community plan and ensuring the governance structure is adequate to sustain its implementation.

k. to mitigate future physical climate risk due to sea level rise, and/or storm surges and/or flooding, based on available data predicting the likelihood of future extreme weather events, including hazard risk analysis data if applicable.

3. Before making any commitment, including entering into an agreement or incurring any indebtedness for the purpose of acquiring, constructing, or financing any project covered by the provisions of this article, the chief executive officer of a state infrastructure agency shall attest in a written smart growth impact statement that the project, to the extent practicable, meets the relevant criteria set forth in subdivision two of this section, unless in any respect the project does not meet such criteria or compliance is considered to be impracticable, which shall be detailed in a statement of justification.

4. Nothing in this section shall contravene any federal law governing the expenditure of disbursement of federal infrastructure funding administered by the state.

§ 6-0109. Smart growth advisory committees.

The chief executive officer of each state infrastructure agency shall create a smart growth advisory committee to advise the agency regarding the agencies' policies, programs and projects with regard to their compliance with the state smart growth public infrastructure criteria. Such committees shall consist of appropriate agency personnel designated by the chief executive officer to conduct the evaluation required by section 6-0107 of this article. Such committees shall solicit input from and consult with various representatives of affected communities and organizations within those communities, and shall give consideration to the local and environmental interests affected by the activities of the agency or projects planned, approved or financed through such agency.

§ 6-0111. Private right of action.

Nothing contained in this article or in the administration or application hereof shall be construed to create any private right of action on the part of any person, firm or corporation against the state of New York or any state infrastructure agency as defined in subdivision two of section 6-0103 of this article.

ARTICLE 7

COUNCIL OF ENVIRONMENTAL ADVISERS

Section 7-0101. Council of environmental advisers; creation; membership; qualifications.

7-0103. Terms of office; vacancies.

7-0105. Personnel.

7-0107. General functions, powers and duties.

7-0109. Compensation.

§ 7-0101. Council of environmental advisors; creation; membership; qualifications.

There is hereby continued in the Executive Department a council to be known as the Council of Environmental Advisers, to provide special counsel to the Governor on environmental policy matters affecting the state. The council shall consist of seven members who shall be private citizens, representative of a broad range of interests and disciplines related to the quality of our environment and responsive to the full range of needs and concerns of our present and future generations. The Governor shall appoint the members by and with the advice and consent of the Senate and designate one from among the members to serve as chairman of the council.

§ 7-0103. Terms of office; vacancies.

1. The members of the council shall hold office at the pleasure of the Governor.

2. Vacancies shall be filled by appointment by the Governor, by and with the advice and consent of the Senate.

§ 7-0105. Personnel.

1. The council shall appoint an executive director and shall assign to such director such powers, functions and duties as it shall deem appropriate to fulfill the purposes of this article.

2. The council shall have the power to employ and compensate, within appropriations available therefor, such other personnel as it shall determine necessary to carry out its duties under this article.

§ 7-0107. General functions, powers and duties.

1. In providing counsel to the Governor on environmental policy matters, the council shall:

a. Advise the Governor on comprehensive environmental management policy for the state.

b. At the request of the Governor, provide an overview in both the public and private sector on matters affecting the environment, giving its judgment on specific matters referred to it.

c. Develop or cause to be developed guidelines for weighing the complex interrelationships between environmental quality, economic development, and the growing population associated with economic growth.

d. Study and from time to time report to the Governor on environmental conditions and trends in the state.

e. Recommend state environmental policies, including legislation for implementation thereof, to improve the functioning of the state and the environment of the state.

2. To assist in carrying out the aforementioned functions as provided in this section, the council may:

a. Request and shall receive from any court, department, division, board, bureau, commission or agency of the state or any political subdivision thereof, such assistance as will enable it properly to carry out its powers and duties under this section.

b. Make or recommend such special environmental studies as it deems appropriate or desirable.

c. Hold public and private hearings for specified purposes, take testimony, subpoena witnesses, and require production of books, records, and papers.

d. Report its findings to the Governor.

§ 7-0109. Compensation.

The members of the council shall receive no compensation for their services but shall be allowed their actual and necessary expenses incurred in the performance of their duties.

ARTICLE 8

ENVIRONMENTAL QUALITY REVIEW

Section 8-0101. Purpose.

8-0103. Legislative findings and declaration.

8-0105. Definitions.

8-0107. Agency implementation.

8-0109. Preparation of environmental impact statement.

8-0111. Coordination of reporting; limitations; lead agency.

8-0113. Rules and regulations.

8-0115. Severability.

8-0117. Phased implementation.

§ 8-0101. Purpose.

It is the purpose of this act to declare a state policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and enhance human and community resources; and to enrich the understanding of the ecological systems, natural, human and community resources important to the people of the state.

§ 8-0103. Legislative findings and declaration.

The legislature finds and declares that:

1. The maintenance of a quality environment for the people of this state that at all times is healthful and pleasing to the senses and intellect of man now and in the future is a matter of statewide concern.

2. Every citizen has a responsibility to contribute to the preservation and enhancement of the quality of the environment.

3. There is a need to understand the relationship between the maintenance of high-quality ecological systems and the general welfare of the people of the state, including their enjoyment of the natural resources of the state.

4. Enhancement of human and community resources depends on a quality physical environment.

5. The capacity of the environment is limited, and it is the intent of the legislature that the government of the state take immediate steps to identify any critical thresholds for the health and safety of the people

of the state and take all coordinated actions necessary to prevent such thresholds from being reached.

6. It is the intent of the legislature that to the fullest extent possible the policies, statutes, regulations, and ordinances of the state and its political subdivisions should be interpreted and administered in accordance with the policies set forth in this article. However, the provisions of this article do not change the jurisdiction between or among state agencies and public corporations.

7. It is the intent of the legislature that the protection and enhancement of the environment, human and community resources shall be given appropriate weight with social and economic considerations in public policy. Social, economic, and environmental factors shall be considered together in reaching decisions on proposed activities.

8. It is the intent of the legislature that all agencies conduct their affairs with an awareness that they are stewards of the air, water, land, and living resources, and that they have an obligation to protect the environment for the use and enjoyment of this and all future generations.

9. It is the intent of the legislature that all agencies which regulate activities of individuals, corporations, and public agencies which are found to affect the quality of the environment shall regulate such activities so that due consideration is given to preventing environmental damage.

§ 8-0105. Definitions.

Unless the context otherwise requires, the definitions in this section shall govern the construction of the following terms as used in this article: 1. "State agency" means any state department, agency, board, public benefit corporation, public authority or commission.

2. "Local agency" means any local agency, board, district, commission

or governing body, including any city, county, and other political subdivision of the state.

3. "Agency" means any state or local agency.

4. "Actions" include:

- (i) projects or activities directly undertaken by any agency; or projects or activities supported in whole or part through contracts, grants, subsidies, loans, or other forms of funding assistance from one or more agencies; or projects or activities involving the issuance to a person of a lease, permit, license, certificate or other entitlement for use or permission to act by one or more agencies;
- (ii) policy, regulations, and procedure-making.

5. "Actions" do not include:

- (i) enforcement proceedings or the exercise of prosecutorial discretion in determining whether or not to institute such proceedings;
- (ii) official acts of a ministerial nature, involving no exercise of discretion;
- (iii) maintenance or repair involving no substantial changes in existing structure or facility.

6. "Environment" means the physical conditions which will be affected by a proposed action, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance, existing patterns of population concentration, distribution, or growth, and existing community or neighborhood character.

7. "Environmental impact statement" means a detailed statement setting forth the matters specified in section 8-0109 of this article. It includes any comments on a draft environmental statement which are received pursuant to section 8-0109 of this article, and the agency's response to such comments, to the extent that such comments raise issues not adequately resolved in the draft environmental statement.

8. "Draft environmental impact statement" means a preliminary statement prepared pursuant to section 8-0109 of this article.

9. "Disadvantaged community" shall have the same meaning as subdivision five of section 75-0101 of this chapter.

10. "Pollution" shall have the same meaning as defined by subdivision nineteen of section 1-0303 of this chapter.

11. "Previously disturbed site" means a parcel of land that:

(i) is determined by a responsible agency to have been substantially altered by an occupied, formerly occupied, or demolished building or by another improvement or use at least two years prior to the application for a permit or authorization for an action;

(ii) for any parcel located within a city, town, or village with a population of fewer than one million persons and located outside of an urban area, as such term or equivalent term is or comes to be defined by the United States Census Bureau in the most recent decennial census beginning on or after the two thousand twenty decennial census, such parcel shall abut, adjoin, or be opposite from another parcel that is or has been occupied or formerly occupied by a building, or demolished building, or another improvement or use at least two years prior to the application for a permit or authorization for an action, provided such abutting, adjoining, or opposite parcel shall not be occupied by an industrial or agricultural use;

(iii) for any parcel that is located within a city, town, or village with a population of fewer than one million persons, is not located in a Federal Emergency Management Agency (FEMA) designated 100-year floodplain, or special flood hazard area, provided that this paragraph shall not apply if such a city, town, or village has adopted a law or ordinance that requires new construction to be elevated above the base flood elevation as defined by FEMA;

(iv) for any parcel that is located within a city, town, or village with a population of more than one million persons, is not located in a flood hazard area, as defined in section two hundred two of the New York city building code, provided that this paragraph shall not apply if such a city, town, or village has adopted a law or ordinance that requires new construction to be elevated above the base flood elevation as defined by FEMA;

(v) is not currently being used for agricultural purposes and has not been used for agricultural purposes within: (a) the immediately preceding two years, or (b) three of the last five years before the application for a permit or authorization for an action; and
(vi) is not located in a designated coastal erosion hazard area.

12. "Small community water system" means a public water system which serves at least five service connections used by year-round residents or regularly serves at least twenty-five year-round residents, and serves thirty-three hundred or fewer persons.

13. "Public school facilities" shall mean educational facilities, as defined in section twenty-five hundred ninety-a of the education law, of a city school district in a city having a population of one million or more persons, over which the department of education for such city has jurisdiction, for purposes of meeting the class size compliance targets set forth in subdivision two of section two hundred eleven-d of the education law.

§ 8-0107. Agency implementation.

All agencies shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this article, and shall recommend or effect such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this article. They shall carry out its terms with minimum procedural and administrative delay, shall avoid unnecessary duplication of reporting and review requirements by providing, where feasible, for combined or consolidated proceedings, and shall expedite all proceedings hereunder in the interests of prompt review.

§ 8-0109. Preparation of environmental impact statement.

1. Agencies shall use all practicable means to realize the policies and goals set forth in this article, and shall act and choose alternatives which, consistent with social, economic and other essential considerations, to the maximum extent practicable, minimize or avoid adverse environmental effects, including effects revealed in the environmental impact statement process.

2. All agencies (or applicant as hereinafter provided) shall prepare, or cause to be prepared by contract or otherwise an environmental impact statement on any action they propose or approve which may have a significant effect on the environment. Such a statement shall include a detailed statement setting forth the following:

(a) a description of the proposed action and its environmental setting;

(b) the environmental impact of the proposed action including short-term and long-term effects;

(c) any adverse environmental effects which cannot be avoided should the proposal be implemented;

(d) alternatives to the proposed action;

(e) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented;

(f) mitigation measures proposed to minimize the environmental impact;

(g) the growth-inducing aspects of the proposed action, where applicable and significant;

(h) effects of the proposed action on the use and conservation of energy resources, where applicable and significant, provided that in the case of an electric generating facility, the statement shall include a demonstration that the facility will satisfy electric generating capacity needs or other electric systems needs in a manner reasonably consistent with the most recent state energy plan;

(i) effects of proposed action on solid waste management where applicable and significant;

(j) effects of any proposed action on, and its consistency with, the comprehensive management plan of the special groundwater protection area program, as implemented by the commissioner pursuant to article fifty-five of this chapter;

(k) effects of any proposed action on disadvantaged communities, including whether the action may cause or increase a disproportionate pollution burden on a disadvantaged community; and

(l) such other information consistent with the purposes of this article as may be prescribed in guidelines issued by the commissioner pursuant to section 8-0113 of this chapter.

Such a statement shall also include copies or a summary of the substantive comments received by the agency pursuant to subdivision four of this section, and the agency response to such comments. The purpose of an environmental impact statement is to provide detailed information about the effect which a proposed action is likely to have on the environment, to list ways in which any adverse effects of such an action might be minimized, and to suggest alternatives to such an action so as to form the basis for a decision whether or not to undertake or approve such action. Such statement should be clearly written in a concise manner capable of being read and understood by the public, should deal with the specific significant environmental impacts which can be reasonably anticipated and should not contain more detail than is appropriate considering the nature and magnitude of the proposed action and the significance of its potential impacts.

3. An agency may require an applicant to submit an environmental report to assist the agency in carrying out its responsibilities, including the initial determination and, (where the applicant does not prepare the environmental impact statement), the preparation of an environmental impact statement under this article. The agency may request such other information from an applicant necessary for the review of environmental impacts. Notwithstanding any use of outside resources or work, agencies shall make their own independent judgment of the scope, contents and adequacy of an environmental impact statement.

4. As early as possible in the formulation of a proposal for an action but not more than one year from the establishment of a lead agency, the responsible agency shall make an initial determination as to whether an environmental impact statement need be prepared for the action. In making such determination for any proposed action the responsible agency

shall consider whether such action may cause or increase a disproportionate pollution burden on a disadvantaged community that is directly or significantly indirectly affected by such action. When an action is to be carried out or approved by two or more agencies, such determination shall be made as early as possible after the designation of the lead agency.

With respect to actions involving the issuance to an applicant of a permit or other entitlement, the agency shall notify the applicant in writing of its initial determination specifying therein the basis for such determination. Notice of the initial determination along with appropriate supporting findings on agency actions shall be kept on file in the main office of the agency for public inspection.

If the agency determines that such statement is required, the agency or the applicant at its option shall prepare or cause to be prepared a draft environmental impact statement. If the applicant does not exercise the option to prepare such statement, the agency shall prepare it, cause it to be prepared, or terminate its review of the proposed action. Such statement shall describe the proposed action and reasonable alternatives to the action, and briefly discuss, on the basis of information then available, the remaining items required to be submitted by subdivision two of this section. The purpose of a draft environmental statement is to relate environmental considerations to the inception of the planning process, to inform the public and other public agencies as early as possible about proposed actions that may significantly affect the quality of the environment, and to solicit comments which will assist the agency in the decision making process in determining the environmental consequences of the proposed action. The draft statement should resemble in form and content the environmental impact statement to be prepared after comments have been received and considered pursuant to subdivision two of this section; however, the length and detail of the draft environmental statement will necessarily reflect the preliminary nature of the proposal and the early stage at which it is prepared.

For any action for which the agency determines that such statement is

not required and which would take place in a special groundwater protection area, as defined in section 55-0107 of this chapter, the agency shall show how such action would or would not be consistent with the comprehensive management plan of the special groundwater protection program, as implemented by the commissioner pursuant to article fifty-five of this chapter.

The draft statement shall be filed with the department or other designated agencies and shall be circulated to federal, state, regional and local agencies having an interest in the proposed action and to interested members of the public for comment, as may be prescribed by the commissioner pursuant to section 8-0113. In addition, unless impracticable, the draft statement shall be posted on a publicly-available Internet website. The website posting of such draft statement may be discontinued when the environmental impact statement is posted pursuant to subdivision six of this section.

5. After the filing of a draft environmental impact statement the agency shall determine whether or not to conduct a public hearing on the environmental impact of the proposed action. If the agency determines to hold such a hearing, it shall commence the hearing within sixty days of the filing and unless the proposed action is withdrawn from consideration shall prepare the environmental impact statement within forty-five days after the close of the hearing, except as otherwise provided. The need for such a hearing shall be determined in accordance with procedures adopted by the agency pursuant to section 8-0113 of this article. If no hearing is held, the agency shall prepare and make available the environmental impact statement within sixty days after the filing of the draft, except as otherwise provided.

Notwithstanding the specified time periods established by this article:

(a) an agency shall vary the times so established herein for preparation, review and public hearings to coordinate the environmental review process with other procedures relating to review and approval of an action. An application for a permit or authorization for an action upon which a draft environmental impact statement is determined to be

required shall not be complete until such draft statement has been filed and accepted by the agency as satisfactory with respect to scope, content and adequacy for purposes of subdivision four of this section. Commencing upon such acceptance, the environmental impact statement process shall run concurrently with other procedures relating to the review and approval of the action so long as reasonable time is provided for preparation, review and public hearings with respect to the draft environmental impact statement; and

(b) for actions involving applications for a permit or authorization, the agency shall prepare and make available the environmental impact statement within two years after the date a draft environmental impact statement is determined to be required, unless the agency extends the deadline in writing and, in consultation with an applicant and at the discretion of the agency, establishes a new deadline that provides only so much additional time as is necessary to complete the environmental impact statement, considering any changes made by the applicant to the project design after the issuance of the scoping document that result in new significant environmental impacts, or additional actions that could not have been reasonably anticipated during scoping, or the failure of an applicant to timely provide necessary information despite good faith effort by an agency, or delay in circumstances beyond the control of an agency or an applicant.

6. To the extent as may be prescribed by the commissioner pursuant to section 8-0113, the environmental impact statement prepared pursuant to subdivision two of this section together with the comments of public and federal agencies and members of the public, shall be filed with the commissioner, made available to the public, and, unless impracticable, posted on a publicly-available Internet website prior to acting on the proposal which is the subject of the environmental impact statement. The website posting of such statement may be discontinued one year after all necessary permits have been issued by the federal, state and local governments.

7. a. An agency may charge a fee to an applicant in order to recover the costs incurred in preparing or causing to be prepared or reviewing a draft environmental impact statement or an environmental impact

statement on the action which the applicant requests from the agency; provided, however, that an applicant may not be charged a separate fee for both the preparation and review of such statements. The technical services of the department may be made available on a fee basis reflecting the costs thereof, to a requesting agency, which fee or fees may appropriately be charged by the agency to the applicant under rules and regulations to be issued under section 8-0113.

b. Such rules and regulations shall require the applicant to reimburse the conservation fund, as established pursuant to subdivision (a) of section eighty-three of the state finance law, in order to recover all costs incurred in preparing or causing to be prepared or reviewing a draft environmental impact statement or an environmental impact statement by employees of the department, whose salary and expenses are paid, in whole or in part, from the conservation fund.

8. When an agency decides to carry out or approve an action which has been the subject of an environmental impact statement, it shall make an explicit finding that the requirements of this section have been met and that consistent with social, economic and other essential considerations, to the maximum extent practicable, adverse environmental effects revealed in the environmental impact statement process will be minimized or avoided.

9. An environmental impact statement shall be prepared for any action found to have a significant impact on the special groundwater protection area, as defined in section 55-0107 of this chapter. Such statement shall meet the requirements of the most detailed environmental impact statement required by this section or by any such rule or regulation promulgated pursuant to this section.

§ 8-0111. Coordination of reporting; limitations; lead agency.

1. State and federal reports coordinated. Where an agency as herein defined directly or indirectly participates in the preparation of or prepares a statement or submits material relating to a statement

prepared pursuant to the requirements of the National Environmental Policy Act of 1969, whether by itself or by another person or firm, compliance with this article shall be coordinated with and made in conjunction with federal requirements in a single environmental reporting procedure.

2. Federal report. Where the agency does not participate, as above defined, in the preparation of the federal environmental impact statement or in preparation or submission of materials relating thereto, no further report under this article is required and the federal environmental impact statement, duly prepared, shall suffice for the purpose of this article.

3. State and local coordination. Necessary compliance by state or local agencies with the requirements of this article shall be coordinated in accordance with section 8-0107 and with other requirements of law in the interests of expedited proceedings and prompt review.

4. Effective date of coordinated reporting. The requirements of this section with regard to coordinated preparation of federal and state impact materials and reporting shall not apply to statements prepared and filed prior to the effective date of this article.

5. Exclusions. The requirements of this article shall not apply to:

(a) Actions undertaken or approved prior to the effective date of this article, except:

(i) In the case of an action where it is still practicable either to modify the action in such a way as to mitigate potentially adverse environmental effects or to choose a feasible and less environmentally damaging alternative, in which case the commissioner may, at the request of any person or on his own motion, in a particular case, or generally in one or more classes of cases specified in rules and regulations, require the preparation of an environmental impact statement pursuant to this article; or

(ii) In the case of an action where the responsible agency proposes a modification of the action and the modification may result in a

significant adverse effect on the environment, in which case an environmental impact statement shall be prepared with respect to such modification.

* (b) Actions subject to the provisions requiring a certificate of environmental compatibility and public need in articles seven and ten of the public service law or requiring a major renewable energy facility or a major electric transmission facility siting permit under article eight of the public service law; or

* NB Effective until December 31, 2040

* (b) Actions subject to the provisions requiring a certificate of environmental compatibility and public need in articles seven, ten and the former article eight of the public service law or requiring a siting permit under section ninety-four-c of the executive law; or

* NB Effective December 31, 2040

(c) Actions subject to the class A or class B regional project jurisdiction of the Adirondack park agency or a local government pursuant to section eight hundred seven, eight hundred eight or eight hundred nine of the executive law, except class B regional projects subject to review by local government pursuant to section eight hundred seven of the executive law located within the Lake George park as defined by subdivision one of section 43-0103 of this chapter.

5-a. Exemptions. (a) Notwithstanding any law, rule, or regulation to the contrary, the qualified actions listed in paragraph (b) of this subdivision shall be exempt from the requirements of this article as determined by the responsible agency. In making this determination, the responsible agency shall consider the action as a whole. If the responsible agency determines that no aspect of the action requires review under this article, meaning every aspect of the action meets criteria for exemption pursuant to paragraph (b) of this subdivision or is otherwise exempt from the requirements of this article, the agency may proceed in accordance with the criteria and standards for final decision under other applicable laws, regulations, and ordinances.

(b) An action that is not otherwise exempt from the requirements of this article, which may include building permits, special use permits, variances, subdivision approvals, site plan approvals, zoning text or map amendments, disposition or acquisition of real property, provision

of financial assistance, any other actions governed by laws, rules, regulations, or procedures concerning land use, zoning, permitting, real property acquisition or disposition, or development financial assistance, or any combination thereof, shall be a qualified action exempt from the requirements of this article if the responsible agency determines that the action is for the purposes of:

(i) construction of housing in cities, towns, and villages with populations of one million or more that shall:

(1) be connected to existing community or public water and sewerage systems at the commencement of habitation;

(2) be located at a previously disturbed site;

(3) not be located within an area zoned exclusively for industrial uses;

(4) contain no more than fifty thousand square feet of commercial, retail, community facility, or other non-industrial non-residential uses;

(5) not exceed two hundred fifty dwelling units, provided, however, that for housing that shall be located within a zoning district where, at the time of application, (A) the standard maximum residential building height is greater than forty-five feet, (B) the maximum height of a building is regulated by something other than a horizontal plane and that allows residential buildings to exceed forty-five feet, or (C) there is no such maximum building height, such housing shall not exceed five hundred dwelling units; and

(6) not include construction of only one single-family residence on a parcel of one-half or more acres;

(ii) construction of housing in cities, towns, and villages with populations of fewer than one million persons that shall:

(1) be connected to existing community or public water and sewerage systems at the commencement of habitation;

(2) be located at a previously disturbed site;

(3) contain no more than twenty percent commercial, retail, community facility, or other non-industrial non-residential uses by gross floor area;

(4) not exceed one hundred dwelling units, provided, however, for housing within cities, towns, or villages without zoning, such housing shall not exceed twenty dwelling units, and provided further, that for

housing not within cities, towns, or villages without zoning but within an urban area, as such term or equivalent term is or comes to be defined by the United States Census Bureau in the most recent decennial census beginning on or after the two thousand twenty decennial census, such housing shall not exceed three hundred dwelling units; and

(5) not include construction of only one single-family residence on a parcel of one or more acres;

(iii) construction located at a previously disturbed site of public parks that do not include performance centers, athletic stadiums, or other venues for mass gatherings, or other buildings or structures which do not serve public park, recreation, or open space purposes;

(iv) construction located at a previously disturbed site of multi-use bicycle and pedestrian trails;

(v) construction of public school facilities to be connected at the commencement of use to existing community or public water and sewerage systems, including sewage treatment works, in a city with a population of one million or more;

(vi) water and wastewater infrastructure projects that:

(1) replace, rehabilitate or reconstruct municipal water or wastewater infrastructure, in-kind and on the same site, including lead service line replacement;

(2) replace, rehabilitate, upgrade or reconstruct an existing small community water system, including lead service line replacement; or

(3) provide sewer service to a disadvantaged community served by one or more inadequate sewage treatment systems that has been determined by the department not to require a permit or approval pursuant to articles fifteen, twenty-four or twenty-five of this chapter or any rules or regulations promulgated thereunder; or

(vii) retrofit of an existing structure and its appurtenant areas to incorporate green infrastructure.

(c) (i) For an application for a permit or authorization for a qualified action listed in subparagraph (i) or (v) of paragraph (b) of this subdivision, to qualify for exemption from the requirements of this article pursuant to this subdivision, such action shall be subject to a requirement to comply with local municipal requirements regarding hazardous materials remediation to the extent applicable, and the applicant for a permit or authorization for such qualified action shall

certify that (1) it has followed and will follow all applicable laws, rules, and regulations regarding hazardous waste, (2) for an application for a permit or authorization for a qualified action other than a land use action, zoning text amendment, zoning map amendment, or variance, a Phase I Environmental Site Assessment has been conducted for the parcel in accordance with the all appropriate inquiries regulations of the United States Environmental Protection Agency under the federal Comprehensive Environmental Response, Compensation and Liability Act (40 CFR § 312) to identify any recognized environmental conditions, (3) it has followed or will follow all applicable recommendations of the Phase I Environmental Site Assessment, and (4) it will report contamination at, on, or under the parcel as required by applicable laws, rules, and regulations.

(ii) For an application for a permit or authorization for a qualified action listed in subparagraph (ii) of paragraph (b) of this subdivision, other than a land use action, zoning text amendment, zoning map amendment, or variance, to qualify for exemption from the requirements of this article pursuant to this subdivision, the applicant for a permit or authorization for such qualified action shall certify to the responsible agency that (1) a Phase I Environmental Site Assessment has been conducted for the parcel in accordance with the all appropriate inquiries regulations of the United States Environmental Protection Agency under the federal Comprehensive Environmental Response, Compensation and Liability Act (40 CFR § 312) to identify any recognized environmental conditions, (2) it has followed and will follow all applicable laws, rules, and regulations regarding hazardous waste, including, to the extent applicable, complying with local municipal requirements regarding hazardous materials remediation, (3) it has followed or will follow all applicable recommendations of the Phase I Environmental Site Assessment, and (4) it will report contamination at, on, or under the parcel as required by applicable laws, rules, and regulations.

(iii) The requirements of this paragraph shall not apply (1) to a qualified action initiated by an agency, or (2) if the applicant was previously granted an exemption pursuant to subparagraphs (i), (ii), or (v) of paragraph (b) of this subdivision for the same parcel.

(d) For actions involving applications for a permit or authorization,

the responsible agency shall determine whether such action is a qualified action pursuant to this subdivision within one hundred twenty days of receipt of such application, unless the responsible agency extends the deadline in writing and, in consultation with an applicant and at the discretion of the agency, establishes a new deadline that provides only so much additional time as is necessary to make such determination. In no event shall the deadline be extended by more than thirty days, except where (i) changes are made by the applicant to the application after its submission to the responsible agency and such changes relate to the criteria for exemption pursuant to paragraph (b) of this subdivision, (ii) an applicant fails to timely provide necessary information despite good faith effort by an agency, or (iii) there are circumstances beyond the control of the agency or an applicant that cause delay requiring an extension beyond thirty days. If the responsible agency fails to make a determination pursuant to this subdivision within the delineated time limits, an applicant may institute a proceeding in a court of competent jurisdiction under article seventy-eight of the civil practice law and rules seeking appropriate relief from the court, which may include an order directing the agency to make a determination by a deadline specified by the court.

6. Lead Agency. When an action is to be carried out or approved by two or more agencies, the determination of whether the action may have a significant effect on the environment shall be made by the lead agency having principal responsibility for carrying out or approving such action and such agency shall prepare, or cause to be prepared by contract or otherwise, the environmental impact statement for the action if such a statement is required by this article. In the event that there is a question as to which is the lead agency, any agency may submit the question to the commissioner and the commissioner shall designate the lead agency, giving due consideration to the capacity of such agency to fulfill adequately the requirements of this article.

7. Statute of limitations. The time to commence a proceeding to review an agency determination under the provisions of this article or under the rules or regulations implementing the provisions of this article shall begin to accrue when the agency determination to approve or

disapprove the action becomes final and binding upon the petitioner or the person whom the petitioner represents in law or in fact.

8. Construction. Nothing contained in the chapter of the laws of two thousand twenty-six which added this subdivision shall be interpreted or construed as superseding, limiting, modifying or affecting any authorizations, requirements, or procedures under the national historic preservation act of nineteen hundred sixty-six, the New York state historic preservation act of nineteen hundred eighty, the parks, recreation and historic preservation law, or any other state or local law governing the identification, protection, or management of historic properties, or under any rules or regulations promulgated thereunder. Nor shall anything in the chapter of the laws of two thousand twenty-six which added this subdivision be interpreted or construed as superseding, limiting, modifying or affecting any authorizations, requirements, or procedures, including but not limited to laws, rules and regulations applicable to disadvantaged communities, stormwater management or the protection of water quality, air quality, soil erosion and drainage, freshwater wetlands, tidal wetlands, critical environmental areas, or threatened or endangered species, or any otherwise applicable statutory or regulatory standards, criteria, and permitting procedures, other than those pertaining to environmental review conducted pursuant to this article and any state and local regulations promulgated thereunder. Nor shall anything in the chapter of the laws of two thousand twenty-six which added this subdivision be interpreted or construed as superseding, limiting, modifying or affecting the authority or discretion of cities, towns, and villages under applicable state or local law, rule, regulation, charter, code, resolution, or ordinance regarding zoning or land use, including but not limited to any such authority or discretion regarding site plan review or other discretionary zoning or land use permits, procedures, review, or approvals, such as traffic studies, contamination testing, and determinations of the sufficiency of wastewater and drinking water capacity.

§ 8-0113. Rules and regulations.

1. After consultation with the other agencies subject to the provisions of this article, including state agencies and representatives of local governments and after conducting public hearings and review of any other comments submitted, the commissioner shall adopt rules and regulations implementing the provisions of this article within one hundred and twenty days after the effective date of this section.

2. The rules and regulations adopted by the commissioner specifically shall include:

(a) Definition of terms used in this article;

(b) Criteria for determining whether or not a proposed action may have a significant effect on the environment, taking into account social and economic factors to be considered in determining the significance of an environmental effect, including whether it may cause or increase a disproportionate pollution burden on a disadvantaged community;

(c) Identification on the basis of such criteria of:

(i) Actions or classes of actions that are likely to require preparation of environmental impact statements;

(ii) Actions or classes of actions which have been determined not to have a significant effect on the environment and which do not require environmental impact statements under this article. In adopting the rules and regulations, the commissioner shall make a finding that each action or class of actions identified does not have a significant effect on the environment;

(d) Typical associated environmental effects, and methods for assessing such effects, of actions determined to be likely to require preparation of environmental impact statements;

(e) Categorization of actions which are or may be primarily of statewide, regional, or local concern, with provisions for technical assistance including the preparation or review of environmental impact statements, if requested, in connection with environmental impact review by local agencies.

(f) Provision for the filing and circulation of draft environmental impact statements pursuant to subdivision four of section 8-0109, and environmental impact statements pursuant to subdivision six of section 8-0109, including, in addition to any other circulation and public availability requirements, making such statements available free of

charge to the public and government agencies on the publicly-available Internet website, unless impracticable. Printed filings and public notices shall clearly indicate the address of the website at which such filing is posted;

(g) Scope, content, filing and availability of findings required to be made pursuant to subdivision eight of section 8-0109;

(h) Form and content of and level of detail required for an environmental impact statement; and

(i) Procedures for obtaining comments on draft environmental impact statements, holding hearings, providing public notice of agency decisions with respect to preparation of a draft environmental statement; and for such other matters as may be needed to assure effective participation by the public and efficient and expeditious administration of the article.

(j) Procedure for providing applicants with estimates, when requested, of the costs expected to be charged them pursuant to subdivision seven of section 8-0109 of this article.

(k) Appeals procedure for the settlement of disputed costs charged by state agencies to applicants pursuant to subdivision seven of section 8-0109 of this article. Such appeal procedure shall not interfere or cause delay in the determination of environmental significance or prohibit an action from being undertaken.

(l) A model assessment form to be used during the initial review to assist an agency in its responsibilities under this article.

3. Within the time periods specified in section 8-0117 of this article the agencies subject to this article shall, after public hearing, adopt and publish such additional procedures as may be necessary for the implementation by them of this article consistent with the rules and regulations adopted by the commissioner.

(a) Existing agency environmental procedures may be incorporated in and integrated with the procedures adopted under this article, and variance in form alone shall constitute no objection thereto. Such individual agency procedures shall be no less protective of environmental values, public participation, and agency and judicial review than the procedures herein mandated.

(b) Such agency procedures shall provide for interagency working

relationships in cases where actions typically involve more than one agency, liaison with the public, and such other procedures as may be required to effect the efficient and expeditious administration of this article.

4. Coordination with agricultural districts program. The commissioner, in consultation with the commissioner of agriculture and markets, shall amend the regulations promulgated pursuant to the provisions of this section as necessary and appropriate to assure the adequate consideration of impacts of public acquisitions, or the advancement of public monies for non-farm development on lands used in agricultural production and unique and irreplaceable agricultural lands within agricultural districts in accordance with the provisions of subdivision four of section three hundred five of the agriculture and markets law.

§ 8-0115. Severability.

The provisions of this article shall be severable, and if any clause, sentence, paragraph, subdivision or part of this article shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 8-0117. Phased implementation.

1. With respect to the actions directly undertaken by any state agency, the requirement of an environmental impact statement pursuant to subdivision two of section 8-0109 of this article shall take effect on the first day of September, nineteen hundred seventy-six.

2. With respect to actions or classes of actions identified by the department as likely to require preparation of environmental impact statements pursuant to subparagraph (i) of paragraph (c) of subdivision

two of section 8-0113 of this article directly undertaken by any local agency, whether or not such actions are supported in whole or in part through contracts, grants, subsidies, loans, or other forms of funding assistance from one or more state agency; and all other actions or classes of actions identified by the department as likely to require preparation of environmental impact statements pursuant to subparagraph (i) of paragraph (c) of subdivision two of section 8-0113 of this article supported in whole or in part through contracts, grants, subsidies, loans, or other forms of funding assistance from one or more state agency, the requirement of an environmental impact statement pursuant to subdivision two of section 8-0109 of this article shall take effect on the first day of June, nineteen hundred seventy-seven.

3. With respect to actions or classes of actions identified by the department as likely to require preparation of environmental impact statements pursuant to subparagraph (i) of paragraph (c) of subdivision two of section 8-0113 of this article supported in whole or in part through contracts, grants, subsidies, loans, or other forms of funding assistance from one or more local agency; and with respect to actions or classes of actions identified by the department as likely to require preparation of environmental impact statements pursuant to subparagraph (i) of paragraph (c) of subdivision two of section 8-0113 of this article involving the issuance to a person of a lease, permit, certificate or other entitlement for use or permission to act by one or more state or local agency, the requirement of an environmental impact statement pursuant to subdivision two of section 8-0109 of this article shall take effect on the first day of September, nineteen hundred seventy-seven.

4. With respect to all other actions not included in subdivision two or three of this section which are subject to this article, the requirement of an environmental impact statement pursuant to subdivision two of section 8-0109 of this article shall take effect on the first day of November, nineteen hundred seventy-eight.

5. Agencies subject to this article shall adopt and publish the additional necessary procedures described in subdivision three of

section 8-0113 of this article, as follows:

(a) With respect to actions included within subdivision one of this section, no later than August 1, 1976.

(b) With respect to actions included within subdivision two of this section, no later than April 1, 1977.

(c) With respect to actions included within subdivision three of this section, no later than July 1, 1977.

(d) With respect to actions included within subdivision four of this section, no later than November 1, 1978.

Any agency which has not adopted and published the additional necessary procedures described in subdivisions two and three of section 8-0113 of this article according to the dates set forth in this section shall utilize those procedures found in Part 617 of title six (environmental conservation) of the official compilation of the codes, rules and regulations of the state of New York for purposes of implementing this article until such time as such agency has adopted and published its own procedures.

ARTICLE 9

LANDS AND FORESTS

- | | |
|-------|--|
| Title | 1. General provisions |
| | 3. Use of lands and forests |
| | 5. Reforestation areas |
| | 7. Cooperative forest management program |
| | 8. Forest resources planning |
| | 9. Recreation |
| | 11. Forest fire control |
| | 13. Forest insect and disease control |
| | 15. Removal of trees and protected plants |
| | 17. New York invasive species council |
| | 19. Township forty settlement act |
| | 21. Forest preserve health and safety land account and public utility improvements |
| | 23. The Mount Van Hoevenberg Olympic sports complex |

TITLE 1
GENERAL PROVISIONS

Section 9-0101. Definitions.

9-0105. General powers and duties.

9-0107. Acceptance by department of lands for parks and for silvicultural research.

9-0109. Acquisition of lands within the Adirondack or Catskill parks.

9-0111. Delegation of authority to license guides.

9-0113. Adopt-a-natural resource stewardship program.

§ 9-0101. Definitions.

The following words and phrases, when used in this article, unless otherwise expressly stated, are defined as follows:

1. The "Adirondack park" shall include all lands located in the forest preserve counties of the Adirondacks within the following described boundaries, to wit: Beginning at the most southerly corner of lot 166 of the John Glen and 44 Others Patent in the line between such patent and the twenty-first allotment of the Kayaderosseras Patent; thence northeasterly along the said line and along the southerly bounds of John Glen and 44 Others Patent and of the Sanders Patent to the southeasterly corner of the Sanders Patent; thence continuing northeasterly along the division line between the twenty-second and twenty-fourth allotments of the Kayaderosseras Patent to the southeasterly corner of the twenty-fourth allotment of the Kayaderosseras Patent; thence northerly along the division line between the twenty-fourth and the twenty-fifth allotments of that patent to the northeasterly corner of the twenty-fourth allotment; thence easterly along the north line of the twenty-fifth allotment and the southerly lines of John Glen and 44 Others Patent, the Luzerne Tract and the Glen Patent to the southeasterly corner of the Glen Patent; thence northerly along the easterly lines of the Glen Patent and the Luzerne Tract to the northwesterly corner of the Queensbury Patent; thence easterly along the

northerly bounds of the Queensbury Patent to the northeasterly corner thereof; thence southerly along the easterly bounds of the Queensbury Patent to the northwesterly corner of the Kingsbury Patent; thence easterly along the northerly bounds of the Kingsbury Patent to the southwesterly corner of the Artillery Patent; thence northerly along the westerly line of the Artillery Patent to the northwesterly corner of the Artillery Patent; thence easterly along the northerly bounds of the Artillery Patent to the southwesterly corner of the town of Whitehall; thence northerly along the westerly line of the town of Whitehall to the southern boundary of the town of Dresden; thence in a general northerly and easterly direction along the town line to the state boundary at the outlet of South Bay; thence in a northerly direction along the state boundary to the northeastern corner of the town of Peru in Clinton county; thence in a westerly direction to the low water line of Valcour Island; thence in a general northerly and westerly direction along the northern shore of Valcour Island to the northern boundary of the town of Peru; thence in a westerly direction along the northern boundary of the town of Peru to the eastern edge of the Delaware and Hudson railroad right-of-way; thence southerly along said eastern edge of the railroad right-of-way to the intersection of said right-of-way with the eastern edge of the right-of-way of U. S. Highway No. 9; thence in a general southerly direction along the eastern edge of said highway right-of-way to the southern boundary of the town of Peru; thence westerly along the southern boundary of the town of Peru to the western boundary of Platt's Great Location; thence northerly to the northeastern corner of lot 4 of Tharp's Tract; thence westerly along the northern line of lots 4, 7, 14, 17 and 24; thence northerly along the westerly line of Tharp's Tract to the northern boundary of the town of Peru; thence westerly along the town of Peru boundary to the southwestern corner of lot 30 of Livingston's Patent in the town of Saranac; thence in a northerly direction along the western line of lots 30, 29, 28, 27 and 26 to the northern line of Livingston's Patent; thence easterly to the southwestern corner of lot 12 of Canada and Nova Scotia Refugee Tract in the town of Saranac; thence northerly along the western line of lot 12 to the southwestern corner of lot 11; thence easterly along the northern line of lot 12 to the eastern boundary of the town of Saranac; thence northerly along the eastern boundary of the town of Saranac to the

southern boundary of the town of Dannemora; thence easterly along the southern boundary of the town of Dannemora to the southeastern corner of said town; thence northerly along the eastern boundary of the town of Dannemora to the northeastern corner of said town; thence northerly along the eastern line of lots 22 to 15 inclusive of Duer's Patent in the town of Altona to the northeastern corner of lot 15; thence westerly along the northern line of lots 15 and 14 of Duer's Patent to the southwestern corner of lot 160 of the Canada and Nova Scotia Refugee Tract in the town of Altona; thence northerly along the western line of lots 160 and 161 to the northwest corner of lot 161; thence in a westerly direction along the northern line of lots 163 and 186 to the northwestern corner of lot 186; thence southerly along the western line of lot 186 to the northeastern corner of lot 188; thence westerly along the northern boundary of lot 188 to the eastern line of the B. Wallace Patent; thence southerly and westerly along the B. Wallace Patent boundary to the eastern boundary of the town of Ellenburg; thence northerly along the town of Ellenburg line to the northeastern corner of lot 1 of the Hannah Murray Allotment; thence westerly along the northern boundary of lots 1 to 30 inclusive to the northeastern corner of lot 1, Township 8, Old Military Tract on the county line between Clinton and Franklin counties; thence along the northern line of Township 8 to the western boundary of the town of Bellmont; thence southerly along the town of Bellmont boundary to the southwestern corner of lot 80, Township 8 of the Old Military Tract; thence easterly along the southern line of lots 80 and 79 to the southeastern corner of lot 79; thence southerly along the westerly line of lots 88 and 98 to the line between townships 8 and 9 of the Old Military Tract; thence westerly to the southwesterly corner of township 8, said tract; thence northerly along the line between the towns of Bellmont and Duane to the northeasterly corner of the town of Duane; thence westerly along the southerly bounds of the towns of Malone, Brandon and Dickinson and the northerly bounds of Duane, Santa Clara and Waverly to the easterly bounds of great tract 2, Macomb's Purchase, and the line between Franklin and St. Lawrence counties; thence northerly along said county line to the northeasterly corner of township number 15 Macomb's Purchase, great tract 2; thence westerly along the northerly line of said township to the easterly line of township number 14 in said great tract; thence southerly along the

line between townships 14 and 15 to the northeasterly corner of lot number 2 in said township number 14; thence westerly along the northerly bounds of lots 2, one, 32, 31, 14 and 13 of township 14 and of lots 47 and 39 of township 13, said great tract, to the northwesterly corner of lot number 39; thence southerly along the westerly bounds of lots 39, 38, and 37 in township 13 to the northerly line of township number 11 in great tract number 2; thence westerly along the northerly line of township 11 to the northwesterly corner thereof and the northeasterly corner of the town of Colton; thence southerly along the westerly line of township 11 and the line between the towns of Colton and Parishville to the southwesterly corner of lot number 31 in township number 11; thence westerly along the northerly lines of lots 42, 41, 40, 39, 38 and 37 of township 10, great tract 2, to the westerly line of township 10; thence southerly along the westerly line of township 10 to the northeasterly corner of township 6, Macomb's Purchase, great tract number 3, and the northeasterly corner of the town of Clare; thence westerly along the northerly line of township number 6 and of the town of Clare to the northwesterly corners thereof; thence southerly along the westerly lines of township number 6 and of township number 10 in the great tract and along the line between the towns of Clare and Russell to the northeasterly corner of the town of Fine; thence westerly along the northerly bounds of the town of Fine to the northwesterly corner thereof; thence southerly along the line between the town of Fine and the towns of Edwards and Pitcairn to the northeasterly corner of lot number 90 in township 11, Macomb's Purchase, great tract number 3; thence westerly along the northerly line of lots 90, 89, 88, 87, 86, 85, 84, 83, and 24 of township 11 to the northwesterly corner of lot number 24; thence southerly along the westerly lines of lots 24, 99, 102, 119 and 123 to the southwesterly corner of lot number 123 in the northerly line of lot number 140 in township 11; thence westerly along the northerly line of lot number 140 to the line between the counties of St. Lawrence and Lewis; thence southeasterly along the county line to the most northerly corner of lot number one, Macomb's Purchase, great tract 4 in the town of Diana; thence southwesterly along the northwesterly line of lots one, 2 and 3 in the great tract and town to the most westerly corner of lot number 3; thence southeasterly along the southerly lines of lots 3, 9 and 14 to the most northerly corner of lot

number 16; thence southwesterly along the northwesterly line of lot number 16 to the northerly bounds of great tract 5, Macomb's Purchase, and the line between the towns of Diana and Croghan; thence easterly along said line to the northwesterly corner of lot number 24, range 11, Macomb's Purchase, great tract 5, Chassanis Tract; thence southerly along the line between ranges 10 and 11 of said great tract to the most southerly corner of lot number 13 in range 11 of said tract, and the northerly line of Watson's West Triangle in the line between the towns of Croghan and Watson; thence southwesterly along the said town line and along the northwesterly bounds of Watson's West Triangle and the northerly line of lots 292 and 302 of Watson's West Triangle to the westerly line of lot number 302, Watson's West Triangle; thence southerly along the westerly lines of lots 302, 301, 300, 299, 298, 297, 296, 295, 294 and 293 to the line between the towns of Watson and Greig and the northerly line of the Brantingham Tract; thence westerly along the northerly bounds to the northwesterly corner of lot number 7 in said tract; thence southerly along the westerly lines of lots 7, 25, 43, 61, 79, 97, 115, 133, 151, 169, and 187; thence westerly along the northern line of lots 204 and 203 to the midpoint of the northern line of lot 203; thence southerly to the midpoint of the southern line of lot 203; thence easterly along the southern line of lots 203 and 204 to the southeastern corner of lot 204; thence southerly along the westerly line of lots 223, 241, 259, 276, 293, 309, 325 and 340 to the southwesterly corner of lot number 340 in the Brantingham Tract; thence easterly along the southerly lines of lots 340, 341, 342, 343, 344, 345 and 346 to the southeasterly corner of lot 346 and the westerly line of lot number 347; thence southerly along the westerly line of lot 347 to the line between the counties of Oneida and Lewis and in the north line of the Seymour Tract in Adgates Eastern Tract; thence southwesterly along the northwesterly line of the Adgates Eastern Tract to the westerly line of said tract; thence southerly along the westerly line and along the line between the towns of Boonville and Forestport to the southwesterly corner of said Adgates Eastern Tract; thence easterly along the line between Adgates Eastern Tract and the Woodhull Tract to the line between the counties of Oneida and Herkimer; thence southerly along the said county line to the northeastern corner of lot 8 of the Woodhull Tract; thence westerly along the northern line of lot 8; thence southerly along

the western line of lot 8, thence easterly along the southern line of lot 8 to the county line; thence southerly along the county line; thence southerly to the northern line of the Remsenburg Patent; thence southwesterly along the northern line of lot 8; thence southerly along the western line of lot 8 to the midpoint of said line; thence northeasterly along the southern boundary of state land in lot 8 to the county line; thence southerly along the county line to the northern line of lot 84 of the Remsenburg Patent; thence southwesterly along the northern line of lot 84, thence southerly along the western line of lot 84 to the northern boundary of the Walker Tract; thence northeasterly along this boundary to the county line; thence southerly along the said county line to its intersection with the southerly line of the Jerseyfield Patent; thence southeasterly along the southerly line of the Jerseyfield Patent to the northwestern corner of lot 142 of the Fourth Allotment of the royal grant in the town of Salisbury; thence southerly, easterly and northerly along the boundaries of the forest preserve land in lot 142 to the southerly line of the Jerseyfield Patent; thence southeasterly along the southerly line of the Jerseyfield Patent to the line between the counties of Herkimer and Fulton; thence southerly along the county line to the southwesterly corner of Lott and Low's Patent; thence southeasterly along the southerly line of said Lott and Low's Patent to the southeasterly corner thereof; thence northerly along the line between said Lott and Low's Patent and the Kingsborough Patent to the division line between the towns of Johnstown and Caroga; thence northeasterly along the line between the towns of Caroga and Johnstown to the southeasterly corner of the town of Caroga; thence northerly along said town line to the southerly line of the Mayfield Patent; thence easterly along the southerly line of the Mayfield Patent to the southeasterly corner thereof and the westerly line of the Sacandaga Patent; thence southeasterly along the southwesterly lines of lots 41 and 28 in said patent to the most southerly corner of lot 28 and the westerly line of John Glen and 44 Others Patent; thence northerly, southeasterly and northeasterly along the line between the Sacandaga and the said John Glen and 44 Others Patent to the northwesterly corner of lot 161 of John Glen and 44 Others Patent; thence southeasterly along the southwesterly line of lots 161 and 166 of said patent to the place of beginning.

2. The "Catskill park" shall include all lands located in the counties of Greene, Delaware, Ulster and Sullivan within the following described boundaries, to wit: Beginning in Ulster county at the intersection of the easterly line of the Hardenburgh Patent with the southerly bounds of the Rondout Reservoir; thence running southwesterly along the easterly line of Great Lot 4 of the Hardenburgh Patent to the southeasterly corner of lot one of the East Allotment, east division of Great Lot 4; thence northwesterly along the southerly bounds of lots one, 7, 8, 14, 17, 22, 26, 33, 37 and 46 of said East Allotment, east division of Great Lot 4 and along the southerly bounds of lots 67, 49, 48, 47, 46, 45, 44, 43, 42 and 41 of the Middle Allotment, east division of Great Lot 4 to the center of the Neversink creek; thence northerly along the center of the Neversink creek to the southeasterly corner of lot 37 of the West Allotment, east division of Great Lot 4; thence northwesterly along the southerly bounds of lots 37, 27, 22, 11 and 6 of said West Allotment, east division of Great Lot 4 to a point in the easterly line of the town of Rockland in Sullivan county; thence southerly along the easterly line of the town of Rockland in Sullivan county to the northeasterly corner of the town of Liberty; thence northwesterly along the northerly line of the town of Liberty in Sullivan county to the southwesterly corner of lot 120 of the East Allotment, middle division of Great Lot 4; thence northwesterly along the southerly bounds of lots 119 and 118 of the East Allotment, middle division of Great Lot 4 to a point in the center of the Willowemoc creek; thence westerly down the center of the Willowemoc creek to its confluence with the Beaver Kill; thence northwesterly down the center of said Beaver Kill to the southwesterly line of the town of Colchester in Delaware county; thence northwesterly along said southwesterly line of the town of Colchester in Delaware county to the westerly bank of the east branch of the Delaware river; thence along the westerly bank of the said east branch of the Delaware river and the westerly bounds of the Pepacton reservoir to its intersection with the mouth of the Bush Kill at or near the village of Arkville; thence up along the center of said Bush Kill to the New York Central Railroad; thence along the said New York Central Railroad easterly to the line between the counties of Delaware and Ulster; thence northeasterly along that line to the southerly line of Greene county; thence northwesterly

along the southerly line of Greene county to the southwesterly corner of Great Lot No. 21, Hardenburgh Patent; thence northeasterly along the westerly line of said Great Lot No. 21, Hardenburgh Patent to the south bank of the Batavia Kill; thence along the southerly bank of the Batavia Kill easterly to the west line of the State Land Tract; thence northerly, easterly and southerly along the line of the said State Land Tract to the line of the Hardenburgh Patent; thence easterly and southerly along the general easterly line of the Hardenburgh Patent to the southwest corner of the town of Saugerties in Ulster county; thence easterly along the southerly line of the town of Saugerties to the westerly bounds of the New York State Thruway; thence southerly along the westerly bounds of the said New York State Thruway to the northerly bounds of the Esopus creek; thence in a general westerly direction up and along the northerly bounds of said Esopus creek to its intersection with the southwesterly line of the town of Ulster; thence northwesterly to the southwest corner of the Hurley Patentee Woods Allotment; thence in a general southwesterly direction along the southeasterly line of the Hurley Patentee Woods Allotment to the northerly line of the town of Marbletown; thence northwesterly along said northerly line of the town of Marbletown to the town of Olive; thence southwesterly along the line between the towns of Olive and Marbletown to the line of the town of Rochester; thence northwesterly along the line between the towns of Olive and Rochester to the point where the Mettakahonts creek crosses the same flowing easterly; thence southwesterly parallel with the northwesterly line of the town of Rochester to the southerly bounds of the Rondout creek; thence westerly along the southerly bounds of the Rondout creek and the southerly bounds of the Rondout Reservoir to the easterly line of the Hardenburgh Patent, the point or place of beginning.

3. A "fire patrolman" shall be an able-bodied person whose duty is to patrol a given portion of railroad right of way for the purpose of detecting promptly any fires which may be caused by the operation of the railroad, or other fires which may occur upon such portion of the railroad right of way, and secure their extinguishment.

4. A "forest fire" is a fire which is burning forest or wood lands, or

which, if permitted to extend, would burn forest or upon forest lands.

5. "Forest land" includes not only lands which may be covered with tree growth but also lands which are best adapted to forests.

6. The "forest preserve" shall include the lands owned or hereafter acquired by the state within the county of Clinton, except the towns of Altona and Dannemora, and the counties of Delaware, Essex, Franklin, Fulton, Hamilton, Herkimer, Lewis, Oneida, Saratoga, Saint Lawrence, Warren, Washington, Greene, Ulster and Sullivan, except:

a. Lands within the limits of any village or city;

b. Lands not wild lands and not situated within either the Adirondack park or the Catskill park acquired by the state on foreclosure of mortgages made to loan commissioners; and

c. Lands acquired under the provisions of sections 9-0107 and 9-0501.

7. "Person" means any individual, firm, co-partnership, association or corporation, other than the state or a public corporation, as the latter is defined in subdivision 1 of section 3 of the General Corporation Law.

8. "Railroad" or "railroad company" includes all common or contract carriers or other transportation facilities operating on rails.

9. "Railroad right of way" is the land adjacent to the tracks of a railroad and shall be construed to be 50 feet in width on each side of the center of the track but if the company owns a lesser width it shall include the entire width owned by it.

§ 9-0105. General powers and duties.

For the purpose of carrying out the provisions of this article, the department shall have the power, duty and authority to:

1. Exercise care, custody and control of the several preserves, parks and other state lands described in this article.

2. Consistent with the provisions of section 9-0109 of this chapter, establish, acquire, control and manage state parks, historic sites and parkways in the forest preserve counties within the sixth park region as defined in section 41-0101 and to acquire lands for such purposes when moneys have been appropriated therefor.

3. Make necessary rules and regulations to secure proper enforcement of the provisions hereof. In particular, the department shall have authority to make rules and regulations prohibiting any person or persons from entering upon any state-owned lands, or restricting the activities of the public on such lands, whenever it determines that a serious fire hazard exists thereon, and with the consent of the owner to extend the applicability of such rules and regulations, in whole or in part, to privately-owned forest lands.

4. Establish, operate and maintain nurseries for the production of trees to be used in reforestation. Such trees may be used to reforest any land owned by the state, supplied to owners of private land at a price not exceeding cost of production, or used for planting on public lands under such terms as may be deemed to be for the public benefit.

5. Prepare, print, post or distribute printed matter relating to forestry and make investigations or experiments with regard to forestry practices.

6. Receive and accept, in the name of the people of the state, by gift, devise, or otherwise, the fee or other interest or estate therein of lands or timber or both, for general conservation purposes, including but not limited to water-shed protection, forest management, production of timber or other forest products, silviculture, forest and outdoor recreation and kindred purposes.

7. Acquire, when moneys therefor have been appropriated by the legislature or are otherwise available, real property or any interest in

any timber thereon, situated within the Adirondack or the Catskill parks or contiguous, connected with or adjacent to either park, deemed necessary for the enlargement of the forest preserve or for the conservation of the lands, forests and waters within the state, and real property deemed necessary for the purpose of protecting the forests within the state from fire.

7-a. Acquire, with the approval of the director of the budget and within such appropriations as may be made available therefor by the legislature, such abandoned railroad rights-of-way and other real property pursuant to subdivision seven of this section as may be necessary to develop a system of trails in the Adirondack and Catskill parks which shall mesh, where possible, with the comprehensive statewide trails system promulgated by the commissioner of parks and recreation; and promulgate, develop and improve such trails systems within said parks in order to make such trails suitable and available for use. For the purposes of this subdivision "trails" shall include footpaths, bikeways, snowmobile trails, horse trails, cross country ski trails, roads and other rights-of-way suitable for hiking, strolling, cycling, horseback riding, skiing and other means of motorized and non-motorized travel for recreational purposes and shall include combinations and systems of trails, including connecting and side trails, and trails leading to scenic and recreational areas.

8. Examine the forest lands under the charge of the several state institutions, boards or other management for the purpose of advising and cooperating in securing proper forest management of such lands.

9. Bring any action or proceeding for the following purposes:

a. to enforce the state's rights or interests in real property which an owner of land would be authorized to bring in like cases;

b. to insure the enforcement of the provisions of this article;

c. to determine in trespass, ejectment or other suitable actions, the title to any land claimed adversely to the state;

d. to cancel tax sales or to set aside cancellations of tax sales.

10. Compromise or adjust any judgment or claims arising out of violations of any provisions of this article, except where title to land is involved.

11. Have custody of all abstracts of title, papers, contracts or memoranda relating thereto, except original deeds to the state, for any lands purchased or conveyed to the state for forest preserve purposes.

12. Enter into cooperative agreement with the United States Department of Agriculture, the United States Department of Labor, the United States Office of Economic Opportunity, municipalities or persons for the purpose of better protecting the forests of the state from fire and pests and promoting the practice of forestry. Moneys received from the United States government, municipalities or persons in accordance with such agreements shall be deposited with the Division of Finance in the Department of Taxation and Finance, and may be withdrawn by the Division of Finance upon the warrant or order of the Commissioner of Environmental Conservation. The provisions of section 121 of the State Finance Law shall not apply to any moneys received pursuant to the provisions of this subdivision if used for the purposes indicated.

13. When an honest dispute arises as to the location of the boundary line between land owned by the state, over which the department has control and supervision, and land privately owned, execute a boundary line agreement between the owners of such private lands and the state, subject to the approval of the Commissioner of General Services.

14. Designate or approve, whenever the Commissioner of Correction or the director of the division for Youth so requests, sites on land under its control for the establishment of work camps to which persons transferred to the correctional camps for youth, or to youth opportunity or youth rehabilitation centers may be sent; designate and approve work for such persons in conservation projects on publicly owned lands or lands over which the State has a permanent easement for fishing right

purposes, and provide technical supervision for such work; and designate and approve work for such persons in conservation projects on lands owned by Cornell University for the use of the State University College of Agriculture, and by Syracuse University for the use of the State University of New York College of Environmental Science and Forestry.

15. Make rules and regulations and issue permits for the temporary use of the forest preserve.

16. Nothing in this chapter shall be construed as extending the jurisdiction of the department over the real or personal property now or hereafter under the control or in the custody of Palisades Interstate Park Commission, but the department, subject to the powers of the commissioner, is authorized to cooperate with Palisades Interstate Park Commission by the joint employment of wardens, foresters and keepers for the mutual protection of the lands under their respective jurisdiction and other commissions and the preservation of the forests thereon and of the fish and game therein.

17. Refund, to the persons entitled thereto, moneys heretofore or hereafter received by the department pursuant to any law or to an order, rule or regulation made and prescribed by the commissioner regulating the discharge of the functions, powers and duties of the department and deposited to the general fund, upon satisfactory proof of entitlement. Such refunds shall, upon approval of the commissioner and after audit by the Comptroller, be paid from any moneys available to the department in the general fund.

18. Establish, operate and maintain a search and rescue program in fire towns and fire districts of the state. For the purposes of this section fire towns shall mean such towns provided for in section 9-1107 of this chapter and fire districts shall be deemed to be the fire protection areas provided for in section 9-1109 of this chapter and regulations promulgated pursuant to the authority of such sections. Pursuant to such program the forest ranger force of the department shall have the authority to organize, direct and execute search operations for lost persons or civilian aircraft and conduct rescue operations for

persons injured or in serious danger of injury in the wild, remote and forested areas of fire towns and fire districts of the state; provided that, where criminal conduct is suspected or fugitive search is involved such search or rescue operations shall be conducted under the jurisdiction of the appropriate law enforcement agency. Search and rescue operations outside of fire towns and fire districts may be conducted by the forest ranger force upon request of the agency conducting such operation.

19. Identify, manage and conserve plants and ecological communities that are rare in New York state, located on state-owned lands under the jurisdiction of the department, and participate in the New York natural heritage program, created pursuant to section 11-0539 of this chapter, to identify rare plants, animals and ecological communities.

20. Exercise such other powers and duties as are provided by law.

§ 9-0107. Acceptance by department of lands for parks and for silvicultural research.

Notwithstanding any other provisions of this article, the department is hereby authorized to accept, for the state, grants or deeds of gift of any lands, upon approval of the title thereto by the Attorney General, as follows:

1. a. Lands, located in any county named in subdivision 2 of section 9-0105, or in subdivision 6 of section 9-0101 of this article, which the department may deem suitable for park or reservation purposes. The grant or deed must recite that it is given for acceptance under the provisions of this subdivision of this section.

b. Property so accepted shall forever be under the jurisdiction of the commissioner and his successors in office and, by virtue of the acceptance thereof, shall be irrevocably dedicated to be used for the purposes of a public park or reservation under the care, custody, control and management of the department and shall not become a part of

the forest preserve. Such property shall forever remain open to the public for the enjoyment of the scenic and natural beauties of the premises, and receive such improvement or development, by the erection of buildings, roads, highways, railroads and other structures, including the improvement, alteration and maintenance of the structures now on such premises as the legislature may from time to time determine. The department may, in its discretion, lease a part or all of such premises upon such terms and conditions as it may determine not inconsistent with the reasonable use of such premises by the public, provided that any such lease shall first have been approved by the Attorney General as to form.

2. a. Lands, located in any county named in subdivision 6 of section 9-0101 of this article, which the department may deem suitable for use for the purposes of silvicultural research and experimentation in the science of forestry to the end that forest practices most beneficial to the economy of the state and the health, welfare and comfort of the people of the state may be ascertained and demonstrated. The grant or deed to the state of any such lands must recite that it is given for acceptance under the provisions of this subdivision of this section.

b. Property so accepted shall be under the jurisdiction of the commissioner and his successors in office and, until otherwise provided by law, shall be dedicated for use only for the purposes of silvicultural research and experimentation in the science of forestry, including purposes incidental thereto, under the care, custody, control and management of the department and its successors in office and shall not become a part of the forest preserve. Under such conditions as it may deem consistent with the purposes aforesaid, and upon such terms as it may deem to be for the best interests of the state, the department may sell trees, timber and other products on any such lands. All trees, timber or other products to be sold shall be plainly marked or otherwise designated prior to cutting and no such material shall be removed from such land until paid for. No such material shall be sold at less than the fair market value in the county or counties in which it is located, which value shall be the value fixed by a department forester or other competent appraiser in a report made after an examination of the

materials to be sold, provided such appraisal is approved by the department. The department may sell any such materials at not less than the fair market value so fixed and under such conditions as it may prescribe, provided, however, that no sale of such materials appraised at five hundred dollars or more shall be made without public notice of sale, and after receipt of sealed bids. The award shall be made only to the highest bidder. Such notice of sale and bids, the awarding of the contract and the execution and filing of the contract shall otherwise be in accordance with the procedure specified in sections 9-0501 through 9-0505 of this article for the sale after public notice, of trees, timber, and other forest products on reforestation areas. All moneys received from any such sale shall be paid over to the State Comptroller and shall be deposited by him in the forest preserve expansion fund established by section 97-e of the State Finance Law.

§ 9-0109. Acquisition of lands within the Adirondack or Catskill parks.

1. Unless deemed necessary for the conservation of critical and unique natural land areas or of significant wild forest land areas, the state shall not acquire or accept fee simple ownership of structures or improvements in the Adirondack or Catskill parks listed or eligible to be listed on the state register of historic places including that amount of land on which such structures or improvements are located that is necessary for their maintenance and use.

2. Prior to any land acquisition by a state agency within the Adirondack or Catskill parks, the commissioner or responsible chief executive officer proposing such acquisition shall undertake a review of such action pursuant to the state environmental quality review act as provided in article eight of this chapter and, when applicable, the New York state historic preservation act of 1980.

3. If such structures or improvements in the Adirondack or Catskill parks are offered to the state for purchase or as a gift, it shall be the responsibility of the state agency to which such offer is made, in accordance with guidelines prepared for notifying potential private

purchasers, to search for a private purchaser or donee who would preserve such structures or improvements, if the present owner thereof consents.

4. Historic structures and improvements which are located within the Adirondack and Catskill parks and owned by the state prior to the effective date of this section and which existed prior to acquisition by the state may be maintained provided that:

a. the commissioner of parks, recreation and historic preservation finds that such structures and improvements are listed or are eligible to be listed on the state register of historic places pursuant to subdivision one of section 14.07 of the parks, recreation and historic preservation law; and

b. the commissioner finds that such structures and improvements can be maintained for public enjoyment and understanding of the forest preserve or for departmental activities necessary in protecting forest preserve lands in the parks in a manner that will not disturb the existing degree of wild forest character of land on which the pre-existing structures or improvements are located or the wild forest character of land adjacent thereto; and

c. such maintenance is in accordance with reasonable regulation of the forest preserve in the Adirondack and Catskill parks consistent with article fourteen of the state constitution.

The recording provisions of section sixty-three of the public buildings law shall apply if such structures and improvements are not maintained or are substantially altered or demolished.

§ 9-0111. Delegation of authority to license guides.

The commissioner may delegate the authority to administer the licensing of guides pursuant to section 11-0533 of this chapter to the office of public protection.

§ 9-0113. Adopt-a-natural resource stewardship program.

1. The commissioner may enter into stewardship agreements with any person or persons for the purposes of preserving, maintaining, or enhancing a state-owned natural resource or portion thereof in accordance with the policies of this article.

2. The stewardship agreement shall provide that the natural resource be preserved and maintained in its natural state or managed to enhance or restore the natural resource values they provide, consistent with the provisions of this chapter and purposes of this article. Activities may include: remediating vandalism, picking up litter and trash, establishing or maintaining access or nature trails, providing interpretive services for school groups and other citizens, managing fish and wildlife habitat, and otherwise providing positive benefits to the natural resource.

3. Stewardship agreement with any person or persons may provide for assistance of personnel, facilities and supplies of the department for the purposes of supporting appropriate activities under such stewardship agreement, in accordance with the provisions of this article.

4. The department shall establish procedures by which a person or persons may apply for a stewardship agreement, and shall be responsible for working with such persons to identify specific sections of a state-owned natural resource and specific activities deemed appropriate for such stewardship agreement. The department may consider factors such as safety, environmental sensitivity, need, cost and other factors deemed relevant in determining which natural resource or activities may be eligible or appropriate for a stewardship agreement.

5. Consistent with other laws of the state and regulations of the department, the department shall provide recognition of the stewardship activities by appropriate signage on or near the adopted natural resource, and may provide recognition by such other measures as it may

determine to be appropriate, including but not limited to press releases, certificates, newsletters, and articles in the conservationist.

6. The stewardship agreement may be modified in scope or altered in any other manner at the sole discretion of the department, not inconsistent with the provisions of this section. The person or persons shall have the option of renewing the agreement subject to the approval of the department and the continuation by the department of the adopt-a-natural resource stewardship program. The department may terminate the agreement and remove the signs upon thirty day notice, if in its sole judgment it finds and determines that the person or persons are not meeting the terms and conditions of the agreement.

7. The department shall, to the maximum extent practicable, provide assistance to other state agencies that are interested in developing stewardship programs for natural resources under their jurisdiction.

8. Notwithstanding any inconsistent provision of law, the state and its employees shall not be liable for damages suffered by any person resulting from the actions or activities of such volunteers.

TITLE 3

USE OF LANDS AND FORESTS

Section 9-0301. Use and diminution of Adirondack and Catskill parks.

9-0303. Restrictions on use of state lands.

9-0305. Signs and advertising in Adirondack and Catskill parks.

9-0307. Forest preserve lands; detached parcels outside Adirondack and Catskill parks.

§ 9-0301. Use and diminution of Adirondack and Catskill parks.

1. All lands in the Catskill park and in the Adirondack park, except those lying within the town of Dannemora, now owned or which may hereafter be acquired by the state, shall be forever reserved and

maintained for the free use of all the people, except that nothing herein shall prohibit the charging of a fee for services rendered or facilities provided.

2. No law diminishing the area of the Adirondack and Catskill parks, as defined in section 9-0101 hereof, shall be effective unless enacted by the legislature at two successive regular sessions.

§ 9-0303. Restrictions on use of state lands.

In order to protect the state lands described in this article the following provisions shall apply:

1. Trees or timber. Except as provided in subdivision 2 of section 9-0107 and in sections 9-0501 through 9-0507 of this article no person shall cut, remove, injure, destroy or cause to be cut, removed, injured or destroyed any trees or timber or other property thereon or enter upon such lands with intent to do so.

2. Structures. No building shall be erected, used or maintained upon state lands except under permits from the department.

3. Agricultural use. No person shall use any portion of the forest preserve for agricultural purposes, nor shall cattle or domestic animals of any kind be permitted to graze thereon.

4. Deposit rubbish. No person shall deposit or leave on state lands any rubbish or other waste material.

5. Transfer or lease. No person shall lease, transfer or accept any lease or transfer of any lands in the forest preserve or of any improvements thereon.

6. Disposal of improvements. The department may dispose of any improvements upon state lands under such conditions as it deems to be to the public interest.

7. Removal of materials generally. No person shall remove any material belonging to the state from the state lands without the authorization of the department.

§ 9-0305 Signs and advertising in Adirondack and Catskill parks.

1. In order to conserve the natural beauty of the Adirondack and Catskill parks, to preserve and regulate the said parks for public uses for the resort of the public for recreation, pleasure, air, light and enjoyment, to keep them open, safe, clean, and in good order for the welfare of society, and to protect and conserve the investment of the state in forest lands, campsites and other interests in real property in said parks, no person shall erect or maintain within the boundaries thereof any advertising sign, advertising structure or device of any kind, except under written permit from the department. The provisions of this section shall not apply to signs erected or maintained upon a parcel of real property in connection with the principal business or principal businesses conducted thereon and which advertise such business or businesses only, or to signs within the limits of an incorporated village.

As to signs, structures or devices existing within the Catskill park on May 26, 1969, and which require a permit pursuant to this section, the same may continue to be maintained without permit until January 1, 1976 provided that the property owner or owner of such sign, structure or device registers the same with the department on or before January 1, 1972.

As to signs, structures or devices existing on May 31, 1972 in those portions of the Adirondack park added thereto by chapter six hundred sixty-six of the laws of nineteen hundred seventy-two, and which require a permit pursuant to this section, the same may continue to be maintained without permit until January 1, 1978, provided that the property owner or owner of such sign, structure or device registers the same with the department on or before January 1, 1975.

2. Whenever a sign, structure or device has been erected or is being maintained in violation of the provisions of subdivision one of this section, the commissioner shall cause a notice of such violation, specifying as nearly as may be the nature and location of such sign, structure or device, to be personally served upon the owner of record of the real property upon which the same is located, hereinafter referred to as the property owner. In addition, a copy of such notice shall be personally served upon the owner of such sign, structure or device, if his name and address and the fact that he is the owner is clearly indicated thereon.

3. The property owner or the owner of such sign, structure or device shall remove the same within ten days from the date of the last service of such notice or copy thereof as hereinabove specified. In the event of the failure of the property owner or the owner to remove such sign, structure or device within such ten day period, the commissioner may cause an agent or employee of the department to enter upon the property where such sign, structure or device is located and to remove the same.

4. No action for trespass or damages shall lie on account of entry upon private property by an authorized agent or employee of the department engaged in carrying out any of the provisions of this section.

§ 9-0307. Forest preserve lands; detached parcels outside Adirondack and Catskill parks.

Any lands of the state, now owned or hereafter acquired, constituting the forest preserve, but outside of the Adirondack and Catskill parks as now fixed by law and not acquired or dedicated for the practice of forest or wild life conservation, and consisting in any case of not more than 100 contiguous acres entirely separated from any other portion of the forest preserve, may be dedicated, used, sold or exchanged as follows:

1. The department may dedicate any of such lands for the practice of forest or wild life conservation, or may use any of such lands for public recreational or other state purposes, under the care, custody and control of the division of lands and forests. Such dedication or use shall be by written order of the commissioner, filed in his office, a certified copy of which shall be forthwith filed by him in the office of the Secretary of State.

2. The department may consent to a transfer of jurisdiction over any such lands by the Office of General Services, and such office may make such transfer in accordance with the provisions of subdivision 4 of section 3 of the Public Lands Law governing transfers of jurisdiction in general, for the purpose of thereby dedicating such lands for the practice of forest or wild life conservation or for the use thereof for public recreational or other state purposes.

3. The department may consent to a sale or exchange of any of such lands in accordance with the provisions of section 24 of the Public Lands Law.

TITLE 5

REFORESTATION AREAS

Section 9-0501. Power to acquire reforestation areas; prohibition against compensation or gratuity.

9-0503. Certificate of purchase; exemption from taxation.

9-0505. Sale of products from reforestation areas.

9-0507. Leasing of oil and gas rights on reforestation areas.

9-0509. Lease of land to federal government for use by the federal aviation agency.

§ 9-0501. Power to acquire reforestation areas; prohibition against compensation or gratuity.

1. In order to provide for the acquisition of lands outside of the Adirondack park and the Catskill park as defined by subdivisions 1 and 2

of section 9-0101, which are adapted for reforestation and the establishment and maintenance thereon of forests for watershed protection, the production of timber and other forest products, and for recreation and kindred purposes, the department may acquire in the name of the state, by gift, purchase or appropriation, reforestation areas which shall consist respectively of not less than five hundred acres of contiguous lands, which shall be forever devoted to the planting, growth and harvesting of such trees as shall be deemed by the commissioner best suited for the lands to be reforested. Lands divided only by highway, railroad, transmission line, telephone line, telegraph line, pipe line or other rights of way or only by canals or streams shall be deemed to be contiguous within the meaning of this section. Plantations and other forests thereon shall be established, managed and protected under his supervision pursuant to such provisions of law as shall from time to time be established or to such rules and regulations as may be prescribed by him.

2. No officer or any other person acting for the department in securing options for the purchase of lands acquired or to be acquired under provisions of this title 5 shall directly or indirectly receive or accept from a vendor of lands acquired or to be acquired by the state as herein provided any commission, compensation or gratuity, and no town or county officer shall receive any compensation for services rendered to the department in connection with such acquisition.

§ 9-0503. Certificate of purchase; exemption from taxation.

Immediately upon acquiring by gift, purchase or appropriation lands for a reforestation area the commissioner shall transmit to the state agency authorized by law to approve assessments of state lands and to the Department of Audit and Control, respectively, a certificate which shall set forth, with respect to each parcel of such lands so acquired, a description thereof, the area in acres, from whom acquired, whether acquired by gift, purchase or appropriation, the price paid for such parcel in the case of a purchase (except as hereinafter provided), the date of the recording of the deed, if acquired by deed, the effective

date of the devise, if acquired by devise, and the assessed valuation of such parcels as shown by the assessment rolls of the town in which such parcel is located two years prior to the gift, if acquired by gift and separately assessed. If such a purchase shall include more than one parcel of such lands and it is impossible for the commissioner to determine the price paid for such parcel included in such purchase, he shall specify in such certificate the price paid for the entire tract purchased. Such lands shall be exempt from taxation only as provided in the Real Property Tax Law.

§ 9-0505. Sale of products from reforestation areas.

1. The commissioner, upon such terms as may be deemed by him to be for the best interests of the state and subject to the following rules and regulations, may sell the trees, timber and other products on any areas outside of the forest preserve counties heretofore or hereafter acquired by gift, purchase or appropriation and on any lands within the forest preserve counties, but outside of the Adirondack and Catskill parks as now fixed, or hereafter extended by law, heretofore or hereafter acquired pursuant to this section by the department. For the purposes of this section, the term "other products" shall also include, but not be limited to, the sap from maple trees.

2. All trees, timber or other products to be sold shall be plainly marked or otherwise designated prior to selling and no such material shall be removed from said land until paid for.

3. No such material shall be sold at less than the fair market value in the county or counties in which it is located. Fair market value shall be the value fixed by a department forester or other competent appraiser in a report made after an examination of the materials to be sold, provided such appraisal is approved by the commissioner. The commissioner shall have authority to sell such materials at not less than the value thus fixed and under such conditions as he may prescribe.

4. a. No sale of such materials appraised at ten thousand dollars or

more shall be made without public notice of sale, and after receipt of sealed bids which shall be opened only at the time and place specified in the notice of sale. Award shall be made only to the highest bidder.

b. The public notice of the sale of such materials shall be a notice describing the materials and location thereof, the date when and place where bids will be opened and the address at which said forms and specific details of the sale may be obtained. Such notice shall be printed in the Procurement Opportunity Newsletter, and in such other newspapers as will be most likely to give adequate notice of the sale of such materials, for such time and in such manner as shall be determined by the commissioner.

c. The state may reject all bids submitted if the highest bid is below the fair market value as determined above. No bids shall be withdrawn or cancelled until after the award shall have been made, but the state may reject any bids which do not conform to rules and regulations and may reject all bids and again advertise for bids in the manner herein provided if the interests of the state shall be promoted thereby. Each bidder with his bid shall deposit with the commissioner a certified check drawn upon some legally incorporated bank in this state or money for five per centum of the amount of his bid as a guarantee that he will enter into the contract of sale if it be awarded to him. Notice of the requirement of such deposit with the bid shall be embodied in the public notice for such letting and such notice shall also require the giving of a bond in such amount as the commissioner may prescribe for the faithful performance of the contract and for the indemnification of the state for any unnecessary injury to property of the state, forest growth or other materials not marked or otherwise designated for removal under such contract, which may result from the removal of the materials sold. In lieu of such bond the bidder may deposit cash or a certified check with the commissioner. The contract when awarded shall be executed in triplicate, one triplicate original shall be forthwith filed in the office of the commissioner, one together with the bond accompanying such contract in the office of the State Comptroller and one furnished to the contractor. The contractor shall present to the commissioner evidence that he is insured against all claims for workmen's compensation and

public liability.

d. For sales appraised at more than five hundred dollars and less than ten thousand dollars the commissioner, at a minimum, shall develop a local bid procedure to ensure that the public is aware of such sales and that such sales be awarded to the highest responsible bidder.

5. Notwithstanding any rule or regulation to the contrary, the commissioner shall be authorized to enter into contracts for the lease or use of state lands for the purpose of tree tapping and sap production for a term of up to, but not to exceed, ten years. For the purposes of this section, the terms "tree tapping" and "sap production" shall include trees and sap from species of trees including, but not limited to, maple.

§ 9-0507. Leasing of oil and gas rights on reforestation areas.

Notwithstanding any provisions of Article VII of the Public Lands Law to the contrary, the department, with the approval of the state geologist, may, in any lands acquired by the state in accordance with section 9-0501, enter into leases for the purpose of aiding in discovering and removing any oil or gas upon such lands or storage of gas or oil thereon, under such terms as may be prescribed by the department, and upon such conditions that the exercise of such leasehold rights shall not interfere with the operation of such reforestation areas for the purposes for which they were acquired and as defined in Section 3 of article XIV of the Constitution. Any lease made and entered into pursuant to this section shall be recorded in the Office of General Services.

§ 9-0509. Lease of land to federal government for use by the federal aviation agency.

1. Notwithstanding any contrary provision of this article, the department is hereby authorized upon such terms and conditions as it may

deem appropriate to lease to the federal government, for use by the federal aviation agency, the following described land:

From the United States Coast and Geodetic Survey Monument "SHED" located at Latitude North 42°-47'-21", Longitude West 75°-49'-37" proceed S 88°-15' E a distance of 325 feet to a point on the common property line between the lands of Howard Williams and the lands of the New York State Department of Environmental Conservation, said point being the Northeast corner of Lot 12, Proposal B, Reforestation Area 3, Madison County and also the point of beginning of the herein described area:

Thence S 8°-15' W a distance of 540.0 feet to a point;

Thence S 41°-15' W a distance of 565.0 feet to a point;

Thence N 36°-15' W a distance of 638.0 feet to a point;

Thence N 11°-15' E a distance of 535.0 feet to a point;

Thence S 83°-30' E a distance of 725.0 feet to a point of beginning, containing in all 14 acres more or less, all being situated in Lot 12, Proposal B, Reforestation Area 3, Madison County, State of New York. All bearings are magnetic.

2. The lease of the above described premises shall include the right to construct thereon a very high frequency omni-range navigation facility, together with the right to operate and maintain the same, with easements of access for laying, operating and maintaining utility lines in connection therewith.

TITLE 7

COOPERATIVE FOREST MANAGEMENT PROGRAM

Section 9-0701. Purpose of program.

9-0703. Forest regions.

9-0713. State assistance.

- 9-0715. Cooperating owner.
- 9-0717. Community forests.

§ 9-0701. Purpose of program.

In order that the practice of forestry may be encouraged, the damage caused by unplanned cutting may be avoided and the industries of the state dependent upon forest products may be stabilized as far as possible, the cooperative program provided in this title 7 is hereby authorized.

§ 9-0703. Forest regions.

The commissioner shall establish not to exceed nine forest regions of one or more counties each, which shall include all counties of the state.

§ 9-0713. State assistance.

The commissioner shall adopt forest practice standards. The department shall notify owners of forest land that the commissioner is prepared to assist cooperating owners in connection with the application of forest practice standards. The commissioner shall provide to cooperating forest and farm woodland owners technical services in connection with all phases of forest management including but not limited to, plantation establishment and care, the marking of timber, marketing assistance and silvicultural treatment of immature stands.

§ 9-0715. Cooperating owner.

A cooperating forest or farm woodland owner shall be an owner of forest land within a forest region who shall agree with the commissioner or his representative to comply with the approved forest practice

standards of the forest region, in which his land is located, for a specified period of time which may be extended from time to time by mutual consent and may be reduced to writing at the option of the commissioner. The failure of such owner to comply with the provisions of such agreement will relieve the commissioner and the state forthwith from the obligation to render to any such failing owner any state assistance provided for in section 9-0713. The commissioner may provide limited or sample services to non-cooperating owners with such owners' consent and without agreement.

§ 9-0717. Community forests.

1. Power and authority. A county, city, town, village, school district or any other political subdivision of the state, may acquire by purchase, or gift, or take over lands in its possession within the boundaries of the state and use the same for forestry purposes. The governing board of a county, city, town or school district may appropriate money for the purchase of lands for the purposes herein provided, to establish forest plantations or for the care and management of forests.

2. Procedure. Such boards may undertake such work at regular or special meetings by majority vote of such board after two weeks' public notice setting forth the fact that such plan is contemplated and that moneys are to be appropriated for such purposes.

3. Assistance and trees and shrubs. The department may assist and advise such boards in its reforestation and wildlife habitat improvement work, and the department may furnish trees and shrubs for planting such publicly owned lands without charge provided they are planted in accordance with the instructions of the department.

4. Use. Such governing board shall have full power and authority to acquire, maintain, manage and operate such forests, and sell the produce thereof, for the benefit of the inhabitants of its district.

5. Revenue. The net income from such lands shall be paid into the general fund of such municipal division and shall be used only upon order of its governing board.

TITLE 8

FOREST RESOURCES PLANNING

Section 9-0801. Legislative purpose and findings.

9-0803. Forest resources assessment.

9-0805. Forest resources plan.

9-0807. Committees.

9-0809. Public participation.

9-0811. Cooperation with federal agencies.

9-0813. Assistance from state agencies.

9-0815. Request for comment on local laws or ordinances pertaining to the practice of forestry.

§ 9-0801. Legislative purpose and findings.

It is the purpose of this act to provide for the development and maintenance of a forest resources planning program, consistent with article fourteen of the state constitution, in furtherance of the policy of the state of New York to conserve, improve and protect its natural resources and environment. The legislature recognizes that the needs and opportunities which affect the use, management and protection of the forest resources of the state are interrelated and require a comprehensive approach to issue resolution and policy development. To best serve the public interest, forest resources programs and efforts should be based upon periodic assessments and analyses of present and anticipated use, demand for, and supply of renewable forest resources from the public and private forest lands of the state. The department shall consult and cooperate with the Adirondack park agency in the preparation of those parts of the assessment and plan with respect to the forest resources of the Adirondack park. The legislature hereby designates the department of environmental conservation as the official state agency with the responsibility to plan for present and future

demands on the state's forest resources and declares that the department shall conduct a program of long range comprehensive forest resource planning which planning program shall include the periodic preparation of a forest resources assessment and the periodic development of a forest resources plan.

§ 9-0803. Forest resources assessment.

The department is authorized to carry out a comprehensive statewide assessment (hereinafter referred to as the assessment) of the present and anticipated future conditions of the forest resources of New York state. The initial assessment shall be prepared on or before September thirtieth, nineteen hundred eighty-six and subsequent assessments shall be prepared at least once every ten years. Assessments shall include but not be limited to the following:

1. an inventory of present supply of and demand for renewable forest resources;

2. an analysis of future supply of and demand for renewable forest resources; and

3. a description of present programs and responsibilities of all major organizations involved in the management of public and private forest resources.

The assessment will include all of the ecologic, sociologic, aesthetic, and economic data necessary to achieve the purposes of this act. The department shall develop and maintain an efficient system for collecting, storing, and analyzing these data, and shall prepare an assessment update at least once every five years.

§ 9-0805. Forest resources plan.

The department shall prepare a comprehensive statewide forest

resources plan. The plan shall be prepared no later than March thirtieth, nineteen hundred eighty-seven and shall be updated at least every fifth year thereafter. The plan shall include but not be limited to the following:

1. an inventory of significant forest resources issues, specific needs, and opportunities facing public and private forest resources;
2. an identification of alternative goals and strategies which address such issues, needs and opportunities and which propose specific actions to be taken; and
3. an identification of final recommended goals and strategies.

§ 9-0807. Committees.

The commissioner shall appoint an advisory committee and a technical review committee to assist directly in carrying out the provisions of this act by promoting a constructive interchange among agencies and organizations interested in planning for the use, management and protection of public and private forest resources and to enhance the prospect of common acceptance of plan recommendations.

1. The advisory committee membership shall be representative of forest resources related agencies and organizations in this state. The committee shall provide interdisciplinary review and analysis of policy development throughout the planning process. The committee shall meet at least annually and shall file a written annual report to the department and the legislature which report shall include a statement of progress made toward attaining the goals and objectives stated in the forest resource plan, recommendations for amendment of the plan and any other matter the committee deems necessary to be included. The members of the advisory committee shall not receive any remuneration except that the department may reimburse members thereof for reasonable expenses incurred in attending meetings.

2. The technical review committee membership shall be representative of the full range of expertise in use, management and protection of forest resources. The committee will provide scientific and technical review and analysis in development of the forest resources assessment. The members of the technical review committee shall not receive any remuneration except that the department may reimburse members thereof for reasonable expenses incurred in attending meetings.

§ 9-0809. Public participation.

To assure that all segments of the public have an opportunity to participate in the development of the plan, the planning program will be conducted with a structured program of public participation. The department shall establish procedures to keep the public informed about the planning process and to provide opportunities for the public to contribute to that process.

§ 9-0811. Cooperation with federal agencies.

To assure the availability and compatibility of planning data and federal assistance, the department shall cooperate with the United States department of agriculture, forest service, as provided for by the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 USC 1601 et seq.) and the Cooperative Forestry Assistance Act of 1978 (16 USC 2101 et seq.). The department shall cooperate with any other federal agency that may be involved with planning for forest resources.

§ 9-0813. Assistance from state agencies.

The department is authorized to seek assistance from the professional staff of other state agencies when the expertise of the staff of such other state agency is needed for the development of the plan. Nothing in this title shall alter or supercede section eight hundred one of the executive law.

§ 9-0815. Request for comment on local laws or ordinances pertaining to the practice of forestry.

The commissioner upon his or her own initiative, or upon the written request of a municipality or an owner of forest land within the municipality, may elect to comment upon a proposed local law or ordinance which may restrict the practice of forestry. The requesting municipality or owner of forest land shall provide, at a minimum, the full text of the proposed local law or ordinance to the commissioner with such request.

1. Upon receipt of such written request or upon the commissioner's determination to comment on a local law or ordinance, the commissioner shall notify the municipal legislative body, in writing, of the receipt date or the date of such determination.

2. An owner of forest land shall provide notice to the municipal legislative body proposing the local law or ordinance of a written request to the commissioner in the time, manner, and form as may be prescribed by the commissioner.

3. The commissioner, in preparing his or her comments for consideration by the municipality, may consider factors including, but not limited to, the impact of the proposed local law or ordinance upon the long-term viability of forests in the municipality and any modifications or alternatives which a municipality may undertake to minimize the impacts to the practice of forestry in preparing his or her comments.

4. The commissioner shall have forty-five days after receipt of an ordinance to provide his or her comments, if any, to the municipal legislative body proposing the law or ordinance. Any municipal legislative body shall defer the adoption of such local law or ordinance pending receipt of comments, if any, from the commissioner or the passage of forty-five days from the date of receipt of the proposed

local law or ordinance by the commissioner. The commissioner shall have the opportunity to respond only to the original proposal considered by the local governing body.

5. For purposes of this section, "forest land" shall mean land that is suitable to forest crop production.

TITLE 9

RECREATION

Section 9-0901. Jurisdiction of certain parks and reservations.

9-0903. Recreation facilities.

§ 9-0901. Jurisdiction of certain parks and reservations.

The department shall have care, custody, control and management of the Crown Point reservation in Essex county and Lake George battlefield park.

§ 9-0903. Recreation facilities.

1. The department shall have care, custody, control and management of the Lake George beach facility in Warren county, the Belleayre mountain ski center in Ulster and Delaware counties, the Whiteface mountain ski center and the New York world war veterans memorial highway in Essex county and the Gore mountain ski center and the Prospect Mountain Veteran's Memorial Highway in Warren county. The New York world war veterans memorial highway in Essex county and the Prospect Mountain Veteran's Memorial Highway in Warren county shall continue to be maintained by the Department of Transportation.

2. The commissioner shall have the power and is authorized to impose and provide for the collection of such fees or charges as he may deem necessary and for the best interests of the state for the use of all facilities and their appurtenances. All moneys received therefrom shall

be deposited in the State Treasury pursuant to the provisions of the State Finance Law.

3. The department shall have the supervision and jurisdiction over all locks and adjacent state property between the Saranac river and lower Saranac lake and between lower Saranac and middle Saranac lake in the county of Franklin and make such improvements and repairs thereto from time to time as may be necessary.

4. The commissioner shall have the power and is authorized to encourage investment by the private sector for the provision of equipment and capital improvements for concession facilities operated at the Belleayre Mountain ski center and the Gore Mountain ski center by entering into concession license agreements for extended periods not to exceed ten years in total. Such extended term shall be for the purpose of assuring a concessionaire of adequate protection against loss of investment in structures, fixtures, equipment, supplies and other improvements, and the length of such term shall have a direct relationship to the period required to amortize the investment. The bid prospectus submitted to prospective bidders shall contain specific information concerning the nature of the capital improvements or equipment to be provided by the successful bidder.

TITLE 11

FOREST FIRE CONTROL

Section 9-1101. Proclamation by Governor.

9-1103. Additional powers of department.

9-1105. General prohibitions.

9-1107. Fire towns.

9-1109. Fire protection areas.

9-1111. Forest fire protection.

9-1113. Top lopping evergreen trees.

9-1115. Railroad patrol.

9-1117. Condition of rights of way.

9-1119. Use of protective devices.

9-1121. Fire moneys and accounts.

§ 9-1101. Proclamation by Governor.

Whenever the forests of the state are in danger of fire, the Governor by proclamation may (a) prohibit any person or persons from entering forests, woodlands, waters and open lands; (b) prohibit the starting of fires in the out-of-doors; (c) prohibit the smoking of tobacco in forests, woodlands and open lands and (d) suspend any open season for, or prohibit the taking of, fish, birds and quadrupeds. Such proclamation may contain exceptions to the activities prohibited, and may apply to all or a portion of the state. Such proclamation shall be in full force and effect at the expiration of 24 hours after notice is given in such manner as the Governor may determine and shall remain in full force until rescinded by the Governor.

§ 9-1103. Additional powers of the department.

In addition to the powers provided in section 9-0105 and in connection with the control of fire, the department shall have the power to:

1. Maintain a system of forest fire protection in such areas of the state as the department determines necessary.
2. Purchase necessary equipment, tools or supplies, employ men or incur other expenses as may be necessary to furnish adequate forest fire protection.
3. Establish, maintain, equip and operate forest fire observation stations, telephone lines or other structures therefor as the public interest requires.
4. Make contracts, agreements or purchases either for construction, operation or maintenance of telephone lines for fire protection purposes. Any telephone company may grant the state a preferred rate.

5. With consent of owner build or improve fire roads, ditches, trails or fire lines. No action for trespass shall lie on account of injury to private property on such account, if the act is performed in the protection of the forests from fire.

6. Appoint necessary employees to perform such duties as are required by this title 11.

7. Order removed from service, on forty-eight hours' notice, any railroad locomotive, operating in the fire towns, not properly equipped with fire protection devices.

8. Grant an extension of time in which owners may comply with section 9-1113 when the department is satisfied that such an extension of time will not endanger the forests to fire, but in no case shall an extension be granted for a period of more than six weeks from the time of cutting, except in connection with operations for the clearing of a reservoir site under the authority of section 15-1507.

9. Relieve railroads from maintaining railroad fire patrol, or clearing right of way when in the judgment of the department the absence of such patrol or clearing will not subject the forests to fire menace.

10. Request the Public Service Commission to hear and determine whether any railroad, person or company operating railroad locomotives through forest land is using such devices and precautions against the setting of forest fires, as the public interest requires.

11. Designate persons who shall have authority to issue permits as required by subdivision 5 of section 9-1105.

12. Enter into working agreements with land owners for the purpose of securing better forest fire protection in the fire towns.

13. Make rules and regulations to secure better fire protection within all or any portion of those areas designated as fire districts under

subdivision 2 of section 9-1109 or defined as fire towns by section 9-1107.

§ 9-1105. General prohibitions.

1. The following are prohibited:

(a) setting of fires on or near forest land and leaving such fires unattended and unquenched;

(b) setting of a fire which will endanger the property of another;

(c) setting of forest land on fire except where necessary to implement any provision of this chapter, including, but not limited to, paragraph v of subdivision two of section 3-0301 of this chapter; provided, however, that nothing contained in this paragraph shall permit the setting on fire of any land constituting the forest preserve or of any state land within the Adirondack Park or the Catskill Park for any purpose other than fire suppression. The department shall promulgate regulations governing the use of fire which shall include provisions for notification of, or waiver of notification by, local fire officials;

(d) setting of a permitted fire in or near forest land without all inflammable material having first been removed for a distance of 3 feet around the fire;

(e) the dropping, throwing or otherwise scattering of lighted matches, burning cigars, cigarettes or tobacco on forest land;

(f) the defacing, destruction or removal of any posted notice containing forest fire warnings, laws or rules and regulations.

2. It shall be unlawful to deposit, and leave in any of the fire towns, or in any town included in a fire district as defined in subdivision 2 of section 9-1109 of this title, brush or inflammable material upon the right of way of highways.

3. No device for generating power which burns wood, coke, lignite or coal shall be operated in, through or near forest land, unless the escape of sparks, cinders or coals shall be prevented in such manner as may be required by the department.

4. In any of the fire towns, or in any town included in a fire district as defined in subdivision 2 of section 9-1109, brush, logs, slash or other inflammable material shall not be left or allowed to remain on land within 25 feet of the right of way of a railroad or within 20 feet of the right of way of a public highway.

5. It shall be unlawful to set or cause to be set or sustain any open fire for purpose of burning logs, leaves, sawdust, slabs, brush, stumps, dry grass or other debris, in any of the fire towns, without first having obtained from the department a written permit so to do.

6. Prescribed burns. (a) For the purposes of this subdivision, the term "prescribed burn" shall mean the intentional setting of forest land on fire, under carefully controlled conditions, in order to manage, enhance, or restore populations of plants or animal species or natural communities on such land.

(b) Notwithstanding the provisions of this section or any other provision of law, the department may authorize a landowner to conduct prescribed burn activities pursuant to a written prescribed burn management plan prepared by or for such landowner. The prescribed burn management plan shall include, but not be limited to, the following elements:

(i) a discussion of the landowner's training and expertise in conducting prescribed burn activities;

(ii) a map and narrative description identifying the area or areas on which prescribed burn activities will be undertaken;

(iii) a description of the ecological purposes and objectives of the prescribed burn, including an identification of the specific species or natural communities that are intended to be impacted by the burn;

(iv) a description of the vegetative cover and fuel loads on each area to be subjected to prescribed burning;

(v) a description of physical parameters, such as time of year, wind speed and direction, and air temperature and humidity, which must be met before a prescribed burn is initiated;

(vi) a description of the anticipated intensity and duration of the prescribed burn given the fuel loads and physical prescriptions established in subparagraphs (iv) and (v) of this paragraph;

(vii) a description of the logistics of the prescribed burn operation, number of personnel, and fire management equipment that will be deployed to assure that the burn is restricted to the area or areas identified for prescribed burn management;

(viii) a description of fire suppression activities to be immediately implemented should the prescribed burn threaten to escape, or actually escape, beyond the boundaries identified for such burn;

(ix) a procedure for notifying appropriate local fire officials and law enforcement personnel of the actual date, time, and estimated duration of any prescribed burn;

(x) a procedure for notifying adjacent landowners prior to the undertaking of a prescribed burn;

(xi) a description of the procedures that will be undertaken to assure that the prescribed burn is fully extinguished at the conclusion of the burn.

(c) The department shall promulgate regulations implementing this subdivision prior to authorizing any landowner to undertake prescribed burn activities. Such regulations shall include, but not be limited to, a listing of the necessary elements of the prescribed burn management plan, and standards for determining whether a request for authorization to conduct prescribed burn activities should be granted.

(d) The department shall reject any application for authorization to conduct a prescribed burn pursuant to this subdivision if the department determines that the landowner has not demonstrated the necessary expertise to properly implement the prescribed burn plan.

(e) Before granting a landowner authorization to conduct prescribed burn activities, the department shall give the chief or other official in charge of the fire department or company within whose territorial jurisdiction the proposed prescribed burn is located an opportunity to review and comment on the written prescribed burn management plan.

(f) No burning shall be prescribed under this subdivision within seventy-five feet of the boundary of a landowner's property without the written approval of the adjacent landowner. In addition, the department may prohibit burning in a buffer zone in excess of seventy-five feet from the boundary of an adjacent property owner if specific conditions at the site warrant such buffer.

§ 9-1107. Fire towns.

The following towns, including the area within the boundaries of incorporated villages, are hereby designated as "fire towns": All towns in Essex and Hamilton counties; the towns of Altona, Ausable, Black Brook, Dannemora, Ellenburg and Saranac, Clinton county; the towns of Andes, Colchester, Hancock and Middletown, Delaware county; the towns of Altamont, Belmont, Brighton, Duane, Franklin, Harrietstown, Santa Clara and Waverly, Franklin county; the towns of Bleecker, Caroga, Mayfield, Northampton and Stratford, Fulton county; the towns of Hunter, Jewitt, Lexington and Windham, Greene county; the towns of Ohio, Russia, Salisbury and Webb, Herkimer county; the towns of Crogham, Diana, Grieg, Lyonsdale and Watson, Lewis county; the towns of Forestport and Remsen, Oneida county; the towns of Corinth, Day, Edinburg and Hadley, Saratoga county; the towns of Clare, Clifton, Colton, Fine, Hopkinton, Parishville, Piercefield, Pitcairn, Saint Lawrence county; the towns of Neversink, Rockland, Sullivan county; the towns of Denning, Gardiner, Hardinburgh, Olive, Rochester, Shandaken, Shawangunk, Wawarsing and Woodstock, Ulster county; the towns of Bolton, Chester, Hague, Horicon, Johnsburch, Lake George, Luzerne, Queensbury, Stoney Creek, Thurman and Warrensburgh, Warren county; the towns of Dresden, Fort Ann and Putnam, Washington County.

§ 9-1109. Fire protection areas.

Facilities for protection against forest fire shall be available as follows:

1. In fire towns. The department, for the prevention of forest fires and the extinguishment of fires burning or threatening forests, shall, in the fire towns defined in section 9-1107, maintain an approved fire protection system, including fire observation stations and other equipment necessary to prevent and extinguish forest fires.

2. In forest fire districts. The department may establish a forest

fire protective system in such other parts of the state as it may deem necessary. In such regions the department may maintain an approved fire protection system, including fire observation stations and other equipment necessary to prevent and extinguish forest fires.

§ 9-1111. Forest fire protection.

1. Towns adjacent to fire towns and fire districts. The department may when necessary in its judgment, in order to protect the forests in the fire towns and fire districts from fire, take steps to extinguish fires actually burning in any town adjacent to a fire town or district.

2. Impressing fire fighting assistance. Any department employee or any other officer charged by the department with the duty of fire fighting shall, notwithstanding the provisions of any other law to the contrary or in conflict herewith, have the power to summon and hire for the purpose of fighting fires any person who shall have attained sixteen years of age, and to incur other expenses deemed necessary to the extinguishment of particular fires.

3. Additional protection by towns in Suffolk county. Any town in the county of Suffolk may appropriate not exceeding the sum of one thousand dollars in any one year without the vote of town meeting for the purpose of purchasing equipment and establishing fire patrols for the prevention of forest fires within any such town. The patrols and equipment shall be under the direction and supervision of the town board. Moneys appropriated pursuant to this subdivision shall be assessed, levied and collected in the same manner as moneys for other town charges are assessed, levied and collected.

§ 9-1113. Top lopping evergreen trees.

Every person who shall, within any of the fire towns or within any fire district or part thereof when so designated by department regulation, fell or cause to be felled or permit to be felled any

evergreen tree for sale or other purposes or engage in salvaging any blown down evergreen tree shall cut off or cause to be cut off from the tree at the time of felling or salvaging the tree, unless otherwise authorized by the department before the trees are felled or salvaged, all the limbs thereof up to a point where the trunk of the tree has a longest diameter which does not exceed three inches, unless the tree be felled or salvaged for use with the limbs thereon.

§ 9-1115. Railroad patrol.

All railroads shall, on such parts of their rights of way as are operated through forest lands, maintain from April first to November fifteenth of each year a sufficient number of competent fire patrolmen unless relieved by the department. The railroad shall file in the office of the department on or before April first of each year a complete list of such patrol indicating the names of the persons, their post-office address and portion of right of way assigned to each patrolman. If any changes are subsequently made similar data shall be furnished the department.

§ 9-1117. Condition of rights of way.

1. The railroad right of way of all railroads which are operated through forest lands shall be kept cleared of all inflammable material whenever required by the department.

2. Fire, live coals or hot ashes shall not be deposited unless properly protected upon any track or railroad right of way on or near forest land.

§ 9-1119. Use of protective devices.

1. Employees of a railroad which operates through forest lands shall at all times use in a proper and effective manner the fire protective

appliances provided by such railroad.

2. No locomotive operating through forest lands shall be operated unless equipped with fire protective devices of ash pan and front end which have been approved by the department. Such devices shall be maintained and properly used.

§ 9-1121. Fire moneys and accounts.

In order to carry into effect the provisions of this title the following is prescribed:

1. Temporary loan. The State Comptroller shall have, subject to the approval of the Governor, the authority to make, on behalf of the state a temporary loan not exceeding one hundred thousand dollars in any fiscal year, for the use of the department in protecting the forests and extinguishing fires as provided by title 11 of this article upon the certification of the department that any emergency exists whereby through insufficiency of appropriations it is found to be impossible to protect the forests from fire. The Comptroller shall thereupon borrow such sums as may be directed by the Governor for such purposes and shall report such transactions to the legislature which shall thereupon appropriate the moneys borrowed. Section 41 of the State Finance Law shall not apply to any indebtedness so incurred.

2. Payment of fire bills. All salaries and other expenses incurred by the department and its employees in protecting the forests from fire shall be paid by the state.

3. Rebate by counties. The full expense incurred by a town supervisor acting as superintendent of fires as provided in subdivision twelve of section twenty-nine of the town law and paid by the town in extinguishing fires actually burning except salaries and expenses of regular employees shall be a charge upon the county in which the fire burned provided that the county has within its borders any fire town or fire district as provided in subdivision 1 or 2 of section 9-1109 of

this title and provided that no part of the expenses incurred in extinguishing fires on Indian reservations located in Cattaraugus or Suffolk county shall be a charge upon or payable by such counties. The supervisors acting as superintendents of fires shall on or before September first, of each year, transmit to the clerk of the board of supervisors or county legislative body of each county in which such expense of extinguishing fires was incurred, a summary statement of expenses incurred together with the amount charged against the county, except that a detailed statement of expenses shall be furnished for any designated fire or fires when so requested by a county. The clerk shall thereupon cause the amount due to the town to be included in the budget and levied upon the taxable property of such county at the same time and in the same manner as other county charges, and the amount due the town so levied shall be paid by the County Treasurer, on or before May first following the levy thereof to the town supervisor according to such claim.

4. May pay accounts. If any person incurs expenses fighting forest fires in a fire town, or in a town included in a fire district as defined in subdivision 2 of section 9-1109, the department may upon the receipt of satisfactory proof and accounts filed in its offices within sixty days from the time the expense was incurred audit and pay all or such portion thereof as in its judgment the public interest requires.

5. Recovery of expenses. Any moneys necessarily expended by the state, a municipality, or any person in fighting forest fires may be sued for by the state, municipality or person expending the same and recovered from the person causing the fire. Such actions may be maintained in addition to other actions for damages or penalties and may be demanded in the same or separate actions.

6. Certain towns raise fire fund. Towns other than fire towns may raise necessary funds for prevention and extinguishment of forest fires in their towns either by levy or pursuant to the Local Finance Law.

7. Advance by Comptroller. Upon request of the department, the Comptroller may advance a sum, not to exceed five thousand dollars at

any time, to the department for the purpose of facilitating payment of fire accounts.

§ 9-1123. Northeastern Interstate Forest Fire Protection Compact.

The Northeastern Interstate Forest Fire Protection Compact as first enacted by chapter seven hundred forty-four of the laws of nineteen hundred forty-nine, and as re-enacted by chapter two hundred sixty-three of the laws of nineteen hundred sixty-three, is hereby continued as follows:

NORTHEASTERN INTERSTATE FOREST FIRE PROTECTION COMPACT

Article I

The purpose of this compact is to promote effective prevention and control of forest fires in the northeastern region of the United States and adjacent areas in Canada by the development of integrated forest fire plans, by the maintenance of adequate forest fire fighting services by the member states, by providing for mutual aid in fighting forest fires among the states of the region and for procedures that will facilitate such aid, and by the establishment of a central agency to coordinate the services of member states and perform such common services as member states may deem desirable.

Article II

This agreement shall become operative immediately as to those states ratifying it whenever any two or more of the states of Maine, New Hampshire, Vermont, Rhode Island, Connecticut, New York and the Commonwealth of Massachusetts have ratified it and the congress has given its consent. Any state not mentioned in this article which is contiguous with any member state may become a party to this compact. Subject to the consent of the congress of the United States, any province of the Dominion of Canada which is contiguous with any member state may become a party to this compact by taking such action as its laws and the laws of the Dominion of Canada may prescribe for ratification. In this event, the term "state" in this compact shall include within its meaning the term "province" and the procedures

prescribed shall be applied in the instance of such provinces, in accordance with the forms and practices of the Canadian government.

Article III

Each state joining herein shall appoint three representatives to a commission hereby designated as the Northeastern Forest Fire Protection Commission. One shall be the state forester or officer holding an equivalent position in such state who is responsible for forest fire control. The second shall be a member of the legislature of such state designated by the commission or committee on interstate cooperation of such state, or if there be none, or if said commission on interstate cooperation cannot constitutionally designate the said member, such legislator shall be designated by the governor thereof; provided that if it is constitutionally impossible to appoint a legislator as a commissioner from such state, the second member shall be appointed by the governor of said state in his discretion. The third member shall be a person designated by the governor as the responsible representative of the governor. In the event that any province of the Dominion of Canada shall become a member of this commission, it shall designate three members who will approximate this pattern of representation to the extent possible under the law and practices of such province. This commission shall be a body corporate with the powers and duties set forth herein.

Article IV

It shall be the duty of the commission to make inquiry and ascertain from time to time such methods, practices, circumstances and conditions as may be disclosed for bringing about the prevention and control of forest fires in the area comprising the member states, to coordinate the forest fire plans and the work of the appropriate agencies of the member states and to facilitate the rendering of aid by the member states to each other in fighting forest fires.

The commission shall formulate and, in accordance with need, from time to time, revise a regional forest fire plan for the entire region covered by the compact which shall serve as a common forest fire plan for that area.

The commission shall, more than one month prior to any regular meeting of the legislature in any signatory state, present to the governor and to the legislature of the state its recommendations relating to enactments to be made by the legislature of that state in furthering the interests and purposes of this compact.

The commission shall consult with and advise the appropriate administrative agencies of the states party hereto with regard to problems connected with the prevention and control of forest fires and recommend the adoption of such regulations as it deems advisable.

The commission shall have power to recommend to the signatory states any and all measures that will effectuate the prevention and control of forest fires.

Article V

Any two or more member states may designate the Northeastern Forest Fire Protection Commission as a joint agency to maintain such common services as those states deem desirable for the prevention and control of forest fires. Except in those cases where all member states join in such designation for common services, the representatives of any group of such designating states in the Northeastern Forest Fire Protection Commission shall constitute a separate section of such commission for the performance of the common service or services so designated provided that, if any additional expense is involved, the states so acting shall appropriate the necessary funds for this purpose. The creation of such a section as a joint agency shall not affect the privileges, powers, responsibilities or duties of the states participating therein as embodied in the other articles of this compact.

Article VI

The commission may request the United States forest service to act as the primary research and coordinating agency of the Northeastern Forest Fire Protection Commission, in cooperation with the appropriate agencies in each state and the United States forest service may accept the initial responsibility in preparing and presenting to the commission its

recommendations with respect to the regional fire plan. Representatives of the United States forest service may attend meetings of the commission and of groups of member states.

Article VII

The commission shall annually elect from its members a chairman and a vice-chairman. The commission shall appoint such officers or employees as may be required to carry the provisions of this compact into effect, shall fix and determine their duties, qualifications and compensation, and may at its pleasure, remove or discharge any such officer or employee. The commission shall adopt rules and regulations for the conduct of its business. It may establish and maintain one or more offices for the transaction of its business and may meet at any time or place but must meet at least once a year.

A majority of the members of the commission representing a majority of the signatory states shall constitute a quorum for the transaction of its general business, but no action of the commission imposing any obligation on any signatory state shall be binding unless a majority of the members from such signatory state shall have voted in favor thereof. For the purpose of conducting its general business, voting shall be by state units.

The representatives of any two or more member states, upon notice to the chairman as to the time and purpose of the meeting, may meet as a section for the discussion of problems common to those states.

Sections established by groups of member states shall have the same powers with respect to officers, employees and the maintenance of offices as are granted by this article to the commission. Sections may adopt such rules, regulations and procedures as may be necessary for the conduct of their business.

Article VIII

It shall be the duty of each member state to formulate and put in effect a forest fire plan for that state and to take such measures as may be recommended by the commission to integrate such forest fire plan

with the regional forest fire plan.

Whenever the state forest fire control agency of a member state requests aid from the state forest fire control agency of any other member state in combatting, controlling or preventing forest fires, it shall be the duty of the state forest fire control agency of that state to render all possible aid to the requesting agency which is consonant with the maintenance of protection at home.

Each signatory state agrees to render aid to the forest service or other agencies of the government of the United States in combatting, controlling or preventing forest fires in areas under their jurisdiction located within the member state or a contiguous member state.

Article IX

Whenever the forces of any member state are rendering outside aid pursuant to the request of another member state under this compact, the employees of such state shall, under the direction of the officers of the state to which they are rendering aid, have the same powers (except the power of arrest), duties, rights, privileges and immunities as comparable employees of the state to which they are rendering aid.

No member state or its officers or employees rendering outside aid pursuant to this compact shall be liable on account of any act or omission on the part of such forces while so engaged, or on account of the maintenance or use of any equipment or supplies in connection therewith.

All liability that may arise either under the laws of the requesting state or under the laws of the aiding state or under the laws of a third state on account of or in connection with a request for aid, shall be assumed and borne by the requesting state.

Any member state rendering outside aid pursuant to this compact shall be reimbursed by the member state receiving such aid for any loss or damage to, or expense incurred in the operation of any equipment answering a request for aid, and for the cost of all materials,

transportation, wages, salaries, and maintenance of employees and equipment incurred in connection with such request. Provided, that nothing herein contained shall prevent any assisting member state from assuming such loss, damage, expense or other cost or from loaning such equipment or from donating such services to the receiving member state without charge or cost.

Each member state shall provide for the payment of compensation and death benefits to injured employees and the representatives of deceased employees in case employees sustain injuries or are killed while rendering outside aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within such state.

For the purposes of this compact the term employee shall include any volunteer or auxiliary legally included within the forest fire fighting forces of the aiding state under the laws thereof.

The commission shall formulate procedures for claims and reimbursement under the provisions of this article.

Aid by a member state to an area subject to federal jurisdiction beyond the borders of such state shall not be required under this compact unless substantially the same provisions of this article relative to powers, liabilities, losses and expenses in connection with such aid are embodied in federal laws.

Article IX-A

The provisions of article IX of this compact which relate to mutual aid in combating, controlling or preventing forest fires shall be operative as between any member state and any other state which is party to a regional forest fire protection compact in another region; provided that the legislature of such other state shall have given its consent to such mutual aid provisions of this compact.

Article X

When appropriations for the support of this commission or for the

support of common services maintained by the commission or a section thereof under the provisions of article V are necessary, the commission or section thereof shall allocate the costs among the states affected with consideration of the amounts of forested land in those states that will receive protection from the service to be rendered and the extent of the forest fire problem involved in each state, and shall submit its recommendations accordingly to the legislatures of the affected states.

The commission shall submit to the governor of each state, at such time as he may request, a budget of its estimated expenditures for such period as may be required by the laws of such state for presentation to the legislature thereof.

The commission shall keep accurate books of account, showing in full its receipts and disbursements, and said books of account shall be open at any reasonable time to the inspection of such representatives of the respective signatory states as may be duly constituted for that purpose.

On or before the first day of December of each year, the commission shall submit to the respective governors of the signatory states a full and complete report of its activities for the preceding year.

Article XI

The representatives from any member state may appoint and consult with an advisory committee composed of persons interested in forest fire protection.

The commission may appoint and consult with an advisory committee of representatives of all affected groups, private and governmental.

Article XII

The commission may accept any and all donations, gifts and grants of money, equipment, supplies, materials and services from the federal or any local government, or any agency thereof and from any person, firm or corporation, for any of its purposes and functions under this compact, and may receive and utilize the same subject to the terms, conditions and regulations governing such donations, gifts and grants.

Article XIII

Nothing in this compact shall be construed to authorize or permit any member state to curtail or diminish its forest fire fighting forces, equipment, services or facilities, and it shall be the duty and responsibility of each member state to maintain adequate forest fire fighting forces and equipment to meet normal demands for forest fire protection within its borders.

Nothing in this compact shall be construed to limit or restrict the powers of any state ratifying the same to provide for the prevention, control and extinguishment of forest fires, or to prohibit the enactment or enforcement of state laws, rules or regulations intended to aid in such prevention, control and extinguishment in such state.

Nothing in this compact shall be construed to affect any existing or future cooperative relationship or arrangement between the United States forest service and a member state or states.

Article XIV

1. This compact shall continue in force and remain binding on each state ratifying it until the legislature or the governor of such state takes action to withdraw therefrom. Such action shall not be effective until six months after notice thereof has been sent by the chief executive of the state desiring to withdraw to the chief executive of all states then parties to the compact.

2. The original notice of ratification received from the governor or other duly authorized official of any state or province joining in the compact shall be filed with the official copy of the compact in the office of the secretary of state of this state, and such notice, if any, as may be received from the president or the congress of the United States, signifying the consent of the congress to the compact, shall be filed in the same manner.

3. Pursuant to article three of the compact the three representatives of this state on the Northeastern Forest Fire Protection Commission,

hereinafter called commissioners, shall be: an officer of the Department of Environmental Conservation designated by the Commissioner of Environmental Conservation; a member of the legislature who is also a member of the joint legislative committee on interstate cooperation, who shall be designated by said committee; and a citizen of the state designated by the Governor as his responsible representative to serve at the pleasure of the Governor. The commissioners shall have, exercise and perform, on behalf of the state of New York, all of the powers and duties conferred and imposed by the compact upon members of the Northeastern Forest Fire Protection Commission. They shall serve as such commissioners without compensation, but shall be reimbursed for their expenses, including travel and other expenses both within and without the state, actually and necessarily incurred by them in the performance of their duties under this section and such compact. Such expenses shall be payable on the audit and warrant of the Comptroller, on vouchers certified or approved by the Commissioner of Environmental Conservation in the manner prescribed by law, out of any moneys appropriated or available therefor to the Department of Environmental Conservation. The commissioners serving on the effective date of this section shall continue in office until their successors have qualified, or until otherwise ceasing to be commissioners pursuant to law.

4. The Comptroller of the state of New York is hereby authorized and empowered to examine from time to time the accounts and books of the commission, including its receipts, disbursements and such other items referring to its financial condition as he may deem proper and to report the results of such examinations to the Governor of this state.

5. a. The Northeastern Forest Fire Protection Commission shall submit annually, in accordance with the laws and practices of this state, to the Governor for study and consideration by him, an estimate of moneys required to administer, manage and support the commission. Such estimate shall include any request for appropriation of funds by New York and shall be accompanied by a tabulation of similar requests which the commission expects to make to each other member state and the formula or factors upon which such respective requests are based.

b. The Commissioner of Environmental Conservation shall be afforded an opportunity to comment on any budget request by the commission, and the commission shall be furnished with a copy of any such comments.

6. No provision of the Conservation Law and no provision of the Environmental Conservation Law, if such provision of the Environmental Conservation Law was derived from a provision of the Conservation Law, which is inconsistent with the provisions of the Northeastern Interstate Forest Fire Protection Compact shall be applicable to the commission or to any matter governed by the Northeastern Interstate Forest Fire Protection Compact.

7. On August 15, 1964 and at intervals of four years thereafter, the Commissioner of Environmental Conservation shall evaluate the role of the commission with respect to forest fire protection in New York and shall report to the commission thereon. The Commissioner of Environmental Conservation shall transmit a copy of such report to the Governor. The Commissioner of Environmental Conservation may make such additional reports to the commission and the Governor as he deems appropriate.

8. If any part or provision of this section or of the compact contained herein shall be adjudged unconstitutional by a court of competent jurisdiction, all other parts of this section or of such compact, as the case may be, shall nevertheless continue in full force and effect. If it shall be adjudged by a court of competent jurisdiction that any commissioner appointed pursuant to subdivision three of this article is disqualified from serving or is ineligible to serve as such commissioner for any reason or cause, such commissioner shall not thereby forfeit any other public office then held by him or any of the emoluments thereof and the vacancy on the commission thereby created shall be filled by the Governor by the appointment of a citizen and resident of this state not subject to such disqualification or ineligibility.

FOREST INSECT AND DISEASE CONTROL

Section 9-1301. White pine blister rust and currant rust.

9-1303. Forest insects and other forest tree diseases.

§ 9-1301. White pine blister rust and currant rust.

For the purpose of suppressing and controlling white pine blister rust and currant rust (*Cronartium ribicola*), the following provisions shall apply:

1. Certain cultivars of black currant declared a public nuisance. Unless otherwise provided for by this section, the planting, growing, propagating, cultivating, or selling plants, roots, or cuttings of any species of cultivated black currants (*Ribes nigrum*) other than cultivars that are immune or resistant to white pine blister rust or currant rust is hereby prohibited in this state; provided, however, that the planting, growing, propagating, cultivating, or selling plants, roots or cuttings of any species of cultivated black currants is authorized in all fruiting currant districts or potentially fruiting currant districts. Such unauthorized bushes, roots, cuttings, or plants may be destroyed by the agents of the department.

2. Fruiting currant districts and potential fruiting currant districts defined. Districts where the growing of all species of currants, including black currants, for the production of fruit is carried on and is a commercial enterprise or a potentially important commercial enterprise shall be determined and designated as "fruiting currant districts" or "potential fruiting currant districts", and in such districts the provisions of subdivision three of this section shall apply. The location and extent of such districts shall be determined by the department and the state department of agriculture and markets.

3. No measures for the control of white pine blister rust shall be undertaken by the department within the boundaries of designated fruiting currant districts or potential fruiting currant districts.

4. Control measures outside of fruiting currant districts or potential fruiting currant districts. Whenever such action is desirable as a means of controlling white pine blister rust or currant rust, the department or its duly authorized agents may eradicate any unauthorized plants of the genus *Ribes* (currants and gooseberries), either wild or cultivated, except within nurseries which are annually certified by the state department of agriculture and markets to be free from disease. Owners shall remove from their lands, subject to the direction and the approval of the duly authorized agents of the department, the plants of the genus *Ribes* within a distance of not more than 900 feet of the white pine on the land of adjoining owners who have protected their white pine from white pine blister rust. If any owner, upon not less than thirty days' notice in writing, fails to destroy unauthorized *Ribes* on his or her property as provided in this subdivision, the commissioner may cause such plants to be destroyed, and the expense of such work shall be a charge against the owner, which shall constitute a lien upon the land.

5. Quarantine regulations. The department shall have the authority, by order, to establish quarantine districts in any part or parts of the state. In such districts, it may prohibit the possession of any five-leafed pine trees or plants of the genus *Ribes* (currants and gooseberries), or so much thereof as is deemed necessary. It may also prohibit the transportation of any plants, roots, or cuttings of the genus *Ribes* (currants and gooseberries) from or to any quarantine district within the state, or from any diseased area or locality in which the disease exists outside of the state to any point within the state. Such prohibitions shall be effective on and after the tenth day from the date of the order made with respect thereto. On the making of such order, the department shall cause a certified copy of the same to be filed in the office of the clerk of each county affected by such quarantine and shall give such other notice thereof as it may deem necessary. The provisions of this subdivision shall not apply to undiseased cultivated plants or to the fruit of diseased plants of the genus *Ribes* (currants and gooseberries) included within fruiting currant districts or potential fruiting currant districts or to the merchantable contents of any pine trees; provided that any diseased part thereof is first destroyed.

6. Diseased trees or plants defined. A plant of the genus *Ribes* which is visibly infected by *Cronartium ribicola* or any five-leaved pines upon which white pine blister rust has been found growing shall be construed to be and be, within the meaning of this section only, a diseased plant, and, as such, may be destroyed without compensation under the provisions of this section.

7. Authority to eradicate and compensation. Agents or employees of the department may enter upon any land to carry out the provisions of this section if proper precautionary measures are taken by them to prevent the spread of this disease, and no action for trespass shall lie therefor. Fair compensation shall be allowed for all undiseased trees or undiseased cultivated *Ribes* destroyed, except for prohibited varieties of cultivated black currants (*Ribes nigrum*) located outside of a fruiting currant district or potential fruiting currant district. No compensation shall be paid by the state for any species of *Ribes* destroyed in connection with the establishment of a *Ribes*-free zone around commercial nurseries, but fair compensation for such *Ribes* must be paid by the person owning or operating the nursery protected by such destruction of bushes. The rate of fair compensation shall be determined by the commissioner of agriculture and markets or a committee appointed by him or her. If the commissioner of agriculture and markets determines to appoint a committee for the purpose of making such determination, such committee shall be appointed prior to May 1 in each year.

§ 9-1303. Forest insects and other forest tree diseases.

For the purpose of control and preventing the spread of forest insects and forest tree diseases (except white pine blister rust and currant rust, covered by section 9-1301) the following provisions shall apply:

1. The department may enter into cooperative agreements with any other state, the federal government, any foreign government, any municipal subdivision of New York state or private individuals in order to obtain proper working agreements.

2. The department may accept and expend gifts of money for control and prevention work.

3. The department may conduct necessary investigations for the purpose of discovering better methods of control or prevention of spread of forest insects and forest tree diseases either within or without the state.

4. Duly authorized agents of the department may enter upon any lands for the purpose of determining if such property is infested with forest insects or forest tree diseases, and the extent of such infestation.

5. The department shall have the authority by order to establish quarantine districts in any part or parts of the state, and to prohibit the movement of materials which may be harboring forest insects or forest tree diseases in any of their different forms. On the making of such an order, the department shall cause a certified copy of the same to be filed in the office of the clerk of each county, affected by such quarantine, and shall give such other notice thereof as it may deem necessary. Such order shall be effective on and after the tenth day from the filing thereof.

6. The department shall have discretionary authority to poison forest areas in or near sections infested by insect pests or forest tree diseases.

7. The department may take steps to establish barrier or protective zones for the purpose of preventing the spread of forest insect and disease pests, and in so doing shall have the authority and right to enter upon private lands for this purpose, and thereon make such modifications in the composition of the forest growth as it may deem necessary. In such barrier or protective zones trees or other vegetation may be sprayed, cut, destroyed, or otherwise treated when in the judgment of the department, the same may be necessary, but the owner of the property shall be entitled to a just compensation for damage done through the acts of such agents, except that no compensation shall be

paid for the destruction of infested trees.

8. The department shall have power to ascertain the amount of damage done upon lands of private owners by the acts of the agents of the department in establishing and maintaining barrier zones, by having an agent of the department appraise the same. If the owner is not satisfied with the amount of damage as fixed by such appraisal, he may, within six months after service upon him of a copy of such appraisal, take an appeal therefrom to the Court of Claims, which court is hereby authorized to pass upon the questions involved and determine the amount due such owner.

9. The department may by order make rules and regulations governing any and all operations designed for the purpose of preventing the spread of or for the purpose of controlling forest insects and forest tree diseases, their pupae, eggs and caterpillars, and plants or trees infested by them, all of which are hereby declared a public nuisance. Such rules and regulations shall become effective in any county on and after the tenth day from the filing of a certified copy in the office of the clerk of that county.

10. No action for trespass shall lie on account of entry on private lands by an agent of the department for the exercise of any power authorized by this section.

11. No person shall wilfully resist or obstruct the work of any agents duly employed by the department, engaged in the suppression of forest insects or forest tree diseases.

12. The department shall have the authority to incur expenses in connection with the training of persons at points outside of the state of New York, if the same is deemed by it necessary.

TITLE 15

REMOVAL OF TREES AND PROTECTED PLANTS

Section 9-1501. Removal of trees.

9-1503. Removal of protected plants.

§ 9-1501. Removal of trees.

No person shall cut, pull or dig up for the purpose of removal, injure or destroy or cause to be so removed, injured or destroyed, any tree on the lands of another without consent of the owner. Any peace officer, acting pursuant to his or her special duties, or police officer may enforce the provisions of this section.

§ 9-1503. Removal of protected plants.

1. For the purposes of this section, "plants" shall mean species of native shrubs, trees, herbs, ferns, fern-allies and wild flowers; "endangered species" shall mean those species of plants in danger of extinction throughout all or a significant portion of their ranges within the state, and requiring remedial action to prevent such extinction; "threatened species" shall mean those species of plants that are likely to become endangered within the foreseeable future throughout all or a significant portion of their ranges within the state; "rare species" shall mean those species of plants that have small populations within their ranges in the state, and "exploitably vulnerable species" shall mean those species of plants that are likely to become threatened in the near future throughout all or a significant portion of their ranges within the state if causal factors continue unchecked.

2. The department may, by rule and regulation, promulgate and adopt a list or lists of protected plants which by reason of their endangered, rare, threatened or exploitably vulnerable status should not be picked or removed from their natural habitat. In promulgating and adopting such list or lists the department shall consult with and cooperate with the departments of agriculture and markets and education and other affected public or private organizations. Plants included in such list or lists may be so included for purposes of the entire state or portions thereof. Such list or lists may be modified in whole or in part through the

institution of a permit or waiver-issuing procedure.

3. No person shall, in any area designated by such list or lists, knowingly pick, pluck, sever, remove, damage by the application of herbicides or defoliants or carry away, without the consent of the owner thereof, any protected plant. An offense under this section shall be a violation, punishable by a fine of not to exceed twenty-five dollars.

4. The department is authorized to regulate the harvesting, collection, sale, and exportation of American ginseng (*Panax quinquefolius*) plants, roots and cuttings. The department is further authorized to promulgate rules and regulations to implement the authority conferred herein.

TITLE 17

NEW YORK INVASIVE SPECIES COUNCIL

Section 9-1701. Legislative findings.

9-1703. Definitions.

9-1705. New York invasive species council.

9-1707. New York invasive species advisory committee.

9-1709. General powers and duties of the department.

9-1710. Aquatic invasive species; spread prevention.

9-1711. Aquatic invasive species inspection stations in the Adirondack park.

§ 9-1701. Legislative findings.

The legislature finds that invasive plant and animal species pose an unacceptable risk to New York state's environment and economy and that this risk is increasing through time as more invasive species become established within the state. The legislature additionally finds that invasive species are having a detrimental effect upon the state's fresh and tidal wetlands, water bodies and waterways, forests, agricultural lands, meadows and grasslands, and other natural communities and systems by out-competing native species, diminishing biological diversity,

altering community structure and, in some cases, changing ecosystem processes. Moreover, the legislature recognizes that the ecological integrity of an increasing number of publicly and privately-owned parks and preserves is being adversely affected by invasive plants and animals, challenging the ability of land management agencies to effectively manage these sites. The legislature further recognizes that nearly half (forty-six percent; fifty-seven percent of the plants, thirty-nine percent of the animals) of the species on the federal list of endangered species are declining, at least in part, due to invasive species. The legislature additionally finds that invasive species have an adverse impact on the New York state economy. Particularly affected by these species are the water supply, agricultural, and recreational sectors of the state economy. The economic impact to the national economy has been estimated to be as high as one hundred thirty-seven billion dollars annually.

§ 9-1703. Definitions.

As used in this title:

1. "Advisory committee" means the New York invasive species advisory committee established by section 9-1707 of this title.

2. "Council" means the New York invasive species council established by section 9-1705 of this title.

3. "Control" means, as appropriate, eradicating, suppressing, reducing, or managing invasive species populations, preventing spread of invasive species from areas where they are present, and taking steps such as restoration of native species and habitats to reduce the effects of invasive species and to prevent further invasions.

4. "Ecosystem" means the complex of a community of organisms and its environment.

5. "Introduction" means the intentional or unintentional escape,

release, dissemination, or placement of a species into an ecosystem as a result of human activity.

6. "Native species" means, with respect to a particular ecosystem, a species that, other than as a result of an introduction, historically occurred or currently occurs in that ecosystem.

7. "Species" means a group of organisms all of which have a high degree of physical and genetic similarity, generally interbreed only among themselves, and show persistent differences from members of allied groups of organisms.

8. "Plan" means the plan developed pursuant to section 9-1705 of this title.

9. "GIS" means geographic information system.

10. "Invasive species" means a species that is:

(a) nonnative to the ecosystem under consideration; and

(b) whose introduction causes or is likely to cause economic or environmental harm or harm to human health. For the purposes of this paragraph, the harm must significantly outweigh any benefits.

§ 9-1705. New York invasive species council.

1. There is hereby established the New York invasive species council. Such council shall consist of a total of nine members and shall include the commissioner, the commissioners of agriculture and markets, transportation, parks, recreation and historic preservation, education, the secretary of state, the chairperson of the New York state thruway authority, the director of the New York state canal corporation, and the chairperson of the Adirondack Park agency, or a designee of such department, agency or public authority.

2. The commissioner of agriculture and markets and the commissioner or their designees shall serve as joint chairs of the council.

3. The council shall meet at least quarterly and shall regularly consult with the advisory committee.

4. The council may consult with any organization, educational institution, or governmental agency, including, but not limited to, the United States Department of Agriculture, the United States Coast Guard, the port authority of New York and New Jersey, the National Invasive Species Council and the New York Ocean and Great Lakes Ecosystem Conservation Council.

5. The role of the council includes, but is not limited to:

(a) from time to time assessing the nature, scope and magnitude of the environmental, ecological, agricultural, economic, recreational, and social impacts caused by invasive species in the state;

(b) from time to time identifying actions taken by members of the council, state and local governments and the public to: prevent the introduction of invasive species; detect and respond rapidly to and control populations of invasive species in a cost-effective and environmentally sound manner; monitor invasive species populations accurately and reliably; provide for restoration of native species and habitat conditions in ecosystems that have been invaded; conduct research on invasive species and develop technologies to prevent introduction; provide for environmentally sound control of invasive species; promote public education on invasive species; and the means to address invasive species;

(c) the development of a "comprehensive plan for invasive species management". Such plan shall address all taxa of invasive species. The comprehensive plan should, at a minimum: recommend interagency responsibilities; describe coordination among different agencies and organizations; recommend approaches to funding invasive species work; address prevention, early detection and rapid response; identify opportunities for control and restoration, including research needs; and describe effective outreach and education. Such plan shall recommend responsibilities for different agencies with the goal of reducing or eliminating, where practicable, contradictory or conflicting policies or programs. Such plan should identify needs for additional staff positions

at state agencies and recommend New York state or federal legislation or regulation. Such plan shall place an emphasis on both prevention and early detection and rapid response to prevent future damage. Such plan shall evaluate and incorporate, as appropriate: the approved New York State Aquatic Nuisance Species Management Plan; the Lake Champlain Basin Aquatic Nuisance Species Management Plan; and the Adirondack Park Aquatic Nuisance Species Management Plan;

(d) providing input on funding priorities and grant applications regarding monies made available for the implementation of this title and grants for projects related to the control and management of invasive species, education and outreach efforts, and for projects aimed at the early detection and prevention of invasive species;

(e) organizing and convening a biennial invasive species summit to focus and maintain attention on the state's comprehensive invasive species program;

(f) encouraging industries and trade organizations to develop and adopt voluntary codes of conduct designed to reduce or eliminate the use and distribution of invasive species, reviewing such voluntary codes of conduct and officially recognizing approved codes;

(g) supporting within available funds and encouraging Partnerships for Regional Invasive Species Management in their efforts to address invasive species through coordination, recruitment and training of volunteers, education, early detection, rapid response, eradication, research, and planning;

(h) submitting to the legislature and the governor prior to January first, two thousand ten a report, produced in consultation with the advisory committee, recommending a four-tier system for nonnative animal and plant species. The system shall contain: (i) a list of prohibited species, which should be unlawful to possess, import, purchase, transport, or introduce except under a permit for disposal, control, research, or education; (ii) a list of regulated species which should be legal to possess, sell, buy, and transport but not be introduced into a free-living state; (iii) a list of unregulated species which are nonnative species that should not be subject to regulation; and (iv) a procedure for the review of a nonnative species that is not on the prohibited, regulated, or unregulated lists before the use, distribution or release of such nonnative species. Nothing contained in the report

shall have the force of law. The council shall recommend legislation regarding the four-tier system, including penalties for violations of the four-tier system; and

(i) developing recommendations on statutory actions to prohibit, manage and control invasive species.

§ 9-1707. New York invasive species advisory committee.

1. There shall be established a New York invasive species advisory committee which shall provide information, advice and guidance to the council, including but not limited to providing assistance with the development of the four-tier classification system for nonnative animal and plant species.

2. The commissioner and the commissioner of agriculture and markets shall select up to twenty-five at-large members with at least one member from each of the following: New York biodiversity research institute, New York state's land grant university, New York sea grant, a statewide organization formed to address invasive species, a statewide land conservation organization, a statewide agricultural organization, a nursery business, a boating organization, the darrin freshwater institute, the soil and water conservation districts, the natural heritage program, a New York state forestry school, a lake association, the New York city department of environmental protection, and a statewide local government organization.

3. The members of the advisory council shall serve without compensation, except members shall be allowed their necessary and actual expenses incurred in the performance of their duties under this section.

§ 9-1709. General powers and duties of the department.

1. The department, in cooperation with the department of agriculture and markets, shall restrict the sale, purchase, possession, propagation, introduction, importation, transport and disposal of invasive species

pursuant to this section. The department and the department of agriculture and markets in consultation with the council, shall, after public hearing, promulgate joint regulations to develop:

- (a) a permit for prohibited species disposal, control, research and education;

- (b) a list of prohibited species, which shall be unlawful to knowingly possess with the intent to sell, import, purchase, transport or introduce;

- (c) a list of prohibited species which shall be unlawful to import, sell, purchase, propagate, transport, or introduce except under a permit for disposal, control, research, or education; and

- (d) a list of regulated species which shall be legal to possess, sell, buy, propagate and transport but may not be knowingly introduced into a free-living state or introduced by a means that one knew or should have known would lead to the introduction into a free-living state.

As part of the regulatory process, the departments and the council shall consider establishing grace periods for prohibited and regulated species so businesses can plan the management of existing stock.

2. For the purpose of carrying out the provisions of this title, the department in cooperation with the department of agriculture and markets shall have the authority, within funds available, to:

- (a) establish, operate and maintain state-wide databases and clearinghouses for all taxa of invasive species that incorporate existing data from agencies and organizations in the state, as well as from nearby states, provinces, Canada, and the federal government. Such databases and clearinghouses may provide the aggregate data on-line in a GIS;

- (b) coordinate state agency and public authority actions to do the following:

- (i) phasing out uses of invasive species;

- (ii) expanding use of native species;

- (iii) promoting private and local government use of native species as alternatives to invasive species; and

- (iv) wherever practical and where consistent with watershed and/or regional invasive species management plans, prohibiting and actively

eliminating invasive species at project sites funded or regulated by the state; and

(c) in collaboration with the council, aid in the review and reform of relevant regulatory processes to remove unnecessary impediments to the restoration of invaded ecosystems.

§ 9-1710. Aquatic invasive species; spread prevention.

1. For purposes of this section:

(a) "Watercraft" shall mean every motorized or non-motorized boat or vehicle capable of being used or operated as a means of transportation or recreation in or on water.

(b) "Launch" shall mean to place a watercraft or floating dock into a public waterbody or any inlet or outlet to such waterbody for any purpose, including by trailer or other device or carrying by hand a watercraft into the waterbody.

2. No person shall launch a watercraft or floating dock unless it can be demonstrated that reasonable precautions such as removal of any visible plant or animal matter, washing, draining or drying as defined by the department pursuant to rules and regulations, have been taken.

3. The department may create and maintain a self-issuing certification designed for a person to demonstrate that reasonable precautions have been taken prior to launching a watercraft.

4. The department shall conduct education and outreach efforts including, but not limited to the following:

(a) establish and maintain a public website for the dissemination of educational materials to promote cleaning, draining and drying of watercrafts;

(b) develop and distribute educational materials including, but not limited to, the most effective methods to prevent the spread of aquatic invasive species, and the potential for live wells and other interior water compartments to carry all stages of aquatic invasive species including those that are small-bodied and microscopic; and

(c) include boat washing education in approved boating safety courses.

§ 9-1711. Aquatic invasive species inspection stations in the Adirondack park.

1. The department may establish aquatic invasive species inspection stations at any location in the Adirondack park and within a ten-mile radius of the Adirondack park boundary, including, but not limited to locations adjacent to or near waters; and at state-owned facilities to provide compliance with the requirements of section 9-1710 of this title.

2. When an aquatic invasive species inspection station adjacent to a public waterbody is open for operation, owners or operators of motorized watercraft who are not in possession of either a self-issuing certification or an inspection or decontamination certificate from an aquatic invasive species inspection station, issued since the last operation of such watercraft in a waterbody, shall obtain such certification or certificate before entering the public waterbody to ensure compliance with section 9-1710 of this title. The department shall maintain on their website a list of such stations and their operating hours in order to assist motorized watercraft owners and operators in locating stations where they can inspect and clean their watercraft.

3. The department or other entity designated by the department may issue an inspection or decontamination certificate to the owner or person in possession of a motorized watercraft that has been inspected. Such certificate shall include the following details: (a) the name of the department or program that conducted the inspection; (b) the date, place, and time of inspection; and (c) any preventative measures performed.

4. If the department or designated entity issues an inspection or decontamination certificate to the owner or person in possession of the motorized watercraft, the department or designated entity may attach a

tamperproof tag to the motorized watercraft to certify such motorized watercraft arriving at a boat launch with unbroken tags could launch without an additional inspection. Such tag may only be removed prior to a launch.

5. The department may recognize an inspection or decontamination certificate issued by another governmental entity, if the other governmental entity adheres to the minimum standards for inspection and decontamination as determined by the department, including but not limited to recognized uniform standards.

6. Annually the department will review all data collected at aquatic invasive species inspection stations, including any data from designated entities, to identify practical improvements to reduce the potential spread of aquatic invasive species.

TITLE 19

TOWNSHIP FORTY SETTLEMENT ACT

Section 9-1901. Legislative purpose and intent.

9-1903. Definitions.

9-1905. List of disputed parcels.

9-1907. Process for clearing title.

9-1909. Attorney general to file suit.

9-1911. Conveyances to the state.

9-1913. Adirondack park agency jurisdiction.

9-1915. Notarized statement.

§ 9-1901. Legislative purpose and intent.

1. During the last one hundred years, both the state and private parties have claimed title to identical portions of township forty, Totten and Crossfield Purchase, in the town of Long Lake, county of Hamilton. Indeed, some private parties have occupied and improved a number of such parcels to which the state claims title and, in many cases, both the state and private parties have paid taxes on such

parcels. In the last several decades, the state and some private parties have commenced litigation, at significant expense and with limited success, to establish their respective claims over disputed parcels. As a result of longstanding claims to disputed parcels, the free transfer of the parcels has been inhibited, thereby creating economic and social hardship in township forty which, in turn, has prevented both state and private parties from the full use and enjoyment of the parcels. The legislature has determined that the judicial system is not an appropriate forum to resolve these longstanding title disputes and that a statutory solution is required.

2. For these reasons and as authorized by the provisions of section one of article fourteen of the state constitution, the legislature finds that it is in the public interest to comprehensively and expeditiously resolve these longstanding title disputes in a manner which is fair and equitable. The legislature finds that it is in the best interests of the state, the county of Hamilton, the town of Long Lake, and the private parties who claim title to portions of township forty to resolve these title disputes in a structured and efficient manner that results in clarification of ownership interests, enhancement of public access to forest preserve lands, and the quiet enjoyment of private property.

3. The legislature further finds that resolution of these title disputes shall be accomplished in a manner that ensures the integrity of the forest preserve in the Adirondack park and that results in a net benefit to the forest preserve when compared to the contested parcels.

4. The legislature further finds that the title disputes associated with township forty constitute a unique situation, found nowhere else in the state, and that consequently it is equitable and appropriate for the state to relinquish its claim of title to disputed parcels within the township. This relinquishment of claims to title shall not be deemed to set precedent for the relinquishment of claims to title with respect to other lands owned by the state.

§ 9-1903. Definitions.

For purposes of this title, the following terms shall have the following meanings:

1. "County" means the county of Hamilton.
2. "Disputed parcel" means a parcel of land located in township forty to which both the state and a person claim title.
3. "Person" means any individual, firm, partnership, association, trust, limited liability company or corporation that claims title to a disputed parcel.
4. "Town" means the town of Long Lake, in the county of Hamilton.
5. "Township forty" means township forty, Totten and Crossfield Purchase.

§ 9-1905. List of disputed parcels.

The following parcels of land, identified by the county's two thousand twelve assessment rolls and the county's online mapping system as of October, two thousand twelve, and any subsequent conveyances therefrom, are the disputed parcels that are the subject of the provisions of this title:

37.016-1-1.100

37.016-1-1.210

37.016-1-1.220

37.016-1-2

37.016-1-3

37.016-1-4.110

37.016-1-4.120

37.016-1-4.131

37.016-1-4.132

37.016-1-4.140

37.016-1-4.150

37.016-1-4.160

37.016-1-4.200

37.016-1-4.300

37.016-1-5

37.016-1-6

37.016-1-8.100

37.016-1-10

37.018-1-1

44.000-1-18

44.000-1-19

44.000-1-20

44.000-1-22

44.000-1-26.100

44.000-1-26.111

44.000-1-26.112

44.000-1-26.121

44.000-1-27.112

44.000-1-27.113

44.000-1-27.120

44.000-1-27.211

44.000-1-27.212

44.000-1-27.220

44.000-1-28

44.000-1-3

44.000-1-4.111

44.000-1-4.121

44.000-1-4.200

44.000-1-8

44.000-1-9

44.000-1-10

44.000-1-11

44.000-2-32.100

44.000-2-33.100

44.000-3-1

44.000-3-10

44.000-3-11

44.000-3-12

44.000-3-13

44.000-3-14

44.000-3-15

44.000-3-16

44.000-3-17

44.000-3-2.100

44.000-3-2.200

44.000-3-3

44.000-3-4

44.000-3-5

44.000-3-6

44.000-3-7

44.000-3-8

44.000-3-9.100

44.000-4-1.100

44.000-4-1.200

44.000-4-1.300

44.014-1-10

44.014-1-11.100

44.014-1-12

44.014-1-13

44.014-1-2

44.014-1-3.100

44.014-1-3.200

44.014-1-4.200

44.014-1-5

44.014-1-6

44.014-1-7

44.014-1-8

44.014-1-9

44.014-2-1

44.015-1-1

44.015-1-2

44.015-1-3

44.015-1-4

44.015-1-5

44.015-1-6

44.015-1-7

44.015-1-8

44.015-1-9

44.018-1-1.110

44.018-1-10

44.018-1-11

44.018-1-12

44.018-1-13

44.018-1-14

44.018-1-15

44.018-1-17

44.018-1-18

44.018-1-19

44.018-1-2

44.018-1-20

44.018-1-21

44.018-1-22.111

44.018-1-22.112

44.018-1-22.114

44.018-1-22.115

44.018-1-22.116

44.018-1-22.120

44.018-1-22.200

44.018-1-23.111

44.018-1-23.112

44.018-1-23.120

44.018-1-23.130

44.018-1-23.200

44.018-1-23.311

44.018-1-23.312

44.018-1-23.320

44.018-1-27.110

44.018-1-27.200

44.018-1-28.100

44.018-1-3

44.018-1-4

44.018-1-5

44.018-1-6.100

44.018-1-8.100

44.018-1-8.200

44.018-1-8.300

44.018-1-9

44.018-3-1

44.018-3-2

44.018-3-2.100

52.006-1-13

52.006-1-18

52.006-1-19.100

52.006-1-19.200

52.006-1-19.300

52.006-1-20

52.006-1-22

52.006-1-23

52.006-1-24

52.006-1-25

52.006-1-26

52.006-1-27

52.006-2-1

52.006-2-10

52.006-2-11

52.006-2-12

52.006-2-13

52.006-2-14

52.006-2-15

52.006-2-16

52.006-2-17

52.006-2-18

52.006-2-19.100

52.006-2-19.200

52.006-2-2.121

52.006-2-2.122

52.006-2-2.123

52.006-2-2.124

52.006-2-2.200

52.006-2-20

52.006-2-21.111

52.006-2-21.112

52.006-2-22.110

52.006-2-22.120

52.006-2-23.111

52.006-2-23.112

52.006-2-23.113

52.006-2-23.114

52.006-2-23.115

52.006-2-23.116

52.006-2-23.117

52.006-2-23.118

52.006-2-23.119

52.006-2-23.120

52.006-2-24./1

52.006-2-24.100

52.006-2-25.100

52.006-2-26.100

52.006-2-26.200

52.006-2-27

52.006-2-28.111

52.006-2-28.112

52.006-2-28.113

52.006-2-28.114

52.006-2-28.120

52.006-2-28.200

52.006-2-29

52.006-2-3

52.006-2-4

52.006-2-5

52.006-2-6

52.006-2-7

52.006-2-8.100

52.006-2.8.200

52.006-2-9

52.011-1-1

52.011-1-10.100

52.011-1-10.200

52.011-1-11

52.011-1-2.111

52.011-1-2.112

52.011-1-2.114

52.011-1-2.120

52.011-1-2.200

52.011-1-4.200

52.011-1-5

52.011-1-6

52.011-1-7.100

52.011-1-8

52.011-1-9.110

52.011-1-9.120

52.011-1-9.211

52.011-1-9.212

52.011-1-9.220

52.011-1-9.230

52.011-1-9.300

The disputed parcels identified in this section are not intended to be legal descriptions, but are intended to identify disputed parcels by tax lot number only.

§ 9-1907. Process for clearing title.

1. Within thirty days of the effective date of this section, the department shall submit a written request to the county tax assessor for a certified list, to be prepared from the most current tax roll, of the names and addresses of all persons who claim title to the disputed parcels listed in section 9-1905 of this title. The assessor shall prepare such a list within seven days after receiving the department's request, and include on the list the names and addresses of all persons on the most current tax roll and the names and addresses of all persons who, not less than seven days prior to the date on which the assessor received the department's request, notified the assessor that they claim title to a disputed parcel. The department shall be entitled to rely upon the information contained in the certified list, and failure by the department to give notice to any person claiming title who is not included on the list or is not at the address included on the list shall not invalidate any proceeding or actions authorized by this title.

Within thirty days after receipt of the certified list from the assessor, the department shall send, by first class mail, a letter to each person included on the list, informing the person that a constitutional amendment has been adopted and legislation enacted that authorizes a resolution of title issues on disputed parcels in township forty, including the disputed parcel to which the person claims ownership rights. The department shall send a separate letter to each person claiming title to each disputed parcel. Such letter shall describe the process for resolving title set forth in this title and state that, until such time as the state is estopped from asserting its claim of title to the disputed parcel pursuant to subdivision seven of this section, any person claiming title to the disputed parcel shall assume all the risk with respect to subdividing or adding new structures or improvements to the disputed parcel. The department shall provide a copy of each such letter to the attorney general. The department shall also, within thirty days after receipt of the list from the assessor, publish written notice of the process to clear title, including a list by tax lot number of the parcels listed in section 9-1905 of this title, in the state register, the environmental notice bulletin and a newspaper of general circulation in township forty.

2. Within ninety days of the receipt of the department's letter, pursuant to subdivision one of this section, for each disputed parcel, a person shall provide to the department, with copies to the office of the attorney general and the town, a separate notarized statement as set forth in section 9-1915 of this title, notifying the department either:

a. that he or she will participate in the process set forth in this title to resolve title to the disputed parcel or parcels, and, if so, whether he or she intends to provide as a gift to the state a specified portion of a disputed parcel in fee simple without reservations for inclusion in the forest preserve or a conservation easement to the town restricting development over all or a specified portion of a disputed parcel, with a secondary right of enforcement in the state; or

b. that he or she declines to participate in the process established by this title to resolve title to disputed parcels.

3. With respect to a parcel or conservation easement which the person intends to provide as a gift to the state or the town, respectively, as specified in paragraph a of subdivision two of this section, the town shall provide the person with an assessed value of the proposed conveyance, with a copy to the department, within one hundred twenty days of the town's receipt of a copy of the notification concerning such gift.

4. Within twelve months of the date of the letters sent by the department pursuant to subdivision one of this section, all persons who are participating in the process set forth in this title to resolve title to disputed parcels shall convey to the state any land which such persons expressed an intent to so convey pursuant to paragraph a of subdivision two of this section, convey to the town any conservation easements which such persons expressed an intent to so convey pursuant to paragraph a of subdivision two of this section, and make payment to the town in the amount due pursuant to subdivision five of this section.

5. Within twelve months of the date of the letters sent by the department pursuant to subdivision one of this section, persons participating in the process set forth in this title to resolve title to disputed parcels shall pay the town an amount that approximates the state's administrative costs in resolving the disputed parcels situated within township forty. The payment amount for each individual disputed parcel shall be the sum of: (a) a flat rate of two thousand dollars per parcel; and (b) an amount equal to the total assessed value of the parcel, including structures and improvements situated thereon, as determined by the two thousand twelve town assessment, less the assessed value of any portion of such parcel conveyed to the state in fee or any conservation easement conveyed to the town, pursuant to paragraph a of subdivision two of this section, divided by the total assessed value of all disputed parcels, including structures and improvements situated thereon as determined by the two thousand twelve town assessment, multiplied by two hundred thousand dollars. The town shall use all such payments to acquire land for inclusion in the forest preserve pursuant to subdivision six of this section.

6. Within eighteen months of the date of the letters sent by the department pursuant to subdivision one of this section, the department shall identify lands for the town to acquire for inclusion in the forest preserve. Subject to legislative approval, such lands shall provide a net benefit to the forest preserve as compared to the disputed parcels to which the state is estopped from asserting a claim pursuant to subdivision seven of this section. The town shall use all payments acquired pursuant to subdivision five of this section for the acquisition of such lands. Such lands shall be conveyed from the owner directly to the state. Title to land to be conveyed to the state pursuant to this title and the deed to the state shall be approved by the attorney general, as to form and manner of execution and recordability, before the deed shall be accepted on behalf of the state.

7. The commissioner shall cause to be prepared an accurate survey map showing the boundaries of all disputed land to which the state will be releasing and extinguishing its right, title and interest and record the survey map in the Hamilton county clerk's office. The commissioner shall also cause legal descriptions of such boundaries to be prepared from the map. Except for those parcels the title to which will be litigated pursuant to section 9-1909 of this title, upon legislative approval of the lands to be provided to the state pursuant to subdivision six of this section, the completion of the conveyances to the state, and certification by the commissioner that each respective person has complied with all applicable terms and conditions of this title, and notwithstanding the provisions of the public lands law, the commissioner shall be authorized to release and extinguish all right, title and interest of the state in the disputed parcels that are located within these surveyed boundaries, without reservation and exception. The legal descriptions shall be approved by the commissioner and incorporated into the release and extinguishment document. The commissioner shall send notice of the state's release and extinguishment of rights to a disputed parcel by separate letter to each person for each parcel of land the title to which has been settled pursuant to this title, and upon release and extinguishment of rights, the state shall be estopped from asserting any claim of title to disputed parcels based upon (a) facts or actions

that occurred prior to the effective date of this title, and (b) deeds, tax sales or other documents that predate the effective date of this title. The commissioner shall also cause to be prepared an accurate survey map, to be recorded in the county clerk's office, and a legal description from the survey map, for each individual parcel of land the claimant of which has filed a notice pursuant to paragraph b of subdivision two of this section or has not complied in a timely fashion with the requirements of subdivisions two, four or five of this section. The department shall provide a copy of such survey and legal description to the office of the attorney general to assist in the litigation required by section 9-1909 of this title.

§ 9-1909. Attorney general to file suit.

The attorney general, within twenty-four months of either a person's failure to comply with the requirements of subdivision two of section 9-1907 of this title with respect to a particular disputed parcel, a person's filing of a notice of nonparticipation pursuant to paragraph b of subdivision two of section 9-1907 of this title with respect to a particular disputed parcel, a person's failure to make the required conveyance required by subdivision four of section 9-1907 of this title with respect to a particular disputed parcel, or a person's failure to make the required payment required by subdivisions four and five of section 9-1907 of this title with respect to a particular disputed parcel, shall commence an action in a court of competent jurisdiction pursuant to the real property actions and proceedings law to determine title to such parcel. Nothing contained in this title shall be applicable to such action. Failure by the attorney general to commence such action within such time frame shall not subsequently prevent the attorney general from commencing such an action or create a presumption against the state's claim of title.

§ 9-1911. Conveyances to the state.

Nothing in this title shall be interpreted as at any time preventing

any person claiming a disputed parcel from offering to convey any such parcel, any portion of such parcel, or any interest in such parcel to the state on such terms and conditions as the owner finds acceptable, provided the state may, solely in its discretion, decide whether to accept any such offer.

§ 9-1913. Adirondack park agency jurisdiction.

Nothing in this title shall be interpreted as altering or affecting the regulatory jurisdiction of the Adirondack park agency over any land located within township forty.

§ 9-1915. Notarized statement.

The format for the notarized statement described in subdivision two of section 9-1907 of this title shall be as follows:

NOTARIZED STATEMENT RELATING TO THE SETTLEMENT OF COMPETING CLAIMS OF
TITLE

TOWNSHIP FORTY, TOTTEN AND CROSSFIELD PURCHASE

TOWN OF LONG LAKE, COUNTY OF HAMILTON

Name(s):

Mailing address(es):

Telephone number(s):

Tax parcel number:

Circle either 1 or 2; if you circle 1, you must also circle a or b:

1. I (we) elect to participate in the process to resolve title issues regarding the above-referenced parcel as authorized by title nineteen of article nine of the environmental conservation law.

a. I (we) intend to reduce my (our) payment by gifting to the state a specified portion of a disputed parcel in fee simple without reservation for inclusion in the forest preserve or a conservation easement to the town restricting development over all or a specified portion of a disputed parcel, with a secondary right of enforcement in the state. The

intended gift is described in the attached document.

b. I (we) do not intend to reduce my (our) payment to the state by gifting any portion of the parcel to the state or by gifting a conservation easement over any portion of the parcel to the town; or

2. I (we) elect to not participate in the special process to resolve title issues regarding the above-referenced parcel as authorized by title nineteen of article nine of the environmental conservation law. I (we) understand that: within twenty-four months of my (our) filing of this notice, the attorney general shall commence an action in a court of competent jurisdiction to determine title to such parcel; nothing in title nineteen of article nine of the environmental conservation law shall be applicable to such litigation; and failure by the attorney general to commence such action within such twenty-four month time frame shall not subsequently prevent the attorney general from commencing such an action or create a presumption against the state's claim of title.

Signature

(Notarization)

TITLE 21

FOREST PRESERVE HEALTH AND SAFETY LAND ACCOUNT AND PUBLIC UTILITY IMPROVEMENTS

Section 9-2101. Health and safety land account creation and use.

9-2103. Highway right of way public utility improvements.

9-2105. Department reporting.

§ 9-2101. Health and safety land account creation and use.

1. Definitions. For purposes of this section:

a. "eligible project" means a public health or safety-related project necessary where no viable alternative exists, limited to the following:

(i) address bridge hazards to improve public safety on county highways and town highways;

(ii) elimination of the hazards of dangerous curves and grades on county and town highways to improve public safety;

(iii) relocation, maintenance, and reconstruction of county highways and town highways, including associated culverts, for the purpose of addressing public safety provided that no relocation of any single relocated portion shall exceed one mile in length;

(iv) water wells and necessary appurtenances when such wells are necessary to meet drinking water quality standards and are located within five hundred thirty feet of state highways, county highways and town highways; and

(v) stabilization devices for an existing utility pole adjacent to, or no more than the minimum distance from the width of highway necessary to comply with standard safety practices.

Eligible projects shall not include the use of chemicals/herbicides for clearing state land; the removal of trees and vegetation shall be minimized and the area shall promptly be restored to pre-project conditions to the maximum extent practicable.

b. "county highway" shall have the same meaning as defined in subdivision four of section three of the highway law.

c. "forest preserve expansion fund" shall mean the fund established pursuant to section ninety-seven-e of the state finance law.

d. "project sponsor" means a town, village, or county located in the counties of Clinton, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Herkimer, Lewis, Oneida, Saratoga, Saint Lawrence, Sullivan, Ulster, Warren and Washington.

e. "no viable alternative" means that no other option exists for the eligible project to address ongoing public health or safety concerns other than through the use of state lands.

f. "state highway" means a state highway as defined in subdivisions one, two and three of section three of the highway law.

g. "state lands" means lands owned by the state in forest preserve counties that are under the jurisdiction of the department.

h. "town highway" means a town highway, as defined in subdivision five of section three of the highway law, in existence as of January first, two thousand fifteen, listed on the local highway inventory maintained by the department of transportation, and annually plowed and regularly maintained.

i. "width of the highway" shall have the same meaning as paragraph k of subdivision one of section 9-2103 of this title.

2. Following approval by the legislature of two hundred fifty acres of land to be added to the forest preserve, a health and safety land account of not more than two hundred fifty acres is created for use by project sponsors for eligible projects necessary to protect health and safety where no viable alternative is available. The account will be administered by the department.

3. A project sponsor with an eligible project may apply to the health and safety land account to receive fractional or whole acreage for an eligible project. Such application shall include:

a. a resolution from the governing body of the project sponsor that includes:

(i) attestation that the project is necessary to address public health or safety and no viable alternatives exist;

(ii) attestation that such lands will only be used for eligible purposes and that any real property acquired shall not be sold, leased, exchanged, donated or otherwise disposed of or used for other than the eligible purposes for which it was approved without the express authority of an act of the legislature.

b. a detailed summary of the proposed eligible project, including the whole action and all related activities, a detailed summary of the alternatives the project sponsor explored prior to arriving at the conclusion there were no viable alternatives;

c. specific metes and bounds, including total proposed acreage;

d. a narrative about the project, including a justification that the size of the fractional or whole acreage sought for such eligible project from the health and safety land account is the minimum amount required;

e. monies at least equivalent to the fair market value of the state land proposed to be conveyed;

f. any necessary permits and authorizations; and,

g. an accurate survey.

4. Immediately upon determining that an application is complete, the department shall cause a notice of application, which shall also include the time period for public comments, to be published in the next available state register and environmental notice bulletin as well as in a newspaper having general circulation in the area in which the eligible project is proposed to be located. Newspaper publications shall be provided by the project sponsor.

5. The department shall hold a public hearing on each eligible project at which the public shall be given an opportunity to be heard.

6. The department, following consultation with the department of transportation to determine that any required authorization has been provided, shall only deem a project sponsor eligible to receive fractional or whole acreage from the health and safety land account following a determination that:

a. the project meets the eligible project criteria, is necessary to protect public health or safety and the eligible project has no viable alternative on land not owned by the state;

b. the project minimizes adverse environmental impact to the maximum extent practicable;

c. the project will not adversely impact viewsheds or lands with historical, ecological, environmental or recreational value, as determined by the department based on a resource inventory and assessment;

d. the monies to be paid by the project sponsor into the forest preserve expansion fund, are at least equivalent to the fair market value of the state land proposed to be conveyed; and

e. the project minimizes the fractional or whole acreage from the health and safety land account to the maximum extent practicable.

7. Once an application has been approved the commissioner shall cause to be prepared an accurate survey map showing the boundaries of all state land proposed to be conveyed and shall notify the legislature.

8. a. Prior to the actual transfer of title or issuance of letters patent for an eligible project that is longer than one quarter mile that has been approved by the department, the legislature shall approve each eligible project and the monies to be paid into the forest preserve expansion fund equal to or greater than the fair market value of the acreage to be conveyed from the health and safety land account. Once approved by the legislature, title to the land shall be approved and the deed to the people of the state of New York of any lands dedicated shall be approved by the attorney general as to form and manner of execution and recordability prior to its delivery.

b. Prior to the actual transfer of title or issuance of letters patent for an eligible project that is less than one quarter linear mile total, which shall run and be measured parallel to the county highway or town highway, and which runs no more than ten feet perpendicular beyond the width of the highway which shall mean three rods or the deeded, recorded municipal or state right of way or municipal or state easement in the existence as of January first, two thousand fifteen and, which has been approved by the department, title to land shall be approved and the deed to the people of the state of New York of any lands dedicated shall be

approved by the attorney general as to form and manner of execution and recordability prior to its delivery.

9. Real property acquired, developed, improved, restored or rehabilitated by or through a project sponsor pursuant to this section shall not be leased, exchanged, donated or otherwise disposed of or used for other than the eligible project for which it was approved without the express authority of an act of the legislature. When the project sponsor determines such eligible project is no longer needed, the lands shall revert to the state for inclusion in the forest preserve. The department shall prescribe the terms and conditions for the removal of any improvements to the land and restoration of the land to a natural, vegetative state.

§ 9-2103. Highway right of way public utility improvements.

1. Definitions. For purposes of this section:

a. "county highway" shall have the same meaning as defined in subdivision four of section three of the highway law.

b. "eligible project" shall mean burial or co-location of a public utility line or construction and maintenance of bicycle paths by a project sponsor within the width of a highway of a town highway, county highway or state highway that traverses state forest preserve land.

c. "project sponsor" shall mean a village, town, a county, located in the counties of Clinton, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Herkimer, Lewis, Oneida, Saratoga, Saint Lawrence, Sullivan, Ulster, Warren and Washington or, for:

- (i) bicycle paths, the department of transportation,
- (ii) for water lines, a public water supplier; or
- (iii) for electric, telephone or broadband lines, a public utility company.

d. "public utility company" shall have the same meaning as such term

is defined in section two of the public service law; provided, however, that for broadband projects a person subject to article eleven of the public service law shall be included.

e. "public utility line" shall mean only electric, telephone, broadband, water or sewer lines, including any necessary conduit used to protect such lines. Public utility line shall not include the construction of any new intrastate natural gas or oil pipelines that have not received all necessary state and local permits and authorizations as of June first, two thousand sixteen.

f. "public water supplier" shall mean a county or town water improvement district, village, New York city, public benefit corporation or public authority established pursuant to state law and empowered to construct and operate a municipal water management facility, as defined in section twelve hundred eighty-one of the public authorities law.

g. "state highway" shall mean a state highway as defined in subdivisions one, two and three of section three of the highway law.

h. "state lands" shall mean lands owned by the state in forest preserve counties that are under the jurisdiction of the department.

i. "town highway" shall mean a town highway, as defined in subdivision five of section three of the highway law, in existence as of January first, two thousand fifteen, listed on the local highway inventory maintained by the department of transportation, and annually plowed and regularly maintained.

j. "water supply projects" shall mean drinking water wells.

k. "width of the highway" shall mean three rods or the deeded, recorded municipal or state right of way or easement in existence as of January first, two thousand fifteen.

2. Pursuant to approval by the department and the department of transportation and following a public hearing on each eligible project

at which the public shall be given an opportunity to be heard, a public utility line may be co-located within or buried beneath the width of the highway of any state highway, county highway, or town highway.

3. A project sponsor for an eligible project within the width of the highway shall submit an application for a permit to the department that at minimum shall include:

a. a resolution from the governing body of the project sponsor, or in the case of a public utility seeking to utilize the width of highway of a town highway, the governing body of the town, or the width of highway of a county, the county governing board, that includes:

(i) approval of the project;

(ii) attestation that such width of highway lands will only be used for eligible purposes;

(iii) attestation that the project will minimize the removal of trees and vegetation and restore the area to pre-project condition to the maximum extent practicable.

b. specific metes and bounds, including total proposed acreage of the width of highway land sought;

c. a narrative about the project, including a justification;

d. any necessary permits and authorizations; and,

e. an accurate survey.

4. Immediately upon determining that an application is complete, the department shall cause a notice of application, which shall also include the time period for public comments, to be published in the next available state register and environmental notice bulletin as well as in a newspaper having general circulation in the area in which the eligible project is proposed to be located. Newspaper publications shall be provided by the project sponsor.

5. The department shall hold a public hearing on each eligible project

at which the public shall be given an opportunity to be heard.

6. The department, following consultation with the department of transportation to determine that any required authorization has been provided, shall only approve an application for an eligible project permit following a determination that:

- a. the eligible project meets the eligible project criteria;
- b. the eligible project minimizes adverse environmental impact to the maximum extent practicable; and
- c. the eligible project will not adversely impact lands with environmental, ecological or recreational value, as determined by the department based on a resource inventory and assessment.

7. After a hearing and opportunity to be heard, if the commissioner determines that a project sponsor is utilizing land for a purpose other than as authorized by the department, the commissioner may require removal of any improvements to the land and restoration of the land to a natural, vegetative state.

8. The department is authorized to promulgate such rules and regulations as may be necessary to implement and administer the provisions of this article.

§ 9-2105. Department reporting.

1. The department shall issue an annual report to the legislature detailing the use of the health and safety land account and the highway right of way public utility improvement permits including: the number of applications received; the number of eligible projects applications approved and denied; the project description, narrative and acreage of eligible projects; the cumulative total of eligible projects listed by project sponsor; total deposits by each project sponsor into the forest preserve fund; annual disbursements from the forest preserve fund and

the amount of land acquired with such disbursements; total number of public utility improvement permits issued; and the cumulative total and project type of permits issued listed by project sponsor.

2. The information contained in such report shall also be made available on the department's website and updated no less than annually.

* TITLE 23

THE MOUNT VAN HOEVENBERG OLYMPIC SPORTS COMPLEX

Section 9-2301. Legislative purpose and intent.

9-2302. Definitions.

9-2303. Construction, operation, and maintenance of the Mount Van Hoevenberg Olympic Sports Complex.

9-2304. Land to be acquired for inclusion in the forest preserve in the Adirondack park.

* NB Effective on the same date as a certain CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY (see chapter 488 of 2025 § 2)

*** § 9-2301. Legislative purpose and intent.**

1. It is the intent of the legislature to hereby implement the amendment to section one of article fourteen, of the New York state constitution pertaining to the Mount Van Hoevenberg Olympic Sports Complex located on forest preserve lands in the town of North Elba in Essex County.

2. The legislature further intends that implementation of the constitutional amendment should be accomplished in a manner that ensures the integrity of the forest preserve land on which the sports complex is situated and results in a significant increase of forest preserve acreage in the Adirondack park.

3. The legislature intends that, as offset for the use of forest preserve lands for the sports complex, the state shall acquire as an addition to the forest preserve at least two thousand five hundred acres

of true forest land located in the Adirondack park. To ensure that such lands will be acquired and have characteristics suitable for inclusion in to the forest preserve, the legislature intends to review and approve the acquisition of such lands.

4. For these reasons and as authorized by the provisions of section one of article fourteen of the state constitution, the legislature finds that it is in the public interest to hereby implement the constitutional amendment pertaining to the Mount Van Hoevenberg Olympic Sports Complex.

* NB Effective on the same date as a certain CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY (see chapter 488 of 2025 § 2)

*** § 9-2302. Definitions.**

For purposes of this title, the following terms shall have the following meanings:

1. "Appurtenances" shall mean those facilities that are directly related to and necessary for the construction, operation, maintenance, and public use of modern Nordic skiing and biathlon trails, such as access roads, parking lots, sanitary facilities, offices, day lodges and amenities, snowmaking, five kilometer of paved training trails, and an open-air Nordic skiing and biathlon stadium. This term shall not include:

(a) facilities such as zip lines, hotels, condominiums, swimming pools, all-terrain vehicles or off-road vehicles for public use, tennis courts and other structures and improvements which are not directly related to and necessary for operation, maintenance, and public use of the sports complex; or

(b) any structure located at or above an elevation of two thousand two hundred feet above sea level used for the sale of any goods, services, merchandise, food, or beverage.

2. "Mount Van Hoevenberg Olympic Sports Complex" means a one thousand thirty-nine and two-tenths acre parcel of forest preserve land located in the town of North Elba in Essex County on which the Mount Van

Hoevenberg Olympic Sports Complex is currently located. For purposes of this title, land owned by the town of North Elba which is located adjacent to forest preserve land and over which the state has an easement, including land on which the Olympic bobsled run is located, shall not be considered part of such sports complex.

* NB Effective on the same date as a certain CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY (see chapter 488 of 2025 § 2)

*** § 9-2303. Construction, operation, and maintenance of the Mount Van Hoevenberg Olympic Sports Complex.**

Not more than three hundred twenty-two and twenty-six hundredths acres of forest preserve land at the Mount Van Hoevenberg Olympic Sports Complex may be used for the construction, operation, and maintenance of Nordic skiing and biathlon trails, and appurtenances thereto. Any and all development at the sports complex shall conform to guidelines set forth in the Adirondack park state land master plan and shall be authorized by a unit management plan, as required by section eight hundred sixteen of the executive law.

* NB Effective on the same date as a certain CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY (see chapter 488 of 2025 § 2)

*** § 9-2304. Land to be acquired for inclusion in the forest preserve in the Adirondack park.**

As an offset for the use of forest preserve lands for the sports complex, the state shall acquire no less than two thousand five hundred acres of land for inclusion in the forest preserve in the Adirondack park, subject to legislative approval. Such approval shall include a metes and bounds description and an accurate survey of the lands proposed for inclusion in the forest preserve.

* NB Effective on the same date as a certain CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY (see chapter 488 of 2025 § 2)

ARTICLE 11

FISH AND WILDLIFE

- Title
1. Short title; definitions; general provisions
 3. General powers and duties of the department
 5. Fish and wildlife management practices cooperative program; prohibitions; taking of fish, wildlife, shellfish and crustacea for scientific or propagation purposes; destructive wildlife; rabies control; guides; endangered species
 7. Hunting, fishing and trapping licenses
 9. Hunting
 10. Falconry
 11. Trapping
 12. Hunting while intoxicated
 13. Fishing
 15. Commercial inland fisheries
 17. Importation and sale of fish, wildlife and game from outside the state; sale of domestic and foreign game and hatchery trout; bird plumage; taxidermy
 19. Propagation; shooting preserves; farm fish ponds; fishing preserves
 20. New York state bird conservation area program
 - 20-A. Marine mammal and sea turtle protection area
 21. Conservation areas and facilities; private refuges and posted lands
 23. Administration of fish and wildlife law
 25. Interstate wildlife violator compact

TITLE 1

SHORT TITLE; DEFINITIONS; GENERAL PROVISIONS

- Section 11-0101. Short title.
- 11-0103. Definitions.
- 11-0105. State ownership and control.
- 11-0107. Application of Fish and Wildlife Law.
- 11-0109. Standard Time of the state.
- 11-0110. Interference with lawful taking of wildlife prohibited.

11-0111. Limitation of powers of boards of supervisors and county legislative bodies.

11-0113. Manner of reference to and amendment of provisions contained in tables.

§ 11-0101. Short title.

Article 11 together with article 13 of the Environmental Conservation Law shall be known as the Fish and Wildlife Law. Sections of article 11 or of article 13 may be cited either as sections of the Environmental Conservation Law or as sections of the Fish and Wildlife Law.

§ 11-0103. Definitions.

As used in the Fish and Wildlife Law:

1. a. "Fish" means all varieties of the super-class Pisces.

b. "Food fish" means all species of edible fish and squid (cephalopoda).

c. "Migratory fish of the sea" means both catadromous and anadromous species of fish which live a part of their life span in salt water streams and oceans.

d. "Fish protected by law" means fish protected, by law or by regulations of the department, by restrictions on open seasons or on size of fish that may be taken.

e. Unless otherwise indicated, "Trout" includes brook trout, brown trout, red-throat trout, rainbow trout and splake. "Trout", "landlocked salmon", "black bass", "pickerel", "pike", and "walleye" mean respectively, the fish or groups of fish identified by those names, with or without one or more other common names of fish belonging to the group. "Pacific salmon" means coho salmon, chinook salmon and pink

salmon.

* f. "Speargun" and "under-water gun" means any speargun that stores potential energy provided from the spearfisher's muscles only and is used while submerged under the water. Such gun may only release that amount of energy that the diver has provided to it from such diver's own muscles. Common temporary energy storing devices for spearguns shall include, but not be limited to: rubber bands, springs, and sealed air chambers.

* NB Repealed June 1, 2029

2. "Game" is classified as (a) game birds; (b) big game; (c) small game.

a. "Game birds" are classified as (1) migratory game birds and (2) upland game birds.

(1) "Migratory game birds" means the Anatidae or waterfowl, commonly known as geese, brant, swans and river and sea ducks; the Rallidae, commonly known as rails, American coots, mud hens and gallinules; the Limicolae or shorebirds, commonly known as woodcock, snipe, plover, surfbirds, sandpipers, tattlers and curlews; the Corvidae, commonly known as jays, crows and magpies.

(2) "Upland game birds" (Gallinae) means wild turkeys, grouse, pheasant, Hungarian or European gray-legged partridge and quail. Grouse means ruffed grouse and every member of the grouse family. Pheasant means the ring-necked, dark-necked and mutant pheasants and all species and subspecies of the genus Phasianus representing the true or game pheasants.

b. "Big game" means deer, bear, moose, elk, except captive bred and raised North American elk (*Cervus elaphus*), caribou and antelope.

c. "Small game" means black, gray and fox squirrels, European hares, varying hares, cottontail rabbits, native frogs, native salamanders, native turtles, native lizards, native snakes, coyotes, red fox (*Vulpes vulpes*) and gray fox (*Urocyon cinereoargenteus*) except captive bred red fox or gray fox, raccoon, opossum, or weasel, skunk, bobcat, lynx, muskrat, mink, except mink born in captivity, fisher, otter, beaver,

sable and marten but does not include coydogs.

3. "Wild game" means all game, except (a) domestic game bird and domestic game animal as defined in subdivision 4; (b) carcasses of foreign game as defined in section 11-1717, imported from outside the United States; (c) game propagated or kept alive in captivity as provided in section 11-1907 of this article; (d) game imported alive pursuant to license of the department, or artificially propagated, until such game is liberated; and (e) game so imported or propagated when liberated for the purpose of a field trial and taken during the field trial for which it was liberated.

4. a. "Domestic game bird" means ducks, geese, brant, swans, pheasants, quail, wild turkey, ruffed grouse, Chukar partridge and Hungarian or European gray-legged partridge, propagated under a domestic game bird breeder's license pursuant to section 11-1901 or a shooting preserve license pursuant to section 11-1903, or propagated on a preserve or island outside the state under a law similar in principle to title 19 of this article.

b. "Domestic game animal" means white-tailed deer propagated under a domestic game animal breeder's license pursuant to section 11-1905 or propagated on a preserve or island outside the state under a law similar in principle to title 19 of this article.

c. To qualify as such domestic game bird or domestic game animal, (1) live game must be held in private ownership, on such licensed premises, and in the case of deer must be held on a preserve which is fenced, or is an island, as provided in section 11-1905, or must be held in confinement in course of transportation, and (2) the carcasses or flesh of such game coming from outside the state must originate on premises operated by the holder of a domestic game certificate as provided in section 11-1715.

5. a. "Unprotected wild birds" means the English sparrow and starling, and also includes pigeons and psittacine birds existing in a wild state, not domesticated.

b. "Protected birds" means all wild birds except those named in paragraph a of this subdivision.

6. a. "Wildlife" means wild game and all other animal life existing in a wild state, except fish, shellfish and crustacea.

b. "Wild bird" means birds which are "wildlife".

c. "Protected wildlife" means wild game, protected wild birds, protected insects, species of special concern and endangered and threatened species of wildlife designated by the department pursuant to section 11-0535 of this article, species listed in section 11-0536 of this article and species protected pursuant to section 11-0311 of this article.

d. "Unprotected wildlife" means all wildlife which is not "protected wildlife".

e. "Wild animal" shall not include "companion animal" as defined in section three hundred fifty of the agriculture and markets law. Wild animal includes, and is limited to, any or all of the following orders and families:

(1) Nonhuman primates and prosimians,

(2) Felidae and all hybrids thereof, with the exception of the species *Felis catus* (domesticated and feral cats, which shall mean domesticated cats that were formerly owned and that have been abandoned and that are no longer socialized, as well as offspring of such cats) and hybrids of *Felis catus* that are registered by the American Cat Fanciers Association or the International Cat Association provided that such cats be without any wild felid parentage for a minimum of five generations,

(3) Canidae (with the exception of domesticated dogs and captive bred fennec foxes (*vulpes zerda*)),

(4) Ursidae,

(5) All reptiles that are venomous by nature, pursuant to department regulation, and the following species and orders: Burmese Python (*Python m. bivittatus*), Reticulated Python (*Python reticulatus*), African Rock

Python (*Python sabae*), Green Anaconda (*Eunectes maurinus*), Yellow Anaconda (*Eunectes notaeus*), Australian Amethystine Python (*Morelia amethystina* and *Morelia kinghorni*), Indian Python (*Python molurus*), Asiatic (water) Monitor (*Varanus salvator*), Nile Monitor (*Varanus nilocitus*), White Throat Monitor (*Varanus albigularis*), Black Throat Monitor (*Varanus albigularis ionides*) and Crocodile Monitor (*Varanus salvadori*), Komodo Dragon (*Varanus komodensis*) and any hybrid thereof, (6) Crocodylia.

7. "Protected insect" means any insect with respect to the taking of which restrictions are imposed by the Fish and Wildlife Law or regulations of the department pursuant thereto.

8. "Plumage" is defined in section 11-1729.

9. "Shellfish" means oysters, scallops, and all kinds of clams and mussels.

10. "Hunting" means pursuing, shooting, killing or capturing (other than trapping as defined in subdivision 11) wildlife, except wildlife which has been lawfully trapped or otherwise reduced to possession, and includes all lesser acts such as disturbing, harrying or worrying, whether they result in taking or not, and every attempt to take and every act of assistance to any other person in taking or attempting to take wildlife.

11. "Trapping" means taking, killing and capturing wildlife with traps, deadfalls and other devices commonly used to take wildlife, and the shooting or killing of wildlife lawfully trapped, and includes all lesser acts such as placing, setting or staking such traps, deadfalls and other devices whether they result in taking or not, and every attempt to take and every act of assistance to any other person in taking or attempting to take wildlife with traps, deadfalls or other devices.

12. a. "Fishing" means the taking, killing, netting, capturing or withdrawal of fish from the waters of the state by any means, including

every attempt to take and every act of assistance to any other person in taking or attempting to take fish.

b. "Angling" means taking fish by hook and line. It includes bait and fly fishing, casting, trolling and also includes the use of landing nets in completing the catch of fish taken by hook and line. To constitute "angling" the taking must be in accordance with the following requirements: (1) the operator must be present and in immediate attendance when lines are in the water;

* (2) one person may operate not more than two lines, with or without rod, except that one person may operate up to three lines in freshwater;

* NB Effective until December 31, 2027

* (2) one person may operate not more than two lines, with or without rod;

* NB Effective December 31, 2027

(3) each line shall have not more than five lures or baits, or a combination of both, and in addition each line shall have not exceeding fifteen single hooks, or seven double hooks, or five triple hooks, or any combination of such hooks, provided the total number of hook points thereof does not exceed fifteen. Angling does not include snatching or hooking or the use of tip-ups.

c. "Hooking", "snatching" or "snagging" means taking fish that have not taken or attempted to take a bait or artificial lure into their mouth, by impaling fish with one or more hooks or similar devices, whether or not baited, into any part of their body.

d. "Net" means a non-metallic fabric wrought or woven into meshes and includes the types known as seine, gill, pound, trap, scap, fyke, dip, scoop and stake net.

e. "Spear" means a hand-propelled single or multiple pronged pike, blade or harpoon, and does not include the mechanically propelled device commonly called a spear gun or under-water gun.

13. "Taking" and "take" include pursuing, shooting, hunting, killing, capturing, trapping, snaring and netting fish, wildlife, game,

shellfish, crustacea and protected insects, and all lesser acts such as disturbing, harrying or worrying, or placing, setting, drawing or using any net or other device commonly used to take any such animal. Whenever any provision of the Fish and Wildlife Law permits "taking", the taking permitted is a taking by lawful means and in a lawful manner.

14. "Baiting" means the placing, exposing, depositing, distributing or scattering of shelled, shucked, or unshucked corn, wheat or other grain, salt or other feed in such a manner as to lure, attract, or entice upland game birds to any area where hunters are attempting to take them; "baited area" means any area where shelled, shucked, or unshucked corn, wheat or other grain, salt or other feed whatsoever capable of luring, attracting, or enticing such birds is placed, exposed, deposited, distributed or scattered.

15. "Marine district" means the waters described in section 13-0103.

16. a. "Northern Zone" as used in the Fish and Wildlife Law or in any regulation of the department pursuant thereto means that part of the state situated northerly of a line commencing at a point at the north shore of the Salmon river and its junction with Lake Ontario and extending easterly along the north shore of that river to the village of Pulaski, thence southerly along Route 11 to its intersection with Route 49 in the village of Central Square, thence easterly along Route 49 to its junction with Route 365 in the city of Rome, thence easterly along Route 365 to its junction with Route 28 in the village of Trenton, thence easterly along Route 28 to its junction with Route 29 in the village of Middleville, thence easterly along Route 29 to its junction with Route 4, thence northerly along Route 4 to its junction with Route 22, thence northerly and westerly along Route 22 to the eastern shore of South Bay on Lake Champlain in the village of Whitehall, thence northerly along the eastern shore of South Bay to the New York-Vermont boundary.

b. "Southern Zone" as used in the Fish and Wildlife Law or in any regulation of the department pursuant thereto means that part of the state not included in the "Northern Zone".

17. "Wilderness Hunting Areas" means the following areas:

a. South branch of Moose river--West Canada creek area. Commencing at a point in the village of Indian Lake at the intersection of Route 28 with Route 30, thence southerly along Route 30 to the village of Speculator and its junction with Route 8, thence westerly along Route 8 to its junction with Route 287, thence westerly along Route 287 to its intersection with the Herkimer county line, thence northerly along the Herkimer county line to its intersection with Route 28 near the village of McKeever, thence northerly and easterly along Route 28 to the point of beginning.

b. Essex Chain Lakes area. Commencing with the village of Indian Lake on Route 28, thence northwesterly on Route 28 to its junction with Route 28-N at the village of Blue Mountain Lake, thence northerly along Route 28-N to the village of Long Lake, thence easterly, and southerly along Route 28-N to its junction with Route 28 in the village of North Creek, thence northwesterly along Route 28 to the point of beginning.

c. Cold River area. Commencing at the village of Long Lake, thence northerly along Route 30 to its junction with Route 3 in the village of Tupper Lake, thence easterly along Route 3 to its intersection with Route 86 in the village of Saranac Lake, thence easterly along Route 86 to its junction with Route 73 in the village of Lake Placid, thence easterly and southerly along Route 73 to its junction with Route 9, thence southerly along Route 9 to the village of Schroon River and the junction of the Blue Ridge road, thence westerly along the Blue Ridge road through the village of Blue Ridge to its junction with the Tahawus road, thence southerly along the Tahawus road to its junction with Route 28-N, thence westerly along Route 28-N to the point of beginning.

d. Oswegatchie-Beaver river flow area and Independence river area. Commencing in the village of Blue Mountain Lake, thence westerly along Route 28 through Old Forge to the intersection of Route 28 with the Adirondack state park boundary at the vicinity of White Lake, thence westerly and northerly along the Adirondack state park boundary to the

point where said boundary crosses Route 3 between the villages of East Pitcairn and Fine, thence easterly along Route 3 to its intersection with Route 30 at the village of Tupper Lake, thence southerly along Route 30 to the point of beginning.

e. Middle branch of Grass river area. Commencing in the village of Cranberry Lake on Route 3, thence northeasterly along Route 3 to its junction with Route 56 near the village of Sevey, thence northerly along Route 56 to its intersection with the Adirondack state park boundary southeast of the village of South Colton, thence west and south along said park boundary to its intersection with the Degrasse-Cranberry Lake road, thence easterly and southerly along said road to its junction with Route 3 approximately one mile west of the village of Cranberry Lake thence easterly along Route 3 to the point of beginning.

f. West branch of St. Regis river area. Commencing at the village of Tupper Lake, thence northeasterly along Route 30 to the junction of the Brandon road leading from Paul Smiths to St. Regis Falls, thence westerly and northerly along said Brandon road to its junction with Route 72 about three miles west of the village of Santa Clara, thence northwesterly along Route 72 to its junction with the St. Regis-Lake Ozonia road, thence southerly and westerly along the St. Regis-Lake Ozonia road to Lake Ozonia, thence northerly and westerly along the Lake Ozonia-Hopkinton road to its intersection with the Adirondack state park boundary, thence westerly, southerly, and westerly along the Adirondack state park boundary to its intersection with the Parishville-Stark road, thence southerly along said road to the village of Stark, thence westerly along the Stark-Hubbards road to its junction with Route 56, thence southerly along Route 56 to its junction with Route 3 near the village of Sevey, thence easterly along Route 3 to the point of beginning.

18. "Inhabited" means a permanent occupancy by a species as contrasted with a temporary presence of an occasional individual.

19. a. "Person" means an individual, a co-partnership, joint stock company or corporation.

b. In construing any provision of the Fish and Wildlife Law, gender and number shall be disregarded whenever necessary to give effect to the purpose of the provision.

c. A reference to the "immediate family" of a person means all persons who are related by blood, marriage or adoption to the person whose immediate family is referred to, and are domiciled in the house of such person.

20. "Environmental conservation officer" includes sworn officers in the division of law enforcement in the department.

21. "Carrier" means a person engaged in the business of transporting goods, and includes a common carrier, contract carrier and private carrier.

22. "Closed area" means any area of lands, or waters, or lands and waters of the state, in which the taking of fish, wildlife or protected insects, or one or more of them, is prohibited, or in which hunting, fishing or trapping, or one or more of them, is prohibited by the Fish and Wildlife Law, by proclamation of the Governor pursuant to section 9-1101, or by rule or regulation of the department.

23. a. "Open season" means the time during which fish, game, wildlife, shellfish, crustacea or protected insects may be legally taken. "Closed season" means the time during which they may not legally be taken.

b. Whenever an open season or a closed season is provided by the fixing of dates, such dates shall be deemed part of such open season or closed season.

24. "Enclosed lands" or "wholly enclosed lands" means lands the boundaries of which may be indicated by wire, ditch, hedge, fence, road, highway or water, or in any visible or distinctive manner which indicates a separation from the surrounding contiguous territory. Except as otherwise provided, any such indication of boundaries is sufficient

to constitute the lands within the boundaries "enclosed".

25. "Hunting related incident" means the injury to or death of a person caused by the discharge of a firearm, crossbow or longbow while the person causing such injury or death, or the person injured or killed, is taking or attempting to take game, wildlife or fish.

26. "Muzzle loading firearm" means a gun which is loaded through the muzzle, shooting a single projectile and having a minimum bore of .44 inch.

27. "Leashed tracking dog" means a leashed dog which has been certified by the department pursuant to section 11-0928 of this chapter to track and find wounded or injured big game.

28. "Captive bred" means born in captivity.

29. "Non-native big game mammal" means a mammal species presently found in the wild and hunted as big game that is:

a. Native or an original inhabitant of the continents of Africa, Asia, South America, Australia, or Europe, whether or not captive bred; or

b. A captive bred North American big game mammal including: cougar, wolf, bear, bison, big horn sheep, mountain goat, antelope, elk, musk ox, mule deer, black tailed deer, caribou, and a domestic game animal as defined in paragraph b of subdivision four of this section, provided, however, that nothing herein shall be deemed to expand, diminish, or alter the department's authority under existing statute or regulation to regulate the taking of big game as defined in paragraph b of subdivision two of this section or other protected wildlife as defined in paragraph c of subdivision six of this section.

30. "Facility" means any type of zoo, petting zoo, circus, game farm, game preserve, or similar entity, or part thereof, where non-native big game mammals are housed, held, fed or provided for in any manner.

31. "Pet" means an animal kept for the primary purpose of companionship that is normally maintained in or near the household of the owner or person who cares for such domesticated animal.

32. "Wildlife sanctuary" means an organization as described in section 170(b)(1)(A)(vi) of the Internal Revenue Code of 1986 and that is in compliance with all applicable provisions of the Animal Welfare Act, 7 USC Sec. 2131 et seq. and operates a place of refuge where abused, neglected, unwanted, impounded, abandoned, orphaned, or displaced wild animals are provided care for their lifetime or rehabilitated and released back to their natural habitat, and, with respect to any animal owned by the organization, does not:

a. Use the animal for any type of entertainment, recreational or commercial purpose except for the purpose of exhibition as defined by the department;

b. Sell, trade, lend or barter the animal or the animal's body parts;
or

c. Breed the animal.

33. "Long bow" includes longbows, recurve bows, compound bows, and crossbows.

§ 11-0105. State ownership and control.

The State of New York owns all fish, game, wildlife, shellfish, crustacea and protected insects in the state, except those legally acquired and held in private ownership. Any person who kills, takes or possesses such fish, game, wildlife, shellfish, crustacea or protected insects thereby consents that title thereto shall remain in the state for the purpose of regulating and controlling their use and disposition.

§ 11-0107. Application of Fish and Wildlife Law.

1. No person shall, at any time of the year, pursue, take, wound or kill in any manner, number or quantity, any fish protected by law, game, protected wildlife, shellfish, harbor seals, crustacea protected by law, or protected insects, except as permitted by the Fish and Wildlife Law.

2. No person shall, at any time of the year, buy, sell, offer or expose for sale, transport, or have in his possession any fish protected by law, game, protected wildlife, shellfish, harbor seals, crustacea protected by law, or part thereof, or protected insect, whether taken within the state or coming from without the state, except as permitted by the Fish and Wildlife Law.

§ 11-0109. Standard Time of the state.

Provisions of the Fish and Wildlife Law, or regulations of the department pursuant thereto, stating the periods of the day during which fish, game or wildlife may be taken shall be construed as referring to the Standard Time of the state as defined in section 52 of the General Construction Law, notwithstanding any act of Congress of the United States or of the legislature of this state or any law or ordinance of a subdivision of the state declaring another basis of reckoning time.

§ 11-0110. Interference with lawful taking of wildlife prohibited.

1. As used in this section "wildlife" means wild game and all other animal life existing in a wild state, including fish, shellfish and crustacea, and "process of taking", in addition to any act described in subdivision thirteen of section 11-0103 of this article, includes travel, camping, and other acts preparatory to taking, which occur on lands or waters upon which the affected person has the right or privilege to take such wildlife.

2. A person is guilty of interfering with the lawful taking of wildlife when, with intent to prevent the taking of wildlife, in season,

in a place where hunting, fishing or trapping is lawful, and by a person properly licensed to take such wildlife, he:

(a) strikes, shoves, kicks or otherwise subjects the licensed person to physical contact, or attempts or threatens to do the same; or

(b) follows the licensed person in or about such place and engages in a course of conduct or repeatedly commits acts which alarm or seriously annoy such licensed person and which serve no legitimate purpose.

Notwithstanding any other provision of law to the contrary, no one shall be arrested for violation of this section by other than a duly designated peace officer acting pursuant to his special duties, or a police officer.

§ 11-0111. Limitation of powers of boards of supervisors and county legislative bodies.

Boards of supervisors of counties and county legislative bodies shall not, except as expressly provided in the Fish and Wildlife Law, exercise powers (other than powers to appropriate money), vested in them by any other law, to provide for the protection, preservation or propagation of fish, game, wildlife, or shellfish within the county, or to prescribe or enforce collection of penalties for the violation thereof.

§ 11-0113. Manner of reference to and amendment of provisions contained in tables.

1. Any portion of any table contained in a section of the Fish and Wildlife Law, which portion is capable of identification by reference as provided in this section or otherwise may be quoted, cited, amended or repealed, as if the portion so quoted, cited, amended or repealed, constituted a complete numbered paragraph.

2. In the tables in sections 11-0905 and 11-0907 each letter of the alphabet in column one identifies and furnishes the citation for the matter in column one following such letter and also identifies and

furnishes the citation for the matter appearing in column two and column three opposite the matter so identified in column one.

3. All matter identified by a letter of the alphabet printed in lower-case print and enclosed in parentheses may be referred to as an "item"; all matter identified by a figure printed in arabic numerals and enclosed in parentheses may be referred to as a "sub-item".

4. The headings appearing at the top of the columns are not part of the identification and citation of any part of the table, but the portion of any item or sub-item appearing in a column may be referred to as the portion of that item appearing in that column and "relating to" species, open season, bag limit, area, game and open season, manner of taking, specified waters of the state, or open season, size limits and limits of catch, as the case may be.

5. This section does not make ineffective or affect the construction or operation of any other form or manner of reference used in any act enacted by the legislature.

TITLE 3

GENERAL POWERS AND DUTIES OF THE DEPARTMENT

- Section 11-0303. Management of fish and wildlife resources; general purposes and policies governing manner of exercise of powers.
- 11-0305. General powers and duties of the department.
- 11-0306. The Hudson River estuary management program.
- 11-0306-a. The Flax Pond tidal wetlands sanctuary.
- 11-0307. Migratory game birds; regulation.
- 11-0308. Sale of small lead fishing sinkers prohibited.
- 11-0309. Extension of open seasons after emergency closing.
- 11-0311. Additional or other protection.
- 11-0313. Waters closed to taking of fish.
- 11-0315. Hudson River shad fishery.
- 11-0317. Seasons and limits for taking fish in certain border waters.

- 11-0319. Seasons, limits and manner of taking fish in waters of New York City water supply open to public.
- 11-0321. "Restricted areas"; additional enforcement on private premises.
- 11-0323. Publication of Fish and Wildlife Law.
- 11-0325. Control of dangerous diseases.
- 11-0327. Conservation fund advisory board.
- 11-0329. Outdoor recreation and trail maintenance; regulation.

§ 11-0303. Management of fish and wildlife resources; general purposes and policies governing manner of exercise of powers.

1. The general purpose of powers affecting fish and wildlife, granted to the department by the Fish and Wildlife Law, is to vest in the department, to the extent of the powers so granted, the efficient management of the fish and wildlife resources of the state. Such resources shall be deemed to include all animal and vegetable life and the soil, water and atmospheric environment thereof, owned by the state or of which it may obtain management, to the extent that they constitute the habitat of fish and wildlife as defined in section 11-0103. Such management shall be deemed to include both the maintenance and improvement of such resources as natural resources and the development and administration of measures for making them accessible to the people of the state. To obtain these results it shall include, to the extent authorized by law, the undertaking and execution of reciprocal and cooperative arrangements with the government of the United States, with other states, and with other departments and agencies of this state, political subdivisions and public corporations of this state and owners and lessees of privately owned lands and waters, and shall also include continuation of research and educational programs.

2. To such extent as it shall deem feasible without prejudice to other functions in the management of fish and wildlife resources of the state and the execution of other duties imposed by law, the department is directed, in the exercise of the powers conferred upon it, to develop and carry out programs and procedures which will in its judgment, (a)

promote natural propagation and maintenance of desirable species in ecological balance, and (b) lead to the observance of sound management practices for such propagation and maintenance on lands and waters of the state, whether owned by the state or by a public corporation of the state or held in private ownership, having regard to (1) ecological factors, including the need for restoration and improvement of natural habitat and the importance of ecological balance in maintaining natural resources; (2) the compatibility of production and harvesting of fish and wildlife crops with other necessary or desirable land uses; (3) the importance of fish and wildlife resources for recreational purposes; (4) requirements for public safety; and (5) the need for adequate protection of private premises and of the persons and property of occupants thereof against abuse of privileges of access to such premises for hunting, fishing or trapping.

3. The department may, until December thirty-first, two thousand twenty-seven, fix by regulation measures for the management of striped bass, including size limits, catch and possession limits, open and closed seasons, closed areas, restrictions on the manner of taking and landing, requirements for permits and eligibility therefor, recordkeeping requirements, requirements on the amount and type of fishing effort and gear, and requirements relating to transportation, possession and sale, provided that such regulations are no less restrictive than requirements set forth in this chapter and provided further that such regulations are consistent with the compliance requirements of applicable fishery management plans adopted by the Atlantic States Marine Fisheries Commission and with applicable provisions of fishery management plans adopted pursuant to the Federal Fishery Conservation and Management Act (16 U.S.C. § 1800 et seq.).

§ 11-0305. General powers and duties of the department.

In addition to the powers and duties provided in other sections of the Fish and Wildlife Law, the department shall have the following powers and duties:

1. To sell or furnish trees, shrubs and other plants to owners or lessees of private lands situated in the state on such terms as it deems to be for the public benefit;

2. To issue the licenses and permits provided for by law, to fix their terms, and the fees therefor, when no statutory provision is made, to designate agents to sell and promote the sale of licenses, to adopt procedures for the issuance of licenses, to establish the design and format of licenses and the information to be contained thereon, to provide where it deems appropriate for tags and buttons, to adopt license conditions respecting tagging or identifying fish and wildlife being possessed or transported, to establish procedures and requirements for reporting license sales and handling and remittance of license revenues by persons or entities issuing such licenses, to provide for acceptable methods of payment of license fees, and to revoke licenses and permits as provided by law;

3. To regulate the taking of fish in any manner other than angling, except as to migratory fish of the sea within the marine district;

4. To increase by regulation the size, as established by statute, of mesh of nets that may be used for taking fish;

5. To declare by regulation that waters, specified in the regulation, are not inhabited by trout, whenever it shall determine that the waters specified in the regulation, previously inhabited by trout, are no longer so inhabited, or shall determine that the waters specified in the regulation are unsuitable for trout;

6. To control, manage, propagate and distribute, and to regulate the transportation, importation and exportation of shellfish, cephalopoda and crustacea;

7. To regulate the examination and inspection of shellfish grounds, boats used in taking and buildings used for storage of shellfish, the handling and shipment of shellfish, the floating of shellfish, the removal of shellfish from unsanitary beds and their deposit on

unpolluted grounds;

8. To enforce all laws relating to lands under water which have been or shall be designated, surveyed and mapped out pursuant to law as oyster beds or shellfish grounds and to grant leases of such lands, belonging to the state, for shellfish culture, according to law;

9. To conduct, manage and control all hatching and biological stations, game farms, game refuges, rearing stations and public hunting and fishing grounds owned or operated by the state;

10. To enforce all provisions of the Fish and Wildlife Law and regulations pursuant thereto, and all laws relating to fish, wildlife, protected insects, shellfish, crustacea and game;

11. To settle or compromise in its discretion any action or cause of action to recover a penalty under the provisions of this chapter as it may deem advantageous to the state;

12. To grant refunds of moneys erroneously received by the department, within two years of receipt thereof and upon satisfactory proof of entitlement, which refunds, upon approval of the commissioner and audit by the State Comptroller, shall be paid from any moneys available to the department in the Conservation fund.

13. Notwithstanding any other provision of law, to regulate the possession, transportation, sale, barter and purchase of Pacific salmon and parts thereof; and to require permits or otherwise regulate the sale, barter and purchase of raw or unprocessed Pacific salmon eggs.

14. Notwithstanding any inconsistent provision of law, the commissioner may designate no more than eight days in each year that shall be effective in every administrative region of the department, as free sport fishing days during which any person may, without having a sport fishing license and without the payment of any fee, exercise the privileges of a holder of a sport fishing license, subject to all of the limitations, restrictions, conditions, laws, rules and regulations

applicable to the holder of a sport fishing license. Free sport fishing days shall be designated in a manner determined by the department to best provide public notice thereof and to maximize public participation therein, so as to promote the recreational opportunities afforded by sport fishing.

15. To identify, manage and conserve plants, animals and ecological communities that are rare in New York state, located on state-owned lands under the jurisdiction of the department.

16. Notwithstanding any inconsistent provision of law, to authorize free sport fishing clinics. A free sport fishing clinic shall include, but not be limited to, instruction provided by employees of the department or its designee in recreational angling, including its benefits and values, and may also include instruction and other information relevant to an understanding of fisheries management, ethics and aquatic ecology and habitat. No license or recreational marine fishing registration is required to take fish by angling while participating in a fishing clinic conducted by the department or its designee that has been designated by the commissioner as a free sport fishing clinic. Such clinics shall be implemented consistent with department standards and in a manner determined by the department to best provide public notice thereof and to maximize public participation therein, so as to promote the recreational opportunities afforded by sport fishing. Further, the commissioner may designate additional fishing events organized through the department that provide physical or emotional rehabilitation for veterans, as defined in subdivision three of section one of the veterans' services law, or active duty members of the armed forces of the United States. No license or recreational marine fishing registration shall be required for such veterans or active duty members to take fish by angling while participating in these events.

17. To prepare or cause to be prepared voluntary habitat stamps and furnish such stamps annually to license issuing agents and officers for sale and issuance in the same manner as licenses and other types of stamps. The department shall, by rule, establish the fee for the habitat stamp which shall be no less than five dollars plus an additional amount

for the issuing agent or officer. The purchase of a stamp is voluntary and a stamp need not be possessed in order to take fish or wildlife.

18. To provide a mechanism for a one dollar voluntary contribution to the venison donation account on all hunting and fishing license applications administered by the department. The option to utilize the mechanism shall be voluntary and the mechanism need not be utilized in order to process hunting or fishing license applications.

§ 11-0306. The Hudson River estuary management program.

1. There is established a Hudson River estuarine district which shall include the tidal waters of the Hudson River, including the tidal waters of its tributaries and wetlands from the federal lock and dam at Troy to the Verrazzano-Narrows.

2. The department shall establish a Hudson River estuary management program for the Hudson River estuarine district and associated shorelands, with consideration to the remainder of the Hudson River, New York bight, and the waters around Long Island only as they impact the Hudson River estuary, in order to protect, preserve and, where possible, restore and enhance the Hudson River estuarine district.

3. The commissioner shall appoint a Hudson River estuary management advisory committee with whom he or she shall consult on regulatory, policy and other matters affecting the management, protection and use of the Hudson River estuarine district and on the formulation of a Hudson River estuary management program. Such committee shall consist of not less than eleven members who represent interests directly involved in the Hudson River estuarine district and shall include representatives of commercial fishing, sportsmen, research, conservation, and recreation. For the purpose of immediate implementation of this section, the committee shall consist of the current members of the Hudson River fishery advisory committee.

4. The commissioner shall maintain in the department the position of

Hudson River estuary coordinator to manage the Hudson River estuary management program and to assist the commissioner and the advisory committee in its development and implementation.

5. There is established a Hudson River estuarine sanctuary for the purpose of protecting areas of special ecological significance within the Hudson River estuarine district and associated shorelands. The estuarine sanctuary shall be managed as a long-term estuarine field laboratory for research and education concerning the Hudson River ecosystem. The estuarine sanctuary shall be composed initially of the four sites now within the Hudson River national estuarine research reserve (HRNERR). The department shall adopt the Hudson River national estuarine research reserve program as a program of the department for the purpose of operating the estuarine sanctuary. The sanctuary shall be managed by the department in cooperation with the Hudson River estuary management advisory committee and the commissioner shall have the authority to designate additional sites for inclusion within the estuarine sanctuary. The estuarine sanctuary shall be open to those activities that are compatible with the primary purposes and management goals of the estuarine sanctuary and its individual sites.

6. The department, in cooperation with the Hudson River estuary management advisory committee, shall report to the chairpersons of the assembly committee on environmental conservation and the senate committee on environmental conservation on or before March first, nineteen hundred eighty-eight with an estuary management strategy for the development of a continuing fifteen-year estuary management program for the preservation, protection, restoration and enhancement of the Hudson River estuarine district and associated shorelands including but not limited to its natural resources, its fish and wildlife and the habitats within it. The estuary management strategy shall include but not be limited to the following:

a. A discussion of how the Hudson River estuary functions and the relative role of different species and an explanation of the role of the Hudson River estuary as a distinct ecosystem, as a habitat for fish and wildlife, as a commercial fishery and as a recreational resource.

b. Identification of areas of special ecological significance within the estuarine district and associated shoreland including but not limited to spawning, nursery, wintering, feeding and foraging habitat for marine, anadromous, catadromous, riverine, and freshwater species and a description of the annual dynamics of such habitats including the geochemical, thermodynamic, biological, hydrodynamic and hydrological states and mechanisms critical to habitat maintenance.

c. A plan for the development and operation of the Hudson River estuarine sanctuary which shall include criteria for the identification of additional areas of special ecological significance and for additions to the Hudson River estuarine sanctuary and a program of education and research which shall be consistent with the purposes of subdivision five of this section.

d. A status report on the populations and relative abundance of species that have potential or existing recreational or commercial value or that play a key role in the functioning of the estuary and on the diversity of species in the estuarine district, including a plan for maintaining an accurate evaluation of populations and relative abundance and diversity on an annual basis.

e. Evaluation of the impact of the uses of water on the Hudson River estuarine district including present and future demands for water and their impact on the balance of fresh and salt water in the estuary and the role of the location of the salt front in the estuary.

f. Identification of areas of potential ecological significance which may require rehabilitation.

g. A status report on the levels of toxicants in and their effects on important estuarine indicator species and for species that have potential or existing recreational or commercial value.

h. Identification of the anthropogenic activities and the conservation and management problems that pose an existing or potential threat to the

resources and the functioning of the estuary.

i. An inventory of ownership and tenancy of underwater lands in the estuarine district.

j. Recommendations for developing the economic potential of the Hudson River fishery and maintaining its traditional commercial fishery.

k. Recommendations for implementation of a fifteen-year estuary management program including a list of tasks that must be accomplished to implement the purposes stated in this subdivision and address the findings and implement the recommendations of the estuary management strategy.

l. Evaluation of the existing resources and authority of the department to implement the estuary management program including research, information and data needs and legislative, administrative and regulatory recommendations and the potential role of private sources and institutions.

7. On or before January first, nineteen hundred eighty-nine, the commissioner shall present the department's Hudson River estuary management program at a public hearing. This public hearing shall be advertised in official newspapers in each county along the Hudson River corridor from the city of New York to Albany and Rensselaer counties. The program and public comments regarding it shall be included in a report on the program to be filed with the chairperson of the assembly environmental conservation committee and the chairperson of the senate committee on environmental conservation on or before March first, nineteen hundred eighty-nine.

8. On or before the first day of March of each year, commencing on March first, nineteen hundred ninety, the commissioner shall prepare a report detailing the progress of the estuary management program including but not limited to consideration of those matters listed in subdivision six of this section as well as any planned or anticipated regulatory or policy changes which may affect the estuarine district.

The commissioner shall present the department's annual report at a special public meeting for the purpose of public review and to hear public comment on the annual report. The report shall be filed with the chairpersons of the assembly committee on environmental conservation and the senate committee on conservation and recreation.

9. The commissioner shall consult with the advisory committee regularly and in a timely fashion in the preparation of the estuary management strategy, the estuary management program and his or her yearly report to the legislature regarding any planned or anticipated regulatory or policy changes which will affect the estuarine district. The commissioner shall include in his or her reports to the legislature the comments, recommendations and observations of the advisory committee and a discussion of the consulting role that was played by the advisory committee.

10. The advisory committee shall consult with department personnel on matters affecting the Hudson River estuary on a regular basis and report to the commissioner on or before the first day of December of each year on its activities and concerns.

11. Any agreement or negotiated settlement which existed between the commissioner and the previously existing Hudson River fishery advisory committee, whose membership will comprise the Hudson River estuary management advisory committee for the immediate purposes of implementing this section, shall be binding between the commissioner and the Hudson River estuary management advisory committee.

§ 11-0306-a. The Flax Pond tidal wetlands sanctuary.

1. There is established a Flax Pond tidal wetlands sanctuary for the purpose of protecting areas of special ecological significance within the Flax Pond tidal marsh. The sanctuary shall be composed of the tidal wetlands located in the village of Old Field, county of Suffolk as designated on the March tenth, nineteen hundred sixty-six survey filed in the Suffolk County Clerk's office as file number 136899 and including

a permanent easement for the State University of New York as designated on the March ninth, nineteen hundred sixty-six survey filed in the Suffolk County Clerk's office as file number 81558, and including acreage of 146.162 acres. The sanctuary shall be managed by the department in cooperation with the state university at Stony Brook. The sanctuary shall be managed as a long-term field laboratory for research and education to provide:

a. a natural area for academic research across a wide variety of disciplines including, but not limited to, the fields of community ecology, population ecology, predator-prey relationships, food chain and web dynamics, nutrient and energy flow, hydrology, ornithology, botany, and forestry management;

b. opportunities for instruction between teaching faculty and students by using the property as an "outdoor classroom";

c. opportunities for students, faculty, and the public to connect with the natural world around them;

d. a meaningful contribution toward protection of local and regional biodiversity;

e. lawful recreational angling, however no commercial fishing or shellfishing, nor the taking of invertebrates for bait shall be permitted within the sanctuary;

f. lawful waterfowl hunting during the appropriate open season following receipt of a tidal wetlands access permit issued pursuant to department regulations; and

g. boating by sail, human propelled oar or paddle, or mechanically propelled vessels having a source of power less than ten horsepower.

§ 11-0307. Migratory game birds; regulation.

* 1. The department may adopt rules and regulations in relation to

migratory game birds, provided such regulations are no less restrictive than federal regulations made under authority of the Migratory Bird Treaty Act of July 3, 1918, (16 U.S.C. secs. 703-711), as may be amended from time to time.

* NB Effective until December 31, 2027

* 1. The department shall adopt rules and regulations in relation to migratory game birds consistent with federal regulations made under authority of the Migratory Bird Treaty Act of July 3, 1918, (16 U.S.C. secs. 703-711), as presently constituted or as hereafter amended.

* NB Effective December 31, 2027

2. The department shall, by rule and regulation, establish the means or method for creation of both voluntary migratory bird stamps and migratory bird art prints, their administration, sale and distribution and other matters relating to such voluntary stamps and art prints. The department shall select appropriate works of art that will reflect migratory bird species and/or aquatic ecosystem scenes. The department may prepare or cause to be prepared voluntary migratory bird stamps and prints for any year in excess of the number otherwise to be issued for sale to collectors or other persons desiring to purchase such voluntary stamps or prints.

3. The department shall prepare or cause to be prepared voluntary migratory bird stamps and shall furnish such migratory bird stamps annually to license issuing agents and officers for issuance or sale in the same manner as other types of licenses. The department shall, by rule and regulation, establish the fee for such voluntary stamps which shall not exceed five dollars as a fee and fifty cents for the issuing agent or officer for a stamp sold in the year in which it was issued. The purchase of a stamp is voluntary and need not be possessed in order to hunt migratory waterfowl.

§ 11-0308. Sale of small lead fishing sinkers prohibited.

1. No person shall sell at retail or offer for retail sale lead fishing sinkers weighing one-half ounce or less. Each day of sale or

offering for sale shall constitute a separate violation of this section.

2. For the purposes of this section, the following terms shall have the following meanings:

(a) "sinker" shall mean any device that is designed to be attached to a fishing line and intended to sink the line. Such term shall not include artificial lures, weighted line, weighted flies or jig heads.

(b) "sell at retail" or "retail sale" shall mean the sale to any person in the state for any purpose other than for resale.

3. The department shall provide notice of the prohibition of the retail sale or offering for sale of lead fishing sinkers weighing one-half ounce or less in the state fishing regulations guide.

§ 11-0309. Extension of open seasons after emergency closing.

Whenever open seasons for hunting, fishing or trapping have been curtailed by a proclamation of the Governor pursuant to section 9-1101 of this chapter closing forests and woodlands, or open lands or waters to the public, or suspending an open season for taking fish or wildlife, because of danger of fire, the department, at the expiration of the effective period of the proclamation, shall have power, within the limits of counties affected by the proclamation, to extend by regulation any open season, for a period not to exceed the effective period of the proclamation.

§ 11-0311. Additional or other protection.

1. The department shall have power to give to any wildlife or fish, other than migratory fish of the sea, protection or additional protection to that afforded by this article, if ten or more citizens file with the department a petition signed by them stating the grounds on which such protection is necessary and giving their addresses. If the department entertains the petition it shall within twenty days thereafter hold a public hearing thereon in a place determined by it in

the locality affected. At least ten days before the hearing, notice thereof shall be advertised in a newspaper published in each county affected. The notice shall state the grounds of the application and a copy thereof shall be mailed to each petitioner at least ten days before the hearing.

2. If after the hearing the department determines that by reason of disease danger of extermination or from other cause or reason, such species of fish or wildlife requires such additional or other protection, either local or state-wide, the department may adopt regulations restricting the destruction, disturbance or taking of such species. Such regulations may be adopted for the entire state or any part of it.

3. A regulation adopted pursuant to this section is effective according to its terms notwithstanding any other provision of the Fish and Wildlife Law.

§ 11-0313. Waters closed to taking of fish.

The department shall have power by regulation to close any waters of the state to the taking of fish whenever an environmental investigation it causes to be made reveals that fish life in such waters is in imminent danger of undue depletion because of low water levels brought on by drought. Any such regulation shall remain in force until the department finds that the low water emergency has passed and repeals the regulation.

§ 11-0315. Hudson River shad fishery.

The department is authorized in its discretion to adopt regulations establishing restrictions as to numbers and lengths and types of nets and other gear, compulsory lift periods, licenses, closed season, protected waters or other like measures, as in its judgment may be desirable for the protection of the shad fishing in the Hudson River. In

adopting any such regulation, due regard shall be given to the needs of persons earning their livelihood by shad fishing, opportunity to be heard shall be given, and there shall be no discrimination in such additional regulations against the citizens of any other state.

§ 11-0317. Seasons and limits for taking fish in certain border waters.

1. After consultation with the appropriate agencies of the neighboring states or provinces mentioned in this section, the department shall have power to adopt regulations establishing open seasons, minimum size limits, manner of taking, creel and seasonal limits for the taking of fish in the waters of Indian Lake and Mianus Reservoir, both situated partly in New York and partly in Connecticut, and in the waters of Greenwood Lake, situate partly in New York and partly in New Jersey, and in the Delaware River, situate partly in New York and partly in Pennsylvania and in the waters of Lake Champlain situate partly in New York, partly in Vermont and partly in the Province of Quebec. Such open seasons, manner of taking and limits shall, whenever possible, be made uniform, with those fixed by the neighboring state or province for the waters in question with respect to all species upon which agreement can be reached with the appropriate agency of that jurisdiction.

2. When the department shall find that conditions permit restoration and maintenance of the shad run of the Delaware River and that restrictions imposed under the foregoing powers are inadequate to cooperate with Pennsylvania and New Jersey in maintaining the maximum sustained yield of such fishery, the department is authorized after consultation with the appropriate agencies of Pennsylvania and New Jersey to declare by regulation that an emergency exists and in its discretion to impose such additional restrictions for the taking of shad in the Delaware River and its tributaries as to numbers and lengths and types of nets and other gear, compulsory lift periods, licenses, closed season, protected waters or other like measures as may in its judgment be necessary to maintain such maximum sustained yield. In adopting any such regulation, the department shall observe the conditions prescribed in section 11-0315.

3. After consultation with the appropriate agencies of the neighboring states and the Province of Ontario, the department shall have power to adopt regulations establishing open seasons, minimum size limits, manner of taking, and creel and seasonal limits for the taking of fish in the waters of Lake Erie, Lake Ontario, the Niagara river and the St. Lawrence river. Such open seasons, manner of taking and limits shall, whenever possible, be made uniform with those fixed by the neighboring states and the Province of Ontario, as the case may be, for the waters in question with respect to all species upon which agreement can be reached with the appropriate agency of that jurisdiction.

§ 11-0319. Seasons, limits and manner of taking fish in waters of New York City water supply open to public.

Notwithstanding any other provision of this article and subject to the approval of the New York City Department of Environmental Protection, the department shall have power to adopt regulations establishing open seasons, minimum size limits, manner of taking and daily and seasonal limits for taking fish in the waters of the New York City water supply which are open or may be opened in the future to the public for fishing.

§ 11-0321. "Restricted areas"; additional enforcement on private premises.

1. Without limitation of the purpose and policy described in section 11-0303, or of the powers conferred in other sections, the department is authorized:

a. to adopt by regulation, classifications of "restricted areas" lying within the boundaries of premises, or of two or more sets of contiguous premises, privately owned and with respect to which a cooperation agreement pursuant to section 11-0501 is in force, or owned by the state or a political subdivision or public corporation thereof, in which hunting, fishing or trapping, or any of them, shall be, as provided by

such regulation with respect to the classification in question, prohibited, or shall be restricted or regulated as to the manner, time or conditions applicable to the exercise in such "restricted areas" of the privilege of entry upon such premises for purposes of hunting, fishing or trapping;

b. to adopt regulations with respect to the manner in which, and the conditions upon which, such "restricted areas" shall be recognized, including obligations to be undertaken by the owner or lessee of the premises for the furtherance of sound management practices and public access for hunting, fishing or trapping, to premises outside the "restricted area", identification and notice to the public of the boundaries of the "restricted area", and the manner in which, and the grounds upon which, the recognition of a "restricted area" may be revoked or its classification changed;

c. to adopt regulations with respect to prohibitions applicable to each classification of a "restricted area";

2. Such restricted areas may be established pursuant to this section and regulations may be made with respect to the use of such areas for one or more of the following purposes:

a. providing safety zones in and around buildings;

b. providing safety zones deemed necessary for temporary periods of time for the protection of life or property during farm and woodlot operations;

c. protecting agricultural or forest crops from trampling or other damage during critical growth periods;

d. development or carrying out of a program of research in game management in connection with which the department deems it desirable to control the hunting, fishing or trapping pressures or to put into effect special regulations authorized by section 11-0311 or by any other provision of the Fish and Wildlife Law;

e. protecting the water supply or otherwise providing for the protection of the health of the people of the state;

f. such other purposes relating to farm operation, woodlot development, fish and wildlife habitat improvement or public health and safety which in the opinion of the department require special restrictions on the use of particular premises.

3. No person shall charge or collect a fee or rental for the privilege of hunting, fishing or trapping in a restricted area established under the authority of this section.

4. a. Notwithstanding the provisions of section 11-2111, a restricted area shall be deemed to be in existence and subject to the regulations established pursuant to this section with respect to restricted areas of the classification to which it is assigned, when signs identifying its existence shall have been erected on the premises in such manner as may be required by the regulations of the department applicable thereto, made as prescribed in paragraph b of subdivision 1 of this section.

b. No person shall enter or remain unlawfully or engage in any activity upon land which has been posted pursuant to such regulations in violation of the terms of such posted signs.

c. No unauthorized person shall injure, conceal, deface or remove a sign erected and maintained in accordance with such regulations.

d. The requirements of posting provided in section 11-2111 shall not be applicable to the erection of signs identifying a restricted area.

e. Restricted areas may be established notwithstanding that the lands or waters or part of them, included within said restricted area may have been stocked with fish and game by the state.

f. The existence of the restricted area shall terminate in such manner as may be provided by regulations of the department.

5. The department is further authorized, at the discretion of the commissioner, to exercise all of the powers and authority set forth in this section, in relation to premises with respect to which agreements are in effect between the owner of such premises and the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture and such agreements provide for such regulations, whether or not such premises are the subject of an agreement pursuant to section 11-0501. Payments to such landowners by the United States Department of Agriculture under such agreements shall not constitute a fee or rental within the meaning of subdivision 3 of this section.

§ 11-0323. Publication of Fish and Wildlife Law.

1. The department shall compile and index each year after the adjournment of the legislature the laws relating to fish and wildlife, as well as invasive species (as defined in section 9-1703 and 9-1710 of this chapter), as amended to date. Copies of the compilation shall be printed in pamphlet form of pocket size in the number for which the legislature may appropriate funds.

2. The department shall also prepare a syllabus of such laws and information informing migratory game bird hunters where they can obtain information regarding open seasons and bag limits, federal regulations pursuant to sections 11-1721 and 11-1723 of this article and of laws relating to invasive species (as defined in section 9-1703 of this chapter). The department shall deliver copies of such syllabus to county, city, town and village clerks in numbers sufficient for the furnishing of one copy to each person to whom a hunting, trapping or fishing license is issued. Each such licensee shall be entitled to one copy of such syllabus.

§ 11-0325. Control of dangerous diseases.

1. Whenever it is jointly determined by the Department of

Environmental Conservation and the Department of Health or the Department of Agriculture and Markets, and certification is made to the Commissioner of Environmental Conservation by the Commissioner of Health or the Commissioner of Agriculture and Markets, that a disease, which endangers the health and welfare of fish or wildlife populations, or of domestic livestock or of the human population, exists in any area of the state, or is in imminent danger of being introduced into the state, the department shall adopt any measures or regulations with respect to the taking, transportation, sale, offering for sale or possession of native fish or feral animals it may deem necessary in the public interest to prevent the introduction or spread of such disease. The department may undertake such fish or wildlife control measures it may deem necessary to eliminate, reduce or confine the disease.

2. Whenever it is determined by the Department of Environmental Conservation that an epizootic disease which endangers the health and welfare of native fish or feral animal populations only, exists in any area of the state, or is in imminent danger of developing or being introduced into the state, the department may adopt any measures or regulations with respect to the taking, transportation, sale, offering for sale or possession of native fish or feral animals deemed necessary in the public interest to prevent the development, spread or introduction of such disease.

§ 11-0327. Conservation fund advisory board.

1. Creation of conservation fund advisory board. (a) The conservation fund advisory council is hereby continued and reestablished in the department to be the conservation fund advisory board, which shall make recommendations to state agencies on state government plans, policies, and programs affecting fish and wildlife as more specifically outlined below. Such board shall be composed of eleven voting members, including a member designated by the state fish and wildlife management board, a member designated by the New York state conservation council, three members appointed by the governor, two members appointed by the temporary president of the senate, one member appointed by the minority

leader of the senate, two members appointed by the speaker of the assembly, and one member appointed by the minority leader of the assembly. None of the members shall be employees of the department. Of the members appointed by the governor, the temporary president of the senate, the minority leader of the senate, the speaker of the assembly, and the minority leader of the assembly, no two shall be residents of the same department of environmental conservation region. Each member shall be a resident of the region which that person is appointed to represent. The board shall be representative of individual and organized sportsmen's interests in each region of the state. In addition to these voting members, the commissioner and the chairmen of the senate finance committee, the senate environmental conservation committee, the assembly ways and means committee and the assembly committee on environmental conservation or their designees shall serve as ex officio, non-voting members of the advisory board.

(b) Persons designated or appointed to the advisory board, excluding ex officio members, shall have demonstrated a long-standing interest, knowledge and experience in fish and wildlife management, including hunting or fishing, as evidenced in part by the holding of a valid New York state hunting, fishing or trapping license at the time they are designated or appointed to such board and for each of the three years immediately preceding their designation or appointment to such board. One member, who may not be an ex officio member, shall be elected chairman of the advisory board by a majority vote of the members of such board, excluding ex officio members.

(c) The designation or appointment of any person to the advisory board, excluding ex officio members, shall be considered terminated if, in the course of any one-year period commencing from the date of their designation or appointment, such person shall have accrued three unexcused absences from meetings of the board. Excuses for absences are to be accepted at the discretion of the chairman. In the event of such termination, the resulting vacancy shall be filled as described in subdivision five of this section.

2. Meetings of the advisory board. The board shall meet at least quarterly at the call of the chairman.

3. Duties of the advisory board. The advisory board shall have the following powers and duties:

(a) To review the allocations and expenditures of the department for fish and wildlife purposes as provided in section 11-0303 of this title and report to the commissioner by November fifteenth of each year. To assist the board in its review, the department shall by September first of each year make available to the board, the governor and the legislature current and anticipated income and expenditures for the fish and wildlife programs, including planned expenditures by time and activity code for the next fiscal year. Such report shall include the findings of the advisory board regarding such allocations and expenditures, including expenditures and appropriations from the conservation fund and the extent to which such expenditures and appropriations are consistent with the requirements of state law. The report shall also include recommended maximum annual fees for the licenses and bowhunting and/or muzzle-loading privileges identified in subdivision 3 of section 11-0715 of this article. In recommending such fees the board shall consider economic indicators, the status of the conservation fund, and such program indicators as it may deem appropriate. The commissioner shall submit such report, in its entirety, to the governor and the legislature.

(b) To make reports and release information from time to time, as it deems necessary, to sportsmen and the general public regarding the conservation fund and the fish and wildlife program.

(c) To consult with fish and wildlife interests and render annual reports to the commissioner on fiscal needs and make recommendations on how such needs shall be met.

(d) To assist the department's efforts to expand the available sources of income for the conservation fund and advise the department with respect to the needs of various fish and wildlife programs.

(e) To adopt, promulgate, amend or rescind suitable procedural rules with respect to the composition, internal organization and functioning of the board; and such other rules, regulations and procedures as may be necessary or desirable to effectuate the purposes of this section.

(f) To work to encourage both residents and non-residents to hunt, fish and trap in New York, and to promote conservation and management of New York's natural resources.

4. Advisory board members; expenses. Conservation fund advisory board members shall receive no salary, but the necessary traveling expenses of voting members when attending meetings of the board shall be paid from moneys appropriated to the board for travel and shall be paid on vouchers certified by the chairman of the board upon the audit of the comptroller in the manner provided by law.

5. Term of office. All voting members of the board shall serve terms of three years. An appointment to fill a vacancy shall be made for the remainder of the affected term in the same manner as the original appointment was made. Such appointment shall be made within sixty days of the date the position becomes vacant.

6. State assistance. The commissioner shall, at any time requested by the board, make any and all information readily available to the board which the board indicates is needed to properly and thoroughly carry out its responsibilities. The commissioner shall also make available to the board such secretarial and/or clerical aid reasonably necessary to allow the board to carry out its duties and responsibilities.

§ 11-0329. Outdoor recreation and trail maintenance; regulation.

1. The department shall, by rule and regulation, establish the means or method for the creation of voluntary outdoor recreation and trail maintenance pins and patches, their administration, sale and distribution, the fee therefor, and other matters relating to such voluntary pins and patches.

2. The department shall prepare or cause to be prepared voluntary outdoor recreation and trail maintenance pins and patches and furnish such pins and patches annually to license issuing agents and officers for sale and issuance in the same manner as licenses and other types of pins and patches. The purchase of such pins and patches shall be voluntary and need not be possessed in order to participate in outdoor recreational activities.

TITLE 5

**FISH AND WILDLIFE MANAGEMENT PRACTICES COOPERATIVE
PROGRAM; PROHIBITIONS; TAKING OF FISH, WILDLIFE,
SHELLFISH AND CRUSTACEA FOR SCIENTIFIC OR PROPAGATION
PURPOSES; DESTRUCTIVE WILDLIFE; RABIES CONTROL;
GUIDES; ENDANGERED SPECIES**

- Section 11-0501. Fish and wildlife management practices cooperative program.
- 11-0503. Polluting streams prohibited.
- 11-0505. Interference with fish and wildlife.
- 11-0507. Liberation of fish, shellfish and wildlife.
- 11-0509. Water chestnut.
- 11-0511. Possession and transportation of wildlife.
- 11-0512. Possession, sale, barter, transfer, exchange and import of wild animals as pets prohibited.
- 11-0513. Pigeons.
- 11-0514. Eurasian boars prohibited.
- 11-0515. Licenses to collect, possess or sell for propagation, scientific or exhibition purposes.
- 11-0517. Taking for propagation and stocking; fish hindering propagation of food fish or shellfish.
- 11-0519. Disposition of fish, wildlife, game, shellfish, crustacea or protected insects seized by or surrendered to enforcement officers.
- 11-0521. Destructive wildlife; taking pursuant to permit.
- 11-0522. Urban deer management pilot program.
- 11-0522-a. Long Island deer management pilot program.
- 11-0523. Destructive or menacing wildlife; taking without permit.
- 11-0524. Nuisance wildlife control operators.
- 11-0525. Control of rabies in wildlife.
- 11-0527. State aid to counties participating in control of rabies in wildlife.
- 11-0529. Cats hunting birds; dogs pursuing deer or killing other wildlife in certain areas.

- 11-0531. Bounties prohibited.
- 11-0533. Licensing of guides.
- 11-0535. Endangered and threatened species, species of special concern.
 - 11-0535-a. Illegal ivory articles and rhinoceros horns.
 - 11-0535-b. Vulnerable species.
 - 11-0535-c. Endangered and threatened species mitigation bank fund.
- 11-0536. Sale of certain wild animals or wild animal products prohibited.
- 11-0537. Bald and golden eagles; prohibited acts.
- 11-0538. Direct contact between public and big cats prohibited.
- 11-0539. New York natural heritage program.
- 11-0540. Prohibition on permits authorizing the use of elephants in entertainment acts.
- 11-0541. Monarch preservation plan.

§ 11-0501. Fish and wildlife management practices cooperative program.

1. Purpose.

The cooperative program provided in this section is authorized for the purpose of obtaining on the privately owned or leased lands and waters of the state practices of fish and wildlife management which will preserve and develop the fish and wildlife resources of the state and improve access to them for recreational purposes by the people of the state.

2. Definitions.

a. "Fish and wildlife management" means management of either fish or wildlife, or both.

b. "Region" means a fish and wildlife management region established as provided in subdivision 3.

c. "Regional board" means a board constituted as provided in subdivision 4. "State board" means the board constituted as provided in subdivision 5.

d. "Cooperator" means a person with whom an agreement is made as provided in subdivision 9.

e. "Regional supervisor for natural resources" means the employee of the department bearing that title in each region.

f. "Department", "commissioner", "fish" and "wildlife" have the meanings stated in section 11-0103.

3. Fish and wildlife management regions.

The commissioner shall establish not to exceed fifteen fish and wildlife management regions of one or more counties each, which shall include all counties of the state not wholly included within a city.

4. Regional fish and wildlife management boards.

a. A regional fish and wildlife management board shall be appointed in each of the regions established under subdivision 3 of this section. Such regional board shall consist of three members from each county within the region which has appointed its members. In each county, one member shall be a member of or represent the board of supervisors or county legislative body, one member shall represent the landowners of the county and one member shall represent the sportsmen of the county. Such members from each county shall be appointed by the chairman of the board of supervisors of such county with the approval of the board of supervisors, except that in a county having a county president, a county executive or other chief executive officer, the chief executive officer shall appoint the members representing such county with the approval of the board of supervisors of such county. In a county having an elected legislative body the presiding officer shall appoint the members representing such county with the approval of the legislative body. If

there is no presiding officer then the members representing such county shall be appointed by the legislative body as a whole. If a member of the board of supervisors or legislative body is not available to actively participate on the fish and wildlife management board, a representative shall be selected who is an elected county official or who is employed by the county government in a position having administrative or managerial authority. A landowner representative must actually reside upon rural lands within the county and actually be engaged in the operation of such lands for production of agricultural commodities or forest products. If a landowner representative with such qualifications is not available to actively participate on the fish and wildlife management board, a representative may be appointed who has been for at least five of the past ten years, before commencing his first term in any series of consecutive terms, engaged in such operation of rural lands, and who resides within the county he represents. If no landowner representative with either of these qualifications is available to actively participate on the fish and wildlife management board a representative may be appointed who is a resource manager engaged in such operations on rural lands, and designated by the corporate owner of those lands to represent the landowner's agricultural or silvicultural interests. In the case of certain counties designated by the full state board with a scarcity of rural lands operated for production of agricultural commodities or forest products, the landowner representative shall own such rural lands in New York state, whether or not those properties lie within the county wherein he resides and represents. A sportsman representative must be a resident of the county. The said chief executive officer, presiding officer or legislative body shall receive and consider for appointment as the landowner representative, the recommendations made by the county farm bureau and Pomona grange, and for appointment as the sportsmen's representative, the recommendations made by the county units of organized sportsmen's groups, as well as considering the advantages of new representatives. The term of office of regional board members shall be two calendar years. A member shall be eligible for reappointment to successive terms of office where otherwise qualified. The term of the sportsmen's representative and the board of supervisors or county legislative body representative shall expire at the end of the odd numbered years; the

term of the landowner representative shall expire at the end of the even numbered years. An alternate board of supervisors or county legislative body representative, sportsmen's representative and landowner representative may also be appointed, who shall be available to serve in the event of the temporary inability of the member sportsmen's representative or member landowner representative or board of supervisors or county legislative body representative to so function. A vacancy in membership of a regional board shall be filled in the same manner as the original appointment for the balance of the unexpired term during which the vacancy occurs; if a supervisor member or county legislative body member shall cease to be a supervisor or member of the legislative body before the expiration of his term as a member of the regional board, a successor shall be appointed for the unexpired balance of the term as a member of the regional board. The chairman of the Board of Directors of each soil and water conservation district and the chairman of each regional forest practice board within the fish and wildlife management region, or his or their representatives, shall be advisory members without vote.

b. Each regional board shall elect annually from its members a chairman, a vice chairman and a representative to the state board and may elect a secretary. The regional supervisor for natural resources may serve as secretary of the board if the board so requests, but in any event such supervisor's services shall always be available to the board.

5. State fish and wildlife management board.

a. There shall be a state fish and wildlife management board which shall consist of three representatives, one each representing landowners, sportsmen, and county legislative bodies, from each of the existing regional boards, and, as advisory members of the board without vote, the following persons during their term of office as such, or their representatives: the Commissioner of Environmental Conservation, the Commissioner of Agriculture and Markets, the Commissioner of Transportation, the Commissioner of Parks, Recreation and Historic Preservation, the dean of the New York State College of Agriculture and Life Sciences, the president of the State University of New York College

of Environmental Science and Forestry, the chairman of the State Soil and Water Conservation Committee, the chairman of the State Forest Practice Board, the president of the New York Farm Bureau, the Master of the New York State Grange, the president of the New York State Conservation Council, and the president of the New York State Division of Izaak Walton League.

b. Each member other than the advisory members shall be elected by and from the membership of the respective regional boards for a term of one year from the day of his election, unless within such period he shall cease to be a member of the regional board which elected him, in which event he shall cease to be a member of the state board on the day he ceases to be a member of such regional board. Any vacancy in the state board other than in the office of an advisory member shall be filled for the balance of the unexpired term so vacated by election from its membership by the regional board in which such vacancy occurred.

c. The members of the state board shall elect one of their voting members to serve as chairman, and another as vice chairman, to serve in the absence or inability to serve of the chairman. An officer of the department designated by the commissioner may act as secretary for the board if the board so elect; otherwise a secretary shall be elected from the membership.

d. The state board shall meet at the call of the chairman or secretary when and where necessary within the state.

6. Regional and state board members; expenses.

Regional and state board members, including advisory members, shall receive no salary, but their necessary traveling expenses when attending meetings of the regional or state boards shall be paid from moneys appropriated to the department for travel and shall be paid on vouchers certified by the chairman of the appropriate regional board or state board upon the audit of the comptroller in the manner provided by law.

7. Duties of regional boards.

a. Each regional board shall formulate a statement of fish and wildlife management practices appropriate for its region and submit it for approval to the state board and the commissioner. After such a statement of practices has been approved by the state board and the commissioner, the regional board shall formally adopt such statement of practices and encourage landowners, lessees and sportsmen within the region to adopt and carry out the practices approved.

b. A copy of each resolution so adopting a statement of practices shall be filed in the principal office of the department.

c. Any practices formulated in specific terms shall, unless otherwise expressly limited by the words "without variation", "without alternative", or the like, be interpreted as permitting such variations or alternatives as shall be accepted by the regional board as satisfying the purpose of the practices. But no such variation or alternatives shall be deemed to be a compliance with the practices for purposes of subdivisions 9 and 10 unless the approval of the regional board is recorded in writing.

8. Duties of the state board.

a. The state board shall pass upon and approve or disapprove the fish and wildlife management practices formulated by the regional boards. The state board may, with the advice of the commissioner, and upon recommendations from the regional boards, formulate recommended uniform fish and wildlife management practices for similar ecological types within the various ecological regions of the state. Such uniform practices may thereafter be incorporated expressly or by reference in the statement of practices formulated by regional boards, but shall not be operative as practices of any region unless so incorporated.

b. The state board shall also have the following duties and powers:

(1) to recommend to the regional boards such policies and procedures for the carrying out of fish and wildlife management practices as it deems appropriate;

(2) to keep the several regional boards informed of the activities and experience of all other regional boards in the state and to facilitate an interchange of advice and experience between such regional boards and cooperation between them, and to provide advice and assistance in coordinating the programs of the several regional boards.

c. The state board may submit to the commissioner, recommendations with respect to matters delegated by statute to the department in any case where a statute or regulation of the department may affect the carrying out of fish and wildlife management practices under this section.

9. Cooperation agreements.

a. The commissioner shall have power, through his representative, to enter into an agreement in writing with an owner or lessee of rural lands or waters lying within a fish and wildlife management region or an interest in such lands or waters, or with two or more such owners or lessees who agree jointly and severally, for furnishing of services and benefits as provided in subdivision 10, in exchange for and subject to the condition that such owner or lessee, or owners or lessees, adopt and carry out for a specified period of time, upon such premises or specified parts thereof, one or more of the fish and wildlife management practices adopted by the regional board.

b. The commissioner shall provide standard forms for such cooperation agreements.

c. The agreement shall state the period during which it shall be in force and may provide for renewal. It may also provide for termination before the expiration of such period, and for the conditions upon which and the manner in which any privilege of termination may be exercised.

d. Without limitation by paragraph c or by any term of the agreement pursuant to paragraph c the failure of a cooperator, or of any one of two or more cooperators who agree jointly and severally, to perform his agreement shall relieve the commissioner and the state from the

obligation to furnish the services and benefits provided for in subdivision 10.

10. State assistance.

a. Upon the establishment of such region, the commissioner may, and upon organization of the regional board, the commissioner shall provide personnel from the department to assist the boards and the cooperators within the region.

b. The commissioner shall furnish to cooperators:

(1) technical services;

(2) trees and shrubs from any of the nurseries operated by the department without charge at the nursery, to the extent and subject to the conditions specified in the agreement with the cooperator;

(3) a subscription, without cost, to the New York State Conservationist magazine.

c. The commissioner may also furnish to cooperators such further technical assistance, labor and materials, as may be required in compliance with practices approved by the region and authorized by order of the commissioner.

d. The commissioner may also furnish to premises covered by an agreement and to fish and wildlife upon such premises such protection by way of posting, patrol by environmental conservation officers or forest rangers, inspection or checking stations, fire patrols or other appropriate means, within the limitation of appropriations and of the manpower available as may be advisable in his judgment to protect fish and wildlife resources, provide for public safety and encourage the opening of private lands and waters to public hunting and fishing; but neither this subdivision nor any provision of any agreement pursuant to this section shall be deemed to constitute an undertaking by the state or the department on its behalf to furnish such posting, patrol or protection and neither such agreement nor any provision of the Fish and Wildlife Law shall be deemed to create a ground of liability of the state for damage to person or property caused by the failure or neglect

of the state or its agents, officers or employees to furnish such posting, patrol or protection.

e. The agreement with the cooperator may provide for use by him for purposes compatible with its function in wildlife management, of any structure or facility created or maintained on his premises with funds of the department, or for furnishing to him the incidental products of any activity conducted on his premises for purposes of wildlife management.

§ 11-0503. Polluting streams prohibited.

1. No dyestuffs, coal tar, refuse from a gas house, cheese factory, creamery, condensary or canning factory, sawdust, shavings, tan bark, lime, acid, oil or other deleterious or poisonous substance shall be thrown or allowed to run into any waters, either private or public, in quantities injurious to fish life, protected wildlife or waterfowl inhabiting those waters or injurious to the propagation of fish, protected wildlife or waterfowl therein.

2. a. No person shall place sewage or other matter injurious to fish where it can find its way into water used by any state fish hatchery or allow others to do so on or through premises owned or occupied by him.

b. No person shall erect or maintain any privy, pigsty, inclosure for poultry, barn or barnyard, or drain from any building, whence drainage or refuse may find its way into water used by any state fish hatchery. Every such privy, pigsty, inclosure, barn, barnyard and drain is hereby declared to be a public nuisance and may be summarily abated by the department.

3. Oil, acid, sludge, cinders or ashes from a vessel of any type shall not be thrown, dumped or allowed by any person to run into the waters of the Hudson or Mohawk rivers.

4. No earth, soil, refuse or other solid substances, except snow or

ice, shall be disposed of in any stream or tributary thereto which is inhabited by trout; nor shall any earth, soil, refuse or other solid substance, except snow or ice, be disposed of on the banks of trout streams or tributaries thereto in such a manner that such solid substance can enter the stream at any stage of water level. Dumps and disposal areas for refuse along the banks of trout streams, or tributaries thereto, shall be operated by the owner or lessee of such an area in such manner that the solid substances deposited thereon shall not enter the stream at any stage of water level.

5. This section does not prohibit the control or elimination of aquatic vegetation, insects and aquatic animals, authorized by the department in order to effectuate the provisions of paragraph a of subdivision 2 of section 11-1911 and subdivision 8 of section 11-1913 of the Fish and Wildlife Law.

6. Nothing contained in this section shall prohibit the enactment by the appropriate governing or legislative body of any county, city, town or village of local laws, not inconsistent with this chapter, prohibiting the disposal of earth, soil, refuse, or other solid substance, in streams, ponds or lakes within its jurisdiction.

§ 11-0505. Interference with fish and wildlife.

1. a. Except as permitted by the department, no person shall obstruct the passage of fish in any stream or river by a screen or otherwise. The department may order such obstruction removed by the person erecting the same or by the owner of the land on which it is located. A copy of the order shall be served on such person or owner and failure to comply with its terms within ten days after service thereof shall be deemed a violation of this subdivision. This subdivision shall not apply to dams heretofore or hereafter erected.

b. Flumes or raceways in streams stocked with fish by the state shall be screened as the department may direct.

2. No person shall:

a. hold back or divert water in any stream which supplies a state hatchery so as to prevent the flow of sufficient water for hatchery purposes, or

b. take fish from the waters of any state hatchery operated by the department, except under the authority of the department.

* 3. No deer or bear traps shall be made, set or used upon land inhabited by deer or bear. No salt lick shall be made, set or used upon land inhabited by deer or bear, except that:

a. the department may do so on state wildlife refuges and wildlife management areas; and

b. a nuisance wildlife specialist with a permit issued pursuant to section 11-0522 of this title may do so provided that such activities are in furtherance of the site-specific deer management plan.

c. a nuisance wildlife specialist with a permit issued pursuant to section 11-0522-a of this title may do so provided that such activities are in furtherance of the site-specific deer management plan.

* NB Effective until January 1, 2027

* 3. No deer or bear traps shall be made, set or used upon land inhabited by deer or bear. No salt lick shall be made, set or used upon land inhabited by deer or bear, except that the department may do so on state wildlife refuges and wildlife management areas.

* NB Effective January 1, 2027

4. No person shall use any device which prevents frogs from having free access to and egress from water.

5. No person shall rob or wilfully destroy a nest of any protected birds unless a permit shall first be obtained from the department.

6. Except as permitted by the department, no person shall at any time disturb a beaver dam, house or den or a muskrat house or den or any

structure constructed by a muskrat in which it can take shelter.

7. No person shall at any time disturb a nest box or any structure constructed for the purpose of harboring wild birds whether or not such structure is inhabited by wild birds, except for annual maintenance of such structure or when deemed necessary by the owner of the property whereupon such structure is located.

8. No person shall place, give, expose, deposit, distribute or scatter any substance with the intent to attract or entice deer to feed within three hundred feet of a public highway. Normal agricultural practice of planting, cultivating or harvesting and the feeding of deer held captive for agricultural purposes or the feeding of deer held captive in zoos and wildlife parks shall not be considered attracting or enticing deer to feed for the purposes of this section.

* 9. A nuisance wildlife specialist with a permit issued pursuant to section 11-0522 of this title may, in accordance with the parameters of such permit and the consultation of local law enforcement, entice deer in the manner prohibited in subdivision eight of this section provided that such activities are in furtherance of the site-specific deer management plan.

* NB Repealed January 1, 2027

* 10. A nuisance wildlife specialist with a permit issued pursuant to section 11-0522-a of this title may, in accordance with the parameters of such permit and the consultation of local law enforcement, entice deer in the manner prohibited in subdivision eight of this section provided that such activities are in furtherance of the site-specific deer management plan.

* NB Repealed January 1, 2027

§ 11-0507. Liberation of fish, shellfish and wildlife.

1. Fish or fish eggs shall not be placed in any waters of the state unless a permit is first obtained from the department; but no permit shall be required to place fish or fish eggs in an aquarium.

2. No person shall liberate or import or cause to be imported for the purpose of liberation within the state any European hare (*Lepus europaeus*), European or San Juan rabbit (*Oryctolagus cuniculus*), Texas or jack rabbit (*Lepus californicus*), gray fox (*Urocyon cinereoargenteus*), including captive bred gray fox, red fox (*Vulpes vuples*), including captive bred red fox or nutria (*Myocastor coypus*), whether taken from within or without the state. Nutria may be imported only by permit of the department for scientific, exhibition or for breeding purposes.

3. No person shall willfully liberate within the state any wildlife except under permit from the department. The department may issue such permit in its discretion, fix the terms thereof and revoke it at pleasure. These provisions do not apply to migratory game birds, importation of which is governed by regulation of the department.

4. No person shall intentionally liberate zebra mussels (*Dreissena polymorpha*) into any waters of the state. No person shall buy, sell, or offer to buy or sell, or intentionally possess or transport zebra mussels except under a license or permit issued pursuant to section 11-0515. Zebra mussels, except those lawfully held pursuant to a license or permit, may be destroyed by any person at any time.

§ 11-0509. Water chestnut.

No person shall plant, transport, transplant or traffic in plants of the water chestnut or the seeds or nuts thereof nor in any manner cause the spread or growth of such plants.

§ 11-0511. Possession and transportation of wildlife.

Subject to the provisions of section 11-0512 of this article, no person shall, except under a license or permit first obtained from the department containing the prominent warning notice specified in subdivision nine of section 11-0917 of this article, possess, transport

or cause to be transported, imported or exported any live wolf, wolfdog, coyote, coydog, fox, skunk, raccoon, venomous reptile, endangered species designated pursuant to section 11-0535 of this title, species named in section 11-0536 of this title or other species of native or non-native live wildlife or fish where the department finds that possession, transportation, importation or exportation of such species of wildlife or fish would present a danger to the health or welfare of the people of the state, an individual resident or indigenous fish or wildlife population. Environmental conservation officers, forest rangers and members of the state police may seize every such animal possessed without such license or permit. No action for damages shall lie for such seizure, and disposition of seized animals shall be at the discretion of the department.

§ 11-0512. Possession, sale, barter, transfer, exchange and import of wild animals as pets prohibited.

1. It shall be prohibited for any person to:

a. knowingly possess, harbor, sell, barter, transfer, exchange or import any wild animal for use as a pet in New York state, except as provided in subdivision three of this section; or

b. intentionally release or set at-large any wild animal, authorized by this section for use as a pet, from the location where the animal is permitted to be possessed or harbored.

2. This section shall not apply to the following persons and entities with respect to wild animals owned or harbored by them solely for a purpose other than for use as a pet:

a. Zoological facilities licensed pursuant to 7 USC. Sec. 2131 et seq.;

b. Exhibitors licensed pursuant to the Animal Welfare Act, 7 USC. Sections 2132-2134 and reptile exhibitors who have demonstrated to the

department, in accordance with regulations promulgated by the commissioner, that the sole purpose for which the wild animal or animals are used is for exhibition to the public for profit or compensation;

c. Research facilities as defined in the Animal Welfare Act, 7 USC. Section 2132 (e), which are licensed by the United States Secretary of Agriculture;

d. Licensed veterinarians and incorporated humane societies, animal shelters, societies for the prevention of cruelty to animals or animal welfare organizations in temporary possession of wild animals;

e. State universities, private colleges or universities, or state agencies working with wild animals;

f. Wildlife rehabilitators licensed pursuant to the provisions of subdivision three of section 11-0515 of this title and regulations promulgated thereunder, who are tending to sick or injured wild animals;

g. A person having custody of a wild animal solely for the purpose of transporting it to a licensed veterinarian, wildlife rehabilitator, humane society or other entity authorized by this section to handle or treat wild animals;

h. A wildlife sanctuary as defined in subdivision thirty-two of section 11-0103 of this article;

i. A person who is not a resident of this state who is in the state only for the purpose of travelling between locations outside the state. In no event shall this time period exceed ten days;

j. A person who is paralyzed from the neck down who possesses a new world monkey trained to perform tasks for its owner by an organization described in section 501(c) of the Internal Revenue Code of 1986 and dedicated to improving the quality of life of persons paralyzed from the neck down.

3. Any person who possesses or harbors a wild animal for use as a pet at the time that this section takes effect may retain possession of such animal for the remainder of its life, provided that such person:

a. Has not been convicted of any offense relating to cruelty to animals or under a judicial order prohibiting possession of animals;

b. Applies to the department within six months of the effective date of this section, and obtains from the department, a license pursuant to subdivision four of this section;

c. Complies with all applicable federal, state, or local laws, including any ordinance, rule or regulation adopted by a local board of health, or any rules and regulations established by the department as requisites for ownership of such wild animal; and

d. Reports a release to the local police department and animal control immediately upon discovery of the release. Each escape during a twelve month period of time will subject the possessor to penalties by the department pursuant to subdivisions eight and nine of this section.

4. The department shall be required to issue licenses authorizing possession of wild animals only to those persons who comply with the provisions of subdivision three of this section and with any regulations promulgated by the department thereunder. Such licenses shall be valid in any jurisdiction within the state where possession of a wild animal is not prohibited by local law or ordinance, rule or regulation adopted by a local board of health, and shall be renewable biennially during the life of the animal subject to continued compliance with the provisions of this section and with any regulations promulgated thereunder. The department shall forward copies of such licenses to the clerk of the city, town or village in which each wild animal is harbored.

a. License applications shall include, but shall not be limited to, the following:

(1) The name, address and telephone number of the person who owns, possesses or harbors the wild animal or animals, including an

acknowledgment that the person who owns, possesses or harbors the wild animal or animals is twenty-one years of age or older.

(2) The address of the location where the wild animal or animals will be kept, if different from the above.

(3) A detailed description of each wild animal owned, possessed or harbored, including species, gender, age, any identifying characteristics, and an identification tag or tattoo if required by the department, with proof, acceptable to the department, that each such wild animal was acquired prior to the effective date of this section.

(4) The name, address and telephone number of the veterinarian, who has agreed to treat the wild animal.

(5) An acknowledgment indicating that the wild animal or animals will not be bred.

(6) A detailed certification establishing that the location in which the wild animal will be kept complies with all appropriate standards of care and at minimum complies with the standards for animal care set forth in the Federal Animal Welfare Act and other applicable federal, state and local standards, including, but not limited to housing, temperature, ventilation, drainage, sanitation, food, water, exercise and veterinary care appropriate to the species and sufficient to maintain the wild animal in good health.

(7) An acknowledgment that the wild animal will not be tied, tethered, or chained outdoors, allowed to run at large and that the wild animal will not be brought to any public park or commercial or retail establishment unless it is being brought to a veterinarian or veterinary clinic.

(8) An acknowledgment that possession, harboring or owning such wild animal does not violate any applicable federal, state or local law, including any ordinance, rule or regulation adopted by a local board of health.

b. The department shall set biennial license fees for the possession of wild animals pursuant to subdivision three of this section in an amount determined to be reasonable but not more than one hundred seventy-five dollars for two years for each wild animal. License fees shall be used solely for the implementation and enforcement of this section.

5. The provisions of the state administrative procedure act shall apply to the denial or revocation of a license.

6. Any person in possession of a wild animal as a pet that has been granted a license pursuant to subdivision four of this section shall not breed, or sell, trade, barter or exchange such wild animal.

7. A person possessing, owning or harboring a wild animal who is denied a license pursuant to subdivision four of this section, or whose license is revoked, shall surrender such wild animal to the department or an authorized agent thereof at a location designated by the department for such surrender or a police or peace officer of this state, a local animal control officer, or a duly incorporated society for the prevention of cruelty to animals, or provide proof that the animal has been humanely euthanized according to American Veterinary Medical Association standards by a licensed veterinarian.

8. The department, any police or peace officer of this state, a local animal control officer, or a duly incorporated society for the prevention of cruelty to animals is hereby authorized to enforce the provisions of this section and issue notices of violation to persons in violation of this section, and shall have the authority to seize any wild animal held in violation of this section. A county society for the prevention of cruelty to animals must obtain a warrant before seizing a wild animal or arresting a person who owns or possesses a wild animal under this section. Wild animals seized or surrendered pursuant to the provisions of this section shall be transferred to a duly incorporated wildlife sanctuary as defined in this section, or a zoological facility, or shall be humanely euthanized. Any costs associated with seizing, transferring, recapturing or euthanizing a wild animal shall be borne by the person who owned, harbored or possessed the animal. The department shall also have the authority to seek injunctive relief in any court of appropriate jurisdiction to prevent continued violations of this section.

9. Notwithstanding any other provision of law, any person who

knowingly breeds a wild animal or knowingly possesses, owns, harbors, sells, barter, transfers, exchanges, or imports a wild animal for use as a pet or intentionally releases or sets at-large any wild animal, authorized by this section for use as a pet, from the location where the animal is permitted to be possessed or harbored in violation of the provisions of this section shall be subject to a penalty of not more than five hundred dollars for the first offense and not more than one thousand dollars for a second and subsequent offenses. Each instance of breeding, owning, harboring, sale, barter, release, transfer, exchange, or import of a wild animal in violation of this section shall constitute a separate offense.

10. Nothing contained in this section shall prevent any city, town or county from enacting more restrictive provisions governing the possession of wild animals for use as pets.

§ 11-0513. Pigeons.

1. No person shall at any time, by any means or in any manner capture, kill or attempt to capture or kill any Antwerp or homing pigeon, wearing a ring or seamless leg band with its registered number stamped thereon; nor shall any person remove such mark. No person except the lawful owner shall detain, possess, or transport Antwerp or homing pigeons wearing a ring or seamless leg band with the registered number thereon.

2. Notwithstanding any other law to the contrary, the local legislative body of any city, town or village, or in the city of New York the Department of Health may take or issue a permit to any person to take pigeons at any time and in any humane manner in such municipality, whenever such body or administration finds that pigeons within such municipality are or may become a menace to public health or a public nuisance; provided, however, that no pigeon may be taken in a manner which will endanger other animal life, persons or property.

§ 11-0514. Eurasian boars prohibited.

1. For purposes of this section, "Eurasian boar" shall mean any subspecies, breed, or hybrid of swine recognized as Eurasian boar, Russian boar, wild boar, wild hog, razorback, or feral swine. "Eurasian boar" shall not include domestic pigs (*sus scrofa domestica*) possessed for meat production or as pets, or animals possessed or owned by a zoological park accredited by the Association of Zoos and Aquariums.

2. No person, firm, partnership, corporation, or government entity shall knowingly import, allow to breed, or introduce into the wild Eurasian boars.

3. Beginning September first, two thousand fifteen, no person, firm, partnership, corporation or government entity shall knowingly possess, sell, offer for sale, distribute, transport, or otherwise market or trade live Eurasian boars.

4. The department may adopt rules and regulations necessary to implement and administer this section.

§ 11-0515. Licenses to collect, possess or sell for propagation, scientific or exhibition purposes.

1. The department may issue to any person a license revocable at its pleasure to collect or possess fish, wildlife, shellfish, crustacea, or aquatic insects, birds' nests or eggs for propagation, banding, scientific or exhibition purposes. The department in its discretion may require an applicant to pay a license fee of ten dollars, and to file a bond of two hundred dollars to be approved by the department that he or she will not violate any provisions of this article. Each licensee shall file with the department a report containing such information as the department may require. Such license shall be in force for one year only and shall not be transferable.

2. The department may also issue a license revocable at its pleasure to possess and sell protected fish, wildlife, shellfish, crustacea or

aquatic insects for propagation, scientific or exhibition purposes. The department in its discretion may require a license fee of ten dollars. Such license shall be in force for one year only and shall not be transferable. Each licensee shall file with the department a report containing such information as the department may require. Fish, wildlife, shellfish, crustacea or aquatic insects lawfully possessed under this section may be sold at any time by the licensee for propagation, scientific or exhibition purposes only.

3. The department may also issue a revocable license to possess distressed wildlife for rehabilitation purposes. The department may adopt regulations concerning the qualifications, appointment and duties of wildlife rehabilitators and the procedures for license issuance and revocation.

4. The department shall have power to make regulations governing the possession of such fish, wildlife, shellfish, crustacea and aquatic insects to protect them from cruelty, disease or undue discomfort and to protect the public from attack or contamination.

§ 11-0517. Taking for propagation and stocking; fish hindering propagation of food fish or shellfish.

1. The department may take, or it may permit any person to take wildlife for propagation or stocking purposes, or fish or shellfish for propagation purposes.

2. It may also remove, or permit to be removed, in any manner it may prescribe, from either public or private waters, fish or shellfish which hinder the propagation of food fish or shellfish, or which are in imminent danger of being killed by pollution or otherwise. Such fish or shellfish shall be disposed of as the department may direct.

3. No person shall take fish within one hundred feet of any leader or net operated by the department or permitted under subdivisions 1 or 2 of this section and fish confined therein shall be handled or taken

therefrom only by an employee of the department or by the permittee.

§ 11-0519. Disposition of fish, wildlife, game, shellfish, crustacea or protected insects seized by or surrendered to enforcement officers.

1. When any fish, game, wildlife, shellfish, crustacea or part thereof, or any protected insect, or any bird plumage, is

a. seized by an enforcement officer as provided in section 71-0907 and it is thereafter determined that the possession thereof, by the person from whom it was seized, was unlawful under any provision of the Fish and Wildlife Law or regulation pursuant thereto; or

b. found in or released from a trap, snare, net or other device constituting a nuisance which the officer is authorized summarily to abate as provided in section 71-0915; or

c. surrendered to an enforcement officer for disposition by any person having lawful custody or possession; possession thereof shall be deemed vested in the department on behalf of the state. All such things shall be disposed of as may be determined by the enforcement officer, subject to law and any applicable regulations of the department.

§ 11-0521. Destructive wildlife; taking pursuant to permit.

1. The department may direct any environmental conservation officer, or issue a permit to any person, to take any wildlife at any time whenever it becomes a nuisance, destructive to public or private property or a threat to public health or welfare, provided, however, that where such wildlife is a bear, no such permit shall be issued except upon proof of damage to such property or threat to public health or safety presented to the department. Upon presentation of such proof, the department may issue a permit authorizing the use of trained tracking dogs pursuant to section 11-0928 of this article, and, if the

department has determined that no other alternative is feasible, a separate permit to take the bear. Wildlife so taken shall be disposed of as the department may direct. Any person, agency, corporation or municipality who obtains a migratory bird depredation permit or order issued by the federal department of the interior pursuant to 50 C.F.R. 13 and 50 C.F.R. 21, as may be amended from time to time, shall not be required to obtain a permit from the department to conduct the authorized activities.

2. The department may, by permit issued to a landowner, permit such landowner, and any person he may designate in writing as his agent, to take beaver on lands owned by the permittee, during any specified period, in any specified number, and by any specified means, notwithstanding the provision contained in paragraph d of subdivision 3 of section 11-0901 or any other provision of the Fish and Wildlife Law. Beaver so taken shall be disposed of as the department may direct.

3. Nothing in this section shall be construed as requiring or obligating the department to issue a permit to take wildlife or to direct the taking of any wildlife when in its opinion the nuisance, destruction of property or threat to public health and welfare will not be effectively abated thereby.

*** § 11-0522. Urban deer management pilot program.**

1. For the purposes of this section, "nuisance wildlife specialist" shall mean an employee of or a contractor for the federal or state government responsible for wildlife management acting pursuant to a deer management plan and deer cull permit. A nuisance wildlife specialist must be in compliance with criteria established by the department that at a minimum shall require:

a. a minimum level of marksmanship qualifications appropriate to the firearm or hunting implement to be used;

b. liability insurance coverage or other financial arrangements

identified by the department;

c. a copy of the cull permit and a copy of the log of nuisance wildlife specialists using the permit, be on the nuisance wildlife specialist's person when exercising any privilege of such permit; and

d. reporting requirements.

2. The department may, after reviewing the city of Syracuse's cull permit application and site-specific deer management plan, and upon a finding by the city of Syracuse that deer have become a nuisance, destructive to public or private property or a threat to public health or welfare, issue a deer cull permit for use within the boundaries of the city of Syracuse, authorizing use of a nuisance wildlife specialist to take deer pursuant to the terms of the deer cull permit.

3. Each cull permit application shall at a minimum include requirements for: the timeframe during which the permit must be used, a site-specific deer management plan, a geographic description of the area for which the permit is being requested, a written contract with the city of Syracuse, a list which identifies participating nuisance wildlife specialists and eligibility based on the criteria established by the department, provided by the city of Syracuse, requests for any authorization pursuant to subdivisions three and nine of section 11-0505 of this title, subdivision two of section 11-0901 of this article, and subdivisions two and four of section 11-0931 of this article, provided that any such authorization subsequently granted shall be explicitly included on any cull permit, and details regarding expected local law enforcement consultation.

4. Nothing in this section shall be construed as requiring or obligating the department to issue a permit to take deer when in its opinion the nuisance, destruction of property or threat to public health and welfare will not be effectively abated thereby.

* NB Repealed January 1, 2027

*** § 11-0522-a. Long Island deer management pilot program.**

1. For the purposes of this section, "nuisance wildlife specialist" shall mean an employee of or a contractor for the federal or state government responsible for wildlife management acting pursuant to a deer management plan and deer cull permit. A nuisance wildlife specialist must be in compliance with criteria established by the department that at a minimum shall require:

a. a minimum level of marksmanship qualifications appropriate to the firearm or hunting implement to be used;

b. liability insurance coverage or other financial arrangements identified by the department;

c. a copy of the cull permit and a copy of the log of nuisance wildlife specialists using the permit, be on the nuisance wildlife specialist's person when exercising any privilege of such permit; and

d. reporting requirements.

2. The department may, after reviewing the town of Southold's cull permit application and site-specific deer management plan, and upon a finding by the town of Southold that deer have become a nuisance, destructive to public or private property or a threat to public health or welfare, issue a deer cull permit for use within the boundaries of the town of Southold, authorizing the use of a nuisance wildlife specialist to take deer pursuant to the terms of the deer cull permit.

3. Each cull permit application shall at a minimum include requirements for: the timeframe during which the permit must be used, a site-specific deer management plan, a geographic description of the area for which the permit is being requested, a written contract with the town of Southold, a list which identifies participating nuisance wildlife specialists and eligibility based on the criteria established by the department, provided by the town of Southold, requests for any authorization pursuant to subdivisions three and nine of section 11-0505

of this title, subdivision two of section 11-0901 of this article, and subdivisions two and four of section 11-0931 of this article, provided that any such authorization subsequently granted shall be explicitly included on any cull permit, and details regarding expected local law enforcement consultation.

4. Nothing in this section shall be construed as requiring or obligating the department to issue a permit to take deer when in its opinion the nuisance, destruction of property or threat to public health and welfare will not be effectively abated thereby.

* NB Repealed January 1, 2027

§ 11-0523. Destructive or menacing wildlife; taking without permit.

1. Owners and lessees and members of their immediate families actually occupying or cultivating lands, and persons authorized in writing and actually employed by them in cultivating such lands, may take (a) unprotected wildlife other than birds and (b) starlings, common crows and, subject to section 11-0513, pigeons, when such wildlife is injuring their property or has become a nuisance thereon. Such taking may be done in any manner, notwithstanding any provision of the Fish and Wildlife Law, except section 11-0513, or the Penal Law or any other law.

2. Any bear killing or worrying livestock on land occupied or cultivated, or destroying an apiary thereon, may be taken or killed, at any time, by shooting or device to entrap or entice on such land, by the owner, lessee or occupant thereof, or any member of the owner's, lessee's or occupant's immediate family or by any person employed by such owner, lessee or occupant. The owner or occupant of such lands shall promptly notify the nearest environmental conservation officer and deliver to such officer the carcass of any bear killed pursuant to this subdivision. The environmental conservation officer shall dispose of the carcass as the department may direct.

3. Red-winged blackbirds, common grackles and cowbirds destroying any crop may be killed during the months of June, July, August, September

and October by the owner of the crop or property on which it is growing or by any person in his employ.

4. Varying hares, cottontail rabbits and European hares which are injuring property on occupied farms or lands may be taken thereon, at any time, in any manner, except by the use of ferrets, fitch-ferrets or fitch, by the owners or occupants of such farms or lands or by a person authorized in writing by them and actually employed by them in cultivating such farm lands.

5. Skunks injuring property or which have become a nuisance may be taken at any time in any manner.

6. Raccoons, muskrats, coyotes or fox injuring private property may be taken by the owner, occupant or lessee thereof, or an employee or family member of such owner, occupant or lessee, at any time in any manner.

7. Whenever black, grey and fox squirrels, opossums or weasels are injuring property on occupied farms or lands or dwellings, they may be taken at any time in any manner, by the owners or occupants thereof or by a person authorized in writing by such owner or occupant.

8. No license or permit from the department is required for any taking authorized by this section.

9. Varying hares, cottontail rabbits, skunks, black, grey and fox squirrels, raccoons, muskrats, opossums or weasels taken pursuant to this section in the closed season or in a manner not permitted by section 11-0901 shall be immediately buried or cremated. No person shall possess or traffic in such skunks or raccoons or the pelts thereof or in such varying hares or cottontail rabbits or the flesh thereof.

§ 11-0524. Nuisance wildlife control operators.

1. No person shall charge a fee to take, possess, transport or release wildlife whenever it becomes a nuisance pursuant to section 11-0505,

11-0507, 11-0521, or 11-0523 of this title unless such person has been issued a nuisance wildlife control operator license by the department.

2. No person shall be issued a license by the department under this section unless he or she provides evidence satisfactory to the department, that he or she has completed nuisance wildlife control training. In addition to any other requirements of the department, such training shall include training in site evaluation, methods of resolving common nuisance wildlife problems, including, but not limited to, non-lethal methods; exclusion methods; habitat modification; and capture and handling techniques.

3. The department may issue a revocable nuisance wildlife control operator license and adopt regulations concerning the qualifications for such license and the terms and conditions of such license provided, however, that any such regulations, terms and conditions include training requirements consistent with subdivision two of this section.

4. The fee for a nuisance wildlife control operator license shall be fifty dollars paid annually to be deposited in the conservation fund established pursuant to section eighty-three of the state finance law, provided, however, that a municipality shall not be subject to this fee.

5. Any person licensed pursuant to this section shall submit annually a report to the department which specifies each client's name and address, the date work was performed, the species controlled, the abatement method used, the disposition of the animal, and any other information as required by the department. The department shall annually update a list of nuisance wildlife control operators and make it available to the public in both printed and electronic formats.

§ 11-0525. Control of rabies in wildlife.

1. Whenever the disease rabies occurs in any area of the state and the infection of wild foxes or other wildlife populations is certified to exist therein by the joint determination of the Departments of Health,

Agriculture and Markets and Environmental Conservation, and certification is made to the Commissioner of Environmental Conservation by the Commissioners of Health and of Agriculture and Markets that the health and welfare of the human population or the health and welfare of domestic livestock are in danger therefrom, the department is thereupon authorized and directed to undertake through the use of professional trappers or by other means such fox control or wildlife control measures in the certified area as in its judgment will eliminate, reduce or confine the disease.

2. Such control measures shall be continued until the Commissioners of Health, Agriculture and Markets and Environmental Conservation shall jointly determine that control measures should be terminated.

3. Necessary expenses for such control work shall be financed by moneys made available by appropriation or otherwise to the department out of moneys in the state treasury, in the general fund, to the credit of the state purpose fund not otherwise appropriated.

§ 11-0527. State aid to counties participating in control of rabies in wildlife.

1. The board of supervisors or county legislative body of any county may appropriate moneys for the purpose of controlling the disease rabies in wildlife.

2. Any county situated in an area wherein the infection of wild foxes or other wildlife populations is certified to exist with danger to health and welfare, in accordance with the provisions of section 11-0525, may submit a plan for joint approval by the state departments of Health, Agriculture and Markets and Environmental Conservation for the purposes of eliminating, reducing or confining the disease rabies. If such plan, or a modification of such plan, is approved by such departments and is duly carried out by any such county in accordance with such regulations as may be adopted by the Department of Environmental Conservation (which regulations when adopted shall be made

a part of such plan) then such county shall be reimbursed by the state to the extent of fifty per centum of the amount by it expended in the execution of such plan; provided, however, that such reimbursement to any county shall not exceed six thousand dollars in any state fiscal year.

3. A county shall not be reimbursed for any moneys expended by it for the payment of bounties for the taking of wildlife.

4. Not later than the last day of each of the months of June, September, December and March the county treasurer of each such county which has been certified under section 11-0525 and approved under this section, and has incurred expenditures pursuant to the provisions of this section during the three months' period ending on such days, shall make a report to the Commissioner of Environmental Conservation of the amount of such expenditures and apply for the state reimbursement herein authorized.

5. Such report and application shall be in such form and contain such information as may be required by the Commissioner of Environmental Conservation. The commissioner shall thereupon promptly certify to the comptroller for payment the amount of state reimbursement due the county thereon. The amounts so certified by the Commissioner of Environmental Conservation, after audit by and on the warrant of the Comptroller, shall be paid to the county treasurers of the respective counties to which such reimbursement is due, from any moneys available by appropriation therefor. No reimbursement shall be made for expenditures incurred by any county after such time as the Departments of Health and Agriculture and Markets shall have certified that danger to health and welfare from the disease rabies no longer exists in such county.

§ 11-0529. Cats hunting birds; dogs pursuing deer or killing other wildlife in certain areas.

1. Any person over the age of twenty-one years possessing a hunting license may, and environmental conservation officers and peace officers,

acting pursuant to their special duties, or police officers shall humanely destroy cats at large found hunting or killing any protected wild bird or with a dead bird of any protected species in its possession.

2. Every environmental conservation officer, forest ranger and member of the state police may kill any dog (a) pursuing or killing deer within the Adirondack or Catskill parks, at any time; (b) pursuing or killing any game or wildlife on a state-owned game farm or wildlife refuge; or (c) pursuing or killing any game or wildlife on a state-owned or leased wildlife management area, except a dog being legally used for hunting small game or for dog training.

3. Every park patrolman, park ranger and member of the state police, county police and town police may kill any dog pursuing or killing deer within any state park or state park reservation at any time.

4. At any time (a) any environmental conservation officer, dog warden, forest ranger or member of the state police, anywhere in the state, (b) any member of any town police within the limits of the town of which such member is an officer, (c) any member of the Westchester County Parkway police on any park, parkway or reservation owned or controlled by the county of Westchester or (d) any member of a police force or department of any county, city, town or village in which such member has jurisdiction and is regularly employed may kill any dog pursuing or killing deer and any coyote killing a domestic animal.

5. No action for damages shall lie against any authorized person for the killing of a cat, dog or coyote as provided in this section.

§ 11-0531. Bounties prohibited.

Notwithstanding any other provision of this chapter, or any other law, rule or regulation to the contrary, it shall be unlawful for any department or division of this state, or any political subdivision thereof to pay bounties on the taking of wildlife, except when the state

Department of Health, or any local health authorities, determine that a given type or class of animals constitute a health hazard as carriers or potential carriers of disease.

§ 11-0533. Licensing of guides.

1. As used in this section, the term "guide" shall mean a person who offers services for hire part or all of which includes directing, instructing, or aiding another in fishing, hunting, camping, hiking, white water canoeing, rafting or rock and ice climbing.

2. All guides engaging in the business of guiding on all lands and waters of the state shall possess a license issued by the department, except for any persons operating or assisting upon a public vessel for hire (passenger carrying vessels), licensed by the United States Coast Guard or New York state, upon the Atlantic Ocean and all other marine and coastal waters, tidal waters including the Hudson river up to the Troy barrier dam, St. Lawrence river, Great Lakes and the navigable portion of their tributaries, and other navigable waters, as determined by the department.

3. Except while guiding for the purposes of hunting and/or fishing, no license as defined in section 11-0701 is required for such acts.

4. Employees of children's camps as defined in subdivision one of section one thousand four hundred of the public health law shall be exempt from the provisions of subdivisions one and two of this section, provided such activities are carried out within the scope of said employment.

5. A license as required under subdivision two of this section shall be issued for a period of five calendar years and the fee therefor shall be established by the department, not to exceed two hundred dollars.

6. Every licensed guide while engaged in guiding shall wear in plain sight identification furnished by the department. Licensed guides shall

be at least eighteen years of age. They shall be skilled in the use of boats and canoes whenever use of these craft is required and shall be persons competent to guide one or more of the following: camping, hunting, fishing, hiking, white water canoeing/rafting, rock or ice climbing or other similar activities. The department shall by regulation establish standards and procedures for testing and licensing of guides.

7. Any licensed guide who violates any provision of this chapter or who makes any false statement in his application for a license shall in addition to any other penalties, immediately surrender his license to the department, which may be revoked by the department for up to one year following the date of such surrender.

8. The department shall publish a list of guides annually.

§ 11-0535. Endangered and threatened species, species of special concern.

1. For the purposes of this section, "endangered species" shall mean those species of fish, shellfish, crustacea and wildlife designated by the department, by regulation filed with the Secretary of State, as seriously threatened with extinction, "threatened species" shall mean those species of fish and wildlife designated by the department, by regulation filed with the Secretary of State, which are likely to become endangered species within the foreseeable future throughout all or a significant portion of their range, and "species of special concern" shall mean those species of fish and wildlife designated by the department, by regulation filed with the Secretary of State, which are found by the department to be at risk of becoming threatened in New York. Such regulation shall include, but not be limited to, endangered and threatened species as so designated by the Secretary of the Interior, provided, however, that such regulation shall take effect sixty days after it has been filed with the Secretary of State, and provided, further, that any endangered or threatened species as so designated by the Secretary of the Interior shall be subject to the restrictions of this section, regardless of the removal of such

designation as an endangered or threatened species by the Secretary of the Interior. The commissioner may exclude any such species as the commissioner may determine after investigation to be no longer endangered or threatened from the restrictions of this section.

2. Notwithstanding any other provision of this chapter, the taking, importation, transportation, possession or sale of any endangered or threatened species of fish, shellfish, crustacea or wildlife, or hides or other parts thereof, or the sale or possession with intent to sell any article made in whole or in part from the skin, hide or other parts of any endangered or threatened species of fish, shellfish, crustacea or wildlife is prohibited, except under license or permit from the department.

3. Notwithstanding any other provision of this chapter, the department may promulgate regulations to the taking, importation, transportation, possession or sale of any species of special concern as the department deems necessary for the proper protection of such species.

§ 11-0535-a. Illegal ivory articles and rhinoceros horns.

1. As used in this section:

a. "Distribute" means a transfer or change in possession with an accompanying change in legal ownership.

b. "Ivory article" means any item containing worked or raw ivory from any species of elephant or mammoth.

c. "Raw ivory" means any elephant or mammoth tusk, and any piece thereof, the surface of which, polished, or unpolished, is unaltered or minimally carved.

d. "Worked ivory" means any elephant or mammoth tusk, and any piece thereof, which is not raw ivory.

2. Except as otherwise provided in subdivision three of this section, no person shall sell, offer for sale, purchase, trade, barter or distribute an ivory article or rhinoceros horn.

3. Unless such activity is prohibited by federal law, rule or regulation, the commissioner may issue licenses or permits for the sale, offering for sale, purchase, trading, bartering or distribution of ivory articles or rhinoceros horns, provided that:

a. the ivory article or rhinoceros horn is part of a bona fide antique and is less than twenty percent by volume of such antique, and the antique status of such antique is established by the owner or seller thereof with historical documentation evidencing provenance and showing the antique to be not less than one hundred years old;

b. the distribution or change of possession of the ivory article or rhinoceros horn is for bona fide educational or scientific purposes, or to a museum chartered by the board of regents pursuant to the education law or to a museum authorized by a special charter from the legislature of this state; or

c. the distribution of the ivory article or rhinoceros horn is to a legal beneficiary of a trust or to an heir or distributee of an estate; or

d. the ivory article or rhinoceros horn is part of a musical instrument, including, without limitation, string and wind instruments and pianos, and the owner or seller provides historical documentation as the department may require, demonstrating provenance and showing the item was manufactured no later than nineteen hundred seventy-five.

§ 11-0535-b. Vulnerable species.

1. As used in this section, "vulnerable species" shall mean any species of wildlife designated by the department, by regulation filed with the secretary of state, which meet the following criteria:

(a) On the basis of credible scientific evidence, which may include information contained on the international union for conservation of nature and natural resources red list of threatened species, or other similar data:

(i) the species has an observed, estimated or projected population decline that if unreversed, will likely result in the species becoming endangered or threatened within the foreseeable future; or

(ii) other factors that may cause the species to go extinct if they are not identified and reversed;

(b) The species is known to be in trade in this state;

(c) The species is not protected as an endangered or threatened species by the secretary of the interior; and

(d) The species is not protected under the Marine Mammal Protection Act.

2. Except as otherwise provided in subdivision three of this section, no person shall sell, or possess with the intent to sell, any article made in whole or in part from the skin, hide, or other parts of any vulnerable species, except under license or permit from the department.

3. The commissioner may issue licenses or permits for the sale or possession with intent to sell of any article made in whole or in part from the skin, hide, or other parts of any vulnerable species, provided that:

(a) the article is part of a bona fide antique and the antique status of such antique is established by the owner or seller thereof with historical documentation evidencing provenance and showing the antique to be not less than one hundred years old; or

(b) the article is for bona fide educational or scientific purposes, or to be made part of a temporary or permanent collection of a museum chartered by the board of regents pursuant to the education law or to a museum authorized by a special charter from the legislature of this state, provided that the article is not thereafter sold to any private party.

4. The department shall maintain a list of vulnerable species identified pursuant to this section and post such list on the

department's website.

5. Species shall not be designated as a vulnerable species for the purposes of this section if:

(a) the species is protected pursuant to any other provision of this chapter; or

(b) the taking of the species is regulated by the department pursuant to permit or license.

*** § 11-0535-c. Endangered and threatened species mitigation bank fund.**

1. The department is hereby authorized to utilize funds in the endangered and threatened species mitigation bank fund, established pursuant to section ninety-nine-hh of the state finance law, for the purposes of implementing an endangered and threatened species mitigation plan approved by the department.

2. Such fund shall consist of contributions, in an amount determined by the department, deposited by an applicant granted a siting permit to construct a major renewable energy facility, where such applicant has been ordered to mitigate harm to a threatened or endangered species or its habitat.

3. In administering the provisions of this article, the commissioner:

a. May, in the name of the state, enter into contracts with not-for-profit corporations, private or public universities, and private contractors for services contemplated by this title. Such contracts shall be subject to approval by the state comptroller and, as to form, by the attorney general.

b. Shall approve vouchers for payments pursuant to an approved contract. All such payments shall be paid on the audit and warrant of the state comptroller;

c. May, in the name of the state, enter into contracts with a

not-for-profit corporation to administer grants made pursuant to this title, including the approval and payment of vouchers for approved contracts; and

d. May perform such other and further acts as may be necessary, proper, or desirable to carry out the provisions of this article.

4. Nothing in this article shall be construed to limit or restrict any powers of the commissioner or any other agency pursuant to any other provision of law.

5. The commissioner is authorized and directed to promulgate any regulations deemed necessary to implement this section.

** 6. The commissioner shall annually report to the department of public service, the governor, the temporary president of the senate and the speaker of the assembly on the status of the fund and all monies added to and expended from the fund.

** NB Repealed December 31, 2040

* NB Repealed December 31, 2030

§ 11-0536. Sale of certain wild animals or wild animal products prohibited.

1. Except as provided in subdivision three hereof, no part of the skin or body, whether raw or manufactured, of the following species of wild animals or the animal itself may be sold or offered for sale by any individual, firm, corporation, association or partnership within the state of New York:--Leopard (*Panthera pardus*), Snow Leopard (*Uncia*), Clouded Leopard (*Neofelis nebulosa*), Tiger (*Panthera tigris*), Asiatic Lion (*Panthera leo persica*), Cheetah (*Acinonyx jubatus*), Alligators, Caiman or Crocodile of the Order Crocodylia (except as provided in subdivision two of this section), tortoises of the genus *Gopherus*, marine turtles of the family Cheloniidae and the family Dermochelidae, Vicuna (*Vicugna vicugna*), Wolf (*Canis lupus*), Red Wolf (*Canis niger*), or Tasmanian Forester Kangaroo (*Macropus giganteus tasmaniensis*) or Polar Bear (*Thalarctos maritimus*), Mountain Lion, sometimes called Cougar

(*Felis Concolor*), Jaguar (*Panthera onca*), Ocelot (*Felis pardalis*), or Margay (*Felis wiedii*), Sumatran Rhinoceros (*Dicerorhinus sumatrensis*), or Black Rhinoceros (*Dicero bicornis*).

2. The commissioner may permit, under such terms and conditions as he may prescribe, the importation and sale of the skin, body or parts therefrom of Alligators, Caiman or Crocodile of the Order Crocodylia.

3. Any officer or agent authorized by the commissioner, or any police officer of the state of New York, or any police officer of any municipality within the state of New York, shall have authority to execute any warrant to search for and seize any goods, merchandise or wildlife sold or offered for sale in violation of this section, or any property or item used in connection with a violation of this section; such goods, merchandise, wildlife or property shall be held pending proceedings in any court of proper jurisdiction. Upon conviction, or upon the entry of a judgment restraining the sale or offer for sale of such goods, merchandise or wildlife on the ground that such items were sold or offered for sale in violation of this section, such seized goods, merchandise or wildlife shall be forfeited and, upon forfeiture, either offered to a recognized institution for scientific or educational purposes, or destroyed.

4. The commissioner may permit, under such terms and conditions as he may prescribe, the importation, transportation, possession or sale of any species or subspecies of fish or wildlife listed in this section for zoological, educational, and scientific purposes, and for the propagation of such fish or wildlife in captivity for preservation purposes, unless such importation, transportation, possession or sale is prohibited by any federal law or regulation.

§ 11-0537. Bald and golden eagles; prohibited acts.

It shall be unlawful to knowingly or with wanton disregard for the consequences of this act to take, possess, sell, purchase, barter, offer to sell, purchase or barter, transport, export or import, at any time or

in any manner, any bald eagle commonly known as the American eagle, or any golden eagle, alive or dead, or any part, nest, or egg thereof of the foregoing eagles without a permit from a lawful authority.

§ 11-0538. Direct contact between public and big cats prohibited.

1. As used in this section:

(a) "Big cat" shall mean any live species of lion (*panthera leo*), tiger (*panthera tigris*), leopard (*panthera pardus*) (with the exception of clouded leopards (*neofelis nebulosa*)), jaguar (*panthera onca*), mountain lion, sometimes called cougar (*felis concolor*) or any hybrid of such species.

(b) "Direct contact" means physical contact or proximity where physical contact is possible, including, but not limited to, allowing a photograph to be taken without a permanent physical barrier designed to prevent physical contact between the public and big cats.

(c) "Dealer" shall mean any person who, in commerce, for compensation or profit, delivers for transportation, or transports, except as a carrier, buys, sells, or negotiates the purchase or sale of any animals.

(d) "Exhibitor" shall mean any person (public or private) exhibiting any animals, which were purchased in commerce or the intended distribution of which affects commerce, or will affect commerce, to the public for compensation, as determined by the commissioner, and such term includes carnivals, circuses, and zoos exhibiting such animals whether operated for profit or not.

2. It shall be unlawful for any person licensed or required to be licensed as an exhibitor or dealer pursuant to the Animal Welfare Act, 7 USC 2132-2134, including agents or employees of such person, to knowingly allow the public to have direct contact with a big cat.

3. Any person who violates the provisions of this section shall be subject to a penalty of not more than five hundred dollars for the first offense and not more than one thousand dollars for a second and subsequent offenses. Each instance of allowing direct contact of a big cat with the public in violation of this section shall constitute a

separate offense.

4. Nothing in this section shall be construed to limit or restrict veterinary examination, treatment or care of a big cat or transportation of the animal for such purpose.

§ 11-0539. New York natural heritage program.

1. There is hereby established within the department the New York natural heritage program. The program is charged with:

a. analyzing existing sources of information, monitoring and taking censuses of plant and animal populations, and cooperating with other public agencies and scientific and educational institutions, including the New York state museum and the office of parks, recreation and historic preservation, to identify the location and status of plant and animal species and ecological communities, with an emphasis on rare species and rare ecological communities;

b. developing systems for ranking the state and global rarity of plant and animal species and ecological communities and producing lists of such rankings in consultation with the state biological survey and other appropriate entities and individuals; and

c. maintaining comprehensive data management systems integrating information on the location and status of rare plants, animals, and ecological communities, and analyzing and interpreting such information for the purpose of conserving and managing the state's biological diversity.

2. Upon request, and subject to the provisions of subdivision four of this section, the department shall provide information from the New York natural heritage program to other state agencies, public authorities, counties, towns, villages, cities and landowners or their authorized representatives.

3. The department may contract with a private entity to administer the New York natural heritage program.

4. Notwithstanding the provisions of article six of the public officers law or any other provision of law, the department may deny access to inspection of records, data or information collected or maintained by the New York natural heritage program that identify locations or habitats of rare, threatened or endangered species or ecological communities 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 permit access to such records, data or information to persons, educators, schools or universities engaged in legitimate scientific and academic research.

5. No provision contained in this section shall in any way be construed to diminish or extend the department's authority to protect threatened or endangered species of wildlife or rare, threatened or endangered species of plants pursuant to sections 9-1503, 11-0535 and 11-0536 of this chapter or any other provision of law.

6. Nothing in this section shall authorize any person to enter private land without the permission of the private landowner.

7. State-owned waters, lands or portions thereof may be designated as natural heritage areas in order to conserve and manage plants, wildlife or ecological communities, with an emphasis on rare plants, wildlife, and ecological communities which support such plants or wildlife.

a. For purposes of this title, a site shall be eligible for designation as a "natural heritage area" if it matches one or more of the following criteria:

(i) provides habitat for "endangered species" or "threatened species" as defined in section 11-0535 of this title for animals and 9-1503 of this chapter for plants;

(ii) provides habitat for rare species where rare means species ranked as S1, S2 or S3 under criteria developed pursuant to paragraph b of subdivision one of this section; or

(iii) contains "significant ecological communities" where such term means all rare ecological communities as well as the best examples of common communities.

b. Any property designated as a natural heritage area shall be described and depicted upon a map. The description shall include a narrative setting forth the plants, animals or ecological communities present on the property. The department shall make maps depicting natural heritage areas available for public inspection except as provided in subdivision four of this section.

c. Designation may be accomplished by the head of any state agency or entity having jurisdiction over state lands or waters for such appropriate properties as may exist within their respective jurisdictions and consistent with their respective missions, provided the commissioner is consulted, and approves, prior to such designation.

d. A designating state agency or entity shall publish notice concerning the designation of a natural heritage area in the environmental notice bulletin prior to such designation. Such notice shall provide for a thirty day public comment period following publication of the notice.

e. The head of any state agency or entity having jurisdiction over state lands or waters previously designated as natural heritage areas may seek to remove all or a portion of such lands or waters from such designation provided, however, that prior to such removal the commissioner publishes a finding that the designated area or portion of such area no longer meets the criteria in paragraph a of this subdivision. Such finding shall be published in the environmental notice bulletin and shall provide for a thirty day public comment period following publication of the notice.

§ 11-0540. Prohibition on permits authorizing the use of elephants in entertainment acts.

The department shall not issue any license or permit that would authorize the use of an elephant in an entertainment act pursuant to section three hundred eighty of the agriculture and markets law.

§ 11-0541. Monarch preservation plan.

Beginning within one year of the effective date of this section, the department shall take feasible actions to conserve monarch butterflies and the unique habitats they depend upon for successful migration. These actions may include, but are not limited to, habitat restoration on department and state owned lands, education programs, and voluntary agreements with private landowners. The department may partner with federal agencies, state agencies, nonprofit organizations, academic programs, private landowners, and other entities that undertake actions to conserve monarch butterflies and aid their successful migration. When undertaking actions to conserve monarch butterflies and their habitats pursuant to this section, the department shall use the best available science and consider, as appropriate and feasible, all of the following:

1. restoring or revegetating monarch caterpillar habitat using regionally or locally appropriate native milkweed species and native nectar plant species;
2. controlling nonnative weed species that threaten native milkweed species, and controlling pests and disease, using current best management practices consistent with integrated pest management principles that pose low risk to monarch butterflies and their habitat;
3. identifying alternatives to pest management practices that may be harmful to monarch butterflies, their food or their habitat, including but not limited to alternatives to the use of pesticides that may cause such harm;
4. incorporating diverse tree species, structures, and arrangements when restoring or establishing winter habitat sites to match monarch butterfly preferences for temperature, light, moisture, wind, and other

microclimate characteristics; and

5. increasing the number of partnerships and making the most of partnerships to use residential and institutional landscaped areas, agricultural lands that are not in active production, transportation corridors, and conservation easements to create, restore, or enhance monarch butterfly habitat.

TITLE 7

HUNTING, FISHING AND TRAPPING LICENSES

Section 11-0701. Definitions of licenses and privileges of licensees.

11-0702. Lifetime hunting, fishing, trapping, archery and muzzle-loading licenses.

11-0703. General provisions.

11-0704. Transfer of a lifetime license.

11-0705. Failure to carry license, tag or bowhunting and/or muzzle-loading privileges.

11-0706. Gift cards for hunting and fishing licenses.

11-0707. Exemptions from requirement of hunting, big game, fishing and trapping licenses.

11-0709. Circumstances in which license under section 11-0701 not required.

11-0713. Procedure in issuing licenses.

11-0715. Fees.

11-0719. Revocation and suspension of licenses and of right to hunt, fish or trap without license.

§ 11-0701. Definitions of licenses and privileges of licensees.

1. A hunting license:

a. entitles a holder who is twelve or thirteen years of age to hunt wildlife, except big game, as provided in title 9 of this article subject, specifically, to the provisions of section 11-0929 of this article. It entitles such holder to possess firearms as provided in

section 265.05 of the penal law. A holder who is twelve or thirteen years of age shall not hunt with a crossbow.

b. entitles a holder who is fourteen or fifteen years of age to hunt wildlife, including wild deer and bear, as provided in title 9 of this article, subject, specifically, to the provisions of section 11-0929 of this article. It entitles such holder to possess firearms as provided in section 265.05 of the penal law.

2. a. A hunting license entitles the holder to hunt wildlife subject to the following:

(1) a holder who is eighteen years of age or older may hunt wildlife as provided in title 9 of this article,

(2) a holder who is sixteen years of age or older may hunt wildlife, except big game, as provided in title 9 of this article, and

(3) a holder who is between the ages of sixteen and eighteen may hunt big game pursuant to the provisions of title 9 of this article while the holder is accompanied by a parent, guardian or person over the age of eighteen as required by section 11-0929 of this article.

A holder may take fish with a longbow as provided in titles 9 and 13 of this article.

b. A special antlerless deer license is applicable to the hunting of wild antlerless deer in a special open season fixed pursuant to subdivision 6 of section 11-0903 of this article in a tract within a Wilderness Hunting Area and entitles the holder of a hunting license to hunt antlerless deer in such special open season, as provided in title 9 of this article if he or she has on his or her person while so hunting both his or her hunting license and his or her special antlerless deer license.

3. A bowhunting privilege when included on a hunting license entitles a holder:

(1) who is between the ages of twelve and sixteen years to hunt wild deer and bear with a longbow during the special archery season and during the regular season, as provided in title 9 of this article,

subject to the provisions of section 11-0929 and subdivision 3 of section 11-0713 of this article;

(2) who is eighteen years of age or older to hunt wild deer and bear with a longbow, as provided in title 9 of this article, in a special longbow season; and

(3) who is sixteen or seventeen years of age to exercise the same privileges subject to the provisions of section 11-0929 and subdivision 3 of section 11-0713 of this article.

4. A fishing license entitles the holder to take fish by angling, spearing, hooking, longbow and tipups, to take frogs by spearing, catching with the hands or by use of a club or hook, and to take bait fish for personal use, as provided in titles 9 and 13 of this article, except that such license shall not entitle the holder to take migratory fish of the sea or to take fish from the waters of the marine district.

5. A non-resident bear tag entitles a person who has not been a resident of the state for more than thirty days who also possesses a hunting license to hunt bear during the regular open season therefor or in an open season fixed by regulation pursuant to subdivision eight of section 11-0903 of this article. It entitles a non-resident holder who also possesses a hunting license with bowhunting privilege to hunt bear with a longbow during the open bear season. It entitles a non-resident holder who also possesses a hunting license with muzzle-loading privilege to hunt bear with a muzzleloader during the open bear season.

6. A seven-day fishing license entitles the holder to exercise the privileges of a fishing license for the seven consecutive days specified in the license.

7. A one-day fishing license entitles the holder to exercise the privileges of a fishing license on the day specified on the license.

8. A trapping license entitles the holder to trap beaver, otter, fisher, mink, muskrat, skunk, raccoon, bobcat, coyote, fox, opossum, weasel, pine marten and unprotected wildlife except birds, as provided in title 11, subject to the provisions of section 11-0713 of this

article.

9. A muzzle-loading privilege when included on a hunting license entitles a holder who is fourteen years of age or older to hunt wild deer and bear with a muzzle-loading firearm or crossbow, as provided in title 9 of this article, in a special muzzle-loading firearm season.

§ 11-0702. Lifetime hunting, fishing, trapping, archery and muzzle-loading licenses.

1. There are hereby created the following lifetime hunting, fishing, trapping, archery and muzzle-loading privileges and fees therefor subject to the same privileges and obligations of a comparable short term license:

Licenses	Fees
a. Lifetime license including a hunting license, fishing license and turkey permit. If purchased, for a child four years of age or younger	\$380.00
for a child age five through eleven years of age	\$535.00
for a person age twelve through sixty-nine years of age	\$765.00
for a person age seventy and over.	\$65.00
b. Lifetime hunting license.	\$535.00
c. Lifetime fishing license for a person age sixty-nine or younger.	\$460.00
d. Lifetime fishing license for a person age seventy and over.	\$ 65.00
e. Lifetime trapping license.	\$395.00
f. Lifetime archery privilege.	\$235.00

g. Lifetime muzzle-loading privilege.	\$235.00
h. For transfer to a person pursuant to section 11-0704 of this title	\$50.00

The holder of a lifetime hunting license or lifetime fishing license may, at any time, convert such license to a lifetime license pursuant to paragraph a of this subdivision for an additional fee equal to the difference between the current fee for the new license and the fee originally paid for the license.

2. Legal residency within the state of New York shall be a prerequisite for persons to obtain, or have obtained for them, any lifetime licenses included within this section. Lifetime licenses so obtained shall continue to be valid for use within the state by the person to whom the lifetime license was issued, regardless of a change in residency of that lifetime license holder. Holders of lifetime hunting licenses who become non-residents of the state may continue to obtain resident bowhunting and muzzle-loading privileges, including lifetime archery and muzzle-loading privileges. Holders of lifetime bowhunting and muzzle-loading privileges who become non-residents of the state may continue to obtain resident hunting privileges, including any lifetime licenses that include any hunting privileges. Possession of lifetime licenses is nontransferable.

3. Notwithstanding any other provision of law, the commissioner shall promulgate rules and regulations, which the department deems necessary to implement the establishment of lifetime licenses.

Such rules and regulations shall provide:

- a. for a permanent, counterfeit-resistant identification card with the necessary identification information;
- b. for annual issuance of necessary tags;
- c. (i) for the replacement of a lost license upon application with a notarized affidavit and a fee of five dollars and (ii) for gift

inscriptions, up to twenty-three characters, on lifetime licenses for an additional fee of five dollars;

d. that conditions for lifetime licenses shall include compliance with all conditions presently required for holders of short term licenses;

e. that lifetime license fees shall be increased only when short term or annual licenses are increased and shall be increased at the same percentage level and that such increases shall not be retroactive.

4. All moneys collected from the sale of lifetime licenses shall be deposited in the state fish and game trust account pursuant to section eighty-three of the state finance law.

§ 11-0703. General provisions.

1. a. The privileges of the licenses and stamps defined in section 11-0701 may be exercised only at the times and places, and in the manner and to the extent, permitted by provisions of the Fish and Wildlife Law and applicable regulations of the department, including provisions contained and regulations authorized in sections of the Fish and Wildlife Law other than those specifically referred to in section 11-0701.

b. No license or stamp authorizes the holder (a) to trespass upon private lands or waters or to interfere with property belonging to another person; (b) to take fish or wildlife on an Indian reservation; (c) to enter upon, or to take or disturb fish or wildlife upon, state lands or waters posted by the department except in accordance with a written permit from the department or an order adopted by the department; (d) to take any fish or wildlife in any area closed to the taking of fish or wildlife, or to take any species of fish, wildlife or protected insect in an area closed to the taking of such species.

2. Except as provided in section 11-0704 of this title, no license, permit, tag or privilege is transferable. No person shall alter, change,

lend to another or attempt to transfer to another any license or any permit, tag or privilege issued therewith. No person, while hunting, shall possess a license, permit, tag or privilege which was issued to another person unless actually accompanied by the person to whom such license, permit, tag or privilege was issued. No person shall purchase, possess or use more than one hunting license, trapping license, bowhunting privilege, muzzle-loading privilege or special permit for the current license year, except as permitted by regulation of the department. Notwithstanding the prohibitions contained in this subdivision, the department may authorize by rule or regulation the transfer of deer management permits, issued pursuant to section 11-0913 of this article, to any person licensed to hunt deer pursuant to this title.

3. Any license, stamp or certificate in lieu of a lost or destroyed license, obtained by fraud, or by a person not authorized to hold it, or who makes a false statement in applying for it, is void.

4. a. Non-resident bear tags are issuable only to non-residents and persons who have been residents for less than thirty days immediately preceding the date of application.

b. A person is ineligible for a hunting license, trapping license, bowhunting privilege or muzzle-loading privilege unless such person meets the requirements of subdivision 3 of section 11-0713 of this title.

c. Only the following persons are eligible for resident fees: (1) persons who have been residents in the state for thirty days immediately prior to the date of application for the licenses, or who are enrolled as full-time students at a college or university within the state and who are in residence in the state for the school year, or who are out of state or foreign exchange high school students enrolled as full-time students in a high school within the state and who are in residence in the state for the school year; (2) Indian residents or members of the six nations residing on any reservation wholly or partly within the state; and (3) members of the United States armed forces in active

service, stationed in this state, regardless of the place of residence at the time of entry into the service.

d. Only persons who possess a hunting license are eligible for a bowhunting privilege or muzzle-loading privilege.

e. A person under the age of twelve years is ineligible for a hunting license.

5. a. One-day and seven-day fishing licenses expire on the date stated on them.

b. A fishing license issued without charge to a resident as formerly provided in subdivision 2 of section 11-0715, shall remain effective for the life of the licensee.

c. A special antlerless deer license is effective during the special open season for which it is issued.

d. All other licenses and privileges defined in section 11-0701 are effective for a license year beginning September 1 and ending August 31; provided, however, a fishing license shall remain effective one year from the date on which it was issued.

6. a. Except as provided in section 11-0707 and section 11-0709 of this title, no person shall (1) hunt wildlife unless such person holds and is entitled to exercise the privileges of a hunting license; (2) hunt antlerless deer in a special open season therefor pursuant to subdivision 6 of section 11-0903 of this article unless such person holds and is entitled to exercise the privileges of and has on his or her person while so hunting a hunting license, bowhunting privilege or muzzle-loading privilege, and a special antlerless deer license; (3) take fish or frogs in the manner described in subdivision 4 of section 11-0701 of this title unless such person is entitled to exercise the privileges of a fishing license; (4) trap wildlife unless such person holds a trapping license.

b. Except as provided in section 11-0707 and section 11-0709 of this title, no person shall (1) hunt wild deer or bear unless such person holds and is entitled to exercise the privileges of a hunting license, and meets the requirements of this article; (2) hunt wild deer or bear with a longbow in a special longbow season unless such person holds and is entitled to exercise the privileges of a hunting license with a bowhunting privilege and meets the requirements of this article; or (3) hunt wild deer or bear with a muzzle-loading firearm in a special muzzle-loading firearm season unless such person is at least fourteen years old and holds a hunting license with a muzzle-loading privilege and meets the requirements of this article.

c. No non-resident shall hunt wild bear unless such person holds a hunting license and a non-resident bear tag and meets the requirements of this article.

§ 11-0704. Transfer of a lifetime license.

A lifetime license, as provided in section 11-0702 of this title, is not transferable to any person unless:

1. the person to whom such license and permit was issued dies within one year of the issuance date of such license and permit; and

2. the person to whom such license and permit is to be transferred is a legal resident of this state pursuant to this title; and

3. the person to whom such license and permit is to be transferred would otherwise be eligible to purchase such license and permit; and

4. the person to whom such license is to be transferred is related to the person to whom such license was issued by the first degree of consanguinity, or legal marriage to such person, or is the adopted child or step child or step sibling of such person; and

5. designation is made by the personal representative of the

decedent's estate; and

6. The application for transfer is made within three years of the issuance of the license; and

7. the person to whom such license and permit is transferred pays the fee as set forth in section 11-0702 of this title; and

8. such license and permit has not been previously transferred.

Provided, however, that subdivisions one, six and seven of this section shall not apply when the person to whom such license was issued was a member of the armed forces of the United States or a member of the national guard or other reserve component of the armed forces of the United States who died in combat zone or combat zone of operations or while deployed for active military duty, other than training, on or after the eleventh day of September, two thousand one.

§ 11-0705. Failure to carry license, tag or bowhunting and/or muzzle-loading privileges.

1. a. The holder of a license, tag, bowhunting privilege or muzzle-loading privilege defined in section 11-0701 of this title shall:

(1) have such license, tag or privilege on the holder's person in an electronic or other acceptable format pursuant to regulations, while exercising any privilege of that license stated in section 11-0701 of this title, or while assisting or accompanying a minor in hunting as provided in section 11-0929 of this article, and

(2) shall exhibit it on demand to any police officer, peace officer or owner, lessee or person in control of the lands or waters or the designees of the owner, lessee or person in control of the lands or waters on which the license holder is present.

2. Failure of a licensee to have the holder's license, tag or license with bowhunting and/or muzzle-loading privilege included, on the holder's person in an electronic or other acceptable format pursuant to

regulations, while hunting, fishing or trapping, is presumptive evidence that the holder is hunting, fishing or trapping, as the case may be, without holding the license, tag or license and bowhunting or muzzle-loading privilege required by subdivision 6 of section 11-0703 of this title.

§ 11-0706. Gift cards for hunting and fishing licenses.

1. The commissioner is authorized to establish gift cards for the licenses and bowhunting and muzzle-loading privileges set forth in section 11-0701 of this title.

2. For the purposes of this title, the term "gift card" shall mean a restricted monetary equivalent or voucher that, when redeemed by the holder, entitles such person to a valid license or bowhunting and/or muzzle-loading privilege as set forth in section 11-0701 of this title.

§ 11-0707. Exemptions from requirement of hunting, fishing and trapping licenses.

1. Resident owners and lessees and members of their immediate families, actually occupying and cultivating farm lands, on such farm lands and the waters thereof, shall have the right,

a. to hunt wildlife except wild deer and bear,

b. to trap bobcat, coyote, fox, mink, muskrat, raccoon, opossum, weasel, skunk, and unprotected wildlife that may lawfully be taken by trapping (except that only the owner or lessee thereof may trap without license on a registered muskrat marsh) and

c. to take fish and frogs, except that they may not take bait fish by net or trap, all as if they held the licenses defined in section 11-0701 and required by section 11-0703, subdivision 6.

2. Minors under the age of sixteen may take fish and frogs as if they held fishing licenses, except that they may not take bait fish by net or trap.

3. Any person who is a patient at any facility in this state maintained by the United States Veterans Health Administration or at any hospital or sanatorium for treatment of tuberculosis maintained by the state or any municipal corporation thereof or resident patient at any institution of the department of Mental Hygiene, or resident patient at the rehabilitation hospital of the department of Health, or any incarcerated individual of a conservation work camp within the youth rehabilitation facility of the department of corrections and community supervision, or any incarcerated individual of a youth opportunity or youth rehabilitation center within the Office of Children and Family Services, any resident of a nursing home or residential health care facility as defined in subdivisions two and three of section twenty-eight hundred one of the public health law, or any staff member or volunteer accompanying or assisting one or more residents of such nursing home or residential health care facility on an outing authorized by the administrator of such nursing home or residential health care facility may take fish as if he or she held a fishing license, except that he or she may not take bait fish by net or trap, if he or she has on his or her person an authorization upon a form furnished by the department containing such identifying information and data as may be required by it, and signed by the superintendent or other head of such facility, institution, hospital, sanitarium, nursing home, residential health care facility or rest camp, as the case may be, or by a staff physician thereat duly authorized so to do by the superintendent or other head thereof. Such authorization with respect to incarcerated individuals of said conservation work camps shall be limited to areas under the care, custody and control of the department.

4. If persons holding fishing licenses issued under the New York Fish and Wildlife Law are not required to have licenses issued by a state named in paragraph a, b, c or d of this subdivision when fishing in that part of the waters, specified in such paragraph, which lies within that state, then, in such case, a person holding a fishing license issued by

such state may, without a fishing license issued under the New York State Fish and Wildlife Law, take fish as provided in title 13, from that part of such waters specified in paragraph a, b, c or d which lies within this state:

a. License issued by Vermont: that part of Lake Champlain lying between New York and Vermont;

b. License issued by Pennsylvania: that part of the Delaware River lying between New York and Pennsylvania;

c. License issued by Connecticut: those parts of Indian Lake, and of Samuel Bargh Reservoir (Mianus Reservoir) lying between New York and Connecticut;

d. License issued by New Jersey: that part of Greenwood Lake lying between New York and New Jersey.

7. The owner or lessee of a registered muskrat marsh may, without license, trap muskrat, bobcat, coyote, fox, mink, raccoon, opossum, weasel, skunk, and unprotected wildlife permitted to be taken by trapping, on such registered muskrat marsh.

8. The enrolled members of an Indian tribe having a reservation located wholly or partly within the state and such other Indians as are permitted by the tribal government having jurisdiction over such reservation may hunt, fish, trap upon such reservation subject only to rules, regulations and fish and wildlife laws established by the governing body of such reservation. Before fish and wildlife taken on reservations by Indians shall be transported or possessed off the reservation it shall be tagged for identification purposes in a manner to be required by the governing body of such reservation. This subdivision shall in no way limit or otherwise impair the existing powers of any tribal government to regulate hunting, fishing and trapping and/or to issue licenses for same.

9. A minor under the age of twelve may accompany and assist a licensed

trapper who is the minor's parent or legal guardian or who is a person eighteen years of age or older designated in writing by the minor's parent or legal guardian on a form prescribed by the department and such parent, legal guardian or designee has had at least three years of trapping experience. Such minor may assist the licensed adult in all aspects of trapping without possessing a trapping license.

§ 11-0709. Circumstances in which license under section 11-0701 not required.

1. When a license or permit issued by the department, other than a license defined in section 11-0701, permits taking of fish or wildlife, such taking is exempted from the requirement of a license, defined in section 11-0701, which would otherwise be required, unless the license or permit or the statute authorizing its issuance states that such license is required.

2. Whenever taking of destructive or menacing wildlife is authorized in section 11-0523 of this article, such taking is exempt from the requirement of a license which authorizes the holder to hunt wildlife or trap, unless the provision authorizing such taking specifies that such license is required.

3. The holder of a farm fish pond license, members of his immediate family and persons actually employed by him in the cultivation of his farm or in the management of the licensed pond may, without fishing license, take fish in accordance with section 11-1911 and regulations governing the taking of fish from such fish ponds.

4. The holder of a fishing preserve license, members of his immediate family, and any person to whom the licensee has granted permission to take fish from such licensed fishing preserve waters may, without fishing or netting license, take fish in accordance with section 11-1913 and regulations governing the taking of fish from such fishing preserve waters.

§ 11-0713. Procedure in issuing licenses.

1. a. All licenses, bowhunting privileges, muzzle-loading privileges, tags, permits, registrations, and permit applications authorized by this title or section 13-0355 of this chapter, and any additional privileges authorized by the department shall be issued by:

(1) clerks of a county, town or city, except a city having a population of one million or more, although such clerks may request authorization from the department to cease issuing such licenses or registrations,

(2) clerks of a village having more than one thousand inhabitants according to the last preceding federal census, or of a village in a county of less than five hundred thousand inhabitants, adjoining a city of over one million inhabitants, both according to such census, although such clerks may request authorization from the department to cease issuing such licenses or registrations, and

(3) license issuing officers as may be appointed by the commissioner. Applicants for designation as license issuing officers shall be over the age of eighteen years and shall meet such other requirements of eligibility, including posting bond, as the department may by regulation specify. Such issuing officers shall be entitled to receive and keep the same fees for issuing licenses and stamps that are specified in section 11-0715 of this title for issuing clerks, and shall file reports and remit license fees to the appropriate regional environmental conservation officer or the department as required by regulation.

b. Special antlerless deer licenses shall be issued by the department as provided in subdivision 6 of section 11-0903 of this article.

c. One-day fishing licenses may be issued by any person who has never been convicted of or pleaded guilty to a misdemeanor under this chapter within the past three years, and has not been convicted of a crime under any other law. Such licenses shall be issued to any such person following payment of the applicable license fee for each license. One-day fishing licenses may be sold by the initial purchaser for no more than the applicable license fee, plus one dollar for the person

selling such license. In the case of misuse or fraud in handling the fishing licenses, the department shall have the authority to revoke the privilege to buy and sell the licenses.

2. The issuing officer shall not issue a hunting license or bowhunting privilege or muzzle-loading privilege to a person between the ages of twelve and sixteen years unless, at the time of issuance, the applicant is accompanied by his or her parent or legal guardian who shall consent to the issuance of the license and shall so signify by signing his or her name in ink across the face of it. At no time shall such licenses be issued by mail to persons between the ages of twelve and sixteen years.

3. a. Subject to the provisions of paragraph b of this subdivision, the issuing officer shall not issue a license, privilege, tag, permit, or permit application which authorizes the holder to hunt wildlife, to any person unless the applicant presents:

(1) a license which authorizes the holder to hunt wildlife issued to him previously; or

(2) an affidavit from a license issuing officer stating that applicant previously has been issued a license which authorizes the holder to hunt wildlife; or

(3) a certificate of qualification in responsible hunting, responsible bowhunting and responsible trapping practices, including safety, ethics and landowner-hunter relations, issued or honored by the department, pursuant to this subdivision.

b. (1) The issuing officer shall not issue a bow hunting privilege to any person unless the applicant presents a hunting license issued to that person for the corresponding license year and a New York state license which authorizes the holder to exercise the privilege of hunting with a longbow issued in 1980 or later, an affidavit as provided in subparagraph 2 of paragraph a of this subdivision or a certificate of qualification in responsible bowhunting practices issued or honored by the department.

(2) The issuing officer shall not issue a trapping license to any person unless the applicant presents a trapping license issued to him or her previously, an affidavit as provided in subparagraph 2 of paragraph

a of this subdivision or a certificate of qualification in responsible trapping practices.

(3) The issuing officer shall not issue a muzzle-loading privilege to any person unless the applicant presents a hunting license issued to that person for the corresponding license year and such person is at least fourteen years old.

c. Certifications of qualification in responsible hunting, responsible bowhunting and responsible trapping practices may be made by duly qualified and designated persons, whose fitness to give instructions in said practices has been determined by an agent of the department. The department may designate any person it deems qualified to act as its agent in the giving of instruction and the making of certification. No charge shall be made for any certificate or instruction given to a person to qualify him or her to obtain a license or privilege other than for certain instruction and materials accredited by the department to provide preparation for final instruction and testing by agents of the department or for replacement education certificates for a commission of one dollar to the issuing agent. The department shall make available to the public courses without charge which do not require additional preparation at the expense of students, and may also offer optional courses which require preparatory instruction which may be at the expense of the student. The department may make rules and regulations which in its opinion effectuate better the purpose of this subdivision.

4. a. A person who has lost or accidentally destroyed a license or privilege authorizing the holder to hunt, fish, or trap may apply to the officer who issued it for a certificate in lieu thereof. Such officer shall issue a certificate stating the name and address of the applicant, the type of license issued and the fee, if any, paid for it. Applications and certificates furnished by the department shall be used for this purpose.

b. A person who has lost or accidentally destroyed a tag issued with such a license or privilege may apply to any license issuing officer for a duplicate and the department shall issue a duplicate tag when satisfied that the application is made in good faith.

c. A person who has lost or accidentally destroyed a deer management permit may apply to any license issuing officer for a duplicate. Such officer shall issue a duplicate tag when satisfied that the application is made in good faith. The officer shall also issue a certificate stating the name and address of the applicant, the identifying number of the tag that is being issued and the fee, if any, paid for it. Applications and tags furnished by the department shall be used for this purpose.

5. The commissioner shall establish a toll-free telephone number or a dedicated number for use to purchase sporting licenses by credit card purchasers. Notwithstanding any inconsistent provision of this chapter, the commissioner may authorize the sale of licenses via the internet, telephone or mail and establish procedures therefor, and may, through bulk sales or otherwise, furnish licenses for retail sale to outdoor and recreational outlets and not-for-profit organizations, and the department may sell licenses at department facilities. Except as provided in subdivision 1 of this section, a license sold at retail shall not be sold for a price which exceeds the fee for such license established in the fish and wildlife law.

6. The department shall require training in the safe use of hunting with a crossbow and safe hunting practices in the basic hunter education course required for all new hunters. All persons who have completed hunter education and who have not certified their completion of a safety course which includes crossbow hunting training prior to April first, two thousand fourteen shall complete an online or other training program approved by the department prior to using a crossbow to hunt.

7. The commissioner shall ensure that space is provided on any form for application or renewal of a license issued pursuant to this title so that the applicant shall register or decline registration in the donate life registry for organ, eye and tissue donations pursuant to section forty-three hundred ten of the public health law and that the following is stated on the form in clear and conspicuous type:

"You must fill out the following section: Would you like to be added

to the Donate Life Registry? Check box for 'yes' or 'skip this question'."

The commissioner of health shall not maintain records of any person who checks "skip this question". Except where the application is made in person or electronically, failure to check a box shall not impair the validity of an application, and failure to check "yes" or checking "skip this question" shall not be construed to imply a wish not to donate. In the case of an applicant under eighteen years of age, checking "yes" shall not constitute consent to make an anatomical gift or registration in the donate life registry, except as otherwise provided pursuant to the provisions of paragraph (b) of subdivision one of section forty-three hundred one of the public health law. Where an applicant has previously consented to make an anatomical gift or registered in the donate life registry, checking "skip this question" or failing to check a box shall not impair that consent or registration.

§ 11-0715. Fees.

1. When any license or privilege listed in this section is issued by the department or an officer or employee of the department, the license fee is the amount specified in this section plus the amount, if any, specified as a fee to the issuing clerk.

2. A member of the Shinnecock tribe or the Poospatuck tribe or a member of the six nations, residing on any reservation wholly or partly within the state, is entitled to receive free of charge a fishing license, a hunting license, a muzzle-loading privilege, a trapping license, and a bowhunting privilege; a resident of the state who is a member of the United States armed forces in active service who is not stationed within the state and has not been herein longer than thirty days on leave or furlough, is entitled to receive free of charge a fishing license, a hunting license, and a trapping license; a resident of the state who is an active member of the organized militia of the state of New York as defined by section one of the military law, or the reserve components of the armed forces of the United States, and

excluding members of the inactive national guard and individual ready reserve, is entitled to receive free of charge a fishing license, a hunting license, and a trapping license; and a resident who is blind is entitled to receive a fishing license free of charge. For the purposes of this subdivision a person is blind only if either: (a) his or her central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or (b) his or her visual acuity is greater than 20/200 but is accompanied by a limitation of the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

A resident in the state for a period of thirty days immediately prior to the date of application who has attained the age of seventy is entitled to receive a fishing license, a trapping license, and a hunting license, at a cost of five dollars for each license.

A resident in the state for a period of thirty days immediately prior to the date of application who has attained the age of seventy is entitled to receive free of charge a bowhunting privilege and a muzzle-loading privilege.

3. Each applicant for a license, permit or privilege shall pay to the issuing officer a fee, according to the license, permit or privilege issued and the residence or other qualification of the applicant.

a. In the case of persons who meet the criteria set forth in paragraph c of subdivision four of section 11-0703 of this title:

License	Fee
(1) (a) Hunting	\$22.00
(b) Hunting ages fifteen and under	\$5.00
(2) Fishing	\$25.00
(3)(a) Trapping	\$20.00
(b) Trapping ages fifteen and under	\$5.00
(4) Muzzle-loading privilege	\$15.00
(5)(a) Bowhunting privilege	\$15.00
(b) Bowhunting privilege	

ages fifteen and under	\$4.00
(6) Turkey permit	\$10.00
(7) Seven-day fishing	\$12.00
(8) One-day fishing	\$ 5.00

b. In the case of a non-resident and persons resident in the state for less than thirty days:

License	Fee
(1) (a) Hunting	\$100.00
(b) Hunting ages fifteen and under	\$5.00
(2) Fishing	\$50.00
(3) Seven-day fishing	\$28.00
(4)(a) Trapping	\$275.00
(b) Trapping ages fifteen and under	\$5.00
(5)(a) Bowhunting privilege	\$30.00
(b) Bowhunting privilege ages fifteen and under	\$4.00
(6) Muzzle-loading	\$30.00
(7) Turkey permit	\$20.00
(8) One-day fishing	\$10.00

c. In all cases:

(1) Certificates in lieu of lost license or privilege or tag	\$5.00
(2) Duplicate for lost or destroyed permit or tag	\$10.00

4. A person, resident in the state for at least thirty days immediately prior to the date of application, who (a) has been honorably discharged from service in the armed forces of the United States, or (b) has a qualifying condition, as defined in section one of the veterans' services law, and has received a discharge other than bad conduct or dishonorable from such service, or (c) is a discharged LGBT veteran, as defined in section one of the veterans' services law, and has received a discharge other than bad conduct or dishonorable from such service, and is certified as having a forty percent or greater service-connected disability is entitled to receive all licenses, privileges, tags, and

permits authorized by this title for which he or she is eligible, except turkey permits, renewable each year for a five dollar fee.

5. Prior to the first day of February in the second year following the year in which this subdivision shall have become a law, and prior to the first day of February of every second year thereafter, the conservation fund advisory council shall submit recommendations to the commissioner regarding the level of fees established by this section taking into account economic indicators, the status of the conservation fund, and such program indicators as it may deem appropriate. The commissioner shall transmit the recommendations in their entirety to the governor, the legislature and interested individuals and organizations, and the governor may submit a budget bill incorporating his recommendations thereon to the legislature.

6. a. License issuing officers may retain 1.1 percent of the gross proceeds from the sale of all lifetime licenses listed in section 11-0702 of this title.

b. License issuing officers may retain 5.5 percent of the gross proceeds from sale of all other license, privileges, certificates and permits, including any application fees associated with such licenses, privileges, certificates and permits.

7. Notwithstanding the provisions of subdivision three of this section, the commissioner may offer for sale licenses, privileges and permits listed in this section at a reduced price up to ten days per year to encourage resident and out-of-state hunters, trappers and anglers to utilize New York's hunting, trapping and fishing opportunities. These days shall be designated in a manner determined by the department to best provide public notice thereof and to maximize public participation therein.

§ 11-0719. Revocation and suspension of licenses and of right to hunt, fish or trap without license.

1. a. In the circumstances described in paragraph b of this subdivision the department may revoke any license, bowhunting privilege, or muzzle-loading privilege, of any person, to hunt, fish or trap, defined in section 11-0701 of this title or issued pursuant to any provision of the Fish and Wildlife Law, or it may revoke all of such licenses, bowhunting privileges, or muzzle-loading privileges. It may also deny such person, for a period not exceeding five years, the privilege of obtaining such license or licenses, bowhunting privilege, or muzzle-loading privilege, or of hunting, trapping or fishing, anywhere in the state with or without license, bowhunting privilege, or muzzle-loading privilege, except as provided in subdivision 1 of section 11-0707 of this title or in section 11-0523 of this article. It may also require that such person successfully complete a department-sponsored course and obtain a certificate of qualification in responsible hunting including responsible crossbow hunting, responsible bowhunting or responsible trapping practices before being issued another license.

b. This subdivision applies to any person who:

(1) is convicted of a violation of the Fish and Wildlife Law involving the taking of deer or bear with the aid of an artificial light or signs an acknowledgment of such violation of that law for the purpose of effecting a settlement by civil compromise or by stipulation; or

(2) is convicted of a violation of the Fish and Wildlife Law involving the illegal taking of a deer, moose or bear, or signs an acknowledgment of any such violation of that law for the purpose of effecting a settlement by civil compromise or by stipulation; or

(3) is convicted of any violation of the Fish and Wildlife Law or signs an acknowledgment of any violation of that law for the purpose of effecting a settlement by civil compromise or by stipulation, and previously during the five years immediately preceding such conviction or the signing of such acknowledgment has been so convicted or has signed such an acknowledgment; or

(4) is convicted of an offense involving a violation of subdivisions one and two of section 11-0901 of this article relating to taking of wildlife when the person taking is in or on a motor vehicle while such motor vehicle is on a public highway or an offense involving a violation of subdivision one of section 11-0901 of this article and subparagraph

one of paragraph a of subdivision four of section 11-0931 of this article relating to taking wildlife when the person taking is in or on a motor vehicle and discharging a firearm, crossbow or longbow in such a way that the load, bolt or arrow passes over a public highway or a part thereof or signs an acknowledgment of any such violation for the purpose of affecting a settlement by civil compromise or by stipulation.

c. Upon receipt of a court notification of the failure of a person to appear within three months of the return date or new subsequent adjourned date pursuant to an appearance ticket, uniform appearance ticket or uniform appearance ticket and simplified information charging such person with a violation of the Fish and Wildlife Law, or any rule or regulation adopted pursuant thereto, the department may suspend any license of such person to hunt, fish or trap pending receipt of notice from the court that such person has appeared in response to such appearance ticket. Such suspension shall take effect no less than thirty days from the day upon which notice thereof is sent by the department to the person whose license is to be suspended.

2. a. The department may revoke the licenses, tags, bowhunting privileges, or muzzle-loading privileges, which authorize the holder to hunt and/or trap wildlife, and may deny the privilege of obtaining such licenses, tags, bowhunting privileges, or muzzle-loading privileges, and may deny the privileges of hunting and/or trapping with or without a license.

(1) of any person who, while engaged in hunting or trapping,

(i) causes death or injury to any person by discharging a firearm, crossbow or longbow, or

(ii) so negligently discharges a firearm, crossbow or longbow as to endanger the life or safety of another, or

(iii) so negligently and wantonly discharges a firearm, crossbow or longbow as to destroy or damage public or private property; or

(2) of any agent of the department authorized to issue certificates of qualification in responsible hunting including responsible crossbow hunting, bowhunting, or trapping practices who improperly issues any such certification to a person whom he or she has not trained, or whom he or she knows has not satisfactorily completed all of the requirements

necessary for such certification.

b. Action by the department resulting in the revocation of such license or denial of the privilege to hunt and trap as provided in this subdivision shall be only after a hearing held by the department upon notice to the offender, at which proof of facts indicating the violation is established to the satisfaction of the commissioner or of the hearing officer designated by him or her and concurred in by the commissioner. Provided that where a person, while hunting, causes death or injury to any person by discharge of a firearm, crossbow or longbow, the commissioner may, in his or her discretion, suspend such person's license or licenses to hunt and suspend such person's right to hunt without a license for a period of up to sixty days pending a hearing as provided for in this subdivision.

c. In case such discharge of a firearm, crossbow or longbow causes death or injury to any person, the license or licenses, bowhunting privilege, and muzzle-loading privilege shall be revoked and the ability to obtain any such license and of hunting or of trapping anywhere in the state with or without a license denied, for a period not exceeding ten years, except that no revocation shall be made in cases in which facts established at the hearing indicate to the satisfaction of the commissioner that there was no negligence on the part of the shooter or bowhunter. In all other cases the license or licenses, bowhunting privilege, or muzzle-loading privilege, shall be revoked and the privilege of obtaining such license, bowhunting privilege, or muzzle-loading privilege, and of hunting or of trapping anywhere in the state with or without a license denied for a period not exceeding five years. The department may also require that the person causing such death or injury successfully complete a department-sponsored course and obtain a certificate of qualification in responsible hunting including responsible crossbow hunting or bowhunting practices before being issued another hunting license.

d. Every person injuring himself, herself or another person in a hunting related incident, and the investigating law enforcement officer summoned to or arriving at the scene of such incident shall within ten

days from the occurrence of such incident file a report of the incident in writing with the department. Every such person or law enforcement officer shall make such other and additional reports as the department shall require. Failure to report such incident as herein provided by the person causing injury or to furnish relevant information required by the department shall be a violation and shall constitute grounds for suspension or revocation of such person's hunting licenses and bowhunting and muzzle-loading privileges and denial of the ability to obtain any such license and of hunting with or without a license following a hearing or opportunity to be heard. In addition, the department may temporarily suspend the license of the person failing to report a hunting related incident within the period prescribed herein until such report has been filed. In the case of a non-resident, the failure to report an incident as herein provided shall constitute grounds for suspension or revocation of his or her privileges of hunting within this state. The report required by this section shall be made in such form and number as the department may prescribe.

3. A hunting license issued to a person who is at least twelve and less than sixteen years of age or a hunting license with bowhunting privilege issued to a person who is between the ages of twelve and sixteen years may be revoked by the department upon proof satisfactory to the department that such person, while under the age of sixteen, has engaged in hunting with a gun, crossbow or longbow, in circumstances in which a license and/or bowhunting or muzzle-loading privilege is required, while not accompanied by his or her parent, guardian or other adult as provided in section 11-0929 of this article. Additionally, the department may revoke the hunting and/or bowhunting or muzzle-loading privilege of any parent, guardian, youth mentor or other adult upon proof satisfactory to the department that such person allowed the holder of a hunting license, bowhunting privilege or muzzle-loading privilege to hunt with a gun, crossbow or longbow in violation of section 11-0929 of this article. If such license or privilege is revoked the department shall fix the period of such revocation, which is not to exceed six years. The department may require that such person successfully complete a department sponsored course and obtain a certificate of qualification in responsible hunting including responsible crossbow hunting, or

responsible bowhunting practices before being issued another hunting or bowhunting license.

4. A person whose license to hunt, trap, or fish has been suspended or revoked as provided in this section is ineligible for such license during the period determined by the department as provided in this section. No such person shall, during such period, procure any license for which he or she is ineligible. No person shall without license hunt, trap, or fish during any period in which the privilege to do so has been denied by the department as provided in this section.

5. When the department has revoked a license, or has denied to any person the ability to obtain a license, or of hunting, trapping or fishing without a license, it shall cause the fact of such revocation or denial, or both, as the case may be, and the terms and extent thereof, to be entered in the minutes of the department, and shall forthwith send a written notice of its action as so entered in the minutes to the person affected, at his last known address, either by registered or certified mail or by delivery personally by a representative of the department. Within five days after service of such notice, such person shall deliver to the department the license or licenses revoked, together with any tags issued in connection with them. If the license was one entitling the holder to a bowhunting or muzzle-loading privilege and the revocation concerned some but not all of such privileges, any license, or tag so delivered shall be returned by the department to the person to whom it was issued, appropriately marked or stamped to show the extent to which it is revoked.

TITLE 9

HUNTING

Section 11-0901. Prohibitions.

11-0903. Open hunting seasons and bag limits fixed by regulation.

11-0905. Open hunting seasons and bag limits for upland game birds and small game.

11-0907. Deer and bear; open hunting seasons; bag limits.

- 11-0909. Hunting hours.
- 11-0911. Procedure on taking wild deer and bear; transportation of wild deer.
- 11-0913. Deer management permits.
- 11-0914. Yearling buck protection program.
- 11-0915. Disposal of deer, moose and bear killed unintentionally by collision.
- 11-0917. Possession, transportation and sale of wild game and other wildlife.
- 11-0919. Aid to wildlife in distress.
- 11-0921. Surrender of game unfit for human consumption; permit for taking another of species surrendered.
- 11-0923. Dogs.
- 11-0925. Special dog training areas.
- 11-0927. Field trials.
- 11-0928. Tracking dogs.
- 11-0929. Hunting by minors.
- 11-0931. Prohibitions on the use and possession of firearms.
- 11-0933. Taking small game by crossbow.
- 11-0935. Deer hunting pilot program.

§ 11-0901. Prohibitions.

1. No person while in or on a motor vehicle, as defined in section 11-0931 of this chapter, shall take wildlife other than migratory game birds, or use any lights on any such vehicle for such purpose.

* 2. Wildlife shall not be taken on or from any public highway, except:

a. that in the forest preserve counties it may be taken from highways other than state, county or town highways; and

b. by a nuisance wildlife specialist with a permit issued pursuant to section 11-0522 of this article provided that such activities are in furtherance of the site-specific deer management plan.

c. by a nuisance wildlife specialist with a permit issued pursuant to section 11-0522-a of this article provided that such activities are in furtherance of the site-specific deer management plan.

* NB Effective until January 1, 2027

* 2. Wildlife shall not be taken on or from any public highway, except that in the forest preserve counties it may be taken from highways other than state, county or town highways.

* NB Effective January 1, 2027

3. a. Migratory game birds shall be taken only as permitted by regulations of the department adopted pursuant to section 11-0307.

b. Wild deer and bear shall not be taken except by gun, crossbow or by long bow. Where an open season, set forth in the table of open seasons in section 11-0907 of this title or otherwise established by law or fixed by regulation, is specified as an open season for taking such game by shotgun or long bow only, or is specified as an open season for taking such game by long bow only, they shall not be taken except as so specified.

c. Wild small game and wild upland game birds shall be taken only by longbow or gun, or by the use of raptors as provided in title 10 of this article, except that:

(1) skunk, raccoon, bobcat, coyote, fox, mink and muskrat may be taken in any manner not prohibited in this section or in title 11 of the Fish and Wildlife Law;

(2) frogs may also be taken by spearing, catching with the hands, or by the use of a club or hook; and

(3) crossbows may be used but only by licensees who are fourteen years of age or older.

d. Muskrat shall not be taken by the use of a spear and shall not be taken by shooting except that until the state of Vermont shall prohibit taking of muskrats on Lake Champlain by shooting, muskrats may be taken, by shooting with a firearm not larger than twenty-two caliber, on Lake Champlain, exclusive of the tributary streams flowing into such lake. Possession of pierced or stabbed muskrats shall be presumptive evidence

that they were unlawfully taken. Wild mink shall not be taken by the use of firearms in the Northern Zone nor elsewhere within the state with a firearm larger than twenty-two caliber. Skunk, raccoon, bobcat, mink and muskrat shall not be taken by the use of smoke, chemicals, gas or poison. Beaver, fisher and otter shall not be hunted.

e. Wild pheasant shall be taken only by shotgun or long bow, or by the use of raptors as provided in title 10 of this article. Except as specifically authorized by regulation of the department adopted pursuant to section 11-1007 or whenever the department determines that the taking of hen pheasants will result in better pheasant management and not be detrimental to the natural propagation of such pheasants, only male wild pheasants shall be taken.

f. No wildlife shall be taken with an arrow with an explosive head or shaft, or with an arrow, dart or any device, propelled by any means, that is used for the purpose of injecting or delivering any type of drug into the blood system of such wildlife. Nothing in this paragraph shall be construed as prohibiting a wildlife biologist or employee of the department or anyone acting under a license from the department from using any method to take wildlife if he is doing so within the scope of his employment for the department, or pursuant to the license issued by the department.

g. Wildlife shall not be taken by the use of a device commonly called a spear gun.

4. a. Wild deer and bear shall not be taken in water.

b. No person shall hunt deer:

(1) with the aid of a dog, or aircraft of any kind; or

(2) with the aid of a jacklight, spotlight, headlight or other type of artificial light; or

(3) with a pistol, revolver or rifle using rim-fire ammunition; or

(4) with a shotgun of less than twenty gauge or loaded with shells other than shells each carrying a single round ball or a single slug, provided however, the use of a shotgun of twenty gauge or larger having

a rifled barrel or a smooth bore barrel fitted with a rifled choke, loaded with shells each carrying a single round ball or a single slug, shall not be prohibited so long as only shells having a non-metallic case, except for the base, are used; or

(5) with a long bow with a draw weight of less than thirty-five pounds; or

(6) with an arrow or bolt with an arrowhead that measures less than seven-eighths of an inch at its widest point or that has fewer than two sharp cutting edges; or

(7) with the aid of a pre-established bait pile other than those areas established by standard agricultural production practices; or

(8) with an arrow with a barbed broadhead arrowhead; or

(9) with a crossbow unless such crossbow shall consist of a bow and string, either compound or recurve, mounted upon a stock with a trigger that holds the string and limbs under tension until released. The trigger unit of such crossbow must have a working safety. The minimum peak draw weight of such crossbow shall be one hundred pounds.

c. No person shall hunt bear:

(1) with the aid of a dog, or aircraft of any kind; or

(2) with the aid of a jacklight, spotlight, headlight or other type of artificial light; or

(3) with a pistol, revolver or rifle using rim-fire ammunition; or

(4) with a shotgun of less than twenty gauge or loaded with shells other than shells each carrying a single round ball or a single slug, provided however, the use of a shotgun of twenty gauge or larger having a rifled barrel or a smooth bore barrel fitted with a rifled choke, loaded with shells each carrying a single round ball or a single slug, shall not be prohibited so long as only shells having a non-metallic case, except for the base, are used; or

(5) with a long bow with a draw weight of less than thirty-five pounds; or

(6) with an arrow or bolt with an arrowhead that measures less than seven-eighths of an inch at its widest point or that has fewer than two sharp cutting edges; or

(7) with the aid of a pre-established bait pile other than those areas established by standard agricultural production practices; or

(8) with an arrow with a barbed broadhead arrowhead; or

(9) with a crossbow unless such crossbow shall consist of a bow and string, either compound or recurve, mounted upon a stock with a trigger that holds the string and limbs under tension until released. The trigger unit of such crossbow must have a working safety. The minimum peak draw weight of such crossbow shall be one hundred pounds.

d. The use upon land inhabited by deer or bear of a jacklight, spotlight or other type of artificial light by any person who is or is accompanied by a person who is in possession, at the time of such use, of a long bow, a crossbow or firearm of any kind, shall be presumptive evidence that such person is hunting deer or bear with the aid of such light, in violation of this subdivision, unless:

(1) such long bow or crossbow is unstrung, or such a firearm is taken down, or securely fastened in a case, or locked in the trunk of a vehicle, or

(2) the firearm is a pistol or revolver, or

(3) the firearm is not in or on a motor vehicle and is a rifle designed or adapted for use of rim-fire ammunition and neither the person in possession of the gun, nor any member of his party, has in his possession any twenty-two caliber ammunition other than twenty-two caliber rim-fire ammunition, or

(4) the firearm is not in or on a motor vehicle and is a shotgun and neither the person in possession of the gun, nor any member of his party, has in his possession ammunition other than shells loaded with scatter shot of size number four or smaller.

e. (1) No person shall use a jacklight, spotlight or other type of artificial light upon lands inhabited by deer or bear within five hundred feet from a dwelling house, farm building or farm structure actually occupied or used, for the purpose of locating, spotting, harrying, worrying or otherwise disturbing deer or bear.

(2) The prohibition contained in subparagraph one of this paragraph shall not apply to (i) the owner or lessee of the dwelling house, or members of his immediate family residing therein, or a person in his employ, or the guest of the owner or lessee of the dwelling house acting with the consent of said owner or lessee; provided however, that nothing

herein shall be deemed to authorize such persons to use a jacklight, spotlight or other type of artificial light within five hundred feet from any other dwelling house, farm building or farm structure actually occupied or used, for the purpose of locating, spotting, harrying, worrying or otherwise disturbing deer or bear or (ii) the authorized use of a spotlight or other artificial light regularly operated and maintained by a police department or other law enforcement agency or by any local or state department or agency duly authorized to render services for the protection of life and property.

5. a. Varying hares shall not be taken by the use of ferrets, fitch-ferrets or fitch.

b. Cottontail rabbits shall not be taken by the use of ferrets, fitch-ferrets or fitch unless permitted by regulation of the department or unless a permit for such taking has first been obtained from the department.

c. The possession afield of ferrets, fitch-ferrets or fitch shall be presumptive evidence of their illegal use.

d. The department may adopt regulations specifying towns or counties in which ferrets, fitch-ferrets or fitch may be used to take cottontail rabbits. Whenever cottontail rabbits are injuring property on occupied lands, the department, on request of the owner or occupant of such lands, may issue a permit to use ferrets, fitch-ferrets or fitch to take them if it is satisfied there exists sufficient damage to warrant its issuance.

6. Skunks shall not be taken from holes or dens by digging or by the aid of dogs.

7. Raccoons shall not be taken from dens or houses or by cutting den trees.

8. Traps shall not be used except as permitted in title 5 or title 11 of the Fish and Wildlife Law.

9. No protected wild bird for which no open season is established by law or fixed by regulation shall be taken.

10. No wild game shall be taken except in an open season established by law as provided in section 11-0905, 11-0907 or 11-1103 or fixed by regulation as provided in section 11-0903, or in section 11-0307 in the case of migratory game birds, or in section 11-1103, in the areas for which such open seasons are established or fixed, and during the hours permitted for such taking; nor shall any wild game be taken in excess of bag limits specified in section 11-0905 or section 11-0907, or fixed by regulation as provided in section 11-0903 or section 11-0307.

11. No long bow equipped with a mechanical device which is used to draw, hold or release the bow string or arrow and which is attached to a portion of the bow other than the bow string may be used or carried afield. The shooting of a long bow shall only be accomplished by holding the bow at arm's length, with arrow on the string, and may only be drawn, pulled or released by hand.

12. Upland game birds shall not be taken with the aid of baiting or on or over any baited area.

13. Persons engaged in hunting deer and/or bear with a longbow must possess a current bowhunting privilege or a valid certificate of qualification in responsible bowhunting practices issued or honored by the department.

14. It shall be unlawful for any person to organize, sponsor, conduct, promote, or participate in any contest, competition, tournament, or derby with the objective of taking or hunting wildlife for prizes or other inducement, or for entertainment. The remains of any wildlife killed during the course of a contest, competition, tournament, or derby conducted in violation of this subdivision shall be forfeited by every organizer, promoter, participant or any other person conducting or involved in such contest, competition, tournament, or derby and the remains of such wildlife shall become the property of the department.

The provisions of this subdivision shall not apply to: (a) any contest, competition, tournament, or derby with the object of taking or hunting white-tailed deer, turkey, or bear; or (b) special dog training areas or field trials pursuant to sections 11-0925 and 11-0927 of this title, or any similar canine performance events.

15. This section does not:

a. restrict the authority of any special permit or license issued by the department;

b. limit title 11 or provisions of title 3, title 5, or title 19 authorizing taking of wildlife;

c. limit prohibitions set forth in any other section of the Fish and Wildlife Law.

16. Notwithstanding any inconsistent provision of this section, the department may adopt regulations to allow the taking of big game or small game by the use of a long bow equipped with a mechanical device for holding and releasing the bowstring, attached to the handle section of an otherwise legal long bow, to any person with a physical disability who is physically incapable of drawing and holding a long bow because of a physical disability, subject to such restrictions as the department may adopt by regulation. For the purpose of this subdivision, a person with a physical disability shall mean any person who submits to the department a statement of a physician duly licensed to practice medicine that such person is physically incapable of arm movement sufficient to draw, hold and release a long bow as defined in subdivision four of this section or as otherwise defined in department regulation. The department is authorized to adopt regulations requiring documentation to establish that an applicant is eligible to use a mechanical device pursuant to this subdivision.

17. Notwithstanding any inconsistent provision of this section, the department may issue to a physically disabled person a permit to take big game or small game by the use of a cross-bow equipped with an

apparatus permitting release of the bowstring by means of such person's discharge of breath. For the purposes of this subdivision, "physically disabled person" shall mean any person who submits to the department a statement of a physician duly licensed to practice medicine in this state that such person is permanently physically incapable of arm movement sufficient to release a pre-drawn bow authorized under subdivision fifteen of this section.

§ 11-0903. Open hunting seasons and bag limits fixed by regulation.

* 1. Open seasons and bag limits with respect to migratory game birds shall be those published annually in the federal register by the U.S. Department of the Interior, unless the department adopts regulations pursuant to section 11-0307. Notice of such open seasons and bag limits shall be provided by department press release and any other means that the department determines to be appropriate and effective, including posting on the department's public website.

* NB Effective until December 31, 2027

* 1. Open seasons and bag limits with respect to migratory game birds shall be those fixed by the department in regulations pursuant to section 11-0307, to conform with federal regulations made under authority of the Migratory Bird Treaty Act of July 3, 1918 (16 U.S.C. §§ 703-711).

* NB Effective December 31, 2027

2. The department may fix annually by regulation the open seasons and bag limits for wild game of the following species, until the date specified:

a. Hungarian partridge;

b. black, gray and fox squirrels, bobcat, lynx, coyote, fox, European hare, varying hare and cottontail rabbits, and may regulate or prohibit the use of dogs in hunting varying hare during any regular open season for deer;

c. pheasants anywhere in the state other than Long Island;

* c-1. pheasants on Long Island, but only for those individuals who hold a junior license, and provided that such youth pheasant hunting days are held prior to the start of the open season as indicated in paragraph d of subdivision two of section 11-0905 of this title;

* NB Repealed December 31, 2028

d. raccoon;

e. wild turkeys;

f. frogs, salamanders, turtles, lizards and snakes.

Such open seasons and bag limits may be fixed for the entire state, except on Long Island in the case of pheasants, or for any county or part thereof, giving due regard to abundance of the species and potential hunting pressure. The department may regulate the taking, possession and disposition of wild turkeys.

3. Any open season for pheasants, fixed by regulation of the department in the counties of Albany, Clinton, Columbia, Delaware, Dutchess, Essex, Franklin, Fulton, Greene, Herkimer, Jefferson, Lewis, Montgomery, Oneida, Orange, Oswego, Otsego, Putnam, Rensselaer, Rockland, St. Lawrence, Schenectady, Sullivan and Ulster shall include the intervening Sundays as part of such open season.

4. The department shall fix annually by regulation open seasons and bag limits for ruffed grouse and, whenever possible, and in its opinion it is in the public interest, shall make such seasons run concurrently with open seasons for taking woodcock.

5. Whenever in its opinion deer shall become numerous enough, on state or federal lands closed to the hunting of deer with firearms, to require population control for proper deer management, the department may by regulation permit the taking of deer of either sex, by long bow only, on such lands or any parts thereof during the regular open season for the surrounding area as provided in subdivision 2 of section 11-0907, provided, however, that no regulation adopted pursuant hereto shall

include within its provisions any of the areas set forth in subdivision 5 of section 11-0907. Only persons properly licensed to hunt during the special archery season established in paragraph a of subdivision 1 of section 11-0907 shall be eligible to hunt pursuant to this subdivision.

6. a. Whenever investigation made by the department within the Adirondack park shows that deer have become numerous enough to cause overbrowsing of the range within any "Wilderness Hunting Area" defined in section 11-0103, the department may fix by regulation an open season for taking antlerless deer in a tract within such area. The boundaries of any such tract shall not be less than three miles from any state, county or township road. Any such open season shall be fixed within the open season established by law, in the county or part of the county affected, for deer having antlers not less than three inches in length. For the purposes of this subdivision and of other provisions referring thereto, "antlerless deer" means deer having no antlers or having antlers measuring less than three inches in length.

b. Subject to this section and other applicable provisions of the Fish and Wildlife Law, the department shall have power to fix the conditions for taking "antlerless deer" in any such open season, and of possession, transportation and tagging thereof, and to regulate the issuance of special antlerless deer licenses applicable to the tracts in which such open season is fixed and of seals to be issued to licensees.

c. The department shall issue special antlerless deer licenses, in such form as it shall prescribe, for each tract in which an open season is fixed pursuant to this subdivision and shall have power to limit the number of such licenses to the number necessary in its judgment for proper management with respect to deer in the Area in which such tract is situated. Announcement of the opening of a tract to the taking of antlerless deer and of the number of licenses to be issued for such tract shall be made not later than August 1 of the year in which such open season is fixed. Application for such licenses shall be made not earlier than September 1, and the method of application for and issuance of such licenses, including eligibility and allocation among applicants, shall be specified in the regulations fixing the open season for the

tract. No person shall be entitled to hold more than one special antlerless deer license in a calendar year.

7. Notwithstanding any other provision of this title, the department may, by regulation fix open seasons for taking wild deer of either sex in the counties of Westchester and Suffolk, or any part thereof, and may fix the conditions of such season provided the regulations pertaining thereto shall conform to the following:

a. In Westchester county, such season shall not include Saturdays or Sundays;

b. Such season shall not commence earlier than during the first full week in January nor shall it continue later than January 31 in any year;

c. Deer may be taken only by holders of a license authorizing the taking of big game who have also obtained a special permit provided by the department and issued by the town clerk of each town where such season is fixed; provided, however, in Suffolk county a town may, by local law, waive the requirements that a permit is necessary to take deer during such seasons;

d. Permits issued by a town clerk shall authorize hunting only within the town where issued and only on property where permission of the owner or lessee is granted to the permittee for such hunting;

e. Applications for permits shall be only on forms provided by the department, and each application, before being presented to a town clerk, shall be endorsed by a person who owns or leases ten or more acres of land in the town where application is to be made, certifying that such owner or lessee gives consent to the applicant to hunt deer on his premises in accordance with the conditions of such season;

f. The number of permits to be issued in each town shall be fixed by the department and the town clerk shall issue permits in the order in which valid applications are received until the number fixed for the town is exhausted;

g. Town clerks shall be entitled to charge and receive a fee of one dollar for each permit issued;

h. Such a season shall be fixed only in towns or parts thereof where the discharge of firearms is not prohibited by town ordinance, and deer shall be taken only by means of shotguns using a single ball or slug or muzzle loading firearms, provided, however that a deer may also be taken by long bow in Suffolk county.

8. Notwithstanding any provision of law, rule or regulation to the contrary, the department may, until December thirty-first, two thousand twenty-seven, fix by regulation the open seasons, open areas, bag limit, manner of taking, possession and disposition of bear and parts of bears, and the intentional and incidental feeding of bears. Such regulations shall implement the provisions of this article. Such regulations, as the department deems appropriate, may provide for special permits and permit quotas. When a special permit is required, the department may fix by regulation a fee for each such permit issued.

9. a. Until December thirty-first, two thousand twenty-seven, whenever in its opinion deer shall become numerous enough in any area to cause substantial damage to property or overbrowsing of deer range, the department may fix by regulation special open seasons for taking wild deer of either sex. Subject to this subdivision, the department may fix the conditions of such seasons.

b. Such seasons may be fixed only in counties or parts of counties in which an open season for taking deer by the use of firearms is established by law.

c. Such seasons may be fixed for any number of days during the period beginning on the eleventh day after the close of a regular open season for deer established by law and ending on February 10 immediately following.

d. The department shall designate by regulation areas of the state

consisting of a county, a part of a county, or any combination of counties or parts of counties, excluding the northern zone as defined in subdivision sixteen of section 11-0103 of this chapter, for which separate special open seasons are fixed, and shall issue separate special permits for hunting in each such area so designated, and for each permit shall receive a fee of three dollars to cover the cost of permit issuance and special deer tags.

e. A regulation fixing a season pursuant to this subdivision shall include:

(1) a requirement that hunting deer during such special season shall be only by holders of both a license authorizing the taking of big game and a special permit for the area where hunting is permitted,

(2) a limitation on the number of such special permits to be issued for the area where such open season is fixed,

(3) the method of application for and issuance of such special permits,

(4) suspension of the provisions of subdivision one of section 11-0911 with regard to the manner of reporting deer taken, provided an alternative method of reporting is established, and

(5) such other rules and regulations as the department shall deem necessary for the orderly and efficient conduct of such seasons.

f. This subdivision does not increase the limit of one deer per person per license year.

10. Notwithstanding any inconsistent provision of subdivision 10 of section 11-0901 or subdivision 2, subdivision 3 or subdivision 8 of section 11-0907 of this title, until December thirty-first, two thousand twenty-seven, the department is authorized to adopt regulations with respect to the manner of taking, possession, open seasons and bag limits for deer. The authority to adopt such regulations is in addition to any authority contained in this section or section 11-0913 of this title respecting regulations fixing open seasons for deer and the issuance of deer management permits.

11. The department shall have the authority to establish by

regulation, deer management assistance permits to allow land/resource managers to meet the deer management needs of their property. Such permits shall be valid only on the permittee's lands and shall address site specific management goals including but not limited to agricultural damage, areas where existing statutes do not allow for adequate harvest and areas where public access may be limited for justifiable security reasons. Deer taken under this subdivision are in addition to the one deer per year authorized in section 11-0907 of this title.

§ 11-0905. Open hunting seasons and bag limits for upland game birds and small game.

1. Game of the species listed in column one of the table set forth below may be taken in the open season or seasons specified in column two opposite the name of the species, in the areas for which the open season is so specified, or if no area is specified, anywhere in the state. Such game, of the species listed in column one, may be taken to the extent of the bag limits specified in column three opposite the name of the species. Unless the bag limits are stated separately for different areas they limit the total amount of the species that may be taken by one person in a calendar year, whether hunting is done in one area or more than one area. Where the words "fixed annually by regulation" appear in column two or column three, the species may be taken in open seasons, and to the extent of bag limits, fixed by such regulations of the department pursuant to section 11-0903 or 11-0307.

2. Table

Column One Species	Column Two Open Season	Column Three Bag Limit
* a. Migratory game birds, all species	Fixed annually by federal regulation, unless the state adopts regulation	Fixed annually by federal regulation, unless the state adopts regulation

* NB Effective until December 31, 2027

* a. Migratory game birds, all species	Fixed annually by regulation	Fixed annually by regulation
* NB Effective December 31, 2027		
b. Ruffed grouse	Fixed annually by regulation	Fixed annually by regulation
c. Hungarian partridge	Fixed annually by regulation	Fixed annually by regulation
d. Ring-necked pheasant	Long Island November 1 through December 31. Elsewhere, fixed annually by regulation	Long Island, four birds in one day, thirty during season. Elsewhere, fixed annually by regulation
e. Quail	Orange, Putnam and Westchester counties, fixed annually by regulation; Long Island, November 1 through December 31	Orange, Putnam and Westchester counties; four birds in one day, ten during season. Long Island, six birds in one day, forty during season.
f. Black, gray and fox squirrels	Fixed annually by regulation	Fixed annually by regulation
g. Varying hares	Fixed annually by regulation	Fixed annually by regulation
h. Cottontail rabbits	Fixed annually by regulation	Fixed annually by regulation
i. Frogs	Fixed annually by regulation	Fixed annually by regulation
j. Raccoon	Fixed annually	Fixed annually

	by regulation	by regulation
k. Wild turkeys	Fixed annually by regulation	Fixed annually by regulation
l. European hare	Fixed annually by regulation	Fixed annually by regulation
m. Bobcat	Fixed annually by regulation	Fixed annually by regulation
n. Lynx	Fixed annually by regulation	Fixed annually by regulation
o. Coyote	Fixed annually by regulation	Fixed annually by regulation
p. Fox	Fixed annually by regulation	Fixed annually by regulation
q. Opossum	Fixed annually by regulation	Fixed annually by regulation
r. Weasel	Fixed annually by regulation	Fixed annually by regulation
s. Common snapping turtle	Fixed annually by regulation. Until December 31, 2006 these species may be taken from July 1 through September 30.	Fixed annually by regulation. Until December 31, 2006 the bag limit shall be five per day, thirty per season.
t. Diamondback terrapin	Fixed annually by regulation.	Fixed annually by regulation.

- | | | |
|--|---|--|
| u. Spotted salamander, red-spotted newt, dusky salamander, red-backed salamander, northern slimy salamander and two-lined salamander | Fixed annually by regulation. Until December 31, 2006, the open season for these species shall be all year. | Fixed annually by regulation. Until December 31, 2006, the bag limit for all species combined shall be five in one day, and thirty total for the season. |
| v. Northern water snake, brown snake, red-bellied snake, common garter, green snake, northern ringneck snake and milk snake | Fixed annually by regulation. Until December 31, 2006, the open season for these species shall be all year. | Fixed annually by regulation. Until December 31, 2006, the bag limit for all species combined shall be five in one day, and thirty total for the season. |

3. Skunk, bobcat, coyote, fox, mink and muskrat may be hunted in any manner not prohibited in section 11-0901 during the open seasons for such species established in section 11-1103 or fixed by regulation as provided in section 11-1103. They may be taken in any number.

4. Notwithstanding any inconsistent provision of this section or section 11-0903, the department is authorized to adopt regulations with respect to taking of small game and upland game birds by trained raptors as provided in title 10 of this article from October first through March thirty-first in areas where an open hunting season is established, or if no area is specified, anywhere in the state.

§ 11-0907. Deer and bear; open hunting seasons; bag limits.

1. a. Wild deer without antlers or having antlers measuring less than three inches in length shall not be taken unless it is taken (1) by long bow in a special long bow season established in subdivision three of this section, or (2) by muzzle-loading firearm in a special

muzzle-loading firearm season established in subdivision eight of this section, or (3) by long bow in Westchester and Suffolk Counties in a year in which a regular season for deer of either sex is established for such counties, or (4) in a special open season for deer of either sex fixed by regulation pursuant to subdivision five or seven of section 11-0903 of this title, or (5) pursuant to a special antlerless deer license in a special open season for antlerless deer in a tract within a Wilderness Hunting Area fixed by regulation pursuant to subdivision six of section 11-0903 of this title, or (6) pursuant to a deer management permit by a person eligible to take such deer pursuant thereto as provided in section 11-0913 of this title, or (7) pursuant to a permit issued to an eligible non-ambulatory person, pursuant to subdivision two of section 11-0931 of this title, while in possession of a valid license issued by the department which authorizes the holder to hunt big game. Nothing in this subparagraph shall be construed to limit the power of the department to designate by regulation an area or areas of the state consisting of a county or part of a county where such season shall apply and whether the number of such special permits shall be limited.

b. Except in the Northern Zone as defined in subdivision 15 of section 11-0103, bear which the taker knows or should know to be less than one year old shall not be taken.

* c. The limit for wild deer is one deer per person in a license year except that (1) a person entitled to exercise the privileges of a special antlerless deer license may take an antlerless deer while hunting pursuant to such license in addition to the limit of one deer in a license year otherwise applicable, (2) a person who is a member of a hunting group holding a deer management permit or permits issued pursuant to section 11-0913 of this article may take additional deer while hunting in accordance with the conditions of the permit or permits, (3) the holder of a bowhunting privilege or a muzzle-loading privilege may take up to two additional deer, pursuant to regulations promulgated by the department, and (4) an eligible non-ambulatory person, pursuant to subdivision 2 of section 11-0931 of this article may take a deer of either sex in any wildlife management unit area where deer management permits have been issued by the department, while in possession of a valid hunting license. Nothing contained in this section

shall be construed to limit the power of the department to designate by regulation an area or areas of the state consisting of a county or part of a county where such season shall apply and whether the number of such special permits shall be limited.

* NB Effective until December 31, 2027

* c. The limit for wild deer and bear is one deer and one bear per person in a license year except that (1) a person entitled to exercise the privileges of a special antlerless deer license may take an antlerless deer while hunting pursuant to such license in addition to the limit of one deer in a license year otherwise applicable, (2) a person who is a member of a hunting group holding a deer management permit or permits issued pursuant to section 11-0913 of this article may take additional deer while hunting in accordance with the conditions of the permit or permits, (3) the holder of a bowhunting privilege or a muzzle-loading privilege may take up to two additional deer, pursuant to regulations promulgated by the department, and (4) an eligible non-ambulatory person, pursuant to subdivision 2 of section 11-0931 of this article may take a deer of either sex in any wildlife management unit area where deer management permits have been issued by the department, while in possession of a valid hunting license. Nothing contained in this section shall be construed to limit the power of the department to designate by regulation an area or areas of the state consisting of a county or part of a county where such season shall apply and whether the number of such special permits shall be limited.

* NB Effective December 31, 2027

d. (1) A person who holds licenses and privileges authorizing the holder to hunt deer during a special archery season and the regular open season and who has taken a deer by longbow in a special archery season and who has not taken a deer in a regular open season may, in addition to the limit of one deer in a license year otherwise applicable, take during the same license year additional deer as specified by department regulation in a special archery season following the close of the regular open deer season.

(2) A person who holds licenses and privileges authorizing the holder to hunt deer during a special archery season and the regular open season and who has taken a deer by longbow in the regular open season for deer

in Westchester or Suffolk counties may, in addition to the limit of one deer in a license year otherwise applicable, take during the same license year additional deer as specified by department regulation during such Westchester or Suffolk county regular open deer season.

e. A person who holds licenses and privileges authorizing the holder to hunt deer during a special muzzle-loading season and the regular open season and who has taken a deer by muzzle-loading firearm in a muzzle-loading season and who has not taken a deer in a regular open season may, in addition to the limit of one deer in a license year otherwise applicable, take during the same year additional deer as specified by department regulation in a special muzzle-loading season following the close of the regular deer season.

2. Regular seasons. * a. Regular open hunting seasons for deer are established separately for the named regions or parts of regions, or named counties listed in column one of the table set forth in this subdivision, and are specified as seasons for taking by pistol, rifle, shotgun or long bow, or for taking by shotgun, crossbow or long bow only, or for taking by long bow only, as indicated in column three entitled "Manner of Taking". Where taking of big game by shotgun is permitted by this chapter such shotgun may contain rifling in all or a portion of the barrel, provided, however, if the barrel or a portion thereof does contain rifling only shells having non-metallic cases, except for the base, may be used. In the areas identified in column one except in the "closed areas" specified in subdivision five of this section the game specified in column two may be taken in the open season stated in column two immediately following the specification of the game, in the manner specified in column three.

TABLE

Column One Area	Column Two Game and Open Season	Column Three Manner of Taking
(a) Northern Zone	Deer, next to last Saturday in October through first Sunday in December	Pistol, rifle, shotgun, crossbow or long bow
(b) Catskill region	Deer, first Monday	Pistol, rifle,

except Delaware,	after November 15	shotgun, crossbow
Greene, Sullivan,	through first Tuesday	or long bow
Ulster counties	after December 7	
and those counties		
or portions thereof		
listed in item (i)		
of this paragraph		
(c) Counties of	Deer, first Monday	Pistol, rifle,
Delaware, Greene,	after November 15	shotgun, crossbow
Sullivan and Ulster	through first Tuesday	or long bow
	after December 7	
** (d) Eastern region,	Deer, first Monday	Pistol, shotgun,
except Albany,	after November 15	crossbow,
Columbia, Fulton,	through first Tuesday	muzzle loading
Orange, Rensselaer,	after December 7	firearm or
Saratoga, Schenectady,		long bow only
Washington Counties		
and those counties		
or portions thereof		
listed in item (i)		

of this paragraph

** NB Effective until October 1, 2028

** (d) Eastern region, Deer, first Monday Pistol, shotgun,

except Columbia, after November 15 crossbow,

Fulton, Orange, through first Tuesday muzzle loading

Rensselaer, Saratoga, after December 7 firearm or

Schenectady, long bow only

Washington Counties

and those counties

or portions thereof

listed in item (i)

of this paragraph

** NB Effective October 1, 2028

(e) Fulton, Saratoga, Deer, first Monday Pistol, rifle,

Schenectady, after November 15 shotgun, crossbow

Washington (parts through first Tuesday or long bow

in the Southern after December 7

zone), Columbia,

Orange, and

Rensselaer

counties

** (f) Southern tier,	Deer, first	Pistol, shotgun,
central and Western	Monday after November	crossbow,
region, except those	15 through first	muzzle loading
counties or portions	Tuesday after	firearm or
thereof listed in	December 7	long bow only

item (i), (j), (k),
(l), (m), (n), (o),
(p) or (q) of this

paragraph

** NB Effective until October 1, 2028

** (f) Southern tier,	Deer, first	Pistol, shotgun,
central and Western	Monday after November	crossbow,
region, except those	15 through first	muzzle loading
counties or portions	Tuesday after	firearm or
thereof listed in	December 7	long bow only

item (i), (j), (k),
(l), (m) or (n),

or (p) of this

paragraph

** NB Effective October 1, 2028 until October 1, 2027

** (f) Southern tier,	Deer, first	Pistol, shotgun,
central and Western	Monday after November	crossbow,

region, except those	15 through first	muzzle loading
counties or portions	Tuesday after	firearm or
thereof listed in	December 7	long bow only
item (i), (j), (k)		
or (l), or (n) of		

this paragraph

** NB Effective October 1, 2027

(g) Westchester	Deer of either sex,	long bow only
County	November 1 through December 31	
(h) Suffolk County	Deer of either sex Second Monday in November through March thirty-first	long bow only
(i) The counties of	Deer, the first Monday	Pistol, shotgun,
Allegany, Cattaraugus,	after November 15	crossbow,
Cayuga, Chautauqua	through first Tuesday	muzzle loading
except that portion	after December 7	firearm, rifle or
of the county north		long bow only
of route 20, Chemung,		
Chenango, Herkimer,		
Madison,		

Montgomery, Oneida,
Oswego, Otsego,
Schoharie, Schuyler,
Steuben, Tioga,
Wyoming, Seneca
and Yates

and that portion of
the county of

Broome east of the

Susquehanna river

(j) The county of

Deer, the first Saturday Pistol, shotgun,

Genesee

after November 15
through first Sunday
after December 7

crossbow, muzzle
loading firearm,
rifle or long bow

(k) The county of
Ontario

Deer, the first
Saturday after November
15 through first Sunday
after December 7

Pistol, shotgun,
crossbow,
muzzle loading
firearm, rifle or
long bow only

(l) The county of
Wayne

Deer, the first
Saturday after November
15 through first Sunday
after December 7

Pistol, shotgun,
crossbow,
muzzle loading
firearm, rifle
or long bow only

** (m) The county of
Albany

Deer, the first
Saturday after November
15 through first Sunday

Pistol, shotgun,
crossbow, muzzle
loading firearm,

	after December 7	rifle or long bow only
** NB There are 2 item (m)'s		
** NB Repealed October 1, 2028		
** (m) The county of Livingston	Deer, the first Saturday after November 15 through first Sunday after December 7	Pistol, shotgun, crossbow, muzzle loading firearm, rifle or long bow
** NB There are 2 item (m)'s		
** (n) The county of Broome west of the Susquehanna river except within the city of Binghamton	Deer, the first Saturday after November 15 through first Sunday after December 7	Pistol, shotgun, crossbow, muzzle loading firearm, rifle or long bow
** NB There are 2 item (n)'s		
** (n) The county of Orleans	Deer, the first Saturday after November 15 through first Sunday after December 7	Pistol, shotgun, crossbow, muzzle loading firearm, rifle or long bow
** NB There are 2 item (n)'s		
** (o) The county of Tompkins	Deer, the first Saturday after November 15 through first Sunday after December 7	Pistol, shotgun, crossbow, muzzle loading firearm, rifle or long bow
** Repealed October 1, 2028		
** (p) The county of Onondaga	Deer, the first Saturday after November 15 through first Sunday after December 7	Pistol, shotgun, crossbow, muzzle loading firearm, rifle or long bow
** Repealed October 1, 2027		
** (q) The county of Niagara except within the city of Niagara Falls, the city of Lockport and the city of	Deer, the first Saturday after November 15 through first Sunday after December 7	Pistol, shotgun, crossbow, muzzle loading firearm, rifle or long bow

North Tonawanda

** NB Repealed October 1, 2028

* NB Effective until December 31, 2027

* a. Regular open hunting seasons for big game are established separately for the named regions or parts of regions, or named counties listed in column one of the table set forth in this subdivision, and are specified as seasons for taking by pistol, rifle, shotgun or long bow, or for taking by shotgun or long bow only, or for taking by long bow only, as indicated in column three entitled "Manner of Taking". Where taking of big game by shotgun is permitted by this chapter such shotgun may contain rifling in all or a portion of the barrel, provided, however, if the barrel or a portion thereof does contain rifling only shells having non-metallic cases, except for the base, may be used. In the areas identified in column one except in the "closed areas" specified in subdivision 5 the game specified in column two may be taken in the open season stated in column two immediately following the specification of the game, in the manner specified in column three.

TABLE

Column One Area	Column Two Game and Open Season	Column Three Manner of Taking
(a) Northern Zone	Deer and bear, next to last Saturday in October through first Sunday in December	Pistol, rifle, shotgun, crossbow or long bow
(b) Catskill region	Deer and bear, first	Pistol, rifle,
except Delaware,	Monday after	shotgun,
Greene, Sullivan,	November 15 through	crossbow
Ulster counties	first Tuesday after	or long bow
and those counties	December 7	
or portions thereof		
listed in item (i)		

of this paragraph		
(c) Counties of	Deer, first Monday	Pistol, rifle,
Delaware, Greene,	after November 15	shotgun,
Sullivan and Ulster	through first Tuesday after December 7; Bear, first Monday after November 15 through second Tuesday after December 7	crossbow or long bow
(d) Eastern region,	Deer and bear,	Pistol, shotgun,
except Columbia,	first Monday after	crossbow, muzzle
Fulton, Orange,	November 15 through	loading firearm
Rensselaer, Saratoga,	first Tuesday after	or long bow only
Schenectady,	December 7	
Washington Counties		
and those counties		
or portions thereof		
listed in item (i)		
of this paragraph		
(e) Fulton, Saratoga,	Deer and bear, first	Pistol, rifle,
Schenectady,	Monday after November	shotgun,
Washington (parts	15 through first	crossbow

in the Southern	Tuesday after	or long bow
zone), Columbia,	December 7	
Orange, and		
Rensselaer		
counties		
(f) Southern tier,	Deer and bear, first	Pistol, shotgun,
central and Western	Monday after November	crossbow, muzzle
region, except those	15 through first	loading firearm
counties or portions	Tuesday after	or long bow only
thereof listed in	December 7	
item (i), (j), (j),		
(k), (l) **, (m), **		
** (n) ** or (o) of this		
paragraph		
** NB "(m)" expires October 1, 2028		
** NB "(n)" expires October 1, 2027		
** NB "(o)" expires October 1, 2028		
(g) Westchester	Deer of either sex,	Long bow only
County	November 1 through	
	December 31	
(h) Suffolk County	Deer of either sex	long bow only
	Second Monday in	
	November through	
	March thirty-first	
(i) The counties of	Deer and bear, the	Pistol, shotgun,

Allegany, Cattaraugus,	first Monday after	crossbow,
Chautauqua except	November 15 through	muzzle loading
that portion of the	first Tuesday after	firearm, rifle or
county north of route	December 7	long bow only
20, Chenango,		
Herkimer, Montgomery,		
Oneida, Oswego,		
Otsego, Schoharie,		
Tioga and Wyoming		
and that portion		
of the county		
of Broome east of the		
Susquehanna river		
** (j) The county of Ontario	Deer and bear, the first Saturday after November 15 through first Sunday after December 7	Pistol, shotgun, crossbow, muzzle loading firearm, rifle or long bow only
** NB There are 2 item (j)'s		
** (j) The county of Wayne	Deer and bear, the first Saturday after November 15 through first Sunday after December 7	Pistol, shotgun, crossbow, muzzle loading firearm, rifle or long bow only

** NB There are 2 item (j)'s

(k) The county of Livingston	Deer and bear, the first Saturday after November 15 through first Sunday after December 7	Pistol, shotgun, crossbow, muzzle loading firearm, rifle or long bow
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** (l) The county of Broome west of the Susquehanna river except within the city of Binghamton	Deer and bear, the first Saturday after November 15 through first Sunday after December 7	Pistol, shotgun, crossbow, muzzle loading firearm, rifle or long bow only
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** NB There are 4 item (l)'s

** (l) The county of Genesee	Deer and bear, the first Saturday after November 15 through first Sunday after December 7	Pistol, shotgun, crossbow, muzzle loading firearm, rifle or long bow only
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** NB There are 4 item (l)'s

** (l) The county of Seneca	Deer and bear, the first Saturday after November 15 through first Sunday after December 7	Pistol, shotgun, crossbow, muzzle loading firearm, rifle or long bow only
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** NB There are 4 item (l)'s

** (l) The county of Orleans	Deer and bear, the first Saturday after November 15 through first Sunday after December 7	Pistol, shotgun, crossbow, muzzle loading firearm, rifle or long bow only
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** NB There are 4 item (l)'s

** (m) The county of Tompkins	Deer and bear, the first Saturday after November 15 through first Sunday after December 7	Pistol, shotgun, crossbow, muzzle loading firearm, rifle or long bow only
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** NB Repealed October 1, 2028

** (n) The county of	Deer and bear, the	Pistol, shotgun,
Onondaga	first Saturday after	crossbow, muzzle
	November 15 through	loading firearm,
	first Sunday after	rifle or long
	December 7	bow only

** Repealed October 1, 2027

** (o) The county	Deer and bear, the	Pistol, shotgun,
of Niagara	first Saturday after	crossbow, muzzle
except the city	November 15 through	loading firearm,
of Niagara Falls,	first Sunday after	rifle or long
the city of Lockport	December 7	bow only
and the city of North		
Tonawanda		

** NB Repealed October 1, 2028

* NB Effective December 31, 2027

* b. Regular open hunting seasons for bear are fixed by regulation pursuant to subdivision 8 of section 11-0903. The implements allowed for bear hunting will be the same as those allowed for deer hunting as listed in column three of the table set forth in paragraph a of this subdivision.

* NB Expires December 31, 2027

3. Special archery seasons.

* a. In every area identified in column one of the table set forth in subdivision 2 of this section, except Westchester and Suffolk Counties in which a regular open season for taking deer by firearms is established and effective, a special open season is established for taking deer of either sex, by the use of a long bow only by holders of a hunting license with a valid bowhunting privilege.

* NB Effective until December 31, 2027

* a. In every area identified in column one of the table set forth in subdivision 2 of this section, except Westchester and Suffolk Counties in which a regular open season for taking deer by firearms is established and effective, a special open season is established for taking deer of either sex, and bear, by the use of a long bow only by holders of a hunting license with a valid bowhunting privilege.

* NB Effective December 31, 2027

* b. Such special open deer hunting season for each area shall be from October 15 through the day immediately preceding the regular open season for deer stated in column two of the table set forth in subdivision 2, except that in the Northern Zone each special season shall be from September 27 through the Friday immediately preceding the next to last Saturday in October, and in the Southern Zone such special season shall also include the five days following the closing of the regular open season.

* NB Effective until December 31, 2027

* b. Such special open season for each area shall be from October 15 through the day immediately preceding the regular open season for deer stated in column two of the table set forth in subdivision 2, except that in the Northern Zone each special season shall be from September 27 through the Friday immediately preceding the next to last Saturday in October, and in the Southern Zone such special season shall also include the five days following the closing of the regular open season.

* NB Effective December 31, 2027

* c. A similar special open bear hunting season may be fixed by regulation pursuant to subdivision 8 of section 11-0903.

* NB Expires December 31, 2027

4. a. "Northern Zone" and "Southern Zone" are defined in section 11-0103.

b. "Catskill region" means that part of the Southern Zone consisting of the counties of Greene, Sullivan, Ulster; those parts of Broome and Chenango counties easterly of the Susquehanna River from its junction with the Unadilla River at the Chenango-Otsego County boundary line to a point where it intersects the New York-Pennsylvania line; that part of Otsego County south of the main line tracks of the Delaware and Hudson Railroad Company; and those parts of Delaware and Schoharie counties lying south and west of a line beginning at the intersection of the main line tracks of the Delaware and Hudson Railroad Company with the Otsego-Schoharie County line to the village of Richmondville, thence south on Route 10 to its intersection with Route 23 in the village of Stamford, thence easterly along Route 23 to its intersection with

Schoharie County Route 342 thence easterly along Schoharie County Route 342 to its intersection with Schoharie County Route 3; thence easterly along Schoharie County Route 3 to the Albany-Schoharie County line.

c. "Eastern region" means that part of the Southern Zone easterly of a continuous line formed by the Susquehanna river commencing at its intersection with the New York-Pennsylvania boundary in the town of Windsor in Broome county to its confluence with the Unadilla river, by the Unadilla river from its confluence with the Susquehanna river to its intersection with the Herkimer-Otsego county boundary, by the Otsego-Herkimer county boundary and by the Oneida-Herkimer county boundary to the Northern Zone, except (1) the "Catskill region" defined in paragraph b and (2) Westchester county.

d. "Southern tier, central and western region" means that part of the Southern Zone lying westerly of the continuous line described in paragraph c.

5. Closed areas. The following areas are closed to the taking of deer and bear:

a. In Monroe County, the area bounded and described as follows: On the west by Route 261 (Manitou Road) beginning at Manitou Beach on Lake Ontario in the town of Greece and continuing southerly along such road to its intersection with the Barge Canal, thence easterly along such canal to East Avenue in the village of Pittsford, thence northeasterly along East Avenue to Allen Creek in the town of Brighton, thence northerly along Allen Creek to Irondequoit Creek, thence northerly along Irondequoit Creek to Irondequoit Bay, thence northerly along the easterly shore of Irondequoit Bay to Lake Ontario; except that deer of either sex may be taken during the regular and special deer hunting seasons provided for in this title by the use of a longbow by holders of licenses which authorize the holder to hunt deer during a special archery season and provided further that this exception permitting the taking of deer by a longbow shall not apply within an area in the town of Greece bounded and described as follows: On the west by Long Pond Road beginning at Latta Road and continuing southerly along such road to

its intersection with Maiden Lane, thence easterly along Maiden Lane to its intersection with Mt. Read Blvd., thence northerly along Mt. Read Blvd. to its intersection with Latta Road, thence westerly along Latta Road to its intersection with Long Pond Road at the point of beginning.

b. In Erie County, the area bounded by a continuous line beginning at the point of confluence of the east branch of the Niagara River and the Tonawanda Creek, and from said point of beginning easterly along the south bank of Tonawanda Creek to its intersection with highway 78, thence southerly along highway 78 to its intersection with Greiner Road, thence easterly along Greiner Road to its junction with highway 268, thence southerly along highway 268 to its intersection with highway 5, thence westerly along highway 5 to its junction with Ransom Road, thence southerly along Ransom Road to its intersection with highway 33, thence westerly along highway 33 to its intersection with highway 78, thence southerly along highway 78 to its intersection with highway 20, thence southwesterly along highway 20 to its intersection with highway 20-a, thence westerly along the extension of highway 20-a to Lake Erie, thence northerly along the shores of Lake Erie and the Niagara River to the place of beginning.

c. Nassau County.

d. In Herkimer county, town of Webb, the area bounded by a continuous line beginning at the intersection of the Judson Road and the Herkimer-Hamilton county boundary line, thence westerly to the Higby road, continuing southwesterly to its intersection with the Big Moose road (Herkimer county highway 1), thence north and westerly along the Big Moose road to its intersection with the Martin road and easterly along the Martin road to its end, thence back to the lake shore and back along and around the shore of Big Moose lake (starting westerly) to the Herkimer-Hamilton county boundary on the shore and then south along the boundary line ending at the Judson road, the point of beginning.

e. In Herkimer and Hamilton counties, the area bounded by a continuous line beginning at the junction of the South Shore Road and Route 28 in the village of Old Forge and extending northeasterly along Route 28 to

the hamlet of Inlet and thence southwesterly along the South Shore Road to the point of beginning.

7. Areas restricted to long bow only.

a. The area described in this subdivision is closed to the taking of deer and bear by firearms, but shall be open for taking deer by the use of a longbow only by holders of licenses which authorize the holders to hunt deer during a special archery season as follows: during the special deer season stated in subdivision 3 of this section and during the regular season stated in subdivision 2 of this section, deer of either sex may be taken.

b. This subdivision applies to that area in Albany county east of the Penn Central West Shore railroad starting at the Schenectady county line in the town of Guilderland and continuing to its confluence with the Penn Central Hudson River connecting railroad, thence along such Penn Central Hudson River connecting railroad until it meets Route 32 in Feura Bush and northeast on Route 32 to its juncture with Feura Bush road, then east along Feura Bush road to its juncture with Route 144 in Glenmont, then south along Route 144 to the Vlaman Kill, then east along the Vlaman Kill to the Hudson river.

8. Muzzle-loading firearm big game season.

a. In every area identified in column one of the table set forth in subdivision two of this section, except those areas restricted to special seasons for taking deer by longbow only, special open seasons may be established by regulation for taking deer and/or bear, by the use of muzzle-loading firearms, of not less than .44 caliber shooting a single projectile by the holders of a hunting license with a valid muzzle-loading privilege.

b. Such special open season for the Southern Zone shall be for the seven day period immediately preceding the regular open season for deer stated in column two of the table set forth in subdivision two of this section, except that the department may, by regulation, fix such open

season in the Southern Zone or any portion thereof to be either the seven days immediately preceding or immediately following the regular open season for deer.

c. Until December thirty-first, two thousand twenty-seven, such special season for the Northern Zone or any portion thereof may by regulation be for up to a fourteen-day period preceding the regular open season for deer stated in column two of the table set forth in subdivision 2 of this section or may be for up to a fourteen-day period following such open season or any combination thereof, provided that a maximum of sixteen days is not exceeded for any open area. Regulations establishing such Northern Zone muzzle-loading firearm big game season may specify the taking of deer of either sex, antlerless deer only, legal bucks only, or any combination thereof, and may require that persons participating in the Northern Zone muzzle-loading firearm big game season obtain a special permit from the department. When establishing these regulations, the department must consider the condition of the herd and communities', property owners', hunters' and other relevant interests.

9. Notwithstanding any inconsistent provision of this chapter, big game may be taken on any day of the week during open season or a special season in those parts of New York state east of a line starting at the juncture of the shore of Lake Ontario and West Bay road; then southerly along West Bay road to Route 104A; then easterly along Route 104A to Route 38; then southerly along Route 38 to the New York State Thruway Interstate 90 at Port Byron; then southwesterly along Interstate 90 to Route 90 near Montezuma; then southerly along Route 90 to Route 20; then westerly along Route 20 to the east bank of Seneca River; then southerly along the east bank of Seneca River to the east shore of Cayuga Lake; then southerly along the east shore of Cayuga Lake to Cayuga Creek; then southerly along the east bank of Cayuga Creek to Route 96 in Ithaca; then southerly along Route 96 to Sabin Road in Spencer; then southerly and westerly along Sabin Road to Dean Creek Road; then southwesterly along Dean Creek Road to Route 34; then southerly along Route 34 to the Pennsylvania boundary.

10. Notwithstanding any provision of this chapter, or any prior notwithstanding language in this article, the department may, by regulation, authorize the taking of big game by the use of a crossbow by any licensed person in any big game season in any area in which a long bow is permitted.

§ 11-0909. Hunting hours.

1. Bobcat, mink, muskrat, raccoon, coyote, fox and skunk may be taken at any hour, day or night.

2. Migratory game birds shall be taken only during the hours specified in regulations adopted by the department pursuant to section 11-0307.

3. a. Wild deer and bear, wild upland game birds, and small game other than bobcat, mink, muskrat, raccoon, coyote, fox and skunk, taken in any open season, shall be taken only between the hours of sunrise and sunset, unless otherwise provided in regulations of the department.

b. The department shall have the authority to establish by regulation hours of hunting wild deer and bear, wild upland game birds, and small game, other than bobcat, mink, muskrat, raccoon, coyote, fox and skunk, during the open season provided therefor.

c. Such regulations shall provide for uniform hunting hours for all species of game for which an open season is provided, during all or any part of the period covered by such regulations, other than bobcat, mink, muskrat, raccoon, coyote, fox and skunk.

d. The department shall have the authority to provide in such regulations for different hours of hunting in different areas as set forth in such regulations, and shall have the authority in such regulations to provide for different hours of hunting for a part or parts of any open season.

e. A summary of regulations adopted pursuant to this subdivision shall

be published each year in the hunting and fishing syllabus of the department issued pursuant to section 11-0323.

§ 11-0911. Procedure on taking wild deer and bear; transportation of wild deer.

1. a. When a wild deer is taken the taker shall immediately fill out the deer tag in an electronic or other acceptable format as provided in regulations of the department. The taker shall report details of the location and date of harvest and data on the deer as required by regulation.

b. When a bear is taken, the taker shall immediately fill out the bear tag in an electronic or other acceptable format as provided in regulations of the department. The taker shall report details of the location and date of harvest and data on the bear as required by regulation.

c. The department shall adopt regulations for the tagging or designating by self-locking metal seals or other means of deer of either sex taken in Westchester county pursuant to the provisions of paragraph c of subdivision 1, of section 11-0907, in addition to the limit of one deer in a license year.

2. The taker shall remove his deer out of the woods or open country to a camp or other inhabited location by midnight of the day immediately following the expiration of the open season in the county or part of a county in which the deer was taken.

3. A person licensed to hunt deer pursuant to this chapter who has filled all of his/her valid deer tags may assist and/or supervise other licensed hunters in hunting deer, except that such person shall not shoot or attempt to shoot deer.

4. a. The taker may transport the entire carcass of his deer, with the head attached in a natural way and his license tag attached to the

carcass.

b. He may detach the head of a male deer for mounting only and transport it to a licensed taxidermist. If the head is detached, the taker shall immediately attach to it a tag supplied by himself bearing his signature, address and license number, the name and address of the taxidermist and the number of points on each antler, and the head shall be shipped to the taxidermist immediately. The tag shall remain attached to the head continuously until the head is received by the taxidermist and retained by him for six months after the head is mounted. If at any time during transportation the head is in possession of a person other than the taker or a carrier, his name and address shall be written on the tag at the time the head comes into his possession.

c. The head of a female deer with antlers not less than the minimum legal length may be detached for mounting. The detached head shall be handled in the manner provided in this subdivision with respect to the head of a male deer.

d. The taker may transport the carcass of a male deer, from which he has removed the head, if the carcass bears evidence of sex, or the carcass of a female deer from which the head has been removed, if the metal tag is attached thereto, provided in either case that his deer tag is attached to the carcass and on the reverse side of the tag there appears the name and address of the taxidermist to whom the head is to be delivered and the number of points on each antler.

5. a. The taker may transport by carrier, except parcel post, one deer to which his deer tag is attached, together with an additional tag supplied by him stating the name and address of the consignee. He shall be in personal attendance on the carcass of his deer while it is being transported by any method other than by carrier, except that if the head has not been removed, and if there are attached to the carcass the taker's deer tag and a tag supplied by him on which is written legibly in ink the name and address of the person transporting the deer and the name and address of the consignee, the deer may be transported for him by another.

b. The taker may cut portions of the meat from the carcass and transport or cause them to be transported to consignees for consumption as food only, provided that his deer tag remains attached at all times to the portion of the carcass retained by him, and that each portion transported has attached a tag supplied by the taker and personally signed by him, on which he shall write legibly in ink his name, address and license number, the date when the portions were cut, and the name and address of the consignee. If at any time during transportation any such portion is in possession of a person other than the taker or his consignee, the name and address of such person shall be written legibly on the tag in ink. The tag shall remain attached to the meat until it is prepared for consumption. Where such portions are transported wrapped or boxed, the outside of the package shall bear the word "venison" and be marked as provided in this paragraph for tags. Portions of deer tagged as provided in this paragraph, and packages containing portions of deer, so marked, may be transported by carrier except parcel post.

6. a. The taker may transport the carcass of the bear, for the purposes of harvesting the gallbladder and/or bile, only if the bear tag is attached thereto.

b. No person taking, possessing or transporting bear shall fail to comply with the mandatory requirements of this section and section 11-0917 of this title.

7. No person taking, possessing or transporting wild deer shall fail to comply with the mandatory requirements of this section, and no person shall possess or transport wild deer or any portion of a wild deer except as provided in this section, or at a time not permitted by section 11-0917.

§ 11-0913. Deer management permits.

1. a. Until December thirty-first, two thousand twenty-seven, whenever in its opinion the population of deer in any area of the state except in

the northern zone is such that additional harvest of deer is reasonably necessary to properly manage the deer herd in the state in balance with the available deer range and natural food supply, the department may provide by regulation for issuance of deer management permits, permitting the taking of one deer for the permit, in addition to the limit of one deer that may otherwise be taken by one person in a license year.

b. In the issuance of permits, the department may give preference to resident license holders and may give preference to service-connected disabled veterans having 40 percent or greater service-connected disability as evidenced by a compensation rating from the United States Department of Veterans Affairs or the United States Department of Defense who shall only have to provide proof of service-connected disability at the time of initial issuance of the permit, and to the applications of groups which include a person or the spouse of a person, provided that such spouse lives in the same household, who owns at least 50 acres of land in one parcel in the specified area.

c. "Owner" as used in this section shall include the owner or spouse of the owner of record of such parcel, provided that such spouse lives in the same household as the owner, or a purchaser or spouse of such purchaser of such parcel, provided that such spouse lives in the same household as such purchaser, under an executory contract duly recorded in the office of the recording officer in the county in which real property to which it relates is situate, who actually occupy and cultivate such parcel.

2. Each such regulation shall specify, with respect to the permits to which it relates:

a. The open season or part thereof and the day or days of such season in which such permits may be used;

b. The specific area in which they are valid;

c. The manner of taking for which such permits are valid, which shall

conform with the specifications as to the manner of taking deer in the open season for which the permits may be used;

d. The method of application for and issuance of such permits, including eligibility and allocation among applicants;

e. The number of persons, no fewer than one nor more than six, who must join in the application; and

f. Such other regulations as the department may determine.

3. Each member of a group issued a permit pursuant to this section shall possess a license which authorizes the holder to hunt deer before the permit may be validated.

4. During a license year, no person shall use more than one license which authorizes the holder to hunt deer during the regular open season in making application for a deer management permit.

5. The provisions of paragraph a of subdivision 1 of section 11-0911 shall not apply when a deer is taken pursuant to a deer management permit, but the department may by regulation provide an alternative method of identifying and reporting the deer so taken.

6. With each deer management permit there shall be issued a tag or seal and a reporting form as the department shall determine to be appropriate, and the additional deer may be taken only by the group member who, at the time, is in physical possession of the permit and any tag, seal and reporting form issued with it.

7. The department shall charge and receive a fee of ten dollars for the application and the processing of such permit or permits. Applicants who are successful in the computerized selection shall receive the permit or permits free of any additional charge. The application fee shall be non-refundable. The department may waive the application fee for holders of a lifetime sportsman license existing as of October first, two thousand nine and holders of a hunting license less than

sixteen years of age.

8. Except with respect to deer management unit thirty-four the provision of this section shall not apply to the "Northern Zone" of the state as defined in subdivision sixteen of section 11-0103 of this chapter.

9. Nothing set forth in this section shall prevent the department from permitting the issuance of deer management permits in those portions of Franklin, St. Lawrence, Jefferson and Lewis counties and Northern Zone portions of Oneida and Oswego counties which are situated in the area generally described as the Lake Ontario Plain, St. Lawrence Valley and peripheral Adirondacks/peripheral Tug Hill region. The department is authorized and directed to promulgate any rules or regulations necessary to more particularly describe the region of land set forth in this subdivision.

§ 11-0914. Yearling buck protection program.

1. Definitions. a. An "antlered deer" is defined as a deer with at least one antler measuring three inches or more in length.

b. "Wildlife management unit" means wildlife regions as demarcated by the department.

2. Restrictions and application. a. Any person who hunts or takes antlered deer under a valid permit or license during the bowhunting, regular and muzzleloading deer seasons is restricted to the hunting or taking of antlered deer with at least one antler with at least three points. Each point must be at least one inch long measured from the main antler beam.

b. This program applies to all public and private land within the specified wildlife management units.

3. Wildlife management units. These restrictions shall only apply to

that portion of wildlife management unit 3A south and west of state route twenty-eight.

4. Exemptions from requirements. Hunters under the age of seventeen are exempt from the provisions of this section and may take any deer with an antler or antlers measuring three inches or more in length.

§ 11-0915. Disposal of deer, moose and bear killed unintentionally by collision.

The owner of a motor vehicle which has been damaged by unintentional collision with a deer, moose or bear shall be entitled to possess such deer, moose or bear under the following conditions:

1. The accident is reported to an environmental conservation officer, a member of the State Police, a member of the sheriff's department in which the accident occurred or, if the accident occurred on lands under the jurisdiction of the office of parks, recreation and historic preservation, to an officer of the regional park police having law enforcement responsibilities on such lands, or to any police officer of a city, town or village located in the county of such accident within 24 hours thereafter.

2. The officer shall investigate and, if he finds the deer, moose or bear has been killed or so injured as to require that it be killed and the damage has been done as alleged, he shall issue a permit to the owner of the motor vehicle entitling such owner to possess the carcass. Such permit shall authorize the owner of the motor vehicle to transfer the carcass to a designated person.

3. Whenever the owner of such damaged motor vehicle declines to possess such deer, moose or bear, the officer may in his discretion, issue a permit to possess the carcass to any other party requesting such possession.

§ 11-0917. Possession, transportation and sale of wild game and other wildlife.

1. Wild game and other wildlife, taken in this state, and parts thereof, may, if lawfully taken, be

a. possessed.

b. transported within the state and from within to without the state, and

c. bought and sold, as provided in this section and in the sections of the Fish and Wildlife Law and regulations of the department to which this section refers, and not otherwise. It shall not be possessed, transported, bought or sold unless lawfully taken, nor transported, bought or sold unless lawfully possessed. Nothing in this section applies to any game which is not wild game, as defined in subdivision 2 of section 11-0103.

2. Unprotected wildlife may be possessed, transported, bought and sold without restriction except as provided in subdivision 9 or subdivision 10.

3. Game for propagation purposes may be transported without restriction except as provided in subdivision 8 or subdivision 10.

4. The carcasses, flesh, head, hide, feet or fur of wildlife, except birds, may be bought and sold without restriction, except as provided in subdivisions 8, 9 or 10. The head, skin plumage, hide, feet or fur of wildlife may be possessed and transported without restriction except (a) as provided in section 11-0911 with respect to deer, (b) as provided in subdivision 9 with respect to birds, and (c) as provided in subdivision 8 or subdivision 10.

5. Game taken and possessed in one part of the state may be transported as provided in this section by the taker, or any person who acquires it lawfully from the taker, and possessed by the taker or by

such person in any part of the state for the period during which it may be possessed at the place where taken.

6. Skunk, bobcat, mink, raccoon and muskrat may be bought and sold alive during their respective open seasons.

8. Migratory game birds and beaver, fisher, otter, bobcat, coyote, fox, raccoon, skunk, muskrat and mink shall be possessed, transported and disposed of only as permitted by regulation of the department.

9. a. The flesh of cottontail rabbits, varying hares, European hares, squirrels, bear and deer shall not be bought or sold.

b. Bear gallbladders and bile shall not be possessed, bartered, sold or offered for sale or offered for barter unless a valid bear tag is attached. For the purposes of this paragraph a valid bear tag shall mean the tag or similar identification required by the governmental entity that permitted the legal taking of such bear. Possession of a bear gallbladder without a valid bear tag shall be prima facie evidence of a violation of this paragraph. A minimum five thousand dollar penalty shall be issued per infraction of this paragraph. Nothing in this section prohibits an officer, employee, or agent of the federal government or the department from possessing, transporting, delivering, or receiving bear gallbladders or bile, for wildlife law enforcement purposes.

c. Notwithstanding paragraph a of this subdivision, game legally taken may be possessed, prepared and served by a non-profit organization at any meeting for the members and guests provided that there is no charge for the meal.

d. Game legally taken may be donated to, and possessed, prepared and distributed by a charitable or not-for-profit organization which serves or distributes food without cost to the poor or needy. Game or packages of game donated pursuant to this paragraph shall, notwithstanding the requirements for tagging and labelling of game contained in paragraph b of subdivision 5 of section 11-0911 of this title, be tagged, labelled

or marked "not for sale" and such tag, label or marking shall identify the type of meat, the license number of the taker, the name and address of the professional processor of the game and the date of processing. The department shall make available instructions for the safe and sanitary preparation of game, a list of professional processors where potential donors may take their game for preparation and packaging and a list of charitable or not-for-profit organizations which accept donations of game. Professional processors, charitable and not-for-profit organizations may notify the department of their intention to participate in such distribution, and the department shall include them in its lists unless good cause otherwise exists.

e. The dead bodies of birds belonging to all species or subspecies native to this state, defined in subdivision five of section 11-0103 of this article, as protected wild birds, or belonging to any family of which any species or subspecies is native to this state, and is so defined in subdivision five of section 11-0103 of this article, shall not be sold, offered for sale or possessed for sale, for food purposes.

f. The plumage, skin or body of any wild bird shall not be sold, possessed for sale or offered for sale.

g. No live wolf, coyote, coydog, fox, skunk, venomous reptile or raccoon shall be possessed or transported, except under a license or permit issued by the department. Every such license or permit shall contain a prominent notice thereon warning the licensee or permittee of his or her duty to exercise due care in safeguarding the public from attack by such wild animal or venomous reptile and that failure to do so is a crime under section three hundred seventy of the agriculture and markets law. The provisions of the opening paragraph of section three hundred seventy of the agriculture and markets law except the last sentence thereof shall be set forth on such license or permit immediately following such warning notice.

10. No wildlife shall be possessed, transported or sold contrary to the terms of any statute, or regulation, permit or license of the department, pursuant to which it was taken or acquired.

§ 11-0919. Aid to wildlife in distress.

1. Notwithstanding any provision of law, rule or regulation to the contrary, any person who may discover protected wildlife in distress, except foxes and skunks, may capture the same and render necessary aid. For the purposes of this section "in distress" shall mean the apparent inability to survive in the wild thus requiring human assistance. Such person shall, as soon as possible after capture of such wildlife, deliver it to a person licensed pursuant to section 11-0515 to rehabilitate wildlife.

2. Notwithstanding any provision of law, rule or regulation to the contrary, a wildlife rehabilitator licensed pursuant to section 11-0515 of this article shall be authorized to capture, transport, rehabilitate, release and euthanize rabies vector species, provided that such wildlife rehabilitator has completed a training course approved by the commissioner or provided by the department. A rabies vector species exhibiting signs or symptoms of central nervous system disorder when first encountered by a wildlife rehabilitator or while under the care of a wildlife rehabilitator shall be euthanized immediately by such rehabilitator and disposed of as directed by the local county health department office. The commissioner shall, in consultation with the commissioner of health, promulgate regulations as necessary for the implementation of this subdivision.

§ 11-0921. Surrender of game unfit for human consumption; permit for taking another of species surrendered.

When a wild turkey, wild deer or wild bear is taken by a person holding a license or permit and, upon presentation to an environmental conservation officer or other authorized employee of the department, it is shown to the satisfaction of such officer or authorized employee that its flesh was unfit for human consumption at the time it was killed, the taker may surrender the carcass to the officer or authorized employee

and the officer or authorized employee shall issue the taker a special permit to take another specimen of the same species as surrendered and for which the season is still open.

§ 11-0923. Dogs.

1. No owner or trainer of a dog shall:

a. allow it to hunt deer, or to run at large on enclosed lands on which wildlife or domestic game is possessed under license issued pursuant to the Fish and Wildlife Law or in any state park, state park reservation, state-owned game farm or wildlife refuge or state-owned or leased wildlife management area;

b. allow it to run at large in fields or woods inhabited by deer outside the limits of any city or village, except on lands actually farmed or cultivated by the owner or trainer of the dog or a tenant of such owner or trainer.

2. No owner or trainer of a dog shall take it afield for training on wild game except from August 16 to April 15 or as otherwise permitted by department order.

3. Dogs may be trained on artificially propagated game which is shackled, or led or confined game, legally possessed, or on training dummies or other artificial devices at any time on lands owned or leased by the owner or trainer of the dog or on lands for which he has written permission of the owner or lessee, provided such training is done in a manner to preclude any disturbances injurious to wildlife.

4. During the training of a dog, the trainer and any person in his company shall not possess afield a firearm loaded with ammunition other than blank shells or blank cartridges, or inflict any injury to animals or game birds contrary to law.

5. Dogs hunting deer, or hunting any wildlife or domestic game on

enclosed lands described in paragraph a of subdivision 1 or on a state game farm or wildlife refuge or wildlife management area, may be killed as provided in section 11-0529.

6. Wildlife, except skunk, deer and bear, may be taken with the aid of a dog, provided, however, that the department is authorized to establish a training season during which only persons licensed by the department pursuant to section 11-0928 of this article may train tracking dogs on bear. Such season shall not begin before July first and shall end at least eight days in advance of any open hunting season for bear and no person participating in such training shall possess a firearm of any kind or a longbow. Nothing in this subdivision shall be construed to invalidate or otherwise affect a permit to track or take bear issued pursuant to subdivision one of section 11-0521 of this article.

§ 11-0925. Special dog training areas.

1. a. A dog owner or trainer may establish and maintain a special dog training area on land which the owner or trainer owns or has legal control.

b. The operator of a special dog training area may at any time during the year train the operator's own dogs or the dogs of other persons on such area, and permit others to train dogs. The operator may hold field trials on wild game, or on liberated game, or on liberated artificially propagated game, or on led or confined game, or may in writing permit others to hold such trials, under such conditions as shall be agreed upon by the operator and such other person; but no game shall be taken by shooting at such field trial. No persons shall, on a special dog training area, train a dog, hold a field trial, enter accompanied by a dog, or permit a dog of which he is the owner or trainer to enter, except as provided in this section or in rules adopted pursuant hereto. A permit from the department must be obtained before liberation of any wildlife, and such a permit may be withheld if, in the opinion of the department, granting it would endanger the health of native wildlife species.

2. The department may adopt rules regulating the use of special dog training areas.

3. No person shall hunt on a special dog training area except as provided in this section or rules adopted pursuant thereto. The owner of the lands may hunt unprotected wildlife thereon at any time, and the owner of the land and others authorized by such owner may hunt deer thereon during the open season but at no other time.

§ 11-0927. Field trials.

1. No person shall hold a field trial except as provided in this section or take part in a field trial not conducted in accordance with the provisions of this section.

2. a. A field trial may be held on liberated game, liberated artificially propagated game, led or confined game legally possessed, or on wild game on a licensed dog training area at any time without license, provided such game is not taken by shooting or otherwise killed; and, on areas other than a licensed dog training area, such field trials may be held on wild game from August 16 to April 15 without license, or at such other times when licensed by the department from April 16 to August 15.

b. A permit from the department is required for liberation of any wildlife.

3. Wild game shall not be taken by shooting or otherwise killed in the course of a field trial. Other game on which a field trial may be held as provided in this section may be taken by shooting in the course of a field trial, except a field trial held on a licensed dog training area, provided a license for such shooting has been procured from the department. Game so taken shall be immediately identified on forms provided by the department until the game is finally prepared for consumption.

4. Game so identified may be possessed, transported, bought and sold at any time, without limitation by section 11-0917 of this article.

§ 11-0928. Tracking dogs.

Notwithstanding any other provision of this chapter, the department may by regulation provide for the certification of leashed tracking dogs and may authorize the use of such dogs by persons licensed by the department to track and find dead, wounded or injured big game, and for the certification of trained tracking dogs and may authorize the use of such dogs by persons licensed by the department to track bear pursuant to subdivision one of section 11-0521 of this article.

§ 11-0929. Hunting by minors.

1. A licensee who is twelve or thirteen years of age shall not hunt wildlife with a gun or a longbow unless he or she is accompanied by his or her parent or legal guardian, or by a person twenty-one years of age or older designated in writing by his or her parent or legal guardian on a form prescribed by the department, who holds a hunting license. A licensee who is twelve or thirteen years of age shall not hunt with a crossbow.

2. A licensee who is fourteen or fifteen years of age shall not:

a. hunt wildlife with a gun, crossbow or longbow, other than wild deer or bear as provided in paragraph b of this subdivision, unless he or she is accompanied by his or her parent or legal guardian holding a hunting license, or by a person eighteen years of age or older, designated in writing by his or her parent or legal guardian, holding such license;

b. hunt wild deer or bear with a crossbow or gun unless:

(1) he or she is accompanied by his or her parent or a legal guardian, or a youth mentor who is twenty-one years of age or older designated in

writing by the parent or legal guardian of the licensee on a form prescribed by the department; and

(2) such parent, guardian or youth mentor has had at least three years of experience in hunting big game; and

(3) such parent, guardian or youth mentor holds a hunting license; and

(4) such parent, guardian or youth mentor maintains physical control over the minor he or she is accompanying at all times while hunting; and

(5) such parent, guardian or youth mentor and the minor he or she is accompanying remain at ground level at all times while hunting; and

(6) such parent, guardian or youth mentor and the minor he or she is accompanying shall each display either a minimum total of two hundred fifty square inches of solid fluorescent orange or pink or patterned fluorescent orange or pink consisting of no less than fifty percent fluorescent orange or pink material worn above the waist and visible from all directions, or a hat or cap with no less than fifty percent of the exterior consisting of solid fluorescent orange or pink material and visible from all directions. For purposes of this paragraph, "physical control" shall mean that the physical proximity of the minor to the parent, guardian or youth mentor is such that the parent, guardian or youth mentor is reasonably able to issue verbal directions and instructions, maintain constant visual contact, and otherwise provide guidance and supervision to the minor.

3. A licensee who is sixteen or seventeen years of age and who has not previously had a license which authorizes the holder to hunt big game issued to him or her and engaged in hunting pursuant to it shall not hunt deer or bear unless he or she is accompanied by his or her parent or legal guardian, or by a person designated in writing by his or her parent or legal guardian on a form prescribed by the department and who is eighteen years of age or older and who has had at least one year's experience in hunting deer or bear, and such accompanying parent, guardian or person holds a hunting license.

4. A hunting licensee with a bowhunting privilege, who is fourteen or fifteen years of age, shall not hunt deer or bear unless he or she is accompanied by his or her parent or legal guardian, or by a person designated in writing by his or her parent or legal guardian on a form

prescribed by the department who is eighteen years of age or older and who has had at least one year's experience in hunting deer or bear by longbow, and such accompanying parent, guardian or person holds a hunting license with a bowhunting privilege.

5. A hunting licensee with a bowhunting privilege, who is twelve or thirteen years of age, shall not hunt deer or bear unless:

(a) he or she is accompanied by his or her parent or legal guardian, or by a person designated in writing by his or her parent or legal guardian on a form prescribed by the department who is twenty-one years of age or older and

(b) such parent, guardian or person has had at least three year's experience in hunting deer or bear by longbow and

(c) such parent, guardian or person holds a hunting license and

(d) such parent, guardian or person maintains physical control over the minor he or she is accompanying at all times while hunting. For the purposes of this paragraph "physical control" shall mean that the physical proximity of the minor to the parent, guardian or person is such that the parent, guardian or person is reasonably able to issue verbal directions and instructions, maintain constant visual contact, and otherwise provide guidance and supervision to the minor.

§ 11-0931. Prohibitions on the use and possession of firearms.

1. No person except a law enforcement officer in the performance of his official duties shall use in hunting or possess in the fields or forests or on the waters of the state for any purpose:

a. the apparatus known as a silencer;

b. any automatic firearm, or any firearm which has been converted to an automatic type, or any firearm which has a built-in mechanical adjustment which will permit it to function as an automatic arm; or

c. any auto-loading firearm of a construction to contain more than six shells in the magazine and chamber combined, except

- (1) such a firearm using twenty-two caliber rim-fire ammunition, or
- (2) such a firearm which has been altered so as to reduce its capacity to not more than six shells at one time in the magazine and chamber combined, or
- (3) an auto-loading pistol having a barrel less than eight inches in length.

d. An automatic firearm is defined as one which will continue to fire as long as the trigger is held back. An auto-loading firearm is defined as one which reloads itself after each shot and requires that the trigger be pulled back for each shot.

* 2. a. No crossbow or firearm except a pistol or revolver shall be carried or possessed in or on a motor vehicle unless it is uncocked, for a crossbow or unloaded, for a firearm in both the chamber and the magazine, except that a loaded firearm which may be legally used for taking migratory game birds may be carried or possessed in a motorboat while being legally used in hunting migratory game birds, and b. no person except a law enforcement officer in the performance of his official duties or a nuisance wildlife specialist with a permit issued pursuant to section 11-0522-a of this article, provided that such activities are in furtherance of the site-specific deer management plan, shall, while in or on a motor vehicle, use a jacklight, spotlight or other artificial light upon lands inhabited by deer if he or she is in possession or is accompanied by a person who is in possession, at the time of such use, of a longbow, crossbow or a firearm of any kind except a pistol or revolver, unless such longbow or crossbow is unstrung or such firearm or crossbow is taken down or securely fastened in a case or locked in the trunk of the vehicle. For purposes of this subdivision, motor vehicle shall mean every vehicle or other device operated by any power other than muscle power, and which shall include but not be limited to automobiles, trucks, motorcycles, tractors, trailers and motorboats, snowmobiles and snowtravelers, whether operated on or off public highways. Notwithstanding the provisions of this subdivision, the department may issue a permit to any person who is non-ambulatory, except with the use of a mechanized aid, to possess a loaded firearm in or on a motor vehicle as defined in this section, subject to such restrictions as the department may deem necessary in the interest of

public safety. Nothing in this section permits the possession of a pistol or a revolver contrary to the penal law.

* NB Effective until January 1, 2027

* 2. No crossbow or firearm except a pistol or revolver shall be carried or possessed in or on a motor vehicle unless it is uncocked, for a crossbow or unloaded, for a firearm in both the chamber and the magazine, except that a loaded firearm which may be legally used for taking migratory game birds may be carried or possessed in a motorboat while being legally used in hunting migratory game birds, and no person except a law enforcement officer in the performance of his official duties shall, while in or on a motor vehicle, use a jacklight, spotlight or other artificial light upon lands inhabited by deer if he or she is in possession or is accompanied by a person who is in possession, at the time of such use, of a longbow, crossbow or a firearm of any kind except a pistol or revolver, unless such longbow or crossbow is unstrung or such firearm or crossbow is taken down or securely fastened in a case or locked in the trunk of the vehicle. For purposes of this subdivision, motor vehicle shall mean every vehicle or other device operated by any power other than muscle power, and which shall include but not be limited to automobiles, trucks, motorcycles, tractors, trailers and motorboats, snowmobiles and snowtravelers, whether operated on or off public highways. Notwithstanding the provisions of this subdivision, the department may issue a permit to any person who is non-ambulatory, except with the use of a mechanized aid, to possess a loaded firearm in or on a motor vehicle as defined in this section, subject to such restrictions as the department may deem necessary in the interest of public safety. Nothing in this section permits the possession of a pistol or a revolver contrary to the penal law.

* NB Effective January 1, 2027

3. No person shall discharge a firearm in a "restricted area" established pursuant to section 11-0321, contrary to the terms of the restriction prohibiting or restricting such discharge.

4. a. No person shall:

(1) discharge a firearm, crossbow or long bow in such a way as will result in the load, bolt, or arrow thereof passing over a public highway

or any part thereof;

(2) discharge a firearm within five hundred feet, a long bow within one hundred fifty feet, or a crossbow within two hundred fifty feet from a dwelling house, farm building or farm structure actually occupied or used, school building, school playground, public structure, or occupied factory or church;

(3) use a firearm or a long bow for the hunting of migratory game birds in Larchmont Harbor, specifically those portions bounded by the following points of land:

BEGINNING AT A POINT KNOWN AS UMBRELLA POINT ON THE EAST SHORE OF LARCHMONT HARBOR THEN PROCEEDING IN A NORTHERLY DIRECTION TO CEDAR ISLAND; THENCE NORTHWESTERLY TO MONROE INLET; THENCE NORTHEASTERLY TO DELANCY COVE BEING IN THE TOWN OF MAMARONECK; THENCE IN A SOUTHWESTERLY DIRECTION FROM DELANCY COVE TO GREACEN POINT; THENCE RUNNING THE AREA BETWEEN DELANCY COVE AND THE WEST SHORE OF SATANS TOE NORTHEAST; THENCE SOUTHEAST THEN ALONG THE WEST SHORE OF SATANS TOE SOUTHWEST AND THEN SOUTH TO THE SOUTHERLY POINT OF SATANS TOE TO EDGEWATER POINT.

(4) Use of a firearm or a long bow for the hunting of migratory game birds in Udall's Cove, specifically those portions of Little Neck Bay within Nassau and Queens counties lying east of a line running north from the foot of Douglaston Parkway to the shore opposite.

b. The prohibitions contained in subparagraph 2 of paragraph a above shall not apply to:

* (1) The owner or lessee of the dwelling house, or members of his immediate family actually residing therein, or a person in his employ, or the guest of the owner or lessee of the dwelling house acting with the consent of said owner or lessee, provided however, that nothing herein shall be deemed to authorize such persons to discharge a firearm within five hundred feet, a long bow within one hundred fifty feet, or a crossbow within two hundred fifty feet of any other dwelling house, or a farm building or farm structure actually occupied or used, or a school building or playground, public structure, or occupied factory or church; provided further, that a nuisance wildlife specialist with a permit issued pursuant to section 11-0522 of this article acting in furtherance of the site specific deer management plan may discharge a firearm within

five hundred feet of any dwelling houses, structures, schools or playgrounds, provided that the owners or lessees thereof have been notified by certified mail of the date or dates, and time period of the expected activity, and discharge a firearm within two hundred fifty feet of such dwelling houses, structures, schools or playgrounds provided that all the owners or lessees thereof have provided written consent; provided further, that a nuisance wildlife specialist with a permit issued pursuant to section 11-0522-a of this article acting in furtherance of the site-specific deer management plan may discharge a firearm within five hundred feet of any dwelling houses, structures, schools or playgrounds, provided that the owners or lessees thereof have been notified by certified mail of the date or dates and time period of the expected activity, and discharge a firearm within two hundred fifty feet of such dwelling houses, structures, schools or playgrounds provided that all the owners or lessees thereof have provided written consent;

* NB Effective until January 1, 2027

* (1) The owner or lessee of the dwelling house, or members of his immediate family actually residing therein, or a person in his employ, or the guest of the owner or lessee of the dwelling house acting with the consent of said owner or lessee, provided however, that nothing herein shall be deemed to authorize such persons to discharge a firearm within five hundred feet, a long bow within one hundred fifty feet, or a crossbow within two hundred fifty feet of any other dwelling house, or a farm building or farm structure actually occupied or used, or a school building or playground, public structure, or occupied factory or church;

* NB Effective January 1, 2027

(2) Programs conducted by public schools offering instruction and training in the use of firearms or long bow;

(3) The authorized use of a pistol, rifle or target range regularly operated and maintained by a police department or other law enforcement agency or by any duly organized membership corporation;

(4) The discharge of a shotgun over water by a person hunting migratory game birds if no dwelling house, farm building or farm structure actually occupied or used, school building, school playground, or public structure, factory or church, livestock or person is situated in the line of discharge less than five hundred feet from the point of

discharge.

5. a. No person shall use a rifle for hunting on Long Island or in Westchester County. If a person be found carrying a rifle in the woodlands on Long Island or in Westchester County, that fact shall be presumptive evidence that he is illegally using it for hunting in that area; but this provision does not apply to members of a duly organized target shooting club carrying unloaded rifles to and from the target range.

b. In the counties, or parts of counties, where the use of a rifle other than a muzzle loading firearm is not permitted in the taking of deer, a person afield shall not possess a rifle larger than twenty-two caliber rim-fire other than a muzzle loading firearm during the open season for deer.

c. In the Northern Zone no person, while engaged in hunting with the aid of a dog or while afield accompanied by a dog, shall possess a rifle larger than .22 caliber using rim-fire ammunition or possess a shotgun loaded with a slug, ball or buckshot, or possess a crossbow; but this paragraph does not apply to persons, engaged in coyote hunts with dogs during any open season on coyotes established pursuant to the provisions of section 11-0903 of this title.

6. No person while engaged in hunting deer or bear pursuant to a bowhunting privilege, and no person accompanying him or her or a member of his or her party, while he or she is so engaged during a special longbow season, shall have in his or her possession a firearm of any kind, and no person while engaged in hunting deer or bear pursuant to a muzzle-loading privilege, and no person accompanying him or her or a member of his or her party, while he or she is so engaged during a special muzzle-loading firearm season, shall have in his or her possession a firearm of any kind other than a muzzle-loading firearm.

7. During any open season for deer, a person afield shall not possess shotgun shells loaded with a slug or ball unless he holds a valid license or permit to take deer or bear.

8. a. No person in Westchester, Nassau, or Suffolk county shall discharge a crossbow within five hundred feet of a dwelling house, a farm building or farm structure actually occupied or used, or a school building or playground, public structure, or occupied factory or church.

b. A county not enumerated in paragraph a of this subdivision may opt by local law to be covered by the provisions of such paragraph.

§ 11-0933. Taking small game by crossbow.

Notwithstanding any provision of this chapter, or any prior notwithstanding language in this article, the department may, by regulation, authorize the taking of small game and wild upland game birds by the use of a crossbow by any licensed person fourteen years of age or older, in any small game season, in any area designated in items (a), (b), (c), (d), (e), (f), (i), (k), and (l) of paragraph a of subdivision two of section 11-0907 of this title in which a shotgun or muzzle loader is permitted.

*** § 11-0935. Deer hunting program.**

1. Notwithstanding subdivision one-a of section 11-0701 and the crossbow prohibition of subdivision one of section 11-0929, a hunting license holder who is twelve or thirteen years of age may hunt deer with a crossbow, rifle, shotgun, or muzzle-loading firearm as provided in this title in an eligible area provided that:

(a) such minor is accompanied by their parent or legal guardian, or by a person designated in writing by such parent or legal guardian on a form prescribed by the department who is twenty-one years of age or older; and

(b) such parent, guardian or person has had at least three year's experience in hunting deer; and

(i) such parent, guardian or person holds a hunting license; and

(ii) such parent, guardian or person maintains physical control over

the minor at all times while hunting. For the purposes of this paragraph "physical control" shall mean that the physical proximity of such minor to the parent, guardian or person is such that the parent, guardian or person is reasonably able to issue verbal directions and instructions, maintain constant visual contact, and otherwise provide guidance and supervision to the minor; and

(iii) such parent, guardian or person and the minor remain at ground level at all times while hunting; and

(c) such parent, guardian or person and the minor shall each display either a minimum total of two hundred fifty square inches of solid fluorescent orange or pink or patterned fluorescent orange or pink consisting of no less than fifty percent fluorescent orange or pink material worn above the waist and visible from all directions, or a hat or cap with no less than fifty percent of the exterior consisting of solid fluorescent orange or pink material and visible from all directions.

2. For the purposes of this section "eligible area" shall include a county that has passed a local law authorizing participation in the pilot program and has notified the department of such participation, provided, however, that the following counties: Westchester; Richmond; Bronx; New York; Kings; Queens; Nassau; and Suffolk shall not be deemed to be eligible.

3. The department shall prepare a report by February first of each year including the following information at a minimum: number of violations; hunting related incidents and revocations pursuant to section 11-0719; the number of counties participating; the number of minors participating; and the number of deer taken.

* NB Repealed December 31, 2028

TITLE 10

FALCONRY

Section 11-1001. Definitions.

11-1003. Falconry license.

11-1005. Falconry advisory board.

11-1007. Department authority.

11-1009. Prohibitions.

§ 11-1001. Definitions.

(1) "Raptors" means all species of the orders Strigiformes and Falconiformes and shall include but not be limited to falcons, hawks, owls and eagles except the golden eagle (*Aquila chrysaetor*) and bald eagle (*Haliaeetus leucocephalus*) and all birds listed as endangered or threatened pursuant to section 11-0535 of this article. However, properly banded peregrine falcons which are the progeny of birds lawfully acquired prior to 1978 are raptors within the meaning of this section. (2) "Falconry" means the sport of hunting by the use of trained raptors and includes the training, feeding and handling of such birds and their recapture after being released for hunting or training.

§ 11-1003. Falconry license.

Any resident of this state may be issued a falconry license. The department shall prescribe and furnish forms for application for such license. The fee for the license shall be forty dollars. Falconry licenses shall expire on December 31 every fifth year and shall be renewable at the discretion of the department. A falconry license shall authorize the licensee to obtain, buy, sell, barter, possess and train raptors for falconry and to engage in falconry, provided that no game shall be taken or killed except during an open season therefor, and further provided that such licensee shall also possess a license pursuant to this chapter which authorizes the holder to hunt wildlife. Any non-resident, who legally possesses a raptor where he or she resides and who may legally engage in falconry where he or she resides, may engage in falconry in New York without a falconry license provided he or she possesses a valid non-resident hunting license.

§ 11-1005. Falconry advisory board.

The commissioner shall appoint a falconry advisory board of not less than five members who are residents of the state and who shall serve at the pleasure of the commissioner and who shall be qualified by reason of their association with state or national organizations or institutions with primary interests in ornithology, falconry or wildlife conservation. The duties of the falconry advisory board shall include (i) recommending qualifications for eligibility of applicants for falconry licenses, (ii) reviewing and screening applications for falconry licenses and recommending action to be taken on each application, (iii) recommending the species and number of raptors which may be possessed or taken from the wild by each applicant and the manner of such taking, and (iv) recommending falconry hunting seasons and regulations for various game species.

§ 11-1007. Department authority.

The department shall make such rules and regulations governing the issuance and use of falconry licenses as it shall deem proper and necessary, giving due consideration to the recommendations of the falconry advisory board. The department may fix by regulation special open seasons for the taking of small game or upland game birds by falconry. The department may revoke any falconry license and may seize raptors held pursuant thereto if the licensee (i) fails to provide proper care for the raptors in the licensee's possession, (ii) allows raptors in the licensee's possession to become a public nuisance, (iii) is convicted of or settles by civil compromise any violation of any provision of this chapter or regulation of the department, or (iv) fails to comply with any of the terms or conditions of the falconry license.

§ 11-1009. Prohibitions.

(1) Raptors for use in falconry shall not be bought, sold or bartered, or offered for sale or barter, except that this section shall not apply to the captive bred progeny of lawfully acquired raptors.

(2) No person shall possess or maintain in captivity any raptor or raptors, except as otherwise provided by law, unless he shall first

obtain a falconry license.

TITLE 11

TRAPPING

Section 11-1101. Prohibitions.

11-1103. Open trapping seasons.

11-1105. Procedure.

11-1107. Possession, transportation and sale.

11-1109. Registered muskrat marshes.

§ 11-1101. Prohibitions.

1. Except as provided in title 5 or in sections 11-1901 or 11-1903, no wild bird shall be trapped, netted or snared, or if so taken, possessed.

2. Traps shall not be set for the taking of any protected wildlife except (a) in an open season as provided in section 11-1103 for taking the species for which the trap is set; or (b) in accordance with a license or permit issued by the department pursuant to title 5; or (c) as provided in title 5 or title 19 with respect to rabies control and predatory, destructive or menacing wildlife; or (d) on a registered muskrat marsh as provided in section 11-1109. Protected wildlife taken or captured in a trap shall not be killed or possessed while captive unless it is a species of wildlife for which the trap was or might lawfully have been set at the time of capture.

3. In waters of the Southern Zone, as so defined, from December 5 through January 31, no person shall set, place or maintain a trap of any kind except (a) spring hole trap sets for the purpose of taking fox, or (b) water sets during any open season established for the taking of muskrat, otter and beaver, or (c) traps set on a registered muskrat marsh pursuant to permit, issued as provided in section 11-1109.

4. On the opening day of an open season for trapping, no person shall stake, set or place any trap or deadfall for the purpose of taking the

species of game for which such open season is established or fixed, in the area for which such open season is established or fixed, before 7:00 A.M.

5. Except as provided in subdivision 1 or 2 of section 11-0523 with respect to destructive and menacing wildlife, no person shall (a) set or use a trap of the leg-gripping type having teeth in the jaws; (b) set a trap so that wildlife when caught is suspended; (c) use, locate or set a snare or a device consisting of a noose of any material whereby an animal may be taken.

6. a. No person shall set or use a trap of the leg-gripping type (a) having a spread of jaws exceeding 7 1/4" measured at right angles to the axis upon which the jaws operate and excluding the gripping surface of each jaw, when used under water during the open season for trapping beaver or otter, or (b) in any other case, except as provided in title 5 or in section 11-1109, having a spread of jaws exceeding 5-3/4" as so measured.

b. No person shall set or use a body gripping type trap with a dimension of more than 7-1/2 inches except:

(a) when used in water during the open season for trapping beaver and otter; or

(b) as further permitted by the department by regulation.

The dimension of the body gripping trap shall be ascertained when the trap is set in the extreme cocked position and shall be the maximum distance between pairs of contacting body gripping surfaces except for rectangular devices which shall be the maximum perpendicular distance between pairs of contacting body gripping surfaces.

c. Traps of the leg-gripping type having a spread of jaws exceeding 4" measured as described in paragraph a of this subdivision, when set on land (excluding traps originally set in water) (a) shall be covered at the time the trap is set or visited; if the trap becomes uncovered after it is set the covering shall be replaced at the time the trap is visited; coverings shall include but not be limited to soil, sand,

leaves, needles, other plant materials, and other substances as permitted by department regulation; such substances shall completely cover the jaws of the trap, and (b) shall be equipped with a pan tensioning device which shall include but not be limited to a bolt and nut, notches grooved in the pan and dog or lever, sheer pins, a spring under the pan or strip of band steel, or other devices or modifications as permitted by regulation of the department.

7. Except as provided in section 11-1109, (a) no person shall take muskrat by the use of a box, wire or cage trap, except that they may be taken in such a trap of a construction incapable of taking any species of wildlife until wildlife previously taken therein has been released; (b) except as otherwise permitted by department regulation, no person shall set, stake or use a trap within a distance of five feet from a muskrat den or house or any structure constructed by a muskrat in which it can take shelter; (c) smoke, chemicals, gas or poison shall not be used on or near any trap used to take beaver, otter, fisher, bobcat, coyote, fox, mink, raccoon, muskrat or skunk.

8. Except as permitted by the department, no person shall set, stake or use a trap within a distance of fifteen feet from a beaver dam, den or house.

9. No person shall take, possess or remove from any legally set trap any lawfully trapped wildlife or shall wilfully disturb, destroy, take or possess, any legally set trap, without the permission of the owner of such trap.

10. Traps shall not be set or placed on a public highway.

11. Beaver, fisher and otter shall be taken only as permitted by the department.

12. No person shall trap wildlife within one hundred feet of a dwelling, school building, school playground or church without the written consent of the owner or lessee of the property where the trap is set.

§ 11-1103. Open trapping seasons.

1. The department may by regulation permit trapping of beaver, fisher, otter, bobcat, coyote, fox, raccoon, opossum, weasel, skunk, muskrat, pine marten and mink, or any of them, in specified areas, and may regulate the taking, possession and disposition of such animals. The periods in which trapping of such animals is so permitted are open seasons for the trapping of the species for which the period is fixed, in the area or areas for which it is so fixed.

2. When an investigation made by the department in the month of March of any year reveals that during the current open season for muskrats in any county or part thereof in the Southern Zone, reasonable opportunities were not afforded to trappers to harvest the muskrat crop of such season because of abnormal trapping conditions, the department shall have power to extend by regulation the open season in such county or part thereof for a period not to exceed twenty days.

§ 11-1105. Procedure.

1. Traps set for taking wildlife shall bear the name and residence address or the assigned identification number of the operator legibly at all times, provided, that state, county and municipal law enforcement agencies shall have access to the name, address and telephone number of such operator who was assigned such identification number. They shall be visited once in each twenty-four hours, except in the Northern Zone where they shall be visited once in each forty-eight hours or a shorter interval of no less than twenty-four hours as the department may, by regulation, require, and all wildlife held captive shall immediately be removed from the traps.

2. Wildlife lawfully taken alive in traps may be killed in any manner, except that where the taking is pursuant to a permit or special license, it may not be killed in violation of any term of such permit or license.

§ 11-1107. Possession, transportation and sale.

Wildlife taken by trapping may be possessed, transported, bought and sold as provided in section 11-0917, and shall not be possessed, transported, bought or sold except as so provided.

§ 11-1109. Registered muskrat marshes.

1. Applicability. A registered muskrat marsh is an enclosed marsh which was registered with the department prior to September 1 of the year previous to the year in which a privilege granted or a rule provided by this section is invoked or applied.

2. Registration. Application for registration of a muskrat marsh shall be made upon forms supplied for such purpose by the department. If the department is satisfied that the marsh covered by the application is being managed in accordance with sound management practices, it shall issue a certificate of registration which shall entitle registrant to apply for the permission provided for in this section. The department shall be entitled to receive ten dollars as a registration fee.

3. Control of muskrats on registered marshes. The owner or lessee of a registered marsh may apply to the department for permission to trap within specified dates during the closed season in order to allow the removal of surplus muskrats, not required for breeding stock.

4. Investigation; permit. The department shall cause an investigation to be made of the allegations of all trapping applications filed with it by registered applicants, and may, in its discretion, issue a permit to such applicant, allowing him, and persons whom he may designate in writing, to trap muskrats within specified dates during the closed season, except that no such permit shall be issued for the trapping of muskrats during the period from May 1 through October 31. The name and address of every person designated in writing to trap shall, prior to

the time designee begins to trap, be forwarded by the registrant to the Department of Environmental Conservation, Albany, New York, by registered mail.

5. Regulations. Notwithstanding any other provisions of the Fish and Wildlife Law to the contrary, the department may make regulations governing the manner of trapping muskrats on registered marshes; provided, however, that no such regulations shall be made which are more restrictive than provisions of this chapter expressly regulating the manner of taking muskrats.

6. Reports. Registrants shall, not later than May 1 of each year, furnish the department with a report covering the number of muskrats trapped.

7. License. No person other than the owner or lessee thereof shall engage in trapping on a registered marsh unless he holds a trapping license.

TITLE 12

HUNTING WHILE INTOXICATED

Section 11-1201. Definitions.

11-1203. Hunting while intoxicated prohibited.

11-1205. Enforcement.

11-1207. Evidence admitted in court.

11-1209. Penalties.

11-1211. Savings clause.

§ 11-1201. Definitions.

For the purposes of this title:

1. "Hunting" means shooting or killing wildlife, including shooting or killing wildlife lawfully trapped or otherwise reduced to possession, or pursuing or capturing wildlife with any weapon, projectile, or other

device or instrumentality; and includes all lesser acts such as disturbing, harrying, or worrying, whether they result in taking or not, when done with the aid or accompaniment of any weapon, projectile, or other device or instrumentality; and every attempt to take and every act of assistance to any other person in taking or attempting to take wildlife, when done with the aid or accompaniment of any weapon, projectile, or other device or instrumentality. "Wildlife" as used in this subdivision means "wildlife" as that term is defined in subdivision six of section 11-0103 of the environmental conservation law.

2. "Intoxicated condition" shall mean the presence of .08 of one per centum or more by weight of alcohol in a person's blood as shown by chemical analyses of his blood, breath, urine, or saliva made pursuant to section 11-1205 of this title. An "impaired condition" shall mean a state of impairment of a person's capacity to think or act correctly, or of a loss, even in part of a person's control of his physical or mental faculties due to his consumption of alcohol or use of a drug.

3. "Drug" means "drug" as that term is defined in section one hundred fourteen-a of the vehicle and traffic law.

4. "License to hunt", or "permit to hunt" means any license, permit, or other privilege granted pursuant to section 11-0701 of this article which authorizes the holder to hunt wildlife.

§ 11-1203. Hunting while intoxicated prohibited.

1. No person shall engage in hunting while he is in an intoxicated condition.

2. No person shall engage in hunting while his ability to engage in such hunting without creating unreasonable risk of injury or death to himself or other human life is impaired by his consumption of alcohol or use of a drug.

§ 11-1205. Enforcement.

1. Police officers and officers named in subdivision one of section 71-0907 of this chapter shall have power to enforce the provisions of this title and to take actions, make arrests, and conduct tests thereunder in pursuance of such enforcement.

2. Any person engaged in hunting in this state shall be deemed to have given his consent to a chemical test of his breath, blood, urine, or saliva for the purpose of determining the alcoholic or drug content of his blood, provided that such test is administered at the direction of a police officer or officer of the department of environmental conservation: (a) having reasonable grounds to believe such person to have been engaged in hunting in violation of any subdivision of section 11-1203 of this title, and within two hours after such person has been placed under arrest for any such violation, or (b) within two hours after a breath test, administered pursuant to the provisions of subdivision one of this section, indicates that alcohol has been consumed by such person, and in accordance with the rules and regulations established by the law enforcement unit of which the administering officer is a member.

3. If such person, having been placed under arrest or after a breath test indicates the presence of alcohol in his system and having thereafter been requested to submit to chemical test, refuses to submit to such chemical test, the test shall not be given, and a report of such refusal shall be forwarded by the officer under whose direction the test was requested to the department of environmental conservation within seventy-two hours and the department shall revoke all licenses, bowhunting privileges, muzzle-loading privileges, and permits to hunt which such person may possess; provided, however, that such revocation shall become effective only after a hearing held by the department upon notice to such person, unless such hearing is waived by such person.

4. A license, bowhunting privilege, muzzle-loading privilege, or permit to hunt may, upon the basis of a report, verified as hereinafter provided, of the administering officer that he had reasonable grounds to

believe such person to have been engaged in conduct in violation of any subdivision of section 11-1203 of this title and that said person had refused to submit to such test, be temporarily suspended without notice pending the determination upon any such hearing. Such report may be verified by having the report sworn to, or by affixing to such report a form notice that false statements made therein are punishable as a class A misdemeanor pursuant to section 210.45 of the penal law and such form notice together with the signature of the deponent shall constitute a verification of the report.

5. No license, bowhunting privilege, muzzle-loading privilege, or permit to hunt shall be revoked because of a refusal to submit to such chemical test if the hearing officer is satisfied that the person requested to submit to such chemical test had not been warned prior to such refusal to the effect that a refusal to submit to such chemical test may result in the revocation of such license, bowhunting privilege, muzzle-loading privilege, or permit to hunt whether or not he is found guilty of the charge for which he has been arrested.

6. The department of health shall issue and file rules and regulations approving satisfactory techniques or methods, to ascertain the qualifications and competence of individuals to conduct and supervise chemical analyses of a person's blood, urine, breath or saliva. If the analyses were made by an individual possessing a permit issued by the department of health, this shall be presumptive evidence that the examination was properly given. The provisions of this subdivision do not prohibit the introduction as evidence of an analysis made by an individual other than a person possessing a permit issued by the department of health.

§ 11-1207. Evidence admitted in court.

Upon the trial of any action or proceeding arising out of conduct alleged to have been committed by any person arrested for a violation of any subdivision of section 11-1203 of this title, the court shall admit evidence of the amount of alcohol or drugs in the defendant's blood as

shown by a test administered pursuant to the provisions of section 11-1205 of this title. Evidence that there was five-hundredths of one per centum or less by weight of alcohol in such person's blood is prima facie evidence that the ability of such person to engage in hunting without creating unreasonable risk of injury or death to himself or other human life was not impaired by the consumption of alcohol. Evidence that there was less than eight one-hundredths of one per centum by weight of alcohol in such person's blood is prima facie evidence only that such person was not in an intoxicated condition due to the consumption of alcohol.

§ 11-1209. Penalties.

1. Whoever shall hunt while his ability is impaired by the consumption of alcohol shall be guilty of a violation of law.

2. Whoever shall hunt while in an intoxicated condition or while his ability to hunt is impaired by the use of a drug shall be guilty of a misdemeanor, punishable by imprisonment in a penitentiary or county jail for not more than one year, or by a fine of not more than five hundred dollars, or by both such fine and imprisonment.

3. Notwithstanding any provision in section 11-1205 of this title, the department may revoke, for a period not exceeding two years, any or all licenses, bowhunting privileges, muzzle-loading privileges, or permits to hunt of any person who violates any subdivision of section 11-1203 of this title. Action by the department resulting in such revocation shall become effective only after a hearing held by the department upon notice to such person, at which proof of facts indicating the violation is established to the satisfaction of the commissioner, or of the hearing officer and concurred in by the commissioner. A person whose license to hunt has been revoked as provided in this subdivision is ineligible for such license during the period determined by the department as provided in this section. No such person shall, during such period, procure any license for which he is ineligible. No person shall without license hunt or trap during any period in which the privilege to do so has been

denied him by the department as provided in this section. When the department has revoked a license, or has denied to any person the ability to obtain a license, it shall cause the fact of such revocation or denial, or both, as the case may be, and the terms and extent thereof, to be entered in the minutes of the department, and shall forthwith send a written notice of its action as so entered in the minutes to the person affected, at his last known address, either by registered or certified mail or by delivery personally by a representative of the department. Within five days after service of such notice, such person shall deliver to the department the license or licenses revoked, together with any bowhunting privileges, muzzle-loading privileges or tags issued in connection with them. If the license was one entitling the holder to the privilege of several licenses, and the revocation concerned some but not all of such privileges, any license, bowhunting privilege, muzzle-loading privilege or tag so delivered shall be returned by the department to the person to whom it was issued, appropriately marked or stamped to show the extent to which it is revoked.

4. Violation of any subdivision of section 11-1203 of this title shall constitute grounds for forfeiture pursuant to the provisions of and under the procedures prescribed in subdivisions one, two, five, six and seven of section 71-0909 of this chapter.

§ 11-1211. Savings clause.

If any word, clause, sentence, paragraph, section, or other part of this title is adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this title, but shall be confined in its operation to the word, clause, sentence, paragraph, section, or other part thereof, directly involved in the controversy in which such judgment is rendered.

TITLE 13 FISHING

Section 11-1301. General provisions.

11-1303. Open seasons, size and catch limits and manner of taking fish fixed by regulation.

11-1305. Size and catch limits.

11-1307. Fishing promotion program.

11-1311. Fishing in waters impounded by dams constructed for power purposes.

11-1315. Taking and sale of bait fish.

11-1316. Use of fish as bait.

11-1317. Fish-bait; protection of aquatic insects.

11-1319. Possession, transportation and sale of fish.

11-1321. Other prohibited acts.

§ 11-1301. General provisions.

1. Except as specifically provided in this article or in article 13, or any regulation adopted pursuant thereto:

a. No fish, other than migratory food fish of the sea in the marine and coastal district, shall be taken except by angling.

b. Fish named by regulation adopted pursuant to section 11-1303 of this title shall be taken only during the open seasons specified in such order and only if they are within the minimum size limits established by such regulation.

* c. Except as otherwise prohibited by law, fish may be taken by spear or speargun in the marine and coastal district only for recreational purposes. A speargun must be submerged when used to take fish. Provided, however, that no food fish may be taken by spear or speargun within one hundred yards of a public bathing area.

* NB Repealed June 1, 2029

2. Except when taken pursuant to section 11-0515 or 11-0517 of this article, or when taken in nets as provided by title 15 or article 13, fish named by regulation adopted pursuant to section 11-1303 of this title shall not be taken in excess of the daily or seasonal catch limits

established by such regulation.

3. Fish shall not be taken contrary to the restrictions contained in any regulation of the department, made pursuant to any provision of the Fish and Wildlife Law, closing waters to the taking of fish, or restricting the use of nets or other devices, or fixing seasons, size limits or daily or seasonal catch limits, or otherwise restricting the taking of fish.

4. Fish unintentionally taken contrary to any provision of the Fish and Wildlife Law or regulation of the department shall be returned to the water at once without unnecessary injury.

5. Notwithstanding any inconsistent provision of the Fish and Wildlife Law, the department may adopt regulations for catch and release fishing in all waters of the state.

§ 11-1303. Open seasons, size and catch limits and manner of taking fish fixed by regulation.

Notwithstanding any other provision of this chapter, the department may, until December thirty-first, two thousand twenty-eight, fix by regulation open seasons, size and catch limits and manner of taking of all species of fish in all waters of the state, except marine fish named in subdivisions 2 and 3 of section 13-0339 of this chapter and except to the extent that such open seasons, size and catch limits and manner of taking are otherwise specifically provided for in article 13 of this chapter.

§ 11-1305. Size and catch limits.

The department may promulgate regulations restricting possession on the waters of the state, except the marine and coastal district, of fish, except bait fish named in section 11-1315 of this title, that have been cleaned, filleted or skinned in such a manner that (a) the species

of fish taken cannot be identified, (b) the number of fish taken cannot be determined, or (c) the length of fish taken cannot be ascertained. Such regulations shall initially provide that walleye, largemouth bass, smallmouth bass, brook trout and lake trout may not be so possessed if they have been dismembered, filleted or otherwise prepared for cooking or consumption beyond removal of the gills and viscera and that other species of fish may not be so possessed if they have been dismembered or otherwise prepared for cooking or consumption, except that the gills and viscera may be removed and such fish may be filleted, provided the skin is not removed from the fillet.

§ 11-1307. Fishing promotion program.

The commissioner shall develop and implement a fishing promotion program. The commissioner shall, in conjunction with the commissioner of economic development and the commissioner of parks, recreation and historic preservation, develop and implement a program which will encourage residents and out-of-state fishermen to utilize New York state's fishing opportunities. Such program shall include, but not be limited to:

1. working with conservation organizations, local sportmen's clubs, retail stores, and county chambers to develop and conduct educational fishing clinics for children and adults to teach angling techniques for both fresh and salt water fishing and to provide information about stocking programs that will increase the odds of a successful and safe fishing experience;

2. conducting public outreach, including working with local community and youth organizations, tourism promotion agencies and local governments, to develop programs in conjunction with the two free fishing days annually per department region provided by the legislature, such as educational seminars, day-long fishing festivals, and tackle and rod loaner programs, which will encourage individuals to take up the sport of fishing;

3. making available to the fishing public, via both brochures and the agency's website, the following information:

a. Public fishing sections of streams, ponds, and lakes;

b. Public access points for streams, ponds, and lakes;

c. Handicapped access points for all water bodies; and

d. The location of state lands, including forests, parks, wildlife management areas, trails, campsites by type, ski areas, hatcheries, and environmental education centers and camps;

4. posting fishing reports, including current fishing conditions statewide, on the department's website;

5. developing and implementing a "learn-to-fish" and "instructional" passbook and stamp program. a. The department shall make available, wherever licenses are sold, a "learn-to-fish" passbook and stamps to children under sixteen years of age. Such stamps shall include various types of fish indigenous to New York state and shall also include with the distribution of the "learn-to-fish" passbook one "learn-to-fish" stamp. A child under sixteen years of age may collect stamps and when the "learn-to-fish" passbook is complete shall return such completed "learn-to-fish" passbook to the department via mail and the department shall issue a patch, to be determined by the commissioner, to "learn-to-fish" passbook holders who have participated in and completed the "learn-to-fish" passbook program created pursuant to this subdivision.

b. A licensee shall also be issued an "instructional passbook" and may place a "learn-to-fish" stamp previously issued to a child under sixteen in his or her "instructional passbook" whenever he or she teaches a person under sixteen years of age how to fish. Once that licensee has earned fifty "learn-to-fish" stamps in his or her "instructional passbook", that person shall return such completed "instructional passbook" to the department via mail and the department shall issue a

free fishing license for the season following that in which he or she gets their fiftieth "learn-to-fish" stamp. The department shall include in the "instructional passbook" information relating to the instruction of fishing techniques to children, and shall also include current fishing regulations in the "instructional passbook".

§ 11-1311. Fishing in waters impounded by dams constructed for power purposes.

The waters impounded by any dam hereafter constructed for power purposes on any stream or waterway in the state, and impressed with a public interest pursuant to section 15-1713 of this chapter, shall be open to the public to fish thereon, when authorized by other applicable provisions of this chapter, subject to the following conditions and limitations:

a. Such fishing must be conducted in accordance with rules and regulations of the commissioner in agreement with the person, association or corporation proposing to construct the dam.

b. Such rules and regulations must provide, among other things, that fishing upon any such waters shall be conducted in such a manner as not to interfere injuriously with the operation and maintenance of the dam or of any manufacturing plant operated by power generated therefrom.

c. Damages sustained by a person while fishing or in connection therewith shall not constitute a claim either against the state or the person, association or corporation owning the dam or his or its lessee or other assignee in interest.

d. The commissioner, of his own motion or upon application, after a public hearing held pursuant to notice, shall have power, in his discretion, to exempt from the provisions of this section, the waters impounded by any dam hereafter constructed for power purposes. Notice of such a hearing shall be posted at least ten days before the hearing in five conspicuous places in the locality where the dam is to be

constructed.

e. Rules and regulations of the commissioner, so far as practicable, shall be uniform, but may vary in different localities of the state.

f. Warning notices or signboards not less than one foot square shall be conspicuously posted not more than forty rods apart close to and along the entire boundary of such impounded waters. Posting of such notices shall be sufficient provided that illegal and destroyed signs be replaced once a year during the months of March, July, August or September. Warning notices shall contain such information as the commissioner by rule or regulation may prescribe.

§ 11-1315. Taking and sale of bait fish.

1. a. Except as provided in subdivision 2, no person, without first obtaining the appropriate license from the department, shall take for sale as bait, nor sell as bait the following fish: minnows (family Cyprinidae), except carp or goldfish; top minnows or killifish (family Cyprinodontidae); mudminnows (family Umbridae); darters (family Estheostomidae); sticklebacks (genus Eucalia); tadpole stone cats (genera Noturus and Schilbeodes); smelt or ice fish (Osmerus mordax); alewives, saw bellies or blueback herring (family Clupeidae); suckers (family Catostomidae).

b. Fish taken pursuant to such license shall be used only for bait in hook and line fishing. All carp, goldfish, and lamprey larvae (family Petromyzonidae) taken in nets operated pursuant to such license shall be destroyed immediately.

2. No license under this section is required to take for sale as bait or to sell as bait any marine species of fish taken in the marine district. A minor under the age of sixteen years may, without a license, sell as bait such of the fish listed in subdivision 1 as he has lawfully taken by angling.

3. Bait fish named in subdivision 1, when otherwise permitted by law, may be taken for use or sale as bait by:

- a. angling,
- b. nets when permitted by subdivisions 4 and 5 of this section, or
- c. stunning in the case of tadpole stone cats. "Stunning" means tapping a stone with implement or other stone.

4. a. Fish named in subdivision 1, taken for use as bait for personal use and not for sale, may be taken:

(1) in waters not inhabited by trout, by means of a seine or scap net not larger than thirty-six square feet, and

(2) in any waters of the state by means of a glass, plastic or wire trap not more than twenty inches in length, having no wings or leaders and having an entrance not larger than one inch in diameter, and such trap shall bear legibly at all times when in the water the name and address of the operator.

b. In Keuka Lake, Canandaigua Lake, Cayuga Lake, Seneca Lake, Canadice Lake and Hemlock Lake, alewives or sawbellies taken for such purpose may also be taken by gill nets measuring not more than twenty-five feet in length, having a mesh not larger than one inch.

c. Nets for taking bait fish shall not be hauled after sunset or before sunrise, except as permitted by the department.

d. Fish named in subdivision 1 may be taken for personal use or sale as bait under license from the department in the waters of the Hudson river by means of cast nets not exceeding ten feet in diameter.

5. Fish named in subdivision 1, taken for sale as bait under license from the department, may be taken by the types of nets specified in such license. In issuing such licenses the department may permit the use of nets of metallic or plastic mesh, notwithstanding the definition of "net" as contained in section 11-0103 of the Fish and Wildlife Law.

6. a. Carp, goldfish, and lamprey larvae (family Petromyzonidae) shall not be used as bait or sold for bait.

b. No person shall take smelt for bait from Upper and Lower Saranac lakes or Lake Champlain, except by angling.

c. Nets and traps for the taking of bait fish shall not be placed or operated within one hundred feet of any dock, pier, or boat landing on the St. Lawrence River without the consent of the owner.

7. The license provided for in subdivision 1 shall be issued only to residents of this state and to residents of a state in which residents of this state may be licensed, or are permitted without license, to take such fish for sale as bait.

8. This section does not supersede any provision of section 13-0343 restricting the use of nets in certain waters of the marine district or subdivision 2 of section 11-1307.

§ 11-1316. Use of fish as bait.

1. The department may, by regulation designating the waters in which such use is not permitted, prohibit the use of minnows or other species of fish as bait in the lakes or ponds and tributaries thereto in which:

a. trout are the predominant protected species of fish and which lakes, ponds or tributaries are not infested with yellow perch; or

b. fish have been eradicated by chemical treatment and in which trout or other game fish have been restocked. The list of the water to which this section shall be applicable shall be published in the fishing guide.

2. No person shall possess any species of fish either dead or alive, in or on waters where the use of fish as bait is prohibited, except

species actually present in such waters naturally or by stocking or as permitted by the department by order.

§ 11-1317. Fish-bait; protection of aquatic insects.

1. No aquatic insect nor any insect that lives in the water during any of its life stages shall be taken from waters inhabited by trout nor from the banks thereof at any time.

2. No person shall take from the waters of the state or the banks thereof for sale as bait, and no person shall sell as bait, any such insect, without first obtaining from the department a license to take such insects for sale as bait or to sell such insects as bait.

3. The license provided for in subdivision 2 shall be issued only in the discretion of the department. Licenses to take for sale as bait insects described in this section shall be issued only to residents of this state and to residents of a state in which residents of this state may be licensed, or are permitted without license, to take such insects for sale as bait.

§ 11-1319. Possession, transportation and sale of fish.

1. Application.

a. This section governs possession, transportation and sale of all fish taken in waters of the state, including the marine and coastal district except (1) trout and black bass raised under permit from the department and identified as provided in section 11-1909, (2) fish taken from a farm fish pond licensed as provided in section 11-1911, and (3) fish taken from licensed fishing preserve waters as provided in section 11-1913.

b. Fish lawfully taken may be (1) possessed, (2) transported within the state and from within to without the state, and (3) bought and sold,

as provided in this section and in the sections of the Fish and Wildlife Law and regulations of the department to which this section refers, and not otherwise. Such fish shall not be possessed, transported, bought or sold unless lawfully taken, nor transported, bought or sold, unless lawfully possessed.

c. No fish shall be possessed, transported or sold contrary to the terms of any statute, regulation, permit or license of the department, pursuant to which it is taken or acquired.

2. Sale.

a. Trout, including rainbow trout, Atlantic salmon, black bass, walleye and muskellunge shall not be bought and sold.

b. Bait fish named in section 11-1315 shall not be sold for bait except as provided in that section.

c. The following fish may be bought and sold at any time: (1) the marine species named in section 13-0339 or in regulations of the department provided they are of the minimum size limits stated in such section or in such regulations; (2) fish that may be taken with nets in the Hudson River, Lake Erie and Lake Ontario as authorized by regulations of the department provided they are of the minimum size limits stated in such regulations; (3) fish not specifically named in paragraph d of this subdivision or in section 13-0339, 11-1521 or 13-0347 or in regulation adopted pursuant to section 11-1303; (4) fish for which such regulations specify no minimum size limits and specify generally without exceptions, that the open season is "any time".

3. Possession.

A person shall not possess on waters of the state nor the shores thereof, any species of fish (other than fish legally taken in a net or fish legally taken by the holder of a license issued pursuant to section 13-0335 of this chapter) in excess of the number of such species which may be legally taken by one person in one day.

4. Transportation.

a. Carcasses, and parts thereof, of fish which may be sold as provided in subdivision 2 may be transported within and from within to without the state by any person, at any time, in any number and in any manner.

b. Carcasses, and parts thereof, of fish which may not be sold as provided in subdivision 2 may be transported within and from within to without the state by any person, at any time, subject to the following restrictions: (1) no person shall transport in one day a quantity of fish for which a catch limit is provided in regulations adopted pursuant to section 11-1303 or 11-1505 greater than the quantity that may lawfully be taken by one person in two days, unless such transportation is authorized by permit issued by the department or the fish so transported is frozen or otherwise processed and packaged for storage and is transported from a place of processing to a place of storage or of consumption or from a place of storage to a place of storage or consumption; (2) such carcasses or parts thereof shall not be shipped by parcel post, and if shipped by carrier, they or the package containing them shall have attached a card or label showing the name and address of the taker, his license number, the name and address of the consignee, and if the fish is shipped in a package, the nature of the contents of the package.

§ 11-1321. Other prohibited acts.

1. No person shall take fish (a) by use of explosives or (b) by shutting or drawing off water.

2. Explosives shall not be used or possessed in or on the waters of the state or shores or islands thereof except for mining or mechanical purposes. Possession of explosives in such places by any person shall be presumptive evidence of violation of this subdivision.

3. Bass, walleye, trout, lake trout and salmon shall not be disturbed

on spawning beds in the closed season, nor shall their spawn or milt be taken from spawning beds at any time.

4. Any noise or disturbance of waters or the banks thereof by any means with intent to drive fish into a net, which practice is commonly known as thumping, is prohibited unless expressly permitted in the terms of a license or permit issued by the department.

5. No person owning, leasing, operating or maintaining a dam holding back water which such person knows or has reason to know is inhabited by fish shall draw off such water in such quantities as to cause directly the loss of a substantial number of fish within the impoundment, if such person knows or has reason to know that such loss is likely to occur, without the written permission of the department. The provisions of this subdivision shall not apply, (a) to the federal government or any agency or subdivision thereof, (b) to any hydropower project licensed by the Federal Energy Regulatory Commission pursuant to the Federal Power Act (16 U.S.C. 791a et seq.), (c) in the event of an emergency, such as fire, flood, storm, drought, and the like, where the drawing off of such impounded water is required for public safety or public health, (d) to any artificial or man-made body of water lying wholly within the boundaries of privately owned or leased lands and operated as a farm pond, licensed farm fish pond, licensed fishing preserve water or licensed private trout or bass hatchery, or (e) to any city having a population of one million or more.

6. No person taking or assisting in the taking of fish in other than the marine and coastal district, as described in section 13-0103 of this chapter shall discard any fish carcass or parts thereof into the waters of this state or upon any public lands contiguous to and within one hundred feet of such waters or upon any private lands contiguous to and within one hundred feet of such waters unless such lands are owned by such person or unless such person enters or remains with the permission of the owner of record or his representative or agent. The provisions of this section shall not be deemed to prohibit: the return to the water of live fish or fish required to be returned to the water pursuant to section 11-1301 or 11-1303 of this chapter or rules and regulations

promulgated pursuant thereto; the use of fish or parts thereof as bait; the discarding of fish carcasses or parts thereof into waters not within one hundred feet of any shore; the proper disposal of fish carcasses or parts thereof into suitable garbage or refuse collection systems or by burial; or the incidental cleaning of fish for consumption except that no wastes resulting from such cleaning of fish may be disposed of in waters or lands contiguous to and within one hundred feet of any public boat launching sites or public docking facilities or on such sites or facilities except by proper disposal into suitable garbage or refuse collection systems or by burial.

7. Spears, spear guns and underwater guns shall not be possessed by any person on any body of water within the Adirondack park boundary nor within a distance of two hundred feet of the high water mark of any body of water within the Adirondack park boundary at any time when the use of spears in the taking of fish from such body of water within the Adirondack park boundary is not permitted by law or regulation of the department; except that nothing contained herein shall be construed to prevent the possession of spears in any dwelling or building within two hundred feet of the high water mark of such body of water.

8. Spears, spear guns, underwater guns, and snatch hooks shall not be possessed by any person on Lake George nor within a distance of two hundred feet of the high water mark of such lake, except in a dwelling or building, at any time when the use of such devices in the taking of fish in such lake is not permitted by law or regulation of the department.

9. Pacific salmon shall not be taken by hooking, snatching or snagging. Pacific salmon taken by hooking, snatching or snagging shall not be possessed, transported or otherwise trafficked in.

TITLE 15

COMMERCIAL INLAND FISHERIES

Section 11-1501. Application of title.

11-1503. Nets; license required; power of department.

- 11-1505. Open seasons, size and catch limits and manner of taking and possession of fish; regulations.
- 11-1519. Vessels to carry employees of department.
- 11-1521. Management of striped bass in the Hudson River.

§ 11-1501. Application of title.

1. This title 15 of the Fish and Wildlife Law and regulations adopted pursuant hereto do not apply to (a) the taking of fish by angling as permitted in title 13; (b) the taking of fish or the use of nets in the marine and coastal district as defined in section 13-0103, or in a trout or black bass hatchery operated under permit from the department as provided in section 11-1909, or in a farm fish pond licensed as provided in section 11-1911 or in a fishing preserve licensed as provided in section 11-1913; (c) the sale or taking for sale of bait fish named in section 11-1315.

2. This title 15 and regulations adopted pursuant hereto do not restrict the use of landing nets in completing the catch of fish taken by hook and line, or limit the provisions of section 11-1315 authorizing use of nets and traps for taking bait fish, or of regulations of the department authorizing use of eel weirs and eel pots. It does not limit the provisions of section 11-0517, or the terms of any permit or license issued by the department pursuant to any other provision of the Fish and Wildlife Law.

§ 11-1503. Nets; license required; power of department.

The department may regulate the use of nets and other devices commonly used to take fish. No person shall use a net or device to take fish without first obtaining a license to do so. Gill nets shall not be operated in Lake Erie. No gill net license for use in Lake Ontario, including Chaumont Bay and all its other embayments, shall be issued except to holders of a gill net license valid on or prior to December 31, 1986, and all licenses issued on or prior to that date are

non-transferable.

§ 11-1505. Open seasons, size and catch limits and manner of taking and possession of fish; regulations.

The department may fix by regulation the manner of taking fish with nets and other devices including but not limited to open seasons, size and catch limits and manner of possession and transportation.

§ 11-1519. Vessels to carry employees of department.

Any person operating a boat used in taking fish shall permit conservation officers or other employees of the department to board it and inspect its contents and shall carry such persons for the purpose of inspecting nets or taking fish eggs.

§ 11-1521. Management of striped bass in the Hudson River.

Notwithstanding any provision of law to the contrary:

1. Striped bass (*Morone saxatilis*) less than eighteen inches in total length may not be taken, possessed, bought, sold or offered for sale.

2. Striped bass shall not be taken in the Hudson River from the George Washington bridge north to the Federal dam at Troy from December 1 through March 15. Striped bass unintentionally taken in violation of this subdivision shall be returned to the water immediately without unnecessary injury.

3. Striped bass shall not be taken in the Hudson River from the George Washington bridge north to the Federal dam at Troy with seines, fykes, hoop nets or trawls.

4. From March 15 through June 15, gill nets with stretched mesh size

greater than 3 1/2 inches and less than 5 inches shall not be set in the Hudson River from the George Washington bridge north to the Federal dam at Troy nor possessed while on those waters.

5. In addition to the restrictions set forth in subdivision four hereof, from March 15 through June 15, no person shall set a gill net other than a drift gill net in the waters of the Hudson River lying between the Bear Mountain bridge and the Hamilton Fish Newburgh-Beacon bridge nor possess any gill net other than a drift gill net while on the shores or waters of that portion of the Hudson River. For the purposes of this subdivision a drift gill net is defined as a gill net that is not anchored or staked and is free to move with water currents. The department shall identify additional spawning areas and allocate fishing locations within these spawning areas.

6. Striped bass unintentionally taken in violation of subdivision one, three, four or five of this section shall be returned to the water at once without unnecessary injury, except that fish taken in gill nets need not be so returned to the water but shall not be bought, sold or trafficked in. For the purposes of this section "trafficked in" includes possession or transportation in any boat or vehicle other than the boat in which such striped bass were landed after being taken. Nothing in this subdivision shall be construed as permitting any person to possess striped bass of less than legal size.

7. On or before March 15, 1984 the department shall adopt rules and regulations limiting entry to the traditional commercial fishery for striped bass in the Hudson River. Such rules and regulations may include the establishment of a limit on the number of commercial striped bass licenses to be issued, the establishment of equipment restrictions necessary to maintain traditional fishing methods, the establishment of a striped bass harvest quota for allocation among licensees and the establishment of a Hudson River commercial fishing board whose members will be appointed by the commissioner and which will function to approve or deny applications for commercial striped bass licenses on the basis of rules promulgated by the department, to establish criteria for the allotment of individual licensee catch quotas and to allot the catch

quotas when the department establishes striped bass harvest limits for allocation among licensees. Such rules and regulations shall be publicly reviewed each year by the Hudson River Advisory Committee and revised as needed to insure maintenance of an economically viable, stable and traditional striped bass commercial fishery in the Hudson River and to provide proper protection for the Hudson River striped bass population.

8. No person shall sell or expose or offer for sale, trade or barter striped bass without first obtaining a commercial striped bass license. A commercial striped bass license is required only for initial sale, exposing or offering for sale, trade or barter and is not required for subsequent sales. The resident fee for such license shall be determined by the commissioner and shall not exceed one hundred dollars. Fees for licensing nets in the Hudson River as required by department rules and regulations shall be credited toward purchase of the commercial striped bass license. The nonresident fee for such license shall be two hundred dollars.

TITLE 17

IMPORTATION AND SALE OF FISH, WILDLIFE AND GAME FROM OUTSIDE THE STATE; SALE OF DOMESTIC AND FOREIGN GAME AND HATCHERY TROUT; BIRD PLUMAGE; TAXIDERMY

Section 11-1701. Application of sections 11-1703, 11-1705 and 11-1707.

11-1703. Importation, possession and sale of fish without license or permit; prohibitions.

11-1705. Importation, possession and sale of wildlife and game other than domestic and foreign game.

11-1707. Importation and possession of non-saleable fish, game and wildlife and saleable fish, game and wildlife imported during the closed season.

11-1709. Importation and transportation of certain fish or fish eggs.

11-1717. Foreign game.

11-1721. Identification of carcasses and parts thereof.

11-1723. Sale of game and trout; transportation within the state.

11-1725. Shipment by carriers.

11-1727. Hatchery trout and domestic or imported foreign game in sealed containers.

11-1728. Sale of live wild birds.

11-1733. Taxidermy.

§ 11-1701. Application of sections 11-1703, 11-1705 and 11-1707.

1. Sections 11-1703, 11-1705 and 11-1707 apply to fish, wildlife and game lawfully taken outside the state and lawfully transported from the place of taking, except trout raised in a private hatchery, domestic game as defined in section 11-0103, fish from a licensed fishing preserve and carcasses of foreign game as defined in section 11-1717.

2. Sections 11-1703, 11-1705, and 11-1707 do not limit the privileges of the holder of a license issued under section 11-0515 to import live fish and wildlife, or his privileges with respect to possession, transportation and sale, within the state.

3. Fish referred to by their common names are the fish so referred to and more specifically identified in an order adopted pursuant to section 11-1303 and in section 13-0339 of this chapter. The open seasons for fish are specified by order adopted pursuant to section 11-1305 of this article; those for game are specified in sections 11-0905, 11-0907 and 11-1103 of this article.

4. For the purposes of sections 11-1703, 11-1705 and 11-1707, there is an open season for a species (a) if it is a fish not protected by law or is unprotected wildlife, at any time, and (b) in any other case, at any time when there is an open season for taking it, anywhere in the state.

5. Sections 11-1705, 11-1711, 11-1721, 11-1723 and 11-1725 do not apply to the importation, possession, or sale of captive bred and raised North American elk (*Cervus elaphus*).

§ 11-1703. Importation, possession and sale of fish without license or permit; prohibitions.

1. Except as provided in subdivision 3 and subdivision 4; (a) all species of fish taken outside the state, except trout, black bass, muskellunge and landlocked salmon other than Atlantic salmon, may be imported and transported by any means and in any number, and may be possessed, bought and sold without permit or license, during the open season; (b) Atlantic salmon taken outside the state may be imported, transported, bought and sold at any time.

2. Except as provided in subdivision 3 and subdivision 4, any person may, during the closed season, without license or permit, and without limitation by section 11-1707, transport into the state, buy, possess, transport and sell, lake sturgeon, lake trout, whitefish, pickerel, pike, walleye and striped bass taken outside the state, provided he keeps a record and enters therein the name, residence and post office address of every person from whom he buys and every person to whom he sells or ships such fish. But this subdivision does not require that a record be kept of persons to whom such fish are sold for personal or home consumption, nor by persons who purchase in this state for consumption and not for resale. A person required by this subdivision to keep records shall permit the department or its agents to examine all books and papers relating to such purchase and sale at any time and shall on demand furnish invoices, freight or express receipts used in such transactions.

3. a. No person shall sell, offer for sale or expose for sale, under the name or designation of Lake Champlain fish, any fish other than fish that have been taken from the waters of Lake Champlain, its bays, coves or tributaries, the Missisquoi Bay or the Richelieu River. No person shall wilfully and with intent to deceive, affix, apply or annex, or use in connection with any fish, or any container of the same, any words or other symbols, tending falsely to identify the origin of the contents as the waters described in this paragraph.

b. No person shall possess or transport into the state any fish except

eels caught in that part of Missisquoi Bay in Lake Champlain lying in the Province of Quebec or in the Richelieu River.

4. Fish of the following species taken outside the state shall not be bought or sold or otherwise trafficked in if they are of less than the size limits specified in this subdivision or in the sections to which it refers:

a. striped bass, fluke or summer flounder, blue porgie, weakfish, mackerel, sea bass, king fish, cod fish, blackfish, winter flounder, all as specified in section 13-0339;

b. lake trout, pickerel, Atlantic sturgeon, Atlantic (landlocked) salmon, whitefish, northern pike, all as specified in regulations of the department.

5. Fish named in subdivision 4 of less than the size limits specified, may be imported, transported and possessed as provided in section 11-1707.

6. No person shall import, export, own, possess, acquire or dispose of live piranha fish (*Serrasalmus*, *Rooseveltiella* or *Pyrocentrus*), grass carp (*Ctenopharyngodon idella*) or hybrid grass carp within the state without a license or permit issued at the discretion of the department for scientific, biological or exhibition purposes.

7. Fish, except those specified in subdivision 6 of this section, may be imported and transported at any time, for propagation purposes, and the provisions of section 11-1707 do not apply.

§ 11-1705. Importation, possession and sale of wildlife and game other than domestic and foreign game.

1. Frogs taken outside the state may be imported and transported by any means and in any number, possessed, bought and sold during the open season. During the closed season any person may transport into the

state, without license or permit, and may possess, transport, buy and sell frogs, if he keeps a record with respect thereto, as provided in section 11-1703, subdivision 2 with respect to fish.

2. The carcasses of varying hares and cottontail rabbits may be imported from outside the state and possessed, transported, bought and sold at any time without license or permit.

3. Game for propagation purposes and the plumage or skin of game birds may be imported and transported at any time, without license or permit. Such plumage or skin shall not be sold or offered for sale or possessed for sale except as permitted by section 11-1729 or 11-1731.

4. Deer of all species, except white-tail deer, may be imported, possessed, transported, bought and sold alive at any time, without license or permit. Wild white-tail deer shall not be imported.

5. Skunk, bobcat, mink, muskrat, fisher, beaver, otter, marten or sable may be imported alive at any time without license or permit, and may be bought and sold, possessed and transported alive, by any means, during their respective open seasons. During the closed season such animals shall not be possessed or transported alive without permit or license from the department.

6. The head, skin or hide, fur and feet of game and wildlife, except birds, may be imported and transported, by any means, without license or permit, at any time, and may be bought and sold at any time.

7. The flesh of game and wildlife, except birds, black, grey or fox squirrels, lynx, bear, deer, moose, elk, caribou and antelope may be imported and transported by any means during the open season, without permit or license, and may be imported during the closed season, as provided in section 11-1707, and may be bought and sold at any time.

8. The flesh of bear, deer, moose, elk, caribou, and antelope may be imported, transported and possessed as provided in section 11-1707. The flesh of such game, except bear and white-tail deer, may also be

imported, transported and possessed pursuant to permit under section 11-1711, and if so imported, may be bought and sold when tagged as provided in section 11-1721, but if so imported shall not be possessed or transported unless so tagged.

9. Flesh of bear may be imported, transported, possessed, bought and sold for food purposes as provided in section 11-1713, under permit as provided in that section and when tagged as provided in section 11-1721.

10. The dead bodies of birds belonging to all species or subspecies native to this state, defined in subdivision 5 of section 11-0103, as protected birds, or belonging to any family, any species or subspecies of which is native to this state and is so defined, shall not be sold, offered for sale or possessed for sale for food purposes within this state. They may be imported, transported and possessed, except for sale, as provided in section 11-1707.

§ 11-1707. Importation and possession of non-saleable fish, game and wildlife and saleable fish, game and wildlife imported during the closed season.

1. a. Carcasses or parts thereof, of trout, black bass, muskellunge and landlocked salmon, other than Atlantic salmon, and fish, the sale of which is prohibited by subdivision 4 of section 11-1703, and of wildlife (other than migratory game birds), sale of which without license or permit is not authorized by section 11-1705, may be imported during the open season as provided in subdivision 2, and may be imported during the closed season as provided in subdivision 3 or subdivision 4.

b. Carcasses and parts thereof, of other fish and wildlife, may be imported during the closed season as provided in subdivisions 3 or 4.

c. Importation of migratory game birds is governed by regulation of the department pursuant to section 11-0307.

2. During the open season, carcasses described in paragraph a of

subdivision 1 may be transported by the taker from without to within the state, without permit or license, in any manner except by parcel post, provided that if they are shipped by carrier, they or the parcel containing them shall have attached a card or label showing the name and address of the taker, the name and address of the consignee, and if the shipment is a package, the nature of its contents.

3. During the closed season, the taker may transport carcasses or parts thereof of any fish or wildlife (other than migratory game birds), from without to within the state, provided he accompanies them and has with him a license issued by the department permitting such transportation; or he may ship such carcasses or parts thereof by carrier except parcel post if he has obtained a license issued by the department permitting such transportation and if the carcasses or the package containing them has attached thereto a card or label showing the name and address of the taker, the name and address of the consignee, and if the shipment is a package, the nature of its contents; or he may import into the state and transport therein carcasses and parts of lawfully taken big game animals without such license, provided he accompanies them and the carcasses and parts are tagged and identified in accordance with the laws of the jurisdiction where the big game animal was taken.

4. From September 1 to February 10 any resident of the state may cause to be transported, from without to within the state, in any manner except parcel post, (a) carcasses of fish and wildlife described in paragraph a of subdivision 1, or (b) carcasses of other fish and wildlife (other than migratory game birds) for which there is no open season at the time of such transportation, if he first obtains a license from the department permitting such transportation, and if the shipment has attached a tag showing the name and address of the shipper, and the name and address of the licensee and the number of his license permitting such transportation. The department may refuse to issue such license to any person for any reason it deems sufficient.

5. Carcasses of fish and wildlife imported as provided in subdivision 2 or subdivision 3 may be possessed and transported within the state at

any time. Carcasses of fish and wildlife imported pursuant to subdivision 4 may be possessed by the licensee and transported by him within the state during the term of the license and for thirty days immediately following.

§ 11-1709. Importation and transportation of certain fish or fish eggs.

Notwithstanding any other provision of the Fish and Wildlife Law the department may establish by order regulations governing the importation from without the state or transportation within the state of any live fish or viable eggs of any species of the family Salmonidae (trout, salmon, whitefish and grayling).

§ 11-1717. Foreign game.

1. Foreign game means pheasants of all species, Scotch grouse, Norwegian ptarmigan, Norwegian white grouse, European black game, European black plover, European gray-legged partridge, European red-legged partridge, Egyptian quail, tinamou and species or subspecies of birds not native to this state, and European red deer, fallow deer and roebuck.

2. The carcasses, or parts thereof, of foreign game imported from outside the United States may be bought and sold.

§ 11-1721. Identification of carcasses and parts thereof.

1. The provisions of this section apply to carcasses and parts thereof of

a. domestic game killed on the premises of the holder of a domestic game bird breeder's license pursuant to section 11-1901 of this article, domestic game animal breeder's license pursuant to section 11-1905 of this article or shooting preserve license pursuant to section 11-1903 of

this article;

b. bear possessed under license pursuant to section 11-0515 of this article or outside the state under a license similar in principle and killed for food purposes;

c. trout, black bass, lake trout, landlocked salmon, muskellunge, pike, pickerel and walleye taken from fishing preserve waters licensed pursuant to section 11-1913 of this article.

2. All such carcasses and parts shall be identified with a form provided by the department.

3. Carcasses and parts shall not be possessed unless accompanied by a form provided by the department as required by this section.

§ 11-1723. Sale of game and trout; transportation within the state.

1. a. Except as provided in paragraph b, game and trout required by section 11-1721 of this title to be identified, may be possessed, bought and sold, and subject to section 11-1725 of this title may be transported within and from within to without the state by any means.

b. No domestic duck, goose, brant or swan killed by shooting shall be bought or sold unless marked in accordance with requirements set forth in rules and regulations established by the department of the interior pursuant to 50 C.F.R. 21 as may be amended from time to time. Such information shall be provided by department press release and any other means that the department determines to be appropriate and effective, including posting on the department's public website.

2. No person shall sell or offer for sale any such game or trout unless it is so identified.

§ 11-1725. Shipment by carriers.

1. Carriers may receive, and may transport, within and from within to without the state, carcasses and parts thereof of game, described in subdivision 1 of section 11-1721 and identified as provided in that section, when they are also labeled as provided in this section.

2. a. When received in this state by a carrier, or transported within or from within to without the state by a carrier, every shipment of game required by section 11-1721 to be identified, shall also have attached a card or label with the following data plainly printed or written thereon: names and addresses of consignor and consignee, number and kind of carcasses or parts thereof.

b. If the consignor is the person who holds the game breeder's license or shooting preserve license by authority of which such game (other than imported foreign game) is saleable, or if the game is imported foreign game shipped by a licensed game dealer, the card or label shall also state the name and address of the holder of such license, and the number of the license.

3. No carrier or employee thereof shall, while engaged in such business, transport as owner any fish or game not lawfully saleable. No carrier or employee thereof shall knowingly receive or possess any fish or game, whether packed or unpacked, for shipment for any person, unless (a) if it is game or trout described in section 11-1721 of this title, it is identified as required by that section, and (b) in any case, it bears the tag, card, identification or label required by this section or by sections 11-0911, 11-0917, 11-1319 or 11-1913 of this article.

§ 11-1727. Hatchery trout and domestic or imported foreign game in sealed containers.

Trout raised in a private hatchery under permit from the department or outside the state under certificate pursuant to section 11-1715, and carcasses or parts thereof of processed imported foreign game and domestic game, packed within or without the state in sealed containers,

may be imported, transported, exported, bought and sold at any time. No person in this state shall possess, transport, import, export, buy or sell any such trout, imported game or domestic game in a sealed container unless such container shall bear a label describing the contents and the name of the person by whom processed.

§ 11-1728. Sale of live wild birds.

Except as permitted by rule and regulation of the department, no person shall sell live wild birds, as defined in paragraph b of subdivision six of section 11-0103 of this chapter, unless such birds were born and raised in captivity.

§ 11-1733. Taxidermy.

Persons engaged for hire in the business of preparing, stuffing or mounting of skins of fish or wildlife shall keep in their place of business a true and complete record, in such form as is required by the commissioner showing the name or description of every specimen received, the date of receipt and the name and address of the person from whom received. In addition, such persons shall also record all bear gallbladders and bile received along with information from the valid bear tag required in paragraph b of subdivision nine of section 11-0917 of this article. In the event that such person sells or barter any gallbladder or bile the record shall also include the name and address of the person or persons to whom such items were sold or bartered. Such information shall be reported to the department annually and retained for at least five years. Conservation officers and other persons authorized by the department shall have access to the register at all times.

TITLE 19

**PROPAGATION; SHOOTING PRESERVES; FARM FISH PONDS;
FISHING PRESERVES**

Section 11-1901. Breeding of domestic game birds.
11-1903. Shooting preserves.
11-1904. Canned shoots prohibited.
11-1905. Breeding of domestic game animals.
11-1906. On-line shoots prohibited.
11-1907. Propagation of fur-bearing animals.
11-1909. Private trout and black bass hatcheries.
11-1911. Farm fish ponds.
11-1913. Fishing preserves.

§ 11-1901. Breeding of domestic game birds.

1. The department may, in its discretion, issue to an owner or lessee of wholly enclosed lands, or an entire island, a domestic game bird breeder's license permitting him to possess and propagate such species of domestic game birds as, in its opinion, he has facilities for propagating on the licensed premises. The license shall expire on March 31 every fifth year. The department shall prescribe and furnish forms for application for such license. Applicants shall pay to the department, and the department shall be entitled to receive, fees according to the type of license so issued as follows:

a. Class A license, two hundred dollars. This license shall allow the holder thereof to purchase, possess, propagate, transport and sell domestic game birds, dead or alive, and their eggs.

b. Class B license, forty dollars. This license shall allow the holder thereof to purchase, possess and propagate domestic game birds for his own use. Birds may be killed for food or released to the wild for restocking. No live birds or their eggs or carcasses may be sold, exchanged or given away.

2. The department may revoke the license of any licensee convicted of a violation of this section, and no license shall be issued to him for the ensuing two years. The licensee, unless he shall waive such right, shall have an opportunity to be heard. Notice of hearing shall be given

by mailing the same in writing to the licensee at the address contained in his license. Attendance of witnesses may be compelled by subpoena. Revocation shall be deemed an administrative act reviewable by the supreme court as such.

3. Only domestic game birds legally propagated or acquired shall be possessed under these licenses.

4. On the licensed premises the licensee may kill domestic game birds at any time in any manner except by shooting. Nothing in this section shall be construed to prohibit the shooting of domestic game birds liberated on the licensed premises if such shooting is done during the open season for such species or pursuant to a license under section 11-1903.

5. Each such domestic duck, goose, brant and swan shall be marked in accordance with requirements set forth in rules and regulations established by the department of the interior pursuant to 50 C.F.R. 21 as may be amended from time to time. Such information shall be provided by department press release and any other means that the department determines to be appropriate and effective, including posting on the department's public website. Birds so marked, which have escaped, may be recaptured by the licensee. Escaped birds may be recaptured only on the premises of the licensee.

6. The holder of a domestic game bird breeder's license shall keep records and make reports as required by and upon forms furnished by the department. The reports shall be subscribed by the licensee, and shall contain an affirmation that the statements therein are made subject to the penalties of perjury. The records shall be continuous and current and shall be kept on the licensed premises, and the licensee shall allow any representative of the department to enter upon the premises to inspect his operations and records. Records must be retained for a period of three years.

7. On the licensed premises the licensee may take any unprotected wild bird, or any predatory wildlife except, protected birds, disturbing

domestic game. Such birds or wildlife may be taken at any time and in any manner, except that no trap of the leg-gripping type, having teeth in the jaws or having a greater spread of jaws than six inches, shall be used for such purpose, nor shall a trap be set so that any wildlife when caught shall be suspended. Carcasses of such birds or wildlife shall be immediately buried or cremated, except that carcasses of unprotected wildlife, and of protected wildlife other than birds if taken during their respective open seasons, may be possessed, transported, bought and sold to the extent permitted by section 11-0917.

8. Domestic game bird carcasses and parts shall be identified as required by section 11-1721 of this article.

§ 11-1903. Shooting preserves.

1. The department may, in its discretion, issue to an owner or lessee of wholly enclosed lands or an entire island a shooting preserve license permitting him or her to purchase, possess, rear and transport, and to release and take by shooting therein, domestic game birds legally possessed or acquired. No birds may be held for propagation after April 15 unless the owner or lessee also has a domestic game bird breeder's license as provided for in section 11-1901 of this title. In the case of leased lands, the applicant shall furnish with his or her application evidence of a written lease executed by each lessor covering the premises to be licensed. The license shall expire on April 15 every fifth year. The department shall prescribe and furnish forms for application for such license. Applicants shall pay, and the department shall be entitled to receive, fees according to the type of license issued as follows:

a. Class A license, two hundred dollars. This license shall allow the holder thereof to operate a commercial club or membership shooting preserve with a minimum of one hundred acres and charge a daily fee for hunting or charge a fee for each bird killed or a combination thereof. Birds may be killed by the licensee for his or her own use and may be sold dead or alive.

b. Class B license, sixty dollars. This license shall allow the holder thereof to operate a shooting preserve with use restricted to the licensee, his or her family and invitees, provided no fees are charged for the privilege of hunting or for birds shot. Birds may be killed by the licensee for his or her own use but no live birds, or their eggs, or carcasses may be sold unless the licensee holds a Class A game bird breeder's license.

3. The department may revoke the license of any licensee convicted of a violation of this section, and no license shall be issued to him or her for the ensuing two years. The licensee, unless he or she shall waive such right, shall have an opportunity to be heard. Notice of hearing shall be given by mailing the same in writing to the licensee at the address contained in his or her license. Attendance of witnesses may be compelled by subpoena. Revocation shall be deemed an administrative act reviewable by the supreme court as such.

5. The boundaries of a shooting preserve shall be posted with appropriate signs in accordance with section 11-2111.

7. Domestic game birds may not be killed, by shooting, on the premises specified in the application for the license, except under the following conditions:

a. Birds shall be marked as provided in subdivision 5 of section 11-1901 of this title. Birds so marked, which have escaped, may be recaptured by the licensee. Escaped birds may be recaptured only on the premises of the licensee.

b. Ducks, geese, brant and swans liberated under this section may be taken only under rules and regulations made by the department or adopted by the federal department of the interior; provided, however, that any federal regulations shall be provided by department press release and any other means that the department determines to be appropriate and effective, including posting on the department's public website.

c. On the premises described in the application for the license, the licensee may kill domestic game birds by shooting from September 1 through April 15 and in any manner, other than by shooting, at any time, or any person may take domestic game birds by shooting from September 1 through April 15 with the consent of the licensee.

8. The holder of a shooting preserve license shall keep records and make reports as required by and upon forms furnished by the department. The reports shall be subscribed by the licensee, and shall contain an affirmation that the statements therein are made subject to the penalties of perjury. The records shall be continuous and current and shall be kept on the licensed premises, and the licensee shall allow any representative of the department to enter upon the premises to inspect his operations and records. Records must be retained for a period of three years.

9. On the premises described in the application for the license, the licensee may take any unprotected wild birds, or any predatory wildlife except protected birds, disturbing domestic game. Such birds or wildlife may be taken at any time and in any manner, except that no trap of the leg-gripping type, having teeth in the jaws or having a greater spread of jaws than six inches, shall be used for such purpose, nor shall a trap be set so that any wildlife when caught shall be suspended. Carcasses of such birds or wildlife shall be immediately buried or cremated, except that carcasses of unprotected wildlife, and of protected wildlife other than birds if taken during their respective open seasons, may be possessed, transported, bought and sold to the extent permitted by section 11-0917.

10. a. Carcasses and parts of domestic game birds shall be accompanied by a form provided by the department pursuant to section 11-1721 of this article. No domestic game birds so killed shall be possessed or transported without such form. Only an authorized person as provided in the rules and regulations of the department shall have in his or her possession such form.

b. Domestic game bird carcasses and parts shall be identified as

required by section 11-1721 of this article.

11. Notwithstanding any provision in this section to the contrary, any person may conduct a field trial on the grounds of a shooting preserve at any time under the provisions of section 11-0927.

§ 11-1904. Canned shoots prohibited.

1. No person who owns, operates or manages a facility that harbors non-native big game mammals shall knowingly permit:

a. The taking on such premises by any person who pays a fee to take a live non-native big game mammal by any of the following means:

(1) the shooting or spearing of a non-native big game mammal that is tied or hobbled;

(2) the shooting or spearing of a non-native big game mammal that is staked or attached to any object;

(3) the shooting or spearing of a non-native big game mammal that is confined in a box, pen, cage or similar container of ten or less contiguous acres from which there is no means for such mammal to escape;

(4) the deliberate release of a non-native big game mammal that is confined in a box, pen, cage or similar container of ten or less contiguous acres in the presence of any person who is, or will be, shooting or spearing such non-native big game mammal.

b. For purposes of this section:

(1) shooting shall mean the discharge of any type of firearm or bow and arrow; and

(2) spearing shall mean the use of any hand or mechanically propelled single or multiple pronged pike, blade, or harpoon.

2. Nothing contained in this section shall be deemed to prohibit:

a. The lawful taking, hunting or trapping of an animal as provided in this chapter or other law, rule or regulation of the state of New York; or

b. The lawful slaughtering of an animal as provided in the agriculture and markets law of New York state or as permitted by the United States Department of Agriculture; or

c. The killing of an animal that is menacing in a manner likely to cause serious injury or death to human beings.

§ 11-1905. Breeding of domestic game animals.

1. The department may, in its discretion, issue to an owner or lessee of wholly enclosed lands or an entire island a domestic game animal breeder's license permitting him to possess and propagate domestic game animals provided such animals are confined and cared for according to specifications and regulations which the department, by order, shall adopt. The license shall expire on March 31 every fifth year. The department shall prescribe and furnish forms for application for such license. Applicants shall pay, and the department shall be entitled to receive, fees in accordance with the type of license issued.

a. Class A license, two hundred dollars. This license shall allow the holder thereof to purchase, possess, propagate, transport and sell domestic game animals dead or alive.

b. Class B license, forty dollars. This license shall allow the holder thereof to purchase, possess and propagate domestic game animals for his own use. No animals may be sold, exchanged or given away except that portions of the carcass may be given away provided they are packaged and the package bears the name and license number of the licensee.

2. The department may revoke the license of any licensee convicted of a violation of this section, and no license shall be issued to him for the ensuing two years.

3. Only domestic game animals legally propagated or acquired shall be possessed under these licenses.

4. On the premises described in the application for the license, the licensee may kill domestic game animals at any time and in any manner and, with the consent of the licensee, any person may take domestic game animals by shooting at any time.

5. The holder of a domestic game animal breeder's license shall keep records and make reports as required by and upon forms furnished by the department. The reports shall be subscribed by the licensee, and shall contain an affirmation that the statements therein are made subject to the penalties of perjury. The records shall be continuous and shall be kept on the licensed premises, and the licensee shall allow any representative of the department to enter the premises to inspect his operations and records. Records must be retained for a period of three years.

6. Domestic game animal carcasses and parts shall be identified as required by section 11-1721 of this article.

§ 11-1906. On-line shoots prohibited.

1. No person, firm, corporation, partnership, limited liability company, association or other business entity shall:

a. own or operate a shooting range or gallery located in this state for purposes of the on-line shooting or spearing of targets or animals; or

b. create, maintain or utilize a website via the internet, or a service or business via any other means, from any location within this state for purposes of the on-line shooting or spearing of targets or animals.

2. For purposes of this section:

a. "on-line shooting or spearing" shall mean the firing of a hunting

instrument from a remote location by using a computer, a website via the internet or a service or business via any other means, and any combination of cameras, viewers and sites, or any other devices or controls, to operate such hunting instrument, regardless of whether such operation is live-action, in real-time or delayed;

b. "hunting instrument" shall mean any type of firearm, bow and arrow or mechanically propelled single or multiple pronged pike, blade, or harpoon;

c. "shooting" shall mean the discharge of any type of firearm or bow and arrow;

d. "spearing" shall mean the use of any mechanically propelled single or multiple pronged pike, blade, or harpoon; and

e. "shooting range or gallery" shall mean any place equipped with targets, animals or both, where a hunting instrument is fired.

§ 11-1907. Propagation of fur-bearing animals.

1. Beaver, bobcat, coyote, raccoon, sable or marten, skunk, otter, fisher, nutria and muskrat may be propagated, or kept alive in captivity, provided a license shall first be obtained from the department. The fee for the license shall be twenty-five dollars and the license shall be in force during the calendar year in which it was issued. The license is not transferable.

2. Animals propagated or kept alive in captivity pursuant to such license may be disposed of alive for propagation, exhibition, scientific, or educational purposes or they may be killed and pelted at any time, in any manner. Carcasses and pelts of such animals may be possessed, transported, bought or sold at any time.

3. On or after April first, two thousand twelve, the department shall not issue any new licenses pursuant to this section.

§ 11-1909. Private trout and black bass hatcheries.

1. The department in its discretion may issue to any person a hatchery permit, valid during the calendar year of issue, to propagate, raise and sell trout. The department shall establish by order regulations governing the identification of trout raised under such a permit which are offered for sale, sold or transported.

2. The department in its discretion may issue to any person a hatchery permit, valid during the calendar year of issue, to propagate, raise and sell black bass. The department shall establish by order, regulations governing the transportation of black bass raised under such a permit.

§ 11-1911. Farm fish ponds.

1. "Farm fish pond" means a body of water, impounded by a dam, of not more than ten acres of water surface when full, lying wholly within the boundaries of privately owned or leased lands. It does not include any pond used in connection with any private camp, boarding house, hotel or other establishment catering to the public.

2. The department may issue to the owner or lessee of a farm fish pond a license, effective for a period of five years, entitling the holder to manage such fish pond for the production of fish. The department shall fix the terms of each such license and may include therein (a) permission to control undesirable fish, aquatic vegetation and insect life, interfering with the production of fish and (b) permission, notwithstanding any other provisions of this chapter to the contrary, to release, stock and propagate fish in the licensed pond. The department may specify in the license methods of control to be used and the manner of taking and type, size and mesh of gear to be used in taking fish. The department may, for cause, revoke or suspend any license issued pursuant to this section.

3. No person shall release any species of fish into a farm fish pond unless permission to do so is first obtained from the department.

4. A licensee, any member of his immediate family, and any person actually employed by him in the cultivation of his farm or the management of the licensed pond may without license issued under title 7 of the Fish and Wildlife Law, take fish of any size, in any number, at any time, in any manner permitted by the department.

5. The holder of any type of fishing license, or a person entitled to exercise the privileges of such a license, may, with the permission of the licensee, take fish by angling from the licensed pond provided the holder complies with the provisions of title 13 of the Fish and Wildlife Law, with respect to open seasons, minimum size limits and daily and seasonal possession limits.

6. a. Fish protected by law, except trout, black bass, muskellunge and landlocked salmon, legally taken from a licensed farm fish pond, may be bought and sold during their respective open seasons, and may be possessed and transported at any time. Trout, black bass, muskellunge and landlocked salmon, legally taken from a licensed farm fish pond may be possessed and transported during their respective open seasons and until March 1 immediately following, but unless such fish were taken by a person described in subdivision 4 or are frozen or otherwise processed and packaged for storage and are being transported to a place of storage or consumption, no person shall transport in any one day a quantity of such fish exceeding the quantity which may be legally taken from that farm fish pond by a person described in subdivision 5.

b. Fish protected by law shall not be removed from the premises of the licensee unless such fish or the package containing them bears the name and address of the licensee and his license number and the name and address of the person in whose possession they are.

c. Fish not protected by law, legally taken from a licensed farm fish pond, may be possessed, transported, bought and sold at any time, except that taking and sale of bait fish shall be permitted only under license

pursuant to section 11-1315.

§ 11-1913. Fishing preserves.

1. "Fishing preserve waters" means any artificial or man-made body of water, without limitation of size, lying wholly within the boundaries of privately owned lands, operated for the purpose of permitting the owner to provide fishing facilities to fishermen. Such waters shall not include natural streams, natural ponds or waters impounded by the damming of natural streams. The sources of water for such ponds shall be limited to surface run-off, natural springs or waters diverted from a natural stream.

2. a. The department may, in its discretion, after application on forms furnished by it, issue to an owner of such fishing preserve waters a fishing preserve license permitting the holder thereof to manage such fishing preserve waters and to possess, propagate and rear, and to take or permit others to take therefrom, fish therein legally propagated or acquired. Such license shall expire on the last day of December in the year in which it is issued unless previously revoked. A separate license is required for each body of water defined in subdivision 1 as fishing preserve waters. Two or more ponds under one ownership, supplied by one common water source and located on one continuous parcel of land, shall be considered as one body of water requiring one license.

b. The license so issued, shall:

(1) contain the name of the town and county in which such fishing preserve waters are located;

(2) specify the species of fish authorized to be stocked therein;

(3) authorize the licensee to stock, propagate, raise and release such fish in such licensed fishing preserve waters and to buy, sell or otherwise traffic in fish taken therefrom;

(4) specify the manner of identification of fish taken from the licensed waters, and

(5) specify the means of acquisition of fish stocked therein.

c. The license may also:

(1) authorize the licensee to control undesirable protected fish, wildlife and insects and specify means of control of the same.

(2) specify such other restrictions and controls for the management of the fishing preserve waters as in the judgment of the department may be deemed advisable for proper fish management.

d. The fee for the license shall be fifty dollars, payable at the time application is made.

e. The department may for cause revoke or suspend the license of any licensee.

3. Lands containing fishing preserve waters so licensed shall be posted with appropriate signs in accordance with section 11-2111.

4. A licensee or any member of his immediate family may without license issued under title 7 of the Fish and Wildlife Law, or license to take fish by net or device, take fish of any size, in any number, at any time and in any manner permitted by the license.

5. a. Any licensee, during the term of his license may sell fish taken from the licensed fishing preserve waters and may grant permission to other persons to take fish in or from the licensed fishing preserve waters and charge a fee for such fishing or for the fish taken, or, if the licensee is a club, it may impose dues permitting such angling by members of such club.

b. Persons to whom such permission to fish is granted or who have paid for the privilege of fishing in the licensed waters or dues paying members of a club which is a licensee may fish in such waters without license issued under title 7 of the Fish and Wildlife Law, or other license.

c. The licensee may prescribe such restrictions or limitations as he sees fit with respect to the size of fish, limits of catch, open season and manner of taking fish from the licensed waters. Except as

specifically noted in the license, the provisions of title 13 or title 15 of the Fish and Wildlife Law shall not be applicable to fishing in such licensed fishing preserve waters.

6. a. All trout, black bass, lake trout, landlocked salmon, muskellunge, pike, pickerel and walleye taken from the licensed fishing preserve waters, shall be immediately identified on forms provided by the department as prescribed in the license or by order of the department.

b. The identification form shall accompany the fish until the same is finally prepared for consumption.

c. No fish, required to be identified as specified in paragraph a of this subdivision, taken pursuant to this section shall be possessed off the premises of the fishing preserve without such identification form, and no person shall sell such fish without such identification form.

d. Fish taken from such fishing preserves and identified as provided in this subdivision, may be possessed, bought, sold and offered for sale, and transported without restriction. Fish raised or possessed under license issued under this section may be sold at any time for scientific, exhibition, propagation or stocking purposes.

7. The holder of a fishing preserve license shall keep such records as the department may require and make annual reports to and upon forms furnished by the department. The records shall be continuous and shall be kept on the licensed premises, and the licensee shall allow any representative of the department to enter upon the premises and inspect his operations and records.

8. Farm fish ponds, previously licensed pursuant to section 11-1911, may be licensed as fishing preserves, provided that the waters so sought to be licensed under this section meet the requirements of subdivision 1 hereof, and provided further that such waters have not been stocked by the department during the five year period immediately preceding the application for fishing preserve license.

9. The department may, by special permit or authorization contained in the license, authorize the licensee to use fish toxins in the management of the licensed waters, but unless so specifically authorized by permit or license no toxins or poisons may be introduced into the licensed waters.

10. Nothing in this section shall abridge, alter or affect the rights or liabilities, riparian or otherwise, that would otherwise exist or accrue by reason of the impounding of the water, except that fishing preserve waters are waters of the state within the meaning of section 11-0503 of the Fish and Wildlife Law and article 17 of this chapter.

11. The department may, by order made pursuant to section 11-2301, make such rules and regulations with respect to the management and operation of fishing preserves, not inconsistent with the provisions of this section, as it shall deem necessary and proper to carry into effect the provisions of this section.

TITLE 20

NEW YORK STATE BIRD CONSERVATION AREA PROGRAM

Section 11-2001. New York state bird conservation area program.

11-2003. Advisory committee.

§ 11-2001. New York state bird conservation area program.

1. There shall be created a New York state bird conservation area program which shall consist of such state-owned waters, lands, or portions thereof as are necessary to safeguard and enhance populations of wild birds native to New York state and the habitats therein that birds are dependent upon for breeding, migration, shelter, and sustenance.

2. Any property designated shall be described and depicted upon a map and a copy of any and all such documents shall be forwarded to the

commissioner for inventory, research, and reference purposes for the general public. A master inventory list and maps of properties that are designated as part of the New York state bird conservation area program shall be kept on file by the commissioner who shall also deposit a copy of such at the New York state museum and science service, and at the Cornell Laboratory of Ornithology.

3. For purposes of this title the term "important bird area" shall mean a site providing habitat to one or more species of breeding or non-breeding birds bounded by natural or anthropogenic features or boundaries. To be eligible for designation under this section a site must be an important bird area. Any site that meets or matches one or more of the following criteria in this subdivision shall be eligible for designation as part of the New York state bird conservation area program because it is an important bird area.

a. Waterfowl concentration site: a location that regularly supports at least two thousand birds such as loons, grebes, cormorants, geese, ducks, coots, and moorhens.

b. Pelagic seabird site: a location that regularly supports at least one hundred birds of open water such as shearwaters, storm-petrels, terns, fulmars, gannets, jaegers, alcids, and other like birds and/or ten thousand gulls at one time during some part of the year so long as the primary food source for such birds is not anthropogenic.

c. Shorebird concentration site: a location that supports at least three hundred birds such as plovers, sandpipers, and other like birds during some part of the year.

d. Wading bird concentration site: a location that supports at least one hundred birds such as bitterns, herons, egrets, ibises, and other like birds during some part of the year.

e. Migratory concentration site: a location that is a flight corridor rest stopover site for an exceptional number or diversity of migratory songbirds during either spring or fall seasons.

f. Diverse species concentration site: a location that supports a distinctive group of indigenous bird species that is the consequence of local habitats that are resultant of unique vegetational, geological, geographical, topographical, or microclimatological circumstances.

g. Individual species concentration site: a location that supports at least one bird species during one or more seasons of the year as a regionally unique, dense (for the species) population.

h. Species at risk site: (1) a location that supports a significant population of a species that is listed either federally or by New York state as endangered, threatened, or of special concern, or (2) which supports a species that is verified by either the commissioner or the state ornithologist as being rare or declining within New York state, or (3) an exceptional, rare, or remnant native habitat, vegetative community, or landscape segment that supports one or more significant habitat dependent populations of wild bird species.

i. Bird research site: a location where a wild bird population research and/or monitoring project of at least five consecutive years duration is conducted and contributes to the science of ornithology and/or bird conservation policy through publicly accessible scholarly and/or scientific publications.

4. Designation may be accomplished by the head of any state agency or entity having jurisdiction over state lands or waters for such appropriate properties as may exist within their respective jurisdictions and consistent with their respective missions.

5. A designating state agency or entity shall publish notice concerning the designation of a New York state bird conservation area in the environmental notice bulletin prior to such designation. Such notice shall provide for a thirty day public comment period following publication of the notice.

6. The head of any state agency or entity having jurisdiction over

state lands or waters previously designated as New York state bird conservation areas may seek to remove all or a portion of such lands or waters from such designation provided, however, that prior to such removal the commissioner publishes a finding that the designated area or portion of such area no longer meets the criteria in subdivision three of this section. Such finding shall be published in the environmental notice bulletin and shall provide for a thirty day public comment period following publication of the notice.

* 7. a. The Montauk Point shoals area of the county of Suffolk, having met the criteria of subdivision three of this section, is hereby declared to be an important bird area and the commissioner shall designate such area as part of the New York state bird conservation area program.

b. For the purposes of this title, "Montauk Point shoals area" means those marine and coastal areas off the shore of Montauk Point, in the county of Suffolk, extending to the coastal waters within a sixty foot bathymetric contour that encompasses the area beginning just west of Shagwong Point on the northern shore of Montauk Point, continuing east around Montauk Point, and terminating just east of Ditch Plains on the Atlantic Ocean side of Montauk Point. Such area consisting of waters that are sixty or less feet in depth, and within between three and one-half to four miles from the shoreline. Provided, that the commissioner shall be authorized to change the boundaries of such area, by rule, as he or she shall deem necessary.

c. That portion of the New York state bird conservation area program designated pursuant to this subdivision shall be known as the "Montauk Point shoals bird conservation area".

d. Nothing in this section shall be deemed to impose new fishing restrictions.

* NB Effective October 8, 2024

§ 11-2003. Advisory committee.

There shall be created within the department a New York state bird conservation area program advisory committee whose non-governmental members shall serve without pay, meet not less than twice each year, and whose sole purpose shall be to advise as to the designation, management, educational research and utilization of those sites that are individually designated as part of and collectively comprise the New York state bird conservation area program. Provided, however, the utilization of such sites shall be consistent with the mission of the state agency or entity designating a New York state bird conservation area pursuant to section 11-2001 of this title. In addition to representatives of the department, the advisory committee shall consist of, but not be limited to one representative each from the department of state, the Conservation Fund Advisory Board, the Conservation Council, the office of parks, recreation and historic preservation, the state museum, Cornell Laboratory of Ornithology, the Nature Conservancy, the National Audubon Society, Ducks Unlimited, the New York State Biodiversity Research Institute, and the Federation of New York State Bird Clubs. The commissioner may appoint additional members as appropriate, who shall serve at his pleasure.

TITLE 20-A

MARINE MAMMAL AND SEA TURTLE PROTECTION AREA

Section 11-2050. Establishment of the marine mammal and sea turtle protection area.

§ 11-2050. Establishment of the marine mammal and sea turtle protection area.

1. There shall be created the marine mammal and sea turtle protection area consisting of the waters in the area from mean high water seaward fifteen hundred feet, except further seaward in shallow areas to the outermost limit of waters fifteen feet in depth, around Plum Island, Great Gull Island and Little Gull Island. Such protection area may also be designated as a New York state bird conservation area pursuant to section 11-2001 of this article.

2. For purposes of this title the marine mammal and sea turtle protection area shall mean:

- (a) a site providing habitat to species including:
 - (i) harbor seals (*Phoca vitulina*);
 - (ii) harbor porpoises (*Phocoena phocoena*);
 - (iii) gray seals (*Halichoerus grypus*); and
 - (iv) sea turtle species including kemp's ridley (*Lepidochelys kempii*), green turtles (*Chelonia mydas*) and leatherback (*Dermochelys coreacia*);
- (b) presence of a state-designated natural protective feature; and
- (c) location within the boundaries of two estuaries of national significance.

3. The department is authorized to promulgate regulations to prevent the harassment and for the protection of marine mammals and sea turtles within the marine mammal and sea turtle protection area.

TITLE 21

CONSERVATION AREAS AND FACILITIES; PRIVATE REFUGES AND POSTED LANDS

Section 11-2101. Powers of the department.

11-2103. Acquisition and use of property.

11-2105. State game refuges.

11-2106. National Wildlife refuge system; regulations.

11-2107. Consent for the United States to acquire land or water for the establishment of migratory bird reservations.

11-2111. Posting; service of notice.

11-2113. Effect of posting or service of notice.

11-2115. Posted and unposted lands; failure to leave on request.

11-2117. Damage to property, livestock or domestic fowl by hunters and fishermen.

§ 11-2101. Powers of the department.

1. The department shall have power:

a. to make regulations for the use of state-owned boat-launching sites and state-owned boat-access sites and public hunting, trapping and fishing grounds and to prohibit, limit and manage hunting, trapping and fishing on lands, waters or lands and waters on which such grounds are established, in such manner as it deems calculated to promote the public interest, notwithstanding any other provision of the Fish and Wildlife Law or other law;

b. by posting signs or serving notice as provided in section 11-2111 to protect any lands or waters, rights or interests therein owned, leased or otherwise acquired by the state and assigned or made available to the department for controlling, managing, propagating or distributing fish or wildlife or for conducting and managing hatcheries or biological stations, game farms, rearing stations, refuges, public hunting, trapping and fishing grounds or game management areas;

c. to fix the terms of permits issued and regulations adopted permitting the taking of fish or wildlife on, or entering upon, any area or facility mentioned in this subdivision;

d. to enter into cooperative agreement with any department of the United States government, municipality or person for the purpose of better promoting fish and wildlife conservation practices on any lands or waters owned, leased or otherwise acquired by the state and made available to the department for use by the department, or on other lands or waters as provided in sections 11-0303, 11-0321 or 11-0501.

e. to dispose of surplus products of the state's fish hatcheries and to dispose of pheasant chicks and surplus pheasant eggs of the state's game farms as it deems proper.

2. Whenever in the conduct of the public hunting, trapping and fishing grounds, game refuges and other areas held for use by the department, in the opinion of the department it becomes necessary to remove trees and other products in order to manage such areas along lines scientific research indicates are best calculated to produce the optimum conditions

for fish or wildlife, the department may, upon such terms as it may deem to be for the best interests of the state, sell the trees, timber and other products on any such grounds, refuges or other areas acquired by purchase, gift or devise for use by the department.

§ 11-2103. Acquisition and use of property.

1. The department shall have power to acquire by lease, purchase, gift, devise, agreement or otherwise from any sources, lands, waters or lands and waters, or any right or interest therein for the purpose of establishing and maintaining public hunting, trapping and fishing grounds.

2. a. The department shall have power to receive real and personal property by gift or devise from any person or from the United States Government and to accept such property in the name of the people of the state. Under this power any property of any nature or any rights therein may be received and accepted if the department deems it suitable for purposes of fish and wildlife management.

b. Lands or waters accepted under this power shall be held for the use of the department and shall be improved or developed as the department deems best for such purposes. Such lands and waters shall not become part of the forest preserve nor be subject to the limitation of section 1 of article XIV of the State Constitution.

3. The department may purchase the shooting and fishing rights on lands or waters outside the Adirondack and Catskill parks and establish game refuges thereon.

§ 11-2105. State game refuges.

1. Any enclosed land or water owned by the state may be set aside by the department as a refuge for the protection of fish, wildlife, trees and plants. Not more than one hundred thousand acres in the Adirondack

park nor more than fifteen thousand acres in the Catskill park shall be set aside for such purpose nor shall any land in the Adirondack or Catskill park be so set aside without the approval of the board of supervisors or county legislative body of the county affected. The consent of the riparian owners shall first be obtained before lands under water and the waters thereon shall be so set aside.

2. Lands and waters set aside or established by the department as a game refuge shall remain a game refuge until the department by regulation permits the taking of fish and wildlife thereon.

§ 11-2106. National Wildlife refuge system; regulations.

The department shall adopt regulations in relation to fish and wildlife on lands of the national wildlife refuge system within this state which regulations shall conform to the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd, 668ee), as presently constituted or as hereafter amended, and regulations of the Secretary of the Interior adopted pursuant thereto.

§ 11-2107. Consent for the United States to acquire land or water for the establishment of migratory bird reservations.

Consent of the state is given to the acquisition by the United States by purchase, gift, devise or lease of such areas of land or water, or of land and water, in the state of New York, as the United States may deem necessary for the establishment of migratory bird reservations in accordance with the Migratory Bird Conservation Act (16 U.S.C. § 715), reserving, however, to the state of New York full jurisdiction and authority over all such areas not incompatible with the administration, maintenance, protection and control thereof by the United States under the terms of such act of Congress.

§ 11-2111. Posting; service of notice.

1. An area protected pursuant to this title and title nineteen of this article shall be posted with signs not less than eleven inches by eleven inches, bearing a conspicuous statement as described in subdivision 2 of this section which shall cover a space of not less than eighty square inches. Such signs shall be posted not more than six hundred sixty feet apart, close to and along the boundaries of the area protected. At least one sign shall be posted on each side of the protected area and on each side of each corner of the protected area, provided the corner can be reasonably ascertained. Illegible or torn-down signs shall be replaced at least once a year. Replacement of notices on state game refuges shall be made in March, July, August or September.

2. Signs shall bear the name and address of the owner, lawful occupant, or other person or organization authorized to post the protected area. Signs shall bear a conspicuous statement which shall either (a) consist of the word "posted", or (b) warn against entry for specified purposes or all purposes without the consent of the person or organization authorized to post the protected area. A statement consisting of the word "Posted" shall have the effect of a warning against all such acts. The department may by regulation authorize additional contents of such signs, including but not limited to symbols indicating the acts which are prohibited.

3. Signs to prohibit the taking of fish may be posted by the department up to one thousand feet from a fishway or dam erected by the state in public waters, and shall read substantially: "All persons are prohibited by law from fishing in this stream between this point and the fishway (or dam)."

4. Personal service upon any person, in the name of the owner, lawful occupant, or other person or organization authorized to post signs as provided in this section, of a notice in writing containing a description of the premises and a warning provided by this section for a posted sign, shall, after the service, have the same effect with respect to the person served as if the premises described in the notice were posted with such warning as provided in this section.

5. Private lands constituting the bed, banks and shores of waters stocked with fish by the department, with the consent of the owner of such lands, shall not be posted against public fishing within five years from the date of such stocking, except where an alternate arrangement has been agreed to in writing by the department. Owner shall mean, for purposes of this subdivision, the owner, lawful occupant, or other person or organization having authority to post such lands.

6. The provisions of this section shall not apply to the posting or erection of notices identifying a restricted area pursuant to section 11-0321.

§ 11-2113. Effect of posting or service of notice.

1. No person shall enter or remain unlawfully or engage in any activity upon land which has been posted pursuant to section 11-2111 in violation of the terms of such posted signs or the terms of any written notice and warning served upon such person pursuant to subdivision four of section 11-2111.

2. No person shall post any sign prohibiting or limiting activities on land pursuant to this article, unless authorized to do so by the owner, lawful occupant or other person or organization having authority to post such lands.

3. No unauthorized person shall injure, conceal, deface or remove a sign erected and maintained as provided in section 11-2111.

§ 11-2115. Posted and unposted lands; failure to leave on request.

1. It shall be unlawful for any person engaged in hunting, trapping or fishing without permission upon the lands of another, whether or not posted as provided in section 11-2111 not to leave such lands immediately when requested to do so by the owner, lessee or lawful

occupant.

2. Upon any conviction of a violation of this section, all the current licenses held by the person convicted, issued pursuant to title 7 of the Fish and Wildlife Law, shall be revoked and he shall be ineligible for any such license during the ensuing license year, and in the discretion of the court ineligible therefor during an additional period not exceeding one license year.

3. The punishment provided in this section shall be in addition to such other fines and penalties as the person convicted may have incurred by violating any provision of this title 21 of the Fish and Wildlife Law.

§ 11-2117. Damage to property, livestock or domestic fowl by hunters and fishermen.

No person, for the purpose of or while hunting, trapping or fishing, shall without the permission of the owner, lessee or lawful occupant enter upon the land of another and while thereon kill or injure any dog, livestock or domestic fowl, or cut, destroy or damage any bars, gates or fence or any part thereof, or deface or damage any vehicle, farm equipment, buildings or appurtenances to the land, resulting in damage to the owner or occupant of the land or of the dog, livestock, domestic fowl, bars, gates, fences, vehicles, equipment, buildings or appurtenances to the land.

TITLE 23

ADMINISTRATION OF FISH AND WILDLIFE LAW

Section 11-2301. Rules and regulations.

11-2303. Disposition of moneys.

11-2305. Sale of trees, timber and other products.

§ 11-2301. Rules and regulations.

Rules and regulations adopted by the department pursuant to the Fish and Wildlife Law shall be adopted as provided in the state administrative procedure act.

§ 11-2303. Disposition of moneys.

1. Moneys received in accordance with the terms of any cooperative agreement for promoting fish and wildlife conservation practices pursuant to paragraph d of subdivision 1 of section 11-2101 unless otherwise expressly provided, shall be deposited in the conservation fund as provided by section 83 of the State Finance Law to be available, after appropriation by the Legislature, for any of the purposes specified in that section.

2. Any moneys received by gift or devise pursuant to subdivision 2 of section 11-2103 shall be deposited and disbursed as provided by sections 11 and 83 of the State Finance Law.

§ 11-2305. Sale of trees, timber and other products.

Sale of trees, timber and other products sold by the department pursuant to subdivision 2 of section 11-2101 shall be conducted as provided in section 9-0505 of this chapter.

* TITLE 25

INTERSTATE WILDLIFE VIOLATOR COMPACT

Section 11-2501. Short title.

11-2503. Adoption and text of compact.

* NB Became effective September 16, 2005 per notification from DEC

§ 11-2501. Short title.

This title shall be known and may be cited as "the interstate wildlife violator compact".

§ 11-2503. Adoption and text of compact.

The interstate wildlife violator compact is adopted and enacted into law as follows:

ARTICLE I

Findings, declaration of policy and purpose.

(a) The participating states find that:

(1) Wildlife resources are managed in trust by the respective states for the benefit of all residents and visitors.

(2) The protection of the wildlife resources of a state is materially affected by the degree of compliance with state statutes, laws, regulations, ordinances and administrative rules relating to the management of such resources.

(3) The preservation, protection, management and restoration of wildlife contributes immeasurably to the aesthetic, recreational and economic aspects of such natural resources.

(4) Wildlife resources are valuable without regard to political boundaries; therefore, every person should be required to comply with wildlife preservation, protection, management and restoration laws, ordinances, and administrative rules and regulations of the participating states as a condition precedent to the continuance or issuance of any license to hunt, fish, trap or possess wildlife.

(5) Violation of wildlife laws interferes with the management of wildlife resources and may endanger the safety of persons and property.

(6) The mobility of many wildlife law violators necessitates the maintenance of channels of communication among the various states.

(7) In some states, a person who is cited for a wildlife violation in a state other than his or her home state:

(i) Is required to post collateral or a bond to secure appearance for a trial at a later date; or

(ii) Is taken into custody until the collateral or bond is posted; or

(iii) Is taken directly to court for an immediate appearance.

(8) The purpose of the enforcement practices set forth in paragraph 7 of this subdivision is to ensure compliance with the terms of a wildlife citation by the cited person who, if permitted to continue on his or her way after receiving the citation, could return to his or her home state and disregard his or her duty under the terms of the citation.

(9) In most instances, a person receiving a wildlife citation in his or her home state is permitted to accept the citation from the officer at the scene of the violation and immediately continue on his or her way after agreeing or being instructed to comply with the terms of the citation.

(10) The practices described in paragraph 7 of this subdivision cause unnecessary inconvenience and, at times, a hardship for the person who is unable at the time to post collateral, furnish a bond, stand trial or pay a fine, and thus is compelled to remain in custody until some alternative arrangement is made.

(11) The enforcement practices described in paragraph 7 of this subdivision consume an undue amount of law enforcement time.

(b) It is the policy of the participating states to:

(1) Promote compliance with the statutes, laws, ordinances, regulations and administrative rules relating to management of wildlife resources in their respective states.

(2) Recognize the suspension of wildlife license privileges of any person whose license privileges have been suspended by a participating state and treat such suspension as if it had occurred in their state provided the violation which resulted in the suspension could have been the basis for suspension in their state.

(3) Allow a violator, except as provided in subdivision (b) of article III of this compact, to accept a wildlife citation and, without delay, proceed on his or her way, whether or not a resident of the state in which the citation was issued, provided that the violator's home state is party to this compact.

(4) Report to the appropriate participating state, as provided in the compact manual, any conviction recorded against any person whose home state was not the issuing state.

(5) Allow the home state to recognize and treat convictions recorded against its residents, which convictions occurred in a participating state, as though they had occurred in the home state.

(6) Extend cooperation to its fullest extent among the participating states for enforcing compliance with the terms of a wildlife citation issued in one participating state to a resident of another participating state.

(7) Maximize effective use of law enforcement personnel and information.

(8) Assist court systems in the efficient disposition of wildlife violations.

(c) The purpose of this compact is to:

(1) Provide a means through which a participating state may join in a reciprocal program to effectuate the policies enumerated in subdivision (b) of this article in a uniform and orderly manner.

(2) Provide for the fair and impartial treatment of wildlife violators operating within participating states in recognition of the violator's right to due process and the sovereign status of a participating state.

ARTICLE II

Definitions. As used in this compact, unless the context requires otherwise:

(a) "Citation" means any summons, complaint, summons and complaint, ticket, penalty assessment or other official document issued to a person by a wildlife officer or other peace officer for a wildlife violation which contains an order requiring the person to respond.

(b) "Collateral" means any cash or other security deposited to secure an appearance for trial in connection with the issuance by a wildlife officer or other peace officer of a citation for a wildlife violation.

(c) "Compliance" with respect to a citation means the act of answering a citation through an appearance in a court or tribunal, or through the payment of fines, costs and surcharges, if any.

(d) "Conviction" means a conviction, including any court conviction, for any offense related to the preservation, protection, management or restoration of wildlife which is prohibited by state statute, law, regulation, ordinance or administrative rule, and such conviction shall also include the forfeiture of any bail, bond or other security deposited to secure appearance by a person charged with having committed any such offense, the payment of a penalty assessment, a plea of nolo contendere and the imposition of a deferred or suspended sentence by the

court.

(e) "Court" means a court of law, including magistrate's court and the justice of the peace court.

(f) "Home state" means the state of primary residence of a person.

(g) "Issuing state" means the participating state which issues a wildlife citation to the violator.

(h) "License" means any license, permit or other public document which conveys to the person to whom it was issued the privilege of pursuing, possessing or taking any wildlife regulated by statute, law, regulation, ordinance or administrative rule of a participating state.

(i) "Licensing authority" means the department or division within each participating state which is authorized by law to issue or approve licenses or permits to hunt, fish, trap or possess wildlife.

(j) "Participating state" means any state which enacts legislation to become a member of this wildlife compact.

(k) "Personal recognizance" means an agreement by a person made at the time of issuance of the wildlife citation that such person will comply with the terms of the citation.

(l) "State" means any state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the provinces of Canada and other countries.

(m) "Suspension" means any revocation, denial or withdrawal of any or all license privileges, including the privilege to apply for, purchase or exercise the benefits conferred by any license.

(n) "Terms of the citation" means those conditions and options expressly stated upon the citation.

(o) "Wildlife" means all species of animals including, but not limited to, mammals, birds, fish, reptiles, amphibians, mollusks and crustaceans, which are defined as "wildlife" and are protected or otherwise regulated by statute, law, regulation, ordinance or administrative rule in a participating state. Species included in the definition of "wildlife" vary from state to state and determination of whether a species is "wildlife" for the purposes of this compact shall be based on local law.

(p) "Wildlife law" means any statute, law, regulation, ordinance or administrative rule developed and enacted for the management of wildlife resources and the uses thereof.

(q) "Wildlife officer" means any individual authorized by a participating state to issue a citation for a wildlife violation.

(r) "Wildlife violation" means any cited violation of a statute, law, regulation, ordinance or administrative rule developed and enacted for the management of wildlife resources and the uses thereof.

ARTICLE III

Procedures for issuing state.

(a) When issuing a citation for a wildlife violation, a wildlife officer shall issue a citation to any person whose primary residence is in a participating state in the same manner as though the person were a resident of the issuing state and shall not require such person to post collateral to secure appearance, subject to the exception noted in subdivision (b) of this article, if the officer receives the recognizance of such person that he will comply with the terms of the citation.

(b) Personal recognizance is acceptable (1) if not prohibited by local law or the compact manual and (2) if the violator provides adequate proof of identification to the wildlife officer.

(c) Upon conviction or failure of a person to comply with the terms of a wildlife citation, the appropriate official shall report the conviction or failure to comply to the licensing authority of the participating state in which the wildlife citation was issued. The report shall be made in accordance with procedures specified by the issuing state.

(d) Upon receipt of the report of conviction or noncompliance pursuant to subdivision (c) of this article, the licensing authority of the issuing state shall transmit to the licensing authority of the home state of the violator the information in form and content as prescribed in the compact manual.

ARTICLE IV

Procedure for home state.

(a) Upon receipt of a report from the licensing authority of the issuing state reporting the failure of a violator to comply with the terms of a citation, the licensing authority of the home state shall notify the violator and shall initiate a suspension action in accordance

with the home state's suspension procedures and shall suspend the violator's license privileges until satisfactory evidence of compliance with the terms of the wildlife citation has been furnished by the issuing state to the home state licensing authority. Due process safeguards will be accorded.

(b) Upon receipt of a report of conviction from the licensing authority of the issuing state, the licensing authority of the home state shall enter such conviction in its records and shall treat such conviction as though it occurred in the home state for the purposes of the suspension of license privileges.

(c) The licensing authority of the home state shall maintain a record of actions taken and shall make reports to issuing states.

ARTICLE V

Reciprocal recognition of suspension.

(a) All participating states shall recognize the suspension of license privileges of any person by any participating state as though the violation resulting in the suspension had occurred in their state and could have been the basis for suspension of license privileges in their state.

(b) Each participating state shall communicate suspension information to other participating states in form and content as contained in the compact manual.

ARTICLE VI

Applicability of other laws.

Except as expressly required by provisions of this compact, nothing herein shall be construed to affect the right of any participating state to apply any of its laws relating to license privileges to any person or circumstance or to invalidate or prevent any agreement or other cooperative arrangement between a participating state and a nonparticipating state concerning wildlife law enforcement.

ARTICLE VII

Compact administrator procedures.

(a) For the purpose of administering the provisions of this compact

and to serve as a governing body for the resolution of all matters relating to the operation of this compact, a board of compact administrators is established. The board shall be composed of one representative from each of the participating states to be known as the compact administrator. The compact administrator shall be appointed by the head of the licensing authority of each participating state and shall serve and be subject to removal in accordance with the laws of the state he or she represents. A compact administrator may provide for the discharge of his or her duties and the performance of his or her function as a board member by an alternate. An alternate shall not be entitled to serve unless written notification of his or her identity has been given to the board.

(b) Each member of the board of compact administrators shall be entitled to one vote. No action of the board shall be binding unless taken at a meeting at which a majority of the total number of the board's votes are cast in favor thereof. Action by the board shall be only at a meeting at which a majority of the participating states are represented.

(c) The board shall elect annually from its membership a chair and vice-chair.

(d) The board shall adopt bylaws not inconsistent with the provisions of this compact or the laws of a participating state for the conduct of its business and shall have the power to amend and rescind its bylaws.

(e) The board may accept for any of its purposes and functions under this compact any and all donations and grants of monies, equipment, supplies, materials and services conditional or otherwise, from any state, the United States or any governmental agency, and may receive, utilize and dispose of same.

(f) The board may contract with, or accept services or personnel from, any governmental or intergovernmental agency, individual, firm or corporation, or any private nonprofit organization or institution.

(g) The board shall formulate all necessary procedures and develop uniform forms and documents for administering the provisions of this compact. All procedures and forms adopted pursuant to board action shall be contained in a compact manual.

ARTICLE VIII

Entry into compact and withdrawal.

(a) This compact shall become effective at such time as it is adopted in a substantially similar form by two or more states.

(b) (1) Entry into the compact shall be made by resolution of ratification executed by the authorized officials of the applying state and submitted to the chair of the board.

(2) The resolution shall substantially be in the form and content as provided in the compact manual and shall include the following:

(i) A citation of the authority from which the state is empowered to become a party to this compact; and

(ii) An agreement of compliance with the terms and provisions of this compact.

(3) The effective date of entry shall be specified by the applying state but shall not be less than sixty days after notice has been given (i) by the chair of the board of the compact administrators or (ii) by the secretary of the board to each participating state that the resolution from the applying state has been received.

(c) A participating state may withdraw from participation in this compact by official written notice to each participating state, but withdrawal shall not become effective until ninety days after the notice of withdrawal is given. The notice shall be directed to the compact administrator of each member state. No withdrawal of any state shall affect the validity of this compact as to the remaining participating states.

ARTICLE IX

Amendments to the compact.

(a) This compact may be amended from time to time. Amendments shall be presented in resolution form to the chair of the board of compact administrators and shall be initiated by one or more participating states.

(b) Adoption of an amendment shall require endorsement by all participating states and shall become effective thirty days after the date of the last endorsement.

ARTICLE X

Construction and severability.

This compact shall be liberally construed so as to effectuate the purposes stated herein. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States, or the applicability thereof to any government, agency, individual or circumstance is held invalid, the validity of the remainder of this compact shall not be affected thereby. If this compact shall be held contrary to the constitution of any participating state, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the participating state affected as to all severable matters.

ARTICLE XI

Administration; expenses.

(a) The department of environmental conservation is designated as the licensing authority in this state for purposes of this compact. The commissioner of the department of environmental conservation shall furnish to the appropriate authorities of the participating states any information or documents reasonably necessary to facilitate the administration of this compact.

(b) The compact administrator from this state is not entitled to any additional compensation for his or her service as such but is eligible for reimbursement for expenses incurred in connection with his or her responsibilities as compact administrator in the same manner as expenses incurred in connection with other responsibilities of his or her office or employment.

ARTICLE 13

MARINE AND COASTAL RESOURCES

Title 1. General provisions

3. Marine fisheries

5. The marine and coastal district of New York conservation, education, and research grants program

7. Seagrass protection act

TITLE 1
GENERAL PROVISIONS

Section 13-0101. Short title.
13-0103. Marine and coastal district described.
13-0105. Marine fisheries conservation and management.

§ 13-0101. Short title.

Article 13 together with article 11 of the Environmental Conservation Law shall be known as the Fish and Wildlife Law. Sections of article 13 or of article 11 may be cited either as sections of the Environmental Conservation Law or as sections of the Fish and Wildlife Law.

§ 13-0103. Marine and coastal district described.

The marine and coastal district shall include the waters of the Atlantic Ocean within three nautical miles from the coast line and all other tidal waters within the state, including the Hudson River up to the Governor Mario M. Cuomo bridge.

§ 13-0105. Marine fisheries conservation and management.

1. (a) It is the policy of the state that the primary principle in managing the state's marine fishery resource is to maintain the long-term health and abundance of marine fisheries resources and their habitats, and to ensure that the resources are sustained in usable abundance and diversity for future generations. Utilization and allocation of available resources will be administered consistent with the restoration and maintenance of healthy stocks and habitats. The state shall actively manage its marine fisheries and shall endeavor to: protect and conserve habitats; restore habitats in areas where they have been degraded; and maintain water quality at a level that will foster

occurrence and abundance of marine resources. The state shall optimize the benefits of resource use so as to provide valuable recreational experiences and viable business opportunities for commercial and recreational fisheries.

(b) The marine fisheries conservation and management policy shall be carried out through achievement of the following objectives:

(1) the state shall strive to obtain the best possible scientific information through research and monitoring of the resources;

(2) the state shall use the best available scientific information in managing the resources;

(3) the state recognizes that an informed public is integral to the management system and shall inform and involve constituents in management decisions;

(4) the management of the state's transboundary and migratory species shall be consistent with any interjurisdictional management plans, interstate or state-federal;

(5) in the event that fishery conservation and management require actions that result in resource allocation impacts, the state shall endeavor to assure such allocation impacts are distributed equitably among user groups, giving priority to existing fisheries within the state;

(6) the state shall minimize waste and reduce discard mortality of marine fishery resources;

(7) the state shall investigate and encourage the development of aquaculture of economically important species, both to relieve pressure on and enhance wild stocks and to provide economic opportunity;

(8) the state shall encourage and, when feasible, provide access to the state's marine fishery resources consistent with marine fisheries conservation and management policy; and

(9) the state recognizes that adequate law enforcement services are integral to the success of any marine resource management program and shall endeavor to provide the necessary law enforcement services to ensure the protection of the resources and compliance of users with laws and regulations designed to manage and allocate those resources.

2. Prior to proposing regulations for the management of marine fish, mollusks (Phylum mollusca) or crustaceans (Class crustacea) found in the

marine and coastal district, the department shall identify recreational and commercial fisheries interests which may be affected by the proposed regulations and directly consult with such interests. Such consultation may include, as appropriate, the conduct of meetings with invited representatives of fisheries interests, public information meetings, public hearings, direct mailings of information and public comment solicitations, and publication of proposals and comment solicitations in trade publications, and other measures. Such consultation shall include a meeting with the marine resources advisory council. No consultation shall be required prior to proposing emergency regulations.

3. (a) In reviewing proposed regulations, the council may request comments from harvesters of marine fisheries and the commercial and recreational fishing industries.

(b) The council shall express its advice to the department as the result of a vote of the membership on a recommendation that the proposed regulations be adopted, not adopted, or adopted with specified revisions.

(c) In making its final decision on such regulations, the department shall be guided by the recommendations of the marine resources advisory council and, consistent with the marine fisheries conservation and management policy set forth in subdivision one of this section and the requirements of subparagraph three of paragraph (b) of subdivision one of this section, shall endeavor to incorporate such recommendations in the final rulemaking. The department's assessment of public comment published in the state register shall set forth the council's recommendations and an explanation of the department's final decision in regard to such recommendations and the requirements of this section.

TITLE 3

MARINE FISHERIES

- | | |
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| Section 13-0301. | Lease of state-owned underwater lands for shellfish cultivation. |
| 13-0302. | Lands underwater of Gardiner's and Peconic bays. |
| 13-0303. | Tax on state-owned underwater lands held under lease or franchise for shellfish cultivation. |

- 13-0305. Marking lands prohibited; injury to monuments.
- 13-0307. Sanitary surveys.
- 13-0309. Taking, handling and importation of shellfish; general provisions.
- 13-0310. Northern or lined seahorses; prohibited acts.
- 13-0311. Digger's permit to take shellfish for commercial purposes; when not required.
- 13-0313. Shellfish growers; definitions; bed permit.
- 13-0315. Shellfish shipper's and processor's permit.
- 13-0316. Marine hatcheries; off-bottom and on-bottom culture; permits.
- 13-0317. Shipping tags.
- 13-0319. Shellfish regulations.
- 13-0321. Taking and importation of shellfish for transplanting and other purposes.
- 13-0323. Oysters; prohibited acts.
- 13-0325. Clams; prohibited acts.
- 13-0327. Scallops.
- 13-0328. Commercial licenses; limited entry.
- 13-0329. Lobsters; permit to take; prohibited acts.
- 13-0330. Whelks or conchs; license to take.
- 13-0331. Crabs; permit to take; prohibited acts.
- 13-0333. Menhaden; license; prohibited acts.
- 13-0334. Marine and coastal district food fish and crustacea dealers and shippers license.
- 13-0335. Food fish; license; prohibited acts.
- 13-0336. Marine and coastal district party and charter boat license.
- 13-0337. Return of fish, crustacea and other animals to the water.
- 13-0338. Sharks; department authority; finning prohibited.
- 13-0339. Marine fish; size limits of marine species; sale of marine species.
- 13-0339-a. Atlantic cod (*Gadus morhua*), Atlantic sturgeon (*Acipenser oxyrinchus*), shortnose sturgeon (*Acipenser brevirostrum*), American eel (*Anguilla rostrata*), Atlantic herring (*Clupea harengus*),

American shad (*Alosa sapidissima*), alewife (*Alosa pseudoharengus*), blueback herring (*Alosa aestivalis*), squid (cephalopoda), and hickory shad (*Alosa mediocris*).

- 13-0340. Bluefish (*Pomatomus saltatrix*).
- 13-0340-a. Weakfish (*Cynoscion regalis*).
- 13-0340-b. Fluke - summer flounder (*Paralichthys dentatus*).
- 13-0340-c. Winter flounder (*Pleuronectes americanus*).
- 13-0340-d. Blackfish or tautog (*Tautoga onitis*).
- 13-0340-e. Scup (*Stenotomus chrysops*).
- 13-0340-f. Black sea bass (*Centropristis striata*).
- 13-0340-g. Monkfish (*Lophius americanus*, *Lophius reticulatus* and *Lophius gastrophysus*).
- 13-0340-h. Atlantic bonito (*Sarda sarda*) and false albacore (*Euthynnus alletteratus*).
- 13-0341. Trawls; use prohibited in certain waters.
- 13-0342. Marine fisheries data.
- 13-0343. Nets other than trawls; restrictions on use of nets and trawls.
- 13-0343-a. Fish pots and traps; restrictions.
- 13-0344. Fish, shellfish and crustacea; dumping.
- 13-0345. Protection of waters; cesspools and drains.
- 13-0347. Management of striped bass in marine waters.
- 13-0349. Taking of fish for commercial purposes.
- 13-0350. Marine resources advisory council.
- 13-0355. Recreational marine fishing license.
- 13-0360. Special management areas.
- 13-0371. Atlantic States Marine Fisheries Compact.

§ 13-0301. Lease of state-owned underwater lands for shellfish cultivation.

1. Leases. a. Except as provided in paragraph b of this subdivision, the department may lease state-owned underwater lands within the marine and coastal district for the cultivation of shellfish. The written approval of the office of general services shall be obtained for the

lease of land within five hundred feet of the high water mark.

b. The following lands underwater shall not be leased: (i) lands where there is an indicated presence of shellfish in sufficient quantity and quality and so located as to support significant hand raking or tonging harvesting; (ii) lands where the leasing will result in a significant reduction to established commercial finfish or crustacean fisheries; (iii) lands where bay scallops are produced regularly on a commercial basis; and (iv) lands underwater of Gardiner's and Peconic bays and the tributaries thereof between the westerly shore of Great Peconic bay and an easterly line running from the most easterly point of Plum Island to Goff point at the entrance of Napeague harbor.

2. Regulations. a. Regulations adopted by the department for the implementation and administration of this section shall include regulations with respect to leasing forms and procedures; public notice of leasing; execution of leases; minimum rental fees; bidding procedures; posting and forfeiture of financial security, renewals, termination and assignment of leases; marking and testing of grounds; maintenance of boundary markers; collection of rental and recording fees; submission and approval of cultivation plans; harvesting gear; acreage of lands to be let and term of leases and other matters pertinent to underwater land use and shellfish cultivation.

b. Regulations adopted by the department for the implementation and administration of this section shall include the following requirements: (i) leases shall be awarded after public auction following due notice; (ii) leases shall be awarded to the highest responsible bidder; (iii) bidders shall provide a detailed cultivation plan; and (iv) cultivation of shellfish shall commence within one year of the award of the lease.

3. Summary proceedings. Upon failure to pay the rental on any date due under the terms of the lease or upon revocation, the department may, after written notice to the lessee, declare the lease cancelled as of the date set forth in such notice, and may immediately thereafter evict the lessee from such lands. The provisions of article seven of the real property actions and proceedings law shall apply and govern the

procedure in such cases.

4. Limitations. The commissioner of general services shall not grant or lease lands for shellfish cultivation. The public shall not be excluded from the taking of shellfish from underwater lands granted or leased by such commissioner for other purposes; provided, however, that should any grant or lease made by such commissioner for such other purposes include lands leased by the department for shellfish cultivation the lessee for shellfish cultivation shall have the exclusive right to use and take shellfish from such leased lands for a period of two years from the date of the grant or lease by such commissioner or until the expiration of the shellfish cultivation lease, whichever is the earliest, and may prior to the expiration of such period, remove and transplant the shellfish from such lands to other lands leased, owned or controlled by such lessee.

§ 13-0302. Lands underwater of Gardiner's and Peconic bays.

1. Underwater lands ceded to county of Suffolk. All the right, title and interest in which the people of the state of New York have in and to the lands under water of Gardiner's and Peconic bays in the county of Suffolk, except underwater lands within one thousand feet of the high water mark is hereby ceded to such county, for the purposes of shellfish or seaweed cultivation, to be managed and controlled by such county, provided that such lands shall revert to the state when they shall cease to be used for shellfish or seaweed cultivation. For the purposes of this section, the term "Gardiner's and Peconic bays" shall mean the waters of Gardiner's and Peconic bays and the tributaries thereof between the westerly shore of Great Peconic bay and an easterly line running from the most easterly point of Plum island to Goff point at the entrance of Napeague harbor.

2. Ratification. The grant of lands under the waters of Gardiner's and Peconic bays, by the commissioners of shell fisheries, in accordance with the provisions of chapter 385 of the laws of 1884, as amended, subsequently held and used by the grantees, heirs, successors, and

assigns on which all taxes and assessments have been paid, are hereby ratified and confirmed. Any underwater lands in Gardiner's and Peconic Bays previously granted that revert or escheat to the state or are subject to tax deed by the county of Suffolk shall be available to the county for leasing pursuant to this section. All other lands under such waters, which pursuant to such chapters, have escheated or reverted to the state, are hereby ceded to Suffolk county for the purposes of the cultivation of shellfish or seaweed, subject to existing valid grants and easements; provided however, that nothing in this section shall interfere with the right of the commissioner of general services to grant lands and easements under water to owners of adjacent uplands, pursuant to the provisions of the public lands law, or of the legislature to make such grants without regard to upland ownership, and to grant franchises to utilities, municipalities and governmental, educational, or scientific bodies for cables, outfalls, ecological studies, and experimentation with controlled marine life.

3. Leases for shellfish cultivation. Suffolk county may lease lands under water ceded to it by the state for the purpose of shellfish cultivation. Provided if no such leases have been executed by December thirty-first, two thousand ten, such authority to lease pursuant to this section shall terminate.

a. Leases may be issued only within areas designated as shellfish cultivation zones on a map or maps to be prepared and approved by the county of Suffolk.

b. No lease shall be granted except upon written application on forms furnished by the county of Suffolk, and properly executed and signed by the applicant.

c. Before a lease is approved, notice shall be provided for at least two months by posting such notice at the bureau of marine resources in the department, the office of the county clerk, and the office of the town clerk in which all or any part of the lands to be leased are located. Such notice shall also be published in the official newspaper of the county. The notice shall include the name of the lessee, the

boundaries of the lease, and the area of the lease. A copy of the proposed lease shall be available for public inspection and copying in the office of the county clerk.

4. Establishment of shellfish cultivation zones. Before leasing or using the lands hereby ceded to it, the county of Suffolk shall cause an accurate survey to be made of such lands, and a map or maps to be prepared therefrom. Such map or maps shall establish shellfish cultivation zones within Gardiner's and Peconic bays. Such map or maps shall be approved by local law. After such map or maps have been adopted, the county shall have the authority to issue leases for shellfish cultivation within the shellfish cultivation zones, as provided herein. Such map or maps shall be updated by the county of Suffolk every five years.

a. Underwater lands within one thousand feet of the high water mark shall not be included in a shellfish cultivation zone.

b. Underwater lands where bay scallops are produced regularly and harvested on a commercial basis shall not be included in a shellfish cultivation zone.

c. Underwater lands where there is an indicated presence of shellfish in sufficient quantity and quality and so located as to support significant hand raking and/or tonging harvesting shall not be included in a shellfish cultivation zone.

d. Underwater lands where the leasing will result in a significant reduction of established commercial finfish or crustacean fisheries shall not be included in a shellfish cultivation zone.

5. Regulations for shellfish cultivation. The county shall, by local law, before leasing any such underwater lands, adopt regulations governing:

a. applications for leases;

- b. notices to be given;
- c. the form and terms of leases;
- d. standards for the approval or denial of leases;
- e. administration of leases;
- f. the transfer or renewal of leases;
- g. marking grounds and testing;
- h. fees;
- i. recording of leases;
- j. bonds; and
- k. such other matters as are appropriate to the leasing program.

6. Department authority over shellfish cultivation. Notwithstanding any of the provisions of this section:

a. any person engaging in the cultivation or harvesting of shellfish in a shellfish cultivation zone pursuant to this section shall obtain a permit in accordance with section 13-0316 of this title; and

b. the department shall regulate and control the use of certain types of vessels and equipment for harvesting shellfish, requirements for reseeding, the right to enter upon such leased lands for reseeding or making shellfish population surveys, and enforce all other applicable state laws relating to said underwater lands.

7. Leases for seaweed cultivation. Suffolk county may lease lands under water ceded to it by the state for the purpose of seaweed cultivation, provided if no such leases have been executed by December thirty-first, two thousand thirty-one, such authority to lease pursuant

to this section shall terminate. Nothing shall preclude the county from issuing a single lease to an applicant for both shellfish and seaweed, provided that the application complies with all the requirements of this section. For the purposes of this section, "seaweed" means any marine macroalgae that is native or indigenous to the marine and coastal district and approved by the commissioner for cultivation in the waters of Gardiner's and Peconic bays.

a. Leases may be issued only within areas designated as seaweed cultivation zones on a map or maps to be prepared and approved by the county of Suffolk.

b. No lease shall be granted, except upon written application on forms furnished by the county of Suffolk, and properly executed and signed by the applicant.

c. Before a lease is approved, notice shall be provided for at least two months by posting such notice at the division of marine resources in the department, the office of the county clerk, and the office of the town clerk in which all or any part of the lands to be leased are located. Such notice shall also be published in the official newspaper of the county. The notice shall include the name of the lessee, the boundaries of the lease, and the area of the lease. A copy of the proposed lease shall be available for public inspection and copying in the office of the county clerk.

8. Establishment of seaweed cultivation zones. Before leasing or using the lands hereby ceded to it for seaweed cultivation, the county of Suffolk shall cause an accurate survey to be made of such lands, and a map or maps to be prepared therefrom. Such map or maps shall establish seaweed cultivation zones within Gardiner's and Peconic bays. Such map or maps shall be approved by local law. After such map or maps have been adopted, the county shall have the authority to issue leases for seaweed cultivation within the seaweed cultivation zones, as provided herein. Such map or maps shall be updated by the county of Suffolk every five years.

a. Underwater lands within one thousand feet of the high water mark shall not be included in a seaweed cultivation zone.

b. Underwater lands where bay scallops are produced regularly and harvested on a commercial basis shall not be included in a seaweed cultivation zone.

c. Underwater lands where there is an indicated presence of shellfish in sufficient quantity and quality and so located as to support significant hand raking and/or tonging harvesting shall not be included in a seaweed cultivation zone.

d. Underwater lands where the leasing will result in a significant reduction of established commercial finfish or crustacean fisheries shall not be included in a seaweed cultivation zone.

9. Regulations for seaweed cultivation. The county shall, by local law, before leasing any such underwater lands, adopt regulations governing:

a. applications for leases;

b. notices to be given;

c. the form and terms of leases;

d. standards for the approval or denial of leases;

e. administration of leases;

f. the transfer or renewal of leases;

g. marking grounds and testing;

h. fees;

i. recording of leases;

j. bonds; and

k. such other matters as are appropriate to the leasing program.

10. Department authority over seaweed cultivation. Notwithstanding any of the provisions of this section:

a. any person engaging in the cultivation or harvesting of seaweed in a seaweed cultivation zone pursuant to this section shall obtain all permits required by this chapter;

b. the department may regulate and control the use of certain types of vessels and equipment for harvesting seaweed, requirements for reseeding, the right to enter upon such leased lands, and enforce all other applicable state laws relating to said underwater lands; and

c. any person engaging in the cultivation or harvesting of seaweed in a seaweed cultivation zone pursuant to this section shall obtain a permit in accordance with section 13-0316 of this title.

11. Duties of the county clerk. Leases issued pursuant to this section shall be recorded in the office of the county clerk in the manner and form to be determined by local law as provided in subdivision five of this section.

12. Summary proceedings. Upon the failure of a lessee to pay the rental on any date due under the terms of the lease or upon revocation as provided for by local law pursuant to subdivision five or seven of this section, the county may, after written notice to the lessee declare the lease cancelled as of the date set forth in such notice, and may immediately thereafter evict the lessee from such lands. The provisions of article seven of the real property actions and proceedings law shall apply and govern the procedure in such case.

13. Disposition of fees and rents. All fees and rents received shall be deposited into the general fund of the county. However, in the

alternative, nothing shall prohibit the county of Suffolk, by local law, from establishing a special fund for the promotion of aquaculture where such fees and rents shall be deposited.

14. Suffolk county shall be authorized to allow the underwater lands at Gardiner's and Peconic Bays within the shellfish cultivation zone to be used for the implementation of a pilot program to conduct research and scientific assessment of the feasibility of seaweed cultivation. Such pilot program shall be limited to persons holding a lease from Suffolk county for shellfish cultivation and shall be limited to a total of five acres of such cultivation zone provided that any one person may be authorized to conduct seaweed cultivation on no more than one acre of the lease. Suffolk county shall provide a report to the legislature and the department on the pilot program no later than January first, two thousand twenty-six.

§ 13-0303. Tax on state-owned underwater lands held under lease or franchise for shellfish cultivation.

1. Tax. There shall be an annual tax of one dollar per acre on all state-owned underwater lands held by franchise for shellfish cultivation. The tax shall be levied and assessed by the department before February 1 each year on such lands held on August 1 of the preceding year. Written notice shall be mailed to each grantee showing the number of acres so assessed and the amount of tax thereon. The department shall keep an assessment book showing annually the names and addresses of all grantees, the number and location of acres held by each, the amount of tax payable and date and amount of any tax paid.

2. Payment. Such tax shall be paid on or before April 1 each year. Such tax shall be a first lien upon all the property subject thereto, including the shellfish thereon from February 1 in the year levied.

3. Collection of tax. If any tax shall not be paid on or before April 1, the department shall issue a warrant for collection thereof, with interest thereon at one per centum per month from the day such tax

became due and payable until paid, together with all fees incurred in collecting such tax, and deliver such warrant to the sheriff of the county within whose jurisdiction the lands are situate for collection. All moneys received by the department in payment of taxes and interest thereon shall be accounted for and paid by it, within thirty days after its receipt, to the Division of Finance in the Department of Taxation and Finance, for the benefit of the state.

4. Reversion of lands for non-payment of taxes. Land under water granted to individuals by franchise for shellfish cultivation by the department shall revert to state-owned public grounds if the owner defaults in payment of franchise taxes for a period of one year after such tax became due and payable.

5. Franchises not transferable. Franchised lands under water held for shellfish cultivation when returned to the state by default in payment of taxes may not be assigned, reassigned, or transferred to a new owner or owners. Such lands may be leased by the department for shellfish cultivation as provided in section 13-0301.

6. Tax in lieu of other taxes. The tax imposed by this section shall be in lieu of all other taxes on the property on which it is imposed, and no other tax except as provided herein shall be levied or imposed on such lands, or the shellfish thereon, by any authority whatsoever.

§ 13-0305. Marking lands prohibited; injury to monuments.

1. No person other than the lessee or the department shall mark out or enclose in any manner, any state-owned lands under water for the purpose of planting shellfish thereon or excluding the general public therefrom.

2. No person shall wilfully injure or remove any monument, stake or boundary marker of any kind, placed for the purpose of delineating or locating state owned shellfish lands except by authority of the department.

§ 13-0307. Sanitary surveys.

1. The department periodically shall examine all shellfish lands within the marine district and the Hudson River between the Governor Mario M. Cuomo bridge and the federal dam at Troy to ascertain the sanitary condition thereof in accordance with regulations promulgated pursuant to section 13-0319 of this title.

2. The department, following an examination, shall certify which shellfish lands are in such sanitary condition that shellfish thereon may be taken for use as food. Such lands shall be designated as certified shellfish lands, and all other shellfish lands as uncertified shellfish lands.

3. The department, annually, and as often as it deems necessary, shall publish in a newspaper in the county in which such lands are located a notice containing a description, in plain language, of uncertified shellfish lands and stating that a legal description of such lands is available from the department. The department shall make a legal description of uncertified shellfish lands available to the public upon request.

§ 13-0309. Taking, handling and importation of shellfish; general provisions.

1. a. Shellfish shall not be taken from uncertified lands except as provided in sections 13-0319 and 13-0321.

b. Shellfish from uncertified lands of other states shall not be possessed, transported or trafficked in within this state, except pursuant to permit as provided in sections 13-0319 and 13-0321.

c. Shellfish shall not be shipped or transported into this state except as provided in sections 13-0319 and 13-0321 unless such shellfish are harvested from certified shellfish lands whose quality is equivalent

to or better than that described in regulations promulgated pursuant to section 13-0319.

2. a. Shellfish shall not be taken from sunset to sunrise from any shellfish lands of this state.

b. During the period from one hour after sunset until sunrise, no person, except pursuant to a permit issued by the department, shall possess on board a vessel, or off-load from a vessel, more than the quantities of shellfish allowed to be possessed pursuant to subdivision five of section 13-0311 of this title. Possession of shellfish during the period from one hour after sunset until sunrise in quantities exceeding those set forth in subdivision five of section 13-0311 of this title shall be presumptive evidence of a violation of paragraph a of this subdivision.

3. No dredge or scrape or other device operated by power or by boats propelled by motor or other mechanical means may be used for the taking of shellfish from public or unleased lands under water except that

a. Sea scallops (*Pecten magellanicus*) may be taken from the waters of the Atlantic Ocean by any means.

b. In the taking of soft clams (*Mya arenaria*) on lands below low tide, the practice of churning with a propeller may be employed.

c. Surf, sea, hen or skimmer clams (*Spisula solidissima*; *Spisula polynyma*) and ocean quahogs (*Arctica islandica*) may be taken by mechanical means from the waters of the marine and coastal district, except as limited by any regulations promulgated pursuant to subdivision twelve of this section.

d. The department may permit the taking of shellfish for purposes of transplanting only pursuant to section 13-0321, by mechanical means, except that in the waters of Richmond county the department may permit such taking in waters at a mean low water mark of thirty feet or more.

e. Subject to the provisions of section 13-0327, bay scallops (*Pecten irradians*) may be taken with a dredge or scrape, having an opening at the mouth not to exceed thirty-six inches in width, when towed by a boat operated by mechanical power, or other means provided that such dredge or scrape is brought aboard by hand power without the use of a mechanical device.

f. The department may issue permits for the taking of mussels (*Mytilus edulis*) from underwater lands as hereinafter described by means of dredges not to exceed thirty-six inches in width, which may be equipped to be returned to boatside by means of power or mechanical devices. Mussels (*Mytilus edulis*) may be taken by such means in the following areas:

(1) In Long Island Sound generally easterly of a line extending due north from Herod Point on Long Island including those waters surrounding Fishers Island.

(2) In the Atlantic Ocean easterly of a line extending due south from the rock jetty on the east side of Shinnecock Inlet.

(3) In the bays with state-owned bottomland easterly from the Town of Riverhead to and including Block Island Sound.

(4) The limit on mussels (*Mytilus edulis*) taken in such a manner is fifteen bushels per person per day, not to exceed thirty bushels taken per boat per day. Possession of other shellfish or possession of mussels on a vessel possessing a dredge is presumptive evidence that such shellfish or mussels were taken by such dredge.

g. In the taking of hard clams (*Mercenaria mercenaria*), a pot hauler may be used onboard a vessel to assist in hauling or retrieving a clam rake from the water, provided that the basket attached to the clam rake shall not exceed twenty-six inches in width. For the purposes of this section, "pot hauler" shall mean a mechanically operated device, including but not limited to a winch, reel, windlass or capstan, which is used to haul or retrieve a clam rake from the water and return it to the harvest vessel.

4. No person shall take, carry away, interfere with or disturb shellfish of another, lawfully possessed, planted or cultivated; nor

remove any stakes, buoys or boundary marks of lawfully possessed, planted or cultivated lands. The possession of dredges, rakes or tongs overboard on any such lands shall be deemed presumptive evidence of a violation of this subdivision.

5. All boats, houses and other places, containers and equipment used in the handling of shellfish shall be maintained in a sanitary condition as provided in section 13-0319.

6. Shellfish shall not be treated by the process known as drinking, floating, plumping or swelling, and shellfish so treated shall not be possessed, bought, sold or exposed for sale; provided, however, that shellfish may be retained in water storage as provided in section 13-0319 and provided, further, that nothing herein shall be deemed to prohibit or render unlawful the practice of off-bottom culture of shellfish under permit issued pursuant to section 13-0316 hereof.

7. Shellfish in the shell, or shucked, shall not be washed preparatory to marketing except by the use of water from a water supply approved by the department.

8. The operation, use or placing, for whatever purpose, of dredges, rakes, tongs or other devices for the taking of shellfish in uncertified shellfish lands, except as provided in sections 13-0319 and 13-0321, is prohibited. The department may suspend or cancel the digger's permit of any person who is convicted of a violation of this subdivision or who signs an acknowledgment of a violation of this subdivision for the purpose of effecting a settlement by civil compromise or by stipulation.

9. No person shall in any way alter, damage, mutilate, move or carry away any buoy or marker placed by the department that is used to designate, mark or define the uncertified waters of the state.

10. The department may issue permits for the possession of a stick dredge for purposes it may deem necessary. No person without a permit from the department shall possess a stick dredge in Nassau county, Suffolk county, or in the marine and coastal district. For the purpose

of this section, a stick dredge shall be any tooth-basket combination dredging device whose construction shall allow for the installation of a stick or sticks of any type material whose purpose is to permit the direction of force upon such device and which is commonly used for the taking of *Mercenaria mercenaria* by being towed either directly or indirectly by a motorboat which has its engine engaged.

11. No person without a permit from the department shall possess rakes or tongs, of the type and design normally used by shellfish harvesters for harvesting shellfish from shellfish lands, in Nassau county, Suffolk county or the marine and coastal district except:

a. hand operated tongs having teeth in the heads spaced not less than one inch apart and the basket attached to such tongs having bars not less than fifteen-sixteenths of an inch apart, or

b. hand operated rakes having teeth spaced not less than one inch apart and the basket attached to such rake having bars not less than fifteen-sixteenths of an inch apart.

Rakes or tongs having wire netting or other material between the teeth or bars shall not be used.

12. Notwithstanding any other provision of this chapter or rule or regulation, the department shall fix by regulations open seasons, harvest areas, size limits, catch limits, manner of taking and possession, transportation, identification, sale and permit requirements for surf, sea, hen and skimmer clams (*Spisula solidissima*, *Spisula polynyma*) and ocean quahogs (*Arctica islandica*). Such regulation may provide for, but not be limited to the following:

a. a daily catch limit for surf clams not to exceed eight hundred ninety-six bushels or twenty-eight cages per vessel and a daily catch limit for ocean quahogs not to exceed eight hundred ninety-six bushels or twenty-eight cages per vessel, regardless of the number of permittees aboard such vessel;

b. requirements with respect to number of vessels which may participate in the surf clam and ocean quahog fishery;

c. limitations on harvest within specified periods of time, such as weekly and daily harvest limits, designed to minimize the number of and the duration of closures;

d. qualification of applicants and vessels to participate in the surf clam and ocean quahog fishery;

e. the regulations shall take into consideration and attempt to maintain the economic viability of those portions of the surf clam harvesting and processing industry that have a longstanding investment in the domestic surf clam industry; and

f. the regulations shall take into consideration and attempt to maintain the economic viability of the traditional established New York based commercial surf clam/ocean quahog harvesting industry, processors and packers that rely on this fishery.

13. Possession of shellfish on a vessel equipped with a dredge, scrape or other device operated by power and capable of being used for the taking of shellfish, except a scallop dredge as defined in paragraph e of subdivision three of this section, is presumptive evidence that such shellfish were taken by the use of such dredge, scrape or other device.

14. The department, until April first, two thousand ten shall be entitled to collect fifteen cents per bushel of surf clams and ten cents per bushel of ocean quahogs taken from all certified waters to be deposited in the surf clam/ocean quahog account as provided in section eighty-three of the state finance law.

15. Unless and until regulations are adopted implementing a comprehensive long-term management plan for the protection of surf clams and ocean quahogs in New York waters, the following restrictions shall apply in addition to any consistent regulations adopted prior to the date upon which such section shall take effect:

- a. a weekly catch limit not to exceed twenty-eight cages;
- b. an annual catch limit in certified waters of the Atlantic Ocean for surf clams not to exceed five hundred thousand bushels in the aggregate;
- c. an annual catch limit in certified waters other than the Atlantic Ocean for surf clams not to exceed fifty thousand bushels in the aggregate; and
- d. requiring permittees to report on a weekly basis the number of bushels harvested in the previous seven day period, and provide that the failure to file such weekly report may result in the revocation of such person's permit by the department.

§ 13-0310. Northern or lined seahorses; prohibited acts.

1. No person shall take any northern or lined seahorse (*Hippocampus erectus*) for commercial purposes.
2. The provisions of subdivision one of this section shall not apply to the taking of seahorses for scientific or educational purposes including, but not limited to, public or not-for-profit zoos and aquariums, as determined by the commissioner.

§ 13-0311. Digger's permit to take shellfish for commercial purposes; when not required.

1. Subject to the provisions of this article, a person may take shellfish from under water lands in the state for commercial purposes, including the culling, sorting or tagging of such shellfish, only upon first obtaining a digger's permit from the department, provided, however, that the application for such permit by a person sixteen years of age or under shall be signed by his parent or legal guardian, who shall thereby consent to the issuance of the permit.

2. The department shall prescribe and furnish forms for application for such permit.

3. The fee for such permit shall be fifty dollars for a person domiciled within the state. The fee for persons not domiciled within the state shall be one hundred fifty dollars. Such permit shall expire on December 31 of the year of issue. If it appears in the public interest, the department may, after hearing held on ten day's notice, suspend or cancel such permits, except that in case of a taking from an uncertified area such suspension or cancellation may be without prior notice.

4. The holder of such permit shall not ship or sell shellfish, except to a holder of a valid Class A, B, or E shipper's permit, issued pursuant to section 13-0315 of this title, who has a place of business in the county of Nassau or Suffolk, without first obtaining a shipper's permit as provided in subdivision 1 of section 13-0315.

5. Subject to the provisions of this article, a person may, without permit, take not more than a total of four pecks (one bushel) of shellfish other than bay scallops and not more than four pecks of bay scallops (*Argopecten irradians*) in any one day for the use of such person or such person's family. Within the one bushel total limit of species, other than bay scallops, which may be taken in one day the following species-specific limits shall apply:

a. Hard clams (*Mercenaria mercenaria*). Not more than one hundred individual organisms.

b. Blue mussels (*Mytilus edulis*). Not more than two pecks.

c. Oysters (*Crassostrea virginica*). Not more than two pecks.

d. Soft Clams (*Mya arenaria*). Not more than two pecks.

6. The holder of such digger's permit shall carry the permit assigned to such holder while engaged in the permitted activities, and the

failure by such holder to exhibit the permit to any shellfish inspector, environmental conservation officer, health official, peace officer, acting pursuant to such officers' special duties, police officer or magistrate shall be presumptive evidence that no valid digger's permit has been issued to the person who fails to produce such permit.

7. No person shall take shellfish or assist another in the taking of shellfish in any quantity, including the culling, sorting or tagging of such shellfish, during the time that such person's digger's permit privileges have been revoked or suspended.

8. Endorsed vessels. a. Upon application to the department on forms furnished by the department, a shellfish digger's permit may be endorsed for use on a vessel, in which case such permit shall authorize all persons on board such vessel to engage in the taking of hard clams (*Mercenaria mercenaria*) and oysters (*Crassostrea virginica*), including the culling, sorting, and tagging of such shellfish. Each application shall include a copy of one of the following documents as proof of vessel length: the certificate of documentation for the vessel issued by the United States government, or the registration for the vessel issued by any state government within the United States.

b. The fee for endorsing a shellfish digger's permit to a vessel shall be fifty dollars for a vessel that is forty feet or less in registered length, and one hundred dollars for a vessel that is greater than forty feet in registered length. Such fee shall be in addition to the permit fee provided for in subdivision three of this section.

c. Not more than one rake, tong or other shellfish harvesting device shall be used for the taking of hard clams and oysters at any given time pursuant to a digger's permit which has been endorsed to a vessel.

d. A shellfish digger's permit which has been endorsed to a vessel shall not cover any person whose shellfish digger's permit privileges have been revoked or suspended.

e. The holder of a shellfish digger's permit which has been endorsed

to a vessel shall be on board such vessel at all times when the vessel is being used for the taking of hard clams and oysters.

f. The holder of a shellfish digger's permit which has been endorsed to a vessel shall be liable for all violations of this title that occur on such vessel.

g. If the holder of a shellfish digger's permit which has been endorsed to a vessel is a corporation, the operator of such vessel shall possess a separate shellfish digger's permit issued in the operator's name, and such operator shall be liable for all violations of this title that occur on such vessel.

h. A shellfish digger's permit shall not be endorsed to more than one vessel at any one time.

i. The holder of a shellfish digger's permit which has been endorsed to a vessel shall maintain a daily log indicating the names and addresses of individuals covered by such permit for each day the vessel is used for taking hard clams and oysters and shall make such log available to the department upon request.

§ 13-0313. Shellfish growers; definition; bed permit.

1. Any person resident in this state one year or more may engage in the cultivation and marketing of shellfish subject to the provisions of sections 13-0307, 13-0309, 13-0311 and 13-0319 and shall be known as a grower.

2. A grower shall not take shellfish, for shipping or marketing from lands owned, leased or rented by him, except upon permit of the department which shall certify that such lands lie within certified areas. The department shall prescribe and furnish forms for application for such permits.

3. The fee for such permit shall be twenty-five cents for each acre

from which shellfish are to be taken; provided, however, that the minimum fee shall be five dollars. Such certificates shall expire on December 31 of the year of issue.

4. If it appears in the public interest, the department may suspend or cancel any such permit.

5. Where lands for which such permit has been issued are found to be in part within an uncertified area, the department shall issue without fee, a new permit covering the remaining portion of such lands.

6. In case of assignment or transfer of rights or ownership of any private or leased lands under water, or parts thereof, a new permit shall be required.

§ 13-0315. Shellfish shipper's and processor's permit.

1. Prior to the processing, transportation or shipment of shellfish, either in intra-state or inter-state commerce, an appropriate permit to do so shall be obtained from the department. Such permit shall be required of all shippers and dealers in fresh and frozen shellfish within the state, except retail dealers, and shall certify that the holder thereof has complied with all the requirements of sections 13-0309, 13-0311, 13-0313, 13-0317 and 13-0319 and rules and regulations adopted pursuant thereto.

2. A shellfish shipper's and/or processor's permit shall be issued only to a person eighteen years or older. The department shall prescribe and furnish forms for application for such permit.

3. Applicants shall pay, and the department shall be entitled to receive, fees according to the type of permit issued, as follows:

a. Class A permit. This permit shall allow the holder thereof and any person in the employ of the permit holder, in accordance with regulations adopted pursuant to section 13-0319 of this title, to: (i)

reship shellfish previously shipped by the holder of a class A, B, C, D or E permit issued pursuant to this section, or similar permit issued by the shellfish sanitation control agency of another state or foreign country; (ii) pack or repack shellstock received from the holder of a digger's permit, pursuant to section 13-0311 of this title; or (iii) pack or repack shellstock from the holder of a class A, B, C, D or E permit issued pursuant to this section, or similar permit issued by the shellfish sanitation control agency of another state or foreign country. The fee for a class A permit shall be three hundred dollars.

b. Class B permit. This permit shall allow the holder thereof and any person in the employ of the permit holder to engage in the activities authorized by a class A permit, as described in paragraph a of this subdivision, and to otherwise process shellfish as authorized by regulations adopted pursuant to section 13-0319 of this title. The fee for a class B permit shall be six hundred dollars.

c. Class C permit. This permit shall allow the holder thereof and any person in the employ of the permit holder, in accordance with regulations adopted pursuant to section 13-0319 of this title, to reship shellfish previously shipped by the holder of a class A, B, C, D or E permit issued pursuant to this section, or similar permit issued by the shellfish sanitation control agency of another state or foreign country. The fee for a class C permit shall be two hundred dollars.

d. Class D permit. This permit shall allow the holder thereof, in accordance with regulations adopted pursuant to section 13-0319 of this title, to ship shellstock which the holder has legally harvested from shellfish lands of the state. The fee for a class D permit shall be seventy-five dollars.

e. Class E permit. This permit shall allow the holder thereof, members of the permit holder's immediate family and not more than two employees of the permit holder, in accordance with regulations adopted pursuant to section 13-0319 of this title, to shuck and pack bay scallops which have been received from the holder of a digger's permit, pursuant to section 13-0311 of this title, and to ship such scallops in the form of fresh

shucked stock only in intrastate commerce. The fee for a class E permit shall be fifty dollars.

f. All permits issued pursuant to this section shall expire on the thirty-first of December of the year of issue. The department may suspend or revoke any such permit at any time on failure of the holder thereof to comply with the conditions thereof.

§ 13-0316. Marine hatcheries; off-bottom and on-bottom culture; permits.

1. Marine hatcheries. The department, in its discretion, may issue permits for operation of marine hatcheries. No person shall operate a marine hatchery without first obtaining a permit from the department. The fee for such permit shall be one hundred dollars annually, except that political subdivisions of the state shall be issued permits without fee. Each such permit shall expire on December 31 of the year of issue. A marine hatchery permit entitles the holder thereof, notwithstanding any other provision hereof, to possess, raise and breed marine plant and animal life, including but not limited to shellfish, lobster, crab, shrimp and food fish and to sell the products of a marine hatchery, where less than legal size, to other permitted marine hatcheries, persons holding a valid off-bottom or on-bottom culture permit, persons holding a valid permit issued pursuant to section 11-0515 of this chapter, and, subject to department rules and regulations, to individual or commercial markets for consumption or resale. Products of a marine hatchery of legal size may be sold for consumption or resale. The department may adopt regulations with respect to the purchase, sale, harvesting, transplanting, relaying, receiving, possessing, transporting, exporting or otherwise trafficking in products of a marine hatchery including the sale to individual or commercial markets for consumption or resale.

2. Off-bottom and on-bottom culture. The department, in its discretion, may issue permits for off-bottom and on-bottom culture of marine plant and animal life, including but not limited to shellfish, lobster, crab, shrimp and fish. No person shall engage in such

off-bottom or on-bottom culture without first obtaining a permit from the department. The fee for such permit shall be one hundred dollars annually, except that political subdivisions of the state shall be issued permits without fee. Each such permit shall expire on December 31 of the year of issue. No such permit shall be issued unless the applicant has obtained any necessary permits or licenses required under any state or federal law and has obtained the written authorization of the person or political subdivision having title or legal control of the underwater lands on or above which such on-bottom or off-bottom culture shall take place. An off-bottom or on-bottom culture permit entitles the holder thereof, notwithstanding any other provision hereof, to purchase and possess, from within or without the state, marine plant and animal life of legal and less than legal size for purposes of off-bottom and on-bottom culture only and, subject to department rules and regulations, to sell such marine animal and plant life of less than legal size. Products of off-bottom and on-bottom culture of legal size may be sold to individual or commercial markets for consumption or resale. The department may adopt regulations, necessary to protect the marine environment and public health and safety, with respect to the construction, marketing and maintenance of off-bottom and on-bottom culture structures and the purchase, sale, harvesting, possessing, transporting, importing, exporting, or otherwise trafficking in products of off-bottom or on-bottom culture of marine animal and plant life.

§ 13-0317. Shipping tags.

All persons transporting, importing, exporting or otherwise distributing shellfish shall label or tag the same as provided under section 13-0319.

§ 13-0319. Shellfish regulations.

The department may adopt regulations with respect to the harvesting, transplanting, relaying, receiving, possessing, transporting, importing, exporting, processing, buying, selling of or otherwise trafficking in

shellfish; the labeling or tagging thereof; the keeping of records of shellfish received, transported and distributed; the construction, operation and maintenance of all shellfish handling, processing and distributing establishments, including facilities and equipment and the cleaning, cleansing and water storage of shellfish. The provisions of this section relating to transplanting and relaying include but are not limited to the removal of shellfish from uncertified growing areas and transplanting to certified areas for subsequent harvest for market purposes and transplanting of scallops pursuant to section 13-0327. Such regulations may provide for payment of the reasonable costs of the department of supervision of removal of shellfish from uncertified areas, except where such removal is being undertaken by a municipality or political subdivision. Such regulations shall be drawn in such a manner as to provide adequate sanitary control over all shellfish offered for sale and distribution in the state. Such regulations shall not be less restrictive than the minimum requirements of any federal agency regulating the inter-state shipment of shellfish.

§ 13-0321. Taking and importation of shellfish for transplanting and other purposes.

1. Shellfish may be taken from uncertified shellfish lands for transplanting or other purposes as the department may deem advisable subject to supervision and regulation as provided in section 13-0319.

2. Prior to the taking from uncertified shellfish lands of this state for transplanting or other purposes, a permit shall be obtained from the department and shall be issued for the taking of shellfish from a specific area. Such permit shall be valid only during the period of operations in the uncertified land for which the permit was issued. The holder of such permit may not receive, sell, offer for sale, transport, or ship any shellfish taken pursuant to this permit, except as provided by regulations made pursuant to section 13-0319.

3. Shellfish from certified or uncertified lands without the state shall not be transplanted in this state or imported into this state for

such purposes unless a permit therefor has been obtained from the department.

§ 13-0323. Oysters; prohibited acts.

1. No person shall sell or offer for sale, any oysters, or label or brand any packages containing oysters for shipment or sale under the name of blue point oysters, other than oysters which have been planted and cultivated at least three months in the waters of Great South Bay.

2. In no case shall oysters other than the species *Crassostrea virginica* be planted or transplanted in New York waters without procuring a permit from the department.

3. The department may, until December thirty-first, two thousand twenty-seven, fix by regulation measures for the management of oysters (Family Ostreidae) including size limits, catch and possession limits, open and closed seasons, closed areas, restrictions on the manner of taking and landing, requirements for permits and eligibility therefor, recordkeeping and identification requirements, requirements on the amount and type of fishing effort and gear, and requirements relating to transportation, possession and sale, provided that such regulations are no less restrictive than requirements set forth in this chapter.

§ 13-0325. Clams; prohibited acts.

1. Except for transplanting as provided in section 13-0321, no person shall take, harvest, possess, sell, offer for sale or otherwise trafficked in hard clams (*Mercenaria mercenaria*) measuring less than one inch in thickness.

2. Hard clams less than one inch in thickness may be taken by shellfish growers from leased or privately owned lands other than town lands currently under cultivation by the grower for transplanting to other such lands being cultivated by the same grower, and imported from

another state by a shellfish grower for transplanting to public or private or leased lands under cultivation, provided a permit for each separate transplanting operation is issued by the department subject to provisions of sections 13-0319 and 13-0321. The permit, providing for transplanting hard clams less than one inch in thickness, shall be issued without fee. Such clams shall not be transported to a point without the state.

3. Soft or steamer clams (*Mya arenaria*) less than one and one-half inches in the longest diameter shall not be taken, possessed, bought, sold or otherwise trafficked in.

4. a. Surf, sea, hen or skimmer clams (*Spisula solidissima*; *Spisula polynyma*) less than three inches in the longest diameter shall not be taken, possessed, bought, sold, or otherwise trafficked in except that such clams less than four inches in the longest diameter shall not be taken from the waters of the Atlantic Ocean for use as food.

b. All surf, sea, hen or skimmer clams and ocean quahogs taken from the waters of the marine and coastal district shall be landed in the state of New York.

c. Boats of nonresidents may be licensed to take surf, sea, hen or skimmer clams and ocean quahogs from the waters of the Atlantic Ocean within the marine and coastal district in accordance with paragraph c of subdivision three of section 13-0309 hereof, provided that the boat is registered in a state which accords reciprocal clamming privileges to residents of this state and provided that the owner is a citizen of the United States and a resident of a state according reciprocal privileges to residents of this state. The license shall be issued in the name of the boat and shall be on board during all licensed operations. The fee for said license shall be five hundred dollars per boat. Each license shall expire on the thirty-first day of December next succeeding its issue, and if it appears in the public interest the department may suspend or cancel such license on ten days notice in writing to the holder thereof, except that in case of a taking from an uncertified area, such suspension or cancellation may be without prior notice.

d. Any individual, while participating in the operation of a licensed boat, shall be exempt from the requirements of section 13-0311 but shall not ship or sell shellfish taken by such boat without first obtaining a shellfish shipper's permit as provided for in section 13-0315.

5. Clams shall be culled when taken in accordance with rules and regulations promulgated by the commissioner. Clams which may not be taken, possessed, offered for sale, sold or otherwise trafficked in pursuant to the provisions of subdivision 1, 3 or 4 of this section may compose not to exceed three per centum of any bushel, package or container, when unavoidably taken. Such three per centum shall be determined by the measurement of any bushel, or other package or container of different measurement of clams taken from the catch or in the possession of the person offering the same for sale.

6. Each bushel, or other package or container of different measurement containing an excess of three per centum of clams which may not be taken, possessed, offered for sale, sold or otherwise trafficked in pursuant to the provisions of subdivision 1, 3 or 4 of this section determined by count shall constitute a separate violation.

7. It shall be unlawful to knowingly:

a. Transport, conceal or convey hard shell clams obtained or possessed in contravention of the provisions of this chapter in, upon or by means of any vehicle, vessel or aircraft; or

b. Conceal or possess hard shell clams obtained or possessed in contravention of the provisions of this chapter in or upon any vehicle, vessel or aircraft.

8. The department may, until December thirty-first, two thousand twenty-eight, adopt by regulation measures for the management of hard clams (*Mercenaria mercenaria*), soft or steamer clams (*Mya arenaria*), and razor clams (*Ensis* sp.), including size limits, catch and possession limits, open and closed seasons, closed areas, restrictions on the

manner of taking and landing, requirements for permits and eligibility therefor, recordkeeping and identification requirements, requirements on the amount and type of fishing effort and gear, and requirements relating to transportation, possession and sale, provided that such regulations are no less restrictive than requirements set forth in this chapter.

§ 13-0327. Scallops.

The department may, until December thirty-first, two thousand twenty-seven, adopt by regulation measures for the management of scallops (Family Pectinidae) including size limits, catch and possession limits, open and closed seasons, closed areas, restrictions on the manner of taking and landing, requirements for permits and eligibility therefor, recordkeeping and identification requirements, requirements on the amount and type of fishing effort and gear, and requirements relating to transportation, possession and sale, provided that such regulations are no less restrictive than requirements set forth in this chapter.

§ 13-0328. Commercial licenses; limited entry.

1. Commercial food fish licenses. Commercial food fish licenses provided for by section 13-0335 of this title shall be issued as follows:

a. for the period beginning January first, two thousand eighteen through December thirty-first, two thousand twenty-six, the number of resident commercial food fish licenses and the number of non-resident commercial food fish licenses shall not exceed the following annual limits:

(i) for two thousand eighteen, the number of licenses shall be limited to the number of licenses issued in two thousand seventeen, plus fifty percent of any difference between the number of licenses issued in two thousand seventeen and nine hundred sixty-nine;

(ii) for two thousand nineteen, the number of licenses shall be limited to the number of licenses established in subparagraph (i) of this paragraph;

(iii) for two thousand twenty, the number of licenses shall be limited to the number of licenses established in subparagraph (i) of this paragraph;

(iv) for two thousand twenty-one, the number of licenses shall be limited to the number of licenses established in subparagraph (i) of this paragraph;

(v) for two thousand twenty-two, the number of licenses shall be limited to the number of licenses established in subparagraph (i) of this paragraph;

(vi) for two thousand twenty-three, the number of licenses shall be limited to the number of licenses established in subparagraph (i) of this paragraph;

(vii) for two thousand twenty-four, the number of licenses shall be limited to the number of licenses established in subparagraph (i) of this paragraph;

(viii) for two thousand twenty-five, the number of licenses shall be limited to the number of licenses established in subparagraph (i) of this paragraph; and

(ix) for two thousand twenty-six, the number of licenses shall be limited to the number of licenses established in subparagraph (i) of this paragraph.

b. for the period beginning January first, two thousand twenty-three through December thirty-first, two thousand twenty-six, persons who were issued a commercial food fish license in the previous year shall be eligible to be issued such license.

c. for the period beginning January first, two thousand twenty-three through December thirty-first, two thousand twenty-six, the department shall issue commercial food fish licenses to persons who were not issued such license in the previous year provided that the total number of such licenses issued to such persons does not exceed the difference between the number of licenses established in paragraph a of this subdivision and the number of such licenses issued pursuant to paragraph b of this

subdivision, subject to the following:

(i) licenses shall be issued in the order in which the applications were received, except that where multiple applications are received by the department on the same day, applicants for whom the department has received notice of successful completion of an apprenticeship pursuant to subdivision seven of this section shall be considered by the department prior to other applicants;

(ii) licenses may be issued to individuals only;

(iii) licenses shall be issued to applicants who are sixteen years of age or older at the time of the application; and

(iv) licenses shall be issued only to persons who demonstrate in a manner acceptable to the department that they received an average of at least fifteen thousand dollars of income over three consecutive years from commercial fishing or fishing, or who successfully complete a commercial food fish apprenticeship pursuant to subdivision seven of this section. As used in this subparagraph, "commercial fishing" means the taking and sale of marine resources including fish, shellfish, crustacea or other marine biota and "fishing" means commercial fishing and carrying fishing passengers for hire. Individuals who wish to qualify based on income from "fishing" must hold a valid marine and coastal district party and charter boat license. No more than ten percent of the licenses issued each year based on income eligibility pursuant to this paragraph shall be issued to applicants who qualify based solely upon income derived from operation of or employment by a party or charter boat. For the income evaluation of this subdivision, the department may consider persons who would otherwise be eligible but for having served in the United States armed forces on active duty, provided that such individual (1) has received an honorable or general discharge, or (2) has a qualifying condition, as defined in section one of the veteran's services law, and has received a discharge other than bad conduct or dishonorable from such service, or (3) is a discharged LGBT veteran, as defined in section one of the veteran's services law, and has received a discharge other than bad conduct or dishonorable from such service, shall not be deemed ineligible.

2. Commercial lobster permits. Commercial lobster permits provided for by section 13-0329 of this title shall be issued as follows:

for the period beginning January first, two thousand twenty-three, through December thirty-first, two thousand twenty-six, only persons who were issued a commercial lobster permit in the previous year shall be eligible to be issued such permit.

3. Commercial crab permits. Commercial crab permits provided for by section 13-0331 of this title shall be issued as follows:

a. for the period beginning January first, two thousand eighteen through December thirty-first, two thousand twenty-six, the number of resident commercial crab permits and the number of non-resident commercial crab permits shall not exceed the following annual limits:

(i) for two thousand eighteen, the number of permits shall be limited to the number of permits issued in two thousand seventeen, plus fifty percent of any difference between the number of permits issued in two thousand seventeen and five hundred sixty-three;

(ii) for two thousand nineteen, the number of permits shall be limited to the number of permits established in subparagraph (i) of this paragraph;

(iii) for two thousand twenty, the number of permits shall be limited to the number of permits established in subparagraph (i) of this paragraph;

(iv) for two thousand twenty-one, the number of licenses shall be limited to the number of licenses established in subparagraph (i) of this paragraph;

(v) for two thousand twenty-two, the number of licenses shall be limited to the number of licenses established in subparagraph (i) of this paragraph;

(vi) for two thousand twenty-three, the number of licenses shall be limited to the number of licenses established in subparagraph (i) of this paragraph;

(vii) for two thousand twenty-four, the number of licenses shall be limited to the number of licenses established in subparagraph (i) of this paragraph;

(viii) for two thousand twenty-five, the number of licenses shall be limited to the number of licenses established in subparagraph (i) of

this paragraph; and

(ix) for two thousand twenty-six, the number of licenses shall be limited to the number of licenses established in subparagraph (i) of this paragraph.

b. for the period beginning January first, two thousand twenty-one through December thirty-first, two thousand twenty-six, persons who were issued a commercial crab permit in the previous year shall be eligible to be issued such permit.

c. for the period beginning January first, two thousand twenty-three through December thirty-first, two thousand twenty-six, the department shall issue commercial crab permits to persons who were not issued such permit in the previous year provided that the total number of such permits issued to such persons does not exceed the difference between the number of permits established in paragraph a of this subdivision and the number of such permits issued pursuant to paragraph b of this subdivision, subject to the following:

(i) permits shall be issued in the order in which the applications were received, except that where multiple applications are received by the department on the same day, applicants for whom the department has received notice of successful completion of an apprenticeship pursuant to subdivision seven of this section shall be considered by the department prior to other applicants;

(ii) permits may be issued to individuals only;

(iii) permits shall be issued to applicants who are sixteen years of age or older at the time of the application; and

(iv) permits shall be issued only to persons who demonstrate in a manner acceptable to the department that they received an average of at least fifteen thousand dollars of income over three consecutive years from commercial fishing or fishing, or who successfully complete an apprenticeship pursuant to subdivision seven of this section. As used in this subparagraph, "commercial fishing" means the taking and sale of marine resources including fish, shellfish, crustacea or other marine biota and "fishing" means commercial fishing and carrying fishing passengers for hire. Individuals who wish to qualify based on income from "fishing" must hold a valid marine and coastal district party and

charter boat license. No more than ten percent of the permits issued each year based on income eligibility pursuant to this paragraph shall be issued to applicants who qualify based upon income derived from operation of or employment by a party or charter boat.

4. Commercial whelk or conch licenses. Commercial whelk or conch licenses provided for by section 13-0330 of this title shall be issued as follows:

a. for the period beginning January first, two thousand eighteen through December thirty-first, two thousand twenty-six, the number of resident commercial whelk or conch licenses and the number of non-resident commercial whelk or conch licenses shall not exceed the following annual limits:

(i) for two thousand eighteen, the number of licenses shall be limited to the number of licenses issued in two thousand seventeen plus fifty percent of any difference between the number of licenses issued in two thousand seventeen and two hundred fifty-two;

(ii) for two thousand nineteen, the number of licenses shall be limited to the number of licenses established in subparagraph (i) of this paragraph;

(iii) for two thousand twenty, the number of licenses shall be limited to the number of licenses established in subparagraph (i) of this paragraph;

(iv) for two thousand twenty-one, the number of licenses shall be limited to the number of licenses established in subparagraph (i) of this paragraph;

(v) for two thousand twenty-two, the number of licenses shall be limited to the number of licenses established in subparagraph (i) of this paragraph;

(vi) for two thousand twenty-three, the number of licenses shall be limited to the number of licenses established in subparagraph (i) of this paragraph;

(vii) for two thousand twenty-four, the number of licenses shall be limited to the number of licenses established in subparagraph (i) of this paragraph;

(viii) for two thousand twenty-five, the number of licenses shall be

limited to the number of licenses established in subparagraph (i) of this paragraph; and

(ix) for two thousand twenty-six, the number of licenses shall be limited to the number of licenses established in subparagraph (i) of this paragraph.

b. for the period beginning January first, two thousand twenty-three through December thirty-first, two thousand twenty-six, persons who were issued a commercial whelk or conch license in the previous year shall be eligible to be issued such license.

c. for the period beginning January first, two thousand twenty-three through December thirty-first, two thousand twenty-six, persons who were not issued a commercial whelk or conch license in the previous year shall be eligible to be issued such license provided that the total number of such licenses issued to such persons shall not exceed the difference between the number of licenses established in paragraph a of this subdivision and the number of such licenses issued pursuant to paragraph b of this subdivision, subject to the following:

(i) licenses shall be issued in the order in which the applications were received, except that where multiple applications are received by the department on the same day, applicants for whom the department has received notice of successful completion of an apprenticeship pursuant to subdivision seven of this section shall be considered by the department prior to other applicants;

(ii) licenses may be issued to individuals only;

(iii) licenses shall be issued to applicants who are sixteen years of age or older at the time of the application; and

(iv) licenses shall be issued only to persons who demonstrate in a manner acceptable to the department that they received an average of at least fifteen thousand dollars of income over three consecutive years from commercial fishing or fishing, or who successfully complete an apprenticeship pursuant to subdivision seven of this section. As used in this subparagraph, "commercial fishing" means the taking and sale of marine resources including fish, shellfish, crustacea or other marine biota and "fishing" means commercial fishing and carrying fishing passengers for hire. Individuals who wish to qualify based on income

from "fishing" must hold a valid marine and coastal district party and charter boat license. No more than ten percent of the licenses issued each year pursuant to this paragraph shall be issued to applicants who qualify based upon income derived from operation of or employment by a party or charter boat.

5. Marine and coastal district party and charter boat licenses. Marine and coastal district party and charter boat licenses provided for by section 13-0336 of this title shall be issued as follows, except that this subdivision shall not apply to the owner or operator of a party boat or charter boat whose vessel is classified by the United States Coast Guard as an Inspected Passenger Vessel and which is licensed to carry more than six passengers:

a. for the years two thousand twenty-three through two thousand twenty-six, the annual number of marine and coastal district party and charter boat licenses issued shall not exceed five hundred seventeen.

b. for the years two thousand twenty-three through two thousand twenty-six, persons who were issued a marine and coastal district party and charter boat license in the previous year shall be eligible to be issued such license.

c. for the years two thousand twenty-three through two thousand twenty-six, the department shall issue marine and coastal district party and charter boat licenses to persons who were not issued such license in the previous year, provided that the total number of licenses issued does not exceed five hundred seventeen, subject to the following:

(i) licenses shall be issued in the order in which the applications were received;

(ii) licenses shall be issued only to persons who hold an Uninspected Passenger Vessel license issued by the United States Coast Guard.

6. License or permit reissuance.

a. Notwithstanding the provisions of subdivisions one, two, three and four of this section, the department may permit reissuance of a license

or permit to a member of the immediate family of the prior holder of such license or permit; provided that the individual to whom the license or permit is being reissued is at least sixteen years of age. The department may permit a license or permit holder to designate in writing a member of his or her immediate family to whom the license or permit shall be reissued in the event that the license or permit holder dies prior to surrendering his or her license or permit to the department.

b. In the event that a designated immediate family member does not wish to engage in the commercial fishing activities authorized by such license or permit, the department may permit such person to identify an alternate person to whom the license or permit shall be reissued. The department is authorized to adopt regulations concerning the reissuance of licenses or permits pursuant to this subdivision.

c. The holder of a reissued license or permit shall engage in the activity authorized by the license or permit within three years of the reissuance date. If the license or permit holder fails to engage in such activity during the three years following reissuance, the license or permit shall lapse at the end of the three year period and shall not be renewed unless the department, in its discretion, determines that the license or permit holder's inactivity was justified by significant hardship or unavoidable circumstances.

d. For purposes of this section, "immediate family" shall include spouse, sibling, parent, child, grandparent, grandchild, and, in addition, all persons who are related by blood, marriage or adoption to the permit holder and domiciled in the house of the license or permit holder.

7. Commercial license apprenticeship program. The department is authorized to adopt regulations establishing an apprenticeship program for persons who wish to obtain a commercial crab permit pursuant to section 13-0331 of this title, a commercial food fish license pursuant to section 13-0335 of this title or a commercial whelk (conch) license pursuant to section 13-0330 of this title. Upon successful completion of the apprenticeship program, a person shall become eligible to receive a

commercial crab permit, commercial food fish license or a commercial whelk (conch) license, as applicable, subject to the provisions of paragraph c of subdivision one, paragraph c of subdivision three, and paragraph c of subdivision four of this section, respectively.

§ 13-0329. Lobsters; permit to take; prohibited acts.

1. Any person domiciled within the state may take and land lobsters (*Homarus americanus*) from the waters of the state or land lobsters in the state taken elsewhere upon first obtaining a permit from the department. There shall be two classes of permits: a non-commercial permit, the fee for which shall be ten dollars, and a commercial permit, the fee for which shall be one hundred fifty dollars. A non-commercial permit shall allow the holder to set no more than five lobster pots and to take or land in any one day no more than six legal lobsters by this or any other legal method for the holder's own or family use. Holders of non-commercial permits shall not sell, offer for sale, trade or barter, or otherwise traffic in lobsters so taken. A commercial permit shall allow the holder to set any number of pots and use any other legal method for taking lobsters with no restriction on the number of legal lobsters that may be taken, landed or possessed except that on the waters of Long Island Sound and its adjoining bays, harbors and estuaries (herein defined as all waters of the state north of the northern shore lines of Long Island, Plum Island, Little Gull Island, Great Gull Island and Fishers Island and all the waters of the state north of the waters that separate those islands from each other) a person holding a commercial permit who is a person operating or owning or on board a dragger or any vessel used to operate any net defined as a trawl in section 13-0341 shall not take, land nor possess any lobsters or parts thereof unless there are no such nets on board, attached to in any way, or being used by such vessel. This prohibition on the taking of lobsters by the use of a trawl shall not allow the use of a trawl in any waters where it is prohibited by sections 13-0341 and 13-0343. The department shall furnish forms for application for both classes of permits. A non-commercial permit shall be issued to an individual. A commercial permit shall be issued to an individual and it may be

endorsed for use on a fishing vessel, in which case it shall cover all persons on board such vessel. The holder of a commercial permit shall be liable for all violations that occur on the vessel for which the holder's permit is endorsed. The holder of a permit shall carry on his or her person or post on his or her vessel such permit at all times when fishing for lobsters. Except as provided in subdivision six of this section, the permit holder must be present at all times while the privileges of such permit are being exercised and while lobster fishing gear owned by the permit holder is being set out or retrieved. The holder of a commercial permit may endorse such permit to only one vessel at any one time and shall be on board such vessel at all times when it is used for fishing for lobsters.

2. a. A person not domiciled within the state but who is domiciled in a state that provides reciprocal permits or licenses to persons domiciled in New York state may, upon first obtaining a permit from the department, take and land lobsters only from the waters of the state westerly and southerly of a straight line drawn from the Flashing Green Light Number 9 Whistle Buoy at Cerebus Shoals (located approximately seven miles northwesterly to Montauk Point) northwesterly to Race Rock and thence due north to the New York-Connecticut interstate boundary line; and may land lobsters taken outside New York state waters.

b. The fee for such lobster permit shall be two hundred twenty-five dollars. The permit shall be issued to an individual and may be endorsed for use on a fishing vessel in which case it shall cover all persons on board such vessel. Except as provided in subdivision six of this section, the permit holder must be present at all times while the privileges of such permit are being exercised and while lobster fishing gear owned by the permit holder is being set out or retrieved. The holder of such permit shall be liable for all violations that occur on any vessel for which the permit may be endorsed. The holder of such permit shall carry on his or her person or post on his or her vessel such permit at all times when fishing for lobsters. The holder of a commercial permit may endorse such permit to only one vessel at any one time and shall be on board such vessel at all times when it is used for fishing for lobsters.

c. On the waters of Long Island Sound and its adjoining bays, harbors and estuaries (as defined in subdivision 1 of this section) a person holding such permit who is a person operating or owning or on board a dragger or any vessel used to operate a trawl as defined in section 13-0341 shall not take, land nor possess any lobsters or parts thereof unless there are no such nets on board, attached to in any way, or being used by such vessel. This prohibition on the taking of lobsters by the use of a trawl shall not allow the use of a trawl in any waters where it is prohibited by sections 13-0341 and 13-0343.

d. A person not domiciled in the state who is not qualified to hold a lobster permit under paragraph a of this subdivision, or person domiciled within the state who is not eligible to obtain a commercial lobster permit under subdivision one of this section, may obtain a permit to land lobsters in the state which have been legally taken outside the state. The fee for a lobster landing permit shall be three hundred dollars.

e. The department shall prescribe and furnish forms for such permits.

3. a. Lobster permits shall be non transferable and shall expire on December 31 of the year of issue. If it appears in the public interest, the department may suspend or cancel any such permit on ten days' written notice to the holder thereof.

b. No person who has had any such permit suspended or revoked shall take or land lobsters or aid in the taking or landing of lobsters until such permit has been reinstated or a new permit is issued.

c. A person who holds a permit to take or land lobsters shall notify the department of any change of address within thirty days of such change.

4. Buoys or markers of prescribed design may be used in designating the location of licensed lobster pots or traps in such manner as shall be required by the department.

5. a. Except as provided in subdivisions 13, 16 and 18 of this section, only lobsters measuring three and three-eighths inches or more and five and one-quarter inches or less may be taken, possessed, bought, sold, imported and exported. All measurements are from the rear end of the eye socket along a line parallel to the center line of the body shell (carapace) to the rear end of the body shell (carapace).

b. A lobster that has been damaged or mutilated to the extent that its length from the rear end of the eye socket along a line parallel to the center line of the body shell (carapace) to the rear end of the body shell (carapace) cannot be determined shall not be possessed, sold or offered for sale, trade or barter.

c. Lobsters in spawn shall not be taken or possessed at any time. Eggs shall not be removed from such lobsters.

d. The landing or possession, in the marine district, of lobster, or parts thereof, not in the shell, detached lobster tails or claws, or any other part of a lobster that has been separated from the lobster by any person who has a lobster permit issued by the state is prohibited.

e. The landing or possession of any V-notched female lobster is prohibited. This prohibition applies to all persons other than a final purchaser or consumer. V-notched female lobster shall mean any female lobster bearing a V-shaped notch (i.e. a straight-sided triangular cut without setal hairs, at least one-quarter inch in depth and tapering to a sharp point) in the flipper next to the right of the center flipper as viewed from the rear of the female lobster. V-notched female lobster also means any female which is mutilated in a manner which could hide, obscure or obliterate such a mark. The right flipper will be examined when the underside of the lobster is down and its tail is toward the person making the determination; however, the department shall have the authority to adopt by rule or regulation a modified definition of "V-notched female lobster" to reflect any changes to the definition the Atlantic States Marine Fisheries Commission may adopt.

6. No person other than the licensee shall set out, tend, haul or unduly disturb, or take or remove lobsters from, a lobster pot or trap or other commercial gear, or damage, take, remove or possess such gear. Possession of such gear without the consent of the licensee shall be considered prima facie evidence of violation of this subdivision. Provided, however, that in the event of a temporary emergency, a licensee may provide written authorization for a different licensee to haul and remove lobster from the licensee's pots or traps. A copy of such written authorization shall be filed with the department and the department shall determine what constitutes a temporary emergency and the appropriate maximum duration of a temporary emergency for the purposes of this subdivision.

7. a. Lobsters may be taken only by lobster pots, traps, otter trawls or similar devices, or by skin diving, including the use of self-contained underwater breathing apparatus (SCUBA), or by hand. The use of spears, gigs, gaffs, or other penetrating devices to take lobsters is prohibited.

b. The landing of more than one hundred lobsters per twenty-four hour period by gear or methods other than lobster traps or pots is prohibited. The landing of more than five hundred lobsters by gear or methods other than lobster traps or pots during a trip lasting five days or longer is prohibited.

8. A person shall not be issued a permit to take or land lobsters in New York state if said person had a license or permit to take or land lobsters in another state which has been suspended or revoked for an illegal act which is also an illegal act in New York state until such suspension or revocation has been terminated. Upon receipt of information from another state that a license or permit of a person to take or land lobsters has been suspended or revoked for an illegal act which is also an illegal act in New York state, said person, if he holds such a permit in New York state, shall have his New York permit suspended or revoked until such suspension or revocation by another state has been terminated.

9. On the waters of Long Island Sound and its adjoining bays, harbors and estuaries (as defined in subdivision one of this section) lobsters shall not be taken by any method from one hour after sunset to one hour before sunrise. The provisions of this subdivision shall not apply to the taking of lobsters by skin diving, including the use of self-contained underwater breathing apparatus (SCUBA), by holders of a valid resident non-commercial lobster permit.

10. A holder of a commercial lobster license may apply for a permit to fish a gill net as permitted in paragraph (b) of subdivision fifteen of section 13-0343 of this chapter. This permit is to be used for the purposes of obtaining bait fish to be used solely by the permittee to pursue his lobster fishery. Bait so taken shall not be sold.

11. In order to reduce mortality of lobster due to lost traps and pots, the department may adopt regulations requiring escape panels and vents in such traps and pots and describing their design, configuration, composition, size and any other necessary characteristics. Any such regulations shall be consistent with the Interstate Management Plan for American Lobster prepared by the Atlantic States Marine Fisheries Commission.

12. Lobsters shall not be transferred from one vessel to another vessel on the waters of Long Island Sound or its adjacent bays, harbors and estuaries, except that nothing in this section shall prohibit the unloading of lobsters, lawfully taken and possessed, in harbor at a vessel's permanent mooring to a transfer vessel for the purpose of transporting such lawfully taken and possessed lobsters to land.

13. The department may issue a permit, revocable at pleasure, to any person to import, possess, buy or sell lobsters of less than the size permitted to be taken and possessed pursuant to this section for scientific and educational purposes only.

14. Possession of a lobster trap or pot with a volume larger than twenty-two thousand nine hundred fifty cubic inches is prohibited.

15. (a) The department shall adopt regulations to implement and administer a lobster trap tag program. Such regulations shall be consistent with the specific requirements of the lobster fishery management plan adopted by the Atlantic States Marine Fisheries Commission and any other applicable federal lobster trap tag regulations. Lobster trap tags shall be issued by the department or an agent authorized by the department. The cost to affected permittees for each tag shall not be more than the cost of production and distribution of each tag and shall not exceed the sum of twenty cents.

(b) If the department administers a lobster trap tag program, any funds derived from such program and received by the department shall be deposited into the marine resource account established pursuant to subparagraph (i) of paragraph three of subdivision (a) of section eighty-three of the state finance law.

16. The department may, until December thirty-first, two thousand twenty-seven, adopt regulations for Atlantic States Marine Fisheries Commission Areas One, Two, Three, Four, Five, and Outer Cape Cod, to implement conservation measures that affect landings of lobsters, pursuant to the recommendations of the respective Area's Lobster Conservation Management Team as required by the Interstate Fishery Management Plan for American Lobster adopted by the Atlantic States Marine Fisheries Commission.

* 17. a. No lobster may be taken from Atlantic States Marine Fisheries Commission Area Six from September eighth through November twenty-eighth pursuant to the recommendations of the Area's Lobster Conservation Management Team as required by the Interstate Fishery Plan for Lobsters adopted by the Atlantic States Marine Fisheries Commission.

b. During the September eighth through November twenty-eighth closure, lobster permit holders who use lobster traps or pots shall remove lobster traps and pots from the water by September twenty-second.

c. No lobster trap or pot may be in the water from September twenty-second until November fourteenth unless the lobster permit holder also holds a permit or license that authorizes them to harvest other species from their lobster traps or pots.

d. Lobster permit holders may set unbaited lobster traps or pots beginning November fourteenth.

e. Lobster permit holders may set baited lobster traps or pots beginning November twenty-first.

* NB Repealed December 31, 2027

18. a. Lobsters greater in length than provided in subdivision 5 of this section may be imported into the state and possessed for exportation provided that:

i. The lobsters were legally taken in the state or country where the lobsters were landed, and, if applicable, the Atlantic States Marine Fisheries Commission Area where the lobsters were taken;

ii. The lobsters were placed in containers and sealed with tamper proof seals acceptable to the department in the state or country where the lobsters were landed;

iii. The lobsters remain in the sealed containers at all times while the lobsters are possessed in the state, including the placement of the sealed containers in holding tanks in the state;

iv. Each sealed container is accompanied with a label, invoice, bill of lading, purchase order or manifest identifying the state or country where the lobsters were landed, and, if applicable, the Atlantic States Marine Fisheries Commission Area where the lobsters were taken, the number of lobsters contained therein, and the date the container was sealed; and

v. The lobsters are imported, possessed and exported to or by a person licensed pursuant to section 13-0334 of this title.

b. Lobsters greater in length than provided in subdivision 5 of this section may be imported, possessed, sold or offered for sale in the state provided that:

i. The lobsters were legally taken in the state or country where the lobsters were landed, and, if applicable, the Atlantic States Marine Fisheries Commission Area where the lobsters were taken;

ii. Each lobster is tagged in the state or country where the lobster was landed with a tamper resistant tag acceptable to the department. The tag shall be attached to the lobster and identify the state or country where the lobster was landed and, if applicable, the Atlantic States Marine Fisheries Commission Area where the lobster was taken;

iii. The tag must remain on the lobster until it is sold to the end consumer in the state, including while in a holding tank in a restaurant or retail outlet;

iv. Each shipment of tagged lobsters is accompanied with a label, invoice, bill of lading, purchase order or manifest identifying the state or country and, if applicable, the Atlantic States Marine Fisheries Commission Area where the lobsters were taken, the number of lobsters contained therein, and the date or dates the lobsters were harvested; and

v. The lobsters are imported, possessed and sold or offered for sale in the state by a person licensed pursuant to section 13-0334 of this title.

c. The department may promulgate regulations necessary to implement this subdivision.

19. Lobsters, or parts thereof, not in the shell, detached lobster tails or claws, or any other part of a lobster that has been separated from the lobster may only be possessed, purchased, offered for sale, trade or barter, imported, or exported, provided:

a. The lobster was legally taken in the state or country where the lobster was landed, and, if applicable, the Atlantic States Marine Fisheries Commission Area where the lobster was taken;

b. The lobster parts are packaged with labels identifying the state, or country where the lobster was taken and if applicable, the Atlantic States Marine Fisheries Commission Area. Lobster parts must be packaged and properly labeled prior to being possessed, sold, purchased or imported in the state.

§ 13-0330. Whelks or conchs; license to take.

1. A person domiciled within the state may take whelks or conchs (*Busycon* spp.) for commercial purposes from the waters of the state upon first obtaining a license from the department.

a. The department shall prescribe and furnish forms for application for such permit.

b. The fee for such whelk license shall be thirty dollars.

2. A person not domiciled in the state who is domiciled in a state that provides reciprocal permits or licenses to persons domiciled in New York state may take whelks or conchs (*Busycon* spp.) for commercial purposes upon first obtaining a license from the department.

a. The department shall prescribe and furnish forms for application for such permit.

b. The fee for such whelk license shall be fifty dollars.

3. Whelk licenses shall be non-transferable, and shall expire on the last day of December of each year.

4. The holder of a whelk license must be present and must have the license in possession and available for inspection at all times when the privileges of the license are being exercised.

5. For purposes of this section, "commercial purposes" shall mean the

taking or landing of twenty-five or more whelks in any one day.

6. The department may, until December thirty-first, two thousand twenty-nine, fix by regulation measures for the management of whelk or conch (*Busycon* and *Busycotypus* spp.), including size limits, catch and possession limits, open and closed seasons, closed areas, restrictions on the manner of taking and landing, requirements for permits and eligibility therefor, recordkeeping requirements, requirements on the amount and type of fishing effort and gear, and requirements relating to transportation, possession and sale, provided that such regulations are no less restrictive than requirements set forth in this chapter and provided further that such regulations are consistent with the compliance requirements of applicable fishery management plans adopted by the Atlantic States Marine Fisheries Commission and with applicable provisions of fishery management plans adopted pursuant to the Federal Fishery Conservation and Management Act (16 U.S.C. § 1800 et seq.).

§ 13-0331. Crabs; permit to take; prohibited acts.

* 1. No person shall take crabs, including horseshoe crabs (*Limulus* sp.) for commercial purposes without first obtaining a permit from the department. For purposes of this subdivision, a presumption of "commercial purposes" shall be made wherein one takes or lands more than fifty crabs in any one day or sells or barter or offers for sale or barter any crabs he or she has taken. Permits shall be issued to individuals only but may be endorsed for use on a vessel, in which case it shall cover all persons on board such vessel.

* NB Effective until January 1, 2029

* 1. No person shall take crabs for commercial purposes without first obtaining a permit from the department. For purposes of this subdivision, a presumption of "commercial purposes" shall be made wherein one takes or lands more than fifty crabs in any one day or sells or barter or offers for sale or barter any crabs such person has taken. Permits shall be issued to individuals only but may be endorsed for use on a vessel, in which case it shall cover all persons on board such vessel.

* NB Effective January 1, 2029

1-a. The department may, until December thirty-first, two thousand twenty-six, fix by regulation the limit of Jonah crabs that may be taken for commercial purposes by commercial crab permit holders and by holders of New York commercial lobster licenses provided that such regulations shall be consistent with the compliance requirements of applicable fishery management plans adopted by the Atlantic States Marine Fisheries Commission and with applicable provisions of fishery management plans adopted pursuant to the Federal Fishery Conservation and Management Act (16 U.S.C. section 1800 et seq.).

2. A person domiciled within the state may take crabs, for commercial purposes, from the waters of the state upon first obtaining a crabbing permit from the department.

a. The department shall prescribe and furnish forms for application for such permit.

b. The fee for such crabbing permit shall be thirty dollars.

3. A person not domiciled in the state who is domiciled in a state that provides reciprocal permits or licenses to persons domiciled in New York state may take crabs, for commercial purposes, upon first obtaining a crabbing permit from the department.

a. The department shall prescribe and furnish forms for application for such permit.

b. The fee for such crabbing permit shall be fifty dollars.

4. Permits are not transferable and shall expire on December 31 following the date of issue. If it appears in the public interest, the department may suspend or cancel such permits without prior notice.

5. Female crabs with eggs visible thereon, commonly called sponge crabs, or any female crabs from which the egg pouch or bunion has been removed, shall not be taken, possessed, transported or offered for sale

at any time.

6. Crabs shall not be taken by dredging in the waters of Richmond county; Hempstead Bay and South Oyster Bay in the county of Nassau; or in the waters of Great South Bay west of Captree bridge in the county of Suffolk.

* 7. The department may, until December thirty-first, two thousand twenty-nine, fix by regulation measures for the management of crabs of any kind including horseshoe crabs (*Limulus* sp.), including minimum and maximum size limits, catch and possession limits, open and closed seasons including lunar closures, closed areas, restrictions on the manner of taking and landing including a prohibition on the harvest of crabs in amplexus, requirements for permits and eligibility therefor, recordkeeping requirements, requirements on the amount and type of fishing effort and gear, and requirements relating to transportation, possession and sale, provided that such regulations are no less restrictive than requirements set forth in this chapter and provided further that such regulations are consistent with the compliance requirements of applicable fishery management plans adopted by the Atlantic States Marine Fisheries Commission and with applicable provisions of fishery management plans adopted pursuant to the Federal Fishery Conservation and Management Act (16 U.S.C. § 1800 et seq.).

* NB Effective until January 1, 2029

* 7. The department may, until December thirty-first, two thousand twenty-nine, fix by regulation measures for the management of crabs of any kind, excluding horseshoe crabs (*Limulus* sp.), including minimum and maximum size limits, catch and possession limits, open and closed seasons including lunar closures, closed areas, restrictions on the manner of taking and landing including a prohibition on the harvest of crabs in amplexus, requirements for permits and eligibility therefor, recordkeeping requirements, requirements on the amount and type of fishing effort and gear, and requirements relating to transportation, possession and sale, provided that such regulations are no less restrictive than requirements set forth in this chapter and provided further that such regulations are consistent with the compliance requirements of applicable fishery management plans adopted by the Atlantic States Marine Fisheries Commission and with applicable

provisions of fishery management plans adopted pursuant to the Federal Fishery Conservation and Management Act (16 U.S.C. § 1800 et seq.).

* NB Effective January 1, 2029

* 8. The department shall, when adopting regulation measures for the management of horseshoe crabs (*Limulus* sp.) pursuant to subdivision seven of this section, consult with any town, village or county that requests any municipal property be subject to a harvest closure.

* NB Effective until January 1, 2029

* 8. No person shall take horseshoe crabs (*Limulus* sp.), including for commercial or biomedical purposes, from the waters of this state. Provided however that this section shall not apply to the taking of horseshoe crabs (*Limulus* sp.) for bona fide scientific or educational purposes including, but not limited to, public or not-for-profit zoos and aquaria, as determined by the commissioner pursuant to rules and regulations.

* NB Effective January 1, 2029

§ 13-0333. Menhaden; prohibited acts.

Menhaden (*Brevoortia tyrannus*) from which oil or meal is made, subject to the provisions of section 13-0343, may not be taken from the waters of the marine district with a purse seine; provided however, that the department shall have the authority to issue a temporary order allowing the use of purse seines for taking menhaden, pursuant to temporary permits, if the department determines that there is an imminent risk of a fish kill resulting from the presence of unusually large amounts of menhaden in waters of the marine and coastal district in or adjacent to waterbody segments that are characteristic of locations likely to experience fish kills or that have a history of hypoxia. Prior to issuing such temporary order, the department shall first consider other fishing methods authorized under this chapter, including but not limited to beach seines, and shall only issue a temporary order if the department determines that such other fishing methods will not sufficiently mitigate the conditions precipitating the potential fish kill. Such order shall include the department's justification for the use of purse seines, time, geography, and poundage specifications, and

any other conditions that the department deems appropriate and shall be posted on the department's website. Following the adoption of such an order, the department may issue temporary permits, not to exceed fourteen days and subject to the conditions of the department's temporary order, allowing for the harvest of menhaden.

§ 13-0334. Marine and coastal district food fish and crustacea dealers and shippers license.

1. No person shall purchase marine food fish or crustacea, whether to be used as food or bait, directly from the person taking such marine food fish or crustacea for the purpose of resale trade or barter without a valid food fish and crustacea dealers and shippers license. No person shall operate a facility for packing, holding or storing such marine food fish or crustacea prior to consignment, transport or sale without a valid food fish and crustacea dealers and shippers license.

2. No person shall ship, transport or traffic in marine food fish or crustacea for resale, trade or barter to persons other than the final consumer within the state or export food fish or crustacea landed in New York to outside the state without a valid food fish and crustacea dealers and shippers license. No such license shall be required of common carriers who transport marine food fish or crustacea. Such common carrier must carry and have ready for inspection any bill of consignment, bill of lading or other documentation showing thereon the name and address of the consignee, name and address of the shipper, the date of the shipment and the quantity of each species shipped. For purposes of this section, "common carrier" shall mean persons engaged solely in the transport of food fish or crustaceans which have been consigned or sold by a licensed harvester or by a licensed dealer and shipper to a licensed dealer and shipper within the state or to another party outside the state. A common carrier shall hold no title, ownership or financial interest in the food fish or crustacean being transported. No such license shall be required of a person who is the holder of a food fish license, a lobster license or a blue-claw crab license issued pursuant to section 13-0335, 13-0329 or 13-0331, respectively, while

transporting the species which he or she has lawfully and personally taken. For purposes of this section, "landed" means the bringing to any shore food fish or crustacea taken by a holder of a license issued pursuant to this article or the transfer of the catch taken pursuant to this article from a vessel to any other vessel or to the land or to any pier, wharf, dock or other similar structure.

3. No person who is the holder of a commercial food fish license or a commercial lobster license or a commercial crab license shall sell, trade or barter marine food fish or crustacea in New York state except to the holder of a marine and coastal district food fish and crustacea dealers and shippers license. Provided, however, that persons who possess commercial food fish, lobster, or crab licenses may sell the marine food fish or crustacea they are authorized to take for commercial purposes directly to the consumer of such marine food fish or crustacea and that such licensed harvesters shall report to the department such direct sales to consumers pursuant to paragraph a of subdivision one of section 13-0342.

4. The fee for a food fish and crustacea dealers and shippers license shall be two hundred fifty dollars and shall cover all persons employed by the licensee. Licenses issued pursuant to this section shall be valid for a single business address, shall be nontransferable and shall expire on the thirty-first day of December of each year.

5. No person licensed as a dealer or shipper shall purchase or ship marine food fish or crustacea directly from the taker of marine food fish or crustacea unless the taker presents the appropriate valid license to the person making the purchase. No person who operates a facility for the packing, holding or storing of marine food fish or crustacea prior to consignment, transport or sale shall accept such product without requiring the taker to provide his or her name, address and appropriate valid license number, the date, and quantities of product in the transaction.

6. A licensed dealer or shipper may only import, export, possess, or offer for sale, barter, or trade, lobsters greater in length than

provided by subdivision 5 of section 13-0329 of this title if:

a. The licensed dealer or shipper has notified the department in writing prior to taking such action on a form prescribed by the department; and

b. The lobsters are in a secured container in accordance with paragraph a of subdivision 18 of section 13-0329 of this title or tagged in accordance with paragraph b of subdivision 18 of section 13-0329 of this title.

7. No person licensed as a dealer or shipper may import, export, possess, or offer for sale, barter, trade, lobsters, or parts thereof, not in the shell, detached lobster tails or claws, or any other part of a lobster that has been separated from the lobster except as authorized by subdivision 19 of section 13-0329 of this title.

§ 13-0335. Food fish; license; prohibited acts.

1. A person who is domiciled in the state may take and land food fish for commercial purposes, upon obtaining a marine commercial food fishing license, except as prohibited by this chapter, from the waters of the marine and coastal district and may land food fish taken from waters outside New York state boundaries for commercial purposes. For purposes of this section "commercial purposes" shall mean the taking of food fish by any method for subsequent sale, trade or barter or to offer for sale, trade or barter and the taking of food fish when setting, maintaining, operating or using nets, except cast nets, not in excess of twenty feet in diameter, when operated by hand for the purposes of taking only Atlantic menhaden (*Brevoortia tyrannus*) and mullets (*Mugil spp*), for recreational purposes only, seines not larger than thirty feet long or four feet deep or lift nets not larger than sixteen square feet; traps, except bait traps not more than thirty inches in length; combs; pots; or hook and line, except by angling. The fee for such license shall be two hundred fifty dollars, and shall cover all persons employed by the licensee while engaged in such employment of commercial fishing.

2. A person not domiciled in the state may take food fish, except as prohibited by this chapter, from the waters of the marine and coastal district and may land food fish taken from outside New York state boundaries for commercial purposes upon first obtaining a commercial fishing license. The fee for such license shall be one thousand two hundred fifty dollars, and shall cover all persons employed by the licensee while engaged in such employment of commercial fishing. Such licenses shall be issued only to persons domiciled in states offering reciprocal fishing privileges to persons domiciled in New York state and which implemented the size limits and other management strategies recommended in fisheries management plans or amendments thereto adopted by the Atlantic States Marine Fisheries Commission or the regional management councils as provided in the Fisheries Conservation and Management Act (16 USC 1800 et seq.) which have been implemented in New York State. Such license shall only be issued during the month of January of each year.

3. A person may land food fish, except as prohibited by this chapter and except blackfish or tautog (*tautoga onitis*), taken from waters outside the marine and coastal district for commercial purposes upon first obtaining a marine and coastal district food fish landing license. The fee for such marine and coastal district food fish landing license shall be five hundred dollars and shall cover all persons employed by the licensee while engaged in such employment of landing food fish.

4. Licenses issued under this section shall be non-transferable and shall expire on the last day of December of each year. Such licenses shall be issued annually and the department shall not limit the number of licenses issued. The department may, in its discretion and after an opportunity for a hearing, revoke any such license of any person who has been convicted of a violation of title three of this article or who signs an acknowledgment of such violation for the purpose of effecting a settlement by civil compromise or by stipulation. The application for any such license by a person under the age of sixteen shall be signed by his parent or guardian who shall thereby consent to its issuance.

5. It shall be unlawful for any person to render food fish into fertilizer.

6. No person shall intentionally disturb or without the consent of the licensee take or remove fish or crustacea from any legally set or operated nets or other commercial gear, or damage, take, remove or possess any such net or gear. Possession of any such net or gear without the consent of the licensee shall be considered prima facie evidence of a violation of this subdivision.

7. The holder of any license issued pursuant to this section shall display the license and/or have the license available for inspection according to such rules and regulations as the department may promulgate.

8. The provisions of sections 13-0311, 13-0329, 13-0331 and 13-0333 of this title shall be applicable to lobsters, crabs, shellfish and menhaden and no license therefor shall be required pursuant to this section.

9. Notwithstanding the provisions of subdivision one of this section, a person may, upon obtaining a marine bait permit, take marine bait fish and sell such fish as bait at retail only, subject to the following restrictions:

a. Only Atlantic menhaden, silversides (*Minidia* spp.) and killifish (*Fundulus* spp.) may be taken and sold pursuant to this subdivision.

b. Bait fish to be sold pursuant to this subdivision may be taken only using cast nets not larger than twenty feet in diameter, seines not larger than thirty feet in length or four feet in depth, or lift nets not larger than sixteen square feet or bait traps not more than thirty inches in length.

c. Marine bait permits shall be available to any person at a fee of fifty dollars, shall be non-transferable, and shall expire on December thirty-first of the year of issue and shall identify the business name

and address of the single retail business at which the bait taken pursuant to the permit may be sold.

d. The holder of a marine bait fish permit must be present and have the permit in possession and available for inspection at all times when the bait harvesting privileges of the permit are being exercised.

§ 13-0336. Marine and coastal district party and charter boat license.

1. No owner or operator of a party boat or charter boat shall carry recreational fishing passengers in the marine and coastal district or land fish taken outside the territorial waters of the state without holding a party or charter boat license issued by the department for an annual fee of two hundred fifty dollars and a recreational marine fishing registration issued by the department. Such license and registration shall be issued only to persons domiciled in the state or in a state which affords reciprocal fishing privileges to persons domiciled in New York. Such license and registration shall be available on the vessel at all times. For purposes of this subdivision, party boats and charter boats are vessels used to carry passengers for hire wherein a fee is charged, either directly or indirectly, for the purpose of taking or attempting to take marine fish for recreational purposes.

2. Party and charter boat licenses shall expire on December thirty-first of each year.

§ 13-0337. Return of fish, crustacea and other animals to the water.

1. If any fish or crustacea are unintentionally taken contrary to any provisions of the Fish and Wildlife Law, they shall be returned to the water at once, without unnecessary injury.

2. Starfish, drills (*Urosalpinx cinerea*), periwinkle (*Litorinia*) and drum fish (*Pogonias chromis*) when taken shall not be returned alive to the waters of the state.

§ 13-0338. Sharks; department authority; finning prohibited.

1. For purposes of this section:

a. "Shark" means any species of the subclass Elasmobranchii except species in the order Batoidei;

b. "Finning" means the removal of a fin or fins from a shark and not retaining the remainder of the shark's carcass; and

c. "Shark fin" means the raw, dried or otherwise processed detached fin including the tail.

2. No person shall engage in finning on the waters of the marine and coastal district.

3. a. No person shall possess, sell, offer for sale, trade or distribute a shark fin; provided, however, that this prohibition shall not apply to any shark fin that was taken from a spiny dogfish (*Squalus acanthias*) or a smooth dogfish (*Mustelus canis*) lawfully caught by a licensed commercial fisherman.

b. A shark fin may be possessed by any person if the shark was lawfully caught and the person has a recreational marine fishing registration or a license or permit from the department for bona fide scientific research or educational purposes.

4. The department may, until December thirty-first, two thousand twenty-nine, fix by regulation measures for the management of sharks, including size limits, catch and possession limits, open and closed seasons, closed areas, restrictions on the manner of taking and landing, requirements for permits and eligibility therefor, recordkeeping requirements, requirements on the amount and type of fishing effort and gear, and requirements relating to transportation, possession and sale, provided that such regulations are no less restrictive than requirements

set forth in this chapter and provided further that such regulations are consistent with the compliance requirements of applicable fishery management plans adopted by the Atlantic States Marine Fisheries Commission and with applicable provisions of fishery management plans adopted pursuant to the Federal Fishery Conservation and Management Act (16 U.S.C. §1800 et seq.).

* 5. Sharks, excluding spiny dogfish, shall not be taken for commercial or recreational purposes by baited hooking except with the use of non-stainless steel non-offset circle hooks. In addition, no person shall conduct, sponsor or participate in any shark tournament unless said tournament's rules and regulations require the exclusive use of non-stainless steel non-offset circle hooks.

* NB Repealed December 31, 2026

§ 13-0339. Marine fish; size limits of marine species; sale of marine species.

1. a. The taking of fish with nets in the marine and coastal district is governed by sections 13-0333, 13-0335, 13-0341, 13-0343, 13-0347 and 11-1521, and regulations adopted pursuant to sections 11-0303, 11-1303, 13-0338, 13-0339-a, 13-0340, 13-0340-a, 13-0340-b, 13-0340-c, 13-0340-d, 13-0340-e, 13-0340-f and 13-0340-g of this chapter. The taking of fish by other means, in the marine and coastal district, is governed by title 13 of article 11 of the Fish and Wildlife Law, subject to restrictions in section 13-0343 as to certain waters, and to provisions of sections 13-0347 and 11-1521 and regulations adopted pursuant to section 11-0303 of this chapter as to striped bass and sections 13-0338, 13-0339-a, 13-0340, 13-0340-a, 13-0340-b, 13-0340-c, 13-0340-d, 13-0340-e, 13-0340-f and 13-0340-g as to other species of marine fish. The taking, and sale or taking for sale, of certain bait fish are governed by section 11-1315 of this chapter.

b. Open seasons, minimum size limits and catch limits for fish other than the marine species named in subdivisions 2 and 3 of this section are specified by regulations adopted pursuant to sections 11-0303, 11-1303, 13-0338, 13-0339-a, 13-0340, 13-0340-a, 13-0340-b, 13-0340-c,

13-0340-d, 13-0340-e, 13-0340-f and 13-0340-g of this chapter. All shortnose sturgeon irrespective of size and all Atlantic sturgeon under the size limits prescribed by regulations adopted pursuant to section 11-1303 of this chapter taken in gill nets shall be immediately returned to the water without unnecessary injury. Other fish named by regulations adopted pursuant to sections 11-0303, 11-1303, 13-0338, 13-0339-a, 13-0340, 13-0340-a, 13-0340-b, 13-0340-c, 13-0340-d, 13-0340-e, 13-0340-f and 13-0340-g of this chapter and under the size limits prescribed in such regulations, shall not be bought, sold or trafficked in.

c. The sale, possession and transportation of fish, other than the marine species named in subdivisions 2 and 3 of this section are governed by sections 11-1319, 11-1521 and 13-0347, and regulations adopted pursuant to sections 11-0303, 11-1303, 13-0338, 13-0339-a, 13-0340, 13-0340-a, 13-0340-b, 13-0340-c, 13-0340-d, 13-0340-e, 13-0340-f and 13-0340-g of this chapter.

2. Fluke or summer flounder (*Paralichthys dentatus*) and southern flounder (*Paralichthys lethostigma*) less than fourteen inches in length, weakfish (*Cynoscion regalis*) less than twelve inches in length, Atlantic cod (*Gadus morhua*) less than nineteen inches in length, porgy or scup (*Stenotomus chrysops*) less than seven inches, black sea bass (*Centropristis striata*) less than nine inches, and winter flounder (*Pleuorenetes americanus*) less than eleven inches in length may not be taken by angling for recreational purposes.

3. Fluke or summer flounder (*Paralichthys dentatus*) and southern flounder (*Paralichthys lethostigma*) less than fourteen inches; blue fish (*Pomatomus saltatrix*) less than nine inches; porgy or scup (*Stenotomus chrysops*) less than nine inches; weakfish (*Cynoscion regalis*) less than twelve inches; mackerel (*Scomber scombrus*) less than seven inches; black sea bass (*Centropristis striata*) less than nine inches; Atlantic cod (*Gadus morhua*) less than nineteen inches; winter flounder (*Pleuorenetes americanus*) less than twelve inches, may not be taken or possessed for commercial purposes or transported for commercial purposes nor bought, sold or offered for sale. For purposes of this subdivision, commercial

purposes includes use of any form of net, comb, dredge or hook and line, except angling.

4. All length measurements in this section shall be taken as the total length which is defined as the longest straight-line measurement from the most anterior or forward part of the fish with the jaws closed to the tip of the tail. The tail rays of a fish with a forked tail may be squeezed together to give the longest overall measurement.

5. Blue marlin (*Makaira nigricans*), white marlin (*Tetrapturus albidus*), sailfish (*Istiophorus platypterus*), and longbill spearfish (*Tetrapturus pfluegeri*) shall not be bought, sold or offered for sale. Striped marlin (*Tetrapturus audax*), black marlin (*Makaira indica*), shortbill spearfish (*Tetrapturus angustirostris*) shall not be bought, sold or offered for sale unless identified and tagged as such prior to entry into the state. Such identification and tag shall include at a minimum, the species of billfish and the place of initial landing.

§ 13-0339-a. Atlantic cod (*Gadus morhua*), Atlantic sturgeon (*Acipenser oxyrinchus*), shortnose sturgeon (*Acipenser brevirostrum*), American eel (*Anguilla rostrata*), Atlantic herring (*Clupea harengus*), American shad (*Alosa sapidissima*), alewife (*Alosa pseudoharengus*), blueback herring (*Alosa aestivalis*), squid (cephalopoda), and hickory shad (*Alosa mediocris*).

1. The department may fix, by regulation, measures for the management of the following species:

a. Atlantic cod (*Gadus morhua*) until December thirty-first, two thousand twenty-nine,

b. American eel (*Anguilla rostrata*) until December thirty-first, two thousand twenty-nine,

c. Atlantic and shortnose sturgeon (*Acipenser oxyrinchus* and

brevirostrum) until December thirty-first, two thousand twenty-nine,

d. Atlantic herring (*Clupea harengus*) until December thirty-first, two thousand twenty-nine,

e. American shad (*Alosa sapidissima*) until December thirty-first, two thousand twenty-eight,

f. alewife (*Alosa pseudoharengus*) until December thirty-first, two thousand twenty-eight,

g. blueback herring (*Alosa aestivalis*) until December thirty-first, two thousand twenty-nine,

h. squid (cephalopoda) until December thirty-first, two thousand twenty-nine, and

i. hickory shad (*Alosa mediocris*) until December thirty-first, two thousand twenty-eight.

2. Such management regulations may include size limits, catch and possession limits, open and closed seasons, closed areas, restrictions on the manner of taking and landing, requirements for permits and eligibility therefor, recordkeeping requirements, requirements on the amount and type of fishing effort and gear, and requirements relating to transportation, possession and sale, provided that such regulations are no less restrictive than requirements set forth in this chapter and provided further that such regulations are consistent with the compliance requirements of applicable fishery management plans adopted by the Atlantic States Marine Fisheries Commission and with applicable provisions of fishery management plans adopted pursuant to the Federal Fishery Conservation and Management Act (16 U.S.C. § 1800 et seq.).

§ 13-0340. Bluefish (*Pomatomus saltatrix*).

The department may, until December thirty-first, two thousand

twenty-eight, fix by regulation measures for the management of bluefish (*Pomatomus saltatrix*), including size limits, catch and possession limits, open and closed seasons, closed areas, restrictions on the manner of taking and landing, requirements for permits and eligibility therefor, recordkeeping requirements, requirements on the amount and type of fishing effort and gear, and requirements relating to transportation, possession and sale, provided that such regulations are no less restrictive than requirements set forth in this chapter and provided further that such regulations are consistent with the compliance requirements of applicable fishery management plans adopted by the Atlantic States Marine Fisheries Commission and with applicable provisions of fishery management plans adopted pursuant to the Federal Fishery Conservation and Management Act (16 U.S.C. § 1800 et seq.).

§ 13-0340-a. Weakfish (*Cynoscion regalis*).

The department may, until December thirty-first, two thousand twenty-eight, fix by regulation measures for the management of weakfish (*Cynoscion regalis*), including size limits, catch and possession limits, open and closed seasons, closed areas, restrictions on the manner of taking and landing, requirements for permits and eligibility therefor, recordkeeping requirements, requirements on the amount and type of fishing effort and gear, and requirements relating to transportation, possession and sale, provided that such regulations are no less restrictive than requirements set forth in this chapter and provided further that such regulations are consistent with the compliance requirements of applicable fishery management plans adopted by the Atlantic States Marine Fisheries Commission and with applicable provisions of fishery management plans adopted pursuant to the Federal Fishery Conservation and Management Act (16 U.S.C. § 1800 et seq.).

§ 13-0340-b. Fluke - summer flounder (*Paralichthys dentatus*).

The department may, until December thirty-first, two thousand twenty-nine, fix by regulation measures for the management of fluke or

summer flounder (*Paralichthys dentatus*), including size limits, catch and possession limits, open and closed seasons, closed areas, restrictions on the manner of taking and landing, requirements for permits and eligibility therefor, recordkeeping requirements, requirements on the amount and type of fishing effort and gear, and requirements relating to transportation, possession and sale, provided that such regulations are no less restrictive than requirements set forth in this chapter and provided further that such regulations are consistent with the compliance requirements of applicable fishery management plans adopted by the Atlantic States Marine Fisheries Commission and with applicable provisions of fishery management plans adopted pursuant to the Federal Fishery Conservation and Management Act (16 U.S.C. § 1800 et seq.).

§ 13-0340-c. Winter flounder (*Pleurenectes americanus*).

The department may, until December thirty-first, two thousand twenty-nine, fix by regulation measures for the management of winter flounder (*Pleurenectes americanus*), including size limits, catch and possession limits, open and closed seasons, closed areas, restrictions on the manner of taking and landing, requirements for permits and eligibility therefor, recordkeeping requirements, requirements on the amount and type of fishing effort and gear, and requirements relating to transportation, possession and sale, provided that such regulations are no less restrictive than requirements set forth in this chapter and provided further that such regulations are consistent with the compliance requirements of applicable fishery management plans adopted by the Atlantic States Marine Fisheries Commission and with applicable provisions of fishery management plans adopted pursuant to the Federal Fishery Conservation and Management Act (16 U.S.C. § 1800 et seq.).

§ 13-0340-d. Blackfish or tautog (*Tautoga onitis*).

1. The department may, until December thirty-first, two thousand twenty-eight, fix by regulation measures for the management of blackfish

(*Tautoga onitis*), including size limits, catch and possession limits, open and closed seasons, closed areas, restrictions on the manner of taking and landing, requirements for permits and eligibility therefor, recordkeeping requirements, requirements on the amount and type of fishing effort and gear, and requirements relating to transportation, possession and sale, provided that such regulations are no less restrictive than requirements set forth in this chapter and provided further that such regulations are consistent with the compliance requirements of applicable fishery management plans adopted by the Atlantic States Marine Fisheries Commission and with applicable provisions of fishery management plans adopted pursuant to the Federal Fishery Conservation and Management Act (16 U.S.C. § 1800 et seq.).

2. The commercial possession limit for blackfish (*tautog*) shall be 25 per trip per vessel.

§ 13-0340-e. Scup (*Stenotomus chrysops*).

The department may, until December thirty-first, two thousand twenty-nine, fix by regulation measures for the management of scup (*Stenotomus chrysops*), including size limits, catch and possession limits, open and closed seasons, closed areas, restrictions on the manner of taking and landing, requirements for permits and eligibility therefor, recordkeeping requirements, requirements on the amount and type of fishing effort and gear, and requirements relating to transportation, possession and sale, provided that such regulations are no less restrictive than requirements set forth in this chapter and provided further that such regulations are consistent with the compliance requirements of applicable fishery management plans adopted by the Atlantic States Marine Fisheries Commission and with applicable provisions of fishery management plans adopted pursuant to the Federal Fishery Conservation and Management Act (16 U.S.C. § 1800 et seq.).

§ 13-0340-f. Black sea bass (*Centropristis striata*).

The department may, until December thirty-first, two thousand twenty-nine, fix by regulation measures for the management of black sea bass (*Centropristis striata*), including size limits, catch and possession limits, open and closed seasons, closed areas, restrictions on the manner of taking and landing, requirements for permits and eligibility therefor, recordkeeping requirements, requirements on the amount and type of fishing effort and gear and requirements relating to transportation, possession and sale, provided that such regulations are no less restrictive than requirements set forth in this chapter and provided further that such regulations are consistent with the compliance requirements of applicable fishery management plans adopted by the Atlantic States Marine Fisheries Commission and with applicable provisions of fishery management plans adopted pursuant to the Federal Fishery Conservation and Management Act (16 U.S.C. § 1800 et seq.).

§ 13-0340-g. Monkfish (*Lophius americanus*, *Lophius reticulatus* and *Lophius gastrophysus*).

The department may, until December thirty-first, two thousand twenty-seven, fix by regulation measures for the management of monkfish (*Lophius americanus*, *Lophius reticulatus* and *Lophius gastrophysus*), including size limits, catch and possession limits, open and closed seasons, closed areas, restrictions on the manner of taking and landing, requirements for permits and eligibility therefor, recordkeeping requirements, requirements on the amount and type of fishing effort and gear, and requirements relating to transportation, possession and sale, provided that such regulations are no less restrictive than requirements set forth in this chapter and provided further that such regulations are consistent with the compliance requirements of applicable fishery management plans adopted by the Atlantic States Marine Fisheries Commission and with applicable provisions of fishery management plans adopted pursuant to the Federal Fishery Conservation and Management Act (16 U.S.C. § 1800 et seq.).

§ 13-0340-h. Atlantic bonito (*Sarda sarda*) and false albacore (*Euthynnus*

alletteratus).

The department may, until December thirty-first, two thousand twenty-nine, fix by regulation measures for the management of Atlantic bonito (*Sarda sarda*) and false albacore (*Euthynnus alletteratus*) including size limits, catch and possession limits, open and closed seasons, closed areas, restrictions on the manner of taking and landing, requirements for permits and eligibility therefor, recordkeeping requirements, requirements on the amount and type of fishing effort and gear, and requirements relating to transportation, possession and sale, provided that such regulations are no less restrictive than requirements set forth in this chapter and provided further that such regulations are consistent with the compliance requirements of applicable fishery management plans adopted by the Atlantic States Marine Fisheries Commission and with applicable provisions of fishery management plans adopted pursuant to the Federal Fishery Conservation and Management Act (16 U.S.C. § 1800 et seq.).

§ 13-0341. Trawls; use prohibited in certain waters.

For the purposes of this chapter, a trawl shall be defined as a net which is towed or dragged through the water column, capturing fish by straining the water, but shall not include a seine which is used to encircle fish. The term trawl shall include but not be limited to the otter trawl, the beam trawl, the Paranzella or two-boat trawl, the pair trawl, the Danish seine and the Scottish seine. Trawls shall not be set or used in the water areas of the marine district described in the following subdivisions:

1. In the waters of the county of Richmond and in the counties of Kings or Queens, northerly and westerly of a line from the sea end of the breakwater at Rockaway Point to Romer Shoal lighthouse, including Jamaica Bay and its adjacent bays, inlets, creeks and basins.

2. a. In the Atlantic Ocean within one-half mile of the coastline and in all connecting tidal waters inshore of the coastline, from Rockaway

Inlet Jetty at Rockaway Point to the Town of Babylon bathing pavilion at Cedar Island Beach, and in all tidal waters inshore of a line from the Town of Babylon bathing pavilion to the sea buoy (BW S-I, Bell) at the entrance of Fire Island Inlet and thence to the seaward end of Fire Island Inlet Jetty at Democrat Point.

b. Seaward of Rockaway Inlet within an arc with a radius of one and one-half miles measured from the point at 40°32.4' N latitude, 73°56.5' W longitude, which is at or near the most southerly terminus of the Rockaway Inlet Jetty at Rockaway Point.

c. Seaward of East Rockaway Inlet within an arc with a radius of one and one-half miles measured from the point at 40°34.9' N latitude, 73°45.3' W longitude, which is at or near the most southerly terminus of the East Rockaway Inlet Jetty at Silver Point.

d. Seaward of Jones Inlet within an arc with a radius of two miles measured from the point at 40°34.4' N latitude, 73°34.6' W longitude, which is at or near the most southerly terminus of the East (Short Beach side) Inlet Jetty, during the period January 1 through June 14.

e. Seaward of Fire Island Inlet within an arc with a radius of two miles measured from the point at 40°37.2' N latitude, 73°18.4' W longitude, which is at or near the most southerly terminus of the Fire Island Inlet Jetty at Democrat Point, during the period January 1 through June 14.

3. In Mecox Inlet within one-half mile of the narrowest part of the mouth of such inlet and seaward of Moriches and Shinnecock Inlets within separate arcs each with a radius of one and one-half miles measured from a point for Moriches Inlet at 40°45.4' N latitude, 72°45.2' W longitude, and for Shinnecock Inlet at 40°50.2' N latitude, 72°28.3' W longitude, which points are midway between the points at the most southerly termini of the east and west jetties at the entrance to each inlet.

4. In the Harlem River and the East River east of the Robert F. Kennedy Bridge and in Long Island Sound west of a line drawn from

Hewlett's (King's) Point to the north end of Hart Island, thence to the south end of Glen Island, and in their adjacent bays, coves, creeks and confluent waters.

5. In Flanders Bay, Great Peconic Bay, Little Peconic Bay, Noyac Bay and Shelter Island Sound, including all waters forming a part thereof or tributary thereto, lying westerly of an imaginary line extending from the most southerly point of Orient State Park to the most easterly point of Shelter Island, also known as Ram Head, and from this point in a generally southerly direction to the most northerly point of Cedar Point, including all of Orient Harbor, Hallock Bay and Northwest Harbor.

6. In the county of Suffolk in the waters lying westerly of an imaginary line extending in a southerly direction from the most easterly end of Plum Island to the most northerly end of Gardiners Island, and westerly of Gardiners Island, and westerly of a line extending in a southerly direction from the most southerly end of Gardiners Island to Goff Point; provided, however, that vessels and motorboats owned and operated by citizens who are residents of the state may be used in such waters in connection with the operation of trawls and other types of nets towed by such boats and vessels. Nothing in this subdivision shall be construed as legalizing the operation of any trawls in the waters described in subdivision 5 of this section.

7. In Long Island Sound, including all waters forming a part thereof or which are tributary thereto: a. west of an imaginary line from the New York-Connecticut boundary shore line extending easterly and southerly to Eaton's Point Neck on Long Island from April 1 to November 1.

b. South of a line from Hewlett Point on Great Neck eastward to Sands Point on Manhasset Neck, then to Matinick Point, then to Oak Neck Point, then to Rocky Point at Centre Island, then to Lloyd Point, then to Eaton's Neck Point, buoy 13, then to buoy "1" (privately maintained) off the Northport Power Plant, then to buoy "NR" off the north of the Nissequogue river, then to buoy "1" off Stony Brook Harbor, and then to Crane Neck Point.

c. In the Nissequogue River.

d. Within Stony Brook Harbor.

e. Within one-half mile of the shore between an imaginary line extending north from Crane Neck Point and an imaginary line extending north from the shore intersect of the Riverhead-Brookhaven town line near Wading River, including all bays, harbors and tributaries landward thereof, including Port Jefferson Harbor, Conscience Bay, Setauket Harbor and Mount Sinai Harbor.

f. Within one mile of the shore of Fishers Island, or between the shore of Fishers Island and the Connecticut-New York State boundary line wherever such boundary line is within less than one mile of the shore of Fishers Island.

8. In the waters of the Great South Bay, Moriches Bay and Shinnecock Bay, including all tidal waters and all waters forming a part thereof or tributary thereto.

9. The department is authorized to adopt regulations prescribing the minimum size net mesh, and the manner in which such nets may be possessed and used, in trawl fisheries for summer and winter flounder.

§ 13-0342. Marine fisheries data.

1. a. The department is authorized to adopt regulations which require reporting of catch, effort, area fished, gear used, by-catch, and volume and value of product purchased from fishermen, by holders of all categories of commercial food fish, lobster, and crab fishing and landing licenses, marine and coastal district food fish and crustacea dealers and shippers licenses, marine and coastal district party and charter boat license, menhaden licenses, shellfish shippers permits and diggers permits.

b. Beginning May first, nineteen hundred ninety-nine and every May first thereafter, the department shall submit a report to the legislature on the data collected pursuant to this section. Such report shall include the catch, effort, area fished, gear used, by-catch, and volume and value of product purchased from fishermen, by holders of all categories of commercial food fish, lobster, and crab fishing and licenses, marine and coastal district party and charter boat licenses, menhaden licenses, shellfish shippers permits and diggers permits.

2. The department may, by rule and regulation, provide that data collected by the department or available to the department shall be confidential and shall not be disclosed except when required under court order. The department may, by rule and regulation, prescribe such procedures as may be necessary to preserve such confidentiality except that the department may release or make public any statistics in an aggregate or summary form which does not directly or indirectly disclose the identity or business of any person who submits such statistics.

§ 13-0343. Nets other than trawls; restrictions on use of nets and trawls.

1. Nets other than trawls shall not be placed, maintained or used in any of the following waters except: (a) as permitted by this section; (b) landing nets may be used in completing the catch of fish hooked by angling; and (c) cast nets, not in excess of twenty feet in diameter, operated by hand may be used to take Atlantic menhaden (*Brevoortia tyrannus*) and mullets (*Mugil spp*), except in the waters described in subdivisions four, eight and twelve of this section. The use of cast nets shall be limited to one per boat.

2. In the waters of the marine district in the county of Richmond purse seines may not be used to take menhaden; and nets of not more than ten feet in length, operated by hand, may be used to take minnows and shrimp for bait.

3. In the Harlem River and the East River east of the Robert F.

Kennedy Bridge and in Long Island Sound west of a line drawn from Hewlett's (King's) Point to the north end of Hart Island, thence to the south end of Glen Island, and in their adjacent bays, coves, creeks and confluent waters, only such nets as are used to take lobsters or crabs may be used.

4. In the Nissequogue River fish may be taken by angling only except that nets of not more than twenty feet in length and four feet in depth, operated by hand, may be used to take bait fish during daylight hours only.

5. a. In the inland tidal waters within the town of Hempstead, no person shall at any time engage in eel dredging by the use of nets accompanied by cutting boards, chains or other similar devices.

b. In the inland tidal waters within the town of Hempstead westerly of the Wantagh State Parkway causeway, nets shall not be used except nets, not over forty feet long and four feet deep, may be used to take minnows or shrimp for bait.

6. In Jamaica Bay and its adjacent creeks, inlets and basins, nets shall not be used inshore of a line from the beacon at Rockaway Point jetty to the municipal bath houses on Coney Island, except that minnows and shrimp may be taken by hand nets not over forty feet long and four feet deep and except that nets other than trawls may be used from October 10 to December 31 in that part of such area southerly of a line from the lighted beacon at Manhattan Beach to the most southerly point on Barren Island and westerly of the Marine Parkway bridge across Rockaway Inlet.

7. In Gravesend Bay, and in the Atlantic Ocean within one-half mile of the shore from Norton's point to the municipal bath houses on Coney Island and within one-half mile of the shore from the Rockaway Inlet jetty at Rockaway Point to the East Rockaway Inlet jetty at Silver Point, nets shall not be used except as follows:

a. To take minnows or shrimp for bait, hand nets not more than forty

feet long and four feet deep.

b. To take eels, spears and eel weirs.

c. To take menhaden, vessels of forty tons or less register using nets other than trawls, except where prohibited by subdivision 13 of this section.

8. In the Carmans river, Suffolk county.

a. Nets shall not be used in the river north of a line running from the most southerly point of land within the Wertheim National Wildlife Refuge on the western shore of the river easterly to the point where the southern boundary of the refuge meets the eastern shore of the river.

b. Eel pots shall not be used north of the point where Beaver Dam road (Brookhaven avenue) meets the river. Between the point where Beaver Dam road meets the river and the line described in paragraph a of this subdivision eel pots may be used only to take eels.

9. In Jones' Inlet, nets, except haul seines of not more than one hundred twenty feet in length and six feet in depth used to take bait fish or crustacea, shall not be used inshore from an east and west line drawn from a point one-half mile southerly of the municipal bathing pavilion at Point Lookout, thence easterly to a point one-half mile southerly of the Short Beach Coast Guard tower. The inshore boundary of the Jones' Inlet area closed to certain netting shall be the bridges of the Loop and Meadowbrook Parkway.

10. In Fire Island Inlet, nets, except during the period of time from April first through May thirty-first haul seines of not more than one hundred seventy-five feet in length and twenty feet in depth used to take bait fish or crustacea, shall not be used inshore of a line drawn from the sea end of the government jetty at Democrat Point to the town of Babylon bathing pavilion at Cedar Island Beach. The inshore boundary of the Fire Island Inlet area closed to certain netting shall be the Robert Moses bridge to Fire Island.

11. Nets shall not be used in Moriches inlet, Shinnecock Inlet and in Mecox Inlet nor in the Atlantic Ocean within one-half mile of the shores thereof for a distance of one-half mile measured east and west along the beach from the east and west shores of the seaward entrances to such inlets. The department, for law enforcement purposes, may in its discretion erect suitable markers on the beach at the limit points.

12. In the Connetquot River nets shall not be used.

13. In the waters of the Atlantic Ocean and Fire Island Inlet, nets shall not be used within one thousand feet of the beach between Rockaway Inlet Jetty at Rockaway Point and the headland extending into Fire Island Inlet known as the "sore thumb".

14. In the county of Suffolk.

a. In the waters lying westerly of an imaginary line extending in a general southerly direction from Leaves Point in Southold town to Hay Beach Point in Shelter Island, and a line extending in a general northeasterly direction from Mashomack Point in Shelter Island to Cedar Point at the eastern entrance to Sag Harbor.

(1) haul seines shall not be used measuring over one hundred fifty fathoms in length, attached to which may be two wings, each measuring not more than one hundred fifty fathoms in length with a stretched mesh size including knot of not less than three and one-quarter inches in one wing and three and one-half inches in the other wing;

(2) the use of haul seines is prohibited from midnight Thursday to 6:00 P.M. Sunday.

(3) when permitted by the commissioner, pound or trap nets may be used in the waters described in paragraph a of this subdivision provided they do not interfere with or obstruct navigation or the carrying out of shellfish culture as provided in this chapter. Any such pound or trap nets shall be marked in accordance with requirements prescribed by the commissioner.

b. Waste fish shall not be left on shore or within the waters five

hundred feet from shore.

15. a. Nets shall not be used in Long Island sound west of an imaginary line from the New York-Connecticut boundary shore line extending easterly and southerly to Eaton's Point Neck on Long Island from April 1 to November 1, nor at any time in the waters of Huntington Bay, Lloyd Harbor, Northport Bay or Coldspring Harbor; provided, however, that hand nets not more than forty feet long and four feet in width may be used to take minnows and shrimp for bait, at any time.

b. Gill nets shall not be used in Long Island Sound or in harbors, bays or other waters adjacent thereto west of an imaginary line extending north from the easterly boundary of the town of Brookhaven on the north shore of Long Island in the county of Suffolk. However, as permitted under subdivision ten of section 13-0329 of this chapter, a holder of a commercial lobster license may use no more than one gill net not longer than three hundred feet with a stretched mesh size between three and one-half inches and four and one-quarter inches to take bait fish between April 1 and November 15 during each weekly period beginning 6:00 p.m., Sunday, through 9:00 a.m. Friday, providing that each net will be buoyed on each end and identified with the permittee's commercial lobster license number. The net shall be fished with the top not less than four feet below the surface of the water.

16. Unless permitted by statute, or licensed or permitted by the department, nets shall not be possessed by any person in or on waters of the marine district, in the following instances:

a. Nets of metallic fabric shall not be possessed in or on any waters or within one-half mile thereof;

b. In waters where use of trawls is prohibited by section 13-0341, such trawls shall not be possessed in the waters where their use is prohibited, or during any time when such use is so prohibited;

c. In waters where use of nets other than trawls, or use of trawls; is prohibited by this section, the nets, or trawls, as the case may be, or

nets of the kind or kinds prohibited, shall not be possessed in the waters where their use is prohibited or during any time when such use is prohibited, except that where a provision of this section expressly specifies a lesser distance from the water in which possession is prohibited, this section does not enlarge the distance from the water in which such possession is prohibited.

d. Nothing in this subdivision shall be construed as prohibiting commercial fishing vessels sailing to or from offshore fishing grounds from carrying on board fishing gear that may legally be used in such offshore waters even though they must pass through waters where the use of such gear is otherwise prohibited.

17. Within three nautical miles of the Atlantic coastline and in all other tidal waters within the state, the use of purse seines for taking food fish is prohibited.

18. Nets and seines measuring more than twenty-five feet in length and four feet in depth shall not be used in the waters of Oyster Bay Harbor.

19. a. Gill or trammel nets set or operated in the marine and coastal district shall be marked at each end with an orange flag at least twelve inches square attached to a mast rising above the surface of the water at least five feet. Nets operated after dark shall have orange and white reflective tape attached to the mast for a minimum one foot length immediately below the flag.

b. No gill or trammel net shall be set or operated in the marine and coastal district within one thousand feet of a pound or trap net.

c. Except in the waters of the Atlantic Ocean, Long Island Sound, Tiana Bay, Shinnecock Bay, Mecox Bay, Quantuck Bay, that portion of Moriches Bay within the town of Southampton, and the marine and coastal waters lying easterly of an imaginary line extending in a general southerly direction from Cleaves Point in the town of Southold to Hay Beach Point in Shelter Island, and a line extending in a general northeasterly direction from Mashomack Point in Shelter Island to Cedar

Point at the eastern entrance to Sag Harbor, no gill or trammel net shall be set in the waters of the marine and coastal district from sunset Friday to sunrise Monday during the period from April first to November first.

d. Gill or trammel nets set or operated in the waters of the Great South Bay shall not exceed twelve hundred feet in length. In addition to the requirements in paragraph a of this subdivision, nets set or operated in the Great South Bay shall display surface markers at least every one hundred feet. No gill or trammel net shall be set in the waters of the Great South Bay from May first until May thirty-first, inclusive. For the purposes of this subdivision, Great South Bay shall mean the waters extending east from Wantagh State Parkway to the Smith Point Bridge and southwest to the Robert Moses Inlet Bridge.

e. Those gill and trammel nets set in the waters of the Hudson River in accordance with section 11-1511 of this chapter shall be exempt from the provisions of this subdivision.

f. The use of gill or trammel nets for the taking of blackfish is prohibited.

§ 13-0343-a. Fish pots and traps; restrictions.

1. No person shall utilize commercial fishing gear commonly known as "fish pots" or "fish traps" within five hundred feet of any artificial reef. The department may publish a list of artificial reef sites and locations where the placing of pots or traps is prohibited.

2. The department may regulate the use and design of "fish pots" and "fish traps", including, but not limited to, the following matters: design, including, but not limited to, identification and marking; configuration and material composition; requirements for escape panels and/or vents; restrictions on the total number of traps or pots that may be fished individually or collectively; and in addition to the restrictions contained in subdivision one of this section, those areas

where such pots or traps may not be used.

3. The department may require those who hold licenses pursuant to section 13-0335 of this title to first obtain a permit from the department to set, operate, maintain or use "fish pots" or "fish traps". The department may restrict the number of permits issued pursuant to this section.

4. This section shall not apply to any "fish pot" or "fish trap" exempted under section 13-0335 of this title. Any rule or regulation proposed or adopted pursuant to this section shall be consistent with the provisions of section 13-0105 of this article. The commissioner is authorized to promulgate such rules or regulations as he deems necessary to implement this section.

5. No person shall return a fish pot or trap which contains fish to the water.

§ 13-0344. Fish, shellfish and crustacea; dumping.

It shall be unlawful for any person who has been requested or signaled to stop by any police or peace officer, to throw or dump into the water any fish, shellfish or crustacea, or the contents of any pail, bag, barrel or any container which may be used in the taking or storage of fish, shellfish or crustacea, or any implements used in the taking of fish, shellfish or crustacea before such police or peace officer has inspected the same.

§ 13-0345. Protection of waters; cesspools and drains.

1. Sludge, acid or refuse from oil works, sugar houses or other manufactories, sewage or any substance injurious to shellfish culture or fish, or which shall in any manner affect the flavor, odor, color, or sanitary condition of such shellfish so as to injuriously affect the sale thereof, or which shall cause any injury to the public and private

shell fisheries of this state, shall not be placed or allowed to run into waters of the state in the marine district.

2. Garbage, cinders, ashes, oils, acids, sludge or refuse of any kind shall not be thrown, dumped or permitted to run into the waters of the marine district.

§ 13-0347. Management of striped bass in marine waters.

Notwithstanding any provision of law to the contrary:

1. Striped Bass (*Morone saxatilis*) taken by hook and line for recreational purposes, shall not be possessed, bought, sold or offered for sale when less than twenty-four inches in total length.

2. Striped bass less than twenty-four inches in total length taken by other methods including but not limited to gill nets, haul seines and trawl nets shall not be possessed, bought, sold or offered for sale.

3. All other striped bass less than legal size shall be returned to the water immediately without unnecessary injury.

4. No person shall take or land striped bass in the marine waters of New York state during the period December 15 to April 15 inclusive. For purposes of this section "marine waters" means the tidal waters of the state including the Hudson River from the Battery to the George Washington bridge, and "land" shall mean the setting or putting on shore from any boat or vessel or to bring to any port or docking place any striped bass. Possession of striped bass imported into New York other than by boat is not prohibited during the closed season so long as such striped bass are of legal minimum size. Striped bass unintentionally taken in violation of this subdivision shall be returned to the water immediately without unnecessary injury.

6. In all waters from the Robert F. Kennedy bridge west through the East River, Harlem River and those portions of the Hudson River south of

the George Washington bridge to a line drawn from Rockaway Point to Romer Shoals lighthouse, no person shall use a net to take fish, except that landing nets and nets of not more than 10 feet in length, operated by hand, may be used to take bait and shrimp, and cast nets may be used to take Atlantic menhaden and mullets as provided in subdivision one of section 13-0343 of this title.

§ 13-0349. Taking of fish for commercial purposes.

1. No person shall take food fish, shellfish, or crustacea from the waters of the marine and coastal district for commercial purposes using a commercial fishing vessel longer than seventy feet in registered length. For purposes of this section a person shall be presumed to be taking food fish, shellfish or crustacea for commercial purposes when setting, maintaining, operating or using nets, except seines not larger than thirty feet long or four feet deep or lift nets not larger than sixteen square feet; traps, except bait traps not more than thirty inches in length; combs; dredges; pots; or hook and line, except by angling.

2. However, vessels being used to take food fish, shellfish or crustacea from the waters of the marine and coastal district prior to July first, nineteen hundred ninety-seven shall be exempt from the registered length requirement and the department shall publish a list of such vessels. In addition, such vessels which are exempt from such seventy foot in registered length requirement, and are on the list published pursuant to this section, shall also be permitted to be replaced one time without loss of such exemption.

3. All vessels of sixty-three feet or greater registered length may be replaced one time by a new vessel of up to ten percent greater registered length.

§ 13-0350. Marine resources advisory council.

1. Legislative intent. The legislature hereby finds and declares that the finfish and shellfish industry in this state plays a vital part in the economy of the state in general and the Long Island region in particular.

By establishing the marine resources advisory council the legislature publicly declares its support for the further development and advancement of such industry; such council's mandate to monitor and review fishery management regulations, programs, allocations and expenditures of the department of environmental conservation for the care, management, protection and enlargement of finfish and shellfish will provide proper input from that segment of our populace most concerned with the impact this state's programs have on finfish and shellfish resources.

2. Creation of marine resources advisory council. (a) There is hereby created within the department a marine resources advisory council to review proposed regulations for management of marine fisheries and to make recommendations on plans, policies, and programs affecting marine resources as more specifically outlined below. Such council shall be composed of fifteen members appointed by the commissioner, none of whom shall be employees of the department. Two council members representative of recreational users of marine resources and two council members representative of commercial users of marine resources shall be designated by the majority leader of the senate and two members representative of recreational users of marine resources and two council members representative of commercial users of marine resources shall be designated by the speaker of the assembly. One member will be the director of the marine sciences research center at SUNY Stony Brook or the director's designee who shall act as chairman. Of the members appointed all shall be residents of a county which borders the marine and coastal district. The council shall be representative of individual and organized commercial and recreational shellfishing and finfishing interests in the state. At no time shall there be less than seven members of the council who shall be representative of commercial harvesters of marine resources nor shall there be less than seven members of the council who shall be representative of recreational users

and harvesters of marine resources. Appointments to the advisory council shall be made no later than the first day of March next succeeding the date on which this section shall have become a law.

(b) Persons designated or appointed to the advisory council shall have demonstrated a long-standing interest, knowledge and experience in commercial or recreational harvesting of marine resources.

3. Meetings of the council. The council shall meet at least quarterly.

4. Duties of the advisory council. The advisory council shall have the following powers and duties:

(a) To review the allocations and expenditures of the department for the care, management, protection and enlargement of marine resources and report to the commissioner by January first of each year. The commissioner shall, by February first of each year, submit such report, in its entirety, to the governor, the legislature and interested individuals and organizations. Such report shall include the findings of the advisory council regarding such allocations and expenditures, including expenditures and appropriations from the conservation fund and the extent to which such expenditures and appropriations are consistent with the requirements of state law.

(b) To make reports and release information from time to time as it deems necessary to commercial and recreational harvesters and users of marine resources and the general public regarding the marine resources program.

(c) To consult with commercial and recreational users of marine resources and make recommendations on program needs and on how such needs shall be met.

(d) To assist the department's efforts to expand the available sources of income for the marine resources account and advise the department with respect to the needs of those industries involved with the commercial and recreational harvesting of marine resources.

(e) To review proposed regulations pertaining to the conservation and management of marine fisheries, to consult with commercial and recreational users of such fisheries regarding such regulations, and to make recommendations and comments to the department regarding the adoption and modification of such regulations consistent with the policy

and principles set forth in section 13-0105 of this article.

5. Term of appointment. All members of the council shall serve terms of three years provided, however, that of the members first appointed, one-third shall be appointed for a term of three years, one-third shall be appointed for a term of two years, and one-third shall be appointed for a term of one year. An appointment to fill a vacancy shall be made for the remainder of the affected term in the same manner as the original appointment was made. Such appointment shall be made within sixty days of the date the position becomes vacant.

5-a. Term of appointment. The new members appointed pursuant to subdivision two of this section as amended by a chapter of the laws of 1994 entitled "AN ACT to amend the environmental conservation law, in relation to establishing the marine fisheries conservation and management policy, various other provisions relating to the management of marine resources and repealing paragraph d of subdivision 2 of section 11-1319 of such law relating to the sale of billfish" shall be appointed to terms as follows: the member appointed by the majority leader of the senate and the member appointed by the speaker of the assembly shall each be appointed to a term of three years; and of the two members appointed by the commissioner, one shall be appointed to a term of two years and the other shall be appointed to a term of one year.

6. State assistance. The commissioner shall make any and all documents readily available to the council which the council indicates are needed to properly and thoroughly carry out its responsibilities. The commissioner shall also make available to the council such aid reasonably necessary to allow the council to carry out its duties and responsibilities.

§ 13-0355. Recreational marine fishing registration.

1. Definitions of registrations; privileges. A recreational marine fishing registration entitles the holder who is sixteen years of age or

older to take fish from the waters of the marine and coastal district and to take migratory fish of the sea from all waters of the state, except as provided in sections 13-0333 and 13-0335 of this title. A recreational marine fishing registration is effective for one year from the date it was issued.

2. General provisions. a. The privileges of a recreational marine fishing registration may be exercised only at the times and places, and in the manner and to the extent, permitted by the fish and wildlife law and applicable regulations of the department.

b. Recreational marine fishing registrations are not transferable. No person shall alter, change, lend to another person or attempt to transfer to another person any recreational marine fishing registration.

c. A registration issued in lieu of a lost or destroyed registration is void if it is obtained: (i) by fraud; or (ii) by a person who is not authorized to hold it or who makes a false statement in applying for it.

d. No registration authorizes the holder (a) to trespass upon private lands or waters or to interfere with property belonging to another person; (b) to take fish or wildlife on an Indian reservation; (c) to enter upon, or to take or disturb fish or wildlife upon, state lands or waters posted by the department except in accordance with a written permit from the department or an order adopted by the department; (d) to take any fish or wildlife in any area closed to the taking of fish or wildlife, or to take any species of fish, wildlife or protected insect in an area closed to the taking of such species.

3. Failure to carry registration. a. The holder of a recreational marine fishing registration shall:

(i) at all times have such registration on the holder's person while exercising any privilege of that registration; and

(ii) shall exhibit such registration on demand to any police officer, peace officer, or owner, lessee or other person in control of the lands or waters or the designees of the owner, lessee or person in control of the lands or waters on which the registration holder is present and is

exercising the privileges thereof.

b. Failure to have a recreational marine fishing registration on one's person while exercising any privilege of that registration is presumptive evidence that such person is fishing without holding the registration required by this section.

4. Fees. No applicant for a recreational marine fishing registration shall be required to pay a fee for such registration.

5. Exemption from requirement of recreational marine fishing registration. a. Minors under the age of sixteen may take fish as if they held a recreational marine fishing registration.

b. Recreational fishing passengers on a marine and coastal district party or charter boat licensed and registered pursuant to section 13-0336 of this title may take fish as if they held a recreational marine fishing registration.

6. Recreational marine fishing registration data. a. The department is authorized to collect data on holders of recreational marine fishing registrations, which shall include but not be limited to, a registrant's name, address and date of birth.

b. Registration holder data collected by the department or available to the department shall be confidential and shall not be disclosed except as required to comply with section 401(g) of the Magnuson-Stevens fisheries management and conservation act (16 U.S.C. 1881), as may be amended from time to time, or by court order, except that the department may release or make public any statistics in an aggregate or summary form which does not make it possible to identify any person who submits such data. The department may prescribe such procedures as may be necessary to preserve such confidentiality.

7. Reciprocity in boundary waters. If persons holding recreational marine fishing registrations issued under the New York fish and wildlife law are not required to have licenses or registrations issued by a state

named in paragraph a, b or c of this subdivision when fishing in that part of the waters, specified in such paragraph, which lies within that state then, in such case, a person holding a similar license or registration issued by such state may, without a recreational marine fishing registration issued under the New York fish and wildlife law, take fish as provided in this title, from that part of such waters specified in paragraph a, b or c of this subdivision which lies within this state:

a. License or registration issued by Connecticut: those parts of Long Island Sound lying between New York and Connecticut.

b. License or registration issued by New Jersey: those parts of New York Harbor, Hudson River, Kill Van Kull, Arthur Kill, Raritan Bay and Atlantic Ocean lying between New York and New Jersey.

c. License or registration issued by Rhode Island: those parts of Long Island Sound, Block Island Sound and Atlantic Ocean lying between New York and Rhode Island.

§ 13-0360. Special management areas.

1. For purposes of this section:

(a) "artificial reef" shall mean a hard structure, deliberately placed in a marine or coastal water body for the purpose of imitating environmental conditions found on natural underwater rock outcroppings, shellfish reefs or coral reefs; and

(b) "wreck" shall mean an abandoned shipwreck which occurred through an accidental circumstance or deliberate scuttling or sinking that was not part of artificial reef construction activities.

2. For the purposes of protecting reef ecosystems and managing reef fisheries, the department is hereby authorized to adopt regulations which designate as a special management area any area of the marine and coastal district which contains artificial reefs or wrecks simulating artificial reefs together with the surrounding areas where the biota are

dependent upon the physical characteristics of the reef.

3. Notwithstanding any other provision of this chapter, the department may, until December thirty-first, two thousand twenty-six, adopt regulations restricting the taking of fish, shellfish and crustacea in any special management area designated pursuant to subdivision two of this section. Such regulations may restrict the manner of taking of fish, shellfish and crustacea in such areas and the landing of fish, shellfish and crustacea which have been taken therefrom. Such regulations shall be consistent with all relevant federal and interstate fisheries management plans and with the marine fisheries conservation and management policy set forth in section 13-0105 of this article.

§ 13-0371. Atlantic States Marine Fisheries Compact.

1. The Atlantic States Marine Fisheries Compact as first enacted by chapter 500 of the laws of 1941, and as reenacted by chapter 474 of the laws of 1961, is hereby continued. The compact is as follows:

ATLANTIC STATES MARINE FISHERIES COMPACT

The contracting states solemnly agree:

Article I

The purpose of this compact is to promote the better utilization of the fisheries, marine, shell and anadromous, of the Atlantic seaboard by the development of a joint program for the promotion and protection of such fisheries by the prevention of the physical waste of the fisheries from any cause. It is not the purpose of this compact to authorize the states joining herein to limit the production of fish or fish products for the purpose of establishing or fixing the price thereof, or creating and perpetuating monopoly.

Article II

This agreement shall become operative immediately as to those states executing it whenever any two or more of the states of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New

Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia and Florida have executed it in the form that is in accordance with the laws of the executing state and the Congress has given its consent. Any state contiguous with any of the aforementioned states and riparian upon waters frequented by anadromous fish, flowing into waters under the jurisdiction of any of the aforementioned states, may become a party hereto as hereinafter provided.

Article III

Each state joining herein shall appoint three representatives to a commission hereby constituted and designated as the Atlantic states marine fisheries commission. One shall be the executive officer of the administrative agency of such state charged with the conservation of the fisheries resources to which this compact pertains or, if there be more than one officer or agency, the official of that state named by the governor thereof. The second shall be a member of the legislature of such state designated by the commission or committee on interstate cooperation of such state, or if there be none, or if said commission on interstate cooperation cannot constitutionally designate the said member, such legislator shall be designated by the governor thereof; provided that if it is constitutionally impossible to appoint a legislator as a commissioner from such state, the second member shall be appointed by the governor of said state in his discretion. The third shall be a citizen who shall have a knowledge of and interest in the marine fisheries problem to be appointed by the governor. This commission shall be a body corporate with the powers and duties set forth herein.

Article IV

The duty of the said commission shall be to make inquiry and ascertain from time to time such methods, practices, circumstances and conditions as may be disclosed for bringing about the conservation and the prevention of the depletion and physical waste of the fisheries, marine, shell and anadromous, of the Atlantic seaboard. The commission shall have power to recommend the coordination of the exercise of the police powers of the several states within their respective jurisdictions to promote the preservation of those fisheries and their protection against

overfishing, waste, depletion or any abuse whatsoever and to assure a continuing yield from the fisheries resources of the aforementioned states.

To that end the commission shall draft and, after consultation with the advisory committee hereinafter authorized, recommend to the governors and legislatures of the various signatory states, legislation dealing with the conservation of the marine, shell and anadromous fisheries of the Atlantic seaboard. The commission shall, more than one month prior to any regular meeting of the legislature in any signatory state, present to the governor of the state its recommendations relating to enactments to be made by the legislature of that state in furthering the intents and purposes of this compact.

The commission shall consult with and advise the pertinent administrative agencies in the states party hereto with regard to problems connected with the fisheries and recommend the adoption of such regulations as it deems advisable. The commission shall have power to recommend to the states party hereto the stocking of the waters of such states with fish and fish eggs or joint stocking by some or all of the states party hereto and when two or more of the states shall jointly stock waters the commission shall act as the coordinating agency for such stocking.

Article V

The commission shall elect from its number a chairman and a vice chairman and shall appoint and at its pleasure remove or discharge such officers and employees as may be required to carry the provisions of this compact into effect and shall fix and determine their duties, qualifications and compensation. Said commission shall adopt rules and regulations for the conduct of its business. It may establish and maintain one or more offices for the transaction of its business and may meet at any time or place but must meet at least once a year.

Article VI

No action shall be taken by the commission in regard to its general affairs except by the affirmative vote of a majority of the whole number

of compacting states present at any meeting. No recommendation shall be made by the commission in regard to any species of fish except by the affirmative vote of a majority of the compacting states which have an interest in such species. The commission shall define what shall be an interest.

Article VII

The fish and wildlife service of the department of the interior of the government of the United States shall act as the primary research agency of the Atlantic states marine fisheries commission cooperating with the research agencies in each state for that purpose. Representatives of the said fish and wildlife service shall attend the meetings of the commission.

An advisory committee to be representative of the commercial fishermen and the salt water anglers and such other interests of each state as the commission deems advisable shall be established by the commission as soon as practicable for the purpose of advising the commission upon such recommendations as it may desire to make.

Article VIII

When any state other than those named specifically in article two of this compact shall become a party thereto for the purpose of conserving its anadromous fish in accordance with the provisions of article two the participation of such state in the action of the commission shall be limited to such species of anadromous fish.

Article IX

Nothing in this compact shall be construed to limit the powers of any signatory state or to repeal or prevent the enactment of any legislation or the enforcement of any requirement by any signatory state imposing additional conditions and restrictions to conserve its fisheries.

Article X

Continued absence of representation or of any representative on the commission from any state party hereto shall be brought to the attention of the governor thereof.

Article XI

The states party hereto agree to make annual appropriation to the support of the commission in proportion to the primary market value of the products of their fisheries, exclusive of cod and haddock, as recorded in the most recent published reports of the fish and wildlife service of the United States department of the interior, provided no state shall contribute less than two hundred dollars per annum and the annual contribution of each state above the minimum shall be figured to the nearest one hundred dollars.

The compacting states agree to appropriate initially the annual amounts scheduled below, which amounts are calculated in the manner set forth herein, on the basis of the catch record of nineteen hundred thirty-eight. Subsequent budgets shall be recommended by majority of the commission and the cost thereof allocated equitably among the states in accordance with their respective interests and submitted to the compacting states.

Schedule of initial annual state contributions:

Maine	\$700
New Hampshire	200
Massachusetts	2,300
Rhode Island	300
Connecticut	400
New York	1,300
New Jersey	800
Delaware	200

Maryland	700
Virginia	1,300
North Carolina	600
South Carolina	200
Georgia	200
Florida	1,500

Article XII

This compact shall continue in force and remain binding upon each compacting state until renounced by it. Renunciation of this compact must be preceded by sending six months' notice in writing of intention to withdraw from the compact to the other states party hereto.

The states consenting to this amendment agree that any two or more of them may designate the commission as a joint regulatory agency with such powers as they may jointly confer from time to time for the regulation of the fishing operations of the citizens and vessels of such designating states with respect to specific fisheries in which such states have a common interest. The representatives of such states on the commission shall constitute a separate section commission for the exercise of the additional powers so granted provided that the states so acting shall appropriate additional funds for this purpose. The creation of such section as a joint regulatory agency shall not deprive the states participating therein of any of their privileges or powers or responsibilities in the commission under the general compact.

2. "The executive officer" referred to in article three of the compact shall, in the case of New York, be the Commissioner of Environmental Conservation or an officer of the department designated by him. The two other representatives shall be chosen from the classes of persons prescribed in article three of the compact, and in the manner required thereby.

3. The Atlantic States Marine Fisheries Commission shall submit annually, in accordance with the laws and practice of this state, to the Commissioner of Environmental Conservation for study and consideration by such commissioner, an estimate of moneys required to administer, manage and support the commission during the ensuing fiscal year. Such estimate shall include any request for appropriation of funds by New York and shall be accompanied by a tabulation of similar requests which the commission expects to make to each other member state and the formula or factors upon which such respective requests are based.

4. The Commissioner of Environmental Conservation shall include a suitable item or items of estimated expenditures in the budget estimates of his department, and shall give due effect to the provisions of article eleven of the Atlantic States Marine Fisheries Compact.

5. The State Comptroller is hereby authorized and empowered from time to time to examine the accounts and books of the commission, including its receipts, disbursements and such other items referring to its financial standing as such comptroller may deem proper and to report the results of such examination to the Governor.

6. No provision of the Conservation Law and no provision of the Environmental Conservation Law, if such provision of the Environmental Conservation Law was derived from a provision of the Conservation Law, which is inconsistent with the provisions of the Atlantic States Marine Fisheries Compact shall be applicable to the Atlantic States Marine Fisheries Commission or to any matter governed by the Atlantic States Marine Fisheries Compact.

7. On August 15, 1964 and at intervals of four years thereafter, the Commissioner of Environmental Conservation shall evaluate the role of the Atlantic States Marine Fisheries Commission with respect to the interstate fisheries of concern to New York and shall report to the commission thereon. The commissioner shall transmit a copy of such report to the Governor. The commissioner may make such additional reports to the Atlantic States Marine Fisheries Commission and the

Governor as he deems appropriate.

TITLE 5

THE MARINE AND COASTAL DISTRICT OF NEW YORK CONSERVATION, EDUCATION, AND RESEARCH GRANTS PROGRAM

Section 13-0501. Marine and coastal district of New York conservation, education, and research grants program.

13-0503. Marine and coastal district of New York conservation, education, and research board.

§ 13-0501. Marine and coastal district of New York conservation, education, and research grants program.

1. There is hereby created within the department the marine and coastal district of New York conservation, education, and research grants program. The program shall make grants available to eligible recipients for conservation, research, and education projects relating to such marine and coastal district. For purposes of this title, the term "eligible recipients" shall mean not-for-profit corporations located within New York state whose purpose is to promote sport fishing, increase participation in recreational angling, increase public awareness and appreciation of aquatic natural resources, encourage conservation of fisheries resources, or promote research relating to the marine and coastal district of New York.

2. The grants program may include funding for programs containing elements such as, but not limited to, the following:

(a) educational programs which raise public awareness and appreciation of the need for protecting, conserving, and restoring the state of New York's aquatic natural resources.

(b) research relating to the marine and coastal district of New York.

(c) production of informational materials in print, audio, video, electronic, or other media.

(d) production and distribution of exhibits, public service announcements, and advertisements.

(e) programs which promote angling and sport fishing through information and/or training.

3. The commissioner may accept grants from public or private sources for the program. Any such monies shall be deposited in the marine and coastal district of New York conservation, education, and research fund established pursuant to section ninety-five-c of the state finance law. The commissioner, in administering this section, shall seek to coordinate the program with other public and private efforts, and may undertake joint or cooperative programs with other public or private entities.

4. The commissioner shall make rules and regulations necessary and appropriate for the implementation of this section.

§ 13-0503. Marine and coastal district of New York conservation, education, and research board.

1. There is hereby established in the department the marine and coastal district of New York conservation, education, and research board to be composed of three members, one of whom shall be appointed by the governor, one of whom shall be appointed by the temporary president of the senate, and one of whom shall be appointed by the speaker of the assembly. Each appointing official shall also appoint an alternate who may serve in the place of the member appointed by such appointing official. A member or alternate member of the board shall serve at the pleasure of the official by whom he or she is appointed. The members of the board shall choose their chairperson.

2. The board shall have the power and duty to: (a) receive and review, and to approve or deny, applications from eligible recipients for grants from the marine and coastal district of New York conservation, education, and research fund, created pursuant to section ninety-five-c of the state finance law, for conservation, research, and education projects relating to such marine and coastal district. Approval of any such proposed project may be granted only by unanimous vote of all three

members of the board. In the event a member of the board is unable to vote, the alternate for such member may vote in his or her place;

(b) make by-laws for the management of its affairs and to do all things necessary or convenient to carry out the powers expressly given in this title;

(c) review the allocations and expenditures of the department related to the marine resources account. To assist the board in its review, the department shall by September first of each year make available to the board, the governor and the legislature current and anticipated income and expenditures for the account, including planned expenditures by time and activity code for the next fiscal year; and

(d) consult with marine fish and wildlife interests and render annual reports to the commissioner on fiscal needs and make recommendations on expenditures and how such needs shall be met.

3. The board shall meet at least two times a year, at the request of the chairperson.

4. The members of the board and alternate members shall receive no compensation for their services, but shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of their official duties pursuant to this section.

TITLE 7

SEAGRASS PROTECTION ACT

Section 13-0701.Short title.

13-0703.Definitions.

13-0705.Departmental responsibilities.

§ 13-0701. Short title.

This act shall be known and may be cited as the seagrass protection act.

§ 13-0703. Definitions.

1. "Coastal community" shall mean a municipal corporation, as defined in section two of the general municipal law, in Nassau and Suffolk counties.

2. "Seagrass" shall mean rooted, vascular, flowering marine plants that are submerged in New York's bays and coastal waters, including *Zostera marina* and *Ruppia maritima*.

§ 13-0705. Departmental responsibilities.

1. The department shall designate seagrass management areas. Designation of such areas shall include consideration, on a geographic or estuarine basis, of likely threats to seagrass.

2. For each designated seagrass management area, the department shall develop and adopt a seagrass management plan to guide the development of rules and regulations pursuant to subdivision three of this section. Such plan shall be developed after consultation with local governments, representatives of recreational boating interests, the marine industries (including commercial and recreational shell fishermen, and commercial shell fish farmers), affected property owners, and other stakeholders, so as to effectively manage and protect seagrass beds and seagrass restoration efforts at those locations at which the restoration of seagrass is reasonably possible. Such plans shall, to the extent practicable, take into consideration, the goals of existing estuary programs. In addition, seagrass management plans shall seek to preserve traditional recreational activities, including recreational boating and marina operations, as well as finfishing, shellfishing and tourism while ensuring such activities do not threaten seagrass beds or negate seagrass restoration efforts.

3. The department shall have the authority to adopt rules and regulations to regulate coastal and marine activities that threaten seagrass beds or seagrass restoration efforts.

4. The department shall have the authority to restrict the use of mechanical-powered fishing or shellfishing gear which may directly impact seagrass beds, including churning, dredges, rakes and tongs.

5. The department shall identify water quality impacts such as nitrogen pollution and make recommendations on how to minimize such impacts.

6. The department shall make information concerning the importance of seagrass protection and the status of seagrass restoration efforts available on the department website.

ARTICLE 14

NEW YORK OCEAN AND GREAT LAKES ECOSYSTEM CONSERVATION ACT

Section 14-0101. Short title.

14-0103. Legislative findings and declarations.

14-0105. Definitions.

14-0107. New York ocean and Great Lakes ecosystem conservation council.

14-0109. Responsibilities of the council.

14-0111. Report to the governor and legislature.

14-0113. State agency assistance.

§ 14-0101. Short title.

This article shall be known and may be cited as the "New York ocean and Great Lakes ecosystem conservation act".

§ 14-0103. Legislative findings and declarations.

The legislature finds and declares that:

1. New York's coastal ecosystems are critical to the state's environmental and economic security, and integral to the state's high quality of life and culture. Healthy coastal ecosystems are part of the state's legacy, and are necessary to support the state's human and wildlife populations;

2. The policy of the state of New York shall be to conserve, maintain and restore coastal ecosystems so that they are healthy, productive and resilient and able to deliver the resources people want and need;

3. The governance of coastal ecosystems shall be guided by the following principles:

- a. activities in and uses of the coastal ecosystem are sustainable;
- b. ecological health and integrity is maintained;
- c. ecosystems' interconnections among land, air and water are recognized;
- d. understanding of coastal ecosystems is enhanced;
- e. decisions are informed by good science;
- f. when risks are uncertain, caution is applied; and
- g. broad public participation occurs in planning and decision making.

§ 14-0105. Definitions.

As used in this article:

1. "Coastal waters" means lakes Erie and Ontario, the St. Lawrence and Niagara rivers, the Hudson river south of the federal dam at Troy, the East river, the Harlem river, the Kill von Kull, and Arthur Kill, Long Island sound, and the Atlantic ocean, and their connecting water bodies, bays, harbors, shallows, and marshes.

2. "Coastal ecosystems" mean the resources of coastal waters and their watersheds.

3. "Council" means the New York ocean and Great Lakes ecosystem conservation council created by section 14-0107 of this article.

4. "Submerged aquatic vegetation" means native underwater plants found in coastal waters, including but not limited to, eelgrass (*Zostera marina*), widgeon grass (*Ruppia maritima*), wild celery (*Vallisneria Americana*), and pondweed (*Potamogeton crispus*).

5. "Submerged aquatic vegetation meadows" means those habitats in coastal waters vegetated with one or more species of submerged aquatic vegetation.

§ 14-0107. New York ocean and Great Lakes ecosystem conservation council.

1. There is hereby created the New York ocean and Great Lakes ecosystem conservation council. The council shall consist of the following thirteen members: the commissioners of agriculture and markets, economic development, environmental conservation, general services, parks, recreation and historic preservation, health, education and transportation; the secretary of state; the president of the energy research and development authority; the president of the environmental facilities corporation; the chairman of the state soil and water conservation committee; and the chancellor of the state university of New York; or their respective designees.

2. The commissioner shall serve as chair of the council, and the deputy secretary of state for coastal resources shall serve as such council's executive director.

3. Members of the council shall receive no compensation but shall be entitled to reimbursement for any necessary expenses incurred in connection with the performance of their duties.

4. The council shall meet at least quarterly.

§ 14-0109. Responsibilities of the council.

The New York ocean and Great Lakes ecosystem conservation council shall:

1. Promote the understanding, protection, restoration and enhancement of New York's ocean and Great Lakes ecosystems while promoting sustainable and competitive economic development and job creation;

2. Ensure that community needs and aspirations are accommodated, recognizing the interdependent goals of community well-being, environmental quality and economic viability;

3. Define and implement an adaptive approach building upon existing laws and programs to advance activities that affect coastal ecosystems in order to ensure the coexistence of healthy ecosystems with human activities;

4. Integrate and coordinate ecosystem-based management with existing laws and programs;

5. Develop guidelines for agency programs and activities that affect coastal ecosystems to advance the policy and principles delineated in section 14-0103 of this article;

6. Encourage scientific research and information sharing that will inform ecosystem-based management decisions and enhance ecosystem management capabilities;

7. Use New York's private and public academic, research and non-profit institutions more effectively in developing and advancing coastal ecosystem-based management;

8. Facilitate regional coordination and cooperation to address complex coastal resource issues which cross political and jurisdictional boundaries.

§ 14-0111. Report to the governor and legislature.

The New York ocean and Great Lakes ecosystem conservation council shall deliver a report to the governor and the legislature by November first, two thousand eight which shall:

1. demonstrate improvements that can be accomplished in the eastern Lake Ontario and the Long Island great south bay coastal ecosystems through ecosystem-based management in cooperation with resource managers, local governments, industry, conservation and community-based organizations, and academic and research institutions;

2. define executive and legislative actions necessary to integrate ecosystem-based management with existing programs needed to advance the coastal ecosystem principles;

3. include a plan, schedule, and funding opportunities for implementation of executive actions necessary to advance the policy and principles in section 14-0103 of this article;

4. create an ocean and coastal resources atlas to make information available to the public and decision makers;

5. establish a research agenda that identifies priority issues in need

of further research to enhance ecosystem-based management;

6. recommend actions to preserve, restore and protect submerged aquatic vegetation populations and meadows; and

7. identify opportunities for regional ecosystem-based management with neighboring states and the federal government.

§ 14-0113. State agency assistance.

Any state agency, department, public benefit corporation or division, bureau or agency thereof may provide the council with the services of its agents, employees and facilities without charge to the council for the purpose of carrying out this article.

ARTICLE 15

WATER RESOURCES

Title 1. Short title; statement of policy; definitions; general provisions

3. Powers and duties

5. Protection of water

6 Water efficiency and reuse

7. Private rights in waters

8. Regulation of reservoir releases

9. Administrative procedures for article 15

11. Local and regional water resources planning and development

13. Comprehensive public water supply studies and reports

15. Water supply

17. Water power

19. Drainage

21. River regulation by storage reservoirs

23. River improvement

25. Joint river regulating, river improvement and drainage improvement districts

27. Wild, scenic and recreational rivers system

- 29. Water resources management strategy
- 31. Groundwater protection and remediation program

TITLE 1

SHORT TITLE; STATEMENT OF POLICY; DEFINITIONS; GENERAL PROVISIONS

Section 15-0101. Short title.

15-0103. Legislative findings.

15-0105. Declaration of policy.

15-0107. Definitions as used in this article.

15-0109. General jurisdiction.

15-0111. Public Authorities Law and Administrative Code of the
City of New York are not affected.

15-0113. State to be reimbursed for costs.

§ 15-0101. Short title.

This article 15 of the Environmental Conservation Law shall be known as the Water Resources Law. However, sections of the Environmental Conservation Law falling within this article 15 may be cited either as such sections of the Environmental Conservation Law or as such sections of the Water Resources Law.

§ 15-0103. Legislative findings.

Article 15 shall be construed and administered in the light of the following findings of fact:

1. The sovereign power to regulate and control the water resources of this state ever since its establishment has been and now is vested exclusively in the state of New York, except to the extent of any delegation of power to the United States;

2. New York State has been generously endowed with water resources

which have contributed and continue to contribute greatly to the position of preeminence attained by New York in population, agriculture, commerce, trade, industry and outdoor recreation;

3. Adequate and suitable water for water supply, domestic, municipal, industrial, agricultural and commercial uses, power, irrigation, transportation, fire protection, sewage and waste assimilation, the growth of forests, maintenance of fish and wildlife, recreational enjoyment and other uses is essential to the health, safety and welfare of the people and economic growth and prosperity of the state;

4. In recent years our population growth and the development and use of new technology and processes have resulted in demands for more water and the equitable use thereof for these purposes;

5. In recent years recreational activities are making new and greater demands on lakes and streams of the state for boating, fishing, bathing and water sports, and the lands adjacent thereto for campsites, access areas and public beaches;

6. The growth of cities and urban areas and their expansion into formerly rural areas has in many cases resulted in the filling in, diversion and destruction of water courses, necessarily destroying aquatic habitat and lessening supplies of water for multiple use purposes;

7. Increased motorized highway travel and public safety are requiring the construction of new, better and larger public highways which may alter the water ways of the state and encroach upon water courses and affect their uses;

8. All fish, game, wildlife, shellfish, crustacea and protected insects in the state, except those legally acquired and held in private ownership, are owned by the state and held for the use and enjoyment of the people of the state, and the state has a responsibility to preserve, protect and conserve such terrestrial and aquatic resources from destruction and damage and to promote their natural propagation;

9. The unreasonable, uncontrolled and unnecessary interference with or defilement and disturbance of water courses create hazards to the health, safety and welfare of the people of the state causing great economic loss by erosion of soil, increased costs of water purification and treatment, the loss of crop lands and forests by flooding, the destruction and failure of natural propagation of fish and aquatic resources and the loss of water for domestic, industrial, navigational, municipal, agricultural, recreational and other beneficial uses and purposes;

10. The unreasonable and unregulated (a) interference with the channels and beds of lakes and streams by construction of dams, roads and other structures, (b) alteration of water courses and gradients, (c) impounding of water, (d) dredging and filling in of stream beds, and the unreasonable removal of sand, gravel or other materials from streams, and by other action, have resulted in pollution of such waters, increase in turbidity and the deposit of silt and debris, irregular variations of velocity, temperature and levels of water, erosion of banks and uplands and the flooding of valuable lands;

11. The department, and two of its predecessors, the Water Resources Commission and the Water Pollution Control Board, has classified substantially all of the waters of the state;

12. The department, pursuant to title 11 of article 15 of the Environmental Conservation Law, is continuing the work of its predecessor, the Water Resources Commission in undertaking comprehensive planning for the protection, conservation and development of the water resources of the state;

13. It is in the best interest of the state that provision be made for the regulation and supervision of activities that deplete, defile, damage or otherwise adversely affect the waters of the state and land resources associated therewith.

§ 15-0105. Declaration of policy.

In recognition of its sovereign duty to conserve and control its water resources for the benefit of all inhabitants of the state, it is hereby declared to be the public policy of the state of New York that:

1. The regulation and control of the water resources of the state of New York be exercised only pursuant to the laws of this state;

2. The waters of the state be conserved and developed for all public beneficial uses;

3. Comprehensive planning be undertaken for the protection, conservation, equitable and wise use and development of the water resources of the state to the end that such water resources be not wasted and shall be adequate to meet the present and future needs for domestic, municipal, agricultural, commercial, industrial, power, recreational and other public, beneficial purposes;

4. With respect to the use of the waters of the state and the water courses thereof, due consideration shall be given to the relative importance of different uses;

5. The acquisition, storage, diversion and use of water for domestic and municipal purposes shall have priority over all other purposes;

6. Alterations in the conditions of waters and water courses be planned and carried out in such manner that the important uses will be impaired as little as possible;

7. Reasonable standards of purity and quality of the waters of the state be maintained consistent with public health, safety and welfare and the public enjoyment thereof, the propagation and protection of fish and wildlife, including birds, mammals and other terrestrial and aquatic life, and the industrial development of the state, and to that end, to require the use of all known available and reasonable methods to prevent and control pollution, wastage and unreasonable disturbance and

defilement of the waters of the state;

8. In addition to other recognized public beneficial uses and control of water as provided by this article 15 or by any other statute, the regulated acquisition, storage, diversion and use of water for the supplemental irrigation of agricultural lands within the state is a public purpose and use, in the interests of the health, safety and welfare of the people of the state and for their interest.

§ 15-0107. Definitions as used in this article.

1. "Person" means any individual, firm, co-partnership, association or corporation other than the state and a "public corporation."

2. "Public corporation" means "public corporation" as defined in subdivision one of Section 3 of the General Corporation Law and includes all public authorities, except the Power Authority of the State of New York.

3. "Municipality" or "municipal corporation" includes a county, city, town and village.

4. "Waters" shall be construed to include lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic ocean within the territorial limits of the state of New York, and all other bodies of surface or underground water, natural or artificial, inland or coastal, fresh or salt, public or private, which are wholly or partially within or bordering the state or within its jurisdiction.

5. "Water power" shall be construed to mean power developed from falling or flowing water, and all electrical current and other forms of energy into which such power may be transformed.

6. The term "comprehensive planning" as used in title 11 of this article shall be deemed to mean multi-purpose planning for at least two,

and as many more as may be found to be practicable and reasonable, of the purposes and uses as provided by this article 15 or by any other statute, the provisions of which and the procedures authorized thereby are to remain in full force and effect.

7. Other definitions, applicable to this article, are found in sections 15-1301, 15-1703, 15-1973 and 15-2101.

§ 15-0109. General jurisdiction.

The department shall exercise its powers and perform its duties in any matter affecting the construction of improvements to or developments of water resources for the public health, safety or welfare, including but not limited to the supply of potable waters for the various municipalities and inhabitants thereof, the use of water for industrial and agricultural operations, the developed and undeveloped water power of the state, the facilitation of proper drainage and the regulation of flow and improvement of the rivers of the state.

§ 15-0111. Public Authorities Law and Administrative Code of the City of New York are not affected.

Nothing contained in this article shall be deemed or construed as amending, repealing, altering or otherwise modifying in whole or in part any provision of Title 1, Article 5 of the Public Authorities Law, as amended, with respect to Power Authority of the State of New York, or any provision of Title K of Chapter fifty-one and Title D of Chapter 15 of the Administrative Code of the City of New York, as amended, with respect to the City of New York, and such acts shall remain in full force and effect, except that notwithstanding the provisions of this section and title 3 of article 1 of this chapter, section 15-0103 and title 8 of this article shall apply to the city of New York, its agencies and departments. Nothing in this article shall be deemed or construed as adding to, diminishing or otherwise modifying the rights, powers, duties and obligations granted to and imposed upon Power

Authority of the State of New York and the City of New York, its or their agencies and departments by such statutes or any other statutes, except that notwithstanding the provisions of this section and title 3 of article 1 of this chapter, section 15-0103 and of title 8 of this article shall apply to the city of New York, its agencies and departments.

§ 15-0113. State to be reimbursed for costs.

In the event that the department shall carry out a project paid for by the beneficiaries, as provided by various parts in this article, the department may, if such procedure shall be found to be just and reasonable, require that the state be reimbursed for costs which may have been paid from state appropriations. This reimbursement may cover costs and expenses incurred prior to the time the project funds could be made available for salaries and expenses for regular employees of any state department who may have devoted all or a part of their time to that particular project, except this is not intended to apply to the salaries of the members of the department engaged only in general administrative work in connection with the project.

TITLE 3
POWERS AND DUTIES

Section 15-0301. Investigations.

15-0303. Examination of books, records and accounts.

15-0305. Access to property for inspection or investigation.

15-0307. Requirement of statements and reports.

15-0309. Power to sue.

15-0311. Eminent domain.

15-0313. Powers and responsibilities with respect to water pollution control.

15-0314. Powers and responsibilities with respect to certain plumbing fixtures.

15-0315. Relations with other governmental bodies and agencies.

15-0317. General powers and duties.

§ 15-0301. Investigations.

1. The department may, of its own motion, make or cause to be made such surveys and investigations as it may deem advisable and necessary for the discharge of its duties under this article.

2. The department, upon its own motion, or upon a petition presented to it by a person or public corporation pursuant to provisions of this article, may in its discretion, extend the scope of such proceeding to any improvements or developments of natural resources which may be done under any provisions of this article, and if any part of the procedure governing the matters concerning which the petition is presented cannot be made applicable in all respects to the subject matter of the proceedings as thus extended, then the procedure peculiar to such additional matter as provided for in this article may be adopted to the extent necessary.

3. The department shall make or cause to be made continuing investigations of the water resources of the state so as to accumulate comprehensive data as a basis of providing for their proper conservation, development, regulation and use.

4. The department shall conduct systematic gauging of rainfall and stream flow throughout the state when moneys shall have been appropriated therefor.

§ 15-0303. Examination of books, records and accounts.

For the purpose of ascertaining material information relevant to the function of the powers and duties of the department, the department may by its members, authorized agents or representatives freely examine at any time the books, records and accounts of any holder of a license, permit or other authorization, issued pursuant to this article.

§ 15-0305. Access to property for inspection or investigation.

The department or its duly appointed agents shall have the right to enter at all times in or upon any property, public or private, for the purpose of inspecting or investigating conditions relating to matters within the jurisdiction of the department pursuant to article 15. The department shall be liable only for actual damage done by reason of any such entry, inspection, or investigation. The amount of such damages may be agreed upon between the department and the owner and occupant of the damaged property, or if they cannot agree the amount of such damages shall be ascertained and determined by proper court action.

§ 15-0307. Requirement of statements and reports.

The department may require any holder of a license, permit or other authorization, issued pursuant to this article, at a designated time or times, to file with it statements and reports, in such form as it may prescribe, covering any data or information which it deems necessary or proper to enable it to carry into effect the provisions of this article.

§ 15-0309. Power to sue.

The department may bring actions, suits or proceedings as in its judgment may be necessary and proper to enable it to perform any of the duties imposed upon it by the provisions of this article as amended or to prevent the violation by any person or public corporation of any of the provisions thereof; and may defend such actions, suits or proceedings as may arise through the performance of any duties or functions imposed upon it by the provisions of this article as amended.

§ 15-0311. Eminent domain.

The department may, in those situations which are specifically

enumerated in this article and subject to whatever restrictions and limitations this article may impose, acquire real property pursuant to this article under an exercise of the right of eminent domain.

§ 15-0313. Powers and responsibilities with respect to water pollution control.

1. The department shall perform such duties and functions with respect to the control of water pollution as is provided in article 17 of the Environmental Conservation Law, and shall have such powers and authority as may be necessary in that regard.

2. The department is hereby authorized, upon due consideration after hearing to:

a. Alter, modify or amend the "Rules and Classifications and Standards of Quality and Purity for Waters of New York State" for the control of pollution of the waters of the state as provided in paragraph (c) of subdivision 7 of section 17-0301,

b. Classify the waters of the state in accordance with best usage in the interest of the public, and alter, reclassify, modify, change or amend the classification of waters hitherto adopted and established by the former Water Resources Commission and the former Water Pollution Control Board as provided in paragraph (c) of subdivision 7 of section 17-0301,

c. Establish new, or alter, modify, change or amend existing standards of quality and purity of the waters of the state applicable to the classification of waters.

3. In the classification of waters and the adoption of standards of purity and quality therefore, due consideration shall be given by the department to the factors and considerations specifically provided in section 17-0301.

4. The department is authorized to adopt and enforce rules and regulations governing the direct application of chemicals to or in surface waters for the purpose of altering water quality, or the direct application of pesticides to or in surface waters, notwithstanding any of the provisions of this chapter.

a. Such rules and regulations may forbid such direct application or use of pesticides and chemicals except pursuant to a permit issued by the department, or by an appropriate officer or agency authorized by such rules to issue such permits, except that a permit shall not be required for the application of a pesticide to a pond of one acre or less in size which has no outlet to surface water.

b. Such rules and regulations may specify the pesticides and chemicals and quantities and concentrations thereof which may be directly applied or used, which specified chemicals and pesticides shall be selected with maximum protection of life, health and property as criteria for their selection, and shall also provide for giving reasonable notice to persons likely to be adversely affected by such use of chemicals and may require consent of persons who may reasonably be expected to suffer substantial damage or injury thereby prior to the issuance of any permit for such use. A fee of one hundred dollars shall accompany each permit.

c. No pesticide or chemical may be introduced into any surface waters of the state classified pursuant to article 17 in violation of such rules and regulations.

§ 15-0314. Powers and responsibilities with respect to certain plumbing fixtures.

1. On and after the effective date of this section, no individual, public or private corporation, political subdivision, government agency, department or bureau of the state, municipality, industry, co-partnership, association, firm, trust, estate or other legal entity shall, for purposes of use in this state, distribute, sell, offer for sale, import or install any sink faucet or lavatory faucet, shower head,

drinking water fountain, urinal or water closet, including tank-type toilets, flushometer-tank toilets, flushometer-valve toilets, electromechanical hydraulic toilets, and all other types of toilets that use water and associated flush-valve, if any, unless it shall meet the water saving performance standards as provided for in subdivision two of this section.

2. The water saving performance standards for sink and lavatory faucets, shower heads, drinking water fountains, urinals and water closets, including tank-type toilets, flushometer-tank toilets, flushometer-valve toilets, electromechanical hydraulic toilets, dual-flush toilets and all other types of toilets that use water shall be as follows:

(a) for lavatory faucets, at a constant water pressure of sixty pounds per square inch, maximum flow shall not exceed 1.5 gallons of water per minute (or .25 gallons per cycle for lavatory faucets designed as metering faucets) and provided that those faucet models installed in public buildings must be of a self-closing variety and must be designed to limit the discharged flow rate of water to a maximum of .5 gallons per minute at a constant water pressure of sixty pounds per square inch or must be of the metering type which limit the discharge of water to a maximum of .25 gallons per cycle; and

(b) for sink faucets, at a constant water pressure of sixty pounds per square inch, maximum flow shall not exceed 2.2 gallons of water per minute; and

(c) for shower heads, at a constant water pressure of eighty pounds per square inch, maximum flow shall not exceed 2.0 gallons of water per minute; and

(d) for urinals and associated flush-valve, if any, maximum flow shall not exceed an average of 0.5 gallons of water per flush (except for urinals designated and marketed exclusively for use in prisons or mental health care facilities); and

(e) except for water closets and toilets designed and marketed exclusively for use in prisons or mental health care facilities, (1) for water closets and associated flush-valve, if any, maximum flow shall not exceed an average of 1.28 gallons of water per flush; (2) for dual-flush tank-type water closets, the average of two reduced flushes and one full

flush shall not exceed 1.28 gallons of water per flush; and (3) for dual-flush flushometer-valve water closets, maximum flow shall not exceed an average of 1.28 gallons of water per flush; and

(f) drinking water fountains must be of a self-closing variety.

3. Each shower head, sink or lavatory faucet, both box and product, shall be marked and labeled, and each water closet or urinal, or each component if the water closet or urinal is comprised of two or more components, both box and product, shall be marked and labeled in accordance with the latest revision of the standards designated American National Standards, written under American National Standards Institute (ANSI), and, as applicable, the following United States Environmental Protection Agency watersense program specification: showerheads (July 26, 2018), tank-type toilets (June 2, 2014), lavatory faucets (October 1, 2007), flushing urinals (August 14, 2009), and flushometer-valve toilets (December 17, 2015).

4. The commissioner may permit the sale and installation of water closets, blow out toilets and associated flush-valves, if any, which do not meet the standards provided for in subdivision two of this section if after application therefor it is determined by the commissioner that the installation of fixtures which meet such standards would be detrimental to the operation of the existing sewerage system or part of such system, servicing such fixtures.

5. The provisions of this section shall not apply to fixtures which were in compliance with this section and other applicable provisions of law on the date on which they were installed which are removed and relocated to another room or area of the same building or to another building owned or leased by the owner of the building from which such fixtures were removed after the effective date of this section, nor shall they apply to fixtures such as safety showers, bedpan washer equipped water closets and aspirator faucets, which, in order to perform a specialized function, cannot meet the standards specified in subdivision two of this section.

6. "Public building" as used in this section, means any building or

portion thereof, used or controlled by any department or branch of a state or local government, or which is constructed wholly or partially through state or municipal funds, including tax funds, funds obtained through bond issues or grants or loans under any state law, which is likely to be used by the public, including, but not limited to theaters, concert halls, auditoriums, museums, schools, libraries, recreation facilities, transportation terminals and stations, factories, office buildings and building establishments. In addition, "public building" includes those facilities such as stores, restaurants and hotels which have restrooms which are open to the public or the clientele of the facility but not including private restrooms which are part of sleeping quarters in such a facility. The term "public building" does not include privately owned residential structures, public housing structures, or police, fire or correction structures.

7. A violation of the provisions of this section shall be liable for a penalty pursuant to section 71-1127 of this chapter.

8. The commissioner, to the extent practicable and appropriate, shall utilize the latest revision of the standards designated American National Standards, written under American National Standards Institute (ANSI) procedures in determining requirements under this section, and, as applicable, the following United States Environmental Protection Agency watersense program specification: showerheads (July 26, 2018), tank-type toilets (June 2, 2014), lavatory faucets (October 1, 2007), flushing urinals (August 14, 2009), and flushometer-valve toilets (December 17, 2015).

§ 15-0315. Relations with other governmental bodies and agencies.

1. In order to adequately protect the interests of the state in its water resources, the department is hereby authorized to:

a. Cooperate with the appropriate agencies of the federal government or this or other states, or any interstate bureau, group, division or agency with respect to the use of water from lakes, ponds, rivers and

streams, which are without or wholly or partially contained within this state, and to endeavor to harmonize any conflicting claims which might arise therefrom.

b. Appear, represent and act for the state in respect to any proceeding before either a federal or state governmental body or agency where the water resources of the state may be affected, and may do and perform such acts in connection therewith as it deems proper to protect the interests of the state.

c. Present for the consideration of the Congress or officers of the federal government, as occasion requires, the just rights of the state in relation to its waters and institute and prosecute appropriate actions and proceedings to secure such rights, and defend any action or proceeding calculated to impair such rights.

2. The department is designated as the agent of the state to obtain the cooperation, aid and assistance of any appropriate federal agencies in the performance of the functions of the department or of any regional planning and development board created under title 11 of this article. The department may enter into contracts, when required, with any such federal agencies for such purposes. Wherever it is required by a federal statute, rule or regulations that such cooperation, aid and assistance be given on a matching-funds basis, the department, if funds have been appropriated and are available therefor, is designated as the agent of the state to enter into contracts on said basis; provided, however, that payment by the state shall not exceed one-half of the cost, including personal service, of the services rendered by the federal agencies. All contracts entered into by the department shall be executed by its commissioner and in the manner and form prescribed by law.

§ 15-0317. General powers and duties.

The department shall continue to exercise all the functions, powers and duties of the former Water Resources Commission as specified in the former Conservation Law in effect on the date of the enactment of

chapter 140 of the laws of 1970, and all the functions, powers and duties of the Water Power and Control Commission as previously established by chapter 242 of the laws of 1928 and of its predecessors and all the functions, powers and duties enumerated in this article as amended and as may hereinafter be prescribed by law.

TITLE 5

PROTECTION OF WATER

Section 15-0501. Protection of certain streams; disturbances of stream beds; permit.

15-0503. Protection of water bodies; permit.

15-0505. Protection of navigable waters; excavation or fill; permit.

15-0507. Structures impounding waters; structures in waters; responsibility of owner; inspection.

15-0509. Bonds.

15-0511. Alterations to watercourses and lakes; inspection and correction; illegal impounding of waters.

15-0513. Liability of subcontractor, employee or agent.

15-0514. Prohibition of certain incompatible uses over either primary ground water recharge areas or federally designated sole source aquifers.

15-0515. Review.

15-0516. Inspection report of dam safety.

15-0517. Water quality testing requirements for land clearing debris and compost facilities in Nassau and Suffolk counties.

§ 15-0501. Protection of certain streams; disturbances of stream beds; permit.

1. Except as provided in subdivisions 4, 5, 6 and 7 of this section, no person or public corporation shall change, modify or disturb the course, channel or bed of any stream as defined in subdivision 2, or remove any sand, gravel or other material from the bed or banks of such

a stream without a permit issued pursuant to subdivision 3 of this section.

2. For the purposes of this section, stream shall mean that portion of any fresh surface watercourse, except lakes or ponds having a surface area greater than ten acres at mean low water level, for which the department has adopted or may hereafter adopt pursuant to section 17-0301, any of the following classifications or standards:

AA and AA (T),

A and A (T),

B and B (T),

C (T)

Small ponds or lakes with a surface area at mean low water level of ten acres or less, located in the course of a stream, shall be considered a part of the stream and subject to regulation under this section.

3. Permit.

a. Before granting a permit, a permit renewal or a permit modification pursuant to this section, the department shall ascertain the probable effect on the health, safety and welfare of the people of the state, and the effect on the natural resources of the state, including soil, forests, water, fish and aquatic resources therein, likely to result from the proposed project or work.

b. In order to minimize the disturbance of a stream and in order to prevent unreasonable erosion of soil, increased turbidity of the waters, irregular variations in velocity, temperature and level of waters, the loss of fish and aquatic wildlife and the destruction of natural habitat thereof, and the danger of flood or pollution, the department shall review the permit application or request for renewal or modification of

an existing permit and may approve the manner and the extent to which the stream bed or channel may be changed, altered or modified and may limit the quantity of sand, gravel or other material to be removed, designate the location in the bed, channel or banks of the stream from which the sand, gravel or other material may be removed, or it may deny the permit or request.

c. The rules and regulations adopted by the department to implement this section and the provisions of article 70 of this chapter and rules and regulations adopted thereunder shall govern the processing of permit applications, renewals, modifications, suspensions and revocations under this section.

4. No permit under this section shall be required of any local public corporation which has entered into a written memorandum of understanding with the department establishing the plan of operation to be followed in carrying out projects or work affecting water courses so as to afford proper protection to the public beneficial uses of such water courses.

5. No permit under this section shall be required of any state department or state public corporation. State departments and state public corporations may enter into a written memorandum of understanding with the department concerning projects or work of the type for which a permit would be required under this section if the project or work were undertaken by a person or local public corporation. The memorandum may establish procedures for review by the department of the plans for such projects or work and for written recommendations by the department with respect thereto.

6. No permit under this section shall be required for emergency work in a stream or on its banks which is immediately necessary to protect the health, safety and well-being of any person or persons or to prevent damage to personal or real property, provided that the department is given written notification by registered mail or telegraph within forty-eight hours after the commencement of the work and within forty-eight hours following the completion of such work. Whenever emergency work is performed as provided in this subdivision, it shall be

performed in a manner that will cause the least change, modification, disturbance or damage to the course or bed of the stream and its banks.

7. No permit under this section shall be required for certain agricultural activities of persons and corporations actively cultivating land devoted to agriculture whether or not the same be along a stream or watercourse as described in subdivision 2; providing that these agricultural activities consist only of crossing and recrossing of such streams or watercourses by livestock or by wheeled farm equipment normally used for traditional agricultural purposes; or the use of such stream or watercourse for withdrawal of water for irrigation where such withdrawal does not require altering the bed, banks or course of the stream in any manner.

8. The requirements of this section shall be in addition to those specified in section 15-0505 of this title, provided however, that the department may, by rule and regulation, provide that only one application for a permit or request for renewal or modification of an existing permit need be filed with the proposed project or work requires a department permit under this section and section 15-0505 of this title.

§ 15-0503. Protection of water bodies; permit.

1. Except as provided in subdivision 3 of this section

a. No dam shall be erected, constructed, reconstructed or repaired by any person or local public corporation without a permit issued pursuant to subdivision 2 of this section. As used in this section, and section 15-0511 of this title, "dam" means any artificial barrier including any earthen barrier, together with its appurtenant works, which impounds or will impound waters, provided it has (1) a height equal to or greater than fifteen feet or (2) a maximum impoundment capacity equal to or greater than three million gallons; except that for purposes of this section a dam shall not include any structure which has (i) a height equal to or less than six feet regardless of the structure's impoundment

capacity, or (ii) an impoundment capacity not exceeding one million gallons regardless of the structure's height.

b. Except where a lease or other appropriate conveyance of an interest authorizing the use and occupancy of state-owned lands underwater has been obtained from the commissioner of general services pursuant to subdivision seven of section seventy-five of the public lands law, no dock, wharf, platform, breakwater, mooring, or other structure in, on or above waters shall be erected, placed, constructed, reconstructed, or expanded after the effective date of this paragraph by any person or local public corporation without a permit issued pursuant to subdivision 2 of this section. The term "reconstructed" as used in relation to docks, wharves, platforms, breakwaters, mooring or other structures pursuant to this paragraph shall mean the substantial rebuilding of structures or facilities and shall not apply to ordinary maintenance or repair of existing functional structures or facilities, such as repainting, redriving pilings or replacing broken boards in docks.

c. A city, town, village or county may submit to the commissioner a local law or ordinance regulating docks or other structures as described in paragraph b of this subdivision. The commissioner shall review such law or ordinance to determine whether it provides environmental protection comparable to, or greater than, the provisions of such paragraph and any regulations promulgated thereunder. If the commissioner determines that the local law or ordinance submitted meets such requirements, the commissioner may delegate, upon such terms and conditions as he or she deems appropriate, to the local government the authority to administer the permit program and to charge a fee for permit processing. Any delegation may be revoked by the commissioner if he or she finds that the local government has failed to carry out the program in accordance with the terms of the delegation.

2. Permits. a. Before granting a permit, a permit renewal or a permit modification pursuant to this section, the department shall ascertain the probable effect on the health, safety and welfare of the people of the state, and the effect on the natural resources of the state likely to result from the proposed project or work.

b. The department shall review the permit application or request for renewal or modification of an existing permit and may approve the manner and extent to which the waters of the state or the banks and shore thereof will be affected by the proposed project or work and may grant or deny the permit or request, or may grant the permit or request with such conditions as might appear necessary to safeguard life, property and natural resources during and after the execution of the proposed project or work.

c. The rules and regulations adopted by the commissioner to implement this section and the provisions of article 70 of this chapter and rules and regulations adopted thereunder shall govern permit applications, renewals, modifications, suspensions and revocations under this section.

d. The requirements of this section shall be in addition to those specified in sections 15-0501 and 15-0505 of this title, provided however, that the department may, by rule and regulation, provide that only one application for a permit or request for renewal or modification of an existing permit need be filed when the proposed project or work requires a department permit under this section and any other section of this title.

3. The requirement of a permit pursuant to this section shall not apply to the following facilities:

a. A dock, pier, wharf or other structure used solely as a landing place on water providing dockage for five or fewer boats and encompassing within its outer perimeter an area less than four thousand square feet;

b. A mooring facility providing mooring for fewer than ten boats;

c. Seasonal replacement or reinstallation of structures referenced and listed in paragraph b of subdivision 1 of this section installed prior to the effective date of this paragraph.

4. The design, preparation of plans, estimates and specifications and the supervision of the erection, construction, reconstruction and repair of all the structures hereinbefore referred to shall be done by a licensed professional engineer, or in the case of farm ponds for which a permit is required, by an engineer or conservationist employed by a governmental agency cooperating with a soil conservation district, or by an engineer employed by the department.

5. Notwithstanding the provisions of this or any other chapter or law to the contrary, no reservoirs for any purpose shall hereafter be constructed on the Upper Hudson River in the Adirondack park between Luzerne and the river's source; the Boreas river from its mouth to Durgin Brook; the Indian river from its mouth to Abanakee Dam; and the Cedar river from its mouth to Cedar River Flow, by the state or by any river regulating board.

§ 15-0505. Protection of navigable waters; excavation or fill; permit.

1. No person, local public corporation or interstate authority shall excavate or place fill below the mean high water level in any of the navigable waters of the state, or in marshes, estuaries, tidal marshes and wetlands that are adjacent to and contiguous at any point to any of the navigable waters of the state and that are inundated at mean high water level or tide, without a permit issued pursuant to subdivision 3 of this section. For the purposes of this section, fill shall include, but shall not be limited to, earth, clay, silt, sand, gravel, stone, rock, shale, concrete (whole or fragmentary), ashes, cinders, slag, metal, or any other similar material whether or not enclosed or contained by (1) crib work of wood, timber, logs, concrete or metal, (2) bulkheads and cofferdams of timber sheeting, bracing and piling or steel sheet piling or steel H piling, separated or in combination. Nothing contained in this section is intended to be, nor shall be construed to limit, impair or affect the memorandum of understanding which any state department enters into with the Department of Environmental Conservation or the general powers and duties of the Department of Transportation relating to canals or the general powers and duties of the Department of

Environmental Conservation relating to flood control.

2. A permit application or request for a permit renewal or modification shall be made on forms provided by the department and shall consist of a description of the character and extent of the proposed project or work, drawings, plans and specifications providing the location and details of the proposed project or work, and such additional information as the department may require.

3. Before granting a permit, a permit renewal or a permit modification pursuant to this section the department shall ascertain the probable effect on the use of such waters for navigation, the health, safety and welfare of the people of the state and the effect on the natural resources of the state, including soil, forests, water, fish and aquatic resources therein, likely to result from the proposed project or work.

4. The department shall review the permit application or request for renewal or modification of an existing permit and may grant or deny the permit or request, or may grant the permit with such conditions as will safeguard life or property against danger or destruction and as will make the navigable waters safe for use by the public.

5. The rules and regulations adopted by the department to implement this section and the provisions of article 70 of this chapter and rules and regulations adopted thereunder shall govern the processing of permit applications, renewals, modifications, suspensions and revocations under this section.

6. The provisions of subdivisions 1, 2, 3 and 4 of this section shall not apply to emergency work in waters described in subdivision 1 of this section which is immediately necessary to protect the health, safety and well-being of any person or persons or to prevent damage to personal or real property, provided that the department is given written notification by registered mail or telegraph within forty-eight hours after the commencement of the work and within forty-eight hours following the completion of the work. Whenever such emergency work is performed as provided in this subdivision, it shall be performed in a

manner that will cause the least change, modification, disturbance or damage to the environment.

7. The requirements of this section shall be in addition to those specified in section 15-0501 of this title, provided however, that the department may, by rule and regulation, provide that only one application for a permit or request for renewal or modification of an existing permit need be filed when the proposed project or work requires a department permit under this section and section 15-0501 of this title.

§ 15-0507. Structures impounding waters; structures in waters; responsibility of owner; inspection.

1. Any owner of a dam or other structure which impounds waters shall at all times operate and maintain said structure and all appurtenant structures in a safe condition. As used in this section and section 71-1109 of this chapter, "owner" means any person or local public corporation who owns, erects, reconstructs, repairs, maintains or uses a dam or other structure which impounds waters. The commissioner may promulgate regulations requiring any owner to prepare and implement a safety program for such dam or structure as necessary to safeguard life, property or natural resources. Regulations governing the safety program may include requirements for inspections, monitoring, maintenance and operation, emergency action planning, response and prevention of terrorism and cyber terrorism, financial security, recordkeeping and reporting or any other requirement the commissioner deems necessary to safeguard life, property or natural resources. Such requirement shall only apply to those dams or other structures that impound waters which pose, in the event of failure, a threat of personal injury, substantial property damage or substantial natural resource damage.

2. Whenever in the judgment of the department public safety requires, the department shall investigate dams and other structures impounding waters in the state, and docks, piers and wharves extending into such waters.

3. In addition to any other power set forth in this chapter, including the power to issue an order pursuant to section 71-0301 of this chapter, the department shall have the power, whenever in the judgment of the department it may be necessary to safeguard life or property or to protect the natural resources of the state, after hearing on due notice, to issue an order, setting forth the findings of fact and conclusions therefrom, directing any owner:

a. to conduct studies, investigations and analyses necessary to evaluate the safety of the structure, including but not limited to visual inspections, measurements, foundation exploration and testing, materials testing, hydraulic and hydrologic analyses, structural stability analyses and seepage investigations; and

b. to either remove the said structure or to erect, reconstruct or repair the same within such reasonable time and in such manner as shall be specified in said order.

It shall be the duty of every such owner to obey, observe and comply with such order and with the conditions therein prescribed. The provisions of title 9 of this article with respect to administrative procedures shall be applicable to hearings under this section.

4. It shall be unlawful for any owner to fail, omit or neglect to comply with such order within a reasonable time as designated by the department.

5. Upon the violation of any such order, the department shall have power to enter upon the lands and waters where such structures are located for the purpose of removing, repairing or reconstructing the same and to take such other and further precautions which it may deem necessary to safeguard life or property or protect the natural resources of the state against danger occasioned by the presence of such structures. In removing, repairing and reconstructing such structures or other properties so affected the department shall not deviate from the method, manner and specifications contained in the original order.

6. The department shall certify the amount of the costs and expenses incurred by the department and any state departments for the removal, repair or reconstruction aforesaid in any wise connected therewith to the county legislative body of the county or counties in which the said lands and waters are located, whereupon it shall be the duty of such county legislative body of each county to add the amount so certified to the assessment rolls of such locality or localities as a charge against the real property upon which the dam, dock or other structure is located, designated or described by the department as chargeable therewith, and to issue its warrant or warrants for the collection thereof. Thereupon it shall become the duty of such locality or localities through their proper officers to collect the amount so certified in the same manner as other taxes are collected in such locality or localities and when collected to pay the same to the department, who shall thereupon, pay the same into the State Treasury. Any amount so levied shall thereupon become and be a lien upon the real property affected thereby to the same extent as any tax levy becomes and is a lien thereon. The department may also assert other rights of recovery as may exist by law for such costs and expenses incurred.

§ 15-0509. Bonds.

The department may require the posting of a bond by permittees conditioned upon compliance with the terms of permits issued pursuant to the provisions of title 5 of this article.

§ 15-0511. Alterations to watercourses and lakes; inspection and correction; illegal impounding of waters.

1. Whenever in the judgment of the commissioner, public safety requires, or an illegal excavation, fill, or dam exists in or on the waters of the state, the commissioner may cause an investigation to be made of the nature of the hazard or violation and its probable effect on the health, safety and welfare of the people of the state, and the

effect on the environment and natural resources including forests, soil, water, fish and wildlife.

2. In addition to any other power set forth in this chapter, including the power to issue an order pursuant to section 71-0301 of this chapter, the commissioner shall have the power, after hearing on due notice, to issue an order, setting forth the findings of fact and conclusions therefrom, directing any person or local public corporation, who hereafter makes or allows to be made or is making an illegal or unsafe excavation or fill, or who constructs an illegal dam, to conduct studies, investigations, and analyses necessary to evaluate the safety of the structure, including but not limited to visual inspections, measurements, foundation exploration and testing, materials testing, hydraulic and hydrologic analyses, structural stability analysis and seepage investigations and to remove, replace or correct the dam or excavated or filled materials, within such reasonable time and in such manner as shall be specified in said order, and it shall be the duty of every such person or local public corporation to obey, observe and comply with such order and with the conditions therein prescribed. The provisions of title 9 of this article with respect to administrative procedures shall be applicable to hearings under this section.

3. It shall be unlawful for any person or local public corporation to fail, omit or neglect to comply with such order within a reasonable time as designated by the commissioner.

4. Upon the violation of any such order, the commissioner, or a duly appointed representative, shall have power to enter upon the lands and waters where such illegal or unsafe disturbances are located for the purpose of removing, replacing or correcting the same and to take such other and further precautions which the commissioner may deem necessary to safeguard life or property or protect the environment of the state against danger occasioned by the presence of the illegal or unsafe excavation, fill or dams. In removing or replacing such structures or other properties so affected the commissioner shall not deviate from the method, manner and specifications contained in the original order.

5. The commissioner shall certify the amount of the costs and expenses incurred by the department and any state departments for the removal or replacing aforesaid in anywise connected therewith to the county legislative body of the county or counties in which the said lands and waters are located, whereupon it shall be the duty of such county legislative body of each county to add the amount so certified to the assessment rolls of such locality or localities as a charge against the real property upon which the excavation, fill or dam is located, designated or described by the commissioner as chargeable therewith, and to issue its warrant or warrants for the collection thereof. Thereupon it shall become the duty of such locality or localities through their proper officers to collect the amount so certified in the same manner as other taxes are collected in such locality or localities and when collected to pay the same to the department which shall thereupon pay the same into the State Treasury. Any amount so levied shall thereupon become and be a lien upon the real property affected thereby to the same extent as any tax levy becomes and is a lien thereon. The department may also assert other rights of recovery as may exist by law for such costs and expenses incurred.

§ 15-0513. Liability of subcontractor, employee or agent.

It shall be unlawful for a subcontractor, employee or agent of a person or public corporation, or of a state department to knowingly and intentionally act, or a prime contractor of a person, public corporation or state department to act with or without an intention to violate the provisions of sections 15-0501, 15-0503 or 15-0505 in disregard of specifications provided in a construction contract protecting against stream damage.

§ 15-0514. Prohibition of certain incompatible uses over either primary groundwater recharge areas or federally designated sole source aquifers.

1. Definitions: The following terms, whenever used or referred to in

this section, shall have the following meanings:

a. "Primary groundwater recharge areas" shall mean those areas of the land surface through which water of great volume and high quality generally move downward to the deeper portions of the underlying groundwater reservoir. In the counties of Nassau and Suffolk, primary groundwater recharge areas shall mean Hydrogeologic Zones I, II, III, IV and V as defined in the Long Island Comprehensive Waste Treatment Management Plan of 1978, or any amendments to such boundaries which are accepted by the commissioner.

a-1. "Primary water supply aquifer areas" shall mean those areas in the counties of Nassau, Suffolk, Kings and Queens and the Schenectady aquifer (commonly known as the Great Flats Aquifer), as identified in the nineteen hundred eighty-one New York state department of health report on groundwater dependence in New York state, and defined in the United States Geologic Survey maps for such aquifers, or any amendments to such boundaries which are accepted by the commissioner.

b. "Incompatible uses" shall mean any hazardous waste or substances as determined by the department, that may ultimately be discharged to groundwater, or the storage of such a substance that may contaminate the groundwater.

c. "Long Island Comprehensive Waste Treatment Management Plan of 1978" shall mean the study prepared by the Long Island Regional Planning Board pursuant to section two hundred eight of the Federal Water Pollution Control Act as amended in 1972.

d. "Sole source aquifer" shall mean an aquifer system that the United States environmental protection agency, pursuant to Public Law 93-523 which is known as the federal Safe Drinking Water Act of 1974, has designated as the sole or principal drinking water source for an area and which, if contaminated, would create a significant hazard to public health.

e. "Hazardous wastes" shall include all materials or chemicals listed

as hazardous wastes pursuant to article twenty-seven of this chapter, or all toxic pollutants as defined in subdivision nineteen of section 17-0105 of this chapter.

f. "Hazardous substance" means:

(1) petroleum; or

(2) any substance or combination of substances designated as a hazardous substance under section 311 of the Federal Water Pollution Control Act (33USC1321) and which is not a hazardous waste under title 9 of article 27 of this chapter; or

(3) any substance listed by the department which because of its quantity, concentration, or physical, chemical or infectious characteristics may;

(i) Cause, or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(ii) Pose a substantial present or potential hazard to human health or the environment when improperly stored or otherwise managed.

The department shall promulgate a list of hazardous substances, within one year after the effective date of this section, including petroleum for the purposes of carrying out the applicable provisions of this title. Prior to the promulgation of such list the department shall solicit information on the present practices of industry and other commercial users of hazardous substances.

g. "Petroleum" means oil or petroleum of any kind and in any form including, but not limited to, oil, petroleum, fuel oil, crude oil, petroleum mixed with one or more other substances, gasoline, kerosene, naphtha and as further defined by the department in rules and regulations.

2. The Nassau - Suffolk Hydrogeologic Zones I, II, III, IV and V, and their attendant boundaries as specified in the Long Island Comprehensive Waste Treatment Management Plan of 1978, or any amendments to such boundaries which are accepted by the commissioner are hereby adopted as primary groundwater recharge areas for the counties of Nassau and

Suffolk for the purposes of this section.

3. The department shall propose, for the purposes of this section, primary groundwater recharge areas within either other designated sole source aquifer systems, excluding the counties of Nassau and Suffolk, or within primary water supply aquifer areas based upon hydrogeological conditions and recommendations within the department's groundwater management plan, within twelve months subsequent to the date at which the sole source aquifer designation becomes effective or within twelve months of the effective date of this amended subdivision, pursuant to the following procedures:

a. The department shall hold public hearings in regard to the proposed locations and boundaries of the primary groundwater recharge areas.

b. Notice of each public hearing shall be by publication in a newspaper most likely to give notice to the people residing within the primary water supply aquifer. Notice of such hearing shall be printed at least once in each of three successive weeks, but the hearing shall not be conducted less than thirty days following the date of first publication of notice of such hearing.

c. The department shall subsequently finalize and adopt specific locations and boundaries of such primary groundwater recharge areas within three months following the completion of such hearing.

d. Additional primary groundwater recharge areas or new boundaries of existing primary recharge areas may be delineated by the department based upon new hydrogeological information subject to the procedure outlined in paragraphs a, b and c of this subdivision.

4. Copies of the adopted boundaries of the delineated areas shall be kept on file in the offices of the commissioner and the regional director of the department.

5. The department shall promulgate rules and regulations which will restrict or prohibit incompatible uses over primary water supply

aquifers, giving special attention where necessary to protect primary groundwater recharge areas.

6. In undertaking its responsibilities under this section, the department shall give first attention to the protection of pristine, largely undisturbed or undeveloped areas to insure the non-degradation of the water resources of such areas.

§ 15-0515. Review.

A determination, order or issuance, modification or denial of a permit, pursuant to sections 15-0501, 15-0503 and 15-0505 shall be reviewable in a proceeding pursuant to article 78 of the Civil Practice Law and Rules.

§ 15-0516. Inspection report of dam safety.

1. Within thirty days of the creation by the department of any inspection report of any intermediate or high hazard dam, the department shall provide, to the chief executive officer of a municipality in which the dam is located, a copy of such report. Such report shall also be furnished to the chief executive officer of any other municipality in the county where the dam is located, or any county adjoining such county upon written request of the chief executive officer of such municipality.

2. For the purposes of this section, the term "chief executive officer" shall mean:

- (a) for the purposes of a village or city, the mayor of such village or city;
- (b) for the purposes of a town, the supervisor of such town;
- (c) for the purposes of a county, the chairperson of the county legislature or board of supervisors, or, if there be one, the county executive.

§ 15-0517. Water quality testing requirements for land clearing debris and compost facilities in Nassau and Suffolk counties.

1. In Nassau and Suffolk counties, the department shall promulgate rules and regulations to prevent water quality and other environmental impairments resulting from land clearing debris facilities or composting facilities. Such regulations shall at a minimum require:

- (a) quarterly up gradient and down gradient water quality testing;
- (b) setbacks from drinking water supply wells and surface water bodies; and
- (c) dust and odor suppression and fire risk minimization.

2. The department shall in the case of a primary recharge area, and may for other recharge areas, promulgate rules and regulations to be implemented twenty-four months after the effective date of this section, to prevent water quality and other environmental impairments resulting from land clearing debris facilities or composting facilities by requiring the use of an impermeable liner, in addition to the requirements of subdivision one of this section. The department may exempt a land clearing debris facility or a composting facility from the regulatory requirements of this subdivision following a review of the facility's water quality testing results and a determination by the department that such facility does not pose a risk of impairment to the primary recharge area or, if applicable, other recharge area.

3. For the purposes of this section:

(a) "land clearing debris" shall mean vegetative matter, soil and rock resulting from activities such as land clearing and grubbing, utility line maintenance or seasonal or storm related cleanup such as trees, stumps, brush and leaves and including wood chips generated from these materials.

(b) "composting facilities" shall mean facilities that accept more than three thousand cubic yards of waste, either processed or unprocessed, per year.

TITLE 6

WATER EFFICIENCY AND REUSE

Section 15-0601. Definitions as used in this title.

15-0603. Reclaimed wastewater feasibility study.

15-0605. Standards for reuse and disposal of reclaimed wastewater.

15-0607. Utilization of reclaimed wastewater registry.

§ 15-0601. Definitions as used in this title.

1. "Water reclamation project" means a project designed to utilize reclaimed wastewater or greywater for beneficial non-potable uses including, but not limited to, agricultural and landscape irrigation, commercial and industrial uses, and wetland maintenance purposes.

2. "Greywater" means untreated wastewater from bathtubs, showers, washing machines, dishwashers and sinks, but shall not include discharges from toilets or urinals or industrial discharges.

3. "Reclaimed wastewater" means water discharged from a treatment works utilizing at least effective secondary treatment as defined in section 17-0509 of this chapter.

§ 15-0603. Reclaimed wastewater feasibility study.

1. The department, in consultation with the department of health, shall conduct a study of potential uses of greywater and reclaimed wastewater in New York state, and develop a strategy for promoting water reclamation projects.

2. Such study shall be completed within eighteen months of the effective date of this section and a report of the findings from the study shall be presented to the governor, the speaker of the assembly and the temporary president of the senate within ninety days of the completion of the study.

§ 15-0605. Standards for reuse and disposal of reclaimed wastewater.

The commissioner, in consultation with the department of health, shall establish rules, regulations and standards for the reuse and disposal of reclaimed wastewater and/or greywater. The department of health shall advise the department on water quality and pathogens monitoring requirements.

1. Such rules, regulations and standards shall specify:

a. the permitted uses of reclaimed wastewater and greywater with required levels of water quality and treatment for each permitted use; permitted uses shall include, but not be limited to: industrial cooling; commercial and industrial landscaping; park and golf course irrigation; groundwater recharge; surface water supply augmentation; wetland creation and augmentation, and non-food agricultural crop and lawn irrigation.

b. operational requirements including, but not limited to, treatment facility reliability; storage requirements, if necessary; system labeling and color-coding requirements; and pipe location and placement.

2. Such rules, regulations and standards shall be promulgated within thirty months of the effective date of this section.

§ 15-0607. Utilization of reclaimed wastewater registry.

All persons utilizing reclaimed wastewater or greywater shall register such project with the department. The department shall maintain such registry.

Section 15-0701. Harmless alterations in watercourses and lakes; prescriptive rights or privileges; action for declaratory judgment; limitation of time.

§ 15-0701. Harmless alterations in watercourses and lakes; prescriptive rights or privileges; action for declaratory judgment; limitations of time.

1. An alteration (whether or not it causes water to cover or permeate land previously dry) in the natural flow, quantity, quality or condition of a natural watercourse or lake situated in this state and either on or below the surface of the earth, effected by the use either on or off riparian land, withdrawal, impoundment, or obstruction of the water in such watercourse or lake, or by the addition of water thereto, or by changes in the banks, bed, course or other physical characteristics of such watercourses or lake, is reasonable and lawful as against any person, as defined in subdivision two of section 15-0107, having an interest in such watercourse or lake, unless such alteration is causing harm to him or it, or would cause him or it immediate harm if and when begun. No action for nominal damages or for an injunction shall be maintainable because of such an alteration against any person or corporation, whether a riparian owner or not, on the ground that such alteration is an infringement of the plaintiff's private rights and privileges in the waters of, or with respect to, such watercourse or lake unless such alteration is causing plaintiff harm, or would cause him or it immediate harm if and when begun. This subdivision shall apply to such an action regardless of whether the alteration sought to be made the basis of it was caused before or after the effective date of this section.

2. For the purpose of this section, "harm" shall mean:

a. Interference with a present use of the water by the complaining party or an interference with the complaining party's present enjoyment of riparian land occurring prior to suit, or which will immediately occur when the alteration complained of is begun, regardless of whether

such interference has caused or will ever cause such party measurable financial loss; or

b. A decrease in the market value of the complaining party's interest in riparian land occurring prior to suit, or which will immediately occur when the alteration complained of is begun, regardless of whether his use of the water or enjoyment of riparian land was interfered with prior to suit, or will be immediately interfered with when the alteration complained of is begun.

3. Interference with the present enjoyment of riparian land may be established by proof that the alteration complained of or sought to be enjoined is rendering or will immediately render riparian land owned or occupied by the complainant less suitable or useful for the purpose or purposes to which he is presently devoting it. The evidence admissible to establish a decrease in the suitability or utility of such land for such purposes may include, but not be limited to, evidence tending to show that the act complained of has diminished, or when begun, will immediately diminish, the desirability for recreational purposes, or the natural beauty of the body of water to which the land owned or occupied by the complainant is riparian.

4. The cause of action essential to the initiation and creation of a prescriptive right or privilege against a private riparian owner to continue an alteration in the natural condition of such a watercourse or lake shall not be supplied by such an alteration until it shall have caused such riparian owner harm and then only if it is unreasonable.

5. Nothing contained in this section shall, however, be construed as depriving any person or corporation having an interest in such watercourse or lake of any remedy either at law or in equity which he now has, or may hereafter acquire, under the law of this state for harm caused him by an unreasonable alteration in the natural condition of such a watercourse or lake, regardless of whether such alteration was harmful and unreasonable from its initiation or subsequently became so.

6. Any person desirous of ascertaining the extent of the rights and

privileges of himself and others in the water of or with respect to the natural condition of such a natural watercourse or lake may maintain an action for a declaratory judgment defining the extent of such rights and privileges. Neither proof of present harm nor of the likelihood of future harm to the plaintiff from an alteration in the natural condition of such watercourse or lake shall be prerequisite to the maintenance of such an action, the judgment in which shall not affect the rights and privileges of any person or corporation not a party thereto. Such an action shall be maintainable by persons, corporations, governmental units, owners of land riparian to such a natural watercourse or lake, persons to whom such owners have granted their riparian rights in whole or in part, and owners of prescriptive rights or privileges in the water of or with respect to such watercourses or lakes.

7. No statute of limitations shall begin to run against a cause of action for such a declaratory judgment until a plaintiff who is empowered by this section to maintain it has been harmed by an unreasonable alteration in the natural condition of such watercourse or lake effected by the person or his predecessor in interest against whom such an action may be maintained.

8. Notwithstanding any other provision of this section, if the harm resulting from an unreasonable alteration of the natural condition of such a natural watercourse or lake is one which would not ordinarily be noticeable by an owner of land actually present thereon, no statute of limitations shall begin to run against any cause of action referred to in subdivisions four and five of this section until the party harmed is fairly chargeable with knowledge that he has been harmed.

9. Nothing herein contained shall be construed to alter or affect the right to exercise any power which the state of New York or any agency thereof, or any county, city, town or village or any agency thereof, may have to enjoin the initiation or continuance of an alteration in the natural condition of a natural watercourse or lake.

REGULATION OF RESERVOIR RELEASES

Section 15-0801. Statement of legislative findings and policy.

15-0803. Inventory of reservoirs.

15-0805. Regulation of reservoir releases.

15-0807. Public notice and hearing procedures.

§ 15-0801. Statement of legislative findings and policy.

1. In addition to the statements of policy and legislative findings as herein otherwise provided in this article, the legislature hereby finds that the volume and abrupt changes in the volume of releases of water from impounding reservoirs of water having a capacity of more than one billion gallons and located in the counties of Delaware, Greene, Putnam, Schoharie, Sullivan, Ulster and Westchester have damaged the recreational uses, such as trout fishing and canoeing, of waters affected by such releases, that such waters are a recreational resource for residents from all parts of the state of New York and elsewhere, that such recreational resource benefits the economy and welfare of this state and that the volume and rate of change of volume of such releases can be regulated to protect and enhance the recreational use of waters affected by such releases while ensuring and without impairing an adequate supply of water for power production or for any municipality which uses water from such reservoirs for drinking and other purposes.

2. It is hereby declared to be the policy of this state that the volume and rate of change of volume of releases of water from such reservoirs should be regulated to protect and enhance the recreational use of waters affected by such releases while ensuring and without impairing an adequate supply of water for power production or for any municipality which uses water from such reservoirs for drinking and other purposes.

§ 15-0803. Inventory of reservoirs.

The commissioner shall, on or before the first day of January,

nineteen hundred seventy-seven file with the secretary of state an inventory of impounding reservoirs of waters having a capacity of more than one billion gallons and located in the counties of Delaware, Greene, Putnam, Schoharie, Sullivan, Ulster and Westchester.

§ 15-0805. Regulation of reservoir releases.

1. The commissioner is authorized and directed to promulgate rules and regulations as expeditiously as possible but in no event later than the first day of April, nineteen hundred seventy-seven for releases from Schoharie reservoir through the Shandaken tunnel and for releases from Neversink, Pepacton and Cannonsville reservoirs, nor later than the first day of October, nineteen hundred seventy-eight for releases from the remaining impounding reservoirs, to carry out the policy set out in this title consistent with the findings and policies set out in this article.

2. Without limiting the foregoing, such rules and regulations may include provisions respecting the volume, timing and rate of change in volume of releases of water, monitoring, maintenance of records, inspection of records and premises, reporting and investigations by representatives of the department, may vary from time to time, on a seasonal basis and from reservoir to reservoir and shall include provisions to insure that an adequate supply of water for power production and for any municipality which uses water from such reservoir for drinking and other purposes will not be impaired, to provide for the public health and safety in the event of drought or other emergency conditions and shall be promulgated only after affected municipalities are provided an opportunity for consultation.

§ 15-0807. Public notice and hearing procedures.

The promulgation of rules and regulations pursuant to this title shall be exclusively governed by the rule-making procedures of the state administrative procedure act, except that municipalities affected by the

releases which are the subject of such rules and regulations shall also be provided an opportunity for consultation during the preparation of such rules and regulations.

TITLE 9

ADMINISTRATIVE PROCEDURES FOR ARTICLE 15

Section 15-0901. Rule-making procedure.

15-0903. Hearing procedure.

15-0905. Review.

15-0907. Services of notice, order or direction.

15-0909. Payment of costs.

§ 15-0901. Rule-making procedure.

The department may adopt rules in conformity with statute governing the procedures prescribed or authorized by this article. Such rules may include rules of practice before the department, together with forms and instructions. To assist the persons or public corporations dealing with it, the department shall so far as deemed practicable supplement its rules with descriptive statements of its procedures or requirements.

§ 15-0903. Hearing procedure.

1. The provisions of this title shall not apply to applications for permits, requests for permit renewals and modifications, or to permit modification, suspension or revocation proceedings initiated by the department where any of such actions involve title 5, 15 or 27 of this article.

2. Whenever a public hearing is to be held pursuant to this article, the notice of such hearing shall be published in such newspaper or newspapers as the department shall deem appropriate, once in each week for not more than four weeks. At least one publication shall be in a newspaper of general circulation in the area affected. Notice thereof

shall specify that on a date therein named, the department will cause such hearing to be held at such place and time as it may specify therein, for the purpose of receiving evidence and arguments from all persons and public corporations that may be affected by the proposed permit or project and shall have filed timely notices of appearance. The public notice shall specify the last day, not more than ten days prior to the day specified for the public hearing, on which notices of appearance may be filed with the department. Notices of appearance in opposition to the permit or project shall recite in the notice the interest of the person or public corporation filing such notice, and the specific grounds of objection to the permit or project. In the event that no notice of appearance in opposition to the proposed permit or project is filed within the time specified, the department may dispense with the public hearing and shall proceed to consider and examine the application, petition, maps, plans, proofs, arguments and other matters submitted in support of the proposed permit or project; provided, however, that nothing herein contained shall authorize the denial of an application unless and until the applicant or petitioner has been afforded an opportunity to present proof and argument in support of the application. The notice of hearing shall also specify the subject matter of the hearing in such detail as the department shall deem necessary.

3. Conduct of hearing shall be as follows:

a. All hearings shall be public except as to those matters where a public hearing may be dispensed with pursuant to the provisions of subdivision 1 of this section.

b. The hearings herein provided for may be conducted by the commissioner or any employee of the department to whom the commissioner shall delegate the power and authority to conduct such hearings as a hearing officer in the name of the department at any time and place.

c. In such hearings, the hearing officer may administer oaths to witnesses and may issue subpoenas in the name of the department, requiring the attendance and giving testimony by witnesses and the

production of books, papers and other documentary evidence for such hearings.

d. The record, or summary thereof, of the proceedings of such hearings shall be made and filed with the department. The department, on its own motion or if requested to do so, may cause to be taken and filed with the department a full stenographic transcript in duplicate of the testimony presented at the hearing. The cost of such department copies shall be paid by the applicant. The stenographer shall, upon payment of his fees by a person requesting the same, furnish a copy of the whole or any part of the transcript to such person.

e. The department may, for the purpose of such a hearing, provide for the taking of depositions of witnesses before any member of the department, or any person who may be designated hereunder by the department to hold hearings. In such case such member, 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 and shall be filed with the department prior to the final adjournment of the hearings.

f. The provisions of subdivision y of section 71-0503, applicable to investigations by the department and a direction to testify made by the department, shall apply to hearings and investigations and a direction to testify or produce evidence made by a hearing officer at a hearing conducted pursuant to the provisions of this article.

g. The department and hearing officers designated by it pursuant to this article shall not be bound by the laws of evidence in the conduct of hearing proceedings, but every decision and order shall be founded upon competent, material evidence which is substantial in view of the entire record.

h. No factual information or evidence other than that in the record shall be considered in arriving at a decision in a case. However, all evidence, including records and documents in the possession of the department of which it desires to avail itself, may be offered and made

a part of the record in the case. All such documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

i. The applicant and any person who has filed a notice of appearance shall have the right of cross-examination of witnesses who testify, and shall have the right to submit rebuttal evidence.

j. The department may take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within its specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of material so noticed, and they shall be afforded an opportunity to contest the facts so noticed. The department may utilize its experience, technical competence, and specialized knowledge in the evaluation of evidence presented to it.

4. The department shall, upon any application submitted to it or initiated on its own motion, render its decision thereon in writing, including or accompanied by findings of fact, and whenever required by this article, by statutory determinations. The original of such decision, together with all maps, plans and other papers or records relating thereto, shall be filed and kept on file in the department. A copy of the decision shall be delivered or mailed to the attorney of record of the applicant and of each person who filed a notice of appearance, or to the applicant or such person directly if not represented by an attorney.

§ 15-0905. Review.

1. The applicant or any person or public corporation, who or which has filed a notice of appearance in the proceedings before the department and is affected by a decision made pursuant to this article, may review such decision under the provisions of article 78 of the Civil Practice Law and Rules.

2. A special proceeding for such review must be commenced within sixty days after the service in person or by mail of a copy of the decision upon the attorney of record of the applicant and of each person who has filed a notice of appearance, or to such applicant in person directly if not represented by an attorney.

3. In the event that upon such review, the judgment of the court modifies the decision of the department or any accompanying documents or maps, the department shall cause such judgment to be filed or recorded, as the case may be, in each place where the final decision of the department was filed and recorded, and such modified maps and documents shall be final and conclusive.

§ 15-0907. Services of notice, order or direction.

Whenever this article provides for or authorizes the service of a notice, order or direction upon a licensee or applicant for a license, or upon any other person, and does not provide for the manner of service, and no different time is provided, such service may be made either personally or in the manner provided by law for the service of a summons or by mailing a copy of the same by registered mail in a postpaid wrapper addressed to the licensee or applicant, or any other person, at the address given in the application or as subsequently communicated to the department in writing, or at the project works. Such service may be made upon a municipal corporation either personally as above provided or by mailing a copy of the same in like manner addressed to the mayor of the city or village or the supervisor of the town. Service upon unknown owners shall be made by publication in the manner provided by law for service of a summons upon unknown parties.

§ 15-0909. Payment of costs.

The expense of any hearing initiated by petition shall be certified by the department to the person or public corporation filing such petition, and shall be paid by such petitioner within thirty days after the

receipt of the certificate.

TITLE 11
**LOCAL AND REGIONAL WATER RESOURCES PLANNING AND
DEVELOPMENT**

Section 15-1101. Legislative purposes.

15-1103. Petition; proceedings; exclusion of certain counties.

15-1105. Regional planning and development board; meetings;
quorum; powers and duties.

15-1107. Plans; approval; changes, modifications and rescission.

15-1109. Additional powers and duties of the department.

15-1111. Duties of county; county charge; counties included
within a city.

15-1113. Existing rights and remedies preserved; limitations.

§ 15-1101. Legislative purposes.

In addition to the powers vested in the department by this article 15, and in order to stimulate and encourage local participation and assistance, comprehensive planning for the protection, control, conservation, development and beneficial utilization of the water resources of the state may be undertaken as provided in title 11 of this article. Nothing contained herein shall be deemed to repeal, amend or modify the powers and duties of the department as now or hereafter provided by this article 15 or by any other statute or to repeal the procedures authorized thereby.

§ 15-1103. Petition; proceedings; exclusion of certain counties.

1. Any county, city, town or village, when duly authorized to do so, or any combination thereof, except as provided in subdivision 7 hereof, may submit to the department a verified petition requesting the department to consider a proposal for a survey and study of the water resources of a specified region of which the petitioning municipality is

a part, for the purpose of preparing and providing a comprehensive plan or plans for the protection, conservation, development and beneficial use of such resources. Any such petition, prior to its submission to the department, must be approved by the county legislative body of each county wholly or partly within the specified region. The petition shall set forth the facts upon which the petitioner or petitioners rely to show that it is necessary and would be in the public interest and benefit to undertake such survey, study and comprehensive planning. The petition shall list the persons, public corporations and state agencies engaged in receiving, collecting, storing, transmitting, distributing, processing or otherwise dealing with water for a public purpose, within the region set forth in the petition, and the names and addresses of the clerks or other executive officers thereof. There shall be attached to the petition a certified copy of the resolution, ordinance or other evidence of authority authorizing the execution of the petition.

2. Upon receipt of a petition, the department with reasonable diligence shall cause public notice to be given that on a day therein named it will hold a public hearing at such place, within the region specified in the petition, as is designated in the notice for the purpose of hearing all persons, public corporations and state agencies in favor of or opposed to the proposal. Such public notice shall be given by publication as provided in subdivision 1 of section 15-0903.

3. In addition to such public notice, the department shall give notice of the time and place of the public hearing in writing, at least fifteen days prior to the date thereof, to the state Departments of Agriculture and Markets, Commerce, Health and Transportation, and the State Soil Conservation Committee; also to the clerks or other executive officers of the public corporations and state agencies, persons and other agencies as listed in the petition. The department may also give similar written notice to any other person, body or agency it may deem would have an interest in or would be affected by any comprehensive planning. Any public corporation, acting through any executive office authorized to take such action by its governing body or board, may file with the department a written request that such public corporation be notified in writing of any hearing under title 11 of this article in relation to any

region embraced in whole or in part within any area or areas of the state designated by such public corporation in its written request. After the filing of such request, where any petition shall be filed with the department setting forth any such region, but not listing such public corporation, the department shall give notice to such public corporation of any hearing on such petition, in the same manner as if it had been listed in the petition pursuant to subdivision 1 of this section. For the purpose of any hearings or proceedings under title 11 of this article or to review a decision in the manner provided by article seventy-eight of the Civil Practice Law and Rules relating to any region embraced within the area or areas designated in such request, any public corporation entitled to notice by reason of having filed such request shall be deemed to be and shall have all of the rights of a party to the same extent as if such public corporation had been listed in the petition pursuant to subdivision 1 of this section. A modification or withdrawal of any such request may be filed by any public corporation in the same manner as an original request. Any such modification shall have the same force and effect as an original request. Failure of the department to give notice pursuant to such written request shall not invalidate any proceedings had or action taken by the department.

4. The department shall, upon the day specified in the notice, or upon such subsequent day or days to which it may adjourn the hearing, proceed to take testimony and proof and to hear arguments submitted in support of and in opposition to the proposal. If in the course of the hearing, it shall appear to the department that the region specified in the petition should be enlarged in order to undertake a more comprehensive and beneficial study, survey and planning, the department shall adjourn the hearing a sufficient period of time in order to obtain the approval of the county legislative body or bodies of the county or counties in which the additional area is located for the inclusion of such additional area in the proposal. If such approval is given, the department shall give, within the additional area, similar public and written notice, and shall give similar written notice to public corporations which have filed requests, and in like manner, as provided by subdivisions 2 and 3 of this section, of the time and place fixed by

the department for the resumption of the public hearing. The hearing shall resume and proceed at such time and place as if the additional area had been included in the petition as part of the region.

5. Within thirty days after the taking of testimony and proofs, any person, public corporation or state agency, who or which has appeared at the hearing, may file with the department written objections to the proposal or parts thereof as petitioned for or as enlarged as above provided. Such objections shall specify the grounds and reasons upon which they are made. Briefs in support of and in opposition to the proposal may be filed with the department within the same thirty day period. Upon expiration of the period, the hearing shall be deemed closed, unless the department determines that the hearing should be reopened for the taking of further testimony or other proof.

6. Thereafter and with all convenient speed, the department shall render its decision, determining if it is or is not in the public interest or benefit to undertake the proposal. If the proposal is found to be in the public interest or benefit, the department shall determine the region of the state to be included in the study, survey and comprehensive planning, the minimum number of specific purposes for which the planning should be undertaken, the extent of the study, survey and planning involved and an approximate estimate of the cost of the study and survey.

7. Following this determination by the department, and before proceeding thereon, the petitioner for the survey and study decide within six months after the date of the department's determination whether to proceed with the survey and study or to withdraw its request therefor. Notice of its decision shall be given promptly to the department. The department may grant one or more extensions of six months each to the petitioner to make its decision.

8. The area of the state within the corporate limits of the city of New York shall not be included, in whole or in part, in any region proposed by a petition, or as enlarged or as determined by the department under this section, which region includes in whole or in part

the counties of Nassau or Suffolk, or either of them.

§ 15-1105. Regional planning and development board; meetings; quorum; powers and duties.

1. If the department shall determine that the proposal should be undertaken, the department, after the expiration of the time in which a review of its decision may be had or, in the event such a review has been instituted, after a final judgment or order affirming the department's decision has been entered therein, shall appoint a regional planning board, hereinafter referred to as "the board."

2. The board shall consist of seven members residing in the region of the proposal and of whom:

a. At least one member shall be representative of the municipal corporations within the region of the proposal; and service as a member of the board shall not be deemed as service rendered to any municipal corporation;

b. At least one member shall be representative of the agricultural and farming interests within the region of the proposal and shall be actively interested in the improvement and development of agricultural and farming process and techniques;

c. At least one member shall be representative of industry within the region of the proposal and actively engaged or employed in an industrial or commercial pursuit;

d. At least one member shall be representative of groups within the region of the proposal interested in the needs of fisheries and waterfowl and in forms of outdoor recreation made possible by the state's waters; and

e. At least one member shall be actively engaged in or connected with the acquisition, operation or management of public water supplies within

the region; and service as a member of the board shall not be deemed as service rendered to any municipal corporation.

3. Appointments to the board shall be made by the department from lists of nominations submitted to it, at the department's request, by the county legislative body or bodies of the county or counties within the region of the proposal. Each list of nominations shall contain fourteen names including two for each of the five representative classes specified by subdivision 2 of this section. Where more than one county is included, the county legislative body or bodies shall make all reasonable effort to agree upon a single list of nominations. The department when making its requests for nominations shall specify a date, fixed so as to permit action on the requests by the county legislative bodies; on or before which such nominations must be submitted, unless the department shall extend such time. The persons so appointed by the department shall within ten days following the date of their appointments and before entering upon the performance of their duties, take and subscribe an oath of office in the manner and form prescribed by law, and shall file the same in the office of the Secretary of State of the state of New York. Each appointee shall notify the department in writing of the date of filing his oath of office. A vacancy shall be filled from the appropriate representative class and in like manner as an original appointment.

4. The board shall hold its first meeting not later than thirty days after the oaths of office of all members have been so filed for the purpose of organization and the appointment of its officers. The board shall select from among its members a chairman, vice chairman and secretary.

5. The board shall be known and transact its affairs as the "..... Regional Water Resources Planning Board" (insert in the name of such board a word or words, chosen by the board at its first meeting, descriptive of the region of the proposal).

6. The members of the board shall serve without compensation but shall be reimbursed for their actual and necessary expenses incurred in the

performance of their duties. Vouchers for such expenses shall be prepared on forms provided by the department and shall be approved by the chairman of the board. Such vouchers shall be submitted in duplicate to the department, which shall transmit one copy of each voucher to the Comptroller of the state of New York for payment and shall retain the other copy in its files.

7. The board shall expire and the terms of office of its members shall terminate thirty days after the department has finally approved or disapproved a plan as hereinafter provided in title 11 of this article. However, the department, with the concurrence of the county legislative body or bodies of the county or counties within the region, may terminate the existence of the board and the terms of office of its members at any time it deems it in the public interest to do so; and the department, with the concurrence of the county legislative body or bodies of such county or counties, may continue the existence of the board and the terms of office of its members for a specified additional period of time after the department has finally approved a plan, for the purpose of furthering the objectives of the plan.

8. The board shall hold regular meetings monthly, keep a record of all its proceedings, and determine the rules of its own proceedings.

9. Special meetings may be called by the chairman upon his own initiative and must be called by him upon receipt of a written request therefor signed by at least two members of the board. Written notice of the time and place of such special meeting shall be given by the secretary to each member at least four days before the date fixed by the notice for such special meeting.

10. Four members of the board shall constitute a quorum to transact the business of the board at both regular and special meetings.

11. The board shall request the department within appropriations available to the department therefor, to provide office space and equipment, and to select and employ or retain clerical, technical, scientific, engineering, legal and other personnel and services to

assist the board in carrying out its duties and performing its functions under title 11 of this article.

12. The board, using the personnel so selected and employed or retained by the department, shall proceed to investigate, study, examine and survey the water resources of the region of the proposal to ascertain the present uses being made thereof, and to determine the feasibility of their future development by proper conservation and control measures, to provide a greater supply for, and an equitable distribution among domestic, municipal, agricultural, commercial, industrial and recreational users, to the end that the water resources of the region shall not be wasted and shall be conserved and utilized for the beneficial interests of all the people of the state. Particular consideration shall be given to the impounding and retention of flood waters for their future use and distribution.

13. The board may conduct informal hearings and meetings at any place or places within the region for the purpose of obtaining necessary information or other data to assist it in the proper performance of its functions and duties. The board may delegate to any member, to the secretary or to any agent of the board the power and authority to conduct such hearings and meetings, and all reasonable efforts shall be made to ascertain the views, wishes and opinions of the inhabitants of the region.

14. The board and its authorized agents may enter upon any lands as in its judgment may be necessary for the purpose of making surveys and examinations to accomplish its functions and duties under this article, without liability. Liability only for actual damage done during any such entry, survey and examination is hereby assumed by the state and consent is hereby granted to any owner of such lands to pursue his remedy for any such actual damage pursuant to the Court of Claims Act.

15. The board shall cooperate with legislative committees and commissions, and shall make available to such committees and commissions, upon request, any records and other data, and shall file monthly with the department a report of its activities and progress.

Upon termination of the board's existence, the board shall deposit all records of its proceedings with the department.

16. The board, based upon its investigations and studies, shall prepare a comprehensive plan or plans for the protection, conservation, development and utilization of the water resources of the region of the proposal, and shall submit the plan or plans to the department for its approval.

§ 15-1107. Plans; approval; changes, modifications and rescission.

1. Plans submitted pursuant to section 15-1105:

a. Shall in all cases be so drawn and of such scope as is best calculated to assure prompt or orderly development of the water resources for the beneficial use of the people of the region involved and of the state as a whole;

b. Shall show the available and feasible sites for the installation and operation of protective, conservation and regulatory works, and the benefits estimated to be derived from such installation and operation. The plan or plans shall be accompanied by such maps, profiles and other data and descriptions as will set forth and show the location and character of the works and of the property required to be taken for or to be damaged by such installation or operation or for the protection and maintenance of the works to be installed, together with an estimate of the cost thereof;

c. Shall estimate the minimum annual amount of water which would be available for all purposes if the plan or plans were to be put in operation;

d. Shall not, in the computations of water estimated to become available as a result of the execution of the plan or plans, include any amount of water, the use of which has theretofore been duly acquired or authorized pursuant to approval, license, permit or other official

sanction;

e. Shall, whenever feasible and economically justified, provide for the storage of sufficient water for distribution and use for all the purposes and uses contemplated by this article;

f. Shall not include in any plan or plans, any proposal or project providing for any action or steps which would impair or diminish any right protected by section 15-1113;

g. Shall list possible sources of income, including the sale of water, from the operation of such works, and estimate the amount thereof; and

h. Shall recommend whether the plan or plans should be carried out as a single or multiple stage project, and shall also recommend an agency, existing or proposed, to undertake the project.

2. Upon receipt of a plan from the board, the department shall cause public notice to be given that on a day therein named it will hold a public hearing at such a place as is specified in the notice and within the region covered by the plan, for the purpose of hearing all persons, public corporations and agencies of the state which may be affected by the plan. Such notice shall be published pursuant to subdivision 1 of section 15-0903. In addition to such publication, the department shall give written notice of the public hearing, as required by subdivision 3 of section 15-1103, and may give written notice thereof to additional persons, public corporations or agencies of the state, as authorized by such subdivision. At any time prior to the day specified in such notice, specified objections in writing to the plan or parts thereof may be filed in the office of the department. The department shall, upon the day specified in the notice, or upon such subsequent day or days to which it may adjourn the hearing, proceed to take testimony and proof and to hear arguments submitted in support of and in opposition to the plan, but no objectors shall be heard unless they have filed written objections as authorized by this section. At the close of the hearing, the department may fix a date or dates for the filing of briefs.

3. The department within ninety days after the last date fixed for the filing of briefs and with all convenient speed shall render its decision. The department, upon the proofs and evidence submitted at the public hearing:

a. Shall determine whether the plan as proposed by the board conforms to and complies with the purposes of title 11 of this article and would serve the public interest and benefit, or whether it should be modified in any respect, detail or part to accomplish such purposes;

b. Shall determine whether the plan as proposed by the board interferes or conflicts with the plans of any other regional water resources planning board, and would be just and equitable to the interests of other areas of the state;

c. Shall approve such plan as submitted by the board or as modified by the department; or shall disapprove the plan; or shall remit the proposal to the board for further investigation, study, survey and planning; and

d. Shall recommend with public corporations, private corporations or agencies of the state, existing or proposed, would, in its opinion, be best qualified to carry out expeditiously and efficiently the project proposed by the plan, as approved by the department, and to construct, maintain and operate the works in connection therewith. If the department recommends that a new public corporation or state agency should be established for such purposes, it shall transmit a recommendation to the legislature and the Governor for the enactment of legislation to create and establish such body or agency, or to grant authority to existing public corporations or state agencies.

4. Upon the filing of the departments decision or, in the event such decision is reviewed in the manner provided by article seventy-eight of the Civil Practice Law and Rules, upon the final determination of such review proceeding, the plan as approved by the department or as approved or modified by the court in a review proceeding, shall be the general plan for the conservation, development and utilization of the water

resources of the region, and such general plan shall be given consideration by the department in any future application before it and over which it has jurisdiction by virtue of this article or other provision of law. None of the works or projects, included in the general plan, nor any part or parts thereof shall be undertaken, constructed or put into operation until detailed and specific maps and plans therefor have been submitted to the department for approval upon the petition of an agency authorized to undertake or construct such works or projects or parts thereof. The department shall determine, after public hearing, if the detailed and specific plan before it for approval conforms to and is consistent with the general plan, and whether it is in the public interest to undertake the construction and operation of the works or projects as proposed. The department shall have the power to approve or disapprove the detailed and specific maps and plans, or to so modify them as will, on the evidence presented, bring them into conformity with the general plan.

5. Any municipality or combination of municipalities may, except as provided in subdivision 7 of section 15-1103, file with the department a verified petition requesting the department to modify, change or rescind any general plan approved by it. The petition shall set forth the facts on which the petitioner or petitioners rely to show that it is necessary and would be in the public interest to change or modify such plan as requested in the petition, or to rescind such plan. Upon receipt of such a petition, the department shall give public notice of hearing, shall give written notice of hearing to parties and persons, shall hold a public hearing on such petition, and shall take testimony and proof, in the same manner as if the department were holding a public hearing on the original submission of the plan which such petition seeks to change, modify or rescind. The department, within ninety days after the last date fixed for the filing of briefs and with all convenient speed, shall render its decision changing, modifying or rescinding such plan, or denying the petition, as the public interest shall require.

6. The department may, on its own motion, initiate proceedings to change, modify or rescind any approved plan. The proceedings and procedure with respect to any such proposal, including notice, hearing

and judicial review, shall be the same as in the case of a petition for change, modification or rescission of a plan.

7. Except as hereinafter in this subdivision provided, the provisions of sections 15-1109 and 15-1111 shall apply to the sharing and apportionment of costs and expenses incurred by the department under this section. In any case where an application under this section is filed with respect to any plan by any municipality or municipalities outside of the region specified in such plan, the share of the department costs and expenses which would otherwise be paid by the county or counties of such region, shall be paid by such municipality or municipalities.

§ 15-1109. Additional powers and duties of the department.

1. The department shall, if appropriations are available therefor, provide the board with such office space and equipment, clerical, technical, scientific, engineering, legal and other personnel and services as are reasonably necessary to assist the board in carrying out its functions, and shall fix the compensation, within appropriations available therefor, of such personnel. The department may enter into and execute contracts in the manner and form prescribed by law for technical, scientific, engineering and legal services to be made available for the board's functions, and may enter into cooperative agreements with federal agencies for research, the investigation, collection, compilation, study and analysis of information and data on the water resources and the hydrology of the state, and for the preparation and publication of reports thereon.

2. The department shall cooperate with the board and render to it advisory and consultant services whenever practicable.

3. The department shall endeavor to coordinate the activities of existing agencies and departments of the state charged with functions involving waters and to secure their cooperation with and assistance for the board in carrying out its functions, and provide the means for

coordination of the studies and development plans of all regional boards;

4. The department shall keep a true and accurate account of all expenditures incurred on behalf of the board including, but not limited to, those incurred for all proceedings, hearings (except the hearing required by section 15-1103), notifications, clerical, technical, engineering, legal and other services and expenses;

5. The department shall, within a reasonable time after the plan has been approved or disapproved, submit an itemized statement of the costs and expenses so incurred and expended to the county legislative body. Notice shall be attached to such statement that, under title 11 of this article, twenty-five per cent of the cost and expenses is a county charge which, if more than one county is involved, is to be equitably apportioned among them; that the counties may by agreement determine such equitable apportionment within sixty days from the date of such notice, and, that in the failure of the counties so to agree, the department, on a specified date after such sixty day period has expired, will hear the counties at its office and proceed to make an equitable apportionment of the county charge;

6. The department shall recommend legislation to accomplish and further the planning and development program of the water resources of the state.

§ 15-1111. Duties of county; county charge; counties included within a city.

1. The county legislative body or bodies shall comply promptly with the departments request for lists of nominations for membership on the board. The county or counties shall cooperate with and assist, so far as is reasonable and practicable, the board in carrying out its functions.

2. Of the total costs and expenses incurred by the department, twenty-five per cent shall be a county charge and shall be audited and

paid as such in the manner prescribed by the county legislative body or bodies. If more than one county is included within the region of the project, the county charge of twenty-five per cent shall be equitably apportioned among them, consideration being given to, but not limited to, prospective benefits to accrue to each in the event that the project is undertaken. If the counties fail to agree within sixty days after the statement of costs and expenses from the department upon an equitable apportionment of the county charge, the department after hearing the counties, shall make such apportionment.

3. With respect to any or all of the counties within the city of New York, except as provided and limited by subdivision 7 of section 15-1103:

a. All rights, powers and privileges granted to, and all duties, obligations and charges imposed upon any county by the provisions of title 11 of this article, are granted to or imposed upon such city; and

b. All rights, powers and privileges granted to the county legislative body of any county by the provisions of title 11 of this article (including, but not limited to the power to approve a petition for a survey and study and establishment of a regional planning board) and all duties and obligations imposed upon any such county legislative body by title 11 of this article, are granted to or imposed upon the board of estimate of such city.

§ 15-1113. Existing rights and remedies preserved; limitations.

1. Nothing in title 11 of this article is intended to or shall be construed to alter, impair, diminish or enlarge any existing or hereafter acquired public or private right, riparian or otherwise, or to create any new public or private right, riparian or otherwise, with reference to water resources and the use of the waters thereof and such rights hereby preserved shall include, but not be limited to any such right of the state or any agency thereof or any person or public corporation. Any reference in this section to a public or private right

with reference to water resources and the use of the waters thereof shall include, but shall not be limited to, any right to receive, collect, store, control, transmit, consume, supply, sell, discharge or dispose of water, any right to own, construct, operate and maintain any water supply or water treatment facilities, including reservoirs, dams, aqueducts, chlorinating and aeration plants and pumping stations, and any right to exercise control over the level, flow, discharge or disposition of waters, including water in reservoirs, rivers, streams and aqueducts.

2. Nothing in title 11 of this article is intended to alter or abridge any right of action or other remedy now or hereafter existing nor shall any act done by virtue of title 11 of this article be construed as estopping the exercise of such rights.

3. Nothing in title 11 of this article shall be held to repeal, limit or modify the jurisdiction, powers and duties of any state or local department, board, district, commission or authority, or any public corporation, or other agency, now or hereafter possessed, or to invalidate or modify, in whole or in part, any decision, order, license, permit, approval, or other act, issued or taken heretofore or hereafter by such department, board, district, commission, authority, or public corporation or other agency, or to nullify, abate or otherwise affect any rights acquired or action taken heretofore or hereafter pursuant to such decision, order, license, permit, approval, or other act.

4. Nothing in title 11 of this article shall be construed as requiring that a plan hereunder be approved for any region before any project utilizing, affecting or involving the water resources of such region in whole or in part may be authorized, approved, initiated or carried out within or without such region.

TITLE 13

COMPREHENSIVE PUBLIC WATER SUPPLY STUDIES AND REPORTS

Section 15-1301. Definitions.

15-1303. Powers and duties of the department.

- 15-1305. Powers and duties of the state Commissioner of Health.
- 15-1307. Powers of local agencies.
- 15-1309. State aid.
- 15-1311. Limitations.

§ 15-1301. Definitions.

1. "Comprehensive study and report" shall mean a comprehensive engineering and economic feasibility study and the resultant plan for the development of projects to provide adequately for present and reasonably foreseeable area-wide public water supply system needs. The study shall be designed to develop such information as may be required by the department, including, but not limited to: technical feasibility; cost estimates for construction, property rights acquisition and contingencies and for engineering, legal and other services; proposed methods of financing; and estimates of first costs and subsequent total annual costs of construction, operation and maintenance of recommended facilities. Such study shall not provide for plans and projects for public water supply system, or portions thereof, the scope or the area of which is less than that determined by the commission as necessary for comprehensive area-wide water supply system planning. Such study shall not include the preparation of detail design and engineering drawing, specifications, and contract documents.

2. "Public water supply system" means the public treatment facilities, transmission facilities and source of supply facilities to provide water for residential, commercial, industrial and fire service needs for areas located in two or more municipalities.

3. "Municipality" means a county, city, town or village.

4. "Governing body" means: (a) in a county, the county legislative body; (b) in a city, the board of aldermen, common council, commission or other body vested by its charter or other law with jurisdiction to enact ordinances or local laws, except that in a city having a population of one million or more, if there be a board of estimate, the

term "governing body" shall mean such board of estimate; (c) in a town, the town board; and (d) in a village, the board of trustees.

5. "Local agency" means the department, bureau, commission, board, division, agency, public benefit corporation, administration, or committee of municipalities, designated by the governing body of each participating municipality, or designated by the county legislative body in the case of a county acting on its own motion, to conduct and develop comprehensive studies and reports.

§ 15-1303. Powers and duties of the department.

The department shall:

1. Promulgate, and amend from time to time, such rules and regulations as the department shall deem necessary, proper or desirable to carry out the provisions and purposes of this title and to assure the appropriate coordination of water supply planning pursuant to this title with the planning, protection, conservation, development and utilization of the water resources of this state pursuant to the provisions of this chapter, the Public Health Law or any other law. Such rules and regulations shall be promulgated prior to July 1, 1964;

2. Receive applications of local agencies for state aid, pursuant to this title, in such form and containing such information as it may require;

3. Approve the area and scope of such comprehensive studies, prior to their execution, in accordance with the rules and regulations adopted by the department; and upon recommendations of the state Commissioner of Health;

4. Approve applications for state aid pursuant to this title;

5. Receive copies of final reports of local agencies; and make advisory recommendations to the state Commissioner of Health with

respect thereto;

6. Performs such other and further acts as may be necessary, proper or desirable to carry out effectively the provisions of this section.

§ 15-1305. Powers and duties of the state Commissioner of Health.

The Commissioner of Health shall:

1. Review the area and scope of any comprehensive study prior to its execution and make recommendations to the Department of Environmental Conservation with respect thereto.

2. Advise legal agencies and the participating municipalities of the approval of their applications for state aid pursuant to this title;

3. Execute contracts for the services of consulting engineers necessary for such studies and reports jointly with the local agency requesting state aid therefor;

4. Approve the amount of compensation to be paid for such engineering services and the method of determining such compensation; provided, however, that such compensation shall not be computed on a per diem or percentage of estimated costs basis;

5. Receive and approve final reports of local agencies prior to final payment;

6. Approve vouchers for the payment of state aid grants pursuant to the provisions of this title;

7. Prepare and file with the Department of Environmental Conservation for its review and evaluation an annual report on the scope and results of comprehensive studies undertaken pursuant to this section;

8. Make an estimate of the annual funds necessary to carry out the

provisions of this title and, with the approval of the Department of Environmental Conservation request such amount for inclusion in the executive budget;

9. Perform such other and further acts as may be necessary, proper or desirable to carry out effectively the provisions of this section.

§ 15-1307. Powers of local agencies.

A local agency may:

1. Apply to the department and contract with the state Commissioner of Health for state aid pursuant to this title on and after September 1, 1964.

2. Select the person or firm to perform necessary consulting engineering services for a comprehensive study and report and enter into contracts for such services, provided, however, that the state Commissioner of Health shall also be a party to any such contract;

3. Expend money received from the state pursuant to this title only for purposes consistent therewith.

§ 15-1309. State aid.

The state Commissioner of Health, may, in the name of the state, make or contract to make, within appropriations therefor, a state grant for payment during any of the ten successive fiscal years of the state, beginning with its fiscal year commencing April 1, 1964, to a local agency to cover the entire cost, as determined by him, of the preparation of a comprehensive study and report.

§ 15-1311. Limitations.

Nothing in title 13 of this article shall be held to repeal, limit or modify the jurisdiction, powers and duties of any state or local department, board, district, commission or authority, or any public corporation, or other agency, now or hereafter possessed, or to invalidate or modify, in whole or in part, any decision, order, license, permit, approval, or other act, issued or taken heretofore or hereafter by such department, board, district, commission, authority, or public corporation or other agency, or to nullify, abate or otherwise affect any rights acquired or action taken heretofore or hereafter pursuant to such decision, order, license, permit, approval, or other act.

TITLE 15

WATER SUPPLY

Section 15-1501. Water withdrawals; permit.

15-1502. Definitions.

15-1503. Permits.

15-1504. Water withdrawals for agricultural purposes.

15-1505. Interbasin diversions and water supply to other states.

15-1506. Transportation of water by vessel.

15-1507. Municipal water supply reservoirs on forest preserve lands.

15-1509. Approval of plans for forest preserve reservoir projects; petition; proceedings.

15-1511. Procedure on approval of application with respect to forest preserve reservoir projects.

15-1513. Payment of cost of construction.

15-1515. Supervision of construction and operation.

15-1517. Reservoir to be owned by the state.

15-1519. Reservoir to be kept in repair.

15-1521. Supply of water to other public water supply systems.

15-1523. Indirect damages; decision and payment as to Rochester.

15-1525. Water well drillers in New York state to obtain certificates of registration.

15-1527. Permit required for certain wells in Long Island counties.

15-1528. Moratorium on the drilling of new wells in the Lloyd

Sands.

15-1529. Approval of completed water withdrawal systems.

15-1530. Long Island water usage information.

§ 15-1501. Water withdrawals; permit.

1. Except as otherwise provided in this title, no person who is engaged in, or proposing to engage in, the operation of a water withdrawal system with a capacity of greater than or equal to the threshold volume, shall have any power to do the following until such person has first obtained a permit or permit modification from the department pursuant to this title:

a. To make a water withdrawal from an existing or new source or an increased water withdrawal from an existing permitted source;

b. To take or condemn lands for the protection of any existing sources of public water supply; or for the development or protection of any new or additional sources of public water supply;

c. To commence or undertake the construction of any works or projects in connection with the proposed withdrawal; or

d. To extend its supply or distribution mains into any new water service area or extension that has not been approved by the department or a predecessor commission; or

e. To make a significant change in the principal use of the water withdrawal system from that specified in the permit, or permit application.

2. All valid public water supply permits and approvals issued by the department or its predecessors shall remain in full force and effect for the purpose of satisfying the permit requirements of subdivision one of this section for existing water withdrawals from a source and in an amount authorized by such permit or approval. Until the department

promulgates regulations pursuant to subdivision four of this section, nothing contained in subdivision one of this section concerning permits from the department shall be applicable to water withdrawals other than for a public water supply system.

3. Nothing contained in this title concerning permits from the department for water withdrawals shall be deemed to nullify the requirements of the State Sanitary Code applicable to drinking water supplies, including public water systems and bottled water facilities, in effect on February 15, 2012, as may be amended from time to time. No supplier of water shall make, install or construct, or allow to be made, installed or constructed, a public water supply system or any addition or deletion to or modification of a public water supply system until the plans and specifications therefor have been submitted to and approved by the commissioner of health or his or her designee as may be required by the state sanitary code.

4. The department shall promulgate regulations to implement a permitting program for water withdrawals equal to or greater than the threshold volume consistent with the requirements of this section which shall establish: (a) minimum standards for operation and new construction of water withdrawal systems; (b) monitoring, reporting and recordkeeping requirements; and (c) protections for present and future needs for sources of potable water supply. Such regulations may establish quantitative standards that maintain stream flows protective of aquatic life, consistent with the policy objectives of this article and any other conditions, limitations and restrictions that the department, in consultation with the department of health, determines are necessary to protect the environment and the public health, safety and welfare and to ensure the proper management of the waters of the state. The regulations may establish exemptions from permitting requirements in addition to those exemptions specified in this section.

5. The department is authorized to consolidate existing water supply permits for a public water supply system into one permit, and may require submission of an application for such permit where the department determines that such actions are necessary to protect the

environment and the public health, safety and welfare and to ensure the proper management of the waters of the state.

6. Each person who is required under this section to obtain a permit shall annually, on a form prescribed by the department, report all information requested by the department, including but not limited to water usage and water conservation measures undertaken during the reporting period. Information on water usage and water conservation measures shall be posted on the department's website.

7. The following water withdrawals are exempt from the permit requirements established by this section: (a) withdrawals used for fire suppression or public emergency purposes; (b) withdrawals that have received an approval from a compact basin commission which administers a program governing water withdrawals; (c) closed loop, standing column, or similar non-extractive geothermal heat pumps; (d) withdrawals for which a permit has been issued pursuant to the requirements of section 15-1527 of this title; (e) existing withdrawals for agricultural purposes provided the withdrawal has been registered with the department pursuant to the requirements of title sixteen of this article or reported to the department pursuant to the requirements of title thirty-three of this article on or before February fifteenth, two thousand twelve; and (f) withdrawals at remediation sites conducted pursuant to a federal or state court order or federal or state government agency agreement or order.

8. The department shall establish a water conservation and efficiency program with the goals of (a) ensuring improvement of the waters and water dependent natural resources, (b) protecting and restoring the hydrologic and ecosystem integrity of watersheds throughout the state, (c) retaining the quantity of surface water and groundwater in the state, (d) ensuring sustainable use of state waters, and (e) promoting the efficiency of use and reducing losses and waste of water.

9. The department shall issue an initial permit, subject to appropriate terms and conditions as required under this article, to any person not exempt from the permitting requirements of this section, for

the maximum water withdrawal capacity reported to the department pursuant to the requirements of title sixteen or title thirty-three of this article on or before February fifteenth, two thousand twelve.

§ 15-1502. Definitions.

When used in this title, unless otherwise expressly stated or unless the context or subject matter otherwise requires:

1. "Coastal communities" shall mean those areas on Long Island where the Magothy aquifer is either absent or contaminated with chlorides.

2. "Lloyd Sands" shall mean that geological strata generally known to be the deepest and oldest water-bearing layer of the Long Island aquifer system and shall not include bedrock.

3. "Water well" shall mean any groundwater excavation for the purpose of obtaining water.

4. "Water well drilling" or "water well drilling activities" shall mean the construction and reconstruction of water wells, the establishment or repair of a connection through the well casing and the repair of water wells including repairs which require the opening of the well casing.

5. "Water well driller" shall mean a person who, for compensation or as part of property development and sale, engages in water well drilling activities; provided, however, that, for the purposes of this subdivision, the term "person" shall not include a public corporation, political subdivision, government agency, department, or bureau of the state or a municipality.

6. "Enforcement officer" shall mean any person authorized to enforce the provisions of this title or the building code in the municipality in which the water well drilling activities are taking place.

7. "Agricultural purpose" shall mean the practice of farming for crops, plants, vines and trees, and the keeping, grazing, or feeding of livestock for sale of livestock or livestock products, and the on-farm processing of crops, livestock and livestock products.

8. "Compact basin commission" shall mean an interstate commission having jurisdiction with respect to the regulation of water resources within a basin in the state, created by interstate compact or federal-interstate compact, including but not limited to, the Susquehanna river basin commission and the Delaware river basin commission.

9. "Environmentally sound and economically feasible water conservation measures" shall mean those measures, methods, technologies or practices for efficient water use and for reduction of water loss and waste or for reducing a withdrawal, consumptive use or diversion that: (i) are environmentally sound; (ii) reflect best practices applicable to the water use sector; (iii) are technically feasible and available; (iv) are economically feasible and cost effective based on an analysis that considers direct and avoided economic and environmental costs; and (v) consider the particular facilities and processes involved, taking into account the environmental impact, age of equipment and facilities involved, the processes employed, energy impacts and other appropriate factors.

10. "Interbasin diversion" shall mean the transfer of water or wastewater from one New York major drainage basin to another drainage basin.

11. "Person" shall mean any individual, public or private corporation, political subdivision, government agency, department or bureau of the state, municipality, industry, co-partnership, association, firm, trust, estate or any other legal entity whatsoever.

12. "Potable water" shall mean water intended for human consumption that meets the requirements for a public water system as set forth in the state sanitary code.

13. "Public water supply system" shall mean a permanently installed water withdrawal system including its source, collection, pumping, treatment, transmission, storage and distribution facilities used in connection with such system, which provides piped potable water to the public for potable purposes, if such system has at least five service connections used by year-round residents.

14. "Threshold volume" shall mean the withdrawal of water of a volume of one hundred thousand gallons or more per day, determined by the limiting maximum capacity of the water withdrawal, treatment, or conveyance system; provided that for agricultural purposes the threshold volume shall mean a withdrawal of water of a volume in excess of an average of one hundred thousand gallons per day in any consecutive thirty-day period.

15. "Water withdrawal system" shall mean any equipment or infrastructure operated or maintained for the provision or withdrawal of water including, but not limited to, collection, pumping, treatment, transportation, transmission, storage, and distribution.

16. "Withdrawal" or "withdrawal of water" shall mean the removal or taking of water for any purpose from the waters of the state.

§ 15-1503. Permits.

1. A permit application or request for a permit renewal or modification shall be made on forms prescribed by the department and shall contain all information requested by the department relative to the withdrawal, use and discharge of water, including:

a. with respect to a public water supply system, proof of adequate authorization for the proposed project;

b. such exhibits as may be necessary clearly to indicate the scope of the proposed project;

c. a map of any lands to be acquired;

d. project plans;

e. a statement of the need for and the reasons why the proposed source or sources of supply were selected among the alternative sources which are or may become available and the adequacy of the supply selected; and

f. a description of the applicant's proposed near term and long range water conservation program that incorporates environmentally sound and economically feasible water conservation measures, including implementation and enforcement procedures, effectiveness to date and any planned modifications for the future. For a public water supply system, the water conservation program may include but need not be limited to:

i. the identification of and cost effectiveness of distribution system rehabilitation to correct sources of lost water;

ii. measures which encourage proper maintenance and water conservation;

iii. a public information program to promote water conservation, including industrial and commercial recycling and reuse;

iv. household conservation measures; and

v. contingency measures for limiting water use during seasonal or drought shortages.

2. In making its decision to grant or deny a permit or to grant a permit with conditions, the department shall determine whether:

a. the proposed water withdrawal takes proper consideration of other sources of supply that are or may become available;

b. the quantity of supply will be adequate for the proposed use;

c. the project is just and equitable to all affected municipalities and their inhabitants with regard to their present and future needs for sources of potable water supply;

d. the need for all or part of the proposed water withdrawal cannot be reasonably avoided through the efficient use and conservation of existing water supplies;

e. the proposed water withdrawal is limited to quantities that are considered reasonable for the purposes for which the water use is proposed;

f. the proposed water withdrawal will be implemented in a manner to ensure it will result in no significant individual or cumulative adverse impacts on the quantity or quality of the water source and water dependent natural resources;

g. the proposed water withdrawal will be implemented in a manner that incorporates environmentally sound and economically feasible water conservation measures; and

h. the proposed water withdrawal will be implemented in a manner that is consistent with applicable municipal, state and federal laws as well as regional interstate and international agreements.

3. In order to assist the development of local water conservation programs for public water supply systems, the department shall continue to publish and distribute a water conservation manual that includes beneficial near term and long range water conservation procedures which reflect local water resource needs and conditions. Such manual shall include examples of:

a. methods of identifying and determining the cost effectiveness of distribution system rehabilitation to correct sources of lost water;

b. measures which encourage proper maintenance and water conservation;

c. a public information program to promote water conservation, including industrial and commercial recycling and reuse;

d. household conservation measures; and

e. contingency measures for limiting water use during seasonal or drought shortages.

4. The department may grant or deny a permit or grant a permit with such conditions as may be necessary to provide satisfactory compliance by the applicant with the matters subject to department determination pursuant to subdivision 2 of this section, or to bring into cooperation all persons that may be affected by the project, but it shall make a reasonable effort to meet the needs of the applicant, with due regard to the actual or prospective needs, interests and rights of others that may be affected by the project.

5. The rules and regulations adopted by the department to implement this title and the provisions of article 70 of this chapter and rules and regulations adopted thereunder shall govern permit applications, renewals, modifications, suspensions and revocations under this title.

6. A new permit for a water withdrawal system and any subsequent renewal thereof shall be valid for a period of time not to exceed ten years from the date of issuance. A new permit or permit modification must be obtained from the department prior to any transfer or change of ownership of a water withdrawal system.

7. For each permit issued for a public water supply system, the department shall post on the department's website the permittee, the maximum pumping capacity allowed under the permit, the results of well monitoring, and the information reported pursuant to subdivision six of section 15-1501 of this title.

§ 15-1504. Water withdrawals for agricultural purposes.

1. Applicability.

a. This section applies to withdrawals of water for agricultural purposes that have been registered with the department pursuant to the requirements of title sixteen of this article or reported to the department pursuant to the requirements of title thirty-three of this article on or before February fifteenth, two thousand twelve.

b. All persons making a withdrawal of water for agricultural purposes shall annually register or report the withdrawal to the department under the provisions of this section by March thirty-first of each year.

2. When used in this section:

a. "Great Lakes basin" shall mean the watershed of the Great Lakes and the St. Lawrence River, upstream from Trois-Rivieres, Quebec, consisting in New York state of the Lake Erie-Niagara River, Lake Ontario minor tributaries, Genesee River, Seneca-Oneida-Oswego River, Black River, St. Lawrence River and Lake Champlain drainage basins.

b. "Great Lakes water" shall mean the water contained in the watershed, including the lakes and rivers, of the Great Lakes basin.

3. Registration of water withdrawals in the Great Lakes basin.

a. All persons withdrawing Great Lakes water for agricultural purposes in excess of an average of one hundred thousand gallons per day in any consecutive thirty-day period shall annually register such withdrawal with the department.

b. Each registration shall be on a form and contain such information as may be prescribed by the department and consist of a statement of and supporting documentation which shall include but not be limited to the following:

- (1) The place and source of the proposed or existing withdrawal;
- (2) The location of any discharge or return flow;

- (3) The location and nature of the proposed or existing water use;
- (4) The actual or estimated average annual and monthly volumes and rates of withdrawal; and
- (5) The actual or estimated average annual and monthly volumes and rates of water loss from the withdrawal.

c. In calculating the total amount of an existing or proposed withdrawal for the purpose of determining the applicability of this subdivision, a person shall combine all separate withdrawals which the person makes or proposes to make, whether or not such withdrawals are for a single agricultural purpose or are for related but separate agricultural purposes.

d. Registrations shall be valid for a period of one year.

e. A registration may be transferred by submitting a notice of transfer to the department prior to the date of a transfer or change of ownership of a water withdrawal system associated with a registered withdrawal.

f. The department may cooperate with state soil and water conservation districts for the preparation and distribution of informational materials to persons who withdraw water for agricultural purposes, regarding the purposes, benefits and requirements of this section, and which may also provide information on complying with the registration program and on any general or applicable methods for calculating or estimating water withdrawals or water loss.

4. Water withdrawal reporting.

a. Any person who withdraws water for agricultural purposes in excess of an average of one hundred thousand gallons per day in any consecutive thirty-day period shall annually report to the department. The report shall be made on a form and contain such information as may be prescribed by the department and shall be based on the water withdrawals for the previous calendar year, and shall include but not be limited to:

- (1) the water source, the location of the water source and the source

capacity if known;

(2) the amount of water withdrawn for the reporting period, including the average or peak withdrawals for intervals specified by the department;

(3) a description of the use of the water withdrawn; and

(4) estimated amounts of water to be returned, if any, the locations of such returns and the method of such returns.

b. The following water withdrawals are exempt from the reporting requirements of this subdivision:

(1) a withdrawal registered with the department under subdivision three of this section;

(2) a withdrawal permitted pursuant to section 15-1501 of this title;

(3) a withdrawal reported to the department under any program that requires the reporting of substantially similar data, including withdrawals regulated by the Susquehanna River Basin Commission and the Delaware River Basin Commission;

(4) a withdrawal permitted under section 15-1527 of this title;

(5) closed loop, standing column, or similar non-extractive geothermal heat pumps; and

(6) reclaimed wastewater withdrawn for reuse.

5. Withdrawals of water for agricultural purposes registered or reported to the department under the requirements of this section shall be deemed to be in compliance with the requirements of title sixteen and title thirty-three of this article, as applicable.

§ 15-1505. Interbasin diversions and water supply to other states.

1. No person shall transport or carry through pipes, conduits, ditches or canals the waters of any fresh water lake, pond, brook, river, stream, or creek in this state or any well, subsurface or percolating waters of this state into any other state for use therein without first obtaining a permit from the department pursuant to this title.

2. No person shall make a new or increased interbasin diversion which

results in a diversion in excess of one million gallons per day, as determined by the limiting maximum capacity of the treatment or conveyance system, or construct facilities or equipment therefor, until such person has registered the diversion with the department. No later than February fifteenth, two thousand thirteen, all existing interbasin diversions in excess of one million gallons per day, as determined by the limiting maximum capacity of the treatment or conveyance system, shall be registered with the department.

3. Registration is not required for an interbasin diversion which is part of a water withdrawal system for which the department has issued a permit under this title, or which is operating pursuant to a duly authorized permit issued by the department or its predecessors.

4. Registration shall be renewed every year or whenever ownership of the facilities which create an interbasin diversion is transferred, whichever occurs first. Registration shall be made on forms prescribed by the department and shall contain all information requested by the department relative to the water withdrawal, use and discharge. Each person who is required under this section to register shall annually, on a form prescribed by the department, report all information requested by the department, including the amount of water diverted. Information on interbasin diversions shall be posted on the department's website.

5. No person shall make a new or increased interbasin diversion which results in a significant adverse impact on the water quantity of the source New York major drainage basin.

6. Diversions from the Great Lakes-St. Lawrence river basin are prohibited by the Great Lakes-St. Lawrence River Basin Water Resources Compact, as enacted in title ten of article twenty-one of this chapter. Limited exceptions for public water supply systems will only be considered when in compliance with that Compact.

§ 15-1506. Transportation of water by vessel.

1. Except as provided in subdivision three of this section, no person or public corporation shall transport or carry by vessel, more than ten thousand gallons in any one day of the waters of any freshwater lake, pond, brook, river, stream, or creek in this state without first obtaining a permit from the department.

2. If the department finds that the transport of such water is reasonable, and is not contrary to the conservation of the natural resources of the state or to other uses of the water, including health, safety and welfare of the people of the state, the permit shall be granted subject to reasonable conditions on the withdrawal and transport. Such permit shall be subject to annual renewal.

3. No permit shall be necessary for the taking of a volume of ballast water necessary for normal vessel activity, but this exemption shall not apply to the exchange of ballast water.

4. The department shall not issue permits for the transport of water by vessel which will conflict or be inconsistent with the provisions of any interstate compact, commission or charter relating to the allocation of water resources to which New York is a signatory.

§ 15-1507. Municipal water supply reservoirs on forest preserve lands.

Any public corporation, now or hereafter empowered by law to construct and operate a publicly owned system for the supply of water for drinking, domestic and public purposes to the inhabitants of any municipality, may make application for the construction and maintenance by the state of a water supply reservoir on lands owned by the state and constituting a part of the forest preserve thereof in the manner hereinafter set forth.

§ 15-1509. Approval of plans for forest preserve reservoir projects; petition; proceedings.

1. Any publicly owned water supply project involving the construction of a reservoir on forest preserve lands must be submitted for approval to the department as provided in sections 15-1501 and 15-1503 of this article, and the procedure on such an application shall be as therein set forth except as to the additional requirements and further procedure required by this section.

2. The petition for approval of such a project must state that it is desired to construct a reservoir on state owned forest preserve lands, giving a description of the location and extent of the lands to be occupied or flooded, and shall be accompanied by a map, based on accurate surveys, showing the boundaries of such land and the high flow line of the water to be impounded thereon. The public notices of the hearing shall state that the reservoir proposed to be constructed is on state owned lands within the forest preserve.

3. In addition to the findings required by section 15-1503 of this article, the department in such cases shall also determine whether the needs of the applicant for water are such as require the proposed public use of the land involved, whether the constitutional limitation as to the amount of such land that can be used for reservoir purposes will not be exceeded, and whether the plans are such that unsanitary conditions will not be created by the proposed project.

4. If the application is approved, the department shall apportion all the expenses of the proposed project upon the municipalities which it may find to be benefited thereby, to the extent of the benefits received; it shall also fix the amount to be paid to the state by the municipalities benefited. Such amount to be paid to the state is to be computed as follows:

a. The value of the state owned timber and other forest products to be removed during the construction of the project, such amounts to be due on the cutting of such timber or other products. Such material shall become the property of the applicant on the payment of such amount to the state. The department may direct that the amount due be paid in one lump sum or may permit partial payments to be made in such amounts and

at such times as may be specified.

b. A charge of six per centum per annum on the value of the state owned lands and rights used, unimproved and bare of timber. This value shall be determined by the department and be redetermined by it at intervals of ten years from the date of approval of the application. The amount of this charge for any year shall be due and payable on the first day of January of the succeeding year and shall be computed from the day of the actual entry of the applicant or the department on the state owned land for the purpose of beginning the clearing or the construction work.

c. An annual charge, to be determined, redetermined and payable as provided in paragraph b above, as a reasonable return to the state for its services rendered.

5. A statement of all these matters shall be included in the decision of the department approving the application.

§ 15-1511. Procedure on approval of application with respect to forest preserve reservoir projects.

1. The decision of the department on an application shall be certified to the applicant. Thereafter, and at any time within five years of the date of the decision, the applicant may petition the department that it construct the reservoir and appurtenant works in accordance with the approved plans. Such petition shall be in writing and shall be accompanied by plans and specifications for the structures to be built and such other papers as may be necessary to show to the satisfaction of the department that the project in all respects conforms to the requirements of the decision of the department. The department may permit minor modifications in the plans or specifications, provided that the general features of the project as first approved are not changed.

2. If the department decides that the project which it is asked to build is in conformity with the provisions of its decision upon the

original application it shall advertise for proposals for doing the work. Upon the receipt of such proposals, the department shall make a final determination of the probable cost of the project and shall require the applicant to state that it desires the work to proceed, and to show that it has available sufficient funds to defray the total cost thereof. If the applicant desires to carry out the project and the department is satisfied that sufficient funds are available for the purpose, the department shall thereupon let contracts for and proceed with the construction of the works.

3. In obtaining proposals and letting contracts for and in the prosecution of this work the department shall be governed by the provisions of title 19 of this article, insofar as they may be applicable to the provisions of this part of article 15.

§ 15-1513. Payment of cost of construction.

1. The cost of any such project shall be certified by the department to the applicant and shall be paid by the applicant within thirty days thereafter to the persons or corporations entitled thereto. Either total or partial costs may be thus certified, as the department shall determine. The applicant is hereby authorized to pay such costs from funds which have been raised, or which it is authorized to raise for the purpose of waterworks construction.

2. It shall be unlawful for the applicant to pay out, for any purpose other than those specified in this section, any funds which it shall have certified to the department to be available for defraying cost of this construction, until such time as the department shall have certified to the applicant that all construction costs have been paid.

§ 15-1515. Supervision of construction and operation.

1. All construction work which the Department of Environmental Conservation is authorized to undertake by virtue of the provisions of

sections 15-1507 through 15-1519 shall be done under the direction of the Commissioner of Transportation. After the works shall have been constructed, they shall thereafter be maintained and operated for the benefit of the applicant by the Commissioner of Transportation under the direction of the Department of Environmental Conservation.

2. All costs of such supervision of construction, operation and maintenance shall be paid by the applicant in the manner specified in section 15-1513 of this article, except that the applicant shall not be charged with the salaries and expenses of such officials and regular employees of the state who, in addition to other duties, exercise only general supervision over the work done under the provisions of sections 15-1507 through 15-1519.

3. The Department of Environmental Conservation is authorized to employ such engineers and other persons as may in its judgment be necessary to carry out the provisions of sections 15-1507 through 15-1519 and to fix the compensation for such employees. Such compensation shall be paid by the applicant.

4. Except for such expenses and salaries as are specifically exempted by subdivision 2 of this section, no moneys of the state shall be expended, nor shall the state incur any liability or indebtedness by virtue of the provisions of sections 15-1507 through 15-1519.

§ 15-1517. Reservoir to be owned by the state.

Any lands not owned by the state, but required for the purpose of the construction of the reservoir on forest preserve lands shall be acquired by the applicant, by purchase or condemnation, and conveyed by the applicant to the state, provided however that no rental shall be paid to the state for any land thus acquired. The reservoir and all dams, dikes, spillways, gate houses, pipe lines or any other works which the department shall construct on state owned land shall be the property of the state, but shall be operated solely for the benefit of the applicant. All real estate, reservoirs and appurtenant structures

acquired, taken or constructed pursuant to the provisions of sections 15-1507 through 15-1519 are hereby dedicated to the uses and purposes for which acquired, taken or constructed, and the right, title and interest acquired by the state therein is so acquired subject to such use and purposes.

§ 15-1519. Reservoir to be kept in repair.

The reservoir and appurtenant works shall be kept in safe, sanitary and serviceable condition and to this end shall be repaired, remodeled or additional work done thereon at the request of the applicant or as required by the department. All such work shall be done by the department at the expense of the applicant. If the applicant shall at any time determine that its needs for an additional supply of water require the enlargement of the reservoir in order that a greater quantity of water can be stored therein or drawn therefrom, a new water supply application shall be made to the department asking for approval of the desired modifications of the original plans.

§ 15-1521. Supply of water to other public water supply systems.

On any application for a new or increased withdrawal of water for a public water supply system, the department may require or authorize the applicant to make provisions for the supply and to supply water to any area of the state which as determined by the department in its decision on that application properly should be supplied with water from the source or sources of water supply sought by the applicant. The owner or operator of any existing or proposed public water supply system within such area may apply to the department for a permit to take water from that source of water supply or from any part of the public water supply system of the applicant supplied in whole or in part from that source. If the department so requires, or if it grants a permit, it shall be the duty of the applicant so to supply water, subject to such requirements as the department may impose. The price to be paid for the amount of water so to be taken may be agreed upon between the applicant and the

taker of the water, or if they cannot agree, fair and reasonable amounts and rates shall be, after due hearings thereon, fixed by the public service commission. Any such agreement or determination of the public service commission may from time to time be modified by further agreement between the parties affected thereby or by the further order of the commission.

§ 15-1523. Indirect damages; decision and payment as to Rochester.

1. Whenever the department shall decide that the execution of any water supply project by the city of Rochester will result in damages to persons and property, the determination of and payment for which are not otherwise provided for by law, the department shall so state in its decision and it may order that such damages be determined and paid in accordance with the provisions of this section.

2. Whenever the department shall make such a decision relating to the determination and payment of damages pursuant to the provisions of this section, any person who is on the date of such decision, the owner of any real estate not taken by the applicant, or the owner of any established business, directly or indirectly decreased in value by reason of the acquiring of land for or on account of a new or additional water supply project, his heirs, personal representatives and assigns, shall have a right to damages for such decrease in value. The city of Rochester may agree with such person as to the amount of such damages, and, if such agreement cannot be made, such damages, if any, shall be determined in the manner provided in the eminent domain procedure law for the ascertaining and determining of the value of the real estate taken for such project, and the court shall not be limited in the reception of evidence to the rules regulating the proof of direct damages. The amount of such damages so agreed upon, or determined, as aforesaid, shall be paid and collected in the same manner as is provided for the payment of awards in condemnation proceedings as provided in the charter of the city of Rochester for the taking of real property.

3. A person employed in a manufacturing establishment, or in an

established business, or upon any lands, who is not the owner or part owner thereof, which manufacturing establishment, or established business, is injured or destroyed, or which lands are taken or acquired under or on account of the carrying out of such project, and who has been so employed continuously for at least six months prior to the date of the decision of the department and who continues in such employment up to the time of such injury, destruction, taking or acquisition, shall have a claim for damages against the city of Rochester equal to the salary or wages paid to such employee for the six months immediately preceding the date of such decision. Such damages may be determined by agreement with the city of Rochester, or, in case such agreement cannot be made, such employee may maintain an action against the city of Rochester in the Supreme Court to recover such damages, not, however, to exceed the sum of the salary or wages paid him for the six months immediately preceding the date of the decision of the department.

4. If the department shall so approve of a project, or a part of a project, the execution of which is to be deferred, or, if for any reason such execution shall thereafter be deferred, the department shall in its decision, or in a modification thereof, fix a date, other than the date of the decision, which shall be held to be applicable to all damages arising from the execution of such project, or of such part of a project.

5. The powers, rights, privileges and duties granted, conferred and imposed by the provisions of this section are hereby granted, conferred and imposed notwithstanding any inconsistent provision in this or any other general or special law.

§ 15-1525. Water well drillers in New York state to obtain certificates of registration.

1. No person shall engage in the business of water well drilling in the state of New York without first obtaining a certificate of registration from the department as hereinafter provided. All water well drilling shall be performed in accordance with the rules and regulations

promulgated by the commissioner of health pursuant to subdivision eighteen of section two hundred six of the public health law.

2. Application for a certificate of registration shall be made upon a form prescribed and furnished by the department providing such information as the department deems necessary for the purposes of issuance of a certificate of registration.

3. The certificate of registration shall require that, before the commencement of drilling of any well or wells, the water well driller shall file a preliminary notice with the department; it shall also provide that upon the completion of the drilling of any water well or water wells, a completion report be filed with the department, giving the log of the well, the size and depth thereof, the capacity of the pump or pumps attached or to be attached thereto, and such other information pertaining to the withdrawal of water and operation of such water well or water wells as the department by its rules and regulations may require. The water well driller shall provide a copy of such completion report to the water well owner. The number of the certificate of registration must be displayed on the well drilling machinery of the registrant. The certificate of registration shall also contain a notice to the certificate holder that the business activities authorized by such certificate are subject to the provisions of article thirty-six-A of the general business law. The fee for such certificate of registration shall be ten dollars annually. The commissioner shall promulgate a water well completion report form which shall be utilized by all water well drillers in satisfying the requirements of this section and any other provision of state or local law which requires the submission of a water well completion report or water well log.

4. The department may revoke any certificate of registration for violation of any of the provisions of this section, or violation of rules made by the department pertaining thereto. A certificate of registration may be revoked by the department regardless of the criminal provisions with regard to this section found in section 71-1115.

5. a. On and after January first, two thousand three, any individual

who is responsible for the on-site supervision of water well drilling activities must have passed, with at least a seventy percent score, a two-part certification exam by the national ground water association or an equivalent exam offered or approved by the commissioner. Evidence of having passed such exam shall be provided by the person responsible for the on-site supervision of water well drilling activities upon demand of any enforcement officer.

b. Notwithstanding the provisions of paragraph a of this subdivision any individual, who is responsible for the on-site supervision of the repair or installation of water pumps, requiring the opening of the well casing, must have passed, with at least a seventy percent score, a certification exam developed by the national ground water association or the water systems council, or an equivalent exam offered or approved by the commissioner. Evidence of having passed such exam shall be provided by the person responsible for the on-site supervision of the repair or installation of water pumps, requiring the opening of the well casing, upon demand of any enforcement officer.

6. Except as otherwise provided by law, nothing in this section shall be deemed to preempt any provision of local law which requires the license or registration of water well drillers or which otherwise regulates the practice of water well drilling, provided that the provisions of such local law are at least as comprehensive as the provisions of this section.

§ 15-1527. Permit required for certain wells in Long Island counties.

1. No person or public corporation shall hereafter install or operate any new or additional wells in the counties of Kings, Queens, Nassau or Suffolk to withdraw water from underground sources for any purpose or purposes whatsoever where the installed pumping capacity of any such new well or wells singly or in the aggregate, or the total installed pumping capacity of old and new wells on or for use on one property is in excess of forty-five gallons a minute without a permit pursuant to this title.

2. Such persons or public corporations operating or proposing to operate a well or wells in excess of such capacity in any of such counties shall be subject to all the provisions of this article relating to persons or public corporations, with the same force and effect as if they were supplying or proposing to supply water to the inhabitants of a municipal corporation or other civil division of the state. In taking action on such an application the department shall have authority to impose such conditions and make such requirements and limitations as may be necessary for the protection of the interests of the applicant and of the people of the state and may issue limited or revocable permits for such wells.

3. All new well permits shall be valid for a period of time not to exceed ten years from the date of issuance. The department shall develop a permit renewal application and a time schedule for permit renewals. Well permits may be renewed, including any modifications deemed appropriate by the department, and such renewal shall be considered valid for a period specified by the department but in any case shall not exceed a period of ten years from the date of reissuance or renewal.

4. All applications for new well permits, all applications for well permit renewals, and all reopened well permits shall be evaluated, notwithstanding any other requirements of this title, according to criteria established by rule or regulation of the department which shall include but not be limited to:

a. Specific yield of the aquifer segment in which the well is or will be screened;

b. Requested rated capacity of well and anticipated or actual amount of withdrawal from such well, both seasonally and annually;

c. Whether the well site or proposed well site is in an over-stressed, transitional, or unstressed area;

d. The proposed use of the water; whether the water will be or is recharged or discharged to waste; and the likely quality of the water if

it is or will be recharged;

e. The amount of withdrawal requested and its relationship to volume of recharge occurring locally as well as the relationship of the requested withdrawal to the regional level of withdrawal and recharge;

f. The degree of consistency between the requested rate of withdrawal and any regional water management plans; and

g. If the well is to be used by a water purveyor, either public or private, or a water authority, whether such purveyor or authority has an active and on-going water conservation program, leak detection program, and metering program.

In addition, the department shall vigorously apply subdivision two of section 15-1503 of this title in its decision-making process. The department shall determine whether the watershed, which in the case of Long Island shall mean the land surface that represents the recharge catchment area recharging water for each respective well, has been adequately protected. If the well is to be used as a public water supply by a water purveyor or water authority, the department shall require as a permit condition that the water purveyor or authority prepare and submit watershed rules and regulations as described pursuant to section eleven hundred of the public health law.

5. The department shall develop a system for categorizing the counties of Kings, Queens, Nassau and Suffolk into areas that are either unstressed, transitional, or over-stressed with respect to the quality and/or quantity of the groundwater supply. For those areas which are considered to be over-stressed, as determined by the department, all valid well permits within this category shall be reopened in order to evaluate and possibly modify, add or delete any permit conditions or requirements. Special consideration shall be given to permit conditions aimed at reducing the levels of withdrawal and consumptive water use in over-stressed areas. The reopening of the well permits may be phased in over a five year period. All reopened well permits which are deemed by the department to be acceptable following review and any subsequent

changes may be renewed and shall, if renewed, be valid for a period of time not to exceed ten years from the date of reissuance or renewal. Nothing in this title shall be considered to prohibit the department from revoking a permit following the review required by this title.

6. The provisions of this section shall not apply to the installation of a fire well to which no pumping equipment is permanently attached when such well is installed by a municipal corporation, fire district or duly organized fire company or fire department.

7. The provisions of this section shall apply to the use of water for agricultural purposes. The department shall, for the purposes of section 70-0116 of this chapter, make a finding of an emergency when a replacement well is needed during the growing season for a crop. Pursuant to section 70-0116 of this chapter, the department may issue an emergency authorization for the construction and operation of such replacement well.

§ 15-1528. Moratorium on the drilling of new wells in the Lloyd Sands.

1. The department is directed to identify those areas of Long Island within the counties of Kings, Queens, Nassau and Suffolk which, for the purposes of this section, shall be considered coastal communities.

2. A moratorium shall be established on the granting of new permits to drill public water supply, private water supply or industrial wells into the Lloyd Sands or to permit new withdrawals of water from the Lloyd Sands or to permit the storage or pumping of water into the Lloyd Sands. Such moratorium shall apply to all areas that are not coastal communities, provided however that such moratorium shall apply to all areas including coastal communities for the storage or pumping of water into the Lloyd Sands. The waters of the Lloyd Sands shall be reserved for the use of coastal communities during the moratorium, however, nothing required herein shall affect the permits of wells presently screened in the Lloyd Sands and withdrawing water therefrom.

3. The moratorium shall be lifted upon a directive from the commissioner. The directive shall be based upon his finding that sufficient research has been conducted so as to provide a sound working knowledge of the details, dynamics, water volume, and levels of safe withdrawal appropriate to maintain a safe quantity of Lloyd Sands water. Further, the commissioner must find that a workable program is in place that can properly administer a well permit program for the Lloyd Sands water. Such program shall take into account both the localized and regional aspects and implications of Lloyd Sands water withdrawals, with special attention given to the prevention of water contamination and salt water intrusion. The program must ensure that a safe level of withdrawal from the Lloyd Sands is not exceeded.

4. The commissioner may grant exemptions to the moratorium upon a finding of just cause and extreme hardship. Such exemptions shall not apply to the storage or pumping of water into the Lloyd Sands. An adjudicatory hearing shall be held and findings presented to the commissioner prior to the granting of an exemption.

§ 15-1529. Approval of completed water withdrawal systems.

The construction of any new or modified water withdrawal system authorized under this title shall be under the general supervision of a person or firm licensed to practice professional engineering in the state. Upon completion of construction, such person or firm shall certify to the department that the water withdrawal system has been fully completed in accordance with the approved engineering report, plans and specifications, and the permit issued by the department pursuant to this title. The owner shall not commence operation of the new or modified water withdrawal system prior to the department receiving such certificate and prior to approval of the system by the department of health or its designee as may be required by the state sanitary code.

§ 15-1530. Long Island water usage information.

In Nassau and Suffolk counties, all water purveyors, either public or private, or a water authority, with ten thousand or more customers, shall include water usage information along with customer bills. Such usage information shall be specified in both gallons and cubic feet and at a minimum include:

1. information on year to date usage;
2. a seasonal comparison; and
3. last year's usage for the same time period.

TITLE 17

WATER POWER

Section 15-1701. Reservation of state control.

15-1703. Definitions.

15-1705. Licenses; approval by the Governor.

15-1707. Procedure on application for license.

15-1709. Preliminary permits.

15-1711. Provisions and conditions of licenses; payment to state treasury of moneys received under this title.

15-1713. Waters impounded by dams constructed for power purposes impressed with a public interest.

15-1715. Licenses and the protection of navigation.

15-1717. Provisions for the revision and readjustment of rent in licenses.

15-1719. Equitable rental for Niagara River water.

15-1721. Reservation in the license; state control of rates and use and distribution of power.

15-1723. Contribution to the cost of headwater improvement.

15-1725. Prosecution of project works.

15-1727. Maintenance of project works.

15-1729. Eminent domain.

15-1731. Eminent domain; transmission lines.

15-1733. Use of land occupied by a public highway.

- 15-1735. Contracts extending beyond license period.
- 15-1737. Transfer of license restricted.
- 15-1739. Revocation of license.
- 15-1741. Re-entry at expiration of the license period.
- 15-1743. Renewal and extension of licenses.
- 15-1745. Prohibited diversions.
- 15-1747. False entries, statements or reports.
- 15-1749. Previous grantees not to divert waters without a license.
- 15-1751. Right to amend and repeal reserved.

§ 15-1701. Reservation of state control.

Where any person takes, diverts, appropriates, or otherwise uses, whether by virtue of the provisions of title 17 of this article or otherwise, the waters of the state over which the state has the proprietary ownership of the flow and to the use of which the state has the right paramount and exclusive, or concurrently with any other jurisdiction, such waters shall remain subject to the power and control of the state for the purposes of regulating, licensing, controlling, or terminating the use and disposition of the same by such person, as well as for the purpose of exacting any rentals or charges therefor.

§ 15-1703. Definitions.

When used in title 17 of this article unless otherwise expressly stated or unless the context or subject matter otherwise requires:

1. "Licensee" means a person or public corporation holding a license issued pursuant to title 17 of this article, his successor in interest or assign;
2. "Stream" means a river or other stream and its tributaries;
3. "Water power site" means the real property including rights

appurtenant thereto or which may become appurtenant thereto which, when a water power is developed, is necessary or useful for the construction, maintenance and operation of a plant for the use of a fall of water for the generation of power;

4. "Developed water power site" is a "water power site" where the development is used or usable in its present condition for the generation of power or where the works of such development are being constructed or are in course of repair;

5. "Surplus canal waters" means such waters flowing in canal feeders, artificial canals or the canalized streams of the state, as in the judgment of the Commissioner of Transportation, are not necessary for any canal uses or purposes;

6. "Project" means a complete unit of improvements or development, consisting of a power plant, all water conduits, or dams and appurtenant works and structures which are a part of such unit, and all storage, diverting or forebay reservoirs connected therewith, the primary line or lines transmitting power therefrom to the point of junction with the distribution system, all miscellaneous structures used and useful in connection with such unit or part thereof, and all water rights, rights of ways, ditches, dams, reservoirs, lands or interest in lands, the use and occupancy of which are necessary or appropriate in the maintenance and operation of such unit;

7. "Project works" means physical structures of a "project;"

8. "Reconstruction cost" of a project or of any part thereof means the actual and reasonable original cost to the licensee of the lands or interests in the lands of such project or such part, less depreciation, if any, plus the cost of reproducing the ways, means and works thereon less the depreciation of such ways, means or works, including in such costs a reasonable allowance for organization and development expenses, but excluding therefrom any allowance for the value of the license or any contract, lease or franchise, or value as a going concern, or future profits in pending or existing contracts or prospective profits,

revenues, dividends or any other intangible element;

9. "Real property", without words of limitation, includes all uplands, lands under water, waters of any lake, pond or stream, all water and riparian rights or privileges, all dams, races, sluiceways, and machinery connected therewith, and all land, water and rights necessary to carry out any project or development provided for by title 17 of this article, including the right to divert running water of any stream or streams, and lands necessary for such diversion, and all easements and incorporeal hereditaments, and every estate, interest and right, legal or equitable in land and water, including terms for years and liens on real property as above defined and all real property as above defined, acquired and used for railroad, highway and other public purposes in any county containing a part of the forest preserve as now constituted.

10. For other definitions, also applicable in this title, see section 15-0107.

§ 15-1705. Licenses; approval by the Governor.

1. The department, subject to the provisions of title 17 of this article, may upon application issue to any person or public corporation heretofore or hereafter authorized to develop, use, furnish or sell power in this state or to a municipality of the state having such authority, a license authorizing the diversion and use for power or other purposes of any of the waters of the state in which the state has a proprietary right or interest, or the bed of which, or the real property required for use of such waters or the right to develop water power, is vested in the state; or of boundary waters of the state where the state has jurisdiction over the diversion or interference with the flow of the same solely or concurrently with any other jurisdiction or owner of a proprietary right; or to any such applicant when the owner of any water power site or sites which it uses or proposes to use for the production, sale and distribution of heat, light or power to the public; and subject to the property right of others including riparian rights, authorizing the construction, maintenance and operation in, across or

along any of such lands and waters of such dams, reservoirs, diverting canals or races, water conduits, power houses, transmission lines and other project works as are deemed necessary or convenient for the development, transmission and utilization of the developable power and authorizing in connection therewith the use of dams or other structures or contiguous or adjacent lands belonging to the state. When any water power site or property necessary to the full development of such a site is owned by the state, or water, the use of which is dependent upon the consent of the state, is not, in the opinion of the department suitable or necessary for the development of power for public use, a license may be issued to a person or public corporation for private use under like conditions and with the same restrictions.

2. Whenever the use of water or the erection of structures under a license may affect the navigable waters over which the United States shall have lawfully assumed jurisdiction for purposes of navigation, such license shall not be issued until the plans for such use and structures have been submitted to and approved by the federal authorities as required by law and any licenses shall be at all times subject to the lawful exercise of such jurisdiction over the waters affected by the license for the purposes of navigation.

3. Whenever canal lands, structures or surplus canal or canal feeder waters are covered by the license, the license shall not issue unless the Commissioner of Transportation certifies to the department in writing that the same are not necessary for the navigation or operation of the canals and shall not become effective until endorsed with his approval. Any licensee in the use of such license, structures or water shall be at all times subject to such reasonable rules and regulations as the Commissioner of Transportation shall from time to time prescribe so that the use thereof by the licensee shall not impair the efficiency of the canals and such use shall at all times be subordinate to the needs of the canals.

4. Notwithstanding any provision of title 17 of this article, no license issued by the department pursuant to the provisions of title 17 of this article shall be effective unless and until it is approved in

writing by the Governor and such approval is signed by him and affixed thereto; and notwithstanding any provision of title 17 of this article a modification of such license shall not be effective until approved by the Governor in like manner.

§ 15-1707. Procedure on application for license.

1. Each applicant for a license shall submit to the department a written verified application in such form as the department may prescribe and containing such data or information of the applicant's project as the department may require. It shall be accompanied by proposed plans and specifications showing the nature and extent of the applicant's proposed development and estimates of cost as may be required for a full understanding of the proposed project. Such maps, plans and specifications when approved by the department shall be made a part of the license; and thereafter no changes shall be made in such maps, plans or specifications until such changes shall have been approved and made a part of such license by the department. Applications shall be filed with the department in the order of their receipt.

2. Each license covering water power sites or lands, the title to which is vested in the state, shall require the payment by the licensee of an annual charge measured by a fair rental value thereof; in other cases, except where the state has no proprietary interest, an equitable annual charge may be made, in determining which the department shall give consideration to the cost of producing power by others in competition with the licensee; and every license shall require the payment by the licensee of an annual charge for the purpose of reimbursing the state for the cost of administration of the provisions of title 17 of this article. The department, by resolution, shall fix and determine such annual charge, and the time or stage of development from which rentals are to be computed, whereupon if one or more applicants signifies his readiness, and establishes to the satisfaction of the department his ability, to construct and maintain the proposed project, to pay the charge or rental fixed by the department, and otherwise to comply with the provisions of title 17 of this article in

the use of such water and property, it shall give notice of such determination and of a time, not less than fifteen days from the date of the first publication of the notice, and of the place of a meeting of the department to take action on such application or applications.

3. A copy of such determination and notice shall be served upon each applicant for the license not less than fifteen days previous to the date set for the hearing. If the application applies to or may affect any canal or canal feeder waters, a like notice shall be given to the Commissioner of Transportation. The department shall also cause such notice to be published as provided in subdivision 1 of section 15-0903.

4. At the time and place designated in such notice, or at a time and place to which the meeting may be adjourned, the department shall determine whether the plan or plans set forth in the application or applications on file with the department, or any such plan, is or may be consistent with the proper development, conservation and utilization in the public interest of power resources of the water shed, stream or localities to be affected by the determination. If it shall determine that any of the plans is consistent with such development, conservation and utilization and that there is no reason why the water power involved should at the time be withheld in the public interest from development by private interests, it may grant the application. If there be two or more such applications it shall decide which of the plans is most suitable for the proper development, conservation and utilization in the public interest of the water power resources of the water shed, stream or locality affected.

5. The department in granting the license shall accord a preference to the applicant whose plans, being approved under the preceding subdivision, are best adapted to properly develop the water power site or sites covered by the application, provided that it is satisfied that such applicant is reliable and responsible and capable of consummating the project; and provided further that as between two or more plans equally well adapted to such purpose, a preference may be given to the application of a municipal corporation, if an order shall have been previously made by the Public Service Commission approving the

installation of a municipal power plant which it proposes to install under the license, or in default of such an application to a riparian owner, and, otherwise, to the application first filed with the department; and provided further that the department may impose as a condition of granting the license that the plan be modified to improve the development or otherwise conserve the public interest or protect private rights.

6. The department from time to time, either before or after a license is granted, may permit minor changes and corrections to be made in any map, plans or specifications filed by an applicant for the purpose of improving the same. It may also permit changes to be made therein for the purpose of better adapting the same to the development, conservation and utilization in the public interest of the water power resources of the water shed, stream or locality affected. No correction or change shall be made under this subdivision until the same has been authorized by a resolution adopted by the department.

§ 15-1709. Preliminary permits.

1. The department may issue preliminary permits for the purpose of enabling applicants for a license hereunder to secure the data and to perform the acts required by section 15-1707, provided, however, that upon the filing of any application for a preliminary permit by any person or public corporation, the department before granting such application shall at once give notice of such application in writing to any municipality which, in its judgment, is likely to be interested in or affected by such application. Each such permit shall be for the sole purpose of maintaining priority of application for a license under the terms of title 17 of this article for such period or periods, not exceeding a total of three years, as in the discretion of the department may be necessary for making examinations and surveys, preparing maps, plans, specifications and estimates, and making financial arrangements.

2. The permit shall set forth the conditions under which priority shall be maintained and the license issued, and may prescribe any

condition of issuing the license for the protection of the interests of the state. Only one preliminary permit at a time shall be issued and outstanding for the same project. The same preference shall be accorded by the department in considering applications for a preliminary permit as is accorded in considering applications for a license. Each preliminary permit shall require the permittee to proceed diligently and immediately to secure the data and to perform the acts required by section 15-1707.

3. All investigation work in connection with any operations carried on under the preliminary permit shall be subject to the inspection of the department, its agents and employees, and, from time to time upon the request of the department, the permittee shall make full reports to the department of the progress of the work carried on under the preliminary permit, but such reports shall be confidential until final application is made for the license, unless the department takes proceedings to revoke the preliminary permit.

4. Permits shall not be transferable and may be cancelled by the department upon failure of the permittee to comply with the conditions thereof.

§ 15-1711. Provisions and conditions of licenses; payment to state treasury of moneys received under this title.

1. The term of the license shall not exceed fifty years from its date.

2. The licensee shall agree to accept and abide by the terms and provisions of title 17 of this article, and to pay to the state the charge or rental, if any, fixed by the department and reserved in the license, or as the same may be readjusted pursuant to law.

3. The license shall by reference to maps, plans, and specifications or otherwise clearly identify and define the improvement or development to be affected under the license.

4. If the license affects any canal or canal feeder waters, it shall contain a provision, in substance, reserving to the Commissioner of Transportation the right at any and all times to enter upon the property covered by the license, and to do and perform such acts or things, including the temporary drawing off of the water from the dam or forebay from which the licensee is drawing water and such interruption in the supply of water to the licensee, as may be deemed necessary for the repair, reconstruction or improvement of the canal or any canal works or structures and that the licensee shall be at all times subject to such reasonable rules and regulations for the management and maintenance of the canals and navigation thereof as the Commissioner of Transportation shall from time to time prescribe; also a provision in substance reserving to the department the right, on ninety days' written notice to the licensee, to retake, recapture and resume wholly or in part the use of the water and other property covered by the license, including all structures erected upon and improvements to such property, and to control and limit the manner and extent of use of such water or other property, whenever in the opinion of the Commissioner of Transportation or the Legislature, the necessary supply of water for the use of the canals of the state, or any future alterations or improvements of the canals, or the safety of the works connected therewith, may render such resumption, control or limitation necessary; also a provision in substance reserving to the state the right wholly to abandon or destroy the canal, dam or works by the erection or construction of which the surplus water covered by the license is rendered available. In either of which events, the licensee, if he promptly complies with any and all lawful directions of the department with respect to the cessation of the use of water and removal from the premises may recover from the state in the Court of Claims the damages resulting to him therefrom, but the damages for improvements on state lands shall not exceed the reconstruction cost. The damages for which the state shall be liable may be specified in the license. The state shall not be liable for any temporary interruption for the repair of or in the operation of the canal, and in case of a substantial change in the right or privilege granted, the department, by agreement, may readjust the charge or rental with the licensee.

5. The license shall contain a provision in substance that if there be a partial resumption of the use of the water or of the land which is covered by the license, the licensee, at his option, may continue for the remainder of the term specified in the license to use the residue of the water and land covered by the license, under the terms and conditions of the license, or such modified terms as may be agreed upon, upon the payment to the state of a revised and readjusted charge or rental, and that if the licensee refuses to accept or continue the use of the remaining water and land at the revised and readjusted rental, the license shall terminate and the licensee shall have his claim for damages as provided by the preceding subdivision.

6. Except as otherwise provided by law, the terms and provisions of a license may be altered only by mutual agreement between the department and the licensee, after publication as provided in subdivision 1 of section 15-0903 of a notice setting forth the time and place of the meeting at which the proposal to alter the terms and provisions of the license will be considered. If by any such agreement the amount of water available for use by the licensee is curtailed or the privileges and rights under the license are materially changed, the department may revise and readjust the rental to be paid.

7. The license may contain a provision to the effect that the licensee shall furnish to the state, free of charge or upon terms to be fixed as therein provided, the hydraulic or hydro-electric power required for the operation or lighting of certain defined state structures, works or property.

8. The license may also contain a provision in substance, that the licensee shall obtain the fee simple absolute of, or any lesser interest in, all property other than that of the state used by him in the construction of the project.

9. In issuing licenses for a minor part only of a complete project, or for a complete project of not more than one hundred horsepower capacity, the department may in its discretion waive such conditions, provisions and requirements of title 17 of this article, except the license period

of fifty years, as it may deem to be to the public interest to waive under the circumstances.

10. The department shall pay into the state treasury the moneys received by it in the course of administering the provisions of title 17 of this article in the manner provided by section 121 of the State Finance Law.

§ 15-1713. Waters impounded by dams constructed for power purposes impressed with a public interest.

The waters impounded by any dam hereafter constructed for power purposes on any stream or waterway in the state, shall be impressed with a public interest and open to the public to fish thereon, when authorized by other applicable provisions of this chapter subject to the conditions and limitations found in section 11-1311 of this chapter.

§ 15-1715. Licenses and the protection of navigation.

Before granting any license, the department shall inquire and determine to its own satisfaction that the exercise of the privilege conferred will not impair or interfere with navigation on the waters covered by the license and, whenever, the public interest requires, shall impose such conditions in granting the license as may be required to protect and safeguard navigation.

§ 15-1717. Provisions for the revision and readjustment of rent in licenses.

1. The annual charge or rental fixed by the department shall continue for the period of the license, unless the license provides for a readjustment of the charge or rental at a specified time or times, in which case the charge or rental, as fixed by the license, may be revised and readjusted by the department according to the terms of the license.

Payments on account of any such charge or rental shall be treated as a part of the operating expense.

2. The licensee shall be given ten days' notice of the time and place of the meeting of the department at which the question of the revision and readjustment of such charge or rental will be considered. The revision and readjustment shall be in the form of a resolution adopted by the department and thereafter, the revised and readjusted rental or charge, unless reviewed and reversed or modified as herein provided, shall apply to and govern the license.

3. Any such decision may be reviewed by the licensee pursuant to the provisions of section 15-0905.

4. Pending the final determination of the review proceedings, the licensee shall pay to the state the revised and readjusted rental or charge as fixed by the department; and if it shall be determined that the rental or charge shall be revised, the licensee shall be credited on later payments with any excess he may pay over the rental as finally fixed, with interest. If the credits be insufficient to satisfy such excess, the licensee may recover the balance in the Court of Claims.

§ 15-1719. Equitable rental for Niagara River water.

The department shall have the power to fix and determine, after a hearing held upon notice to the parties interested, the amount of an equitable rental, which is hereby charged pursuant to the reservations made in chapter 597 of the laws of 1918 for the diversion, as specified in such chapter, of water from the Niagara River in excess of a daily diversion at the rate of fifteen thousand one hundred cubic feet per second, and also, from July 1, 1943, the amount of an equitable rental, which is hereby charged, for the diversion of water from the Niagara River to the extent of a daily diversion at the rate of fifteen thousand one hundred cubic feet per second and not otherwise subject to the imposition of an equitable rental as specified in such chapter. Such rental shall be fixed in like manner as if application were made for a

license under the provisions of title 17 of this article before the water was used, and the people of the state may sue for and collect in behalf of the state such rentals as so fixed and determined.

§ 15-1721. Reservation in the license; state control of rates and use and distribution of power.

1. Every license issued pursuant to title 17 of this article for a project shall contain a provision expressly reserving to the state the right to regulate and control the use and distribution of the power generated by any licensee, and to fix reasonable rates to be charged by the licensee under all circumstances for furnishing heat, light or power generated wholly or partly by the use of property covered by the license, and to regulate the service, capitalization and secured debt of the licensee and licensed project.

2. Jurisdiction is hereby conferred upon, and it shall be the duty of, the Public Service Commission to regulate and control the use and distribution of all power generated by any licensee under title 17 of this article, or generated by any person or public corporation, by the use and diversion for power purposes of any waters of the state in which the state has a proprietary right or interest, and to fix reasonable rates to be charged by such licensee, or such person or public corporation, for furnishing heat, light or power generated wholly or partly by the use of water in which the state has a proprietary right or interest. In the exercise of such jurisdiction the Public Service Commission shall give preference to municipalities in the use and distribution of power generated by such licensee or by such person or public corporation. To carry out the provisions of this section, and until otherwise provided by law, complaints, inspections, investigations, hearings, rules, regulations, orders and determinations may be made or had, and rules, regulations and orders enforced, in the manner, so far as applicable, provided in the Public Service Commission Law in respect of electrical corporations and of the manufacture, sale and distribution of electricity.

3. Every license issued pursuant to this article shall contain a condition that the development of power thereunder shall be subject to the control and authority of the Public Service Commission to the extent conferred upon such Commission by this section.

§ 15-1723. Contribution to the cost of headwater improvement.

Licensees and persons exercising rights conferred by title 17 of this article shall be liable for any payments or charges resulting from the improvement of headwaters under the provisions of title 21 and title 23 of this article, according to their respective interests in the property benefited.

§ 15-1725. Prosecution of project works.

1. The licensee shall commence the construction of the project works within the time fixed therefor in the license. He shall thereafter in good faith and with due diligence continue the construction thereof, and within the time fixed in the license complete and put into operation the whole of such development work or such part or parts thereof as the license prescribes; except that when not incompatible with the public interest, the department may, from time to time, for good cause, by resolution extend the time either for the commencement of construction or for the completion thereof.

2. The licensee shall, when required by the department and as often as once in every six months during the course of the construction, file with the department a detailed statement of the cost of the project during the period covered by the statement. Within six months after the licensee has filed its final statement after the completion of the project, the department shall file a statement of the total cost of the investment.

3. The department at such time or times as it deems proper may examine any statement of the licensee, whether partial or complete, and hold a

hearing to determine whether the same correctly states the cost of the project or part thereof, as therein set forth, and shall have power to determine whether any part of the expenditure has been made wastefully, or in disregard of the terms of the license, or in bad faith, and to deduct such items improperly included as may be necessary to make such statement or statements conform to the fair and actual cost of the project or part thereof. Subject to review as provided in section 15-0905, the determination of the department shall be conclusive for all purposes as to the amount of such investment as shown by any such statement.

§ 15-1727. Maintenance of project works.

1. The licensee shall at all times maintain the project works in good repair and in efficient working order; shall promptly make all necessary renewals and replacements, including such necessary renewals or replacements as may, after a hearing, be directed by the department for this purpose, and shall establish and maintain adequate reserves therefor.

2. The department may at any time institute an investigation or hold a hearing, or both, with respect to the compliance by the licensee with the requirements of this section and the adequacy of the reserves maintained by it for the purposes herein specified. After such investigation or hearing, the department may issue such order or orders, not inconsistent with title 17 of this article, as in its judgment will insure compliance by the licensee with the provisions of title 17 of this article, in respect to all matters so investigated.

3. The licensee shall promptly conform to and comply with such directions, orders, rules or regulations as the department may make from time to time in the interests of navigation, or for the protection of life, health or property or other lawful purposes. He shall likewise promptly conform to and comply with such lawful rules and regulations as may from time to time be prescribed by the federal government, its duly authorized officers or agents relating to the navigation of the waters

covered by the license.

§ 15-1729. Eminent domain.

Real property may be acquired pursuant to title 17 of this article under an exercise of the right of eminent domain in the following cases:

1. Real property which is necessary to the full development and utilization of any water power site of which the state is the owner, in whole or in part.

2. Real property which is necessary to the full development of water power sites where such water power sites on a stream, or in a given locality cannot be developed separately as efficiently and economically for the generation of power as under a plan for their development together and the owner or owners of the right to the use of the greater part of the head and volume of usable flow for power at such sites transfer the same to a corporation organized for the production, sale and distribution of heat, light and power to the public as herein provided, or such right is owned by such a corporation and the department determines by resolution that such power sites can be more efficiently and economically developed for the production of power under such a plan than singly, and the heat, light or power is necessary for public use.

3. Real property, on the application of a corporation organized for the production of heat, light or power, after a determination by the Public Service Commission that such property is necessary to the full development and utilization of a single undeveloped water power site, a major part of the head and volume of the usable flow for power at which site is owned by such corporation, for the production of heat, light or power for sale or distribution to the public and that such heat, light or power is necessary for public use. In any county containing a part of the forest preserve as now constituted, for the purpose of establishing the right to exercise the power of eminent domain under this subdivision the ownership of wild or unoccupied land shall be presumed to be in an

applicant showing a record title under which the applicant or his grantors has claimed for a period of ten years and it appears that the state and county taxes thereon have been paid by or on behalf of such applicant or his grantors for a period of five years before the proceeding in which the application is made was begun; ownership in other lands wherever located shall be presumed on showing record title in the applicant for a period of ten years and possession thereunder for a like period.

4. Such right of eminent domain shall be exercised under the provisions of the eminent domain procedure law subject to the following restrictions and limitations:

a. The acquisition of real property for the state shall be on the application of the department, and payment therefor shall be made in the manner provided for the payment of lands appropriated by the state in the Adirondack and Catskill parks under section 3-0305 of this chapter.

b. If a water power site be taken under subdivision 2 of this section, the owner of any such power site shall have the option to receive and own such a proportion of the power resulting from the common development as the head and volume of the usable flow of the water at the site bears to the product of the total head and volume of the usable flow of the waters of the common development, provided he pays a like proportion of the cost of development, maintenance and operation, and consents that his pro rata share of such power shall be pledged to secure such payment, and assents to such reasonable and equitable provisions and regulations in relation to the development and operation thereof for the common benefit and to payment therefor as the department shall prescribe. In case of the exercise of such option by the owner of a developed water power site, such owner shall also be allowed the loss, if any, resulting to him from the excess in value, if any, of the water power owned by him before such common development over the water power right owned by him after such development, after deducting from the value of such power right his proportion of the cost of such development. Such difference in value shall be deemed a part of the damages in the condemnation proceeding, and the payment thereof shall be

secured as directed by the court.

c. Before any real property is taken under the provisions of subdivision 2 of this section, the owner or owners of the right to the use of the greater part of the head and volume of usable flow for power at the sites to be developed in common shall, unless such a corporation be already organized and be the owner of such rights, organize a corporation for the production, distribution and sale of heat, light and power to the public, and shall transfer to such corporation such sites. Such corporation shall file with the Public Service Commission a certified copy of its certificate of incorporation and shall also file with such department a map of the water power sites, and property connected therewith, of which it is the owner, with satisfactory proof that it is the owner thereof, and a map of the water power sites and property which it seeks to acquire for the purpose of making a common development. It shall also file with such department a plan of its proposed development of water power on the property which it owns and which it seeks to acquire. Such corporation shall file copies of such maps and plan certified by the president and engineer of the corporation, or a majority of the directors, in the office of the clerk of the county in which such development is to be made, or if it be in more than one county, in the office of the clerk of each county; and shall give written notice to all actual occupants of lands of which it is not the owner on which such development is to be made, of the time and place such maps and plan were filed, and that such development is to be made on the lands of such occupants. The Public Service Commission shall give an opportunity to persons interested to be heard, investigate and determine whether it is in the public interest that such development be made and whether the power to be produced is necessary for the supply of the public with heat, light or power. If it shall so determine, it may issue to such corporation a certificate that public convenience and necessity require that such development be made, but in granting the certificate the department may expressly except from its certificate any part of the property proposed to be developed as unnecessary to the plan. Such certificate when issued shall be conclusive evidence as to the matters lawfully certified therein in any proceeding under the Condemnation Law to acquire the property, or any part thereof, set forth

in such certificate.

5. Real property, on the application of a corporation authorized to do business in this state and engaged in the production, sale and distribution of heat, light or power to the public, which is necessary to perfect or improve water power already developed, provided that property taken does not impair or injure any developed water power or developed water power site. The corporation may apply for and in a proper case receive from the Public Service Commission a certificate of convenience and necessity for taking the property so to be acquired in the manner and with like effect as provided in paragraph c of subdivision 4 of this section. Any such corporation may also exercise the right of eminent domain to acquire real property in accordance with the provisions of subdivisions 2, 3 and 4 of this section.

6. If it appears that there is a defect of title or any outstanding interest in any of the real property occupied or to be occupied by the project when completed, the corporation making, or having the right to make, the development of the water power may exercise the right of eminent domain for the purpose of acquiring any such outstanding interest or any real property with respect to which the title appears to be or is defective.

7. In any county containing a part of the forest preserve as now constituted, real property, on the application of a corporation organized for the production of heat, light or power, necessary for the development of a water power site or sites, developed or about to be developed, and occupied by a railroad and real property necessary to and for the relocation of such railroad, upon application to and on order of the Public Service Commission authorizing the same and upon thirty days' notice to the railroad corporation. The Public Service Commission shall grant the order if in its judgment the public interest will be promoted thereby. The relocation of the railroad shall be at the expense of the applicant and in accordance with plans and specifications to be approved by such Public Service Commission. The applicant shall not take possession of any real property of the railroad necessary for its operation until such relocation of the railroad shall have been

completed. The Public Service Commission upon the assent of the railroad may order the abandonment of such part of the railroad as is necessary to be taken instead of ordering a relocation thereof.

8. Real property, on the application of a corporation organized for the production of heat, light or power, which is necessary for the full development of a water power site or sites, developed or about to be developed, and is used or occupied as burial place or cemetery, and real property necessary to locate and reinter any human remains removed therefrom. Proceedings shall be had for the taking of such real property and removal of such remains in the manner provided by section 15-2117, in so far as the provisions thereof are applicable thereto, but such exercise of the right of eminent domain shall be subject to the sound discretion of the court.

§ 15-1731. Eminent domain; transmission lines.

Any corporation authorized to do business in this state and engaged in the production, sale and distribution of heat, light or power to the public may exercise the right of eminent domain pursuant to the provisions of the eminent domain procedure law to acquire property necessary for the construction of transmission lines for such heat, light and power, when necessary for such sale and distribution to the public. If the corporation is a licensee under title 17 of this article it may apply to, and in a proper case receive from, the Public Service Commission a certificate of convenience and necessity for any property so required in the manner and with like effect as provided in paragraph c of subdivision 4 of section 15-1729. The court in such proceedings of condemnation may prescribe any reasonable limitations, restrictions or regulations for the construction and operation of such lines so as to protect life and prevent unnecessary injury to property.

§ 15-1733. Use of land occupied by a public highway.

1. Whenever, in order to complete any project as provided by title 17

of this article, it becomes necessary to use lands occupied by a public highway the licensee shall apply to the Commissioner of Transportation for permission to relocate such highway, the entire expense of such relocation to be borne entirely by the licensee including any damages to persons or property which may be caused by or result from such relocation. The new location shall be determined by the Commissioner of Transportation and the application of the licensee shall be accompanied by funds in an amount sufficient to provide for the cost of a survey, preliminary plans and all other expenses of the Commissioner of Transportation in determining a suitable relocation.

2. The licensee shall provide the necessary land for such relocated highway in accordance with land taking-maps prepared by the Commissioner of Transportation. If such relocation is on state land the fee to the land covered by the right of way shall remain in the state. If the licensee acquires private property for right of way in the relocation of a state or a county highway the fee in such right of way shall be deeded to the state or to the county in which the same is situated as the case may be. If the licensee acquires private property for right of way in the relocation of a town highway the fee in such right of way shall be deeded to the town or towns in which the same is situated.

3. Any such relocation shall be made by the licensee according to plans and specifications approved by the Commissioner of Transportation.

4. Upon the completion and acceptance of such relocated highway the original highway for which it is substituted shall be deemed abandoned as a public highway and the relocated highway shall thereafter be maintained in the same manner as was the original highway for which it was substituted.

5. The highway law shall apply to the relocation of highways as provided in this section so far as applicable thereto and not inconsistent with title 17 of this article.

§ 15-1735. Contracts extending beyond license period.

1. Whenever the public interest requires or justifies the execution by a licensee whose license covers any state property, or who uses water that cannot be lawfully used without the consent of the state, of a contract for the sale and delivery of power for a period extending beyond the terms of the license, such a contract may be entered into with the approval of the department and the Public Service Commission, in which event the duty to perform such contract after the expiration of the license period shall devolve upon the person or corporation to whom or which a new license covering the property of the former licensee is issued, and such new license shall so provide.

2. A licensee making such a contract shall not be liable thereon after the expiration of his license, if it cover any state property or the use of water subject to state control, unless the new license is issued to him. No such licensee without the written approval of the department shall enter into any contract for the sale or delivery of power for a term or period extending beyond the time fixed for the revision of the change or rental payable under his license.

§ 15-1737. Transfer of license restricted.

No voluntary sale, assignment, or transfer of any license or of the rights thereby granted shall be made without the written approval of the department; nor become effective until the instrument of transfer be filed and recorded in the office of the clerk of each county in which property covered by the license is located. Notice thereof must be given to the department before possession is given under such transfer, and if there be a transfer by operation of law, the transferee must give notice thereof to the department before taking possession.

§ 15-1739. Revocation of license.

1. The department may by resolution terminate and revoke any license, issued pursuant to the provisions of title 17 of this article for the

following reasons:

a. Failure of the licensee to commence, advance or complete construction of the project works within the time fixed therefor, unless the time be extended by the department; or

b. Failure of the licensee to pay, at the time or times provided in the license, the charge or rental provided for in the license or fixed pursuant to law; or

c. Failure of the licensee promptly to comply with any of the terms, conditions or provisions of title 17 of this article or of the license, or with any direction, order, rule or regulation given or made by the department or otherwise, pursuant to the license or provisions of law.

2. No action terminating or revoking a license shall be taken until the licensee is afforded an opportunity to appear before the department and be heard with respect thereto. Ten days' notice of the time and place of the meeting of the department at which the action will be considered shall be given to the licensee.

3. In case the department revokes a license as herein provided because of the failure of the licensee in good faith to commence actual construction of the project works or any specified part thereof within the required time, the licensee shall not recover any damages or compensation from the state because of such revocation.

4. If the license is terminated or revoked, the state may elect to take any and all interest of the licensee in and to state property covered by the license including all works and structures thereon.

5. In such event the department may, subject to the making of adequate appropriation therefor, provide by written agreement for the payment to the licensee of the amount of the enhancement in value, if any, of the state property which is covered by the license resulting from any improvements of the same made or effected by the licensee, not exceeding, however, the reconstruction cost, which recovery in the case

of termination and revocation pursuant to paragraph a of subdivision 1 of this section shall not include or be affected by any organization or other expenditures preliminary to actual construction work, and in the case of termination and revocation pursuant to paragraphs b and c of subdivision 1 of this section shall be less a deduction equal to that portion, if any, of the aggregate income from the project over and above actual and reasonable expenses of operation, including repairs, which shall exceed an amount equal to eight per centum per annum, to the time that the state property is taken over by the state, of the actual and reasonable cost to the licensee of the lands and interests in lands, the actual and reasonable cost to the licensee of the ways, means and works and the allowance made for organization and development expenses. If the amount involved does not exceed the indebtedness which may be lawfully incurred for such purposes without an appropriation, such agreement may provide for the payment thereof before an appropriation is made.

6. In the event that the licensee and the department are unable to agree upon the amount of damages payable to the licensee as above provided, and the same does not exceed the indebtedness which may be lawfully incurred, for such purpose without an appropriation being made therefor, the licensee may recover from the state in the Court of Claims the amount of enhanced value, if any, of the licensed property owned by the state, resulting from any and all existing improvements of the same made or effected by the licensee, not exceeding, however, the reconstruction cost, less depreciation thereof as limited above to proceedings pursuant to the provisions of paragraph a of subdivision 1, or less deduction as stated above for proceedings pursuant to paragraphs b and c of subdivision 1. If the amount of damages shall exceed the amount of such lawful indebtedness, the revocation shall not take effect until an adequate appropriation has been made therefor and in such case damages may be in like manner recovered in the Court of Claims.

7. The Attorney General at the request of the department may institute appropriate actions or proceedings in the Supreme Court in any judicial district of the state or in any court of competent jurisdiction to carry into effect the resolution of the department revoking any license and to remove from state property covered by the license, any licensee whose

license has been revoked.

§ 15-1741. Re-entry at expiration of the license period.

1. Upon the expiration of the original license period any and all interest of the licensee in and to state property which is covered by the license, together with any and all works and structures thereon, shall vest in and become the property of the state free and clear of any and all liens and encumbrances, provided, however, that the department may at the time the license is granted, or at any later time during its continuance, enter into an agreement with the licensee that an allowance will be made to the licensee for and on account of improvements to property of the state, or improvements the value of which is dependent on the use of state property, for which in view of the rent paid the licensee shall not have been compensated by the privilege of the license, but such agreement must be made before the improvement for which such allowance is to be made, is undertaken. If the amount of such allowance exceeds the amount of indebtedness, which may be lawfully incurred for such purposes without an appropriation, the time when such property is vested in the state shall be postponed until an adequate appropriation is made therefor. The allowance so made or to be made may be by way of an extension of the license pursuant to an agreement between the department and the licensee.

2. Any agreement with the licensee for an allowance on account of improvements to property of the state or improvements the value of which is dependent on the use of state property, shall not provide for an allowance in excess of the reconstruction cost, less a deduction equal to that portion, if any, of the aggregate income from the project, over and above actual and reasonable expenses of operation, including repairs, which shall exceed an amount equal to eight per centum per annum, to the time that the state property is taken over by the state, of the actual and reasonable cost to the licensee of the lands and interests in lands, the actual and reasonable cost to the licensee of the ways, means and works and the allowances made for organization and development expenses.

§ 15-1743. Renewal and extension of licenses.

The department may renew an expiring license to the same licensee on the same or different terms, or may renew the privilege from year to year under such terms as may be agreed upon.

§ 15-1745. Prohibited diversions.

1. Unless a license has been obtained therefor under this title, or the diversion of such waters is subject to the charging or imposition of an equitable rental under this title, it shall be unlawful for any person or public corporation who has been notified by the department to desist from such conduct, to willfully take, divert, draw or make use of, for power and/or other commercial or manufacturing purposes:

a. waters, or the bed or other real property required for the use of such waters, in which the state has a proprietary right or interest;

b. boundary waters of the state concerning which the state has jurisdiction over the diversion or interference with the flow of the same for power purposes, solely or concurrently with any other jurisdiction or owner of a proprietary right.

2. The use of such water, except when the right to the use thereof has been acquired by means of a written license issued pursuant to the provisions of title 17 of this article, or when the diversion of such water is subject to the charging or imposition of an equitable rental pursuant to the provisions of subdivision 1 of section 15-1719 of this article, shall be prima facie evidence of the wilfulness of the taking, drawing, diversion or use thereof and of the guilt of the person taking, diverting or making use thereof.

§ 15-1747. False entries, statements or reports.

No person shall for the purpose of deceiving, make or cause to be made any false entry in the books of accounts of a licensee, or for the purpose of deceiving, make or cause to be made any false statement or report in response to a request, order or direction from the department for statements or reports under title 17 of this article.

§ 15-1749. Previous grantees not to divert waters without a license.

A person or corporation, other than a municipal corporation, claiming or purporting to have, or to have had, by general or special act or other grant from the state, the right to divert water from Lake Erie, Niagara River or the boundary waters of the state, or to divert any waters in which the state has a proprietary interest, or the successor in interest of such a corporation, whether or not there has been or is now an actual diversion of waters or development of power therewith pursuant to such act or grant, may apply for a license under title 17 of this article to divert such waters and shall not divert such waters without having obtained such license, unless the diversion of such waters is subject to the charging or imposition of an equitable rental pursuant to the provisions of title 17 of this article, and shall otherwise be subject to the provisions of title 17 of this article.

§ 15-1751. Right to amend and repeal reserved.

The right to alter, amend or repeal title 17 of this article is expressly reserved, but substantial rights acquired pursuant to title 17 of this article shall not be lost or impaired by such repeal or amendment.

TITLE 19

DRAINAGE

Section 15-1901. Purpose.

15-1903. General provisions and definitions.

15-1905. Drainage improvement districts.
15-1907. Drainage improvement associations.
15-1909. Entry upon lands, structures and waters; condemnation.
15-1911. Petition for formation of district.
15-1913. Proceedings on petition.
15-1915. Proceedings for formation of district.
15-1917. Surveys and maps.
15-1919. Drainage enhancements.
15-1921. Proceedings on enhancements.
15-1923. Plans and estimates.
15-1925. General apportionment of cost.
15-1927. Proceedings on general apportionment of costs and final
fixation of boundaries.
15-1929. Corrections and revisions of statements of
enhancements.
15-1931. Procedure for authorization of construction.
15-1933. Construction.
15-1935. Contracts.
15-1937. Operation and maintenance.
15-1939. Special apportionment of cost.
15-1941. Major repairs of drainage works.
15-1943. Minor repairs in drainage districts.
15-1945. Minor repairs in existing drainage ditches.
15-1947. Unlawful interference with drainage works.
15-1949. Removal of beaver.
15-1951. Financing of improvements.
15-1953. Drainage improvement district fund.
15-1955. Proceedings for assessment and collection of cost.
15-1957. Drainage fund.
15-1959. Corrections and revisions of assessments,
determinations of drainage enhancements and
apportionment of costs.
15-1961. Drainage district with federal aid.
15-1963. Formation of district with federal aid.
15-1965. Construction project.
15-1967. Changes in project.
15-1969. Continuation of district.

- 15-1971. Transfer of property and discontinuance of district.
- 15-1973. Drainage section association; definitions.
- 15-1975. Drainage section association; creation.
- 15-1977. Articles of association; recording and filing.
- 15-1979. First annual meeting; members; officers; by-laws.
- 15-1981. Powers of association; limitations; voluntary dissolution.
- 15-1983. Drainage of agricultural lands; procedure.

§ 15-1901. Purpose.

To provide for the drainage of agricultural land to the end that it may be made more productive, and in order to benefit the public health, safety and welfare, the department shall possess the powers and exercise the duties hereinafter prescribed in respect to drainage.

§ 15-1903. General provisions and definitions.

The following words and phrases used in this title 19, when not otherwise specified, are defined or indicate procedure, as follows:

1. Filing. Wherever it is required that copies of maps and documents be filed, certified copies thereof shall be filed in the offices of the clerks of each county, town, city or incorporated village, any part of which is included in the district or proposed district.

2. Recorded. Whenever it is required that any document be recorded, the department shall send a certified copy thereof to the clerk of each county, any part of which is included in the district or proposed district, and it shall be the duty of such clerk thereupon to record such document and to collect the legal fees therefor.

3. Costs. Whenever it is practicable so to do, the department shall include in the cost of any surveys, maps, estimates, determinations of enhancements, apportionments of cost or assessments made, or

construction, maintenance or repair work carried out, the cost of all proceedings, hearings, notifications, filings, recordings, engineering, legal and other services and expenses which may lawfully be incurred, including the cost of acquisition of lands and rights of way, suits and prosecutions.

4. Notice. Unless otherwise specified, notice of a hearing, contemplated act or of an act performed shall be given as provided in section 15-0903.

5. Assessment. As used in title 19 of this article the term assessment shall mean the whole or any appropriate part of the procedure by which the cost of any proceeding or construction project is made a legal charge on certain properties. It may include the determination of enhancements and apportionment of construction and other costs. It includes similar proceedings once specified in earlier forms of title 19 of this article, or in former or other general and special laws with regard to drainage.

6. Initiation of proceedings. It is the intent of title 19 of this article that petition may be made to the department to make any survey or investigation or do any work that may fall under the purposes of title 19 of this article notwithstanding the special provisions hereof and that, if it is advisable or advantageous so to do, more than one procedure may be carried on at the same time or may be followed out with respect to a part rather than the whole of the district. Should such petition not fully conform as to subject matter with the following sections, the department is empowered nevertheless to give the relief desired by following the specified procedure as nearly as may be and to assess the cost of such investigations or work on the properties surveyed, investigated, appraised, included in an apportionment or improved in such manner as may be found most equitable and to conform most nearly with the specific provisions of title 19 of this article. Any procedure under this title 19 which may be initiated by petition may also be initiated by the department on its own motion. In such case the department shall adopt an initiating resolution which shall have the same force and effect as a petition.

7. Served by. A parcel of land is served by any ditch or structure useful for the drainage thereof. Thus any ditch which actually drains the parcel or which intercepts and carries away water which otherwise would reach the parcel, or any ditches which carry water collected by such drainage or intercepting ditches serve such parcel.

§ 15-1905. Drainage improvement districts.

1. Bodies corporate which shall consist of and be known as drainage improvement districts may be created as herein provided to carry out the purposes of title 19 of this article. Such drainage improvement districts are declared to be public corporations and shall have perpetual existence and the power to acquire, hold or sell such real estate or other property as may be necessary, to sue or be sued, to incur contract liabilities, to exercise the right of eminent domain, and of assessment and taxation and to do all acts and exercise all powers necessary to accomplish the purposes of title 19 of this article. Such powers shall be exercised by and in the name of the district. The governing body of the district shall be the department.

2. The debts, liabilities and obligations incurred by a drainage improvement district shall in no event be construed as debts, liabilities or obligations of the State of New York, and neither the department, nor any member thereof in his individual capacity shall be liable therefor. All drainage improvement districts heretofore formed under the provisions of this chapter or its predecessor, the Conservation Law, are hereby declared to be such bodies corporate and all the provisions of title 19 of this article shall be applicable to such drainage improvement districts.

3. Drainage improvement districts generally shall include all such portions of a natural drainage basin as should be treated as one project on the assumption that all lands in such basin needing drainage are to be improved. The department may form a portion of such basin into a district, on the assumption that the district may later be extended to

include the whole basin, but, in so far as may be possible, in that case the district formed shall be so laid out that all lands which eventually will drain into or be served by any part of the district works other than the main drainage channel, shall be included therein. It is intended that the boundaries of the district shall include all lands which would be enhanced in value by the construction of complete drainage works therefor and that land, the value of which will not be enhanced, shall be excluded, but in order to simplify the boundaries of the district certain relatively small areas of land not so enhanced may be included on condition that they bear no part of the cost of any improvement work.

§ 15-1907. Drainage improvement associations.

1. There shall be in each drainage improvement district an association to be known by the name of the district, as Drainage Improvement Association. It shall be the object of this association to represent the interests of its members in drainage matters before the department and elsewhere and to serve as a channel of communication between the members thereof and the department. Each owner of land within the district, each lessee of such land and each person who has contracted to purchase such land shall be a member of and shall have an equal vote in the association. Such association may be formed voluntarily as soon as the department has filed its first description of the boundaries of the district. As soon as practicable after recording the final order creating a district, the association, if already formed, shall call a meeting of the members of the association and perfect a permanent organization.

2. If no association has been formed, the department may call a meeting for the purpose of forming such association and a representative of the department shall preside thereat until a temporary chairman is elected. Such association shall adopt by-laws for the transaction of its business. The association shall choose from among its members a president, secretary and executive committee and such other officers and committees as the by-laws may provide. It shall be the duty of the

secretary to keep a list of the members and their addresses and to furnish the department with copies of such list on request. The annual meeting of the association shall be held during the month of February in each year, at which meeting the officers shall be elected and the association shall determine upon the drainage maintenance or construction work desired during the ensuing year.

3. Immediately after the close of the annual meeting the secretary of the association shall submit to the department a list of the names and addresses of the officers for the year and, if there be such, petitions setting forth the desires of the association and of the members thereof.

4. To defray the costs of the necessary meetings, the association may collect dues or contributions from its members.

§ 15-1909. Entry upon lands, structures and waters; condemnation.

1. For carrying out the surveys and examinations required by title 19 of this article, the department may enter upon any lands, structures and waters as in its judgment may be necessary, as provided by section 15-0305.

2. The department, its members, officers, employees and agents may enter upon any lands, structures and waters necessary for the purposes of title 19 of this article and may determine what rights in and to such property are to be acquired therein. If the owner of any property to be acquired, or on or over which an easement is needed for such improvement shall agree with the department upon the sum to be paid therefor, or for the right to use and occupy the same, or for any damages sustained, such sum shall be paid as part of the necessary expense of the project.

3. If the department cannot agree with the owners upon the compensation and damages to be paid for the property or easement to be acquired, the department shall proceed to take the title thereto or the required rights therein under the provisions of the eminent domain procedure law.

4. Whenever a construction project affects a ditch or channel which has been constructed and in use for twenty years and upwards such use and operation shall be conclusive evidence that a right of way therefor and all rights in the premises through which it passes, which are necessary and incident to the perpetual maintenance thereof, were duly obtained when such ditch or channel was constructed. All real property acquired by a drainage improvement district shall be exempt from taxation.

§ 15-1911. Petition for formation of district.

1. Any three or more persons possessing swamp, bog, pond, meadow, or other low or wet lands or any lands in the vicinity thereof, or any public corporation in which such lands are located, or in the vicinity of such lands, may present to the department a verified petition praying for the formation of a drainage improvement district.

2. Such petition shall set forth:

a. The proposed name of such district, as the
Drainage Improvement District.

b. The facts showing that the swamp, bog, pond, meadow or other low or wet lands are a menace to the public health, safety or welfare and that it is necessary for the conservation of the public health, safety or welfare to drain or improve such lands by the construction of such drains, ditches, channels, dams, dikes or other works, through or upon such lands or through or upon the lands of others, so far as necessary for any or all of such purposes.

c. A general description of the lands to be included in the proposed district.

d. A general statement of the benefits which will inure from the formation of such district and the drainage of such lands.

§ 15-1913. Proceedings on petition.

1. On receipt of a petition for the formation of a district the department shall make such preliminary investigation of the proposed district as it may find to be suitable and prepare a report thereon. Such report shall describe tentative boundaries for the district, shall contain a preliminary discussion of the present conditions, possible measures of relief, approximate cost of necessary drainage works, possible benefits and advantages therefrom, shall give an estimate of the cost of the surveys and all proceedings necessary for and including final fixation of boundaries of the district and shall set forth the recommendations of the department with regard to the formation of the proposed district.

2. Such report shall be filed and notice of such filing and of a hearing thereon given. Such notice, among other things, shall state the estimated cost of the surveys and all proceedings necessary for and including final fixation of boundaries of the district and that, should such proceedings be fully or partially completed, such cost will be assessed in one year upon the lands in the district at a uniform amount per acre of such lands.

§ 15-1915. Proceedings for formation of district.

1. At the hearing the department shall hear all persons affected by the formation of the proposed district. The department may change the tentative boundaries of the proposed district, but in that case a new hearing shall be held thereon after due notice thereof.

2. After the final hearing the department shall determine whether or not the tentative boundaries as described include all the lands which should be included in the district and exclude as far as is reasonably possible all lands which will not be benefited by drainage; whether or not the lands included therein will be made more productive by drainage,

the public health, safety or welfare will be benefited thereby and it will be to the public interest to form the drainage improvement district and carry out further proceedings for final fixation of boundaries or whether the application should be rejected. It shall embody such determination and disposition of the case in a written order, which shall be filed and notice of such filing given.

3. If the decision is favorable, such order shall declare the district to be formed and shall direct the making of surveys and the taking of the remainder of the proceedings for final fixation of boundaries for the district all as provided by sections 15-1917 to 15-1927, inclusive. Thereupon the order may be reviewed as provided by section 15-0905, and in due course shall be recorded.

4. The district shall be held to have been formed on the date of such order, but such formation shall not be effective until such order, as made or modified on review, shall have been recorded.

§ 15-1917. Surveys and maps.

1. The department may proceed to make such survey of the district as may be found to be necessary. It shall prepare maps of such district showing natural and artificial features as may be needed, the boundaries of the district, the boundaries and area of each parcel of land in the district together with the name of the owner thereof so far as the same readily may be ascertained. When a parcel is intersected by a county, town, village or city line, the area in each such political subdivision shall be given. Each parcel of land or each subdivision thereof shall be designated by a number. In the course of the proceeding further subdivision of parcels may be made if necessary or convenient.

2. The department may then determine the enhancement accruing to each such parcel due to drainage as provided in sections 15-1919 and 15-1921, prepare designs and estimates for drainage works as provided in section 15-1923, prepare a general apportionment of cost as provided in section 15-1925 and 15-1927, and fix the final boundaries of the district as

provided in section 15-1927.

§ 15-1919. Drainage enhancements.

1. For the purpose of making apportionments of the cost of future drainage construction, allowing credits for such construction already completed, determining the economic feasibility of a contemplated construction project and for other purposes, there shall be determined for each parcel of land in a district what is called the drainage enhancement for such parcel.

2. Drainage enhancement is a special form of assessed valuation made for the purposes of title 19 of this article and used only as such. Such enhancement is determined solely on the basis of estimated land value without consideration of certain specified conditions and is not dependent on or made in connection with any specific drainage construction project, completed or proposed. The drainage enhancement of any parcel of land is the increase in the value of such parcel which, on the basis of prices of land locally current at the time the determination is made, will occur as the result of improving that parcel by drainage works from its original undrained condition to the maximum condition of drainage which is practical. It is the maximum benefit which can inure to an undrained parcel by drainage to the practical limit, is the measure for the apportionment of the cost of such complete drainage construction and, as among other parcels, is the relative measure of benefits resulting from the construction of works giving a less complete drainage. Such enhancement, once determined, will remain fixed until such time as a general change in local land values is experienced.

3. The value of each parcel shall be determined (a) on the assumption that no drainage work has ever been done in the district and (b) on the assumption that the land is drained to the maximum practical extent. The difference is the drainage enhancement. In making these determinations it shall be assumed in both instances that the land is devoted to the highest use for which it will be fitted by drainage

regardless of the fact that it may have to be cleared or otherwise prepared for such use, unless it can be shown that drainage will affect the cost of such clearing and preparation in which case due allowance shall be made therefor. If a parcel contains lands of different values it may be subdivided and the enhancement determined for each subdivision.

4. The department may appoint persons as assessors to assist in the determination of such drainage enhancements.

5. These "drainage enhancements" are the same as the "benefits due to drainage" specified in earlier forms of article VIII of the Conservation Law, and "drainage enhancements" specified in article V of the Conservation Law as it read on the date of the enactment of the present chapter, and any such "benefits" heretofore determined shall remain unchanged by this amendment, but shall, after this article takes effect, be known and used as "enhancements."

§ 15-1921. Proceedings on enhancements.

1. The drainage enhancements shall be set forth in a statement signed by the department, which together with the map of the district shall be filed and notice of a hearing thereon at which grievances will be heard shall be given. At such hearing objectors shall be heard as to the property lines shown on the maps and the drainage enhancements shown on the statement thereof.

2. After the close of the hearing the department may amend both maps and statement, adopt the statement in final form and shall file such amended maps and final statement and give notice of such filing. Thereupon such amended maps and final statement shall be recorded when and as provided in section 15-1927.

§ 15-1923. Plans and estimates.

The department may make a study of the works necessary to drain the district and prepare maps, plans, estimates and reports showing a complete system of drainage therefor, the estimated cost of the various ditches and other works and parts thereof and the boundaries of the land which will be served by and therefor should contribute to the cost of each structure. These estimates of costs shall be made on the assumption that no drainage work has ever been done in the district. In addition the department may show on the plans any drainage work which has heretofore been done in the district, may estimate the cost of those works on the same basis used for the estimate of the cost of the proposed system and in similar manner may determine the boundaries of the land served by the existing ditches.

§ 15-1925. General apportionment of cost.

1. A general apportionment of the cost of the complete system of drainage shall be made as herein described. The total cost determined under the provisions of section 15-1923 shall be equitably apportioned on the various parcels of land in the district and on such public corporations as the department may find to be justly chargeable with a part of such cost in addition to what might be apportioned to them as owners of property in the district. Such charge on a public corporation shall be expressed as a percentage of the whole cost and only the remaining percentage of the cost shall be apportioned on the individual properties.

2. The general theory of such apportionment shall be that any parcel using or served by any ditch or part of a ditch shall share in the cost of that ditch or part and that share shall be in proportion to the drainage enhancement of that parcel already determined as set forth in section 15-1919 as compared with the sum of such drainage enhancements of all the parcels using or served by the same ditch or part of a ditch, but such strict rule may be modified should it lead to inequitable results.

3. The department may divide the whole drainage system into individual

ditches and appropriate parts of ditches, estimate for each ditch or part the total cost thereof, determine the boundaries of the lands which would use or be served by that ditch or part, subdivide the previously determined drainage enhancement of each parcel which may be subdivided by such boundaries and apportion the total cost of each ditch or part of a ditch accordingly. Finally all amounts apportioned to any one parcel shall be added together and compared with the drainage enhancement of that parcel. Should the total cost apportioned to any parcel exceed the drainage enhancement of that parcel, the design of the drainage system or the boundaries of the district shall be changed in such manner that for no parcel shall the costs exceed the enhancements. The department may make a similar apportionment of the cost determined under the provisions of section 15-1923 for such drainage works heretofore done which in its opinion are useful and may be incorporated into the complete system of drainage.

§ 15-1927. Proceedings on general apportionment of costs and final fixation of boundaries.

1. The department shall prepare and sign a statement of the general apportionment of cost and shall file it together with the maps, reports and estimates on which it was based and shall give notice of a hearing thereon. At the hearing the department shall consider and hear objections to the various matters covered by sections 15-1923 and 15-1925.

2. After the hearing the department shall make such revisions as it may find to be proper, shall adopt the maps, plans, estimates, boundaries and general apportionment in final form, shall file such papers and give notice of such filing. Such general apportionment in final form shall include an order fixing the final boundaries of the district. Thereupon these matters may be reviewed as provided by section 15-0905 and, if not so reviewed within sixty days after date of filing, such apportionment shall be final and conclusive and shall be recorded together with the final statement of drainage enhancements. Thereafter such apportionment in final form and the boundaries of the district

shall be fixed and determined. At the same time or as a separate proceeding the apportionment of the cost of older drainage work may be considered, heard, reviewed and recorded in like manner.

3. Thereafter all costs incurred by the department for surveys and all proceedings necessary for and including final fixation of boundaries of the district shall be apportioned on all parcels of land included in such district in proportion to the areas of such parcels of land and shall be collected on one assessment roll. Should the proceedings necessary for and including final fixation of boundaries of a district for any reason be abandoned or discontinued such costs shall, notwithstanding such action, be assessed on and collected from the lands within the boundaries of the district as fixed at the time of such abandonment or discontinuance as herein provided.

§ 15-1929. Corrections and revisions of statements of enhancements.

Should it be found necessary to correct or to revise any statements of enhancements due to drainage, general apportionment of cost, general plan for drainage works, estimates of cost of drainage works, boundaries of districts, boundaries of lands assessable for various portions of the work or any other matter above treated, such corrections and revisions may be made either upon petition or on motion of the department by following the procedure for each case as above set forth in so far as it can be made to apply.

§ 15-1931. Procedure for authorization of construction.

1. Petition may at any time after the final fixation of boundaries of a drainage improvement district be filed with the department asking that all or a part of the proposed drainage system be constructed. If the work desired is not shown on the plans filed or differs from that so shown or if the cost of the work shall have changed, the department shall on request of the association or of the executive committee thereof make plans of such work, estimate the cost thereof and make

tentative determination of the lands on which the cost of such work should be apportioned, making suitable subdivision of parcels and the enhancements thereto, if necessary.

2. Such petition must be in writing, signed and acknowledged in the manner of a deed to be recorded, by a majority of the owners of the property to share in the cost of the work and representing at least half of the total of the drainage enhancements of such property as shown by the recorded statement of enhancements, with subdivision of parcels made as above. The petition shall specify what part or parts of the work it is desired shall be built and the estimated cost thereof as the department may have determined.

3. On receipt of such petition the department shall prepare a description of the proposed work and a special apportionment of the cost thereof, shall file such statement and apportionment and, after due notice, shall hold a hearing thereon. Thereafter the department shall determine as to whether or not it is to the public interest to proceed with the work. The department may approve or reject the application or modify it and, if necessary, return it for further signatures or require a new petition to be filed in lieu thereof.

4. If the application is approved the approving order shall fix the boundaries of the land on which the cost is to be apportioned and the apportionment of such cost in final form shall be attached thereto. Certified copies of the order and apportionment in final form shall be filed and notice of such filing given. Thereupon such order and apportionment may be reviewed as provided by section 15-0905 and in due course shall be recorded.

§ 15-1933. Construction.

1. In general all construction work shall be done by contract, but in the event that the estimated cost of such work or of a specified portion thereof shall not exceed the sum of twenty-five thousand dollars, the department may, on the recommendation of the Commissioner of

Transportation, authorize the Commissioner of Transportation to do such work or part of such work by days' work under his direction.

2. All costs of supervision and inspection of construction work, costs of making surveys, plans and estimates in connection therewith and the costs of taking title to property and any other costs which may be incurred in connection with or incidental to such work shall be considered a part of the cost of such improvement.

§ 15-1935. Contracts.

1. The department may prepare contracts, plans and specifications for doing such work and furnishing the necessary materials. The work may be divided into several parts and a separate contract let for each. Each contract shall contain a provision that no extra or unspecified work shall be certified for payment unless such work is done pursuant to written order of the department. The form of such contract shall be approved by the Attorney General. Contracts shall be executed in triplicate by the department on behalf of the district.

2. Bids or proposals for any such contract work shall be called for by publishing a notice thereof once a week for two successive weeks in a newspaper published in each county affected by the proposed works, which the department shall select, and in such other papers as the department shall direct. The advertisements shall be limited to a brief description of the work proposed to be let with an announcement stating where the maps, plans and specifications are on exhibition, of the terms and conditions under which bids will be received, the time and place when the same will be opened and such other matters as may be necessary to carry out the provisions of title 19 of this article.

3. The Department of Transportation is authorized to furnish copies of such contract plans and specifications to prospective bidders at a price which it shall find to be reasonable. Every bid or proposal must be in writing and be accompanied by a money deposit in the form of a draft or certified check upon some national or state bank or trust company within

the state in good credit and payable at sight to the department for five per cent of the total amount of the proposal. In case the proposer to whom such contract shall be awarded shall fail or refuse to enter into such contract within the time fixed by the department, such a deposit shall be forfeited to the department and paid by it into the drainage improvement district fund; otherwise such deposits shall be returned.

4. The proposals received pursuant to the advertisement shall be publicly opened and read at the time and place designated. The department may reject any or all bids and readvertise and award the contract in the manner herein provided whenever in its judgment the interests of the district will be benefited thereby. No contract, the total of which exceeds by more than ten per cent the gross cost of the work as estimated by the department, shall be awarded. The contract shall be entered into with the person who shall offer to do and perform the same at the lowest price and who will give adequate security for the faithful and complete performance of the contract. Such security shall be approved as to character and sufficiency by the department and as to form by the Attorney General and shall be at least ten per cent of the amount of the estimated cost of the work according to the contract price.

5. If in the judgment of the department, the work upon any contract is not being performed according to the contract, or for the best interests of the district, it shall have power to suspend or stop the work under such contract while it is in progress and it shall thereupon become the duty of the department to complete the same in such manner as will accord with the contract specifications and be for the best interests of the district, or the contract may be cancelled and readvertised and relet in the same manner above prescribed and any excess in the cost of completing the contract beyond the price for which the same was originally awarded shall be chargeable to and paid by the contractor failing to perform the work. Partial payments for work actually done may be provided for in the contracts and paid in the manner hereinbefore provided to an amount not to exceed ninety per cent of the contract price. The payments due on account of any such contracts, or for necessary expense or work in connection therewith, shall be paid from

the drainage improvement district fund as hereinafter provided.

§ 15-1937. Operation and maintenance.

1. The care, operation and maintenance of the drainage works in a drainage improvement district shall be subject to the control and supervision of the department. It shall be the duty of the department, within the limit of the funds made available for that purpose, to maintain the drainage works in the district in serviceable condition.

2. The drainage association shall consider and make recommendations with regard to extensions and maintenance work annually and the department may make recommendations with regard thereto to be submitted to the association for discussion.

3. For such maintenance work the department is authorized to hire employees, purchase or rent land, buildings, tools, machinery or supplies, to let work by contract or to carry out projects by day labor.

4. The procedure to be followed for the authorization, financing and assessment of the cost of such work purchases shall be that specified in sections 15-1941 or 15-1943, whichever is applicable, or the proceedings may be initiated by the department of its own motion. In cases where a permanent maintenance or operating force is necessary, the department may annually prepare a maintenance budget which shall be treated as a repair project under section 15-1943.

§ 15-1939. Special apportionment of cost.

1. The special apportionment of the cost of a construction project, be it new construction, enlargement, repair or maintenance, must be based on the benefits derived from the work. This will conform to that part of the general apportionment applicable to the particular ditch or part of a ditch under consideration unless the department shall determine otherwise. It is the intent of title 19 of this article that in the

interest of justice and equity and best to meet the needs and desires of the owners of the property affected, the department may exercise some latitude in the application of the rules herein set forth and, without excluding other departures therefrom, the following are required or authorized:

a. If a parcel previously has been assessed for drainage improvements which will continue to be useful for the drainage thereof due allowance shall be made therefor. The apportionment of the cost of previous work, already made, will be used for this purpose, but may be modified to give due consideration to actual records of cost, if such can be discovered. If the present owner of such parcel has contributed labor, materials, or money to any such drainage work the department may make such allowances therefor as it finds to be just and proper.

b. If any parcel is uncleared or otherwise not immediately fit for the raising of crops, the department may make a reasonable adjustment based on the minimum time required with all due diligence to fit such parcel for such use.

2. Except by special request of the owner the capital cost of all past and future work serving a parcel shall not exceed the total drainage enhancement of that parcel.

3. Any ditch may on due petition therefor be excavated to less than full size if certain groups of properties eventually to be served by it do not desire at that time to share in the cost thereof. In that case it shall be unlawful for such properties to be drained until the owners thereof have had suitable enlargements of the outlet ditches made at their expense. If the petition shall so ask, a ditch, in the cost of which only a part of the properties eventually to be served asked to participate, may be made to full dimensions and the cost apportioned on the participating lands only, provided that the petition clearly so states and is signed by at least two-thirds of the owners of the lands to share in the cost representing at least two-thirds of the total enhancements to such lands. In that case the lands not sharing in the cost shall not be drained until the owners thereof have asked that their

share of the cost be apportioned to them and such apportionment has been made as provided above and the department shall have made suitable provision for reimbursement or credit to the persons at that time owning the property which bore the cost of such improvement in the first instance.

4. The costs of making such special apportionment of cost and proceedings thereupon shall be included in the cost of the work, or should the work be delayed or not carried out, they shall be assessed on one assessment roll on the participating lands in accordance with the apportionment made.

§ 15-1941. Major repairs of drainage works.

1. Major repairs, alterations, extensions and improvements of drainage works for a drainage improvement district may be made by the department on petition therefor and after procedure thereon similar to that specified in section 15-1931 for original construction. If additional surveys are required, they may be authorized as provided in sections 15-1911, 15-1913, 15-1915 and 15-1917, except that the cost of surveys and other expenses may be included in the cost of the improvement and assessed on the properties to be served thereby in accordance with the apportionment of cost of the repairs.

2. Except where the department shall otherwise determine, the cost of improvements and repairs to a ditch already built under the provisions of title 19 of this article, or of any former drainage laws, shall be apportioned in the same manner as the original cost was apportioned, but the department may make a new apportionment by following the procedure above specified.

§ 15-1943. Minor repairs in drainage districts.

1. Application for the repair, enlargement or cleaning out of any ditch originally constructed or repaired by assessment under the

provisions of title 19 of this article, or any former general or special drainage laws, if within a drainage improvement district and if the total cost thereof shall not exceed two per cent of the total of the drainage enhancements of all parcels served by such ditch, may be made by any three or more persons liable to be assessed therefor. Such application shall be made by written petition, verified by at least one of the signers thereof, setting forth the work desired, the estimated cost thereof and the need therefor.

2. On receipt of such petition the department shall cause an examination to be made of such ditch or ditches, an estimate of the cost of such repairs and improvements and a special apportionment of the cost thereof to be prepared, and shall file a statement of these matters. Thereafter, after due notice, the department shall hear all interested parties with regard thereto. The filing of written objections shall not be required. If after the hearing the department shall determine that the work can be done under this section, is necessary and is desired by the owners of the lands involved, it may proceed to make such repairs or enlargements. The cost of such repairs and expenses of the hearing and examination generally shall be apportioned upon the properties served by the work in accordance with the general or a previous special apportionment of the cost of such ditch or part of a ditch.

3. If the department shall find that changes should be made in the apportionment, or, for any other reason, that the work should not be done under the provisions of this section, it may so specify in its order, giving its reasons therefor, and return the case to the applicants for further petition. Money to pay for such work shall be raised pursuant to the Local Finance Law and as elsewhere herein provided. The whole cost of such work shall be collected within not to exceed three years from the date of completion of the project as may be determined by the department.

§ 15-1945. Minor repairs in existing drainage ditches.

1. Repairs of a minor nature may be made to ditches heretofore

constructed by assessment under the former drainage law, or the laws from which it was derived or under the provisions of this or any other general or special law by following the procedure set forth in section 15-1943 so far as it is applicable. The total cost of such repairs shall not exceed the sum of five thousand dollars on any one ditch for work done under one proceeding. The cost of such work shall be paid for out of the drainage fund provided by section 15-1957 hereof.

2. When such repairs or enlargements shall be finished, it shall be the duty of the department to make up an itemized account of the cost incurred in the making of such repairs or enlargements and to file the same as provided in section 15-1955 and such cost shall thereafter be assessed and collected within not to exceed three years as therein provided and as further provided herein. The expenses of such repairs and enlargements shall be apportioned among the premises to which were originally apportioned the cost of construction of such ditch or ditches, as shown by the apportionment made for such original construction and filed in the county clerk's office or elsewhere according to the valuation thereof on the last completed assessment roll or the drainage enhancements thereof, if such have been determined.

3. In case any public corporations have contributed to the construction of such ditch or ditches, such public corporations shall be liable for the repair or enlargement of the ditch or ditches, in the same proportion that they were originally assessed for the construction of the same, which shall also be levied and collected out of the taxable inhabitants of such public corporation in the same manner that other taxes are levied and collected in the corporation.

§ 15-1947. Unlawful interference with drainage works.

1. It shall be unlawful for any person to divert water from its natural watershed in such manner that it flows into a drainage district, or so to divert water in a drainage district as to prevent it from following the course laid out for such water by the department and cause it to flow into any stream, ditch or ditches into which it does not

naturally or was not designed to flow.

2. It shall be unlawful for any person without authorization to interfere with, fill up, alter or change any drainage ditch or other structure constructed under the provisions of title 19 of this article or lawfully constructed under the provisions of the conservation or the drainage laws or any other general or special statutes, or without authorization to open or close gates or other regulating works in connection therewith or to construct unauthorized ditches or drains or other interference. This shall not be held to prevent the private construction of drainage works within a district, provided that such construction is done in accordance with plans approved by the department and with its written consent.

3. It shall be unlawful to build or maintain across or in such drainage ditch any bridge or culvert which unduly impedes the flow of water in such ditch. No bridge or culvert across or in any drainage channel or ditch within or without a drainage district and necessary to the proper drainage thereof, shall hereafter be built, rebuilt or altered by any person or authority except with the written consent and approval of the department.

§ 15-1949. Removal of beaver.

In the event that any drainage improvement district is inhabited by or is invaded by beaver and the work of those animals interferes with the proper operation of the drainage system, the commissioner may cause such beaver to be removed or destroyed as he shall determine.

§ 15-1951. Financing of improvements.

1. For defraying the costs of all proceedings, surveys, studies and construction projects authorized by any section of title 19 of this article, the department may raise funds pursuant to the Local Finance Law. Such funds may not be borrowed unless the proceedings authorizing

such expenditures have become final.

2. In addition the department is authorized in the name of the district to apply for, receive and expend funds or services which may be granted or contributed for the purpose by the federal government or other public authorities or by private persons or organizations. Obligations issued for such purpose shall not be construed in any event as obligations or indebtedness of the state, and neither the state, the department or any member thereof personally shall be obligated to pay the principal or interest therefor. Bonds issued for such purpose shall be lawful investments for savings banks, trust companies, executors and trustees and for any of the funds of the state which by law may be invested.

3. The proceeds of such bonds shall be deposited in a national or state bank or trust company either in Albany or in one of the counties in which such improvement is made, to be designated by the Comptroller. Before any such deposit is made, the Comptroller shall require from the depository security for the repayment of the same to the department upon demand of the moneys so deposited in the manner provided in section 106 of the State Finance Law.

§ 15-1953. Drainage improvement district fund.

Moneys received under the provisions of title 19 of this article shall constitute a fund to be known as the drainage improvement district fund, and the portion thereof applicable to each improvement shall be separately kept by the Comptroller, and the Comptroller is authorized and directed to pay therefrom the principal and interest of such obligations as the same mature and become payable by the terms thereof, and the costs and expenses of such improvement and the maintenance thereof upon the order of the department or the authorized officer thereof.

§ 15-1955. Proceedings for assessment and collection of cost.

1. Except as otherwise provided by law, all costs and expenses necessary for the formation, improvement and maintenance of a drainage improvement district shall be met from funds collected from the owners of lands benefited or affected or from public corporations as provided in title 19 of this article. The fiscal year shall start on the first day of July.

2. On or before the first day of July each year the department shall prepare and file for each existing or proposed district having outstanding indebtedness or for which the borrowing of money has been authorized, an itemized statement of the amounts that must be collected on the tax roll to be prepared that year to meet the fiscal obligations of the district for the following fiscal year, including retirement of outstanding or contemplated evidences of indebtedness, interest thereon, repayments to the drainage fund and all other costs of whatever name or nature. Such statement shall set forth separately each project or parts of a project or other items in such manner as to facilitate the preparation of the tax rolls as herein provided. The total of each such item shall further be subdivided to show the amount thereof to be paid by each county, town, city or village and the amount to be levied on the individual properties. This last amount shall be further subdivided to show the total amount to be levied and collected in each county, town, city or village, all as previously determined by the department.

3. Such statement shall be approved as to the various amounts by the Comptroller. Certified copies of each statement shall be filed with the Comptroller, with the clerk of the county legislative body, or such other similar official as shall have been designated by the county legislative body, the clerk of each town and the clerk of each city or village affected thereby.

4. The amount shown on each statement to be due from any county, town, city or village shall be by such municipality assessed, levied and collected in the same manner as provided by law with reference to general taxes and paid to the treasurer of the county, who shall forthwith forward the same to the Comptroller to be paid by him into the

drainage improvement district fund applicable to such district or proposed district or into the drainage fund. That portion of each such item which is to be levied on the individual properties in any town or city shall be handled as follows. The appropriate board of assessors shall ascertain from the maps filed and apportionment of cost filed or recorded, the various parcels liable for any part of such item and shall enter in appropriate columns in the annual assessment roll before the delivery thereof to the county legislative body the number of each such parcel, the name of the owner as far as the same can be ascertained by the assessors and the figure to be used in determining the amount to be borne by each parcel, be it area, enhancements, modified enhancements, assessed valuation or percentage, all as shown by the above-mentioned maps or statements. Should a parcel have been subdivided, each division shall be so entered separately and the area, enhancement or other figures shall be subdivided accordingly by the assessors.

5. The county legislative body shall each year, at the time the annual tax levy is made, levy upon each separate parcel so shown on the assessment rolls an amount which shall bear the same relation to the total to be collected as shown by the annual statement as the area, enhancement or similar figure assigned to that parcel bears to the total of all such areas, enhancements or similar figures. Should the board of supervisors discover errors in the work of the assessors, they hereby are specifically empowered to correct the same so that the full amount shown by the annual statement of the department shall be assessed upon the properties liable therefor and it shall be the duty of the assessors to aid the county legislative body in making such corrections.

6. The amount so levied shall be collected and shall be a like lien as general taxes until the amount thereof is paid to the county treasurer, superior in force and effect to all other liens except unpaid general taxes, provided, however, that the collection of such tax shall be enforced only by sale of the land or property assessed. On or before the first day of June in each year the county treasurer shall pay the amount so to be raised in his county, as shown by the annual statement of the department of the previous year, to the Comptroller who shall pay the same into the drainage improvement district fund or into the drainage

fund as the case may be. The tax collectors and county treasurers collecting and paying such taxes to the Comptroller shall be governed by and have all the powers specified in the Real Property Tax Law, which formerly were specified in articles 4 and 7 of the Tax Law for the collection of taxes and sale of property by county treasurers for unpaid taxes and redemption of lands.

§ 15-1957. Drainage fund.

1. The Comptroller shall designate a depository or depositories for receiving all moneys provided for the repair or enlargement of the ditches or channels specified in section 15-1945. The fund thus created shall be known as "the drainage fund." Before any such deposit shall be received by any such depository, such depository shall execute and file with the Comptroller a bond in such penal sum, with such sureties and upon such conditions as shall be approved by the Comptroller.

2. The department is hereby authorized and empowered to enlarge and repair such ditches or channels in accordance with the procedure prescribed by that section and to pay the costs thereof from the drainage fund herein created. All moneys received pursuant to section 15-1945 shall be deposited by the comptroller to the credit of such drainage fund. At the time of any such deposit, the department shall send to the Comptroller an original duplicate of the deposit slip, together with a statement of the amount and by whom paid. The moneys of the drainage fund shall be paid out by the Comptroller on the order of the department or the authorized officer thereof.

3. The drainage fund may also be used to defray the costs of surveys, determination of enhancements, apportionment of costs or similar matters in a district or for maintenance of ditches and minor repairs thereto in a district in lieu of raising the necessary funds pursuant to the Local Finance Law, provided, however, that no such proceeding or project shall cost more than five thousand dollars. Any moneys so advanced from this fund shall be repaid to it by the Comptroller as soon as they are collected and paid to him by the county treasurer.

§ 15-1959. Corrections and revisions of assessments, determinations of drainage enhancements and apportionment of costs.

1. In the event that obvious errors or discrepancies should be discovered in any assessment, determination of drainage enhancements or general or special apportionments of cost, the department may correct the same by filing corrected copies of the statement of such assessment, determination or apportionments and following the procedure specified in title 19 of this article.

2. Should such corrections be made, the county legislative body is empowered to levy additional sums on or to give credit to certain parcels to the end that the amount collected from each parcel shall be what it should have been had an error not been made. The county legislative body is also empowered to apply to the department for an adjustment of assessments among the various parts into which an original parcel may have subdivided.

3. The department shall file and record its findings in such cases as amendments to the original or corrected assessments, and shall give notice to the parties affected, but need hold no hearing thereon unless such hearing be demanded by a party affected within ten days after notice is given.

4. None of the above proceedings shall be held to reopen a determination of enhancements or an apportionment of cost, except as to the particular matter involved. Should the department at any time find that a former assessment, determination or apportionment appears with the lapse of time or in the light of new knowledge and experience to have become inequitable, it may so declare by written order and proceed to review the whole matter by following the full procedure laid down in whichever one of the following sections is appropriate: 15-1919, 15-1925, 15-1937 or 15-1939.

§ 15-1961. Drainage district with federal aid.

1. In the event that any agency of the government of the United States shall be willing to perform, direct or finance any work for the drainage and reclamation of any swamp, bog, pond, meadow or other low or wet lands in the state in such manner that the greater part of the cost of such work shall be paid by such government, the department shall have power to form a drainage improvement district including the lands so to be drained and improved by following the procedure set forth in sections 15-1963 to 15-1967 inclusive, hereinafter referred to as the federal aid sections, in lieu of the procedure specified in the preceding sections of title 19 of this article.

2. It is the intent of these federal aid sections to facilitate the carrying out of such projects by permitting changes in the normal sequence of doing the various acts specified in the preceding sections, but, except as specifically authorized, not to permit changes in the manner of doing each act or in the conditions on which such act is based.

§ 15-1963. Formation of district with federal aid.

1. The department may proceed of its own motion to form such district and to authorize the proposed work as though petitions therefor had been filed as provided in sections 15-1911 and 15-1913 or 15-1931. It may negotiate with the federal government, investigate the proposed district, study such plans of and reports on the proposed improvement as it may find to be available and shall prepare a written report thereon describing the proposed district, the proposed work, the fixation of the district boundaries, giving estimates of the cost of the various parts of the work which may be a charge against the state or the property owners in the district and including a determination of enhancements and an apportionment of costs of such a project. Such report shall be filed and notice of such filing and of a hearing thereon given as provided in sections 15-0903, 15-1913 and 15-1931.

2. After the final hearing the department shall determine whether it is to the public interest to form the district and to proceed with the work and, in general terms, what lands will be benefited thereby. These matters shall be embodied in a written order, which shall, if the action is favorable, form the district, authorize entry into agreements with agencies of the federal government and the doing of whatever is needful to carry out the project, all as elsewhere specified in title 19 of this article. Certified copies of the determination and order shall be filed and notice of such filing given. Thereupon such determination may be reviewed as provided by section 15-0905, except that the proceedings for such review must be initiated not later than ten days after such filings; otherwise such determination shall be considered final and conclusive and in due course it shall be recorded. The district shall be held to have been formed on the date of such final order, but such formation shall not be effective until such order shall have been recorded.

§ 15-1965. Construction project.

As soon as the formation of the district becomes effective, the department shall have full power to enter into agreements with the proper officials of the federal government or of other agencies of the state, to acquire or appropriate lands and rights in lands, including sites for camps and appurtenant facilities, access roads, borrow pits, quarries, spoil banks and all other necessary and proper matters, to incur contractual obligations, to purchase supplies and materials, to employ the necessary personnel and generally to do whatever is necessary to carry out the proposed project or projects.

§ 15-1967. Changes in project.

After such district is formed and the original federal project authorized, major changes in such project, additional federal projects or changes in district boundaries necessitated by such federal projects may be authorized or made by following the pertinent portions of the

procedure in sections 15-1963 and 15-1965.

§ 15-1969. Continuation of district.

Except for such projects as may be carried out by the federal government, any district formed under the provisions of section 15-1963 shall thereafter continue as a drainage improvement district, as though formed under the provisions of section 15-1915.

§ 15-1971. Transfer of property and discontinuance of district.

Whenever a drainage improvement district created pursuant to this article and lying wholly within a county small watershed protection district established pursuant to article 5-D of the County Law has no outstanding debts, liabilities and obligations, the department as the governing body of such drainage improvement district, if it determines after public hearing that the public interest would be served thereby, is hereby authorized to convey, upon such terms and conditions and for such consideration as it may deem adequate, if any, all or any part of the real estate or an easement or easements therein, or other property of such drainage improvement district to such county small watershed protection district. Whenever all of the real property and other property is conveyed as authorized herein, such drainage improvement district and the drainage improvement association within such district shall immediately cease to exist, and any and all functions, powers and duties previously possessed, performed and exercised by either of them shall be terminated.

§ 15-1973. Drainage section association; definitions.

The following words and phrases, unless otherwise specified, are defined as follows:

1. A "drainage section" shall mean an area, of drainable acreage, as

described in articles of association which have been filed and recorded as authorized by section 15-1975.

2. "Drainable acreage" shall mean that part of an owner's swamp, bog, pond, meadow or other low or wet agricultural lands, which will be drained by a drainage system as authorized by this title 19 to increase its productivity or otherwise render it more available for agricultural purposes, or in order to benefit the public health, safety and welfare.

3. "Aggregate drainable acreage" shall mean the total drainable acreage owned by all owners who execute articles of association authorized by this title 19.

4. "Owner" shall mean a person other than a municipal or public corporation, who or which is the owner in fee of drainable acreage and who or which executes the articles of association.

§ 15-1975. Drainage section association; creation.

Three or more owners of drainable acreage may form a drainage section association by executing and recording articles of association as hereinafter provided.

§ 15-1977. Articles of association; recording and filing.

1. The articles of association shall be signed by all owners as listed therein and shall be acknowledged in the form now or hereafter required for the recording of a deed of real property. If there be more than one owner of a separate parcel of drainable acreage, the articles of association shall be signed and acknowledged by each owner thereof. The articles of association shall set forth:

a. The name and address of each owner.

b. The name of the proposed association, such as

the.....Drainage Section Association.

c. The designation of two of the owners to act as temporary president and temporary secretary until the first annual meeting of the association.

d. The location and amount of drainable acreage as determined and owned by each owner and a brief description of the parcel or parcels if there be more than one, of drainable acreage owned by each.

e. The facts showing the necessity for the proposed drainage.

f. A description of the proposed drainage works which as far as practicable may include bearings and distances locating the proposed alignment of drains, profiles, proposed new drains and a typical section.

g. The names and addresses, so far as can be ascertained, of persons who are not parties to the articles of association regarding whose lands it will be necessary to obtain a right, pursuant to section 15-1983, to construct, maintain and keep in repair drainage works in order to effectuate the drainage proposed by the articles of association.

h. A map, attached to the articles of association, which generally shall show the drainable acreage of each owner and the lands of others on which it will be necessary to construct, maintain and keep in repair such drainage works referred to in paragraph g of this subdivision. The map shall show generally also the type and location of the proposed drainage works.

i. A mutual agreement by the owners to proceed with the project, to construct it, to maintain it and keep it clean and in repair; to pay all costs and expenses, including legal, engineering, filing and recording fees, all debts of the association and any damages which may be assessed for the acquisition of a right or easement to construct or maintain drainage works upon the lands of a person not a party to the articles of association. Such costs, expenses, fees, debts and damages shall be

assessed against each owner in the proportion the drainable acreage owned by him bears to the aggregate drained acreage, or in some other proportion mutually agreed upon and specified in the articles of association. The agreement shall further provide that if any such apportionment is not paid within the time prescribed by the by-laws, the association may institute an action in its own name to recover the same.

j. The articles of association shall provide that they, and the agreement set forth therein, shall be binding upon the heirs, devisees, assignees and grantees of each owner and shall constitute covenants running with the land of each.

2. The articles of association shall be filed and recorded in the office of the county clerk of the county or counties in which the drainage section is located, with a notice appended thereto to the county clerk or clerks to enter the same in the index of grantors of real property under the names of all signers of the articles of association and the name of the association. The names of all such signers shall be alphabetically and legibly listed in such notice. A certified copy of the articles of association, as so filed and recorded, forthwith shall be filed in the office of the department.

§ 15-1979. First annual meeting; members; officers; by-laws.

1. Upon filing and recording, the articles of association shall be deemed to be in effect and the drainage section association created thereby shall have the power and authority and shall assume the liabilities conferred and imposed by title 19 of this article. The temporary secretary shall notify all members by mail of the time, not more than ten days after such filing and recording, and of the place of the first annual meeting of the association, at which time permanent officers shall be elected for the coming year.

2. The original membership of the association shall consist of the signers of the articles of association. Membership shall cease when a member dies or when he divests himself of the entire drainable acreage

owned by him. Grantees, devisees and heirs of the fee of a member's entire drainable acreage shall be members and entitled to all the rights of membership, and they shall be bound by the articles of association. Grantees, devisees and heirs of the fee of a part of a member's drainable acreage shall be members, shall be entitled to all the rights of membership, shall be bound by the articles of association and shall be liable in the proportion that such granted, devised or inherited part bears to the total of the drainable acreage of the member from whom they have taken title.

3. The officers of the association shall be members thereof and shall consist of a president, vice-president, and secretary-treasurer. If an officer's membership in the association shall terminate, the association shall call a special meeting to elect his successor for the remainder of the term for which he was elected. The term of office of all officers shall be one year.

4. The association shall adopt at the first annual meeting by-laws, not inconsistent with law or with the articles of association. The by-laws shall fix the time and place of future annual meetings and regular meetings of the association and shall provide for the calling and holding of special meetings; shall provide the number of members, not less than one-third, to constitute a quorum at its meetings; shall provide the method of conduct of elections of its officers at annual meetings; shall provide the form of notice, in writing, to be given to all members of the amount of assessment due to pay the debts of the association, and to pay all costs, expenses, fees and damages as provided in the articles of association; and may provide for the imposition and collection of annual dues and for any other matter necessary to carry out the conduct of the affairs of the association.

§ 15-1981. Powers of association; limitations; voluntary dissolution.

1. The association shall have:

a. Power to construct, maintain and keep in repair the drainage

project described in the articles of association;

b. Power to sue and be sued and to enter into contracts to carry out its purposes;

c. Power to make application, pursuant to section 15-1983, to acquire the right to construct, maintain and keep in repair, on the lands of others, that part of the drainage project as so described in the articles of association; and

d. No power to issue bonds or other evidences of indebtedness.

2. All actions of the association shall be taken by a majority vote, except as hereinafter provided, of those members present at a duly called meeting at which a quorum is present. Each member shall have but one vote regardless of the number of parcels of drainable acreage owned by him and included within the drainage section. If there be more than one owner of a parcel or parcels of drainable acreage, such owners shall be entitled collectively to but one vote.

3. No drainage section association shall be formed in an area within a presently existing drainage improvement district. The formation of such an association shall not prevent the inclusion of the aggregate drained acreage within a drainage improvement district hereafter created, in which event the association shall be deemed to be dissolved, except for the purpose of meeting and paying its existing liabilities for debts, costs, expenses and fees.

4. A voluntary petition to dissolve the association may be made to the Supreme Court upon petition of the president of the association when authorized to do so by the affirmative votes of three-fourths of the members present at a special meeting called for that sole purpose and at which a quorum is present. Ten days' notice, in writing of the time and place of the presentation of such a petition shall be given to all members and to non-members, if any, upon whose lands drainage works shall have been constructed in accordance with the articles of association. Public notice of the presentation of the petition shall

also be given by a notice stating the time and place of such presentation, published once in two consecutive weeks prior to such time in a paper published in the county in which the articles of association have been recorded. The court, after hearing all interested persons, may grant an order dissolving the association, upon such terms and conditions as in its discretion are merited. The court shall not grant such order in the absence of proof that the association has no outstanding indebtedness. An order dissolving the association shall be recorded in the office of the county clerk in which the articles of association have been recorded and shall direct the county clerk to index it under the name of the association in the index of grantors of real property.

§ 15-1983. Drainage of agricultural lands; procedure.

1. Any person or persons owning any swamp, bog, pond, meadow or other low or wet agricultural lands within this state, or a drainage section association organized pursuant to sections 15-1973 to 15-1981, who or which shall desire to drain the same in order to increase their productivity or otherwise render them more available for agricultural purposes and who shall deem it necessary, in order thereto, that a drain or drains, ditch or ditches, dike or dikes, seepage basin or basins for the free passage or disposal of water should be constructed, reconstructed, enlarged, cleaned or maintained on lands belonging to others, may acquire an easement or right to effect such purpose pursuant to the provisions of the eminent domain procedure law, or in lieu thereof, may present a petition duly verified to the department setting forth the following facts:

- a. The name and residence of the petitioner or petitioners.
- b. A map or description showing the approximate location and area of the property which is to be drained.
- c. A map or description which will show the location of such drain, ditches, dikes and basins and the area of the lands and properties to be

occupied thereby.

d. The names and places of residence of the owners of the property to be so occupied; if an infant, the name and place of residence of the person with whom he resides; if a person adjudged incompetent by reason of mental illness or other cause, the name and place of residence of his committee or trustee, if he has one, otherwise, the name and place of residence of the person with whom he resides; if a conservatee, the name and place of residence of his conservator, if he has one, otherwise the name and place of residence of the person with whom he resides; if a non-resident, having an agent or attorney residing in the state, authorized to contract for the sale of the property, the name and place of residence of such agent or attorney. If the name or place of residence of any owner cannot after diligent inquiry be ascertained, it may be so stated with a specific statement of the extent of the inquiry which has been made.

e. A statement that the petitioner has been unable to agree with the owner or owners of the property for the damages to be paid for such occupation.

f. A statement that it is the intention of the petitioner, in good faith, to complete such drains, ditches, dikes and basins, for which purpose the property is so occupied.

g. A request that the department determine the necessity for such drainage and for occupying such lands and property and ascertain the compensation to be made to the owner or owners and that the petitioner be permitted, upon making such compensation, to construct, reconstruct, enlarge or clean such watercourses or drains, ditches, dikes and basins, and maintain the same across the lands specified.

2. In addition, the petition shall be accompanied by an undertaking, satisfactory to the department as to amount and sureties, that applicants will pay the expenses of the proceedings and determination as hereinafter provided.

3. A person who seeks to acquire an easement or right, to effect the purpose set forth in subdivision above, pursuant to the provisions of the eminent domain procedure law, and who is unable to provide a specific description of the property to be acquired and its location by metes and bounds, with reasonable certainty, may prior to the presentation of a petition to a special term of the Supreme Court, apply for an order permitting such person to enter upon the property sought to be acquired, for the purpose of viewing, surveying, measuring and otherwise examining such property, in order to describe such property in the petition. Application for such an order shall be made to a special term of the Supreme Court, held in the judicial district in which the property is located. The court shall if the facts so warrant, grant the application upon such terms and conditions as it may deem advisable. The court may also require the applicant to post bond to indemnify the owner of the property for any damage caused in the making of the survey.

4. Upon receipt of such petition, the department shall take such steps as it shall deem proper to ascertain if the relief sought can be accomplished in the manner described in such petition and other facts pertinent to the case and to this end may make such surveys or other investigations as may be in its judgment necessary in the premises.

5. Notice of a hearing shall be given as follows:

a. The department shall appoint a time and place when and where it will hold a hearing for the purpose of determining the necessity for such drainage and for occupying such lands and properties and assess the damages and benefits resulting therefrom. The department shall deliver to the petitioner copies of the petition, to which shall be attached a notice of the time and place appointed for a hearing, addressed to the owner of each parcel to be occupied.

b. The petitioner upon receipt of such copies and notice shall, on the same day, or the next day thereafter, excluding Sundays and holidays, cause such copy and notice to be served upon the persons to whom it is addressed. A copy of such notice and petition shall be served on the owner of each parcel or to any one of several owners of a parcel in case

there be more than one. In case the owner is an infant such copy and notice shall be served upon his general guardian, if he has one; if not, on the person with whom he resides. If a person adjudged incompetent by reason of age, drunkenness, mental illness or other cause, service shall be made upon his committee or trustee, if he has one; if not, on the person with whom he resides. If a non-resident, having an agent or attorney residing in this state, authorized to contract for the sale of the real property described in the petition, service upon such agent or attorney will be sufficient service upon the owner.

c. Depositing a copy and notice in the post office properly inclosed in an envelope addressed to the owner, guardian, committee, trustee, agent or attorney, respectively, at his post office address, and paying the postage thereon shall be deemed proper service. Notice of such hearing may be given by publishing the same once a week for two successive weeks, immediately prior thereto in two newspapers in the county or counties in which the lands and properties affected are located, provided personal service cannot be made. Such service shall be made at least fifteen days prior to the date of the hearing.

6. Assessment of damages shall be as follows:

a. The department shall view the premises affected and at the time and place appointed shall hear all parties interested and such witnesses as they may produce. Such hearing may be adjourned at the discretion of the department.

b. At the close of such hearing, if the department shall determine that the occupying of the lands and properties specified is necessary for the drainage of the lands of the petitioner, it shall assess the damages to the person or persons owning the same and fix the compensation to be made therefor. In fixing the amount of compensation for lands or property to be taken, the department shall make such allowance or deduction on account of any benefits which the owners may derive from the proposed work as the department shall determine to be just and equitable in the premises.

c. A copy of such determination, duly certified by the department, shall be filed by the department in the clerk's office of the county or counties in which such lands and properties are located. A copy of such determination shall be served by the department by mail on each petitioner and on each owner of each parcel or on any one of several owners of a parcel in case there be more than one, together with a notice of the date and place of filing such certified copy in the county clerk's office.

7. Review shall be as follows:

a. If the petitioner or petitioners feel aggrieved by the decision of the department, he or they may review the same as provided in section 15-0905. Unless such proceeding for review shall have been instituted within sixty days after filing of the decision in the county clerk's office, the decision of the department shall be deemed final. If the final decision shall be adverse to the applicant, no other application to the department for the construction of the same works shall be made within one year.

b. If the owner or owners of the property to be occupied feel aggrieved by the decision of the department only to the extent that it determines the necessity for the occupation of the lands and properties of such owner or owners, he or they may review the same as provided for in section 15-0905. Unless such proceeding for review shall have been instituted within sixty days after the filing of the decision in the county clerk's office, the decision of the department shall be deemed final. If such owner or owners feel aggrieved by the assessment of damages made by the decision of the department he or they may apply, pursuant to the applicable provisions of the eminent domain procedure law to ascertain the compensation to be made to the owner or owners for the property to be taken. Upon the granting of such an order the proceeding shall continue for the ascertainment of compensation as provided by the eminent domain procedure law as if acquisition proceedings had been instituted by the petitioners in the first instance. Such an application shall save to such owner or owners the right to review the determination of necessity for the drainage works

made by the department on any appeal taken to the Appellate Division by petitioners or owners pursuant to the provisions of the eminent domain procedure law.

8. If after the expiration of sixty days proceedings have not been instituted to review the decision of the department as provided in subdivision 7 above, the petitioner or petitioners shall pay the damages assessed by the department and may thereafter enter upon such lands or properties for the purpose of constructing, reconstructing, enlarging, cleaning or maintaining such drains, ditches, dikes and basins. Deposit of the money to the credit of the owner or owners, pursuant to the direction of the department, shall be deemed a payment within the provisions of this section.

TITLE 21

RIVER REGULATION BY STORAGE RESERVOIRS

Section 15-2101. Definitions and construction.

15-2103. Creation of river regulating districts.

15-2105. Organization of the boards of river regulating districts.

15-2107. General duties.

15-2109. General powers.

15-2111. Acquisition of real estate.

15-2113. Discontinuance or relocation, or both, of highways, roads and streets.

15-2115. Taxation of real estate.

15-2117. Cemeteries.

15-2119. Procedure for construction of reservoirs.

15-2121. Apportionment of cost.

15-2123. Assessments; how levied and collected.

15-2125. Operation and maintenance charges.

15-2127. Error in names.

15-2129. Financing.

15-2131. Reports.

15-2133. Operation of reservoirs.

15-2135. Hearings; hearing officers; determinations.

15-2137. Hudson River-Black River Regulating District; old boards abolished; new board created.

15-2139. Hudson River Regulating District and Black River Regulating District: transfer of functions; pending actions and proceedings; interpretation of documents; existing rights and remedies.

15-2141. Hudson River Regulating District and Black River Regulating District: funds of the board.

§ 15-2101. Definitions and construction.

The following words and phrases when used in title 21 are defined as follows:

1. "Real estate," when used without words of limitation, includes all uplands, lands under water, the waters of any lake, pond or stream, all water and riparian rights or privileges, all water powers, water plants, and all dams, races, sluiceways and machinery connected therewith, and any and all easements and incorporeal hereditaments, and every estate, interest and right, legal or equitable, in land or water, including terms for years, and liens, legal or equitable, on real estate, as above defined, in way of judgment, mortgage or otherwise, and all real estate as above defined acquired or used for railroad, highway, or other public purposes.

2. "Regulating reservoir" means a basin for impounding water, formed or enlarged by a dam, constructed or maintained for the purpose of regulating the flow of a stream or river and shall be construed to include the dams and dikes or other structures by means of which the water is or is to be impounded, the gate houses, including controlling gates, sluices, screens, racks and other accessories thereto; spillways, fishways, log or ice chutes, or barriers and all accessories thereto; all bridges or roadways over or appurtenant to the dams and dikes; all other structures, devices, or appliances connected with or appurtenant to any of the structures hereinbefore enumerated, in such manner that they cannot be removed without injury to such structures or without

impairing the usefulness thereof for the purposes for which they are intended; the lands under the water impounded, or to be impounded, by the dam or dams, and such lands surrounding or adjacent to the dam, or the water impounded or to be impounded thereby, and such other real estate and appliances, including roadways and telephone lines, as shall be necessary for the purposes of the construction, maintenance, or operation of a regulating reservoir, as above defined, also including such land surrounding such reservoir as may be necessary to preserve and protect such reservoir from unsanitary conditions, and from any encroachment affecting its use for the purpose of regulating the flow of the stream or river for the regulation of which it may be constructed. Such term is not intended to include a reservoir created by a dam constructed or maintained for power purposes, but is intended to include a reservoir at or by reason of which there may be, as an incident to the construction, maintenance and operation of such regulating reservoir, the possibility of the utilization of a portion of the water stored thereby for power purposes, without in any way interfering with the primary purpose of a reservoir constructed under the provisions of title 21 of this article.

3. "Benefit or benefits" shall be interpreted to include benefits to real estate, public or private, to municipal water supply, to navigation, to agriculture and to industrial and general welfare by reason of the maintenance and operation of a regulating reservoir, whether such benefit shall inure to a person, a public corporation or the state. In the event that any regulating reservoir operates to relieve the state of any obligation by reason of diversion of the water of any river for canal purposes, the state, to the extent that the maintenance and operation of such reservoir may accomplish such relief, shall be deemed to have received benefit therefrom.

4. "Board" shall mean the river regulating board of a district.

5. "Preliminary expenses" shall be construed to mean expenditures made or incurred by the state on account of the services or expenses of its officers or employees in making studies, investigations, surveys, plans, specifications and estimates; in negotiating, drafting, and letting

contracts; in supervising and directing the construction of works and structures, as authorized or required by title 21 of this article; and the expenses of procuring searches, or abstracts of title of real estate for the purpose of carrying out the provisions of title 21 of this article.

6. "Regulation" means only such regulation as can be had through the construction, maintenance and operation of regulating reservoirs, excepting as otherwise expressly provided in title 21 of this article.

7. "Average flow" means that result in terms of cubic feet of water per second derived by the division of the total number of cubic feet of water flowed by any stream or river, at the location thereon where the measurement is taken, in one year, or for an average of years, by the number of seconds in a year.

8. "Average normal flow" means that result in terms of cubic feet of water per second derived by the division of the total number of cubic feet of water flowed by any stream or river, at the location thereon where the measurement thereof is taken, on those days in a year during which such flow did not exceed the average flow, by the number of seconds in the total number of such days.

9. "Cost of construction" shall be construed to include in addition to the cost of a regulating reservoir, all preliminary expenses, all expenses of organization of the district, engineering fees, costs of surveys, plans, advertising, salaries, compensation and expenses of the board, together with all legal and other expenses, incidental to the construction of such reservoirs up to time of the completion thereof.

10. "Cost of maintenance and operation" shall be construed to include all such expenses for repairs and upkeep of the regulating reservoir, all such expenses necessary to the proper operation of such reservoir for the purposes for which it was constructed and all such part of the compensation and expenses of the board, its officers and employees after the completion of such regulating reservoir as are in the judgment of the board and the department properly chargeable thereto.

11. "High flow line" means the line which will be made around a reservoir by the water therein when it is at the level of the crest of the reservoir spillway.

12. "Low flow line" means the line made by the water of a reservoir when it is at the lowest level which, consistent with the regulation of the flow of the river and the maintenance of sanitary conditions, the board with the approval of the department shall fix and determine.

13. "Unsanitary condition or conditions" means such condition or conditions as are a menace to the public health.

14. The general provisions and definitions appearing in section 15-1903 shall, where appropriate, be applicable to the functions and duties of the department or board, as the case may be, under title 21.

§ 15-2103. Creation of river regulating districts.

1. Bodies corporate, which shall consist of and be known as river regulating districts, may be created pursuant to title 21 of this article to construct, maintain and operate reservoirs within such districts, subject to the provisions of this article for the purpose of regulating the flow of streams, when required by the public welfare, including public health and safety. Such river regulating districts are declared to be public corporations and shall have perpetual existence and the power to acquire, and hold such real estate and other property as may be necessary, to sue and be sued, to incur contract liabilities, to exercise the right of eminent domain and of assessment and taxation and to do all acts and exercise all powers authorized by and subject to the provisions of this article. Such powers shall be exercised by and in the name of the board of the district.

1-a. Notwithstanding any other provision of law, for purposes of applying for and/or receiving any federal moneys or deriving any type of benefit or advantage pursuant to federal law, rule or regulation river

regulating districts are hereby deemed to be municipal corporations within the meaning of subdivision two of section sixty-six of the general construction law.

2. Petitions may be filed as follows:

a. Any person or public corporation may present to the department a petition for the organization of a river regulating district pursuant to the provisions of title 21 of this article. Any such petitioner shall be a resident or owner of real estate within the proposed district, or if a public corporation, one whose boundaries lie wholly or partly within such district.

b. The petition shall set forth:

(1) The proposed name of the district, as the River Regulating District.

(2) The necessity for the organization of such district, the purposes to be accomplished thereby and the benefits to inure from the exercise of its powers.

(3) A general description of the territory included in the proposed district. Such description need not be given by metes and bounds, or by political subdivisions, but it shall be sufficient to state that the territory to be included in the proposed district constitutes the watershed of the particular river in reference to which the petition is filed stating generally the extent of such watershed. In the event that the district sought to be organized does not include the whole watershed of the particular river, but only the watershed of a tributary of the river, then, the petition should generally set forth the extent of such watershed, the reason why the watershed of the tributary should be organized as a separate river regulating district, and the relation of the regulation of the flow of such tributary to and effect upon the flow of the river to which it is tributary.

(4) The extent of the regulation possible through the construction and operation of reservoirs.

(5) Whether state or private lands, or both, will be required, and in general the extent thereof, and all such facts as would show or tend to show the public necessity for the regulation of the flow of the river.

3. Hearings shall be held as follows:

a. Immediately upon the receipt of such petition, the department shall cause notice by publication pursuant to subdivision one of section 15-1903 to be given of the pendency of the petition, and of the time and place of a hearing thereon, and may appoint times and places for further hearings if deemed by it to be desirable.

b. Hearings shall be conducted in accordance with the procedure set forth in section 15-1903 of this article. If after such a hearing or hearings, it should appear that the purposes of title 21 of this article would be best served by the creation of the river regulating district sought in the petition, the department shall thereupon so decide and declare. It shall then prepare and file a map of such district with a certificate of its determination creating such district and showing the name, extent and purpose of the district, with the Secretary of State and the county clerk of each county wholly or partly within the district, and notice of such decision shall be given in the manner set forth in section 15-0903.

4. Review is available according to the following provisions:

a. The decision of the department may be reviewed in accordance with the provisions of section 15-0905. Upon failure so to review within the time prescribed or if the action of the department is sustained or modified on such review, the district shall thereupon become a river regulating district of the State of New York and a public corporation with all the rights and powers granted by title 21 of this article. No such review shall be had excepting at the instance of the Attorney General of the state unless prior to the application for the review the party making application shall file a bond or undertaking in a sum to be fixed by the Supreme Court or a justice thereof with good and sufficient sureties to be approved by the court or a justice thereof agreeing to pay all costs and expenses caused by such review as determined by the court in the proceeding in the event of failure to set aside or modify the determination and order of the department creating such district.

b. After such a river regulating district shall have been created as a public corporation hereunder, the certificate creating the same shall be final and binding upon all the public corporations and real estate within the district, and shall finally and conclusively establish the regular creation and organization of such district.

c. The organization of the district shall not be directly or collaterally questioned in any suit, action or proceeding except as herein expressly provided.

5. Copies of the certificate certified by the department shall be recorded in the office of the Secretary of the State and in the office of the county clerk of each county partly or wholly within the district and in the event of a review any order or judgment of the court thereupon shall be likewise recorded. The county clerks and the Secretary of the State shall receive for filing and recording such copies and all papers to be filed and recorded by them under the provisions of title 21 of this article. They shall also receive such fees as are, or hereafter may be, provided by law for like services in similar cases and all above mentioned fees shall be a part of the preliminary expenses.

§ 15-2105. Organization of the boards of river regulating districts.

1. Within thirty days after the incorporation of a river regulating district as hereinbefore provided, the Governor shall appoint three persons, two at least of whom shall be resident freeholders within the district, as a board to be known as the Board of River Regulating District; one for a term of three years, one for a term of four years, and one for a term of five years. At the expiration of their respective terms of office, appointments shall be made for terms of five years. The Governor shall fill any vacancy on the board within thirty days after it occurs.

2. The members of the board including the chairperson shall not

receive a salary or other compensation but shall receive all necessary expenses incurred in the performance of their duties. Expenses for any member shall be approved by the board before being paid.

3. Each member of such board, before entering upon his duties, shall take and subscribe the constitutional oath of office, which oath shall be filed in the office of the Secretary of State. Upon taking the oath, the board shall choose one of its number president, and shall select some suitable person or persons to act as secretary and treasurer, who may or may not be a member of the board. It shall adopt a seal and shall keep in well bound books a record of all its meetings and proceedings, certificates, contracts, surety bonds, and corporate acts, which shall be open to the inspection of the department, the members thereof and all owners of real estate in the district and all other interested parties.

4. A majority of such board shall constitute a quorum, and a concurrence of a majority in any matter shall be sufficient, for its determination, except as otherwise provided by the Local Finance Law.

5. The secretary shall keep and be the custodian of the records of the board, and of its corporate seal, and shall assist the board in such particulars as it may direct in the performance of its duties. He shall attest under the corporate seal of the district all certified copies of the office records and files of the district that may be required of him by the provisions of title 21 of this article or by any person ordering the same and paying the reasonable cost of transcription. Any portion of the records so certified and attested shall prima facie import verity. The secretary shall also serve as treasurer of the district unless a separate treasurer is selected by the board.

6. The board may employ such attorneys, engineers, agents, assistants and employees as may be needful, and fix their compensation, including the compensation of its secretary and treasurer.

7. The Governor may remove a member of such board for inefficiency, neglect of duty or misconduct in office, giving to him a copy of the charges against him and an opportunity of being publicly heard in person

or by counsel in his own defense upon not less than ten day's notice. If such member shall be removed the Governor shall file in the office of the Secretary of State a complete statement of all charges made against such member and his findings thereon, together with a complete record of the proceedings.

§ 15-2107. General duties.

1. Upon its organization the board may prepare a plan for the regulation of the flow of the river or rivers in its district. Such plan shall show the available and feasible reservoir sites on such river or rivers, whether any reservoir now existing can be and should be enlarged and to what extent, the approximate number of acres of land flowed or to be flowed by each reservoir, whether any of such land is owned by the state and if any, how many acres, the number of acres of private land required, together with the estimated value of the land, and how many acres, if any, of such land are lands of the state within the forest preserve. Such acreage shall include such quantity of land surrounding the reservoir to be created or enlarged as would in the judgment of the board be required for the protection, maintenance and operation of such reservoir. The plan shall be accompanied by such maps, profiles and other data and descriptions as may be necessary to set forth properly the location and character of the work and of the property to be taken or damaged, and by estimates of cost of each such reservoir. In case maps, plans and specifications for any such reservoir at or near the site thereof, are on file in the office of the department, and in case any records in any other department of the state government would be an aid in the preparation of such plans, these shall be available to the board for such purpose.

2. Upon the completion of such plan if the board approves of such plan it shall certify it to the department for its approval, and the department within forty days thereafter may approve the same, or modify it and approve it as so modified. As so approved by the department it shall be known as the "official plan" for the regulation of the flow of the river or rivers of the district. Copies thereof shall be filed in

the offices of the board, the department, and of the county clerk of each county wholly or partly within the district. Such plan in like manner may be altered from time to time provided such alteration shall not affect any assessment already made.

§ 15-2109. General powers.

1. The board shall have power to make all necessary rules and regulations which shall be effective when approved by the department.

2. The board and its authorized agents may enter upon any lands as in its judgment may be necessary for the purpose of making surveys and examinations to accomplish any purpose authorized by title 21 of this article, being liable only for actual damage done.

3. The board on behalf of such district shall have and may exercise all of the powers enumerated in subdivision 1 of section 15-2103 and in addition thereto all such other powers as are necessary and proper to carry into execution the powers expressly granted to it, including power to make such channel improvements as may be necessary to prevent damage to downstream properties by the waters released from reservoirs. The board shall have charge of the operation of all reservoirs now in existence, or hereafter constructed for the regulation of the flow of the river and its tributaries of the district which it represents, not including, however, any reservoirs which are or may be maintained primarily to provide water for the canal system of the state. No reservoirs for the regulation of the flow of streams or for any other purpose except for municipal water supply shall be hereafter constructed in Hamilton or Herkimer counties on the south branch of the Moose River by any river regulating board.

4. The board shall have the right to establish and maintain stream gauges and rain gauges, and may make such surveys and examinations of rainfall, stream flow and flood conditions, and of other scientific and engineering subjects as may be necessary and proper for the purposes of the district and shall preserve a record thereof.

5. The board, on behalf of such district, subject to the limitations of title 21 of this article, shall have a dominant right of eminent domain over the right of eminent domain of public corporations, except cities. In exercise of this right, due care shall be taken to do no unnecessary damage to other public utilities, and in case of failure to agree upon the mode and terms of interference, not to interfere with their operation and usefulness beyond the actual necessities of the case, due regard being paid to the other public interests involved.

6. The board on behalf of such district shall have power to consent to the transfer of jurisdiction over lands under its jurisdiction to any state department or a bureau, division or agency thereof, or to any state agency, upon such terms and conditions and under such regulations and restrictions as said board shall deem just and proper, providing, however, that the use of such lands will not interfere with the purposes for which they were acquired.

7. The board of the Hudson river-Black river regulating district shall have the power to contract to sell water, upon such terms and conditions as it deems advisable to any or all of the counties of Albany, Columbia, Essex, Fulton, Green, Hamilton, Rensselaer, Saratoga, Schenectady, Warren or Washington, which counties are contained within such district.

§ 15-2111. Acquisition of real estate.

1. The board on behalf of such district shall, subject to the limitations herein contained, have the right to condemn for the use of the district any real estate which is determined to be necessary for the purpose of carrying out any of the provisions of title 21 of this article. It may acquire title to such real estate by agreement with the owner thereof and upon payment therefor of the amount of compensation to be paid such owner.

2. Lands of the state outside of the forest preserve, not used by canals of the state, may be used for the purposes of title 21 of this

article. Not exceeding three per centum of the lands of the state, not owned or hereafter acquired, constituting the forest preserve as now fixed by law, may be used for the construction and maintenance of reservoirs for the purpose of title 21 of this article.

3. If any real estate belonging to any county, city, town, village or school district is required for the purposes of title 21 of this article, the county legislative body for such county, the mayor and common council or governing body for such city, the town board for such town, the village board for such village, the trustees or board of education of any school district for such district, or any persons, body or bodies, having a like power, acting for such public corporation may grant or surrender such real estate for such compensation as may be agreed upon by such official representatives and the board. The compensation agreed upon as thus provided shall be paid to the fiscal officer of the public corporation or the person or persons from whom such real estate is acquired.

4. Title to any such real estate owned by any infant or incompetent person may be acquired on behalf of the board in the same manner as provided by law with respect to the sale, mortgage or lease of real property of such infant or incompetent person upon such terms as the Supreme Court or the County Court of the county in which such real estate is situated may provide, and for such purpose jurisdiction is hereby conferred upon such courts.

5. If the board cannot agree with the owners upon the compensation and damages to be paid for the real estate so taken, it shall thereupon serve upon such owners a notice as hereinafter provided that the real estate described therein has been acquired by the board for the purposes of title 21 of this article, and shall proceed to acquire title thereto under the provisions of the eminent domain procedure law.

6. If any real property, owned by a corporation having by law the power to exercise the right of eminent domain, is taken under the eminent domain procedure law, the board shall have no right to enter upon and take possession of any such real estate until the owner thereof

shall have been paid or tendered the amount due under the final order and judgment in such proceedings with interest.

7. If any such payments are made directly by the board, the amount so paid shall be refunded to the board out of the general funds of the district as provided in subdivision 7 of section 15-2119.

8. Title to all real estate acquired pursuant to the provisions of title 21 of this article except where this expressly provides otherwise, shall be taken in the name of the State of New York, and when so taken shall be deemed to be taken for a public use.

9. All real estate acquired or taken pursuant to the provisions of title 21 of this article is hereby dedicated to the use and purposes for which it is so taken, and the right, title and interest acquired by the state therein is so acquired subject to such use and purposes.

§ 15-2113. Discontinuance or relocation, or both, of highways, roads and streets.

1. If the board shall deem it necessary to discontinue a public highway, road or street, or a part thereof, because of its interference with the proper location of a reservoir for which preliminary plans shall have been adopted as provided in title 21 of this article, it may discontinue it; and if the board shall determine that the public interest so requires, it may relocate such highway, road or street, or the part discontinued, along a course wholly or partly within or without the high flow line of such reservoir, and acquire, with funds of the board applicable to the expense of such reservoir, in the manner provided in title 21 of this article for the acquisition of real estate, the necessary rights of way or easements for such relocated part, or in lieu of such a relocation may establish new highways to connect with then existing highways, roads or streets, to afford a substantial equivalent, for purposes of highway traffic, of such a relocation. The determination of the board to relocate or establish any such highway, road or street, shall be by resolution, setting forth a description of

the course of such highway, road or street, a certified copy of which shall be filed in the office of the clerk of each town and village containing any part of the relocated or new highway, road or street. If the highway, or part thereof, so established or relocated shall be a state or county highway, the resolution shall not be effective until approved by the state Commissioner of Transportation and his written approval appended thereto. From the time of the filing of such copy or copies of the resolution, the relocated or connecting highway shall be deemed duly laid out.

2. After having acquired the necessary rights of way or easements therefor, the board, with its funds, shall construct such relocated or connecting highway, road or street, or part thereof. If the highway, or part thereof, which is discontinued, be a state or county highway, or part thereof, the construction of the relocated or connecting highway shall be in accordance with plans approved by the state Commissioner of Transportation. If the highway, or part thereof, which is discontinued, be a county road, or part thereof, the construction of the relocated or connecting highway shall be in accordance with plans approved by the county superintendent of highways. In the case of any other highway, road or street, the board shall construct the same so as to make it conform in kind and quality generally to the discontinued highways, roads and streets.

3. The control and maintenance of the relocated or connecting highway, street or road, after its completion, shall vest in the local authorities of the city, town or village, in which it or any part thereof is situated, and for such purpose it shall be deemed a highway, road or street of the city, town or village, except that if the highway or road which was discontinued, or the part thereof discontinued, was a state or county highway, or county road, the control and maintenance of the relocated or connecting highway or road shall vest in the state or county authorities having charge of the discontinued highway or road, and for such purpose it shall be deemed a state or county highway, or county road, as the case may be.

§ 15-2115. Taxation of real estate.

Lands owned by the state and acquired pursuant to the provisions of title 21 of this article, exclusive of the improvements erected thereon by the regulating districts, shall be assessed and taxed in the same manner as state lands subject to taxation pursuant to title 2 of article 5 of the Real Property Tax Law, provided, however, that the aggregate assessed valuations of such lands in any town shall not be reduced below the aggregate assessed valuations thereof with the improvements thereon at the time of their acquisition by the regulating districts, and provided further that in case of a general increase in assessments in any town the assessed valuations of the lands and improvements at the time of their acquisition by the regulating districts shall be deemed to have been increased proportionately with the increase of other real property in such tax district.

§ 15-2117. Cemeteries.

1. Whenever for the purposes of title 21 of this article it shall be necessary to use any portion of any lands or premises now occupied by graves, burial places, cemeteries, or other places of interment of human remains, the board may acquire the same in the same manner as other real estate may be acquired by it. Provided, however, that if lands or premises so occupied and sought to be acquired are not within a cemetery under the actual control and management of a then existing religious or cemetery corporation, and proceedings shall have been instituted by the board for their acquisition under the eminent domain procedure law, the court, if satisfied at any stage of the proceedings, that the public interests will be prejudiced by delay, may, by order, direct that the board may enter immediately on such lands and premises, and, after the provisions of subdivisions 4 through 8 of this section and sections 304 and 404 of the eminent domain procedure law have been complied with, may devote the same to the public use specified in the petition, upon deposit with the court of a sum to be fixed by the court; but no such order shall be made except upon notice of the application therefor served and posted as hereinafter provided.

2. Such notice shall be served as follows: If any of the owners or their places of residence are unknown, notice addressed, generally, to all owners of and persons interested in the lands used for graves, burial places, cemetery purposes or places of interment within a certain lot, tract or parcel of land, to be described with sufficient certainty to identify it, shall be published in the time and manner prescribed by subdivisions 4 through 8 with respect to the notice therein provided for. Owners, if any, whose names and places of residence are known and who reside within the state, shall be served with such notice personally or by leaving the notice at the abode of the owner to be served, with a person of suitable age and discretion residing therein. Owners, if any, whose names and places of residence are known and who reside without the state, shall be served with such notice by mail, the notice to be deposited in a post office in the state, addressed to the owner to be served, and inclosed in a securely sealed postpaid wrapper. The notice also shall be posted conspicuously in ten places in each town in which the lands are located, at least twenty days before the time of making the application. If the notice be published, the time for making the application shall be not less than eight days nor more than sixteen days after the last publication, and in any case personal service, if any, or service by leaving at the owner's abode, shall be made at least eight days, and service by mail, if any, at least thirty days, before the time of making the application. If, in the condemnation proceeding, an attorney has been appointed by the court to represent defendants served with the original notice otherwise than personally, under the eminent domain procedure law, the notice also shall be served on him, at least eight days before the time of making the application.

3. The notice shall specify the relief sought and the time and place of making the application. The papers or proofs submitted to the court on the application shall include due proofs of the service and posting of the notice and proof, by affidavit, that the persons, if any, served personally or by leaving at their abodes or by mail constitute all of the owners of and persons interested in the lands so occupied whose names and places of residence are known, or, if none were so served, that all of the owners are unknown, and if certain owners were known but

not their places of residence, and therefore were not served, personally or by mail, that fact and the names of such owners shall be stated. Such affidavit also shall set forth the extent of the inquiry to ascertain the names and places of residence of the owners. The provisions of the eminent domain procedure law, as to matter subsequent to the deposit of such moneys shall apply hereto, except that the general fund of the district shall be applicable to the payment of any deficiency judgment rendered pursuant to such section.

4. The board having so acquired title, or the right of immediate entry, shall cause to be published in two newspapers in the county where such burial place or places or graves are situated, which shall in its judgment be best calculated to notify the persons or parties interested or entitled to such notice, which notice shall describe the location of such burial place, cemetery or grave in such manner as to sufficiently identify the same. Such publication shall be made once in each week in each of the newspapers for the space of four weeks, and such notice shall also contain a statement to the effect that any person or persons legally entitled to direct as to the disposition of any such remains may remove the same to any other cemetery or burial place within sixty days after the last publication of such notice, if they so elect, but without expense to the board therefor. From and after the period of sixty days from the last date of publication, the board shall advertise in the state paper and a newspaper published in the county or counties in which the cemetery or cemeteries are situated for bids for the removal of such remains by contract, and their proper reinterment as hereinafter provided.

5. All removals and transportation of such human remains shall be done in accordance with the provisions of the Public Health Law and the local rules or ordinances of any town, city or village wherein such cemetery, burial ground or graves shall be located or wherein any of such remains may be reinterred. The board may acquire such other lands as it deems necessary within the county or in an adjoining county where such burial place or places or graves are now located for the purpose of properly reintering such removed remains, which lands shall be acquired in the same manner as provided by title 21 of this article for the acquisition

of other lands, title to be taken in the name of the particular river regulating district, but lands shall not be acquired within the corporate limits of a village or city except within the bounds of an existing cemetery unless by consent of the board of trustees of the village or common council of the city or other authorities within such village or city occupying similar positions as trustees or aldermen respectively.

6. The lands so acquired shall be suitable and properly fenced or inclosed, and in such manner as to permit of proper ingress and egress thereto before the final completion and payment for such work, and the expense therefor shall be included within the estimate and contract for such removal. All the bodies removed by such contractor, or by order of the board shall, when distinguishable, be incased each in a separate box or coffin, and each monument, headstone, footstone, slab, board or other designation or distinguishing mark shall be properly removed and reset at the grave of each body at the time of such reinterment. Members of the same family shall be interred in contiguous graves.

7. Whenever any person or persons legally entitled to direct as to the disposition of any remains now interred in such cemeteries, burying place or graves shall request the board, in writing, to reinter such remains in any other cemetery or burial plot, within the same county where such cemetery, burial place or graves sought to be removed are located or in an adjoining county, the board shall cause such remains to be interred where requested within the same county or in an adjoining county, and shall carefully and properly remove such remains to such burial plot and properly reinter the same, but no payment shall be made for a grave or graves or burial plot for such reinterment other than that acquired by the board as hereinbefore provided. Whenever any person or persons legally entitled to direct as to the disposition of any human remains exhumed or to be exhumed from any cemetery, burial place or graves as herein provided, desire to remove the same for reinterment to any burial plot or cemetery not within the same county from which such remains were exhumed or in an adjoining county as herein provided, such person or persons so entitled to designate such other burial place or plot shall be permitted to remove such exhumed remains from such county,

subject to the written consent of the board and the provisions of the Public Health Law, and the local rules or ordinances of any town, city or village wherein such cemetery, burial ground or graves shall be located, or wherein such human remains may be reinterred, but no portion of the expense of such transportation or burial in another county other than an adjoining county shall be borne by the board. The board shall pay all expenses connected with such removal, out of the general fund of the district in the same manner as other payments are made.

8. Whenever any lands acquired by the board for the purposes of reinterment of human remains as herein provided, and all the remains so interred have been exhumed from a cemetery, burial place or grave belonging to a corporation organized under the Religious Corporations Law, the Membership Corporations Law, the Not-For-Profit Corporation Law, or by special act, or belonging to a town or board of trustees elected pursuant to the provisions of the Town Law, or to a village or city, the board shall by a proper resolution, after completion and acceptance thereof and final payment for all work performed as provided in this section, execute and deliver in the name of the district, and without expense to the grantee therefor, to the trustees or other governing body of such corporation, by whatsoever name or title they may hold office, or to the board of trustees of a town burial ground, or to a duly incorporated cemetery association, and to their successors in office, a quitclaim deed covering the lands so acquired, together with all structures erected thereon; and where such lands were so acquired for the purposes of reinterment of human remains exhumed from a public or private cemetery, burial place or grave which shall have been used by the inhabitants of any town in this state as a cemetery or burial ground for the space of fourteen years and not having a board of trustees pursuant to the provisions of the Town Law, the board shall by proper resolution as provided by title 21 of this article, after completion and acceptance thereof, and final payment for all work as by this section provided, execute and deliver in the name of the board, and without expense to the grantee therefor, a quitclaim deed or other proper release to such town wherein such lands so acquired as provided by this section may be situated, and such cemetery or burial place shall from and after the execution and delivery thereof be deemed to be vested in

such town, and shall be subject in the same manner as other corporate property of towns, to the government and direction of the electors in town meeting, excepting, however, that where such lands so acquired for the purposes set forth in this section are situate within the corporate limits of a village or city, such quitclaim deed or release herein provided for shall be executed and delivered to such village or city and thereafter be and become the property of such village or city and subject to the laws governing such village or city, and further excepting, however, that the board, subject to the approval of the town board, or city or village authorities herein referred to, shall have the right to convey such lands so acquired, together with all structures erected thereon, to a duly incorporated cemetery association. From and after the date of the execution and delivery by the board, as by this section provided, of the quitclaim deed or release, the board shall be deemed to be divested of all right and title to such lands so quit-claimed or released and shall not thereafter be liable for the care, custody, maintenance and control thereof. This section does not limit any existing rights of burial, or removal of remains under other provisions of law applicable thereto.

§ 15-2119. Procedure for construction of reservoirs.

1. Preliminary plans, specifications, maps, statements and estimates are required as follows:

a. If the board shall determine as a part of the official plan or before the official plan has been prepared that the public interest or welfare requires that a reservoir should be constructed for the regulation of the flow of a river or rivers, stream or streams of the district, it shall cause to be prepared preliminary plans and specifications of such reservoir with estimates of the total cost thereof together with a survey of the lands upon which the same is to be constructed, giving the location thereof, and of all lands to be taken, flowed or damaged, with a description by survey or otherwise, showing the amount of lands belonging to the state and to persons or public corporations and the amount of lands of the state in the forest preserve

affected thereby.

b. The board shall also cause a map to be made, showing all such lands, the number of acres in each separate tract, the names of the owners and occupants thereof, so far as the board can ascertain the same. Such maps shall also show the high flow lines of the proposed reservoir.

c. The board shall also prepare a statement of the amount of water power, if any, which consistent with the proper regulation of the flow of the river or stream may be developed at or by reason of such reservoir by the withdrawal of water for power purposes directly therefrom with an estimate of the value thereof. The board shall also prepare a statement showing generally the public corporations and locality of lands to be benefited by the improvement and how and whether the state will be benefited thereby and the public necessity for the improvement.

d. In the event that any of the real estate required for such reservoir shall belong to the state, the value thereof shall be determined in the estimates, as hereinbefore provided, and in the event that such land is outside the forest preserve and the state is chargeable with any proportion of the expenses, such value shall be deducted from the amount to be paid by it, and shall be chargeable as a part of the expenses of the improvement.

e. When the board shall have completed such preliminary plans, maps, specifications, estimates and statements, it shall certify the same with its approval thereof to the department, which shall have power after hearing the board, to modify such maps, plans, specifications, estimates and statements, or any of them, and within forty days after the receipt thereof shall approve the same as certified to or modified by it, and shall certify the same as approved by it to the board. The board shall thereupon cause the preliminary plans, maps, specifications, estimates and statements so approved to be filed in the office of the county clerk of each county having lands within such district, and in the office of the department.

2. Upon the completion and filing of such preliminary plans, maps, specifications, estimates and statements, as aforesaid, the board shall forthwith give notice of such filing as provided in subdivision 1 of section 15-0903, and shall hold a hearing thereon in the manner set forth in section 15-0903.

3. Upon the completion of such hearing the board shall determine whether the public welfare requires that such proposed improvement should be proceeded with, and what, if any, modification should be made in such plans, maps, specifications, estimates and statements. If the board shall determine that such maps and plans, specifications, estimates and statements should be modified in any respect, it shall certify its proposed modifications to the department, which after hearing, the board shall determine what, if any, modifications should be made therein, and as modified by them shall approve the same and certify the same with their approval to the board, which modified plans, maps, specifications, statements and estimates shall be filed by it as hereinbefore provided for the filing of the original thereof. If the board shall finally determine that the proposed reservoir shall be made, it shall thereupon make a final order directing the same to be made, and shall cause such final order or certified copies thereof to be filed and recorded in the office of the county clerk of each county in which any lands within such district are located, and in the office of the department, and forthwith give notice by publication of the making and filing of such final order.

4. Any person or public corporation affected by the determination of the board may review such final determination in the manner provided by article seventy-eight of the civil practice law and rules. Unless application shall be made for such review within sixty days after the filing of the final order, as herein provided, the plans, maps, specifications, statements and estimates shall be the established and final plans, maps, specifications, statements and estimates of such reservoir. In the event that upon such review there shall be any modification by the court of the final order, maps, plans, specifications, statements and estimates, the court shall direct the

modification thereof by order, and the board shall cause such order to be filed and recorded in each place where the final order was filed and recorded. No review of the final determination of the board shall be had unless at the time of the application for review the person or public corporation seeking the review shall give an undertaking approved by the supreme court or a justice thereof, as to form, amount, and sufficiency or sureties that in the event of failure to modify the final determination, he or it will pay to the board all such costs and expenses as are incurred by it on account of the review proceedings, as shall be determined by the court.

5. The board shall have power to make such changes in the final maps, plans and order as the nature of the work may require, provided that the board shall give notice by publication pursuant to subdivision 1 section 15-0903, and shall give a hearing thereon as in the first instance and the same proceedings shall be had as provided by subdivisions 3 and 4 of this section.

6. In the event that in any such plans, estimates and statements, a charge is made against the state for any share of the expenses of the proposed reservoir, not including therein such preliminary expenses as may have been necessary or expenses consisting only of assessments against the state on account of benefits from the improvement, no such reservoir shall be made under title 21 of this article pursuant to any such final order until the Legislature shall make appropriation to pay the state's share of such expenses. The sum so appropriated shall be paid into the general fund of the river regulating district for which it is appropriated.

7. When any such final order shall have been made, and the Legislature shall have made appropriation for any share of the expense payable by the state, if any, the board shall proceed as herein provided to the acquisition of such real estate as may be necessary for the construction, maintenance and operation of such reservoir. When proceedings are taken under the eminent domain procedure law, the board shall file in the Comptroller's office a certified copy of the final order provided for in the eminent domain procedure law, and a certified

copy of the judgment therein rendered pursuant to the eminent domain procedure law, together with the certificate of the Attorney General that no appeal from such final order and judgment has been made, or will be taken by the state, or if an appeal has been taken, a certified copy of the final judgment of the appellate court. Payments of the amount due upon such final order and judgment with interest from the date of the judgment until thirty days after the entry of such final order and judgment, and payments for real estate taken by agreement, shall be made out of the general fund of the district.

8. Construction work shall be undertaken in accordance with the following provisions:

a. After any such final order shall have been made and filed as hereinbefore provided, the board may proceed to construct the work according to the plans and specifications, by publishing a notice stating the time when and the place where such bids or proposals will be received, once a week for three weeks in one newspaper published in the city of New York and in one newspaper in each county wholly or partly within the district, if such papers there be, and in such other newspapers as the board shall deem advisable.

b. The advertisement shall be limited to a brief description of the work proposed to be let with an announcement stating where the maps, plans and specifications are on exhibition and the terms and conditions on which bids will be received and such other matters as may be necessary to carry out the provisions of title 21 of this article. In such notice the board shall reserve the right to reject any or all bids and again advertise for further bids.

c. The proposals received pursuant to such advertisements shall be publicly opened and read at the time and place designated. Every proposal must be accompanied by a deposit in the form of a certified check upon some national or state bank or trust company within the state in good credit and payable to the board for five per cent of the amount of the proposal. In case the proposer to whom such contract shall be awarded shall fail or refuse to enter into such contract within the time

fixed by the board, such deposit shall be forfeited to the board and paid by it into and become a part of its general fund. In case the contract be made such deposit shall be returned to the contractor.

d. Before entering into any such contract a bond with sufficient sureties to be approved by the board shall be required, conditioned that the contractor will perform all work within the time prescribed in and in accordance with the plans and specifications, and will pay to the state, the regulating district and the board all damages, costs and expenses suffered or incurred by any or all of them by reason of the neglect or default of such contractor or his employees or any subcontractor or his employees in the performance of such contract or in doing such work thereunder.

e. Such contract may provide for partial payments to be made from time to time upon the certificate of the engineer in charge of the work after due inspection thereof for an amount not exceeding ninety per cent of the contract price for the work actually done as shown by the certificate. Such certificate must state the amount of the work performed and its total value, at the price fixed by such contract, but in all cases not less than ten per cent of the estimate thus certified must be retained until the contract is completed and approved by the engineer in charge of the work and by the department.

f. The board may divide the work into several parts and let separate contracts therefor. If the estimated cost of any part of such work does not exceed ten thousand dollars, the board may by resolution proceed to do such part of such work by its own forces or otherwise. All such contracts before being entered into shall be approved by the department.

g. Subject to the authority of the department to dispose of merchantable timber and salable wood on state land, no reservoir shall be constructed until provision shall have been made by the board for the clearing from the reservoir site of all timber and all timber growth on lands to be flowed, such timber and timber growth to be removed by the board by contract or otherwise, with the approval of the department. The board shall not permit to remain upon a reservoir site above the low

flow line of the reservoir any stump higher than twelve inches above the bed of the reservoir adjacent thereto.

h. All merchantable timber and salable wood on state land to be flowed shall be sold by the department in such manner as it shall deem best for the interests of the state, but in no event for a sum less than its fair market value, provided, however, that the department may in its discretion sell any such merchantable timber or salable wood at public auction after due advertisement. The proceeds of any sale or disposition less the expenses thereof and the reasonable cost of inspecting, scaling, lumbering, cutting and piling, if any, incurred by the department, shall be paid into the general fund of the state. The department may designate the trees or kinds of trees to be considered merchantable timber or salable wood.

i. In preparation of the reservoir site the board shall do such work as may be necessary to prevent stagnant pools above the low flow line thereof.

§ 15-2121. Apportionment of cost.

1. If proceedings to review the final order of the board determining that such proposed reservoir shall be made have not been instituted within sixty days from the date of the filing of the same, or upon the filing of a modification thereof as directed by order of the court, the board shall, as soon thereafter as practicable, prepare an estimate of the total cost of such reservoir, including interest on certificates of indebtedness issued prior to the effective date of the Local Finance Law, or on notes, to the maturity thereof and compensation for real estate and all damages suffered by reason thereof and all expenses necessarily incurred or to be incurred in connection therewith, and make a complete and verified statement thereof.

2. The board shall then apportion such cost, less the amount which may be chargeable to the state, among the public corporations and parcels of real estate benefited, in proportion to the amount of benefit which will

inure to each such public corporation and parcel of real estate by reason of such reservoir. Such apportionment shall be made in writing and shall show the name of each public corporation and a brief description of each parcel of real estate benefited; the name of the owner, or owners, of each such parcel of real estate, so far as can be ascertained; the proportion of such cost less the amount which may be chargeable to the state to be borne by each, expressed in decimals; and the amount to be paid by each such public corporation or the owner or owners of each such parcel of real estate.

3. Such amount shall be determined by multiplying the total cost less the amount which may be chargeable to the state by the decimal representing the proportion thereof to be borne by each public corporation or parcel of real estate.

4. The board, or a majority of the members thereof, before making such apportionment shall view the premises and public corporations benefited. Such apportionment shall be approved by the board and certified to the department for its approval. Upon the approval thereof by the department, the board shall cause a copy thereof to be served upon the chairman or other presiding officer of the county legislative body of each county, the mayor of each city, the supervisor of each town, and the mayor of each village, named in the apportionment, or if service cannot be had upon such chairman, mayor, or supervisor, then upon a member of the county legislative body of the county, an alderman of the city or member of the governing board thereof, a member of the town board of the town, or a trustee of the village, and to be filed in the office of the county clerk of each county in which any public corporation or real property thereby affected is located. After such service and filing of such apportionment and determination, notice shall be given by the board, of publication of a time and place where the board will meet to hear any public corporation or person aggrieved by the same. The affidavit of the person serving or publishing such notice shall be evidence of such service or publication.

5. The board shall meet at the time and place specified and hear all persons and public corporations interested in or aggrieved by such

apportionment and may approve of or modify the same. If such apportionment and determination be modified by the board it shall not become effective until approved by the department and a copy thereof served and filed in the same manner as upon the completion of the same in the first instance. Any public corporation or any person deeming it or himself aggrieved may upon notice to the board review the determination of the board in the same manner as a review is had of the determination of a board of assessors in making an assessment. Such apportionments as so modified and as further modified by any final judgment or order made in proceedings to review the same as herein provided shall be final and conclusive.

6. The amount of the total cost and expense of such reservoir and the maintenance and operation thereof including the amount of a reasonable return to the state as herein provided for, which each such public corporation and each such parcel of real estate is to pay and bear shall be based upon the proportion of cost as determined in the apportionment. If the total cost of such reservoir shall exceed the estimate made and apportioned as hereinbefore provided, the amount of such excess cost, less the amount which may be chargeable to the state, shall be apportioned among the public corporations and parcels of real estate benefited, by an additional apportionment to be made in the same manner and by the same procedure as the original apportionment, and shall be levied, assessed and collected in the manner provided in section 15-2123 hereof. Such apportionment and determination, when finally made, also shall be deemed to fix and determine the apportionment and the basis of apportionment of all subsequent expenses to be incurred in the maintenance and operation of such reservoir, including the amount of a reasonable return to the state, if any, as provided for in title 21 of this article.

7. If powers be developed after such apportionment has been made or if for any other reason any public corporation or any parcel of real estate becomes liable equitably for such subsequent expenses, a subsequent apportionment may be made in the same manner and subject to the same review as the original apportionment. Provided, however, that before any such apportionment of costs or any assessment is made by the board,

public corporations or owners of property liable for the same may execute and deliver to the board a consent, executed and acknowledged in like manner as a deed, by which they acknowledge that they are the public corporations and owners of property benefited by the improvement and consent to bear the cost thereof, less any sum previously appropriated by the state therefor, together with charges provided for in section 15-2125 of title 21 of this article, and to have the same assessed against them or their property as in this article provided. Such consent may also provide, as a condition of its acceptance by the board, for the basis on which the assessment for the improvement shall be made upon the parties consenting.

8. The board may accept or reject such consent. If it accepts the same it must be by resolution providing for the levy of the entire assessment upon the public corporations and property of the parties filing such consent, on the basis of benefits received, if any, determined by the terms of the consent, or if no basis of assessment be fixed by the consent, on the basis of the benefits shared by such parties in the manner provided in title 21 of this article. If such consent be accepted by the board, a certified copy thereof shall be filed by the board in the office of the county clerk of each county in which any public corporation or real property affected by the assessment is located. Such a consent, when executed by a public corporation, must be authorized by the governing body thereof.

§ 15-2123. Assessments; how levied and collected.

1. After the apportionment of cost has been made and filed in accordance with the provisions of section 15-2121 hereof, the board shall prepare a statement showing the name of each public corporation and a description of each parcel of real estate benefited by such reservoir and the amount to be borne by each as determined in the apportionment. The board shall also determine and state whether the amounts shall be paid in one sum or in annual installments, in such amounts as the board shall annually determine to be necessary.

2. A copy of such statement duly verified under the seal of the district shall be filed with the clerk of each county, town, village or city affected or containing any real estate which is benefited. The clerk of every such county, city, town or village shall make and deliver to the county legislative body of such county, the common council of such city, the board of trustees of such village, and the assessors of such town, city or village a copy of such statement.

3. The county legislative body of every such county shall levy and assess upon such county and upon each town specified in such statement the amount of such cost and expense which in such statement is certified to be the proportion thereof which should be borne by such county or such town as a whole, and the common council or other governing body of each city and the board of trustees of every such village shall in like manner levy and assess upon such city and village respectively the amount of such cost and expense which in such statement is certified to be the proportion thereof which should be borne by such city and village respectively. The assessors of each town or city, containing individual real estate upon which a proportion of such cost is assessed, shall enter on a separate page of their assessment roll a statement of the total amount to be paid by such individual real estate, a description of each parcel and of the property rights defined as real estate herein and the amount chargeable thereto, as contained in the statement filed. The county legislative body of each county wherein such property or land is situate shall levy and assess against each such parcel and each such property right defined as real estate herein the amount specified in the statement, and shall by their warrant direct the collection thereof in the same manner and by the same procedure as general taxes are collected; and in case it is determined that the amount is to be paid in annual installments, the county legislative body or the assessors of the city, town or village, as the case may be, shall annually assess the annual installment to be paid by such county, city, town or village or person in the manner provided by this section until the whole amount shall be paid.

4. Upon the assessment of the cost as provided in this section, the amounts apportioned and assessed shall be paid and remain charges

against the several public corporations and liens upon the several properties charged therewith, until paid or otherwise removed, superior in force and effect to all other liens except unpaid general taxes. All moneys collected under and by virtue of the provisions of this section shall be paid to the county treasurer of the county benefited or the county in which the town, city, village or real estate is located who shall pay the same on or before the first day of June in each year to the Comptroller of the state, who shall deposit the same in depository banks to the credit of the several funds of such district as herein provided. In event that it has been determined that the cost of the improvement shall be paid in installments, interest for one year at a rate not higher than the rate of interest secured by the obligations to which the assessments are applicable, and not more than sufficient to pay the same, shall be added to the amount of each installment, on the cost of the improvement less the installment or installments previously levied or assessed, and be collected in the manner provided for the collection of the principal of the assessment. In the case of default in payment of assessments or any installment thereof levied as herein provided, the same penalties shall be collected as are provided in the case of failure to pay general taxes within the time prescribed by law, and when collected shall be deemed a part of the assessment.

5. If the assessment, together with the amount appropriated by the state, be insufficient to pay the obligations issued on account of such improvement, the board shall make a new assessment or assessments, as the case may be, to make up the deficiency, and the owner and holder of any obligations issued under title 21 of this article may by appropriate remedy compel the assessment of such deficiency.

6. Notwithstanding the provisions of subdivision four of this section, all moneys required to be collected under and by virtue of the provisions of this section may be paid directly to the river regulating district responsible for levying the assessment, provided the payment is made prior to the thirty-first day of October of the year in which the assessment is levied. Any direct payments received by the river regulating district shall be forwarded by the district to the state comptroller, who shall deposit the same in depository banks to the

credit of the several funds of such district as herein provided. Upon receipt of any such direct payments, the river regulating district board shall notify the appropriate county treasurer to whom such payments would have been made under subdivision four of this section had not direct payment been made to the river regulating district. All moneys required to be collected and not paid directly to the river regulating district by the thirty-first day of October of the year in which the assessment is levied shall be payable to the county treasurer as provided under subdivision four of this section and shall be subject to a service fee of one percent of the total amount assessed which shall be added to the amount to be collected and which shall be in addition to any penalties which may be imposed in the case of failure to pay general taxes within the time prescribed by law and when collected, such penalties shall be deemed a part of the assessment. All service fees collected by county treasurers pursuant to this subdivision shall be retained by the county treasurer and deposited in the general fund of the county, provided the moneys collected under the annual assessment installment are paid to the comptroller of the state within thirty days of their receipt by such county treasurer. Otherwise, the county treasurer shall pay over the entire service fee collected to the comptroller of the state for deposit to the credit of the several funds of the river regulating district in the same manner as moneys collected under the annual installments of the assessments provided for herein.

§ 15-2125. Operation and maintenance charges.

1. The board shall make an estimate of an amount sufficient to pay the expense of the maintenance and operation of the works erected hereunder, including interest on temporary certificates of indebtedness issued prior to the effective date of the Local Finance Law. If lands in the forest preserve have been used, such estimate shall include in addition a reasonable return to the state upon the value of the rights and property of the state used and the services of the state rendered. A reasonable return to the state upon the value of the rights and property of the state used shall mean six per cent upon the value of the lands flowed, exclusive of merchantable timber and salable wood removed

therefrom for which the state shall have been paid as provided by subdivision 8 of section 15-2119 hereof. The value of the services of the state rendered shall be construed to mean the actual cost thereof.

2. Any amount so estimated shall be the estimated amount required for such purposes each year, and when fixed and determined as herein provided shall be the amount thereof for a period of three years. The amount shall be readjustable at the end of any three-year term. The amount less any part thereof to be paid by the state shall be the amount to be annually collected for such purposes, and shall be apportioned upon the public corporations and real estate benefited according to the benefits derived therefrom respectively, and shall be levied, assessed and collected in the same manner as the cost and expenses of the reservoir are herein provided to be levied, assessed and collected.

3. Such estimates and determinations as from time to time fixed and determined by the board may upon application of any party affected thereby be reviewed in the manner provided by article seventy-eight of the Civil Practice Law and Rules by the Supreme Court of the judicial district in which the reservoir is located. Upon the hearing on such application for review, the court shall take the testimony and other proofs of the parties and may make an order affirming, vacating or modifying any such estimate and determination.

§ 15-2127. Error in names.

No error in the names of the owners of real estate, or in the descriptions thereof, shall invalidate such apportionment or the levying of assessments or taxes based thereon if sufficient description is given to identify such real estate, and the owners thereof.

§ 15-2129. Financing.

1. After the cost of any improvement made or to be made under title 21 of this article has been apportioned among the public corporations and

parcels of real estate benefited as herein provided and after such apportionment has been assessed upon such public corporations and parcels of real estate, the board may finance the cost of any such improvement pursuant to the Local Finance Law. Any bonds issued for such purposes shall not be construed in any event as bonds or indebtedness of the state, and the state shall not be obligated to pay the principal or interest therefor. Such bonds shall be lawful investments for trustees and savings banks of the state and for any of the funds of the state which by law may be invested.

2. The board shall annually include in the installment of the assessment to be collected in that year a sum sufficient to provide for the payment of the principal of and interest on obligations issued for such purposes and maturing in that year.

3. The proceeds of the sale of obligations issued for the purposes of title 21 of this article, together with all other revenues of the board from whatever source derived, shall be deposited in such national or state bank or banks or trust company or trust companies at Albany or within the regulating district as are approved by the Comptroller and the board, subject, however, to the provisions of section 165.00 of the Local Finance Law. Before any such deposit is made the Comptroller shall require from any such bank or trust company security for repayment of the same to such board or to the Comptroller upon demand for the money so deposited in the manner provided in section 106 of the State Finance Law. All moneys received by the board under the provisions of title 21 of this article, except from assessments levied to pay the cost of construction, shall constitute a fund to be known as the "general fund" of the district.

4. All moneys received from assessments levied to pay the cost of construction, together with such part of any surplus in the "general fund" as shall be determined by the board over and above the requirements for the construction, maintenance and operation of the reservoir, including the amount raised for a reasonable return to the state, shall constitute a separate fund, to be known as the "debt service fund," the moneys in which shall be applied to the payment of

principal of and interest on obligations issued for the purposes of title 21 of this article, except when the total cost of construction is paid without the issuance of obligations, in which case the moneys applicable thereto shall be paid into the "general fund." Any installment or installments of the assessment which shall become payable before any obligations have been issued, shall be paid by the Comptroller into the "general fund" and applied to the payment of the cost of construction. The Comptroller is authorized and directed to pay from the "debt service fund" the principal of and interest on obligations issued for the purposes of title 21 of this article.

5. All moneys in said "debt service fund" shall be applied by the Comptroller to the payment of the principal of and interest on such obligations, except as aforesaid, and to the purchase of the same in the open market when possible and while awaiting such purchase such excess shall be invested or kept at interest in the same manner as sinking funds of the state of like nature are invested. If any moneys remain in the "debt service fund" after all outstanding obligations have been paid up and redeemed, such moneys shall be paid into the "general fund" and may be used to pay the expenses of maintenance and operation and other expenses.

6. The board may invest and reinvest any moneys of the "general fund" which are not required to be deposited in accordance with the provisions of section 165.00 of the Local Finance Law. Any such investment shall be made only in obligations of the federal government and the State of New York, and in certificates of deposit of banks or trust companies or in bank or trust accounts of banks in this state, secured by obligations of the United States of America or of the state of New York of a market value equal at all times to the amount of the deposit and with the approval of the Comptroller. The board may sell and dispose of any securities purchased for investment pursuant to this paragraph at any time with the consent of the Comptroller, and the proceeds thereof shall be paid to the Comptroller and deposited in the "general fund."

7. Any obligations purchased for investment pursuant to this section shall be delivered by the seller to the Comptroller who shall be the

custodian thereof until the same are sold or otherwise disposed of. The Comptroller also shall collect the income of such investments and deposit such income in the "general fund." Except that certificates of deposit purchased for the Black river regulating district shall be retained in the office of the said Black river regulating district at Watertown, New York and a statement shall be filed with the Comptroller listing such certificate or certificates, the amount thereof, the interest due and payable thereon, the maturity date thereof, the issuer of such certificate and such other information as shall be required by the Comptroller.

8. All payments from the "general fund" of the district shall be made by requisition of the board signed by the board or by the officer or officers thereof authorized by it so to do and audited and countersigned by the Comptroller.

9. The board shall keep in suitable books a complete record of its financial transactions, and the books shall be audited from time to time by the Comptroller.

§ 15-2131. Reports.

1. The board of any river regulating district created hereunder shall annually, as of such date as the department may provide, submit to it a written report, which shall contain:

a. An exhibit of the personnel of the board, and all of the employees and persons connected with the board;

b. A financial statement, showing fully and clearly the finances of the district, the amounts and dates of maturity of all bonds, notes and certificates of indebtedness, the amounts of money received, and from what sources, and amounts of money paid and purposes for which same were paid;

c. A statement of any petitions received by the board and the action

taken thereon;

d. A descriptive statement of the work done during the previous year;
and

e. A statement of the condition of reservoirs and the results secured
by the operation thereof in each case.

2. In addition to the matters outlined above the board shall report to
the department such other matters as it shall deem proper or the
department shall require.

§ 15-2133. Operation of reservoirs.

1. The board shall not permit the water in any reservoir constructed
under the provisions of title 21 of this article to rise above the high
flow line thereof, except during floods or other emergencies, and if
during floods or other emergencies the water shall rise above such high
flow line the board shall immediately open the outlet gates in such
reservoir and take such other action as may be necessary to lower the
water to the high flow line of such reservoir with the least practicable
delay. The board shall keep an accurate and, so far as practicable,
continuous record of the height of water in each reservoir and shall
install and maintain at suitable places such gauges or instruments as
may be necessary therefor.

2. Except for absolutely necessary inspection or repairs, no reservoir
shall at any time be drawn off below the low flow line, or to such
extent as to expose isolated pools which may cause unsanitary
conditions, unless due provision is made for draining such pools into
the lowest water level of such reservoir. It shall be unlawful for any
officer or person in charge of any reservoir to neglect the provisions
of this section.

3. It shall be unlawful for any person to open or close or cause to be
opened or closed a gate or gates in any dam constructed pursuant to the

provisions of this title without the consent of the board or for any person to interfere in any way with the operation of, or injure a regulating reservoir.

4. When the flow of a river at any water power plant thereon falls below the average normal flow thereof, the then natural flow of the river at a reservoir dam thereon shall not be restricted without the consent of the owner of such power plant.

5. No regulating reservoir shall be constructed pursuant to the provisions of title 21 of this article of a capacity greater than is required to maintain the average flow.

6. The expense of maintenance and operation of any existing reservoirs shall be paid as now provided by law until such reservoirs are taken over by the board pursuant to the provisions of title 21 of this article, and thereafter such expense shall be paid as herein provided for the maintenance and operation of reservoirs constructed pursuant to title 21 of this article.

§ 15-2135. Hearings; hearing officers; determinations.

Whenever the department is empowered under the terms of title 21 of this article to make a determination it may hear testimony and take proofs material for its information and may appoint a hearing officer by a written appointment, for that purpose. Every hearing officer so appointed shall be authorized to take such testimony and hear such proofs as may be material to the inquiry and report the proofs and testimony so taken, with his opinion as to the facts established thereby, to the department. The department may make such determination from the proofs and testimony taken before it or before such hearing officer or from any other data which shall be satisfactory to it, and the expenses of taking such testimony or proofs shall be deemed a part of the expense of the improvement to which it relates.

§ 15-2137. Hudson River-Black River Regulating District; old boards abolished; new board created.

1. The Hudson River Regulating District and the Black River Regulating District created pursuant to this article are hereby consolidated into a single district, to include the areas of both such districts, and to be known as the Hudson River-Black River Regulating District.

2. Except as hereinafter provided, the board of the Hudson River Regulating District and the board of the Black River Regulating District are hereby abolished, and all of the jurisdiction, functions, powers, duties and obligations possessed or exercised by, or for which commitments have been made by, such boards, including lands or property acquired, moneys of the boards, and actions taken or determinations made by such boards, are hereby transferred to, assigned to and devolved upon the Hudson River-Black River Regulating District and its board.

3. Notwithstanding any provision of titles 21, 23 and 25 of this article, a board of the Hudson River-Black River Regulating District is hereby created to consist of seven members to be appointed by the governor not less than three of whom shall be residents of the territory comprising the Black River area and not less than three of whom shall be residents of the territory comprising the Hudson River area. The governor shall appoint one member for a term ending September 1, 1960, one for a term ending September 1, 1961, one for a term ending September 1, 1962, one for a term ending September 1, 1963, and one for a term ending September 1, 1964, and thereafter, on the expiration of their respective terms of office, appointments shall be made for terms of five years. The governor shall appoint two additional board members, each of whom shall serve for a term of five years from the effective date of his or her appointment; provided, however, that the board members first appointed on or after the effective date of the chapter of the laws of two thousand five which amended this subdivision shall serve an initial term of two years from the effective date of such appointment. The governor shall fill any vacancy on such board within thirty days after it occurs for the remainder of the term of office.

§ 15-2139. Hudson River Regulating District and Black River Regulating District: transfer of functions; pending actions and proceedings; interpretation of documents; existing rights and remedies.

1. Except as hereinafter provided, the contracts, books, maps, plans, papers, records and property of whatever description within the jurisdiction or under the control of the Hudson River Regulating District or the Black River Regulating District, including moneys appropriated and available to such districts, pertaining to or used in connection with the exercise or performance of the functions, powers and duties hereby transferred and assigned, shall be delivered to the secretary of the board of the Hudson River-Black River Regulating District, who is hereby authorized to take possession thereof.

2. For the purposes of succession, the functions, powers and duties transferred, assigned to, and devolving upon the Hudson River-Black River Regulating District shall be deemed to constitute a continuation of such functions, powers and duties exercised by the Hudson River Regulating District and the Black River Regulating District, and the acts, orders, rules, regulations and determinations of such districts shall have, and continue with, the same force and effect as though done by or made by the Hudson River-Black River Regulating District.

3. Any business or matter heretofore undertaken or commenced by or before the Hudson River Regulating District or the Black River Regulating District, or any action or proceeding heretofore brought by or against such districts, pertaining to or connected with the functions, powers and duties hereby transferred and assigned to the Hudson River-Black River Regulating District may be conducted, completed, prosecuted and defended by and in the name of the Hudson River-Black River Regulating District. In all such actions and proceedings the Hudson River-Black River Regulating District, upon application to the court, may be substituted as a party.

4. When the Hudson River Regulating District or the Black River

Regulating District is referred to or designated in any law, contract or document, such reference or designation shall be deemed to refer to and include the Hudson River-Black River Regulating District so far as such law, contract or document pertains to matters which are within its jurisdiction by reason of such transfer and assignment of functions, powers and duties.

5. No existing right or remedy of any character shall be lost, or affected by reason of the provisions of sections 15-2137, 15-2139 and 15-2141.

§ 15-2141. Hudson River Regulating District and Black River Regulating District: funds of the board.

1. Notwithstanding the consolidation of the Hudson River Regulating District and the Black River Regulating District into a single district, effectuated by this title, or any other provision of title 21 of this article, moneys constituting the respective "general fund" or "debt service fund" or other fund or funds of either the Hudson River Regulating Board or District or the Black River Regulating Board or District, shall remain and be kept separate and apart and shall be applied for the cost of maintenance and operation in the area of the appropriate district and to pay the debts and obligations of the appropriate board or district, on whose account such moneys were received.

2. Notwithstanding any provision of sections 15-2137 and 15-2139 or any other provision of title 21 of this article, all moneys hereafter received by the Hudson River-Black River Regulating District and its board, as consolidated, by reason of assessments or from the sale of obligations issued or from other source, all for the purposes of the respective areas heretofore comprising the Hudson River Regulating District or the Black River Regulating District, shall be kept separate and apart and shall constitute "general funds" and "debt service funds" and other fund or funds with the same force and effect as funds heretofore constituted by the Hudson River Regulating Board or District

and by the Black River Regulating Board or District and shall be applied solely for the cost of maintenance and operation in the respective areas from which the moneys were received and to pay the debts and obligations accrued or as they become due in the areas where the debts and obligations were incurred, provided, however, that the expenses of the board, as consolidated by this part, and of its officers and employees shall be paid from the appropriate "general funds" in the same proportion as moneys are annually collected from the respective areas. The provisions of section 15-2129, in so far as the same are applicable and not inconsistent herewith, shall apply as they relate to the "general fund", "debt service fund", and to the fund or funds of the district.

TITLE 23

RIVER IMPROVEMENT

Section 15-2301. Legislative purpose.

15-2303. River improvement districts.

15-2305. River improvement associations.

15-2307. Construction contracts.

15-2309. Entry upon lands, structures and waters; acquisition of property.

15-2311. Financing of river improvements; assessment and collection of cost; correction and revision of assessments.

15-2313. Operation, maintenance, repair and extension of river improvements.

15-2315. Unlawful interference with improvement works.

15-2317. Construction of reservoir on state-owned lands in a forest preserve.

15-2319. Payment by the state of part of cost of river improvement.

15-2321. River improvement district with federal aid.

§ 15-2301. Legislative purpose.

The purpose of title 23 of this article is to provide a method by which a project may be undertaken to improve the channel, construct dikes or regulate the flow of a river for the protection of life, property and the public health or welfare from damage by floods, such work in general to be done at the expense of the owners of the properties and of the political subdivisions of the state benefited thereby.

§ 15-2303. River improvement districts.

1. Bodies corporate which shall consist of and be known as river improvement districts may be created as herein provided to carry out the purposes of title 23 of this article on some particular stream or part thereof. Such river improvement districts are declared to be public corporations and shall have perpetual existence and the power to acquire, hold or sell such real estate or other property as may be necessary, to sue and to be sued, to incur contract liabilities, to exercise the right of eminent domain and of assessment and taxation and to do all acts and exercise all powers necessary to accomplish the purposes of title 23 of this article. Such powers shall be exercised by and in the name of the district. The governing body of the district shall be the department, unless such district be combined with a river regulating district as provided below. Any watershed of the state or any integral part of such watershed may be created into a river improvement district pursuant to the provisions of title 23 of this article. The debts, liabilities and obligations incurred by a river improvement district shall in no event be construed as debts, liabilities or obligations of the State of New York, and neither the department nor any member thereof in his individual capacity shall be liable therefor. Any river improvement districts heretofore formed under the provisions of this chapter are hereby declared to be bodies corporate and all the provisions of this section shall be applicable to such river improvement districts. The general provisions and definitions appearing in sections 15-1903 and 15-2101 are also applicable to title 23.

2. Any county, city, town or village, or any person or persons owning

lands situated on, bordering on or near any river or watercourse may present to the department a petition, duly verified, praying for the formation of a river improvement district. The petition shall set forth the facts as to the effects on life, health, welfare and property of the present flow of the stream and may state the method whereby the petitioners believe that the conditions complained of can be remedied or bettered. The department may by rule prescribe the form and nature of the contents of such petition. On receipt of such petition the department shall cause the matter to be investigated. The department may make tentative determinations as to remedial measures, what properties would be benefited, the cost of the work and the division of such costs between public corporations and private owners; or it may find that the relief sought is impracticable or not of sufficient importance to warrant state interference.

3. Notice of a hearing shall be given as follows:

a. The department shall set forth the material in subdivision 2 above in a report which shall be filed and notice of such filing, together with the notice of a public hearing thereon, shall be given. If the report is favorable, the notice shall also state that the department contemplates the making of a survey and of an assessment of the costs of the project, the costs of which survey and assessment will be assessed on the properties and public corporations surveyed or assessed as beneficiaries.

b. Whenever the department is required to give notice of a hearing or of any act performed or contemplated, it shall be given in accordance with the provisions of subdivision 1 of section 15-0903.

4. At the hearing the department shall hear testimony and arguments with regard to the proposed project. Thereafter the department shall determine whether the public health, safety or welfare require the formation of the district and shall make a final order with regard thereto. Such an order forming a district shall describe the boundaries thereof and state the name of the district and shall include orders to make surveys, studies, estimates and assessments. The final order shall

be filed and notice of such filing given.

5. The department may proceed to make such surveys of the lands in the proposed district and the boundaries thereof and of the river and its tributaries and such other areas as may be necessary. For the carrying out of the purposes of this title 23 the department and its authorized agents may enter upon any such land as in its judgment may be necessary, the district being liable only for actual damage done thereby. The amount of such damages may be agreed upon between the department and the owner or occupant of such lands or if they cannot agree the amount of such damages shall be ascertained and determined by proper court action.

6. After the completion of the surveys the department shall prepare maps of the proposed district showing the boundaries thereof, the boundaries and area of each public corporation in so far as it lies within the district, the boundaries of each parcel of land in the district which is to be directly assessed, together with the name of the owner thereof as far as the same may be ascertained. Where a parcel is intersected by the boundary of a public corporation, the area in such parcel in each such public corporation shall be separately given. The boundaries shall include all properties benefited, and may include properties not benefited if necessary to make the district a continuous area with reasonably simple boundaries. Such maps shall also show as far as may be necessary the topography, and the natural and artificial features of the lands within the district or elsewhere. The department shall also show on such maps and other plans the location and general structural details of such works as may be required for the proposed improvement. The department shall also prepare a general description of the proposed works and an estimate of the cost of constructing such works.

7. The department shall also determine the amount of benefit which will accrue to each parcel of land in the district and shall apportion the cost of such work among such parcels in proportion to the benefit which each will derive therefrom. If the department finds that any public corporation will be benefited in its corporate capacity, it shall state what proportion of the total cost of the works or of the various

parts thereof shall be borne by such public corporation and only the remaining portion of the work shall be assessed on the individual owners. The department shall prepare a statement of its assessment and apportionment. Certified copies of such maps, plans, estimates and other papers and of the assessment and apportionment shall be filed and notice of such filing and of the time and place for the hearing thereof shall be given.

8. Thereafter the department shall proceed to hold the hearing and to consider the testimony and arguments presented thereat. If it shall appear that additional areas should be included in the district and that additional surveys are necessary, the department shall so determine and may proceed to make such surveys in the same manner as is provided for the original surveys. Upon completion of such hearings the department shall determine whether or not it is to the public interest to grant the petition, form the district and carry out the project, whether all properties which will be benefited by the proposed works are included in the district and whether the assessment and apportionment is just and equitable, and it shall make a final order with regard thereto. Certified copies of such final order shall be filed and notice of such filing given. After the expiration of the time for review of such an order, if no review is had, or after the review is completed, the department shall cause the same to be recorded. The district shall be held to have been formed on the date of such final order but such formation shall not be effective until such order as made or as modified on review shall have been recorded.

9. Any determination, apportionment, decision, order, maps or plans which the provisions of this title require to be filed and notice of such filing to be given, except in the case where a hearing is to be held may be reviewed by any interested party as provided in section 15-0905.

10. Wherever it is required in title 23 of this article that copies of maps and documents be filed, certified copies thereof shall be filed in the offices of the clerks of each county, town, city or incorporated village, any part of which is included in the district or proposed

district. Wherever it is required in title 23 of this article that any document be recorded, the department shall cause a certified copy thereof to be sent to the clerk of each county, any part of which is included in the district or proposed district, and such clerk shall thereupon record such document.

11. The department may change the boundaries of a district, consolidate two or more districts or subdivide an existing district into two or more districts, the procedure for which shall be the same as is provided for herein for the formation of a district, in so far as the same is applicable.

12. Apportionment of costs shall be as follows:

a. Whenever it is practicable so to do, the department shall include in the cost of any survey made, or construction, maintenance or repair work carried out under provisions of title 23 of this article the cost of all proceedings, hearings, notifications, filings, recordings, engineering, legal and all other services and expenses which lawfully may be incurred, including the cost of acquisition of lands and rights-of-way, suits and prosecutions.

b. To pay the expenses of the surveys, preparation of maps, plans and estimates, the making of the assessment, the holding of the required hearings and other matters required by the provisions of this section, the department may make funds available therefor. The assessment of such costs shall be divided between public corporations and private persons in the manner set forth in the district assessment; the remaining amount shall be assessed on all the properties in the proposed district as shown by the maps filed in proportion to the assessed valuation of such properties. In the event that any such property is cut by the district boundary, the department shall request the local assessors to divide the assessment between the portion within and that without the district and it shall be the duty of such assessors to make such division.

13. At any time after the formation of a district petition may be made to the department for additional construction or for major changes in

the project already adopted or the department, of its own motion, may suggest such changes or additions. The procedure shall be that specified in this section as far as it is applicable. The same procedure may also be followed in order to authorize the raising of additional funds for a project already adopted, should it be found that sufficient funds were not originally authorized.

§ 15-2305. River improvement associations.

There shall be in each river improvement district an association to be known by the name of the district, as.....River Improvement Association. It shall be the object of this association to represent the interests of its members before the department and elsewhere and to serve as a channel of communication between the members thereof and the department. Each public corporation and each owner of land within the district and each lessee of such land shall be a member of and shall have an equal vote in the association. Such association may be formed voluntarily as soon as the department has filed its first description of the boundaries of the district. As soon as practicable after recording the final order creating the district the association, if already formed, shall call a meeting of the members of the association and perfect a permanent organization. If no association has been formed the department shall call a meeting for the purpose of forming such an association and a representative of the department shall preside thereat until a temporary chairman is elected. Such association shall adopt by-laws for the transaction of its business. The association shall choose from among its members a president, secretary and executive committee and such other officers and committees as the by-laws may provide. It shall be the duty of the secretary to keep a list of the members and their addresses and to furnish the department with a list of such members on request. The association may require the payment of annual dues or contributions to the association treasury, the amount of such contribution and the manner of collecting the same to be decided by the association. The annual meeting of the association shall be held during the month of February in each year, at which meeting the officers shall be elected and the association shall determine what further work,

if any, it desires during the ensuing year. Immediately after the close of the annual meeting the secretary of the association shall submit to the department a list of names and addresses of the officers for the year and a petition setting forth the desires of the association.

§ 15-2307. Construction contracts.

1. In general all construction work shall be done by contract, but in the event that the estimated cost of such work, or of a specified portion thereof, shall not exceed the sum of ten thousand dollars, the department may, on the recommendation of the Commissioner of Transportation, authorize the Commissioner of Transportation to do such work or part of such work by day's work under his direction. The department may prepare contracts, plans and specifications for doing such work and furnishing the necessary materials. The work may be divided into several parts and a separate contract let for each. Each contract shall contain a provision that no extra or unspecified work shall be certified for payment unless such work is done pursuant to written order of the department. The form of such contract shall be approved by the Attorney General. Contracts shall be executed in triplicate by the department on behalf of the district.

2. Bids or proposals for any such work shall be called for by publishing a notice thereof once a week for two successive weeks in a newspaper published in each county affected by the proposed works which the department shall select and in such other papers as the department shall direct. The advertisements shall be limited to a brief description of the work proposed to be let with an announcement stating where the maps, plans and specifications are on exhibition, of the terms and conditions under which bids will be received, the time and place when the same will be opened and such other matters as may be necessary to carry out the provisions of title 23 of this article. The department is authorized to furnish copies of such contract plans and specifications to prospective bidders at a price which it shall find to be reasonable and to pay the funds so received into the river improvement district fund. Every bid or proposal must be in writing and be accompanied by a

money deposit in the form of a draft or certified check upon some national or state bank or trust company within the state in good credit and payable at sight to the department for five per cent of the total amount of the proposal. In case the proposer to whom such contract shall be awarded shall fail or refuse to enter into such contract within the time fixed by the department, such deposit shall be forfeited to the department and paid by it into the river improvement district fund; otherwise such deposits shall be returned. The proposals received pursuant to the advertisement shall be publicly opened and read at the time and place designated. The department may reject any and all bids and re-advertise and award the contract in the manner herein provided whenever in its judgment the interests of the district will be enhanced thereby.

3. No contract, the total of which exceeds by more than ten per cent the gross cost of the work as estimated by the department shall be awarded. The contract shall be entered into with the person, firm or corporation who shall offer to do and perform the same at the lowest price and who will give adequate security for the faithful and complete performance of the contract. Such security shall be approved as to character and sufficiency by the department and as to form by the Attorney General and shall be at least ten per cent of the amount of the estimated cost of the work according to the contract price. If, in the judgment of the department, the work upon any contract is not being performed according to the contract, or for the best interests of the district, it shall have power to suspend or stop the work under such contract while it is in progress and it shall thereupon become the duty of the department to complete the same in such manner as will accord with the contract specifications and be for the best interests of the district, or the contract may be cancelled and re-advertised and relet in the same manner above prescribed and any excess in the cost of completing the contract beyond the price for which the same was originally awarded shall be chargeable to and paid by the contractor failing to perform the work.

4. Partial payment for work actually done may be provided for in the contract and paid in the manner hereinbefore provided to an amount not

to exceed ninety per cent of the contract price. The payments due on account of any such contracts, or for necessary expense or work in connection therewith, shall be paid from the river improvement district fund as hereinbefore provided.

§ 15-2309. Entry upon lands, structures and waters; acquisition of property.

The department, its members, officers, employees and agents may enter upon any land, structures and waters necessary for the purposes of title 23 of this article and may determine what rights in and to such property are to be acquired therein. If the owner of any property to be taken, or on or over which an easement is to be taken, for such improvement shall agree with the department upon the sum to be paid therefor, or for the right to use and occupy the same, or for any damages sustained, such sum shall be paid as hereinafter provided as part of the necessary expense incurred for the purpose of such improvement. If the department cannot agree with the owners upon the compensation and damages to be paid for the property or easement to be so taken the department shall proceed to acquire title thereto under the provisions of the eminent domain procedure law. All real property acquired by a river improvement district shall be exempt from taxation.

§ 15-2311. Financing of river improvements; assessment and collection of cost; correction and revision of assessments.

1. After a river improvement project has been duly authorized and the determination of benefits and the apportionment of cost thereof duly recorded, the department may finance such improvement pursuant to the Local Finance Law. If obligations are issued, they shall not be construed in any event as obligations of the state, and neither the state, the department, nor any member thereof personally shall be obligated to pay the principal or interest therefor. Such obligations shall be lawful investments for savings banks, trust companies, executors and trustees and for any of the funds of the state which by

law may be invested. The proceeds thereof shall be deposited in a national or state bank or trust company either in Albany or in one of the counties in which such improvement is made, to be approved by the Comptroller. Before any such deposit is made, the Comptroller shall require from the depository security for the repayment of the same to the department upon demand of the moneys so deposited in the manner provided in section 106 of the State Finance Law. Moneys received under the provisions of title 23 of this article shall constitute a fund to be known as the "river improvement district fund," and the portion thereof applicable to each improvement shall be separately kept by the Comptroller and the same are hereby pledged to the payment of the cost and expenses of such improvement and the Comptroller is authorized and directed to pay therefrom the costs and expenses of such improvement upon the order of the department or the authorized officer thereof.

2. The department shall, on or before September 1 following the issuing of any obligations and annually thereafter, prepare a statement of the amount to be raised during the ensuing year, in order to retire the obligations maturing during such year, together with the interest thereon and the estimated cost of maintenance of such improvement for the ensuing calendar year. Such statement shall be approved by the Comptroller; it shall show the amount of the proportional share thereof to be paid by each county, town, city or village respectively as determined by the department, and such county, town, city or village shall cause the same to be assessed, levied and collected in the same manner as provided by law with reference to general taxes, and paid to treasurer of the county, who shall forthwith forward the same to the Comptroller to be by him paid into the river improvement district fund applicable to such improvement; it shall also show the amount of the proportional share thereof to be paid by the lands and properties collectively in such improvement district within each county during such year, to be assessed, levied and collected as hereinafter provided. Copies of this statement shall be transmitted on or before September 1 to the Comptroller, the clerk of the county legislative body, or such other similar official as shall have been designated by the county legislative body, the clerk of each town, the mayor of each city and the mayor of each village affected by such improvement.

3. The assessors of each town and city included in such improvement district are hereby required to enter in a separate column in the annual assessment roll of such town or city before the delivery thereof to the county legislative body the description by number corresponding with the number thereof on said survey, map and descriptions so filed in the county clerk's office, each parcel of land and each designation or description of property within the county in such improvement district, together with the name of the then owner or owners thereof as far as the same can be ascertained by the assessors, and set opposite such number and description of each separate parcel or property, in the column of the roll for the total assessed valuation of property, the amount of benefit by reason of such improvement received by such parcel or property as stated and specified in the determination of the department as modified by the court if so modified, and recorded in the office of the clerk of the county.

4. The county legislative body shall each year at the time the annual tax levy is made levy upon each separate parcel and property in the county within such improvement district appearing upon the assessment rolls of the towns and cities included therein as herein provided, such portion of the amount to be paid by all of the property in the county within such improvement district appearing by the statement of the department and the Comptroller made to the board as in title 23 of this article provided as the amount so assessed against such parcel or property on the rolls for benefit accruing thereto bears to the aggregate amount so assessed on the rolls against all of such lands and properties, and the taxes so levied shall be collected in the same manner as general taxes are levied and collected, and shall be like liens as general taxes until the amount thereof is paid to the county treasurer of the county, superior in force and effect to all other liens except unpaid general taxes; provided, however, that the collection of such tax shall only be enforced by a sale of the land or property assessed.

5. On or before the first day of June in each year the county treasurer shall pay the amount so to be raised in his county, as shown

by the statement of the department and Comptroller of the previous year, to the Comptroller, who shall pay the same into the river improvement district fund. The tax collectors and county treasurers collecting and paying such taxes to the Comptroller shall be governed by and have all the powers specified in the Real Property Tax Law, which formerly were specified in articles 4 and 7 of the Tax Law for the collection of taxes and sales of property by county treasurers for unpaid taxes and redemption of lands.

6. In the event that obvious errors or discrepancies should be discovered in any assessment of benefits or apportionment of cost made under the provisions of title 23 of this article, the department may correct the same by filing corrected copies of the statement of such assessment and apportionment and following the procedure specified above. Should such correction be made the county legislative body are empowered to levy additional sums on or to give credit to certain parcels to the end that the amount collected from each parcel shall be what it should have been had an error not been made. Such county legislative body is also empowered to apply to the department for an adjustment of assessments among the various parts into which an original parcel may be subdivided. The department shall file and record its findings in such cases as amendments to the original or corrected assessment, and shall give notice to the parties affected, but need hold no hearing thereon unless such hearing be demanded within ten days after notice is given by a party affected. None of the above proceedings shall be held to reopen the determination of an assessment or apportionment, or both, except as to the particular matter involved. Should the department at any time find that a former assessment or apportionment appears with the lapse of time or in the light of new knowledge and experience to have become inequitable it may so declare by written order and proceed to review the whole matter by following the full procedure laid down in section 15-2303.

§ 15-2313. Operation, maintenance, repair and extension of river improvements.

1. The care, operation and maintenance of any works of the river improvement district shall be subject to the control and supervision of the department. It shall be the duty of the department to maintain any works constructed by it in serviceable condition. To that end the department is authorized to hire employees, purchase or rent land, buildings, tools or machinery, to let work by contract or to carry out projects by day labor. The procedure to be followed for the authorization, financing and assessment of the cost of such work or purchases shall be that specified in section 15-2303 except that proceedings may be initiated by the department of its own motion. In cases where a permanent maintenance or operating force is necessary, the department may annually prepare a maintenance budget which shall be treated as a repair project under subdivision 2 below.

2. Major repairs, alterations, extensions and improvements in any river improvement district may be made by the department on petition therefor and after procedure thereon similar to that specified in section 15-2303 hereof, for original construction. If additional surveys are required, they may be authorized and paid for as provided in section 15-2303 hereof, except that the cost of surveys and other expenses may be included in the cost of the improvement and assessed on the properties benefited in accordance with the benefits to be derived from such improvements. Except where the department shall otherwise determine, the cost of improvements and repairs on works already built under the provisions of title 23 of this article, shall be assessed in the same manner as the original cost was assessed, but the department may make a new assessment by following the procedure above specified. Any such project for repairs, alterations, extensions and improvements may be initiated by the department.

§ 15-2315. Unlawful interference with improvement works.

It shall be unlawful for any person to damage, alter, change or interfere with any works constructed under the provisions of title 23 or to open or close, or cause to be opened or closed, a gate or gates in any dam or dike or a gate in any head race or obstruct any channel

constructed under title 23 so far as the same relates to such improvements, without the consent of the department. After the improvement of any channel or watercourse has been authorized it shall be unlawful for any person or public authority to construct any dam or other structure on the bed of such stream or any bridge across it until the department has found that such construction or bridge will not unduly affect the projected or completed improvement.

§ 15-2317. Construction of reservoir on state-owned lands in a forest preserve.

If as a part of any project for the improvement of a district it is necessary to construct a reservoir on any part of the forest preserve, the department must, before making the final order, cause such lands to be accurately surveyed and the boundaries of the lands needed and the high flow line of the reservoir to be accurately fixed and thereafter, after due notice, to hold a public hearing as to whether such lands are required for such public use and, if so required, as to what will be a reasonable return to the state upon the value of the rights and property of the state so used and the services of the state as to such lands if such improvement is made. If it be determined that such lands are so required, such determination must be incorporated in the final order with a statement of the boundaries, the high flow line, the acreage and the amounts to be paid to the state for the lands and services. Such payments to the state and the cost of building such portions of the reservoir as are on state forest preserve lands shall be apportioned like other costs and expenses on the municipalities, other public corporations and properties benefited to the extent of the benefits received. If additional land is required it shall be acquired or taken in the name of the state and the entire reservoir shall be the property of the state, although paid for by the district and dedicated for the purposes for which constructed. Such reservoir shall always be operated by the department or other state authority for the benefit of the district. The reasonable return to the state shall be fixed for terms not exceeding ten years and may be changed at the beginning of any new term. The high flow line of a reservoir as referred to in title 23 of

this article is hereby defined as the level of the water in the reservoir when the greatest flood reasonably to be expected is passing over the spillway of the dam with all outlet gates closed. Before any such state lands are flooded, the timber shall be removed therefrom and the construction thereof shall be approved by the Commissioner of Health as not creating or tending to create any unsanitary condition.

§ 15-2319. Payment by the state of part of cost of river improvement.

Should the department find that the state of New York properly should bear a part of the cost of any river improvement, it is hereby authorized to so recommend to the Legislature and it may not proceed further with the project until the Legislature has made the necessary provisions for the payment of such costs or unless the project be so modified as to eliminate state contributions to the cost thereof. Except under the above circumstances the state shall be liable for no costs in connection with any such improvement except that the salaries and general expenses of the members of the department not specifically assigned to the particular project are not to be assessed upon the district.

§ 15-2321. River improvement district with federal aid.

1. In the event that any agency of the government of the United States shall be willing to perform, direct or finance any work for the improvement of a river, as specified in title 23 of this article, in such manner that the greater part of the cost of such work shall be paid by such government, the department shall have power to form a river improvement district covering the areas to be benefited by such work by following the procedure set forth in this section, in lieu of the procedure specified in the preceding sections of title 23 of this article.

2. The department may proceed of its own motion to form such district and to authorize the proposed work as though a petition therefor had

been filed as provided in section 15-2303. It may negotiate with the federal government, investigate the proposed district and prepare a written report thereon, describing the proposed district and the proposed works, and giving estimates of the cost of the various parts of the work which may be a charge against the proposed district. Such report shall be filed and notice of such filing and of a hearing thereon given as provided in section 15-2303, except that the period of notice provided for in section 15-2303 shall be halved. After the final hearing the department shall determine whether it is in the public interest to form the district and to proceed with the work and in general terms, what public corporations and lands will be benefited thereby. These matters shall be embodied in a written order, which shall, if the action is favorable, contain orders to make surveys, assessments, enter into agreements with agencies of the federal government, acquire lands and rights in lands and all other matters which may be needful for the carrying out of the proposed project. Such written order shall state whether it is planned to issue obligations pursuant to the Local Finance Law. Certified copies of the determination and order shall be filed and notice of such filing given. Such determination and order may be reviewed pursuant to section 15-0905, but application for review must be made within ten days after such filing. If no review is had, the department shall cause the same to be recorded. The district shall be held to have been formed on the date of such final order, but such formation shall not be effective until such order, as made or as modified on review, shall have been recorded.

3. As soon as the formation of the district becomes effective, the department shall have full power to enter into agreements with the proper officials of the federal government or of other agencies of the state, to acquire or to appropriate lands and rights in lands, including sites for camps and appurtenant facilities, access roads, borrow pits, quarries, spoil banks and all necessary and proper matters, to incur contractual obligations, to employ the necessary personnel and generally to do whatever is necessary to carry out the proposed project or projects.

4. After such district is formed and the original federal project

authorized, major changes in such project, additional federal projects, changes in district boundaries necessitated by such federal projects or the raising of required additional funds for the work may be authorized by following the pertinent portions of the procedure in section 15-2303 above.

5. Except for such projects as may be carried out by the federal government, any district formed under the provisions of subdivision 2 above shall thereafter continue as a river improvement district, as though formed under the provisions of section 15-2303.

TITLE 25

JOINT RIVER REGULATING, RIVER IMPROVEMENT AND DRAINAGE IMPROVEMENT DISTRICTS

Section 15-2501. Formation of joint districts.

15-2503. Finances.

15-2505. Powers of the department.

§ 15-2501. Formation of joint districts.

1. A river regulating district formed and established under the provisions of title 21 of this article may be given extended powers and duties by the formation by the department of a river improvement or drainage improvement district, or both, which districts shall have the same boundaries as the river regulating district, shall be joined with it as one body corporate and subject to the general supervision of the department and shall be administered by the board of the river regulating district. If this is done, the board shall thenceforth exercise the powers of the department as set forth in title 19 and title 23 of this article, except those under sections 15-1945 and 15-1957 and as otherwise provided below. Whenever the department is empowered to set up districts under title 19 and title 23 of this article, the board may, by the same procedure, set up river or drainage improvement sub-districts which shall not be separate bodies corporate but shall be financial and assessment entities and each of which shall have an

association. Any function which title 19 and title 23 specify to be performed by the Department of Transportation or the Commissioner thereof shall be performed by the board through its engineering forces, and legal matters may be handled by counsel to the board. Whenever the statute requires the board to file in final form orders, statements, schedules, reports, plans, or other papers, to give notice of such filing and, after review, if any, to record or file the same such papers may not be filed except with the consent and approval of the department. All contract plans and specifications must similarly receive such approval to make them valid. All contracts must be so approved before they are signed and all acts authorizing the borrowing of money, making of assessments, or statements of the amounts which must be collected with annual taxes, must be approved by the department before they are submitted to the Comptroller. In proper cases, any such district may be assessed as an entity for benefits derived from the operation of another sub-district or the construction of a regulating reservoir.

2. Proceedings for the formation of a joint district shall be as nearly as may be those set forth in title 19 or title 23 as the case may be. They shall be initiated by a written petition filed with the department. On receipt thereof the department shall make such investigation as it deems necessary, shall set the time and place for a hearing thereon and shall give notice of the same by publication pursuant to the provisions of subdivision 1 of section 15-0903. At the hearing, the department will hear the applicants and the board, and such objectors as have filed written objections. After the hearing the department shall approve, modify and approve or reject the application according to what it finds to be the best interest of the people of the state. The action of the department shall be in the form of a signed written order, copies of which shall be filed in the offices of the clerk of each county, town, city or village, any part of which lies within the proposed district. Notice of such filing shall be given by publication and the acts of the department may be reviewed provided such review is initiated within sixty days of the date of the order. If not reviewed or if confirmed by the courts reviewing the matter, the order shall be recorded in the offices of the clerks of the various counties; thereupon the order shall become final and the joint district shall be

deemed to have been formed on the date of the order. Certified copies of such order shall be served on the board and shall be its authority to act for the new district.

§ 15-2503. Finances.

The financial affairs of each sub-district shall be handled as a unit and in accordance with the provisions of title 25 of this article which apply thereto. Compensation of the members of the board, salaries of regular employees of the regulating district, together with expenses and general operating costs shall be allocated by the board on a time basis among the sub-districts and paid from district funds. Such payments shall not operate to change the status of any member, officer or employee, nor shall they result in an increment in the rate of payment made to them, computed on an annual basis. Preliminary costs incurred in the formation of a sub-district shall be reimbursed from sub-district funds if the sub-district is formed; otherwise they shall be a charge against the signers of the petition. Funds raised under the provisions of title 21 of this article cannot be used in connection with any river or drainage improvement district or sub-district.

§ 15-2505. Powers of the department.

Nothing in title 25 of this article shall be held to curtail the powers of the department as to river or drainage work within a river regulating district prior to the time that such district is charged with the powers and duties above set forth as to river or drainage work or both, nor in any event shall the powers of the department under sections 15-1945 and 15-1957 be curtailed or changed. Should the department at any time form or have formed a river or drainage improvement district in a basin now or subsequently formed into a river regulating district, which district is later given the extended powers herein provided, such river or drainage improvement district shall become a sub-district administered by the board. In such cases, all outstanding indebtedness and financial liabilities of the district shall remain undisturbed and

not in anywise altered by the transfer and shall be met by the board.

TITLE 27

WILD, SCENIC AND RECREATIONAL RIVERS SYSTEM

Section 15-2701. Statement of policy and legislative findings.

15-2703. Definitions.

15-2705. Jurisdiction of the commissioner and the Adirondack park agency.

15-2707. Classes of river areas includable in system, criteria; management objectives.

15-2709. Administration of the system.

15-2711. Establishing boundaries.

15-2713. Initial designations.

15-2714. Additional designations.

15-2715. Designation of additions to the system.

15-2717. Cooperation with the federal government.

15-2719. Cooperation clause.

15-2721. Conflict with other laws.

15-2723. Penalties and enforcement.

§ 15-2701. Statement of policy and legislative findings.

1. The legislature hereby finds that many rivers of the state, with their immediate environs, possess outstanding natural, scenic, historic, ecological and recreational values.

2. Improvident development and use of these rivers and their immediate environs will deprive present and future generations of the benefit and enjoyment of these unique and valuable resources.

3. It is hereby declared to be the policy of this state that certain selected rivers of the state which, with their immediate environs, possess the aforementioned characteristics, shall be preserved in free-flowing condition and that they and their immediate environs shall be protected for the benefit and enjoyment of present and future

generations.

4. The purpose of this act is to implement this policy by instituting a state wild, scenic and recreational rivers system, by designating the initial components of that system and by prescribing the methods by which and standards according to which additional components may be added to the system from time to time.

§ 15-2703. Definitions.

Except as otherwise required by the context, the following terms when used in this act shall be construed as follows:

1. "Agency" means the Adirondack park agency as created by chapter seven hundred and six of the laws of nineteen hundred seventy-one, and whose functions, powers and duties are provided for in article twenty-seven of the executive law.

2. "Commissioner" means the commissioner of environmental conservation, his successors in office and any agency which may succeed to the duties of such office.

3. "Development" means any activity which materially affects the existing condition, use or appearance of any land, structure or improvement including the actual or effective division or proposed division of land into lots, parcels or sites whether contiguous or not, for the purpose of sale, lease, license or any form of separate ownership or occupancy as part of a common scheme or plan, (including any grading, road construction, installation of utilities or other improvements or any other development preparatory or incidental to any such division) by any person or by any other person controlled by, under common control with or controlling such person or by any group of persons acting in concert as part of a common scheme or plan but shall not include the division of any land resulting from bona fide devise, inheritance, gift or the lease of land for hunting and fishing.

4. "Forest Management" means forestry practices, including harvesting of a forest woodland or plantation, the construction, alteration or maintenance of wood roads, skidways, landings and fences and related research and educational activities.

5. "Free flowing" means existing or flowing in natural condition without impoundment, diversion, straightening, riprapping, or other modification of the waterway, except for stream improvement structures for fisheries management purposes expressly authorized in section 15-2709 of this chapter.

6. "Improvement" means any change in or addition to land, including but not limited to grading, filling, excavating or adding banks, fences, dikes, ditches, pipelines, poles, electrical conduits, roads, streets, curbs, gutters, sidewalks, driveways, parking lots or spaces.

7. "Motor vehicle" means a device for transporting personnel or material, incorporating a motor or an engine of any type for propulsion and with wheels, tracks, skids, skis, air cushion or other contrivance for traveling on, or adjacent to land and water or through water.

8. "Person" means any individual, corporation, partnership, joint venture, association, organization, government or any agency or political subdivision thereof, or any other entity.

9. "River" means a flowing body of water or a section, portion or tributary thereof, including rivers, streams, creeks, runs, kills, rills, branches, or lakes. "River area" means the term river and the land area in its immediate environs as established by the commissioner or the agency, but not exceeding a width of one-half mile from each bank thereof.

10. "Road" means any highway, hard-surfaced road, improved or dirt road.

11. "Stream improvement structures for fishery management purposes" means structures and improvements, including but not limited to, fish

barrier dams, fish passage structures, minor diking, cribbing, bank stabilization and stream deflectors and other structures or improvements designed solely for fishery management purposes which do not materially alter the natural character of the waterway.

12. "Structure" means any object constructed, installed or parked on land to facilitate land use, such as buildings, mobile homes, sheds, signs, tanks, outdoor lighting and any fixtures, additions and alterations thereto and trailers, travel trailers, campers, or tents constructed, installed, or parked on land for other than a temporary period or for a purpose other than transient occupancy and any fixtures, additions or alterations thereto.

13. "System" means the rivers designated as wild, scenic and recreational rivers in this part.

§ 15-2705. Jurisdiction of the commissioner and the Adirondack park agency.

Notwithstanding provisions of any other general or special law, the functions, powers and duties encompassed by this section shall be vested in the Adirondack park agency as to any privately owned part of a river area within the Adirondack park as defined by law which may become part of the system; however, the commissioner shall have exclusive jurisdiction over all other river areas in the state and of all parts of river areas owned by the state located within the Adirondack park which may become part of the system. This section shall not be construed to divest the commissioner from the exercise of functions, powers and duties which have not been delegated by law to the agency. If the commissioner or the agency shall conduct any studies, proceedings or activities under this section or otherwise which affect or may affect river areas, any part of which are within the Adirondack park, they shall consult and cooperate to carry out the purposes of this title.

§ 15-2707. Classes of river areas includable in system, criteria;

management objectives.

1. The following types of river areas are eligible for inclusion in the system. All state agencies are hereby directed to pursue policies with respect to their respective activities, functions, powers and duties which are designated to enhance the conditions of designated rivers in accordance with the criteria set forth for such rivers in this section.

2. All rivers in the system shall be relatively free of pollution and the water quality thereof of a standard sufficiently high to meet the primary management purposes enumerated herein.

a. Wild river. Those rivers or sections of rivers that are free of diversions and impoundments, inaccessible to the general public except by water, foot or horse trail, and with river areas primitive and undeveloped in nature and with development, if any, limited to forest management and foot bridges.

(1) The minimum length of any one section shall be five miles.

(2) In general, the minimum distance from the river shore to a public highway or a private road open to the public for motor vehicle use, shall be one-half mile except where a physical barrier exists which effectively screens the sight and sound of motor vehicles.

(3) Management of wild river areas shall be directed at perpetuating them in a wild condition as defined herein.

b. Scenic river. Those rivers, or sections of rivers, that are free of diversions or impoundments except for log dams, with limited road access and with river areas largely primitive and largely undeveloped or which are partially or predominantly used for agriculture, forest management and other dispersed human activities which do not substantially interfere with public use and enjoyment of the rivers and their shores.

(1) There shall be no minimum length of any one section.

(2) Management of scenic river areas shall be directed at preserving and restoring the natural scenic qualities of such rivers.

c. Recreational river. Those rivers, or sections of rivers, that are

readily accessible by road or railroad, that may have development in their river area and that may have undergone some impoundment or diversion in the past.

(1) There shall be no minimum length of any one section.

(2) Management shall be directed at preserving and restoring the natural scenic and recreational qualities of such river areas.

d. Exceptions. Limited existing exceptions to the criteria for all three classes of rivers will not automatically exclude rivers from designation. Rather, the river area shall be examined as a whole with its overall worthiness for inclusion being the deciding factor.

§ 15-2709. Administration of the system.

1. The wild, scenic and recreational rivers system shall be administered in accordance with their respective jurisdictions by the commissioner or the agency according to policies and criteria set forth in this title upon establishment of the boundaries of each river area in accordance with section 15-2711 of this chapter. The commissioner or agency shall make and enforce regulations necessary for the management, protection, and enhancement of and control of land use and development in the wild, scenic and recreational river areas. No regulations shall be promulgated unless a publicized public hearing is held in the environmental conservation region encompassing the affected area by the commissioner or agency. In such administration, primary emphasis shall be given to protecting ecological, recreational, aesthetic, botanical, scenic, geological, fish and wildlife, historical, cultural, archeological and scientific features of the area. In connection with such administration, the commissioner or the agency may provide for the preparation and implementation of management plans for individual river areas or significant portions thereof.

2. After inclusion of any river in the wild, scenic and recreational rivers system, no dam or other structure or improvement impeding the natural flow thereof shall be constructed on such river except as expressly authorized in paragraphs b and c of this subdivision.

Notwithstanding anything herein contained to the contrary, existing land uses within the respective classified river areas may continue, but may not be altered or expanded except as permitted by the respective classifications, unless the commissioner or agency orders the discontinuance of such existing land use. In the event any land use is so directed to be discontinued, adequate compensation therefor shall be paid by the state of New York either by agreement with the real property owner, or in accordance with condemnation proceedings thereon. The following land uses shall be allowed or prohibited within the exterior boundaries of designated river areas depending on the classification of such areas:

a. In wild river areas, no new structures or improvements, no development of any kind and no access by motor vehicles shall be permitted other than forest management pursuant to forest management standards duly promulgated by regulations.

b. In scenic river areas, the continuation of present agricultural practices, the propagation of crops, forest management pursuant to forest management standards duly promulgated by regulations, limited dispersed or cluster residential developments and stream improvement structures for fishery management purposes shall be permitted. There shall be no mining, excavation, or construction of roads, except private roads necessary for residential, agricultural or forest management purposes, and with the further exception that public access through new road construction may be allowed, provided that there is no other such access within two land miles in either direction.

c. In recreational river areas, the lands may be developed for the full range of agricultural uses, forest management pursuant to forest management standards duly promulgated by regulations, stream improvement structures for fishery management purposes, and may include small communities as well as dispersed or cluster residential developments and public recreational areas. In addition, these river areas may be readily accessible by roads or railroads on one or both banks of the river, and may also have several bridge crossing and numerous river access points.

3. In addition to the provisions of article 70 of this chapter and rules and regulations adopted thereunder, the rules and regulations adopted by the department pursuant to this title to implement its processing of permit applications, modifications, suspensions and revocations shall govern permit administration by the department under this title.

§ 15-2711. Establishing boundaries.

The commissioner shall, within one year after a river has been included in the state wild, scenic and recreational rivers system, establish detailed boundaries of the river area associated with that river, except that in the case of river areas within the Adirondack park said boundaries shall be mutually agreed upon by the commissioner and the agency. Said boundaries shall not exceed a width of one-half mile from each bank thereof.

§ 15-2713. Initial designations.

The following rivers which are located within the boundaries of the Adirondack park, as now defined by law, are to be initially included in this system being classified by the above-stated criteria:

1. Wild rivers

a. Cedar river--Approximately seven miles from the southwest boundary of lot 82, township 17, Totten and Crossfield's Purchase to the Hamilton county line.

b. Cold river--Approximately fourteen miles from the Duck Hole to the confluence with the Raquette river and the entire three-mile length of Ouluska Pass brook.

c. Hudson river--Approximately ten and one-half miles from the confluence of the Cedar river to the confluence with Boreas river.

d. Indian river--Approximately thirteen miles from Brook Trout lake to the confluence with the south branch of the Moose river.

e. Opalescent river--Approximately eleven miles from Flowed Lands to the confluence with the Hudson river.

f. East branch of the Sacandaga river--Approximately eleven and one-half miles from Botheration pond to a point one-half mile above the confluence with Cook brook.

g. West branch of the Sacandaga river--Approximately seven miles from the confluence of the Piseco lake outlet to the confluence with Dugway creek.

h. West Canada creek--Approximately eight miles from Mud lake to the Old Mitchell dam site.

2. Scenic rivers

a. Ampersand brook--Approximately eight miles from Ampersand pond to the confluence with the Raquette river.

b. Ausable river--Approximately nine miles from Marcy swamp to St. Hubert's.

c. Boreas river--Approximately eleven and one-half miles from Cheney pond to the confluence with the Hudson river.

d. Bouquet river--Approximately six miles of the North Fork from the headwaters on Dial mountain to the bridge on route 73. Approximately five and one-half miles of the South Fork from the headwaters to the bridge on route 73.

e. Cedar river--Approximately five miles from the Hamilton County line to the confluence with the Hudson river.

f. Hudson river--Approximately nine miles from the hamlet of Newcomb to the confluence with the Cedar river and approximately four miles from the confluence with the Boreas river to a point one mile north of the hamlet of North river.

g. South branch of the Moose river--Approximately eighteen miles from the east boundary of the state land immediately west of Little Moose lake to the west boundary of state land near Rock Dam and approximately six and one-half miles from the east boundary of state land just north of Woodhull mountain downstream to the state land boundary near the confluence with the middle branch of the Moose river.

3. Recreational rivers

a. West branch of Ausable river--Approximately five miles from the state boundary along the River road east of Big Cherry Patch pond downstream to the state boundary immediately west of High Falls.

§ 15-2714. Additional designations.

In addition to the rivers designated in section 15-2713 of this chapter, the following rivers are included in the system, being classified by the criteria stated in section 15-2707:

1. Wild rivers

a. Cedar river - Approximately seven and three-tenths miles from the outlet of Cedar lakes to a point where a road crosses the river approximately one and one-half miles upstream of Cedar river flow.

b. Kunjamuk river - Approximately eight miles from the outlet of South pond to a fish barrier dam near the southwest boundary of lot 9, township 31, Gorton Tract.

c. Main branch of the Oswegatchie river - Approximately eighteen and one-half miles from the Partlow Mill dam to the southernmost boundary

between private and state land at Inlet.

d. Middle branch of the Oswegatchie river - Approximately fourteen and one-half miles from the north boundary of lot 27, Watson's East Triangle to a point one mile downstream of the confluence with Wolf creek.

e. Piseco outlet - Approximately four and one-fifth miles from a point one-half mile east of the route 10 bridge crossing to the confluence with the West Branch of the Sacandaga river.

f. West branch of the Sacandaga river - Approximately nine miles from the source near Silver lake mountain to the Silver lake wilderness boundary near route 10 and approximately two and seven-tenths miles from the confluence with Cow creek to the confluence with Piseco outlet.

g. South branch of West Canada creek - Approximately five and nine-tenths miles from the headwaters near T-Lake falls to a footbridge crossing located approximately one mile upstream of the Floe.

2. Scenic rivers

a. Black river - Approximately seven and eight-tenths miles from the point where Farr road crosses the river to the point where the river intersects the Adirondack park boundary.

b. Bog river - Approximately seven and three-tenths miles from the dam below Hitchins pond to Big Tupper lake.

c. Blue Mountain stream - Approximately nine miles from the outlet of Clear pond to the confluence with Pleasant lake stream.

d. Carmens river - Approximately two and one-quarter miles from its headwaters at the north boundary of Cathedral Pines Park (formerly Camp Wilderness), Suffolk county, southerly to its intersection with the southern boundary of Camp Sobaco (Girl Scout Camp).

e. Carmens river--Approximately two and one-half miles from Yaphank

avenue, Suffolk county, southerly to the Concrete Wing dam in Southhaven park.

f. Carmens river--Approximately two and one-half miles from the south side of Sunrise highway, Suffolk county, southerly to the mouth of the river (a line between Long Point and Sandy Point) at its confluence with Great South Bay.

g. Cedar river - Approximately ten miles from a point where a road crosses the river one and one-half miles upstream of Cedar river flow to a point where a southerly extension of the northeast state land boundary of lot 96, township 33, Totten and Crossfield's Purchase, would intersect the river.

h. Deer river - Approximately six and two-tenths miles from the outlet of Deer river flow to a point where the river intersects the Adirondack park boundary.

i. East Canada creek - Approximately twenty and nine-tenths miles from Powley Place to a point at which the creek intersects the Adirondack park boundary near Sprite creek at the southwest corner of lot 45, town of Oppenheim, Lott and Low's Patent.

i-1. The Genesee river within Letchworth State Park.

j. Middle branch of the Grasse river - Approximately fourteen and one-half miles from the confluence of Blue Mountain stream and Pleasant lake stream to the confluence of the South Branch of the Grasse river.

k. North branch of the Grasse river - Approximately twenty-five and four-tenths miles from the outlet of Church pond to a point where the North Branch intersects the Adirondack park boundary.

l. South Branch of the Grasse river - Approximately thirty-five and two-tenths miles from the outlet of Center pond to the confluence with the outlet of Allen pond, and approximately three and seven-tenths miles from the most southerly point where the South Branch of the Grasse river

intersects the Adirondack park boundary, north to the confluence with the Middle Branch of the Grasse river.

m. Independence river - Approximately twenty-six miles from the outlet of Little Independence pond to the point where the Sperryville bridge crosses the river.

n. Jordan river - Approximately eighteen miles from the outlet of Marsh pond to Carry Falls reservoir.

o. Kunjamuk river - Approximately ten and four-tenths miles from a fish barrier dam near the southwest boundary of lot 9, township 31, Gorton Tract, to the confluence with the Sacandaga river.

p. Long Pond outlet - Approximately sixteen miles from the outlet of Long pond to the confluence with the West Branch of the St. Regis river.

q. Marion river - Approximately five miles from the outlet of Utowana lake to Raquette lake.

r. Main branch of the Moose river - Approximately fifteen and four-fifths miles from the confluence of the South and Middle Branches of the Moose river to a point where the Main Branch intersects the Adirondack park boundary.

s. South branch of the Moose river - Approximately fourteen and two-fifths miles from the west boundary of state land near Rock dam to the east boundary of state land north of Woodhull mountain.

s-1. North Branch of the Moose river -- Approximately six miles from the outlet of Big Moose lake to the confluence with the outlet of Goose Pond.

s-2. Nissequogue river - Approximately one and four-tenths miles from the dam at the outlet of New Mill Pond to the pedestrian bridge south of Route 25/25A including its tributaries and ponds identified as P288 Phillips Millpond, P289 Willow Pond, P290 Upper Vail Pond, P291 Webster

Pond, and P291a Lower Vail Pond on a certain map titled "Official Classifications - Surface Waters of Western Suffolk County," published by the water resources council and prepared by the New York state department of health.

t. Middle branch of the Oswegatchie river - Approximately nine miles from the outlet of Walker lake to the north boundary of lot 27, Watson's East Triangle and approximately fourteen and two-fifths miles from a point one mile downstream of the confluence with Wolf Creek to a point where the Middle Branch intersects the Adirondack park boundary at the southeast boundary of lot 993, township of Diana, Macomb's Purchase, great tract 4.

u. West branch of the Oswegatchie river - Approximately seven miles from the outlet of Buck pond to a point approximately one mile upstream of Round pond at the point where a foot and snowmobile bridge crosses the West Branch.

v. Otter brook - Approximately ten miles from the outlet of Lost pond to the confluence with the South Branch of the Moose river.

w. Raquette river - Approximately twenty miles from the outlet of Long lake to the confluence with a small stream from the northeast, located approximately one mile downstream from Trombley Landing, and approximately thirteen and eight-tenths miles from the confluence with Dead creek to a point where the river intersects the north boundary of lot 1, township 5, Tannery Lot near Carry Falls reservoir.

x. Red river - Approximately nine and seven-tenths miles from the headwaters of the river to the confluence with the South Branch of the Moose river.

y. Rock river - Approximately six and nine-tenths miles from the O'Neil flow road crossing to the confluence with the Cedar river.

z. Round lake outlet - Approximately two and seven-tenths miles from the outlet of Round lake to the confluence with the Bog river.

aa. East branch of the St. Regis river - Approximately fourteen and one-half miles from a point where route 30 crosses the East Branch near Meacham lake, to a point one-half mile upstream from Everton falls.

bb. Main branch of the St. Regis river - Approximately fifteen and five-tenths miles from a point where a private road to Bay pond crosses the Main Branch in lot 16, township 17, Macomb's Purchase, great tract 1, to the confluence with Balsam brook.

cc. West branch of the St. Regis river - Approximately thirty-five miles from the outlet of Little Fish pond to a point one-half mile downstream from the confluence with Fenner Meadow brook.

dd. West Canada creek - Approximately seventeen miles from a point where the creek intersects the state land boundary approximately two miles upstream of the Old Mitchell Dam site, to the route 8 bridge crossing near Nobleboro.

ee. West Stony creek - Approximately seven and seven-tenths miles from the Tannery road crossing to the confluence with Hatch brook.

ff. Peconic river - Approximately ten and one-half miles from the western boundary of the Red Maple swamp to the Long Island railroad bridge between Connecticut and Edwards Avenue and approximately three miles from Middle Country Road (State Route 25) to the confluence with the previously described segment of the Peconic including tributaries T112-5, T112-6 and T112-7.

3. Recreational rivers

a. East branch of the Ausable river - Approximately twenty-eight and three-tenths miles from St. Huberts to the confluence with the West Branch.

b. Main branch of the Ausable river - Approximately twenty-two miles from the confluence of the East and West Branches of the Ausable river

to Lake Champlain.

c. West branch of the Ausable river - Approximately twenty-nine and one-half miles from the headwaters of the West Branch near Heart lake to the confluence with the East Branch.

d. Black river - Approximately six and three-fifths miles from the outlet of North lake to a point where Farr road crosses the river.

e. Bouquet river - Approximately forty-seven and seven-tenths miles from the confluence with the North Fork of the Bouquet river to Lake Champlain.

f. Carmens river - Approximately two miles from its intersection with the southern boundary of Camp Sobaco (Girl Scout Camp), southerly to Yaphank Avenue, Suffolk county. However, the rules and regulations applicable to recreational rivers as set forth in title twenty-seven of this law shall not apply to any lands or structures included in the proposed Yaphank historic district. This exclusion shall take effect only upon the creation of said Yaphank historic district.

g. Carmens river - Approximately one mile southerly from the Concrete Wing dam in Southaven park, Suffolk county, to Sunrise highway.

h. Cedar river - Approximately eleven miles from a point at which a southerly extension of the northeast state land boundary parallel to the southwest boundary of lot 96, township 33, Totten and Crossfield's Purchase would intersect the river to the southwest boundary of lot 82, township 17, Totten and Crossfield's Purchase.

i. Connetquot river - Approximately five and three-fourths miles from Johnson Avenue, Suffolk county, south to the Sunrise highway.

j. South branch of the Grasse river - Approximately five and one-fifth miles from the confluence with the outlet of Allen pond to the most southerly point where the South Branch intersects the Adirondack park boundary.

k. Hudson river - Approximately twelve and seven-tenths miles from the confluence with the Opalescent river to a point where route 28N crosses the Hudson river at Newcomb and approximately forty-five and nine-tenths miles from a point one mile north of North river to the confluence with the Sacandaga river.

l. Independence river - Approximately one-half mile from a point where the Sperryville bridge crosses the river to a point where the river intersects the Adirondack park boundary.

m. Indian river - Approximately eight and three-tenths miles from the outlet of Indian lake to the confluence with the Hudson river.

m-1. Middle Branch of the Moose river -- Approximately thirteen and four-tenths miles from the confluence with the North Branch of the Moose river to the confluence with the South Branch of the Moose river.

m-2. North Branch of the Moose river -- Approximately thirteen miles from the confluence with the outlet of Goose Pond to the confluence with the Middle Branch of the Moose river.

n. Main branch of the Oswegatchie river - Approximately two and three-tenths miles from the southernmost boundary between private and state land at Inlet to Wanakena.

o. West branch of the Oswegatchie river - Approximately six and one-tenth miles from a point approximately one mile upstream of Round pond at the point where a foot and snowmobile bridge crosses the West Branch to a point where the river intersects the Adirondack park boundary.

p. Raquette river - Approximately twenty-two miles from the outlet of Raquette lake to the outlet of Long lake and approximately seventeen miles from the confluence of the Raquette river and a small stream from the northeast, at a point approximately one mile downstream from Trombley landing to the confluence with Dead creek.

q. Rock river - Approximately one and one-fifth miles from the outlet of lake Durant to the O'Neil flow road crossing.

r. East branch of the St. Regis river - Approximately six and one-tenth miles from a point one-half mile upstream of Everton falls to the confluence with the Main Branch of the St. Regis river.

s. Main branch of the St. Regis river - Approximately seven miles from the St. Regis Church to a point where a private road to Bay pond crosses the Main Branch in lot 16, township 17, Macomb's Purchase, great tract 1, and approximately eighteen miles from the confluence with Balsam brook to a point at which the river intersects the Adirondack park boundary.

t. West branch of the St. Regis river - Approximately five and one-half miles from a point one-half mile downstream of the confluence with Fenner Meadow brook to a point where the West Branch intersects the Adirondack park boundary.

u. East branch of the Sacandaga river - Approximately fourteen miles from a point approximately one-half mile above Cook brook to the confluence with the Main Branch of the Sacandaga river.

v. Main branch of the Sacandaga river - Approximately thirty-one miles from the outlet of Lake Pleasant to the inlet of Great Sacandaga lake.

w. West branch of the Sacandaga river - Approximately ten and three-fifths miles from the Silver lake wilderness boundary near the most upstream route 10 bridge crossing to the confluence with Cow creek and approximately seven and two-tenths miles from the confluence of Dugway creek to the confluence with the Main Branch of the Sacandaga river.

x. Salmon river - Approximately twelve and three-tenths miles from the outlet of Elbow ponds to the point where the river intersects the Adirondack park boundary.

y. Main branch of the Saranac river - Approximately sixty and two-fifths miles from the outlet of Upper Saranac lake to the point where the river intersects the Adirondack park boundary.

z. Schroon river - Approximately sixty-six and seven-tenths miles from the outlet of the former Dead Water pond to the confluence with the Hudson river.

aa. West Canada creek - Approximately eleven miles from the route 8 bridge crossing near Nobleboro to the Harvey road bridge crossing.

bb. South branch of West Canada creek - Approximately nine and seven-tenths miles from the footbridge crossing one mile upstream of The Floe to the confluence with the Main Branch of West Canada creek.

cc. West Stony creek - Approximately six miles from the Persch road crossing to the Tannery road crossing and approximately two and seven-tenths miles from the confluence with Hatch brook to the confluence with the Main Branch of the Sacandaga river.

dd. Ramapo river -- Approximately three and one-half miles from the Orange county line to the site of an abandoned power dam in the hamlet of Ramapo.

ee. Nissequogue river - Approximately one and four-tenths miles from state route 347 to the dam at the outlet of New Mill Pond including its tributaries identified as P292-1 to Brooksite Drive and two unnamed tributaries P292-2 and P292-3, and approximately five miles from the pedestrian walkway and dam at the outlet of Phillips Millpond to its confluence with Long Island sound including its tributaries and ponds connected therewith, specifically described as T-62 on a certain map entitled "Official Classifications-Surface Waters of Western Suffolk County", prepared by the New York state department of health and published by the water resources council.

ff. Shawangunk Kill river - From the border of Ulster and Orange

counties to its confluence with the Wallkill river.

gg. Peconic river - Approximately five and one-half miles from the Long Island railroad bridge between Connecticut and Edwards Avenue to Grangabel Park dam in Riverhead and approximately two miles of the Little River (tributary T112-1) from and including Wildwood Lake to its confluence with the Peconic.

hh. Fall Creek from the southern boundary of Cayuga Lake to the west face of the foot bridge running across Fall Creek, which foot bridge is located between Thurston Avenue on the west and Beebe Lake on the east. The boundaries of the river corridor shall be defined as follows:

DESCRIPTION OF NORTHERN BOUNDARY OF FALL CREEK RIVER CORRIDOR

Beginning at a point at the intersection of the high water mark of Cayuga Lake, on the southerly boundary of Cayuga Lake, and the northerly boundary of Fall Creek, said point being in the northerly boundary of Stewart Park; running thence northeasterly along the northerly boundary of Stewart Park to its intersection with the westerly boundary of the Lehigh Valley Railroad right-of-way; running thence in a southerly direction along the westerly edge of the Lehigh Valley Railroad right-of-way approximately 3,450 feet to a point located 50 feet northerly along said railroad from the north bank of Fall Creek; running thence in a southeasterly direction parallel with and 50 feet northerly from the north bank of Fall Creek crossing Cayuga Street to a point on the easterly boundary of Cayuga Street, located approximately 20 feet northerly from the north bank of Fall Creek, said point being the intersection of the easterly boundary of Cayuga Street with the extended line of a chain link fence on Ithaca School District property running approximately parallel with Fall Creek; running thence in a southeasterly direction along the extended line of the chain link fence and continuing along said chain link fence, approximately parallel to Fall Creek to the end of the chain link fence; continuing thence in a southeasterly direction along the extended line of said chain link fence approximately 5 feet to the south line of a sidewalk which runs through Ithaca School District property approximately parallel with Fall Creek; continuing thence along the south line of said sidewalk to the

intersection of the south line of said sidewalk with the westerly boundary of Lake Street; running thence perpendicular to Lake Street approximately 50 feet to the east boundary of Lake Street; running thence in a northwesterly direction along the east line of Lake Street approximately 75 feet to a point of the northwest corner of City Tax Parcel 12-1-1; running thence in an easterly direction along the northerly boundary of tax parcel 12-1-1 approximately 250 feet to the northeast corner of Tax Parcel 12-1-1; continuing thence on the same course along a line shown on Tax Maps Numbers 12 and 11 as a match line and along the northerly boundary line of Tax Parcel 6-2-1 approximately 600 feet to the northwest corner of Tax Parcel 11-1-1, said point being located approximately 12.5 feet westerly from the westerly boundary of Stewart Avenue; running thence easterly approximately 12.5 feet along the north boundary of Tax Parcel 11-1-1 to the westerly boundary of Stewart Avenue; running thence in a southeasterly direction along the southwesterly boundary of Stewart Avenue approximately 464 feet to the southeasterly corner of Tax Parcel 11-1-2; running thence in an easterly direction perpendicular to and across Stewart Avenue to a point in the easterly line of Stewart Avenue approximately 25 feet northerly of the northerly boundary of the Stewart Avenue bridge; running thence northerly and easterly along the easterly boundary of Stewart Avenue and southerly boundary of Fall Creek Drive as it curves to a point located approximately 145 feet southerly along Fall Creek Drive from the intersection of the east boundary of Fall Creek Drive and the south boundary of Thurston Avenue, said point being located at the intersection of the easterly boundary of Fall Creek Drive and a line extended westerly being a line 10 feet southerly from the southerly boundary of the tennis courts located southeasterly from the intersection of Thurston Avenue and Fall Creek Drive; running thence easterly along said extended line and 10 feet southerly from the southerly boundary of said tennis courts to the intersection of said line extended easterly and the northeasterly boundary of an asphalt path which runs southwesterly from Prudence Risley Hall to Thurston Avenue; running thence in a southeasterly direction along the northerly boundary of said asphalt path to the intersection of said asphalt path with the westerly boundary of Thurston Avenue; running thence southerly along the westerly boundary of Thurston Avenue to a point located 25 feet

northerly from the north edge of the gorge; running thence easterly parallel with and 25 feet northerly from the north edge of the gorge to its intersection with the line of the west face as extended northerly of the foot bridge over the gorge; running thence southerly to and along the west face of said foot bridge to a point in the center line of Fall Creek.

DESCRIPTION OF SOUTHERN BOUNDARY OF FALL CREEK RIVER CORRIDOR

Beginning at a point at the intersection of the high water mark at the south end of Cayuga Lake with the east bank of Cayuga Inlet; running thence southerly along the east bank of Cayuga Inlet approximately 1,050 feet to a point marking the intersection of the east bank of the Cayuga Inlet with the southwest corner of Tax Parcel 2-2-1; running thence easterly along the south boundary of Tax Parcel 2-2-1 approximately 600 feet to a point marked by a 2-inch square iron pin, said point being located approximately 100 feet southwesterly from the west bank of Fall Creek; running thence southeasterly approximately 1,290 feet to a point at the east side of the golf course access gate; running thence easterly approximately 80 feet to the eastern edge of Pier Road; running thence southeasterly along the east edge of Pier Road approximately 950 feet to the north edge of a gravel access road which runs to the Lehigh Valley Railroad right-of-way; running thence southeasterly along the north edge of said gravel access road to the westerly right-of-way of the Lehigh Valley Railroad; running thence northwesterly along said right-of-way to a point located approximately 50 feet southerly from the south bank of Fall Creek; running thence southeasterly parallel with and 50 feet southerly from the south bank of Fall Creek to the west edge of Woodland Place, being also the easterly right-of-way line of New York State Route 13; running thence southwesterly along the east right-of-way line of New York State Route 13 and the west side of Woodland Place to a point in the north boundary of Tax Parcel 13-1-5; running thence northeasterly and southeasterly along the south line of Woodland Place, being also the north lines of Tax Parcel Nos. 13-1-5, 13-1-6, and 13-1-7 215.6 feet to the west boundary of North Cayuga Street; continuing thence along the same course across Cayuga Street to a point being the northwesterly corner of Tax Parcel No. 5-2-1; running thence southeasterly along the northeasterly boundaries of Tax Parcel Nos. 5-2-1, 5-2-6, 5-2-7, 5-2-8,

5-2-9 and 5-2-10 a distance approximately 480 feet to the easterly corner of Tax Parcel No. 5-2-10, said point being the intersection of the north boundary of East York Street and the west boundary of North Tioga Street; running thence northerly along the west boundary of North Tioga Street to the bank of Fall Creek; running thence southeasterly along the bank of Fall Creek to the northwest corner of Tax Parcel No. 12-2-1; running thence southeasterly along the northerly boundary of Tax Parcel Nos. 12-2-1 and 12-2-2 360 feet to the northeast corner of Tax Parcel No. 12-2-2; running thence easterly along the northerly boundary of Tax Parcel No. 12-2-13 45.5 feet to the northeast corner of Tax Parcel No. 12-2-13; running thence southerly approximately 25 feet along the easterly boundary of Tax Parcel No. 12-2-13 to the northwest corner of Tax Parcel No. 12-2-12; running thence easterly along the northerly boundary of Tax Parcel No. 12-2-12 35.33 feet to a point; running thence southerly approximately 12.5 feet; and running thence easterly along the north boundary of Tax Parcel No. 12-2-12 approximately 40 feet to a point; continuing thence along the northerly boundaries of Tax Parcel Nos. 12-2-11, 12-2-10, 12-2-9, 12-2-8, 12-2-7, 12-2-6, 12-2-5 and 12-2-4 approximately 328.6 feet to the westerly boundary of Lake Street at the southwest corner of the Lake Street bridge over Fall Creek; continuing thence across Lake Street along the south edge of the Lake Street bridge over Fall Creek to a point in the easterly boundary of Lake Street; running thence southerly along the east boundary of Lake Street 401 feet to a point marking the intersection of the east boundary of Lake Street and the southerly boundary of Lincoln Street extended; continuing thence easterly along the southerly boundary of Lincoln Street extended 180 feet to a point marking the southeast corner of Lincoln Street extended; continuing thence on the same course approximately 75 feet to a point in the east boundary of Tax Parcel No. 12-7-4; running thence northerly along the east boundary of Tax Parcel No. 12-7-4 approximately 69 feet to a point; running thence easterly along the northerly boundary of Tax Parcel No. 11-3-1 100 feet to a point at the southerly boundary of Old Penstock; running thence easterly along the southerly boundary of said Old Penstock a chord distance of approximately 362.5 feet to a point; in the westerly boundary of Tax Parcel No. 11-3-3; running thence southerly along the westerly boundary of Tax Parcel No. 11-3-3 approximately 68 feet to a point marking the northwesterly corner of Willard Way; running

thence southeasterly and southerly along the northerly and easterly boundaries of Willard Way to the southwesterly corner of Tax Parcel No. 11-3-3 said point also being the northwesterly corner of Tax Parcel No. 11-3-6; running thence easterly along the southerly boundary of Tax Parcel No. 11-3-3 110 feet to a point in the northwesterly boundary of Stewart Avenue; running thence northerly and easterly along the westerly and northerly boundary of Stewart Avenue approximately 298 feet to a point located approximately 35 feet southerly from the Stewart Avenue bridge; running thence in an easterly direction across Stewart Avenue to a point marking the southerly boundary of the Cayuga Trail; running thence easterly along the southerly boundary of the Cayuga Trail to the northwesterly boundary of University Avenue; running thence northerly and easterly along the westerly and northerly boundaries of University Avenue to the intersection of the north line of University Avenue and the west line of Thurston Avenue; continuing thence easterly along the north line of University Avenue as it becomes the north line of Forest Home Drive and along the north line of Forest Home Drive approximately 600 feet to the intersection of the north line of Forest Home Drive with the line of the west face of the foot bridge over Fall Creek Gorge as extended southerly; running thence northerly along said extended line and the west face of the said foot bridge to the center of Fall Creek.

Such boundaries shall constitute the final boundaries and shall not be subject to amendment, alteration or modification by any action or determination by the commissioner or the department.

Responsibility for the administration of the area designated herein shall be delegated to the city of Ithaca pursuant to the appropriate regulations.

The designation of Fall Creek shall not, solely by operation of this article, be construed so as to restrict or prohibit utility or similar facilities support related-systems or facilities support-related activities of the land grant institution known as Cornell University conducted in furtherance of its educational purposes, which are located upstream of the designated area of Fall Creek. Such activities shall include, but not be limited to, the operation of Cornell University's

chilled water plant, water filtration plant and intakes for such plants and for its hydroelectric plant and the necessary dredging of intake areas, storm water drains, utility lines, and foot bridges, which may otherwise be permitted but for such designation.

§ 15-2715. Designation of additions to the system.

1. The commissioner or agency shall study and from time to time submit to the governor and to the legislature proposals for the addition to the state wild, scenic and recreational rivers system of river areas which, in their judgment, fall within one or more of the descriptive classes set out in this title. Each proposal shall specify the class or classes of the proposed addition and shall be accompanied by a detailed report on the factors which, in the judgment of the commissioner or agency, make the area a worthy addition to the system. The report shall show the area included within the proposal; the characteristics which make the area a worthy addition to the system; the current status of land ownership and use in the area; the anticipated acquisitions of land and scenic or other easements in the area; the potential uses of the land and water; and the cost of acquisitions of land and scenic or other easements and improvements proposed. The commissioner or agency shall send the report to the legislative authority of each county, town, and municipal corporation, any part of which is within the area, and to the commissioner of transportation, commissioner of agriculture and markets, commissioner of health, and commissioner of commerce. Thereafter, each proposal shall be submitted to the governor and the legislature for adoption or modification. This section is not intended to preclude or discourage studies and proposals by other agencies or by citizen groups working independently or with the commissioner or the agency, provided that such studies and proposals shall be conducted and made in accordance with the criteria and procedures set forth in this subdivision and shall be submitted to the agency or the commissioner as appropriate for comment prior to submission of any proposal to the governor or the legislature. The commissioner and the agency shall provide technical assistance to and cooperate with any such agencies and citizen groups.

2. Not later than three years after the effective date upon which each of the following rivers shall have been designated for study by inclusion in this subdivision, the agency, after consultation and cooperation with the commissioner with respect to rivers within the Adirondack park, or the commissioner with respect to rivers elsewhere, is hereby directed to consider and make proposals to the legislature for the addition of each such river to the state wild, scenic and recreational rivers system :

a. The Batten Kill river from the Vermont state line to the dam at Greenwich.

b. The Delaware river from Port Jervis to the junction of the East and West Branches of the Delaware river, and the East Branch of the Delaware river upstream to the Downsville dam, and the West Branch of the Delaware river upstream to the Cannonsville dam.

c. The Genesee river from the Pennsylvania state line to Letchworth State Park.

d. The Susquehanna river from Otsego lake to Bainbridge at the Route 206 crossing.

g. Bouquet river--Approximately twenty-four miles of the North Branch from Trout pond to the confluence with the Main Branch.

h. The Branch--Approximately sixteen miles from Elk lake to the confluence with the Schroon river.

i. East Stoney creek--Approximately eighteen miles from Harrisburg lake to Great Sacandaga lake.

j. Grasse river--Approximately twenty-five miles of the Main Branch from the confluence with the South Branch to the village of Canton.

l. Osgood river--Approximately fourteen miles from Jones pond to

Meacham lake.

m. Oswegatchie river--Approximately eleven miles of the Main Branch from the Cranberry lake outlet to River road.

n. Pleasant Lake stream--Approximately seven miles from Pleasant lake to the confluence with the Middle Branch of the Grasse river.

o. Saranac river--Approximately seventeen miles of the North Branch from Mud pond to the confluence with the Main Branch.

§ 15-2717. Cooperation with the federal government.

Nothing in this title shall preclude a section of the state wild, scenic and recreational rivers system from becoming a part of the national wild and scenic rivers system. The commissioner and the agency are directed to encourage and assist any federal studies for inclusion of New York State rivers in the national wild and scenic rivers system.

§ 15-2719. Cooperation clause.

The commissioner and agency shall cooperate with each other and coordinate their activities with respect to their respective jurisdictions over the designated rivers within the Adirondack park to ensure compliance for the general criteria and management objectives set forth in this part.

§ 15-2721. Conflict with other laws.

Any section of the state wild, scenic and recreational rivers system that is or shall become a part of the Forest Preserve, the Adirondack or Catskill Parks or any other state park, wildlife refuge, or similar area shall be subject to the provisions of this title, and the laws and constitutional provisions under which the other areas may be

administered, and in the case of conflict between the provisions of those laws and constitutional provisions and the provisions of this title, the more restrictive provisions shall apply.

§ 15-2723. Penalties and enforcement.

Any person who violates any provision of this title or any regulation or order issued pursuant to this act by the commissioner or the agency may be compelled to comply with or obey the same by injunction, mandamus or other appropriate remedy. In addition, any such person shall pay a civil penalty of not less than one hundred dollars or more than one thousand dollars for each day of such violation. The commissioner or the agency as the case may be, is authorized to commence a civil action to recover such civil penalties or other appropriate relief.

TITLE 29

WATER RESOURCES MANAGEMENT STRATEGY

Section 15-2901. Water resources planning council; organization.

15-2903. Water resources planning council; quorum, bylaws.

15-2905. Statewide inventory of existing significant deficiencies in water supply systems.

15-2907. Water resources management strategy; development purpose.

15-2909. Water resources management strategy; hearings.

15-2911. Water resources management strategy; approval.

15-2913. Water resources management strategy; revision.

§ 15-2901. Water resources planning council; organization.

There is hereby established within the department of environmental conservation a water resources planning council. It shall consist of fifteen members, including the commissioners of agriculture and markets, economic development, environmental conservation, health, transportation, the chair of the public service commission, president of

the New York state energy research and development authority, secretary of state and seven members to be appointed by the governor including at least one member who shall have expertise in the science of water resources planning and at least one member selected from a list proposed by public interest or environmental citizens organizations. These seven members shall serve terms of four years each. Two of the members shall be appointed upon the recommendation of the majority leader of the senate and two of the members shall be appointed upon the recommendation of the speaker of the assembly. The governor shall select a chair from among the members. Meetings of the council shall be called by the chair. Members shall receive reimbursement for expenses.

§ 15-2903. Water resources planning council; quorum, bylaws.

A majority of the members of the council shall constitute a quorum for the transaction of any business or the exercise of any power of the council. The commissioners of agriculture and markets, commerce, energy, environmental conservation, health, transportation, the chairman of the public service commission and secretary of state may, by official authority filed in their respective agencies, and with the water resources planning council, designate a deputy or other officer to exercise his powers and perform his duties, including the right to vote, on the council. The council may also establish for itself bylaws for the conduct of its affairs.

§ 15-2905. Statewide inventory of existing significant deficiencies in water supply systems.

The commissioner, in consultation with the commissioner of health and utilizing information requested from the responsible local officials as well as relevant information developed through titles eleven and thirteen of this article, shall cause to be prepared an inventory of existing significant deficiencies in water supply availability throughout the state, including specific needs for improvement, rehabilitation and establishment of water supply, distribution and

transmission facilities. Such inventory shall also identify those water supply systems affected or threatened by intrusions of hazardous materials or wastes and the nature of remediation required. Such inventory shall be completed and transmitted to the governor, legislature and the council by July first, nineteen hundred eighty-five.

The commissioner in consultation with the secretary of state, shall also cause to be prepared a review and summary of existing statutory and constitutional provisions relating to the provision and financing of water supply facilities by local governments, including such provision and financing through inter-local cooperation. Such review and summary shall also identify any existing statutory and constitutional constraints against the effective and efficient provision of sound financing, on a revenue or general obligation basis, of such facilities. Such review and summary shall be completed and transmitted to the governor, legislature and the council by January first, nineteen hundred eighty-six. At such time and based upon the above inventory and review and summary, the commissioner shall also cause to be prepared a compilation of those instances in which correction of existing significant deficiencies appears to be beyond the reasonable financial capabilities of the affected communities.

§ 15-2907. Water resources management strategy; development purpose.

Not later than January first, nineteen hundred eighty-seven, the department of environmental conservation, with the participation of the department of health and whenever possible, regional planning and development boards, shall develop and submit a complete statewide water resources management strategy to the water resources planning council for its review and adoption. This strategy shall be composed of substate water resources management strategies which recognize the natural boundaries of the water resource basins, watersheds, and aquifers and existing significant deficiencies of water supply, and which organize these in the most practical and manageable manner. Each substate management strategy shall analyze the present and future demographic, natural resource, economic development, water quality, and conservation

requirements of public and private water systems and develop regional management strategies to meet the water resources requirements of residential, agricultural, industrial and commercial users as well as assure the highest possible quality and quantity of these resources.

Strategies shall analyze the efficiency and capacity of existing water supply sources and facilities and shall contain recommendations for appropriate modifications, restoration, and expansion or development of new sources or facilities. Such strategies shall also include evaluations and recommendations as to the feasibility of including hydroelectric energy generation facilities as part of the modifications, restoration, and expansion or development of new or existing resources or facilities. The strategy shall also contain recommendations regarding implementation of these strategies by the department of health, the department of environmental conservation, other appropriate state agencies, local governments and special districts. In addition, the departments shall submit to the council substate water resources management strategies as soon as such strategies are developed. The departments shall also report regularly to the council on the development of the strategies and receive the council's recommendations and directions. Such substate strategies shall also be available for public inspection as soon as such strategies are developed.

§ 15-2909. Water resources management strategy; hearings.

Upon receipt of the statewide water resources management strategy from the department of environmental conservation, the council shall promptly publish once a week for three consecutive weeks in newspapers of general circulation notice of public hearings thereon. Public hearings shall be conducted in each of the substate areas represented in the statewide strategy, and shall be in accordance with regulations adopted by the department, subject to modification by the council. Such regulations shall, at a minimum, require a hearing on the record with sworn witnesses and shall afford interested parties a reasonable opportunity to sponsor witnesses and to question witnesses sponsored by others, including department staff, consistent with the need to conclude the

hearings expeditiously so that a state water resources management strategy can be adopted in a timely manner. The hearings shall not be considered part of an adjudicatory proceeding, as defined in subdivision three of section one hundred two of the state administrative procedure act, or as part of a rule-making proceeding held under subdivision one of section two hundred two of such act.

§ 15-2911. Water resources management strategy; approval.

The water resources planning council shall, as expeditiously as practicable following the conclusion of its hearings, but in no case later than January first, nineteen hundred eighty-eight, determine, based on the record, whether the statewide water resources management strategy should be approved with modifications or disapproved, and shall state in writing the reasons for its determination. If the council has determined approval of the strategy, it shall be adopted by the departments of health and environmental conservation and other appropriate state agencies in the form determined by the council. If the council has determined disapproval of the strategy, the department of environmental conservation, in conjunction with the department of health, shall modify the strategy in accordance with the determination issued by the council and resubmit the strategy to the council for its action.

§ 15-2913. Water resources management strategy; revision.

From time to time and at least once every two years, the department of environmental conservation, with the participation of the department of health and whenever possible, regional planning and development boards, shall review the strategy and shall either (a) prepare any amendments necessary to update the strategy, or (b) issue a determination that no amendments are necessary and the reasons supporting the determination. Any interested person may seek such a review upon written application to the department of environmental conservation for an amendment to the statewide water resources management strategy. Any statement issued by

the departments that no amendments are necessary shall be submitted to the council for approval, modification or disapproval. Amendments shall be adopted in the same manner as the strategy itself.

TITLE 31

GROUNDWATER PROTECTION AND REMEDIATION PROGRAM

Section 15-3101. Short title.

15-3103. Legislative findings and intent.

15-3105. Purpose.

15-3107. Groundwater information management.

15-3109. Groundwater remediation strategy.

15-3111. Rules and regulations.

§ 15-3101. Short title.

This title shall be known and may be cited as the "groundwater protection act".

§ 15-3103. Legislative findings and intent.

The legislature hereby finds and declares that:

1. The waters of the state are one of its most essential natural resources.

2. Adequate supplies of good quality groundwater are critical to the health and welfare of the residents of the state and to their economic well-being. Groundwater contamination exists at levels which exceed applicable standards, criteria and guidance values at many sites around the state, including inactive hazardous waste disposal sites, brownfield sites, and sites contaminated by the discharge of petroleum. The levels and types of contaminants, the extent of contamination, and the present and potential impacts on public health and the environment vary widely from site to site, but cumulatively could endanger the integrity of the

water resources of New York state.

3. Due to the complexity of groundwater contamination problems, the restoration of groundwater to its classified use may not currently be feasible at some sites.

4. It is the intent of the legislature that groundwater be protected for its classified use, the highest of which is drinking water.

§ 15-3105. Purpose.

It is the intent of the legislature that the department develop a strategy to address contaminated groundwater and implement a program to remediate and manage groundwater resources in a manner that will ensure long-term sustainability.

§ 15-3107. Groundwater information management.

Information collected pursuant to this section shall be incorporated into the geographic information system maintained by the department to track remedial programs, pursuant to section 3-0315 of this chapter.

§ 15-3109. Groundwater remediation strategy.

No later than three years after the effective date of this title, the department, in consultation with the department of health, shall develop and publish a strategy to address the long-term remediation of groundwater contamination, including strategies to protect groundwater from future degradation from contaminated sites.

1. Such strategy shall govern all programs within the department responsible for groundwater protection and remediation. Such strategy shall include, but not be limited to:

(a) Recognition that both short- and long-term remediation strategies

may be necessary to address groundwater contamination.

(b) Identification of the long-term groundwater remedial activities that are required to be taken by the state pursuant to title fourteen of article twenty-seven of this chapter for sites which the department has determined pose a significant threat, or which can be initiated by the state pursuant to other provisions of this chapter to address groundwater contamination.

(c) Establishment of criteria for the prioritization of long-term groundwater remediation activities to be performed by the department. Such criteria shall include, but not be limited to:

(i) the current or reasonably anticipated future use of contaminated groundwater as drinking water;

(ii) the current or reasonably anticipated future use of a groundwater aquifer into which contaminated groundwater is flowing as drinking water;

(iii) the current or reasonably anticipated future use of contaminated groundwater for non-potable purposes including but not limited to recreational uses, institutional uses and agricultural or non-agricultural irrigation;

(iv) community needs;

(v) feasibility of remediation; and

(vi) protection of natural resources and minimizing the impairment of the resource.

Notwithstanding subparagraphs (i) through (vi) of this paragraph, while the current use of groundwater as drinking water may be considered, the absence of such use shall not exclude the need for remediation.

2. A public comment period of at least one hundred twenty days shall be held on the initial draft strategy. Such strategy shall be updated regularly based on progress made and the availability of new remedial technologies, scientific information, and field data. Each updated draft strategy shall be released to the public, and will require a public comment period of at least sixty days.

3. The department is responsible pursuant to title fourteen of article

twenty-seven of this chapter for the remediation of off-site groundwater contamination emanating from sites being remediated by a volunteer, which sites have been determined to be a significant threat. Within six months of the determination of significant threat at a site being remediated by the volunteer the department shall bring an enforcement action against any parties known or suspected to be responsible for contamination at or emanating from the site which is the subject of such agreement. If such action cannot be brought, or does not result in the initiation of a remedial program by such party or parties at such site, the department shall use best efforts to begin a remedial program to perform the remediation of off-site contamination at such site within one year of the completion of such enforcement action or the completion of the volunteer's remedial program, whichever is later.

§ 15-3111. Rules and regulations.

The commissioner shall promulgate rules and regulations necessary and appropriate to carry out the purposes of this title.

TITLE 33

SOURCE WATER PROTECTION PROJECTS

Section 15-3301. Definitions.

15-3303. Land acquisition projects for source water protection.

15-3305. Approval and execution of projects.

§ 15-3301. Definitions.

As used in this title the following terms shall mean:

1. "Land acquisition projects" means open space acquisition projects undertaken with willing sellers including, but not limited to, the purchase of conservation easements, undertaken by a municipality, a not-for-profit corporation, or purchase of conservation easements by a soil and water conservation district.

2. "Municipality" means the same as such term as defined in section 56-0101 of this chapter.

3. "Not-for-profit corporation" means a corporation formed pursuant to the not-for-profit corporation law and qualified for tax-exempt status under the federal internal revenue code.

4. "Soil and water conservation district" means the same as such term as defined in section three of the soil and water conservation districts law.

5. "State assistance payment" means payment of the state share of the cost of projects authorized by this title to preserve, enhance, restore and improve the quality of the state's environment.

§ 15-3303. Land acquisition projects for source water protection.

1. The commissioner is authorized to provide state assistance to municipalities, not-for-profit corporations and soil and water conservation districts to undertake land acquisition projects for source water protection, in cooperation with willing sellers. Land acquisition projects for source water protection shall support, expand or enhance drinking water quality protection, including but not limited to aquifers, watersheds, reservoirs, lakes, rivers and streams.

2. a. Any buffer encumbered by a conservation easement acquired pursuant to this section that encumbers lands used in agricultural production as defined in section three hundred one of the agriculture and markets law in a county designated state certified agricultural district created under section three hundred three of the agriculture and markets law may allow agricultural activity that qualifies such lands, provided such activity on such lands does not impair drinking water and complies with an agricultural environmental management program plan developed by the state soil and water conservation committee, in partnership with the department.

b. Notwithstanding any limitations provided herein on lands acquired pursuant to this title a license or easement may be granted by the owner of such property to a public utility for a public purpose.

3. In evaluating land acquisition projects for source water protection pursuant to this section, the department shall give priority to projects which protect or recharge drinking water sources and watersheds including riparian buffers and wetlands.

4. a. No state assistance may be provided pursuant to this section to fund any land acquisition project which is undertaken by eminent domain unless such process is undertaken with a willing seller.

b. The department shall not provide funding pursuant to this title for any land acquisition project for source water protection by a not-for-profit corporation, if any town, village or city within which such a project is located, by resolution, within ninety days of notification by such corporation of its interest in acquiring such projects, objects to such acquisition.

5. Consistent with section eleven-b of the soil and water conservation districts law, the soil and water conservation committee in consultation with the commissioner of agriculture and markets is authorized to provide state assistance payments to county soil and water conservation districts, within amounts appropriated, for land acquisition projects for source water protection projects to support, expand or enhance drinking water quality protection, including but not limited to aquifers, watersheds, reservoirs, lakes, rivers and streams. Such committee shall give priority to projects which establish buffers from waters which serves as or are tributaries to drinking water supplies for such projects using state assistance pursuant to this section.

6. Real property acquired, developed, improved, restored or rehabilitated by or through a municipality, county soil and water conservation district or not-for-profit corporation with funds made available pursuant to this title shall not be sold, leased, exchanged,

donated or otherwise disposed of or used for other than the public purposes of this title without the express authority of an act of the legislature, which shall provide for the substitution of other lands of equal environmental value and fair market value and reasonably equivalent usefulness and location to those to be discontinued, sold or disposed of, and such other requirements as shall be approved by the commissioner.

7. If the state acquires a real property interest in land purchased by a municipality or not-for-profit with funds made available pursuant to this title, the state shall pay the fair market value of such interest less the amount of funding provided by the state pursuant to this section.

8. To the fullest extent practicable, it is the policy of the state to promote an equitable regional distribution of funds, consistent with the purpose of this section.

§ 15-3305. Approval and execution of projects.

1. Land acquisition projects for source water protection may be undertaken pursuant to the provisions of this article and other applicable provisions of law only with the approval of the commissioner.

2. The commissioner shall review such project application and may approve, disapprove or recommend modifications thereto consistent with applicable law, criteria, standards or rules and regulations relative to such projects. In reviewing applications for projects pursuant to this section, the commissioner shall give due consideration to:

a. the project's contribution to the protection of drinking water supplies;

b. the presence of a water plan, including a source water assessment/protection plan or other similar plan which identifies measures to reduce threats to drinking water sources and priorities for

land acquisition projects; and,

c. financial need or hardship.

3. All land acquisition projects shall be undertaken in the state of New York. The total amount of the state assistance payments toward the cost of any such project shall be set forth in any request for proposal issued to solicit projects and will in no event exceed seventy-five percent of the cost.

For the purpose of determining the amount of the state assistance payments, the cost of the project shall not be more than the amount set forth in the application for state assistance payments approved by the commissioner. The state assistance payments toward the cost of a project shall be paid on audit and warrant of the state comptroller on a certificate of availability of the director of the budget.

4. a. The commissioner and a municipality may enter into a contract for the undertaking by the municipality of a source water protection project. Such project shall be recommended to the commissioner by the governing body of the municipality and, when approved by the commissioner, may be undertaken by the municipality pursuant to this title and any other applicable provision of law.

b. The commissioner and a not-for-profit corporation may enter into a contract for the undertaking by the not-for-profit corporation of a source water protection project. Such a project shall be recommended to the commissioner by the governing body of a not-for-profit corporation which demonstrates to the satisfaction of the commissioner that it is capable of operating and maintaining such property for the benefit of drinking water and/or water quality protection. Upon approval by the commissioner, such project may be undertaken pursuant to the provisions of this title and any other applicable provision of law.

5. No monies shall be expended for source water protection land acquisition projects except pursuant to an appropriation therefor.

ARTICLE 16
FLOOD CONTROL

- Section 16-0101. State participation in federal flood control program.
- 16-0103. Receipt of funds by comptroller.
- 16-0105. Appropriation for flood control purposes.
- 16-0107. Acquirement of property for flood control.
- 16-0109. Projects authorized.
- 16-0111. Powers and duties of commissioner.
- 16-0113. Municipalities bearing cost.
- 16-0115. Municipal participation in federal program; raising and disbursement of funds; local cooperation agreements.
- 16-0117. Use of lands acquired for other purposes for flood control; transfer by commissioner; dual purpose use.
- 16-0119. Disbursements.

§ 16-0101. State participation in federal flood control program.

It is hereby declared that the state deems it advisable to participate in a federal program of flood control in the state of New York in the manner hereinafter described.

§ 16-0103. Receipt of funds by comptroller.

The comptroller is hereby authorized to receive from the federal government any moneys which the federal government shall offer to the state of New York for reimbursement for expenditures or otherwise in connection with any federal flood control project in the state of New York. The comptroller is authorized, upon receipt of any allotment of moneys from the federal government for reimbursement of expenditures or otherwise in connection with a flood control project to deposit such moneys to the credit of the general fund.

§ 16-0105. Appropriation for flood control purposes.

The legislature may appropriate from any money in the state treasury not otherwise appropriated for payment by the state for the costs of the state's participation in federal flood control projects and for engineering connected with these projects including personal services and expenses. The money appropriated shall be available for the cost of relocation and reconstruction of state highways, including structures; for channel improvements; for check dams; for quarries, gravel pits, spoil banks and borrow pits; for access roads; for camp sites; for relocation of buildings, structures and facilities; for relocation of the properties, structures, service lines and connections incident thereto of public service utilities, both publicly and privately owned; for relocation of railroad rights-of-way, facilities and structures; for rights of way and for other related purposes contemplated by and incidental to said flood control projects. The moneys appropriated shall also be available for payment by the state for the relocation and reconstruction of streets, sidewalks, public grounds, parks, cemeteries, water supply systems, sewer systems and lighting systems of municipal corporations, county roads and town highways, including structures and including rights of way.

§ 16-0107. Acquirement of property for flood control.

1. The commissioner of environmental conservation, for the people of the state of New York, shall acquire any property or interest therein, necessary for purposes connected with the flood control projects. Such property or interest therein shall be for rights-of-way, channel improvements, reservoirs, dams, quarries, gravel pits, borrow pits, spoil banks, camp sites, relocation of buildings and facilities, relocation of the facilities of public service utilities, relocation of streets, sidewalks, public grounds, parks, cemeteries, water supply systems, sewer systems and lighting systems of municipal corporations; relocation of county roads and town highways; and for other purposes connected with the flood control projects. The term "property" as used in this section shall be deemed to mean and include "real property" as such term is defined in section one hundred three of the eminent domain

procedure law. The manner of acquisition, including method of obtaining possession, shall be governed by the provisions of the eminent domain procedure law.

2. The commissioner of environmental conservation shall cause to be prepared an accurate acquisition map of any property which he may deem necessary for purposes connected with the flood control projects or of any property in and to which he may deem the acquisition or exercise of an easement, interest or right to be necessary for such purposes, indicating and describing in each case the particular easement, interest or right. On the approval of such map by the commissioner he shall acquire such property, easements, interests or rights pursuant to the provisions of the eminent domain procedure law.

3. If the commissioner shall determine, prior to the filing of such copy of the acquisition map in the office of the county clerk, that changes, alterations or modifications of such map should be made, he or she shall, subject to the provisions of article two of the eminent domain procedure law, if applicable, direct the preparation of an amended map, either by preparing a new map or by making changes on the original tracing of such map, with a notation indicating such changes. On the approval of such amended map by the commissioner, it shall be filed in the main office of the department in the same manner as the original map was filed and the amended map shall thereupon in all respects and for all purposes supersede the map previously filed.

4. If the commissioner shall determine, prior to the filing of such copy of the map in the office of the county clerk as provided in section four hundred two of the eminent domain procedure law, that such map should be withdrawn, he or she shall file a certificate of withdrawal in the offices of the department and department of law. Upon the filing of such certificate of withdrawal, the map to which it refers shall be cancelled and all rights thereunder shall cease and determine.

5. The commissioner shall deliver to the attorney general a copy of such acquisition map, whereupon it shall be the duty of the attorney general to advise and certify to the commissioner the names of the

owners of the property, easements, interests or rights described in the said acquisition map, including the owners of any right, title or interest therein, pursuant to the requirements of section four hundred three of the eminent domain procedure law.

6. If, at or after the vesting of title to such property in the people of the state of New York in the manner provided for in this section, the commissioner shall deem it necessary to cause the removal of an owner or other occupant from such property, he may cause such owner or other occupant to be removed therefrom by proceeding in accordance with section four hundred five of the eminent domain procedure law. The proceedings shall be brought in the name of the commissioner as agent of the state. If any person proceeded against shall contest the petition by an answer, the attorney general shall be notified, and he thereafter shall represent the petitioner in the proceedings. No execution shall issue for costs, if any, awarded against the state or the commissioner but they shall be part of the costs of the acquisition and be paid in like manner. Proceedings may be brought separately against one or more of the owners or other occupants of a property, or one proceeding may be brought against all or several of the owners or other occupants of any or all property within the territorial jurisdiction of the same justice or judge; and judgment shall be granted for immediate removal of persons defaulting in appearance or in answering, or withdrawing their answers, if any, without awaiting the trial or decision of issues raised by contestants, if any.

7. Upon making any agreement provided for in section three hundred four of the eminent domain procedure law, the commissioner of environmental conservation shall deliver to the comptroller such agreement and a certificate stating the amount due such owner or owners thereunder on account of such appropriation of his or their property and the amount so fixed shall be paid out of the state treasury from moneys appropriated for purposes connected with the flood control projects, but not until there shall have been filed with the comptroller a certificate of the attorney general showing the person or persons claiming the amount so agreed upon to be legally entitled thereto.

8. Application for reimbursement as provided in section seven hundred two of the eminent domain procedure law, shall be made to the commissioner upon forms prescribed by him and shall be accompanied by such information and evidence as the commissioner may require. Upon approval of such application, the commissioner shall deliver a copy thereof to the comptroller together with a certificate stating the amount due thereof, and the amount so fixed shall be paid out of the state treasury after audit by the comptroller from monies appropriated for the acquisition of property under this section.

9. a. The commissioner with the approval of the director of the budget, shall establish and may from time to time amend rules and regulations authorizing the payment of the following expenses and losses incurred by the displaced owners or occupants of a property acquired pursuant to this section as a result of such acquisition:

(1) actual reasonable and necessary moving expenses; and

(2) actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation on such property, but not exceeding an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the commissioner; and

(3) actual reasonable and necessary expenses in searching for a replacement to the business or farm operation on such property; and

(4) actual and reasonable expenses necessary to reestablish a displaced farm operation, non-profit organization, or small business from such property at its new site but not to exceed the maximum amount provided for in the regulations.

b. Such regulations may provide in hardship cases for the advance payment of any such expenses and losses. For the purposes of making payment of such expenses and losses only, such regulations shall provide that the term "business" includes any lawful activity conducted primarily for assisting in the purchase, sale, resale, manufacture, processing or marketing of products, commodities, personal property or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located

on the premises on which any of the above activities are conducted. Such rules and regulations may further define the terms used in this subdivision. Such regulations may also provide for payments to utilities for the relocation of their facilities under such circumstances and in such amounts as the commissioner may determine.

c. Any person eligible for the payments authorized by paragraph a of this subdivision, who is displaced from their residential property may, in lieu of such payments, elect to accept an expense and dislocation allowance, determined in accordance with a schedule prepared by the commissioner and made a part of such rules and regulations.

d. Any person eligible for the payments authorized by paragraph a of this subdivision, who is displaced from their business or farm operation and who is eligible under criteria established by the department may, in lieu of such payments, elect to accept a fixed relocation payment, except that such payment shall be not less than the minimum nor more than the maximum amount provided for in the regulations. However, a person whose sole business at the property so acquired is the rental of such property to others shall not qualify for payment under this paragraph.

e. Application for payment under this subdivision shall be made to the commissioner upon forms prescribed by the commissioner and shall be accompanied by such information and evidence as the commissioner may require. Upon approval of such application, the commissioner shall deliver a copy thereof to the comptroller together with a certificate stating the amount due thereunder, and the amount so fixed shall be paid out of the state treasury after audit by the comptroller from moneys appropriated for the acquisition of property under this section. No payment shall be made under this subdivision for any cost, expense, difference or other amount for which payment was previously made.

f. The regulations necessary to implement this subdivision shall be consistent with the applicable provisions of section thirty of the highway law, as the same may from time to time be amended, and regulations issued thereunder.

10. The commissioner pursuant to section three hundred five of the eminent domain procedure law, may make agreements on such terms, conditions and consideration as he deems beneficial to the state with respect to any property heretofore or hereafter acquired, whereby such property may be used and occupied by the former owner, tenant or by any other party from a date specified in said agreement, until such time as the state requires and obtains actual physical possession. The agreements for the use and occupancy of such property may be managed, supervised and enforced (1) by the staff, forces and equipment of the department of environmental conservation; or (2) by the commissioner of environmental conservation contracting for the management, supervision and enforcement thereof with any person, firm or corporation; or (3) by a combination of such methods.

The use and occupancy of such property under the provisions of this section and the right of the state or its duly authorized agent to recover possession thereof shall not be subject to the emergency housing rent control law.

Expenses which are determined by the commissioner to have been incurred in connection with the use and occupancy of such property may be paid out of the state treasury after audit by the comptroller from moneys appropriated for the duly authorized project for which the property was acquired. However, such expenses incurred under a contract for management and supervision of such property may be paid out of the gross revenue therefrom. All moneys received by the commissioner for such use or occupancy shall be paid into the treasury of the state to the credit of the capital construction fund.

11. a. Authorization is hereby given to the commissioner to make supplemental relocation payments, separately computed and stated, to displaced owners and tenants of residential property acquired pursuant to this section who are entitled thereto, as determined by the commissioner. The commissioner with the approval of the director of the budget, may establish and from time to time amend rules and regulations providing for such supplemental relocation payments. Such rules and

regulations may further define the terms used in this subdivision.

b. In the case of residential property acquired pursuant to this section, which is improved by a dwelling actually owned and occupied by the displaced owner for not less than one hundred eighty days immediately prior to initiation of negotiations for the acquisition of such property, such supplemental relocation payment to such owner shall not exceed the maximum amount provided for in the regulations. Such payment shall include the following elements:

(1) the amount, if any, which, when added to the acquisition payment equals the average price, established by the commissioner, required to obtain a comparable replacement dwelling for such displaced owner, but in no event shall such payment exceed the difference between acquisition payment and the actual purchase price of the replacement dwelling; and

(2) the amount which will compensate such displaced owner for any increased interest costs required to pay for financing the acquisition of the comparable replacement dwelling. Such amount shall be paid only if the dwelling on the property acquired pursuant to this section was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than one hundred eighty days prior to the initiation of negotiations for the acquisition of such property. Any such compensating interest payment made pursuant to this provision shall, notwithstanding the provisions of section twenty-six-b of the general construction law, be in lieu of and in full satisfaction of the requirements of such section; and

(3) an amount which will compensate such displaced owner for reasonable expenses incurred for evidence of title, recording fees and other closing costs incident to the purchase of the comparable replacement dwelling, but not including prepaid expenses.

c. Any supplemental relocation payment made pursuant to paragraph b of this subdivision shall be made only to a displaced owner who purchases and occupies a comparable replacement dwelling within one year subsequent to the date on which such owner is required to move from the dwelling on the property acquired pursuant to this section or the date on which such owner receives from the state final payment for such acquired dwelling, whichever occurs later. The commissioner may extend

such period for good cause; provided however, that any payment shall be based on the costs of relocating the displaced person to a comparable replacement dwelling within one year of such extended date. The regulations may provide that advance payment of such payments may be made in hardship cases.

d. In the case of residential property acquired pursuant to this section from which an owner or tenant, not otherwise eligible to receive a supplemental relocation payment pursuant to the provisions of paragraph b of this subdivision, is displaced from any dwelling thereon which has been actually and lawfully occupied by such owner or tenant for not less than ninety days immediately prior to (1) the initiation of negotiations for the acquisition of such property or (2) such other event as regulations may prescribe when the displacement is not a direct result of such acquisition, such supplemental relocation payment to such owner or tenant shall not exceed the maximum amount provided for in the regulations. Such payment shall be the amount which is necessary to enable such owner or tenant to lease or rent for a period not to exceed the maximum time specified in the regulations, a comparable replacement dwelling but such amount shall not exceed the maximum amount specified in the regulations. Such payments may be made in periodic installments as determined by the commissioner. Any person eligible for a supplemental relocation payment under this paragraph may elect to use such payment for the down payment, including reasonable incidental expenses incurred by such person on the purchase of, a comparable replacement dwelling, except such payment shall not exceed the maximum amount provided for in the regulations.

e. Application for payment under this subdivision shall be made to the commissioner upon forms prescribed by the commissioner and shall be accompanied by such information and evidence as the commissioner may require. Upon approval of such application, the commissioner shall deliver a copy thereof to the comptroller, together with a certificate stating the amount due thereunder, and the amount so fixed shall be paid out of the state treasury after audit by the comptroller from moneys appropriated for the acquisition of property under this section. No payment shall be made under this subdivision for any cost, expense,

difference or other amount for which payment was previously made.

f. The regulations necessary to implement this subdivision shall be consistent with the applicable requirements of section thirty of the highway law, as the same may from time to time be amended, and regulations issued thereunder.

12. Any owner may present to the court of claims, pursuant to section five hundred three of the eminent domain procedure law, a claim for the value of such property appropriated and for legal damages, as provided by law for the filing of claims with the court of claims. Awards and judgments of the court of claims shall be paid in the same manner as awards and judgments of that court for the acquisition of lands generally and shall be paid out of the state treasury from moneys appropriated for purposes connected with the flood control projects.

13. Permits for use of flood control lands. No person shall construct any improvement, excavate, deposit material or operate a motorcycle, motor-driven cycle, snowmobile or motor vehicle except lawn maintenance equipment upon lands acquired or burdened by a flood control easement pursuant hereto without a permit. Permits will be issued by the commissioner where the proposed activity will not interfere with or endanger the flood control works, or impede the maintenance or operation of such works. The commissioner may adopt such rules and regulations as he may deem necessary to protect flood control works from damage which may interfere with their proper and safe operation, or impede their maintenance. Failure to comply with the provisions of this section or with rules and regulations promulgated pursuant hereto shall be a violation.

14. The commissioner notwithstanding any other provisions of this act or any other law, may acquire by grant or purchase any property which he deems necessary, in order to carry out the projects herein authorized.

Payment therefor, if any, shall be made in the manner prescribed in this section for the payment of adjusted claims, provided, however, that no interest in real property shall be so acquired unless the title

thereto shall be approved by the attorney general.

15. The expense of such acquisitions including the cost of making surveys, and preparing maps of property to be acquired, serving notices, making appraisals and agreements and of searches ordered and examinations and readings of title made by the attorney general, and expenses incurred by the commissioner or attorney general in proceedings for removal of owners and occupants, shall be deemed part of the cost of such flood control projects.

16. Notwithstanding the provisions of any general, special or local law, the commissioner, his officers or agents, and the officers, agents or contractor of the United States when engaged on flood control projects, may enter upon property for the purposes of making surveys, test pits, test borings, or other investigations and also for the purposes of temporary occupancy during construction. Any claim for damage caused by such work or on account of such temporary occupancy, not exceeding five thousand dollars, may be adjusted by agreement by the commissioner without acquiring such property. Upon making any such adjustment and agreement the commissioner shall deliver to the comptroller such agreement and a certificate stating the amount due such owner for damage caused by such work, or on account of such temporary occupancy, and the amount so fixed shall be paid out of the state treasury from moneys appropriated for purposes connected with the flood control projects.

17. The commissioner (a) May determine whether any property taken for any of the purposes connected with flood control projects pursuant to this section may be leased, sold or exchanged on terms beneficial to the state, and in all cases of such determination subject to compliance with section four hundred six of the eminent domain procedure law, he may, lease, sell or exchange such property; in order to carry any such lease, sale or exchange into effect, the commissioner is hereby authorized to execute and deliver, in the name of the people of the state, a quit claim or lease of such property.

(b) May also convey to the United States for flood control purposes all right, title and interest of the state in and to any property

heretofore or hereafter so taken for any of such purposes for which reimbursement by the United States is made in accordance with section two of the federal flood control act of nineteen hundred thirty-eight being public law, numbered seven hundred and sixty-one, seventy-fifth congress, and including improvements made thereon for such purposes. Such conveyance shall be by deed or instrument of quit claim, executed by the commissioner in the name of the people of the state, delivered to the federal authority having jurisdiction. This paragraph shall not prevent reservations, if any, in such a conveyance, agreed to by such commissioner and federal authority, to protect leases or easement, if any, theretofore lawfully made or created by such commissioner. Whenever the United States, acting by and through said federal authority having jurisdiction, shall cause to be filed in the office of the secretary of state of this state, a duplicate original of the deed or instrument of conveyance to the United States of any such property for the purposes herein specified, such jurisdiction as may be required for flood control purposes is thereupon ceded to the United States over the property described in said deed or instrument of conveyance, during the time that the United States shall be or remain the owner thereof and shall use such property for flood control purposes.

(c) Is hereby authorized to agree with the United States as to the value of the property appropriated and for legal damages caused by any such appropriation thereof, as and for reimbursement by the United States, and the commissioner is authorized to convey such property to the United States, in the manner herein provided, specifying in such conveyance that the consideration stated therein is the agreed value of such property and legal damages, and is in full reimbursement thereof by the United States.

18. The attorney general is hereby authorized and empowered to certify to the United States of America or a department, agency or authority thereof having jurisdiction therein, the right, title or interest vested in the people of the state of New York in and to property acquired for the purpose of this act for which reimbursement is to be made by the United States of America to the people of the state of New York.

19. If the commissioner shall determine subsequent to the acquisition of a temporary easement right in property and subsequent to the filing of a description and map of such property in the office of the county clerk, as aforesaid, that the purposes for which such easement right was acquired have been accomplished and that the use and occupancy of said property for flood control purposes are no longer necessary, and that, therefore, the term of such easement should be further limited, or if the appropriation of such easement was for an indefinite period, that such period should be fixed and determined, or that the period of such easement has by its terms expired, the commissioner shall make a certificate that the use and occupancy of such property for flood control purposes are no longer necessary, that the property in which such easement right was acquired is surrendered back to the affected owner of said property and that such easement right is thereupon terminated, released and extinguished. The commissioner shall cause a copy of such certificate to be filed in the main office of the department. Upon the filing of such certificate in the office of the department all rights acquired by the state in such property shall cease and determine. The commissioner shall cause a copy of such certificate together with notice of the filing thereof in the main office of the department to be mailed to the owner of the property affected, as certified by the attorney general, if the place of residence of such owner is known or can be ascertained by a reasonable effort. A further copy of such certificate and notice of filing shall be filed in the office of the recording officer of each county wherein the property affected is situated. On the filing of such certificate and notice with such officer it shall be the duty of such officer to record same in the books used for recording deeds in the office of such officer.

§ 16-0109. Projects authorized.

The projects herein authorized consist in general of all projects for flood control lying wholly or partially within the state of New York which have been or may be approved by the federal government and for which federal funds shall be made available.

§ 16-0111. Powers and duties of commissioner.

The commissioner is hereby authorized and directed for and in behalf of the state to carry out the state's participation in a federal program of flood control, to sign all necessary agreements, and to do and perform all necessary acts in connection therewith to consummate the intent and purpose running with the approval by the federal government of flood control projects in New York state and the allotment of moneys for such projects, if, as and when made by the federal government. He is authorized and empowered, notwithstanding any other law of this state, to carry out the provisions of this act and to perform and do such other and further acts not hereby specifically provided in this act as may be necessary to carry out the projects herein authorized and so as to conform with the act and rules, regulations and requirements of the federal government made to govern the expenditures. Work may be carried out by contract or by department forces or by a combination of these two methods. However, if the commissioner deems it to be in the interest of the public, he may agree with a municipal corporation affected by such work, to have its contractor or its forces and equipment perform such work, upon such terms as the commissioner may deem advantageous to the state. The commissioner shall exercise his powers and duties with respect to the said flood control projects in a manner that will comply with any act of congress applicable thereto and any rules and regulations made and promulgated by virtue thereof.

§ 16-0113. Municipalities bearing cost.

The commissioner together with the benefiting municipality or municipalities as specified in a local cooperation agreement shall carry out the relocation and reconstruction of streets, sidewalks, public grounds, parks, cemeteries, water supply systems, sewer systems and lighting systems, county roads and town highways, and any other structures or facilities made necessary by the construction of federal flood control projects. The total cost of such relocation and reconstruction for a flood control project shall be apportioned between

the state and the benefiting municipality or municipalities pursuant to the provisions of subdivision three of section 16-0115 of this article. The commissioner of transportation shall approve any such relocation and reconstruction on property under his jurisdiction.

§ 16-0115. Municipal participation in federal program; raising and disbursement of funds; local cooperation agreements.

1. Prior to the commencement of any federal flood protection project, the governing body of any benefiting municipality or municipalities must execute a local cooperation agreement which will specify the cost to be borne by the municipality. The moneys so required shall be paid by such benefiting municipality or municipalities and shall be raised by tax or pursuant to the local finance law, or in accordance with any local charter or law, as the case may be. All such funds shall be paid by such benefiting municipality or municipalities in a manner specified in a local cooperation agreement.

2. The non-federal share of any costs related to development of any flood control project required by the federal government shall be borne by the state except for construction costs which shall be shared in accordance with the percentages specified in paragraphs (a) and (b) of subdivision three of this section.

3. The assignment of responsibility for all required non-federal items of cooperation shall be specified in the local cooperation agreement as follows:

(a) the state shall bear fifty percent of those costs required by the federal government including lands, easements, rights-of-way, relocations, and cash contributions if any.

(b) the benefiting municipality or municipalities shall bear fifty percent of those costs required by the federal government including lands, easements, rights-of-way, relocations, and cash contributions if any.

(c) the costs of all lands, easements, rights-of-way and relocations borne by the state or a benefiting municipality or municipalities shall

be a credit against the respective shares of the state and the benefiting municipality or municipalities.

(d) the operation and maintenance of the project, once constructed, shall be the responsibility of the benefiting municipality or municipalities in accordance with the guidance and direction of the state and under the controlling principle that flood control is the primary purpose.

(e) replacement of project facilities shall be the responsibility of the state provided that replacement is not due to deferred maintenance.

4. Notwithstanding any other provisions of this section, for any flood control project for which a local cooperation agreement was developed or a letter of intent was furnished to the federal government before January first, nineteen hundred eighty-seven, the state of New York shall not pay less than the total costs of all lands, easements, rights-of-way, bridges and relocations, with the exception of lands owned by the benefiting municipality or municipalities and the relocation of facilities owned by the benefiting municipality or municipalities.

5. Any local cooperation agreement may include such additional terms and conditions as the commissioner may determine to be necessary.

§ 16-0117. Use of lands acquired for other purposes for flood control; transfer by commissioner; dual purpose use.

Notwithstanding any other provisions of this act or any other law, the commissioner is authorized to use either exclusively for, or in conjunction with, flood control purposes any property under his jurisdiction acquired for other public purposes. Transfer of such use shall be effected by an official order of the commissioner to be filed in the offices of the department and of the department of state, accompanied by a description and map of such property. When the use is to be exclusively for flood control purposes then upon such filing of the description, map and official order of transfer of use, the property shall be used and maintained for flood control purposes and be governed

as though the said property was acquired pursuant to the provisions of this article for flood control purposes. When dual use is to be made of such property for flood control purposes and other public purposes by the state, the official order of transfer shall so certify, and upon such filing of the description, map and official order of transfer, the property shall be used and maintained for such dual purposes, and is, in the discretion of the commissioner, to be governed either by this article or the act under which jurisdiction was acquired by the commissioner or both. When grade crossing elimination property is involved, the official order of transfer shall also be approved by the commissioner of transportation.

§ 16-0119. Disbursements.

The moneys hereby appropriated shall be payable by the commissioner of taxation and finance on the audit and warrant of the comptroller on vouchers approved by the commissioner.

ARTICLE 17

WATER POLLUTION CONTROL

- Title 1. General provisions and public policy
- 3. Jurisdiction of the department; authority; powers and duties
 - 5. Prohibitions
 - 7. Permits and certificates
 - 8. State pollutant discharge elimination system
 - 9. Procedure
 - 10. Control of the bulk storage of petroleum
 - 11. Scope and construction; other remedies
 - 13. Approval of marine toilet pollution control devices and establishing effluent standards therefor
 - 14. Nonpoint source water pollution control
 - 15. Realty subdivisions: sewerage service
 - 17. Discharge of sewage into waters
 - 19. State aid: collection, treatment, and disposal of sewage
 - 21. Nutrient runoff

TITLE 1

GENERAL PROVISIONS AND PUBLIC POLICY

Section 17-0101. Declaration of policy.

17-0103. Statement of purpose.

17-0105. Definitions applicable to portions of this article.

§ 17-0101. Declaration of policy.

It is declared to be the public policy of the state of New York to maintain reasonable standards of purity of the waters of the state consistent with public health and public enjoyment thereof, the propagation and protection of fish and wild life, including birds, mammals and other terrestrial and aquatic life, and the industrial development of the state, and to that end require the use of all known available and reasonable methods to prevent and control the pollution of the waters of the state of New York.

§ 17-0103. Statement of purpose.

It is the purpose of this article to safeguard the waters of the state from pollution by preventing any new pollution and abating pollution existing when the predecessor of this chapter was enacted, under a program consistent with the declaration of policy stated in section 17-0101.

§ 17-0105. Definitions applicable to portions of this article.

When used in titles 1 to 11, inclusive, and titles 14 and 19 of this article:

1. "Person" or "persons" means any individual, public or private corporation, political subdivision, government agency, municipality,

industry, co-partnership, association, firm, trust, estate or any other legal entity whatsoever.

2. "Waters" or "waters of the state" shall be construed to include lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic ocean within the territorial limits of the state of New York and all other bodies of surface or underground water, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters which do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction.

3. "Marine district" shall include the waters of the Atlantic ocean within three nautical miles from the coast line and all other tidal waters within the state, except the Hudson river northerly of the south end of Manhattan Island.

4. "Sewage" means the water-carried human or animal wastes from residences, buildings, industrial establishments or other places, together with such ground water infiltration and surface water as may be present. The admixture with sewage as above defined of industrial wastes or other wastes as hereafter defined, shall also be considered "sewage" within the meaning of this article.

5. "Industrial waste" means any liquid, gaseous, solid or waste substance or a combination thereof resulting from any process of industry, manufacturing, trade, or business or from the development or recovery of any natural resources, which may cause or might reasonably be expected to cause pollution of the waters of the state in contravention of the standards adopted as provided herein.

6. "Other wastes" means garbage, refuse, decayed wood, sawdust, shavings, bark, sand, lime, cinders, ashes, offal, oil, tar, dyestuffs, acids, chemicals, ballast and all other discarded matter not sewage or industrial waste which may cause or might reasonably be expected to cause pollution of the waters of the state in contravention of the

standards adopted as provided herein.

7. "Standard" or "Standards" means such measure of purity or quality for any waters in relation to their reasonable and necessary use as may be established by the department pursuant to section 17-0301.

8. "Sewer system" or "sewerage system" means pipe lines or conduits, pumping stations, and force mains, and all other constructions, devices, and appliances appurtenant thereto, used for conducting sewage, industrial waste or other wastes to a point of ultimate disposal.

9. "Treatment works" means any plant, disposal field, lagoon, pumping station, constructed drainage ditch or surface water intercepting ditch, incinerator, area devoted to sanitary land fills, or other works not specifically mentioned herein, installed for the purpose of treating, neutralizing, stabilizing or disposing of sewage, industrial waste or other wastes.

10. "Disposal system" means a system for disposing of sewage, industrial waste or other wastes, and including sewer systems and treatment works.

11. "Outlet" means the terminus of a sewer system, or the point of emergence of any water-borne sewage, industrial waste or other wastes or the effluent therefrom, into the waters of the state.

12. "Shellfish" includes oysters, scallops, clams, mussels and other aquatic mollusks, and lobsters, shrimp, crawfish, crabs and other aquatic crustaceans.

13. "State Pollutant Discharge Elimination System" or "SPDES" means the system established pursuant hereto for issuance of permits authorizing discharges to the waters of the state.

14. "National Pollutant Discharge Elimination System" or "NPDES" means the national system for the issuance of permits under the Federal Water Pollution Control Act.

15. "Effluent standard and/or limitation" means any restriction on quantities, quality, rates and concentrations of chemical, physical, biological, and other constituents of effluents which are discharged into or allowed to run from an outlet or point source into waters of the state promulgated by the federal government.

16. "Point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft, or landfill leachate collection system from which pollutants are or may be discharged. This term does not include agricultural stormwater discharges and return flows from irrigated agriculture.

17. "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand and industrial, municipal, and agricultural waste discharged into water; and ballast which may cause or might reasonably be expected to cause pollution of the waters of the state in contravention of the standards adopted as provided herein.

18. "Schedule of compliance" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard.

19. "Toxic pollutant" means those pollutants, or combination of pollutants, including disease-causing agents which after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly through food chains, will, on the basis of information available to the department, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions, including malfunctions in reproduction, or physical deformations, in such organisms or their offspring.

20. "New source" means any source, the construction of which is commenced after the publication of a standard or performance applicable to such source under the provisions of the Act, provided such standard is thereafter promulgated and adopted.

21. "Standard of performance" means a standard for the control of the discharge of pollutants which reflects the greatest degree of effluent reduction which the federal government determines to be achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants.

22. "Toxic and pretreatment effluent standard" means standards adopted by the federal government pursuant to section 307 of the Act.

23. "Tanker" means any watercraft of more than three hundred gross tons and having a fully loaded draft of seven feet or more used to carry any liquid cargo, including petroleum, oil or water.

TITLE 3

JURISDICTION OF THE DEPARTMENT;

AUTHORITY; POWERS AND DUTIES

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

17-0303. General powers and duties applicable to portions of this article.

17-0305. Establishment of a program to monitor water quality by private citizens under the direction of the department.

§ 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.

§ 17-0303. General powers and duties applicable to portions of this article.

1. The provisions of this section shall apply only to titles 1 to 11, inclusive, and title 19 of this article.

2. The department shall have administrative jurisdiction to abate and prevent the pollution of waters of the state in the manner herein provided in accordance with the classification of waters adopted by the department pursuant to section 17-0301 and in accordance with standards, criteria, limitations, rules and regulations and permit conditions adopted, promulgated or applied by the department pursuant to title 8 hereof.

3. The department, acting through the commissioner may, from time to time, adopt, amend, or cancel administrative rules and regulations governing the procedure to be followed with respect to hearing, filing of reports, the issuance of permits, and all other matters relating to procedure, and generally, may make such administrative rules and regulations, and do and perform any and all acts, not inconsistent with the provisions of this article listed in subdivision 1 of this section, as may be necessary or proper to carry into effect such provisions of this article listed in subdivision 1 of this section, and may make, amend and repeal rules and regulations for the storage of liquids likely to pollute the waters of the state including, but not limited to,

standards for the construction, installation, maintenance, protection and diking of tanks used to store any such liquids and their associated structures, piping, valves, fittings, fixtures and outlets, in conjunction with the promulgation of which, the commissioner shall consider codes and practices of industries concerned with the handling and storage of such liquids and the time required for persons engaged in such industries to conform with such rules and regulations. Such rules and regulations, before becoming effective, shall 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 120 of the Executive Law.

4. The commissioner is hereby authorized to:

a. Hold public hearings, receive pertinent and relevant proof from any party in interest who appears at such hearing, compel the attendance of witnesses, make findings of fact and determinations, and assess such penalties therefor as are hereinafter prescribed, all with respect to the violations of the provisions of this article listed in subdivision 1 of this section, or the orders issued by the commissioner;

b. Make, modify or cancel orders requiring the discontinuance of the discharge of sewage, industrial waste or other wastes into any waters of the state in accordance with the provisions of this article listed in subdivision 1 of this section, and specifying the conditions and time within which such discontinuance must be accomplished.

c. Institute or cause to be instituted in a court of competent jurisdiction proceedings to compel compliance with the provisions of this article listed in subdivision 1 of this section or the determinations and orders of the commissioner;

d. Issue or deny permits, under such conditions as may be prescribed for the prevention and abatement of pollution, for the discharge of sewage, industrial waste or other wastes, or for the installation or operation of disposal systems or parts thereof;

e. Continue any permit heretofore or hereafter issued under the provisions of this article listed in subdivision 1 of this section, or under the authority of laws previously enacted and thereafter repealed, whenever, after hearing thereon, the commissioner determines that such continuation is necessary or desirable to prevent or abate pollution of any waters of the state;

f. Revoke or modify any construction, operating or discharge permit heretofore or hereafter issued under the provisions of this article listed in subdivision 1 of this section, or under the authority of laws previously enacted and thereafter repealed, whenever, after hearing thereon, the commissioner determines that such revocation or modification is necessary or desirable to prevent or abate pollution of any waters of the state provided, however, that the hearing required under this paragraph may be waived in writing by the applicant or permittees;

g. Conduct such investigations as may be deemed advisable and necessary to carry out the intents and purposes of the provisions of this article listed in subdivision 1 of this section;

h. Settle or compromise, with the approval of the attorney general, any action or cause of action for the recovery of a penalty under the provisions of this article listed in subdivision 1 of this section as he may deem advantageous to the state;

i. Perform such other and further acts as may be necessary, proper or desirable, to carry out effectively the duties and responsibilities prescribed in the provisions of this article listed in subdivision 1 of this section.

5. It shall be the duty and responsibility of the department to:

a. Encourage voluntary cooperation by all persons in preventing and abating pollution of the waters of the state;

b. Encourage the formulation and execution of plans by cooperative

groups or associations of municipalities, industries, and other users of the waters who, severally or jointly, are or may be the source of pollution in the same waters, for the prevention and abatement of pollution;

c. Cooperate with the appropriate agencies of the United States or other states, or any interstate agencies in respect to pollution control matters, or for the formulation for submission to the legislature of interstate pollution control compacts or agreements;

d. Conduct or cause to be conducted studies and research, and provide services by itself or in cooperation with federal, interstate, state or municipal agencies, with respect to pollution abatement or control problems, disposal systems, and treatment of sewage, industrial waste and other wastes, which shall include but not be limited to (1) advances in effectiveness and economies in waste water treatment and plant design and operation, (2) feasible and economical means for providing sewers and sewage treatment works for small communities, (3) economical means for future incorporation of separate sewer service units into area-wide systems, (4) studies of selected problems, such as industrial wastes and changing sewage characteristics, (5) development of a data processing system for periodic determination of the status of water pollution control throughout the state, (6) provision of advisory services for municipal officials in relation to sewage problems, including information material concerning planning, construction and operation, financial assistance programs and methods of defraying the costs of sewers and sewage treatment plants, and (7) assimilative capacities of streams, lakes and other waters of the state;

e. Prepare and develop a general comprehensive plan for the abatement of existing pollution and the prevention of new pollution, by the installation, use, and operation of practical and available systems, methods and means for controlling pollution, recognizing different requirements for separate waters and for different segments of the same waters;

f. Require to be submitted to it, and to consider for approval, plans

for disposal systems or any part thereof, and to inspect the construction thereof for compliance with the approved plans;

g. Serve as an agency of the state for the receipt of moneys from the federal government, or other public or private agencies, and to expend the same, after appropriation therefor, for the purpose of pollution control, studies or research.

h. Establish a water quality surveillance network with sufficient stations and sampling schedule to meet the needs of the state, including ground water and surface water, both fresh and salt, and publish the results of such water quality surveillance network periodically;

i. Develop a public education and promotion program to aid and assist public officials in publicizing needs and securing support for pollution control action;

j. Prepare an annual report on the status of the water pollution control program, covering all phases of the program;

l. Promulgate rules, regulations and standards, subject to the requirements of subdivision 3 of section 17-0303, providing for the testing and measuring of sewage, industrial waste or other wastes, at their outlet or point source into waters of the state, and further providing for the maintaining of a permanent record of the resulting data, and periodically reporting such record to the commissioner, subject to the restriction set forth in subdivision 6 of section 17-0303.

6. The commissioner, or his authorized representative, shall have the right to enter at all reasonable times in or upon any property, public or private, for the purpose of inspecting and investigating conditions relating to pollution, or the possible pollution of any waters of the state, which inspection or examination does not involve confidential information relating to secret processes or economics of operation.

7. The commissioner, or his authorized representative may examine any

records or memoranda pertaining to the operation of a disposal system or treatment works which examination does not involve confidential information relating to secret processes or to economics of operation.

8. The commissioner, or his or her authorized representative, shall disclose to the public the date, location and source of a petroleum spill, including, but not limited to, information pertaining to the cleanup of such spill and the presence of methyl tertiary butyl ether (MTBE). In the event of such spill, the department shall post such information on its website within a reasonable period of time, including additional related information as soon thereafter as it becomes available.

§ 17-0305. Establishment of a program to monitor water quality by private citizens under the direction of the department.

1. The commissioner shall establish a program which shall be known as the "citizens statewide lake assessment program". The purpose of this program is to establish a network of volunteers belonging to lake associations throughout the state to monitor the condition of their respective lakes under the guidance and direction of the department. The volunteers, designated by the commission, will sample the assigned lakes on a weekly basis between May and September. Water quality information will be obtained by measuring water transparency and taking samples for water chemistry. Samples shall be processed by the volunteers and forwarded to a contract chemistry laboratory for analysis.

2. The commissioner shall establish and fill a new permanent position of program coordinator for the monitoring program within the division of water.

3. The commissioner shall establish a training program for the purpose of providing the volunteers with the skills necessary to accomplish their monitoring tasks. Quality control checks will be carried out on a regular basis by the program coordinator, and through the lake

classification and inventory survey.

4. The commissioner will provide the volunteers with all of the equipment and materials necessary to accomplish the monitoring.

5. Chemistry parameters shall include, but are not limited to, tests for total phosphorus, nitrate, color and chlorophyll. Additional survey data shall include, but not be limited to, aquatic vegetation surveys, angler surveys and questionnaires/surveys for water users concerning problems, issues and use impairment.

6. The program coordinator shall prepare an annual report which will include a summary of the information collected on the monitored waters during the previous season. This information shall be distributed to the program participants and other interested parties.

TITLE 5

PROHIBITIONS

Section 17-0501. General prohibition against pollution.

17-0503. Prohibition against pollution of waters of marine district.

17-0505. Prohibition against certain acts without permit.

17-0507. Prohibition against modification of wastes discharged through existing outlet or point source without permit.

17-0509. Minimum treatment required.

17-0511. Restrictions on discharge of sewage, industrial waste or other wastes.

§ 17-0501. General prohibition against pollution.

1. It shall be unlawful for any person, directly or indirectly, to throw, drain, run or otherwise discharge into such waters organic or inorganic matter that shall cause or contribute to a condition in contravention of the standards adopted by the department pursuant to

section 17-0301.

§ 17-0503. Prohibition against pollution of waters of marine district.

1. Sewage, industrial waste or other wastes, or any substance injurious to edible fish and shellfish, or the culture or propagation thereof, or which shall in any manner affect the flavor, color, odor or sanitary condition of such fish or shellfish so as to injuriously affect the sale thereof, or which shall cause any injury to the public and private shell fisheries of this state shall not be placed or allowed to run into the waters of the state in the marine district nor into any waters of Long Island, tributary to the marine district.

2. Garbage, cinders, ashes, oils, sludge or refuse of any kind shall not be thrown, dumped or permitted to run into the waters of the marine district.

§ 17-0505. Prohibition against certain acts without permit.

The making or use of an outlet or point source discharging into the waters of the state, and the operation or construction of disposal systems, without a valid SPDES permit as provided by section 17-0701 or title 8 hereof are prohibited.

§ 17-0507. Prohibition against modification of wastes discharged through existing outlet or point source without permit.

Increasing or altering the content of the wastes discharged through an outlet or a point source into the waters of the state by a change in volume or physical, chemical or biological characteristics without a SPDES permit so to do as provided by section 17-0701 or title 8 hereof, or standards, criteria, limitations, rules or regulations promulgated or applied pursuant thereto, is prohibited.

§ 17-0509. Minimum treatment required.

1. As used in this section, the term "effective secondary treatment" shall mean the removal of substantially all floating and settleable solids and the removal of at least eighty-five percent of suspended solids and at least eighty-five percent of five day biochemical oxygen demand, or such other standard as may be adopted pursuant to the Act.

2. The minimum degree of treatment required for the discharge of sanitary sewage into the surface waters of the state shall be effective secondary treatment, provided, however, that additional treatment may be required consistent with the standards established for specific waters by the department pursuant to section 17-0301 or with standards, criteria, limitations, rules or regulations promulgated or applied pursuant to title 8 hereof.

§ 17-0511. Restrictions on discharge of sewage, industrial waste or other wastes.

The use of existing or new outlets or point sources, which discharge sewage, industrial waste or other wastes into waters of this state is prohibited unless such use is in compliance with all standards, criteria, limitations, rules and regulations promulgated or applied by the department pursuant to this article.

TITLE 7

PERMITS AND CERTIFICATES

Section 17-0701. Permit for outlet, point source and for disposal system required.

17-0703. Issuance, denial, and revocation of permits.

17-0705. Certificates of compliance for purposes of the Real Property Tax Law.

17-0707. Certificates of compliance for purposes of the Tax Law.

§ 17-0701. Permit for outlet, point source and for disposal system required.

1. It shall be unlawful for any person, until a written SPDES permit therefor has been granted by the commissioner, or by his designated representative, and unless such permit remains in full force and effect, to:

a. Make or cause to make or use any outlet or point source for the discharge of sewage, industrial waste or other wastes or the effluent therefrom, into the waters of this state, or

b. Construct or operate and use a disposal system for the discharge of sewage, industrial waste, or other wastes or the effluent therefrom, into the waters of the state, or make any change in, addition to or an extension of any existing disposal system or part thereof which would materially alter the volume of, or the method or effect of treating or disposing of the sewage, industrial waste or other wastes, or

c. Increase or alter the content of the wastes discharged through an outlet or point source into the waters of the state by a change in volume or physical, chemical or biological characteristics.

2. Notwithstanding any other provision of this article, for the purposes of this title, the following definitions shall be applicable:

a. "Industrial waste" means any liquid, gaseous, solid or waste substance or a combination thereof resulting from any process of industry, manufacturing, trade, or business or from the development or recovery of any natural resources, which may cause or might reasonably be expected to cause pollution of the waters of the state.

b. "Other wastes" means garbage, refuse, decayed wood, sawdust, shavings, bark, sand, lime, cinders, ashes, offal, oil, tar, dye-stuffs, acids, chemicals, ballast and all other discarded matter not sewage or industrial waste which may cause or might reasonably be expected to

cause pollution of the waters of the state.

3. No permit prescribed by subdivision 1 of this section shall be issued by the commissioner or by his designated representative until the requirements of title 8 of this article and the regulations promulgated thereunder have been satisfied.

4. a. A person, corporation, public authority or public benefit corporation hereafter intending to construct a nuclear steam-electric generating facility shall file an environmental feasibility report, in a form prescribed by the commissioner, with the department concurrently with the filing of the preliminary safety analysis report required to be filed with the United States atomic energy commission for a nuclear power plant.

b. No person, corporation, public authority, or public benefit corporation shall construct or operate any new steam-electric generating facility or increase the capacity of any existing steam-electric generating facility without a permit issued in accordance with the provisions of this subdivision allowing thermal discharge from such facility to the waters of the state. A public hearing may be conducted by the department prior to the issuance of any such permit.

5. A SPDES permit shall be issued to the applicant upon such conditions as the commissioner may direct:

a. if the commissioner finds on the basis of the submitted plans or application that the discharge from the outlet or point source or modified disposal system will not be in contravention of the standards, criteria, limitations, rules and regulations adopted or applied by the department; or

b. in case no classification has been made of the receiving waters at said outlet or point source or into which such proposed discharge is to be made, if the commissioner finds that such proposed discharge will not be injurious to public health and public enjoyment thereof, the propagation and protection of fish and wild life, the industrial

development of the state and will not contravene standards, criteria, limitations, rules and regulations adopted or applied pursuant to title 8 hereof.

6. The permit prescribed by subdivision 1 of this section and title 8 hereof shall not be required for the construction and use of a new or modified disposal system, point source or outlet when such disposal system, point source or outlet is designed to discharge or discharges sewage effluent without the admixture of industrial wastes or other wastes to the ground waters of the state when such discharge consists of a flow of less than one thousand gallons per day. Nothing contained in this subdivision shall be construed to permit the making or use of an outlet or point source discharging an effluent to the waters of the state in contravention of any standards adopted by the former Water Pollution Control Board or the former Water Resources Commission and continued by this article or adopted by the department or standards, criteria, limitations, rules or regulations promulgated or applied pursuant to title 8 hereof, or discharging an effluent in such a manner as to expose sewage on the ground surface, impair the quality of waters of the state used for drinking purposes or otherwise create a nuisance or menace to health. A county, city, town or village may adopt and enforce additional local laws, ordinances and regulations or enforce existing local laws, ordinances and regulations relating to discharges of sewage herein referred to, including local laws, ordinances and regulations requiring a permit for disposal systems, point sources or outlets for such discharges, provided that such local laws, ordinances and regulations are not inconsistent with the provisions of this chapter or the sanitary code.

7. The commissioner may delegate to qualified personnel of county and city health departments his duties of review and approval of plans and issuance of permits required in subdivisions 1, 3 and 4 of this section, subject to such conditions as he may establish.

9. In the case of a major steam electric generating facility, as defined in section one hundred forty of the public service law, for the construction or operation of which a certificate is required under

article eight of such law, an applicant shall apply for and obtain such certificate in lieu of filing plans and reports and obtaining a permit under this section. Any reference in this article to a permit under this section shall, in the case of such major steam electric generating facility, be deemed for all purposes to refer to such certificate, provided that nothing herein shall limit the authority of the departments of health and environmental conservation to monitor the environmental and health impacts resulting from the operation of such major steam electric generating facility and to enforce applicable provisions of the public health and environmental conservation laws and the terms and conditions of the certificate governing the environmental and health impacts resulting from such operation.

§ 17-0703. Issuance, denial, and revocation of permits.

1. The permit provided in section 17-0701 and title 8 hereof shall be issued by the commissioner or by his designated representative, pursuant to regulations of the department adopted in accordance with subdivision 3 of section 17-0303 and title 8 hereof.

2. Public hearings, on due notice, shall be conducted by the commissioner or by his designated representative in connection with the issuance of any order or determination denying, revoking, continuing or modifying a permit as provided by section 17-0701 paragraph f of subdivision 4 of section 17-0303 and title 8 hereof, unless the applicant or permittee waives said hearing in writing and no request for a public hearing has been received from any interested party.

§ 17-0705. Certificates of compliance for purposes of the Real Property Tax Law.

1. For the purposes of section 477 of the Real Property Tax Law, the commissioner or his designated representative is hereby authorized to issue certificates of compliance concerning industrial waste treatment facilities, and industrial waste treatment controlled process facilities

as defined in such law. No such certificate shall be issued unless the facility to which it is applicable is in compliance with applicable provisions of titles 1 to 11, inclusive, and title 19 of article 17, article 19, and title 1 of article 27 of this chapter; of the Public Health Law; of the state sanitary code and of regulations, permits or orders issued pursuant thereto.

2. In the case of facilities which have not been completed prior to the close of a taxable status date with respect to which an exemption may be claimed under the Real Property Tax Law, a temporary certificate of compliance may be issued if the commissioner or his representative is satisfied, on the basis of the construction which has taken place, that such facilities, when completed, will be in compliance with the provisions of titles 1 to 11, inclusive, and title 19 of article 17, article 19, and title 1 of article 27 of this chapter; of the Public Health Law; of the state sanitary code, and regulations, permits or orders issued pursuant thereto. Such a temporary certificate shall apply only to taxes levied as of the taxable status date with respect to which such a certificate is issued.

§ 17-0707. Certificates of compliance for purposes of the Tax Law.

1. For the purposes of sections 208, 210, 606 and 612 of the Tax Law, the commissioner or his designated representative is hereby authorized to issue certificates of compliance concerning industrial waste treatment facilities and industrial waste treatment controlled process facilities as defined in such law. No such certificate shall be issued unless the facility to which it is applicable is in compliance with applicable provisions of titles 1 to 11, inclusive, and title 19 of article 17, article 19, and title 1 of article 27 of this chapter; of the Public Health Law; of the state sanitary code and of regulations, permits or orders issued pursuant thereto.

2. In the case of facilities which have not been completed prior to the close of a taxable year for which a deduction may be claimed under the Tax Law, a temporary certificate of compliance may be issued if the

commissioner or his representative is satisfied, on the basis of the construction which has taken place, that such facilities will be in compliance with the provisions of titles 1 to 11, inclusive, and title 19 of article 17, article 19, and title one of article 27 of this chapter; of the Public Health Law of the state sanitary code, and regulations, permits or orders issued pursuant thereto. Such a temporary certificate shall apply only to expenditures made in the taxable year with respect to which such a certificate is issued.

TITLE 8

STATE POLLUTANT DISCHARGE ELIMINATION SYSTEM

- Section 17-0801. Purpose.
- 17-0803. SPDES permits; application.
- 17-0804. Rules and regulations.
- 17-0805. Notice and public participation; access to information.
- 17-0807. Prohibited discharges.
- 17-0808. Municipal and industrial stormwater discharges.
- 17-0809. Effluent limitations.
- 17-0810. Stormwater management design manual modification.
- 17-0811. Application of effluent standards and limitations; water quality standards; other requirements.
- 17-0813. Compliance schedules.
- 17-0815. SPDES permits; additional terms and conditions.
- 17-0815-a. Discharge point signs.
- 17-0816. Coordination with AEM program.
- 17-0817. SPDES permits; duration and reissuance.
- 17-0819. Applications, reports, notices; provisions to insure verity.
- 17-0821. Fees.
- 17-0823. Power plant siting.
- 17-0825. Discharges of industrial waste to publicly owned treatment works.
- 17-0826. Notification of discharges affecting groundwaters.
- 17-0826-a. Mandatory sewage release reporting and notification by publicly owned treatment works and operators of

publicly owned sewer systems.

- 17-0827. Conflicts of interest.
- 17-0828. Discharges affecting groundwaters.
- 17-0829. Inspection and entry.
- 17-0831. Environmental monitors for tankers.

§ 17-0801. Purpose.

To create a state pollutant discharge elimination system (SPDES) to insure that the State of New York shall possess adequate authority to issue permits regulating the discharge of pollutants from new or existing outlets or point sources into the waters of the state, upon condition that such discharges will conform to and meet all applicable requirements of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251, et seq.) hereinafter referred to as the "Act", and rules, regulations, guidelines, criteria, standards and limitations adopted pursuant thereto relating to effluent limitations, water quality related effluent limitations, new source performance standards, toxic and pretreatment effluent limitations, ocean discharge criteria, and monitoring, and to participate in the national pollutant discharge elimination system (NPDES) created by the Act.

§ 17-0803. SPDES permits; application.

Except as provided by subdivision five of section 17-0701 of this article, it shall be unlawful to discharge pollutants to the waters of the state from any outlet or point source without a SPDES permit issued pursuant hereto or in a manner other than as prescribed by such permit. The department shall, by rule and regulation, require that every applicant for a permit to discharge pollutants into the waters of the state shall file such information at such times and in such form as the department may reasonably require to execute the provisions of this article. Rules and regulations adopted hereunder may provide that in lieu of issuance of such permit the department may accept as compliance herewith a permit duly issued by the federal government or an agency

thereof pursuant to the provisions of the Act.

§ 17-0804. Rules and regulations.

The rules and regulations adopted by the department to implement this title and the provisions of article 70 of this chapter and rules and regulations thereunder shall govern permit applications, renewals, modifications, suspensions and revocations under this title.

§ 17-0805. Notice and public participation; access to information.

1. a. Public notice of a complete application for a SPDES permit, including: (i) all renewals of SPDES permits issued in lieu of NPDES permits; (ii) other permit renewals, except renewals of permits for projects defined as minor in article 70 of this chapter; and (iii) modifications involving substantive changes in permit requirements or authorized activities, except modification of permits for projects defined as minor under article 70 of this chapter, shall be circulated in a manner designed to inform interested and potentially interested persons and any other state, the waters of which may be affected, of such application. Such notice shall include, where appropriate, the following: (i) the applicant's name and address; (ii) a brief description of the project or proposed project and its location; (iii) a list of all department permits directly related to the project for which application has been made; (iv) the name and classification of the water body to which discharges are being made or are to be made; (v) the volume and type of the discharge authorized or to be authorized; (vi) the permit's priority ranking score; (vii) the name and telephone number of the department and the lead agency contact persons for the project; (viii) a statement that copies of the permit application, the existing or draft permit, the fact sheet, the priority ranking fact sheet, worksheet and a description of the SPDES permit priority ranking system are available upon request; and (ix) a statement that written comments or requests for a public hearing on the permit application, draft environmental impact statement or the permit's priority ranking score

may be filed by a time and at a place specified.

b. The department shall provide a period of not less than thirty days following the date of the public notice pursuant to paragraph a of this subdivision during which time interested persons may submit their written views with respect to the application and the priority ranking of the permit. The period for comment may be extended at the discretion of the department. All written comments submitted during such thirty day or extended period shall be retained by the department and considered in the formulation of the final determination on the application and the priority ranking of the permit. The department may, in its discretion, provide an opportunity for the applicant or any interested agency, person or group of persons to request or petition for a public hearing with respect to such application or the priority ranking of the permit. Such request or petition shall be made during the public notice and comment period. The department shall promulgate rules and regulations with respect to notice, procedures and conduct of public hearings in accordance with due process of law for administrative proceedings and the provisions of the Act.

2. Notwithstanding any other provision of law, any effluent data, any SPDES permit, permit application including a permit renewal application, priority ranking fact sheet or request for permit modification, suspension or revocation shall be available to the public for inspection and copying. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

3. Except insofar as trade secrets would be disclosed, the following information shall be available to the public for inspection and copying;

(a) any public comments, testimony or other documentation concerning a permit application, including a permit renewal application, priority ranking fact sheet or request for permit modification, suspension or revocation; and

(b) any information obtained pursuant to any monitoring, records, reporting or sampling requirements or as a result of sampling or other investigatory activities of the department.

4. The department shall identify and hold confidential any information, except effluent data, SPDES permits, permit applications, including permit renewal applications priority ranking fact sheets or requests for permit modification, suspension or revocation, including information submitted on the forms themselves and any attachments used to supply information required by the forms, shown by any person to be information which, if made public, would divulge methods or processes entitled to protection as trade secrets of such person.

§ 17-0807. Prohibited discharges.

The following discharges into the waters of the state are hereby prohibited.

1. the discharge of any radiological, chemical or biological warfare agent or high-level radioactive waste, as such terms are defined by the Act or pursuant thereto.

2. any discharge which would substantially impair anchorage and navigation, as determined by the Secretary of the Army.

3. any discharge to which the federal government has objected pursuant to any right to object provided by the Act.

4. any discharge not permitted by the provisions of this article, rules and regulations adopted or applicable pursuant hereto, the Act, or provisions of a permit issued hereunder.

§ 17-0808. Municipal and industrial stormwater discharges.

1. Prior to October first, nineteen hundred ninety-two, no permit shall be required for discharges composed entirely of stormwater, except as provided in subdivision two of this section.

2. Subdivision one of this section shall not apply with respect to the

following stormwater discharges:

- a. A discharge with respect to which a permit has been issued under this title prior to the effective date of this section;
- b. A discharge associated with industrial activities directly related to manufacturing, processing, or raw materials storage areas at an industrial plant;
- c. A discharge from a municipal separate storm sewer system serving a population of one hundred thousand or more; or
- d. A discharge which the commissioner determines contributes to a violation of water quality standards adopted pursuant to section 17-0301 of this article or is a significant contributor of pollutants to the waters of the state.

3. Permits for discharges from municipal storm sewers:

- a. May be issued on a system or jurisdiction-wide basis, pursuant to paragraph (a) of subdivision seven of section 70-0117 of this chapter;
- b. Shall include a requirement which regulates non-stormwater discharges into the storm sewers; and
- c. Shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system design and engineering methods, and such other provisions as the commissioner determines appropriate for the control of such pollutants.

4. The commissioner shall promulgate regulations setting forth the requirements for permit applications for stormwater discharges and the deadlines for the receipt of applications.

§ 17-0809. Effluent limitations.

1. SPDES permits issued pursuant hereto shall contain applicable effluent limitations as required by the Act and as may be promulgated by the department.

2. Notwithstanding any other provision of this article, any point source the construction of which is commenced after the date of enactment of the Act and which is so constructed as to meet all applicable standards of performance shall not be subject to any more stringent standard of performance during a ten-year period beginning on the date of completion of such construction or during the period of depreciation or amortization of such facility for the purposes of section 167 or 169 (or both) of the Internal Revenue Code of 1986, whichever period ends first.

3. Notwithstanding any other provision of this article, when effluent limitations are established they must be at least as stringent as the effluent limitations previously required unless the commissioner determines, through regulation, that an exception is warranted as provided in section 303(d) and 402(o) of the Federal Water Pollution Control Act (33 U.S.C. sections 1313(d) and 1342(o)) as amended by the Water Quality Act of 1987; provided, however, no such exceptions may be determined to be warranted in special groundwater protection areas designated pursuant to article fifty-five of this chapter or in Nassau or Suffolk counties where such discharges will impact marine waters within ten years or less. In such areas, the best available technology, that is economically feasible and cost effective based on an analysis that considers direct and avoided economic and environmental costs, shall be applied with special emphasis on reducing nitrogen pollution.

§ 17-0810. Stormwater management design manual modification.

On or before one year following the effective date of this section, the department shall modify the New York State Stormwater Management Design Manual to include the following provisions:

1. Require signage prohibiting swimming and wading, warning of possible contamination or pollution of the stormwater retention pond, and a description with the depth of the stormwater retention pond;
2. Define a reasonable slope past the aquatic bench to limit the immediate drop off to the deeper end of the stormwater retention pond;
3. Require aquatic vegetation be established in the aquatic and safety benches before the stormwater retention pond is rendered in-service;
4. Ensure maintenance plans include a requirement for examining the status of safety features by the maintenance authority in their routine maintenance schedule of stormwater retention ponds; and
5. Any other provisions the department deems essential to further promote safety in and around stormwater retention ponds.

§ 17-0811. Application of effluent standards and limitations; water quality standards; other requirements.

SPDES permits issued pursuant hereto shall include provisions requiring compliance with the following, where applicable;

1. effluent limitation.
2. standards of performance for new sources.
3. toxic and pretreatment effluent standards.
4. ocean discharge criteria adopted by the federal government.
5. any further limitations necessary to insure compliance with water quality standards adopted pursuant to state law.

§ 17-0813. Compliance schedules.

SPDES permits issued pursuant hereto may contain compliance schedules. Such compliance schedules shall require that the permittee within the shortest reasonable time consistent with the requirements of the Act conform to and meet;

1. applicable effluent limitations.
2. any further limitations necessary to insure compliance with water quality standards adopted pursuant to state law.
3. standards of performance for new sources.
4. ocean discharge criteria adopted by the federal government pursuant to the Act.
5. toxic and pretreatment effluent standards.

§ 17-0815. SPDES permits; additional terms and conditions.

SPDES permits shall include the following provisions, terms, requirements and conditions;

1. that all discharges authorized by the permit shall be consistent with the provisions, terms, requirements and conditions of such permit.
2. that facility expansions, production increases or process modifications by the permittee which result in new or increased discharges of pollutants into the waters of the state shall be reported by the permittee by submission of a new SPDES application.
3. that the discharge of any pollutant not identified and authorized by such permit or the discharge of any pollutant more frequently than or at a level in excess of that permitted by such permit shall constitute a violation of the terms of the permit.

4. that, where the permit is for a publicly owned treatment works, notice shall be given the department of any new introduction into such works of pollutants or substantial changes in volume or character of pollutants.

5. that for discharges from publicly owned treatment works appropriate measures will be established by the permittee to insure compliance by industrial users with any system of user charges and recovery of construction costs required under the provisions of the Act.

6. that such permit may be modified, suspended or revoked where the department finds.

a. a violation of any term of the permit;

b. that the permit was obtained by misrepresentation or failure to disclose fully all relevant facts; or

c. a change in conditions or the existence of a condition which requires either a temporary or permanent reduction or elimination of the authorized discharge.

7. such other terms, provisions, requirements or conditions as may be necessary to meet the requirements of the Act.

8. recording, reporting, monitoring, and sampling requirements applicable under the Act.

§ 17-0815-a. Discharge point signs.

1. Any person possessing a SPDES permit which allows the discharge of waste water into the surface waters of the state shall post a sign as provided for in subdivision two of this section at all discharge points to surface waters, except for those sites where the discharge is composed exclusively of storm water runoff.

2. (a) All SPDES permit holders for discharges to surface waters shall erect or post a conspicuous and legible sign of not less than eighteen inches by twenty-four inches bearing the following statement:

"N.Y.S. Permitted Discharge Point Permit No. (here insert permit number). For information on this discharge you can contact:"

The sign shall also contain the following information: The SPDES permit number as issued by the department; the name and telephone number of the permit holder which shall be the business office repository of the permit holder as required by this title; and the name, address and telephone number of the regional department office in which the discharging facility is located.

(b) The permit holder shall provide for public review at the business office repository of the permit holder or at the off-premises location of its choice (such location shall be the village, town, city or county clerk's office, local library or such other location as the department and permit holder shall agree upon) all the Discharge Monitoring Reports (DMR) prepared by the permit holder to demonstrate compliance with the SPDES permit conditions. A copy of each DMR shall be placed on file at such location at the same time it is sent to the department. This information shall be kept on file for the period of the effective dates of the SPDES permit.

(c) The permit holder shall be in compliance with this title by providing, at its option, on or off premises inspection of documents pursuant to paragraphs (a) and (b) of this subdivision and providing the address or location where the required information is available for public review upon an inquiry.

3. The department shall, pursuant to the terms and conditions of the permits issued pursuant to this title, establish the actual appearance and location of the sign on the property of the permit holder in as close proximity to the point of discharge into the surface waters as is reasonably possible while ensuring the maximum visibility from the surface water and shore.

4. It shall be the responsibility of the permit holder to periodically and reasonably maintain the sign to ensure that it is still legible,

visible and factually correct. A good faith documented effort by permit holder to maintain such sign will be an affirmative defense for its absence.

5. The department may in its discretion waive all or part of the requirements of this section if it determines that: (a) such sign cannot be reasonably maintained; (b) such sign would be inconsistent with the provisions of another statute; (c) such sign could not be so located as to provide a public purpose; (d) the nature of the discharge is temporary and of a relatively short duration; (e) the permit has been issued under the terms and conditions of a general permit as authorized by this title; or (f) the discharge is not a major, significant discharge.

§ 17-0816. Coordination with AEM program.

To the extent practical and consistent with the purposes of this title and title seven of this article, SPDES permits for farm operations participating in the agricultural environmental management (AEM) program as set forth in article eleven-A of the agriculture and markets law shall incorporate as part of the SPDES permit terms and conditions any AEM plan prepared for the permit applicant.

§ 17-0817. SPDES permits; duration and reissuance.

1. SPDES permits issued in lieu of national pollutant discharge elimination system permits shall be valid for a fixed term not to exceed five years. All other SPDES permits issued pursuant to this chapter shall be valid for a term not to exceed ten years.

2. All SPDES permits may be administratively renewed in accordance with article seventy of this chapter.

3. The department shall review at least once every five years all existing permits for conformance with new federal treatment technology,

new state water quality classifications and water quality standards.

4. The department shall develop a priority ranking system of SPDES permits. The ranking system shall prioritize permits for full technical review and, when necessary, modification. For purposes of this subdivision, full technical review shall mean the complete evaluation of all elements of the permit associated with the ranking system's priority ranking factors, together with substantive issues identified in comments submitted during the public comment period, and the verification of the accuracy and appropriateness of all other information contained in the permit. Any permits reviewed pursuant to this subdivision shall require compliance with current effluent standards and limitations and water quality standards.

5. Any interested party may request at any time that a permit be modified, suspended or revoked on the grounds that newly discovered, material information has been discovered; that a material change in environmental conditions has occurred; that relevant technology or applicable law or regulations have changed since the issuance of the existing permit; or on other grounds established by the department by regulation. All such requests shall be in writing and contain facts or reasons supporting the request. If the department determines that the request is not justified, it shall send the party a brief written response giving the reasons for the decision. A copy of such request and the department's response shall be sent to the permittee. If the department determines that the request is justified, it shall take action pursuant to article seventy of this chapter.

6. Within eight months after the effective date of this section the department shall hold at least three public hearings to solicit public comments on the SPDES permit priority ranking system, including the permit priority ranking factors and the weighing and scoring system. All comments submitted during the hearing process and associated comment period shall be considered by the department in the review, and modification if appropriate, of the SPDES permit priority ranking system. Thereafter, whenever the department reviews the SPDES permit priority ranking system for possible modification, the department shall

formally solicit and provide for the involvement of the public in such review. The department shall annually publish in the environmental notice bulletin any changes in the priority ranking list, and solicit and provide for the involvement of the public in a review of the priority ranking list.

§ 17-0819. Applications, reports, notices; provisions to insure verity.

All applications, reports, notices or notifications required or authorized to be made or filed by this title or by rules or regulations promulgated pursuant hereto or by the provisions or conditions of any permit issued pursuant to this title or title three of this article by or on behalf of a permittee, applicant for a permit or person in control of an outlet into the water of the state or point source shall be verified or sworn to in respect to all statements of fact therein or shall bear a form notice as provided in section 210.45 of the penal law to the effect that false statements made therein are punishable.

§ 17-0821. Fees.

The department is hereby authorized to establish a schedule of reasonable fees, such schedule taking into consideration the volume of the discharge and treatment costs, for application for issuance of SPDES permits to compensate the department for its expenses hereunder, giving due recognition to the amount of federal assistance available; provided, however, that the department shall not charge a publicly owned drinking water treatment plant the rates charged industrial facilities, but shall consider such plants to be municipal facilities for the purposes of the imposition of fees pursuant to section 72-0602 of this chapter.

§ 17-0823. Power plant siting.

In the case of a major steam electric generating facility, as defined in section one hundred forty of the public service law, for the

construction or operation of which a certificate is required under the former article eight of the public service law, or a major electric generating facility as defined in section one hundred sixty of the public service law, for the construction or operation of which a certificate is required under article ten of the public service law, such certificate shall be deemed a permit under this section if issued by the state board on electric generation siting and the environment pursuant to federally delegated or approved environmental permit authority. Nothing herein shall limit the authority of the department of health and the department to monitor the environmental and health impacts resulting from the operation of such major steam electric generating facility or major electric generating facility and to enforce applicable provisions of the public health law and this article and the terms and conditions of the certificate governing the environmental and health impacts resulting from such operation. In such case all powers, duties, obligations and privileges conferred upon the department by this article shall devolve upon the New York state board on electric generation siting and the environment. In considering the granting of permits, such board shall apply the provisions of this article and the Act.

§ 17-0825. Discharges of industrial waste to publicly owned treatment works.

Persons discharging industrial waste to a publicly owned treatment works shall comply with toxic effluent standards and pretreatment standards and to monitoring, reporting, recording, sampling and entry requirements provided by the Act or adopted pursuant thereto.

§ 17-0826. Notification of discharges affecting groundwaters.

Whenever a provision of this title is violated by a facility operating under or pursuant to a SPDES permit and located within an area designated pursuant to any federal or state statute as a sole source aquifer, all public water purveyors with a service area or portion

thereof located within a three mile radius of the violating facility shall be notified by the department of such violation if the department determines that the violation could have a significant impact on the water resources of the area. The department's notices pursuant to this section shall be made within fourteen days of the official notice of noncompliance of the SPDES permit to the violating facility.

For the purposes of this section "public water purveyor" shall mean any person, partnership, public or private corporation, municipality, or public authority which sells water derived from a sole source aquifer to at least five service connections or at least twenty-five individuals.

§ 17-0826-a. Mandatory sewage release reporting and notification by publicly owned treatment works and operators of publicly owned sewer systems.

1. Publicly owned treatment works or the operator of a publicly owned sewer system shall immediately, but in no case later than two hours after discovery, report discharges of untreated or partially treated sewage, including combined sewer overflows, except partially treated sewage discharged directly from a publicly owned treatment works that is in compliance with a department approved plan or permit, to the department and the local health department, or if there is none, the New York state health department. Such report shall, at a minimum, include, to the extent knowable with existing systems and models:

- (a) the volume and treated state of the discharge;
- (b) the date and time of the discharge;
- (c) the expected duration of the discharge;
- (d) a brief description of the steps being taken to contain the discharge except for wet weather combined sewer overflow discharges;
- (e) the location of the discharge, with the maximum level of specificity possible; and
- (f) the reason for the discharge.

2. In addition to subdivision one of this section, as soon as possible, but no later than four hours from discovery of the discharge,

the publicly owned treatment works or the operator of a publicly owned sewer system shall notify the local health department or if there is none, the New York state health department, the chief elected official or their authorized designee of the municipality in which the discharge occurred and the chief elected official or their authorized designee of any adjoining municipality that may be affected. The same notification shall also be provided within the same timeframe to the general public, pursuant to regulations to be promulgated under subdivision four of this section through appropriate electronic media, including, but not limited to, electronic mail or voice communication as determined by the department.

3. The department, in consultation with the department of health, shall post reported information on its website expeditiously and shall prepare a report on publicly owned treatment works and sewer system discharges annually. The report shall, at a minimum, include: the total number of discharges, details of such discharges including the volume and treated state of the discharge, and the duration and location of each discharge; as well as any remedial responses taken to mitigate impacts and avoid further discharges.

4. The department shall promulgate rules and regulations that are necessary for the implementation of this section. Such regulations as are necessary for the implementation of the public notification requirements of subdivision two of this section shall provide only for public notification of discharges that may present a threat to public health, considering the potential for exposure and other relevant factors. Such regulations may also include preconditions for notification of any discharge that is not subject to a permit issued under this title and does not present a threat to public health, considering the potential for exposure and other relevant factors.

§ 17-0827. Conflicts of interest.

The commissioner of the department or his designee responsible for issuance of SPDES permits hereunder, is hereby prohibited from

receiving, or during two years prior to approval of an application for a permit from having received, a significant portion of his income directly or indirectly from permit holders or applicants for a permit. For the purposes of this section (a) "significant portion of his income" shall mean ten percent of gross personal income for a calendar year, except that it shall mean fifty percent of gross personal income for a calendar year if the recipient is over sixty years of age and is receiving such portion pursuant to retirement, pension, or similar arrangement; (b) "income" includes retirement benefits, consultant fees, and stock dividends; and (c) income is not received "directly or indirectly from permit holders or applicants for a permit" where it is derived from mutual-fund payments, or from other diversified investments over which the recipient does not know the identity of the primary sources of income.

§ 17-0828. Discharges affecting groundwaters.

In addition to any other requirements imposed by this title, any person seeking a SPDES permit or a renewal hereunder, within an area designated pursuant to any federal or state statute as a sole source aquifer, shall include as a part of the required information, the name and address of all public water purveyors with a service area or portion thereof located within a three mile radius of the applicant's facility. The names of all public water purveyors identified in the SPDES permit application or renewal shall be included in the project description as set forth when announced in the environmental notice bulletin.

For the purposes of this section "public water purveyor" shall mean any person, partnership, public or private corporation, municipality, or public authority which sells water derived from a sole source aquifer to at least five service connections or at least twenty-five individuals.

§ 17-0829. Inspection and entry.

(a) To carry out the purposes of this Act or any rule, regulation, order, or permit, issued thereunder, the department or its authorized

representative, upon presentation of his credentials:

(1) shall have a right of entry to, upon, or through any premises in which any effluent source is located or in which any records are required to be maintained;

(2) may at reasonable times have access to and copy any records required to be maintained;

(3) may inspect any monitoring equipment or method which is required; and

(4) may have access to and sample any discharges or pollutants to waters or to publicly owned treatment works resulting directly or indirectly from activities or operations of the owner or operator of the premises in which the effluent source is located.

(b) For the purposes of this section the term "effluent source" shall mean:

(1) a point source of the discharge of pollutants or

(2) a source of introduction of pollutants into publicly owned treatment works by an industrial user.

§ 17-0831. Environmental monitors for tankers.

1. At the discretion of the commissioner, a tanker withdrawing or transporting water where such withdrawal or transport was authorized pursuant to a permit issued under section 15-1506 of this chapter shall be accompanied by an environmental monitor authorized by the department.

2. It shall be the duty of such environmental monitor to inspect and monitor the compliance of such tankers with all federal, state and local requirements for operations and ballasting.

3. Nothing in this section shall prohibit the department from entering into a memorandum of understanding with the board of commissioners of pilots, created by article six of the navigation law, to allow licensed pilots to perform the functions of environmental monitors.

4. The department is authorized to set environmental monitoring fees to recover all costs associated with such monitors. Every tanker

withdrawing or transporting water where such withdrawal or transport was authorized pursuant to a permit issued under section 15-1506 of this chapter shall be subject to such fees.

TITLE 9 PROCEDURE

Section 17-0901. Hearings.

17-0903. Notices; service of process.

17-0905. Proceedings before the commissioner.

17-0907. Hearings for persons aggrieved.

17-0909. Review by courts.

§ 17-0901. Hearings.

1. Public hearings shall be conducted by the commissioner, or his duly designated representative or representatives prior to issuance of an order directing any person to discontinue discharge of sewage, industrial waste or other wastes which contravene the standards established for any waters of the state or standards, criteria, limitations, rules or regulations promulgated or applied pursuant to title 8 hereof.

2. The hearings herein provided may be conducted by the commissioner, or by the duly designated hearing officer or officers, at any time and place.

3. A record, or summary thereof, of the proceedings of said hearings shall be made and filed with the department. If requested to do so by any party concerned with said hearing, the full stenographic notes of the testimony presented at said hearing shall be taken and filed. The stenographer shall, upon the payment of his fees allowed by law therefor, furnish a certified transcript of the whole or any part of his notes to any party to the action requiring the same.

4. In any such hearing, the hearing officer or any member of the

hearing panel, may administer oaths, examine witnesses, and issue, in the name of the department, notices of hearings and subpoenas requiring the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in any such hearing. A designation of a person or persons by the commissioner to perform the functions herein authorized shall be in writing and filed in the department.

5. In case of contumacy or refusal to obey a notice of hearing or subpoena issued under this section, the supreme court shall have jurisdiction, upon application of the commissioner or his duly designated representative, to issue an order requiring such person to appear and testify or produce evidence, as the case may require, and any failure to obey such order of the court may be punished by said court as a contempt thereof.

§ 17-0903. Notices; service of process.

1. Notices of all public hearings held pursuant to this title shall specify the time, date and place of hearing.

2. Service of all processes, except subpoenas, shall be made in the same manner as a summons in a civil action or by registered or certified mail with a return receipt requested, addressed to the individual served in person or in a representative capacity as hereinafter provided at his last known residence, office or place of business. Such service shall be made upon a municipality by serving the chief executive or counsel thereof, upon a sewer district, authority, commission or private corporation by serving an officer thereof, or upon an unincorporated association or partnership or other company of persons, which has a president or treasurer, by serving either of such officers.

3. Subpoenas shall be served upon the witnesses personally, together with such fees therefor as may be provided by law.

§ 17-0905. Proceedings before the commissioner.

1. The commissioner may, on his own motion, investigate or make inquiry, in a manner to be determined by him, as to the condition of any of the waters of the state and as to any alleged act of pollution or omission or failure to comply with any provisions of titles 1 to 11, inclusive, or title 19 of this article.

2. Whenever 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, or title 19 of this article, he shall give written notice to the alleged violator or violators setting forth any thing or act done or omitted to be done or claimed to be in violation of any such provisions, and requiring that the matters complained of be corrected, or that the alleged violator appear in person or by attorney before the commissioner or his duly designated representative, at the time and place in said notice specified, and answer the charges complained of.

3. Whenever it shall appear to the commissioner, after investigation, that industrial or other wastes turned or allowed to run into a sewer or sewage disposal system, the content of which ultimately is discharged into the waters of the state, is a cause or contributes to the pollution of the said waters, he shall also notify the person or persons allowed to be responsible for the discharge of the industrial or other wastes into the sewer or sewage disposal system of any alleged violations on his or their part and shall notify him or them to appear at said hearing and answer the charges made against him or them.

4. At least twenty days' notice of such hearing shall be given.

5. Upon the return day of such notice the person so notified shall file with the commissioner a statement setting forth the position of the person so notified, the answer, if any, to the charges made against him, the methods, practices and procedures, if any, which are being taken to prevent polluting discharges into the waters of the state or the sewer or sewage disposal system which ultimately empties into said waters, and any other defenses or information pertinent to the case. Pertinent and relevant testimony of witnesses shall be received in support of or

opposition to said statement.

6. The burden of proof with respect to violations of or liability imposed by titles 1 to 11, inclusive, and title 19 of this article shall, except as otherwise provided in section 71-1941, be upon the department.

7. After due consideration of the written and oral statements, and testimony and arguments filed pursuant to subdivision 5 above, or on default in appearance on said return day, the commissioner may issue and enter such final order or make such final determination as he deems appropriate under the circumstances, and shall notify such person or persons thereof in writing, personally, or by registered mail.

§ 17-0907. Hearings for persons aggrieved.

1. This section shall apply only to titles 1 to 11, inclusive, and title 19 of this article.

2. The commissioner shall grant a hearing to any person not previously heard in connection with the making of a determination, or order, who within twenty days after service upon him of a copy of a notice, order or determination of the commissioner, may file a petition with the department alleging that the said order or determination is or are contrary to fact and injurious to him, and that said order or determination cause him damage by the invasion of or interference with a private right or privilege, particularly appertaining to him. At such hearing the petitioner may appear in person or by attorney, present witnesses, submit evidence and be given full opportunity to be heard. Following such hearing, the commissioner shall make his determination, which, unless an appeal is taken therefrom, shall be final and conclusive.

§ 17-0909. Review by courts.

1. The provisions of this section shall apply only to titles 1 to 11, inclusive, and title 19 of this article.

2. All orders or determinations of the commissioner or the department shall be subject to review as provided in article 78 of the Civil Practice Law and Rules. Application for such review must be made within sixty days after service in person or by mail of a copy of the determination, or decision upon the attorney of record of the applicant and of each person who has filed a notice of appearance, or to the applicant in person directly if not represented by an attorney.

3. Where a review as provided by article 78 of the Civil Practice Law and Rules is not maintainable, either because the person aggrieved was not a party to the original proceedings, or for any other reason, an order or determination of the former water pollution control board, the former water resources commission, the department or the commissioner may nevertheless be reviewed as hereinafter provided:

a. Application for relief shall be made by special proceeding. The petition shall be verified and shall set forth that the classification of waters, standards of quality and purity thereof, or the finding, determination, decision or order sought to be reviewed is illegal, in whole or in part, and specify the grounds of the illegality; it may be accompanied by affidavits and other written proof, and shall demand the relief to which the petitioner supposes himself entitled, in the alternative or otherwise. Such petition may be made by any person or persons jointly or severally aggrieved by a denial or revocation of a permit or by any decision of the former Water Pollution Control Board, the former Water Resources Commission, the department, or the commissioner or any act of the executive secretary or other agent or person acting in the name of such board, commission, department, or the commissioner whether or not such petitioner is or was a party to the proceedings sought to be reviewed.

b. A proceeding brought under the provisions of this subdivision must be instituted by service of the petition and notices of application for relief, within four months after publication as herein provided of the

classification of waters or the standards of purity and quality of waters, or after the finding, determination, decision or order sought to be reviewed becomes final and binding upon the petitioner or the person whom he represents, either in law or in fact; or with the court's permission within two years, where the petitioner or the person whom he represents, at the time such determination became final and binding upon him, was under the age of twenty-one years, or mentally ill, or imprisoned on a criminal charge or sentenced for a term of less than life.

c. In all other respects the procedure prescribed in subdivision 2 shall be applicable to a review provided by this subdivision.

TITLE 10

CONTROL OF THE BULK STORAGE OF PETROLEUM

Section 17-1001. Legislative findings and declarations.

17-1003. Definitions.

17-1005. Leak detection.

17-1007. Corrective actions.

17-1009. Registration.

17-1011. Access to records and facilities.

17-1013. State petroleum bulk storage advisory council.

17-1015. State petroleum bulk storage standards.

17-1016. Reduction of air pollution from petroleum bulk storage facilities.

17-1017. Preemption of local law.

§ 17-1001. Legislative findings and declarations.

The legislature finds and declares that the lands and waters of New York state constitute an irreplaceable resource upon which is founded the well-being of public health, economic vitality and the state's environment; that these resources may be contaminated by spills and leaks of petroleum from active and abandoned petroleum bulk storage facilities; that once contaminated the quality of these resources cannot

be completely restored to their original state; and that contamination of these resources must be prevented through improved safeguards in storage and handling.

The legislature declares these spills and leaks to be a threat to the public welfare of the state and hereby exercises the power of the state to prevent these spills and leaks from occurring through the establishment of a state petroleum bulk storage code for new and substantially modified facilities.

§ 17-1003. Definitions.

As used in this title:

1. "Facility" means a single property or contiguous or adjacent properties used for a common purpose which are owned or operated by the same person on or in which are located:

a. one or more stationary tanks which are used singularly or in combination for the storage or containment of more than one thousand one hundred gallons of petroleum; or

b. any tank whose capacity is greater than one hundred ten gallons that is used for the storage or containment of petroleum, the volume of which is ten percent or more beneath the surface of the ground.

This term shall not include:

(1) facilities licensed under article twelve of the navigation law;

(2) facilities regulated under the federal natural gas act;

(3) a heating oil tank used for on premises consumption at the same site which is not interconnected to any other heating oil tank and is used to store or contain less than one thousand one hundred gallons of petroleum unless such tank is located on a site that otherwise meets the definition of facility given in this subdivision;

(4) tanks eleven hundred gallons or less used to store motor fuel (gasoline or diesel products) for non-commercial purposes (not for

resale) at a farm or residence, unless such tank or tanks are located on a site that otherwise meets the definition of facility given in this subdivision;

(5) tanks used to store or contain asphalt, however, tanks used to store or contain asphaltic emulsions are included; or

(6) tanks which have been permanently closed in accordance with regulations promulgated pursuant to section 17-1005 of this title.

2. "Substantially modified facility" means the reconditioning or replacement of an existing tank or installation of a new tank at a facility.

3. "Operator" means any person who leases, operates, controls or supervises a facility.

4. "Owner" means any person who has legal or equitable title to a facility.

5. "Petroleum" means:

a. crude oil and any fraction thereof;

b. any mixture containing crude oil or any fraction thereof; and

c. synthetic forms of lubricating oil, dielectric oils, insulating oils, hydraulic oils and cutting oils.

Such term shall not include:

(1) hazardous waste defined pursuant to section 27-0903 of this chapter;

(2) substances meeting the definition of hazardous substance pursuant to section 40-0105 of this chapter;

(3) animal or vegetable oils that do not contain crude oil or fractions thereof; or

(4) substances that are gases at standard temperature and pressure.

6. "Electronic monitoring system" means an electronic leak detection

system, approved by the department, containing a warning system capable of operating on a continuous basis to detect petroleum prior to its reaching ground or surface waters.

7. "Tank" means a stationary device designed to store petroleum, which is constructed of non-earthen materials that provide structural support. The term "tank" includes all associated pipes, lines, fixtures and other ancillary equipment. The term "tank" does not include septic tank; surface impoundment, pit, pond or lagoon; storm-water or wastewater collection system; flow-through process tank; or liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.

8. "Spill" or "leak" means any escape of petroleum from the ordinary containers employed in the normal course of storage, transfer, processing or use.

§ 17-1005. Leak detection.

1. a. The department shall promulgate rules and regulations to provide for the early detection of leaks or potential leaks by owners and operators.

b. Such rules and regulations shall provide for daily measurements and inventory records for petroleum in each facility using a gauge, gauge stick or automatic gauging system as well as product receipt and disbursement records. The department may exempt facilities which are not engaged in the resale of petroleum from the requirements of this paragraph.

2. a. The department shall establish minimum standards and schedules for testing and inspection of those portions of facilities which are over ten years old. Such schedules shall be based on such factors as inventory methods and electronic monitoring systems; facility age, condition and construction type; soil conditions, location of facility relative to water supplies and other environmental factors.

b. The department shall establish, by rule and regulation, criteria whereby facilities are properly closed and thereby released from testing and inspection requirements. The department may require the owner to provide financial assurances to ensure that the facility is properly closed. Any decision by the department with respect to requiring such financial assurances and the methods or instruments which are to be used shall be accompanied by a finding regarding the public interest and shall set forth the reasons therefor.

§ 17-1007. Corrective actions.

1. Any operator shall within forty-eight hours notify the facility owner and the department, and if the facility is located within any county, or city of a population of one million or more which filed with the department a written declaration under subdivision two of section 17-1017 of this title which is approved by the commissioner in written findings the operator shall also notify such county or city of a population of one million or more, of any abnormal loss or gain detected through daily inventory which cannot be explained by inaccurate record keeping, temperature variations, or other causes not related to leakage. For the purposes of this subdivision, "abnormal loss or gain" shall mean a loss or gain of three-quarters of one percent or greater of the total volume of petroleum handled over a period of ten days.

2. Where a leak or spill of petroleum is suspected or appears probable, the department may order the owner to inspect that tank or tanks or associated equipment suspected to be leaking and to test for tightness and structural soundness or may prohibit delivery pursuant to subdivision four of this section. If the owner fails within ten days to conduct such tests as required under this subdivision, the department may conduct such tests for tightness or structural soundness. The reasonable expenses of conducting such tests incurred by the department shall be paid by the owner.

3. It shall be unlawful to continue operation of any leaking tank or

associated equipment of a facility. The contents of such tank or equipment shall be promptly removed.

4. The department may prohibit deliveries of petroleum to any tank (i) that is leaking or (ii) where a leak appears probable. If the source of the leak or a probable leak cannot be determined, the department may prohibit deliveries to any tank or tanks that may be the probable source of a leak until such time as the source has been identified, at which time the prohibition on delivery will apply to the leaking tank or tanks. In addition, the department may prohibit deliveries of petroleum to any tank that is in violation of any requirement prescribed by regulation pursuant to this title related to:

a. installing required equipment for spill prevention, overfill protection, leak detection, corrosion protection or secondary containment;

b. performing leak detection or inspections of tank systems;

c. properly operating or maintaining leak detection; or

d. properly operating or maintaining spill, overfill or corrosion protection equipment.

(i) The department shall attach a tag to the tank or tanks to identify those tanks to which delivery is prohibited and provide a written notice to the owner and operator specifying the reasons for the prohibition of delivery. The department may consider not prohibiting deliveries of petroleum for up to one hundred eighty days after a determination is made that the facility or tank meets the conditions in this subdivision if such prohibition would jeopardize the availability of, or access to, fuel in any rural and remote areas unless the department has determined that the condition at the facility endangers public health, safety or the environment.

(ii) As promptly as possible thereafter, not to exceed fifteen days, the commissioner shall provide the owner or operator an opportunity to be heard and to present proof that such condition or activity does not violate the provisions of this section or of the rules or regulations

adopted pursuant to this title. The commissioner shall adopt rules and regulations describing the procedure to be followed in the prohibition of petroleum deliveries. In adopting such rules and regulations the department shall allow for the owner or operator at any time to submit information to the department to demonstrate that the owner or operator is in compliance with the requirements or has corrected the violation that prompted the department to prohibit deliveries of petroleum and to allow the tank or tanks to be, as promptly as possible, brought back into operation, not to exceed two business days from the department's determination that a tank is in compliance. The department shall use its best efforts to timely determine compliance. The commissioner shall draft such rules and regulations and submit them to the state petroleum bulk storage advisory council for comments within six months of the effective date of this subparagraph.

(iii) Unless otherwise authorized by the department, no person shall tamper with or remove, or cause the tampering with or removal of, a tag attached to any tank under the provisions of this subdivision.

(iv) No person shall deliver, cause the delivery of, deposit, or accept petroleum to any tank or tanks to which a tag is affixed pursuant to this subdivision.

§ 17-1009. Registration.

1. The department shall consult with the state petroleum bulk storage advisory council to compile a list of facilities within the state. Within thirty days of the promulgation of rules and regulations in accordance with section 17-1005, section 17-1007, and this section of this title, the department shall make available, upon request, a copy of such rules and regulations.

2. All owners shall register the facility with the department. In cases where there are multiple tank owners at a facility, the owners of the tanks may designate one of the tank owners to be an authorized representative to register the tanks. The department is authorized to assess a fee according to a schedule based on the size and type of facility, not to exceed five hundred dollars per facility. Such fee

shall be paid at the time of registration or registration renewal. Registration shall be renewed every five years or whenever ownership of a facility is transferred, whichever occurs first. The owner shall notify the department when the authorized representative or operator of the facility changes. In addition to such registration requirements and pursuant to leak detection requirements set forth in section 17-1005 of this title, notwithstanding any other provision of law, rule or regulation, the department shall duly notify the facility owner of the requirement for such owner to perform the required tightness test on a petroleum bulk storage tank no less than forty-five days prior to the date of the test expiration on the tank. All fees collected pursuant to this subdivision shall be deposited in the New York environmental protection and spill compensation fund established pursuant to section one hundred seventy-nine of the navigation law. The owner must submit, with each application for registration or registration renewal, a five-year fee as follows:

Combined Storage Capacity at Facility	5-Year Fee
Greater than 110 gallons to 1,100 gallons	\$0 per facility
Greater than 1,100 gallons to less than 2,000 gallons	\$100 per facility
Greater than 2,000 gallons to less than 5,000 gallons	\$300 per facility
5,000 gallons to less than 400,000 gallons	\$500 per facility

3. The owner shall, within thirty days prior to reconditioning or replacement of an existing tank or installation of a new tank at a facility, notify the department in writing of such reconditioning, replacement or installation.

4. Owners who become newly subject to registration requirements of this section must, within one year of becoming subject to this section, register the facility and complete any modifications to tanks at the facility to be in compliance with the regulations promulgated pursuant to this title.

§ 17-1011. Access to records and facilities.

1. Every owner or operator shall, upon reasonable notice of the commissioner or his 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 relating to the daily measurement and inventory of petroleum stored at a facility.

2. Any duly designated officer or employee of the department may, at reasonable times and upon reasonable notice of the commissioner or a designee, enter and inspect any facility, provided that such officer or employee shall be accompanied by the owner or operator or their designee.

§ 17-1013. State petroleum bulk storage advisory council.

1. There is hereby created within the department the "state petroleum bulk storage advisory council" hereinafter referred to as the "council". Such council shall consist of seven members, at least one of whom shall be a representative of operators other than owners in the state, at least one of whom shall be a representative of owners in the state, at least one of whom shall be a representative of municipal corporations, and at least two of whom shall be representatives of organizations whose prime function is the protection of natural resources and enhancement of the environmental quality of the state. The members of the council shall be appointed by the commissioner within three months of the effective date of this title. Each member shall be, by professional training or experience and attainment, qualified to analyze and interpret matters pertaining to bulk storage of petroleum.

2. One member shall be elected chairman of the advisory council by a majority vote of the members of such council.

3. The members of the council shall serve without compensation for their services as members of the council, except that each of them may be allowed the necessary and actual expenses which he shall incur in the

performance of his duties under this section.

4. The council shall have the power, duty and responsibility to:

a. Serve as a working forum for the exchange of views, concerns, ideas, information and recommendations relating to the bulk storage of petroleum.

b. Advise the department on the proposal, preparation and revision of the rules and regulations necessary to carry out the provisions of this title.

c. Request and receive from the department at each meeting of the council any portions of the rules and regulations then available for review, whether in final or draft form, and any supporting documents or other pertinent data.

d. Before promulgation of the rules and regulations required by this title, the commissioner shall first submit such rules and regulations to the council for review. The council shall, within sixty days of such submission, recommend in writing to the commissioner any suggested modifications to such rules and regulations.

5. The recording of council proceedings shall be performed by personnel of the department.

§ 17-1015. State petroleum bulk storage standards.

1. The department shall, pursuant to section 17-0303 of this article, promulgate rules and regulations establishing standards for existing and new petroleum bulk storage facilities which shall include, but not be limited to, design, equipment requirements, construction, installation and maintenance. In proposing, preparing and compiling such rules and regulations, the department shall include consideration of the future physical climate risk due to sea level rise, and/or storm surges and/or flooding, based on available data predicting the likelihood of future

extreme weather events, including hazard risk analysis data if applicable. The department shall consult with the state petroleum bulk storage code advisory council in proposing, preparing and compiling such rules and regulations. In addition, the department shall consult with the state fire prevention and building code council to assure that such rules and regulations are consistent with the uniform fire prevention and building code.

2. The department shall establish rules and regulations allowing variances from such standards provided that it can be demonstrated to the department that an alternate design, practice or method of storage provides environmental protection equal to or greater than the requirements of such standard.

3. The department shall promulgate rules and regulations establishing training requirements for operators of petroleum bulk storage facilities. The department shall specify training requirements for:

a. persons having primary responsibility for on-site operation and maintenance of storage tank systems;

b. persons having daily on-site responsibility for the operation and maintenance of storage tank systems; and

c. daily, on-site employees having primary responsibility for addressing emergencies presented by a spill or release from a storage tank system.

§ 17-1016. Reduction of air pollution from petroleum bulk storage facilities.

1. Definitions. For purposes of this section, the terms below shall have the following meanings:

a. "Shell color" shall mean any coating on the sides or shell of a tank, which reduces volatile emissions.

b. "Roof color" shall mean any coating on the roof of a tank, which reduces volatile emissions.

c. "Tank" shall have the meaning set forth in section 17-1003 of this title except that for purposes of this section "tank" means an above-ground tank, unless the department determines the tank to be otherwise sufficiently protected against volatilization in a manner no less protective than subdivision two of this section, and does not include associated pipes, lines, fixtures or other ancillary equipment.

2. Tank coloring. a. No person shall own or operate a facility containing a tank that does not meet the color requirements of this subdivision. Such color requirements shall apply to every tank at a facility regardless of whether the tank is in active use for storage.

b. A tank shall have a shell color and roof color of either white or beige/cream, or which limits volatile emissions to the same or to a greater extent as a shell color and roof color of white or beige/cream, as determined by the department.

§ 17-1017. Preemption of local law.

1. Except as provided in subdivision two of this section, any local law or ordinance which is inconsistent with any provision of this title or any rule and regulation promulgated hereunder shall be preempted.

2. a. Any local law or ordinance of any county, or of any city of a population of one million or more, which is inconsistent with the provisions of this title or any rules or regulations promulgated hereunder shall not be preempted if such local law or ordinance provides environmental protection equal to or greater than the provisions of this title or any rules or regulations promulgated hereunder, and such county or city files with the department a written declaration of its intent to administer and enforce such local law or ordinance which is approved by the commissioner in written findings which set forth the terms of such

approval.

b. When any county, or city of a population of one million or more, files with the department a written declaration of its intent to administer and enforce such local law or ordinance which is approved by the commissioner in written findings which set forth the terms of such approval, the department shall continue to administer and enforce any provision of this title with respect to any public authority created under the public authorities law and the public authority shall notify in writing any such county, or city of a population of one million or more when the public authority registers or reregisters a facility with the department.

TITLE 11

SCOPE AND CONSTRUCTION; OTHER REMEDIES

Section 17-1101. Existing rights and remedies preserved.

17-1103. Persons other than the state acquire no actionable rights.

17-1105. Conflicting laws.

17-1107. Other Environmental Conservation Laws to remain in effect.

§ 17-1101. Existing rights and remedies preserved.

It is the purpose of titles 1 to 11, inclusive, and title 19 of this article to provide additional and cumulative remedies to abate the pollution of the waters of the state and nothing herein contained shall abridge or alter rights of action or remedies now or hereafter existing, nor shall any such provisions or any act done by virtue of such provisions, be construed as estopping the state, persons or municipalities, as riparian owners or otherwise, in the exercise of their rights to suppress nuisances or to abate any pollution now or hereafter existing.

§ 17-1103. Persons other than the state acquire no actionable rights.

The bases for proceedings or actions resulting from the violations of the prohibitions contained in titles 1 to 11, inclusive, and title 19 of this article inure solely to and are for the benefit of the people generally of the state of New York, and it is not intended to in any way create new, or enlarge existing rights of riparian owners or others. A determination by the department or the commissioner that pollution exists or that violations of any such prohibitions have occurred or are occurring, whether or not a proceeding or action may be brought by the state, shall create by reason thereof no presumptions of law or findings of fact inuring to or for the benefit of persons other than the state.

§ 17-1105. Conflicting laws.

Titles 1 to 11, inclusive, and title 19 of this article shall not be construed as repealing any of the laws relating to the pollution of the waters of the state not herein expressly repealed, but shall be held and construed as ancillary to and supplementing the same and in addition to the laws now in force, except as the same may be in direct conflict herewith.

§ 17-1107. Other Environmental Conservation Laws to remain in effect.

Nothing contained in titles 1 to 11, inclusive, and title 19 of this article shall be construed as amending or repealing sections 11-0503 or 13-0345 and any parts of said sections inconsistent with the provisions of titles 1 to 11, inclusive, and title 19 of this article or with any rule, regulation, order or determination authorized by titles 1 to 11, inclusive, and title 19 of this article shall be held to be effective.

TITLE 13

**APPROVAL OF MARINE TOILET POLLUTION
CONTROL DEVICES AND ESTABLISHING**

EFFLUENT STANDARDS THEREFOR

Section 17-1301. Approval of marine toilet pollution control devices and establishing effluent standards therefor.

§ 17-1301. Approval of marine toilet pollution control devices and establishing effluent standards therefor.

The department shall have all the functions, powers, obligations and duties, regarding approval of marine toilet pollution control devices and establishing effluent standards therefor, provided for in section 33-c of the Navigation Law.

TITLE 14

NONPOINT SOURCE WATER POLLUTION CONTROL

Section 17-1401. Purpose.

17-1403. Definitions.

17-1405. Inventory.

17-1407. Priority nonpoint source pollution.

17-1409. State assistance for non-agricultural nonpoint source abatement and control projects.

17-1411. Regulations.

§ 17-1401. Purpose.

It is the purpose of this title to safeguard the waters of the state from nonpoint source pollution by controlling and abating new and existing sources of nonpoint source pollution.

§ 17-1403. Definitions.

As used in this title:

1. "Best management practices" means methods, measures or practices

determined to be the most practical and effective in preventing or reducing the impact of pollutants generated by nonpoint sources to a level compatible with water quality standards established pursuant to section 17-0301 of this article. Best management practices include, but are not limited to, structural and nonstructural controls and operations and maintenance procedures. Best management practices can be applied before, during or after pollution producing activities to reduce or eliminate the introduction of pollutants into receiving waters.

2. "Municipal corporation" means a county, city, town or village or an entity designated to act on behalf of such.

3. "Nonpoint source" means any source of water pollution or pollutants which is not a discrete conveyance or point source permitted pursuant to title seven or eight of this article.

4. "Nonpoint source abatement and control program" means a program of activities and projects for the abatement and reduction of nonpoint source pollution through the implementation of best management practices.

5. "District" means a county soil and water conservation district created pursuant to section five of the soil and water conservation districts law.

§ 17-1405. Inventory.

1. Within eighteen months of the effective date of this title the commissioner, in cooperation with the state soil and water conservation committee, shall prepare a report which:

a. identifies those water bodies within the state which, without additional action to control nonpoint sources of pollution, cannot reasonably be expected to attain and maintain applicable water quality standards; and

b. identifies categories or subcategories of nonpoint sources or particular nonpoint sources which add significant amounts of pollution to each water body identified above.

2. The report prepared pursuant to this section shall be revised by the commissioner in cooperation with the state soil and water conservation committee at least every five years.

§ 17-1407. Priority nonpoint source pollution.

From the inventory developed pursuant to section 17-1405 of this title the commissioner, after consultation with the state soil and water conservation committee, shall develop a prioritized list of water bodies, management of which will reduce and control nonpoint source pollution and improve water quality. In developing such list, consideration shall be given to the existing water quality of the water body, the best usage of the water body pursuant to section 17-0301 of this article and its potential for improvement.

§ 17-1409. State assistance for non-agricultural nonpoint source abatement and control projects.

1. Subject to the availability of funds appropriated therefor, a matching grant program is established to fund the costs of implementing nonpoint source abatement and control projects that meet the following criteria:

a. the project must consist of activities and projects which will significantly reduce, abate or control nonpoint source pollution originating from non-agricultural activities;

b. the project must be proposed for implementation by a municipal corporation, or by a district at the formal request of such corporation;

c. the project must be located within a water body identified by the

commissioner, pursuant to section 17-1407 of this title;

d. the project must propose to implement best management practices which meet the criteria promulgated pursuant to section 17-1411 of this title; and

e. the municipal corporation must have funds available to pay for its share of the eligible project costs.

1-a. Subject to the availability of funds appropriated therefore, a matching grant program is established to fund the cost of comprehensive watershed based water quality management designed to address the reduction and control of nonpoint source pollution and the improvement of water quality in a water body or water bodies identified on the prioritized list developed pursuant to section 17-1407 of this title.

2. Applications for matching grants shall contain the following information:

a. the name and location of the water body and the nonpoint source problem to be addressed;

b. for projects described in subdivision one of this section, an identification of the best management practice to be implemented;

c. a cost estimate for the proposed project;

d. the source of funds available to pay for the non-state share of the eligible costs;

e. information sufficient to demonstrate that the criteria set forth in subdivision one of this section have been met; and

f. such other information as may be required by the commissioner through regulations.

3. In awarding grants pursuant to this section, the commissioner shall

give preference to those projects located or designed to address water quality concerns for in the highest priority water bodies identified pursuant to section 17-1407 of this title.

4. Eligible costs that may be funded pursuant to this section are architectural and engineering services, plans and specifications, consultant and legal services and other direct expenses related to comprehensive watershed based water quality management and project implementation.

5. Matching grants awarded pursuant to this section shall be up to seventy-five percent of the eligible costs for any specified project.

6. Notwithstanding any other provision of law to the contrary, storm water discharges of a municipality permitted pursuant to title seven or eight of this article shall be treated as a non-agricultural nonpoint source for the purpose of qualifying for funding pursuant to this section.

§ 17-1411. Regulations.

The commissioner may promulgate regulations necessary to effectuate the purposes of section 17-1409 of this title including, but not limited to, regulations setting forth criteria for submission and processing of grant applications, components of best management practices and state standards necessary to control nonpoint source pollution.

TITLE 15

REALTY SUBDIVISIONS: SEWERAGE SERVICE

Section 17-1501. Definitions.

17-1503. Local regulations.

17-1505. Plans required to be filed and approved.

17-1507. Filing fees to accompany plans.

17-1509. Cooperation with the Department of Health.

17-1511. Duty of county clerk or register in respect to filing

of plans and map.

17-1513. Remedy for purchaser of one parcel of unapproved realty subdivision.

17-1515. Regulation by commissioner.

§ 17-1501. Definitions.

1. As used in sections 17-1501 to 17-1505, inclusive, and sections 17-1509 and 17-1511, the word "subdivision" shall mean any tract of land which is divided into five or more parcels, after the effective date of this act, along any existing or proposed street(s), highway(s), easement(s) or right(s)-of-way for sale or for rent as residential lots or residential building plots, and in the county of Suffolk also as business, commercial or industrial lots or building plots, regardless of whether the lots or plots to be sold or offered for sale, or leased for any period of time, are described by metes and bounds or by reference to a map or survey of the property or by any other method of description and regardless of whether the lots or plots are contiguous. A tract of land shall constitute a subdivision upon the sale, rental or offer for sale or lease of the fifth residential lot or residential building plot therefrom within any consecutive three year period, and at this time the provisions of section 17-1505 of this chapter shall apply to all such parcels thereof, including the first four parcels, regardless of whether said parcels have been sold, rented or offered for sale or lease singly or collectively.

2. The word "tract" shall mean any body of land, including contiguous parcels of land, under one ownership or under common control of any group of persons acting in concert as part of a common scheme or plan.

3. "Residential lot" or "residential building plot" shall mean any parcel of land of five acres or less, any point on the boundary line of which is less than one-half mile from any point on the boundary line of another such lot in the same tract, unless any such lot may not legally be used for residential purposes. Without limiting the generality of the foregoing, the term "residential" shall include temporary, seasonal and

permanent residential use.

4. For the purposes of this title sewage shall be defined as any substance, solid or liquid that contains any of the waste products or excrementitious or other wastes or washings from the bodies of human beings or animals.

§ 17-1503. Local regulations.

1. Any city or county which has established or establishes a city, county or part-county department of health may adopt regulations for the control of such developments. Regulations adopted by a county or city board of health may include, but not be limited to, establishment of such requirements as it may deem necessary to guarantee the installation of such sewage facilities in accordance with the plans heretofore or hereinafter approved by the county or city department of health or any approved revision or revisions thereof.

2. Nothing contained in sections 17-1501 to 17-1505, inclusive, and sections 17-1511 and 17-1513, shall be construed to delegate the general powers of the department nor to impair nor to deprive the department of its powers and functions as now provided by law.

§ 17-1505. Plans required to be filed and approved.

1. No subdivision or portion thereof shall be sold, offered for sale, leased or rented by any corporation, company or person, and no permanent building shall be erected thereon, until a plan or map of such subdivision shall be filed with and approved by the department or city, county or part-county department of health having jurisdiction and such plan or map thereafter filed in the office of the clerk of the county in which such subdivision is located.

2. Such plan or map shall show methods for obtaining and furnishing adequate and satisfactory sewerage facilities to said subdivision.

3. The installation of such facilities shall be in accordance with the plans or any revision or revisions thereof approved by the department or city, county or part-county department of health having jurisdiction.

4. The rules and regulations adopted by the department to implement this title and the provisions of article 70 of this chapter and rules and regulations adopted thereunder shall govern department processing of approval applications and modifications under this title.

§ 17-1507. Filing fees to accompany plans.

1. At the time of submitting a plan for approval as required by this title, a filing fee computed at the rate of one dollar and seventy-five cents per lot shall be paid to the department or to the city, county or part-county health district wherein such plans are filed, and where the approval sought is from the department, such additional fee as may be specified in article 70 of this chapter shall also be paid.

2. The department, or the city, county or part-county health district, shall not review or approve any such subdivision map submitted for approval after this section takes effect until such fee, as herein provided, has been received by it.

3. If any plan submitted to the department, or to a city, county or part-county health district, cannot be approved, such plan shall be returned to the person who submitted the plan with a summary of the reasons for disapproval.

§ 17-1509. Cooperation with the Department of Health.

Notwithstanding any other provision of this title the Commissioner of Environmental Conservation is empowered to make administrative arrangements with the Commissioner of Health for joint or cooperative administration of this title and title II of Article 11 of the Public

Health Law, such that only one plan must be filed and only one fee totalling three dollars and fifty cents per lot must be paid, except that where department approval is sought in connection with a particular plan or map, such additional fee as may be specified in article 70 of this chapter shall also be paid.

§ 17-1511. Duty of county clerk or register in respect to filing of plans and map.

The county clerk or register shall not file nor record nor accept for filing or recording any map or plat showing a subdivision of land in any town, village or city having a population of less than one million unless there is endorsed thereon or annexed thereto a certificate of the department or city, county or part-county department of health having jurisdiction approving the sewerage systems proposed or installed for such subdivision and consenting to the filing of such map or plat.

§ 17-1513. Remedy for purchaser of one parcel of unapproved realty subdivision.

1. The owner of a parcel of land acquired as one parcel for residential purposes may apply to the department or local health department having jurisdiction for a certificate approving the sewage facilities for said parcel as adequate and satisfactory. The application shall include the description of the parcel as specified in the instrument, by which owner acquired title.

2. The proper department shall entertain said application and issue said certificate providing the sewage facilities will not, in the opinion of such department, result in the contravention of standards adopted for and assigned to the receiving waters pursuant to this chapter, or be injurious to public health for the public enjoyment of said waters, the propagation and protection of fish and wild life or the industrial development of the state or result in the exposure of sewage on the ground surface or impair the quality of the ground water for

drinking purposes or otherwise create a nuisance, or menace or potential menace to health.

3. The certificate approving the sewage facilities for said parcel shall contain the name of the owner-applicant and the description of the property set forth in the application. The owner shall append the certificate of approval to a verified petition directed to the county clerk of the county wherein the property is located, praying that the petition and certificate of approval annexed be recorded and indexed against the owner-petitioner.

4. The county clerk upon receiving the petition with annexed certificate of approval, and upon tender of the lawful recording fees, shall record the same in his office and index it against the owner-petitioner. The recording of the petition with annexed certificate of approval shall be deemed compliance with section 17-1505, for the parcel described.

5. a. This section shall apply only to a single residential lot which was acquired without having complied with the provisions of former section 89 of the Public Health Law or section 17-1505 of this title but was:

1. acquired by the owner-applicant prior to January first, nineteen hundred seventy-one; or

2. acquired by the owner-applicant through devise or intestate succession; or

3. not at the time of acquisition of title by the owner-applicant, a part of a subdivision, as such term is defined in section 17-1501 of this title.

b. In addition, this section shall apply to a single residential lot which the appropriate department deems proper for approval because of hardship or other special circumstances established to its satisfaction by the owner-applicant.

§ 17-1515. Regulation by commissioner.

The commissioner may from time to time establish by rule or regulation standards for subdivisions necessary to effect the purposes of this title and not inconsistent with regulations of a city, county or part-county department of health having jurisdiction, now or hereafter adopted pursuant to law. In the event of and to the extent of such inconsistency, the standards established by the commissioner shall be deemed inapplicable.

TITLE 17

DISCHARGE OF SEWAGE INTO WATERS

Section 17-1701. Definition of sewage; discharge of sewage and other matter into certain waters prohibited.

17-1703. Contamination of salt wells.

17-1704. Discharge of sewage and other offensive matter from new or renovated wastewater disposal systems to the surface waters of the Owasco lake watershed extending from the city dam on the outlet to the existing Moravia village outfall sewer on the inlet are prohibited.

17-1705. Discharge of sewage into Wallkill Creek prohibited.

17-1707. Discharge of sewage into the Susquehanna near Binghamton prohibited.

17-1709. Discharge of sewage and other offensive matter into Lake George and Skaneateles lake prohibited.

17-1710. Deposit of garbage or other refuse on or in waters of the Owasco lake watershed extending from the city dam on the outlet to the existing Moravia village outfall sewer on the inlet is prohibited.

17-1711. Deposit of garbage or other refuse on or in waters of Lake George and Skaneateles lake and their tributaries prohibited.

17-1713. Discharge of sewage and other offensive matter into

- Brant Lake, Loon Lake, Friends Lake and Schroon Lake prohibited.
- 17-1715. Discharge of sewage and other offensive matter into Oneida Lake prohibited.
 - 17-1717. Order to discontinue pollution of waters.
 - 17-1719. Actions by municipalities to prevent discharge of sewage into waters.
 - 17-1721. Reports of municipal authorities to local boards of health.
 - 17-1723. Reports of proprietors of industrial establishments.
 - 17-1725. Permission to discharge sewage.
 - 17-1727. Permission to discharge refuse or waste matter from industrial establishments.
 - 17-1729. Permits for conduit or discharge pipes.
 - 17-1731. Revocation or modification of permits.
 - 17-1733. Record of permits; inspection of local boards of health.
 - 17-1735. Violations; service of notice; actions.
 - 17-1737. Legal construction and limitations; riparian owners.
 - 17-1739. Repeal of provisions.
 - 17-1741. Sewerage; construction; villages.
 - 17-1743. Reporting of spills of liquids stored in bulk.
 - 17-1745. Sewage from vessels.

*** § 17-1701. Definition of sewage; discharge of sewage and other matter into certain waters prohibited.**

1. For the purposes of this title sewage shall be defined as any substance, solid or liquid that contains any of the waste products or excrementitious or other wastes or washings from the bodies of human beings or animals.

2. No person, corporation or municipality, shall place or cause to be placed, or discharged or cause to be discharged into any of the waters of this state, in quantities injurious to the public health, or in violation of standards, criteria, limitations, rules or regulations

promulgated or applied pursuant hereto, any sewage, garbage, offal, or any decomposable or putrescible matter of any kind or the effluent from any sewage disposal plant, or any substance, chemical or otherwise, or any refuse or waste matter, either solid or liquid, from any sewer or drainage system or from any shop, factory, mill or industrial establishment; unless express permission to do so shall have been first given in writing by the commissioner as provided in this article, except as hereinafter provided.

3. This section shall not prevent the discharge of sewage from any public sewer system owned and maintained by a municipality until an order prohibiting same shall be made as hereinafter provided, or the discharge of refuse or waste matter from any shop, factory, mill or industrial establishment, if such sewer system was in operation and was discharging sewage, or such shop, factory, mill or industrial establishment was in operation and discharging refuse or waste matter, into any of the waters of this state on or prior to May 7, 1903, and such municipality or the proprietor of such shop, factory, mill or industrial establishment secured exemption from this section by filing a report with the commissioner in accordance with law, nor to any extension or modification of such shop, factory, mill or industrial establishment, or reconstruction thereof, provided the refuse or waste matter discharged therefrom is not materially changed or increased; but this exception shall not permit any increase in the discharge of such sewage, or in the discharge of refuse or waste matter from any shop, factory, mill or industrial establishment, nor shall it permit the discharge of sewage from a sewer system which shall be extended, modified or reconstructed subsequent to said date.

* NB Expired September 1, 1973

§ 17-1703. Contamination of salt wells.

It shall be unlawful for any person to wilfully place, introduce or cause to flow or enter into any spring, brook or body of water, which is used in the manufacture of salt, or into any salt well, or salt mine, or into any cavity or reservoir beneath the surface of the earth from which

salt or brine is taken or used in the manufacture of salt, any impure or deleterious substance or thing whatsoever, which is liable to pollute the waters thereof, or the brine or salt taken or manufactured therefrom, provided that this act shall not interfere with any existing system of drainage or sewerage.

§ 17-1704. Discharge of sewage and other offensive matter from new or renovated wastewater disposal systems to the surface waters of the Owasco lake watershed extending from the city dam on the outlet to the existing Moravia village outfall sewer on the inlet are prohibited.

1. No person or corporation shall cause or permit the fall, flow or discharge into the surface waters of the Owasco lake watershed extending from the city dam on the outlet to the existing Moravia village outfall sewer on the inlet, of any sewage matter, or other foul, noxious or deleterious, solid or liquid matter or effluent from any wastewater disposal system located therein except for those operating under a duly authorized permit from the state or county health departments and except for run-off from accepted agricultural practices.

2. Existing permitted surface water outlets shall be eliminated by January 1, 1991. In the event of change of ownership or major alteration or renovations to existing wastewater disposal systems, the existing wastewater outlets shall be eliminated and be replaced by an approved sub-surface disposal system.

3. The Cayuga county board of health shall examine any alleged offense of this section within its jurisdiction and cause the same to be abated by injunction or otherwise if found to exist.

*** § 17-1705. Discharge of sewage into Wallkill Creek prohibited.**

No person or corporation shall permit the discharge or escape of any sewage, or other matter deleterious to public health, or destructive to

fish, or throw or cast any dead animal, carrion or offal, or other putrid or offensive matter into the waters of the Wallkill creek, in the counties of Ulster and Orange.

* NB Expired September 1, 1973

*** § 17-1707. Discharge of sewage into the Susquehanna near Binghamton prohibited.**

1. No person or corporation shall cause to fall, flow or discharge into the Susquehanna river or any of its tributaries, between the Rock Bottom dam in such river at the city of Binghamton, and a point one mile east of the bridge that crosses such river at Conklin, any sewage matter, or other foul, noxious or deleterious, solid or liquid matter, or any matter that may be declared such by the board of health of any municipality adjacent to such river within such limit.

The board of health of any such municipality shall examine into any alleged offense against this section and cause the same to be abated, if found to exist.

* NB Expired September 1, 1973

§ 17-1709. Discharge of sewage and other offensive matter into Lake George and Skaneateles lake prohibited.

1. No person or corporation shall cause or permit the fall, flow or discharge into Lake George or Skaneateles lake or any of their tributaries, of any sewage matter, or other foul, noxious or deleterious, solid or liquid matter or effluent from any sewage disposal plant, or any matter that may be declared such by the board of health of any municipality adjacent to such lakes where any such fall, flow or discharge shall occur.

2. The board of health of any such municipality shall examine into any alleged offense against this section within its jurisdiction and cause the same to be abated, by injunction or otherwise, if found to exist.

3. The discharge of sewage or treated sewage effluent into the drainage basin of Lake George is hereby prohibited except as follows:

(a) Subsurface sewage disposal facilities with a design capacity of one thousand gallons per day or less are permitted to discharge within the basin provided said facilities are designed, constructed, operated and maintained in accordance with all applicable laws, regulations and permits issued pursuant thereto.

(b) Subsurface sewage disposal facilities with a design capacity of greater than one thousand gallons per day are permitted to discharge within the basin provided that such facilities:

(i) discharge treated sewage effluent to land or groundwater;

(ii) are designed to meet best technology available;

(iii) are in compliance with a valid state pollutant discharge elimination system (SPDES) permit;

(iv) are designed to meet existing needs only; and

(v) are designed, operated and maintained in accordance with applicable laws and regulations.

(c) The commissioner shall prepare a technical manual describing the best technologies available for sewage disposal facilities within the Lake George basin, which shall include, but not be limited to, specifications for the design, construction, maintenance and monitoring of such facilities and performance standards for nutrient removal. The commissioner shall complete the manual within eighteen months of the effective date of this subdivision and shall notice completion of the manual in the state register and the environmental notice bulletin.

§ 17-1710. Deposit of garbage or other refuse on or in waters of the Owasco lake watershed extending from the city dam on the outlet to the existing Moravia village outfall sewer on the inlet is prohibited.

No person or corporation shall deposit, dump, throw, abandon, discard, or place, or cause to be deposited, dumped, thrown, abandoned, discarded or placed upon or in the waters of the Owasco lake watershed extending from the city dam on the outlet to the existing Moravia village outfall

sewer on the inlet, or upon the frozen surface thereof, any garbage, rubbish, refuse, trash, litter, debris, abandoned properties, waste material or any nauseous or offensive matter.

§ 17-1711. Deposit of garbage or other refuse on or in waters of Lake George and Skaneateles lake and their tributaries prohibited.

No person shall deposit, dump, throw, abandon, discard or place, or cause to be deposited, dumped, thrown, abandoned, discarded or placed upon or in the waters of Lake George or Skaneateles lake, or any of their tributaries, or upon the frozen surfaces thereof, any garbage, rubbish, refuse, trash, litter, debris, abandoned properties, waste material or any nauseous or offensive matter.

*** § 17-1713. Discharge of sewage and other offensive matter into Brant Lake, Loon Lake, Friends Lake and Schroon Lake prohibited.**

1. No person or corporation shall cause or permit the fall, flow or discharge into Brant lake, Loon lake or Friends lake in the county of Warren or Schroon lake located partly in the county of Essex and partly in the county of Warren or any of their tributaries, of any sewage matter, or other foul, noxious or deleterious, solid or liquid matter, or effluent from any sewage disposal plant, or any matter that may be declared such by the board of health of any municipality adjacent to any such lake where any such fall, flow or discharge shall occur.

2. The board of health of any such municipality shall examine into any alleged offense against this section within its jurisdiction and cause the same to be abated, by injunction or otherwise, if found to exist.

3. The prohibition of the discharge of sewage effluent into Schroon lake as hereinbefore in this section provided shall not apply to the treated effluent from a sewage or waste treatment plant which has been,

or may be constructed, maintained and operated in accordance with plans approved and a permit issued by the former Water Pollution Control Board. Such permit shall prohibit the discharge of sewage effluent into Schroon lake or any of its tributaries in any quantities which will adversely affect said waters or which will render said waters unsuitable for any purpose recognized under the classification of said waters by the former Water Pollution Control Board.

* NB Expired September 1, 1973

*** § 17-1715. Discharge of sewage and other offensive matter into Oneida Lake prohibited.**

1. No person or corporation shall cause or permit the fall, flow or discharge into Oneida lake or any of its tributaries of any sewage matter, or other foul, noxious or deleterious, solid or liquid matter, or effluent from any sewage disposal plant, or any matter that may be declared such by the board of health of any municipality adjacent to such lake where any such fall, flow or discharge shall occur.

2. It shall be the duty of the board of health of any municipality where any such fall, flow or discharge shall occur to cause the same to be abated; provided that any person aggrieved by any such fall, flow or discharge may also cause such abatement, by injunction or other appropriate action or proceeding.

3. The prohibition of the discharge of sewage effluent as hereinbefore in this section provided shall not apply to the treated effluent from a sewage or waste treatment plant which has been, or may be, constructed, maintained and operated in accordance with plans approved and a permit issued by the former Water Pollution Control Board. Such permit shall prohibit the discharge of sewage effluent into Oneida lake or any of its tributaries in any quantities which will adversely affect said waters or which will render said waters unsuitable for any purpose recognized under the classification of said waters by the former Water Pollution Control Board.

* NB Expired September 1, 1973

*** § 17-1717. Order to discontinue pollution of waters.**

1. Whenever the commissioner shall determine upon investigation that sewage from any city, village, town, building, steamboat or other vessel, or property, or any garbage, offal or any decomposable or putrescible matter of any kind is being discharged into any of the waters of the state, which shall include all streams and springs and all bodies of surface and ground water, whether natural or artificial, within or upon the boundaries of the state, and when, in the opinion of the commissioner, such discharge is polluting such waters in a manner injurious to or so as to create a menace to health, or so as to create a public nuisance, he may order the municipality, corporation or person so discharging sewage, refuse or other matter, to show cause before him why such discharge should not be discontinued.

2. A notice shall be served on the municipality, corporation or person so discharging sewage, refuse or other matter, directing such municipality, corporation or person to show cause before the commissioner on a date specified in such notice why an order should not be made directing the discontinuance of such discharge. Such notice shall specify the time when and place where a public hearing will be held by the commissioner and notice of such hearing shall be published at least twice in a newspaper of the city, village, town or county where such discharge occurs, and shall be served personally or by mail at least fifteen days before said hearing and in the case of a municipality or a corporation such service shall be upon an officer thereof.

3. The commissioner shall take evidence in regard to said matter and he may issue an order to the municipality, corporation or person responsible for such discharge, directing that within a specified period of time thereafter such discharge be discontinued, and such proper method of treatment or disposal of such sewage, refuse or waste matter be installed as shall be approved by the department.

4. Such order shall not be valid until approved by the Governor and

the Attorney General, and when so approved it shall be the duty of the Attorney General to enforce such order.

5. Such means or method for the treatment or disposal of sewage, refuse or other matter must be executed, completed and put in operation within the time fixed in the order.

6. The commissioner shall have authority to require from the officials and persons responsible for the execution of such orders satisfactory evidence at specified times of proper progress in the execution of such orders, and may stipulate and require that certain definite progress shall be made at certain definite times prior to the final date fixed in the order.

7. This section shall not apply to refuse or waste matter from any shop, factory, mill or industrial establishment not containing sewage.

* NB Expired September 1, 1973

*** § 17-1719. Actions by municipalities to prevent discharge of sewage into waters.**

1. Any incorporated city or village in the state of New York, which has made such provision for the disposal of its sewage as not to pollute or contaminate therewith any river, stream, lake or other body of water, may have and maintain an action in the supreme court to prevent the discharge of any sewage or substance deleterious to health, or which shall injure the potable qualities of the water in any river, stream, lake or other body of water, from which such incorporated city or village shall take or receive its water supply, provided, that such river, stream, lake or other body of water is wholly, or in part, within the boundaries of the county in which such plaintiff is located.

2. Whenever action shall be brought under the provisions of this section, it shall be the duty of the supreme court upon proof of the existence of facts justifying the bringing and maintenance of such action under the provisions of this section to render a judgment in

which shall be incorporated a mandatory injunction requiring the person, body, board, corporation, municipality, village, county or town, being a defendant to said action which directly or indirectly, or by its servants, agents or officers shall discharge or dispose of its sewage, or any other substance deleterious to health or which shall injure the potable qualities of the water in such ways as that the same shall enter into any river, stream, lake or other body of water, from which such plaintiff shall take or receive its water supply, within such reasonable time as may be prescribed by the court, to take such action as shall prevent such discharge or the disposal of such sewage or other substance into such waters, or the pollution thereof, with such further directions in the premises as may be proper and desirable to effect such purpose, provided that such river, stream, lake or other body of water is wholly, or in part, within the boundaries of the county in which such plaintiff is located.

3. No such action shall be brought as provided for in this section until the department has examined and determined whether the sewage does pollute or contaminate the river, stream, lake or other body of water into which said sewage is discharged.

4. The expense of such examination by the department shall be a charge upon and paid by the municipality in whose interests and on whose behalf such examination is made.

5. In case the department shall find upon examination that the discharge of said sewage does pollute or contaminate said waters or any of them in such manner as to be a menace or danger to the health of those using said waters the plans for the removal or disposal of the sewage ordered to be prepared by the court as provided in this section shall be submitted to the department for its approval.

* NB Expired September 1, 1973

*** § 17-1721. Reports of municipal authorities to local boards of health.**

1. The report of the public authorities having by law charge of the

sewer system of every municipality in the state, from which sewer system sewage was being discharged into any of the waters of the state on May 7, 1903, transmitted by the board of health of the municipality within which any sewer outlet of the said sewer system is located to the commissioner and filed by him in his office, shall constitute the evidence of exemption from the prohibition of section 17-1701.

2. No sewer system shall be exempt from the prohibition of said section against the discharge of sewage into the waters of the state for which a satisfactory report shall not have been filed in the office of the commissioner in accordance with chapter 468 of the laws of 1903.

* NB Expired September 1, 1973

*** § 17-1723. Reports of proprietors of industrial establishments.**

1. The report of the proprietor of every shop, factory, mill and industrial establishment in the state, from which refuse or waste matter was being discharged into any of the waters of the state on May 7, 1903, filed in the office of the commissioner shall constitute the evidence of exemption of the shop, factory, mill or industrial establishment from the prohibition of section 17-1701.

2. No shop, factory, mill or industrial establishment shall be exempt from the prohibition of said section against the discharge of refuse or waste matter into the waters of the state, for which a report shall not have been made in accordance with chapter 468 of the laws of 1903.

* NB Expired September 1, 1973

*** § 17-1725. Permission to discharge sewage.**

1. Upon application duly made to the commissioner by the public authorities having by law the charge of the sewer system of any municipality, the commissioner shall have power to consider the case of a sewer system otherwise prohibited by section 17-1701 from discharging sewage into any of the waters of the state, and whenever in his opinion

the general interests of the public health would not be endangered thereby he may issue a permit for the discharge of sewage from any such sewer system into any of the waters of the state, and may stipulate in the permit, modification, regulations and conditions on which such discharge may be permitted.

2. Such application must be made in a form required by the commissioner. The plans for the construction of any sewer system or sewage disposal plant for the extension, reconstruction or modification of sewers, sewer systems or sewage disposal plants the permit for the discharge from which is requested from the commissioner as provided in this section shall be submitted to and approved by the department before such permit becomes effective.

3. Such permit before being operative shall be recorded in the county clerk's office of the county wherein the outlet of the said sewer system is located, and a copy of the permit shall be transmitted by the commissioner to the board of health of the municipality wherein the outlet of said sewer system is located.

* NB Expired September 1, 1973

*** § 17-1727. Permission to discharge refuse or waste matter from industrial establishments.**

1. Upon application duly made to the commissioner by the proprietor, lessee or tenant of any shop, factory, mill or industrial establishment from which the discharge of refuse or waste matter into any of the waters of the state is otherwise prohibited by section 17-1701, the commissioner shall have power to consider the case of the said shop, factory, mill or industrial establishment, and whenever the public health and purity of the waters shall warrant it, he shall issue a permit for the discharge of refuse or waste matter from such shop, factory, mill or industrial establishment into any of the waters of the state, and may stipulate in the permit such modification, regulations and conditions as the public health may require.

2. Such permit before being operative shall be recorded in the county clerk's office of the county where such shop, factory, mill or industrial establishment is located and a copy of such permit shall be transmitted by the commissioner to the board of health of the municipality wherein the outlet discharging refuse or waste matter from such shop, factory, mill or industrial establishment shall be located.

* NB Expired September 1, 1973

*** § 17-1729. Permits for conduit or discharge pipes.**

1. Before any conduit or discharge pipe, or other means of discharging or casting any refuse or waste matter from any shop, factory, mill or industrial establishment not constructed or in process of construction on May 7, 1903, shall be put in or constructed for the purposes of discharging any refuse or waste matter therefrom into any waters in this state, a statement of the purpose for which the same is to be used shall be submitted to the commissioner. If the same is not detrimental to the public health he shall issue a permit therefore to the applicant.

2. Before such permit becomes effective the plan or plans for any such conduit or discharge pipe or other means of discharging or casting any refuse or waste matter shall be submitted to and approved by the department.

3. No such conduit, discharge pipe or other means of discharging or casting any refuse or waste matter from any such shop, factory, mill or establishment into any of the waters of this state shall be put in or constructed before such permit is granted.

* NB Expired September 1, 1973

*** 17-1731. Revocation or modification of permits.**

1. Every permit for the discharge of sewage from a sewer system or for the discharge of refuse or waste matter from a shop, factory, mill or industrial establishment, shall when necessary to conserve the public

health, be revocable or subject to modification or change by the commissioner on due notice after an investigation and hearing and an opportunity for all interested therein to be heard thereon being served on the public authorities of the municipality owning and maintaining the sewer system, or on the proprietor, lessee or tenant of the shop, factory, mill or industrial establishment.

2. Plans for any such modification shall be submitted to and approved by the department.

3. The length of the time after receipt of the notice within which the discharge of sewage or of refuse or waste matter shall be discontinued may be stated in the permit, but in no case shall it exceed two years in the case of a sewer system, or one year in the case of a shop, factory, mill or industrial establishment, and if the length of time is not specified in the permit, it shall be one year in the case of a sewer system, and six months in the case of a shop, factory, mill or industrial establishment.

4. On the expiration of the period of time prescribed after the service of a notice of revocation, modification or change from the commissioner, the right to discharge sewage or refuse or waste matter into any of the waters of the state shall cease and terminate and the prohibition of section 17-1701 against such discharge shall be in full force as though no permit had been granted, but a new permit may thereafter again be granted as hereinbefore provided.

* NB Expired September 1, 1973

*** § 17-1733. Record of permits; inspection of local boards of health.**

1. Each local board of health shall preserve in its office and on a form prescribed by the commissioner, a permanent record of the following:

a. Each permit issued by the commissioner granting the right to discharge sewage or refuse or waste matter into any of the waters of the

state within the municipality;

b. Each revocation of a permit; and

c. Each report received by the local board of health concerning each sewer system and each shop, factory, mill or industrial establishment which on May 7, 1903, was discharging sewage or refuse or waste matter into any of the waters of the state within the municipality.

2. Each local board of health shall make and maintain such inspection as will, at all times, enable it to determine whether section 17-1701 is being complied with in respect to the discharge of sewage, refuse or waste matter or other materials prohibited by said section, into any of the waters of the state within that municipality.

3. For the purpose of such inspection every member of such local board of health, or its health officer, or any person duly authorized by it, shall have the right to make all necessary examinations of any premises, building, shop, factory, mill, industrial establishment, process or sewer system.

* NB Expired September 1, 1973

*** § 17-1735. Violations; service of notice; actions.**

1. The board of health of each municipality shall promptly ascertain every violation of, or noncompliance with, any of the provisions of section 17-1701 or of the permits for the discharge of sewage or refuse or waste material into any of the waters of the state herein provided, which may occur within that municipality, or the commissioner may ascertain such violations or noncompliance.

2. The local board of health shall on the discovery of every violation of or noncompliance with any of the provisions of said section or of any permit duly issued, report the same in writing to the commissioner.

3. Upon receipt of such report from a local board of health the

commissioner shall investigate the matter immediately and shall hold a hearing and give the person or persons charged with such violation or noncompliance an opportunity to present evidence on his or their behalf, and shall ascertain whether a violation or noncompliance exists.

* NB Expired September 1, 1973

*** § 17-1737. Legal construction and limitations; riparian owners.**

Nothing in titles 15 and 17 of this article shall be construed to diminish or otherwise to modify the common law rights of riparian owners in the quality of waters of streams covered by such rights, nor in the case of actions brought against the pollution of waters to limit their remedy to indemnities.

* NB Expired September 1, 1973

§ 17-1739. Repeal of provisions.

The provisions of sections 17-1701, 17-1705, 17-1707, 17-1713 to 17-1737, inclusive, and 71-1925, shall remain in force and effect only until September 1, 1973.

§ 17-1741. Sewerage; construction; villages.

1. Whenever any local board of health in any incorporated village shall deem the sewers of such village insufficient to properly and safely sewer such village, and protect the public health, it shall certify such fact in writing, stating and recommending what additions or alterations should in the judgment of such board of health be made, with its reasons therefor, to the commissioner for his approval.

2. If such recommendations shall be approved by the commissioner, and the plans therefor be approved by the department, it shall be the duty of the board of trustees or other board or officials of such village having jurisdiction of the construction of sewers therein, whether

sufficient funds shall be on hand for such purpose or not, to forthwith make such additions to or alterations in the sewers of such village and execute such recommendations.

3. The expenses of such additions to, or alterations to the sewerage of such village shall be paid for wholly by said village in the same manner as other village expenses are paid or by an assessment of the whole amount against the property benefited, or partly by the village and partly by an assessment against the property benefited, as the board of trustees of such village shall by resolution determine.

4. If the board of trustees shall determine that such expenses shall be paid partly by the village and partly by an assessment against the property benefited, as authorized by this section, it shall in the resolution making such determination fix the proportion of such expense to be borne by each, and the proportion thereof to be raised by an assessment against the property benefited shall be assessed and collected in the same manner provided by the Village Law for the assessment and collection of sewer assessments.

5. Said village is hereby authorized to raise such sum as may be necessary for the payment of the expenses incurred, which are a village charge, if any, as herein provided, in addition to the amount such village is now authorized to raise by law for corporation purposes, and such board shall have the right to acquire such lands, right of way, or other easements, by gift, or purchase, or in case the same cannot be acquired by purchase may acquire the same by condemnation in the manner provided by law.

§ 17-1743. Reporting of spills of liquids stored in bulk.

Any person who is the owner of or in actual or constructive possession or control of more than one thousand one hundred gallons, in bulk, of any liquid, including petroleum, which, if released, discharged or spilled would or would be likely to pollute the lands or waters of the state including the groundwaters thereof shall, as soon as he has

knowledge of the release, discharge or spill of any part of such liquid in his possession or control onto the lands or into the waters of the state including the groundwaters thereof immediately notify the department. Within forty-eight hours of receipt of notification made pursuant to this section of a spill of a hazardous substance or acutely hazardous substance listed pursuant to article thirty-seven of this chapter of a quantity that may threaten the health or safety of the public or environment, the department shall notify the chief executive officer in the village, town, and city in which the spill occurred, and any adjoining city or town or village that the department deems appropriate. In addition, the department shall provide notification of such spill to the general public through local news outlets, newspaper or any other media available to the department. Notification received pursuant to this section or information obtained by the exploitation of such notification shall not be used against any such person in any criminal case, except a prosecution for perjury or for giving a false statement.

§ 17-1745. Sewage from vessels.

1. Definitions. (a) "Dump station" means any facility designed to receive sewage from any portable toilet carried on any vessel.

(b) "Marine holding tank" means any container aboard any vessel that is designed and used for the purpose of collecting and storing treated or untreated sewage from marine toilets.

(c) "Marine toilet" means any toilet on or within any vessel, except those that have been permanently sealed and made inoperative.

(d) "Commercial marina" means any installation that is owned by any party other than the state or any of its political subdivisions and which provides services to the public for more than twenty vessels for a fee.

(e) "Private marina" means any installation that is owned by any party other than the state or any of its political subdivisions and which serves more than twenty vessels or transient slips for a fee.

(f) "Public marina" means any installation that is owned by the state or any of its political subdivisions and which serves more than twenty

vessels with or without charge, but shall not include quick launches or launching ramps intended for trailered vessels.

(g) "Pumpout facility" means any device, portable or permanent, capable of removing sewage from a marine holding tank.

(h) "Sewage" means all human body wastes and gray water.

(i) "Vessel" shall have the same meaning as in subdivision six of section two of the navigation law.

(j) "Gray water" shall have the same meaning as in subdivision twenty-nine of section two of the navigation law.

2. Notice of pumpout facilities and dump stations required. Every commercial marina, public marina and private marina shall post a sign of not less than eighteen inches by twenty-four inches in a conspicuous location clearly stating the location of a pumpout facility and dump station located at such marina or if no pumpout facility or dump station is located at such marina stating the location of and distance to the nearest pumpout facility and dump station.

3. The commissioner shall promulgate rules and regulations to establish and maintain the Hudson River as a "no discharge zone" pursuant to the federal clean water act and associated programs administered by the federal environmental protection agency.

4. Pumpout facilities and dump stations required on the Hudson River. The commissioner shall require that marinas located on the navigable waters of the Hudson River shall provide pumpout facilities and dump stations for the transfer and disposal of sewage and gray water from marine holding tanks and portable toilets in accordance with the requirements contained in subdivision three of this section.

(a) The commissioner shall authorize a grant from funds made available in accordance with the clean vessel act of 1992 for the purchase and installation of pumpout facilities and dump stations at public marinas in accordance with the New York state clean vessel act plan.

(b) The commissioner shall authorize a grant from funds made available in accordance with the clean vessel act of 1992 for the purchase and installation of a pumpout facility and dump station at a commercial marina, provided the owner or operator of such commercial marina agrees

to maintain the pumpout facility and dump station at no charge to the state and provides pumpout and dump station services to the public at a charge to be established by the commissioner in accordance with federal guidelines as required by the clean water act.

(c) Nothing in this subdivision shall restrict the use of any public funding source for the purchase and installation of a pumpout facility and dump station at any public or commercial marina.

5. Public information and registry. (a) The commissioner, in consultation with the department of motor vehicles, the department of state, and the office of parks, recreation and historic preservation, shall cause to be prepared periodic and timely informational material for distribution regarding the environmental purposes of utilizing pumpout facilities and dump stations including the location thereof on the navigable waters of the Hudson River, the importance of proper maintenance of vessel sanitation equipment, and information regarding fines and penalties for the illegal discharge of sewage and litter from vessels. The department of motor vehicles and the office of parks, recreation and historic preservation shall assist in the distribution of such informational material in the course of ordinary business.

(b) The commissioner, in consultation with the department of motor vehicles, the department of state, and the office of parks, recreation and historic preservation, shall create a registry and maintain records, updated annually, of all public, private and commercial marinas that identify which marinas have pumpout facilities and dump stations. The commissioner shall, upon written request, provide such information to any interested party.

6. Penalties. Failure to comply with the provisions of this section shall result in fines of two hundred fifty dollars per day for each violation.

TITLE 19

STATE AID: COLLECTION, TREATMENT, AND DISPOSAL OF SEWAGE

Section 17-1901. Comprehensive studies and reports: definitions; state aid; powers and duties of the commissioner; powers of

the municipalities.

17-1903. Contracts for construction of sewage treatment works.

17-1905. Operation and maintenance of sewage treatment works.

17-1907. Contracts for construction of sewer systems.

17-1909. Water pollution control revolving fund agreements.

§ 17-1901. Comprehensive studies and reports: definitions; state aid; powers and duties of the commissioner; powers of the municipalities.

1. As used in this section:

a. "Comprehensive study and report" means an engineering study for the development of economical projects for the present and future collection, treatment and disposal of sewage for one or more municipalities or any portion thereof. Such study shall contain such information as may be determined by the commissioner, including, but not limited to, the determination of the economical service area or administrative area for sewage works projects; cost estimates covering construction, engineering, legal and other services, land acquisition, and contingencies; proposed method of financing; preparation of estimates of first costs and total annual costs for the construction, and operation and maintenance of the recommended facilities; basic data such as general plan for sewage treatment plant site, flow, size and capacity of proposed units, and location, size or capacity of main trunk sewers, subtrunks, pumping stations, force mains, and outfalls; basic information so that sewage works and sewerage systems may be enlarged economically to serve future areas and population; and development of major alternative solutions. Such study shall not provide for minor sewer extensions or for sewer plans for small subdivisions or small areas, and shall not include the preparation of detail design and engineering drawings, specifications, and contract documents.

b. "Municipality" means county, city, town or village, or any designated agency thereof.

c. "Governing body" means in a county, the county legislative body; in a city, the board of aldermen, a common council, commission or other body vested by its charter or other law with jurisdiction to enact ordinances or local laws, except that in a city having a population of one million or more, if there be a board of estimate, the term "governing body" shall mean such board of estimate; in a town, the town board; and, in a village, the board of trustees.

d. "Agency" means the department, bureau, commission, board, division, agency, public benefit corporation, or committee of any municipality or municipalities, designated by the governing body of such municipality, or by the governing body of each participating municipality in the case of a joint undertaking, to conduct and develop comprehensive studies and reports.

2. The commissioner may, in the name of the state, make or contract to make, within appropriations therefor, a state grant, for payment during any of the ten successive fiscal years of the state beginning with its fiscal year commencing April 1, 1972, to any municipality, or to two or more municipalities jointly, to cover the entire cost, as determined and approved by the commissioner, of the preparation or updating of a comprehensive study and report for the present and future collection, treatment, and disposal of sewage in such municipality or municipalities.

3. In administering and enforcing the provisions of this section, the commissioner shall:

a. Make an estimate of the funds or appropriations for inclusion annually in the executive budget;

b. Receive applications for state aid in such form and containing such information as he may require;

c. Qualify municipalities for state aid and advise them of such qualifications;

d. Approve the area and scope of any comprehensive study prior to its execution;

e. Approve the person or firm selected by the municipality to perform necessary consulting services for the comprehensive study and reports;

f. Approve the report prior to final payment;

g. Execute contracts for the services of consulting engineers necessary for such study jointly with the municipality or municipalities requesting state aid therefor;

h. Approve the amount of compensation to be paid for such engineering services and the method of determining such compensation, provided, however, that such compensation shall not be computed on a per diem or percentage of estimated costs basis;

i. Approve vouchers for payment of state aid grants;

j. Perform such other and further acts and promulgate such rules and regulations, pursuant to subdivision 2 of section 17-0303, as may be necessary, proper or desirable to carry out effectively the provisions of this section.

4. Any municipality, or municipalities acting jointly, may:

a. Apply to and contract with the commissioner for state aid pursuant to this section;

b. Select, subject to the commissioner's approval, the person or firm to perform necessary consulting engineering services for a comprehensive study and report, and enter into contracts for such services, provided, however, that the commissioner shall also be a party to any such contract;

c. Expend money received from the state pursuant to this section only for purposes consistent with this section.

§ 17-1903. Contracts for construction of sewage treatment works.

1. As used in this section:

a. "Sewage treatment works" means a facility for the purpose of treating, neutralizing or stabilizing sewage, including treatment or disposal plants, the necessary intercepting, outfall and outlet sewers, pumping stations integral to such plants or sewers, equipment and furnishings thereof and their appurtenances.

b. "Construction" means the erection, building, acquisition, alteration, reconstruction, improvement or extension of sewage treatment works; the inspection and supervision thereof; and the engineering, architectural, legal, fiscal and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other actions necessary thereto.

c. "Eligible project" means a project for the construction of sewage treatment works, (1) for which a permit has been issued pursuant to section 17-0701 of this article, (2) which is, in the judgment of the commissioner, in accord with applicable comprehensive studies and reports made pursuant to section 17-1901, if any, (3) which is, in the judgment of the commissioner, eligible for federal pollution abatement assistance, whether or not federal funds are then available therefor, (4) which conforms with applicable rules and regulations of the commissioner, (5) which is, in the judgment of the commissioner, necessary for the accomplishment of the state water pollution control program, and (6) either (a) the erection, building, acquisition, alteration, reconstruction, improvement or extension of which is commenced or is to be commenced between the date on which this act becomes a law and March 31, 1972, or (b) any portion of the erection, building, acquisition, alteration, reconstruction, improvement or extension of which is undertaken between the date on which this act becomes a law and March 31, 1972.

d. "Municipality" means any county, city, town, village, district corporation, county or town improvement district, or sewer authority now existing in a city, the New York State Environmental Facilities Corporation acting pursuant to subdivision three of section twelve hundred eighty-five of the public authorities law, or any two or more of the foregoing which are acting jointly in connection with an eligible project.

e. "Federal pollution abatement assistance" means funds available to a municipality, either directly or through allocation by the state, from the federal government as grants for construction of sewage treatment works, pursuant to section 6 of the Federal Water Pollution Control Act as enacted by section 1 of the Federal Water Pollution Control Act amendments of 1956 and acts amendatory thereto.

f. "Federal assistance" means funds available, other than by loan, from the federal government to a municipality, either directly or through allocation by the state, for construction of sewage treatment works or which are used for such construction, pursuant to the Federal Water Pollution Control Act and acts amendatory thereto or pursuant to any other federal law or program.

2. For the purpose of discharging the state responsibility with respect to the protection and promotion of the health of the inhabitants of the state by the provision of sewage treatment works, the commissioner, in the name of the state, may enter into contracts with municipalities having power to construct, operate and maintain sewage treatment works, and any such municipality may enter into a contract with the commissioner, concerning eligible projects. Any such contract may include such provisions as may be agreed upon by the parties thereto, and shall include, in substance, the following provisions:

a. An estimate of the reasonable cost of the project as determined by the commissioner.

b. An agreement by the commissioner to pay to the municipality, during the progress of construction of each phase of the project (said phases

to be construction of interceptors, substructure, superstructure, outfalls or other similar major components of a project), subject to final computation and determination of the state grant upon completion of the entire project reflecting the actual eligible cost thereof, a portion of the cost of the project representing the part of the non-municipal share of the cost of the project that is not paid by the federal government, determined in the following manner:

(1) An amount equal to thirty per cent of the actual cost of the project, or an amount equal to thirty per cent of the estimated reasonable cost of the project, whichever is lower, provided, however, that the state payment under this subparagraph shall be reduced by the amount of any federal assistance received or to be received by the municipality which is in excess of sixty per cent of the cost of the project, together with,

(2) If necessary to limit the municipal share of the cost of the project to forty per cent, an additional amount which when added to the amount of federal assistance, if any, received or to be received by the municipality, equals thirty per cent of the actual cost of the project, or equals thirty per cent of the estimated reasonable cost of the project, whichever is lower.

c. An agreement by the municipality

(1) To proceed expeditiously with, and complete, the project in accordance with plans approved pursuant to section 17-0701;

(2) To commence operation of the sewage treatment works on completion of the project, and not to discontinue operation or dispose of the sewage treatment works without the approval of the commissioner;

(3) to operate and maintain the sewage treatment works in accordance with applicable provisions of this article, the state sanitary code and rules and regulations of the commissioner;

(4) to apply for and make reasonable efforts to secure federal assistance for the project;

(5) to secure the approval of the commissioner before applying for federal pollution abatement assistance, in order to maximize the amounts of such assistance received or to be received for all projects in New York state, including amounts for reimbursement of payments made by the state pursuant to subparagraph (2) of paragraph b of this subdivision;

and

(6) to provide for the payment of the municipality's share of the cost of the project.

d. A provision that, in the event that federal assistance which was not included in the calculation of the state payment pursuant to paragraph b of this subdivision becomes available to the municipality, the amount of the state payment shall be recalculated with the inclusion of such additional federal assistance and the municipality shall either (1) pay to the state the amount by which the state payment actually made exceeds the state payment determined by the recalculation or, (2) if such additional federal assistance has not been received by the municipality, authorize the state to receive and retain such amount from the federal government.

3. The commissioner may adopt rules and regulations pursuant to subdivision 2 of section 17-0303 governing the making and enforcing of contracts pursuant to this section.

4. All contracts entered into pursuant to this section shall be subject to approval by the state comptroller, and by the attorney general as to form. All payments by the state pursuant to such contracts shall be made after audit by and upon the warrant of the comptroller on vouchers approved by the commissioner.

5. The commissioner shall prepare and file with the department an annual report on the scope and results of construction undertaken pursuant to this section.

6. In connection with each contract concerning an eligible project the commissioner shall keep adequate records of the amount of the payment by the state pursuant to subparagraph (2) of paragraph b of subdivision 2 of this section, and of the amount of federal assistance received by the municipality. Such records shall be retained by the commissioner and shall establish the basis for application for federal reimbursement of such payments made by the state. The commissioner is hereby authorized to make such applications in appropriate cases.

7. In the event that a project is an eligible project by reason of clause (b) of subparagraph (6) of paragraph c of subdivision 1 of this section rather than by reason of clause (a) of such subparagraph, then the estimated reasonable cost of the project determined pursuant to paragraph a of subdivision 2 of this section and the actual cost of the project for the purpose of subparagraphs (1) and (2) of paragraph b of such subdivision shall be calculated only with respect to that portion of the erection, building, acquisition, alteration, reconstruction, improvement or extension of the sewage treatment works which is undertaken after the date on which this act becomes a law.

8. The commissioner may advance funds to a municipality in accordance with the following provisions:

a. Prior to entering into a contract authorized by subdivision 2 of this section, the commissioner may advance funds to a municipality, in an amount up to five per cent of the estimated reasonable cost of an eligible project as determined by the commissioner, for the purpose of assisting the municipality in defraying expenses of an eligible project incurred in advance of construction. This advance shall be payable, upon the warrant of the comptroller on a voucher approved by the commissioner, after formal acceptance by the municipality of the federal pollution abatement assistance offered pursuant to the provisions of the Federal Water Pollution Control Act and amendments thereto or at the discretion of the commissioner after state submission of the project to the federal government and in the absence of a federal offer.

b. The amount of the advance shall be deducted from the amount of the state payment to be made to the municipality, pursuant to the agreement of the commissioner with the municipality, when construction of the entire project is one-half completed.

c. The municipality shall initiate construction of the project within the time specified in the approved project which, in any event, shall not be later than two years after the date of such advance of funds. If construction is not initiated within such time, the amount of the

advance shall be repaid to the state. Whenever such municipality shall fail to make any such repayment to the state, upon request of the commissioner, the state comptroller shall cause to be withheld from state-collected, locally-shared taxes or state aid, whichever he shall determine and to which such municipality would otherwise be entitled, a sum sufficient to reimburse the state for the amount due and owing the state.

9. To the extent that funds available pursuant to chapter 176 of the laws of 1965 (Pure Waters Bond Act) are not needed to finance the state share of projects, the construction of which was undertaken prior to April 1, 1972, the commissioner is authorized to provide assistance to municipalities for the construction of "water quality improvement projects" as defined in section 51-0303 of this chapter. The use of funds as authorized by this subdivision will be governed by the provisions of titles 1 and 3 of article 51 of this chapter, provided however, that subdivisions 1 through 8 of this section will continue to apply to projects construction of which was undertaken prior to April 1, 1972.

§ 17-1905. Operation and maintenance of sewage treatment works.

1. As used in this section:

a. "Operation and maintenance" means and includes all direct costs for labor, direct supervision, vehicles, vessels, supplies, materials, fuel, lubricants, power, and similar costs, the direct costs charged against labor such as retirement, social security, and insurance, and such other charges as real property and school taxes and special assessments and ad valorem levies on sewage treatment works located outside of the corporate limits of the municipality, insurance premiums on sewage treatment plant structures, and equipment. It shall not include any administrative, legislative or overhead costs other than as outlined above, costs of indirect supervision or costs of any capital improvements.

b. "Sewage treatment works" means and includes the structures, equipment, vehicles, vessels, and appurtenances of local government used exclusively for the treatment of sewage and for the disposal of sludge resulting from sewage treatment. Sewage treatment works shall also include outlet sewers, overflow structures on sewer systems, diversion chambers on intercepting sewers, and pumping stations which have replaced a sewage treatment plant or plants. Such treatment works shall not include any other sewers, nor any properties used in whole or in part for the administration of sewage treatment works unless such properties are on the site of, and an integral part of, the sewage treatment plant.

c. "Qualifications for state assistance to municipalities" means and includes submission by the municipality of (1) audited costs of sewage treatment plant operation, (2) standard reports with respect to such plant performance and effect on receiving waters, (3) evidence that the sewage treatment plant is under the supervision of an operator qualified pursuant to section f of chapter 11 of the State Sanitary Code, (4) evidence that the sewage from the tributary area reaches such sewage treatment plant for processing, within practical limitations, (5) evidence that such sewage treatment plant is and has been constructed in substantial compliance with the plans approved by and on file with the commissioner or with approved amendments thereto. The burden of proof to establish qualifications for state assistance rests with the municipality.

d. "Municipality" means a county, city, town, village or district corporation, or a county or town on behalf of a special improvement district, which operates and maintains sewage treatment works, or a city on behalf of a sewer authority now existing in such city which operates and maintains sewage treatment works, or any of the foregoing in cases in which the sewage treatment works is operated and maintained by the New York State Environmental Facilities Corporation pursuant to subdivision 1 of section 1285 of the Public Authorities Law, or the New York state pure waters authority acting pursuant to subdivision 3 of section 1285 of the Public Authorities Law.

2. The commissioner shall apportion and approve for payment state assistance to each municipality which, by itself or in cooperation with one or more other municipalities or other governments, operates and maintains or is responsible for the payment of expenses for operation and maintenance of sewage treatment works during all or part of a fiscal year of such municipality, in accordance with qualifications for state assistance applicable to the operation and maintenance of such works. Where a special or improvement district or a sewer authority operates and maintains sewage treatment works, state assistance paid to a county, city or town on behalf of such district or authority shall be credited by such county, city or town to such district or authority. Such state assistance, when apportioned among the municipalities applying, shall be for not more than one-third of the amount approved by the commissioner as having been duly expended by the municipality for such operation and maintenance during each of the two successive fiscal years of the municipality beginning with its fiscal year commencing on or after June 1, 1974 and for one-fourth of such amount expended by the municipality during each of the following five successive fiscal years of the municipality beginning with its fiscal year commencing on or after June 1, 1976, for thirty-three and one-third percent of such amount expended by the municipality for its fiscal year commencing between June 1, 1981 and May 31, 1982, for one-third of such amount expended by the municipality for its fiscal year commencing between June 1, 1982 and May 31, 1983, for one-third of such amount expended by the municipality for its fiscal year commencing between June 1, 1983 and May 31, 1984, for one-third of such amount expended by the municipality for its fiscal year commencing between June 1, 1984 and May 31, 1985, for one-third of such amount expended by the municipality for its fiscal year commencing between June 1, 1985 and May 31, 1986, for one-third of such amount expended by the municipality for its fiscal year commencing between June 1, 1986 and May 31, 1987, for one-third of such amount expended by the municipality for its fiscal year commencing between June 1, 1987 and May 31, 1988 and for one-third of such amount expended by the municipality for its fiscal year commencing between June 1, 1988 and May 31, 1989. Provided further, however, if the amount appropriated by the legislature to meet the requirements of this section is insufficient to make the full payments required herein, the amounts to be paid to municipalities

pursuant to this section shall be proportionately reduced. Such state assistance shall be paid on account of such expenditures after the termination of the fiscal year of the municipality and after the commissioner shall have determined, in accordance with this section;

a. The total of such expenditures properly attributable to operation and maintenance, and

b. That such operation and maintenance complied with the applicable qualifications for state assistance.

All payments of such state assistance shall be made after audit by and upon warrant of the comptroller on vouchers approved by the commissioner.

3. A municipality applying for state assistance pursuant to this section shall submit to the commissioner within sixty days after the termination of a fiscal year of the municipality an application in such form and containing such information as the commissioner shall require in order to effectuate the purposes of this section and to perform his functions, powers and duties thereunder.

4. In administering and enforcing the provisions of this section the commissioner shall:

a. Annually furnish an estimate to the director of the budget of the amount required to be included in the executive budget for state assistance payable under this section and for such purpose shall have power to require municipalities to file advance estimates of the amounts of state assistance estimated to be payable to them under this section during the next fiscal year of the state.

b. Deny state assistance to any municipality which fails to operate and maintain its sewage treatment works in accordance with qualifications for state assistance applicable to such works.

c. Make an annual inspection of operating conditions and results, including the collection of necessary flow and analytical data and

sampling, at each sewage treatment plant for the maintenance and operation of which state assistance is granted pursuant to this section.

d. Promulgate such rules and regulations pursuant to subdivision 3 of section 17-0303 as may be necessary, proper or desirable to carry out effectively the provisions of this section, including, but not limited to, standards of operating efficiency for sewage treatment works, based on the best usage of the receiving waters, type of treatment provided, and available dilution.

e. On or before May first, nineteen hundred seventy-five, the commissioner shall present to the governor and the legislature a study of the system of state assistance payable under this section. The study shall describe the effect the provision of this state assistance has had on the quality and efficiency of the treatment of sewage by municipalities. It shall also evaluate the effect that would be achieved by changing the type and level of assistance provided. In evaluating these alternatives, it shall consider among other possible courses, the possibilities of providing aid in relation to the level of removal of pollutants achieved, and of providing aid for certain items not now included in approvable operating costs such as repairs and rehabilitation of facilities, and of providing more or less state assistance for the various types of expenses. It shall also evaluate such other aspects of the program as shall be necessary to provide a clear picture of the current effectiveness of the program, how it may be improved, what the annual costs of such improvements may be and whether such current or proposed expenditures do in fact provide a commensurate value to the state. Such study shall contain the commissioner's recommendations for the continuation, elimination or modification of the system of state assistance payable under this section.

§ 17-1907. Contracts for construction of sewer systems.

1. As used in this section:

a. "Construction" means and includes the building, installation, or

extension of a sewer system; the inspection and supervision thereof; the engineering, legal, fiscal and economic investigations; studies, surveys, designs, plans, contract drawings, specifications, procedures; and other actions necessary thereto.

b. "Sewer system" means and includes pipe lines or conduits, pumping stations, force mains, and all other constructions, devices, and appliances appurtenant thereto, used for conducting sewage (the water-carried human, animal or other treatable wastes from residences, buildings, industrial and commercial establishments or other places) to a point of connection to the sewage treatment works as defined in section 17-1903.

c. "Sewer connection" means and includes a point of connection between a building, residence or other structure and a public sewer.

d. "Residence" means and includes a building or structure which is occupied principally as the home of one or more persons; provided, however, that such building or structure contain not more than two dwelling units.

e. "Municipality" means and includes any county, town, village, district corporation, county or town improvement district, or any two or more of the foregoing which are acting jointly in connection with an eligible project. For purposes of this section only, an Indian reservation located partly or wholly within New York State shall be construed as a "municipality".

f. "Local governing body" means and includes (1) in a county, the county legislative body (2) in a town, the town board; (3) in a village, the board of trustees; (4) in a district corporation or an improvement district, the governing board; (5) in an Indian reservation, the proper tribal officials.

g. "Federal assistance" means and includes funds available, other than by loan, from the federal government to a municipality, either directly or through allocation by the state, for construction of a sewer system

or which are used for such construction, pursuant to any other federal law or program.

i. "Project" means the construction of the whole or connected portion of a sewage collection system. Where the construction of a sewage collection system is phased over a period of years, each phase may be considered as a project.

j. "Eligible project" means a project which in the judgment of the commissioner meets all of the following requirements:

(1) It is in accord with applicable comprehensive studies and reports made pursuant to section 17-1901 of this article;

(2) It conforms with applicable rules and regulations of the commissioner and, in his opinion, reflects a reasonable effort to develop maximum economy in planning, design and construction, with an acceptable ratio between costs and benefits;

(3) It is necessary for the accomplishment of the state water pollution control program;

(4) It is under construction in the period between April 1, 1965 and March 31, 1977;

(5) No portion of the project aided herein is eligible to receive assistance pursuant to section 17-1903;

(6) It serves inhabited residences in existence prior to the effective date of this law;

(7) It serves the public by providing for the collection of sewage (house connections and pipes collecting exclusively industrial, commercial and other nonresidential waste are ineligible);

(8) The project or major part thereof is, at the time of construction, located in: (a) a town which has a total population of seventeen thousand or less persons, or (b) a town outside of village area which has a population density per square mile of less than one hundred persons.

k. "Capital cost" means the actual cost of construction of an eligible project, not to include the cost of securing financing or interest on funds borrowed to finance such construction, and representing that part of the cost of the eligible project that is not paid by the federal

government.

l. "Annual debt service" means such amounts as shall be required to be paid annually to amortize obligations (both principal and interest) issued in order to finance the capital cost of an eligible project; provided, however, that for the purposes of state aid, such annual debt service shall be computed on a debt amortization schedule of not less than thirty years nor more than forty years, as the commissioner shall determine, and shall not include any other debt service (whether principal or interest) on obligations of or on behalf of a municipality, other capital costs, or expenditures for the purpose as to which state reimbursement is claimed under any provision of law other than this section. Where the eligible portion of the sewage collection system serves non-residential users as well as residences, the amount of annual debt service to be used in computing state aid shall be reduced as determined by the commissioner, to compensate for the benefits received by the nonresidential users from such system.

m. "State aid" means financial support made available to a municipality by way of state participation in annual debt service, through contracts entered into between the commissioner and the municipality, upon such terms and conditions as the commissioner shall deem appropriate, which shall be based on the number of residences served by the eligible project and computed as follows:

(1) The amount of annual debt service, as defined above, minus the municipality's share of the expense for construction of the sewage collection system.

(2) The municipality's share shall be the product of the number of residential sewer connections served by the project multiplied by an adjusted rate. The adjusted rate shall be determined by applying a valuation correction from the sum of one hundred twenty-five dollars.

(3) Valuation correction shall consist of minus one dollar for each one thousand dollars or part thereof that the project area per capita full value is less than the average per capita full value for the state excluding all cities. For projects wholly located within a village or town the project area per capita full value shall be the per capita full value for the village, or for the town outside of village area,

respectively. For other projects, per capita full value shall be per capita full value of the town or village within which the major portion of the project is located. Per capita full value shall mean the full value of such municipality or area divided by the population thereof.

The amount of such state aid shall be recomputed each year, on the basis of data reported by the local governing body as accepted by the commissioner. State aid shall commence in the state fiscal year beginning April 1, 1971. No state-aid payments shall be made on the basis of any portion of the debt service of eligible projects which was due and payable prior to April 1, 1971.

2. For the purpose of meeting the state responsibility as provided herein, with respect to the protection and promotion of the health of the inhabitants of the state by the provision of sewer systems, the commissioner, in the name of the state, may enter into contracts with municipalities having power to construct, operate and maintain sewer systems, and any such municipality may enter into a contract with the commissioner concerning eligible projects. Any such contract may include such provisions as may be agreed upon by the parties thereto, and shall include, in substance, the following provisions:

a. The cost of the eligible project as determined by the commissioner.

b. The method by which the eligible project shall be financed.

c. An agreement between the commissioner and the municipality to provide state aid to the municipality each year, during the progress of construction or following completion of construction as may be agreed upon by the parties.

d. An agreement by the municipality

(1) To proceed expeditiously with, and complete, the project in accordance with plans approved pursuant to section 17-0701 of this article;

(2) To commence operation of the sewer system on completion of the project, and not to discontinue operation of the sewer system without

the approval of the commissioner,

(3) To operate and maintain the sewer system in accordance with applicable provisions of this article, the state sanitary code and rules and regulations of the commissioner,

(4) To apply for and make reasonable efforts to secure federal assistance for the project,

(5) To secure the approval of the commissioner before applying for federal assistance, in order to maximize the amounts of such assistance received or to be received for all projects in New York state,

(6) To provide for the payment of the municipality's share of the cost of the project,

(7) To execute a contract or agreement with the owner of the sewage treatment plant, if other than the municipality itself, to accept sewage from the sewage collection system aided under this section, and

(8) To promulgate a municipal sewage use ordinance acceptable to the commissioner.

e. A provision that, in the event that federal assistance which was not included in the calculation of the capital cost becomes available to the municipality, the amount of the state payment shall be recalculated by deducting the amount of such federal assistance from the eligible capital cost, and adjustment shall be made either (1) by the municipality paying to the state the amount by which the state payments actually made exceed the state payments determined by the recalculation or, (2) by deducting the excess paid from subsequent payments to be made by the state.

3. The commissioner may adopt rules and regulations pursuant to subdivision 3 of section 17-0303 of this article governing the making and enforcing of contracts pursuant to this section.

4. All contracts entered into pursuant to this section shall be subject to approval by the state comptroller, and by the attorney general as to form. All payments by the state pursuant to such contracts shall be made after audit by and upon the warrant of the comptroller on vouchers approved by the commissioner.

5. In connection with each contract concerning an eligible project the commissioner shall keep adequate records of the amount of the payment by the state pursuant to subparagraph c of subdivision two of this section, and of the amount of federal assistance received by the municipality.

§ 17-1909. Water pollution control revolving fund agreements.

1. As used in this section:

a. "Allocation" means the amount of moneys allocated to reduce a municipality's or group of municipalities' total financing costs for one or more eligible projects.

b. "Construction" means the erection, building, acquisition, alteration, reconstruction, improvement, enlargement or extension of an eligible project; the inspection and supervision thereof; and the engineering, architectural, legal, fiscal, and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other actions necessary thereto.

c. "Corporation" means the New York state environmental facilities corporation, continued pursuant to section twelve hundred eighty-two of the public authorities law, or any successor thereto.

d. "Eligible project" means a project for construction of a facility which would be eligible for financing under the Federal Water Pollution Control Act:

(i) for which all required federal and state permits have been issued; and

(ii) which the commissioner has determined:

(a) is in accord with applicable comprehensive studies and reports made pursuant to sections 17-0303 and 17-1901 of this article; and

(b) is necessary for the accomplishment of the state water pollution control program formulated pursuant to sections 17-0303 and 17-1901 of this article; and

(c) represents a reasonable effort to develop economic viability in

planning, design and construction; and

(d) is a project for which financial assistance is available from the fund; and

(e) conforms with applicable rules and regulations of the department, including a demonstration that design and construction consider future physical climate risk due to sea level rise, and/or storm surges and/or flooding, based on available data predicting the likelihood of future extreme weather events, including hazard risk analysis data if applicable; and

(f) includes consideration of county-wide or regional wastewater planning.

e. "Financial assistance to a municipality" has the same meaning as set forth in subdivision four of section twelve hundred eighty-five-j of the public authorities law.

f. "Fund" means the water pollution control revolving fund established under section twelve hundred eighty-five-j of the public authorities law.

g. "Intended use plan" means the plan prepared pursuant to subdivision two of this section, identifying the intended uses of the amounts available in the fund, including but not limited to: (i) a list of those projects for construction of publicly owned treatment works on the priority list developed pursuant to subdivision two of this section; (ii) a list of projects developed pursuant to subdivision two of this section anticipated to be financed by the fund through the water pollution control linked deposit program; (iii) a description of the short and long term goals and objectives of the fund; (iv) information on the activities to be supported, including a description of project categories, discharge requirements under the Federal Water Pollution Control Act, terms of financial assistance, and eligible borrowers pursuant to the water pollution control linked deposit program served; (v) the criteria and method established for the distribution of funds; and (vi) the amount of moneys from the fund, not to exceed ten million dollars annually, to be made available for linked loans under the water pollution control linked deposit program during the period covered by

such intended use plan.

h. "Municipality" means any county, city, town, village, district corporation, county or town improvement district, school district, Indian reservation wholly within New York state, any public benefit corporation or public authority established pursuant to the laws of New York or any agency of New York state which is empowered to construct and operate an eligible project, or any two or more of the foregoing which are acting jointly in connection with an eligible project.

i. "Project financing agreement" means an agreement between the corporation and one or more municipalities meeting the requirements of subdivision four of this section.

2. The commissioner is required to establish and maintain a list of potentially eligible projects and shall establish, pursuant to rules and regulations, a process for listing potentially eligible projects identified by municipalities and eligible borrowers pursuant to article sixteen of the state finance law and a priority ranking system for the purpose of providing financial assistance to municipalities and eligible borrowers for such projects under this section. In establishing such system, the commissioner shall take into account:

a. The environmental significance of such potentially eligible projects which shall include, but need not be limited to, an assessment of (i) public health and safety; (ii) protection of environmental resources; (iii) population affected; (iv) attainment of state water quality goals and standards; (v) compliance with state and federal law, rules and regulations; and (vi) the extent to which such projects reflect county-wide or regional wastewater planning;

b. A municipality's inability as determined by the corporation to pay for such potentially eligible project prior to receipt of such financial assistance;

c. The regional distribution of environmentally significant projects;

d. For agricultural projects funded through the water pollution control linked deposit program, in consultation with the commissioner of agriculture and markets, the extent to which the project will reduce, abate, control, or prevent non-point source pollution originating from agricultural sources and/or propose to implement best management practices, as identified in section three of the soil and water conservation districts law; and

e. For residential and small business on-site wastewater treatment system projects funded through the water pollution control linked deposit program, in consultation with the department of state, the extent to which the project will prevent an increase in nutrients in water bodies or the extent to which the project will enhance source water or watershed protection.

3. a. The corporation is authorized to promulgate regulations, developed in consultation with the commissioner and the director of the division of the budget, for the purpose of carrying out its responsibilities under this section, including establishing criteria and standards for determining the amount of financial assistance to a municipality for an eligible project. To the extent financial assistance to a municipality for an eligible project is provided as a loan from the proceeds of bonds or notes of the corporation, the amount of an allocation applicable to the portion of such eligible project financed with such loan shall be, subject to such maximum financial limitations as may otherwise be necessary and prescribed by the commissioner and the director of the division of the budget, thirty-three and one-third percent of the principal amount of such loan outstanding at any time for such eligible project, to the extent reasonably practicable, and subject to such deviation as may be necessary, in connection with the administration and investment of moneys in the fund, unless allocations in differing amounts are necessary to preclude a determination by the commissioner or the corporation pursuant to paragraph e of subdivision eight of this section or unless an allocation in a differing amount is required for an innovative technology demonstration project; provided, however, that in the case of any municipality which has, during the period commencing on June first, nineteen hundred ninety-two and ending

on September thirtieth, two thousand twenty-seven, (i) submitted an application for financial assistance in the form of such a loan for an eligible project, which application has been accepted by the corporation, (ii) closed on such loan, and (iii) commenced construction of such eligible project, the allocation applicable to the portion of such project financed with such loan shall be, subject to maximum financial limitations as may otherwise be necessary and prescribed by the commissioner and the director of the division of the budget, fifty percent of the principal balance outstanding on such loan at any time for such eligible project, to the extent reasonably practicable, and subject to such deviation as may be necessary, in connection with the administration and investment of moneys in the fund, unless allocations in differing amounts are necessary to preclude a determination by the commissioner or the corporation pursuant to paragraph e of subdivision eight of this section or unless an allocation in a differing amount is required for an innovative technology demonstration project.

b. The corporation may enter into a project financing agreement with up to three municipalities which provides for up to one hundred percent subsidy of the interest on the amount of principal not to exceed three million dollars for the construction of innovative technology demonstration projects which shall be waste water treatment facilities which utilize innovative technology approved by the commissioner as defined in regulations promulgated by the United States environmental protection agency in accordance with the Federal Water Pollution Control Act. The commissioner shall prepare criteria for selection of eligible projects pursuant to this paragraph including, but not limited to, the use of innovative technology which has been proven reasonably effective on at least a demonstration model basis.

c. The department is authorized to promulgate regulations, developed in consultation with the director of the division of the budget, for the purpose of carrying out its responsibilities under this section.

4. The corporation may enter into project financing agreements with municipalities providing for the construction and financing of eligible projects. The corporation shall prepare each project financing

agreement, which shall include but is not limited to the following provisions:

- a. A description of the eligible project;
- b. An estimate of the reasonable cost of the eligible project and a projected cash flow schedule for meeting that cost;
- c. A schedule for construction of the eligible project;
- d. A right of the corporation to approve all contracts for services and construction funded pursuant to a project financing agreement, and to inspect and review the construction of eligible projects;
- e. Notwithstanding the provisions of any other law, general, special or local, inconsistent with this section, a right of the corporation to invest proceeds of the corporation's bonds or notes, including proceeds of bonds or notes of the municipality, as provided in subdivision four of section twelve hundred eighty-four and subdivision six of section twelve hundred eighty-five-j of the public authorities law.

Such right shall include the right to invest such monies together with any other monies held by the corporation pursuant to the provisions of section twelve hundred eighty-five-j of the public authorities law;
- f. Remedies in the event of a municipality's failure to comply with the terms of a project financing agreement;
- g. An agreement by the corporation to:
 - (i) lend to the municipality for the construction of an eligible project a specified amount from the proceeds of the corporation's bonds or notes, not to exceed the estimated reasonable cost of construction of the eligible project established in the project financing agreement or any loan agreement, subject to the ability of the corporation to provide such financing, including but not limited to the approval of the corporation's board and any other approvals required by state or federal law;

(ii) use all reasonable efforts to issue its bonds or notes in an amount sufficient to finance the estimated reasonable cost of the eligible project, including but not limited to costs of issuance, credit support fees, if any, trustees fees, interest during construction, and such reserve funds, if any, as may be necessary to secure such bonds or notes;

(iii) in the alternative, provide financial assistance to the municipality for the construction of an eligible project in a specified amount from the proceeds of any federal capitalization grant, award, assistance, or any state moneys appropriated to or otherwise transferred into the fund, not to exceed the estimated reasonable cost of construction of the eligible project established in the project financing agreement or any loan agreement, as determined by the corporation or as directed by the commissioner pursuant to subdivision eight of this section or subdivision four of section twelve hundred eighty-five-j of the public authorities law;

(iv) make reimbursements for the administrative and management costs of the department and the corporation in accordance with subdivisions five and seven of section twelve hundred eighty-five-j of the public authorities law;

(v) provide to the municipality, for any loan made from the proceeds of the corporation's bonds or notes, an interest rate subsidy allocation for the eligible project in accordance with section twelve hundred eighty-five-j of the public authorities law and this section;

(vi) administer any federal rebate requirement in connection with obligations of the corporation and of any municipality issued in accordance with a project financing or loan agreement;

h. An agreement by the municipality to:

(i) proceed expeditiously with and complete the eligible project in accordance with plans approved pursuant to titles seven and eight of this article;

(ii) commence operation of the eligible project on completion of the project, and not discontinue operation of or dispose of the eligible project as long as a loan to the municipality for such project remains outstanding, without approval of the commissioner; provided, however, that the commissioner shall not approve disposition of the eligible

project without the concurrent approvals, as appropriate, of the corporation and the state comptroller. None of the foregoing shall limit the commissioner's authority to terminate or impose conditions upon the operation of an eligible project pursuant to the provisions of this chapter and any implementing regulations thereto;

(iii) operate and maintain the eligible project in accordance with applicable requirements of federal and state law;

(iv) establish and maintain project accounts in accordance with the project financing agreement and generally accepted government accounting standards;

(v) establish a dedicated source of revenue (which may include a general obligation of the municipality) providing for:

(a) operation and maintenance costs of the eligible project and equipment renewal and replacement; and

(b) loan repayment regardless of whether the eligible project is in operation;

(vi) permit any reviews or audits and provide assistance determined to be reasonable and necessary by the department or the corporation;

(vii) retain public ownership of the eligible project; and

(viii) notwithstanding the provisions of any other law, general, special or local, inconsistent with this section, delegate to the corporation the authority to invest proceeds of bonds or notes issued by the corporation or the municipality on behalf of the municipality.

i. An agreement by the corporation to certify, subject to the availability of funds, payment upon submission of a satisfactory request for disbursement of loan proceeds by a municipality, of an amount equivalent to actual construction costs incurred on or before the date of submission of the request for disbursement of loan proceeds, plus any projected construction costs which will be incurred within ninety days from the date of submission of the request for disbursement of loan proceeds, less any funds already advanced;

j. An agreement in regard to financial assistance provided pursuant to paragraph (b) of subdivision four of section twelve hundred eighty-five-j of the public authorities law, to waive programmatic requirements other than those mandated by federal law and subparagraph

(i) of paragraph d of subdivision one of this section, provided that the project was in compliance with the goals and requirements of the Federal Water Pollution Control Act, prior to July first, nineteen hundred eighty-eight, or was subject to an administrative or judicial order requiring compliance with the goals and requirements of the Federal Water Pollution Control Act prior to September thirtieth, nineteen hundred eighty-nine; and

k. Such other agreements or covenants as may be required in connection with the issuance by the corporation of its bonds or notes.

5. For the purpose of implementing the program set forth in this section and section twelve hundred eighty-five-j of the public authorities law, and ensuring compliance with the requirements of Title VI of the Federal Water Pollution Control Act, the corporation shall ensure compliance with each project financing agreement by:

a. retaining the right to inspect and review work on each eligible project in progress and upon completion, and determining whether such work was undertaken and completed in compliance with all relevant plans and the terms of such project financing agreement;

b. retaining the right to certify or refuse to certify advances and payments to a municipality pursuant to a project financing agreement or any loan agreement executed subsequent thereto to finance an eligible project;

c. retaining the right to certify or refuse to certify advances and payments to a municipality pursuant to a project financing agreement and any loan agreement executed subsequent thereto to finance an eligible project based upon the determinations of any review or audit;

d. establishing remedies if work on an eligible project has not been completed in accordance with all relevant plans and the terms of such project financing agreement due to factors within the municipality's control; and

e. requiring a municipality to maintain project accounts with respect to any eligible project.

Nothing herein shall be construed to affect or diminish the general authority of the department to inspect and review the work on any project financed pursuant to this section, or to inspect the records relating to such project, for the purpose of determining compliance with any other provisions of this chapter.

6. In the event the work completed pursuant to a project financing agreement or loan agreement is deemed not in compliance with such agreements, the corporation shall expeditiously notify the municipality of such non-compliance and indicate the reasons for such determination.

7. For the purpose of implementing the program set forth in this section and section twelve hundred eighty-five-j of the public authorities law, and ensuring compliance with the requirements of Title VI of the Federal Water Pollution Control Act, the department shall:

a. Enter into any agreement between the state of New York and the administrator of the United States environmental protection agency and take all other actions necessary to comply with the requirements of Title VI of the Federal Water Pollution Control Act and state law, including but not limited to:

(i) determining a reasonable schedule for financing and construction of eligible projects;

(ii) directing the establishment of systems of records or accounts and subaccounts within the water pollution control revolving fund as the department deems necessary or desirable, and approving or disapproving the establishment of such record systems or accounts and subaccounts as the corporation requests for the operation of the water pollution control revolving loan fund;

(iii) determining the accounts or subaccounts within the water pollution control revolving fund which will be used as a source of funding for each eligible project subject to the limitations of subdivision six of this section; and

(iv) approving each project for qualification as an eligible project.

b. Arrange in consultation with the corporation for independently conducted reviews and audits on at least an annual basis necessary to carry out the objectives of the fund.

c. Submit a copy of the draft intended use plan to the governor, the director of the division of the budget, the chairman of the senate finance committee and the chairman of the assembly ways and means committee on or before October thirty-first, nineteen hundred eighty-nine and annually on or before such date thereafter and submit a copy of the final intended use plan to such persons upon its approval by the administrator of the United States environmental protection agency.

8. The corporation may or, if so directed by the commissioner, the corporation shall provide financial assistance to municipalities as a loan pursuant to paragraph (a) of subdivision four of section twelve hundred eighty-five-j of the public authorities law from any available moneys in the fund other than the proceeds of the corporation's bonds or notes or moneys needed to comply with subdivision five of section twelve hundred eighty-five-j of the public authorities law if and to the extent any of the following conditions are met:

a. The corporation determines that it is unable to, or that it is impracticable to, finance all or a portion of the costs of an eligible project from the proceeds of bonds or notes that are special obligations of the corporation; or

b. The total cost of the eligible project and related segments does not exceed four million dollars where such project and related segments service a municipality with a population of three thousand five hundred or less; or

c. The commissioner or the corporation determines that failure to do so would jeopardize the receipt or maintenance of federal capitalization grant moneys, awards or assistance; or

d. A determination is made by the corporation that the issuance of and

use of the proceeds of the corporation's bonds to provide financial assistance to municipalities would cause the loss of the tax-exempt status of any bonds or other obligations of New York state, all or a portion of the proceeds of which are appropriated or otherwise transferred into the fund; or

e. Federal capitalization grants are provided in the form of a letter of credit or draws under capitalization grant agreements and the commissioner or the corporation determines, consistent with the purposes of the fund, that providing financial assistance from the proceeds of corporation bonds or notes would delay receipt of moneys from the federal government under the Federal Water Pollution Control Act.

The interest rate charged on any loan made by the corporation pursuant to this subdivision shall be no more than two-thirds of the market rate of interest otherwise applicable thereto, provided, however, that in the case of any municipality which has, during the period commencing on June first, nineteen hundred ninety-two and ending on September thirtieth, two thousand twenty-seven, (i) submitted an application for financial assistance in the form of a loan from the corporation pursuant to this subdivision, for an eligible project, which application has been accepted by the corporation, (ii) closed on such loan, and (iii) commenced construction of such eligible project, the interest rate charged on such loan shall be no more than one-half of the market rate otherwise applicable thereto.

9. The contracts for the construction of eligible projects constructed and financed pursuant to a project financing agreement shall be subject to the requirements and provisions of article 15-A of the executive law and, for such purposes, any such contract shall be considered a "state contract" and the department shall be the "contracting agency" for each such contract.

10. Notwithstanding the provisions of any other law, general, special or local, the following determinations shall be made by the corporation in its sole and absolute discretion:

(a) In connection with any application for financial assistance from

the fund in the form of a loan from the proceeds of bonds or notes of the corporation, the determination as to whether the municipality receiving such loan has qualified for an allocation of fifty percent of the principal amount of such loan outstanding at any time, pursuant to subdivision three of this section; and

(b) In connection with any application for financial assistance from the fund in the form of a loan from the corporation pursuant to subdivision eight of this section, where the municipality receiving such loan is not qualified for an interest rate of zero percent, the determination as to whether such municipality has qualified for an interest rate of one-half of the market rate otherwise applicable thereto, pursuant to subdivision eight of this section.

TITLE 21

NUTRIENT RUNOFF

Section 17-2101. Definitions.

17-2103. Sale or use of phosphorus fertilizer restricted.

17-2105. Local fertilizer regulation.

§ 17-2101. Definitions.

As used in this title:

1. "Compost" means the biologically stable humus-like material derived from composting or the aerobic, thermophilic decomposition of organic matter.

2. "Fertilizer" means the same as "specialty fertilizer" as defined in section one hundred forty-three of the agriculture and markets law.

3. "Lawn" or "non-agricultural turf" means any non-crop land area that is covered by any grass species. Lawn or non-agricultural turf does not mean flower or vegetable gardens, pasture, hayland, trees, shrubs, turf grown on turf farms, or any form of agricultural production.

4. "Phosphorus fertilizer" means fertilizer in which the available phosphate (P2O5) content is greater than 0.67 percent by weight, excluding compost.

§ 17-2103. Sale or use of phosphorus fertilizer restricted.

1. No person shall apply or authorize any person by way of service contract or other arrangement to apply in this state any phosphorus fertilizer on lawn or non-agricultural turf, except when:

(a) A soil test indicates that additional phosphorus is needed for growth of that lawn or non-agricultural turf; or

(b) The phosphorus fertilizer is used for newly established lawn or non-agricultural turf during the first growing season.

2. Any retailer selling or offering for sale phosphorus fertilizer for use on lawn or non-agricultural turf shall comply with the retail sale requirements in section one hundred forty-six-g of the agriculture and markets law related to display of phosphorus fertilizer and the posting of educational signs.

3. No person shall apply fertilizer to:

(a) lawn or non-agricultural turf between December first and April first, annually;

(b) any impervious surface including parking lots, roadways, and sidewalks. If such application occurs, the fertilizer must be immediately contained and either legally applied to lawn or non-agricultural turf or placed in an appropriate container; or

(c) any lawn or non-agricultural turf on any real property within twenty feet of any surface water, except that this restriction shall not apply where a continuous natural vegetative buffer, at least ten feet wide, separates an area of lawn or non-agricultural turf and surface water, and except that, where a spreader guard, deflector shield or drop spreader is used to apply fertilizer, such application may not occur within three feet of any surface water. This paragraph shall not apply to an application of fertilizer for newly established lawn or non-agricultural turf during the first growing season.

4. Nothing in this title shall impair or supersede the authority of the commissioner of agriculture and markets pursuant to articles ten and twenty-five-AA of the agriculture and markets law.

§ 17-2105. Local fertilizer regulation.

A local government may enact more stringent standards for the application of fertilizer for lawn and non-agricultural turf than established in this title, provided, however, that any local government that enacts such standards after January 1, 2011 must demonstrate to the department prior to enactment that additional or more stringent standards are necessary to address local water quality conditions.

ARTICLE 19

AIR POLLUTION CONTROL

Title 1. Short title; declarations of policy and purpose; definitions
3. Powers and duties
5. Procedure
7. Scope and construction
9. State acid deposition control act
11. Vehicle global warming index labels

TITLE 1

**SHORT TITLE; DECLARATIONS OF POLICY AND PURPOSE;
DEFINITIONS**

Section 19-0101. Short title.
19-0103. Declaration of policy.
19-0105. Declaration of purpose.
19-0107. Definitions.

§ 19-0101. Short title.

This article shall be known as the "Air Pollution Control Act".

§ 19-0103. Declaration of policy.

It is declared to be the policy of the state of New York to maintain a reasonable degree of purity of the air resources of the state, which shall be consistent with the public health and welfare and the public enjoyment thereof, the industrial development of the state, the propagation and protection of flora and fauna, and the protection of physical property and other resources, and to that end to require the use of all available practical and reasonable methods to prevent and control air pollution in the state of New York. It is further declared that this can be done most effectively by focusing on goals to be achieved by a maximum of cooperation among all parties concerned and that codes, rules and regulations established under the provisions of this article should be clearly premised upon scientific knowledge of causes as well as of effects.

§ 19-0105. Declaration of purpose.

It is the purpose of this article to safeguard the air resources of the state from pollution by: (1) controlling or abating air pollution which shall exist when this article shall be enacted and (2) preventing new air pollution, under a program which shall be consistent with the declaration of policy above stated and in accordance with the provisions of this article.

§ 19-0107. Definitions.

When used in this article:

1. "Person" means any individual, public or private corporation, political subdivision, agency, board, department or bureau of the state, municipality, partnership, association, firm, trust, estate or any other

legal entity whatsoever which is recognized by law as the subject of rights and duties.

2. "Air contaminant" means a dust, fume, gas, mist, odor, smoke, vapor, pollen, noise or any combination thereof.

3. "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in quantities, of characteristics and of a duration which are injurious to human, plant or animal life or to property or which unreasonably interfere with the comfortable enjoyment of life and property throughout the state or throughout such areas of the state as shall be affected thereby; excluding however all conditions subject to the requirements of the Labor Law and Industrial Code.

4. "Air contamination" means the presence in the outdoor atmosphere of one or more air contaminants which contribute or which are likely to contribute to a condition of air pollution.

5. "Air contamination source" means any source at, from or by reason of which there is emitted into the atmosphere any air contaminant, regardless of who the person may be who owns or operates the building, premises or other property in, at or on which such source is located or the facility, equipment or other property by which the emission is caused or from which the emission comes. Without limiting the generality of the foregoing, this term includes all types of commercial and industrial plants and works, heating and power plants and stations, shops and stores; buildings and other structures of all types, including single and multiple family residences, apartment houses, office buildings, public buildings, hotels, restaurants, schools, hospitals, churches, and other institutional buildings; automobiles, trucks, tractors, buses and other motor vehicles (hereinafter called "motor vehicles"); garages; vending and service locations and stations; railroad locomotives; ships, boats and other waterborne craft; aircraft; portable fuel-burning equipment; incinerators of all types, indoor and outdoor; and refuse dumps and piles.

6. "Air cleaning installation" means any method, process or equipment

which removes, reduces or renders less noxious air contaminants discharged into the atmosphere.

7. "Area of the state" means any county, city, town, village, or other geographical area of the state as may be designated by the department.

8. "The Act" means the Federal Clean Air Act, 42 U.S.C. Section 7401 et seq., as amended by Public Law 101-549, November fifteenth, nineteen hundred ninety.

9. "Administrator" means the administrator of the United States environmental protection agency.

10. "Affected source" or "affected unit" shall have the meaning given to it in the regulations promulgated under Title IV of the Act.

11. "Clean alternative fuels" means fuels, for use in motor vehicles which meet the requirements of section 7511a(c)(4) of the Act.

12. "Clean fuel vehicle" means a vehicle in a class or category of vehicles which has been certified to meet, for any model year, the clean fuel vehicle standards for clean fuel vehicles specified in this article pursuant to section 7583 of the Act.

13. "Covered fleet" means ten or more motor vehicles which are owned or operated by a single person in an area designated as being a severe ozone non-attainment area by the administrator pursuant to Title I of the Act. In determining the number of motor vehicles owned or operated by a single person for the purposes of this article, all motor vehicles owned or operated, leased or otherwise controlled by such person, by any person who controls such person, by any person controlled by such person, and by any person under common control with such person shall be treated as owned by such person. The term "covered fleet" shall not include motor vehicles held for lease or rental to the general public, motor vehicles held for sale by motor vehicle dealers including demonstration vehicles, motor vehicles used for motor vehicle manufacturer product evaluations or tests, law enforcement and other

emergency vehicles, or non-road vehicles including farm and construction vehicles.

14. "Covered fleet vehicle" means only a motor vehicle which is (i) in a covered fleet which is centrally fueled or is capable of being centrally fueled and (ii) in a vehicle class for which standards are applicable under this article.

15. "Emission offset" or "offset" means emission reductions or emission reduction credits which are required to be obtained by an air contamination source in order to obtain approval for a permit to construct a new air contamination source, or modify an existing air contamination source, in a non-attainment area pursuant to Title I of the Act.

16. "Emission reduction" or "emission reduction credit" means the actual decrease in emissions of a regulated air contaminant in tons per year. Emission reductions may be created by, but not limited to, product, process, pollution control or housekeeping changes that:

- a. reduce emissions beyond that which is required by the Act;
- b. are real and actually occur;
- c. are quantifiable;
- d. are enforceable by the commissioner or the administrator; and
- e. are assured for the life of a corresponding increase.

17. "Fugitive emissions" means those emissions of regulated air contaminants which could not reasonably pass through a stack, chimney, vent or other functionally-equivalent openings.

18. "Operating permit" means a permit issued pursuant to section 19-0311 of this article.

19. "Major air contamination source" or "major stationary source" means any stationary source or any group of stationary sources located within a contiguous area and under common control and belonging to a single major industrial grouping that:

a. emits or has the potential to emit one hundred tons per year of any regulated air contaminant; or

b. emits or has the potential to emit ten tons per year of any air contaminant or twenty-five tons per year of any combination of air contaminants listed under section 7412(b) of the Act, including fugitive emissions of such contaminants, or lesser quantities as the administrator may establish pursuant to the Act; or

c. emits or has the potential to emit twenty-five tons per year of volatile organic compounds or oxides of nitrogen, including fugitive emissions of such contaminants if located in an area designated a "severe non-attainment area" pursuant to section 7511 of the Act; or

d. emits or has the potential to emit fifty tons per year of volatile organic compounds or one hundred tons of oxides of nitrogen if located in an ozone transport region pursuant to section 7511(c) of the Act.

Fugitive emissions from a stationary source must be considered in determining whether such stationary source is a major stationary source for permit requirements if the source belongs to one of the categories of stationary sources identified by the administrator in regulation pursuant to section 7602(j) of the Act.

20. "Major industrial grouping" means all activities belonging to the same major group identified in the Standard Industrial Classification Manual (1987) published by the United States department of commerce.

21. "Potential to emit" means the maximum capacity of a stationary source to emit any regulated air contaminant under its physical and operational design. Any physical or operational limitation on the capacity of such source to emit a regulated air contaminant, including

air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the commissioner and the administrator of the United States environmental protection agency provided, however, that physical or operational limitations enforceable by the commissioner shall be treated as part of a source's design, if the commissioner is given such authorization by the administrator.

22. "Regulated air contaminant" means the following:

a. oxides of nitrogen;

b. volatile organic compounds;

c. sulfur dioxide;

d. particulate;

e. carbon monoxide;

f. any class I or II substance subject to a standard promulgated pursuant to section 7671 of the Act;

g. any other air contaminant for which a national ambient air quality standard has been promulgated; or

h. any air contaminant that is regulated under section 7411 or 7412 (b) and (c) of the Act and which the commissioner has listed in regulation. The department may use emergency rulemaking pursuant to subdivision six of section two hundred two of the state administrative procedure act if necessary, in order to timely list such air contaminants.

23. "State implementation plan" or "SIP" means documents prepared by the department, and submitted to the administrator for approval, which identify actions and programs to be undertaken by the state and its

subdivisions to implement the Act.

24. "Stationary source" means any building, structure, facility or installation that emits or may emit any regulated air contaminant.

TITLE 3

POWERS AND DUTIES

- Section 19-0301. Powers and duties.
- 19-0302. Permits and certificates.
- 19-0303. Codes, rules and regulations.
- 19-0304. Burning of hazardous wastes.
- 19-0305. Commissioner; enforcement power.
- 19-0306. Municipal solid and regulated medical waste incineration facilities.
- 19-0306-a. Personal watercraft emissions regulations.
- 19-0306-b. Zero-emissions cars and trucks.
- 19-0307. Certificates of compliance for purposes of the Real Property Tax Law.
- 19-0309. Certificates of compliance for purposes of the Tax Law.
- 19-0311. Operating permit program for sources subject to federal Clean Air Act.
- 19-0312. Power plant emissions and performance standards.
- 19-0313. Small business stationary source technical and environmental compliance assistance program.
- 19-0315. Small business stationary source compliance advisory panel.
- 19-0317. Air program evaluation.
- 19-0319. Centrally fueled fleet program.
- 19-0320. Emissions inspections of heavy duty vehicles.
- 19-0321. Permits to construct and operate certain municipally sponsored major facilities.
- 19-0323. Use of ultra low sulfur diesel fuel and best available technology by the state.
- 19-0325. Sulfur reduction requirements.
- 19-0327. Bioheating fuel requirements.

- 19-0328. Ozone non-attainment fee programs.
- 19-0329. Certain fuel oil; prohibited.
- 19-0331. Moratorium on air permit issuance and renewal.

§ 19-0301. Powers and duties.

1. Consistent with the policy of the state as it is declared in section 19-0103, the department shall have power to:

a. Formulate, adopt and promulgate, amend and repeal codes and rules and regulations for preventing, controlling or prohibiting air pollution in such areas of the state as shall or may be affected by air pollution and to include in any such codes, rules or regulations a general provision for controlling air contamination including but not limited to a requirement that permits to construct and certificates to operate be obtained from the department, provided, however, that in exercising the provisions of this subdivision the department shall conform with the provisions of section 19-0303.

b. Include in any such codes and rules and regulations provisions establishing areas of the state and prescribing for such areas (1) the degree of air pollution or air contamination that may be permitted therein, (2) the extent to which air contaminants may be emitted to the air by any air contamination source, (3) standards for the composition of fuels offered for sale or use of fuels or energy sources in any type or class of air contamination source where the department finds that air contaminants from such type or class or source will probably otherwise be discharged in contravention of applicable emission standards or air quality standards, and (4) requirements and standards for the approval of plans or specifications for air cleaning installations.

c. Promulgate standards for crankcase ventilating systems and air contaminant emission control systems, in accordance with the Vehicle and Traffic Law.

d. Hold public hearings, conduct investigations, compel the attendance

of witnesses, receive such pertinent and relevant proof and do such other things as it may deem to be necessary, proper or desirable in order that it may effectively discharge its code, rule and regulation making duties and responsibilities under this article.

e. Except as otherwise required by the Act or regulations promulgated pursuant thereto by the administrator, formulate, adopt, and promulgate, amend and repeal codes, rules and regulations establishing an operating permit program in accordance with section 19-0311 of this title.

f. Delegate to the department of agriculture and markets the authority to test fuels for conformance with applicable standards and to enforce against violations of such standards.

2. It shall be the duty and responsibility of the department to:

a. Prepare and develop a general comprehensive plan for the control or abatement of existing air pollution and for the control or prevention of any new air pollution recognizing varying requirements for different areas of the state.

b. Encourage voluntary cooperation by all persons in controlling air pollution and air contamination, including but not limited to, educating the public about the health and environmental impacts of idling vehicles, such as air pollution from vehicle emissions, environmental impacts of carbon dioxide emissions and health risks associated with exposure to vehicle emissions. Such education shall, at a minimum, include developing and distributing educational materials and posting such information on the department's website.

c. Encourage the formulation and execution of plans by cooperative groups or associations of counties, cities, towns and villages, industries and others who severally or jointly are or may be the source of air pollution, for the prevention and abatement of pollution.

d. Cooperate with the appropriate agencies of the United States or other states or any interstate agencies or international agencies with

respect to the control of air pollution and air contamination, or for the formulation for the submission to the legislature of interstate air pollution control compacts or agreements.

e. Promulgate standards for the use of fuel or fuel additives for use in motor vehicles or motor vehicle engines, taking due recognition of federal standards and requirements.

3. a. The department is prohibited from adopting any rule, regulation or standard which would require the use or sale of any type of reformulated gasoline other than the federal reformulated gasoline that is certified by the administrator pursuant to section 7545(k) of the Act for sale and use in states other than California; provided, however, that nothing in this subdivision shall be deemed to limit the authority of the department to adopt a rule, regulation or standard for:

(1) fuel oxygen content or fuel volatility; or

(2) the composition of fuels necessary to implement section 7586 of the Act; or

(3) the composition of fuels necessary to implement section 7507 of the Act if such fuel standard is adopted and implemented regionally pursuant to agreement with any three states sharing a boundary with New York; or

(4) the composition of fuels if the commissioner finds that no other measures would bring about timely attainment or maintenance of a national primary or secondary ambient air quality standard for which New York state must file a state implementation plan pursuant to the Act, or that other existing and technically possible measures are unreasonably costly or impracticable and the commissioner has included such measure in the implementation plan pursuant to section 7410 of the Act.

b. No provision of this subdivision shall be deemed to authorize the use of methyl tertiary butyl ether as an oxygenate in any motor fuel imported into, or sold or offered for sale in this state.

4. Any final order or determination or other final action by the commissioner and the validity or reasonableness of any code, rule or regulation promulgated by the department pursuant to this article shall

be subject to review as provided in article seventy-eight of the civil practice law and rules; provided however, the department may establish by regulation a ninety day statute of limitations for review of final permit actions by the commissioner pursuant to section 19-0311 of this title, if required to maintain compliance with the Act.

5. The department shall certify emission reduction credits and establish an emission reduction credit registry. Such registry shall identify emission reduction credits, that are certified by, or used in, New York state. Prior to certifying credits, the department shall publish notice and provide the opportunity for public comment, pursuant to article seventy of this chapter, on the proposed modification of a source's permit to reflect that emission reductions will be certified as emission reduction credits. The department shall provide information regarding the availability of such certified emission reduction credits to any person upon request. The department shall, to the extent consistent with any rules or guidance related to emission offset requirements published by the administrator, adopt rules and regulations to provide for the use of mobile source emission reduction credits as a means of satisfying emission offset requirements pursuant to section 7503(c) of the Act. Such rules and regulations shall include provision for cooperating with the commissioner of motor vehicles pursuant to paragraph one of subdivision (d) of section 301 of the vehicle and traffic law.

§ 19-0302. Permits and certificates.

1. The rules and regulations adopted by the department to implement this article and the provisions of article 70 of this chapter and rules and regulations adopted thereunder and the provisions of the state administrative procedure act shall govern permit and certificate applications, renewals, modifications, suspensions and revocations under this article unless otherwise provided for in this article.

2. No permit issued pursuant to this article shall include performance, emission or control standards more stringent than any

established by the Act or by the United States environmental protection agency unless such standards are authorized by rules or regulations.

§ 19-0303. Codes, rules and regulations.

1. A code, rule or regulation or any amendment or repeal thereof shall not be adopted until after a public hearing within the area of the state concerned. Notice of such hearing shall be given at least sixty days prior to the scheduled date of the hearing by public advertisement of the date, time, place and purpose of such hearing. At such hearing, opportunity to be heard by the department with respect to the subject thereof shall be given to the public. A code, rule or regulation or an amendment or repeal thereof shall not become effective until thirty days after certified copies thereof shall have been filed with the secretary of state. Any person heard at such hearing shall be given written notice of the action of the department with respect to the subject thereof.

2. The code, rule and/or regulation or any amendment thereof which shall be adopted by the department may differ in its terms and provisions as between particular types and conditions of air pollution or of air contamination; as between particular air contamination sources; and as between particular areas of the state.

3. In exercising the power conferred upon it by section 19-0301 to formulate, adopt and promulgate, and to amend and repeal, codes and rules and regulations for preventing, controlling or prohibiting air pollution, the department shall give due recognition to the fact that the quantity or characteristics of air contaminants or the duration of their presence in the atmosphere, which may cause air pollution in one area of the state, may cause less air pollution or not cause any air pollution in another area of the state, and it shall take into consideration in this connection such factors, among others found by it to be proper and just, as existing physical conditions, zoning classifications, topography and prevailing wind directions and velocities and also the fact that a code, rule or regulation and the degree of conformance therewith which may be proper as to an essentially

residential area of the state may not be proper as to a highly developed industrial area of the state.

4. In adopting any code, rule or regulation which contains a requirement that is more stringent than the Act or regulations issued pursuant to the Act by the United States environmental protection agency, the commissioner shall, in addition to the provisions of section two hundred two-a of the state administrative procedure act, include in the regulatory impact statement:

(a) a detailed explanation of the reason or reasons that justify exceeding federal minimum requirements, including:

(i) satisfying any requirement of the Act as it relates to New York state, including any requirement for demonstrating attainment or maintenance of ambient air quality standards or meeting reasonable further progress pursuant to Title I of the Act;

(ii) preventing an assessment or imposition of sanctions, or the imposition of a federal implementation plan, pursuant to the Act;

(iii) complying with a final decree of a court; or

(iv) protecting public health or the environment;

(b) an evaluation of the cost-effectiveness of the proposed code, rule or regulation, in comparison with the cost-effectiveness of reasonably available alternatives; and

(c) a review of the reasonably available alternative measures considered by the commissioner and an explanation of the reasons for rejecting such alternatives.

5. The state, through its representatives on the interstate transport commission established pursuant to section 7506a of the Act, shall provide for public review of proposed recommendations for additional control measures and attainment strategies. Such public review will be effected by the governor's designee causing a notice of such proposed recommendations to be published in the Environmental Notice Bulletin. Such public review may be conducted concurrently with any public review required pursuant to the Act.

§ 19-0304. Burning of hazardous wastes.

1. Any person applying for a permit to burn hazardous waste pursuant to the department's rules and regulations shall be subject to the requirements of this section.

For the purposes of this section, all burning of hazardous wastes shall be subject to the provisions of this section, including combustion for the recovery of the thermal value of such wastes.

As used in this section, the term "hazardous waste" shall have the same meaning as provided in subdivision three of section 27-0901 of this chapter except that it shall not include wastes classified as hazardous wastes solely because they are ignitable.

2. Prior to the issuance of such permit the commissioner may require the applicant to submit a trial burn plan. The trial burn plan shall include but need not be limited to those items among the following which the commissioner determines to be necessary:

a. An analysis of the waste or mixture of wastes to be burned;

b. An engineering description of the incinerator, process, or combustion installation for which the permit is being sought;

c. A test protocol, including but not limited to the following for each waste type:

(1) identification of waste type,

(2) waste feed rate,

(3) combustion air rate,

(4) combustion chamber temperature,

(5) gas residence time in combustion chamber,

(6) identification of actual and if used, surrogate principal organic hazardous constituents (hereinafter referred to as "POHC") selected from the list in appendix VIII of Part 261 of Title 40 code of Federal Regulations,

(7) feed rate of actual POHC and if used, surrogate POHC,

(8) type and feed rate of auxiliary fuel,

- (9) anticipated identification and flow rate of fuel products,
- (10) estimated combustion efficiency and POHC destruction and removal efficiency,
- (11) methods of waste sampling and analysis,
- (12) methods of stack sampling and analysis;

d. Procedures for rapidly stopping waste feed, shutting down the incinerator, process, or combustion installation, and controlling the emissions in the event of an equipment malfunction;

e. Such other information as the commissioner reasonably finds necessary to determine whether approval of the trial burn plan will ensure compliance with applicable performance standards.

3. The commissioner shall approve a trial burn plan if he finds that:

a. The trial burn will not present an imminent hazard to human health or the environment;

b. The trial burn is likely to determine whether the incinerator, process or combustion installation meet applicable performance standards.

If the trial burn plan is not approved by the commissioner, he shall state in writing the reasons for such disapproval to the applicant. If the trial burn plan is approved by the commissioner, the owner/operator shall only be required to perform a trial burn in accordance with the approved trial burn plan. Notwithstanding the foregoing limitation, the department may require a modification of the trial burn plan pursuant to a written finding by the commissioner that such a modification is required to protect the public health or the environment. Stack tests shall be performed according to procedures established by the commissioner to determine waste destruction and removal efficiency. The commissioner may conduct tests to insure that trace levels of toxic air contaminants are within acceptable limits.

4. After any approved trial burn, the applicant shall submit to the

commissioner a certification that the trial burn has been carried out in accordance with the trial burn plan. This report shall be made within sixty days of the trial burn. In addition, after each approved trial burn, the applicant must furnish such information and data as required by the commissioner pursuant to the approved trial burn plan.

5. The commissioner must either approve or disapprove the application for an activity that includes the burning of hazardous wastes. If the commissioner approves such application, the permit must specify the operating conditions which must be met in burning such wastes. Such permit must also specify the waste types described in the approved trial burn plan. If it is necessary for the permittee to seek a modification of the permit deemed significant by the department with respect to the burning of hazardous waste or wastes, the commissioner may require a new trial burn plan for the department's review.

6. If the commissioner disapproves such application he must notify the applicant in writing of the reasons for such disapproval.

7. At a minimum, the owner or operator must continuously monitor the combustion temperature, waste feed rate and combustion air rate when burning hazardous wastes or use another system, subject to the approval of the commissioner which provides at least equal assurance of on line efficiency.

The commissioner shall require the owner or operator to periodically inspect the incinerator, process, or combustion installation and associated equipment to ensure that combustion efficiency is maintained. The owner or operator must also inspect the alarm system and emergency shut down controls at least every month, or as required by the commissioner.

8. The commissioner, authorized officers or employees of the department may enter any facility with an incinerator, process, or combustion installation at any reasonable time, after proper notification and identification, to conduct an inspection of the installation and any records maintained pursuant to the permit.

9. The commissioner may accept a previously conducted stack test in lieu of a trial burn plan and associated stack tests required under this section.

§ 19-0305. Commissioner; enforcement power.

1. The commissioner is hereby authorized to enforce the codes, rules and regulations of the department established in accordance with this article.

2. In addition to the powers otherwise granted under this article, and in accordance with the policies of department, the commissioner shall have power to:

a. Enter and inspect any property, premise or place and stop, detain and inspect any motor vehicle for the purpose of investigating either an actual or suspected source of air pollution or air contamination or for the purpose of ascertaining compliance or noncompliance with any code, rule or regulation which may be promulgated under this article. Any information relating to secret processes, or methods of manufacture, or production obtained in the course of the inspection or investigation shall be kept confidential, provided that the quantity and physical and chemical characteristics of actual and allowable air contaminant emissions shall be considered public information. If samples of air or air contaminants are taken for analysis during any inspection made on the premises of a person who is suspected of causing air pollution or air contamination or during the inspection of a motor vehicle, a duplicate of the analytical report shall be furnished promptly to such person or the owner of such motor vehicle.

b. Conduct or cause to be conducted studies and research with respect to air pollution control, abatement or prevention.

c. Conduct and supervise programs of air pollution control education including the preparation and distribution of information relating to

air pollution control.

d. Determine by means of field studies and sampling the degree of air pollution in New York state.

e. Provide advisory technical consultation services to local communities.

f. Develop and conduct demonstration programs in cooperation with local communities.

g. Promote the establishment of local laboratory facilities including essential instrumentation.

h. Provide facilities and staff for training personnel of local communities in the principles of air sanitation.

i. Serve as the agent of the state for the receipt of monies from the federal government or other public or private agencies and to expend such monies after appropriation thereof for the purpose of air pollution control studies or research.

j. Consider for approval or disapproval applications for permits and certificates including plans or specifications for air contamination sources and air cleaning installations or any part thereof submitted consistent with the rules of the department, and inspect the installation for compliance with the plans or specifications; provided that in the case of a major steam electric generating facility, as defined in former section one hundred forty of the public service law, for which a certificate is required pursuant to the former article eight of the public service law, or a major electric generating facility as defined in section one hundred sixty of the public service law, for which a certificate is required pursuant to article ten of the public service law, such approval functions may be performed by the state board on electric generation siting and the environment, as defined in the public service law, pursuant to federally delegated or approved environmental permitting authority, and such inspection functions shall

be performed by the department. Nothing herein shall limit the authority of the department of health and the department to monitor the environmental and health impacts resulting from the operation of such major steam electric generating facility and to enforce applicable provisions of the public health law and this chapter and the terms and conditions of the certificate governing the environmental and health impacts resulting from such operation.

k. Approve types of crankcase ventilating systems and air contaminant emission control systems pursuant to standards promulgated by the department, in accordance with the Vehicle and Traffic Law.

l. Do such other things as he may deem necessary, proper or desirable in order that he may enforce codes, rules or regulations which have been promulgated under this article.

§ 19-0306. Municipal solid and regulated medical waste incineration facilities.

1. Definitions. When used in this section:

a. "Municipal solid waste incineration facility" means a facility that is owned, operated, or utilized by, or under contract with, a municipality or political subdivision and which utilizes high temperature thermal destruction technologies, including combustion for the recovery of thermal value or for the disposal of municipal solid waste.

b. "Solid waste" means any materials or substances discarded or rejected as being spent, useless, worthless, or in excess to the owner at the time of such discharge or rejection, except sewage and other highly diluted water carried materials or substances and those in gaseous form.

c. "Regulated medical waste incineration facility" means an incinerator which is operated or utilized for the disposal or treatment

of regulated medical waste, as defined in title 15 of article 27 of this chapter and which may utilize high temperature thermal destruction technologies, including combustion for the recovery of thermal value.

2. Within thirty days of the effective date of this section and pursuant to the state administrative procedure act, the commissioner shall, in consultation with the commissioner of health, propose final draft operating requirements for emissions of air contaminants from municipal solid waste incineration facilities. Such operating requirements shall be effective and shall apply to municipal solid waste incineration facilities for which a permit to construct has been issued and final engineering drawings have been accepted by the commissioner after one hundred twenty days after such operating requirements have been formally promulgated. Such operating requirements shall govern the operation and management of such facilities with respect to air contamination, and shall include but not be limited to provisions for:

a. Maintenance of a minimum incineration temperature and the means and location at which such temperature shall be measured;

b. Residence or exposure time for incineration;

c. Appropriate levels of control for acid gas, sulfur dioxide, oxides of nitrogen, and hydrochloric acid with regard to the following:

(i) the level of protection provided the public health and environment;

(ii) the likely or potential reductions of acid gas emissions from a separate, nearby source of such emissions as a result of a proposed facility becoming operational;

(iii) the likely economic impact of such controls due to associated capital and operating costs, and in relation to alternative solid waste management options, including landfilling; and

(iv) the appropriateness of reduced or modified levels of such controls for smaller facilities;

d. Combustion efficiency;

e. Monitoring of emissions for toxic air contaminants, or surrogates thereof where appropriate, to determine compliance with permit emission limits twice within the first eighteen months of operation and once each within the next two eighteen month intervals and subsequently at the discretion of the commissioner, and following any detection of permit violations in a manner to be determined by the commissioner;

f. Continuous monitoring for oxygen, carbon monoxide, carbon dioxide, opacity and temperature;

g. Sampling and testing of the combined ash and dust residue at least annually to determine appropriate disposition or disposal based on relative toxicity; provided, however, that separate testing of ash and dust shall be required if they are not mixed prior to disposal.

3. The department shall undertake further investigation of appropriate cooling methods for achieving the condensation and collection of air contaminants and of the necessity for, and appropriate means of, regulating fine particulates. Upon such investigation, the commissioner shall issue a report on his findings and may promulgate appropriate regulations.

4. The department shall, in promulgating any new or revised rule or regulation, accompany such rule making with an environmental impact statement or a written assessment stating the extent to or means by which such rule or regulation will prevent, control or prohibit air pollution.

5. Operating requirements established pursuant to this section for municipal incineration facilities shall be embodied in rules and regulations of the department promulgated in accordance with the state administrative procedure act.

6. On or before the effective date of this subdivision, the commissioner shall, in consultation with the commissioner of health, promulgate proposed operating requirements for the emission of air contaminants from regulated medical waste incineration facilities. Such

operating requirements shall, where appropriate, be consistent with the provisions of this section provided, however, that the commissioner shall require such facilities to employ the best available control technologies. Such operating requirements shall be effective and shall apply to all regulated medical waste incineration facilities, for which an operating permit has been issued, ninety days after such operating requirements have been formally promulgated pursuant to the state administrative procedure act provided, however, that where regulated medical waste incineration facilities are owned by health care facilities licensed pursuant to article twenty-eight of the public health law and in operation by permit of the department on or before September first, nineteen hundred eighty-seven, then such standards shall become effective as to such facilities on January first, nineteen hundred ninety-two.

7. Each person who operates a facility for the incineration of regulated medical waste shall report to the commissioner on the volume and sources of regulated medical waste that it incinerated on-site during the six months next following the effective date of this subdivision. Such report shall be the same as or similar to the report required to be filed with the administrator. The commissioner is authorized to require reports pursuant to this subdivision at least annually thereafter.

§ 19-0306-a. Personal watercraft emissions regulations.

1. Pursuant to The Federal Clean Air Act, 42 U.S.C. section 7543 (e)(2)(b) as amended by Public Law 101-549, November fifteenth, nineteen hundred ninety, within one year from the effective date of this section, the commissioner shall adopt regulations which are consistent with the California air emissions reduction and labeling regulations for new spark ignition marine engines for use in personal watercraft. Such regulations shall apply to every new personal watercraft that is manufactured for sale or offered for sale in New York. The commissioner shall review and revise such regulations annually in order to retain their consistency with the California air emissions and labeling

regulations for spark ignition marine engines.

2. For purposes of this section, the term "personal watercraft" shall have the same meaning as in subdivision thirty of section two of the navigation law.

§ 19-0306-b. Zero-emissions cars and trucks.

1. It shall be a goal of the state that one hundred percent of new passenger cars and trucks offered for sale or lease, or sold, or leased, for registration in the state shall be zero-emissions by two thousand thirty-five. It shall be a further goal of the state that one hundred percent of medium-duty and heavy-duty vehicles offered for sale or lease, or sold, or leased, for registration in the state be zero-emissions by two thousand forty-five for all operations where feasible. It shall be further a goal of the state to transition to one hundred percent zero-emissions from new off-road vehicles and equipment purchased beginning in two thousand thirty-five, where feasible.

2. The department, to the extent consistent with federal law, shall develop and propose:

a. Passenger vehicle and truck regulations requiring increasing volumes of new zero-emissions vehicles offered for sale or lease, or sold, or leased, for registration in the state towards the target of one hundred percent of in-state sales by two thousand thirty-five.

b. Medium-duty and heavy-duty vehicle regulations requiring increasing volumes of new zero-emissions trucks and buses offered for sale or lease, or sold, or leased, for registration and operated in the state towards the target of one hundred percent of the fleet transitioning to zero-emissions vehicles by two thousand forty-five everywhere feasible.

c. Strategies, in coordination with other state agencies, other states and the federal environmental protection agency, to achieve one hundred percent zero-emissions from new off-road vehicles and equipment

operations in the state by two thousand thirty-five. In implementing the provisions of this paragraph, the department shall act consistently with safety, technological feasibility and cost-effectiveness.

3. The New York state energy research and development authority, in consultation with the department, the department of economic development, the public service commission, the department of transportation, the department of motor vehicles, and other state agencies, local agencies and other interested parties, shall develop a zero-emissions vehicle market development strategy by January thirty-first, two thousand twenty-three, and an update every three years thereafter, that:

a. Ensures coordinated and expeditious implementation of the system of policies, programs and regulations necessary to achieve the goals and orders established by this section.

b. Outlines state agencies' actions to support new and used zero-emissions vehicle markets for broad accessibility for all residents of this state.

4. The department, the New York state energy research and development authority, the public service commission and other state agencies, shall use existing authorities to accelerate deployment of affordable powering options for zero-emissions vehicles, in ways that serve all communities and particularly low-income and disadvantaged communities, consistent with state and federal law.

5. The department, the New York state energy research and development authority, the department of motor vehicles and the department of transportation, in consultation with the other state agencies, shall on or before July fifteenth, two thousand twenty-three, identify near term actions and investment strategies to improve sustainable transportation, freight and transit options, including where feasible:

a. Supporting bicycle and pedestrian options, particularly in low-income and disadvantaged communities in the state, by incorporating

safe and accessible infrastructure into projects where appropriate.

b. Supporting light, medium, and heavy-duty zero-emissions vehicles and infrastructure as part of larger transportation projects, where appropriate.

§ 19-0307. Certificates of compliance for purposes of the Real Property Tax Law.

1. For the purposes of section 481 of the Real Property Tax Law, the commissioner or his designated representative is hereby authorized to issue certificates of compliance concerning air pollution control facilities and air pollution controlled process facilities as defined in such law. No such certificate shall be issued unless the facility to which it is applicable is in compliance with applicable provisions of titles 1 to 11, inclusive, and title 19 of article 17, article 19, and title 1 of article 27 of this chapter; of the Public Health Law; of the state sanitary code and of codes, rules, regulations, permits or orders issued pursuant thereto.

2. In the case of facilities which have not been completed prior to the close of a taxable status date with respect to which an exemption may be claimed under the Real Property Tax Law, a temporary certificate of compliance may be issued if the commissioner or his representative is satisfied, on the basis of the construction which has taken place, that such facilities, when completed, will be in compliance with the provisions of titles 1 to 11, inclusive, and title 19 of article 17, article 19, and title 1 of article 27 of this chapter; of the Public Health Law, of the state sanitary code, and codes, rules, regulations, permits or orders issued pursuant thereto. Such a temporary certificate shall apply only to taxes levied as of the taxable status date with respect to which such a certificate is issued.

3. The certificate of compliance may be revoked by the commissioner, after providing an opportunity to be heard, upon a determination that the facility to which it was applicable either is not, or has not been,

in compliance with applicable provisions of this chapter, the state sanitary code or codes, rules, regulations, permits or orders issued pursuant thereto. Upon revocation, the commissioner shall notify the commissioner of taxation and finance and the assessor of the appropriate county, city, town or village.

§ 19-0309. Certificates of compliance for purposes of the Tax Law.

1. For the purposes of sections 208, 210, 606 and 612 of the Tax Law, the commissioner or his designated representative is hereby authorized to issue certificates of compliance concerning air pollution control facilities and air pollution controlled process facilities as defined in such law. No such certificate shall be issued unless the facility to which it is applicable is in compliance with applicable provisions of titles 1 to 11, inclusive, and title 19 of article 17, article 19, and title 1 of article 27 of this chapter; of the Public Health Law; of the state sanitary code and of codes, rules, regulations, permits or orders issued pursuant thereto.

2. In the case of facilities which have not been completed prior to the close of a taxable year for which a deduction may be claimed under the Tax Law, a temporary certificate of compliance may be issued if the commissioner or his representative is satisfied, on the basis of the construction which has taken place, that such facilities, when completed, will be in compliance with the provisions of titles 1 to 11, inclusive, and title 19 of article 17, article 19, and title 1 of article 27 of this chapter; of the Public Health Law; of the state sanitary code, and codes, rules, regulations, permits or orders issued pursuant thereto. Such a temporary certificate shall apply only to expenditures made in the taxable year with respect to which such a certificate is issued.

3. The certificate of compliance may be revoked by the commissioner, after providing an opportunity to be heard, upon a determination that the facility to which it was applicable either is not, or has not been, in compliance with applicable provisions of this chapter, the state

sanitary code or codes, rules, regulations, permits or orders issued pursuant thereto. Upon revocation, the commissioner shall notify the State Tax Commission.

§ 19-0311. Operating permit program for sources subject to federal Clean Air Act.

1. The department shall establish an operating permit program for sources subject to Title V of the Act. Upon approval of such program by the administrator, the following sources of regulated air contaminants, hereinafter referred to as "sources", shall obtain an operating permit pursuant to this section:

a. major stationary sources;

b. any source, including an area source, subject to a standard, limitation or other requirement under section 7412 of the Act, except that a source is not required to obtain an operating permit pursuant to this section solely because it is subject to regulation under section 7412(r) of the Act;

c. sources subject to a standard, limitation or other requirement under section 7411 of the Act;

d. affected sources pursuant to Title IV of the Act; and

e. any source in a source category designated by the commissioner in regulation, which shall be the same as the list of sources promulgated by the administrator pursuant to the Act.

2. In implementing this section, the department shall:

a. review and revise, as necessary to be consistent with the Act and other applicable federal and state laws, existing regulations to provide for adequate, streamlined and reasonable procedures for processing permit applications, for public notice and participation, including

offering an opportunity for public comment and hearing, and for expeditious review of permit actions, including applications, renewals and revisions;

b. notwithstanding the provisions of paragraph i of this subdivision, establish regulations for a phased schedule for acting on complete permit applications. Such schedule shall ensure that at least one-third of such permits shall be acted upon by the department annually over a period of three years after the administrator approves the operating permit program;

c. promulgate regulations, consistent with the Act and other applicable federal and state laws, for expeditiously determining whether an application for a permit is complete. Such regulations shall specify that, in order to be deemed complete, an application shall include:

(i) source identification information;

(ii) a description of the source's processes and products by Standard Industrial Classification Code, including any associated with alternate scenarios identified by the source;

(iii) an identification and description of emissions and emission points, including rates of such emissions in sufficient detail to establish the basis for the fees and applicability of requirements of the Act;

(iv) an identification of pollution control activities and compliance monitoring devices or activities;

(v) any limitations on operations or any work practice standards;

(vi) any calculations on which the information provided to the department is based;

(vii) citation and description of all applicable requirements in state and federal law;

(viii) a description of or reference to any applicable test method for determining compliance with applicable requirements;

(ix) information determined necessary by the department to define alternative operating scenarios identified by the permit applicant;

(x) compliance plans;

(xi) schedules of compliance;

(xii) schedules for submission of certified progress reports;

- (xiii) a compliance certification;
- (xiv) completed forms as required under Title IV of the Act;
- (xv) certification by a responsible official that the information submitted is true, accurate and complete; and
- (xvi) any other information required by the Act or other applicable federal or state laws and implementing regulations. Provided, however, that applications for permit revisions need contain such information only to the extent required by the Act or regulations promulgated thereunder.

d. determine, consistent with subdivision 3 of section 70-0117 of this chapter, whether an application is complete within sixty days of receipt, provided that if the department does not make such determination within sixty days, the application is deemed complete. If the department deems the application to be incomplete, the department must, consistent with subdivision 1 of section 70-0109 of this chapter, provide a written explanation of any deficiencies found in the application;

e. provide for issuance, after notice and opportunity for public comment, of a general permit covering numerous similar sources for purposes of complying with Title V of the Act or this article. Such regulations shall ensure that the general permit complies with all requirements applicable under the Act and this chapter and identified criteria by which sources may qualify for such general permit. Notwithstanding subdivision five of this section, the source shall be subject to enforcement action for operation without a permit if the source is determined not to qualify for the conditions and terms of the general permit. Such regulations shall require that any source proposing to operate pursuant to a general permit shall request such permit in writing, and the department shall respond to such request in writing within sixty days;

f. provide that a single permit will be issued for each source, except upon request of a source. In no case shall the determination of whether a source is subject to the requirement to obtain an operating permit pursuant to this section be affected by the application for or issuance

of more than one operating permit for that source. In no case shall a source which has been issued multiple permits be allowed to make minor modifications which, in the aggregate, would be a significant modification if the source had been issued a single permit, unless such source complies with all of the requirements for a significant modification;

g. provide for issuance of a single permit authorizing emissions from similar operations at multiple temporary locations, provided that such permit shall not be issued unless it includes conditions that will ensure compliance with the requirements of this chapter and the Act at all authorized locations and unless it requires the owner or operator to notify the department in advance of each change in location;

h. establish provisions for notifying each state which is within fifty miles of a source that has submitted an application for an operating permit. Such notifications shall be consistent with section 7661d of the Act and Article 70 of this chapter and the state administrative procedure act;

i. take final action on a permit application within eighteen months after the date of receipt of a complete application. Notwithstanding any other provision of law, in the event the department fails to act on a complete permit application or a complete permit renewal application within eighteen months, such failure shall be treated as a final agency action solely for the purpose of judicial review; and

j. require revisions to a permit to incorporate applicable requirements under the Act or state law if the remaining permit term is three years or more. If the permit term is three years or more or if the permit has been extended pursuant to paragraph b of subdivision five of this section, such revision shall be completed not later than eighteen months after promulgation of the applicable requirement.

k. provide an exemption from regulation with respect to volatile organic compounds for any bakery facility which (i) derives at least fifty percent of its revenues from retail sales on premises, or (ii)

utilizes only batch ovens in its baking process. A "batch oven" shall be defined as a non-conveyor belt oven operating on a single baking cycle in which a determinate amount of product is cooked at one baking.

3. Operating permits issued pursuant to this section shall include the following conditions:

a. emissions limitations or standards including standards established by the Act and this article, and references to the origin of and authority for each term and condition;

b. provisions for a fixed permit term, not to exceed five years, unless a shorter term is requested by the source or the department determines a shorter term is appropriate, except if a different term is required to comply with the Act;

c. provisions for detailed monitoring, recordkeeping and reporting, including requirements that records be kept for five years, and that monitoring records be submitted to the department at least every six months, provided, however, that, unless required by the Act, continuous emissions monitoring need not be required if alternative methods are available that provide sufficiently reliable and timely information for determining compliance;

d. A prohibition on emissions in excess of any allowances held by an affected source under Title IV of the Act;

e. terms and conditions, if requested by the source, for the trading of emissions increases and decreases within a facility, to the extent applicable requirements provide for such trading;

f. provisions for alternative operating scenarios where a source identifies such scenarios in its permit application for department approval, and where such scenarios are approved by the department;

g. provisions for emergencies beyond the control of the source; notwithstanding section 71-2109 of this chapter, an "emergency" shall

mean any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, which situation requires immediate corrective action to restore normal operation and which causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error;

h. identification of the terms of the permit that are federally enforceable;

i. provisions for inspection, entry, monitoring, compliance certification and reporting to assure compliance with the permit terms and conditions;

j. unless inconsistent with the Act, provisions for confidentiality of proprietary information pursuant to subdivision two of section eighty-seven of the public officers law, and regulations promulgated thereunder;

k. provisions to allow an existing source to voluntarily make early reduction(s) in hazardous air pollutants, pursuant to section 7412(I) (5) of the Act, and provisions to establish emissions standards for hazardous air pollutants on a case-by-case basis pursuant to section 7412(d), (g) and (j) of the Act in the event the administrator fails to meet the deadlines established pursuant to section 7412(e) of the Act for the promulgation of such standards applicable to a source or source category;

l. provisions that no existing source that has installed best available control technology (as defined in section 7479(3) of the Act), or technology required to meet a lowest achievable emission rate (as defined in section 7501 of the Act), prior to the promulgation of a standard applicable to such source under section 7412(d) and (j) for the same pollutant (or stream of pollutants) shall be required to comply with such standard under this section until the date five years after

the date on which such installation or reduction has been achieved, as determined by the department;

m. provision for a severability clause to ensure the continued validity of the various permit conditions in the event of a challenge to any portion of a permit;

n. provisions to allow that, for any performance or emission standard or other requirement established for a source prior to the issuance of an operating permit, such permit may contain a compliance schedule requiring the source to achieve compliance as soon as practicable but not later than the time required by the Act or this article or regulations promulgated thereunder;

o. provisions requiring compliance with all conditions of the permit, and requiring that noncompliance be grounds for enforcement action; for permit termination, revocation and reissuance, or revision; or for denial of a permit renewal application;

p. provisions allowing for changes within a source without requiring a permit revision provided that such changes are not modifications under Title I of the Act and the changes do not exceed the emissions allowable under the permit; provided, however, that the source must provide the department with written notification at least seven days in advance of the proposed changes;

q. provisions specifying the conditions under which the permit may be reopened and revised prior to the expiration, as prescribed by regulation, and providing that reopenings shall not be initiated before a notice of such intent is provided to the source by the department at least thirty days in advance of the date that the permit is to be reopened, except that the department may provide a shorter time period in the case of an emergency; and

r. other conditions necessary to assure compliance with the Act and other applicable federal and state laws and implementing regulations.

4. a. The department shall provide adequate, streamlined, and reasonable procedures for expeditiously processing applications for minor permit modifications, as defined in regulations. Minor modifications may include those that:

(i) do not violate any applicable requirement of this article or the Act;

(ii) do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;

(iii) do not require or change a case-by-case determination of an emission limitation or standard, or a source specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

(iv) do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject to, including but not limited to federally enforceable emissions caps assumed to avoid classification as a modification under any provision of Title I or emissions limitations approved pursuant to section 7412(i)(5) of the Act; or

(v) do not constitute a modification under Title I of the Act.

b. Upon application by a source for a minor permit modification, the department shall determine whether such application is complete within fifteen days after receipt of such application and whether such proposed modification is minor within twenty-five days after receipt of such application. The department may require public notice of such application and the department's determination of whether the modification is minor. If such modification is deemed minor, the source may proceed with the modification. The department shall approve or deny a minor permit modification within ninety days of the receipt of an application under this subdivision or fifteen days after the end of the administrator's forty-five day review period pursuant to section 7661d(b)(1) of the Act, whichever is later, unless such modification is treated as a new application. The provisions of subdivision five of this section are not applicable to minor modifications until the source receives the final approval from the department.

5. a. The department shall include in a permit issued pursuant to this section a provision stating that compliance with the conditions of the permit shall be deemed compliance with the applicable requirements of the Act as of the date of permit issuance, provided that:

(i) such applicable requirements are specifically identified in the permit; or

(ii) the department, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof. Provided further that nothing herein shall preclude the department from revising or revoking the permit pursuant to article seventy of this chapter or from exercising its summary abatement authority under sections 71-0301 or 71-1719 of this chapter.

b. Consistent with section four hundred one of the state administrative procedure act, the terms and conditions of a permit are automatically continued pending final determination by the department on a request for renewal or initial application for an operating permit, provided a permittee has made a timely and complete application and paid the fees pursuant to section 72-0303 of this chapter.

§ 19-0312. Power plant emissions and performance standards.

1. Definitions. As used in this section:

a. "Mercury" means elemental, oxidized, and particle-bound mercury in source emissions.

b. "Major electric generating facility" means any electricity generating facility with a nameplate capacity of twenty-five thousand kilowatts or more.

2. Any major electric generating facility shall demonstrate compliance with all applicable emission requirements established by the department for the purpose of complying with all state and federal air quality

requirements, including requirements for Sulfur Dioxide, Nitrogen Oxides, Mercury, Carbon Dioxide and particulate matter of less than 2.5 microns. Such facility must also comply with other applicable department air quality requirements relating to offsetting of emissions.

3. No later than twelve months after the effective date of this section, the commissioner shall promulgate rules and regulations targeting reductions in emissions of carbon dioxide that would apply to major electric generating facilities that commenced construction after the effective date of the regulations.

§ 19-0313. Small business stationary source technical and environmental compliance assistance program.

1. The commissioner is hereby authorized and directed to establish, develop and implement a small business stationary source technical and environmental compliance assistance program for those categories of sources of air contamination identified in section 7661f(c) of the Act or any other category of source the commissioner deems appropriate. The commissioner, after consultation with the administrator of the United States environmental protection agency, the administrator of the United States small business administration, the small business stationary source compliance advisory panel and the small business stationary source ombudsman created pursuant to section one hundred thirty-seven of the economic development law, and after providing notice and opportunity for public hearing, may exclude from the program any category or subcategory of sources identified in section 7661f(c) of the Act that the commissioner determines to have sufficient technical and financial capabilities to meet the requirements of the Act without such assistance. The department may designate eligibility for assistance based on whether the stationary source has sufficient technical and financial capabilities to comply with federal and state law without such assistance. Such program shall include:

a. the development, collection and coordination of information concerning compliance methods and technologies for stationary sources of

air pollution, and programs to encourage lawful cooperation among such sources and other persons to further comply with the provisions of this article;

b. adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes and products and methods of operation that help reduce air pollution;

c. the provision of assistance for small business stationary sources in: (i) determining applicable requirements of the Act and this article and rules and regulations promulgated pursuant thereto; and (ii) submitting complete permit applications consistent with the provisions of section 19-0311 of this title, and receiving permits issued by the department in a timely and efficient manner;

d. adequate mechanisms to assure that small business stationary sources receive notice of their rights under the Act and this article and rules and regulations promulgated pursuant thereto in such a manner and form as to assure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final regulation or standard or state implementation plan revision issued pursuant to the Act;

e. adequate mechanisms for informing small business stationary sources of their obligations under this article and the Act, including establishing mechanisms for referring these sources to qualified auditors, or at the department's option upon the request of the small business stationary source, for providing audits of the operations of such sources to determine compliance with the Act and this article and rules and regulations promulgated pursuant thereto;

f. procedures for consideration of, and response to, requests from small business stationary sources for technical and environmental compliance assistance including, but not limited to: (i) assistance in the modification of any work practice and the identification of

affordable alternative technologies or technological improvements to achieve compliance with or to establish compliance procedures pursuant to the Act or this article and rules and regulations promulgated pursuant thereto; (ii) the establishment of a schedule of milestones for implementing such work practice or method of compliance preceding any applicable compliance date, based on the technology and financial capability of such small business stationary source; and (iii) on-site consultations, if requested by a small business stationary source, regarding achievement of compliance. No modification may be recommended unless it is in compliance with the applicable requirements of the Act, including applicable requirements of the state implementation plan. Where applicable requirements are set forth in federal or state regulations, only those modifications authorized in such regulations may be made;

g. procedures for soliciting input from and exchanging information with the small business stationary source ombudsman created pursuant to section one hundred thirty-seven of the economic development law, regarding compliance requirements for small business stationary sources;

h. adequate mechanisms for the collection and dissemination of information to small business stationary sources, including: (i) the development of small business stationary source guidance manuals indicating the categories of small businesses subject to the requirements of this article and the Act, specific compliance requirements and options, a schedule of compliance deadlines and other pertinent information; and (ii) the establishment of a toll-free telephone number dedicated to answering questions involving small business stationary source compliance;

i. procedures for assuring the confidentiality of information received from small business stationary sources;

j. the identification of individuals and firms with a distinctive competence in areas related to business compliance with environmental laws, rules and regulations, and a demonstrated ability to serve small businesses, for the purpose of referring small business stationary

sources with identified needs to consultants with relevant expertise;
and

k. the provision of information on state-sponsored programs offering financial or technical assistance and on funding available from private lenders to stationary sources and aid such sources in applying for financial assistance or funding.

2. In developing the small business stationary source technical and environmental compliance assistance program the department may contract with either the environmental facilities corporation or any other person the commissioner deems appropriate to carry out any or all of the provisions of this section.

3. In developing and implementing the small business stationary source technical and environmental compliance assistance program as required pursuant to subdivision one of this section, the department shall consult with the small business stationary source compliance advisory panel as created pursuant to section 19-0315 of this title and the small business stationary source ombudsman as created pursuant to section one hundred thirty-seven of the economic development law.

4. The provisions of article six of the public officers law shall not apply to records containing information supplied by small business stationary sources to the environmental facilities corporation pursuant to this section.

§ 19-0315. Small business stationary source compliance advisory panel.

1. There is hereby established a small business stationary source compliance advisory panel which shall have the responsibility to:

a. provide guidance to the department on the development of the small business stationary source technical and environmental compliance assistance program;

b. render advisory opinions concerning the effectiveness of the small business stationary source technical and environmental compliance assistance program, including the adequacy of funding available to the program, difficulties encountered, and degree and severity of enforcement;

c. make periodic reports to the commissioner and the administrator of the United States environmental protection agency concerning the compliance of the small business stationary source technical and environmental compliance assistance program with the requirements of the federal paperwork reduction act, 42 U.S.C. § 3501 et seq.; the regulatory flexibility act, 42 U.S.C. § 601 et seq.; and the equal access to justice act, 5 U.S.C. § 504;

d. review information for small business stationary sources to assure that such information is understandable by the layperson;

e. review and advise the department on the development of rules and regulations, the state implementation plan as it affects small business stationary sources, and other programs affecting small business stationary sources implemented by the department pursuant to the Act; and

f. make recommendations for the development of programs to further assist small business stationary sources, including technical and financial assistance programs.

2. The small business stationary source compliance advisory panel shall consist of nine members who shall be appointed no later than November fifteenth, nineteen hundred ninety-three. The panel shall consist of:

a. two persons, who are not owners or representatives of owners of small business stationary sources, selected by the governor to represent the general public;

b. six persons who are owners or who represent owners of small

business stationary sources, two selected by the president pro tem of the senate, two selected by the speaker of the assembly, one selected by the minority leader of the senate and one selected by the minority leader of the assembly; and

c. one person selected by the commissioner to represent the department.

3. The panel shall meet at least quarterly and shall designate one of its members, other than the commissioner's representative, to serve as chairperson. Members of the panel shall serve for terms of three years from the date of their appointment, except that the members appointed by the commissioner shall serve at the pleasure of the commissioner. Members shall serve without compensation, except that they shall be allowed their actual and necessary expenses incurred in the performance of their duties pursuant to this section.

4. The department or its designee shall serve as the secretariat for the panel for development and dissemination of reports and advisory opinions.

§ 19-0317. Air program evaluation.

Within eighteen months after the effective date of this section, and biennially thereafter, the department shall, in coordination with the department of economic development, prepare and submit to the governor and the legislature a report evaluating the programs proposed or adopted to implement the Act. The evaluation shall include:

1. an identification of the specific measures taken to implement the Act, and progress made toward meeting emission reductions required by the Act;

2. recommendations on any additional measures which must be taken if the state is not meeting emission reductions required by the Act;

3. an evaluation of the resources available to implement the programs required by the Act and whether those resources are sufficient;

4. an analysis of the costs of measures taken to implement the Act, including costs imposed directly and indirectly on mobile sources, stationary sources, consumers and businesses. The analysis shall also identify the benefits of compliance with the Act;

5. an analysis of the adequacy of measures taken to assist small business stationary sources in complying with the Act;

6. an identification and status of any non-compliance notifications received from the United States environmental protection agency;

7. a summary of any significant new regulations or guidance prepared by the United States environmental protection agency; and

8. an identification of any regulation or guidance expected from the United States environmental protection agency necessary for the state to implement provisions of the Act, and the effect of any past due rule or guidance on the state's compliance efforts.

§ 19-0319. Centrally fueled fleet program.

1. The department shall develop a centrally fueled fleet program for light duty and heavy duty vehicles, as specified in subdivision (b) of section 7586 of the Act, unless the department has adopted a substitute program or programs for the centrally fueled fleet program, provided that the substitute program meets the criteria set forth in section 7511a(c)(4)(B) of the Act for administrator approval of such program.

2. Such centrally fueled fleet program shall be developed in consultation with fleet operators, vehicle manufacturers, fuel producers and distributors, and other interested parties taking into account operational range, specialty uses, vehicle and fuel availability, costs, safety, resale value of vehicles and equipment and other relevant

factors.

3. Such centrally fueled fleet program shall contain provisions requiring that at least a specified percentage of all new covered fleet vehicles in model year nineteen hundred ninety-eight and thereafter purchased by each covered fleet operator shall be clean fuel vehicles and shall use clean alternative fuels when operating in the covered areas. For the applicable model years (MY) and vehicle types the specified percentages shall be no less than the percentages specified in the following table:

CLEAN FUEL VEHICLE PHASE-IN REQUIREMENTS FOR FLEETS

Vehicle Type

	MY1998	MY1999	MY2000
Light-duty trucks up to 6000 lbs.			
GVWR & light-duty vehicles	30%	50%	70%
Heavy-duty trucks above			
8,500 lbs. GVWR	50%	50%	50%

4. Such centrally fueled fleet program shall also provide that the choice of clean fueled vehicles and clean alternative fuels shall be made by the covered fleet operator subject to the requirements of this section.

5. Such centrally fueled fleet program shall require fuel providers to make clean alternative fuel available to covered fleet operators at locations at which covered fleets are centrally fueled.

§ 19-0320. Emissions inspections of heavy duty vehicles.

1. When used in this section:

a. "Heavy duty vehicle" means any vehicle powered by diesel fuel and having a gross vehicle weight of greater than eight thousand five hundred pounds, except that those vehicles defined in sections one hundred one, subparagraph two of paragraph E and subparagraph (a) of paragraph F of subdivision seven of section four hundred one of the

vehicle and traffic law, and vehicles specified in subdivision thirteen of section four hundred one of the vehicle and traffic law, and farm type tractors and all terrain type vehicles used exclusively for agricultural or mowing purposes, or for snow plowing, other than for hire, farm equipment, including self-propelled machines used exclusively in growing, harvesting or handling farm produce, and self-propelled caterpillar or crawler-type equipment while being operated on the contract site, and timber harvesting equipment such as harvesters, wood chippers, forwarders, log skidders, and other processing equipment used exclusively off highway for timber harvesting and logging purposes, shall not be deemed heavy duty vehicles for purposes of this section.

b. "Roadside program" means a roadside examination program conducted pursuant to the heavy duty vehicle emissions reduction act for the inspection of emissions and emission control equipment, at any public or quasi-public location as designated by the commissioner of transportation with the concurrence of the department and, where appropriate, the New York state thruway authority.

c. "Annual inspection program" means a program in which heavy duty vehicles registered or required to be registered in counties in the state designated as being in serious, severe or extreme non-attainment of the National Ambient Air Quality Standard for ozone pursuant to the 1990 amendments of the federal Clean Air Act (42 U.S.C. 7511) are annually inspected in accordance with this article.

2. The department, jointly with the departments of motor vehicles and transportation, shall develop a program for the inspection of emissions from heavy duty vehicles. Such inspection program shall consist of an annual inspection program and a roadside program. The annual inspection program developed in accordance with this section shall be limited to heavy duty vehicles registered or required to be registered in counties in the state designated as being in serious, severe or extreme non-attainment of the National Ambient Air Quality Standard for ozone pursuant to the 1990 amendments of the federal Clean Air Act (42 U.S.C. 7511). Under no circumstances shall such program require heavy duty vehicles to meet emission standards more stringent than the new vehicle

emission standards to which such vehicles were certified pursuant to the federal Clean Air Act. The department shall, with the department of transportation and, where appropriate, the New York state thruway authority, jointly develop criteria for roadside program site selection and procedures for the control of traffic and operation of such sites.

3. The department, jointly with the departments of motor vehicles and transportation, shall adopt rules and regulations establishing test standards, method, and equipment for the period of effectiveness of this section. The department shall adopt such rules and regulations and implement such program by June first, nineteen hundred ninety-nine. The department shall consider establishing a hardship waiver based on an evaluation of fleet size and cost of effective repair, and shall consider exempting from the roadside inspection vehicles that successfully pass an annual inspection as approved by the commissioner.

4. Notwithstanding the provisions of title twenty-one of article seventy-one of this chapter, operation of a heavy duty vehicle which, when tested, exceeds emission levels set forth in regulations promulgated pursuant to this section shall be a violation, and the following penalties shall apply to any violation found as a result of roadside emissions inspections:

- a. First violation: \$ 700.00
- Second and subsequent violations: \$1300.00.

b. The penalties set forth in paragraph a of this subdivision shall be reduced to one hundred fifty dollars for the first violation and five hundred dollars for the second and subsequent violations by the court or administrative tribunal before which the summons or appearance ticket is returnable if the violation set forth in the summons or appearance ticket is corrected not later than thirty days after the issuance of the summons or appearance ticket and proof of such correction, as defined in paragraph c of this subdivision, is submitted to the court or administrative tribunal. The penalties described in this section shall not apply to vehicles defined by section one hundred forty-two of the vehicle and traffic law or owned by a county, town, city, or village for

a first violation provided the vehicle is repaired within thirty days of ticket issuance.

c. Acceptable proof of repair or adjustment shall be submitted to the court or administrative tribunal on or before the return date of the summons or appearance ticket in a form and manner prescribed by regulations adopted pursuant to this section.

5. Notwithstanding the provisions of title twenty-one of article seventy-one of this chapter, operation of any heavy duty vehicle registered or required to be registered in this state without a certificate of inspection resulting from an annual inspection as required by regulations adopted pursuant to this section shall be a violation, and the following violation structure shall apply to such violations:

- a. First violation: \$ 700.00
- Second and subsequent violations: \$1300.00.

b. The penalties defined in paragraph a of this subdivision shall be reduced to three hundred fifty dollars for the first violation and seven hundred fifty dollars for second and subsequent violations, provided that the vehicle in question bears a certificate which was valid within the last thirty days. The penalties described in this section shall not apply to vehicles defined by section one hundred forty-two or owned by a county, town, city, or village of the vehicle and traffic law for a first violation provided the vehicle is repaired within thirty days of ticket issuance.

6. Vehicles found in violation of applicable emission standards implemented pursuant to this program shall not be subject to impoundment or otherwise prevented from engaging in commerce as a result of this program.

6-a. Notwithstanding the provisions of this section, no penalty shall be imposed pursuant to this section where the operator of such vehicle has been convicted of the same violation arising from the same incident

pursuant to section three hundred one-b of the vehicle and traffic law.

7. The department shall, to the extent practicable, coordinate with appropriate agencies in the states in the northeast ozone transport region and which have proposed or adopted heavy duty emission inspection programs to promote regional consistency in such programs.

§ 19-0321. Permits to construct and operate certain municipally sponsored major facilities.

1. For the purposes of this section only:

a. "Major facility" means an air contamination source which directly emits, or has the potential to emit, twenty-five tons per year of either oxides of nitrogen or volatile organic compounds.

b. "Municipally sponsored facility" means a facility for which a city with a population of one million or more or a political subdivision or agency thereof was an applicant or co-applicant as of November fifteenth, nineteen hundred ninety-two.

c. "Emission offset" means an emission reduction credit, as established by the commissioner, required to be obtained from a severe nonattainment area by an air contamination source prior to the issuance of a permit to construct, at a ratio of 1.3 tons of reductions for each ton of new emissions of oxides of nitrogen and volatile organic compounds; provided that the emission offset requirement for oxides of nitrogen may be met by oxides of nitrogen or an equivalent number of tons of volatile organic compounds.

2. The provisions of this section shall apply only to permits to construct and operate issued on or after November fifteenth, nineteen hundred ninety-two for a municipally sponsored major facility located in a city with a population of more than one million for which the permit application was deemed complete by the department before November fifteenth, nineteen hundred ninety-two.

3. No permit to construct shall be issued or shall be valid for a new or modified major facility until after the applicant has obtained emission offsets for such facility. For purposes of this section, in addition to any other available emission offsets, emission reductions from the following sources shall be eligible as emission offsets:

a. emission reductions that result from the closure or modification of any solid waste incineration facilities within such city which were operating in nineteen hundred ninety-one; and

b. emission reductions that result from the cessation of operation, removal or sealing of any refuse burning equipment in such city pursuant to any local law which took effect in nineteen hundred ninety-three.

Provided, that the commissioner shall have authority to establish the amount of credit attributed to any emission reduction used to create an emission offset to satisfy the requirements of this section.

4. Prior to the operation of a facility which as been issued a permit to which subdivision three of this section applies, such city shall conduct a base-line health study on a statistically representative sample of residents within the areas most affected by the facility. No later than one hundred eighty days after the commencement of operation of such facility, the city shall, in conjunction with the department, conduct stack tests of the facility and assess the health risks from expose to such emissions; such stack tests shall be performed in accordance with the department's rules and the results of such assessment shall be delivered to the department within thirty days after completion of the health risk assessment report for appropriate action. After operation of such facility is commenced, such city shall implement a follow-up health study that monitors on a regular basis the health impacts from such facility with an emphasis on at-risk populations. Such study and monitoring shall be conducted in consultation with an advisory committee appointed by the commissioner of health which shall include representatives of the parties to the permit proceeding for such facility. Such study and monitoring shall be designed to avoid

duplication of efforts otherwise required by permit or by law.

5. Notwithstanding the provisions of subdivision two of this section, any action deemed to have a significant impact on the environment pursuant to article eight of this chapter, if such action involves a municipally sponsored facility within a three-mile radius of a permitted facility for which emission offsets were required pursuant to this section, shall require an environmental impact statement which shall include an analysis of the cumulative air impacts of such action in conjunction with other actions involving facilities that have been constructed or are planned within such three-mile radius.

§ 19-0323. Use of ultra low sulfur diesel fuel and best available technology by the state.

1. As used in this section, the terms:

a. "Ultra low sulfur diesel fuel" means diesel fuel having sulfur content of 0.0015 per cent of sulfur or less.

b. "Heavy duty vehicle" or "vehicle" means any on and off-road vehicle powered by diesel fuel and having a gross vehicle weight of greater than 8,500 pounds, except that those vehicles defined in section 101 of the vehicle and traffic law, paragraph 2 of schedule E and paragraph (a) of schedule F of subdivision 7 of section 401 of such law, and vehicles specified in subdivision 13 of section 401 of such law, and farm type tractors and all terrain type vehicles used exclusively for agricultural or mowing purposes, or for snow plowing, other than for hire, farm equipment, including self-propelled machines used exclusively in growing, harvesting or handling farm produce, and self-propelled caterpillar or crawler-type equipment while being operated on the contract site, and timber harvesting equipment such as harvesters, wood chippers, forwarders, log skidders, and other processing equipment used exclusively off highway for timber harvesting and logging purposes, shall not be deemed heavy duty vehicles for purposes of this section. This term shall not include vehicles that are specially equipped for

emergency response by the department, office of emergency management, sheriff's office of the department of finance, police department or fire department.

c. "Best available retrofit technology" means technology, verified by the United States environmental protection agency for reducing the emission of pollutants that achieves reductions in particulate matter emissions at the highest classification level for diesel emission control strategies that is applicable to the particular engine and application. Such technology shall also, at a reasonable cost, achieve the greatest reduction in emissions of nitrogen oxides at such particulate matter reduction level and shall in no event result in a net increase in the emissions of either particulate matter or nitrogen oxides.

d. "Reasonable cost" means that such technology does not cost greater than 30 percent more than other technology applicable to the particular engine and application that falls within the same classification level for diesel emission control strategies, as set forth in paragraph c of this subdivision, when considering the cost of the strategies, themselves, and the cost of installation.

2. Any diesel powered heavy duty vehicle that is owned by, operated by or on behalf of, or leased by a state agency and state and regional public authority shall be powered by ultra low sulfur diesel fuel.

3. Any diesel powered heavy duty vehicle that is owned by, operated by or on behalf of, or leased by a state agency and state and regional public authority with more than half of its governing body appointed by the governor shall utilize the best available retrofit technology for reducing the emission of pollutants. The commissioner shall promulgate regulations for the implementation of this subdivision specifying that all vehicles covered by this subdivision shall have best available retrofit technology on or before December 31, 2019.

This subdivision shall not apply to any vehicle subject to a lease or public works contract entered into or renewed prior to the effective

date of this section.

4. In addition to other provisions for regulations in this section, the commissioner shall promulgate regulations as necessary and appropriate to carry out the provisions of this act including but not limited to provision for waivers upon written finding by the commissioner that (a) best available retrofit technology for reducing the emissions of pollutants as required by subdivision 3 of this section is not available for a particular vehicle or class of vehicles and (b) that ultra low sulfur diesel fuel is not available.

5. In addition to any waiver which may be issued pursuant to subdivision four of this section, the department shall issue a waiver to a state agency, a state or regional public authority, or a person operating any diesel-powered heavy duty vehicle on behalf of a state agency, state or regional public authority, upon a request in a form acceptable to the department for a waiver from the provisions of subdivision three of this section for a vehicle engine provided that such vehicle engine will cease to be used in the state on or before December thirty-first, two thousand twenty. Any waiver issued pursuant to this subdivision shall expire when a state agency, a state or regional public authority, or a person operating any diesel-powered heavy duty vehicle on behalf of a state agency, state or regional public authority ceases to use the engine in the state but not later than December thirty-first, two thousand twenty.

6. This section shall not apply where federal law or funding precludes the state from imposing the requirements of this section.

7. On or before January 1, 2008 and every year thereafter, the commissioner shall report to the governor and legislature on the use of ultra low sulfur diesel fuel. On or before January 1, 2020 and every year thereafter, the commissioner shall include in the report to the governor and legislature the use of the best available retrofit technology as required under this section. The information contained in this report shall include, but not be limited to, for each state agency and public authority covered by this section: (a) the total number of

diesel fuel-powered motor vehicles owned or operated by such agency and authority; (b) the number of such motor vehicles that were powered by ultra low sulfur diesel fuel; (c) the total number of diesel fuel-powered motor vehicles owned or operated by such agency and authority having a gross vehicle weight rating of more than 8,500 pounds; (d) the number of such motor vehicles that utilized the best available retrofit technology, including a breakdown by motor vehicle model, engine year and the type of technology used for each vehicle; (e) the number of such motor vehicles that are equipped with an engine certified to the applicable 2007 United States environmental protection agency standard for particulate matter as set forth in section 86.007-11 of title 40 of the code of federal regulations or to any subsequent United States environmental protection agency standard for particulate matter that is at least as stringent; and (f) all waivers, findings, and renewals of such findings, which, for each waiver, shall include, but not be limited to, the quantity of diesel fuel needed to power diesel fuel-powered motor vehicles owned or operated by such agency and authority; specific information concerning the availability of ultra low sulfur diesel fuel.

8. The department shall, to the extent practicable, coordinate with regions which have proposed or adopted heavy duty emission inspection programs to promote regional consistency in such programs.

§ 19-0325. Sulfur reduction requirements.

(1) On or after July first, two thousand twelve, all number two heating oil sold for use in residential, commercial, or industrial heating within the state shall not have a sulfur content greater than fifteen parts per million.

(2) The governor may, by issuing an executive order, temporarily suspend the applicability of this section at any time based on the governor's determination, after consulting with the New York energy research and development authority, that meeting the requirement of subdivision one of this section is not feasible due to lack of adequate supply of the required fuel.

§ 19-0327. Bioheating fuel requirements.

(1) Definitions. For the purpose of this section, the following terms shall have the following meanings:

(a) "Biodiesel" shall mean a fuel, designated B100, that meets the requirements of the ASTM international specification D6751.

(b) "Renewable Hydrocarbon Diesel" shall mean a North American-produced fuel derived from vegetable oils, animal fats, and other renewable feedstocks that meet the requirements of ASTM international specification D975. Renewable hydrocarbon shall not include any fuel from co-processed biomass with a feedstock that is not biomass.

(c) "Bioheating fuel" shall mean a fuel comprised of biodiesel blended with petroleum heating oil that meets the requirements of the ASTM international specification D396, a fuel comprised of domestically-produced renewable hydrocarbon diesel with petroleum heating oil that meets the specifications of ASTM international specification D975, or other specifications as determined by the commissioner.

(d) "Heating oil" shall mean petroleum oil refined for the purpose of use as fuel for combustion in a space and/or water heating system that meets the requirements of the ATSM international specification D396 or other specifications as determined by the commissioner.

(e) "Feedstock" shall mean soybean oil, oil from annual cover crops, algal oil, biogenic waste oils, fats or greases, or non-food grade corn oil, provided that the commissioner may, by rules and regulations, modify the definition of feedstock based on the vegetable oils, animal fats or cellulosic biomass listed in table 1 of 40 C.F.R. § 80.1426.

(2) On and after July first, two thousand eighteen, all heating oil sold for use in any building within the counties of Nassau, Suffolk and Westchester shall be bioheating fuel that contains at least five percent biodiesel.

(3) On or after July first, two thousand twenty-two, all heating oil sold for use in any building within the state shall be bioheating fuel that contains at least five percent biodiesel.

(4) On or after July first, two thousand twenty-five, all heating oil sold for use in any building within the state shall be bioheating fuel

that contains at least ten percent biodiesel.

(5) On or after July first, two thousand thirty, all heating oil sold for use in any building within the state shall be bioheating fuel that contains at least twenty percent biodiesel.

(6) The minimum content requirements of this section shall not apply to kerosene.

(7) The governor may, by issuing an executive order, temporarily suspend the applicability of this section at any time based on the governor's determination, after consulting with the New York state energy research and development authority and the department, that meeting the requirement of subdivision two of this section is not feasible due to lack of adequate supply of biodiesel or that meeting the requirement would result in financial hardship to consumers.

(8) The requirements of this section shall not: (a) prohibit the sale and use of bioheating fuel with the same or any greater percentage of biodiesel blended with heating oil, or the sale and use of one hundred percent biodiesel, for space and/or water heating purposes in the state; and (b) preempt any laws of the city of New York with respect to mandated percentage levels of biodiesel blends with heating oil provided that such laws require the same or greater percentage of biodiesel blended with heating oil as required by this section.

(9) No bioheating fuel shall be sold to a customer that would void the manufacturer's warranty for that burner or boiler type unless the bioheat provider warranties in writing to the customer that the use of such bioheating fuel will be covered to the extent and time limits of the warranty then covering such burner or boiler.

§ 19-0328. Ozone non-attainment fee programs.

1. The department may implement new or revise existing regulatory or permitting fee programs only to the extent necessary to comply with section 7511d of the Act related to the non-attainment of national ambient air quality standards.

2. Fees imposed pursuant to subdivision one of this section shall be calculated in the manner set forth in the Act.

3. The department shall further establish by rule or rules additional procedures to the extent necessary for assessment of and collection of such fees that shall ensure sufficient notice, fee amounts and compliance information are given to affected parties.

4. Moneys received pursuant to this section shall be deposited in the air quality improvement fund as established in section ninety-nine-rr of the state finance law.

§ 19-0329. Certain fuel oil; prohibited.

1. On and after July first, two thousand twenty-three, no fuel oil, grade number six, as classified by ASTM International D396-15c, shall be used for the purpose of providing heat for any building or facility in the state.

2. Nothing in this section shall prevent a municipality from adopting a law, code, ordinance or regulation which is more stringent than the requirements of this section.

§ 19-0331. Moratorium on air permit issuance and renewal.

1. For the period commencing on the effective date of this section and ending two years after such date, the department, after consultation with the department of public service, shall not approve a new application for or issue a new permit pursuant to this article, or article seventy of this chapter, for an electric generating facility that utilizes a carbon-based fuel and that provides, in whole or in part, behind-the-meter electric energy consumed or utilized by cryptocurrency mining operations that use proof-of-work authentication methods to validate blockchain transactions.

2. For the period commencing on the effective date of this section and ending two years after such date, the department shall not approve an

application to renew an existing permit or issue a renewal permit pursuant to this article for an electric generating facility that utilizes a carbon-based fuel and that provides, in whole or in part, behind-the-meter electric energy consumed or utilized by a cryptocurrency mining operation that uses proof-of-work authentication methods to validate blockchain transactions if the renewal application seeks to increase or will allow or result in an increase in the amount of electric energy consumed or utilized by a cryptocurrency mining operation that uses proof-of-work authentication methods to validate blockchain transactions.

TITLE 5 PROCEDURE

Section 19-0501. Notice of hearing; service of process.

19-0503. Complaints; investigation.

19-0505. Notice of violation and public hearing.

19-0507. Conduct of hearing.

19-0509. Order or determination; burdens of proof.

19-0511. Review by the courts.

§ 19-0501. Notice of hearing; service of process.

1. Notices of every public hearing held pursuant to the provisions of this article shall specify the time, date, place and purpose of the hearing.

2. Service of all processes of the commissioner pursuant to the provisions of this article, except subpoenas, shall be made in the same manner as a summons in a civil action or by registered mail upon any person to whom it is addressed, upon the mayor or counsel of a municipality or upon an officer of a district, authority, commission, private corporation or company, as the case may be.

3. Subpoenas issued pursuant to the provisions of this article shall be served upon a prospective witness personally and at the same time he

shall be paid such fees therefor as may be provided by law.

§ 19-0503. Complaints; investigation.

In case any written complaint shall be filed with the commissioner and he shall have cause to believe, or in case the commissioner himself shall have cause to believe, that any person is violating any code, rule or regulation, which was promulgated by the department pursuant to this article, the commissioner shall cause a prompt investigation thereof to be made.

§ 19-0505. Notice of violation and public hearing.

Whenever it shall appear to the commissioner that there has been a violation of any code, rule or regulation of the department promulgated pursuant to this article, the commissioner shall cause to have issued and served upon the alleged violator a written notice, which shall specify the provision of the code, rule or regulation of which such person is said to be in violation, a statement of the manner in, and of the extent to which, such person is said to violate it, and the order which the commissioner proposes to issue, and shall require such person to answer the charges of such complaint at a public hearing before the commissioner at a time not less than fifteen days after the date of notice. The commissioner may modify the proposed order following the hearing or upon the consent of the alleged violator. The alleged violator may, at any time, waive such right to a public hearing.

§ 19-0507. Conduct of hearing.

1. The respondent to such complaint may file a written answer thereto at least three days prior to the hearing and may appear at such hearing in person or by representative, with or without counsel, and may submit testimony, or may do both.

2. The hearing may be held before the commissioner or a representative designated by the commissioner.

3. The commissioner or his delegate shall have power to subpoena and compel the attendance of witnesses and the production for examination of any book or paper relating to the matter under investigation. The commissioner or his delegate at the request of any respondent to a complaint made pursuant to this article shall subpoena and compel the attendance of such witnesses and shall require the production for examination of any such book or paper relating to the matter under investigation as the respondent may reasonably designate.

4. In the case of contumacy or refusal to obey a subpoena, the supreme court shall have jurisdiction upon the application of the commissioner or his delegate to issue an order requiring such person to appear and testify or produce evidence as the case may require. Any failure to obey such an order may be judged by the court as contempt thereof.

5. The testimony taken at the hearing before the commissioner or his delegate shall be under oath and recorded, stenographically or otherwise.

§ 19-0509. Order or determination; burdens of proof.

1. After due consideration of the written and oral statements, the testimony and arguments that shall be submitted under the provisions of section 19-0507 or, upon default in appearance of the respondent on the return day which shall be specified in the notice given as provided in section 19-0505 the commissioner may issue and enter such final order, or make such final determination as he shall deem appropriate under the circumstances, and he shall notify the respondent thereof in writing by registered mail.

2. Any such order may require immediate cessation of any activity in contravention of such codes, rules and regulations.

3. In connection with determining the appropriate remedy, the commissioner shall consider evidence received at such hearing relating to the adequacy and practicability of various means of complying with such codes, rules and regulations and the financial ability of the respondent so to comply. If the commissioner finds that immediate compliance would be impossible or impracticable either because no adequate or practical means of compliance is known or because of financial inability, his order shall establish the reasonable time or times within which the required steps, both intermediate and final, are to be taken. The burden of proving impossibility, impracticability or financial inability shall be upon the person claiming the same.

4. As to all other issues in proceedings before the commissioner or his designee with respect to any alleged violation of any code, rule or regulation which shall have been promulgated by the department pursuant to this article, the burden of proof shall be upon the commissioner.

§ 19-0511. Review by the courts.

1. Any final order or determination or other final action by the commissioner and the validity or reasonableness of any code, rule or regulation promulgated by the department pursuant to this article shall be subject to review as provided in article 78 of the Civil Practice Law and Rules.

2. When a review in accordance with article 78 of the Civil Practice Law and Rules is not maintainable, either because the person aggrieved was not a party to the original proceedings in which the order or determination or other action which is sought to be reviewed was made or taken, or for any other reason, the order or determination of the commissioner and the validity or reasonableness of any code, rule or regulation of the department promulgated pursuant to this article may nevertheless be reviewed as hereinafter provided:

a. Application for relief from any code, rule or regulation of the department or from any determination or order or other action which

shall have been made or taken by the commissioner or by any person acting in the name of the department or commissioner shall be made by special proceeding. The petition shall be verified and shall set forth the code, rule or regulation or the determination or order or other action of the department or commissioner or the part thereof which the petitioner shall claim to be unreasonable or prejudicial to him and shall specify the grounds therefor. Such petition may be accompanied by affidavits or other written proof and shall demand the relief to which the petitioner alleges he is entitled, in the alternative or otherwise. Such petition may be made by any one or more persons jointly or severally who shall be aggrieved by any such code, rule or regulation or any such determination, order or act whether or not such petitioner is or was a party to the proceeding in which such code, rule or regulation was adopted by the department or in which such determination or order or action was made or taken by the commissioner.

b. A proceeding brought under the provisions of this subdivision must be instituted by service of the petition and notices of application for relief within two months after the action of the department or commissioner which is sought to be reviewed shall become final and binding upon the petitioner or the person whom he represents either in law or in fact; or, with the permission of the supreme court granted within two years in case the petitioner or the person whom he represented at the time such action became final and binding upon the petitioner or such person was under the age of twenty-one years, or mentally ill, or imprisoned on a criminal charge, or had been sentenced for a term of less than life.

c. In all other respects the procedure prescribed in subdivision 1 of this section shall be applicable to a review provided for in this subdivision.

TITLE 7

SCOPE AND CONSTRUCTION

Section 19-0701. Application of article.

19-0703. Existing rights and remedies.

19-0705. Persons other than the state shall not acquire actionable rights.

19-0707. Conflicting laws.

19-0709. Local laws, ordinances and regulations.

19-0711. Separability clause.

§ 19-0701. Application of article.

The provisions of this article shall apply to all areas of the state.

§ 19-0703. Existing rights and remedies.

It is the purpose of this article to provide additional and cumulative remedies to prevent and abate air pollution and air contamination. Nothing in this article contained shall abridge or alter rights of action or remedies now or hereafter existing, nor shall any provision of this article or anything done by virtue of this article be construed as estopping individuals, counties, cities, towns or villages or the state from the exercise of their respective rights to suppress nuisances or to prevent or abate air pollution or air contamination.

§ 19-0705. Persons other than the state shall not acquire actionable rights.

The basis for proceedings or other actions that shall result from violations of any code, rule or regulation which shall be promulgated by the department pursuant to this article shall inure solely to and shall be for the benefit of the people of the state generally and it is not intended to create in any way new or enlarged rights or to enlarge existing rights. A determination by the commissioner that air pollution or air contamination exists or that any code, rule or regulation has been disregarded or violated, whether or not a proceeding or action may be brought by the state, shall not create by reason thereof any presumption of law or finding of fact which shall inure to or be for the

benefit of any person other than the state.

§ 19-0707. Conflicting laws.

This article shall not be construed as repealing any of the laws relating to air pollution or air contamination which are not by this article expressly repealed, but it shall be held and construed to be as ancillary to and supplementing the laws now in force, excepting as they may be in direct conflict with this article.

§ 19-0709. Local laws, ordinances and regulations.

Any local laws, ordinances or regulations of any governing body of a county, city, town or village which are not inconsistent with this article or with any code, rule or regulation which shall be promulgated pursuant to this article shall not be superseded by it, and nothing in this article or in any code, rule or regulation which shall be promulgated pursuant to this article shall preclude the right of any governing body of a county, city, town or village to adopt local laws, ordinances or regulations which are not inconsistent with this article or with any code, rule or regulation which shall be promulgated pursuant to this article provided, however, that the exercise of such right by a county shall relate only to the area thereof outside any city, village or area of any town outside the village or villages therein during such time as such city, village or town has local laws, ordinances or regulations consistent with this article or with any code, rule or regulation which shall be promulgated pursuant to this article. Any local laws, ordinances or regulations of a county, city, town or village which comply with at least the minimum applicable requirements set forth in any code, rule or regulation promulgated pursuant to this article shall be deemed consistent with this article or with any such code, rule or regulation.

§ 19-0711. Separability clause.

If any clause, sentence, paragraph, section or part of this article shall be adjudged by any court of competent jurisdiction to be invalid, the judgment shall not affect, impair or invalidate the remainder of this article but shall be confined in its operation to the clause, sentence, paragraph, section or part of this article that shall be directly involved in the controversy in which such judgment shall have been rendered.

TITLE 9

STATE ACID DEPOSITION CONTROL ACT

Section 19-0901. Short title.

19-0903. Definitions.

19-0905. Applicability.

19-0907. Sulfur deposition control program.

19-0909. Interim control target.

19-0911. Final control target.

19-0913. Nitrogen deposition control program.

19-0915. Emission offsets or credits.

19-0919. General powers.

19-0921. Enforcement.

19-0923. Severability.

§ 19-0901. Short title.

This title may be cited as the "State Acid Deposition Control Act".

§ 19-0903. Definitions.

As used in this title:

1. "Acid deposition" means the wet or dry deposition from the atmosphere of chemical compounds, usually in the form of rain or snow, having the potential to form an aqueous compound with a pH level lower

than the level considered normal under natural conditions, or lower than 5.6, whichever is less.

2. "Acid deposition precursor" means sulfur dioxide or oxides of nitrogen.

3. "Best available control technology" means an emission limitation or equipment standard based on the maximum degree of reduction which the department determines is achievable on a case-by-case basis taking into account energy, economic, environmental and health impacts and other costs related to the source.

4. "Coal" means bituminous coal, anthracite coal or lignite.

5. "Conversion or modification" means any construction, reconstruction, addition to or alteration of any facility or stationary source or other physical changes to allow burning of coal as a boiler fuel.

6. "Emission" means the release of acid deposition precursors into the atmosphere from any facility or stationary source.

7. "Environmental threshold value" means a deposition rate, expressed in kilograms of sulfate per hectare per year, at which no significant damaging chemical or biological effects of acid deposition have been reported, and above which there is high probability that such effects would occur.

8. "Final control target" means a limitation, expressed in terms of fuel sulfur content or equivalent emissions reductions, that will reduce the New York state share of total measured or estimated wet sulfate deposition in sensitive receptor areas by the percentage derived according to the following formula:

New York's contribution to
total measured or esti-
mated wet sulfate deposition,

X

(Total measured or estimated
wet sulfate deposition) minus
(Environmental threshold value)

expressed as a percentage

Total measured or estimated
wet sulfate deposition

9. "Fossil fuel" means coal, petroleum products and fuel gases.

10. "Interim control target" means a limitation, expressed in terms of fuel sulfur content, that achieves a level of sulfur deposition reduction that is approximately forty per centum of the final control target.

11. "Least emissions dispatch" means the utilization of the cleanest facility or other stationary source on a priority basis so that less clean facilities or stationary sources are operated at full capacity only when need arises.

12. "Major steam electric generating facility" or "facility" means a steam electric generating facility with a generating capacity of fifty thousand kilowatts or more which burns fossil fuel.

13. "New emission source" means any new facility or stationary source that will emit acid deposition precursors in excess of one hundred tons per year, and is granted a permit to construct pursuant to section 19-0305 of this article after January first, nineteen hundred eighty-seven.

14. "New source performance standard" means a standard developed by the department which sets limitations for emissions of acid deposition precursors from new facilities and new stationary sources.

15. "Sensitive receptor areas" means regions of the state, encompassing geographically significant land areas not wholly contained within any county, that the department determines to be susceptible to the impacts of acid deposition based upon:

a. geological information identifying areas incapable of adequately neutralizing acid deposition;

b. the presence of plant or animal species that are particularly sensitive to acid deposition;

c. existing acid deposition reports and data prepared by agencies of the state or of the federal government; or

d. such other information that the department determines to be indicative of acid sensitivity.

16. "Special limitation" means a special fuel use limitation for a specific facility, stationary source, or specified area of the state promulgated by the department in rules and regulations that permits the sale, offering for sale, purchase and use of oil or coal with a sulfur content in excess of established sulfur limits, when acceptable diffusion analyses have demonstrated to the department's satisfaction that such use would not contribute to the contravention of any applicable federal ambient air quality standard nor significantly increase acid deposition at sensitive receptor areas.

17. "Stationary source" means any source other than major steam electric generating facilities that emits acid deposition precursors in excess of one hundred tons per year.

§ 19-0905. Applicability.

The provisions of this title shall apply to:

1. All major steam electric generating facilities in the state; and
2. All stationary sources in the state.

§ 19-0907. Sulfur deposition control program.

1. No later than January first, nineteen hundred eighty-five, the

department shall:

a. Identify and publish a preliminary list of the sensitive receptor areas of the state with respect to sulfate deposition.

b. Measure or estimate wet and dry sulfate deposition at each of these sensitive receptor areas, including:

(i) total sulfate deposition from all sources; and

(ii) total sulfate deposition from instate sources; and

(iii) the ratio of total sulfate deposition from instate sources to total sulfate deposition from all sources.

c. Identify and publish a preliminary list of environmental threshold values for each sensitive receptor area.

d. Identify and publish a preliminary list or inventory of all facilities and stationary sources in the state which emit sulfur dioxide.

e. Prepare such supporting documentation as the department considers appropriate.

2. a. Before publishing any preliminary list or report pursuant to subdivision one of this section, the department shall conduct a review of all appropriate existing acid deposition reports and data as prepared by the department, other agencies of the state, agencies of other states, agencies of the federal government or agencies of foreign governments. The department shall further review appropriate acid deposition reports, data, documents, studies, surveys or analyses as currently exist in the scientific literature.

b. The department shall set forth in writing its presuppositions and assumptions, mathematical modeling techniques, sampling methodologies, and analytical protocols, based upon existing scientific knowledge, that are utilized to derive the preliminary lists and reports required by this section.

3. Based on the activities listed in subdivisions one and two of this section, the department shall formulate a preliminary final control target for each sensitive receptor area, and shall develop a strategy identifying any emissions reductions for the various facilities and stationary sources in the state that will be required to meet the deposition control targets. These targets and strategies, together with the lists, reports and supporting documentation described in this section, and together with an analysis of the economic impact of the implementation of such targets and strategies, shall constitute a preliminary sulfur deposition control program.

4. a. No later than March first, nineteen hundred eighty-five, the department shall conduct public hearings in at least three geographic locations of the state for the purpose of soliciting information and comments from the public on the preliminary sulfur deposition control program. Any such public hearings shall comply with the notice provisions and other procedures in title three and title five of this article.

b. No later than May first, nineteen hundred eighty-five, and after due consideration of the hearing record, independent scientific review, if any, and the considerations listed in section 19-0303 of this article, the department shall publish the sulfur deposition control program, hereinafter referred to as the "program". In addition to publishing the program, the department shall submit copies of such program to the governor, the temporary president of the senate, the speaker of the assembly, the chairman of the senate standing committee on environmental conservation and recreation, and the chairman of the assembly standing committee on environmental conservation.

c. The program shall be subject to review pursuant to the procedures in title five of this article.

5. The department shall promulgate such rules and regulations as are necessary to effectuate the provisions of this section.

6. The department shall publish all preliminary and final lists,

reports, targets and programs required by this section in the state register and in the environmental notice bulletin.

§ 19-0909. Interim control target.

1. a. In the absence of a controlling federal statute or program which the commissioner determines is consistent with the purpose and intent of this title, the department shall promulgate, no later than January first, nineteen hundred eighty-six, an interim control target for the control of sulfate deposition at each sensitive receptor area where the environmental threshold value is exceeded, and rules and regulations necessary to implement such targets.

b. Any such interim control target promulgated pursuant to this section shall take effect on January first, nineteen hundred eighty-eight, and all facilities and stationary sources shall be in compliance with the interim control target by such date.

c. In connection with the promulgation of an interim control target, the department shall prepare an analysis of the economic impact of the implementation of such target.

2. The department shall not require or prohibit any particular control technique to achieve any such interim control target, but shall allow the use of any or all reasonable sulfur dioxide emission control techniques, including but not limited to:

a. The substitution of lower sulfur content fossil fuels.

b. One or more combinations of blending various sulfur content fossil fuels.

c. The precombustion cleaning of coal.

d. The conversion or modification of an existing boiler to a boiler capable of burning a lower-sulfur content coal.

e. The use of best available control technology at the time of construction, reconstruction or substantial addition to or alteration of a facility or stationary source.

f. The installation of flue gas desulfurization equipment.

g. The installation of fluidized bed boilers.

h. For persons operating multiple boilers, the coordinated operation of these boilers to minimize the discharge of sulfur dioxide from them.

i. The use of least emissions dispatch.

j. The decommissioning of a facility or stationary source.

k. The purchasing of electricity or steam from another person, so as to lessen the operation of a facility or stationary source, provided such purchase does not contribute to a net increase in acid deposition in sensitive receptor areas.

l. The implementation of energy conservation measures to lessen the amount of operation of a facility or stationary source.

§ 19-0911. Final control target.

1. a. In the absence of a controlling federal statute or program which the commissioner determines is consistent with the purpose and intent of this title, the department shall formulate, no later than January first, nineteen hundred ninety-one, a final control target to bring about reductions in the state's contribution to the total sulfate deposition at each sensitive receptor area.

b. As part of such determination, the commissioner shall provide a written analysis of any actions taken or being contemplated by states that border on or are to the east of the Mississippi river or by the

Canadian provinces of Ontario or Quebec and the potential or estimated effect of any such action on acid deposition in sensitive receptor areas.

c. Any such final control target formulated pursuant to this subdivision shall be submitted, in the form of legislative recommendations, to the governor and the legislature.

2. The department shall not adopt or implement the final control target until such time as further specific statutory authorization shall have been enacted, except that any such final control target shall permit the use of all reasonable sulfur dioxide emission control techniques as identified in subdivision two of section 19-0909 of this title.

§ 19-0913. Nitrogen deposition control program.

In the absence of a controlling federal statute or program which the commissioner determines is consistent with the purpose and intent of this title, the department shall promulgate, no later than January first, nineteen hundred eighty-seven, rules and regulations for the control of emissions of oxides of nitrogen from any new facility or new stationary source. Such rules and regulations shall provide for the use of new source performance standards at the time such facility or stationary source is constructed.

§ 19-0915. Emission offsets or credits.

For the purposes of determining the attainment of, or compliance with, the emission controls or reductions required by this article, or any rules or regulations promulgated thereunder, the department shall allow offsets of greater emissions of acid deposition precursors from a facility or stationary source against lower emissions from the same or another facility or stationary source within the state. Any such offsets or credits shall be adjusted to reflect the proximity of the subject

facility or stationary source to sensitive receptor areas.

§ 19-0919. General powers.

1. Nothing in this title shall be construed to require or prohibit the department from:

a. extending compliance schedules, issuing variances or relaxing performance standards at any specific facility or stationary source, so long as such extension, issuance or relaxation does not result in:

(i) violation of any primary federal ambient air quality standard or any state ambient air quality standard; or

(ii) failure to make reasonable further progress in a non-attainment area pursuant to the federal clean air act; or

(iii) failure to attain the interim control target pursuant to section 19-0909 of this title; or

(iv) failure to attain the final control target pursuant to section 19-0911 of this title; or

(v) violation of the nitrogen control program pursuant to section 19-0913 of this title; or

(vi) creation of a public or private nuisance.

b. Continuing any special limitations until January first, nineteen hundred ninety-six or reauthorize any special limitation which has expired after the effective date of this title and prior to January first, nineteen hundred eighty-six.

c. Allowing any conversion or modification of a facility or stationary source to burn coal as a boiler fuel.

2. Nothing in this title shall be construed to establish a statewide cap or limitation on acid deposition precursors such that new sources would be excluded for the state.

§ 19-0921. Enforcement.

1. The commissioner may use the powers granted under title three of this article to determine attainment of, or compliance with, the emission controls and reductions required by this article.

2. The commissioner may request the advice and assistance of other agencies of the state, including but not limited to the commissioners of health, commerce, energy, and parks, recreation and historic preservation, and the chairmen of the public service commission and the Adirondack park agency. The commissioner may further request submission of studies conducted or reports published by such agencies that may aid the commissioner in the enforcement of the provisions of this title.

3. The commissioner shall make a written report to the legislature upon his finding that a Federal law has been enacted that will result in at least a fifty percent reduction in the emissions of SO₂, as defined in section sixty-six-k of the public service law, by electric generating sources pursuant to title four of the Federal Clean Air Act after full implementation.

§ 19-0923. Severability.

The provisions of this title shall be severable, and if any clause, sentence, paragraph, subdivision or part of this title shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not effect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision or part thereof directly involved in the controversy in which such judgment shall have been rendered.

TITLE 11

VEHICLE GLOBAL WARMING INDEX LABELS

Section 19-1101. Definitions.

19-1103. Vehicle global warming index labels.

19-1105. Regulations.

§ 19-1101. Definitions.

For purposes of this article, the following terms shall have the following meanings:

1. "motor vehicle" shall mean a passenger vehicle, light-duty truck with a gross vehicle weight of eighty-five hundred pounds or less, or any other vehicle determined by the commissioner to be a vehicle whose primary use is noncommercial personal transportation and which is manufactured for the model year two thousand ten or subsequent model year; and

2. "motor vehicle global warming gases" or "global warming gases" shall mean carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

§ 19-1103. Vehicle global warming index labels.

1. No model year two thousand ten or subsequent model year motor vehicle shall be sold in this state unless there is securely and conspicuously affixed in a clearly visible location, a label on which the manufacturer shall endorse clearly, distinctly, and legibly true and correct entries disclosing information concerning the emissions of global warming gases.

2. Unless alternative labeling is approved by the commissioner pursuant to section 19-1105 of this title, the label required by subdivision one of this section shall include:

a. a global warming index that contains quantitative information presented in a continuous, easy-to-read scale, unless the commissioner determines, after public hearing, that an alternative graphical representation will more effectively convey the information to consumers, and that compares the emissions of global warming gases from

the vehicle with the average projected emissions of global warming gases from all vehicles of the same model year. For reference purposes, the index shall also identify the emissions of global warming gases from the vehicle model of that same model year that has the lowest emissions of global warming gases; and

b. the use of at least one color ink, as determined by the commissioner, in addition to black.

3. In order to ensure that the label is useful and informative to consumers, the commissioner shall, in designing the label and to the extent feasible within its existing resources:

a. seek input from the commissioner of motor vehicles, automotive consumers, graphic design professionals, and persons with expertise in environmental labeling; and

b. consider other relevant label formats consistent with paragraph a of subdivision two of this section.

4. The index included in the label pursuant to paragraph a of subdivision two of this section shall be updated as determined necessary by the commissioner to ensure that the differences in emissions among vehicles are readily apparent to the consumer.

5. Such label and index included in such label shall, to the largest extent possible, be consistent with labels and information required by other states. A label that complies with the requirements of the California vehicle labeling program shall be deemed to meet the requirements of this title. An automobile manufacturer may apply to the commissioner for approval of an alternative to the labeling requirement that is at least as effective in providing presale notification of the vehicle's emissions of global warming gases as is the labeling required by this title.

6. Nothing in this section shall be construed as prohibiting a purchaser from removing the label required by this section, after such

purchaser has taken possession of the vehicle.

§ 19-1105. Regulations.

The commissioner is hereby authorized and directed to promulgate rules and/or regulations specifying labeling requirements necessary for the implementation of this title provided, however, that any such rules and/or regulations may allow for the use of labels adopted by the state of California that generally meet the requirements of this title.

ARTICLE 21

POLLUTION CONTROL COMPACTS

- Title
1. New England Interstate Water Pollution Control Compact
 3. Ohio River Valley Water Sanitation Compact
 5. Tri-state compact and interstate environmental commission
 7. Delaware river basin compact
 9. Great Lakes basin compact
 10. Great Lakes-St. Lawrence river basin water resources compact
 11. Champlain basin compact
 13. Susquehanna river basin compact
 15. Mid-Atlantic states air pollution control compact
 17. Delaware river basin water commission compact

TITLE 1

NEW ENGLAND INTERSTATE WATER POLLUTION CONTROL COMPACT

- Section
- 21-0101. New England Interstate Water Pollution Control Compact.
 - 21-0103. Membership on commission.
 - 21-0105. Budget.
 - 21-0107. State contribution.
 - 21-0109. Examination of accounts.
 - 21-0111. Inconsistent provisions.
 - 21-0113. Appraisal.
 - 21-0115. Additional powers.

§ 21-0101. New England Interstate Water Pollution Control Compact.

The New England Interstate Water Pollution Control Compact as first entered into pursuant to chapter 764 of the laws of 1949, and as reenacted by chapter 475 of the laws of 1961, is hereby continued. The compact is as follows:

NEW ENGLAND INTERSTATE WATER POLLUTION CONTROL COMPACT

Whereas, the growth of population and the development of the territory of the New England states has resulted in serious pollution of certain interstate streams, ponds and lakes, and of tidal waters ebbing and flowing past the boundaries of two or more states; and

Whereas, such pollution constitutes a menace to the health, welfare and economic prosperity of the people living in such areas; and

Whereas, the abatement of existing pollution and the control of future pollution in the interstate waters of the New England area are of prime importance to the people and can best be accomplished through the co-operation of the New England states in the establishment of an interstate agency to work with the states in the field of pollution abatement;

Now, therefore, the states of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont do agree and are bound as follows:

ARTICLE I

It is agreed between the signatory states that the provisions of this compact shall apply to streams, ponds and lakes which are contiguous to two or more signatory states or which flow through two or more signatory states or which have a tributary contiguous to two or more signatory states or flowing through two or more signatory states, and also shall apply to tidal waters ebbing and flowing past the boundaries of two states.

ARTICLE II

There is hereby created the New England Interstate Water Pollution Control Commission (hereinafter referred to as the commission) which shall be a body corporate and politic, having the powers, duties and jurisdiction herein enumerated and such other and additional powers as shall be conferred upon it by the act or acts of a signatory state concurred in by the others.

ARTICLE III

The commission shall consist of five commissioners, from each signatory state, each of whom shall be a resident voter of the state from which he is appointed. The commissioners shall be chosen in the manner and for the terms provided by law of the state from which they shall be appointed. For each state there shall be on the commission a member representing the state health department, a member representing the state water pollution control board (if such exists), and except where a state in its enabling legislation decides that the best interests of the state will be otherwise served, a member representing municipal interests, a member representing industrial interests, and a member representing an agency acting for fisheries or conservation.

ARTICLE IV

The commission shall annually elect from its members a chairman and vice chairman and shall appoint and at its pleasure remove or discharge such officers. It may appoint and employ a secretary who shall be a professional engineer versed in water pollution and may employ such stenographic or clerical employees as shall be necessary, and at its pleasure remove or discharge such employees. It shall adopt a seal and suitable by-laws and shall promulgate rules and regulations for its management and control. It may maintain an office for the transaction of its business and may meet at any time or place within the signatory states. Meetings shall be held at least twice each year. A majority of the members shall constitute a quorum for the transaction of business but no action of the commission imposing any obligation on any signatory state or on any municipal agency or subdivision thereof or on any person, firm or corporation therein shall be binding unless a majority

of the members from such signatory state shall have voted in favor thereof. Where meetings are planned to discuss matters relevant to problems of water pollution control affecting only certain of the signatory states, the commission may vote to authorize special meetings of the commissioners of the states especially concerned. The commission shall keep accurate accounts of all receipts and disbursements and shall make an annual report to the governor, the temporary president of the senate, the speaker of the assembly, the chairpersons of the senate finance and assembly ways and means committees, and the chairpersons of the senate and assembly environmental conservation committees setting forth in detail the operations and transactions conducted by it pursuant to this compact, and shall make recommendations for any legislative action deemed by it advisable, including amendments to the statutes of the signatory states which may be necessary to carry out the intent and purpose of this compact. The commission shall not incur any obligations for salaries, office, administrative, traveling or other expenses prior to the allotment of funds by the signatory state adequate to meet the same; nor shall the commission pledge the credit of any signatory states. Each signatory state reserves the right to provide hereafter by law for the examination and audit of the accounts of the commission. The commission shall appoint a treasurer who may be a member of the commission, and disbursements by the commission shall be valid only when authorized by the commission and when vouchers therefor have been signed by the secretary and countersigned by the treasurer. The secretary shall be custodian of the records of the commission with authority to attest to and certify such records or copies thereof.

ARTICLE V

It is recognized, owing to such variable factors as location, size, character and flow and the many varied uses of the waters subject to the terms of this compact, that no single standard of sewage and waste treatment and no single standard of quality of receiving waters is practical and that the degree of treatment of sewage and industrial wastes should take into account the classification of the receiving waters according to present and proposed highest use, such as for drinking water supply, industrial and agricultural uses, bathing and other recreational purposes, maintenance and propagation of fish life,

shellfish culture, navigation and disposal of wastes.

The commission shall establish reasonable physical, chemical and bacteriological standards of water quality satisfactory for various classifications of use. It is agreed that each of the signatory states through appropriate agencies will prepare a classification of its interstate waters in entirety or by portions according to present and proposed highest use and for this purpose technical experts employed by state departments of health and state water pollution control agencies are authorized to confer on questions relating to classification of interstate waters affecting two or more states. Each signatory state agrees to submit its classification of its interstate waters to the commission for approval. It is agreed that after such approval all signatory states through their appropriate state health departments and water pollution control agencies will work to establish programs of treatment of sewage and industrial wastes which will meet standards established by the commission for classified waters. The commission may from time to time make such changes in definitions of classifications and in standards as may be required by changed conditions or as may be necessary for uniformity.

ARTICLE VI

Each of the signatory states pledges to provide for the abatement of existing pollution and for the control of future pollution of interstate inland and tidal waters as described in Article I, and to put and maintain the waters thereof in a satisfactory condition consistent with the highest classified use of each body of water.

ARTICLE VII

Nothing in this compact shall be construed to repeal or prevent the enactment of any legislation or prevent the enforcement of any requirement by any signatory state imposing any additional condition or restriction to further lessen the pollution of waters within its jurisdiction. Nothing herein contained shall affect or abate any action now pending brought by any governmental board or body created by or existing under any of the signatory states.

ARTICLE VIII

The signatory states agree to appropriate for the salaries, office, administrative, travel and other expenses such sum or sums as shall be recommended by the commission. The commonwealth of Massachusetts obligates itself only to the extent of sixty-five hundred dollars in any one year, the state of Connecticut only to the extent of three thousand dollars in any one year, the state of Rhode Island only to the extent of fifteen hundred dollars in any one year, and the states of New Hampshire, Maine, and Vermont each only to the extent of one thousand dollars in any one year.

ARTICLE IX

Should any part of this compact be held to be contrary to the constitution of any signatory state or of the United States, all other parts thereof shall continue to be in full force and effect.

ARTICLE X

The commission is authorized to discuss with appropriate state agencies in New York state questions of pollution of waters which flow into the New England area from New York state or vice versa and to further the establishment of agreements on pollution abatement to promote the interests of the New York and New England areas.

Whenever the commission by majority vote of the members of each signatory state shall have given its approval and the state of New York shall have taken the necessary action to do so, the state of New York shall be a party to this compact for the purpose of controlling and abating the pollution of waterways common to New York and the New England states signatory to this compact but excluding the waters under the jurisdiction of the Interstate Sanitation Commission (New York, New Jersey, and Connecticut).

ARTICLE XI

This compact shall become effective immediately upon the adoption of the compact by any two contiguous states of New England but only insofar as applies to those states upon approval by Federal law. Thereafter upon ratification by other contiguous states, it shall also become effective

as to those states.

§ 21-0103. Membership on commission.

The state shall be represented on the New England Interstate Water Pollution Control Commission by five commissioners to be appointed by the Governor. One shall be the Commissioner of Environmental Conservation, one shall be an officer of the Department of Environmental Conservation and the others shall be such persons as the Governor shall determine will serve the best interests of the state. The commissioners shall serve during the pleasure of the Governor. They shall have all the powers and duties enjoined by the compact; shall serve without compensation, but shall be reimbursed for their expenses actually and necessarily incurred by them in the performance of their duties. The traveling expenses of the commissioners in attending meetings of the commission shall be paid on the audit and warrant of the Comptroller upon vouchers approved by the Department of Environmental Conservation from funds appropriated to the Department of Environmental Conservation for such purposes. The Commissioner of Environmental Conservation and the officer of the Department of Environmental Conservation may designate, from time to time, a deputy or other subordinate in his department to attend and participate in any meeting of or hearing by or other proceeding of the commission, with authority to vote as a representative of or substitute for said commissioner or officer of the Department of Environmental Conservation.

§ 21-0105. Budget.

The New England Interstate Water Pollution Control Commission shall submit annually, in accordance with the laws and practice of this state, to the Commissioner of Environmental Conservation for study and consideration by such commissioner, an estimate of moneys required to administer, manage and support the commission during the ensuing fiscal year. Such estimate shall include any request for appropriation of funds by New York and shall be accompanied by a tabulation of similar requests

which the commission expects to make to each other member state and the formula or factors upon which such respective requests are based. The Commissioner of Environmental Conservation shall include a suitable item or items of estimated expenditures in the budget estimates of his department.

§ 21-0107. State contribution.

The state agrees to contribute to the commission such annual amount as may be required for its several purposes under the terms of such compact, within appropriations therefor.

§ 21-0109. Examination of accounts.

The state Comptroller is hereby authorized and empowered from time to time to examine the accounts and books of the commission, including its receipts, disbursements and such other items referring to its financial standing as such Comptroller may deem proper and to report the results of such examination to the Governor.

§ 21-0111. Inconsistent provisions.

No provision of the Public Health Law and no provision of the Environmental Conservation Law, if such provision of the Environmental Conservation Law was derived from a provision of the Public Health Law, which is inconsistent with the provisions of the New England Interstate Water Pollution Control Compact shall be applicable to the New England Interstate Water Pollution Control Commission or to any matter governed by the New England Interstate Water Pollution Control Compact.

§ 21-0113. Appraisal.

On August 15, 1964, and at intervals of four years thereafter, the

Commissioner of Environmental Conservation shall evaluate the role of the New England Interstate Water Pollution Control Commission with respect to the interstate waters of concern to New York, and to which the compact applies, and shall report to the commission thereon. The Commissioner of Environmental Conservation shall transmit a copy of such report to the Governor. The Commissioner of Environmental Conservation may make such additional reports to the New England Interstate Water Pollution Control Commission and the Governor as he deems appropriate.

§ 21-0115. Additional powers.

1. The state reaffirms its support of the cooperative approach to the abatement and control of water pollution as embodied in the New England Interstate Water Pollution Control Compact. In view of the increases in population concentrations, the growing need of industry and agriculture for water of reasonable quality and the quality requirements of water based recreation and other uses, the New England Interstate Water Pollution Control Commission shall develop and maintain its programs, including research on water quality problems at such levels as may be appropriate including, to the extent necessary, levels above those originally provided when the state first enacted the compact.

2. In addition to the minimal personnel authorizations contained in article IV of the New England Interstate Water Pollution Control Compact, the commission may employ such engineering, technical and other professional, secretarial and clerical personnel as the proper administration and functioning of the commission may require.

3. a. This state hereby concurs in the conferring of any powers or duties on the New England Interstate Water Pollution Control Commission by other states in addition to those conferred by provision of the New England Interstate Water Pollution Control Compact. This concurrence is pursuant to article II of said compact.

b. The concurrence is subject to the following limitations:

(1) Unless this state specifically confers a power or duty on the

commission, other than one conferred by the compact itself, no financial or other burden or duties shall be placed upon this state, or any agency, officer or subdivision thereof, by reason of the conferring or exercise of the power or duty. At any time, the Governor, Attorney General, or the State Comptroller shall have the power to make inquiry of the commission and to examine its books and records in order to ascertain the state of compliance with this act.

(2) The rights, privileges and responsibilities of the state with respect to the New England Interstate Water Pollution Control Compact and the commission established thereby shall not be limited or impaired.

(3) The commission shall include in its reports to the Governor a full account of any additional powers or duties exercised or performed by it.

§ 21-0117. Water quality network.

1. The New England Interstate Water Pollution Control Commission, in cooperation with the state and such other states signatory to the New England Interstate Water Pollution Control Compact as may participate, shall establish and maintain a water quality sampling and testing network. The network shall, to the fullest extent practicable, rely upon the sampling and testing programs of the state and other participating states and upon information available from agencies of the federal government, and shall not duplicate any of their activities. However, if the sampling and testing programs of the state and other states and the information available from agencies of the federal government are insufficient to provide the commission with records of water quality adequate for its needs, the commission may supplement the sampling and testing otherwise available to it.

2. Sampling pursuant to this section shall be at points at or near the places where waters cross a boundary of the state and the samples shall be tested in order to determine their quality. The sampling and testing provided for herein shall be scheduled by the commission or in accordance with its requests and shall include such factors or elements as the commission shall request. Any sampling and testing done by the Department of Environmental Conservation as part of the activities of

the commission's network shall be reported fully and promptly by the department to the commission together with the results thereof.

3. a. If the commission ascertains that particular waters at or near a boundary of the state do not comply with the standards of the commission made pursuant to article V of the New England Interstate Water Pollution Control Compact, or are not otherwise of a quality complying with state law, the commission shall inform the Department of Environmental Conservation and the water pollution control agency of any other state concerned and shall afford such agencies an opportunity to verify, explain, supplement or correct the information in the possession of the commission and, if the facts warrant, to take or secure the taking of any necessary remedial action.

b. If such remedial action is not taken or secured in timely fashion, the commission may hold a public hearing on due notice, as provided in its rules and regulations, in order to ascertain all the relevant facts and circumstances. Following public hearing, the commission may issue an order directed to the source or sources of waste discharge causing or contributing to the deteriorated water quality. Such order or orders may require reduction or cessation of waste discharges or the improvement of their quality. An order shall not be valid unless supported by substantial evidence adduced at the public hearing. Such order shall prescribe the date or dates by which discharges of waste are to be reduced, discontinued or treated, and may contain timetables or schedules for specific steps to be taken in order to comply therewith. An order made pursuant to this section may be enforced in any court of competent jurisdiction. Proceedings shall be only on the record made before the commission.

4. Unless otherwise conferred by law, the commission shall not have power to issue permits or licenses in connection with the discharge or treatment of wastes, or pass upon plans or specifications for particular waste treatment or collection equipment or facilities.

OHIO RIVER VALLEY WATER SANITATION COMPACT

Section 21-0301. Ohio River Valley Sanitation Compact.

21-0303. Joinder by Virginia.

21-0305. Commissioners; cooperation by departments and officers.

21-0307. Jurisdiction of court; powers of Attorney-General and
other law enforcement officers.

21-0309. Powers to be additional.

21-0311. Financial examination; recommendations.

21-0313. Budget.

21-0315. Inconsistent provisions.

21-0317. Evaluation.

§ 21-0301. Ohio River Valley Water Sanitation Compact.

The Ohio River Valley Water Sanitation Compact, as first enacted by chapter 776 of the laws of 1939, and as reenacted by chapter 472 of the laws of 1961, is hereby continued. The compact is as follows:

OHIO RIVER VALLEY WATER SANITATION COMPACT

Whereas a substantial part of the territory of each of the signatory states is situated within the drainage basin of the Ohio river; and

Whereas the rapid increase in the population of the various metropolitan areas situated within the Ohio drainage basin, and the growth in industrial activity within that area, have resulted in recent years in an increasingly serious pollution of the waters and streams within the said drainage basin, constituting a grave menace to the health, welfare, and recreational facilities of the people living in such basin, and occasioning great economic loss; and

Whereas the control of future pollution and the abatement of existing pollution in the waters of said basin are of prime importance to the people thereof, and can best be accomplished through the cooperation of the states situated therein, by and through a joint or common agency;

Now, therefore, the states of Illinois, Indiana, Kentucky, New York,

Ohio, Pennsylvania, Tennessee and West Virginia do hereby covenant and agree as follows:

ARTICLE I

Each of the signatory states pledges to each of the other signatory states faithful cooperation in the control of future pollution in and abatement of existing pollution from the rivers, streams and waters in the Ohio river basin which flow through, into, or border upon any of such signatory states, and in order to effect such object, agrees to enact any necessary legislation to enable each such state to place and maintain the waters of said basin in a satisfactory sanitary condition, available for safe and satisfactory use as public and industrial water supplies after reasonable treatment, suitable for recreational usage, capable of maintaining fish and other aquatic life, free from unsightly or malodorous nuisances due to floating solids or sludge deposits, and adaptable to such other uses as may be legitimate.

ARTICLE II

The signatory states hereby create a district to be known as the "Ohio river valley water sanitation district," hereinafter called the district, which shall embrace all territory within the signatory states the water in which flows ultimately into the Ohio river, or its tributaries.

ARTICLE III

The signatory states hereby create the "Ohio river valley water sanitation commission," hereinafter called the commission, which shall be a body corporate, with the powers and duties set forth herein, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the signatory states or by act or acts of the congress of the United States.

ARTICLE IV

The commission shall consist of three commissioners from each state, each of whom shall be a citizen of the state from which he is appointed, and three commissioners representing the United States government. The commissioners from each state shall be chosen in the manner and for the

terms provided by the laws of the state from which they shall be appointed, and any commissioner may be removed or suspended from office as provided by the law of the state from which he shall be appointed. The commissioners representing the United States shall be appointed by the president of the United States, or in such other manner as may be provided by congress. The commissioners shall serve without compensation, but shall be paid their actual expenses incurred in and incident to the performance of their duties; but nothing herein shall prevent the appointment of an officer or employee of any state or of the United States government.

ARTICLE V

The commission shall elect from its number a chairman and vice-chairman, and shall appoint, and at its pleasure remove or discharge, such officers and legal, clerical, expert and other assistants as may be required to carry the provisions of this compact into effect, and shall fix and determine their duties, qualifications and compensation. It shall adopt a seal and suitable by-laws, and shall adopt and promulgate rules and regulations for its management and control. It may establish and maintain one or more offices within the district for the transaction of its business, and may meet at any time or place. One or more commissioners from a majority of the member states shall constitute a quorum for the transaction of business.

The commission shall submit to the governor of each state, at such time as he may request, a budget of its estimated expenditures for such period as may be required by the laws of such state for presentation to the legislature thereof.

The commission shall keep accurate books of account, showing in full its receipts and disbursements, and said books of account shall be open at any reasonable time to the inspection of such representatives of the respective signatory states as may be duly constituted for that purpose.

On or before the first day of December of each year, the commission shall submit to the respective governors of the signatory states a full and complete report of its activities for the preceding year.

The commission shall not incur any obligations of any kind prior to the making of appropriations adequate to meet the same; nor shall the commission pledge the credit of any of the signatory states, except by and with the authority of the legislature thereof.

ARTICLE VI

It is recognized by the signatory states that no single standard for the treatment of sewage or industrial wastes is applicable in all parts of the district due to such variable factors as size, flow, location, character, self-purification, and usage of waters within the district. The guiding principle of this compact shall be that pollution by sewage or industrial wastes originating within a signatory state shall not injuriously affect the various uses of the interstate waters as hereinbefore defined.

All sewage from municipalities or other political subdivisions, public or private institutions, or corporations, discharged or permitted to flow into these portions of the Ohio river and its tributary waters which form boundaries between, or are contiguous to, two or more signatory states, or which flow from one signatory state into another signatory state, shall be so treated, within a time reasonable for the construction of the necessary works, as to provide for substantially complete removal of settleable solids, and the removal of not less than forty-five per centum of the total suspended solids; provided that, in order to protect the public health or to preserve the waters for other legitimate purposes, including those specified in article one, in specific instances such higher degree of treatment shall be used as may be determined to be necessary by the commission after investigation, due notice and hearing.

All industrial wastes discharged or permitted to flow into the aforesaid waters shall be modified or treated, within a time reasonable for the construction of the necessary works, in order to protect the public health or to preserve the waters for other legitimate purposes, including those specified in article one, to such degree as may be determined to be necessary by the commission after investigation, due

notice and hearing.

All sewage or industrial wastes discharged or permitted to flow into tributaries of the aforesaid waters situated wholly within one state shall be treated to that extent, if any, which may be necessary to maintain such waters in a sanitary and satisfactory condition at least equal to the condition of the waters of the interstate stream immediately above the confluence.

The commission is hereby authorized to adopt, prescribe and promulgate rules, regulations and standards for administering and enforcing the provisions of this article.

ARTICLE VII

Nothing in this compact shall be construed to limit the powers of any signatory state, or to repeal or prevent the enactment of any legislation or the enforcement of any requirement by any signatory state, imposing additional conditions and restrictions to further lessen or prevent the pollution of waters within its jurisdiction.

ARTICLE VIII

The commission shall conduct a survey of the territory included within the district, shall study the pollution problems of the district, and shall make a comprehensive report for the prevention or reduction of stream pollution therein. In preparing such report, the commission shall confer with any national or regional planning body which may be established, and any department of the federal government authorized to deal with matters relating to the pollution problems of the district. The commission shall draft and recommend to the governors of the various signatory states uniform legislation dealing with the pollution of rivers, streams and waters and other pollution problems within the district. The commission shall consult with and advise the various states, communities, municipalities, corporations, persons, or other entities with regard to particular problems connected with the pollution of waters, particularly with regard to the construction of plants for the disposal of sewage, industrial and other waste. The commission shall, more than one month prior to any regular meeting of the

legislature of any state which is a party thereto, present to the governor of the state its recommendations relating to enactments to be made by any legislature in furthering the intents and purposes of this compact.

ARTICLE IX

The commission may from time to time, after investigation and after a hearing, issue an order or orders upon any municipality, corporation, person, or other entity discharging sewage or industrial waste into the Ohio river or any other river, stream or water, any part of which constitutes any part of the boundary line between any two or more of the signatory states, or into any stream any part of which flows from any portion of one signatory state through any portion of another signatory state. Any such order or orders may prescribe the date on or before which such discharge shall be wholly or partially discontinued, modified or treated or otherwise disposed of. The commission shall give reasonable notice of the time and place of the hearing to the municipality, corporation or other entity against which such order is proposed. No such order shall go into effect unless and until it receives the assent of at least a majority of the commissioners from each of not less than a majority of the signatory states; and no such order upon a municipality, corporation, person or entity in any state shall go into effect unless and until it receives the assent of not less than a majority of the commissioners from such state.

It shall be the duty of the municipality, corporation, person or other entity to comply with any such order issued against it or him by the commission, and any court of general jurisdiction or any United States district court in any of the signatory states shall have the jurisdiction, by mandamus, injunction, specific performance or other form of remedy, to enforce any such order against any municipality, corporation or other entity domiciled or located within such state or whose discharge of the waste takes place within or adjoining such state, or against any employee, department or subdivision of such municipality, corporation, person or other entity; provided, however, such court may review the order and affirm, reverse or modify the same upon any of the grounds customarily applicable in proceedings for court review of

administrative decisions. The commission or, at its request, the attorney-general or other law enforcing official, shall have power to institute in such court any action for the enforcement of such order.

ARTICLE X

The signatory states agree to appropriate for the salaries, office and other administrative expenses, their proper proportion of the annual budget as determined by the commission and approved by the governors of the signatory states, one-half of such amount to be prorated among the several states in proportion to their population within the district at the last preceding federal census, the other half to be prorated in proportion to their land area within the district.

ARTICLE XI

This compact shall become effective upon ratification by the legislatures of a majority of the states located within the district and upon approval by the congress of the United States; and shall become effective as to any additional states signing thereafter at the time of such signing.

In witness whereof, the various signatory states have executed this compact through their respective compact commissioners.

§ 21-0303. Joinder by Virginia.

The state of New York hereby consents that the state of Virginia may become a party to and a signatory state of the compact described in the preceding section as fully as though such state had been expressly named therein.

§ 21-0305. Commissioners; cooperation by departments and officers.

1. In pursuance of article four of said compact, there shall be three members (hereinafter called commissioners) of the Ohio River Valley Water Sanitation Commission (hereinafter called commission) from the

state of New York. The Governor, by and with the advice and consent of the senate, shall appoint two persons as two of such commissioners, each of whom shall be a resident and citizen of the state of New York. The terms of such commissioners shall continue to be for six years. Each commissioner shall hold office until his successor shall be appointed and qualified. Vacancies occurring in the office of any such commissioner for any reason or cause shall be filled by appointment by the Governor, by and with the advice and consent of the senate, for the unexpired term. The third commissioner from the state of New York shall be the Commissioner of Environmental Conservation of the state of New York ex officio, and the term of any such ex officio commissioner shall terminate at the time he ceases to hold said office of Commissioner of Environmental Conservation, and his successor as a commissioner shall be his successor as said Commissioner of Environmental Conservation. With the exception of the issuance of any order under the provisions of article nine of the compact, said ex officio commissioner may delegate, from time to time, to any deputy or other subordinate in his department or office the power to be present and participate, including voting, as his representative or substitute at any meeting of, or hearing by, or other proceeding of the commission. The commissioners serving on the effective date of this article shall continue in office until the expiration of their terms, or until their successors have qualified, or until otherwise ceasing to be commissioners pursuant to law.

2. Any commissioner may be removed from office by the Governor upon charges and after a hearing, but opportunity to be heard shall be given.

3. There is hereby granted to the commission and the commissioners thereof all the powers provided for in the said compact and all the powers necessary or incidental to the carrying out of said compact in every particular. All officers of the state of New York are hereby authorized and directed to do all things falling within their respective provinces and jurisdiction necessary or incidental to the carrying out of said compact in every particular; it being hereby declared to be the policy of the state of New York to perform and carry out the said compact and to accomplish the purposes thereof. All officers, bureaus, departments and persons of and in the state government or administration

of the state of New York are hereby authorized and directed at convenient times and upon request of the said commission to furnish the said commission with information and data possessed by them or any of them and to aid said commission by loan of personnel or other means lying within their legal powers respectively.

§ 21-0307. Jurisdiction of court; powers of Attorney-General and other law enforcement officers.

The supreme court of the state of New York is hereby granted the jurisdiction specified in article nine of said compact, and the Attorney-General and any other law enforcement officer of the state of New York is hereby granted the power to institute any action for the enforcement of the orders of the commission as specified in article nine of the compact.

§ 21-0309. Powers to be additional.

Any powers herein granted to the commission shall be regarded as in aid of and supplemental to and in no case a limitation upon any other powers vested in said commission by other laws of the state of New York or by any other jurisdiction, or by the terms of said compact.

§ 21-0311. Financial examination; recommendations.

1. The commission shall keep accurate accounts of all receipts and disbursements and shall report to the Governor and the legislature of the state of New York, on or before the tenth day of January in each year, setting forth in detail the transactions conducted by it during the preceding calendar year and shall make recommendations for any legislative action deemed by it advisable including amendments to the statutes of the state of New York which may be necessary to carry out the intent and purposes of the compact between the signatory states.

The Comptroller of the state of New York is hereby authorized and empowered from time to time to examine the accounts and books of the commission including its receipts, disbursements and such other items referring to its financial standing as such Comptroller may deem proper and to report the results of such examination to the Governor of such state.

§ 21-0313. Budget.

1. The commission shall submit annually, in accordance with the laws and practice of this state to the Governor, for study and consideration by him, an estimate of moneys required to administer, manage and support the commission. Such estimate shall include any request for appropriation of funds by New York state and shall be accompanied by a tabulation of similar requests which the commission expects to make to each other member state and the formula or factors upon which such respective requests are based.

2. The Commissioner of Environmental Conservation shall be afforded an opportunity to comment on any budget request by the commission, and the commission shall be furnished with a copy of any such comments.

§ 21-0315. Inconsistent provisions.

No provision of the Public Health Law and no provision of the Environmental Conservation Law, if such provision of the Environmental Conservation Law was derived from a provision of the Public Health Law, which is inconsistent with the provisions of the Ohio River Valley Water Sanitation Compact shall be applicable to the commission or to any matter governed by the Ohio River Valley Water Sanitation Compact.

§ 21-0317. Evaluation.

On August 15, 1964, and at intervals of four years thereafter, the

Commissioner of Environmental Conservation shall evaluate the role of the commission with respect to the waters within and commingled with those in New York over which the commission has jurisdiction and shall report to the commission thereon. The Commissioner of Environmental Conservation shall transmit a copy of such report to the Governor. The Commissioner of Environmental Conservation may make such additional reports to the commission and the Governor as he deems appropriate.

TITLE 5

TRI-STATE COMPACT AND INTERSTATE ENVIRONMENTAL COMMISSION

Section 21-0501. Tri-state compact.

21-0503. Commissioners.

21-0505. Cooperation of other officers and agencies.

21-0507. Enforcement proceedings.

21-0509. Powers to be additional; inconsistent provisions.

21-0511. Further pollution.

21-0513. Hearings.

21-0515. Preparation of plan; consultation.

21-0517. Report and recommendations.

21-0519. Budget.

21-0521. Financial examination.

21-0523. Evaluation.

21-0525. Interstate air pollution.

§ 21-0501. Tri-state compact.

The tri-state compact as first entered into pursuant to chapter 4 of the laws of 1936, as reenacted by chapter 476 of the laws of 1961, and as amended by chapter 1046 of the laws of 1969, is hereby continued. The compact is as follows:

TRI-STATE COMPACT

Whereas, The tremendous growth of population and the development of the territory surrounding and adjacent to the harbor of New York has resulted in recent years in an increasingly serious pollution of the

harbor, coastal and tidal waters in such area and the tributary waters therein; and

Whereas, Such pollution constitutes a grave menace to the health, welfare and recreational facilities of the people living in such area and is occasioning great economic loss; and

Whereas, The control of future pollution and the abatement of existing pollution in the waters in such area is of prime importance to the people living in such area and can best be accomplished through the co-operation of the states of New Jersey and New York and Connecticut by and through a joint or common agency;

Now, therefore, The state of New York and the state of New Jersey and the state of Connecticut do agree and are bound as follows:

ARTICLE I

1. Each of the signatory states pledges each to the other faithful co-operation in the control of future pollution and agrees to provide for the abatement of existing pollution in the tidal and coastal waters in the adjacent portions of the signatory states defined herein as coming within the district, and consistent with such object, to enact adequate legislation which will enable each of the signatory states to put and maintain the waters thereof in a satisfactory sanitary condition and particularly to protect public health; to render safe such waters as are now used or may later become available for bathing and recreational purposes; to abate and eliminate such pollution as becomes obnoxious or causes a nuisance; to permit the maintenance of major fish life, shellfish and marine life in waters now available or that may by practicable means be made available for the development of such fish, shellfish or marine life; to prevent oil, grease or solids from being carried on the surface of the water; to prevent the formation of sludge deposits along the shores or in the waterways; and with the fulfillment of these objectives to abate and avoid incurring unnecessary economic loss by safeguarding the rights of the public in its varied legitimate uses of the waters of the district.

ARTICLE II

1. To that end they do agree that there shall be created and they do hereby create a district to be known as the Interstate Environmental District (hereinafter referred to as the district) which shall embrace the territory described as follows:

All of the coastal, estuarial and tidal waters within or covering portions of the signatory states as follows:

(a) In Connecticut, Long Island sound and estuaries and tidal waters thereof between the easterly side of New Haven harbor at Morgan Point and the Connecticut-New York state boundary, and the Housatonic river up to the northerly boundary lines of the towns of Stratford and Milford.

(b) In New York, all of the tidal waters of Greater New York city; including Kill Van Kull and Arthur Kill, Long Island Sound and the estuaries and tidal waters thereof between the New York city line and the New York-Connecticut state boundary and between the New York city line and the easterly side of Port Jefferson harbor; the Atlantic ocean and the estuaries and tidal waters thereof between the New York city line and the easterly side of Fire Island inlet; and the Hudson river and estuaries and tidal waters thereof between the New York and New Jersey state boundary and the northerly line of Rockland county on the westerly side and between the northerly line of New York city and the northerly line of Westchester county on the easterly side of the river.

(c) In New Jersey, the Hudson river and New York upper bay and estuaries and tidal waters thereof between the New York-New Jersey boundary and Constable Point on Constable Hook, the Kill Van Kull and Arthur Kill to the mouths of the rivers entering into the Kills; Newark bay and the estuaries thereof up to the mouth of the Passaic river; and up to the mouth of the Hackensack river; Raritan bay together with the Raritan river up to the Victory bridge on said river between Perth Amboy and South Amboy; together with the Cheesequake creek up to the New York and Long Branch Railroad bridge on said creek at Morgan; together with the Matawan creek up to the New York and Long Branch Railroad bridge on said creek at Matawan; Sandy Hook bay; together with the Shrewsbury river up to the passenger railroad bridge between Navesink Light and Highland Beach on said river.

ARTICLE III

1. There is hereby created the Interstate Environmental Commission (hereinafter referred to as the commission) which shall be a body corporate and politic, having the powers, duties and jurisdiction herein enumerated and such other and additional powers as shall be conferred upon it by the act or acts of a signatory state concurred in by the others and by the act or acts of congress when necessary.

ARTICLE IV

1. The commission shall consist of five commissioners from each state, each of whom shall be a resident voter of the state from which he is appointed.

The commissioners shall be chosen in the manner and for the terms provided by law of the state from which they shall be appointed, and each commissioner may be removed or suspended from office as provided by the law of the state from which he shall be appointed. The commissioners shall serve without compensation, but shall be paid their actual expenses incurred and incident to the performance of their duties.

ARTICLE V

1. The commission shall elect from its number a chairman and vice-chairman and shall appoint and at its pleasure remove or discharge such officers and legal, clerical, expert and other assistants as may be required to carry the provisions of this compact into effect, and shall fix and determine their duties, qualifications and compensations.

It shall adopt a seal and suitable by-laws and shall promulgate rules and regulations for its management and control. It may maintain one or more offices for the transaction of its business and may meet at any time or place within the signatory states.

A majority of the members from each state shall constitute a quorum for the transaction of business, the exercise of any powers, or the performance of any duties, but no action of the commission shall be binding unless at least three of the members from each state shall vote in favor thereof.

The commission shall keep accurate accounts of all receipts and disbursements and shall make an annual report to the governor and the legislature of each state setting forth in detail the operations and transactions conducted by it pursuant to this compact, and shall make recommendations for any legislative action deemed by it advisable, including amendments to the statutes of the signatory states which may be necessary to carry out the intent and purpose of this compact, and changes in the district which concentration of population or other cause may require.

The commission shall not incur any obligations for salaries, office or other administrative expenses prior to the making of appropriations adequate to meet the same; nor shall the commission pledge the credit of any of the signatory states except by and with the authority of the legislatures thereof. Each state reserves the right to provide hereafter by law for the examination and audit of the accounts of the commission by its comptroller or other official.

The commissioners shall meet and organize within ten days after the effective date of this compact.

ARTICLE VI

1. It is recognized by the signatory states that, where tidal waters are used for such varied purposes as bathing, navigation, shellfish culture, the development of fish life and the disposal of wastes, no single standard of purity is practicable in all parts of the district. In order to attain the objects of this compact, the commission, after proper study and after conducting public hearings upon due notice, shall group the designated waters of the district into classes. Where local conditions shall have changed in the future to such an extent that changes in classification become necessary, the commission may, after conducting public hearings upon due notice, adopt such changes.

Two general classifications shall be used:

(1) Class "A", in which the designated water areas are expected to be used primarily for recreational purposes, shellfish culture or the

development of fish life;

(2) Class "B", in which the designated water areas are not expected to be used primarily for recreational purposes, shellfish culture or the development of fish life.

ARTICLE VII

1. It is agreed between the signatory states that no sewage or other polluting matters shall be discharged or permitted to flow into, or be placed in, or permitted to fall or move into the tidal waters of the district, except under the following conditions and restrictions:

(1) All sewage discharged or permitted to flow into Class "A" waters of the district shall first have been so treated as

(a) to remove all floating solids and at least sixty per centum (60%) of the suspended solids; and

(b) to effect a reduction of organisms of the B. Coli group (intestinal bacilli) so that the probable number of such organisms shall not exceed one per cubic centimeter in more than fifty per centum (50%) of the samples of sewage effluent tested by the partially confirmed test; provided, however, that in the case of discharge into waters used primarily for bathing this bacterial standard need not be required except during the bathing season; and

(c) to effect a reduction in the oxygen demand of the sewage effluent sufficient to maintain an average dissolved oxygen content in the tidal waters of the district and in the general vicinity of the point of discharge of the sewage into those waters, at a depth of about five feet below the surface, of not less than fifty per centum (50%) saturation during any week of the year.

2. All sewage discharged or permitted to flow into class "B" waters of the district shall first have been so treated as

(a) to remove all floating solids and at least ten per centum (10%) of the suspended solids, or such additional percentage as may by reason of local conditions be necessary to avoid the formation of sludge deposits in the class "B" waters of the district; and

(b) to effect a reduction in the oxygen demand of the sewage effluent sufficient to maintain an average dissolved oxygen content in the tidal waters of the district and in the general vicinity of the point of

discharge of the sewage into those waters, at a depth of about five feet below the surface, of not less than thirty per centum (30%) saturation during any week of the year.

ARTICLE VIII

1. Each of the signatory states agrees, that in so far as waters within its jurisdiction may flow into any portion of the district, all sewage discharged or permitted to flow into any stream tributary to the tidal waters of the district shall be treated to that extent, if any, which may be necessary to maintain such tributary immediately above its confluence with the tidal waters of the district in a sanitary condition at least equal to the classification requirements determined by the commission for the tidal waters of the district into which it discharges. The waters of the Hudson river, immediately above the mouth of Sparkhill creek on the westerly side and the New York-New Jersey boundary extended on the easterly side of the river, shall be maintained in a sanitary condition at ebb tide at least equal to the sanitary condition prevailing in the waters of the river immediately below said boundary at flood tide.

ARTICLE IX

1. Nothing in this compact shall be construed to repeal or prevent the enactment of any legislation or the enforcement of any requirement by any signatory state imposing any additional conditions and restrictions to further lessen or prevent the pollution of waters within its jurisdiction.

ARTICLE X

1. Subject to the provisions of this compact the commission, as soon as may be after its organization, after an investigation and after conducting public hearings upon due notice, shall by order prescribe the reasonable date on or before which each municipality or other entity discharging sewage into the designated waters within the district shall be treating such sewage in accordance with the standards specified in this compact. And such order may prescribe that certain specific progress shall be made at certain definite time prior to the final date fixed in such order.

It is the desire of all parties to accomplish the objects herein set forth with the least possible injury to investments which have already been made in the construction of sewage treatment plants within the district, and where changes or additions to such plants would be necessary to conform to the standards herein adopted, a reasonable time to effect such changes or additions may, in the discretion of the commission, be granted.

ARTICLE XI

1. Each of the signatory states agrees that it will prohibit the pollution of the said waters within the district in accordance with the several articles of this compact, and that it will enact suitable and adequate legislation which will accomplish effectively the objects of this compact and which will enable its officers, departments, boards and agents to accomplish satisfactorily the obligations and duties assumed by the state under the terms of this compact, and it is further agreed that the courts of the several states shall have jurisdiction to enforce as against any person, corporation, municipality or other entity or any employee, department or subdivision of the respective signatory states any and all provisions of this compact.

The commission shall have authority to investigate and determine if the requirements of the compact and/or the orders of the commission pursuant thereto are complied with and if satisfactory progress has not been made, to bring action in its own name in the proper court or courts to compel the enforcement of any and all the provisions of this compact, and/or the orders of the commission pursuant thereto.

ARTICLE XII

1. In order that future pollution be controlled and existing pollution be abated with the greatest possible economy and efficiency, the commission shall co-operate and advise with the respective state and district authorities having jurisdiction over stream pollution, with a view to coordinating their activities and securing the most satisfactory results at lower cost. For such purpose the commission may prepare a general plan of the most practicable and economical method of securing

conformity with the standards herein set forth, having in view the future growth and development of the district. Such plan when completed shall be submitted to the governor and the legislature of each state and to the state agency or agencies or district agencies in charge of sewage problems.

The provisions of this act shall not affect the discharge from the outfall pipes of the Passaic valley sewerage system into the water of New York harbor; provided, however, that said discharge shall be in accordance with the terms and provisions of the stipulation entered into on April fourteenth, one thousand nine hundred ten, between the United States of America and Passaic valley sewerage commissioners.

ARTICLE XIII

1. Terms used in this compact are defined as follows:

"District" means the area more particularly described in article two of this compact.

"Commission" means the Interstate Environmental Commission.

"Municipality" means any city, incorporated village, borough, county, town, township, district, or any municipality governed by an improvement commission, any joint sewer commission, or any other subdivision of any one of the signatory states, located within the district.

"Rule" or "Regulation" means any rule or regulation established by the commission not inconsistent with the constitution of the United States or of any signatory state, promulgated by the commission touching the abatement or pollution of the waters of the district.

"Tidal waters" means all those waters which ebb and flow within the designated district.

"Dissolved oxygen" is the gaseous oxygen held in solution by the water at any given time. It is expressed as a percentage of the maximum amount of oxygen that would be required to saturate the water under the existing conditions of temperature and salinity.

"Pollution" is any foreign matter which renders waters unfit to sustain fish life and unsatisfactory for bathing.

"Sewage effluent" means the treated sewage discharged from a treatment plant.

"Suspended solids" means those solid particles carried in suspension

in the untreated sewage or sewage effluent.

"Entity" means any organization or association owning, controlling or operating a sewerage system or treatment plant within a municipality.

ARTICLE XIV

1. The signatory states agree to appropriate annually for the salaries, office and other administrative expenses such sum or sums as shall be recommended by the commission and approved by the governors of the signatory states, the state of New York and the state of New Jersey agreeing each to appropriate forty-five per centum (45%) thereof, and the state of Connecticut agreeing to appropriate ten per centum (10%) thereof. The state of New York and the state of New Jersey obligate themselves hereunder, however, only to the extent of fifteen thousand dollars (\$15,000.00) each in any one year, and the state of Connecticut obligated itself hereunder only to the extent of three thousand, three hundred thirty-three dollars and thirty-four cents (\$3,333.34) in any one year.

ARTICLE XV

1. Should any part of this compact be held to be contrary to the constitution of any signatory state or of the United States, all other severable objects of this compact shall continue to be in full force and effect.

ARTICLE XVI

1. This compact shall become effective as to the state of New Jersey and the state of New York immediately upon the signing thereof by the representatives of such states, and thereafter it shall also become effective as to the state of Connecticut immediately upon the signing thereof by the representatives of such state; provided, however, that prior to the signing of this compact by the representatives of the state of Connecticut the district as set forth in article two shall not embrace any territory within the jurisdiction of the state of Connecticut, nor shall the commission exercise any jurisdiction or perform any duties or acts affecting such territory; and the appropriations for salaries, office and other administrative expenses shall be borne equally by the state of New York and the state of New

Jersey.

2. Nothing herein contained shall affect or abate any action now pending brought by any governmental board or body created by or existing under any of the signatory states.

ARTICLE XVII

In addition to, or in substitution for, the classifications of waters set forth in Articles VI and VII of this compact and the effluent standards made applicable thereto, the Commission may develop and, after public hearing place in force other classifications of waters and effluent standards within the District. Such classifications shall be on the basis of present or intended uses of the waters in question and shall be accompanied by requirements governing the quality of effluents, receiving waters, or both, as the public interest may make appropriate.

Classifications, standards, and requirements adopted pursuant to this Article shall be developed and may be revised with due consideration for uniformity of requirements relating to the quality of effluents and receiving waters within the same classification in all parts of the District.

Classifications made pursuant to this Article shall be governed by and shall implement any water and related land resource plans, water use plans or pollution control plans adopted by appropriate agencies of the signatory states, acting singly or in concert, or through joint intergovernmental agencies. Any exercise of authority by the Commission pursuant to this Article shall be subject to any procedural requirements, if applicable, that may be contained in federal law.

Nothing contained in this Article shall be construed to abridge or limit any power otherwise existing of a signatory state to make and enforce classifications, standards, and requirements for effluents and receiving waters.

§ 21-0503. Commissioners.

1. The Governor shall, by and with the advice and consent of the senate, appoint four commissioners to the interstate environmental commission created by the tri-state compact, each of whom shall be a resident voter of the state of New York. The Commissioner of Environmental Conservation, and each of his successors in such office, also shall be a commissioner of the interstate environmental commission. Each commissioner shall hold office until his successor has been appointed and qualified. The commissioners serving on the effective date of this article shall continue in office until the expiration of their terms, or until their successors have qualified, or until otherwise ceasing to be commissioners pursuant to law. The Commissioner of Environmental Conservation may appoint a member of his department to act as his statutory representative on the commission.

2. At the expiration of the term of each appointive commissioner and of each succeeding appointive commissioner, the Governor shall, by and with the advice and consent of the senate, appoint a successor who shall hold office for a term of four years or until his successor has been appointed and qualified. In the event of a vacancy occurring in the office of an appointive commissioner by death, resignation or otherwise, the Governor shall, by and with the advice and consent of the senate, appoint a successor, who shall hold office for the unexpired term. Any commissioner may be removed upon charges and after hearing by the Governor. The commissioners shall have the powers and duties, and be subject to the limitations provided for in the compact and applicable laws of this state. The commissioners shall serve without compensation, but shall be paid their actual expenses incurred and incident to the performance of their duties.

§ 21-0505. Cooperation of other officers and agencies.

All state and municipal departments, commissions, boards and bodies having to do with the waters of the state shall cooperate with the commission and shall furnish to the commission such information as the commission shall request, touching the pollution or the elimination

thereof, of the waters of the district.

§ 21-0507. Enforcement proceedings.

Whenever the interstate environmental commission shall be of the opinion that any person, association or corporation, municipal or otherwise, within the district is failing or omitting, or about to fail or omit to do anything required of it by its order or by the laws governing the control or elimination of pollution of the waters of the district, or is doing or is about to do anything, or permitting or about to permit anything to be done contrary to or in violation of such orders or such laws, or the provisions of the compact, it may direct its legal representative to commence an action or a proceeding in the name of the interstate environmental commission in an appropriate court having jurisdiction for the purpose of having such violations or threatened violations stopped and prevented. Such an action or proceeding when directed against any person, firm, association, corporation, municipal or otherwise, within the state may be brought in the supreme court of this state and the said court shall have and is hereby given the necessary and appropriate jurisdiction to determine such action or proceeding upon the merits and/or to grant any relief appropriate to the case.

§ 21-0509. Powers to be additional; inconsistent provisions.

Any powers herein granted to the interstate environmental commission shall be regarded as in aid of and supplemental to, and in no case a limitation upon, any other powers legally vested in said commission. No provision of the Public Health Law and no provision of the Environmental Conservation Law, if such provision of the Environmental Conservation Law was derived from a provision of the Public Health Law, which is inconsistent with the provisions of the tri-state compact shall be applicable to the interstate environmental commission or to any matter governed by the tri-state compact.

§ 21-0511. Further pollution.

No person, firm or corporation, municipal or otherwise, shall create, establish, cause or maintain any source of pollution within the district, not existing on April 1, 1935; provided, however, that after hearing and investigation on application of such person, firm or corporation, municipal or otherwise, the commission may issue such order relating to any such pollution as it shall find will best serve the public interest.

§ 21-0513. Hearings.

Whenever the commission shall determine upon investigation that sewage or other polluting matter from any city, village, town, county, borough, municipality or other entity, as defined in the compact, building, steamboat, or other vessel, or any garbage, offal or any decomposable or putrescible matter of any kind is being discharged into any waters of the district, and whenever in the opinion of the commission such discharge is polluting such waters in a manner injurious to or so as to create a menace to public health, welfare and recreational purposes, or so as to create a public nuisance, or so as to be obnoxious, the commission may order the municipality, corporation or person so discharging sewage, refuse or other matter, to show cause before it or its duly designated representative why such discharge should not be discontinued or why said commission should not issue an order regulating such pollution. A notice shall be served on the municipality, corporation or person so discharging sewage, refuse or other matter, directing such municipality, corporation or person to show cause before the said commission on a date specified in such notice why an order should not be made directing the discontinuance of such discharge or otherwise regulating the said pollution. Such notice shall specify the time when and place where a public hearing will be held by the commission or its duly delegated representative and shall be served personally, or by mail at least fifteen days before said hearing, and in case of a municipality or a corporation, such service shall be upon an

officer thereof. The person or persons presiding at such hearing shall take evidence, and after conducting such public hearing, the commission shall by order prescribe a reasonable date on or before which such municipality, corporation or person discharging sewage, refuse or other matter into the designated waters within the district, shall cease to discharge such refuse or other matter and shall treat such sewage in accordance with the standards specified in the compact, and such order may prescribe that certain specific progress shall be made at definite times prior to the final date fixed in such order. The commission shall have authority to require from the officials and persons responsible for the execution of such orders satisfactory evidence at specified times of proper progress in the execution of such orders.

§ 21-0515. Preparation of plan; consultation.

The commission may prepare a general plan of the most practicable and economical method of securing conformity with the standards set forth in the compact, having in view the future growth and development of the district, and to that end shall cooperate and advise with the respective state authorities having jurisdiction over stream pollution and any other bodies having to do with sewage and garbage disposal and the pollution of the waters of the district, with the secretary of the army of the United States, with appropriate committees of congress and any and all other federal authorities having jurisdiction in the premises, with representatives of chambers of commerce and other civic bodies within the district, and with such bodies, commissions and legislative committees as may exist or be created in any of the signatory states, for the purpose of bringing about a comprehensive program for the abatement and elimination of pollution.

§ 21-0517. Report and recommendations.

The commission shall keep accurate accounts of all receipts and disbursements and shall report to the Governor and the legislature of this state on or before the twenty-fifth day of January in each year,

setting forth in detail the transactions conducted by it and shall make recommendations for any legislative action deemed by it advisable, including amendments to the statutes of the signatory states which may be necessary to carry out the intent and purposes of the compact.

§ 21-0519. Budget.

1. The interstate environmental commission shall submit annually to the Governor in accordance with the laws and practice of this state, for study and consideration by him, an estimate of moneys required to administer, manage and support the commission during the ensuing fiscal year. Such estimate shall include any request for appropriation of funds by New York and shall be accompanied by a tabulation of similar requests which the commission expects to make to each other member state and the formula or factors upon which such respective requests are based.

2. The Commissioner of Environmental Conservation shall be afforded an opportunity to comment on any budget request by the commission, and the commission shall be furnished with a copy of any such comments.

§ 21-0521. Financial examination.

The Comptroller of the state of New York is hereby authorized and empowered, from time to time, to examine the accounts and books of the commission including its receipts, disbursements and such other items referring to its financial standing as such Comptroller may deem proper and to report the results of such examination to the Governor of such state.

§ 21-0523. Evaluation.

On August 15, 1964, and at intervals of four years thereafter, the Commissioner of Environmental Conservation shall evaluate the role of the commission with respect to the waters within and commingled with

those in New York, and any other matter over which the commission has jurisdiction and shall report to the commission thereon. The Commissioner of Environmental Conservation shall transmit a copy of such report to the Governor. The Commissioner of Environmental Conservation may make such additional reports to the commission and the Governor as he deems appropriate.

§ 21-0525. Interstate air pollution.

When the state of New Jersey shall have enacted legislation of substantially similar import and for so long as such legislation of the state of New Jersey remains in force, the interstate environmental commission shall, in addition to its other powers, duties and functions have authority, in accordance with article three of the tri-state compact set forth in section 21-0501 of this chapter, to engage in activities with respect to interstate air pollution problems between the states of New York and New Jersey as follows:

- a. to conduct studies;
- b. to undertake research, testing and development;
- c. to gather, exchange and disseminate information with and among public or private bodies, persons or organizations and to cooperate with any of them in solving air pollution problems;
- d. to take samplings and to trace sources of air pollutants;
- e. to refer complaints to an appropriate enforcement agency or agencies of the states in which the sources are located and to which air pollutants are carried, along with such data and information as it may have obtained with respect to the nature, characteristics, source, path and effect of air pollutants;
- f. whenever found appropriate on the basis of such studies and research, (1) to make recommendations and reports to the governors and

legislatures of the participating states;

(2) to recommend to the legislatures, air pollution control agencies and municipalities of the states the establishment of such specific control and enforcement measures as may be necessary to abate air pollution in one state which endangers the health and welfare of people in another state;

(3) to join in a requirement upon the federal Administrator of the Environmental Protection Agency that he convene a conference pursuant to the federal clean air act, and to participate in such a conference; and

(4) to recommend and assist in the establishment of air pollution monitoring systems and air pollution warning systems.

The primary effort of the interstate environmental commission under this act shall be directed to air contaminant solids, liquids or gases which are toxic, disagreeable or irritant, or which are destructive.

In carrying out its functions under this act, the interstate environmental commission shall make use of the services, facilities and information of existing state, local and federal agencies wherever feasible and available.

In furtherance of the purposes of this act, the interstate environmental commission is empowered to accept moneys, property and other donations or gifts from any person whatever, whether public, private or governmental, real or artificial.

No trade secret or secret process shall be inquired into by the interstate environmental commission under this act, whether with respect to one or more of the substances or one or more of the processes, operations, techniques or devices used in connection therewith, and whenever a trade secret or secret process is involved, the activity under this act shall be limited to the identification of the device or facility from which the effluent discharged into the outer air derives, and the nature, rate and period of emission of such effluent.

All information obtained from any sampling, tracing or other specific inquiry performed under this act shall be kept and maintained as a

confidential disclosure and, except as may be essential for the purpose of referring a complaint to an appropriate enforcement agency and of any enforcement proceeding by or before any such agency, shall not be disclosed or published in any way other than such as will not identify a given substance, process, operation, technique or device with the physical location or identity of the source plant or facility, or with the product made or service performed, or with the person or persons using the same.

A printed copy of the provisions of this section shall be furnished on request to any person furnishing information to the interstate environmental commission and, in case of an inquiry at a plant or facility, to the person then in charge of the same.

So long as the activities conducted pursuant to this act are limited to the states of New York and New Jersey, all of the costs and expenses of the same, direct and indirect, shall be met, within the limits of available appropriations therefor, by said two states in equal shares and all actions of the interstate environmental commission with respect to such activities shall be governed solely by the commissioners from the states of New York and New Jersey, with like effect as though the state of Connecticut were not a participant of said commission, and for this purpose the commission shall establish administratively a separate division on interstate air pollution, and maintain separate financial accounts to reflect its direct and allocated costs and expenses; provided, however, that the full commission, including the members representing the state of Connecticut, shall rule on all matters touching the accounting systems to be used and the charging and allocation of costs and expenses.

TITLE 7

DELAWARE RIVER BASIN COMPACT

Section 21-0701. Delaware river basin compact.

21-0703. Commissioner and alternate.

21-0705. Advisors.

21-0707. Consent to alteration of diversions.

21-0709. Jurisdiction of courts.
21-0711. Prior to project approval.
21-0713. Agreements with municipalities.
21-0715. Delegations of power.
21-0716. Report and recommendations of department.
21-0717. Cooperative services.
21-0719. Budget.
21-0721. Audit.
21-0723. Inconsistent laws.

§ 21-0701. Delaware river basin compact.

The Delaware river basin compact as first entered into pursuant to chapter 148 of the laws of 1961, as renumbered by chapter 801 of the laws of 1962, and as amended by chapter 262 of the laws of 1970, is hereby continued as follows:

The Delaware river basin compact is hereby entered into and enacted into law, subject to the execution by the Governor as provided in said compact and in accordance with its terms. The compact is as follows:

WHEREAS the signatory parties recognize the water and related resources of the Delaware basin as regional assets vested with local, state and national interests, for which they have a joint responsibility; and

WHEREAS the conservation, utilization, development, management and control of the water and related resources of the Delaware River Basin under a comprehensive multi-purpose plan will bring the greatest benefits and produce the most efficient service in the public welfare; and

WHEREAS such a comprehensive plan administered by a basin-wide agency will provide effective flood damage reduction; conservation and development of ground and surface water supply for municipal, industrial and agricultural uses; development of recreational facilities in

relation to reservoirs, lakes and streams; propagation of fish and game; promotion of related forestry, soil conservation and watershed projects; protection and aid to fisheries dependent upon water resources; development of hydro-electric power potentialities; improved navigation; control of the movement of salt water; abatement and control of stream pollution; and regulation of stream flows toward the attainment of these goals; and

WHEREAS decisions of the United States Supreme Court relating to the waters of the basin have confirmed the interstate regional character of the water resources of the Delaware River Basin, and the United States Corps of Engineers has in a prior report on the Delaware River Basin (House Document 179, 73d Cong., 2nd Sess.) officially recognized the need for an interstate agency and the economies that can result from unified development and control of the water resources of the basin; and

WHEREAS the water resources of the basin are presently subject to the duplicating, overlapping and uncoordinated administration of some 43 state agencies, 14 interstate agencies and 19 federal agencies which exercise a multiplicity of powers and duties resulting in a splintering of authority and responsibilities; and

WHEREAS the joint advisory body known as the Interstate Commission on the Delaware River Basin (INCodel), created by the respective commissions or committee on Interstate Cooperation of the States of Delaware, New Jersey, New York and Pennsylvania, has on the basis of its extensive investigations, surveys and studies concluded that regional development of the Delaware River Basin is feasible, advisable and urgently needed; and has recommended that an interstate compact with federal participation be consummated to this end; and

WHEREAS the Congress of the United States and the executive branch of the government have recognized the national interest in the Delaware River Basin by authorizing and directing the Corps of Engineers, U.S. Department of the Army, to make a comprehensive survey and report on the water and related resources of the Delaware River Basin, enlisting the technical aid and planning participation of many federal, state and

municipal agencies dealing with the waters of the basin, and in particular the federal departments of Agriculture, Commerce, Health, Education and Welfare, Interior, and Federal Power Commission; and

WHEREAS some 22,000,000 people of the United States at present live and work in the region of the Delaware River Basin and its environs, and the government, employment, industry and economic development of the entire region and the health, safety and general welfare of its population are and will continue to be vitally affected by the use, conservation, management and control of the water and related resources of the Delaware River Basin; and

WHEREAS demands upon the waters and related resources of the basin are expected to mount rapidly because of the anticipated increase in the population of the region projected to reach 30,000,000 by 1980 and 40,000,000 by 2010, and because of the anticipated increase in industrial growth projected to double by 1980; and

WHEREAS water resources planning and development is technical, complex and expensive, and has often required fifteen to twenty years from the conception to the completion of a large dam and reservoir; and

WHEREAS the public interest requires that facilities must be ready and operative when needed, to avoid the catastrophe of unexpected floods or prolonged drought, and for other purposes; and

WHEREAS the Delaware River Basin Advisory Committee, a temporary body constituted by the governors of the four basin states and the mayors of the cities of New York and Philadelphia, has prepared a draft of an interstate-federal compact for the creation of a basin agency, and the signatory parties desire to effectuate the purposes thereof;

Now therefore the states of Delaware, New Jersey and New York and the Commonwealth of Pennsylvania, and the United States of America hereby solemnly covenant and agree with each other, upon the enactment of concurrent legislation by the Congress of the United States and by the respective state legislatures, having the same effect as this Part as

follows:

ARTICLE 1--SHORT TITLE, DEFINITIONS, PURPOSE AND LIMITATIONS

Section 1.1 Short title.

This act shall be known and may be cited as the Delaware River Basin Compact.

1.2. Definitions.

For the purposes of this compact, and of any supplemental or concurring legislation enacted pursuant thereto, except as may be otherwise required by the context:

(a) "Basin" shall mean the area of drainage into the Delaware River and its tributaries, including Delaware Bay;

(b) "Commission" shall mean the Delaware River Basin Commission created and constituted by this compact;

(c) "Compact" shall mean the compact as contained title 7 of article 21 of the Environmental Conservation Law.

(d) "Cost" shall mean direct and indirect expenditures, commitment, and net induced adverse effects, whether or not compensated for, used or incurred in connection with the establishment, acquisition, construction, maintenance and operation of a project;

(e) "Facility" shall mean any real or personal property, within or without the basin, and improvements thereof or thereon, and any and all rights of way, water, water rights, plants, structures, machinery and equipment, acquired, constructed, operated or maintained for the beneficial use of water resources or related land uses including, without limiting the generality of the foregoing, any and all things and appurtenances necessary, useful or convenient for the control, collection, storage, withdrawal, diversion, release, treatment, transmission, sale or exchange of water; or for navigation thereon, or the development and use of hydroelectric energy and power, and public recreational facilities; or the propagation of fish and wildlife; or to conserve and protect the water resources of the basin or any existing or future water supply source, or to facilitate any other uses of any of them;

(f) "Federal government" shall mean the government of the United States of America, and any appropriate branch, department, bureau or

division thereof, as the case may be;

(g) "Project" shall mean any work, service or activity which is separately planned, financed, or identified by the commission, or any separate facility undertaken or to be undertaken within a specified area, for the conservation, utilization, control, development or management of water resources which can be established and utilized independently or as an addition to an existing facility, and can be considered as a separate entity for purposes of evaluation;

(h) "Signatory party" shall mean a state or commonwealth party to this compact, and the federal government;

(i) "Water resources" shall include water and related natural resources in, on, under, or above the ground, including related uses of land, which are subject to beneficial use, ownership or control.

1.3 Purpose and findings.

The legislative bodies of the respective signatory parties hereby find and declare:

(a) The water resources of the basin are affected with a local, state, regional and national interest and their planning, conservation, utilization, development, management and control, under appropriate arrangements for intergovernmental cooperation, are public purposes of the respective signatory parties.

(b) The water resources of the basin are subject to the sovereign right and responsibility of the signatory parties, and it is the purpose of this compact to provide for a joint exercise of such powers of sovereignty in the common interests of the people of the region.

(c) The water resources of the basin are functionally interrelated, and the uses of these resources are interdependent. A single administrative agency is therefore essential for effective and economical direction, supervision and coordination of efforts and programs of federal, state and local governments and of private enterprise.

(d) The water resources of the Delaware River Basin, if properly planned and utilized, are ample to meet all presently projected demands, including existing and added diversions in future years; and ever increasing economies and efficiencies in the use and reuse of water resources can be brought about by comprehensive planning, programming

and management.

(e) In general, the purposes of this compact are to promote interstate comity; to remove causes of present and future controversy; to make secure and protect present developments within the states; to encourage and provide for the planning, conservation, utilization, development, management and control of the water resources of the basin; to provide for cooperative planning and action by the signatory parties with respect to such water resources; and to apply the principle of equal and uniform treatment to all water users who are similarly situated and to all users of related facilities, without regard to established political boundaries.

1.4 Powers of Congress; withdrawal.

Nothing in this compact shall be construed to relinquish the functions, powers or duties of the Congress of the United States with respect to the control of any navigable waters within the basin, nor shall any provision hereof be construed in derogation of any of the constitutional powers of the Congress to regulate commerce among the states and with foreign nations. The power and right of the Congress to withdraw the federal government as a party to this compact or to revise or modify the terms, conditions and provisions under which it may remain a party by amendment, repeal or modification of any federal statute applicable thereto is recognized by the signatory parties.

1.5 Existing agencies; construction.

It is the purpose of the signatory parties to preserve and utilize the functions, powers and duties of existing offices and agencies of government to the extent not inconsistent with this compact, and the commission is authorized and directed to utilize and employ such offices and agencies for the purpose of this compact to the fullest extent it finds feasible and advantageous.

1.6 Duration of compact.

(a) The duration of this compact shall be for an initial period of 100 years from its effective date, and it shall be continued for additional periods of 100 years if not later than 20 years nor sooner than 25 years prior to the termination of the initial period or any succeeding period none of the signatory states, by authority of an act of its legislature,

notifies the commission of intention to terminate the compact at the end of the then current 100 year period.

(b) In the event that this compact should be terminated by operation of paragraph (a) above, the commission shall be dissolved, its assets and liabilities transferred, and its corporate affairs wound up, in such manner as may be provided by act of the Congress.

ARTICLE 2--ORGANIZATION AND AREA

Section 2.1 Commission created.

The Delaware River Basin Commission is hereby created as a body politic and corporate, with succession for the duration of this compact, as an agency and instrumentality of the governments of the respective signatory parties.

2.2 Commission membership.

The commission shall consist of the Governors of the signatory states, ex officio, and one commissioner to be appointed by the President of the United States to serve during the term of office of the President.

2.3 Alternates.

Each member of the commission shall appoint an alternate to act in his place and stead, with authority to attend all meetings of the commission, and with power to vote in the absence of the member. Unless otherwise provided by law of the signatory party for which he is appointed, each alternate shall serve during the term of the member appointing him, subject to removal at the pleasure of the member. In the event of a vacancy in the office of alternate, it shall be filled in the same manner as an original appointment for the unexpired term only.

2.4 Compensation.

Members of the commission and alternates shall serve without compensation but may be reimbursed for necessary expenses incurred in and incident to the performance of their duties.

2.5 Voting power.

Each member shall be entitled to one vote on all matters which may come before the commission. No action of the commission shall be taken

at any meeting unless a majority of the membership shall vote in favor thereof.

2.6 Organization and procedure.

The commission shall provide for its own organization and procedure, and shall adopt rules and regulations governing its meetings and transactions. It shall organize annually by the election of a chairman and vice-chairman from among its members. It shall provide by its rules for the appointment by each member in his discretion of an advisor to serve without compensation, who may attend all meetings of the commission and its committees.

2.7 Jurisdiction of the commission.

The commission shall have, exercise and discharge its functions, powers and duties within the limits of the basin, except that it may in its discretion act outside the basin whenever such action may be necessary or convenient to effectuate its powers or duties within the basin, or to sell or dispose of water, hydroelectric power or other water resources within or without the basin. The commission shall exercise such power outside the basin only upon the consent of the state in which it proposes to act.

ARTICLE 3--POWERS AND DUTIES OF THE COMMISSION

Section 3.1 Purpose and policy.

The commission shall develop and effectuate plans, policies and projects relating to the water resources of the basin. It shall adopt and promote uniform and coordinated policies for water conservation, control, use and management in the basin. It shall encourage the planning, development and financing of water resources projects according to such plans and policies.

3.2 Comprehensive plan, program and budgets.

The commission shall, in accordance with Article 13 of this compact, formulate and adopt:

(a) A comprehensive plan, after consultation with water users and interested public bodies, for the immediate and long range development and uses of the water resources of the basin;

(b) A water resources program, based upon the comprehensive plan, which shall include a systematic presentation of the quantity and quality of water resources needs of the area to be served for such reasonably foreseeable period as the commission may determine, balanced by existing and proposed projects required to satisfy such needs, including all public and private projects affecting the basin, together with a separate statement of the projects proposed to be undertaken by the commission during such period; and

(c) An annual current expense budget, and an annual capital budget consistent with the water resources program covering the commission's projects and facilities for the budget period.

3.3 Allocations, diversions and releases.

The commission shall have the power from time to time as need appears, in accordance with the doctrine of equitable apportionment, to allocate the waters of the basin to and among the states signatory to this compact and to and among their respective political subdivisions, and to impose conditions, obligations and release requirements related thereto, subject to the following limitations:

(a) The commission, without the unanimous consent of the parties to the United States Supreme Court decree in *New Jersey v. New York*, 347 U.S. 995 (1954), shall not impair, diminish or otherwise adversely affect the diversions, compensating releases, rights, conditions, obligations, and provisions for the administration thereof as provided in said decree; provided, however, that after consultation with the river master under said decree the commission may find and declare a state of emergency resulting from a drought or catastrophe and it may thereupon by unanimous consent of its members authorize and direct an increase or decrease in any allocation or diversion permitted or releases required by the decree, in such manner and for such limited time as may be necessary to meet such an emergency condition.

(b) No allocation of waters hereafter made pursuant to this section shall constitute a prior appropriation of the waters of the basin or confer any superiority of right in respect to the use of those waters, nor shall any such action be deemed to constitute an apportionment of the waters of the basin among the parties hereto; provided that this paragraph shall not be deemed to limit or restrict the power of the

commission to enter into covenants with respect to water supply, with a duration not exceeding the life of this compact, as it may deem necessary for the benefit or development of the water resources of the basin.

(c) Any proper party deeming itself aggrieved by action of the commission with respect to an out-of-basin diversion or compensating releases in connection therewith, notwithstanding the powers delegated to the commission by this compact may invoke the original jurisdiction of the United States Supreme Court within one year after such action for an adjudication and determination thereof de novo. Any other action of the commission pursuant to this section shall be subject to judicial review in any court of competent jurisdiction.

3.4 Supreme court decree; waivers.

Each of the signatory states and their respective political subdivisions, in consideration of like action by the others, and in recognition of reciprocal benefits, hereby waives and relinquishes for the duration of this compact any right, privilege or power it may have to apply for any modification of the terms of the decree of the United States Supreme Court in *New Jersey v. New York*, 347 U.S. 995 (1954) which would increase or decrease the diversions authorized or increase or decrease the releases required thereunder, except that a proceeding to modify such decree to increase diversions or compensating releases in connection with such increased diversions may be prosecuted by a proper party to effectuate rights, powers, duties and obligations under Section 3.3 of this compact, and except as may be required to effectuate the provisions of paragraphs III B 3 and V B of said decree.

3.5 Supreme court decree; specific limitations on commission.

Except as specifically provided in Sections 3.3 and 3.4 of this article, nothing in this compact shall be construed in any way to impair, diminish or otherwise adversely affect the rights, powers, privileges, conditions and obligations contained in the decree of the United States Supreme Court in *New Jersey v. New York*, 347 U.S. 995 (1954). To this end, and without limitation thereto, the commission shall not:

(a) Acquire, construct or operate any project or facility or make any

order or take any action which would impede or interfere with the rights, powers, privileges, conditions or obligations contained in said decree;

(b) Impose or collect any fee, charge or assessment with respect to diversions of waters of the basin permitted by said decree;

(c) Exercise any jurisdiction, except upon consent of all the parties to said decree, over the planning, design, construction, operation or control of any projects, structures or facilities constructed or used in connection with withdrawals, diversions and releases of waters of the basin authorized by said decree or of the withdrawals, diversions or releases to be made thereunder; or

(d) Serve as river master under said decree, except upon consent of all the parties thereto.

3.6 General powers.

The commission may:

(a) Plan, design, acquire, construct, reconstruct, complete, own, improve, extend, develop, operate and maintain any and all projects, facilities, properties, activities and services, determined by the commission to be necessary, convenient or useful for the purposes of this compact;

(b) Establish standards of planning, design and operation of all projects and facilities in the basin which affect its water resources, including without limitation thereto water and waste treatment plants, stream and lake recreational facilities, trunk mains for water distribution, local flood protection works, small watershed management programs, and ground water recharging operations;

(c) Conduct and sponsor research on water resources, their planning, use, conservation, management, development, control and protection, and the capacity, adaptability and best utility of each facility thereof, and collect, compile, correlate, analyze, report and interpret data on water resources and uses in the basin, including without limitation thereto the relation of water to other resources, industrial water technology, ground water movement, relation between water price and water demand, and general hydrological conditions;

(d) Compile and coordinate systematic stream stage and ground water level forecasting data, and publicize such information when and as

needed for water uses, flood warning, quality maintenance or other purposes;

(e) Conduct such special ground water investigations, tests, and operations and compile such data relating thereto as may be required to formulate and administer the comprehensive plan;

(f) Prepare, publish and disseminate information and reports with respect to the water problems of the basin and for the presentation of the needs, resources and policies of the basin to executive and legislative branches of the signatory parties;

(g) Negotiate for such loans, grants, services or other aids as may be lawfully available from public or private sources to finance or assist in effectuating any of the purposes of this compact; and to receive and accept such aid upon such terms and conditions, and subject to such provisions for repayment as may be required by federal or state law or as the commission may deem necessary or desirable;

(h) Exercise such other and different powers as may be delegated to it by this compact or otherwise pursuant to law, and have and exercise all powers necessary or convenient to carry out its express powers or which may be reasonably implied therefrom.

3.7 Rates and charges.

The commission may from time to time after public notice and hearing fix, alter and revise rates, rentals, charges and tolls and classifications thereof, for the use of facilities which it may own or operate and for products and services rendered thereby, without regulation or control by any department, office or agency of any signatory party.

3.8 Referral and review.

No project having a substantial effect on the water resources of the basin shall hereafter be undertaken by any person, corporation or governmental authority unless it shall have been first submitted to and approved by the commission, subject to the provisions of Sections 3.3 and 3.5. The commission shall approve a project whenever it finds and determines that such project would not substantially impair or conflict with the comprehensive plan and may modify and approve as modified, or may disapprove any such project whenever it finds and determines that

the project would substantially impair or conflict with such plan. The commission shall provide by regulation for the procedure of submission, review and consideration of projects, and for its determinations pursuant to this section. Any determination of the commission hereunder shall be subject to judicial review in any court of competent jurisdiction.

3.9 Coordination and cooperation.

The commission shall promote and aid the coordination of the activities and programs of federal, state, municipal and private agencies concerned with water resources administration in the basin. To this end, but without limitation thereto, the commission may:

(a) Advise, consult, contract, financially assist, or otherwise cooperate with any and all such agencies;

(b) Employ any other agency or instrumentality of any of the signatory parties or of any political subdivision thereof, in the design, construction, operation and maintenance of structures, and the installation and management of river control systems, or for any other purpose;

(c) Develop and adopt plans and specifications for particular water resources projects and facilities which so far as consistent with the comprehensive plan incorporate any separate plans of other public and private organizations operating in the basin, and permit the decentralized administration thereof;

(d) Qualify as a sponsoring agency under any federal legislation heretofore or hereafter enacted to provide financial or other assistance for the planning, conservation, utilization, development, management or control of water resources.

3.10 Advisory committees.

The commission may constitute and empower advisory committees, which may be comprised of representatives of the public and of federal, state, county and municipal governments, water resources agencies, water-using industries, water-interest groups, labor and agriculture.

ARTICLE 4--WATER SUPPLY

Section 4.1 Generally.

The commission shall have power to develop, implement and effectuate plans and projects for the use of the waters of the basin for domestic, municipal, agricultural and industrial water supply. To this end, without limitation thereto, it may provide for, construct, acquire, operate and maintain dams, reservoirs and other facilities for utilization of surface and ground water resources, and all related structures, appurtenances and equipment on the river and its tributaries and at such off-river sites as it may find appropriate, and may regulate and control the use thereof.

4.2 Storage and release of waters.

(a) The commission shall have power to acquire, operate and control projects and facilities for the storage and release of waters, for the regulation of flows and supplies of surface and ground waters of the basin, for the protection of public health, stream quality control, economic development, improvement of fisheries, recreation, dilution and abatement of pollution, the prevention of undue salinity and other purposes.

(b) No signatory party shall permit any augmentation of flow to be diminished by the diversion of any water of the basin during any period in which waters are being released from storage under the direction of the commission for the purpose of augmenting such flow, except in cases where such diversion is duly authorized by this compact, or by the commission pursuant thereto, or by the judgment, order or decree of a court of competent jurisdiction.

4.3 Assessable improvements.

The commission may undertake to provide stream regulation in the main stream or any tributary in the basin and may assess on an annual basis or otherwise the cost thereof upon water users or any classification of them specially benefited thereby to a measurable extent, provided that no such assessment shall exceed the actual benefit to any water user. Any such assessment shall follow the procedure prescribed by law for local improvement assessments and shall be subject to judicial review in any court of competent jurisdiction.

4.4 Coordination.

Prior to entering upon the execution of any project authorized by this

article, the commission shall review and consider all existing rights, plans and programs of the signatory parties, their political subdivisions, private parties, and water users which are pertinent to such project, and shall hold a public hearing on each proposed project.

4.5 Additional powers.

In connection with any project authorized by this article, the commission shall have power to provide storage, treatment, pumping and transmission facilities, but nothing herein shall be construed to authorize the commission to engage in the business of distributing water.

ARTICLE 5--POLLUTION CONTROL

Section 5.1 General powers.

The commission may undertake investigations and surveys, and acquire, construct, operate and maintain projects and facilities to control potential pollution and abate or dilute existing pollution of the water resources of the basin. It may invoke as complainant the power and jurisdiction of water pollution abatement agencies of the signatory parties.

5.2 Policy and standards.

The commission may assume jurisdiction to control future pollution and abate existing pollution in the waters of the basin, whenever it determines after investigation and public hearing upon due notice that the effectuation of the comprehensive plan so requires. The standard of such control shall be that pollution by sewage or industrial or other waste originating within a signatory state shall not injuriously affect waters of the basin as contemplated by the comprehensive plan. The commission, after such public hearing may classify the waters of the basin and establish standards of treatment of sewage, industrial or other waste, according to such classes including allowance for the variable factors of surface and ground waters, such as size of the stream, flow, movement, location, character, self-purification, and usage of the waters affected. After such investigation, notice and hearing the commission may adopt and from time to time amend and repeal rules, regulations and standards to control such future pollution and

abate existing pollution, and to require such treatment of sewage, industrial or other waste within a time reasonable for the construction of the necessary works as may be required to protect the public health or to preserve the waters of the basin for uses in accordance with the comprehensive plan.

5.3 Cooperative legislation and administration.

Each of the signatory parties covenants and agrees to prohibit and control pollution of the waters of the basin according to the requirements of this compact and to cooperate faithfully in the control of future pollution in and abatement of existing pollution from the rivers, streams, and waters in the basin which flow through, under, into or border upon any of such signatory states, and in order to effect such object, agrees to enact any necessary legislation to enable each such party to place and maintain the waters of said basin in a satisfactory condition, available for safe and satisfactory use as public and industrial water supplies after reasonable treatment, suitable for recreational usage, capable of maintaining fish and other aquatic life, free from unsightly or malodorous nuisances due to floating solids or sludge deposits and adaptable to such other uses as may be provided by the comprehensive plan.

5.4 Enforcement.

The commission may, after investigation and hearing, issue an order or orders upon any person or public or private corporation, or other entity, to cease the discharge of sewage, industrial or other waste into waters of the basin which it determines to be in violation of such rules and regulations as it shall have adopted for the prevention and abatement of pollution. Any such order or orders may prescribe the date, including a reasonable time for the construction of any necessary works, on or before which such discharge shall be wholly or partially discontinued, modified or treated, or otherwise conformed to the requirements of such rules and regulations. Such order shall be reviewable in any court of competent jurisdiction. The courts of the signatory parties shall have jurisdiction to enforce against any person, public or private corporation, or other entity, any and all provisions of this Article or of any such order. The commission may bring an action

in its own name in any such court of competent jurisdiction to compel compliance with any provision of this Article, or any rule or regulation issued pursuant thereto or of any such order, according to the practice and procedure of the court.

5.5 Further jurisdiction.

Nothing in this compact shall be construed to repeal, modify or qualify the authority of any signatory party to enact any legislation or enforce any additional conditions and restrictions to lessen or prevent the pollution of waters within its jurisdiction.

ARTICLE 6--FLOOD PROTECTION

Section 6.1 General powers.

The commission may plan, design, construct and operate and maintain projects and facilities, as it may deem necessary or desirable for flood damage reduction. It shall have power to operate such facilities and to store and release waters on the Delaware River and its tributaries and elsewhere within the basin, in such manner, at such times, and under such regulations as the commission may deem appropriate to meet flood conditions as they may arise.

6.2 Flood plain zoning.

(a) The commission shall have power to adopt, amend and repeal recommended standards, in the manner provided by this section, relating to the nature and extent of the uses of land in areas subject to flooding by waters of the Delaware River and its tributaries. Such standards shall not be deemed to impair or restrict the power of the signatory parties or their political subdivisions to adopt zoning and other land use regulations not inconsistent therewith.

(b) The commission may study and determine the nature and extent of the flood plains of the Delaware River and its tributaries. Upon the basis of such studies, it may establish encroachment lines and delineate the areas subject to flood, including a classification of lands with reference to relative risk of flood and the establishment of standards for flood plain use which will safeguard the public health, safety and property. Prior to the adoption of any standards delineating such area or defining such use, the commission shall hold public hearings, in the manner provided by Article 14, with respect to the substance of such

standards. At or before such public hearings the proposed standards shall be available, and all interested persons shall be given an opportunity to be heard thereon at the hearing. Upon the adoption and promulgation of such standards, the commission may enter into agreements to provide technical and financial aid to any municipal corporation for the administration and enforcement of any local land use ordinances or regulations giving effect to such standards.

6.3 Flood lands acquisition.

The commission shall have power to acquire the fee or any lesser interest in lands and improvements thereon within the area of a flood plain for the purpose of restricting the use of such property so as to minimize the flood hazard, converting property to uses appropriate to flood plain conditions, or preventing unwarranted constrictions that reduce the ability of the river channel to carry flood water. Any such action shall be in accord with the standards adopted and promulgated pursuant to Section 6.2.

6.4 Flood and stream stage warnings and posting.

The commission may cause lands particularly subject to flood to be posted with flood hazard warnings, and may from time to time cause flood advisory notices to be published and circulated as conditions may warrant.

ARTICLE 7--WATERSHED MANAGEMENT

Section 7.1 Watersheds generally.

The commission shall promote sound practices of watershed management in the basin, including projects and facilities to retard runoff and waterflow and prevent soil erosion.

7.2 Soil conservation and forestry.

The commission may acquire, sponsor or operate facilities and projects to encourage soil conservation, prevent and control erosion, and to promote land reclamation and sound forestry practices.

7.3 Fish and wildlife.

The commission may acquire, sponsor or operate projects and facilities

for the maintenance and improvement of fish and wildlife habitats related to the water resources of the basin.

7.4 Cooperative planning and operation.

(a) The commission shall cooperate with the appropriate agencies of the signatory parties and with other public and private agencies in the planning and effectuation of a coordinated program of facilities and projects authorized by this Article.

(b) The commission shall not operate any such project or facility unless it has first found and determined that no other suitable unit or agency of government is available to operate the same upon reasonable conditions, in accordance with the intent and purpose expressed in Section 1.5 of this compact.

ARTICLE 8--RECREATION

Section 8.1 Development.

The commission shall provide for the development of water related public sports and recreational facilities. The commission on its own account or in cooperation with a signatory party, political subdivision or any agency thereof, may provide for the construction, maintenance and administration of such facilities, subject to the provisions of Section 8.2 hereof.

8.2 Cooperative planning and operation.

(a) The commission shall cooperate with the appropriate agencies of the signatory parties and with other public and private agencies in the planning and effectuation of a coordinated program of facilities and projects authorized by this article.

(b) The commission shall not operate any such project or facility unless it has first found and determined that no other suitable unit or agency of government is available to operate the same upon reasonable conditions, in accordance with the intent and purpose expressed in Section 1.5 of this compact.

8.3 Operation and maintenance.

The commission, within limits prescribed by this article, shall:

(a) Encourage activities of other public agencies having water related recreational interests and assist in the coordination thereof;

(b) Recommend standards for the development and administration of

water related recreational facilities;

(c) Provide for the administration, operation and maintenance of recreational facilities owned or controlled by the commission and for the letting and supervision of private concessions in accordance with this article.

8.4 Concessions.

The commission shall after notice and public hearing provide by regulation for the award of contracts for private concessions in connection with recreational facilities, including any renewal or extension thereof, upon sealed competitive bids after public advertisement therefor.

ARTICLE 9--HYDROELECTRIC POWER

Section 9.1 Development.

The waters of the Delaware River and its tributaries may be impounded and used by or under authority of the commission for the generation of hydroelectric power and hydroelectric energy, in accordance with the comprehensive plan.

9.2 Power generation.

The commission may develop and operate, or authorize to be developed and operated, dams and related facilities and appurtenances for the purpose of generating hydroelectric power and hydroelectric energy.

9.3 Transmission.

The commission may provide facilities for the transmission of hydroelectric power and hydroelectric energy produced by it where such facilities are not otherwise available upon reasonable terms, for the purpose of wholesale marketing of power and nothing herein shall be construed to authorize the commission to engage in the business of direct sale to consumers.

9.4 Development contracts.

The commission may after public notice and hearing enter into contracts on reasonable terms, consideration and duration under which public utilities or public agencies may develop hydroelectric power and

hydroelectric energy through the use of dams, related facilities and appurtenances.

9.5 Rates and charges.

Rates and charges fixed by the commission for power which is produced by its facilities shall be reasonable, nondiscriminatory, and just.

ARTICLE 10--REGULATION OF WITHDRAWALS AND DIVERSIONS

Section 10.1 Power of regulation.

The commission may regulate and control withdrawals and diversions from surface waters and ground waters of the basin, as provided by this article. The commission may enter into agreements with the signatory parties relating to the exercise of such power of regulation or control and may delegate to any of them such powers of the commission as it may deem necessary or desirable.

10.2 Determination of protected areas.

The commission may from time to time after public hearing upon due notice determine and delineate such areas within the basin wherein the demands upon supply made by water users have developed or threatened to develop to such a degree as to create a water shortage or to impair or conflict with the requirements or effectuation of the comprehensive plan, and any such areas may be designated as "protected areas." The commission, whenever it determines that such shortage no longer exists, shall terminate the protected status of such area and shall give public notice of such termination.

10.3 Withdrawal permits.

In any protected areas so determined and delineated, no person, firm, corporation or other entity shall divert or withdraw water for domestic, municipal, agricultural or industrial uses in excess of such quantities as the commission may prescribe by general regulation, except (i) pursuant to a permit granted under this article, or (ii) pursuant to a permit or approval heretofore granted under the laws of any of the signatory states.

10.4 Emergency.

In the event of a drought or other condition which may cause an actual and immediate shortage of available water supply within the basin, or within any part thereof, the commission may, after public hearing, determine and delineate the area of such shortage and declare a water supply emergency therein. For the duration of such emergency as determined by the commission no person, firm, corporation or other public or private entity shall divert or withdraw water for any purpose, in excess of such quantities as the commission may prescribe by general regulation or authorize by special permit granted hereunder.

10.5 Standards.

Permits shall be granted, modified or denied as the case may be so as to avoid such depletion of the natural stream flows and ground waters in the protected area or in an emergency area as will adversely affect the comprehensive plan or the just and equitable interests and rights of other lawful users of the same source, giving due regard to the need to balance and reconcile alternative and conflicting uses in the event of an actual or threatened shortage of water of the quality required.

10.6 Judicial review.

The determinations and delineations of the commission pursuant to Section 10.2 and the granting, modification or denial of permits pursuant to Section 10.3 through 10.5 shall be subject to judicial review in any court of competent jurisdiction.

10.7 Maintenance of records.

Each state shall provide for the maintenance and preservation of such records of authorized diversions and withdrawals and the annual volume thereof as the commission shall prescribe. Such records and supplementary reports shall be furnished to the commission at its request.

10.8 Existing state systems.

Whenever the commission finds it necessary or desirable to exercise the powers conferred by this article any diversion or withdrawal permits authorized or issued under the laws of any of the signatory states shall be superseded to the extent of any conflict with the control and

regulation exercised by the commission.

ARTICLE 11--INTERGOVERNMENTAL RELATIONS

Section 11.1 Federal agencies and projects.

For the purposes of avoiding conflicts of jurisdiction and of giving full effect to the commission as a regional agency of the signatory parties, the following rules shall govern federal projects affecting the water resources of the basin, subject in each case to the provisions of Section 1.4 of this compact:

(a) The planning of all projects related to powers delegated to the commission by this compact shall be undertaken in consultation with the commission;

(b) No expenditure or commitment shall be made for or on account of the construction, acquisition or operation of any project or facility nor shall it be deemed authorized, unless it shall have first been included by the commission in the comprehensive plan;

(c) Each federal agency otherwise authorized by law to plan, design, construct, operate or maintain any project or facility in or for the basin shall continue to have, exercise and discharge such authority except as specifically provided by this section.

11.2 State and local agencies and projects.

For the purpose of avoiding conflicts of jurisdiction and of giving full effect to the commission as a regional agency of the signatory parties, the following rules shall govern projects of the signatory states, their political subdivisions and public corporations affecting water resources of the basin:

(a) The planning of all projects related to powers delegated to the commission by this compact shall be undertaken in consultation with the commission;

(b) No expenditure or commitment shall be made for or on account of the construction, acquisition or operation of any project or facility unless it shall have first been included by the commission in the comprehensive plan;

(c) Each state and local agency otherwise authorized by law to plan, design, construct, operate or maintain any project or facility in or for the basin shall continue to have, exercise and discharge such authority,

except as specifically provided by this section.

11.3 Reserved taxing powers of states.

Each of the signatory parties reserves the right to levy, assess and collect fees, charges and taxes on or measured by the withdrawal or diversion of waters of the basin for use within the jurisdictions of the respective signatory parties.

11.4 Project costs and evaluation standards.

The commission shall establish uniform standards and procedures for the evaluation, determination of benefits, and cost allocations of projects affecting the basin, and for the determination of project priorities, pursuant to the requirements of the comprehensive plan and its water resources program. The commission shall develop equitable cost sharing and reimbursement formulas for the signatory parties including:

- (a) Uniform and consistent procedures for the allocation of project costs among purposes included in multiple-purpose programs;
- (b) Contracts and arrangements for sharing financial responsibility among and with signatory parties, public bodies, groups and private enterprise, and for the supervision of their performance;
- (c) Establishment and supervision of a system of accounts for reimbursable purposes and directing the payments and charges to be made from such accounts;
- (d) Determining the basis and apportioning amounts (i) of reimbursable revenues to be paid signatory parties or their political subdivisions, and (ii) of payments in lieu of taxes to any of them.

11.5 Cooperative services.

The commission shall furnish technical services, advice and consultation to authorize agencies of the signatory parties with respect to the water resources of the basin, and each of the signatory parties pledges itself to provide technical and administrative services to the commission upon request, within the limits of available appropriations and to cooperate generally with the commission for the purposes of this compact, and the cost of such services may be reimbursable whenever the parties deem appropriate.

ARTICLE 12--CAPITAL FINANCING

Section 12.1 Borrowing power.

The commission may borrow money for any of the purposes of this compact, and may issue its negotiable bonds and other evidences of indebtedness in respect thereto. All such bonds and evidences of indebtedness shall be payable solely out of the properties and revenues of the commission without recourse to taxation. The bonds and other obligations of the commission, except as may be otherwise provided in the indenture under which they were issued, shall be direct and general obligations of the commission and the full faith and credit of the commission are hereby pledged for the prompt payment of the debt service thereon and for the fulfillment of all other undertakings of the commission assumed by it to or for the benefit of the holders thereof.

12.2 Funds and expenses.

The purposes of this compact shall include without limitation thereto all costs of any project or facility or any part thereof, including interest during a period of construction and a reasonable time thereafter and any incidental expenses (legal, engineering, fiscal, financial consultant and other expenses) connected with issuing and disposing of the bonds; all amounts required for the creation of an operating fund, construction fund, reserve fund, sinking fund, or other special fund; all other expenses connected with the planning, design, acquisition, construction, completion, improvement or reconstruction of any facility or any part thereof; and reimbursement of advances by the commission or by others for such purposes and for working capital.

12.3 Credit excluded; officers, state and municipal.

The commission shall have no power to pledge the credit of any signatory party, or of any county or municipality, or to impose any obligation for payment of the bonds upon any signatory party or any county or municipality. Neither the commissioners nor any person executing the bonds shall be liable personally on the bonds of the commission or be subject to any personal liability or accountability by reason of the issuance thereof.

12.4 Funding and refunding.

Whenever the commission deems it expedient, it may fund and refund its bonds and other obligations whether or not such bonds and obligations have matured. It may provide for the issuance, sale or exchange of refunding bonds for the purpose of redeeming or retiring any bonds (including the payment of any premium, duplicate interest or cash adjustment required in connection therewith) issued by the commission or issued by any other issuing body, the proceeds of the sale of which have been applied to any facility acquired by the commission or which are payable out of the revenues of any facility acquired by the commission. Bonds may be issued partly to refund bonds and other obligations then outstanding, and partly for any other purpose of the commission. All provisions of this compact applicable to the issuance of bonds are applicable to refunding bonds and to the issuance, sale or exchange thereof.

12.5 Bonds; authorization generally.

Bonds and other indebtedness of the commission shall be authorized by resolution of the commission. The validity of the authorization and issuance of any bonds by the commission shall not be dependent upon nor affected in any way by: (i) the disposition of bond proceeds by the commission or by contract, commitment or action taken with respect to such proceeds; or (ii) the failure to complete any part of the project for which bonds are authorized to be issued. The commission may issue bonds in one or more series and may provide for one or more consolidated bond issues, in such principal amounts and with such terms and provisions as the commission may deem necessary. The bonds may be secured by a pledge of all or any part of the property, revenues and franchises under its control. Bonds may be issued by the commission in such amount, with such maturities and in such denominations and form or forms, whether coupon or registered, as to both principal and interest, as may be determined by the commission. The commission may provide for redemption of bonds prior to maturity on such notice and at such time or times and with such redemption provisions, including premiums, as the commission may determine.

12.6 Bonds; resolutions and indentures generally.

The commission may determine and enter into indentures providing for

the principal amount, date or dates, maturities, interest rate, denominations, form, registration, transfer, interchange and other provisions of the bonds and coupons and the terms and conditions upon which the same shall be executed, issued, secured, sold, paid, redeemed, funded and refunded. The resolution of the commission authorizing any bond or any indenture so authorized under which the bonds are issued may include all such covenants and other provisions other than any restriction on the regulatory powers vested in the commission by this compact as the commission may deem necessary or desirable for the issue, payment, security, protection or marketing of the bonds, including without limitation covenants and other provisions as to the rates or amounts of fees, rents and other charges to be charged or made for use of the facilities; the use, pledge, custody, securing, application and disposition of such revenues, of the proceeds of the bonds, and of any other moneys of the commission; the operation, maintenance, repair and reconstruction of the facilities and the amounts which may be expended therefor; the sale, lease or other disposition of the facilities; the insuring of the facilities and of the revenues derived therefrom; the construction or other acquisition of other facilities; the issuance of additional bonds or other indebtedness; the rights of the bondholders and of any trustee for the bondholders upon default by the commission or otherwise; and the modification of the provisions of the indenture and of the bonds. Reference on the face of the bonds to such resolution or indenture by its date of adoption or the apparent date on the face thereof is sufficient to incorporate all of the provisions thereof and of this compact into the body of the bonds and their appurtenant coupons. Each taker and subsequent holder of the bonds or coupons, whether the coupons are attached to or detached from the bonds, has recourse to all of the provisions of the indenture and of this compact and is bound thereby.

12.7 Maximum maturity.

No bond by its terms shall mature in more than fifty years from its own date and in the event any authorized issue is divided into two or more series or divisions, the maximum maturity date hereby authorized shall be calculated from the date on the face of each bond separately, irrespective of the fact that different dates may be prescribed for the

bonds of each separate series or division of any authorized issue.

12.8 Tax exemption.

All bonds issued by the commission under the provisions of this compact and the interest thereof shall at all times be free and exempt from all taxation by or under authority of any of the signatory parties, except for transfer, inheritance and estate taxes.

12.9 Interest.

Bonds shall bear interest at a rate determined by the commission, payable annually or semi-annually.

12.10 Place of payment.

The commission may provide for the payment of the principal and interest of bonds at any place or places within or without the signatory states, and in any specified lawful coin or currency of the United States of America.

12.11 Execution.

The commission may provide for the execution and authentication of bonds by the manual, lithographed or printed facsimile signature of officers of the commission, and by additional authentication by a trustee or fiscal agent appointed by the commission. If any of the officers whose signatures or counter signatures appear upon the bonds or coupons cease to be officers before the delivery of the bonds or coupons, their signatures or counter signatures are nevertheless valid and of the same force and effect as if the officers had remained in office until the delivery of the bonds and coupons.

12.12 Holding own bonds.

The commission shall have power out of any funds available therefor to purchase its bonds and may hold, cancel or resell such bonds.

12.13 Sale.

The commission may fix terms and conditions for the sale or other disposition of any authorized issue of bonds. The commission may sell bonds at less than their par or face value but no issue of bonds may be

sold at an aggregate price below the par or face value thereof if such sale would result in a net interest cost to the commission calculated upon the entire issue so sold of more than six percent per annum payable semi-annually, according to standard tables of bond values. All bonds issued and sold for cash pursuant to this act shall be sold on sealed proposals to the highest bidder. Prior to such sale, the commission shall advertise for bids by publication of a notice of sale not less than ten days prior to the date of sale, at least once in a newspaper of general circulation printed and published in New York City carrying municipal bond notices and devoted primarily to financial news. The commission may reject any and all bids submitted and may thereafter sell the bonds so advertised for sale at private sale to any financially responsible bidder under such terms and conditions as it deems most advantageous to the public interest, but the bonds shall not be sold at a net interest cost calculated upon the entire issue so advertised, greater than the lowest bid which was rejected. In the event the commission desires to issue its bonds in exchange for an existing facility or portion thereof, or in exchange for bonds secured by the revenues of an existing facility, it may exchange such bonds for the existing facility or portion thereof or for the bonds so secured, plus an additional amount of cash, without advertising such bonds for sale.

12.14 Negotiability.

All bonds issued under the provisions of this compact are negotiable instruments, except when registered in the name of a registered owner.

12.15 Legal investments.

Bonds of the commission shall be legal investments for savings banks, fiduciaries and public funds in each of the signatory states.

12.16 Validation proceedings.

Prior to the issuance of any bonds, the commission may institute a special proceeding to determine the legality of proceedings to issue the bonds and their validity under the laws of any of the signatory parties. Such proceedings shall be instituted and prosecuted in rem and the judgment rendered therein shall be conclusive against all persons whomsoever and against each of the signatory parties.

12.17 Recording.

No indenture need be recorded or filed in any public office, other than the office of the commission. The pledge of revenues provided in any indenture shall take effect forthwith as provided therein and irrespective of the date of receipt of such revenues by the commission or the indenture trustee. Such pledge shall be effective as provided in the indenture without physical delivery of the revenues to the commission or to the indenture trustee.

12.18 Pledged revenues.

Bond redemption and interest payments shall, to the extent provided in the resolution or indenture, constitute a first, direct and exclusive charge and lien on all such rates, rents, tolls, fees and charges and other revenues and interest thereon received from the use and operation of the facility, and on any sinking or other funds created therefrom. All such rates, rents, tolls, fees, charges and other revenues, together with interest thereon, shall constitute a trust fund for the security and payment of such bonds and except as and to the extent provided in the indenture with respect to the payment therefrom of expenses for other purposes including administration, operation, maintenance, improvements or extensions of the facilities or other purposes shall not be used or pledged for any other purpose so long as such bonds, or any of them, are outstanding and unpaid.

12.19 Remedies.

The holder of any bond may for the equal benefit and protection of all holders of bonds similarly situated: (a) by mandamus or other appropriate proceedings require and compel the performance of any of the duties imposed upon the commission or assumed by it, its officers, agents or employees under the provisions of any indenture, in connection with the acquisition, construction, operation, maintenance, repair, reconstruction or insurance of the facilities, or in connection with the collection, deposit, investment, application and disbursement of the rates, rents, tolls, fees, charges and other revenues derived from the operation and use of the facilities, or in connection with the deposit, investment and disbursement of the proceeds received from the sale of

bonds; or (b) by action or suit in a court of competent jurisdiction of any signatory party require the commission to account as if it were the trustee of an express trust, or enjoin any acts or things which may be unlawful or in violation of the rights of the holders of the bonds. The enumeration of such rights and remedies does not, however, exclude the exercise or prosecution of any other rights or remedies available to the holders of bonds.

12.20 Capital financing by signatory parties; guarantees.

(a) The signatory parties will provide such capital funds required for projects of the commission as may be authorized by their respective statutes in accordance with a cost sharing plan prepared pursuant to Article 11 of this compact; but nothing in this section shall be deemed to impose any mandatory obligation on any of the signatory parties other than such obligations as may be assumed by a signatory party in connection with a specific project or facility.

(b) Bonds of the commission, notwithstanding any other provision of this compact, may be executed and delivered to any duly authorized agency of any of the signatory parties without public offering and may be sold and resold with or without the guarantee of such signatory party, subject to and in accordance with the constitutions of the respective signatory parties.

(c) The commission may receive and accept, and the signatory parties may make, loans, grants, appropriations, advances and payments of reimbursable or non-reimbursable funds or property in any form for the capital or operating purposes of the commission.

ARTICLE 13--PLAN, PROGRAM AND BUDGETS

Section 13.1 Comprehensive plan.

The commission shall develop and adopt, and may from time to time review and revise, a comprehensive plan for the immediate and long range development and use of the water resources of the basin. The plan shall include all public and private projects and facilities which are required, in the judgment of the commission, for the optimum planning, development, conservation, utilization, management and control of the water resources of the basin to meet present and future needs; provided that the plan shall include any projects required to conform with any present or future decree or judgment of any court of competent

jurisdiction. The commission may adopt a comprehensive plan or any revision thereof in such part or parts as it may deem appropriate, provided that before the adoption of the plan or any part or revision thereof the commission shall consult with water users and interested public bodies and public utilities and shall consider and give due regard to the findings and recommendations of the various agencies of the signatory parties and their political subdivisions. The commission shall conduct public hearings with respect to the comprehensive plan prior to the adoption of the plan or any part or revision thereof.

13.2 Water resources program.

The commission shall annually adopt a water resources program, based upon the comprehensive plan, consisting of the projects and facilities which the commission proposes to be undertaken by the commission and by other authorized governmental and private agencies, organizations and persons during the ensuing six years or such other reasonably foreseeable period as the commission may determine. The water resources program shall include a systematic presentation of:

- 1) the quantity and quality of water resources needs for such period;
- 2) the existing and proposed projects and facilities required to satisfy such needs, including all public and private projects to be anticipated;
- 3) a separate statement of the projects proposed to be undertaken by the commission during such period.

13.3 Annual current expense and capital budgets.

(a) The commission shall annually adopt a capital budget including all capital projects it proposes to undertake or continue during the budget period containing a statement of the estimated cost of each project and the method of financing thereof.

(b) The commission shall annually adopt a current expense budget for each fiscal year. Such budget shall include the commission's estimated expenses for administration, operation, maintenance and repairs, including a separate statement thereof for each project, together with its cost allocation. The total of such expenses shall be balanced by the

commission's estimated revenues from all sources, including the cost allocations undertaken by any of the signatory parties in connection with any project. Following the adoption of the annual current expense budget by the commission, the executive director of the commission shall:

1) certify to the respective signatory parties the amounts due in accordance with existing cost sharing established for each project; and

2) transmit certified copies of such budget to the principal budget officer of the respective signatory parties at such time and in such manner as may be required under their respective budgetary procedures. The amount required to balance the current expense budget in addition to the aggregate amount of item (1) above and all other revenues available to the commission shall be apportioned equitably among the signatory parties by unanimous vote of the commission, and the amount of such apportionment to each signatory party shall be certified together with the budget.

(c) The respective signatory parties covenant and agree to include the amounts so apportioned for the support of the current expense budget in their respective budgets next to be adopted, subject to such review and approval as may be required by their respective budgetary processes. Such amounts shall be due and payable to the commission in quarterly installments during its fiscal year, provided that the commission may draw upon its working capital to finance its current expense budget pending remittances by the signatory parties.

ARTICLE 14--GENERAL PROVISIONS

Section 14.1 Auxiliary powers of commission; functions of commissioners.

(a) The commission, for the purposes of this compact, may:

1) Adopt and use a corporate seal, enter into contracts, sue and be sued in all courts of competent jurisdiction;

2) Receive and accept such payments, appropriations, grants, gifts, loans, advances and other funds, properties and services as may be transferred or made available to it by any signatory party or by any other public or private corporation or individual, and enter into

agreements to make reimbursement for all or part thereof;

3) Provide for, acquire and adopt detailed engineering, administrative, financial and operating plans and specifications to effectuate, maintain or develop any facility or project;

4) Control and regulate the use of facilities owned or operated by the commission;

5) Acquire, own, operate, maintain, control, sell and convey real and personal property and any interest therein by contract, purchase, lease, license, mortgage or otherwise as it may deem necessary for any project or facility, including any and all appurtenances thereto necessary, useful or convenient for such ownership, operation, control, maintenance or conveyance;

6) Have and exercise all corporate powers essential to the declared objects and purposes of the commission.

(b) The commissioners, subject to the provisions of this compact, shall:

1) Serve as the governing body of the commission, and exercise and discharge its powers and duties except as otherwise provided by or pursuant to this compact;

2) Determine the character of and the necessity for its obligations and expenditures and the manner in which they shall be incurred, allowed, and paid subject to any provisions of law specifically applicable to agencies or instrumentalities created by compact;

3) Provide for the internal organization and administration of the commission;

4) Appoint the principal officers of the commission and delegate to and allocate among them administrative functions, powers and duties;

5) Create and abolish offices, employments and positions as it deems

necessary for the purposes of the commission, and subject to the provisions of this article, fix and provide for the qualification, appointment, removal, term, tenure, compensation, pension and retirement rights of its officers and employees;

6) Let and execute contracts to carry out the powers of the commission.

14.2 Regulations; enforcement.

The commission may:

(a) Make and enforce reasonable rules and regulations for the effectuation, application and enforcement of this compact; and it may adopt and enforce practices and schedules for or in connection with the use, maintenance and administration of projects and facilities it may own or operate and any product or service rendered thereby; provided that any rule or regulation, other than one which deals solely with the internal management of the commission, shall be adopted only after public hearing and shall not be effective unless and until filed in accordance with the law of the respective signatory parties applicable to administrative rules and regulations generally; and

(b) Designate any officer, agent or employee of the commission to be an investigator or watchman and such person shall be vested with the powers of a peace officer of the state in which he is duly assigned to perform his duties.

14.3 Tax exemption.

The commission, its property, functions, and activities shall be exempt from taxation by or under the authority of any of the signatory parties or any political subdivision thereof; provided that in lieu of property taxes the commission shall, as to specific projects, make payments to local taxing districts in annual amounts which shall equal the taxes lawfully assessed upon property for the tax year next prior to its acquisition by the commission for a period of ten years. The nature and amount of such payments shall be reviewed by the commission at the end of ten years, and from time to time thereafter, upon reasonable notice and opportunity to be heard to the affected taxing district, and the payments may be thereupon terminated or continued in such reasonable

amount as may be necessary or desirable to take into account hardships incurred and benefits received by the taxing jurisdiction which are attributable to the project.

14.4 Meetings; public hearing; records, minutes.

(a) All meetings of the commission shall be open to the public.

(b) The commission shall conduct at least one public hearing prior to the adoption of the comprehensive plan, water resources program, annual capital and current expense budgets, the letting of any contract for the sale or other disposition by the commission of hydroelectric energy or water resources to any person, corporation or entity, and in all other cases wherein this compact requires a public hearing. Such hearing shall be held upon at least ten days public notice given by posting at the offices of the commission. The commission shall also provide forthwith for distribution of such notice to the press and by the mailing of a copy thereof to any person who shall request such notices.

(c) The minutes of the commission shall be a public record open to inspection at its offices during regular business hours.

14.5 Officers generally.

(a) The officers of the commission shall consist of an executive director and such additional officers, deputies and assistants as the commission may determine. The executive director shall be appointed and may be removed by the affirmative vote of a majority of the full membership of the commission. All other officers and employees shall be appointed by the executive director under such rules of procedure as the commission may determine.

(b) In the appointment and promotion of officers and employees for the commission, no political, racial, religious or residence test or qualification shall be permitted or given consideration, but all such appointments and promotions shall be solely on the basis of merit and fitness. Any officer or employee of the commission who is found by the commission to be guilty of a violation of this section shall be removed from office by the commission.

14.6 Oath of office.

An oath of office in such form as the commission shall prescribe shall be taken, subscribed and filed with the commission by the executive director and by each officer appointed by him not later than fifteen

days after the appointment.

14.7 Bond.

Each officer shall give such bond and in such form and amount as the commission may require for which the commission may pay the premium.

14.8 Prohibited activities.

(a) No commissioner officer or employee shall:

1) be financially interested, either directly or indirectly, in any contract, sale, purchase, lease or transfer of real or personal property to which the commission is a party;

2) solicit or accept money or any other thing of value in addition to the compensation or expenses paid him by the commission for services performed within the scope of his official duties;

3) offer money or any thing of value for or in consideration of obtaining an appointment, promotion or privilege in his employment with the commission.

(b) Any officer or employee who shall willfully violate any of the provisions of this section shall forfeit his office or employment.

(c) Any contract or agreement knowingly made in controvention of this section is void.

(d) Officers and employees of the commission shall be subject in addition to the provisions of this section to such criminal and civil sanctions for misconduct in office as may be imposed by federal law and the law of the signatory state in which such misconduct occurs.

14.9 Purchasing.

Contracts for the construction, reconstruction or improvement of any facility when the expenditure required exceeds ten thousand dollars and contracts for the purchase of services, supplies, equipment and materials when the expenditure required exceeds two thousand five hundred dollars shall be advertised and let upon sealed bids to the lowest responsible bidder. Notice requesting such bids shall be published in a manner reasonably likely to attract prospective bidders, which publication shall be made at least ten days before bids are

received and in at least two newspapers of general circulation in the basin. The commission may reject any and all bids and readvertise in its discretion. If after rejecting bids the commission determines and resolves that in its opinion the supplies, equipment and materials may be purchased at a lower price in the open market, the commission may give each responsible bidder an opportunity to negotiate a price and may proceed to purchase the supplies, equipment and materials in the open market at a negotiated price which is lower than the lowest rejected bid of a responsible bidder, without further observance of the provisions requiring bids or notice. The commission shall adopt rules and regulations to provide for purchasing from the lowest responsible bidder when sealed bids, notice and publication are not required by this section. The commission may suspend and waive the provisions of this section requiring competitive bids whenever:

- 1) the purchase is to be made from or the contract to be made with the federal or any state government or any agency or political subdivision thereof or pursuant to any open end bulk purchase contract of any of them;

- 2) the public exigency requires the immediate delivery of the articles or performance of the service;

- 3) only one source of supply is available;

- 4) the equipment to be purchased is of a technical nature and the procurement thereof without advertising is necessary in order to assure standardization of equipment and interchangeability of parts in the public interest; or

- 5) services are to be provided of a specialized or professional nature.

14.10 Insurance.

The commission may self-insure or purchase insurance and pay the premiums therefor against loss or damage to any of its properties; against liability for injury to persons or property; and against loss of

revenue from any cause whatsoever. Such insurance coverage shall be in such form and amount as the commission may determine, subject to the requirements of any agreement arising out of the issuance of bonds by the commission.

14.11 Annual independent audit.

(a) As soon as practical after the closing of the fiscal year, an audit shall be made of the financial accounts of the commission. The audit shall be made by qualified certified public accountants selected by the commission, who have no personal interest direct or indirect in the financial affairs of the commission or any of its officers or employees. The report of audit shall be prepared in accordance with accepted accounting practices and shall be filed with the chairman and such other officers as the commission shall direct. Copies of the report shall be distributed to each commissioner and shall be made available for public distribution.

(b) Each signatory party by its duly authorized officers shall be entitled to examine and audit at any time all of the books, documents, records, files and accounts and all other papers, things or property of the commission. The representatives of the signatory parties shall have access to all books, documents, records, accounts, reports, files and all other papers, things or property belonging to or in use by the commission and necessary to facilitate the audit and they shall be afforded full facilities for verifying transactions with the balances or securities held by depositaries, fiscal agents and custodians.

(c) The financial transactions of the commission shall be subject to audit by the general accounting office in accordance with the principles and procedures applicable to commercial corporate transactions and under such rules and regulations as may be prescribed by the comptroller general of the United States. The audit shall be conducted at the place or places where the accounts of the commission are kept.

(d) Any officer or employee who shall refuse to give all required assistance and information to the accountants selected by the commission or to the authorized officers of any signatory party or who shall refuse to submit to them for examination such books, documents, records, files, accounts, papers, things or property as may be requested shall forfeit his office.

14.12 Reports.

The commission shall make and publish an annual report to the legislative bodies of the signatory parties and to the public reporting on its programs, operations and finances. It may also prepare, publish and distribute such other public reports and informational materials as it may deem necessary or desirable.

14.13 Grants, loans or payments by states or political subdivisions.

(a) Any or all of the signatory parties or any political subdivision thereof may:

1) Appropriate to the commission such funds as may be necessary to pay preliminary expenses such as the expenses incurred in the making of borings, and other studies of subsurface conditions, in the preparation of contracts for the sale of water and in the preparation of detailed plans and estimates required for the financing of a project;

2) Advance to the commission, either as grants or loans, such funds as may be necessary or convenient to finance the operation and management of or construction by the commission of any facility or project;

3) Make payments to the commission for benefits received or to be received from the operation of any of the projects or facilities of the commission.

(b) Any funds which may be loaned to the commission either by a signatory party or a political subdivision thereof shall be repaid by the commission through the issuance of bonds or out of other income of the commission, such repayment to be made within such period and upon such terms as may be agreed upon between the commission and the signatory party or political subdivision making the loan.

14.14 Condemnation proceedings.

(a) The commission shall have the power to acquire by condemnation the fee or any lesser interest in lands, lands lying under water, development rights in land, riparian rights, water rights, waters and other real or personal property within the basin for any project or facility authorized pursuant to this compact. This grant of power of eminent domain includes but is not limited to the power to condemn for the purposes of this compact any property already devoted to a public

use, by whomsoever owned or held, other than property of a signatory party and any property held, constructed, operated or maintained in connection with a diversion authorized by a United States Supreme Court decree. Any condemnation of any property or franchises owned or used by a municipal or privately owned public utility, unless the affected public utility facility is to be relocated or replaced, shall be subject to the authority of such state board, commission or other body as may have regulatory jurisdiction over such public utility.

(b) Such power of condemnation shall be exercised in accordance with the provisions of any federal law applicable to the commission; provided that if there is no such applicable federal law, condemnation proceedings shall be in accordance with the provisions of such general state condemnation law as may be in force in the signatory state in which the property is located.

(c) Any award or compensation for the taking of property pursuant to this article shall be paid by the commission, and none of the signatory parties nor any other agency, instrumentality or political subdivision thereof shall be liable for such award or compensation.

14.15 Conveyance of lands and relocation of public facilities.

(a) The respective officers, agencies, departments, commissions or bodies having jurisdiction and control over real and personal property owned by the signatory parties are authorized and empowered to transfer and convey in accordance with the laws of the respective parties to the commission any such property as may be necessary or convenient to the effectuation of the authorized purposes of the commission.

(b) Each political subdivision of each of the signatory parties is authorized and empowered, notwithstanding any contrary provision of law, to grant and convey to the commission, upon the commission's request, any real property or any interest therein owned by such political subdivision including lands lying under water and lands already devoted to public use which may be necessary or convenient to the effectuation of the authorized purposes of the commission.

(c) Any highway, public utility or other public facility which will be dislocated by reason of a project deemed necessary by the commission to effectuate the authorized purposes of this compact shall be relocated and the cost thereof shall be paid in accordance with the law of the state in which the facility is located; provided that the cost of such

relocation payable by the commission shall not in any event exceed the expenditure required to serve the public convenience and necessity.

14.16 Rights of way.

Permission is hereby granted to the commission to locate, construct and maintain any aqueducts, lines, pipes, conduits and auxiliary facilities authorized to be acquired, constructed, owned, operated or maintained by the commission in, over, under or across any streets and highways now or hereafter owned, opened or dedicated to or for public use, subject to such reasonable conditions as the highway department of the signatory party may require.

14.17 Penal sanction.

Any person, association or corporation who violates or attempts or conspires to violate any provision of this compact or any rule, regulation or order of the commission duly made, promulgated or issued pursuant to the compact in addition to any other remedy, penalty or consequence provided by law shall be punishable as may be provided by statute of any of the signatory parties within which the offense is committed; provided that in the absence of such provision any such person, association or corporation shall be liable to a penalty of not less than \$50 nor more than \$1000 for each such offense to be fixed by the court which the commission may recover in its own name in any court of competent jurisdiction, and in a summary proceeding where available under the practice and procedure of such court. For the purposes of this section in the event of a continuing offense each day of such violation, attempt or conspiracy shall constitute a separate offense.

14.18 Tort liability.

The commission shall be responsible for claims arising out of the negligent acts or omissions of its officers, agents and employees only to the extent and subject to the procedures prescribed by law generally with respect to officers, agents and employees of the government of the United States.

14.19 Effect on riparian rights.

Nothing contained in this compact shall be construed as affecting or

intending to affect or in any way to interfere with the law of the respective signatory parties relating to riparian rights.

14.20 Amendments and supplements.

Amendments and supplements to this compact to implement the purposes thereof may be adopted by legislative action of any of the signatory parties concurred in by all of the others.

14.21 Construction and severability.

The provisions of this act and of agreements thereunder shall be severable and if any phrase, clause, sentence or provision of this compact or such agreement is declared to be unconstitutional or the applicability thereof to any signatory party, agency or person is held invalid, the constitutionality of the remainder of this compact or such agreement and the applicability thereof to any other signatory party, agency, person or circumstance shall not be affected thereby. It is the legislative intent that the provisions of this compact be reasonably and liberally construed.

14.22 Effective date; execution.

This compact shall become binding and effective thirty days after the enactment of concurring legislation by the federal government, the states of Delaware, New Jersey and New York, and the Commonwealth of Pennsylvania. The compact shall be signed and sealed in six duplicate original copies by the respective chief executives of the signatory parties. One such copy shall be filed with the Secretary of State of each of the signatory parties or in accordance with the laws of the state in which the filing is made, and one copy shall be filed and retained in the archives of the commission upon its organization. The signatures shall be affixed and attested under the following form:

In Witness Whereof, and in evidence of the adoption and enactment into law of this compact by the Congress and legislatures, respectively, of the signatory parties, the President of the United States and the respective Governors do hereby, in accordance with authority conferred by law, sign this compact in six duplicate original copies, as attested by the respective secretaries of state, and have caused the seals of the

United States and of the respective states to be hereunto affixed
this.....day of.....

§ 21-0703. Commissioner and alternate.

1. As provided in the second subdivision of section two of article two of the compact, the Governor shall be this state's member on the commission established thereby. The Governor shall appoint an officer of the Department of Environmental Conservation as his alternate pursuant to the third subdivision of said section two of article two of the compact.

2. Any person serving on the Delaware river basin commission pursuant to this section shall be reimbursed for all necessary expenses incurred as an incident of such service, and such reimbursement shall be from the funds of said person's department or office.

§ 21-0705. Advisors.

1. The member of the Delaware river basin commission from this state shall have an advisor as contemplated by subdivision six of section two of article two of the compact. Such advisor shall be the mayor of the city of New York or his designee, but no designee of the mayor shall be recognized as an advisor or accorded any privileges as such unless the mayor shall have notified the commission member from this state and the Delaware river basin commission in writing of the selection of such designee and of his identity.

2. The Department of Environmental Conservation shall provide an advisory committee who together with the state Commissioner of Commerce shall constitute an advisory committee with whom the member of the Delaware river basin commission from this state may consult with respect to the conduct of New York participation in the compact. Such member of the commission also may consult from time to time with other officers of the state government or any subdivision thereof, as may be appropriate.

§ 21-0707. Consent to alteration of diversions.

1. Consent of this state to the impairment, diminution or other adverse effect on diversions, compensating releases, rights, conditions, obligations, and provisions for the administration thereof as contemplated by subdivision three of section three of article three of the compact shall not be given, except with the prior approval of the Department of Environmental Conservation.

2. Except with respect to diversions governed by subdivision one of this section and the provision of the compact referred to therein, the provisions of section 15-1505 of this chapter shall not apply to any diversion or furnishing of water authorized by or made pursuant to the compact.

§ 21-0709. Jurisdiction of courts.

Except as otherwise specifically provided herein, the phrase "court of competent jurisdiction" as used in the compact shall, with reference to this state, mean the supreme court, and said court is hereby given all necessary and appropriate jurisdiction to hear and determine any action or proceeding brought before it pursuant to appropriate provisions of the compact. As used in subdivision six of section ten of article ten of the compact, the phrase "court of competent jurisdiction" shall mean a court in which an appropriate proceeding under article seventy-eight of the Civil Practice Law and Rules may be brought. As used in item one of paragraph (a) of subdivision one of section fourteen of article fourteen of the compact, the phrase "court of competent jurisdiction" shall mean any court of this state in which an action or proceeding of the class brought by the Delaware river basin commission may be heard and determined.

§ 21-0711. Prior to project approval.

No project requiring a license, permit or other approval by any agency or officer of this state, or any subdivision thereof, shall be given any such license, permit, or approval, if such project requires approval of the Delaware river basin commission pursuant to the compact and such has not been given.

§ 21-0713. Agreements with municipalities.

Any city, county, town or village within the "basin", as that term is defined in the compact, shall have power to make agreements to provide technical and financial aid as contemplated by paragraph (b) of subdivision two of section six of article six of the compact. Nothing herein contained shall be construed to relieve any such city, county, town or village from compliance with any general or special laws relating to the receipt of grants or other assistance from other governmental units and contracts in connection therewith.

§ 21-0715. Delegations of power.

No agency or officer of this state or any subdivision thereof shall accept or exercise any delegation of power pursuant to subdivision one of section ten of article ten of the compact unless, in the absence of the compact, it would have the constitutional or statutory power to exercise such power on its own account.

§ 21-0716. Report and recommendations of department.

The department shall submit to the governor and the legislature of this state on or before the twenty-fifth day of January, nineteen hundred seventy-eight, and every year thereafter, a detailed examination and evaluation of the programs and activities of the commission as they relate to New York state and shall make recommendations for any legislative action deemed by the department advisable, including

amendments to the statutes of the signatory states which may be necessary to carry out the intent and purposes of the compact.

§ 21-0717. Cooperative services.

Departments, agencies and officers shall provide technical and administrative services to the Delaware river basin commission upon request, within the limits of available appropriations and shall cooperate generally with said commission for the purposes of the compact.

§ 21-0719. Budget.

The Delaware river basin commission shall submit annually to the Director of the Budget, in accordance with the rules and practice of the state, for study and consideration by such Director, an estimate of moneys required to administer, manage and support the commission during the ensuing fiscal year. Such estimate shall include any request for appropriation of funds by New York and shall be accompanied by a tabulation of similar requests which the commission expects to make to each other member state and the formula or factors upon which such respective requests are based. The provisions of subdivision three of section thirteen of article thirteen of the compact shall apply to the budgetary and other fiscal matters related to the participation of this state in the compact.

§ 21-0721. Audit.

Pursuant to paragraph (b) of subdivision eleven of section fourteen of article fourteen of the compact, the State Comptroller is hereby authorized and empowered from time to time to examine the accounts and books of the commission, including its receipts, disbursements and such other items referring to its financial standing as such Comptroller may deem proper and to report the results of such examination to the

Governor.

§ 21-0723. Inconsistent laws.

No provision of this chapter or of any other law, which is inconsistent with the provisions of the compact shall be applicable to the Delaware river basin commission or to any matter governed by the compact.

TITLE 9

GREAT LAKES BASIN COMPACT

Section 21-0901. Great Lakes basin compact.

21-0903. Representation on the commission.

21-0905. Budget.

21-0907. Examination of commission accounts.

21-0909. Transmittal of documents.

21-0911. Inconsistent provisions.

21-0913. Appraisal of commission.

21-0915. Termination.

21-0917. The Great Lakes Basin advisory council.

§ 21-0901. Great Lakes Basin Compact.

The Great Lakes Basin Compact, as first enacted by chapter 643 of the laws of 1960, as reenacted by chapter 473 of the laws of 1961, and as renumbered by chapter 73 of the laws of 1962, is hereby continued. The compact is as follows:

The party states solemnly agree:

ARTICLE I

The purposes of this compact are, through means of joint or cooperative action:

1. To promote the orderly, integrated, and comprehensive development, use, and conservation of the water resources of the Great Lakes Basin (hereinafter called the Basin).

2. To plan for the welfare and development of the water resources of the Basin as a whole as well as for those portions of the Basin which may have problems of special concern.

3. To make it possible for the states of the Basin and their people to derive the maximum benefit from utilization of public works, in the form of navigational aids or otherwise, which may exist or which may be constructed from time to time.

4. To advise in securing and maintaining a proper balance among industrial, commercial, agricultural, water supply, residential, recreational, and other legitimate uses of the water resources of the Basin.

5. To establish and maintain an intergovernmental agency to the end that the purposes of this compact may be accomplished more effectively.

ARTICLE II

A. This compact shall enter into force and become effective and binding when it has been enacted by the legislatures of any four of the States of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin and thereafter shall enter into force and become effective and binding as to any other of said states when enacted by the legislature thereof.

B. The Province of Ontario and the Province of Quebec, or either of them, may become states party to this compact by taking such action as their laws and the laws of the Government of Canada may prescribe for adherence thereto. For the purpose of this compact the word "state" shall be construed to include a Province of Canada.

ARTICLE III

The Great Lakes Commission created by Article IV of this compact shall

exercise its powers and perform its functions in respect to the Basin which, for the purposes of this compact, shall consist of so much of the following as may be within the party states:

1. Lakes Erie, Huron, Michigan, Ontario, St. Clair, Superior, and the St. Lawrence River, together with any and all natural or man-made water interconnections between or among them.

2. All rivers, ponds, lakes, streams, and other watercourses which, in their natural state or in their prevailing condition, are tributary to Lakes Erie, Huron, Michigan, Ontario, St. Clair, and Superior or any of them or which comprise part of any watershed draining into any of said lakes.

ARTICLE IV

A. There is hereby created an agency of the party states to be known as The Great Lakes Commission, (hereinafter called the Commission). In that name the Commission may sue and be sued, acquire, hold and convey real and personal property and any interest therein. The Commission shall have a seal with the words "The Great Lakes Commission" and such other design as it may prescribe engraved thereon by which it shall authenticate its proceedings. Transactions involving real or personal property shall conform to the laws of the state in which the property is located, and the Commission may by bylaws provide for the execution and acknowledgment of all instruments in its behalf.

B. The Commission shall be composed of not less than three commissioners nor more than five commissioners from each party state designated or appointed in accordance with the law of the state which they represent and serving and subject to removal in accordance with such law.

C. Each state delegation shall be entitled to three votes in the Commission. The presence of commissioners from a majority of the party states shall constitute a quorum for the transaction of business at any meeting of the Commission. Actions of the Commission shall be by a majority of the votes cast except that any recommendations made pursuant

to Article VI of this compact shall require an affirmative vote of not less than a majority of the votes cast from each of a majority of the states present and voting.

D. The commissioners of any two or more party states may meet separately to consider problems of particular interest to their states but no action taken at any such meeting shall be deemed an action of the Commission unless and until the Commission shall specifically approve the same.

E. In the absence of any commissioner, his vote may be cast by another representative or commissioner of his state provided that said commissioner or other representative casting said vote shall have a written proxy in proper form as may be required by the Commission.

F. The Commission shall elect annually from among its members a chairman and vice-chairman. The Commission shall appoint an Executive Director who shall also act as secretary-treasurer, and who shall be bonded in such amount as the Commission may require. The Executive Director shall serve at the pleasure of the Commission and at such compensation and under such terms and conditions as may be fixed by it. The Executive Director shall be custodian of the records of the Commission with authority to affix the Commission's official seal and to attest to and certify such records or copies thereof.

G. The Executive Director, subject to the approval of the Commission in such cases as its bylaws may provide, shall appoint and remove or discharge such personnel as may be necessary for the performance of the Commission's functions. Subject to the aforesaid approval, the Executive Director may fix their compensation, define their duties, and require bonds of such of them as the Commission may designate.

H. The Executive Director, on behalf of, as trustee for, and with the approval of the Commission, may borrow, accept, or contract for the services of personnel from any state or government or any subdivision or agency thereof, from any intergovernmental agency, or from any institution, person, firm or corporation; and may accept for any of the

Commission's purposes and functions under this compact any and all donations, gifts, and grants of money, equipment, supplies, materials, and services from any state or government or any subdivision or agency thereof or intergovernmental agency or from any institution, person, firm or corporation and may receive and utilize the same.

I. The Commission may establish and maintain one or more offices for the transacting of its business and for such purposes the Executive Director, on behalf of, as trustee for, and with the approval of the Commission, may acquire, hold and dispose of real and personal property necessary to the performance of its functions.

J. No tax levied or imposed by any party state or any political subdivision thereof shall be deemed to apply to property, transactions, or income of the Commission.

K. The Commission may adopt, amend and rescind bylaws, rules and regulations for the conduct of its business.

L. The organization meeting of the Commission shall be held within six months from the effective date of this compact.

M. The Commission and its Executive Director shall make available to the party states any information within its possession and shall always provide free access to its records by duly authorized representatives of such party states.

N. The Commission shall keep a written record of its meetings and proceedings and shall annually make a report thereof to be submitted to the duly designated official of each party state.

O. The Commission shall make and transmit annually to the legislature and Governor of each party state a report covering the activities of the Commission for the preceding year and embodying such recommendations as may have been adopted by the Commission. The Commission may issue such additional reports as it may deem desirable.

ARTICLE V

A. The members of the Commission shall serve without compensation, but the expenses of each commissioner shall be met by the state which he represents in accordance with the law of that state. All other expenses incurred by the Commission in the course of exercising the powers conferred upon it by this compact, unless met in some other manner specifically provided by this compact, shall be paid by the Commission out of its own funds.

B. The Commission shall submit to the executive head or designated officer of each party state a budget of its estimated expenditures for such period as may be required by the laws of that state for presentation to the legislature thereof.

C. Each of the Commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. Detailed commission budgets shall be recommended by a majority of the votes cast, and the costs shall be allocated equitably among the party states in accordance with their respective interests.

D. The Commission shall not pledge the credit of any party state. The Commission may meet any of its obligations in whole or in part with funds available to it under Article IV (II) of this compact, provided that the Commission takes specific action setting aside such funds prior to the incurring of any obligations to be met in whole or in part in this manner. Except where the Commission makes use of funds available to it under Article IV (H) hereof, the Commission shall not incur any obligations prior to the allotment of funds by the party states adequate to meet the same.

E. The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under the bylaws. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become a part of the

annual report of the Commission.

F. The accounts of the Commission shall be open at any reasonable time for inspection by such agency, representative or representatives of the party states as may be duly constituted for that purpose and by others who may be authorized by the Commission.

ARTICLE VI

The Commission shall have power to:

A. Collect, correlate, interpret, and report on data relating to the water resources and the use thereof in the Basin or any portion thereof.

B. Recommend methods for the orderly, efficient, and balanced development, use, and conservation of the water resources of the Basin or any portion thereof to the party states and to any other governments or agencies having interests in or jurisdiction over the Basin or any portion thereof.

C. Consider the need for and desirability of public works and improvements relating to the water resources in the Basin or any portion thereof.

D. Consider means of improving navigation and port facilities in the Basin or any portion thereof.

E. Consider means of improving and maintaining the fisheries of the Basin or any portion thereof.

F. Recommend policies relating to water resources including the institution and alteration of flood plain and other zoning laws, ordinances and regulations.

G. Recommend uniform or other laws, ordinances, or regulations relating to the development, use and conservation of the Basin's water resources to the party states or any of them and to other governments, political subdivisions, agencies or intergovernmental bodies having

interests in or jurisdiction sufficient to affect conditions in the Basin or any portion thereof.

H. Consider and recommend amendments or agreements supplementary to this compact to the party states or any of them, and assist in the formulation and drafting of such amendments or supplementary agreements.

I. Prepare and publish reports, bulletins, and publications appropriate to this work and fix reasonable sale prices therefor.

J. With respect to the water resources of the Basin or any portion thereof, recommend agreements between the governments of the United States and Canada.

K. Recommend mutual arrangements expressed by concurrent or reciprocal legislation on the part of Congress and the Parliament of Canada including but not limited to such agreements and mutual arrangements as are provided for by Article XIII of the Treaty of 1909 Relating to Boundary Waters and Questions Arising Between the United States and Canada. (Treaty Series, No. 548).

L. Cooperate with the governments of the United States and of Canada, the party states and any public or private agencies or bodies having interests in or jurisdiction sufficient to affect the Basin or any portion thereof.

M. At the request of the United States, or in the event that a Province shall be a party state, at the request of the Government of Canada, assist in the negotiation and formulation of any treaty or other mutual arrangement or agreement between the United States and Canada with reference to the Basin or any portion thereof.

N. Make any recommendation and do all things necessary and proper to carry out the powers conferred upon the Commission by this compact, provided that no action of the Commission shall have the force of law in, or be binding upon, any party state.

ARTICLE VII

Each party state agrees to consider the action the Commission recommends in respect to:

- A. Stabilization of lake levels.
- B. Measures for combating pollution, beach erosion, floods, and shore inundation.
- C. Uniformity in navigation regulations within the constitutional powers of the states.
- D. Proposed navigation aids and improvements.
- E. Uniformity or effective coordinating action in fishing laws and regulations and cooperative action to eradicate destructive and parasitical forces endangering the fisheries, wild life and other water resources.
- F. Suitable hydroelectric power developments.
- G. Cooperative programs for control of soil and bank erosion for the general improvement of the Basin.
- H. Diversion of waters from and into the Basin.
- I. Other measures the Commission may recommend to the states pursuant to Article VI of this compact.

ARTICLE VIII

This compact shall continue in force and remain binding upon each party state until renounced by act of the legislature of such state, in such form and manner as it may choose and as may be valid and effective to repeal a statute of said state, provided that such renunciation shall not become effective until six months after notice of such action shall have been officially communicated in writing to the executive head of the other party states.

ARTICLE IX

It is intended that the provisions of this compact shall be reasonably and liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States, or in the case of a Province, to the British North America Act of 1867 as amended, or the applicability thereof to any state, agency, person or circumstance is held invalid, the constitutionality of the remainder of this compact and the applicability thereof to any state, agency, person or circumstance shall not be affected thereby, provided further that if this compact shall be held contrary to the constitution of the United States, or in the case of a Province, to the British North America Act of 1867 as amended, or of any party state, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

§ 21-0903. Representation on the commission.

In pursuance of article four of the compact there shall be five commissioners. One shall be the Commissioner of Environmental Conservation or, if designated by him, one of his principal deputies. The other four commissioners shall be designated by the Governor to serve at his pleasure. Each commissioner shall have three-fifths of one vote and is hereby given all of the powers conferred on a commissioner by the compact or which shall be necessary or incidental to the performance of his functions as such a commissioner. It is hereby specifically recognized that the interests and activities of the Great Lakes Commission contemplate many aspects of the great lakes and of their relation to the member states. Accordingly, it is declared to be the legislative intent that each of the New York commissioners, and such commissioners as a group, shall confer and consult with all other agencies and officers of the state government whenever appropriate to coordinate or make known the views and policies of such agencies and officers with respect to the work of the commission or the interests of

the state in the great lakes basin.

§ 21-0905. Budget.

1. The Great Lakes Commission shall submit annually to the Commissioner of Environmental Conservation, in accordance with the laws and practice of this state, for study and consideration by such commissioner, an estimate of moneys required to administer, manage and support the commission during the ensuing fiscal year. Such estimate shall include any requests for appropriation of funds by New York state and shall be accompanied by a tabulation of similar requests which the commission expects to make to each other member state and the formula or factors upon which such respective requests are based.

2. The Commissioner of Environmental Conservation shall include a suitable item or items of estimated expenditures for the Great Lakes Commission in the budget estimates of his department.

§ 21-0907. Examination of commission accounts.

In accordance with paragraph F of article five of the compact, the state Comptroller is hereby authorized and empowered from time to time to examine the accounts and books of the commission, including its receipts, disbursements and such other items referring to its financial standing as such Comptroller may deem proper and to report the results of such examination to the Governor.

§ 21-0909. Transmittal of documents.

The Secretary of State is hereby authorized and directed to transmit a duly authenticated copy of this title and the act by which it has been added to the Environmental Conservation Law to each jurisdiction party to the compact.

§ 21-0911. Inconsistent provisions.

No provision of the Conservation Law, and no provision of the Environmental Conservation Law, if such provision of the Environmental Conservation Law was derived from a provision of the Conservation Law, which is inconsistent with the provisions of the Great Lakes Basin Compact shall be applicable to the Great Lakes Commission or to any matter governed by the Great Lakes Basin Compact.

§ 21-0913. Appraisal of commission.

On August 15, 1964, and at intervals of four years thereafter, the Commissioner of Environmental Conservation shall evaluate the role of the Great Lakes Commission with respect to the interests of this state in the Great Lakes, and shall report to the commission thereon. The Commissioner of Environmental Conservation shall transmit a copy of such report to the Governor. The Commissioner of Environmental Conservation may make such additional reports to the Great Lakes Commission and the Governor as he deems appropriate.

§ 21-0915. Termination.

In accordance with article eight of the compact, termination of the participation of this state in such compact shall be evidenced by repeal of this title. Notice of intention to withdraw from the compact shall be executed and transmitted by the Governor.

§ 21-0917. The Great Lakes Basin advisory council.

1. As used in this section:

a. "Great Lakes Basin" means the watershed of the Great Lakes and the St. Lawrence River, upstream from Trois Rivieres, Quebec, consisting in

New York State of the Lake Erie, Niagara River, Lake Ontario minor tributaries, Genesee River, Seneca-Oneida Oswego River, Black River, St. Lawrence River, and Lake Champlain drainage basins.

b. "Great Lakes region" means the geographic region composed of the states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio and Wisconsin, the commonwealth of Pennsylvania, and the provinces of Ontario and Quebec, Canada.

2. There is hereby established within the department the Great Lakes Basin advisory council (hereinafter referred to as the "council") consisting of nineteen members to advise the governor and the commissioner on matters relating to the state's role in regional, federal, and international activities aimed at the protection of the quality and quantity of water in the Great Lakes, domestic, municipal, industrial and agricultural water supplies, navigation, hydroelectric power and energy production, recreation, fish and wildlife habitat, and a balanced ecosystem which are all vital to the future environmental, social, and economic health of New York State and the other states and provinces comprising the Great Lakes region.

a. The council shall:

(i) advise the commissioner and the governor on the implementation and any modifications to any comprehensive long-term Great Lakes management plan developed by the department;

(ii) advise the state's members on the board of directors of the Great Lakes protection fund;

(iii) annually identify specific research or program needs for funding from the New York Great Lakes protection fund, after consultation with the Great Lakes protection fund, other Great Lakes states and other concerned parties. Such annual program, with as much detail on the scope and expectations of each project as is practical, shall be submitted to the commissioner, who shall select specific projects from the program, recommended by the council and shall submit such projects to the department for implementation; and

(iv) evaluate and report to the governor and the legislature on the projects funded by the New York Great Lakes protection fund.

b. The governor shall appoint nine members with one representing an institution that performs research on the issues and the problems of the Great Lakes, one representing a labor union whose members derive their livelihood from the Great Lakes, three representing environmental or conservation organizations with interests in the Great Lakes Basin, two representing business organizations whose commercial interest lies in activities in or around Lake Ontario, Lake Erie and/or the St. Lawrence River, one representing a municipality adjacent to Lake Erie, Lake Ontario or the St. Lawrence River, and one representing a county having a population of two hundred and fifty thousand people or less adjacent to Lake Erie, Lake Ontario or the St. Lawrence River. The temporary president of the Senate and the speaker of the Assembly shall each appoint two members who have a demonstrated knowledge in Great Lakes issues. The commissioner, the commissioners of the departments of state, health, transportation, economic development and the chairman of the power authority of the state of New York or their designated representative shall be ex-officio members. The appointed members of the council shall serve terms of three years; provided, however, that of the members first appointed by the governor, three shall be appointed for a term of three years, three shall be appointed for a term of two years and three shall be appointed for a term of one year. An appointment to fill a vacancy shall be made for the remainder of the affected term in the same manner as the original appointment was made. Such appointment shall be made within sixty days of the date the position becomes vacant. Members shall serve until their successor has been appointed. The governor shall designate the chairperson.

3. The advisory council shall meet at a minimum of two times annually.

4. Advisory council members shall receive no compensation for their services, but shall be reimbursed for their actual and necessary expenses incurred during the performance of their duties.

5. The council shall submit a report prior to January first beginning in nineteen hundred ninety and annually thereafter to the governor, the speaker of the Assembly, the temporary president of the Senate and the

chairmen of the Senate and Assembly committees on environmental conservation. Such report should include an evaluation of the problems and conditions of the Great Lakes and recommendations for departmental or legislative solutions.

TITLE 10

GREAT LAKES-ST. LAWRENCE RIVER BASIN WATER RESOURCES COMPACT

Section 21-1001. The Great Lakes-St. Lawrence River Basin Water Resources Compact.

21-1003. Rules and regulations.

21-1005. Report and recommendations of department.

21-1007. The Great Lakes Basin advisory council; convening.

21-1009. Grievances.

§ 21-1001. The Great Lakes-St. Lawrence River Basin Water Resources Compact.

GREAT LAKES-ST. LAWRENCE RIVER BASIN WATER RESOURCES COMPACT

ARTICLE 1

SHORT TITLE, DEFINITIONS, PURPOSES AND DURATION

Section 1.1. Short Title. This act shall be known and may be cited as the "Great Lakes-St. Lawrence River Basin Water Resources Compact."

Section 1.2. Definitions. For the purposes of this Compact, and of any supplemental or concurring legislation enacted pursuant thereto, except as may be otherwise required by the context:

Adaptive Management means a Water resources management system that provides a systematic process for evaluation, monitoring and learning from the outcomes of operational programs and adjustment of policies, plans and programs based on experience and the evolution of scientific knowledge concerning Water resources and Water Dependent Natural Resources.

Agreement means the Great Lakes-St. Lawrence River Basin Sustainable

Water Resources Agreement.

Applicant means a Person who is required to submit a Proposal that is subject to management and regulation under this Compact. Application has a corresponding meaning.

Basin or Great Lakes-St. Lawrence River Basin means the watershed of the Great Lakes and the St. Lawrence River upstream from Trois-Rivieres, Quebec within the jurisdiction of the Parties.

Basin Ecosystem or Great Lakes-St. Lawrence River Basin Ecosystem means the interacting components of air, land, water and living organisms, including humankind, within the Basin.

Community within a Straddling County means any incorporated city, town or the equivalent thereof, that is located outside the Basin but wholly within a County that lies partly within the Basin and that is not a Straddling Community.

Compact means this Compact.

Consumptive Use means that portion of the water withdrawn or withheld from the Basin that is lost or otherwise not returned to the Basin due to evaporation, incorporation into products, or other processes.

Council means the Great Lakes-St. Lawrence River Basin Water Resources Council, created by this Compact.

Council Review means the collective review by the Council members as described in article 4 of this Compact.

County means the largest territorial division for local government in a State. The County boundaries shall be defined as those boundaries that exist as of December 13, 2005.

Cumulative Impacts mean the impact on the Basin Ecosystem that results from incremental effects of all aspects of a withdrawal, diversion or

Consumptive Use in addition to other past, present, and reasonably foreseeable future Withdrawals, Diversions and Consumptive Uses regardless of who undertakes the other Withdrawals, Diversions and Consumptive Uses. Cumulative Impacts can result from individually minor but collectively significant Withdrawals, Diversions and Consumptive Uses taking place over a period of time.

Decision-Making Standard means the decision-making standard established by Section 4.11 for Proposals subject to management and regulation in Section 4.10.

Diversion means a transfer of Water from the Basin into another watershed, or from the watershed of one of the Great Lakes into that of another by any means of transfer, including but not limited to a pipeline, canal, tunnel, aqueduct, channel, modification of the direction of a water course, a tanker ship, tanker truck or rail tanker but does not apply to Water that is used in the Basin or a Great Lake watershed to manufacture or produce a Product that is then transferred out of the Basin or watershed. Divert has a corresponding meaning.

Environmentally Sound and Economically Feasible Water Conservation Measures mean those measures, methods, technologies or practices for efficient water use and for reduction of water loss and waste or for reducing a Withdrawal, Consumptive Use or Diversion that (i) are environmentally sound, (ii) reflect best practices applicable to the water use sector, (iii) are technically feasible and available, (iv) are economically feasible and cost effective based on an analysis that considers direct and avoided economic and environmental costs and (v) consider the particular facilities and processes involved, taking into account the environmental impact, age of equipment and facilities involved, the processes employed, energy impacts and other appropriate factors.

Exception means a transfer of Water that is excepted under Section 4.9 from the prohibition against Diversions in Section 4.8.

Exception Standard means the standard for Exceptions established in

Section 4.9.4.

Intra-Basin Transfer means the transfer of Water from the watershed of one of the Great Lakes into the watershed of another Great Lake.

Measures means any legislation, law, regulation, directive, requirement, guideline, program, policy, administrative practice or other procedure.

New or Increased Diversion means a new Diversion, an increase in an existing Diversion, or the alteration of an existing Withdrawal so that it becomes a Diversion.

New or Increased Withdrawal or Consumptive Use means a new Withdrawal or Consumptive Use or an increase in an existing Withdrawal or Consumptive Use.

Originating Party means the Party within whose jurisdiction an Application or registration is made or required.

Party means a State party to this Compact.

Person means a human being or a legal person, including a government or a non-governmental organization, including any scientific, professional, business, non-profit, or public interest organization or association that is neither affiliated with, nor under the direction of a government.

Product means something produced in the Basin by human or mechanical effort or through agricultural processes and used in manufacturing, commercial or other processes or intended for intermediate or end use consumers. (i) Water used as part of the packaging of a Product shall be considered to be part of the Product. (ii) Other than Water used as part of the packaging of a Product, Water that is used primarily to transport materials in or out of the Basin is not a Product or part of a Product. (iii) Except as provided in (i) above, Water which is transferred as part of a public or private supply is not a Product or part of a

Product. (iv) Water in its natural state such as in lakes, rivers, reservoirs, aquifers, or water basins is not a Product.

Proposal means a Withdrawal, Diversion or Consumptive Use of Water that is subject to this Compact.

Province means Ontario or Quebec.

Public Water Supply Purposes means water distributed to the public through a physically connected system of treatment, storage and distribution facilities serving a group of largely residential customers that may also serve industrial, commercial, and other institutional operators. Water Withdrawn directly from the Basin and not through such a system shall not be considered to be used for Public Water Supply Purposes.

Regional Body means the members of the Council and the Premiers of Ontario and Quebec or their designee as established by the Agreement.

Regional Review means the collective review by the Regional Body as described in Article 4 of this Compact.

Source Watershed means the watershed from which a Withdrawal originates. If Water is Withdrawn directly from a Great Lake or from the St. Lawrence River, then the Source Watershed shall be considered to be the watershed of that Great Lake or the watershed of the St. Lawrence River, respectively. If Water is Withdrawn from the watershed of a stream that is a direct tributary to a great lake or a direct tributary to the St. Lawrence River, then the Source Watershed shall be considered to be the watershed of that Great Lake or the watershed of the St. Lawrence River, respectively, with a preference to the direct tributary stream watershed from which it was Withdrawn.

Standard of Review and Decision means the Exception Standard, Decision-Making Standard and reviews as outlined in Article 4 of this Compact.

State means one of the states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio or Wisconsin or the Commonwealth of Pennsylvania.

Straddling Community means any incorporated city, town or the equivalent thereof, wholly within any County that lies partly or completely within the Basin, whose corporate boundary existing as of the effective date of this Compact, is partly within the Basin or partly within two Great Lakes watersheds.

Technical Review means a detailed review conducted to determine whether or not a Proposal that requires Regional Review under this Compact meets the Standard of Review and Decision following procedures and guidelines as set out in this Compact.

Water means ground or surface water contained within the Basin.

Water Dependent Natural Resources means the interacting components of land, Water and living organisms affected by the Waters of the Basin.

Waters of the Basin or Basin Water means the Great Lakes and all streams, rivers, lakes, connecting channels and other bodies of water, including tributary groundwater, within the Basin.

Withdrawal means the taking of water from surface water or groundwater. Withdraw has a corresponding meaning.

Section 1.3. Findings and Purposes.

The legislative bodies of the respective Parties hereby find and declare:

1. Findings:

a. The Waters of the Basin are precious public natural resources shared and held in trust by the States;

b. The Waters of the Basin are interconnected and part of a single hydrologic system;

c. The Waters of the Basin can concurrently serve multiple uses. Such multiple uses include municipal, public, industrial, commercial, agriculture, mining, navigation, energy development and production, recreation, the subsistence, economic and cultural activities of native peoples, water quality maintenance, and the maintenance of fish and wildlife habitat and a balanced ecosystem. And, other purposes are encouraged, recognizing that such uses are interdependent and must be balanced;

d. Future Diversions and Consumptive Uses of Basin Water resources have the potential to significantly impact the environment, economy and welfare of the Great Lakes-St. Lawrence River region;

e. Continued sustainable, accessible and adequate water supplies for the people and economy of the Basin are of vital importance; and,

f. The Parties have a shared duty to protect, conserve, restore, improve and manage the renewable but finite Waters of the Basin for the use, benefit and enjoyment of all their citizens, including generations yet to come. The most effective means of protecting, conserving, restoring, improving and managing the Basin Waters is through the joint pursuit of unified and cooperative principles, policies and programs mutually agreed upon, enacted and adhered to by all Parties.

2. Purposes:

a. To act together to protect, conserve, restore, improve and effectively manage the Waters and Water Dependent Natural Resources of the Basin under appropriate arrangements for intergovernmental cooperation and consultation because current lack of full scientific certainty should not be used as a reason for postponing measures to protect the Basin Ecosystem;

b. To remove causes of present and future controversies;

c. To provide for cooperative planning and action by the Parties with respect to such Water resources;

d. To facilitate consistent approaches to Water management across the Basin while retaining State management authority over Water management decisions within the Basin;

e. To facilitate the exchange of data, strengthen the scientific information base upon which decisions are made and engage in consultation on the potential effects of proposed Withdrawals and losses on the Waters and Water Dependent Natural Resources of the Basin;

f. To prevent significant adverse impacts of Withdrawals and losses on the Basin's ecosystems and watersheds;

g. To promote interstate and State-Provincial comity; and,

h. To promote an Adaptive Management approach to the conservation and management of Basin Water resources, which recognizes, considers and provides adjustments for the uncertainties in, and evolution of, scientific knowledge concerning the Basin's Waters and Water Dependent Natural Resources.

Section 1.4. Science. 1. The Parties commit to provide leadership for the development of a collaborative strategy with other regional partners to strengthen the scientific basis for sound Water management decision making under this Compact.

2. The strategy shall guide the collection and application of scientific information to support:

a. An improved understanding of the individual and Cumulative Impacts of Withdrawals from various locations and Water sources on the Basin Ecosystem and to develop a mechanism by which impacts of Withdrawals may be assessed;

b. The periodic assessment of Cumulative Impacts of Withdrawals, Diversions and Consumptive Uses on a Great Lake and St. Lawrence River watershed basis;

c. Improved scientific understanding of the Waters of the Basin;

d. Improved understanding of the role of groundwater in Basin Water resources management; and,

e. The development, transfer and application of science and research related to Water conservation and Water use efficiency.

ARTICLE 2 ORGANIZATION

Section 2.1. Council Created.

The Great Lakes-St. Lawrence River Basin Water Resources Council is hereby created as a body politic and corporate, with succession for the duration of this Compact, as an agency and instrumentality of the governments of the respective Parties.

Section 2.2. Council membership.

The Council shall consist of the Governors of the Parties, ex officio.

Section 2.3. Alternates.

Each member of the Council shall appoint at least one alternate who may act in his or her place and stead, with authority to attend all meetings of the Council and with power to vote in the absence of the member. Unless otherwise provided by law of the Party for which he or she is appointed, each alternate shall serve during the term of the member appointing him or her, subject to removal at the pleasure of the member. In the event of a vacancy in the office of alternate, it shall be filled in the same manner as an original appointment for the unexpired term only.

Section 2.4. Voting.

1. Each member is entitled to one vote on all matters that may come before the Council.
2. Unless otherwise stated, the rule of decision shall be by a simple majority.
3. The Council shall annually adopt a budget for each fiscal year and the amount required to balance the budget shall be apportioned equitably among the Parties by unanimous vote of the Council. The appropriation of such amounts shall be subject to such review and approval as may be required by the budgetary processes of the respective Parties.
4. The participation of Council members from a majority of the Parties shall constitute a quorum for the transaction of business at any meeting of the Council.

Section 2.5. Organization and Procedure.

The Council shall provide for its own organization and procedure, and may adopt rules and regulations governing its meetings and transactions, as well as the procedures and timeline for submission, review and consideration of Proposals that come before the Council for its review and action. The Council shall organize, annually, by the election of a Chair and Vice Chair from among its members. Each member may appoint an advisor, who may attend all meetings of the Council and its committees, but shall not have voting power. The Council may employ or appoint professional and administrative personnel, including an Executive Director, as it may deem advisable, to carry out the purposes of this Compact.

Section 2.6. Use of Existing Offices and Agencies.

It is the policy of the Parties to preserve and utilize the functions, powers and duties of existing offices and agencies of government to the extent consistent with this Compact. Further, the Council shall promote

and aid the coordination of the activities and programs of the Parties concerned with Water resources management in the Basin. To this end, but without limitation, the Council may:

1. Advise, consult, contract, assist or otherwise cooperate with any and all such agencies;
2. Employ any other agency or instrumentality of any of the Parties for any purpose; and,
3. Develop and adopt plans consistent with the Water resources plans of the Parties.

Section 2.7. Jurisdiction.

The Council shall have, exercise and discharge its functions, powers and duties within the limits of the Basin. Outside the Basin, it may act in its discretion, but only to the extent such action may be necessary or convenient to effectuate or implement its powers or responsibilities within the Basin and subject to the consent of the jurisdiction wherein it proposes to act.

Section 2.8. Status, Immunities and Privileges.

1. The Council, its members and personnel in their official capacity and when engaged directly in the affairs of the Council, its property and its assets, wherever located and by whomsoever held, shall enjoy the same immunity from suit and every form of judicial process as is enjoyed by the Parties, except to the extent that the Council may expressly waive its immunity for the purposes of any proceedings or by the terms of any contract.

2. The property and assets of the Council, wherever located and by whomsoever held, shall be considered public property and shall be immune from search, requisition, confiscation, expropriation or any other form of taking or foreclosure by executive or legislative action.

3. The Council, its property and its assets, income and the operations it carries out pursuant to this Compact shall be immune from all taxation by or under the authority of any of the Parties or any political subdivision thereof; provided, however, that in lieu of property taxes the Council may make reasonable payments to local taxing districts in annual amounts which shall approximate the taxes lawfully assessed upon similar property.

Section 2.9. Advisory Committees.

The Council may constitute and empower advisory committees, which may be comprised of representatives of the public and of federal, State, tribal, county and local governments, water resources agencies, water-using industries and sectors, water-interest groups and academic experts in related fields.

ARTICLE 3 GENERAL POWERS AND DUTIES

Section 3.1. General.

The Waters and Water Dependent Natural Resources of the Basin are subject to the sovereign right and responsibilities of the Parties, and it is the purpose of this Compact to provide for joint exercise of such powers of sovereignty by the Council in the common interests of the people of the region, in the manner and to the extent provided in this Compact. The Council and the Parties shall use the Standard of Review and Decision and procedures contained in or adopted pursuant to this Compact as the means to exercise their authority under this Compact.

The Council may revise the Standard of Review and Decision, after consultation with the Provinces and upon unanimous vote of all Council members, by regulation duly adopted in accordance with Section 3.3 of this Compact and in accordance with each Party's respective statutory authorities and applicable procedures.

The Council shall identify priorities and develop plans and policies relating to Basin Water resources. It shall adopt and promote uniform

and coordinated policies for Water resources conservation and management in the Basin.

Section 3.2. Council Powers.

The Council may: plan; conduct research and collect, compile, analyze, interpret, report and disseminate data on Water resources and uses; forecast Water levels; conduct investigations; institute court actions; design, acquire, construct, reconstruct, own, operate, maintain, control, sell and convey real and personal property and any interest therein as it may deem necessary, useful or convenient to carry out the purposes of this Compact; make contracts; receive and accept such payments, appropriations, grants, gifts, loans, advances and other funds, properties and services as may be transferred or made available to it by any Party or by any other public or private agency, corporation or individual; and, exercise such other and different powers as may be delegated to it by this Compact or otherwise pursuant to law, and have and exercise all powers necessary or convenient to carry out its express powers or which may be reasonably implied therefrom.

Section 3.3. Rules and Regulations.

1. The Council may promulgate and enforce such rules and regulations as may be necessary for the implementation and enforcement of this Compact. The Council may adopt by regulation, after public notice and public hearing, reasonable Application fees with respect to those Proposals for Exceptions that are subject to Council review under Section 4.9. Any rule or regulation of the Council, other than one which deals solely with the internal management of the Council or its property, shall be adopted only after public notice and hearing.

2. Each Party, in accordance with its respective statutory authorities and applicable procedures, may adopt and enforce rules and regulations to implement and enforce this Compact and the programs adopted by such Party to carry out the management programs contemplated by this Compact.

Section 3.4. Program Review and Findings.

1. Each Party shall submit a report to the Council and the Regional Body detailing its Water management and conservation and efficiency programs that implement this Compact. The report shall set out the manner in which Water Withdrawals are managed by sector, Water source, quantity or any other means, and how the provisions of the Standard of Review and Decision and conservation and efficiency programs are implemented. The first report shall be provided by each Party one year from the effective date of this Compact and thereafter every 5 years.

2. The Council, in cooperation with the Provinces, shall review its Water management and conservation and efficiency programs and those of the Parties that are established in this Compact and make findings on whether the Water management program provisions in this Compact are being met, and if not, recommend options to assist the Parties in meeting the provisions of this Compact. Such review shall take place:

- a. 30 days after the first report is submitted by all Parties; and,
- b. Every five years after the effective date of this Compact; and,
- c. At any other time at the request of one of the Parties.

3. As one of its duties and responsibilities, the Council may recommend a range of approaches to the Parties with respect to the development, enhancement and application of Water management and conservation and efficiency programs to implement the Standard of Review and Decision reflecting improved scientific understanding of the Waters of the Basin, including groundwater, and the impacts of Withdrawals on the Basin Ecosystem.

ARTICLE 4

WATER MANAGEMENT AND REGULATION

Section 4.1. Water Resources Inventory, Registration and Reporting.

1. Within five years of the effective date of this Compact, each Party shall develop and maintain a Water resources inventory for the

collection, interpretation, storage, retrieval, exchange, and dissemination of information concerning the Water resources of the Party, including, but not limited to, information on the location, type, quantity, and use of those resources and the location, type, and quantity of Withdrawals, Diversions and Consumptive Uses. To the extent feasible, the Water resources inventory shall be developed in cooperation with local, State, federal, tribal and other private agencies and entities, as well as the Council. Each Party's agencies shall cooperate with that Party in the development and maintenance of the inventory.

2. The Council shall assist each Party to develop a common base of data regarding the management of the Water Resources of the Basin and to establish systematic arrangements for the exchange of those data with other States and Provinces.

3. To develop and maintain a compatible base of Water use information, within five years of the effective date of this Compact any Person who Withdraws Water in an amount of 100,000 gallons per day or greater average in any 30-day period (including Consumptive Uses) from all sources, or Diverts Water of any amount, shall register the Withdrawal or Diversion by a date set by the Council unless the Person has previously registered in accordance with an existing State program. The Person shall register the Withdrawal or Diversion with the Originating Party using a form prescribed by the Originating Party that shall include, at a minimum and without limitation: the name and address of the registrant and date of registration; the locations and sources of the Withdrawal or Diversion; the capacity of the Withdrawal or Diversion per day and the amount Withdrawn or Diverted from each source; the uses made of the Water; places of use and places of discharge; and, such other information as the Originating Party may require. All registrations shall include an estimate of the volume of the Withdrawal or Diversion in terms of gallons per day average in any 30-day period.

4. All registrants shall annually report the monthly volumes of the Withdrawal, Consumptive Use and Diversion in gallons to the Originating Party and any other information requested by the Originating Party.

5. Each Party shall annually report the information gathered pursuant to this Section to a Great Lakes - St. Lawrence River Water use data base repository and aggregated information shall be made publicly available, consistent with the confidentiality requirements in Section 8.3.

6. Information gathered by the Parties pursuant to this Section shall be used to improve the sources and applications of scientific information regarding the Waters of the Basin and the impacts of the Withdrawals and Diversions from various locations and Water sources on the Basin Ecosystem, and to better understand the role of groundwater in the Basin. The Council and the Parties shall coordinate the collection and application of scientific information to further develop a mechanism by which individual and Cumulative Impacts of Withdrawals, Consumptive Uses and Diversions shall be assessed.

Section 4.2. Water Conservation and Efficiency Programs.

1. The Council commits to identify, in cooperation with the Provinces, Basin-wide Water conservation and efficiency objectives to assist the Parties in developing their Water conservation and efficiency program. These objectives are based on the goals of:

a. Ensuring improvement of the Waters and Water Dependent Natural Resources;

b. Protecting and restoring the hydrologic and ecosystem integrity of the Basin;

c. Retaining the quantity of surface water and groundwater in the Basin;

d. Ensuring sustainable use of Waters of the Basin; and,

e. Promoting the efficiency of use and reducing losses and waste of Water.

2. Within two years of the effective date of this Compact, each Party shall develop its own Water conservation and efficiency goals and objectives consistent with the Basin-wide goals and objectives, and shall develop and implement a Water conservation and efficiency program, either voluntary or mandatory, within its jurisdiction based on the Party's goals and objectives. Each Party shall annually assess its programs in meeting the Party's goals and objectives, report to the Council and the Regional Body and make this annual assessment available to the public.

3. Beginning five years after the effective date of this Compact, and every five years thereafter, the Council, in cooperation with the Provinces, shall review and modify as appropriate the Basin-wide objectives, and the Parties shall have regard for any such modifications in implementing their programs. This assessment will be based on examining new technologies, new patterns of Water use, new resource demands and threats, and Cumulative Impact assessment under Section 4.15.

4. Within two years of the effective date of this Compact, the Parties commit to promote Environmentally Sound and Economically Feasible Water Conservation Measures such as:

- a. Measures that promote efficient use of Water;
- b. Identification and sharing of best management practices and state of the art conservation and efficiency technologies;
- c. Application of sound planning principles;
- d. Demand-side and supply-side Measures or incentives; and,
- e. Development, transfer and application of science and research.

5. Each Party shall implement in accordance with Paragraph 2 a voluntary or mandatory Water conservation program for all, including

existing, Basin Water users. Conservation programs need to adjust to new demands and the potential impacts of cumulative effects and climate.

Section 4.3. Party Powers and Duties.

1. Each Party, within its jurisdiction, shall manage and regulate New or Increased Withdrawals, Consumptive Uses and Diversions, including Exceptions, in accordance with this Compact.

2. Each Party shall require an Applicant to submit an Application in such manner and with such accompanying information as the Party shall prescribe.

3. No Party may approve a Proposal if the Party determines that the Proposal is inconsistent with this Compact or the Standard of Review and Decision or any implementing rules or regulations promulgated thereunder. The Party may approve, approve with modifications or disapprove any Proposal depending on the Proposal's consistency with this Compact and the Standard of Review and Decision.

4. Each Party shall monitor the implementation of any approved Proposal to ensure consistency with the approval and may take all necessary enforcement actions.

5. No Party shall approve a Proposal subject to Council or Regional Review, or both, pursuant to this Compact unless it shall have been first submitted to and reviewed by either the Council or Regional Body, or both, and approved by the council, as applicable. Sufficient opportunity shall be provided for comment on the Proposal's consistency with this Compact and the Standard of Review and Decision. All such comments shall become part of the Party's formal record of decision, and the Party shall take into consideration any such comments received.

Section 4.4. Requirement for Originating Party Approval.

No Proposal subject to management and regulation under this Compact shall hereafter be undertaken by any Person unless it shall have been

approved by the Originating Party.

Section 4.5. Regional Review.

1. General.

a. It is the intention of the Parties to participate in Regional Review of Proposals with the Provinces, as described in this Compact and the Agreement.

b. Unless the Applicant or the Originating Party otherwise requests, it shall be the goal of the Regional Body to conclude its review no later than 90 days after notice under Section 4.5.2 of such Proposal is received from the Originating Party.

c. Proposals for Exceptions subject to Regional Review shall be submitted by the Originating Party to the Regional Body for Regional Review, and where applicable, to the Council for concurrent review.

d. The Parties agree that the protection of the integrity of the Great Lakes - St. Lawrence River Basin ecosystem shall be the overarching principle for reviewing Proposals subject to Regional Review, recognizing uncertainties with respect to demands that may be placed on Basin Water, including groundwater, levels and flows of the Great Lakes and the St. Lawrence River, future changes in environmental conditions, the reliability of existing data and the extent to which Diversions may harm the integrity of the Basin Ecosystem.

e. The Originating Party shall have lead responsibility for coordinating information for resolution of issues related to evaluation of a Proposal, and shall consult with the Applicant throughout the Regional Review Process.

f. A majority of the members of the Regional Body may request Regional review of a regionally significant or potentially precedent setting Proposal. Such Regional Review must be conducted, to the extent possible, within the time frames set forth in this Section. Any such

Regional Review shall be undertaken only after consulting the Applicant.

2. Notice from Originating Party to the Regional Body.

a. The Originating Party shall determine if a Proposal is subject to Regional Review. If so, the Originating Party shall provide timely notice to the Regional Body and the public.

b. Such notice shall not be given unless and until all information, documents and the Originating Party's Technical Review needed to evaluate whether the Proposal meets the Standard of Review and Decision have been provided.

c. An Originating Party may:

i. Provide notice to the Regional Body of an Application, even if notification is not required; or,

ii. Request Regional Review of an application, even if Regional Review is not required. Any such Regional Review shall be undertaken only after consulting the Applicant.

d. An Originating Party may provide preliminary notice of a potential Proposal.

3. Public Participation.

a. To ensure adequate public participation, the Regional Body shall adopt procedures for the review of Proposals that are subject to Regional Review in accordance with this Article.

b. The Regional Body shall provide notice to the public of Proposal undergoing Regional Review. Such notice shall indicate that the public has an opportunity to comment in writing to the Regional Body on whether the Proposal meets the Standard of Review and Decision.

c. The Regional Body shall hold a public meeting in the State or

Province of the Originating Party in order to receive public comment on the issue of whether the Proposal under consideration meets the Standard of Review and Decision.

d. The Regional Body shall consider the comments received before issuing a Declaration of Finding.

e. The Regional Body shall forward the comments it receives to the Originating Party.

4. Technical Review.

a. The Originating Party shall provide the Regional Body with its Technical Review of the Proposal under consideration.

b. The Originating Party's Technical Review shall thoroughly analyze the Proposal and provide an evaluation of the Proposal sufficient for a determination of whether the Proposal meets the Standard of Review and Decision.

c. Any member of the Regional Body may conduct their own Technical Review of any Proposal subject to Regional Review.

d. At the request of the majority of its members, the Regional Body shall make such arrangements as it considers appropriate for an independent Technical Review of a Proposal.

e. All Parties shall exercise their best efforts to ensure that a Technical Review undertaken under Sections 4.5.4.c and 4.5.4.d does not unnecessarily delay the decision by the Originating Party on the Application. Unless the Applicant or the Originating Party otherwise requests, all Technical Reviews shall be completed no later than 60 days after the date the notice of the Proposal was given to the Regional Body.

5. Declaration of Finding.

a. The Regional Body shall meet to consider a Proposal. The Applicant shall be provided with an opportunity to present the Proposal to the Regional Body at such time.

b. The Regional Body, having considered the notice, the Originating Party's Technical Review, any other independent Technical Review that is made, any comments or objections including the analysis of comments made by the public, First Nations and federally recognized Tribes, and any other information that is provided under this Compact shall issue a Declaration of Finding that the Proposal under consideration:

i. Meets the Standard of Review and Decision;

ii. Does not meet the Standard of Review and Decision; or,

iii. Would meet the Standard of Review and Decision if certain conditions were met.

c. An Originating Party may decline to participate in a Declaration of Finding made by the Regional Body.

d. The Parties recognize and affirm that it is preferable for all members of the Regional Body to agree whether the Proposal meets the Standard of Review and Decision.

e. If the members of the Regional Body who participate in the Declaration of Finding all agree, they shall issue a written Declaration of Finding with consensus.

f. In the event that the members cannot agree, the Regional Body shall make every reasonable effort to achieve consensus within 25 days.

g. Should consensus not be achieved, the Regional Body may issue a Declaration of Finding that presents different points of view and indicates each Party's conclusions.

h. The Regional Body shall release the Declarations of Finding to the

public.

i. The Originating Party and the Council shall consider the Declaration of Finding before making a decision on the Proposal.

Section 4.6. Proposals Subject to Prior Notice.

1. Beginning no later than five years of the effective date of this Compact, the Originating Party shall provide all Parties and the Provinces with detailed and timely notice and an opportunity to comment within 90 days on any Proposal for a New or Increased Consumptive Use of 5 million gallons per day or greater average in any 90-day period. Comments shall address whether or not the Proposal is consistent with the Standard of Review and Decision. The Originating Party shall provide a response to any such comment received from another Party.

2. A Party may provide notice, an opportunity to comment and a response to comments even if this is not required under Paragraph 1 of this Section. Any provision of such notice and opportunity to comment shall be undertaken only after consulting the Applicant.

Section 4.7. Council Actions.

1. Proposals for Exceptions subject to Council Review shall be submitted by the Originating Party to the Council for Council Review, and where applicable, to the Regional Body for concurrent review.

2. The Council shall review and take action on Proposals in accordance with this Compact and the Standard of Review and Decision. The Council shall not take action on a Proposal subject to Regional Review pursuant to this Compact unless the Proposal shall have been first submitted to and reviewed by the Regional Body. The Council shall consider any findings resulting from such review.

Section 4.8. Prohibition of New or Increased Diversions.

All New or Increased Diversions are prohibited, except as provided for

in this Article.

Section 4.9. Exceptions to the Prohibition of Diversions.

1. Straddling Communities. A Proposal to transfer Water to an area within a Straddling Community but outside the Basin or outside the source great lake Watershed shall be excepted from the prohibition against Diversions and be managed and regulated by the Originating Party provided that, regardless of the volume of Water transferred, all the Water so transferred shall be used solely for Public Water Supply Purposes within the Straddling Community, and:

a. All Water Withdrawn from the Basin shall be returned, either naturally or after use, to the Source Watershed less an allowance for Consumptive Use. No surface water or groundwater from outside the Basin may be used to satisfy any portion of this criterion except if it:

i. Is part of a water supply or wastewater treatment system that combines water from inside and outside of the Basin;

ii. Is treated to meet applicable water quality discharge standards and to prevent the introduction of invasive species into the Basin;

iii. Maximizes the portion of water returned to the Source Watershed as Basin Water and minimizes the surface water or groundwater from outside the Basin;

b. If the Proposal results from a New or Increased Withdrawal of 100,000 gallons per day or greater average over any 90-day period, the Proposal shall also meet the Exception Standard; and

c. If the Proposal results in a New or Increased Consumptive Use of 5 million gallons per day or greater average over any 90-day period, the Proposal shall also undergo Regional Review.

2. Intra-Basin Transfer. A Proposal for an Intra-Basin Transfer that would be considered a Diversion under this Compact, and not already

excepted pursuant to Paragraph 1 of this Section, shall be excepted from the prohibition against Diversions, provided that:

a. If the Proposal results from a New or Increased Withdrawal less than 100,000 gallons per day average over any 90-day period, the Proposal shall be subject to management and regulation at the discretion of the Originating Party.

b. If the Proposal results from a New or Increased Withdrawal 100,000 gallons per day or greater average over any 90-day period and if the Consumptive Use resulting from the Withdrawal is less than five million gallons per day average over any 90-day period:

i. The Proposal shall meet the Exception Standard and be subject to management and regulation by the Originating Party, except that the Water may be returned to another Great Lake watershed rather than the Source Watershed;

ii. The Applicant shall demonstrate that there is no feasible, cost effective, and environmentally sound water supply alternative within the Great Lake watershed to which the Water will be transferred, including conservation of existing water supplies; and,

iii. The Originating Party shall provide notice to the other Parties prior to making any decision with respect to the Proposal.

c. If the Proposal results in a New or Increased Consumptive Use of 5 million gallons per day or greater average over any 90-day period:

i. The Proposal shall be subject to management and regulation by the Originating Party and shall meet the Exception Standard, ensuring that Water Withdrawn shall be returned to the Source Watershed;

ii. The Applicant shall demonstrate that there is no feasible, cost effective, and environmentally sound water supply alternative within the great lake watershed to which the Water will be transferred, including conservation of existing water supplies;

iii. The Proposal undergoes Regional Review; and,

iv. The Proposal is approved by the Council. Council approval shall be given unless one or more Council Members vote to disapprove.

3. Straddling Counties. A Proposal to transfer Water to a Community within a Straddling County that would be considered a Diversion under this Compact shall be excepted from the prohibition against Diversions, provided that it satisfies all of the following conditions:

a. The Water shall be used solely for the Public Water Supply Purposes of the Community within a Straddling County that is without adequate supplies of potable water;

b. The Proposal meets the Exception Standard, maximizing the portion of water returned to the Source Watershed as Basin Water and minimizing the surface water or groundwater from outside the Basin;

c. The Proposal shall be subject to management and regulation by the Originating Party, regardless of its size;

d. There is no reasonable water supply alternative within the basin in which the community is located, including conservation of existing water supplies;

e. Caution shall be used in determining whether or not the Proposal meets the conditions for this Exception. This Exception should not be authorized unless it can be shown that it will not endanger the integrity of the Basin Ecosystem;

f. The Proposal undergoes Regional Review; and,

g. The Proposal is approved by the Council. Council approval shall be given unless one or more Council Members vote to disapprove.

A Proposal must satisfy all of the conditions listed above. Further,

substantive consideration will also be given to whether or not the Proposal can provide sufficient scientifically based evidence that the existing water supply is derived from groundwater that is hydrologically interconnected to Waters of the Basin.

4. Exception Standard. Proposals subject to management and regulation in this Section shall be declared to meet this Exception Standard and may be approved as appropriate only when the following criteria are met:

a. The need for all or part of the proposed Exception cannot be reasonably avoided through the efficient use and conservation of existing water supplies;

b. The Exception will be limited to quantities that are considered reasonable for the purposes for which it is proposed;

c. All Water Withdrawn shall be returned, either naturally or after use, to the Source Watershed less an allowance for Consumptive Use. No surface water or groundwater from the outside the Basin may be used to satisfy any portion of this criterion except if it:

i. Is part of a water supply or wastewater treatment system that combines water from inside and outside of the Basin;

ii. Is treated to meet applicable water quality discharge standards and to prevent the introduction of invasive species into the Basin;

d. The Exception will be implemented so as to ensure that it will result in no significant individual or cumulative adverse impacts to the quantity or quality of the Waters and Water Dependent Natural Resources of the Basin with consideration given to the potential Cumulative Impacts of any precedent-setting consequences associated with the Proposal;

e. The Exception will be implemented so as to incorporate Environmentally Sound and Economically Feasible Water Conservation Measures to minimize Water Withdrawals or Consumptive Use;

f. The Exception will be implemented so as to ensure that it is in compliance with all applicable municipal, State and federal laws as well as regional interstate and international agreements, including the Boundary Waters Treaty of 1909; and,

g. All other applicable criteria in Section 4.9 have also been met.

Section 4.10. Management and regulation of New or Increased Withdrawals and Consumptive Uses.

1. Within five years of the effective date of this Compact, each Party shall create a program for the management and regulation of New or Increased Withdrawals and Consumptive Uses by adopting and implementing Measures consistent with the Decision-Making Standard. Each Party, through a considered process, shall set and may modify threshold levels for the regulation of New or Increased Withdrawals in order to assure an effective and efficient Water management program that will ensure that uses overall are reasonable, that Withdrawals overall will not result in significant impacts to the Waters and Water Dependent Natural Resources of the Basin, determined on the basis of significant impacts to the physical, chemical, and biological integrity of Source Watersheds, and that all other objectives of the Compact are achieved. Each Party may determine the scope and thresholds of its program, including which New or Increased Withdrawals and Consumptive Uses will be subject to the program.

2. Any Party that fails to set threshold levels that comply with Section 4.10.1 any time before 10 years after the effective date of this Compact shall apply a threshold level for management and regulation of all New or Increased Withdrawals of 100,000 gallons per day or greater average in any 90 day period.

3. The Parties intend programs for New or Increased Withdrawals and Consumptive Uses to evolve as may be necessary to protect Basin Waters. Pursuant to Section 3.4, the Council, in cooperation with the Provinces, shall periodically assess the Water management programs of the Parties.

Such assessments may produce recommendations for the strengthening of the programs, including without limitation, establishing lower thresholds for management and regulation in accordance with the Decision-Making Standard.

Section 4.11. Decision-Making Standard.

Proposals subject to management and regulation in Section 4.10 shall be declared to meet this Decision-Making Standard and may be approved as appropriate only when the following criteria are met:

1. All Water Withdrawn shall be returned, either naturally or after use, to the Source Watershed less an allowance for Consumptive Use;
2. The Withdrawal or Consumptive Use will be implemented so as to ensure that the Proposal will result in no significant individual or cumulative adverse impacts to the quantity or quality of the Waters and Water Dependent Natural Resources and the applicable Source Watershed;
3. The Withdrawal or Consumptive Use will be implemented so as to incorporate Environmentally Sound and Economically Feasible Water Conservation Measures;
4. The Withdrawal or Consumptive Use will be implemented so as to ensure that it is in compliance with all applicable municipal, State and federal laws as well as regional interstate and international agreements, including the Boundary Waters Treaty of 1909;
5. The proposed use is reasonable, based upon a consideration of the following factors:
 - a. Whether the proposed Withdrawal or Consumptive Use is planned in a fashion that provides for efficient use of the water, and will avoid or minimize the waste of Water;
 - b. If the proposal is for an increased Withdrawal or Consumptive Use, whether efficient use is made of existing water supplies;

c. The balance between economic development, social development and environmental protection of the proposed Withdrawal and use and other existing or planned withdrawals and water uses sharing the water source;

d. The supply potential of the water source, considering quantity, quality, and reliability and safe yield of hydrologically interconnected water sources;

e. The probable degree and duration of any adverse impacts caused or expected to be caused by the proposed Withdrawal and use under foreseeable conditions, to other lawful consumptive or non-consumptive uses of water or to the quantity or quality of the Waters and Water Dependent Natural Resources of the Basin, and the proposed plans and arrangements for avoidance or mitigation of such impacts; and,

f. If a proposal includes restoration of hydrologic conditions and functions of the Source Watershed, the Party may consider that.

Section 4.12. Applicability.

1. Minimum Standard. This Standard of Review and Decision shall be used as a minimum standard. Parties may impose a more restrictive decision-making standard for Withdrawals under their authority. It is also acknowledged that although a Proposal meets the Standard of Review and Decision it may not be approved under the laws of the Originating Party that has implemented more restrictive Measures.

2. Baseline. a. To establish a baseline for determining a New or Increased Diversion, Consumptive Use or Withdrawal, each Party shall develop either or both of the following lists for their jurisdiction:

i. A list of existing Withdrawal approvals as of the effective date of the Compact;

ii. A list of the capacity of existing systems as of the effective date of this Compact. The capacity of the existing systems should be

presented in terms of Withdrawal capacity, treatment capacity, distribution capacity, or other capacity limiting factors. The capacity of the existing systems must represent the state of the systems. Existing capacity determinations shall be based upon approval limits or the most restrictive capacity information.

b. For all purposes of this Compact, volumes of Diversions, Consumptive Uses, or Withdrawals of Water set forth in the list(s) prepared by each Party in accordance with this Section, shall constitute the baseline volume.

c. The list(s) shall be furnished to the Regional Body and the Council within one year of the effective date of this Compact.

3. Timing of Additional Applications. Applications for New or Increased Withdrawals, Consumptive Uses or Exceptions shall be considered cumulatively within ten years of any application.

4. Change of Ownership. Unless a new owner proposes a project that shall result in a Proposal for a new or Increased Diversion or Consumptive Use subject to Regional Review or Council approval, the change of ownership in and of itself shall not require Regional Review or Council approval.

5. Groundwater. The Basin surface water divide shall be used for the purpose of managing and regulating New or Increased Diversions, Consumptive Uses or Withdrawals of surface water and groundwater.

6. Withdrawal Systems. The total volume of surface water and groundwater resources that supply a common distribution system shall determine the volume of a Withdrawal, Consumptive Use or Diversion.

7. Connecting Channels. The watershed of each Great Lake shall include its upstream and downstream connecting channels.

8. Transmission in Water Lines. Transmission of Water within a line that extends outside the Basin as it conveys Water from one point to

another within the Basin shall not be considered a Diversion if none of the Water is used outside the Basin.

9. Hydrologic Units. The Lake Michigan and Lake Huron watersheds shall be considered to be a single hydrologic unit and watershed.

10. Bulk Water Transfer. A Proposal to Withdraw Water and to remove it from the Basin in any container greater than 5.7 gallons shall be treated under this Compact in the same manner as a Proposal for a Diversion. Each Party shall have the discretion, within its jurisdiction, to determine the treatment of Proposals to Withdraw Water and to remove it from the Basin in any container of 5.7 gallons or less.

Section 4.13. Exemptions.

Withdrawals from the Basin for the following purposes are exempt from the requirements of Article 4.

1. To supply vehicles, including vessels and aircraft, whether for the needs of the persons or animals being transported or for ballast or other needs related to the operation of the vehicles.

2. To use in a non-commercial project on a short-term basis for firefighting, humanitarian, or emergency response purposes.

Section 4.14. U.S. Supreme Court Decree: Wisconsin et al. v. Illinois et al.

1. Notwithstanding any terms of this Compact to the contrary, with the exception of Paragraph 5 of this Section, current, New or Increased Withdrawals, Consumptive Uses and Diversions of Basin Water by the State of Illinois shall be governed by the terms of the United States Supreme Court decree in Wisconsin et al. v. Illinois et al. and shall not be subject to the terms of this Compact nor any rules or regulations promulgated pursuant to this Compact. This means that, with the exception of Paragraph 5 of this Section, for purposes of this Compact, current, New or Increased Withdrawals, Consumptive Uses and Diversions

of Basin Water within the State of Illinois shall be allowed unless prohibited by the terms of the United States Supreme Court decree in *Wisconsin et al. v. Illinois et al.*

2. The Parties acknowledge that the United States Supreme Court decree in *Wisconsin et al. v. Illinois et al.* shall continue in full force and effect, that this Compact shall not modify any terms thereof, and that this Compact shall grant the parties no additional rights, obligations, remedies or defenses thereto. The Parties specifically acknowledge that this Compact shall not prohibit or limit the State of Illinois in any manner from seeking additional Basin Water as allowed under the terms of the United States Supreme Court decree in *Wisconsin et al. v. Illinois et al.*, any other party from objecting to any request by the State of Illinois for additional Basin Water under the terms of said decree, or any party from seeking any other type of modification to said decree. If an application is made by any party to the Supreme Court of the United States to modify said decree, the Parties to this Compact who are also parties to the decree shall seek formal input from the Canadian Provinces of Ontario and Quebec, with respect to the proposed modification, use best efforts to facilitate the appropriate participation of said Provinces in the proceedings to modify the decree, and shall not unreasonably impede or restrict such participation.

3. With the exception of Paragraph 5 of this Section, because current, New or Increased Withdrawals, Consumptive Uses and Diversions of Basin Water by the State of Illinois are not subject to the terms of this Compact, the State of Illinois is prohibited from using any term of this Compact, including Section 4.9, to seek New or Increased Withdrawals, Consumptive Uses or Diversions of Basin Water.

4. With the exception of Paragraph 5 of this Section, because Sections 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.9, 4.10, 4.11, 4.12 (Paragraphs 1, 2, 3, 4, 6 and 10 only), and 4.13 of this Compact all relate to current, New or Increased Withdrawals, Consumptive Uses and Diversions of Basin Waters, said provisions do not apply to the State of Illinois. All other provisions of this Compact not listed in the preceding sentence shall apply to the State of Illinois, including the Water Conservation

Programs provision of Section 4.2.

5. In the event of a Proposal for a Diversion of Basin Water for use outside the territorial boundaries of the Parties to this Compact, decisions by the State of Illinois regarding such a Proposal would be subject to all terms of this Compact, except Paragraphs 1, 3 and 4 of this Section.

6. For purposes of the State of Illinois' participation in this Compact, the entirety of this Section 4.14 is necessary for the continued implementation of this Compact and, if severed, this Compact shall no longer be binding on or enforceable by or against the State of Illinois.

Section 4.15. Assessment of Cumulative Impacts.

1. The Parties in cooperation with the Provinces shall collectively conduct within the Basin, on a Lake watershed and St. Lawrence River Basin basis, a periodic assessment of the Cumulative Impacts of Withdrawals, Diversions and Consumptive Uses from the Waters of the Basin, every 5 years or each time the incremental Basin Water losses reach 50 million gallons per day average in any 90-day period in excess of the quantity at the time of the most recent assessment, whichever comes first, or at the request of one or more of the Parties. The assessment shall form the basis for a review of the Standard of Review and Decision, Council and Party regulations and their application. This assessment shall:

a. Utilize the most current and appropriate guidelines for such a review, which may include but not be limited to Council on Environmental Quality and Environment Canada guidelines;

b. Give substantive consideration to climate change or other significant threats to Basin Waters and take into account the current state of scientific knowledge, or uncertainty, and appropriate Measures to exercise caution in cases of uncertainty if serious damage may result;

c. Consider adaptive management principles and approaches, recognizing, considering and providing adjustments for the uncertainties in, and evolution of science concerning the Basin's water resources, watersheds and ecosystems, including potential changes to Basin-wide processes, such as lake level cycles and climate.

2. The Parties have the responsibility of conducting this Cumulative Impact assessment. Applicants are not required to participate in this assessment.

3. Unless required by other statutes, Applicants are not required to conduct a separate cumulative impact assessment in connection with an Application but shall submit information about the potential impacts of a Proposal to the quantity or quality of the Waters and Water Dependent Natural Resources of the applicable Source Watershed. An Applicant may, however, provide an analysis of how their Proposal meets the no significant adverse Cumulative Impact provision of the Standard of Review and Decision.

ARTICLE 5 TRIBAL CONSULTATION

Section 5.1. Consultation with Tribes.

1. In addition to all other opportunities to comment pursuant to Section 6.2, appropriate consultations shall occur with federally recognized Tribes in the Originating Party for all Proposals subject to Council or Regional Review pursuant to this Compact. Such consultations shall be organized in the manner suitable to the individual Proposal and the laws and policies of the Originating Party.

2. All federally recognized Tribes within the Basin shall receive reasonable notice indicating that they have an opportunity to comment in writing to the Council or the Regional Body, or both, and other relevant organizations on whether the Proposal meets the requirements of the Standard of Review and Decision when a Proposal is subject to Regional Review or Council approval. Any notice from the Council shall inform the

Tribes of any meeting or hearing that is to be held under Section 6.2 and invite them to attend. The Parties and the Council shall consider the comments received under this Section before approving, approving with modifications or disapproving any Proposal subject to Council or Regional Review.

3. In addition to the specific consultation mechanisms described above, the Council shall seek to establish mutually agreed upon mechanisms or processes to facilitate dialogue with, and input from federally recognized Tribes on matters to be dealt with by the Council; and, the Council shall seek to establish mechanisms and processes with federally recognized Tribes designed to facilitate on-going scientific and technical interaction and data exchange regarding matters falling within the scope of this Compact. This may include participation of tribal representatives on advisory committees established under this Compact or such other processes that are mutually-agreed upon with federally recognized Tribes individually or through duly-authorized intertribal agencies or bodies.

ARTICLE 6

PUBLIC PARTICIPATION

Section 6.1. Meetings, Public Hearings and Records.

1. The Parties recognize the importance and necessity of public participation in promoting management of the Water Resources of the Basin. Consequently, all meetings of the Council shall be open to the public, except with respect to issues of personnel.

2. The minutes of the Council shall be a public record open to inspection at its offices during regular business hours.

Section 6.2. Public Participation.

It is the intent of the Council to conduct public participation processes concurrently and jointly with processes undertaken by the Parties and through Regional Review. To ensure adequate public participation, each Party or the Council shall ensure procedures for the

review of Proposals subject to the Standard of Review and Decision consistent with the following requirements:

1. Provide public notification of receipt of all Applications and a reasonable opportunity for the public to submit comments before Applications are acted upon.
2. Assure public accessibility to all documents relevant to an Application, including public comment received.
3. Provide guidance on standards for determining whether to conduct a public meeting(s) or hearing(s) for an Application, time and place of such a meeting or hearing, and procedures for conducting of the same.
4. Provide the record of decision for public inspection including comments, objections, responses and approvals, approvals with conditions and disapprovals.

ARTICLE 7

DISPUTE RESOLUTION AND ENFORCEMENT

Section 7.1. Good Faith Implementation.

Each of the Parties pledges to support implementation of all provisions of this Compact, and covenants that its officers and agencies shall not hinder, impair, or prevent any other Party carrying out any provision of this Compact.

Section 7.2. Alternative Dispute Resolution.

1. Desiring that this Compact be carried out in full, the Parties agree that disputes between the Parties regarding interpretation, application and implementation of this Compact shall be settled by alternative dispute resolution.

2. The Council, in consultation with the Provinces, shall provide by rule procedures for the resolution of disputes pursuant to this section.

Section 7.3. Enforcement.

1. Any Person aggrieved by any action taken by the Council pursuant to the authorities contained in this Compact shall be entitled to a hearing before the Council. Any Person aggrieved by a Party action shall be entitled to a hearing pursuant to the relevant Party's administrative procedures and laws. After exhaustion of such administrative remedies, (i) any aggrieved Person shall have the right to judicial review of a Council action in the United States District Courts for the District of Columbia or the District Court in which the Council maintains offices, provided such action is commenced within 90 days; and, (ii) any aggrieved Person shall have the right to judicial review of a Party's action in the relevant Party's court of competent jurisdiction, provided that an action or proceeding for such review is commenced within the time frames provided for by the Party's law. For the purposes of this Paragraph, a State or Province is deemed to be an aggrieved Person with respect to any Party action pursuant to this Compact.

2. a. Any Party or the Council may initiate actions to compel compliance with the provisions of this Compact, and the rules and regulations promulgated hereunder by the Council. Jurisdiction over such actions is granted to the court of the relevant Party, as well as the United States District Courts for the District of Columbia and the District Court in which the Council maintains offices. The remedies available to any such court shall include, but not be limited to, equitable relief and civil penalties.

b. Each Party may issue orders within its respective jurisdiction and may initiate actions to compel compliance with the provisions of its respective statutes and regulations adopted to implement the authorities contemplated by this Compact in accordance with the provisions of the laws adopted in each Party's jurisdiction.

3. Any aggrieved Person, Party or the Council may commence a civil action in the relevant Party's courts and administrative systems to compel any Person to comply with this Compact should any such Person, without approval having been given, undertake a New or Increased

Withdrawal, Consumptive Use or Diversion that is prohibited or subject to approval pursuant to this Compact.

a. No action under this subsection may be commenced if:

i. The Originating Party or Council approval for the New or Increased Withdrawal, Consumptive Use or Diversion has been granted; or,

ii. The Originating Party or Council has found that the New or Increased Withdrawal, Consumptive Use or Diversion is not subject to approval pursuant to this Compact.

b. No action under this subsection may be commenced unless:

i. A Person commencing such action has first given 60 days prior notice to the Originating Party, the Council and Person alleged to be in noncompliance; and,

ii. Neither the Originating Party nor the Council has commenced and is diligently prosecuting appropriate enforcement actions to compel compliance with this Compact.

The available remedies shall include equitable relief, and the prevailing or substantially prevailing party may recover the costs of litigation, including reasonable attorney and expert witness fees, whenever the court determines that such an award is appropriate.

4. Each of the Parties may adopt provisions providing additional enforcement mechanisms and remedies including equitable relief and civil penalties applicable within its jurisdiction to assist in the implementation of this Compact.

ARTICLE 8 ADDITIONAL PROVISIONS

Section 8.1. Effect on Existing Rights.

1. Nothing in this Compact shall be construed to affect, limit,

diminish or impair any rights validly established and existing as of the effective date of this Compact under State or federal law governing the Withdrawal of Waters of the Basin.

2. Nothing contained in this Compact shall be construed as affecting or intending to affect or in any way to interfere with the law of the respective Parties relating to common law Water rights.

3. Nothing in this Compact is intended to abrogate or derogate from treaty rights or rights held by any Tribe recognized by the federal government of the United States based upon its status as a Tribe recognized by the federal government of the United States.

4. An approval by a Party or the Council under this Compact does not give any property rights, nor any exclusive privileges, nor shall it be construed to grant or confer any right, title, easement, or interest in, to or over any land belonging to or held in trust by a Party; neither does it authorize any injury to private property or invasion of private rights, nor infringement of federal, State or local laws or regulations; nor does it obviate the necessity of obtaining federal assent when necessary.

Section 8.2. Relationship to Agreements Concluded by the United States of America.

1. Nothing in this Compact is intended to provide nor shall be construed to provide, directly or indirectly, to any Person any right, claim or remedy under any treaty or international agreement nor is it intended to derogate any right, claim, or remedy that already exists under any treaty or international agreement.

2. Nothing in this Compact is intended to infringe nor shall be construed to infringe upon the treaty power of the United States of America, nor shall any term hereof be construed to alter or amend any treaty or term thereof that has been or may hereafter be executed by the United States of America.

3. Nothing in this Compact is intended to affect nor shall be construed to affect the application of the Boundary Waters Treaty of 1909 whose requirements continue to apply in addition to the requirements of this Compact.

Section 8.3. Confidentiality.

1. Nothing in this Compact requires a Party to breach confidentiality obligations or requirements prohibiting disclosure, or to compromise security of commercially sensitive or proprietary information.

2. A Party may take measures, including but not limited to deletion and redaction, deemed necessary to protect any confidential, proprietary or commercially sensitive information when distributing information to other Parties. The Party shall summarize or paraphrase any such information in a manner sufficient for the Council to exercise its authorities contained in this Compact.

Section 8.4. Additional Laws.

Nothing in this Compact shall be construed to repeal, modify or qualify the authority of any Party to enact any legislation or enforce any additional conditions and restrictions regarding the management and regulation of Waters within its jurisdiction.

Section 8.5. Amendments and Supplements.

The provisions of this Compact shall remain in full force and effect until amended by action of the governing bodies of the Parties and consented to and approved by any other necessary authority in the same manner as this Compact is required to be ratified to become effective.

Section 8.6. Severability.

Should a court of competent jurisdiction hold any part of this Compact to be void or unenforceable, it shall be considered severable from those portions of the Compact capable of continued implementation in the

absence of the voided provisions. All other provisions capable of continued implementation shall continue in full force and effect.

Section 8.7. Duration of Compact and Termination.

Once effective, the Compact shall continue in force and remain binding upon each and every Party unless terminated.

This Compact may be terminated at any time by a majority vote of the Parties. In the event of such termination, all rights established under it shall continue unimpaired.

ARTICLE 9 EFFECTUATION

Section 9.1. Repealer.

All acts and parts of acts inconsistent with this act are to the extent of such inconsistency hereby repealed.

Section 9.2. Effectuation by Chief Executive.

The Governor is authorized to take such action as may be necessary and proper in his or her discretion to effectuate the Compact and the initial organization and operation thereunder.

Section 9.3. Entire Agreement.

The parties consider this Compact to be complete and an integral whole. Each provision of this Compact is considered material to the entire Compact, and failure to implement or adhere to any provision may be considered a material breach. Unless otherwise noted in this Compact, any change or amendment made to the Compact by any Party in its implementing legislation or by the U.S. Congress when giving its consent to this Compact is not considered effective unless concurred in by all Parties.

Section 9.4. Effective Date and Execution.

This Compact shall become binding and effective when ratified through concurring legislation by the states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio and Wisconsin and the Commonwealth of Pennsylvania and consented to by the Congress of the United States. This Compact shall be signed and sealed in nine identical original copies by the respective chief executives of the signatory Parties. One such copy shall be filed with the Secretary of State of each of the signatory Parties or in accordance with the laws of the state in which the filing is made, and one copy shall be filed and retained in the archives of the Council upon its organization. The signatures shall be affixed and attested under the following form:

In Witness Whereof, and in evidence of the adoption and enactment into law of this Compact by the legislatures of the signatory parties and consent by the Congress of the United States, the respective Governors do hereby, in accordance with the authority conferred by law, sign this Compact in nine duplicate original copies, attested by the respective Secretaries of State, and have caused the seals of the respective states to be hereunto affixed this_____ day of (month), (year)

§ 21-1003. Rules and regulations.

The department is authorized to promulgate rules and regulations necessary to implement and administer this title.

§ 21-1005. Report and recommendations of department.

The department shall submit to the governor and the legislature on or before the first day of the January next succeeding the approval of the Compact its recommendations for any legislative action deemed by the department advisable, including amendments to the statutes of the state of New York as well as recommendations for rules or regulations which it determines are necessary to carry out the intent and purposes of the Compact. The department shall also, as it deems advisable, submit to the governor and the legislature information on the programs and activities of the Council as they relate to the state of New York.

§ 21-1007. The Great Lakes Basin advisory council; convening.

1. Not later than three months after the effective date of this section, the commissioner shall convene the Great Lakes Basin advisory council pursuant to section 21-0917 of this article.

2. The advisory council shall be convened for the purpose of developing recommendations for legislation, regulations or rules that are necessary to implement and effectuate the requirements and purposes of the Compact. The recommendations shall include, but shall not be limited to the following:

a. the evaluation and recommendations of the threshold levels to be included in the implementing legislation regulation or rules for regulating new or increased water withdrawals in the state;

b. the establishment of a permitting program or alternative programs in order to meet the water management objectives of this state;

c. the development of the state's water conservation and efficiency programs;

d. the method for establishing the baseline for determining a new or increased diversion, consumptive use, or withdrawal pursuant to Section 4.12.2 of the Compact; and

e. the collection and application of scientific information to improve understanding of the waters of the Great Lakes Basin and the impacts of withdrawals and diversions.

3. The advisory council shall present its final recommendations to the governor and the legislature not later than eighteen months after the effective date of this section.

4. The department shall not adopt any rule or regulation pursuant to the Compact prior to advisory council issuing its final recommendations

to the governor and the legislature.

§ 21-1009. Grievances.

1. For the purposes of section 7.3 of the Compact, a person shall be aggrieved only when they have exhausted all rights and remedies afforded pursuant to article seventy-eight of the civil practice law and rules and:

a. there is interference with a present use of the water by the complaining person or an interference with the complaining person's present enjoyment of riparian land occurring prior to suit, or which will immediately occur when the withdrawal complained of is begun;

b. a decrease in the market value of the complaining person's interest in riparian land occurring prior to suit or which will immediately occur when the withdrawal complained of is begun, regardless of whether his or her use of the water or enjoyment of riparian land was interfered with prior to suit, or will be immediately interfered with when the withdrawal complained of is begun; or

c. the complaining person is an applicant, and the complaining person's application is denied or modified in whole or in part.

2. Nothing contained in this section shall, however, be construed as depriving any person of any remedy either at law or in equity, which he or she now has, or may hereafter acquire, under the laws of this state.

TITLE 11

CHAMPLAIN BASIN COMPACT

Section 21-1101. Champlain basin compact.

21-1103. State member of the basin panel and representative; planning members.

21-1105. Advisors.

21-1107. Cooperative services.

21-1109. Budget.

21-1111. Audit.

21-1113. Inconsistent laws.

§ 21-1101. Champlain basin compact.

The Champlain basin compact as first entered into pursuant to chapter 905 of the laws of 1966, is hereby continued as follows:

THE CHAMPLAIN BASIN COMPACT

ARTICLE 1--PURPOSE

1.1 The signatory parties agree that there is need for a regional intergovernmental forum for consideration of the problems and coordination of governmental activities in the great underdeveloped Champlain Basin.

1.2 The signatory parties recognize the water and related resources of the Champlain Basin as regional assets vested with local, state and national interests for which they have joint responsibility, and that the conservation, utilization, development, management and control of the water and related resources of the Champlain Basin under a comprehensive multi-purpose plan is essential to provide the greatest benefits for the public welfare.

1.3 The signatory parties acknowledge that planning and protection are essential in order to assure orderly development, safeguard the values of the area, and preserve the magnificent beauties and amenities of the great boundary sea of Lake Champlain and its environs, and this need is greatest in the areas most subject to the pressures of urbanization, the counties riparian on Lake Champlain and in particular the lake and its immediate environs.

1.4 To these ends, the signatory parties find that it is essential to establish a joint agency of the signatory parties, with powers sufficient and appropriate:

a) to provide a forum for consultation among and coordination of

governmental agencies in the area.

b) formulate a comprehensive plan and program to effectuate proper management of the water and related resources of the Champlain Basin.

c) encourage and implement planning and protection of values and amenities in the counties riparian on Lake Champlain.

d) consider, formulate and recommend programs and provisions for the protection of the values and amenities of Lake Champlain and its immediate environs; and administer and enforce such programs when authorized by the legislatures of the respective states.

ARTICLE 2--SHORT TITLE, DEFINITIONS

2.1 This act shall be known and may be cited as the Champlain Basin Compact.

2.2 The term "Champlain Region" shall mean the area included within the boundaries of the Champlain Basin.

2.3 The term "Champlain Basin" shall mean Lake Champlain, its tributaries and all land drained by that Lake and its tributaries to whatever extent they lie within the signatory states.

2.4 The term "Champlain Valley" shall mean the area in Vermont contained in the counties of Grand Isle, Franklin, Chittenden, Addison, and those portions of Rutland County which are within the basin, the areas in New York contained in the counties of Clinton, Essex, Warren, and those portions of Washington county which are within the basin.

2.5 The term "Lake Champlain Park" shall mean Lake Champlain, its bays and indentations and shores, and the land and waters in both states contained within one quarter of a mile west of the outside state property line of Interstate 87 from the international boundary to Glens Falls, on the east side contained within one quarter of a mile east of the outside state property lines of Interstate 89 starting at the Canadian border to Burlington, Interstate 189 to South Burlington, U.

S. 7 to Vergennes, 22A to Fairhaven and 4 to Whitehall, provided that with respect to advertising this shall include any structures, displays or devices which can be seen from the lake if they are not otherwise included.

2.6 The term "Lake Champlain" shall include the Lake, its islands, the lands under its waters up to the international boundary and its tributaries up to the boundaries of the Lake Champlain Park.

ARTICLE 3

3.1 The Champlain Basin Compact shall come into effect when enacted by the legislatures of Vermont and New York.

The provisions of Title 1 of Article 6 with respect to water and related resources management and the operation of the Basin panel with respect thereto shall come into effect when enacted by Vermont and New York and Title II of Article 6 shall come into effect when such a title has been enacted by the two states and the Congress has enacted legislation making the United States a signatory party to the provisions of Title II of Article 6 and provided for United States participation in the Basin Panel.

The provisions of Articles 7 and 8, the operation of the Valley Council with respect thereto, and all provisions of the compact except Title II of Article 6 as provided for shall come into effect when enacted by Vermont and New York.

3.2 The province of Quebec and the Government of Canada subject to such arrangements as may be necessary to effect participation under the constitutions of both nations may participate in this agreement or the Basin Panel thereof to that extent and under such terms as may be agreed between such government or governments and the signatory parties.

3.3 The Interstate Commission on the Lake Champlain Basin (Incochamp) is hereby created by the signatory parties as a body politic and corporate, with succession for the duration of this compact, as an agency and instrumentality of those parties. The Commission shall be

composed of six members from each state and when the United States participates in the Basin Panel as a signatory party, a representative of the United States with the following powers and duties.

The states of Vermont and New York, and when the United States participates as a signatory party, the United States of America shall be entitled to a representative on the Basin Panel to act for it in the management of the water and related resources of the Champlain Basin under the provisions of Article 6. In the instance of Vermont and New York, the state member shall be the Governor or a representative designated by the Governor to act for him. The United States representative shall be appointed by the President.

Each state shall name four planning members, and a state legislator from a constituency in the Champlain Basin. These members shall be designated or appointed and serve and be subject to removal as provided in the legislation by which their state enacts this compact.

The representatives of the signatory parties shall exercise the following voting powers in the Commission:

The representative of the United States may participate in all discussions but vote only on all matters with respect to the provisions of Article 6 and the Basin Panel thereof.

The representatives of each state on the Basin Panel may participate in all discussions and vote on all matters.

The planning members may participate in all discussions and vote on all matters except those matters within the purview of the Basin Panel as embodied in Article 6 of this compact. The legislative member may participate in all discussions and vote on all matters except those matters within the purview of the Basin Panel as embodied in Article 6 of this compact and those with respect to management and administration of regulatory and proprietary functions contained or established under the provisions of Articles 7 and 8.

3.4 a) The Commission as a whole shall act as a forum for the problems of the Champlain region and, where needful, in coordinating the activities within the region of the signatory parties, their subdivisions and agencies, and in addressing general recommendations to any government or governments with jurisdiction within the area encompassed by the signatory parties other than recommendations with respect to subjects on which recommendations are within the purview of the Basin Panel as embodied in Article 6 of this compact.

b) The Basin Panel of the Commission shall be composed of the representatives of the signatory parties designated to act for them in the management of the water and related resources of the Champlain Basin. Voting on all matters as included in Article 6 of this agreement shall be limited to the members of the Basin Panel. Each member of the panel shall be entitled to one vote on all matters which may come before the panel. No action of the panel shall be taken at any meeting unless a majority of the membership shall vote in favor thereof. Each member of the panel shall appoint an alternative to act in his place and stead, who shall attend all meetings of the Panel with power to vote in the absence of the member.

c) The Valley Council of the Commission shall act with respect to matters relative to the Valley and Lake Champlain Park as included in Articles 7 and 8 and shall be composed of the four planning members from each state, the representatives of each state on the Basin Panel and subject to the limitations described in 3.3 herein the Legislative members. Each member of the Valley Council shall be entitled to one vote. When the United States participates in the Basin Panel, the representative of the United States shall be entitled to participate in the discussions in the Valley Council and the Commission as a whole.

d) No action of the Commission as a whole or its Valley Council shall be binding unless taken at a meeting in which a majority of the members from each state are present and unless a majority of those qualified to vote on such action from each state concur, provided that any action not binding for such reason may be ratified within thirty days by the concurrence of a majority of each state. In the absence of any

representative his vote may be cast by another representative of his government in the Commission, provided that the representative casting the vote shall have a written proxy in proper form as may be required by the Commission.

3.5 The Commission may sue and be sued, and shall have a seal.

3.6 The Commission shall elect annually, from among its members, a chairman, a vice-chairman, and a treasurer. The commission shall appoint an executive director who shall also act as secretary and who, together with the treasurer, shall be bonded in such amounts as the Commission may require. Each panel shall elect annually a chairman and vice-chairman from among its members.

3.7 Irrespective of the civil service, personnel or other merit system laws of any of the signatory parties, the Commission shall appoint and remove or discharge such personnel as may be necessary for the performance of the Commission's functions. The Commission may establish and maintain in conjunction with any one or more of the signatory parties a suitable retirement system for its employees. Employees of the Commission shall be eligible for social security coverage in respect to old age and survivors insurance, provided that the Commission takes such steps as may be necessary to participate in such program as of insurance as a governmental agency or unit.

3.8 The commission may establish and maintain or participate in such additional programs of employee benefits as may be appropriate to afford employees of the Commission terms and conditions of employment similar to those enjoyed by employees of the signatory states generally.

3.9 a) The Commission may borrow, accept or contract for the services of personnel from any inter-governmental agency or government with jurisdiction in the region or any subdivision or agency thereof, or from any institution, person, firm or corporation.

b) The Commission may accept for any of its purposes and functions under this Compact any and all donations, and grants of money,

equipment, supplies, materials, and services, conditional or otherwise, from any government, inter-governmental agency, institution, person, firm, or corporation, and may receive, utilize, and dispose of the same provided no non-governmental donation or grant in kind or money shall be accepted for administrative or operating expenses. The Commission shall have the power to apply and qualify for and accept federal grants.

3.10 a) The Commission may establish and maintain such facilities as may be necessary for the transacting of its business. For these purposes the Commission may acquire, hold and convey real and personal property and any interest therein.

b) The Commission may adopt, amend, and rescind bylaws, rules, and regulations for the conduct of its business.

c) The Commission annually shall make a report to the Governors and the President of the United States. The report, which shall cover the activities of the Commission for the preceding year and embody such recommendations as may have been adopted by the Commission, shall be transmitted to the legislatures of all governments with jurisdiction in the region. The Commission may issue such additional reports as it may deem desirable.

ARTICLE 4--FINANCE

4.1 The Commission shall submit to the executive head or designated officer of each signatory party a budget or budgets for the Basin or Valley including a statement of all funds expected to be available to the Commission and their sources and, a request for an appropriation to cover that party's share of expenditures for such period as may be required by the laws of that jurisdiction for presentation to the legislature thereof.

4. With due regard for such monies and other assistance as may be made available to it, the Commission shall be provided with such funds by each of the several parties participating therein to provide the means of establishing and maintaining facilities, a staff of personnel, and such activities as may be necessary to fulfill the powers and duties

imposed upon and entrusted to the Commission or the Basin Panel or Valley Council thereof.

With due allowance for monies otherwise available, and monies made available by the United States of America, each budget of the Commission shall be the responsibility of the signatory parties, but as to the states apportioned between them as follows: 50% on an equal basis; 30% on the basis of population; 20% on the basis of area, such population to be determined in accordance with the last official United States Census of Population.

4.3 The Commission shall not pledge the credit of any jurisdiction. The Commission may meet any of its obligations in whole or in part with funds available to it under 3.8(b) of this compact, provided that the Commission takes specific action setting aside such funds prior to the incurring of any obligation to be met in whole or in part in such manner.

4.4 The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Commission shall be audited by a qualified public accountant and the report of the audit shall be included in and become part of the annual report of the Commission.

4.5 The accounts of the Commission shall be open at any reasonable time for inspection by such agency, representative, or representatives of the jurisdictions which appropriate funds to the Commission.

ARTICLE 5--CHAMPLAIN REGION--ORDERLY DEVELOPMENT

5.1 The Commission shall act as a general forum for the problems of the region, including, but not limited to, those for which the agreement establishes separate consideration by the Basin Panel and Valley Council, and to that end shall encourage and implement channels of communication and coordination among those departments and agencies of the signatory parties and their subdivisions as have significant

interest in the subject matters of the Commission's activities and may make such recommendations to those parties, and those departments, agencies, and subdivisions as may be desirable for the welfare and orderly development of the region.

5.2 The Commission shall hold an annual general conference and such other conferences or meetings, general or particular, as it may deem advisable to promote the welfare and orderly development of the region.

5.3 The Commission shall sponsor, organize or encourage and aid conferences of the local governments of the Basin or such areas thereof as may be appropriate to implement inter-governmental information, co-operation, and coordination on and among all levels of government in the region. To effectuate better coordination in the region the Commission shall promote mutual aid and multilateral arrangements between the signatory parties and their agencies and local governments and their agencies and encourage interlocal legislation and agreements. It may sponsor or encourage the publications of local government bulletins or information to these ends.

5.4 The Commission may:

a) establish advisory and other technical committees as occasion warrants, composed of private citizens, expert and lay personnel, representatives of industry, labor, commerce, agriculture, civic associations and officials, and personnel of any government or inter-governmental organization having jurisdiction in the region.

b) cooperate with all appropriate governmental and private agencies in the encouragement of the orderly development of the region and of tourist traffic and facilities.

c) organize, sponsor and encourage historical observances or other festivals and exhibitions to promote the welfare and orderly development of the region.

d) plan and recommend governmental services and programs which would

be of assistance to the orderly growth and prosperity of the region, and to the well-being of its population.

e) study and recommend means for the most effective utilization of such federal assistance as may be available on a regional basis or may have an interstate or regional impact.

f) assist the party states in cooperative planning undertakings with the federal government or any agencies thereof within the Champlain region.

5.5 The Commission shall compile and keep current an inventory of scenic, ecological and historic sites and its recommendations with respect thereto.

ARTICLE 6--LAKE CHAMPLAIN BASIN--WATERSHED MANAGEMENT

Title I

6.1 It is the purpose of this Compact to provide in the Champlain Basin improved procedures for the coordination of the policies, programs and activities of the several jurisdictions and private persons and entities in the field of water and related resources and for the planning and management of the development, use and conservation of such water and related resources.

6.2 The Commission utilizing appropriate state and other duly authorized public agencies may through its Basin Panel:

a) Conduct and sponsor research on water resources and their planning, use, conservation, management, development, control, and protection, and the capacity, adaptability, and best utility of each facility thereof, and collect, compile, correlate, analyze, report, and interpret data on water resources and uses in the basin, including without limitation thereto the relation of water to other resources, industrial water technology, ground water movement, relation between water price and water demand and other economic factors, and general hydrological conditions:

b) Collect, compile, coordinate, and interpret systematic stream stage and ground water data, and publicize such information when and as needed for water uses, flood warning, quality maintenance, or other purposes:

c) Conduct ground and surface water investigations, tests, and operations, and compile data relating thereto as may be required to formulate and administer the comprehensive plan:

d) Prepare, publish, and disseminate information and reports concerning the water problems of the basin and for the presentation of the needs and resources of the basin and policies of the commission to executive and legislative branches of the signatory parties to this article.

6.3 The Commission through its Basin Panel shall develop and adopt, and may from time to time review and revise, a comprehensive plan for the immediate and long range development and use of the water resources of the basin. The plan shall include all public and private projects and facilities which are required, in the judgment of the Commission, for the optimum planning, development, conservation, utilization, management, and control of the water resources of the basin to meet present and future needs. The commission may adopt a comprehensive plan or any revision thereof in such part or parts as it may deem appropriate, provided that before the adoption of the plan or any part or revision thereof the Commission shall consult with water users and interested public bodies and public utilities and shall consider and give due regard to the findings and recommendations of the various agencies of the signatory parties, their political subdivisions and interested groups. The Commission shall conduct public hearings with respect to the comprehensive plan prior to the adoption of the plan or any part of the revision thereof and shall make public any dissenting or minority opinions.

6.4 The Commission shall promote and aid the coordination of the activities and programs of Federal, state, municipal, and private agencies concerned with water resources administration in the basin.

6.5 In the event the legislatures of the two states and the Congress of the United States do not within a year from the date of the enactment of this Compact enact a Title II of this article providing for the implementation of the comprehensive plan in terms of a water resources program and management of water and related resources in the Champlain Basin, the Basin Panel shall prepare and recommend provisions to effectuate these purposes for enactment as such title by the two states and the United States. Nothing in this article, however, shall be construed to prohibit action by the Basin Panel to this end during the two year period immediately following the enactment of this compact or thereafter.

ARTICLE 7--CHAMPLAIN VALLEY--PLANNING FOR DEVELOPMENT

7.1 It is the purpose of this Compact to encourage and coordinate local, regional, interstate and international planning and zoning in the Champlain Valley in order to safeguard its beauty and amenities and assure its orderly development as population pressures inevitably grow in this core of the Champlain Basin.

7.2 The Commission, acting through its Valley Council may recommend standards as guides for planning, zoning, and other action which will promote balanced development.

7.3 The Commission, acting through its Valley Council may act as coordinator or as an agency for the inter-governmental coordination and effectuation of local, regional, state, interstate and international planning.

7.4 a) The Commission, acting through its Valley Council after consultation with appropriate agencies of the signatory states, may recommend a comprehensive master plan for their public works and like expenditures in the Valley or a portion thereof, which, in those particulars and for such period as is approved by the legislatures of the signatory states, shall be observed by them with the same force and effect as if incorporated in this agreement.

The Valley Council may, from time to time, recommend plans for the Valley, supplementary to or amendatory of any previous plan, which in the same fashion shall be observed by the parties so agreeing, with same force and effect as if incorporated in this agreement.

b) The Valley Council in consultation with the planning agencies of the states and their political subdivisions is authorized to adopt and from time to time, amend or extend, a comprehensive plan for the development and protection of the Champlain Valley to serve as a general framework or guide of development within which each part of the Valley may be more precisely planned and which shall include among things, a land use plan and which shall serve to reconcile and integrate planning proposals throughout the valley.

ARTICLE 8--LAKE CHAMPLAIN PARK

8.1 The signatory parties find that the protection of the amenities and resources of Lake Champlain and its adjacent area is central to the economic health and orderly development of the entire valley and region. Accordingly, it is the purpose of this Compact to provide through the Commission acting through its Valley Panel a mechanism for joint action of the signatory parties in safeguarding the values, resources, and amenities of Lake Champlain and its adjacent area in accordance with the comprehensive plan.

8.2 The Lake Champlain Park as described in 2.5 of this agreement shall constitute a zone in which the Valley Council may perform the functions described in this article.

8.3 The Commission through its Valley Panel may draft and recommend for adoption ordinances and regulations which would assist, develop and protect the park area and the character of its communities.

Local governments may consider parts of their area which are within the park area under the provisions of this article separately from the municipality as a whole and pursuant to the laws of the state governing the adoption of these regulations generally may enact regulations limited to the designated area. In making recommendations to a local

government which is partly in and partly out of the park, the Valley Council may make recommendations for the entire municipality.

8.4 In order to preserve and enhance the natural beauty and the amenities of the Lake Champlain Park; protect and conserve the investment of the signatory parties in forest land, islands, state campsites and other interest in real property in the parks; preserve and regulate the park for public uses for the resort of the public for recreation, transportation, pleasure, air, light, and enjoyment; keep it open, safe, clean and in good order for the welfare of society and prevent unrestricted commercial development, the Commission through its Valley Council shall recommend within three years after the adoption of the Compact, or report its reasons for not so doing, legislation for these purposes which shall come into effect inside the boundaries of the parks area within the jurisdiction of a state upon enactment by the legislature concurred in by the legislature of the other state:

a) Protection of the Lake and its Environs

Regulation of: advertising, objectionable use of property, filling or use for private purposes of state lands under water, conduct of boats and vessels with respect to safety and sanitation, maintenance of lake levels, sewage disposal into the lake, dumping and littering on its waters or frozen surface. The encouragement of restrictive covenants.

b) Coordination of Law Enforcement

Establishment of common high and low water marks and state jurisdiction with regard thereto, aid to local law enforcement over the use of the lake, provisions for the enforcement of laws by joint or coordinated state or local action, deputation of law enforcement powers as among jurisdictions, provisions for the appearance of the Commission in the courts of either state with power to bring actions or proceedings in law or equity to enforce provisions of law and requirements as they apply to the area set forth in paragraph 2.5 of this Compact.

A negative report shall not preclude a later affirmative

recommendation or recommendations on these subjects by the Valley Council. The listing of matters in (a) and (b) of this paragraph shall not be interpreted to preclude recommendations on matters not so listed. Nothing in this article shall be construed to prohibit action by a signatory party, or the signatory parties by means of legislation other than legislation concurred in by both states.

8.5 Nothing in this Compact or in any regulation issued under the provisions of this article or concurrent legislation enacted in accordance therewith shall be interpreted to supersede actions of a park district created under the laws of either state lying wholly or partially in the Lake Champlain Park unless the Valley Council specifically states such effect is necessary for the adequate protection of the amenities and values of the Lake Champlain Park.

Nor shall this compact be interpreted to prohibit more stringent action by a signatory party.

ARTICLE 9

Except as may be stipulated in Title II of Article 6 nothing in this Compact shall be construed to impair, or otherwise affect the jurisdiction of any interstate agency in which any party state participates not to abridge, impair, or otherwise affect the provisions of any compact to which any one or more of the party states may be a party, nor to supersede, diminish, or otherwise affect any obligation assumed under any such compact; nor shall anything in this compact be construed to discourage additional interstate compacts among some or all of the party states or the establishment of intergovernmental agencies in sub-areas of the region or to limit the jurisdiction or activities of any participating government, agency, or officer thereof, or any private person or agency.

ARTICLE 10

The provisions of this Compact shall be severable and if phrase, clause, sentence or provision of this Compact is declared to be unconstitutional or the applicability thereof to any state, agency, person or circumstance is held invalid, the constitutionality of this

Compact, and the applicability thereof to any state, person or circumstance shall not be affected thereby. It is the legislative intent that the provisions of this Compact be reasonably and liberally construed.

ARTICLE 11

This Compact shall continue in force and remain binding on the signatory parties unless renounced by legislative action of a signatory party at least four years in advance of the effective date of withdrawal. Such withdrawal shall not affect the operation of the provisions of this Compact with respect to the continued operations of the Basin Panel and Article 6 under separate withdrawal provisions for that article.

§ 21-1103. State member of the basin panel and representative; planning members.

1. As provided in the third subdivision of section three of article three of the compact the Governor shall be this state's member on the basin panel established thereby or shall appoint a representative to act for him. He shall appoint four planning members of the commissions to serve at his pleasure: a citizen who is a resident of the valley, a state planning official, a state parks official and an officer of the Department of Environmental Conservation.

2. The legislative member shall be elected by a majority vote of the legislators elected from the counties of Clinton, Essex, Warren and Washington.

3. Any person, member or alternate, serving on the interstate commission on Lake Champlain basin (Incochamp) pursuant to this section shall be reimbursed for all necessary expenses incurred as an incident of such service, and such reimbursement shall be from the funds of said person's department or office. For this purpose the citizen member shall be considered as a member of the executive department.

§ 21-1105. Advisors.

The Department of Environmental Conservation shall provide an advisory committee who together with the state Commissioner of Commerce and the director of the office of regional development shall constitute an advisory committee with whom the members of the interstate commission on the Lake Champlain basin from this state may consult with respect to New York participation in the compact. Such members of the commission may also consult from time to time with other officers of the state government or any subdivisions thereof, as may be appropriate.

§ 21-1107. Cooperative services.

Departments, agencies and officers shall provide technical and administrative services to the interstate commission on the Lake Champlain basin upon request.

§ 21-1109. Budget.

The interstate commission on the Lake Champlain basin shall submit annually to the Director of the Budget, in accordance with the rules and practice of the state, for study and consideration by such Director, an estimate of moneys required to administer, manage and support, the commission during the ensuing fiscal year. Such estimate shall include any request for appropriation of funds by New York and shall be accompanied by a tabulation of similar requests which the commission expects to make to each other member and the formula or factors upon which such respective requests are based.

§ 21-1111. Audit.

Pursuant to subdivision five of article four of the compact, the state Comptroller is hereby authorized and empowered from time to time to

examine the accounts and books of the commission, including its receipts, disbursements and such other items referring to its financial standing as such Comptroller may deem proper and to report the results of such examination to the Governor.

§ 21-1113. Inconsistent laws.

No provision of this chapter or of any other law, which is inconsistent with the provisions of the compact shall be applicable to the interstate commission on the Lake Champlain basin or to any matters governed by the compact.

TITLE 13

SUSQUEHANNA RIVER BASIN COMPACT

Section 21-1301. Susquehanna river basin compact.

21-1303. Member and alternate.

21-1305. Advisory committee.

21-1307. Consent to alteration of diversion.

21-1309. Jurisdiction of courts.

21-1311. Prior project approval.

21-1313. Delegations of power.

21-1315. Cooperative services.

21-1316. Report and recommendations of department.

21-1317. Budget.

21-1319. Audit.

21-1321. Inconsistent laws.

§ 21-1301. Susquehanna river basin compact.

The Susquehanna river basin compact as first entered into pursuant to chapter 785 of the laws of 1967, is hereby continued as follows:

SUSQUEHANNA RIVER BASIN COMPACT

Preamble

Whereas the signatory parties hereto recognize the water resources of

the Susquehanna River Basin as regional assets vested with local, state, and national interest for which they have a joint responsibility; and declare as follows:

1. The conservation, utilization, development, management, and control of the water resources of the Susquehanna River Basin under comprehensive multiple purpose planning will bring the greatest benefits and produce the most efficient service in the public interest; and

2. This comprehensive planning administered by a basin-wide agency will provide flood damage reduction, conservation and development of surface and ground water supply for municipal, industrial, and agricultural uses, development of recreational facilities in relation to reservoirs, lakes and streams, propagation of fish and game, promotion of forest land management, soil conservation, and watershed projects, protection and aid to fisheries, development of hydroelectric power potentialities, improved navigation, control of the movement of salt water, abatement and control of water pollution, and regulation of stream flows toward the attainment of these goals; and

3. The water resources of the basin are presently subject to the duplicating, overlapping, and uncoordinated administration of a large number of governmental agencies which exercise a multiplicity of powers resulting in a splintering of authority and responsibility; and

4. The Interstate Advisory Committee on the Susquehanna River Basin, created by action of the states of New York, Pennsylvania, and Maryland, on the basis of its studies and deliberation has concluded that regional development of the Susquehanna River Basin is feasible, advisable, and urgently needed, and has recommended that an intergovernmental compact with Federal participation be consummated to this end; and

5. The Congress of the United States and the executive branch of the Federal government have recognized a national interest in the Susquehanna River Basin by authorizing and directing the Corps of Engineers of the Department of the Army, the Department of Agriculture, the Department of Health, Education and Welfare, the Department of

Interior, and other Federal agencies to cooperate in making comprehensive surveys and reports concerning the water resources of the Susquehanna River Basin in which individually or severally the technical aid and assistance of many Federal and state agencies have been enlisted, and which are being or have been coordinated through a Susquehanna River Basin Study Coordinating Committee on which the Corps of Engineers of the Department of the Army, the Department of Agriculture, the Department of Commerce, the Department of Health, Education and Welfare, the Department of Interior, the Department of Housing and Urban Development and its predecessor Housing and Home Finance Agency, the Federal Power Commission, and the States of New York, Pennsylvania, and Maryland are or were represented; and

6. Some three million people live and work in the Susquehanna River Basin and its environs, and the government, employment, industry, and economic development of the entire region and the health, safety, and general well being of its population are and will continue to be affected vitally by the conservation, utilization, development, management, and control of the water resources of the basin; and

7. Demands upon the water resources of the basin are expected to mount because of anticipated increases in population and by reason of industrial and economic growth of the basin and its service area; and

8. Water resources planning and development are technical, complex, and expensive, often requiring fifteen to twenty years from the conception to the completion of large or extensive projects; and

9. The public interest requires that facilities must be ready and operative when and where needed, to avoid the damages of unexpected floods or prolonged drought, and for other purposes; and

10. The Interstate Advisory Committee on the Susquehanna River Basin has prepared a draft of an intergovernmental compact for the creation of a basin agency, and the signatory parties desire to effectuate the purposes thereof;

Now therefore

The States of New York and Maryland and the Commonwealth of Pennsylvania, and the United States of America hereby solemnly covenant and agree with each other, upon the enactment of concurrent legislation by the Congress of the United States and by the respective state legislatures, to the Susquehanna River Basin Compact which consists of this Preamble and the Articles that follow.

ARTICLE 1--SHORT TITLE, DEFINITIONS, PURPOSES, AND LIMITATIONS

Section 1.1. Short Title.

This compact shall be known and may be cited as the Susquehanna River Basin Compact.

1.2 Definitions.

For the purposes of this compact, and of any supplemental or concurring legislation enacted pursuant to it:

1. "Basin" shall mean the area of drainage of the Susquehanna River and its tributaries into Chesapeake Bay to the southern edge of the Pennsylvania Railroad bridge between Harve de Grace and Perryville, Maryland.

2. "Commission" shall mean the Susquehanna River Basin Commission hereby created, and the term "Commissioner" shall mean a member of the commission.

3. "Cost" shall mean direct and indirect expenditures, commitment, and net induced adverse effects, whether or not compensated for, used or incurred in connection with the establishment, acquisition, construction, maintenance, and operation of a project.

4. "Diversion" shall mean the transfer of water into or from the basin.

5. "Facility" shall mean any real or personal property, within or

without the basin, and improvements thereof or thereon, and any and all rights of way, water, water rights, plants, structures, machinery, and equipment acquired, constructed, operated, or maintained for the beneficial use of water resources or related land uses or otherwise including, without limiting the generality of the foregoing, any and all things and appurtenances necessary, useful, or convenient for the control, collection, storage, withdrawal, diversion, release, treatment, transmission, sale, or exchange of water; or for navigation thereon, or the development and use of hydroelectric energy and power, and public recreational facilities; of the propagation of fish and wildlife; or to conserve and protect the water resources of the basin or any existing or future water supply source, or to facilitate any other uses of any of them.

6. "Federal government" shall mean the government of the United States of America, and any appropriate branch, department, bureau, or division thereof, as the case may be.

7. "Project" shall mean any work, service, or activity which is separately planned, financed, or identified by the commission, or any separate facility undertaken or to be undertaken by the commission or otherwise within a specified area, for the conservation, utilization, control, development, or management of water resources which can be established and utilized independently or as an addition to an existing facility and can be considered as a separate entity for purposes of evaluation.

8. "Signatory party" shall mean a state or commonwealth party to this compact, or the Federal government.

9. "Waters" shall mean both surface and underground waters which are contained within the drainage area of the Susquehanna River in the states of New York, Pennsylvania, and Maryland.

10. "Water resources" shall include all waters and related natural resources within the basin.

11. "Withdrawal" shall mean a taking or removal of water from any source within the basin for use within the basin.

12. "Person" shall mean an individual, corporation, partnership, unincorporated association, and the like and shall have no gender, and the singular shall include the plural.

1.3 Purpose and Findings.

The legislative bodies of the respective signatory parties hereby find and declare:

1. The water resources of the Susquehanna River Basin are affected with a local, state, regional, and national interest, and the planning, conservation, utilization, development, management, and control of these resources, under appropriate arrangements for intergovernmental cooperation, are public purposes of the respective signatory parties.

2. The water resources of the basin are subject to the sovereign rights and responsibilities of the signatory parties, and it is the purpose of this compact to provide for a joint exercise of these powers of sovereignty in the common interest of the people of the region.

3. The water resources of the basin are functionally interrelated, and the uses of these resources are interdependent. A single administrative agency is therefore essential for effective and economical direction, supervision, and coordination of water resources efforts and programs of federal, state, and local governments and of private enterprise.

4. Present and future demands require increasing economies and efficiencies in the use and reuse of water resources, and these can be brought about only by comprehensive planning, programming, and management under the direction of a single administrative agency.

5. In general, the purposes of this compact are to promote interstate comity; to remove causes of possible controversy; to make secure and protect developments within the states; to encourage and provide for the

planning, conservation, utilization, development, management, and control of the water resources of the basin; to provide for cooperative and coordinated planning and action by the signatory parties with respect to water resources; and to apply the principle of equal and uniform treatment to all users of water and of water related facilities without regard to political boundaries.

6. It is the express intent of the signatory parties that the commission shall engage in the construction, operation, and maintenance of a project only when the project is necessary to the execution of the comprehensive plan and no other competent agency is in a position to act, or such agency fails to act.

1.4. Powers of Congress; Withdrawal.

Nothing in this compact shall be construed to relinquish the functions, powers, or duties of the Congress of the United States with respect to the control of any navigable waters within the basin nor shall any provisions hereof be construed in derogation of any of the constitutional powers of the Congress to regulate commerce among the states and with foreign nations. The power and right of the Congress to withdraw the Federal government as a party to this compact or to revise or modify the terms, conditions, and provisions under which it may remain a party by amendment, repeal, or modification of any Federal statute applicable hereto is recognized by the signatory parties.

1.5 Duration of Compact.

(a) The duration of this compact shall be for an initial period of 100 years from its effective date, and it shall be continued for additional periods of 100 years if not less than 20 years nor more than 25 years prior to the termination of the initial period or any succeeding period none of the signatory states, by authority of an act of its legislature, notifies the commission of intention to terminate the compact at the end of the then current 100-year period.

(b) In the event this compact should be terminated by operation of paragraph (a) above, the commission shall be dissolved, its assets and liabilities transferred in accordance with the equities of the signatory

parties therein, and its corporate affairs wound up in accordance with agreement of the signatory parties or, failing agreement, by act of the Congress.

ARTICLE 2--ORGANIZATION AND AREA

Section 2.1 Commission Created.

The Susquehanna River Basin Commission is hereby created as a body politic and corporate, with succession for the duration of this compact, as an agency and instrumentality of the governments of the respective signatory parties.

2.2 Commission Membership.

The members of the commission shall be the governor or the designee of the governor of each signatory state, to act for him, and one member to be appointed by the President of the United States to serve at the pleasure of the President.

2.3 Alternates.

An alternate from each signatory party shall be appointed by its member of the commission unless otherwise provided by the laws of the signatory party. The alternate, in the absence of the member, shall represent the member and act for him. In the event of a vacancy in the office of alternate, it shall be filled in the same manner as the original appointment.

2.4 Compensation.

Members of the commission and alternates shall serve without compensation from the commission but may be reimbursed for necessary expenses incurred in and incident to the performance of their duties.

2.5 Voting Power.

Each member is entitled to one vote. No action of the commission may

be taken unless three of the four members vote in favor thereof.

2.6 Organization and Procedure.

The commission shall provide for its own organization and procedure, and shall adopt the rules and regulations governing its meetings and transactions. It shall organize annually by the election of a chairman and vice-chairman from among its members. It shall provide by its rules for the appointment by each member in his discretion of an advisor to serve without compensation from the commission, who may attend all meetings of the commission and its committees.

2.7 Jurisdiction of the Commission.

The commission shall have, exercise, and discharge its functions, powers, and duties within the limits of the basin. Outside the basin, the commission shall act at its discretion, but only to the extent necessary to implement its responsibilities within the basin, and where necessary subject to the consent of the state wherein it proposes to act.

ARTICLE 3--POWERS AND DUTIES OF THE COMMISSION

Section 3.1 General.

The Commission shall develop and effectuate plans, policies, and projects relating to the water resources of the basin. It shall adopt and promote uniform and coordinated policies for water resources conservation and management in the basin. It shall encourage and direct the planning, development, operation, and subject to applicable laws the financing of water resources projects according to such plans and policies.

3.2 Policy.

It is the policy of the signatory parties to preserve and utilize the functions, powers, and duties of the existing offices and agencies of government to the extent consistent with this compact, and the

commission is directed to utilize those offices and agencies for the purposes of this compact.

3.3 Comprehensive Plan, Program and Budgets.

The commission in accordance with Article 14 of this compact, shall formulate and adopt:

1. A comprehensive plan, after consultation with appropriate water users and interested public bodies for the immediate and long range development and use of the water resources of the basin;
2. A water resources program, based upon the comprehensive plan, which shall include a systematic presentation of the quantity and quality of water resources needs of the area to be served for such reasonably foreseeable period as the commission may determine, balanced by existing and proposed projects required to satisfy such needs, including all public and private projects affecting the basin, together with a separate statement of the projects proposed to be undertaken by the commission during such period; and
3. An annual current expense budget and an annual capital budget consistent with the commission's program, projects, and facilities for the budget period.

3.4 Powers of Commission.

The commission may:

1. Plan, design, acquire, construct, reconstruct, complete, own, improve, extend, develop, operate, and maintain any and all projects, facilities, properties, activities, and services which are determined by the commission to be necessary, convenient, or useful for the purposes of this compact.
2. Establish standards of planning, design, and operation of all projects and facilities in the basin to the extent they affect water

resources, including without limitation thereto water, sewage and other waste treatment plants and facilities, pipelines, transmission lines, stream and lake recreational facilities, trunk mains for water distribution, local flood protection works, watershed management programs, and ground water recharging operations.

3. Conduct and sponsor research on water resources and their planning, use, conservation, management, development, control, and protection, and the capacity, adaptability, and best utility of each facility thereof, and collect, compile, correlate, analyze, report, and interpret data on water resources and uses in the basin, including without limitation thereto the relation of water to other resources, industrial water technology, ground water movement, relation between water price and water demand and other economic factors, and general hydrological conditions.

4. Collect, compile, coordinate, and interpret systematic surface and ground water data, and publicize such information when and as needed for water uses, flood warning, quality maintenance, or other purposes.

5. Conduct ground and surface water investigations, tests, and operations, and compile data relating thereto as may be required to formulate and administer the comprehensive plan.

6. Prepare, publish, and disseminate information and reports concerning the water problems of the basin and for the presentation of the needs and resources of the basin and policies of the commission to executive and legislative branches of the signatory parties.

7. Negotiate loans, grants, gifts, services, or other aids as may be lawfully available from public or private sources to finance or assist in effectuating any of the purposes of this compact, and receive and accept them upon terms and conditions, and subject to provisions, as may be required by Federal or state law or as the commission may deem necessary or desirable.

8. Exercise such other and different powers as may be delegated to it

by this compact or otherwise pursuant to law, and have and exercise all powers necessary or convenient to carry out its express powers and other powers which reasonably may be implied therefrom.

9. Adopt, amend, and repeal rules and regulations to implement this compact.

3.5 Duties of the Commission.

The commission shall:

1. Develop and effectuate plans, policies, and projects relating to water resources, adopt, promote, and coordinate policies and standards for water resources conservation, control, utilization, and management, and promote and implement the planning, development, and financing of water resources projects.

2. Undertake investigations, studies, and surveys, and acquire, construct, operate, and maintain projects and facilities in regard to the water resources of the basin, whenever it is deemed necessary to do so to activate or effectuate any of the provisions of this compact.

3. Administer, manage, and control water resources in all matters determined by the commission to be interstate in nature or to have a major effect on the water resources and water resources management.

4. Assume jurisdiction in any matter affecting water resources whenever it determines after investigation and public hearing upon due notice given, that the effectuation of the comprehensive plan or the implementation of this compact so requires. If the commission finds upon subsequent hearing requested by an affected signatory party that the party will take the necessary action, the commission may relinquish jurisdiction.

5. Investigate and determine if the requirements of the compact or the rules and regulations of the commission are complied with, and if satisfactory progress has not been made, institute an action or actions

in its own name in any state or federal court of competent jurisdiction to compel compliance with any and all of the provisions of this compact or any of the rules and regulations of the commission adopted pursuant thereto. An action shall be instituted in the name of the commission and shall be conducted by its own counsel.

3.6 Cooperative Legislation and Further Jurisdiction.

(a) Each of the signatory parties agrees that it will seek enactment of such additional legislation as will be required to enable its officers, departments, commissions, boards, and agents to accomplish effectively the obligations and duties assumed under the terms of this compact.

(b) Nothing in the compact shall be construed to repeal, modify, or qualify the authority of any signatory party to enact any legislation or enforce any additional conditions and restrictions within its jurisdiction.

3.7 Coordination and Cooperation.

The commission shall promote and aid the coordination of the activities and programs of Federal, state, municipal, and private agencies concerned with water resources administration in the basin. To this end, but without limitation thereto, the commission may:

1. Advise, consult, contract, financially assist, or otherwise cooperate with any and all such agencies;

2. Employ any other agency or instrumentality of any of the signatory parties or of any political subdivision thereof, in the design, construction, operation, and maintenance of structures, and the installation and management of river control systems, or for any other purpose;

3. Develop and adopt plans and specifications for particular water resources projects and facilities which so far as consistent with the comprehensive plan incorporate any separate plans of other public and private organizations operating in the basin, and permit the

decentralized administration thereof;

4. Qualify as a sponsoring agency under any Federal legislation heretofore or hereafter enacted to provide financial or other assistance for the planning, conservation, utilization, development, management, or control of water resources.

3.8 Allocations, Diversions, and Releases.

(a) The commission shall have power from time to time as the need appears, to allocate the waters of the basin to and among the states signatory to this compact and impose related conditions, obligations, and release requirements.

(b) The commission shall have power from time to time as the need appears to enter into agreements with other river basin commissions or other states with respect to in-basin and out-of-basin allocations, withdrawals, and diversions.

(c) No allocation of waters made pursuant to this section shall constitute a prior appropriation of the waters of the basin or confer any superiority of right in respect to the use of those waters, nor shall any such action be deemed to constitute an apportionment of the waters of the basin among the parties hereto. This subsection shall not be deemed to limit or restrict the power of the commission to enter into covenants with respect to water supply, with a duration not exceeding the life of this compact, as it may deem necessary for the benefit or development of the water resources of the basin.

3.9 Rates and Charges.

The commission, from time to time after public hearing upon due notice given may fix, alter, and revise rates, rentals, charges, and tolls, and classifications thereof, without regulation or control by any department, office, or agency of any signatory party, for the use of facilities owned or operated by it, and any services or products which it provides.

3.10 Referral and Review.

No projects affecting the water resources of the basin, except those not requiring review and approval by the commission under paragraph 3 following, shall be undertaken by any person, governmental authority or other entity prior to submission to and approval by the commission or appropriate agencies of the signatory parties for review.

1. All water resources projects for which a permit or other form of permission to proceed with construction or implementation is required by legislative action of a signatory party or by rule or regulation of an office or agency of a signatory party having functions, powers, and duties in the planning, conservation, development, management, or control of water resources shall be submitted as heretofore to the appropriate office or agency of the signatory party for review and approval. To assure that the commission is apprised of all projects within the basin, monthly reports and listings of all permits granted, or similar actions taken, by offices or agencies of the signatory parties shall be submitted to the commission in a manner prescribed by it.

Those projects which also require commission approval pursuant to the provisions of paragraphs 2(ii) and 2(iii) following shall be submitted to the commission through appropriate offices or agencies of a signatory party, except that, if no agency of a signatory party has jurisdiction, such projects shall be submitted directly to the commission in such manner as the commission shall prescribe.

2. Approval of the commission shall be required for, but not limited to, the following:

(i) All projects on or crossing the boundary between any two signatory states;

(ii) Any project involving the diversion of water;

(iii) Any project within the boundaries of any signatory state found and determined by the commission or by any agency of a signatory party having functions, powers, and duties in the planning, conservation, development, management, or control of water resources to have a significant effect on water resources within another signatory state; and

(iv) Any project which has been included by the commission, after hearing, as provided in Article 14, Section 14.1, as a part of the commission's comprehensive plan for the development of the water resources of the basin, or which would have a significant effect upon the plan.

3. Review and approval by the commission shall not be required for:

(i) Projects which fall into an exempt classification or designation established by legislative action of a signatory party or by rule or regulation of an office or agency of a signatory party having functions, powers, and duties in the planning, conservation, development, management, or control of water resources. The sponsors of those projects are not required to obtain a permit or other form of permission to proceed with construction or implementation, unless it is determined by the commission or by the agency of a signatory party that such project or projects may cause an adverse, adverse cumulative, or an interstate effect on water resources of the basin, and the project sponsor has been notified in writing by the commission or by the agency of a signatory party that commission approval is required.

(ii) Projects which are classified by the commission as not requiring its view and approval, for so long as they are so classified.

4. The commission shall approve a project if it determines that the project is not detrimental to the proper conservation, development, management, or control of the water resources of the basin and may modify and approve as modified, or may disapprove the project, if it determines that the project is not in the best interest of the conservation, development, management, or control of the basin's water resources, or is in conflict with the comprehensive plan.

5. The commission, after consultation with the appropriate offices or agencies of the signatory parties, shall establish the procedure of submission, review, and consideration of projects. Any procedure for review and approval of diversions of water shall include public hearing on due notice given with opportunity for interested persons, agencies, governmental units, and signatory parties to be heard and to present evidence. A complete transcript of the proceedings at the hearing shall

be made and preserved, and it shall be made available under rules for that purpose adopted by the commission.

6. Any determination of the commission pursuant to this article or any article of the compact providing for judicial review shall be subject to such judicial review in any court of competent jurisdiction, provided that an action or proceeding or for such review is commenced within 90 days from the effective date of the determination sought to be reviewed; but a determination of the commission concerning a diversion, under Section 3.10-2(ii) with the claimed effect of reducing below a proper minimum the flow of water in that portion of the basin within the area of a signatory party, shall be subject to judicial review under the particular provisions of paragraph 7 below.

7. Any signatory party deeming itself aggrieved by an action of the commission concerning a diversion under Section 3.10-2(ii) with the claimed effect of reducing below a proper minimum the flow of water in that portion of the basin which lies within the area of that signatory party, and notwithstanding the powers provided to the commission by this compact, may have review of commission action approving the diversion in the Supreme Court of the United States; provided that a proceeding for such review is commenced within one year from the date of action sought to be reviewed. Any such review shall be on the record made before the commission. The action of the commission shall be affirmed, unless the court finds that it is not supported by substantial evidence.

3.11 Advisory Committees.

The commission may constitute and empower advisory committees.

ARTICLE 4--WATER SUPPLY

Section 4.1 Generally.

The commission shall have power to develop, implement, and effectuate plans and projects for the use of the water of the basin for domestic, municipal, agricultural, and industrial water supply. To this end, without limitation thereto, it may provide for, construct, acquire,

operate, and maintain dams, reservoirs, and other facilities for utilization of surface and ground water resources, and all related structures, appurtenances, and equipment on the river and its tributaries and at such off-river sites as it may find appropriate, and may regulate and control the use thereof.

4.2 Storage and Release of Waters.

(a) The commission shall have power to acquire, construct, operate, and control projects and facilities for the storage and release of waters, for the regulation of flows and supplies of surface, and ground waters of the basin, for the protection of public health, stream quality control, economic development, improvement of fisheries, recreation, dilution and abatement of pollution, the prevention of undue salinity, and other purposes.

(b) No signatory party shall permit any augmentation of flow to be diminished by the diversion of any water of the basin during any period in which waters are being released from storage under the direction of the commission for the purpose of augmenting such flow, except in cases where the diversion is authorized by this compact, or by the commission pursuant thereto, or by the judgment, order, or decree of a court of competent jurisdiction.

4.3 Assessable Improvements.

The commission may provide water management and regulation in the main stream or any tributary in the basin and, in accordance with the procedures of applicable state laws, may assess on an annual basis or otherwise the cost thereof upon water users or any classification of them specially benefited thereby to a measurable extent, provided that no such assessment shall exceed the actual benefit to any water user. Any such assessment shall follow the procedure prescribed by law for local improvement assessments and shall be subject to review in any court of competent jurisdiction.

4.4 Coordination.

Prior to entering upon the execution of any project authorized by this

article, the commission shall review and consider all existing rights, plans, and programs of the signatory parties, their political subdivisions, private parties, and water users which are pertinent to such project, and shall hold a public hearing on each proposed project.

4.5 Additional Powers.

In connection with any project authorized by this article, the commission shall have power to provide storage, treatment, pumping, and transmission facilities, but nothing herein shall be construed to authorize the commission to engage in the business of distributing water.

ARTICLE 5--WATER QUALITY MANAGEMENT AND CONTROL

Section 5.1 General Powers.

(a) The commission may undertake or contract for investigations, studies, and surveys pertaining to existing water quality, effects of varied actual or projected operations on water quality, new compounds and materials and probable future water quality in the basin. The commission may receive, expend, and administer funds, Federal, state, local, or private as may be available to carry out these functions relating to water quality investigations.

(b) The commission may acquire, construct, operate, and maintain projects and facilities for the management and control of water quality in the basin whenever the commission deems necessary to activate or effectuate any of the provisions of this compact.

5.2 Policy and Standards.

(a) In order to conserve, protect, and utilize the water quality of the basin in accordance with the best interests of the people of the basin and the states, it shall be the policy of the commission to encourage and coordinate the efforts of the signatory parties to prevent, reduce, control, and eliminate water pollution and to maintain water quality as required by the comprehensive plan.

(b) The legislative intent in enacting this article is to give specific emphasis to the primary role of the states in water quality management and control.

(c) The commission shall recommend to the signatory parties the establishment, modification, or amendment of standards of quality for any waters of the basin in relation to their reasonable and necessary use as the commission shall deem to be in the public interest.

(d) The commission shall encourage cooperation and uniform enforcement programs and policies by the water quality control agencies of the signatory parties in meeting the water quality standards established in the comprehensive plan.

(e) The commission may assume jurisdiction whenever it determines after investigation and public hearing upon due notice given that the effectuation of the comprehensive plan so requires. After such investigation, notice, and hearing, the commission may adopt such rules, regulations, and water quality standards as may be required to preserve, protect, improve, and develop the quality of the waters of the basin in accordance with the comprehensive plan.

5.3 Cooperative Administration and Enforcement.

(a) Each of the signatory parties agrees to prohibit and control pollution of the waters of the basin according to the requirements of this compact and to cooperate faithfully in the control of future pollution in and abatement of existing pollution from the waters of the basin.

(b) The commission shall have the authority to investigate and determine if the requirements of the compact or the rules, regulations, and water quality standards of the commission are complied with and if satisfactory progress has not been made, may institute an action or actions in its own name in the proper court or courts of competent jurisdiction to compel compliance with any and all of the provisions of this compact or any of the rules, regulations, and water quality standards of the commission adopted pursuant thereto.

5.4 Further Jurisdiction.

Nothing in this compact shall be construed to repeal, modify, or qualify the authority of any signatory party to enact any legislation or enforce any additional conditions and restrictions to lessen or prevent the pollution of waters within its jurisdiction.

ARTICLE 6--FLOOD PROTECTION

Section 6.1 Flood Control Authority.

The commission may plan, design, construct, and operate and maintain projects and facilities it deems necessary or desirable for flood plain development and flood damage reduction. It shall have power to operate such facilities and to store and release waters of the Susquehanna River and its tributaries and elsewhere within the basin, in such manner, at such times, and under such regulations as the commission may deem appropriate to meet flood conditions as they may arise.

6.2 Regulation.

(a) The commission may study and determine the nature and extent of the flood plains of the Susquehanna River and its tributaries. Upon the basis of the studies, it may delineate area subject to flooding, including but not limited to a classification of lands with reference to relative risk of flooding and the establishment of standards for flood plain use which will promote economic development and safeguard the public health, welfare, safety, and property. Prior to the adoption of any standards delineating the area or defining the use, the commission shall hold public hearings with respect to the substance of the standards in the manner provided by Article 15. The proposed standards shall be available from the commission at the time notice is given, and interested persons shall be given an opportunity to be heard thereon at the hearings.

(b) The commission shall have power to promulgate, adopt, amend, and repeal from time to time as necessary, standards relating to the nature and extent of the uses of land in areas subject to flooding.

(c) In taking action pursuant to subsection (b) of this section and as a prerequisite thereto, the commission shall consider the effect of particular uses of the flood plain in question on the health and safety of persons and property in the basin, the economic and technical feasibility of measures available for the development and protection of the flood plain, and the responsibilities, if any, of local, state, and federal governments connected with the use or proposed use of the flood plain in question. The commission shall regulate the use of particular

flood plains in the manner and degree it finds necessary for the factors enumerated in this subsection, but only with the consent of the affected signatory state, and shall suspend such regulation when and so long as the signatory party or parties or political subdivision possessing jurisdiction have in force applicable laws which the commission finds give adequate protection for the purpose of this section.

(d) In order to conserve, protect, and utilize the Susquehanna River and its tributaries in accordance with the best interests of the people of the basin and the signatory parties, it shall be the policy of the commission to encourage and coordinate the efforts of the signatory parties to control modification of the river and its tributaries by encroachment.

6.3 Flood Lands Acquisition.

The commission shall have power to acquire the fee or any lesser interest in lands and improvements thereon within the area of a flood plain for the purpose of regulating the use or types of construction of such property to minimize the flood hazard, convert the property to uses or types of construction appropriate to flood plain conditions, or prevent constrictions or obstructions that reduce the ability of the river channel and flood plain to carry flood water.

6.4 Existing Structures.

No rule or regulation issued by the commission pursuant to this shall be construed to require the demolition, removal, or alteration of any structure in place or under construction prior to the issuance thereof, without the payment of just compensation therefor. However, new construction or any addition to or alteration in any existing structure made or commenced subsequent to the issuance of such rule or regulation, or amendment, shall conform thereto.

6.5 Police Powers.

The regulation of use of flood plain lands is within the police powers of the signatory states for the protection of public health and the

safety of the people and their property and shall not be deemed a taking of land or lands for which compensation shall be paid to the owners thereof.

6.6 Cooperation.

Each of the signatory parties agrees to control flood plain use along and encroachment upon the Susquehanna and its tributaries and to cooperate faithfully in these respects.

6.7 Other Authority.

Nothing in this article shall be construed to prevent or in any way to limit the power of any signatory party, or any agency or subdivision thereof, to issue or adopt and enforce any requirement or requirements with respect to flood plain use or construction thereon more stringent than the rules, regulations, or encroachment lines in force pursuant to this article. The commission may appear in any court of competent jurisdiction to bring actions or proceedings in law or equity to enforce the provisions of this article.

6.8 Debris.

The signatory states agree that dumping or littering upon or in the waters of the Susquehanna River or its tributaries or upon the frozen surfaces thereof of any rubbish, trash, litter, debris, abandoned properties, waste material, or offensive matter, is prohibited and that the law enforcement officials of each state shall enforce this prohibition.

ARTICLE 7--WATERSHED MANAGEMENT

Section 7.1 Watersheds Generally.

The commission shall promote sound practices of watershed management in the basin, including projects and facilities to retard runoff and waterflow and prevent soil erosion.

7.2 Soil Conservation and Land and Forest Management.

The commission, subject to the limitations in Section 7.4(b), may acquire, sponsor, or operate facilities and projects to encourage soil conservation, prevent and control erosion, and promote land reclamation and sound land and forest management.

7.3 Fish and Wildlife.

The commission, subject to the limitations in Section 7.4(b), may acquire, sponsor, or operate projects and facilities for the maintenance and improvement of fish and wildlife habitat related to the water resources of the basin.

7.4 Cooperative Planning and Operation.

(a) The commission shall cooperate with the appropriate agencies of the signatory parties and with other public and private agencies in the planning and effectuation of a coordinated program of facilities and projects authorized by this article.

(b) The commission shall not acquire or operate any such project or facility unless it has first found and determined that no other suitable unit or agency of government is in a position to acquire or operate the same upon reasonable conditions, or such unit or agency fails to do so.

ARTICLE 8--RECREATION

Section 8.1 Development.

The commission may provide for the development of water related public sports and recreational facilities. The commission on its own account or in cooperation with a signatory party, political subdivision or any agency thereof, may provide for the construction, maintenance, and administration of such facilities, subject to the provisions of Section 8.2 hereof.

8.2 Cooperative Planning Operation.

(a) The commission shall cooperate with the appropriate agencies of the signatory parties and with other public and private agencies in the

planning and effectuation of a coordinated program of facilities and projects authorized by this article.

(b) The commission shall not operate any such project or facility unless it has first found and determined that no other suitable unit or agency of government is available to operate the same upon reasonable conditions.

8.3 Operation and Maintenance.

The commission, within limits prescribed by this article, shall:

1. Encourage activities of other public agencies having water related recreational interests and assist in the coordination thereof;

2. Recommend standards for the development and administration of water related recreational facilities;

3. Provide for the administration, operation, and maintenance of recreation facilities owned or controlled by the commission and for the letting and supervision of private concessions in accordance with this article.

8.4 Concessions.

The commission, after public hearing upon due notice given shall provide by regulation a procedure for the award of contracts for private concessions in connection with its recreational facilities, including any renewal or extension thereof, under terms and conditions determined by the commission.

ARTICLE 9--OTHER PUBLIC VALUES

Section 9.1 Inherent Values.

The signatory parties agree that it is a purpose of this compact in effectuating the conservation and management of water resources to preserve and promote the economic and other values inherent in the historic and the scenic and other natural amenities of the Susquehanna

River Basin for the enjoyment and enrichment of future generations, for the promotion and protection of tourist attractions in the basin, and for the maintenance of the economic health of allied enterprises and occupations so as to effect orderly, balanced, and considered development in the basin.

9.2 Project Compatibility.

To this end, the signatory parties agree that in the consideration, authorization, construction, maintenance, and operation of all water resources projects in the Susquehanna basin, their agencies and subdivisions, and the Susquehanna River Basin Commission will consider the compatibility of such projects with these other public values.

9.3 Regulation Standards.

The commission may recommend to governmental units with jurisdiction within areas considered for scenic or historic designation minimum standards of regulation of land and water use and such other protective measures as the commission may deem desirable.

9.4 Local Area Protection.

The commission may draft and recommend for adoption ordinances and regulations which would assist, promote, develop, and protect those areas and the character of their communities. Local governments may consider parts of their area which have been designated scenic or historic areas under the provisions of this article separately from the municipality as a whole, and pursuant to the laws of the state governing the adoption of those regulations generally may enact regulations limited to the designated area. In making recommendations to a local government which is partly in and partly out of such a scenic or historic area the commission may make recommendations for the entire municipality.

ARTICLE 10--HYDROELECTRIC POWER

Section 10.1 Development.

The waters of the Susquehanna River and its tributaries may be impounded and used by or under authority of the commission for the generation of hydroelectric power and hydroelectric energy in accordance with the comprehensive plan.

10.2 Power Generation.

The commission may develop and operate, or authorize to be developed and operated, dams and related facilities and appurtenances for the purpose of generating hydroelectric power and hydroelectric energy.

10.3 Transmission.

The commission may provide facilities for the transmission of hydroelectric power and hydroelectric energy produced by it where such facilities are not otherwise available upon reasonable terms, for the purpose of wholesale marketing of power and nothing herein shall be construed to authorize the commission to engage in the business of direct sale to consumers.

10.4 Development Contracts.

The commission, after public hearing upon due notice given may enter into contracts on reasonable terms, consideration, and duration under which public utilities or public agencies may develop hydroelectric power and hydroelectric energy through the use of dams, related facilities, and appurtenances.

10.5 Rates and Charges.

Rates and charges fixed by the commission for power which is produced by its facilities shall be reasonable, nondiscriminatory, and just.

ARTICLE 11--REGULATION OF WITHDRAWAL AND DIVERSIONS; PROTECTED AREAS AND EMERGENCIES

Section 11.1 Power of Regulation.

The commission may regulate and control withdrawals and diversions from surface waters and ground waters of the basin, as provided by this article. The commission may enter into agreements with the signatory parties relating to the exercise of such power or regulation or control and may delegate to any of them such powers of the commission as it may deem necessary or desirable.

11.2 Determination of Protected Area.

The commission, from time to time after public hearing upon due notice given may determine and delineate such areas within the basin wherein the demands upon supply made by water users have developed or threaten to develop to such a degree as to create a water shortage or impair or conflict with the requirements or effectuation of the comprehensive plan, and any such area may be designated as a protected area, with the consent of the member or members from the affected state or states. The commission, whenever it determines that such shortage no longer exists, shall terminate the protected status of such area and shall give public notice of such termination.

11.3 Diversion and Withdrawal Permits.

In any protected areas so determined and delineated, no person shall divert or withdraw water for domestic, municipal, agricultural, or industrial uses in excess of such quantities as the commission may prescribe by general regulations, except (1) pursuant to a permit granted under this article, or (2) pursuant to a permit or approval heretofore granted under the laws of any of the signatory states.

11.4 Emergency.

(a) In the event of a drought which may cause an actual and immediate shortage of available water supply within the basin, or within any part thereof, the commission after public hearing upon due notice given may determine and delineate the area of the shortage and by unanimous vote declare a drought emergency therein. For the duration of the drought emergency as determined by the commission, it thereupon may direct

increases or decreases in any allocations, diversions, or releases previously granted or required, for a limited time to meet the emergency condition.

(b) In the event of a disaster or catastrophe other than drought, natural or manmade, which causes or may cause an actual and immediate shortage of available and usable water, the commission by unanimous consent may impose direct controls on the use of water and shall take such action as is necessary to coordinate the effort of federal, state, and local agencies and other persons and entities affected.

11.5 Standards.

Permits shall be granted, modified, or denied, as the case may be, to avoid such depletion of the natural stream flows and ground waters in the protected area or in an emergency area as will adversely affect the comprehensive plan or the just and equitable interests and rights of other lawful users of the same source, giving due regard to the need to balance and reconcile alternative and conflicting uses in the event of an actual or threatened shortage of water of the quality required.

11.6 Judicial Review.

The determinations and delineations of the commission pursuant to Section 11.2 and the granting, modification or denial of permits pursuant to Section 11.3, 11.4, and 11.5 shall be subject to judicial review in any court of competent jurisdiction.

11.7 Maintenance of Records.

Each signatory party shall provide for the maintenance and preservation of such records of authorized diversions and withdrawals and the annual volume thereof as the commission shall prescribe. Such records and supplementary reports shall be furnished to the commission at its request.

11.8 Existing State Systems.

Whenever the commission finds it necessary or desirable to exercise the powers conferred with respect to emergencies by this article, any diversion or withdrawal permits authorized or issued under the laws of any of the signatory states shall be superseded to the extent of any conflict with the control and regulation exercised by the commission.

ARTICLE 12--INTERGOVERNMENTAL RELATIONS

Section 12.1 Federal Agencies and Projects.

For the purposes of avoiding conflicts of jurisdiction and of giving full effect to the commission as a regional agency of the signatory parties, the following rules shall govern Federal projects affecting the water resources of the basin, subject in each case to the provisions of Section 1.4 of this compact:

1. The planning of all projects related to powers delegated to the commission by this compact shall be undertaken in consultation with the commission.

2. No expenditure or commitment shall be made for or on account of the construction, acquisition, or operation of any project or facility nor shall it be deemed authorized, unless it shall have first been included by the commission in the comprehensive plan.

3. Each Federal agency otherwise authorized by law to plan, design, construct, operate or maintain any project or facility in or for the basin shall continue to have, exercise, and discharge such authority except as specifically provided by this section.

12.2 State and Local Agencies and Projects.

For the purposes of avoiding conflicts of jurisdiction and of giving full effect to the commission as a regional agency of the signatory parties, the following rules shall govern projects of the signatory states, their political subdivisions and public corporations affecting water resources of the basin:

1. The planning of all projects related to powers delegated to the commission by this compact shall be undertaken in consultation with the commission;

2. No expenditure or commitment shall be made for or on account of the construction, acquisition, or operation of any project or facility unless it first has been included by the commission in the comprehensive plan;

3. Each state and local agency otherwise authorized by law to plan, design, construct, operate, or maintain any project or facility in or for the basin shall continue to have, exercise, and discharge such authority, except as specifically provided by this section.

12.3 Reserved Taxing Powers of States.

Each of the signatory parties reserves the right to levy, assess, and collect fees, charges, and taxes on or measured by the withdrawal or diversion of waters of the basin for use within the jurisdiction of the respective signatory parties.

12.4 Project Costs and Evaluation Standards.

The commission shall establish uniform standards and procedures for the evaluation, determination of benefits, and cost allocations of projects affecting the basin, and for the determination of project priorities, pursuant to the requirements of the comprehensive plan and its water resources program. The commission shall develop equitable cost sharing and reimbursement formulas for the signatory parties including:

1. Uniform and consistent procedures for the allocation of project costs among purposes included in multiple-purpose programs;

2. Contracts and arrangements for sharing financial responsibility among and with signatory parties, public bodies, groups, and private enterprise, and for the supervision of their performance;

3. Establishment and supervision of a system of accounts for reimbursement purposes and directing the payments and charges to be made from such accounts;

4. Determining the basis and apportioning amounts (i) of reimbursable revenues to be paid signatory parties or their political subdivisions, and (ii) of payments in lieu of taxes to any of them.

12.5 Cooperative Services.

The commission shall furnish technical services, advice, and consultation to authorized agencies of the signatory parties with respect to the water resources of the basin, and each of the signatory parties pledges itself to provide technical and administrative service to the commission upon request within the limits of available appropriations, and to cooperate generally with the commission for the purposes of this compact, and the cost of such service may be reimbursable whenever the parties deem appropriate.

ARTICLE 13--CAPITAL FINANCING

Section 13.1 Borrowing Power.

The commission may borrow money for any of the purposes of this compact and may issue its negotiable bonds and other evidences of indebtedness in respect thereto.

All such bonds and evidences of indebtedness shall be payable solely out of the properties and revenues of the commission without recourse to taxation. The bonds and other obligations of the commission, except as may be otherwise provided in the indenture under which they were issued, shall be direct and general obligations of the commission, and the full faith and credit of the commission are hereby pledged for the prompt payment of the debt service thereon and for the fulfillment of all other undertakings of the commission assumed by it to or for the benefit of the holders thereof.

13.2 Funds and Expenses.

The purposes of this compact shall include without limitation thereto all costs of any project or facility or any part thereof, including interest during a period of construction and a reasonable time thereafter and any incidental expenses (legal, engineering, fiscal, financial consultant, and other expenses) connected with issuing and disposing of the bonds; all amounts required for the creation of an operating fund, construction fund, reserve fund, sinking fund, or other special fund; all other expenses connected with the planning, design, acquisition, construction, completion, improvement, or reconstruction of any facility or any part thereof; and reimbursement of advances by the commission or by others for such purposes and for working capital.

13.3 Credit Excluded; Officers, State and Municipal.

The commission shall have no power to pledge the credit of any signatory party or of any county or municipality, or to impose any obligation for payment of the bonds upon any signatory party or any county or municipality. Neither the commissioners nor any person executing the bonds shall be liable personally on the bonds of the commission or be subject to any personal liability or accountability by reason of the issuance thereof.

13.4 Funding and Refunding.

Whenever the commission deems it expedient, it may fund and refund its bonds and other obligations, whether or not such bonds and obligations have matured. It may provide for the issuance, sale, or exchange of refunding bonds for the purpose of redeeming or retiring any bonds (including payment of any premium, duplicate interest, or cash adjustment required in connection therewith) issued by the commission or issued by any other issuing body, the proceeds of the sale of which have been applied to any facility acquired by the commission or which are payable out of the revenues of any facility acquired by the commission. Bonds may be issued partly to refund bonds and other obligations then outstanding, and partly for any other purpose of the commission. All provisions of this compact applicable to the issuance of bonds are

applicable to refunding bonds and to the issuance, sale, or exchange thereof.

13.5 Bonds: Authorization Generally.

Bonds and other indebtedness of the commission shall be authorized by resolution of the commission. The validity of the authorization and issuance of any bonds by the commission shall not be dependent upon or affected in any way by: (1) the disposition of bond proceeds by the commission or by contract, commitment or action taken with respect to such proceeds; or (2) the failure to complete any part of the project for which bonds are authorized to be issued. The commission may issue bonds in one or more series and may provide for one or more consolidated bond issues, in such principal amounts and with such terms and provisions as the commission may deem necessary. The bonds may be secured by a pledge of all or any part of the property, revenues, and franchises under its control. Bonds may be issued by the commission in such amount, with such maturities and in such denominations and form or forms, whether coupon or registered, as to both principal and interest, as may be determined by the commission. The commission may provide for redemption of bonds prior to maturity on such notice and at such time or times and with such redemption provisions, including premiums, as the commission may determine.

13.6 Bonds, Resolutions and Indentures Generally.

The commission may determine and enter into indentures providing for the principal amount, date or dates, maturities, interest rate, denominations, form, registration, transfer, interchange, and other provisions of the bonds and coupons and the terms and conditions upon which the same shall be executed, issued, secured, sold, paid, redeemed, funded, and refunded. The resolution of the commission authorizing any bond or any indenture so authorized under which the bonds are issued may include all such covenants and other provisions other than any restriction on the regulatory powers vested in the commission by this compact as the commission may deem necessary or desirable for the issue, payment, security, protection, or marketing of the bonds, including

without limitation covenants and other provisions as to the rates or amounts of fees, rents, and other charges to be charged or made for use of the facilities; the use, pledge, custody, securing, application, and disposition of such revenues, of the proceeds of the bonds, and of any other moneys of the commission; the operation, maintenance, repair, and reconstruction of the facilities and the amounts which may be expended therefor; the sale, lease, or other disposition of the facilities; the insuring of the facilities and of the revenues derived therefrom; the construction or other acquisition of other facilities; the issuance of additional bonds or other indebtedness; the rights of the bondholders and of any trustee for the bondholders upon default by the commission or otherwise; and the modification of the provisions of the indenture and of the bonds. Reference on the face of the bonds to such resolution or indenture by its date of adoption or the apparent date on the face thereof is sufficient to incorporate all of the provisions thereof and of this compact into the body of the bonds and their appurtenant coupons. Each taker and subsequent holder of the bonds or coupons, whether the coupons are attached to or detached from the bonds, has recourse to all of the provisions of the indenture and of this compact and is bound thereby.

13.7 Maximum Maturity.

No bond or its terms shall mature in more than fifty years from its own date, or on any date subsequent to the duration of this compact, and in the event any authorized issue is divided into two or more series or divisions, the maximum maturity date herein authorized shall be calculated from the date on the face of each bond separately, irrespective of the fact that different dates may be prescribed for the bonds of each separate series or division of any authorized issue.

13.8 Tax Exemption.

All bonds issued by the commission under the provisions of this compact and the interest thereon shall at all times be free and exempt from all taxation by or under authority of any of the signatory parties, except for transfer, inheritance, and estate taxes.

13.9 Interest.

Bonds shall bear interest at a rate determined by the commission, payable annually or semi-annually.

13.10 Place of Payment.

The commission may provide for the payment of the principal and interest of bonds at any place or places within or without the signatory states, and in any specified lawful coin or currency of the United States of America.

13.11 Execution.

The commission may provide for the execution and authentication of bonds by the manual, lithographed, or printed facsimile signature of officers of the commission, and by additional authentication by a trustee or fiscal agent appointed by the commission. If any of the officers whose signatures or countersignatures appear upon the bonds or coupons ceases to be an officer before the delivery of the bonds or coupons, his signature or countersignature is nevertheless valid and of the same force and effect as if the officer had remained in office until the delivery of the bonds and coupons.

13.12 Holding Own Bonds.

The commission shall have power out of any funds available therefor to purchase its bonds and may hold, cancel, or resell such bonds.

13.13 Sale.

The commission may fix terms and conditions for the sale or other disposition of any authorized issue of bonds and may sell its bonds at less than their par or face value. All bonds issued and sold for cash pursuant to this compact shall be sold on sealed proposals to the highest bidder. Prior to such sale, the commission shall advertise for

bids by publication of a notice of sale not less than ten days prior to the date of sale, at least once in a newspaper of general circulation printed and published in New York City carrying municipal bonds notices and devoted primarily to financial news. The commission may reject any and all bids submitted and may thereafter sell the bonds so advertised for sale at private sale to any financially responsible bidder under such terms and conditions as it deems most advantageous to the public interest, but the bonds shall not be sold at a net interest cost calculated upon the entire issue so advertised, greater than the lowest bid which was rejected. In the event the commission desires to issue its bonds in exchange for an existing facility or portion thereof, or in exchange for bonds secured by the revenues of an existing facility, it may exchange such bonds for the existing facility or portion thereof or for the bonds so secured, plus an additional amount of cash, without advertising such bonds for sale.

13.14 Negotiability.

All bonds issued under the provisions of this compact are negotiable instruments, except when registered in the name of a registered owner.

13.15 Legal Investments.

Bonds of the commission shall be legal investments for savings banks, fiduciaries and public funds in each of the signatory states.

13.16 Validation Proceedings.

Prior to the issuance of any bonds, the commission may institute a special proceeding to determine the legality of proceedings to issue the bonds and their validity under the laws of any of the signatory parties. Such proceedings shall be instituted and prosecuted in rem, and the judgment rendered therein shall be conclusive against all persons whomsoever and against each of the signatory parties.

13.17 Recording.

No indenture need be recorded or filed in any public office, other than the office of the commission. The pledge of revenues provided in any indenture shall take effect forthwith as provided therein and irrespective of the date of receipts of such revenues by the commission or the indenture trustee. Such pledge shall be effective as provided in the indenture without physical delivery of the revenues to the commission or the indenture trustee.

13.18 Pledged Revenues.

Bond redemption and interest payments, to the extent provided in the resolution or indenture, shall constitute a first, direct and exclusive charge and lien on all such rates, rents, tolls, fees, and charges and other revenues and interest thereon received from the use and operation of the facility, and on any sinking or other funds created therefrom. All such rates, rents, tolls, fees, charges and other revenues, together with interest thereon, shall constitute a trust fund for the security and payment of such bonds, and except as and to the extent provided in the indenture with respect to the payment therefrom of expenses for other purposes including administration, operation, maintenance, improvements, or extensions of the facilities or other purposes shall not be used or pledged for any other purpose so long as such bonds, or any of them, are outstanding, and unpaid.

13.19 Remedies.

The holder of any bond may for the equal benefit and protection of all holders of bonds similarly situated; (1) by mandamus or other appropriate proceedings require and compel the performance of any of the duties imposed upon the commission or assumed by it, its officers, agents, or employees under the provisions of any indenture, in connection with the acquisition, construction, operation, maintenance, repair, reconstruction, or insurance of the facilities, or in connection with the collection, deposit, investment, application, and disbursement of the rates, rents, tolls, fees, charges, and other revenues derived from the operation and use of the facilities, or in connection with the deposit, investment, and disbursement of the proceeds received from the

sale of bonds; or (2) by action or suit in a court of competent jurisdiction of any signatory party require the commission to account as if it were the trustee of an express trust, or enjoin any acts or things which may be unlawful or in violation of the rights of the holders of the bonds. The enumeration of such rights and remedies, however, does not exclude the exercise or prosecution of any other rights or remedies available to the holders of bonds.

13.20 Capital Financing by Signatory Parties; Guarantees.

(a) The signatory parties shall provide such capital funds required for projects of the commission as may be authorized by their respective statutes in accordance with a cost sharing plan prepared pursuant to Article 12 of this compact; but nothing in this section shall be deemed to impose any mandatory obligation on any of the signatory parties other than such obligations as may be assumed by a signatory party in connection with a specific project or facility.

(b) Bonds of the commission, notwithstanding any other provision of this compact, may be executed and delivered to any duly authorized agency of any of the signatory parties without public offering and may be sold and resold with or without the guaranty of such signatory party, subject to and in accordance with the constitutions of the respective signatory parties.

(c) The commission may receive and accept, and the signatory parties may make, loans, grants, appropriations, advances, and payments of reimbursable or nonreimbursable funds or property in any form for the capital or operating purposes of the commission.

ARTICLE 14--PLAN, PROGRAM AND BUDGETS

Section 14.1 Comprehensive Plan.

The commission shall develop and adopt, and may from time to time review and revise, a comprehensive plan for the immediate and long range development and use of the water resources of the basin. The plan shall include all public and private projects and facilities which are required, in the judgment of the commission, for the optimum planning, development, conservation, utilization, management, and control of the water resources of the basin to meet present and future needs. The

commission may adopt a comprehensive plan or any revision thereof in such part or parts as it may deem appropriate, provided that before the adoption of the plan or any part or revision thereof the commission shall consult with water users and interested public bodies and public utilities and shall consider and give due regard to the findings and recommendations of the various agencies of the signatory parties, their political subdivisions, and interested groups. The commission shall conduct public hearings upon due notice given with respect to the comprehensive plan prior to the adoption of the plan or any part of the revision thereof, except that public and private projects and facilities which, in the judgment of the commission, are not required for the optimum planning, development, conservation, utilization, management, and control of the water resources of the basin and which, in the judgment of the commission, will not significantly affect the water resources of the basin, may be added directly to the comprehensive plan at any time at the discretion of the commission without public hearing thereon. The comprehensive plan shall take into consideration the effect of the plan or any part thereof upon the receiving waters of Chesapeake Bay.

14.2 Water Resources Program.

The commission shall annually adopt a water resources program, based upon the comprehensive plan, consisting of the projects and facilities which the commission proposes to be undertaken by the commission and by other authorized governmental and private agencies, organizations, and persons during the ensuing six years or such other reasonably foreseeable period as the commission may determine. The water resources program shall include a systematic presentation of:

1. The quantity and quality of water resources needs for such period;
2. The existing and proposed projects and facilities required to satisfy such needs, including all public and private projects to be anticipated; and
3. A separate statement of the projects proposed to be undertaken by

the commission during such period.

14.3 Annual Current Expense and Capital Budgets.

(a) The commission shall annually adopt a capital budget including all capital projects it proposes to undertake or continue during the budget period containing a statement of the estimated cost of each project and the method of financing thereof.

(b) The commission shall annually adopt a current expense budget for each fiscal year. Such budget shall include the commission's estimated expenses for administration, operation, maintenance, and repairs, including a separate statement thereof for each project, together with its cost allocation. The total of such expenses shall be balanced by the commission's estimated revenues from all sources, including the cost allocations undertaken by any of the signatory parties in connection with any project. Following the adoption of the annual current expense budget by the commission, the executive director of the commission shall:

1. Certify to the respective signatory parties the amounts due in accordance with existing cost sharing established for each project; and

2. Transmit certified copies of such budget to the principal budget officer of the respective signatory parties at such time and in such manner as may be required under their respective budgetary procedures. The amount required to balance the current expense budget in addition to the aggregate amount of item 1 above and all other revenues available to the commission shall be apportioned equitably among the signatory parties by unanimous vote of the commission, and the amount of such apportionment to each signatory party shall be certified together with the budget.

(c) The respective signatory parties covenant and agree to include the amount so apportioned for the support of the current expense budget in their respective budgets next to be adopted, subject to such review and approval as may be required by their respective budgetary processes. Such amounts shall be due and payable to the commission in quarterly installments during its fiscal year, provided that the commission may draw upon its working capital to finance its current expense budget

pending remittance by the signatory parties.

ARTICLE 15--GENERAL PROVISIONS

Section 15.1 Auxiliary Powers of Commission; Functions of Commissioners.

(a) The commission, for the purposes of this compact, may:

1. Adopt and use a corporate seal, enter into contracts, and sue and be sued in any court of competent jurisdiction;

2. Receive and accept such payments, appropriations, grants, gifts, loans, advances, and other funds, properties, and services as may be transferred or made available to it by any signatory party or by any other public or private corporation or individual, and enter into agreements to make reimbursement for all or part thereof;

3. Provide for, acquire, and adopt detailed engineering, administrative, financial, and operating plans and specifications to effectuate, maintain, or develop any facility or project;

4. Control and regulate the use of facilities owned or operated by the commission;

5. Acquire, own, operate, maintain, control, sell and convey real and personal property and any interest therein by contract, purchase, lease, license, mortgage, or otherwise as it may deem necessary for any project or facility, including any and all appurtenances thereto necessary, useful, or convenient for such ownership, operation, control, maintenance, or conveyance;

6. Have and exercise all corporate powers essential to the declared objects and purposes of the commission.

(b) The commissioners, subject to the provisions of this compact, shall:

1. Serve as the governing body of the commission, and exercise and discharge its powers and duties, except as otherwise provided by or

pursuant to this compact;

2. Determine the character of and the necessity for its obligations and expenditures and the manner in which they shall be incurred, allowed, and paid subject to any provisions of law specifically applicable to agencies or instrumentalities created by this compact;

3. Provide for the internal organization and administration of the commission;

4. Appoint the principal officers of the commission and delegate to and allocate among them administrative functions, powers and duties;

5. Create and abolish offices, employments, and positions as it deems necessary for the purposes of the commission, and subject to the provisions of this article, fix and provide for the qualification, appointments, removal, term, tenure, compensation, pension, and retirement rights of its officers and employees;

6. Let and execute contracts to carry out the powers of the commission.

15.2 Regulations; Enforcement.

The commission may:

1. Make and enforce rules and regulations for the effectuation, application, and enforcement of this compact; and it may adopt and enforce practices and schedules for or in connection with the use, maintenance, and administration of projects and facilities it may own or operate and any product or service rendered thereby; provided that any rule or regulation, other than one which deals solely with the internal management of the commission, shall not be effective unless and until filed in accordance with the law of the respective signatory parties applicable to administrative rules and regulations generally; and

2. Designate any officer, agent, or employee of the commission to be

an investigator or watchman and such person shall be vested with the powers of a peace officer of the state in which he is duly assigned to perform his duties.

15.3 Tax Exemptions.

The commission, its property, functions and activities shall be exempt from taxation by or under the authority of any of the signatory parties or any political subdivision thereof; provided that in lieu of property taxes the commission, as to its specific projects, shall make payments to local taxing districts in annual amounts which shall equal the taxes lawfully assessed upon property for the tax year next prior to its acquisition by the commission for a period of ten years. The nature and amount of such payments shall be reviewed by the commission at the end of ten years, and from time to time thereafter, upon reasonable notice and opportunity to be heard to the affected taxing district, and the payments may be thereupon terminated or continued in such reasonable amount as may be necessary or desirable to take into account hardships incurred and benefits received by the taxing jurisdiction which are attributable to the project.

15.4 Meetings; Public Hearing; Records, Minutes.

(a) All meetings of the commission shall be open to the public.

(b) The commission shall conduct at least one public hearing in each state prior to the adoption of the initial comprehensive plan. In all other cases wherein this compact requires a public hearing, such hearing shall be held upon not less than twenty days' public notice given by posting at the offices of the commission, and published at least once in a newspaper or newspapers of general circulation in the area or areas affected. The commission shall also provide forthwith for distribution of such notice to the press and by the mailing of a copy thereof to any person who shall request such notices.

(c) The minutes of the commission shall be a public record open to inspection at its offices during regular business hours.

15.5 Officers Generally.

(a) The officers of the commission shall consist of an executive

director and such additional officers, deputies, and assistants as the commission may determine. The executive director shall be appointed and may be removed by the affirmative vote of a majority of the full membership of the commission. All other officers and employees shall be appointed or dismissed by the executive director under such rules of procedure as the commission may establish.

(b) In the appointment and promotion of officers and employees for the commission, no political, racial, religious, or residence test or qualification shall be permitted or given consideration, but all such appointments and promotions shall be solely on the basis of merit and fitness. Any officer or employee of the commission who is found by the commission to be guilty of a violation of this section shall be immediately dismissed.

15.6 Oath of Office.

An oath of office in such form as the commission shall prescribe shall be taken, subscribed, and filed with the commission by the executive director and by each officer appointed by him not later than fifteen days after the appointment.

15.7 Bond.

Each officer shall give such bond and in such form and amount as the commission may require, for which the commission shall pay the premium.

15.8 Prohibited Activities.

(a) No commissioner, officer or employee shall:

1. Be financially interested, either directly or indirectly, in any contract, sale, purchase, lease, or transfer of real or personal property to which the commission is a party;

2. Solicit or accept money or any other thing of value in addition to the compensation or expense paid him by the commission for services performed within the scope of his official duties;

3. Offer money or any thing of value for or in consideration of obtaining an appointment, promotion, or privilege in his employment with the commission.

(b) Any officer or employee who willfully violates any of the provisions of this section shall forfeit his office or employment.

(c) Any contract or agreement knowingly made in contravention of this section is void.

(d) Officers and employees of the commission shall be subject, in addition to the provisions of this section, to such criminal and civil sanctions for misconduct in office as may be imposed by Federal law and the law of the signatory state in which such misconduct occurs.

15.9 Purchasing.

Contracts for the construction, reconstruction or improvement of any facility when the expenditure required exceeds ten thousand dollars, and contracts for the purchase of services, supplies, equipment, and materials when the expenditure required exceeds five thousand dollars shall be advertised and let upon sealed bids to the lowest responsible bidder. Notice requesting such bids shall be published in a manner reasonably likely to attract prospective bidders, which publication shall be made at least thirty days before bids are received and in at least two newspapers of general circulation in the basin. The commission may reject any and all bids and readvertise in its discretion. If after rejecting bids the commission determines and resolves that in its opinion the supplies, equipment, and materials may be purchased at a lower price in the open market, the commission may give each responsible bidder an opportunity to negotiate a price and may proceed to purchase the supplies, equipment, and materials in the open market at a negotiated price which is lower than the lowest rejected bid of a responsible bidder, without further observance of the provisions requiring bids or notice. The commission shall adopt rules and regulations to provide for purchasing from the lowest responsible bidder when sealed bids, notice, and publication are not required by this section. The commission may suspend and waive the provisions of this section requiring competitive bids whenever:

1. The purchase is to be made from or the contract to be made with the Federal or any state government or any agency or political subdivision thereof or pursuant to any open and bulk purchase contract of any of them;

2. The public exigency requires the immediate delivery of the articles or performance of the service;

3. Only one source of supply is available;

4. The equipment to be purchased is of a technical nature and the procurement thereof without advertising is necessary in order to assure standardization of equipment and interchangeability of parts in the public interest; or

5. Services are to be provided of a specialized or professional nature.

15.10 Insurance.

The commission may self-insure or purchase insurance and pay the premiums therefor against loss or damage to any of its properties; against liability for injury to persons or property; and against loss of revenue from any cause whatsoever. Such insurance coverage shall be in such form and amount as the commission may determine, subject to the requirements of any agreement arising out of the issuance of bonds by the commission.

15.11 Annual Independent Audit.

(a) As soon as practical after the closing of the fiscal year an audit shall be made of the financial accounts of the commission. The audit shall be made by qualified certified public accountants selected by the commission, who have no personal interest direct or indirect in the financial affairs of the commission or any of its officers or employees. The report of audit shall be prepared in accordance with accepted accounting practices and shall be filed with the chairman and such other officers as the commission shall direct. Copies of the report shall be

distributed to each commissioner and shall be made available for public distribution.

(b) Each signatory party by its duly authorized officers shall be entitled to examine and audit at any time all of the books, documents, records, files, and accounts and all other papers, things, or property of the commission. The representatives of the signatory parties shall have access to all books, documents, records, accounts, reports, files, and all other papers, things, or property belonging to or in use by the commission and necessary to facilitate the audit and they shall be afforded full facilities for verifying transactions with the balances or securities held by depositaries, fiscal agents, and custodians.

(c) The financial transactions of the commission shall be subject to audit by the General Accounting Office in accordance with the principles and procedures applicable to commercial corporate transactions and under such rules and regulations as may be prescribed by the Comptroller General of the United States. The audit shall be conducted at the place or places where the accounts of the commission are kept.

(d) Any officer or employee who shall refuse to give all required assistance and information to the accountants selected by the commission or to the authorized officers of any signatory party or who shall refuse to submit to them for examination such books, documents, records, files, accounts, papers, things, or property as may be requested shall forfeit his office.

15.12 Reports.

The commission shall make and publish an annual report to the legislative bodies of the signatory parties and to the public reporting on its programs, operations, and finances. It may also prepare, publish, and distribute such other public reports and informational materials as it may deem necessary or desirable.

15.13 Grants, Loans, or Payments by States or Political Subdivisions.

(a) Any or all of the signatory parties or any political subdivision thereof may:

1. Appropriate to the commission such funds as may be necessary to pay

preliminary expenses such as the expenses incurred in the making of borings, and other studies of subsurface conditions, in the preparation of contracts for the sale of water and in the preparation of detailed plans and estimates required for the financing of a project;

2. Advance to the commission, either as grants or loans, such funds as may be necessary or convenient to finance the operation and management of or construction by the commission of any facility or project;

3. Make payments to the commission for benefits received or to be received from the operation of any of the projects or facilities of the commission.

(b) Any funds which may be loaned to the commission either by a signatory party or a political subdivision thereof shall be repaid by the commission through the issuance of bonds or out of the other income of the commission, such repayment to be made within such period and upon such terms as may be agreed upon between the commission and the signatory party or political subdivision making the loan.

15.14 Condemnation Proceedings.

(a) The commission shall have the power to acquire by condemnation the fee or any lesser interest in lands, lands lying under water, development rights in land, riparian rights, water rights, waters and other real or personal property within the basin for any project or facility authorized pursuant to this compact. This grant of power of eminent domain includes but is not limited to the power to condemn for the purposes of this compact any property already devoted to a public use, by whomsoever owned or held, other than property of a signatory party. Any condemnation of any property or franchises owned or used by a municipal or privately owned public utility, unless the affected public utility facility is to be relocated or replaced, shall be subject to the authority of such state board, commission, or other body as may have regulatory jurisdiction over such public utility.

(b) The power of condemnation referred to in sub-section (a) shall be exercised in accordance with the provisions of the state condemnation law in force in the signatory state in which the property is located. If there is no applicable state condemnation law, the power of condemnation

shall be exercised in accordance with the provisions of Federal condemnation law.

(c) Any award or compensation for the taking of property pursuant to this article shall be paid by the commission, and none of the signatory parties nor any other agency, instrumentality or political subdivision thereof shall be liable for such award or compensation.

15.15 Conveyance of Lands and Relocation of Public Facilities.

(a) The respective officers, agencies, departments, commissions, or bodies having jurisdiction and control over real and personal property owned by the signatory parties are authorized and empowered to transfer and convey in accordance with the laws of the respective parties to the commission any such property as may be necessary or convenient to the effectuation of the authorized purposes of the commission.

(b) Each political subdivision of each of the signatory parties, notwithstanding any contrary provisions of law, is authorized and empowered to grant and convey to the commission, upon the commission's request, any real property or any interest therein owned by such political subdivision including lands lying under water and lands already devoted to public use which may be necessary or convenient to the effectuation of the authorized purposes of the commission.

(c) Any highway, public utility, or other public facility which will be dislocated by reason of a project deemed necessary by the commission to effectuate the authorized purposes of this compact shall be relocated and the cost thereof shall be paid in accordance with the law of the state in which the facility is located; provided that the cost of such relocation payable by the commission shall not in any event exceed the expenditure required to serve the public convenience and necessity.

15.16 Rights of Way.

Permission is hereby granted to the commission to locate, construct, and maintain any aqueducts, lines, pipes, conduits, and auxiliary facilities authorized to be acquired, constructed, owned, operated, or maintained by the commission in, over, under, or across any streets and highways now or hereafter owned, opened, or dedicated to or for public use, subject to such reasonable conditions as the highway department of

the signatory party may require.

15.17 Penalty.

Any person, association, or corporation who violates or attempts or conspires to violate any provisions of this compact or any rule, regulation, or order of the commission duly made, promulgated, or issued pursuant to the compact in addition to any other remedy, penalty, or consequence provided by law shall be punishable as may be provided by statute of any of the signatory parties within which the violation is committed; provided that in the absence of such provision any such person, association, or corporation shall be liable to a penalty of not less than \$50 nor more than \$1,000 for each such violation to be fixed by the court which the commission may recover in its own name in any court of competent jurisdiction, and in a summary proceeding where available under the practice and procedure of such court. For the purposes of this section in the event of a continuing offense each day of such violation, attempt, or conspiracy shall constitute a separate offense.

15.18 Tort Liability.

The commission shall be responsible for claims arising out of the negligent acts or omissions of its officers, agents, and employees only to the extent and subject to the procedures prescribed by law generally with respect to officers, agents, and employees of the government of the United States.

15.19 Effect on Riparian Rights.

Nothing contained in this compact shall be construed as affecting or intending to affect or in any way to interfere with the law of the respective signatory parties relating to riparian rights.

15.20 Amendments and Supplements.

Amendments and supplements to this compact to implement the purposes

thereof may be adopted by legislative action of any of the signatory parties concurred in by all of the others.

15.21 Construction and Severability.

The provisions of this compact and of agreements thereunder shall be severable and if any phrase, clause, sentence, or provision of the Susquehanna River Basin Compact or such agreement is declared to be unconstitutional or the applicability thereof to any signatory party, agency, or person is held invalid, the constitutionality of the remainder of such compact or such agreement and the applicability thereof to any other signatory party, agency, person, or circumstance shall not be affected thereby. It is the legislative intent that the provisions of such compact be reasonably and liberally construed.

15.22 Effective Date; Execution.

This compact shall become binding and effective thirty days after the enactment of concurring legislation by the Federal government, the states of Maryland and New York, and the Commonwealth of Pennsylvania. The compact shall be signed and sealed in five identical original copies by the respective chief executives of the signatory parties. One such copy shall be filed with the Secretary of State of each of the signatory parties or in accordance with the laws of the state in which the filing is made, and one copy shall be filed and retained in the archives of the commission upon its organization.

§ 21-1303. Member and alternate.

1. As provided in section 2.2 of the compact, the Governor or his designee shall be this state's member on the commission established thereby. An officer of the Department of Environmental Conservation shall be appointed as the designee if one is appointed. The Governor shall appoint an alternate pursuant to section 2.3 of the compact. If the Governor does not appoint a designee to act for him, he shall appoint an officer of the Department of Environmental Conservation as

alternate.

2. Any person serving on the Susquehanna river basin commission pursuant to this section shall be reimbursed for all necessary expenses incurred as an incident of such service and such reimbursement shall be from the funds of said person's department or office.

§ 21-1305. Advisory committee.

The Department of Environmental Conservation shall provide an advisory committee with whom the member of the Susquehanna river basin commission from this state may consult with respect to the conduct of New York participation in the compact.

§ 21-1307. Consent to alteration of diversion.

1. Consent of the member from this state to the impairment, diminution, or other adverse effect on diversions, compensating releases, rights, conditions, obligations and provisions for the administration thereof as contemplated by section 3.8 of the compact shall not be given, except with the prior approval of the Department of Environmental Conservation.

2. Except with respect to diversions governed by subdivision one of this section the provisions of section 15-1505 of this chapter shall not apply to any diversion or furnishing of water authorized or made pursuant to the compact.

§ 21-1309. Jurisdiction of courts.

Except as otherwise specifically provided herein, the phrase "court of competent jurisdiction" as used in the compact shall mean, with reference to courts of this state, the supreme court, and said court is hereby given all necessary and appropriate jurisdiction to hear and

determine any action or proceeding brought before it pursuant to appropriate provisions of the compact. As used in section 11.6 of the compact, the phrase "court of competent jurisdiction" shall mean, with reference to courts of this state, a court in which an appropriate proceeding under article seventy-eight of the Civil Practice Law and Rules may be brought. As used in clause one of subdivision (a) of section 15.1 of the compact, the phrase "court of competent jurisdiction" shall mean with reference to courts of this state, any court in which an action or proceeding of the class brought by the Susquehanna river basin commission may be heard and determined.

§ 21-1311. Prior project approval.

No project requiring license, permit or other approval by any agency or officer of this state, or any subdivision thereof, shall be given any final license, permit or approval, by such agency or officer of this state if such project requires approval of the Susquehanna river basin commission pursuant to this compact and such approval has not been given.

§ 21-1313. Delegations of power.

No agency or officer of this state or any subdivision thereof shall accept or exercise any delegation of power pursuant to section 11.1 of the compact unless, in the absence of the compact, it would have the constitutional or statutory power to exercise such power on its own account.

§ 21-1315. Cooperative services.

Departments, agencies and officers shall provide technical and administrative services to the Susquehanna river basin commission upon request within the limits of available appropriations and shall cooperate generally with said commission for the purposes of the

compact.

§ 21-1316. Report and recommendations of department.

The department shall submit to the governor and the legislature of this state on or before the twenty-fifth day of January, nineteen hundred seventy-eight, and every year thereafter, a detailed examination and evaluation of the programs and activities of the commission as they relate to New York state and shall make recommendations for any legislative action deemed by the department advisable, including amendments to the statutes of the signatory states which may be necessary to carry out the intent and purposes of the compact.

§ 21-1317. Budget.

The Susquehanna river basin commission shall submit annually to the Director of the Budget, in accordance with the rules and practices of the state for study and consideration by such Director, an estimate of monies required to administer, manage and support the commission during the ensuing fiscal year. Such estimate shall include any request for appropriation of funds by New York and shall be accompanied by a tabulation of similar requests which the commission expects to make to each signatory and the formula or factors upon which such respective requests are based. The provisions of section 14.3 of the compact apply to the budgetary and other fiscal matters related to the participation of this state in the compact.

§ 21-1319. Audit.

Pursuant to subdivision (b) of section 15.11 of the compact, the state Comptroller is hereby authorized and empowered from time to time to examine the accounts and books of the commission, including its receipts, disbursements and other items referring to its financial standing as the Comptroller may deem proper and to report the results of

such examination to the Governor.

§ 21-1321. Inconsistent laws.

No provision of this chapter or of any other law of this state which is inconsistent with the provisions of the compact shall be applicable to the Susquehanna river basin commission or to any matter governed by the compact.

* TITLE 15

MID-ATLANTIC STATES AIR POLLUTION CONTROL COMPACT

Section 21-1501. Mid-Atlantic states air pollution control compact.

21-1503. Commissioner and alternate.

21-1505. Advisors.

21-1507. Jurisdiction of courts.

21-1509. Budget.

21-1511. Audit.

21-1513. Inconsistent laws.

* NB Denied Congressional consent; preempted by enactment of federal Air Quality Act of 1967 (81 stat. 485)

*** § 21-1501. Mid-Atlantic states air pollution control compact.**

The mid-Atlantic states air pollution control compact as first entered into pursuant to chapter 475 of the laws of 1967, as amended by chapter 476 of the laws of 1967, and as amended by chapter 385 of the laws of 1968, and as subject to execution by the governor as provided in said compact, is hereby continued. The compact is as follows:

WHEREAS, the signatory parties recognize that they have certain serious problems in common with respect to pollution of the atmosphere by man-made contaminants; and

WHEREAS, the nature and sources of air pollution are such that the

states' efforts can be effectively supplemented by control measures applicable to regional airsheds which cut across state boundaries; and

WHEREAS, the signatory parties recognize that the protection and improvement of the quality of their common atmosphere is vested with local, state and national interests, for which they have a joint responsibility; and

WHEREAS, the signatory parties have determined to establish a federal-interstate agency, with jurisdiction and powers adequate to cope with interstate air pollution problems;

Now therefore, the states of New Jersey and New York and the United States of America, and if any of them should join herein, the states of Delaware, Connecticut and the commonwealth of Pennsylvania, respectively, hereby solemnly covenant and agree with each other, upon the enactment of concurring legislation by the congress of the United States and by the respective state legislatures, having the same effect as this part as follows:

ARTICLE 1

SHORT TITLE, DEFINITIONS AND FINDINGS

§ 1.1. Short title. This act shall be known and may be cited as the "Mid-Atlantic States Air Pollution Control Compact".

§ 1.2. Definitions. For the purposes of this compact, and of any supplemental or concurring legislation enacted pursuant thereto, except as may be otherwise required by the context:

(a) "Commission" shall mean the commission established by this compact;

(b) "Region" shall mean the territorial limits of the states which are or become parties to this compact;

(c) "Compact" shall mean section 21-1501 of this title;

(d) "Federal government" shall mean the government of the United States of America, and any appropriate branch, department, bureau or division thereof, as the case may be;

(e) "Signatory party" shall mean a state, commonwealth, or the federal government, which has become a party to this compact by enactment of concurring legislation;

(f) "District" shall mean any area established, identified or defined by the commission in connection with the abatement or control of air pollution;

(g) "Air contaminant" shall mean dust, fumes, mist, smoke, or other particulate matter, vapor, gas, odorous substance, or any combination thereof;

(h) "Air pollution" shall mean the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as is or tends to be injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life or property;

(i) "Emission" shall mean a release into the outdoor atmosphere of air contaminants.

§ 1.3. Findings of fact. It is hereby found and declared that:

(a) The tremendous growth of population and industry has resulted in substantial increases in atmospheric waste and air pollution over the entire region;

(b) Air pollution does not respect political boundaries, and persons far removed from its sources and having no responsibility for or control over its creation endure health hazards, discomfort and inconvenience and experience property damage and economic loss;

(c) Air pollution is associated with such important respiratory diseases as lung cancer, emphysema, chronic bronchitis and asthma, and is a general hazard to the public health and welfare, agricultural crops, livestock and other property;

(d) It is necessary and desirable to abate existing air pollution and prevent future air pollution so as to secure and maintain air quality which is consistent with the public health and welfare, the propagation and protection of plant and animal life, and the protection of property and other resources of the region;

(e) In the present state of the art, there are no public facilities for collection and disposal of atmospheric waste comparable to facilities to cope with liquid and solid waste, and the effects of emissions differ greatly among air resource uses and users, under the various meteorological and geographic conditions, which disregard state boundaries.

(f) Air pollution can best be controlled and abated at its sources,

and, while such prevention, control and abatement is the primary obligation of the states, counties or municipalities in which it originates, the problems of interstate air pollution can be more readily and effectively solved under a coordinated regionwide agency of the state and federal governments.

§ 1.4. Existing agencies; construction. It is the purpose of the signatory parties to preserve and utilize the functions, powers and duties of existing offices and agencies of government to the extent not inconsistent with the compact and the commission is authorized and directed to utilize and employ such offices and agencies for the purpose of this compact to the fullest extent it finds feasible and advantageous.

ARTICLE 2

ORGANIZATION AND ADMINISTRATION

§ 2.1. Commission created. There is hereby created the mid-Atlantic states air pollution control commission as a body politic and corporate, with perpetual succession as an agency and instrumentality of the respective signatory parties.

§ 2.2. Commission membership. The commission shall consist of the governors of the signatory states, ex-officio, and one commissioner to be appointed by the president of the United States, to serve during the term of office of the president appointing him and until the appointment and qualification of his successor.

§ 2.3. Alternates. Each member of the commission shall appoint an alternate to act in his place and stead, with authority to attend all meetings of the commission, and with power to vote in the absence of the member. Unless otherwise provided by law of the signatory party for which he is appointed, each alternate shall serve during the term of the member appointing him, subject to removal at the pleasure of the member. In the event of a vacancy in the office of alternate, it shall be filled in the same manner as an original appointment for the unexpired term only. In the event of the temporary absence or disability of an alternate, the member of the commission may appoint another qualified person to act as his alternate for the duration of such temporary absence or disability.

§ 2.4. Compensation. Members of the commission and alternates shall serve without compensation from the commission but may be reimbursed for

necessary expenses incurred in and incident to the performance of their duties.

§ 2.5. Voting power. Each member shall be entitled to one vote on all matters which may come before the commission. No action of the commission shall be taken at any meeting unless a majority of the membership shall vote in favor thereof.

§ 2.6. Organization; procedure. The commission shall provide for its own organization and procedure and shall adopt rules and regulations governing its meetings and transactions. It shall organize annually by the election of a chairman and vice-chairman from among its members. It shall provide by its rules for the appointment by each member in his discretion of an advisor to serve without compensation, who may attend all meetings of the commission and its committees.

§ 2.7. Jurisdiction. The commission shall have, exercise and discharge its functions, powers and duties within the region. It may by contract or otherwise act jointly, concurrently, or in cooperation with any other agency or instrumentality of government within or without the region for the purpose of effectuating the purposes of this compact.

§ 2.8. Retained jurisdiction of signatory parties. (a) Unless authorized by laws of the signatory states other than this compact, the commission shall not have power to require licenses or permits for the construction, establishment, installation, maintenance or operation of any air pollution source or other equipment, device or facility; to require commission approval of any of the foregoing; or to confer upon the commission any other power of licensure.

(b) Nothing in this compact shall be construed to abrogate, impair or in any way prevent the enactment or application of any state or local law, code, ordinance, rule or regulation not inconsistent with this compact, or with any standard, rule or regulation of the commission; and any such state or local law, code, ordinance, rule or regulation may be more restrictive than any requirement in effect pursuant to this compact.

(c) Nothing in this compact shall be construed to affect any aspect of employer-employee relations, including without limitation, statutes, rules or regulations governing industrial health and safety.

ARTICLE 3

POWERS AND DUTIES OF THE COMMISSION

§ 3.1. General powers.

The commission shall:

(a) Investigate the causes and sources of air pollution, identify air contaminants, and provide for research and the compilation and analysis of information relating thereto;

(b) Establish, after consultation with the appropriate agency of the signatory parties, standards for air quality and requirements for the control of emissions of air contaminants to abate existing air pollution and to prevent future air pollution, subject to the provisions of article four of this compact;

(c) Provide and administer plans and programs to effectuate such air quality standards and emission control requirements;

(d) Promote, sponsor and conduct technical, educational and research programs and projects to identify and evaluate air contaminants and to develop and apply methods, systems and procedures for the abatement and prevention of air pollution; and

(e) Enforce or provide for the enforcement of the compact and rules and regulations lawfully promulgated thereunder;

(f) Furnish technical services, advice and consultation to agencies of the signatory parties, provided that the costs of such services may be reimbursable whenever the parties deem appropriate.

§ 3.2. Auxiliary powers. In furtherance of the powers and duties elsewhere prescribed in this compact, the commission may:

(a) Sue and be sued in a court of competent jurisdiction;

(b) Have a seal and alter the same at pleasure;

(c) Acquire, hold and dispose of real and personal property by gift, purchase, lease, license or other similar manner for its corporate purposes and accept grants and comply with the conditions thereof;

(d) Provide for the organization and administration of a commission staff and retain and employ counsel and private consultants on a contract basis or otherwise;

(e) Administer and enforce the provisions of this compact;

(f) Make and enforce such rules and regulations as the commission may deem necessary to effectuate the purposes of this compact or to prevent the circumvention or evasion thereof;

(g) By its members and its properly designated officers, agents and

employees, administer oaths and issue subpoenas throughout the region to compel the attendance of witnesses and the giving of testimony and the production of other evidence;

(h) Have for its members and its properly designated officers, agents and employees, full and free access, ingress and egress to and from all property, premises and places in the region, for the purpose of making inspection or enforcing the provisions of this compact, where there is reasonable cause to believe there is a violation of this compact or of any rule or regulation lawfully made thereunder; and no person shall obstruct or in any way interfere with any such member, officer, employee or agent in the making of such inspection, or in the enforcement of the provisions of this compact or in the performance of any other power or duty under this compact; and

(i) Cooperate with and receive from any department, division, bureau, board, commission, or agency of any or all of the signatory parties, or of any county or municipality thereof, such assistance and data as will enable it properly to carry out its powers and duties hereunder, and may authorize and request any such department, division, bureau, board, commission or agency, with the consent thereof, to execute such of its functions and powers as the public interest may require.

ARTICLE 4

AIR QUALITY STANDARDS AND EMISSION CONTROL REQUIREMENTS

§ 4.1. Generally. The commission shall have jurisdiction to abate existing air pollution and to prevent and control future air pollution in the region, and to this end it shall:

(a) Prepare and develop standards of air quality and emission control requirements for the region as required to protect the public health and welfare and prevent air pollution which would unreasonably impair the beneficial use of the air of the region. To this end, it shall encourage and conduct studies, investigations and research relating to air pollution and its causes, prevention, control and abatement.

(b) For the purpose of such standards, the commission may establish and delineate districts and airsheds, seasonal requirements, and classifications of air contaminants by type and source, for general or selective application of such standards and emission controls.

(c) Prior to the adoption of standards or emission control requirements, the commission shall hold public hearings upon due notice

of the proposed standards, and all interested persons shall be given an opportunity to be heard at such hearing. After such notice and hearing, the commission may adopt and from time to time amend and repeal standards in the form of rules and regulations to prevent or control future air pollution and to abate existing air pollution, and to require the installation of such measures, systems and procedures for the abatement or prevention of air pollution as may be required to protect the public health, safety, property rights, and general welfare. Any such rule or regulation, amendment or repeal thereof shall take effect not less than sixty (60) days after its adoption by the commission and filing as required by law.

§ 4.2. Monitoring; warnings; emergencies. The commission shall: (a) Provide for a uniform, comprehensive and integrated system for monitoring atmospheric waste in the region, the measurement and forecasting of air pollution, and the identification of significant meteorological, geographical, and ecological factors within the region, its districts or airsheds;

(b) Establish and administer warning and alert procedures and systems with respect to impending and existing conditions of sewer and immediately dangerous air pollution;

(c) Upon authorization by any one of the signatory states, exercise emergency powers within those portions of the region lying within the authorizing state to require the reduction or cessation of emissions of air contaminants, and to require the taking or refining from any other measure as may be necessary in the public interest to alleviate or abate the immediate danger.

§ 4.3. Enforcement. (a) The commission may, after such notice and hearing as may be required by due process of law, issue an order or orders to any person or public or private corporation, or other entity, to cease and desist from any emissions which it determines to be in violation of such rules and regulations as it shall have adopted for the prevention and abatement of air pollution. Any such order or orders may prescribe a schedule, including a reasonable time for the construction and installation of any necessary systems, methods and procedures, on or before which the emission of air contaminants shall be wholly or partially discontinued, modified or treated, or otherwise required to conform to the standards established by the commission. Any court of

competent jurisdiction shall have jurisdiction to enforce by injunction in a summary manner against any person, public or private corporation, or other entity, any and all provisions of this article or of any such order. The commission may bring an action in its own name in any such court of competent jurisdiction to compel compliance with any provisions of this compact, or of any rule, regulation or order issued pursuant thereto, according to the practice and procedure of the court.

(b) In the case of air pollution not within an interstate district or airshed as established by the commission, the commission shall give priority to enforcement proceedings by other agencies of the signatory parties; provided, however, that the provisions of this subdivision may not be asserted as a defense in any action or proceeding brought by the commission.

§ 4.4. Hearings; subpoenas. (a) The commission shall establish by appropriate regulation the procedure to be followed in the conduct of its hearings. Neither the commission nor any person designated by it to conduct a hearing shall be bound by common law or statutory rules of evidence or by technical or formal rules of procedure in the conduct of such hearings.

(b) The commission, or such member or officer of the commission as may be designated by the commission for that purpose shall have the power to issue subpoenas effective throughout the region to compel the attendance of witnesses and the giving of testimony or production of other evidence, and to administer oaths in connection with any such hearing. It shall be the duty of the commission or of such member or officer of the commission as it may designate to issue subpoenas at the request of and on behalf of any part to a hearing before the commission. Subpoenas issued by the commission shall be enforced by any court of competent jurisdiction of the signatory parties, according to the practice and procedure of the court applicable to subpoenas issued in proceedings pending before it.

§ 4.5. Penal sanction. Any person, association, or corporation who violates or attempts or conspires to violate any provision of this compact or any rule, regulation or order of the commission duly made, promulgated or issued pursuant to the compact, in addition to any other remedy, penalty or consequence provided by law, shall be punishable as may be provided by statute of any of the signatory parties within which

the offense is committed; provided that in the absence of such provision any such person, association or corporation, shall be liable to a penalty of not less than fifty dollars and not more than one thousand dollars, for each such offense to be fixed by the court, which the commission may recover in its own name in any court of competent jurisdiction, and in a summary proceeding where available under the practice and procedure of such court. For the purposes of this section in the event of a continuing offense, each day of such violation, attempt or conspiracy shall constitute a separate offense.

§ 4.6. Judiciary review. Any order or determination of the commission under this article shall be subject to judicial review in any court of competent jurisdiction as provided by the law of a signatory party.

ARTICLE 5

PERSONNEL AND PROCEDURES GENERALLY

§ 5.1. Powers of the commissioners. The commissioners, subject to the provisions of this compact, shall:

(a) Serve as the governing body of the commission, and exercise and discharge its powers and duties except as otherwise provided by or pursuant to this compact;

(b) Determine the character of and the necessity for its obligations and expenditures and the manner in which they shall be incurred, allowed and paid subject to any provisions of law specifically applicable to agencies or instrumentalities created by compact;

(c) Provide for the internal organization and administration of the commission;

(d) Appoint or provide for the appointment of the principal officers of the commission and delegate to and allocate among them administrative functions, powers and duties;

(e) Create and abolish such offices, employments and positions as it deems necessary for the purposes of the compact, and subject to the provisions of this article, fix and provide for the qualification, appointment, removal, term, tenure, compensation, pension and retirement rights of its officers and employees;

(f) Let and execute contracts to carry out the powers of the commission.

§ 5.2. Regulations; enforcement. The commission may:

(a) Make and enforce reasonable rules and regulations in the form of

an air pollution code or otherwise, for the effectuation, application and enforcement of this compact; provided that any rule or regulation, other than one which deals solely with the internal management of the commission, shall be adopted only after public hearing and shall not be effective unless and until filed in accordance with the law of the respective signatory parties applicable to administrative rules and regulations generally; provided further, that a certified copy of any such rule or regulation, attested as true and correct by the commission, shall be presumptive evidence of the regular making, adoption, filing and publication thereof; and

(b) Designate any officer, agent or employee of the commission to be an investigator, and such person shall be vested with the powers of a peace officer of the state in which he is duly assigned to perform his duties.

§ 5.3. Confidential information. Any records or other information furnished to or obtained by the commission in the exercise of its powers, functions and duties from any private person, corporation or other entity which records or information, as certified by the owner or operator, relate to production or sales figures, or to secret processes or production, or which if made known to others would tend to affect adversely the competitive position of such owner or operator, shall be retained solely for the use of the commission and its employees, in the administration and enforcement of this compact, and for the use of air pollution control agencies of the signatory parties in the administration and enforcement of state or federal law, and shall not be published or disclosed for any other purpose by any officer or employee of the commission or any other person without the written consent of such owner or operator.

§ 5.4. Officers generally. (a) The officers of the commission shall consist of an executive director and such additional officers, deputies and assistants as the commission may determine. The executive director shall be appointed and may be removed by the affirmative vote of a majority of the full membership of the commission. All other officers and employees shall be appointed in such manner and under such rules of procedure as the commission may determine.

(b) In the appointment and promotion of officers and employees for the commission, no political, racial, religious or residency test or

qualification shall be permitted or given consideration, but all such appointments and promotions shall be solely on the basis of merit and fitness. Any officer or employee of the commission who is found by the commission to be guilty of a violation of this section shall be removed from office by the commission.

§ 5.5. Meetings; records. (a) All meetings of the commission shall be open to the public.

(b) The minutes of the commission shall be a public record open to inspection and copying at its offices during regular business hours, subject to the law relating to public records of the signatory states in which such minutes are located.

§ 5.6. Prohibited activities. (a) No commissioner, officer or employee shall:

1) be financially interested, either directly or indirectly, in any contract, sale, purchase, lease or transfer of real or personal property to which the commission is a party;

2) solicit or accept money or any other thing of value in addition to the compensation or expenses paid him by the commission for services performed within the scope of his official duties;

3) offer money or any thing of value for or in consideration of obtaining an appointment, promotion or privilege in his employment with the commission.

(b) Any officer or employee who shall wilfully violate any of the provisions of this section shall forfeit his office or employment.

(c) Any contract or agreement knowingly made in contravention of this section shall be void.

(d) Officers and employees of the commission shall be subject in addition to the provisions of this section to such criminal and civil sanctions for misconduct in office as may be imposed by federal law and the law of the signatory state in which such misconduct occurs.

§ 5.7. Audit. The commission shall provide for an annual independent audit of its accounts and financial transactions by a certified public accountant, and for the publication of the report of such audit.

§ 5.8. Tort liability. The commission shall be responsible for claims

arising out of the negligent acts or omissions of its officers, agents and employees only to the extent and subject to the procedures prescribed by law generally with respect to officers, agents and employees of the government of the United States.

ARTICLE 6

GENERAL PROVISIONS

§ 6.1. Commission budget. The commission shall annually adopt a current expense budget for each fiscal year, and shall apportion the amount required to balance the expenditures therein, less estimated revenues from all sources, to the signatory parties in accordance with such equitable cost-sharing formulae as the members of the commission may adopt by unanimous vote. Following the adoption of its annual budget, the commission shall transmit certified copies of the budget to the budget officer of the respective signatory parties at such time and in such manner as may be required under their respective budgetary procedures. The signatory parties covenant and agree to include the amount so apportioned for the support of the commission's current expense budget in their respective budgets next to be adopted, subject to such review and approval as may be required by their respective budgetary processes. Such amounts shall be due and payable to the commission in equal quarterly installments during the commission's fiscal year.

§ 6.2. Cooperation. Each signatory party pledges faithful cooperation in the control of air pollution in the region and consistent with such object to enact (or if enacted, to keep in force and where necessary to amend) laws which will:

(a) Enable it to secure and maintain standards of air quality at least equal to those prescribed by the commission;

(b) Accomplish effectively the objectives of this compact, and enable its officers, departments, boards and agents satisfactorily to accomplish the obligations and duties assumed by the party under the terms hereof; and

(c) Enable it to provide technical and administrative services to the commission upon request, within the limits of available appropriations, and to cooperate generally with the commission for the purposes of this compact, provided that the cost of such services may be reimbursable whenever the parties deem appropriate.

§ 6.3. Withdrawal from compact. (a) A signatory party may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall become effective until two (2) years after the chief executive of the withdrawing party has given notice of the withdrawal to the commission and to each commissioner.

(b) No withdrawal shall affect any obligation of a signatory party or any person therein accruing prior to the effective date of the withdrawal, nor any abatement order of the commission issued prior to such effective date nor shall any proceeding initiated for the enforcement thereof be invalidated or otherwise affected thereby. The jurisdiction of all appropriate courts and agencies for the enforcement of any such order shall continue, notwithstanding the fact that the effective date of the withdrawal may have passed.

§ 6.5. Amendments and supplements. Amendments and supplements to this compact to implement the purposes thereof may be adopted by legislative action of any of the signatory parties concurred in by all of the others.

§ 6.6. Construction and severability. The provisions of this compact and of agreements thereunder shall be severable and if any phrase, clause, sentence or provision of this compact of such agreement is declared to be unconstitutional or the applicability thereof to any signatory party, agency or person is held invalid, the constitutionality of the remainder of such compact or such agreement and the applicability thereof to any other signatory party, agency, person or circumstance shall not be affected thereby. It is the legislative intent that the provisions of such compact be reasonably and liberally construed.

§ 6.7. Effective date; execution. (a) This compact shall become binding and effective thirty days after the enactment of concurring legislation by the federal government and the state of New Jersey. The compact shall be signed and sealed in six duplicate original copies by the respective chief executives of the signatory parties. One such copy shall be filed with each of the signatory parties in accordance with the laws of the party in which the filing is made, and the remaining copies shall be filed and retained in the archives of the commission upon its organization.

(b) Thereafter, the compact shall become binding and effective separately as to each of the states of Connecticut and Delaware and the

commonwealth of Pennsylvania thirty (30) days after enactment of concurring legislation by such states or commonwealth.

* NB Denied Congressional consent; preempted by enactment of federal Air Quality Act of 1967 (81 stat. 485)

*** § 21-1503. Commissioner and alternate.**

The Governor shall be this state's member on the mid-Atlantic states air pollution control commission. The Governor shall appoint the Commissioner of Environmental Conservation as his alternate pursuant to section 2.3 of article two of such compact.

* NB Denied Congressional consent; preempted by enactment of federal Air Quality Act of 1967 (81 stat. 485)

*** § 21-1505. Advisors.**

1. The mayor of the city of New York, or his designee, shall be the advisor of this state's member of the mid-Atlantic states air pollution control commission, as contemplated by section 2.6 of article two of the mid-Atlantic states air pollution control compact, provided that any such designee shall not be accorded any privileges as such unless the mayor shall have notified this state's member and the commission in writing of the selection of such designee.

2. The Department of Environmental Conservation shall provide an advisory committee with whom this state's member of the commission may consult with respect to the conduct of New York participation in the compact. Such member of the commission also may consult from time to time with other officers of the state government or any subdivision thereof, as may be appropriate.

* NB Denied Congressional consent; preempted by enactment of federal Air Quality Act of 1967 (81 stat. 485)

*** § 21-1507. Jurisdiction of courts.**

Except as otherwise specifically provided in such compact, the phrase "court of competent jurisdiction" as used in the mid-Atlantic states air pollution control compact shall, with reference to this state, mean the supreme court, and said court is hereby given all necessary and appropriate jurisdiction to hear and determine any action or proceeding brought before it pursuant to appropriate provisions of the compact. As used in section 4.6 of the compact, the phrase "court of competent jurisdiction" shall mean a court in which an appropriate proceeding under article seventy-eight of the Civil Practice Law and Rules may be brought. As used in subdivision a of section 3.2 of the compact, the phrase "court of competent jurisdiction" shall mean any court of this state in which an action or proceeding of the same class brought by a resident could be heard and determined.

* NB Denied Congressional consent; preempted by enactment of federal Air Quality Act of 1967 (81 stat. 485)

*** § 21-1509. Budget.**

The mid-Atlantic states air pollution control commission shall submit annually to the Director of the Budget, in accordance with the rules and practice of the state, for study and consideration by such Director, an estimate of moneys required to administer, manage and support the commission during the ensuing fiscal year. Such estimate shall include any request for appropriation of funds by New York and shall be accompanied by a tabulation of similar requests which the commission expects to make to each other signatory party and the formula or factors upon which such respective requests are based. The provisions of section 6.1 of the compact shall apply to the budgetary and other fiscal matters relating to the participation of this state in the compact.

* NB Denied Congressional consent; preempted by enactment of federal Air Quality Act of 1967 (81 stat. 485)

*** § 21-1511. Audit.**

Pursuant to section 6.1 of the mid-Atlantic states air pollution control compact, the state Comptroller is hereby authorized and empowered from time to time to examine the accounts and books of the commission, including its receipts, disbursements and such other items referring to its financial standing as the Comptroller may deem proper and to report the results of such examination to the Governor.

* NB Denied Congressional consent; preempted by enactment of federal Air Quality Act of 1967 (81 stat. 485)

*** § 21-1513. Inconsistent laws.**

No provision of this chapter or of any other law which is inconsistent with the provisions of the mid-Atlantic states air pollution control compact shall be applicable to the mid-Atlantic states air pollution control commission or to any matter governed by such compact.

* NB Denied Congressional consent; preempted by enactment of federal Air Quality Act of 1967 (81 stat. 485)

TITLE 17

DELAWARE RIVER BASIN WATER COMMISSION COMPACT

Section 21-1701. The Delaware river basin water commission compact approved.

21-1703. Force and effect of the compact.

21-1705. Consent of the congress.

21-1707. Effective date of this act.

§ 21-1701. The Delaware river basin water commission compact approved.

The authority of the Governor to enter into a compact on behalf of the state of New York with the states of Delaware and New Jersey and the commonwealth of Pennsylvania in substantially the following form, which authority was first conferred by chapter 701 of the laws of 1952, is hereby continued:

COMPACT

BETWEEN THE STATES OF DELAWARE, NEW JERSEY
AND NEW YORK AND THE COMMONWEALTH OF
PENNSYLVANIA CREATING THE DELAWARE
RIVER BASIN WATER COMMISSION AND
DEFINING ITS POWERS AND DUTIES

Whereas, the peoples of the States of Delaware, New Jersey, and New York and the Commonwealth of Pennsylvania have a common interest in the waters of the Delaware River Basin; and

Whereas, it is desirable that the water and water resources of the Delaware River and its tributaries be developed, utilized, controlled, and conserved for the benefit of all the people; and

Whereas, the United States Supreme Court, in its decision in the Delaware River Case (283 U.S. 336), established the principle of equitable apportionment of the waters of the upper Delaware River Basin; and

Whereas, political subdivisions and metropolitan areas in the States of New Jersey and New York and the Commonwealth of Pennsylvania have been confronted constantly with the problem of meeting existing and prospective requirements of the people within their respective areas for obtaining and maintaining an adequate and satisfactory supply of water, both for domestic and industrial purposes; and

Whereas, it is essential that there be maintained an adequate minimum flow in the Delaware River for the protection of public health, for the benefit of industry and of fisheries, such as oysters, clams and other shellfish, for animal and aquatic life, for recreation, for general sanitary conditions, for the dilution and abatement of pollution, and for the prevention of undue salinity; and

Whereas, for the purpose of promoting interstate cooperation in various fields of governmental operations, including the utilization, control and conservation of water resources of interstate river systems, the States of Delaware, New Jersey, and New York and the Commonwealth of

Pennsylvania each has created and now maintains a Commission (or Committee) on Interstate Cooperation, which Commissions have jointly organized and established and are now maintaining, in cooperation with each of the others, a joint advisory board known as "The Interstate Commission on the Delaware River Basin" for the purpose, among other activities, of formulating and recommending integrated programs for the development, utilization, control and conservation of the water resources of the Delaware River Basin; and

Whereas, upon the recommendation of the said Interstate Commission on the Delaware River Basin, submitted through the Commission on Interstate Cooperation of each of the States concerned, the legislatures of the States of New Jersey and New York and the Commonwealth of Pennsylvania, by reciprocal legislation, enacted laws at their 1949 Sessions (New Jersey Laws of 1949, Chap. 105; New York Laws of 1949, Chap. 610; Pennsylvania Laws of 1949, Act 475), authorizing and directing the said Interstate Commission on the Delaware River Basin to make surveys and investigations to determine and report on the feasibility and advisability of the future construction of an integrated water project designed, among other purposes, to meet the combined prospective water supply requirements of political subdivisions and metropolitan areas in the said States, both within and outside the said Basin, empowering such Commission to enter upon lands, structures, and waters for the purposes of such surveys and investigations, making an appropriation to such Commission, and requiring a full report of its proceedings, findings, conclusions, recommendations, and such draft or drafts of legislation as it may deem necessary or proper for enactment by such States; and

Whereas, based upon a full report submitted by the Interstate Commission on the Delaware River Basin setting forth the findings, conclusions, and recommendations resulting from its surveys and investigations, it is the opinion of that Commission, concurred in by each of the aforesaid Commissions on Interstate Cooperation, that the future construction of integrated water projects in the Delaware River Basin is feasible, advisable, and urgently needed, and can best be accomplished by and through a joint administrative agency created by an agreement or compact between the States of Delaware, New Jersey, and New

York and the Commonwealth of Pennsylvania; and

Whereas, the Congress of the United States, by its joint Resolution of March 1, 1911 (36 Stat. 961), relating to the conservation of forests and water supply and protection of forests from fire, gave general consent to encourage the making of agreements or compacts between States for the purpose of conserving the forests and the water supply;

Now, Therefore, the Commonwealth of Pennsylvania and the States of New Jersey and New York (and the State of Delaware if and when Delaware becomes a signatory State) do hereby solemnly covenant and agree each with the other as follows:

ARTICLE 1
CREATION AND PURPOSES OF THE COMMISSION

1. There is created hereby a body corporate and politic with perpetual succession, to be known as The Delaware River Basin Water Commission (hereinafter in this compact referred to as the Commission), which shall constitute a public corporate instrumentality of the Commonwealth of Pennsylvania and of the States of New Jersey and New York, (and of the State of Delaware if and when Delaware becomes a signatory State), and of each of them, to exercise an essential governmental function of each of the signatory States, for the purposes of developing, utilizing, controlling, and conserving the water resources of the Delaware River Basin in order to assure an adequate water supply:

(a) to meet the domestic and industrial requirements of political subdivisions and metropolitan areas within those States;

(b) to provide an adequate minimum flow in the Delaware River for the protection of public health, for the benefit of industry and of fisheries, such as oysters, clams, and other shellfish, for animal and aquatic life, for recreation, for general sanitary conditions, for the dilution and abatement of pollution, and for the prevention of undue salinity; and

(c) to provide for such other uses of water as navigation, flood control, production of hydro-electric power, and related uses.

2. In order to effectuate the foregoing purposes, the Commission shall

determine the exact locations and character of, formulate plans for, and determine all matters in connection with, the construction, operation and maintenance of dams, reservoirs, and appurtenant structures within the Delaware River Basin as herein defined for the storage and effective regulation of the water resources thereof, and treatment plants, aqueducts, conduits, or other facilities, and shall finance, construct, operate, and maintain such structures and facilities as are deemed necessary to the following project, or a reasonable modification thereof, that is to say: (a) a dam across the West Branch of the Delaware River near Cannonsville, New York; (b) a dam across the Delaware River near Barryville, New York; (c) a dam across the Neversink River near Godeffroy, New York; (d) a dam across the Delaware River near Wallpack Bend; (e) a dam across the East Branch of the Delaware River near Fish Eddy; (f) a dam across Flat Brook near Flatbrookville, New Jersey; (g) an aqueduct connecting the reservoir created by the dam across the Delaware River near Barryville, New York, with the reservoir on the Neversink River created by a dam near Godeffroy, New York; (h) an aqueduct, with equalizing reservoir en route, to convey a supply of water from the reservoir on the Neversink River created by the dam near Godeffroy, New York, to municipalities in northern New Jersey and to New York City; and (i) such dams, reservoirs, tunnels, conduits, and other facilities as may be required to furnish water supply to Philadelphia and adjacent areas.

3. For the purpose of this compact the "Delaware River Basin" is defined as all that land from which surface water drains naturally into the Delaware River.

ARTICLE II COMMISSIONERS

1. The Commission shall consist of three members from each signatory State, who shall be citizens and residents thereof and shall be appointed by the Governor of that State, by and with the consent of its Senate, unless its Constitution otherwise provides.

2. The term of each such commissioner shall be for five years, provided, however, that the terms of the three commissioners first

appointed by each state shall be as follows, to wit: one for three years, one for four years, and one for five years. All commissioners shall continue to hold office after the expiration of the terms for which they shall have been appointed until their respective successors shall have been appointed and qualified, but no period during which any commissioner shall hold over shall be deemed to be an extension of his term of office for the purpose of computing the date on which his successor's term expires.

3. Any commissioner may be removed or suspended from office as provided by the Constitution or applicable law of the State which he represents. In the event of a vacancy in the office of any commissioner, from any reason or cause, such vacancy shall be filled by appointment by the Governor of the State concerned, subject to confirmation as above provided, for the unexpired term.

4. The commissioners shall serve without compensation but shall be paid their actual and necessary expenses incurred in and incident to the performance of their duties, provided, however, that the elected officers of the Commission shall receive such compensation as may be fixed by the Commission.

5. The Federal Government may be represented on the Commission by three advisory members who shall serve without compensation from the Commission. The Constitution and other laws of the United States shall apply to the appointment or removal of such advisory members and the term or terms during which they shall serve.

ARTICLE III

OFFICERS, EMPLOYEES, MANAGEMENT AND PROCEDURE

1. The commissioners shall have charge of the Commission's property and affairs. The Commission shall adopt an official seal and suitable by-laws and shall promulgate rules and regulations for its management and control.

2. A majority of the commissioners from the signatory States shall constitute a quorum for the transaction of business at any meeting of

the Commission. No action shall be taken by the Commission unless a majority of the members from each state are present at a meeting of the Commission and no action so taken, including any action which, for the purposes of the project authorized by paragraph two of Article I of this compact or for any expansion thereof or any new project, imposes any financial obligation on any signatory State or on any political subdivision therein or which allocates water for water supply or for the maintenance of an adequate minimum flow to any signatory State or any political subdivision therein, shall be binding or effective unless a majority of the members from each State shall have voted in favor thereof; provided, however, that no action taken at any meeting of the Commission by any member shall have force or effect until the Governor of the State, which such member represents, shall have an opportunity to approve or veto the same. For the purpose of procuring such approval or veto, the secretary or other officer of the Commission in charge of the minutes of the proceedings of the Commission shall transmit to the Governors of the signatory States at their official offices a certified copy of the minutes of every meeting of the Commission as soon after the holding of such meeting as such minutes can be written out. Each Governor shall, within five days after such minutes shall have been delivered at his official office, cause the same to be returned to the Commission either with his approval or with his veto of any action therein recited as having been taken by any member of the Commission appointed from his State, provided, however, that if a Governor shall not return the said minutes within the said period then at the expiration thereof any action therein recited will have full force and effect according to the wording thereof. If a Governor within the said period returns the said minutes with a veto against the action of any member of the Commission from his State as recited therein, then such action of such member shall be null and void. A governor may by order filed with the secretary of the Commission relieve the members from his State from the duty of procuring his approval of their action upon any particular matter or class of matters, and thereupon the secretary or other officer in charge of the minutes of the proceedings of the Commission shall be relieved from reporting the same to him.

3. The Commission shall elect annually a chairman and a vice-chairman.

The Commission shall appoint a secretary and a treasurer, who may be but need not be members of the Commission. The secretary shall be custodian of the records of the Commission with authority to affix the Commission's official seal and to attest to and certify such records or copies thereof. Disbursements by the Commission shall be valid only when authorized by the Commission.

4. The Commission shall appoint and at its pleasure remove or discharge counsel, an executive director, engineers, and such other agents and employees as it may require for the performance of the powers and functions of the Commission. The Commission shall determine and fix the duties and compensation of its appointed officers and employees, and shall fix the compensation, if any, of its elected officers.

5. The Commission may establish and maintain one or more offices within the area of the signatory States for the transaction of its business and may meet at any time or place, but must meet at least once each year.

6. The Commission shall keep accurate accounts of all receipts and disbursements. The accounts of the Commission shall be open at any reasonable time for inspection and audit by such representative or representatives of the respective signatory States as may be duly constituted for that purpose, and for inspection by others who may be authorized by the Commission.

7. The Commission shall make an annual report to the Governor and the legislature of each signatory State setting forth in detail the operations and transactions conducted by it pursuant to this compact, and shall make recommendations for any legislative action deemed by it to be advisable, including amendments to the statutes of the signatory States which may be deemed necessary to carry out the intent and purpose of this compact.

8. No member, agent or employee of the Commission shall have a personal interest, either directly or indirectly, in any contract entered into by the Commission, including the sale to the Commission of

any real or personal property. A violation of this provision shall constitute a misdemeanor and, upon trial and conviction, shall be punishable in accordance with the laws of the signatory State in which the offense is committed, but, in no event, shall the punishment therefor exceed imprisonment for more than one year or a fine of more than five hundred dollars, or both.

9. No member, agent or employee of the Commission, while acting within the scope of his authority, shall be personally liable for any acts performed in the execution of the powers expressly authorized by this compact.

ARTICLE IV GENERAL POWERS AND LIABILITY TO SUIT

1. For the effectuation of its authorized purposes, the Commission is hereby granted and shall have the following powers in addition to such powers as may be provided for elsewhere in this compact, to wit:

(a) To sue in its own name in Federal and State courts.

(b) To acquire, own, hire, use, operate, and dispose of personal property.

(c) To acquire, own, use, and operate real property and interests therein, to make improvements thereon, and to convey, lease or otherwise dispose of any such property no longer necessary for the authorized purposes of the Commission.

(d) To grant, by lease or otherwise, the use of any property or facility owned or controlled by the Commission, and to make charges therefor.

(e) To exercise the right of eminent domain, as provided in Article V of this compact.

(f) To borrow money, make and issue from time to time negotiable bonds and notes, to fund and refund the same, and to provide for the rights of the holders of its bonds and notes, as provided in Article XIII of this compact.

(g) To establish, levy, and collect, without being subject to the supervision or regulation of any commission, board, bureau or agency of any of the signatory States or political subdivisions thereof, such rentals, fees or other charges for use of the facilities of or for the

services rendered by the Commission, and to revise such rentals, fees, or other charges as may be necessary to assure revenues at least adequate to defray the expenses of operation and maintenance of the said facilities, to pay the interest on and principal of any bonds or other obligations of the Commission, and to establish any reasonable reserves therefor.

(h) To accept such payments, appropriations, grants, gifts, loans, and other funds, properties, and services as may be made available to it by the Federal government or any of its agencies, by the governments and political subdivisions of the signatory States, or by private agencies, corporations, or individuals.

(i) To conduct surveys of dam, reservoir, treatment plant, aqueduct, or conduit locations and study subsurface conditions affecting the selection of such locations. Members of the Commission and its duly accredited agents, engineers, contractors, and employees may enter upon any lands, structures, and waters within any of the signatory States for such purposes or whenever it is deemed necessary for any of the purposes authorized by this compact, and such entry shall not be deemed a trespass or an entry under any condemnation proceedings which may be then pending. In the exercise of this power, the Commission shall save harmless the signatory States from, and be responsible to any property owner for, any damage caused by surveys or by entry on lands or any other damage resulting therefrom, and the Commission shall require every contractor or other agency performing work for said Commission to provide security for the faithful performance of any contract with the Commission and to save harmless the Commission and the signatory States from damages caused as aforesaid.

(j) To determine the exact locations and character of, to formulate plans for, and to determine all matters in connection with, the construction, operation, and maintenance of the dams, reservoirs, and appurtenant structures within the Delaware River Basin as herein defined for the storage and effective regulation of the water resources thereof, and treatment plants, aqueducts, conduits, and other facilities deemed necessary or convenient to effectuate the structures and facilities described in paragraph 2 of Article I of this compact, and to finance, construct, operate and maintain such structures and facilities.

(k) To prepare, upon the request of two or more signatory States, or

upon its own initiative, in appropriate form for submission to the legislatures of the signatory States, a report covering plans for, and the method of financing of, any new project, or any expansion of the project authorized and described in paragraph 2 of Article I of this compact; and, upon approval of such report by the legislatures of the signatory States and upon approval by the appropriate agency or agencies of the State or States of the detailed plans and specifications, all in accordance with the provisions of Article XI of this compact, to finance, construct, operate and maintain such new or expanded project.

(l) To determine and to allocate, subject to the provisions of paragraph 2 of Article III, to each of the signatory States an equitable apportionment of available water supply in order to meet domestic and industrial requirements of political subdivisions and metropolitan areas therein.

(m) To release, subject to the provisions of Article IX, the quantity of water required to be released from storage in order to maintain an adequate minimum flow in the Delaware River during periods of low flow therein for the protection of public health, for the benefit of industry and of fisheries, such as oysters, clams, and other shellfish, for animal and aquatic life, for recreation, for general sanitary conditions, for the dilution and abatement of pollution, and for the prevention of undue salinity.

(n) To provide for such other uses of the water and water resources of the Delaware River Basin as navigation, flood control, production of hydro-electric power, and related uses, and to cooperate with other appropriate agencies for that purpose.

(o) To develop, or to provide for the development of, subject to the provisions of Article X, hydro-electric power and energy inherent in the development and use of the waters to which this compact relates and incident to the control and conservation of such waters.

(p) To make, enter into, and perform contracts with the Federal government, with any of the signatory States or any of their political subdivisions, with public or private agencies, and with corporations or individuals, including (1) contracts for the sale of water for water supply, for the sale of falling water and hydro-electric power and energy, subject to the provisions of Article X, or for other services, (2) contracts for payments by the signatory States, or the political

subdivisions thereof, for benefits resulting from water released from storage in order to maintain an adequate minimum flow in the Delaware River during periods of low flow therein, and (3) any other contracts necessary or incidental to the performance of its duties and the execution of its powers under this compact.

(q) To take all measures necessary to guard and protect the areas in which its facilities or developments are located or in which any work of construction under authority of this compact is in progress, and to protect its facilities and developments from damage by pollution or otherwise, and to appoint a suitable number of persons as guards for such purposes. Such persons shall possess the power and authority of a constable, peace officer, or police officer and shall have full power to serve as such officers within the signatory States and to enforce the provisions of such laws thereof as are applicable to the purposes of this paragraph.

(r) To do all acts and things necessary or convenient to carry out the powers expressly granted in this compact.

2. The signatory States consent to suits, actions or proceedings of any form or nature at law, in equity or otherwise (including proceedings to enforce arbitration agreements) against the Commission, and to appeals therefrom and reviews thereof, except as hereinafter provided in subparagraphs (a) and (b) hereof.

(a) The foregoing consent does not extend to civil suits, actions or proceedings for the recovery of statutory penalties.

(b) The foregoing consent does not extend to suits, actions or proceedings for judgments, orders or decrees restraining, enjoining or preventing the Commission from committing or continuing to commit any act or acts, other than suits, actions or proceedings by the attorney general of any of the signatory States. The attorney general of each of the signatory States is hereby authorized to bring such suits, actions or proceedings in his discretion on behalf of any person or persons whatsoever who requests him so to do except in the cases excluded by subparagraph (a) hereof; provided, that in any such suit, action or proceeding, no judgment, order or decree shall be entered except upon at least two days' prior written notice to the Commission of the proposed entry thereof.

(c) The foregoing consent is granted upon the condition that venue in any suit, action or proceeding against the Commission shall be laid within a county or a judicial district, established by any of the said signatory States or by the United States, and situated wholly or partially within one of the signatory States. The Commission shall be deemed to be a resident of each such county or judicial district for the purpose of such suits, actions or proceedings. Although the Commission is engaged in the performance of governmental functions, the signatory States consent to liability on the part of the Commission in such suits, actions or proceedings for tortious acts committed by it and its agents to the same extent as though it were a private corporation.

* (d) The foregoing consent is granted upon the condition that any suit, action or proceeding prosecuted or maintained hereunder shall be commenced within one year after the cause of action therefor shall have accrued, and upon the further condition that in the case of any suit, action or proceeding for the recovery or payment of money, prosecuted or maintained hereunder, a notice of claim shall have been served upon the Commission by or on behalf of the plaintiff or plaintiffs at least sixty days before such suit, action or proceeding is commenced. The provisions of this subparagraph shall not apply to claims arising out of provisions of any workmen's compensation law of any of the signatory States.

* NB Effective until concurrence by members of the Delaware River Basin Water Commission

* (d) The foregoing consent is granted upon the condition that any suit, action or proceeding prosecuted or maintained hereunder shall be commenced within one year and ninety days after the cause of action therefor shall have accrued, and upon the further condition that in the case of any suit, action or proceeding for the recovery or payment of money, prosecuted or maintained hereunder, a notice of claim shall have been served upon the Commission by or on behalf of the plaintiff or plaintiffs within the time limit established by and in compliance with section fifty-e of the general municipal law. The provisions of this subparagraph shall not apply to claims arising out of provisions of any workmen's compensation law of any of the signatory States.

* NB Effective upon concurrence by the members of the Delaware River Basin Water Commission

(e) The notice of claim required by subparagraph (d) hereof shall be

in writing, sworn to by or on behalf of the claimant or claimants, and shall set forth (1) the name and post office address of each claimant and of his attorney, if any, (2) the nature of the claim, (3) the time when, the place where and the manner in which the claim arose, and (4) the items of damage or injuries claimed to have been sustained so far as then practicable. Such notice may be served in the manner in which process may be served, or in lieu thereof, may be sent by registered mail to the Commission at its principal office. Where the claimant is an infant or is mentally or physically incapacitated and by reason of such disability no notice of claim is filed or suit, action or proceeding commenced within the time specified in subparagraph (d) hereof, or where a person entitled to make a claim dies and by reason of his death no notice of claim is filed or suit, action or proceeding commenced within the time specified in subparagraph (d) hereof, then any court in which such suit, action or proceeding may be brought may in its discretion grant leave to serve the notice of claim and to commence the suit, action or proceeding within a reasonable time but in any event within three years after the cause of action accrued. Application for such leave must be made upon an affidavit showing the particular facts which caused the delay and shall be accompanied by a copy of the proposed notice of claim if such notice has not been served, and such application shall be made only upon notice to the Commission.

(f) The commissioners, officers or employees of the Commission shall not be subject to suits, actions or proceedings for judgments, orders or decrees restraining, preventing or enjoining them in their official or personal capacities from committing or continuing to commit any act or acts on behalf of the Commission other than suits, actions and proceedings brought by the attorney general of any of the signatory States. The attorney general of each of the signatory States is hereby authorized to bring such suits, actions or proceedings in his discretion on behalf of any person or persons whatsoever who requests him so to do except in the cases excluded by subparagraph (a) hereof; provided, that in any such suit, action or proceeding brought by an attorney general, no judgment, order or decree shall be entered except upon at least two days' notice to the defendant of the proposed entry thereof.

ARTICLE V

CONDEMNATION PROCEEDINGS

1. The commission shall have the power, except as hereinafter provided and limited, to acquire by condemnation lands, lands lying under water, rights in land, riparian rights, water rights, waters, and other property within the Delaware River basin as defined herein or required for aqueducts, or conduits deemed necessary or convenient to effectuate the structures and facilities described in paragraph two of Article I of this compact. This grant of the power of eminent domain includes, except as hereinafter provided and limited, but is not limited to, the power to condemn property, within the Delaware river basin as defined herein or required for aqueducts, or conduits deemed necessary or convenient to effectuate the structures and facilities described in paragraph two of Article I of this compact, owned or held by a political subdivision for municipal or public purposes, by a public district, by a public corporation or by a public authority, and includes as well the power to condemn any property already devoted to a public purpose, by whomsoever owned or held, other than property owned or held by the signatory States and other than property owned or held by the City of New York, wherever situate, for its water supply or for its water supply system. Nothing herein shall be deemed to include the power to condemn the lands, structures or properties necessary or convenient to the exercise of the rights reserved in Article XVI of this compact.

2. Such power shall be exercised in accordance with the provisions of such special law, specifically applicable to the said Commission, as may now or hereafter be in force in the signatory State in which such property is located; provided, that if there be no such special law in force in such State, condemnation proceedings shall be in accordance with the provisions of such applicable general condemnation law as may be in force in such State.

3. Any award or compensation for the taking of property pursuant to this Article shall be paid by the Commission, and none of the signatory States nor any agency, instrumentality, or political subdivision thereof shall be liable for such award or compensation.

ARTICLE VI

CONVEYANCE OF LANDS AND RELOCATION OF PUBLIC FACILITIES

1. The signatory States hereby consent to the acquisition, use and occupation by the Commission, pursuant to the laws of the respective States, of any real property within the said States, or any of them, including lands lying under water and lands already devoted to public use, which may be or may become necessary or convenient for the construction, operation, and maintenance of dams, reservoirs, treatment plants, aqueducts, conduits, and other structures or facilities, approved in accordance with the provisions of this compact; provided, such lands and property are located within the Delaware River Basin as defined herein or required for aqueducts, or conduits deemed necessary or convenient to effectuate the structures and facilities described in paragraph 2 of Article I of this compact.

2. The signatory States hereby authorize their respective officers, agencies, departments, commissions or bodies having jurisdiction and control over real property owned by the signatory States to convey in accordance with the laws of the respective States, to the Commission, with or without consideration, any such real property as may be necessary or convenient to the effectuation of the authorized purposes of the Commission.

3. Each political subdivision of each of the signatory States is hereby authorized and empowered, notwithstanding any contrary provision of law, to grant and convey to the Commission, upon the Commission's request, but not otherwise, upon reasonable terms and conditions, any real property owned by such political subdivision, including lands lying under water and lands already devoted to public use, which may be necessary or convenient to the effectuation of the authorized purposes of the Commission.

4. The term "real property" as used in this compact shall include any and all things and rights usually included within the said term and includes not only fees simple absolute, but also any and all lesser interests such as easements, rights of way, uses, leases, licenses, and all other incorporeal hereditaments, and every estate, interest or right, legal or equitable, including terms of years and liens thereon by

way of judgments, mortgages or otherwise, and also claims for damage to real property.

5. Any highway, sewer, public utility, or other public facility, which will be dislocated by reason of the constructions deemed necessary by the Commission to effectuate the authorized purposes of this compact, shall be relocated, providing that such relocation be required to serve the public interest, in the manner provided for by the laws of the respective signatory States, at the expense of the Commission.

ARTICLE VII

TAXES AND PAYMENTS IN LIEU OF TAXES

1. The effectuation of its authorized purposes by the Commission is and will be in all respects for the benefit of the people of the signatory States; and, since the Commission will be performing essential governmental functions in effectuating said purposes, the bonds or other securities or obligations issued by the Commission and the income therefrom, or any profit made on the sale thereof, shall be exempt from all taxation by or within the States of Delaware, New Jersey and New York and the Commonwealth of Pennsylvania except for transfer and inheritance taxes.

2. Lands acquired by the Commission for the purposes of this compact shall be taxable in the tax districts wherein such lands are located at the average value thereof as improved on the date of acquisition. Such average value shall be determined on the basis of computation of the average assessed value of such lands as improved for the five-year period immediately prior to such date of acquisition. The assessed value of such land shall be reviewed by the taxing authority at the end of each five-year period after the date of acquisition and such assessed valuation shall be increased or decreased percentagewise as the average assessed valuation of all the other property in the tax district has increased or decreased in such five-year period. However, none of the dams, reservoirs, treatment plants, aqueducts, conduits, or other structures, or facilities, or their appurtenances, to be built in accordance with the authority conferred by this compact shall be taxable, nor shall the assessed value of the lands upon which such

structures are built be increased by reason of their presence thereon.

3. Notwithstanding the provisions of the last preceding paragraph, the Commission is hereby authorized and empowered to enter into agreements with political subdivisions to pay a fair and reasonable sum or sums to the said political subdivisions in lieu of taxes which otherwise would be levied and collected with respect to any property hereafter acquired by the Commission. Any such payment or payments made by the Commission may be paid on an annual basis, or such payment or payments may be made in a lump sum or sums or over a stated period of years, as shall be agreed upon by and between the Commission and such political subdivision; provided, however, that in any case the payment or payments shall not be in excess of the amount of the taxes upon such property when last assessed prior to the time of its acquisition by the Commission. Every political subdivision wherein property shall be acquired by the Commission is authorized and empowered to enter into such agreement or agreements with the Commission to accept such payment or payments.

ARTICLE VIII CONTRACTS FOR WATER SUPPLY

1. The term "political subdivision", as used in this Article, shall mean and include, in addition to its usual meaning, water districts, water supply districts, and any other public authorities, public corporations, commissions or bodies having power to own, acquire, or contract for a public water supply.

2. Political subdivisions of the signatory States, either directly or through any board of water commissioners, district water supply commissioners, or any other board, commission, or public authority having jurisdiction or control over all or any part of a water supply or distribution system, may enter into contracts for the supplying of water by the Commission and the payment of any fees or other charges to the Commission. The contracts may be made for a specified or an unlimited time notwithstanding any other provisions of law, general or special, on any terms and conditions which may be approved by the political subdivision and which may be agreed to by the Commission, and such

contracts shall be valid and binding upon the political subdivision, notwithstanding that no appropriation has been made or provided to cover the cost or estimated cost of the contract.

3. Such political subdivision is hereby authorized and directed to do and perform any and all acts or things necessary, convenient or desirable to carry out and perform every such contract and to provide for the payment of any obligations thereunder in the same manner as other obligations of such political subdivision. Each political subdivision shall pay promptly to the Commission all fees and other charges due the Commission.

ARTICLE IX RELEASE OF STORED WATERS

1. No signatory State shall permit the flow in the Delaware River to be diminished by the diversion of any water from the main channel of the Delaware River during any period in which waters are being released from storage reservoirs constructed under the provisions of this compact for the purpose of maintaining an adequate minimum flow in the Delaware River during the periods of low flow therein, except in cases where such diversion shall have been duly authorized under the provisions of this compact.

2. The Commission shall release water from storage for the purpose of maintaining an adequate minimum flow in the Delaware River during periods of low flow therein in accordance with the following provisions:

(a) Upon and after completion of a storage reservoir on the West Branch of the Delaware River near Cannonsville, New York, sufficient water shall be released from the aforesaid reservoir to maintain a minimum flow in the Delaware River, as measured at the stream gaging station at Port Jervis, New York, of at least 1800 cubic feet per second.

(b) Upon and after completion of storage reservoirs on the West Branch of the Delaware River near Cannonsville, New York, on the main channel of the Delaware River near Barryville, New York, and on the Neversink River near Godeffroy, New York, sufficient water shall be released from the system consisting of the three aforesaid reservoirs to maintain a

minimum flow in the Delaware River, as measured at the stream gaging station at Trenton, New Jersey, of at least 4000 cubic feet per second.

(c) Upon and after completion of storage reservoirs on the West Branch of the Delaware River near Cannonsville, New York, on the main channel of the Delaware River near Barryville, New York, on the Neversink River near Godeffroy, New York, and on the main channel of the Delaware River near Wallpack Bend, sufficient water shall be released from the system consisting of the four aforesaid reservoirs to maintain a minimum flow in the Delaware River, as measured at the stream gaging station at Trenton, New Jersey, of at least 4800 cubic feet per second.

(d) The intent and purpose of the requirements of paragraphs (b) and (c) of this article are to provide for a flow at all times of at least 4000 cubic feet per second, or at least 4800 cubic feet per second, as the case may be, from the non-tidal section of the Delaware River above Trenton into the tidal section of the Delaware River below Trenton. Accordingly, the requirements for the flow of at least 4,000 cubic feet per second, or at least 4800 cubic feet per second, at Trenton may be reduced by the Commission in such a manner as to carry out this intent and purpose in the event the Commission is called upon to utilize a part of the waters which would otherwise flow in the Delaware River at Trenton as a source of water supply for the City of Philadelphia and other political subdivisions and metropolitan areas in the greater Philadelphia-South Jersey area which are situated wholly within the Delaware River Basin.

ARTICLE X HYDROELECTRIC POWER AND ENERGY

In the exercise of its power to develop, or to provide for the development of, hydroelectric power and energy, no water shall be used in addition to the water which would otherwise be developed and used by the Commission for water supply and for water required to be released from storage in order to maintain an adequate minimum flow in the Delaware River during periods of low flow therein. The Commission shall not engage in the transmission and distribution of power and energy except for its own use.

ARTICLE XI FORMULATION AND APPROVAL OF PLANS

1. Upon the request of two or more signatory States, or upon its own initiative, the Commission shall prepare, in appropriate form for submission to the legislatures of the signatory States, a report covering plans for, and the method of financing, any new project, or any expansion of the project authorized and described in paragraph 2 of Article I of this compact, for the construction, operation, and maintenance of such dams, reservoirs, and appurtenant structures within the Delaware River Basin, and such treatment plants, aqueducts, conduits, and other facilities, as may be required to effectuate the purposes of this compact.

2. Prior to the submission of any such report to the legislatures of the signatory States the Commission shall:

(a) Conduct investigations in such manner as to give appropriate consideration and weight to the interrelation of the proposed project with projects and programs of other agencies, public and private, federal, interstate, state, and local, concerning the development, utilization, control and conservation of the water resources of the Delaware River Basin.

(b) Transmit a copy of its tentative draft of a report concerning any proposed project to the following agencies, or their respective successors, for the purpose of affording such agencies an opportunity to submit to the Commission, within ninety days from the date of receipt of such tentative draft, written statements of their views and recommendations regarding any such project: Water Pollution Control Commission of the State of Delaware; Division of Water Policy and Supply of the State of New Jersey; Water Power and Control Commission of the State of New York; Water and Power Resources Board of the Commonwealth of Pennsylvania; and the Interstate Commission on the Delaware River Basin. Representatives of each of the aforesaid agencies may, in order to analyze and appraise any project proposed by the Commission created by this compact, enter upon any lands, structures, and waters within the states in which the Delaware River Basin is located, for the purpose of surveying dam, reservoir, treatment plant, aqueduct, or conduit locations, studying subsurface conditions affecting the selection of such locations, and for such other purposes as may be deemed necessary.

(c) Include in its report, for submission to the legislatures of the signatory States, the statements of views and recommendations, if any, of the aforesaid agencies.

3. The report, prepared after compliance with the procedures hereinbefore provided, shall be submitted by the Commission to the legislatures of the signatory States. The Commission shall have authority to proceed with the project proposed in the said report when such report has been approved by the legislatures of all the signatory States, or by the legislatures of the States of New Jersey and New York and the Commonwealth of Pennsylvania.

4. Prior to proceeding with any construction which is a part of the project authorized and described in paragraph 2 of Article I of this compact, or of any authorized expansion thereof, or of any authorized new project, the Commission shall submit detailed plans and specifications for the construction of any structure, or part thereof, to, and secure the approval of, the appropriate agency or agencies of the State or States within which such construction is necessary as a part of the said project.

ARTICLE XII

GRANTS, LOANS, OR PAYMENTS BY STATES OR POLITICAL SUBDIVISIONS

1. Any or all of the signatory States, or any political subdivisions thereof, may after appropriate legislative authorization for that purpose,

(a) Appropriate to the Commission such funds as may be necessary to pay preliminary expenses such as the expenses incurred in the making of borings and other studies of sub-surface conditions, in the preparation of contracts for the sale of water, and in the preparation of detailed plans and estimates required for the financing of a construction project.

(b) advance to the Commission, either as grants or loans, such funds as may be necessary or convenient to finance the operation and management of, or construction by, the Commission.

(c) make payments to the Commission for benefits received, or to be received, from the operation of any of the structures or facilities of

the Commission.

2. Any funds which may be loaned to the Commission either by a signatory State, or a political subdivision thereof, shall be repaid by the Commission through the issuance of bonds, or out of other income of the Commission, such repayment to be made within such period and upon such terms as may be agreed upon between the Commission and the State or political subdivision making the loan.

ARTICLE XIII FINANCING

1. The Commission shall have power and is hereby authorized, from time to time, to issue its negotiable bonds for any of its authorized purposes, to issue its bonds to refund bonds issued by it, to issue its negotiable notes in anticipation of bonds, and to pay its bonds and notes from revenues of the Commission and the proceeds of its bonds and other moneys of the Commission, as the resolution authorizing the issuance may provide:

(a) Refunding bonds may be issued partially to refund bonds then outstanding and partially for any other of its authorized purposes. Refunding bonds may be issued whenever the Commission deems expedient, whether the bonds to be refunded have or have not matured, and may be exchanged for the bonds to be refunded with such cash adjustments as may be agreed, or may be sold before the bonds to be refunded become due and the proceeds applied to the purchase, redemption or payment of the bonds to be refunded, including interest accrued, and any redemption premiums payable, thereon.

(b) Except as may be otherwise expressly provided by the Commission, every issue of bonds shall be general obligations payable out of any moneys or revenues of the Commission, subject only to any agreements with the holders of any bonds pledging any moneys or revenues.

(c) Whether or not bonds or notes issued by the Commission are of such form and character as to be negotiable instruments, such bonds or notes shall be fully negotiable within the meaning and for all the purposes of the Negotiable Instruments Law, subject only to any provisions of the bonds for registration.

(d) The Commission may issue temporary bonds, with or without coupons,

pending the preparation of definitive bonds, exchangeable for definitive bonds.

(e) Bonds shall be authorized by resolution of the Commission and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates not exceeding five per centum per annum, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment and at such place or places, and be subject to such terms of redemption, as such resolution or resolutions may provide, but in no event shall the redemption price of a bond exceed the par value thereof and a premium of four per centum plus accrued interest. The official seal of the Commission, or a facsimile thereof, shall be impressed, engraved, or otherwise reproduced on each bond or note, and be attested by the Secretary or by such other officer or agent as the Commission shall appoint and authorize. If any officer or authorized agent whose signature, or a facsimile thereof, shall appear on any bonds, coupons, or notes, shall cease to be such officer or authorized agent before the delivery of the bonds or notes, such signature or such facsimile signature shall be valid and sufficient for all purposes the same as if he had continued in office until such delivery. The bonds shall be sold at public sale for a price not less than ninety-six per centum of the par value thereof plus accrued interest, provided that the interest cost to maturity of the money for any issue of such bonds shall not exceed five per centum per annum.

(f) Any resolution of the Commission authorizing the issuance of bonds may appoint a trustee or trustees, a fiscal agent or fiscal agents, a paying agent or paying agents, and such other fiduciaries as such resolution may provide. Any trustee, fiscal agent, paying agent and other fiduciary so appointed may be any trust company or bank having the powers of a trust company within any one of the signatory States.

(g) In order to secure the payment of its bonds the Commission shall have power, in the resolution authorizing the issuance of the bonds (which shall be deemed a contract with the bondholders):

(1) to pledge all or any part of its revenues to which its right then exists or may thereafter come into existence, and the moneys derived therefrom, and the proceeds of bonds;

(2) to covenant against pledging all or any part of its revenues, or

against mortgaging all or any part of its real or personal property then owned or thereafter acquired, or against permitting or suffering any lien on such revenues or property; to covenant with respect to limitations on its right to sell, lease or otherwise dispose of any project or any part thereof, or any property of any kind;

(3) to covenant as to the bonds to be issued and the limitations thereon and the terms and conditions thereof and as to the custody, application and disposition of the proceeds thereof, and to covenant as to the issuance of additional bonds or as to limitations on the issuance of additional bonds and on the incurring of other debts by it;

(4) to provide for the replacement of lost, destroyed or mutilated bonds;

(5) to provide for the investment of all or a part of its funds on deposit with the trustee or other fiduciary in such obligations as the resolution authorizing the issuance of the bonds may provide;

(6) to covenant against extending the time for the payment of bonds or interest thereon; to covenant as to the redemption premiums and other terms and conditions thereof;

(7) to covenant as to the payment of the principal of or interest on the bonds, or any other obligations, as to the sources and methods of such payment, as to the rank or priority of any such bonds or obligations with respect to any lien or security or as to the acceleration of the maturity of any such bonds or obligations;

(8) to covenant as to the rates of fees or other charges to be established and to be charged, and the amount to be raised each year or other period of time by such charges or other revenues and as to the use and disposition to be made thereof; to create or authorize the creation of special funds or moneys to be held in pledge or otherwise for construction, operating expense, payment or redemption of bonds, reserves or other purposes and to covenant as to the use and disposition of the moneys held in such funds;

(9) to establish the procedure, if any, by which the terms of any contract or covenant with or for the benefit of the bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(10) to covenant as to the maintenance of its real and personal property, the replacement thereof, the insurance to be carried thereon,

and the use and disposition of insurance moneys;

(11) to provide for the rights and liabilities, powers and duties arising upon the breach of any covenant, condition or obligation; to prescribe the events of default and the terms and conditions upon which any or all of the bonds shall become or may be declared due and payable before maturity and the terms and conditions upon which any such declaration and its consequences may be waived;

(12) to vest in a trustee or trustees such property, rights, powers and duties in trust for the bondholders, as the Commission may determine, which may include any or all of the rights, powers and duties of the statutory trustee appointed by the holders of bonds pursuant to sub-paragraph (a) of paragraph 2 of this Article; to limit or abrogate the rights of the holders of such bonds to appoint such statutory trustee, or to limit the rights, duties and powers of such statutory trustee;

(13) to limit the rights of the bondholders to enforce any pledge or covenant securing the bonds; and

(14) to make covenants other than and in addition to the covenants herein expressly authorized, of like or different character; and to make such covenants to do or refrain from doing such acts and things as may be necessary or convenient or desirable in order to better secure the bonds or which, in the absolute discretion of the commission, will tend to make the bonds more marketable, notwithstanding that such covenants, acts or things may not be enumerated herein.

(h) Any pledge of revenues or other moneys made by the Commission shall be valid and binding from the time when the pledge is made; the revenues or other moneys so pledged and thereafter received by the Commission shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Commission, irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be filed or recorded except in the records of the Commission.

(i) Bonds may be issued under the provisions of this compact without obtaining the consent of any department, division, commission, board,

bureau or agency of any of the signatory States, and without any other proceedings or the happening of any other conditions or things than those proceedings, conditions or things which are specifically required by this compact.

(j) The Commission shall not have power to mortgage real property.

(k) Moneys of the Commission or moneys held in pledge or otherwise for the payment of bonds or in any way to secure bonds and the deposits of such moneys may be secured in such manner as the Commission may require and all banks and trust companies in each of the signatory States are authorized to give such security therefor.

(l) Neither the members of the Commission nor any person executing the bonds shall be liable personally on the bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

(m) The Commission shall have the power to purchase its bonds out of any funds available therefor. The Commission may refund, or it may hold, cancel, or resell, such bonds subject to and in accordance with agreements with bondholders.

2. The following provisions shall be applicable to an issue of bonds authorized or issued by the Commission, only if the resolution of the Commission authorizing or providing for the issuance of such bonds shall provide in substance that the holders of the bonds of such issue shall be entitled to the benefits and be subject to the provisions of this paragraph 2:

(a) In the event that there shall be a default in the payment of principal of or interest on any bonds of such issue after the same shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of thirty days, or in the event that the Commission shall fail or refuse to comply with the provisions of this compact or shall fail or refuse to carry out and perform the terms of any contract or covenant with or for the benefit of the holders of any such bonds, and such failure or refusal shall continue for a period of thirty days after written notice by any holder of bonds of such issue or by a trustee for bondholders to the Commission of its existence and nature, the holders of twenty-five per centum (25%) in aggregate principal amount of the bonds of such issue then outstanding by instrument or instruments filed in the office of the Secretary of State

of each signatory State and proved or acknowledged in the same manner as a deed to be recorded, may appoint a statutory trustee to represent the holders of the bonds of such issue for the purposes provided in this paragraph 2.

(b) Such statutory trustee may and, upon written request of the holders of twenty-five per centum (25%) in aggregate principal amount of the bonds of such issue then outstanding, shall, in his or its own name:

(1) by civil action or suit, enforce all rights of the holders of such bonds, including the right to require the Commission to charge and collect revenues adequate to carry out any contract as to, or pledge of, such charges and revenues, and to require the Commission to carry out and perform the terms of any contract or covenant with or for the benefit of the holders of such bonds or its duties under this compact;

(2) bring action or suit upon all or any part of such bonds or interest coupons or claims appurtenant thereto;

(3) by action or suit require the Commission to account as if it were the trustee of an express trust for the holders of such bonds;

(4) by action or suit enjoin any acts or things which may be unlawful or in violation of the covenants of the Commission or the rights of the holders of such bonds; or

(5) declare all such bonds due and payable, whether or not in advance of maturity, upon thirty days' prior notice in writing to the Commission and if all defaults shall be made good, then with the consent of the holders of twenty-five per centum (25%) of the principal amount of such bonds then outstanding, annul such declaration and its consequences.

(c) Before declaring the principal of all such bonds due and payable the statutory trustee shall first give thirty days' notice in writing to the Commission.

(d) Any such statutory trustee, whether or not the issue of bonds represented by such trustee has been declared due and payable, shall be entitled as of right to the appointment of a receiver of any part or parts of the property of the Commission the revenues derived from which property are pledged for the security of the bonds of such issue and such receiver may enter and take possession of such part or parts of such property and subject to any pledge or agreement with bondholders shall take possession of all moneys and other property derived from or applicable to the construction, operation, maintenance and

reconstruction of such part or parts of such property and proceed with any construction thereon which the Commission is under obligation to do and to operate, maintain and reconstruct such part or parts of the property and collect and receive all revenues thereafter arising therefrom subject to any pledge thereof or agreement with bondholders relating thereto, and perform the public duties and carry out the agreements and obligations of the Commission under the direction of the court. In any suit, action or proceeding by the statutory trustee the fees, counsel fees and expenses of the said trustee and of the receiver, if any, shall constitute taxable disbursements and all costs and disbursements allowed by the court shall be a first charge on any revenues derived from such property.

(e) Such statutory trustee shall, in addition to the foregoing, have and possess all of the powers necessary or appropriate for the exercise of any function specifically set forth herein or incident to the general representation of bondholders in the enforcement and protection of their rights.

3. Notes issued in anticipation of bonds shall be paid from any moneys of the Commission available therefor and not otherwise pledged or from the proceeds of sale of the bonds of the Commission in anticipation of which they were issued. The notes shall be issued and sold in the same manner as the bonds and such notes and the resolution or resolutions authorizing the same may contain any provisions, conditions or limitations which the bonds or a bond resolution of the Commission may contain. Such note shall be as fully negotiable as the bonds of the Commission.

4. Bonds issued by the Commission under the provisions of this compact are hereby made securities in which any signatory State and all political subdivisions thereof, their officers, boards, commissions, departments or other agencies, all banks, bankers, savings banks, trust companies, savings and loan associations, investment companies and other persons carrying on a banking business, all insurance companies, insurance associations, and other persons carrying on an insurance business, and other fiduciaries, and all other persons whatsoever, except as hereinafter provided, who now are or may hereafter be

authorized to invest in bonds or other obligations of any signatory State, may properly and legally invest any funds, including capital belonging to them or within their control; provided that, notwithstanding the provisions of any other general or special law to the contrary, such bonds shall not be eligible for the investment of funds, including capital, of trusts, estates or guardianships under the control of individual administrators, guardians, executors, trustees and other individual fiduciaries. Said bonds or other securities or obligations are hereby made securities which may properly and legally be deposited with and received by any State or municipal officers or agency of any signatory State for any purpose for which the deposit of bonds or other obligations of such State is now or may hereafter be authorized by law.

5. Each of the signatory States hereby pledges to and agrees with the holders of the bonds and notes issued in accordance with the provisions of this compact, that such State will not limit or restrict the rights hereby vested in the Commission to maintain, construct, reconstruct, and operate any project as defined in this compact or to establish and collect such rents, fees, receipts or other charges as may be convenient or necessary to produce sufficient revenues to meet the expenses of maintenance and operation thereof and to fulfill the terms of any agreements made with the holders of bonds authorized by this compact or in any way impair the rights or remedies of the holders of such bonds until the bonds, together with interest thereon, are fully paid and discharged.

ARTICLE XIV CREDIT OF SIGNATORY STATES NOT PLEDGED

Bonds or notes issued under the provisions of this compact shall not be deemed to constitute a debt or liability of any of the signatory States or of any political subdivision thereof or a pledge of the faith and credit of any of the signatory States or of any such political subdivision. All such bonds or notes shall contain on the face thereof a statement to the effect that none of the signatory States nor any political subdivision thereof is obligated to pay the same or the interest thereon and that neither the faith and credit nor the taxing

power of any signatory State or of any political subdivision thereof is pledged to the payment of the principal of or the interest on such bonds.

ARTICLE XV NONIMPAIRMENT OF STATE POWERS

1. Except as provided in Article XVI of this compact, the signatory States, as of the effective date of this compact, waive, renounce and release any claim, or alleged claim, of or to a prior appropriation of the waters of the Delaware river, and waive, renounce and release any claim or alleged claim, of or to any superior right of appropriation, diversion or use of said waters.

2. Nothing in this compact shall be construed as impairing the powers of any signatory State to develop, improve, utilize, control, or conserve the water resources of the upper Delaware River Basin within the boundaries of such State; provided, however, that the exercise of such powers by said State shall not conflict with the power of the Commission established by this compact with respect to those water resources authorized to be developed, improved, utilized, controlled, or conserved by such Commission.

3. Nothing in this compact shall be deemed to authorize the taking in any of the signatory States of a supply of water from this Commission unless and until all of the laws of the State, in which the proposed taking of such water is located, have been complied with, and the approval of such taking has been secured from the appropriate agency or agencies of said State having jurisdiction over the taking of water supplied.

ARTICLE XVI EXISTING RIGHTS, DEVELOPMENTS AND COMPACTS

1. Nothing in this compact shall be deemed to affect any right of the States of New Jersey, New York, the Commonwealth of Pennsylvania and the City of New York, or any of them, granted or reserved by or pursuant to the decision of the United States Supreme Court in *New Jersey versus New York, et al.*, (283 U.S. 336), or any modification thereof by that Court.

2. Nothing in any existing compact between any two or more of the signatory States shall be impaired or invalidated by any of the provisions of this compact.

ARTICLE XVII
CONSTRUCTION AND SEVERABILITY

The provisions of this compact, or of agreements thereunder, shall be severable and if any phrase, clause, sentence, or provision of this compact or such agreement is declared to be unconstitutional or the applicability thereof to any State, agency, or person is held invalid, the constitutionality of the remainder of this compact or such agreement and the applicability thereof to any other State, agency, person, or circumstance shall not be affected thereby. It is the legislative intent that the provisions of this compact be reasonably and liberally construed.

ARTICLE XVIII
EFFECTIVE DATE

1. This compact shall enter into force and become effective and binding between the States of New Jersey and New York and the Commonwealth of Pennsylvania when (a) it has been adopted and enacted into law by the respective legislatures of the said States and Commonwealth, and (b) it has been signed by the respective Governors of the said States and Commonwealth, after authorization therefor by their respective legislatures, and has been attested by the Secretary of the State of each of said States and Commonwealth and the Seal of each of said States and Commonwealth has been affixed thereto, and (c) the Congress of the United States of America has consented thereto.

2. This compact shall become effective and binding with respect to the State of Delaware, either at the same time it becomes effective and binding between the States of New Jersey and New York and the Commonwealth of Pennsylvania as provided in the first paragraph of this Article or at any time thereafter, when (a) it has been adopted and enacted into law by the legislature of the State of Delaware, and (b) it has been signed by the Governor of the State of Delaware, after

authorization therefor by the legislature thereof, and has been attested by the Secretary of State of the State and the Seal of that State has been affixed thereto.

3. This compact shall be signed, attested, and sealed in five originals, one original to be forwarded to the Governor of each signatory State for filing in accordance with the laws of that State and one original to be deposited in the archives of the Commission upon its establishment.

IN WITNESS WHEREOF, and in evidence of the adoption and enactment into law of this compact by the legislatures of the respective States, the respective Governors of the signatory States do hereby, in accordance with authority conferred by the legislatures of their respective States, sign this compact in five originals, as attested by the respective Secretaries of State of the said States, and have caused the respective Seals of the said States to be hereunto affixed,
this.....day of.....,19....

§ 21-1703. Force and effect of the compact.

Upon its signature by the respective governors on behalf of at least the state of New Jersey and the commonwealth of Pennsylvania and by the Governor on behalf of the state of New York, and upon the attestation thereof by the secretary of state of each of the signatory states and commonwealth and the affixing thereto of the seal of each of the said states and commonwealth, and the aforesaid compact, which may be known and cited as the Delaware basin compact, shall be and become binding and shall have the force and effect of a statute of the state of New York, and the Delaware river basin water commission shall thereupon become vested with all the powers, rights and privileges, and be subject to the duties and obligations, contained in said compact as though the same were specifically authorized and imposed by statute, and the state of New York shall be bound by all of the obligations assumed by it under said compact; and the Governor shall transmit an original signed copy thereof to the Secretary of State of the state of New York for filing in

his office.

§ 21-1705. Consent of the congress.

The Governor is hereby authorized to apply, on behalf of the state of New York, to the congress of the United States for its consent and approval to the aforesaid compact; but, in the absence of such consent and approval, the Delaware river basin water commission shall have all of the powers which the commonwealth of Pennsylvania and the states of New Jersey and New York (and the State of Delaware if and when it becomes a signatory state) may confer upon it without the consent and approval of the congress.

§ 21-1707. Effective date of this act.

The provisions of this act shall become effective immediately upon final enactment; but the Governor shall not enter into the compact herein set forth until the state of New Jersey and the commonwealth of Pennsylvania shall have passed a substantially similar act embodying the said compact between at least the states of New Jersey, New York and the commonwealth of Pennsylvania.

ARTICLE 22
MINING OF URANIUM

Section 22-1010. Purpose.

22-1030. Legislative findings.

22-1050. Definitions.

22-1070. Activities prohibited.

§ 22-1010. Purpose.

The purpose of this article is to prohibit mining of uranium within the state.

§ 22-1030. Legislative findings.

The legislature hereby finds and declares that mining of uranium may pose a significant danger to the public health, safety and welfare and the environment in that:

1. such mining activities may pose a significant threat of contamination and depletion of the state's drinking water supplies, including surface and subsurface waters;
2. mining activity poses the danger of release of airborne radioactive particulates which may endanger the health of residents and the value of livestock and dairy products;
3. no adequate method currently exists for storing wastes created as a result of uranium mining;
4. in the event of abandonment of any such mine site caused by financial insolvency or other reasons, significant cleanup costs may be forced upon state or local governments and may harm their fiscal integrity;
5. abatement of the hazards associated with uranium mining requires technology or administrative techniques not yet extant, proven reliable, or proven economically feasible;
6. the activities associated with uranium mining may detract from scenic qualities, and reduce property values, tourist revenues, and the general quality of life in the affected area.

The legislature therefore finds that particular caution is needed in determining public policy pertaining to the mining of uranium and that the prohibition of this activity is necessary at this time to insure the protection of the public health, safety and welfare.

§ 22-1050. Definitions.

For the purposes of this article the following terms shall have the following meanings:

1. "Mining" means the extraction or removal of minerals from the ground or the breaking of the surface soil in order to facilitate or accomplish the extraction or removal of such minerals for commercial or industrial use; but shall not include excavation or grading when conducted solely in aid of on-site farming or construction.

2. "Person" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary or other representative of any kind, and includes any department, agency or instrumentality of the state or any of its governmental subdivisions.

§ 22-1070. Activities prohibited.

No person shall mine for uranium by any method including, but not limited to, drilling, excavation and liquid or chemical extraction. Nothing in this article shall be construed to prohibit or in any way restrict mining for coal, peat, garnet, marble, granite, or any other material which may contain traces of uranium in amounts which are uneconomical to extract or remove for commercial and industrial use.

ARTICLE 23 MINERAL RESOURCES

- Title
1. Definitions
 3. General provisions
 5. Well permits and well spacing in oil and natural gas pools and fields
 7. Voluntary integration and unitization in oil and natural gas pools and fields

9. Compulsory integration and unitization in oil and natural gas pools and fields
11. Leases for production and storage of oil and gas on state lands
13. Underground storage of gas
17. Liquefied natural and petroleum gas
19. Oil, gas and solution mining regulation and reclamation fee
21. Interstate compact to conserve oil and gas
23. Rerefining of used oil
24. New York state oil energy conservation program
27. New York state mined land reclamation law

TITLE 1
DEFINITIONS

Section 23-0101. Definitions.
23-0102. Short title.

§ 23-0101. Definitions.

As used in this article, unless the context otherwise requires:

1. "Buffer zone" means all that area outside and surrounding the underground gas storage reservoir which the department approves as appropriate to protect the integrity of the reservoir, no part of which shall be more than thirty-five hundred linear feet from the boundary thereof.

2. "Cavity" means an open or partially open space left after a salt has been solution mined.

3. "Commissioner" means the commissioner of environmental conservation.

4. "Department" means the department of environmental conservation.

5. "Fund" means the oil and gas fund as established in section eighty-three-a of the state finance law.

6. "Field" means the general area underlaid by one or more pools.

7. "Gas" means all natural, manufactured, mixed, and byproduct gas, and all other hydrocarbons not defined as oil in this section.

8. "Local agency" means any local agency, board, authority, school district, commission or governing body, including any county, city, town, village or other political subdivision of the state.

9. "Metered" means the physical measurement of gas by means acceptable to the department.

10. "Oil" means crude petroleum oil and all other hydrocarbons, regardless of gravity, that are produced at the wellhead in liquid form by ordinary production methods and that are not the result of condensation of gas.

11. "Owner" means the person who has the right to drill into and produce from a pool or a salt deposit and to appropriate the oil, gas or salt he produces either for himself or others, or for himself and others.

12. "Person" means and includes any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes any department, agency or instrumentality of the state or any of its governmental subdivisions.

13. "Plug and abandon" means the plugging, replugging if necessary, and abandonment of a well bore including the placing of all bridges, plugs, and fluids therein and the restoration and reclamation of the surface in the immediate vicinity to a reasonable condition consistent with the adjacent terrain.

14. "Pool" means an underground reservoir containing a common accumulation of oil or gas or both; each zone of a structure which is completely separated from any other zone in the same structure is a pool.

15. "Producer" means the owner of a well or wells capable of producing oil, gas, or salt; or any salt or hydrocarbon mixture.

16. "Product" means any commodity made from oil or gas and includes refined crude oil, crude tops, topped crude, processed crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, fuel oil, treated crude oil, residuum, gas oil, casinghead gasoline, natural-gas gasoline, kerosene, benzine, wash oil, waste oil, blended gasoline, lubricating oil, blends or mixtures of oil with one or more liquid products or by-products derived from oil or gas, and blends or mixtures of two or more liquid products or by-products derived from oil or gas, whether herein enumerated or not.

17. "Reservoir" means any underground reservoir, natural or artificial cavern or geologic dome, sand or stratigraphic trap, whether or not previously occupied by or containing oil or gas.

18. "Salt" means sodium chloride, evaporite or other water soluble minerals, either in solution or as a solid or crystalline material in a pure state or as a mixture.

19. "Solution mining" means the dissolving of an underground salt by water to produce a brine for transport to another underground or surface location for sale, processing or storage.

20. "Waste" means

a. Physical waste, as that term is generally understood in the oil and gas industry;

b. The inefficient, excessive or improper use of, or the unnecessary dissipation of reservoir energy;

c. The locating, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner which causes or tends to cause reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations, or which causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas;

d. The inefficient storing of oil or gas; and

e. The flaring of gas produced from an oil or condensate well after the department has found that the use of the gas, on terms that are just and reasonable, is, or will be economically feasible within a reasonable time.

§ 23-0102. Short title.

This article shall be known and may be cited as the "oil, gas and solution mining law".

TITLE 3

GENERAL PROVISIONS

Section 23-0301. Declaration of policy.

23-0303. Administration of article.

23-0305. Powers and duties of the commissioner and the department.

23-0309. Severability.

23-0311. New York state oil, gas and solution mining advisory board.

23-0313. Public access to records.

§ 23-0301. Declaration of policy.

It is hereby declared to be in the public interest to regulate the

development, production and utilization of natural resources of oil and gas in this state in such a manner as will prevent waste; to authorize and to provide for the operation and development of oil and gas properties in such a manner that a greater ultimate recovery of oil and gas may be had, and that the correlative rights of all owners and the rights of all persons including landowners and the general public may be fully protected, and to provide in similar fashion for the underground storage of gas, the solution mining of salt and geothermal, stratigraphic and brine disposal wells.

§ 23-0303. Administration of article.

1. Except to the extent that the administration of this article is specifically entrusted to other agencies or officers of the state by its provisions, such administration shall be by the department. Geological services for the department in connection with the administration of this article shall be provided by or in cooperation with the state geologist. Within appropriations therefor the department is authorized to employ such personnel as may be necessary for the administration of this article and may also employ or secure the services of such engineering, technical and other consultants as it may require from time to time.

2. The provisions of this article shall supersede all local laws or ordinances relating to the regulation of the oil, gas and solution mining industries; but shall not supersede local government jurisdiction over local roads or the rights of local governments under the real property tax law.

3. a. The commissioner shall accept from municipalities requests for funds from the oil and gas fund to reimburse the municipality for costs incurred in repairing damages to municipal land or property. Such requests shall include such explanatory material and documentation as the commissioner may require.

b. The commissioner and director of the budget, may recommend payment

to the municipality to satisfy the request for reimbursement upon finding that:

(1) The municipality has made a bona fide effort to seek relief and recover its costs from those deemed to be responsible and any other appropriate avenues, but has been unsuccessful;

(2) The damage was a direct result of activities regulated under this article and that the amount of funds requested is reasonable in view of such damages; and

(3) The costs were incurred after the effective date of this subdivision.

§ 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.

§ 23-0309. Severability.

The provisions of this article shall be severable and if any phrase, clause, sentence or provision of this article, or the applicability thereof to any person or circumstance shall be held invalid, the remainder of this article and the application thereof shall not be affected thereby.

§ 23-0311. New York state oil, gas and solution mining advisory board.

1. A thirteen member New York state oil, gas and solution mining advisory board shall be created within the department to advise and assist the commissioner and other state agencies on activities and policies related to the development, operation and regulation of the oil, gas and solution mining industry. The members shall be appointed by the governor, with a majority representative of the respective industries. Three of the members shall be appointed upon recommendation of the majority leader of the senate and three of the members shall be appointed upon recommendation of the speaker of the assembly. Appointments shall be made for three-year terms. Members shall continue in office until their successors have been appointed and qualified. The governor shall select a chair from among the members. The board shall meet at least twice yearly and the members shall receive reimbursement for expenses. The department shall provide the board with secretarial services.

2. The chair of the public service commission, the president of the New York state energy research and development authority, the state geologist, and the commissioner shall serve the board in an ex-officio capacity.

3. The commissioner shall seek the views of the board on matters within their scope of concern and shall specifically request the board's participation at an early developmental stage of any new rules, regulations and policies being contemplated or developed. In addition to such other duties as the commissioner may suggest or the board on its own volition may choose to undertake, the board shall:

a. Review and comment on the criteria to be used by the department in selecting abandoned wells for plugging or replugging.

b. Review and comment on proposed rules and regulations and department activities affecting the industry.

c. Recommend to the governor, the commissioner, and other state agencies program directions or modifications related to the development, operation, and regulation of the oil, gas, and solution mining industry.

§ 23-0313. Public access to records.

1. a. Any records or reports or portions thereof pertaining to the production, sale, purchase, acquisition, storage or injection of oil and gas and associated fluids and any records or reports or portions thereof pertaining to the transportation of oil and gas, and any information obtained therefrom, shall be for the confidential use of the department and other departments, agencies and officers of the state for a period of six months following the period to which such records or reports apply, unless the person furnishing the records or reports expressly agrees to their earlier publication or availability to the general public, except as provided in subdivision five of section five hundred ninety-five of the real property tax law. Notwithstanding any law to the contrary, such records shall not be excepted from disclosure to the public after expiration of such six-month period. Nothing in this subdivision shall be construed to prevent the use of such records, reports or information obtained therefrom by any department, agency or officer of the state government in compiling or publishing analyses or summaries relating to the general condition of the industry, the economy or the condition of the natural resources of this state, provided that such analyses or summaries do not involve the publication of records, reports or information relating to a single firm or business enterprise.

b. Notwithstanding any law to the contrary, records or portions thereof pertaining to metering or other measuring of brine produced by

solution mining and to each solution mining cavity or group of interconnected solution mining cavities shall not be released by the department for publication nor be available to the general public without consent of the producer.

c. Notwithstanding any law to the contrary, applications for permits, records or portions thereof which pertain to the total depth and plugging records of wells subject to the oil, gas and solution mining law shall not be excepted from disclosure to the public.

d. Well logs, well samples, directional surveys and reports on well drilling and completion, for all wells subject to the oil, gas and solution mining law, shall be for the confidential use of the department and other departments, agencies and offices of the state government until six months after the commencement of actual drilling operations.

(1) The department may extend the six-month period for an additional six months for a well where drilling operations have been continuous throughout that period. A written request for the extension by the person furnishing the records will not be considered unless it is submitted to the department no more than thirty days before the expiration of the first six-month period. The department shall act upon the request within fifteen days after receipt of the written notification.

(2) The records subject to this paragraph may be excepted from disclosure after the applicable six-month period pursuant to the provisions of subdivision two of section eighty-seven of the public officers law provided, however, that such records cannot be excepted from disclosure for longer than two years after the commencement of the applicable six-month period. A written request for the exception by the person furnishing the records will not be considered unless it is submitted to the department at least thirty days before the expiration date of the applicable six-month period. The request for the exception from disclosure must be sent by certified mail, return receipt requested, and addressed to the New York State Department of Environmental Conservation, Division of Mineral Resources, Records Custodian, Albany, New York. Any person may make a request to the department for disclosure of records pursuant to this subparagraph in

accordance with article six of the public officers law.

2. The records which the department has excepted from disclosure pursuant to article six of the public officers law on or before the effective date of this section shall continue to be excepted from disclosure for one year after the effective date of this section or two years from the commencement of actual drilling operations, whichever is later. The person furnishing the records may authorize the release of these records at any time before the expiration of the applicable periods. Any person may make a request to the department for disclosure of records pursuant to this subdivision in accordance with article six of the public officers law.

TITLE 5

WELL PERMITS AND WELL SPACING IN OIL AND NATURAL GAS POOLS AND FIELDS

Section 23-0501. Well permits.

23-0503. Well spacing in oil and natural gas pools and fields.

§ 23-0501. Well permits.

1. a. This section shall not apply to (1) wells drilled, deepened, plugged back or converted in oil fields or pools which were discovered, developed and operated prior to January first, nineteen hundred eighty-one, and (2) wells drilled, deepened, plugged back or converted in natural gas fields or pools which were discovered, developed and operated prior to January first, nineteen hundred ninety-five and which are not being extended.

b. As used in titles five, seven and nine of this article, unless the context otherwise requires:

(1) "Statewide spacing" means spacing units for gas or oil wells that are within ten percent of the following sizes, as applicable, unless another percentage is specifically stated:

(i) For Medina gas pools at any depth, 40 acres with the wellbore within the target formation no less than 460 feet from any unit

boundary, plus, if applicable, the number of additional acres necessary and sufficient to ensure that any horizontal wellbore within the target formation is not less than 460 feet from any unit boundary;

(ii) For Onondaga reef or Oriskany gas pools at any depth, 160 acres with the wellbore within the target formation no less than 660 feet from any unit boundary, plus, if applicable, the number of additional acres necessary and sufficient to ensure that any horizontal wellbore within the target formation is not less than 660 feet from any unit boundary;

(iii) For fault-bounded Trenton and/or Black River hydrothermal dolomite gas pools where the majority of the pool is between 4,000 and 8,000 feet deep, 320 acres with the proposed productive section of the wellbore within the target formation no less than one-half mile from any other well in another unit in the same pool and no less than 1,000 feet from any unit boundary that is not defined by a field-bounding fault but in no event less than 660 feet from any unit boundary;

(iv) For fault-bounded Trenton and/or Black River hydrothermal dolomite gas pools where the majority of the pool is below 8,000 feet, within five percent of 640 acres with the proposed productive section of the wellbore within the target formation no less than one mile from any other well in another unit in the same pool and no less than 1,500 feet from any unit boundary that is not defined by a field-bounding fault but in no event less than 660 feet from any unit boundary;

(v) For shale gas pools at any depth, for a vertical well outside any existing spacing unit for the same formation, 40 acres with the wellbore within the target formation no less than 460 feet from any unit boundary;

(vi) For shale gas pools at any depth, for a horizontal well outside any existing spacing unit for the same formation and with a written commitment from the well operator to drill infill wells pursuant to subdivision 4 of section 23-0503 of this title, with all horizontal infill wells in the unit to be drilled from a common well pad within three years of the date the first well in the unit commences drilling, notwithstanding the ten percent tolerance specified in this subparagraph, up to 640 acres with the initial horizontal wellbore or wellbores within the target formation approximately centered in the spacing unit and no wellbore in the target formation less than 330 feet from any unit boundary;

(vii) For shale gas pools at any depth, for a horizontal well outside any existing spacing unit for the same formation and in the absence of a written commitment from the well operator to drill infill wells pursuant to subdivision 4 of section 23-0503 of this title, 40 acres with the wellbore within the target formation no less than 330 feet from any unit boundary plus the number of additional acres necessary and sufficient to ensure that the wellbore within the target formation is not less than 330 feet from any unit boundary;

(viii) For all other gas pools where the majority of the pool is above the depth of 4,000 feet, 80 acres with the wellbore within the target formation no less than 460 feet from any unit boundary, plus, if applicable, the number of additional acres necessary and sufficient to ensure that any horizontal wellbore within the target formation is not less than 460 feet from any unit boundary;

(ix) For all other gas pools where the majority of the pool is 4,000 to 6,000 feet deep, 160 acres with the wellbore within the target formation no less than 660 feet from any unit boundary, plus, if applicable, the number of additional acres necessary and sufficient to ensure that any horizontal wellbore within the target formation is not less than 660 feet from any unit boundary;

(x) For all other gas pools where the majority of the pool is 6,000 to 8,000 feet deep, 320 acres with the wellbore within the target formation no less than 1,000 feet from any unit boundary, plus, if applicable, the number of additional acres necessary and sufficient to ensure that any horizontal wellbore within the target formation is not less than 1,000 feet from any unit boundary;

(xi) For all other gas pools where the majority of the pool is below 8,000 feet, within five percent of 640 acres with the wellbore within the target formation no less than 1,500 feet from any unit boundary, plus, if applicable, the number of additional acres necessary and sufficient to ensure that any horizontal wellbore within the target formation is not less than 1,500 feet from any unit boundary;

(xii) For oil pools in the Bass Island, Trenton, Black River, Onondaga reef or other oil-bearing reefs at any depth, 40 acres with the wellbore within the target formation no less than 460 feet from any unit boundary, plus, if applicable, the number of additional acres necessary and sufficient to ensure that any horizontal wellbore within the target

formation is not less than 460 feet from any unit boundary; and

(xiii) For all other oil pools at any depth, the wellbore within the target formation shall be no less than 165 feet from any lease boundary.

Wells completed under a well permit issued pursuant to clause (xii) or (xiii) of this subparagraph that do not produce oil may not commence production of natural gas prior to modification of the spacing unit pursuant to applicable provisions of this title.

(2) "Well operator" means the applicant for a permit to drill, deepen, plug back or convert a well subject to this title and titles 7 and 9 of this article, or the actual operator of the well if the well is not operated by the original applicant.

(3) "Permit" or "well permit" means a permit to drill, deepen, plug back or convert a well for production of oil or gas.

2. Every person who applies for a permit to drill an oil or gas well or deepen or plug back a well to a different pool after the effective date of this section, notwithstanding prior orders, shall control through fee ownership, voluntary agreement, or integration pursuant to section 23-0701 or 23-0901 of this article no less than sixty percent of the acreage within the proposed spacing unit for such well and shall provide the department with:

a. A map in a format specified by the department depicting the proposed spacing unit for the well, the surface and bottom hole locations of the well, the location of the wellbore in the target formation, the location of any field-bounding faults within the proposed spacing unit, the acreage of the proposed spacing unit, and the boundaries of each tract wholly or partially within the proposed spacing unit as may be evidenced by tax identification numbers; and

b. A demonstration that the applicant controls the oil or gas rights, as applicable, in the target formation to be penetrated by the wellbore, provided that, if the applicant does not control such oil or gas rights, the department shall issue a permit that is conditional upon the applicant completing the integration process required by section 23-0901 of this article before the applicant can exercise the right to drill,

deepen, plug back or convert under the permit.

3. (a) No permits shall be issued authorizing an applicant to drill, deepen, plug back, or convert wells that use high-volume hydraulic fracturing or carbon dioxide to complete or recomplete natural gas or oil resources. For purposes of this section, high-volume hydraulic fracturing shall be defined as the stimulation of a well using three hundred thousand or more gallons of water as the base fluid for hydraulic fracturing for all stages in a well completion, regardless of whether the well is vertical or directional, including horizontal.

(b) There shall be a moratorium on the department taking actions on applications filed after the effective date of the chapter of the laws of 2020 which added this subdivision to drill, deepen, plug back, or convert wells that use gelled propane hydraulic fracturing to complete or recomplete natural gas or oil resources until the department completes an analysis of the potential impacts of gelled propane fracturing and makes the analysis publicly available. The scope of the department's analysis shall reflect the potential for development of oil and gas wells using gelled propane hydraulic fracturing and shall disclose the potential adverse impacts to the environment. For purposes of this section, gelled propane hydraulic fracturing shall be defined as the stimulation of a well using gelled propane or liquefied petroleum gas as the base fluid for hydraulic fracturing for all stages in a well completion, regardless of whether the well is vertical or directional, including horizontal.

4. In furtherance of the policy objectives of this article, the department shall take all actions required by it under this title and titles 7 and 9 of this article as expeditiously as possible.

§ 23-0503. Well spacing in oil and natural gas pools and fields.

1. Spacing orders are not required for wells drilled, deepened, plugged back or converted in oil fields or pools which were discovered, developed and operated prior to January first, nineteen hundred eighty-one. Spacing orders are not required for wells drilled, deepened,

plugged back or converted in natural gas fields or pools, which were discovered, developed and operated prior to January first, nineteen hundred ninety-five and which are not being extended.

2. The department shall issue a permit to drill, deepen, plug back or convert a well, if the proposed spacing unit submitted to the department pursuant to paragraph a of subdivision 2 of section 23-0501 of this title conforms to statewide spacing and is of approximately uniform shape with other spacing units within the same field or pool, and abuts other spacing units in the same pool, unless sufficient distance remains between units for another unit to be developed. Prior to issuing any such permit, the department shall publish a notice of intent to issue a well permit in the environmental notice bulletin, which shall include information concerning the spacing unit associated with the well.

3. a. If the proposed spacing unit does not meet the requirements described in subdivision two of this section, the department shall determine if the proposed spacing unit satisfies the policy objectives of section 23-0301 of this article.

b. If the department determines the proposed spacing unit meets the policy objectives of section 23-0301 of this article, the department shall issue a notice of intent to issue a permit and spacing order. The well operator shall cause such notice to be published in a form and manner prescribed by the department. If the notice of intent relates to a proposed spacing unit that is not of a uniform size and shape with other spacing units for the field or pool, the department shall, if necessary, make such adjustment of the allowable production from the well to be drilled thereon so that the owners in the spacing unit receive their just and equitable shares of the production from the pool. Any such adjustment of the allowables shall be included in the notice of intent to issue a permit and spacing order.

c. Any comments regarding a notice of intent to issue a permit and spacing order must be received by the department within thirty days of the date of the notice of intent and must meet the substantive and significant requirement for establishing an issue for adjudication. Any

challenge to a spacing unit must contain (i) a description and a map of the proposed alternative spacing unit; (ii) a technical justification of the proposed alternative spacing unit, which shall include a description and analysis of the scientific data intended by the owner to support its proposed spacing unit configuration; and (iii) the name, address and experience of any expert witness proposed to support the proposed alternative spacing unit configuration. The department may request the owner challenging the spacing unit to present its scientific data to the department.

d. The department shall determine whether substantive and significant issues have been raised. If the department receives no comments or if the comments do not raise a substantive and significant issue, the department shall issue the permit and the final spacing order. If the department determines that substantive and significant issues have been raised in a timely manner, the department shall schedule an adjudicatory hearing.

4. The department may issue permits to drill infill wells on a reasonably uniform pattern within the spacing unit after an integration order has been issued, if required, and only if it determines that drilling infill wells is necessary to satisfy the policy objectives of section 23-0301 of this article. The distances from the unit boundaries set forth in paragraph b of subdivision 1 of section 23-0501 of this title shall apply to any infill wells. For purposes of this section, new lateral wellbores drilled from the original wellbore in the unit are not considered infill wells if they are drilled prior to the first product sales from the original surface location. In a spacing unit established pursuant to clause (vi) of subparagraph 1 of paragraph b of subdivision 1 of section 23-0501 of this title, infill wells shall be deemed necessary, and the number of infill wells required to satisfy the policy objectives of section 23-0301 of this article must be drilled within three years of the date the first well in the unit commences drilling.

5. For wells permitted prior to the effective date of this section where a spacing order is required but has not been issued, the department shall issue a notice of intent to issue a spacing order. The

well operator shall cause such notice to be published in a form and manner prescribed by the department. The department may issue an order without a hearing if the proposed spacing unit complies with the requirements of subdivision two of this section and no substantive and significant objections to the boundaries of the proposed spacing unit are received within thirty days after publication of the notice by the well operator. If the department determines that substantive and significant issues have been raised in a timely manner, the department shall schedule an adjudicatory hearing.

6. Unless it is extinguished pursuant to subdivision seven of this section, a spacing unit established by the department shall be binding upon all persons and their heirs, successors and assigns. Upon good cause shown, an order establishing a spacing unit or a spacing unit which conforms to statewide spacing may be modified by the department without conducting a hearing if a finding has been made that no facts are in dispute after all affected persons have been provided a reasonable opportunity to comment. In a spacing unit established pursuant to clause (vi) of subparagraph 1 of paragraph b of subdivision 1 of section 23-0501 of this title, failure to drill infill wells pursuant to subdivision 4 of this section shall constitute good cause for the department to initiate a modification of the spacing unit. If necessary, upon issuance of an order which changes unit boundaries, the well operator shall adjust the accounts for owners within the original and modified units to reflect the modified boundary. Any participation by new owners and any adjustment of revenue or royalties resulting from participation by new owners shall be on a prospective basis only. If the initial risk penalty phase pursuant to title 9 of this article is in effect, any new owner added to the unit may elect to be integrated as a participating owner, a non-participating owner or an integrated royalty owner as defined by title 9 of this article. Full well costs shall be assessed against new participating owners and non-participating owners and included in the risk penalty calculation. If the initial risk penalty phase has concluded, any new owner added to the spacing unit may elect to be integrated as a participating owner or an integrated royalty owner on a prospective basis only.

7. Upon the expiration of a well permit or the plugging and abandonment of all wells in a spacing unit, the spacing unit shall be extinguished. Upon extinguishment, all lands within such spacing unit shall be eligible for inclusion in subsequent spacing units.

8. The department, without considering correlative rights, may grant a permit to those entities described in paragraphs b and c of subdivision 3 of section 23-1901 of this article for the purposes of natural gas development if the department determines, after notice and hearing, that the natural gas resource would not be developed by any other entity within twelve months of the close of the hearing record. In the event that the department shall not receive timely notice of appearance prior to the scheduled date of hearing, it may dispense with such hearing. In making its determination the department shall require that the entity described in paragraphs b and c of subdivision 3 of section 23-1901 of this article submit a finding made by such entity that such drilling is likely to be economically sound, and that the entity in question utilize the resource for its exclusive use when granting such a permit.

TITLE 7

VOLUNTARY INTEGRATION AND UNITIZATION IN OIL AND NATURAL GAS POOLS AND FIELDS

Section 23-0701. Voluntary integration and unitization in oil and natural gas pools and fields.

§ 23-0701. Voluntary integration and unitization in oil and natural gas pools and fields.

1. Voluntary integration and unitization in oil pools or fields and in natural gas pools or fields shall be subject to the provisions of this section. When two or more separately owned tracts are embraced within a spacing unit, or when there are separately owned interests in all or a part of a spacing unit, the interested persons may integrate their tracts or interests for the development and operation of the spacing unit. An agreement for the unit or for the cooperative development and

operation of a field, pool, or part thereof, may be submitted to the department for approval as being in the public interest or reasonably necessary to prevent waste. Such approval shall constitute a complete defense to any suit charging violation of any statute of this state relating to trusts and monopolies on account thereof or on account of operations conducted pursuant thereto. Failure to submit such an agreement to the department for approval shall not for that reason imply or constitute evidence that the agreement or operations conducted pursuant thereto are in violation of laws relating to trusts and monopolies.

2. Upon twenty-one days notice to the fee owners of oil and gas interests under lease in a spacing unit, a well operator may record as to each tract for which notice has been given a declaration of voluntary integration. The declaration of voluntary integration shall include the acreage applicable to each tract so integrated and the proportion such acreage bears to the entire spacing unit. The declaration of voluntary integration shall be final and binding upon all persons and their heirs, successors and assigns, and all persons who take title by operation of law.

TITLE 9

COMPULSORY INTEGRATION AND UNITIZATION IN OIL AND NATURAL GAS POOLS AND FIELDS

Section 23-0901. Compulsory integration and unitization in oil and natural gas pools and fields.

§ 23-0901. Compulsory integration and unitization in oil and natural gas pools and fields.

1. Compulsory integration and unitization in oil pools and fields and in natural gas pools and fields shall be subject to the provisions of this section with subdivision 3 to be specifically applicable to integration within individual spacing units, and subdivisions 4 through 12 to be specifically applicable to unit operation of an entire pool or

part thereof.

2. The department shall not make any order requiring the integration of interests in any spacing unit or requiring the development or operation of any field, pool or part thereof as a unit unless it finds, after detailed study and analysis, notice and hearing, that the integration of interests in spacing units, under conditions then existing in this state, or in the field or pool to be affected, is necessary to carry out the policy provisions of section 23-0301 of this article.

3. In the absence of voluntary integration as permitted by section 23-0701 of this article and after finding as required by subdivision 2 of this section, the department shall make an order integrating all tracts or interests in the spacing unit for development and operation. Each such integration order shall be upon terms and conditions that are just and reasonable and subject to the following:

a. As used in this section or otherwise in this article, to the extent applicable to oil and gas wells:

(1) "Integrated non-participating owner" or "non-participating owner" means an owner who elects to reimburse the well operator, out of production proceeds, for such owner's proportionate share of the actual well costs of the initial well in a spacing unit and be subject to a risk penalty, and complies with all of the requirements for integration, including the terms of integration, as specified in an order of integration issued pursuant to the compulsory integration provisions of this section. The non-participating owner shall receive the full share of production attributable to such owner's proportionate interest in the spacing unit following the recoupment by the well operator of the owner's proportionate share of the actual well costs plus a risk penalty of two hundred percent of the share of the actual well costs allocable to such owner. In the case of a leased tract, a royalty shall be deducted from the non-participating owner's share of production, which shall not be subject to charges or costs, but shall be separately calculated and paid to the non-participating owner on behalf of the royalty owner as follows:

- (i) During the recovery of the actual well costs, 1/16 or 6.25%,
- (ii) During the recovery of the first 100% of the risk penalty, 3/32 or 9.38%,
- (iii) During the recovery of the second 100% of the risk penalty, the lowest royalty fraction set forth in an existing lease in the unit, but no less than 1/8 or 12.5%.

Nothing in this subparagraph relieves any lessee of its obligation to pay, from the commencement of production, any remaining royalty and overriding royalty owed under the terms of its lease.

(2) "Integrated participating owner" or "participating owner" means an owner who elects to participate in the initial well in a spacing unit, pays all costs associated with participation and complies with all of the requirements for participation, including the terms of integration, specified in an order of integration issued pursuant to the compulsory integration provisions of this section.

(3) "Integrated royalty owner" means an owner who has either elected to be an integrated royalty owner or who does not elect to become either a participating owner or a non-participating owner. The integrated royalty owner shall receive a royalty equal to the lowest royalty in an existing lease in the spacing unit, but no less than one-eighth. The integrated royalty owner shall have no obligation to the well operator or any other owner for any charges, taxes or fees associated with the operation of the oil or gas well and, notwithstanding any other law to the contrary, shall not be liable by reason of the owner's status as an integrated royalty owner for any claims for personal injury or property damage suffered by any person relating to the drilling and operation of the well.

(4) "Risk penalty" means the percentage applied to well costs to reimburse the well operator for the risk involved with the exploration for and development of a well or the percentage applied to other costs that are subject to recoupment and a risk penalty, as provided herein. At any time during a risk penalty phase, an owner subject to a risk penalty may pay to the well operator the full amount subject to recoupment by the well operator, to terminate the risk penalty phase and be eligible for other opportunities for participation as provided herein.

(5) "Well costs" means the costs incurred or estimated to be incurred by the well operator in relation to the drilling, completion, and the installation of surface equipment, other than as described in item E of clause (ii) of subparagraph 1 of paragraph c of this subdivision, including, without limitation, surveying, drill site preparation, leasing of surface rights and access roads pertinent to the drill site, construction of access roads, permitting, drilling, stimulation, testing, well logging, drilling insurance, plugging and abandonment of the well, environmental mitigation costs associated with drilling and any other costs associated with the foregoing that the operator has incurred or anticipates incurring, including a reasonable charge for supervision of the foregoing activities.

b. If upon issuance of a well permit by the department, the well operator does not control all owners within the spacing unit, either through lease or voluntary agreement, the department shall schedule an integration hearing.

c. The well operator shall, no later than thirty days prior to the date of the integration hearing scheduled by the department, provide actual notice of the hearing to all uncontrolled owners wholly or partially within the spacing unit and shall provide notice by publication in a form and manner prescribed by the department. Prior to or contemporaneously with such notice, the well operator shall provide to the department the well operator's estimate of those well costs that the owners electing to participate shall be required to pay to the well operator prior to or at the integration hearing based on each owner's proportionate share of such costs and a list of each tract wholly or partially within the spacing unit, the acreage attributable thereto, the percentage interest of the total spacing unit of each tract, an indication of whether the tract is controlled by the well operator and the names and addresses of the uncontrolled owners. If applicable, such list shall also identify each tract where the owners remain unknown or cannot be located after diligent efforts by the well operator. To the extent an owner cannot be determined after diligent efforts by the well operator and such owner is integrated as an integrated royalty owner, the well operator shall hold the royalty percentage payable to such

integrated royalty owner in an interest bearing account for such integrated royalty owner until the owner is located or the property is deemed abandoned, whichever comes first.

(1) The notice of hearing to each uncontrolled owner shall be made in a form prescribed by the department, and shall include:

(i) An election form, as prescribed by the department, granting the uncontrolled owner the right to elect to be integrated into the spacing unit as an integrated participating owner, an integrated non-participating owner or an integrated royalty owner. Such form shall set forth the well operator's good faith estimate of those well costs which the owners electing to be integrated as participating owners will be responsible for paying to the well operator prior to conclusion of the integration hearing, based on each owner's proportionate share of such costs, and confirm that if an uncontrolled owner does not make a timely election and does not timely comply with all of the requirements to be either a participating owner or a non-participating owner, that such uncontrolled owner shall be integrated into the spacing unit as an integrated royalty owner.

(ii) A copy of the proposed order of integration, which shall include the proposed terms of integration applicable to integrated participating owners and integrated non-participating owners. The proposed order of integration shall include the following terms in addition to any applicable risk penalty:

A. The owner shall be liable for its proportionate share of all costs and expenses, including taxes, and claims of third parties related to the well, operations thereon and in conjunction therewith, and shall be entitled to its proportionate share of all benefits therefrom. If an owner's share of production is subject to a risk penalty, the well operator shall establish a risk penalty account for such owner and all costs, expenses and benefits attributable to such owner shall be reflected in the penalty account;

B. The well operator shall hold any funds paid by the owner or recouped through the risk penalty attributable to the plugging and abandonment costs of the well, as estimated prior to the drilling of the well, in an interest bearing account until such funds are required and

utilized for such purpose;

C. The owner shall be liable for and shall indemnify all other persons participating in the development of the well, whether participating owners, non-participating owners or otherwise, including the well operator, from and against all claims arising out of the owner's non-payment of rentals, royalties and other payments or burdens on the oil and gas rights that such owner contributes to the spacing unit and from and against all claims associated with the loss or failure of title to the oil and gas rights the owner contributes to the spacing unit;

D. The well operator shall have a first lien on the production of the owner to pay any outstanding costs, expenses or claims and the well operator shall be entitled to withhold and retain for the purposes of set off any revenue or production owed or due to the owner under an order of integration. Nothing in this paragraph shall affect the well operator's right to collect any outstanding amounts incurred nor the right of any fee owner of oil and gas interests to collect any amounts owed under the terms of any lease from such owner. The exercise of any remedy shall not preclude the well operator from seeking any other remedies available under the law;

E. Whether or not the owner is subject to a risk penalty, the well operator shall submit to the owner a written authority for expenditure of the estimated costs associated with the construction of any facilities not included in well costs beyond the surface equipment at the wellhead to the first point of interconnection with other facilities that commingle production from a group of wells that includes the well, including, but not limited to, pipe, compression, processing, treating, dehydrating or separating equipment, fixtures, related buildings and other equipment. The owner shall have thirty days to elect to participate and pay its proportionate share of such estimated cost, the failure of which shall be deemed to be an election by the owner not to participate. If the owner elects not to participate or is deemed to have elected not to participate, the well operator shall be entitled to retain for its own account all of the owner's share of production from the well until the well operator has recouped from the net proceeds of

the owner's share of production the owner's share of the actual costs of the facilities, plus a risk penalty of one hundred percent of such costs. Any such amounts shall be added to the risk penalty account for such owner;

F. If the owner is not subject to a risk penalty, the owner shall have the right to take its share of gas or oil production in kind and shall be responsible for its transportation and marketing arrangements downstream of the facilities constructed pursuant to item E of this clause. The owner's election to take in kind must be conveyed to the well operator no later than fourteen days prior to first production from the well or upon seventy-five days written notice to well operator at any time following first production from the well subject to the expiration of any existing contracts;

G. If the owner is not subject to a risk penalty and does not take its share of gas or oil production in kind, the well operator shall market the owner's share of production from the well ratably with its own share of production from the well for the account of the owner. The well operator shall pay the owner based on the price received by the well operator for production in the general area less (I) the owner's proportionate share of all costs incurred by the well operator for transporting, treating, processing, or otherwise making the production marketable, and (II) a marketing fee not to exceed five percent of the sales price of the production;

H. The well operator shall be entitled to propose and conduct a subsequent operation on a well, meaning any reworking, sidetracking, deepening, re-completing or plugging back of the well or the drilling of a lateral or an infill well in the formation for which the unit was created. Owners shall be provided with a written authorization for expenditure of the estimated costs of the subsequent operation. An owner shall not be entitled to participate in a subsequent operation as long as the owner is in a risk penalty phase. If a subsequent operation is proposed while an owner is in a risk penalty phase, the owner's proportionate share of the actual cost of the subsequent operation plus two hundred percent of such actual costs shall be added to the risk

penalty account for such owner. The owner not in a risk penalty phase shall have thirty days to elect and pay its proportionate share of the estimated costs, unless a drilling rig is on location, in which event notice of a subsequent operation may be given by telephone and the owner shall have forty-eight hours, exclusive of Saturday, Sunday and legal holidays, to make an election and thirty days to pay the owner's proportionate share of costs. The failure of any such owner to elect and pay in a timely manner shall be deemed an election by the owner not to participate in the subsequent operation. If such owner elects or is deemed to have elected not to participate in the subsequent operation, the well operator shall be entitled to retain all of the owner's proportionate share of production from the well until the well operator has recouped the proportionate share of the actual costs of the subsequent operation attributable to such owner, plus two hundred percent of such actual costs;

I. The well operator, on behalf of the owner, shall be entitled to conduct all acts associated with the well and necessary facilities related thereto, including without limitation: conducting title examination and curative work on the tracts included in the spacing unit; arranging for contract services or employees of the well operator, at the customary salaries, wages and benefits of such employees, to oversee the operation and maintenance of the well and the facilities in the production unit associated with the well; arranging for and maintaining required financial security for well bonds and insurance; discharging litigation, claims of third parties and disputing tax assessments; developing and implementing emergency responses and dealing with catastrophic events; and arranging for the storage, transporting and disposal of produced water, by-products or refuse associated with production and maintenance facilities; and

J. Other terms may be included in the order of integration if the department determines such terms are reasonably required to further the policy objectives of section 23-0301 of this article.

(2) Within twenty-one days of receiving notice of the integration hearing, each uncontrolled owner shall provide to the well operator and the department its election as to whether it chooses to be integrated as

a participating owner, a non-participating owner or an integrated royalty owner. Failure of an uncontrolled owner to elect to be integrated as a participating owner, a non-participating owner or an integrated royalty owner and to pay the amount specified in the notice by the date of the hearing, or to make any election, shall result in the owner being integrated as an integrated royalty owner. Nothing contained in this section shall preclude any person from entering into a lease or other voluntary agreement at any time prior to the hearing.

d. If substantive and significant issues are raised during the integration hearing, the department shall schedule an adjudicatory hearing.

e. If no substantive and significant issues are raised at the hearing, the department shall issue a final order of integration confirming the status of all uncontrolled owners in the spacing unit as participating owners, non-participating owners or integrated royalty owners; the terms of integration; the acreage attributable to each owner and the proportion such acreage bears to the entire spacing unit; and the royalty applicable to each integrated royalty owner. Such order shall be recorded by the well operator in the office of the county clerk in the county or counties where the spacing unit is wholly or partially located and such order shall be final and binding upon the well operator, all owners and their heirs, successors and assigns.

f. All operations including, but not limited to, the commencement, drilling, or operation of a well or the existence of a shut-in well upon any portion of a spacing unit covered by an order of integration shall be deemed for all purposes the conduct of such operations upon each separately owned tract in the spacing unit by the owner or several owners thereof. That portion of the production allocated to each tract included in a spacing unit covered by an order of integration shall, when produced, be deemed for all purposes to have been produced from such tract by a well drilled thereon.

4. The department upon its own motion may, and upon the application of any interested person shall, hold a hearing to consider the need for the

operation as a unit of an entire pool or part thereof.

5. The department shall make an order providing for the unit operation of a pool or part thereof if it finds that such operation is reasonably necessary to increase substantially the ultimate recovery of oil and gas, and the value of the estimated additional recovery of oil or gas exceeds the estimated additional cost incident to conducting such operation. The order shall be upon terms and conditions that are just and reasonable and shall prescribe a plan for unit operations that shall include:

a. A description of the unitized area, termed the unit area.

b. A statement of the nature of the operations contemplated.

c. An allocation to the separately owned tracts in the unit area of all the oil and gas that is produced from the unit area and is saved, being the production that is not used in the conduct of operations on the unit area or not unavoidably lost. The allocation shall be in accord with the agreement, if any, of the interested parties. If there is no such agreement, the department shall determine the value, from evidence introduced at the hearing, of each separately owned tract in the unit area, exclusive of physical equipment, for development of oil and gas by unit operations, and the production allocated to each tract shall be the proportion that the value of each tract so determined bears to the value of all tracts in the unit area.

d. A provision for the credits and charges to be made in the adjustment among the owners in the unit area for their respective investments in wells, tanks, pumps, machinery, materials, and equipment contributed to the unit operations.

e. A provision providing how the expenses of unit operations, including capital investment, shall be determined and charged to the separately owned tracts and how said expenses shall be paid.

f. A provision, if necessary, for carrying or otherwise financing any

person who is unable to meet his financial obligations in connection with the unit, allowing a reasonable interest charge for such service.

g. A provision for the supervision and conduct of the unit operations, in respect to which each person shall have a vote with a value corresponding to the percentage of the expenses of unit operations chargeable against the interest of such person.

h. The time when the unit operations shall commence, and the manner in which, and the circumstances under which, the unit operations shall terminate.

i. Such additional provisions as are found to be appropriate for carrying on the unit operations, and for the protection or adjustment of correlative rights.

6. No order of the department providing for unit operations shall become effective unless and until the plan for unit operations prescribed by the department has been approved in writing by the owners of sixty percent or more in interest as the costs of such unit operations are shared under the order of the department, and by owners of record of a like percentage of a one-eighth royalty interest in and to the unit area, and the department has made a finding, either in the order providing for unit operations, or in a supplemental order, that the plan for unit operations has been so approved by the required number of owners and royalty owners. If the plan for unit operations has not been so approved by owners and royalty owners at the time the order providing for unit operations is made, the department shall upon application and notice hold such supplemental hearings as may be required to determine if and when the plan for unit operations has been so approved. If the owners and royalty owners, or either, owning the required percentage of interest in the unit area do not approve the plan for unit operations within a period of six months from the date on which the order providing for unit operations is made, such order shall cease to be of force and shall be revoked by the department.

7. An order providing for unit operations may be amended by an order

made by the department, in the same manner and subject to the same conditions as an original order providing for unit operations, provided

a. if such an amendment affects only the rights and interests of the owners, the approval of the amendment by the royalty owners shall not be required, and

b. no such order of amendment shall change the percentage for allocation of oil and gas as established for any separately owned tract by the original order, except with the consent of all persons owning interest in such tract.

8. The department, by an order, may provide for the unit operation of a pool or a part thereof that embraces a unit area established by a previous order of the department. Such order, in providing for the allocation of unit production, shall first treat the unit area previously established as a single tract, and the portion of the unit production so allocated thereto shall then be allocated among the separately owned tracts included in such previously established unit area in the same proportions as those specified in the previous order.

9. Oil and gas allocated to a separately owned tract shall be deemed, for all purposes, to have been actually produced from such tract, and all operations, including, but not limited to, the commencement, drilling, or operation of a well upon any portion of the unit area shall be deemed for all purposes the conduct of such operations upon each separately owned tract in the unit area by its several owners. The operations conducted pursuant to the order of the department shall constitute a fulfillment of all the express or implied obligations of each lease or contract covering lands in the unit area to the extent that compliance with such obligations cannot be had because of the order of the department.

10. Oil and gas allocated to any tract, and the proceeds from the sale thereof, shall be the property and income of the several persons to whom, or to whose credit, the same are allocated or payable under the order providing for unit operations.

11. No division order or other contract relating to the sale or purchase of production from a separately owned tract shall be terminated by the order providing for unit operations, but shall remain in force and apply to oil and gas allocated to such tract until terminated in accordance with the provisions thereof.

12. Except to the extent that the parties affected so agree, no order providing for unit operations shall be construed to result in a transfer of all or any part of the title of any person to the oil and gas rights in any tract in the unit area. All property, whether real or personal, that may be acquired in the conduct of unit operations hereunder shall be acquired for the account of the owners within the unit area, and shall be the property of such owners in the proportion that the expenses of unit operations are charged.

13. Any person taking title by operation of law to any oil and gas interests integrated into a spacing unit pursuant to an order of integration, shall take such interests subject to the terms and conditions of the final order of integration issued by the department duly recorded in accordance with the provisions of this section and shall be subject to all liabilities and benefits associated therewith, unless such person, within sixty days of the taking of such interest, elects to be an integrated royalty owner and notifies the well operator of such election.

TITLE 11

LEASES FOR PRODUCTION AND STORAGE OF OIL AND GAS ON STATE LANDS

Section 23-1101. Procedure for obtaining oil and gas production lease.

23-1103. Procedure for obtaining gas storage lease.

23-1105. Prohibition on state authorizations related to certain offshore oil and natural gas production.

§ 23-1101. Procedure for obtaining oil and gas production lease.

1. The department may make leases on behalf of this state, upon such terms and conditions including consideration as to the department seem just and proper for:

a. The exploration, development and production of gas in state-owned lands, except state park lands, state forests, reforestation areas, wildlife management areas, unique areas, the marine and coastal district as defined in section 13-0103 of this chapter, and the lands under the waters of Lake Ontario or along its shoreline; and

b. The exploration, development and production of oil in state-owned lands, except state park lands, state forests, reforestation areas, wildlife management areas, unique areas, the marine and coastal district as defined in section 13-0103 of this chapter, and the lands under the waters of Lake Erie and Lake Ontario or along their shorelines.

2. All oil and gas leases shall:

a. Be limited in duration to a period not to exceed ten years and as long thereafter as oil and gas is produced in commercially paying quantities;

b. Provide for payment to the agency having jurisdiction over the leased lands of such consideration, royalties, rentals, bonuses and other compensation as shall, in the discretion of the department, be in the best interests of the people of the state of New York;

c. Provide for prompt exploration followed within a reasonable time by operations for the production of oil and gas, if such be found, and shall also contain provisions for the termination of such lease by reason of the lessee's failure to so explore or operate;

d. Be invalid unless they shall have the prior approval of such state department, division, bureau or agency thereof, or state agency having jurisdiction over the land in question; and authority to give such consent is hereby conferred upon the head of any such state department,

or a division, bureau or agency thereof, or any state agency, and with respect to lands under water held by the state in its sovereign capacity, jurisdiction is deemed to be in the Commissioner of General Services; and

e. Be inapplicable to any state park lands and to any lands the leasing of which is prohibited by the State Constitution.

3. In addition to the requirements contained in paragraphs a, c and e of subdivision two of this section, all gas leases with respect to the lands under the waters of Lake Erie shall:

a. Provide for payment to the general fund of the state such consideration, royalties, rentals, bonuses or other compensation as shall, in the discretion of the department, be in the best interests of the people of the state of New York.

b. Require that no well shall be permitted nearer than one-half mile from the shore, two miles from public water intake areas, and one thousand feet from any other structure or installation in or on Lake Erie.

c. Require that the following procedures be established if there is evidence suggesting that liquid hydrocarbons may exist in a stratum penetrated by the well bore:

(i) Drilling or completion operations shall cease immediately.

(ii) The department shall be notified of the evidence indicating the presence of liquid hydrocarbons, pursuant to such notification arrangements as the department shall prescribe.

(iii) A formation test shall be conducted in the presence of a department representative.

(iv) If the formation test indicates the presence of appreciable liquid hydrocarbons, the well bore shall be permanently plugged and abandoned from total depth to the lake bottom with cement.

(v) If the formation test does not indicate the presence of appreciable liquid hydrocarbons, drilling may be resumed after an intermediate string of casing has been set, cemented and tested.

(vi) If there is any further indication of liquid hydrocarbons the procedures outlined in paragraphs one through five hereof shall be repeated.

d. Require that each lessee, or other person desiring to install a pipeline, bury the most shoreward portion of each pipeline, in accordance with rules and regulations which shall be promulgated by the department, to obviate the risk of damage from ice, wave and wind conditions.

e. Be conditioned upon the posting by the responsible parties of a liability bond or liability insurance coverage in such form as the department may by regulation require and in such amount as the department shall deem to be reasonably sufficient to correct, repair or remedy to the satisfaction of the department any environmental damage or hazardous discharge resulting from gas exploration or recovery.

f. Provide that each lessee shall be strictly liable to the state for all reasonable expenses involved in the restoration of fresh water supplies, cleanup of beaches, piers and other similar facilities, which may be required as a result of exploration, drilling or production operations, and for liability claims arising therefrom.

g. Require each lessee to immediately notify the department of any discharge of oil or other pollutant, to act expeditiously to terminate such discharge and to remove the substance discharged.

h. Provide for the use and regular inspection of modern anti-pollution devices, including blow-out preventors on every drilling rig.

i. Provide that when a well is permanently abandoned for any reason it shall be permanently plugged by filling the well bore for its total depth, with cement or other suitable material.

j. Provide that, where in the department's opinion, damage to the environment is imminent or an emergency exists, the department shall order the immediate plugging and abandonment, either temporary or

permanent, of any well on lands beneath Lake Erie.

3-a. For any lease relating to the exploration, development, and production of gas or oil in state forests, reforestation areas, wildlife management areas, and unique areas, which was entered into, on, or before the effective date of a chapter of the laws of two thousand twenty-five which amended subdivision one of this section, any assignment, transfer, or modification of such lease shall not be considered the making of a lease under such law; provided, however, that no such assignment, transfer, or modification shall allow for an increase in acreage under the lease, the expansion of existing gas or oil wells, the drilling of new gas or oil wells, or the expansion or building of any other new gas or oil infrastructure other than well-plugging and remediation activities; and provided, further, that no such lease shall be continued or renewed upon expiration.

4. Any such oil, gas, or oil and gas lease or leases made and granted pursuant to this section shall be awarded to the highest responsible bidder after advertisement for sealed bids. Such advertisements for bids shall be published in the official newspaper or newspapers, if any, or otherwise in a newspaper or newspapers designated for such purpose. Such advertisement shall contain a statement of the time and place where all bids received pursuant to such notice will be publicly opened and read. All bids received shall be publicly opened and read at the time and place specified. At least thirty days shall elapse between the first publication of such advertisement and the date specified for the opening and reading of bids. Bids shall be submitted on forms provided by the department, which forms shall indicate the method or methods for computing compensation to the state for the lease and shall contain such other directions as may be appropriate to secure comparability of bids submitted for any given lease. The department, in its discretion, shall determine the highest bid after taking into consideration the anticipated compensation to be returned to the state under any such lease by way of royalty payments, delayed lease rental payments, bonuses or other compensation or consideration, or by a combination of any or all of the same. In cases where two or more responsible bidders submit identical bids, the department in its discretion, may award the lease

involved to any of such bidders. The department in its discretion, may also reject any or all bids and readvertise for new bids. The department may disallow any bid if the bidder upon request fails to furnish satisfactory evidence of responsibility.

5. Notwithstanding the requirements contained in subdivision four of this section, the department may negotiate and grant an oil or gas lease on small parcels of stateowned land without public bid in order to consolidate large drilling or production units controlled by a single entity. The department shall make a determination that public bid of such property is unreasonable or impracticable and publish such determination in the state register prior to the granting of any such lease.

6. Notwithstanding subdivision four of this section, the department may negotiate and grant an oil or gas lease of lands identified in subdivision one of this section where oil and gas exploration and development rights are co-owned by the state and another owner, including the United States. The department shall publish its intention to enter into negotiations on such lease in the state register prior to the granting of any such lease.

§ 23-1103. Procedure for obtaining gas storage lease.

1. The department may make leases on behalf of this state for the storage of gas, and liquefied petroleum gas, in state owned lands upon such terms and conditions including consideration as to it shall seem just and proper.

2. All leases made pursuant to this section shall:

a. Provide for payment to the agency having jurisdiction over the leased lands of adequate and reasonable consideration;

b. Be invalid unless they shall have the prior approval of such state department, division, bureau or agency thereof, or state agency having

jurisdiction over the land in question, and authority to give such consent is hereby conferred upon the head of any such state department, or a division, bureau or agency thereof, or any state agency; and with respect to lands under water held by the state in its sovereign capacity, jurisdiction is deemed to be in the Commissioner of General Services;

c. Contain such other terms and provisions as may be necessary or appropriate in order to promote the purposes of this article and the public policy of this state; and

d. Be inapplicable to any lands the leasing of which is prohibited by the State Constitution.

§ 23-1105. Prohibition on state authorizations related to certain offshore oil and natural gas production.

1. Neither the department nor the office of general services shall enter into any new lease or other conveyance, lease renewal, extension or modification, that authorizes the exploration for, or the development and production of, oil or natural gas upon lands owned by the state in the marine and coastal district as defined in section 13-0103 of this chapter, that would result in the increase of oil or natural gas production from federal waters.

2. The department is authorized to establish such rules and regulations as it shall deem necessary to implement this section.

3. For the purposes of this section, the following terms have the following meanings:

a. "Development" means those activities taking place following the discovery of oil and natural gas, including geophysical activity, drilling, platform construction, pipeline construction, and operation of all onshore support facilities that are performed for the purposes of ultimately producing the resources discovered.

b. "Exploration" means the process of searching for oil and natural gas, including any drilling whether on or off known geological structures, including the drilling of a well in which a discovery of oil or natural gas is made and the drilling of any additional delineation well after the discovery that is needed to delineate any reservoir and a lessee to determine whether to proceed with development and production.

c. "Federal waters" means those waters and submerged lands lying seaward to the state waters of New York that appertain to the United States and are subject to federal jurisdiction and control.

d. "New or additional exploration, development, or production of oil or natural gas" includes any activity undertaken to increase the capacity of any pipeline or other infrastructure used to convey oil or natural gas from federal waters.

e. "Production" means those activities that take place after the successful completion of any means for the removal of oil and natural gas, including that removal, field operations, transfer or resources to shore, operation, monitoring, maintenance, and workover drilling. "Producing" means undertaking those activities.

TITLE 13

UNDERGROUND STORAGE OF GAS

Section 23-1301. Procedure for obtaining underground storage permit.

23-1303. Authority to acquire property.

23-1305. Procedure for abandoning storage reservoir.

23-1307. Ownership of storage gas and storage rights.

§ 23-1301. Procedure for obtaining underground storage permit.

1. No underground reservoir shall be devoted to the storage of gas, or liquefied petroleum gas unless the prospective operator of such storage reservoir shall have received from the department, after approval in

writing of the state geologist, an underground storage permit which shall be in full force. The application for said permit shall include the following:

a. A map showing the location and boundaries of the proposed underground storage reservoir.

b. A report containing sufficient data to show that the reservoir is adaptable for storage purposes.

c. An affidavit signed by the prospective operator to the effect that he has acquired by grant, lease or other agreement at least seventy-five percent of the storage rights in said reservoir and in the buffer zone established to protect the reservoir as approved by the department, calculated on the basis of surface acreage; and such affidavit shall also set forth that the applicant will agree as a condition to the issuance of such permit that it will thereafter within a reasonable time either acquire by negotiation, or file and proceed with condemnation proceedings to acquire, any outstanding storage rights in the remaining reservoir and buffer zone acreage.

d. Such other information as the department may require.

2. The permit shall be granted within ninety days of application unless the department finds that the application and the information submitted with it do not meet the requirements of this section. The department may revoke or suspend any underground storage permit in force hereunder for failure to comply with any of its provisions or for failure to comply with subdivision 4 of this section.

3. Subdivisions 1 and 2 of this section shall not apply to underground storage reservoirs or the storage of gas therein provided that such reservoirs have been placed in operation prior to October 1, 1963 and so long as such operation is not abandoned.

4. Every operator shall file with the department on or before December 31 of each year, a report with respect to each underground storage

reservoir operated by him showing any change in:

a. The estimated size in surface acreage or shape of the reservoir and the buffer zone if any;

b. His estimate of total capacity of the reservoir;

c. His estimate of working capacity of the reservoir; and

d. Any other engineering, geological or operational data that may be requested by the department.

5. The applicant for a permit for the following purposes shall submit with his application the following fees:

a. for a new underground storage reservoir, a fee of ten thousand dollars.

b. for a modification of the storage capacity of an existing underground storage reservoir, a fee of five thousand dollars.

6. No permit issued hereunder and no provision of this article shall be construed to diminish or impair the jurisdiction of the Public Service Commission with respect to regulation of the manufacture, transportation, distribution or sale of gas.

§ 23-1303. Authority to acquire property.

1. Any corporation empowered to produce, transport, distribute or store gas within this state for ultimate public use, which holds an underground storage permit from the department or which is otherwise lawfully operating an underground storage reservoir and its buffer zone, and which after reasonable effort is unable to obtain rights in real property and wells thereon necessary for activation, operation, or protection of the storage reservoir and its buffer zone shall, subject to the applicable provisions of the eminent domain procedure law, have

the authority to acquire such rights as may be required adequately to examine, prepare, maintain, operate and protect, and for access to such underground storage reservoir and its buffer zone; provided that no right of acquisition under this section shall extend to any lands or interests therein which have been acquired, or, in the hands of the present holder, could have been acquired by acquisition; and, provided further, that any acquisition of cemetery lands or burial grounds shall be in the sound discretion of the court and with due provision for the relocation of human remains.

2. Underground gas storage operators authorized by this section to maintain acquisition proceedings before filing a suit for such acquisition shall have filed with the department a map showing the location, boundaries and estimated size of surface acreage of the underground storage reservoir and its buffer zone.

3. Any operator of an underground gas storage reservoir who at any time controls less than one hundred per cent of the storage rights within that reservoir and its buffer zone and is authorized by this section to maintain a proceeding shall acquire the storage rights remaining in the reservoir and its buffer zone acreage by negotiation or file and proceed with acquisition proceedings within a reasonable time but not to exceed a two year period after the first injection of gas, or after the effective date of this section, whichever is later or within any extension granted by the department.

4. Any operator who seeks to acquire underground gas storage and buffer zone rights as authorized by this section shall name as parties defendant all the owners of all the parcels of property located within the boundaries of the reservoir and its buffer zone from whom storage rights have not previously been legally acquired by grant, lease, or other voluntary agreement; provided, however, that a failure to join the owners of any parcel in the reservoir and its buffer zone due to inadvertence shall not constitute a jurisdictional defect in any proceeding of acquisition.

5. The value of any property acquired pursuant to this section shall

include the value of any commercially recoverable native oil and gas in place to the extent that the holder of the property interest being acquired has a right thereto. The same provision shall apply to the holder of salt rights.

6. The cost of, or possible necessity for, plugging any well or wells, when such plugging or replugging is or may be made necessary by reason of the storage use made possible or facilitated by acquisition shall not be considered in computing the value of property or any interest therein taken under this section.

7. The use of salt cavities for the storage of gas or other petroleum products or byproducts shall be at the discretion of the owner of the salt deposits at the location of the cavity. Salt cavities may be used for salt recovery and storage with the consent and agreement of the owners of the salt cavity and the stored material. Conversion of any salt cavity for the storage of gas or other petroleum products or byproducts shall be in accordance with section 23-1103 or 23-1301 of this article.

§ 23-1305. Procedure for abandoning storage reservoir.

In connection with the abandonment of any underground storage reservoir for which a permit has been granted pursuant to this article or in connection with the revocation of any such permit, the department shall require the premises to be placed in a condition which, to the extent practicable, shall assure the continuance of the same in a condition which does not constitute a menace to the present or future health or safety of persons, or safety or value of property. In case the operator shall fail to put the premises in a satisfactory condition prior to any such abandonment or immediately upon revocation of a permit, the department may do or cause to be done all things necessary to place the premises in satisfactory condition and the operator shall be liable for the cost.

§ 23-1307. Ownership of storage gas and storage rights.

1. All gas and liquefied petroleum gas, which has previously been reduced to possession, and which is lawfully injected into an underground storage reservoir, shall be deemed the property of the injector, his heirs, successors or assigns, provided that the injector, his heirs, successors or assigns, shall have no right to reserves of native gas or oil remaining in any stratum or portion thereof which have not been condemned hereunder or otherwise acquired by such injector, his heirs, successors or assigns. Nothing contained in this subdivision shall be construed to confer on any operator any storage rights not otherwise acquired or held by him.

2. No production lease shall be construed to include rights to store oil or gas unless the lease includes a provision granting such storage rights. The rule of construction provided in this subdivision is not intended to alter any law or rule of construction applicable to leases made prior to October 1, 1963 or to imply any rule of construction for such leases.

TITLE 17

LIQUEFIED NATURAL AND PETROLEUM GAS

Section 23-1701. Short title.

23-1703. Legislative findings.

23-1705. Definitions.

23-1707. Environmental safety permit; siting.

23-1709. Criteria for siting.

23-1711. Permit processing.

23-1713. Transportation of liquefied natural and petroleum gas; certified routes.

23-1715. Inspection to insure compliance; allocation of enforcement costs; revocation; civil and criminal penalties.

23-1717. Training and qualification of municipal fire department personnel; strict liability.

23-1719. Non-conforming facilities; conformance to safety

- criteria; moratorium.
- 23-1721. Hardship; petition and hearing; permit.
- 23-1723. Judicial review.
- 23-1725. Preservation of jurisdiction of public service commission; consultation and coordination with commission and energy office.
- 23-1727. Severability.

§ 23-1701. Short title.

This title shall be known as the "liquefied natural and petroleum gas act".

§ 23-1703. Legislative findings.

The legislature finds that it is necessary for the protection of the public health, the environment and the economic welfare of the people of this state to regulate and control the siting of liquefied natural and petroleum gas facilities in this state because of the hazards posed by liquefied natural and petroleum gas storage and transportation, particularly in populated areas. The legislature finds that liquefied natural and petroleum gas is an extremely volatile, highly flammable and dangerous substance which if released into the air is capable, under unfavorable atmospheric conditions, of causing severe damage even in areas distant from the point of release. The legislature further finds that the use of imported and domestic liquefied natural and petroleum gas is increasing, making its regulation in the public interest essential; and requiring particular caution in its storage, transportation, and conversion, to be carried out other than in residential areas or in dangerous proximity to contiguous population, with the imposition of strict liability in the handling thereof.

It is the purpose of the legislature, subject to the provisions of this act, that liquefied natural or petroleum gas facilities not be sited in residential areas, or in dangerous proximity to contiguous

populations, and that transportation of liquefied natural or petroleum gas be effected under maximum safeguards to protect such areas and populations against possible catastrophic danger in the mishandling or possible escape thereof. Natural gas stored or transported at normal temperatures, whether under pressure or otherwise, after conversion thereof from its super-cooled or cryogenic state as liquefied gas and liquefied petroleum gases in the form of butane, bottled gas, propane, propylene and butylene gas when stored or transported at their respective normal temperatures are not subject to regulation under the provisions of this act.

§ 23-1705. Definitions.

As used in this title, unless the context otherwise requires:

1. "Liquefied natural gas", sometimes referred to as "LNG", and "liquefied petroleum gas", sometimes referred to as "LPG", are gas cooled to its liquid state provided, however, the provisions of this act shall not be deemed to apply to liquefied petroleum gas in the form of butane, bottled gas, propane, propylene or butylene when used, stored or transported at their respective normal temperatures, are not subject to this act.

2. "Liquefied natural or petroleum gas facility" means any structure or facility which is used for the storage or confinement of liquefied natural or petroleum gas, or for the conversion of liquefied natural or petroleum gas into natural gas. The former shall be designated as a "liquefied natural or petroleum gas storage facility"; the latter as a "liquefied natural or petroleum gas conversion facility".

3. "Liquefied natural or petroleum gas transportation activity" means the loading, unloading, or transportation, by whatever means, of liquefied natural gas or liquefied petroleum gas.

4. "Natural gas" means natural or petroleum gas in a non-liquid or gaseous state, whether under pressure or otherwise, and whether or not

the product of conversion from liquefied natural gas or liquefied petroleum gas. The storage and transportation of natural gas, whether under pressure or not, and which take place at normal temperatures, are not subject to this act.

5. "Non-conforming facility" means a liquefied natural or petroleum gas facility in actual use and operation on September first, nineteen hundred seventy-six which is exempted from the requirements of section 23-1707 but is subject to the requirements of section 23-1719.

6. "Person" means any individual, corporation, partnership, association, cooperative or otherwise, trust or estate, governmental agency, authority, public benefit corporation, municipality or agency thereof, board or commission, or other public or private legal entity.

7. "Permit" means an environmental safety permit issued by the department pursuant to this title.

§ 23-1707. Environmental safety permit; siting.

No person shall commence the preparation of a site for, or begin the construction of, a liquefied natural or petroleum gas storage or conversion facility in the state without having first obtained an environmental safety permit issued with respect to such facility or activity by the commissioner pursuant to this title. Any such facility with respect to which a permit is issued shall not thereafter be built, maintained or operated, and any such activity with respect to which a permit is issued, shall not be carried out, except in conformity with such permit and any terms, limitations or conditions contained therein; provided that nothing herein shall exempt such facility from compliance with state law and regulations thereunder or with municipal laws and regulations thereunder not inconsistent with the provisions of such permit. A permit may be transferred, subject to the approval of the commissioner, to a person who agrees to comply with the terms, limitations and conditions contained therein. This section shall not apply to a liquefied natural or petroleum gas storage or conversion

facility in actual use and operation on September first, nineteen hundred seventy-six.

§ 23-1709. Criteria for siting.

1. The department shall, after investigation and opportunity for public comment, within one year from the effective date of this section, adopt, and file with the secretary of state, regulations establishing criteria for the siting of liquefied natural and petroleum gas facilities. Such siting criteria shall be designed to insure the maximum safety of the public from hazards associated with liquefied natural or petroleum gas storage, transportation and conversion. The department shall also within one year from such effective date adopt regulations prescribing the form and content of applications for environmental safety permits to construct a liquefied natural or petroleum gas facility.

2. The regulations issued pursuant to subdivision one of this section for the siting of liquefied natural or petroleum gas facilities shall take into account, among other factors:

(a) The density of population in areas neighboring the liquefied natural or petroleum gas facility;

(b) The density of population in areas neighboring delivery routes of liquefied natural or petroleum gas to a liquefied natural or petroleum gas facility, if delivery is by water-borne vessel, rail or motor vehicle;

(c) The risk of accident during the transportation of liquefied natural or petroleum gas to or from a liquefied natural or petroleum gas facility which could result in a release of liquefied natural or petroleum gas from containment and the safeguards necessary to reduce such risk;

(d) The physical properties of liquefied natural or petroleum gas, including: (i) the effect of cryogenic temperatures upon containers of liquefied natural or petroleum gas; (ii) the maximum distance that a liquefied natural or petroleum gas vapor cloud is projected to expand and pose a threat to the public; and, (iii) the flammability or

explosiveness of such a cloud formed by vaporizing liquefied natural or petroleum gas.

3. The regulations issued by the department pursuant to subdivision one prescribing the form of an application for an environmental safety permit to construct a liquefied natural or petroleum gas facility shall require the applicant to supply detailed information regarding:

(a) The location of the proposed facility;

(b) A description of the design and capacity of the facility;

(c) The expected sources of natural gas or liquefied natural or petroleum gas for the facility, the proposed methods of transporting natural gas or liquefied natural or petroleum gas to and from the facility, and the routes which deliveries will traverse;

(d) The need for the facility;

(e) The environmental impacts of the proposed facility;

(f) A description of reasonable alternative locations for the proposed facility;

(g) Such other information as the department shall prescribe to allow it to render a decision as to whether the proposed liquefied natural or petroleum gas facility is necessary and compatible with the surrounding environment and with the safety of neighboring populations.

4. The rules and regulations adopted by the department to implement this title and the provisions of article 70 of this chapter and rules and regulations adopted thereunder shall govern environmental safety permit applications, renewals, modifications, suspensions and revocations under this title.

§ 23-1711. Permit processing.

1. Any person desiring to construct, reconstruct, enlarge the storage capacity or, if constructed but unused, put into actual use and operation a liquefied natural or petroleum gas facility in the state shall obtain a permit pursuant to this section.

2. Notice of any public hearing conducted in connection with any

environmental safety permit shall be published in at least two newspapers having a general circulation in the area in which the proposed activity is located, and in contiguous areas potentially affected by the proposed action.

3. The department shall render a decision based upon the record either granting the permit, denying it, or granting it upon such terms, conditions, limitations, or modifications thereof as the department may deem appropriate. The department shall deny a permit if residential areas and contiguous populations, will be endangered, or it otherwise does not conform to the siting criteria established for liquefied natural or petroleum gas facilities, or the department finds that the facility is not necessary, or is otherwise not in the public interest to be approved.

§ 23-1713. Transportation of liquefied natural and petroleum gas; certified routes.

1. Except for transportation by navigable waterways, all intrastate transportation of liquefied natural and petroleum gas in its cryogenic state must be along established routes in accordance with a schedule filed with the department, and approved in accordance with this section.

2. The department of transportation in consultation with the department of environmental conservation shall establish criteria for the safe transportation of such liquefied natural and petroleum gas. Such criteria shall take into consideration the proximity of the route or routes to contiguous populations, the capability of municipal fire departments to protect communities and contiguous populations against fire cloud damage attendant upon vapor release of the gas from its cryogenic state due to accident or malfunction in equipment, and the risk of further accident related thereto and conflagration attendant upon its ignition. Such department's criteria shall be no less restrictive than existing federal regulations. Such department shall within one year from the effective date of this section, adopt regulations prescribing the forms and procedures to be followed, which

shall include notice to all affected municipal police and fire departments, for the certification of routes to be used for the safe intrastate transportation of such liquefied natural and petroleum gas.

3. The department of transportation in consultation with the department of environmental conservation shall maintain a map of certified routes for the intrastate transportation of such liquefied natural and petroleum gas. In order to have a route certified under this section, any person proposing to undertake intrastate transportation of such liquefied natural or petroleum gas shall file with such department the proposed transportation route, subject to approval as herein provided.

4. Upon application therefor, and before certifying a route for intrastate transportation of such liquefied natural or petroleum gas under subdivision three, the department of transportation shall hold a public hearing and shall render a decision with respect thereto in accordance with the requirements of section 23-1711, and, to the extent applicable, section 23-1709. In addition, upon route certification, such limitations as are appropriate for safety purposes shall be established by such department for each such certified route, and the department, further, shall establish procedure and notice requirements for the particular route, in accordance with subdivision two hereof, to be given to all affected municipal police and fire departments, to assure adequate notice to all affected municipalities.

§ 23-1715. Inspection to insure compliance; allocation of enforcement costs; revocation; civil and criminal penalties.

1. The department shall have continuing responsibility of inspection to insure compliance with the terms of an environmental safety permit issued under section 23-1707, of route certification under section 23-1713, and with regard to non-conforming facilities under section 23-1719, all in accordance with the terms of this title. It may do so either with its own personnel exclusively, or by contract with one or more of the affected municipalities, utilizing municipal inspection

personnel, or with one or more private firms qualified to monitor compliance and certify with respect thereto, or by a combination of the foregoing means as it may by regulation provide.

2. The expense of enforcement of this act, including necessary training and qualification of municipal fire department personnel under section 23-1717, shall be allocated by the department and assessed upon an appropriate basis against the utilities and others subject to the terms of this title, in order that the administration hereof shall be at no net expense to the state or any affected municipality, but rather charged on an allocated basis to the regulated corporations and individuals subject to the requirements of this title, to be included as part of the expense related to the furnishing of this form of energy, and properly to be borne by the users thereof.

3. After notice and upon hearing if requested, the department shall determine the reasonable cost to the department of its enforcement responsibilities under this title, including direct costs, contractual obligations under subdivision one of this section and under section 23-1717, and allocated departmental overhead; and, further, shall assess said total cost, on an annual basis, against the utilities and others subject to this title, allocated on the basis of direct costs related to each of the foregoing, including contractual obligations incurred in enforcement and training, and allocated departmental overhead charged on the basis of departmental action required during the year with regard to the particular utilities and others subject to its administration and enforcement responsibilities.

4. In the event of the failure of the holder of an environmental safety permit issued under section 23-1707, of route certification under section 23-1713, or of a non-conforming facility under section 23-1719 to comply with the terms thereof or the provisions of the rules and regulations adopted under article 70 of this chapter, the department may revoke said permit or certificate pursuant to the provisions of article 70 of this chapter and impose upon the holder of such permit or certificate a civil penalty of up to one thousand dollars for each day the holder thereof has failed to comply with this title or a permit or

certificate issued hereunder, together with the allocated costs of the revocation and enforcement proceeding itself.

5. In addition to any civil penalty assessed by the department pursuant to subdivision four of this section, any person who knowingly violates any provision of this title, any permit or certificate granted under this title, or any order, rule, or regulation issued pursuant to this title, except where such violation is unintentional and technical, shall be guilty of a class A misdemeanor.

§ 23-1717. Training and qualification of municipal fire department personnel; strict liability.

1. The legislature finds that liquefied natural and petroleum gas, in view of its extreme volatility, high flammability, and dangerous qualities if mishandled resulting in accidental release, poses problems of the control thereof related to the lack of current training and qualification of municipal fire department personnel responsible for control and extinguishment of fire resulting from mishandling and accidental release during its storage, transportation, and conversion.

2. Within thirty days after this title shall become effective, every utility or other person subject to the jurisdiction of the public service commission and which is engaged in the storage, transportation, or conversion of liquefied natural or petroleum gas within the state shall give notice to the department that it is a person subject to this title, and shall specify by geographical description the municipality or municipalities, or parts thereof, within the state where it is handling or otherwise using liquefied natural or petroleum gas, with the nature of such use, storage, transportation, or conversion, with the amounts thereof in each location, on a monthly and annual basis, with any projected increase or decrease in the use or handling thereof at such location or locations within the state on a five year basis from date of report.

3. Within sixty days thereafter, the department, in consultation with

the municipal fire department or departments indicated to be those required to be trained and qualified under this title to control and extinguish fires related to the reported facilities and transportation of liquefied natural or petroleum gas, shall determine and report what, if any, programs are necessary to enable such municipal fire department or departments to be adequately prepared to control and extinguish such fires and to protect persons and property within their municipality or municipalities who might be subject to such danger.

4. The report of the department shall detail the capability and preparedness, or lack thereof, of such fire department or departments effectively to prevent or extinguish a fire at or related to any of the reported facilities, or in connection with the transportation of liquefied natural or petroleum gas; proposals for further training and qualification of personnel which, if implemented, would enable such fire department or departments effectively to carry out such responsibilities; and a detailed analysis of the cost of training and qualification of such municipal fire department personnel to do so, including those related to additional manpower, new or additional equipment, or training of such personnel, although not limited thereto. Such report, in its cost analysis and in making recommendations with respect thereto, shall report separately with regard to projected hiring of additional personnel, the purchase of new or additional equipment and supplies, and necessary training courses, on an initial and continuing basis, together with any other proposals in implementation of this section; and, in addition, shall make specific finding, with regard to the particular municipal fire department or departments involved, which of said proposals is or are required to be implemented to be carried out to comply with the requirements of subdivision three of this section, together with the reasonable cost thereof.

5. Notice of the department's determination with regard to implementation of the training and qualification requirements of this section and of the cost thereof shall be given to the utility or other person subject to this section under subdivision two hereof and to the municipal fire department or departments identified to be with jurisdiction under subdivision three hereof. If a hearing is requested

within thirty days, a hearing shall be held promptly with regard to the program and the cost thereof and, on the basis of the record of the hearing the department, by its commissioner, may modify the program and adjust the cost thereof to be charged against the utility, utilities, or other persons subject to this title in accordance with the provisions of subdivisions two and three of section 23-1715. Such cost, as related to the training and qualification requirements of this title may, at the option of the department, be paid to the department under subdivision three of section 23-1715, or by the utility or other person directly to the chief fiscal officer or officers of the municipality or municipalities involved pursuant to this section; and, in any event, shall be expended only on programs thus approved by the department for the purpose of carrying out the requirements of this section.

6. Upon application for an environmental safety permit under section 23-1707 or for certification of a transportation route under section 23-1713, the procedure of notification, consultation, and report and determination with regard to municipal fire department training program and cost thereof shall be integrated with the application and the determination of the department, if to grant the permit or certificate or certificates, shall include the determination thereof with regard to implementation of the training and qualification requirements of this section and the allocation of the cost thereof, with respect to the particular permit or certificate or certificates granted, to the utility or other person subject to the requirements of this title.

7. In the event that more than one utility or other person is determined to be charged with the cost of training and qualification under this section, said charge or charges may be apportioned by the department between or among them on an equitable basis related to the degree to which each is responsible, based on the degree and complexity of the cost of training and qualification involved. In no event shall the department of environmental conservation, or its commissioner, by virtue of this section, be determined to have any jurisdiction over the operation or administration of any municipal fire department reimbursed under this title and section, or over its fire fighting methods, deployment of personnel, fiscal policies, or other aspects of its

administration. The department is authorized to promulgate rules and regulations necessary to effectuate the purposes of this section.

8. The storage, transportation, and conversion of liquefied natural and petroleum gas within the state, in view of its extreme volatility, high flammability, and dangerous qualities if mishandled resulting in accidental release, is determined to be hazardous and entails strict liability on the part of any person, as defined under this title, that undertakes such activities in the state. Neither compliance with the requirements of this title, nor the exercise of due care, shall excuse any such person from liability for personal or property damage determined to be caused by the accidental release of liquefied natural or petroleum gas within the state, and neither proof of means of ignition nor distinctions between direct and consequential damage shall relieve such person of absolute liability without regard to intent or negligence for any personal or property damage thereby caused.

§ 23-1719. Non-conforming facilities; conformance to safety criteria; moratorium.

The legislature finds that existing facilities have been constructed and are in the process of being used which by reason of their construction in residential areas or in dangerous proximity to contiguous populations, or otherwise, are in violation of the terms of this act, and, having been constructed before its enactment, have not been approved in accordance with the procedures herein required. Taking into account the needs of the service areas involved, the substantial capital investment of the utilities therein, and the changes in corporate plans that compliance with this title will entail, as against the hazards posed to surrounding and contiguous areas and their populations by the potential mishandling or accidental discharge of liquefied natural or petroleum gas in its cryogenic state, the following procedure is established to conform existing facilities to the safety criteria herein prescribed, or, in the alternative, to reexamine the necessity of their use in current locations, and to require alternative siting.

1. Effective on passage hereof, and until regulations pursuant to section 23-1709 are adopted and filed, no liquefied natural or petroleum gas facility may be constructed, reconstructed, enlarged in storage capacity, or, if constructed but unused, put into actual use and operation in this state, and no environmental safety permit pursuant to section 23-1707 of this title shall be issued for such facility.

2. With regard to any non-conforming liquefied natural or petroleum gas storage or conversion facility in actual use and operation on September first, nineteen hundred seventy-six, the following special procedures shall apply:

a. On or before September first, nineteen hundred seventy-six, or the thirtieth day after the effective date of this title, whichever shall be later, the department shall notify any such non-conforming facility of the provisions of this section and of this title, and shall advise it of the procedures to be followed hereunder in terms of conformance to safety criteria or alternative siting.

b. Within thirty days after this title shall become effective, such non-conforming facility shall give the initial notice required under subdivision two of section 23-1717, specifying by geographical description the municipality or municipalities, or parts thereof, within the state within which it is handling or otherwise using liquefied natural or petroleum gas, with the nature of such use, storage, transportation, or conversion, with the amounts thereof in each location, on a monthly and annual basis, with any projected increase or decrease in the use or handling thereof at such location or locations within the state on a five year basis from date of report.

c. Within sixty days thereafter, the department shall complete the consultation and report required by subdivisions three and four of section 23-1717, and the notification required by the first sentence of subdivision five of that section. Thereafter, further proceedings under subdivision five shall be integrated with the hearing hereinafter directed to be had with regard to the non-conforming facility; and the

implementation of the balance of section 23-1717, with regard to training and qualification of municipal fire department personnel, shall be effected in accordance with the determination of the department with regard to the non-conforming facility.

d. Within one hundred and eighty days after this title shall become effective, a public hearing or hearings shall be held in the area or areas in which the non-conforming facility or facilities are located. Such hearing or hearings shall be held on sixty days' notice and as otherwise provided in subdivisions two and three of section 23-1711. Notice shall be given by the facility or facilities in accordance with subdivision three thereof, and public participation shall be afforded by appropriate location and scheduling, and the opportunity to submit oral or written statements for the record.

e. In the adjudicatory phase of the hearing or hearings, evidence may be received relating to the criteria set forth in section 23-1709 as they relate to the non-conforming facility, and with regard to the capability of municipal fire department personnel to control and extinguish fire resulting from mishandling and accidental release of liquefied natural and petroleum gas during its storage, transportation, or conversion. At the time of the notice of hearing the department shall make public its report under paragraph c of subdivision two of this section, together with all information secured by it with respect to the training and qualification of the municipal fire department or departments and their personnel to control or extinguish fires related to the use of the non-conforming facility, and additional oral testimony by the municipal fire department or departments with respect thereto shall be required at the hearing.

3. Upon the basis of the record the department shall render a decision, (a) permitting the facility to continue at the location, under such terms, conditions, or modification of procedures as the department may deem appropriate; or (b) directing discontinuance of the facility upon a showing of alternate means of meeting the service needs currently satisfied thereby, or upon a showing that the service needs currently satisfied thereby are not sufficient to outweigh the public interest in

safety within the terms of section 23-1711. Location within a residential area or in dangerous proximity to contiguous populations shall not, in and of themselves, be determinative with respect to the department determination, but shall be considered along with the other factors set forth in section 23-1709 as criteria for siting, and the information elicited before and at the hearing with respect to the training and qualification of municipal fire department personnel to control or extinguish fires related to the facility under subdivision two of this section, in determining whether or not to permit continuation of the facility at the existing location. In the event it is determined to permit continuation of the facility, it shall be under such limitations in terms of time and conditions as will permit the department currently to review the status of the facility, and to integrate its continued operation with the regulation of other facilities and activities subject to this title to be certified under sections 23-1707 and 23-1713. In the event it is determined to direct discontinuance of the facility, it may be effected over the course of a phase-out period not to exceed three years from the date of determination, in order to arrange for alternate facilities or other means of meeting approved service needs of the area currently served by the facility. In connection with the foregoing, it shall be appropriate at the hearing or hearings provided under this section to receive evidence with regard to capital investment in any such non-conforming facility, the extent of amortization and of tax writeoff thereof, adaptability for alternate use, availability of alternate siting or means of meeting demonstrated and approved service needs of the area. With regard thereto, it shall be appropriate to solicit information and recommendations from the public service commission with respect to consumer needs and the meeting thereof in economical fashion consistent with the requirements of this title, and from the state energy office, if established, with regard to state energy policy. The cost of the hearing and of allocated departmental overhead shall be assessed against the non-conforming facility pursuant to subdivisions two and three of section 23-1715. It is anticipated that any hearing or hearings held under this section with regard to non-conforming facilities will also relate to the function of the department in adopting regulations establishing criteria for the siting of liquefied natural and petroleum

gas facilities, and such shall also be considered in the allocation of expense with regard to hearing or hearings held under this section.

§ 23-1721. Hardship; petition and hearing; permit.

1. Any person, upon a showing of hardship caused by the moratorium under subdivision one of section 23-1719 may petition the department for a review of the application of the moratorium to any proposed activity subject to this title. This shall be by notice to the department of the activity proposed to be conducted, including the information related to geographical location, nature of proposed use, storage, transportation, or conversion, and proposed and projected amounts of liquefied natural or petroleum gas proposed to be used or handled as required in subdivision two of section 23-1719 and subdivision two of section 23-1717.

2. Thereafter, within thirty days after receipt of the petition, the department shall schedule a hearing upon thirty days' notice, to be held in accordance with the other requirements of paragraphs d and e of subdivision two of section 23-1719, insofar as applicable, and upon such further terms and conditions as it may establish.

3. If the proposed activity is not contrary to the policy of this title, or of any provision thereof, the department may permit the activity to continue during the moratorium, provided that permission may be revoked by the department if its terms are violated, and provided, further, that any such hardship permit issued by the department shall be in addition to, and not in lieu of such certification as may be required by any municipality within the jurisdiction of which such proposed activity will be undertaken. Cost of application and hearing shall be assessed against the applicant.

§ 23-1723. Judicial review.

Review under this title may be had in a proceeding under article

seventy-eight of the civil practice law and rules at the instance of any person aggrieved.

§ 23-1725. Preservation of jurisdiction of public service commission; consultation and coordination with commission and energy office.

Except herein as specifically provided with regard to the public safety, as legislatively determined, this title shall not otherwise affect the jurisdiction of the public service commission in the performance of its statutory responsibilities with regard to the regulation of utilities, the setting of rates, and other aspects of its jurisdiction. The department shall consult on a continuing basis with the public service commission and the state energy office, if established, in the administration of this title, and shall coordinate its administration thereof with those agencies in the interests of coordinated state energy policy.

§ 23-1727. Severability.

If any part of this title or the application thereof to any person or circumstances shall be adjudged to be invalid by a court of competent jurisdiction, such order or judgment shall be confined in its applicability to the controversy in which it was rendered, and not affect or invalidate the remainder of any provision of any section or subdivision hereof or the application of any part of the act so interpreted, or otherwise, to any other person or circumstance, and to this end the provisions of each section of the act, and of subdivisions and parts thereof, are hereby declared to be separable.

TITLE 19

OIL, GAS AND SOLUTION MINING REGULATION AND RECLAMATION FEE

Section 23-1901. Construction of title.

23-1903. Imposition of oil, gas and solution mining regulation

and reclamation fees.

§ 23-1901. Construction of title.

1. Nothing contained herein shall release a person from any obligation imposed by the provisions of this article or rules and regulations promulgated thereunder.

2. This title shall supersede all other laws enacted by local governments or agencies concerning the imposition of a fee relating to circumstances described in this title. Nothing in the preceding sentence or in this title shall be construed as superseding or in any way limiting the right of any local government to impose real property taxes pursuant to the real property tax law.

3. Except as otherwise provided in subdivision 4 of this section, the following owners shall not be subject to the fees imposed in this title:

a. The United States of America or any of its agencies or instrumentalities;

b. The state of New York or any of its agencies; and

c. Local Agencies.

4. Agencies shall be subject to the fees imposed in this title when such agencies produce oil or gas, or engage in solution mining, for sale or exchange.

§ 23-1903. Imposition of oil, gas and solution mining regulation and reclamation fees.

1. When a permit is granted to a person by the department pursuant to section 23-0305 of this article to drill a well or when a person converts a well to one subject to the oil, gas and solution mining law,

such person shall pay to the department:

a. A one hundred dollar fee to be credited to the oil and gas account established under chapter fifty-eight of the laws of nineteen hundred eighty-two; and

b. A fee in accordance with the depth drilled or expected to be drilled as set forth below:

0- 500ft. - \$ 190

501- 1000ft. - \$ 380

1001- 1500ft. - \$ 570

1501- 2000ft. - \$ 760

2001- 2500ft. - \$ 950

2501- 3000ft. - \$1,140

3001- 3500ft. - \$1,330

3501- 4000ft. - \$1,520

4001- 4500ft. - \$1,710

4501- 5000ft. - \$1,900

5001- 5500ft. - \$2,090

5501- 6000ft. - \$2,280

6001- 6500ft. - \$2,470

6501- 7000ft. - \$2,660

7001- 7500ft. - \$2,850

7501- 8000ft. - \$3,040

8001- 8500ft. - \$3,230

8501- 9000ft. - \$3,420

9001- 9500ft. - \$3,610

9501-10,000ft.- \$3,800

over 10,000ft.- \$3,800 plus \$190 for each incremental 500

feet of depth over 10,000 feet.

A person who has paid the fees described shall not be required to pay any additional fee for a well conversion. The fee for well deepening permits pertaining to wells for which a well drilling permit was issued after August twenty-fifth, nineteen hundred eighty-one, shall be calculated on the basis of the additional depth drilled.

In the event the actual depth drilled exceeds the depth expected to be drilled, an additional amount shall be paid such that the total fee paid shall be in accordance with the schedule set forth in this paragraph.

2. Upon requesting from the department any determination under the Natural Gas Policy Act, such person shall pay a fifty dollar fee per well for each such determination.

3. The department shall have the authority to establish reasonable fees by rule for closed-loop boreholes deeper than five hundred feet below the earth's surface pursuant to subdivision fifteen of section 23-0305 of this article to be credited to the oil and gas account established under chapter fifty-eight of the laws of nineteen hundred eighty-two for the purposes of environmental protection or greenhouse gas emission reduction.

TITLE 21

INTERSTATE COMPACT TO CONSERVE OIL AND GAS

Section 23-2101. Interstate compact to conserve oil and gas.

§ 23-2101. Interstate Compact to Conserve Oil and Gas.

1. The Interstate Compact to Conserve Oil and Gas, as first enacted by chapter 501 of the laws of 1941, and as re-enacted by chapter 263 of the laws of 1963, is hereby continued as follows:

INTERSTATE COMPACT TO CONSERVE OIL AND GAS

ARTICLE I

This agreement may become effective within any compacting state at any time as prescribed by that state, and shall become effective within those states ratifying it whenever any three of the states of Texas, Oklahoma, California, Kansas and New Mexico have ratified and Congress has given its consent. Any oil-producing state may become a party thereto as hereinafter provided.

ARTICLE II

The purpose of this compact is to conserve oil and gas by the prevention of physical waste thereof from any cause.

ARTICLE III

Each state bound hereby agrees that within a reasonable time it will enact laws, or if laws have been enacted, then it agrees to continue the same in force, to accomplish within reasonable limits the prevention of:

- (a) The operation of any oil well with an inefficient gas-oil ratio.
- (b) The drowning with water of any stratum capable of producing oil or gas, or both oil and gas in paying quantities.
- (c) The avoidable escape into the open air of the wasteful burning of gas from a natural gas well.
- (d) The creation of unnecessary fire hazards.
- (e) The drilling, equipping, locating, spacing or operating of a well or wells so as to bring about physical waste of oil or gas or loss in the ultimate recovery thereof.

(f) The inefficient, excessive or improper use of the reservoir energy in producing any well.

The enumeration of the foregoing subjects shall not limit the scope of the authority of any state.

ARTICLE IV

Each state bound hereby agrees that it will, within a reasonable time, enact statutes, or if such statutes have been enacted then that it will continue the same in force, providing in effect that oil produced in violation of its valid oil and/or gas conservation statutes or any valid rule, order or regulation promulgated thereunder, shall be denied access to commerce; and providing for stringent penalties for the waste of either oil or gas.

ARTICLE V

It is not the purpose of this compact to authorize the states joining herein to limit the production of oil or gas for the purpose of stabilizing or fixing the price thereof, or create or perpetuate monopoly, or to promote regimentation, but is limited to the purpose of conserving oil and gas and preventing the avoidable waste thereof within reasonable limitations.

ARTICLE VI

Each state joining herein shall appoint one representative to a commission hereby constituted and designated as THE INTERSTATE OIL COMPACT COMMISSION, the duty of which said Commission shall be to make inquiry and ascertain from time to time such methods, practices, circumstances and conditions as may be disclosed for bringing about conservation and at such intervals as said commission deems beneficial it shall report its findings and recommendations to the several states for adoption or rejection.

The commission shall have power to recommend the coordination of the exercise of the police powers of the several states within their several jurisdictions to promote the maximum ultimate recovery from the petroleum reserves of said states, and to recommend measures for the

maximum ultimate recovery of oil and gas. Said Commission shall organize and adopt suitable rules and regulations for the conduct of its business.

No action shall be taken by the Commission except:

(a) By the affirmative votes of the majority of the whole number of the compacting states, represented at any meeting, and

(b) By a concurring vote of a majority in interest of the compacting states at said meeting, such interest to be determined as follows:

Such vote of each state shall be in the decimal proportion fixed by the ratio of its daily average production during the preceding calendar half-year to the daily average production of the compacting states during said period.

ARTICLE VII

No state by joining herein shall become financially obligated to any other state, nor shall the breach of the terms hereof by any state subject such state to financial responsibility to the other states joining herein.

ARTICLE VIII

This compact shall expire September 1, 1937, but any state joining herein may, upon sixty (60) days notice, withdraw herefrom. The representatives of the signatory states have signed this agreement in a single original which shall be deposited in the archives of the Department of State of the United States, and a duly certified copy shall be forwarded to the Governor of each of the signatory states.

This compact shall become effective when ratified and approved as provided in Article I of this compact. Any oil-producing state may become a party hereto by affixing its signature to a counterpart to be similarly deposited, certified and ratified.

Done in the City of Dallas, Texas, this sixteenth day of February, 1935.

E. W. MARLAND

The Governor of the State of Oklahoma

JAMES V. ALLRED

The Governor of the State of Texas

R. L. PATTERSON

For the State of California

FRANK VESELY

E. H. WELLS

HUGH BURCH

HIRAM M. DOW

For the State of New Mexico

The following representatives recommend to their respective Governors and Legislatures the ratification of the foregoing agreement:

JOHN W. OLVEY

of Arkansas

WARWICK M. DOWNING

of Colorado

WILLIAM BELL

of Illinois

GORDON E. VAN EENANAAM

GERALD COTTER

of Michigan

RALPH J. PRYOR

E. B. SHAWVER

T. C. JOHNSON

of Kansas

2. The Governor of this state is authorized and empowered, on behalf of the state, to execute agreements for the further extension of the operation of such compact and to determine if and when it shall be for the best interests of this state to withdraw from such compact upon sixty days' notice as provided therein. In the event the Governor shall determine that the state should withdraw from such compact, he shall have full power and authority to give necessary notice and to take any and all steps necessary and proper to effect the withdrawal of this state from such compact.

3. The Commissioner shall be the official representative of this state on the Interstate Oil Compact Commission. At the direction of the commissioner, any other officer or employee of the department may serve as substitute representative in the place and stead of the commissioner. The commissioner shall consult and coordinate with the president of the New York state energy research and development authority on issues relating to state energy policy.

4. The Interstate Oil Compact Commission shall submit annually in accordance with the laws and practices of this state, to the department, for study and consideration an estimate of moneys required to administer, manage and support the commission during the ensuing fiscal year. Such estimate shall include any request for appropriation of funds by New York and shall be accompanied by a tabulation of similar requests which the commission expects to make to each other member state and the formula or factors upon which such respective requests are based.

5. The department shall include a suitable item or items of estimated expenditures for the Interstate Oil Compact Commission in the budget estimates of the department.

6. The State Comptroller is hereby authorized and empowered from time to time to examine the accounts and books of the commission, including its receipts, disbursements and such other items referring to its financial standing as such Comptroller may deem proper and to report the results of such examination to the Governor.

7. No provision of the Conservation Law, and no provision of the Environmental Conservation Law, if such provision of the Environmental Conservation Law was derived from a provision of the Conservation Law, which is inconsistent with the provisions of the Interstate Compact to Conserve Oil and Gas shall be applicable to the Interstate Oil Compact Commission or to any matter governed by the Interstate Compact to Conserve Oil and Gas.

8. Nothing in this section is intended or shall be construed to prevent or prohibit the production of oil by water induction methods

commonly called water flooding nor to require or necessitate the enactment of conservation statutes unless and until the Legislature shall determine by law that such statutes are advisable or necessary to prevent the physical waste of oil or gas.

9. The commissioner shall make such reports to the Interstate Oil Compact Commission and the Governor as he deems appropriate.

10. When the Governor on behalf of the state, executes any agreement for the extension of the operation of the compact herein set forth, he shall affix his signature thereto under a recital that such agreement is executed pursuant to the provisions of the compact, subject to the limitations and qualifications which are contained in the several subdivisions of this section and are in aid and furtherance thereof.

TITLE 23

REREFINING OF USED OIL

Section 23-2301. Definitions.

23-2303. Official encouragement for the use of rerefined oil.

23-2305. Regulations of the commissioner.

23-2307. Used oil retention facilities required; installation and maintenance; posting of notice.

23-2308. Prohibited disposal of used oil.

23-2309. Records.

23-2311. Reports.

§ 23-2301. Definitions.

For the purposes of this title:

1. The term "used oil" means all petroleum-based lubricating oils which have through use been contaminated by physical or chemical impurities which have not been removed by subsequent rerefining;

2. The term "rerefined oil" means used oil which has been refined to

remove the physical and chemical contaminants so that it shall be suitable for lube stock or fuel oil acquired through use, which by itself or when blended with new oil or additives is substantially equivalent or superior to new oil intended for the same purposes, as specified in the American Petroleum Institute's engine service classifications;

3. The term "new oil" means all oil which has been refined from virgin oil and may or may not contain additives, but has never been used, and does not include used oil or rerefined oil;

4. The term "lubricating oil" means all petroleum-based oil which:

a. is suitable for use as a lubricant, or

b. is sold for use as a lubricant, and

c. is not consumed in normal use;

5. The term "fuel oil" means all oil which has been refined, rerefined, or otherwise processed for the purpose of being burned to produce heat;

6. The term "on-premises oil changing operation" means any establishment that drains or collects used oil and replaces the used oil with new or rerefined lubricating oil;

7. The term "service establishment" means every automobile service station including gas only outlets and any other retail outlet and boat marina selling at least five hundred gallons of lubricating oil annually and having an on-premises oil changing operation;

8. The term "used oil collector" means any waste transporter as defined in title three of article twenty-seven of this chapter who controls a system which functions to retrieve or collect used oil for sale or transfer to oil rerefining facilities, or for other methods of disposal, but shall not include service establishments;

9. The term "rerefiner" means any person who rerefines used oil to remove its physical and chemical contaminants; and

10. The term "disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any used oil into or on any land or water so that such used oil or any related constituent thereof may enter the environment or be emitted into the air or discharged into any waters of the state including groundwaters thereof. Disposal shall include the incineration of used oil and the burning of used oil for the purpose of recovering usable energy.

11. The term "retail establishment" means every vendor that sells lubricating oil at retail in quantities in excess of one thousand gallons per year.

§ 23-2303. Official encouragement for the use of rerefined oil.

All state and local officials shall act within their authority to encourage the use of rerefined oil. Such action shall include, but not be limited to:

1. Review of any laws, rules and regulations, ordinances or specifications which exclude the use of rerefined oil products that meet the standards as specified in the American Petroleum Institute's engine service classifications for oil products; and

2. Educating the private sectors of the economy as to the merits of rerefined oil, and the need for its use in order to reduce the drain on the nation's oil reserves and minimize the disposal of used oil in ways harmful to the environment.

§ 23-2305. Regulations of the commissioner.

The commissioner shall, after holding a public hearing with due

notice, promulgate rules and regulations governing used oil collectors and rerefiners, in conformance with article twenty-seven of this chapter, to carry out the requirements of this title.

§ 23-2307. Used oil retention facilities required; installation and maintenance; posting of notice.

1. Service establishments. a. Every service establishment, and every other person, industrial operation, airport, trucking terminal, state or local government facility generating at least five hundred gallons of used oil annually, shall, no later than September first, nineteen hundred seventy-nine, provide and maintain used oil retention facilities, properly sheltered and protected to prevent spillage, seepage or discharge of used oil into storm or sanitary sewers or into or on any lands or waters of the state including groundwaters thereof. The used oil shall be periodically removed from the retention facility by a waste transporter duly permitted by the department under the provisions of title three of article twenty-seven of this chapter. Waste transporters may dispose of used oil only by delivery to a rerefiner except where otherwise permitted by the commissioner. Rules and regulations defining proper design and maintenance of a retention facility may be promulgated by the commissioner.

b. An owner or an employee of every service establishment who is present on the premises shall be required to accept during the normal business hours of the establishment and at no charge, used oil in quantities not exceeding five gallons per day from any individual; provided, however, this requirement to accept does not apply if the petroleum-based lubricating oil brought to the establishment is determined to have been contaminated through other than ordinary and normal use, and does not apply if the used oil retention facility is temporarily filled to capacity; and provided further that such establishment need only accept used oil in screw-top, rigid, closed containers. No such establishment shall impose upon a customer a separate charge or fee for accepting or disposing of used oil; nor shall such establishment impose any charge upon any individual who is not a

customer for such service.

c. Every service establishment shall post a conspicuous sign, open to public view, stating: "WE ACCEPT USED OIL FOR RECYCLING AT NO CHARGE". Such establishment may additionally state, on the same sign or an additional sign, that used oil is accepted only during normal business hours and may state such hours.

2. Retail establishments. a. Unless exempted, every retail establishment shall provide and maintain used oil retention facilities, properly sheltered and protected to prevent spillage, seepage or discharge of used oil into storm or sanitary sewers or into or on any lands or waters of the state including groundwater thereof. The used oil shall be periodically removed from the retention facility by a waste transporter duly permitted by the department under the provisions of title three of article twenty-seven of this chapter. Waste transporters may dispose of used oil only by delivery to a rerefiner except where otherwise permitted by the commissioner. Rules and regulations defining proper design and maintenance of a retention facility may be promulgated by the commissioner.

b. Every retail establishment shall be required to accept at no charge, used oil in quantities not exceeding five gallons per day from any individual during normal business hours of the establishment; provided, however, this requirement to accept does not apply if the petroleum-based lubricating oil brought to the establishment is determined to have been contaminated through other than ordinary and normal use; and provided further, that such establishment need only accept used oil in screw-top, rigid, closed containers.

c. Exemptions. Pursuant to rules and regulations promulgated by the department for the implementation of this section, a retail establishment shall not be required to accept used oil if:

(1) the used oil retention facility is temporarily filled to capacity; or

(2) the retail establishment has a current contract with another retail establishment, municipality or service establishment with an

on-premises used oil retention facility, for the collection of the contracting retail establishment's used lubricating oil. In counties or cities with a population of one million or more the distance between such contracting retail establishment and the contractor shall not exceed eight miles. In all other areas of the state the contracting retail establishment and the contractor shall be within the same or adjacent towns or cities; or

(3) the retail establishment has been granted a hardship waiver by the commissioner for the inability to comply with this section.

d. Signs required. (1) Every retail establishment with an on-premises used oil retention facility shall post a conspicuous sign, open to public view, stating "WE ACCEPT USED OIL FOR RECYCLING AT NO CHARGE". Such establishment may additionally state, on the same sign or an additional sign, that used oil is accepted only during normal business hours, and may state such hours.

(2) Every retail establishment that contracts with another retail establishment or service establishment, shall post a conspicuous sign, open to the public view stating: "USED OIL FOR RECYCLING WILL BE ACCEPTED BY (name of contracted establishment) AT (Address of contracted establishment) AT NO CHARGE". Such establishment may additionally state, on the same sign or an additional sign, that used oil is accepted only during normal business hours of the contracted establishment, and may state such hours.

3. For the purposes of this section, so long as a service or retail establishment shall maintain its used oil retention facilities in compliance with the provisions of this section and any rules and regulations promulgated hereunder and shall deliver collected quantities of used oil to a duly permitted waste transporter or dispose of the used oil as otherwise authorized or permitted by the commissioner, such service establishment shall be exempt from the provisions of titles seven and nine of article twenty-seven and article seventy-two of this chapter.

§ 23-2308. Prohibited disposal of used oil.

1. No person shall engage in the improper disposal of used oil. Used oil shall only be deposited in an available used oil retention facility or disposed of as otherwise authorized or permitted by the commissioner.

The provisions of this section shall not apply to the use of used oil for maintenance or lubrication of agricultural equipment.

2. No person shall sell or offer for sale a used oil disposal kit or product which is comprised of absorbent material into which the lubricating oil from a vehicle is drained when performing an oil change and which is intended for disposal into the solid waste stream rather than for reuse or recycling.

§ 23-2309. Records.

Every used oil collector and rerefiner shall maintain complete records, in conformance with article twenty-seven of this chapter.

§ 23-2311. Reports.

The commissioner shall in consultation with the commissioners of the state energy office and transportation, submit a report to the governor and legislature not later than April first of each year, containing, but not limited to, the following information:

1. The amount of lubricating oil sold throughout the state in the previous year;

2. The amount and location of used oil collected and the amount received in the previous year;

3. The significance of used oil as a contributor to air and water pollution and other environmental problems;

4. The problems of the oil rerefining industry in carrying out the purposes of this title, and possible solutions thereto, including but not limited to, new technological requirements, marketing techniques and deficiencies and suggested tax incentive programs;

5. The estimated impact which the provisions of this title and other relevant provisions of law have had upon the conservation of petroleum resources; and

6. Proposals for further legislative action to aid in carrying out the purposes of this title.

TITLE 24

NEW YORK STATE OIL ENERGY CONSERVATION PROGRAM

Section 23-2401. Legislative intent.

23-2402. New York state oil energy conservation program.

§ 23-2401. Legislative intent.

The legislature finds and declares that the conservation of the state's oil reserves will be of broad benefit to the state. Through utilization of modern well closure technologies, oil will be conserved for the state's future. The legislature further finds that such closure will provide an increased supply of high grade crude oil used for the development of advanced lubricants which are crucial in the promotion of the use of high efficiency engines. In recognition of the potential energy conservation benefits to be accrued from the closure of such wells, the legislature declares that a program directed toward the implementation of modern well closure technologies on abandoned oil wells will provide energy, economic and environmental benefits to the state.

§ 23-2402. New York state oil energy conservation program.

1. The department shall actively implement a modern oil well closure technologies program which shall assist in the implementation of closure technologies on abandoned oil wells and well fields in the state. The program shall:

a. promote the implementation of plugging closure technologies on abandoned oil wells; and

b. identify special needs and problems facing firms implementing well plugging technologies on abandoned oil wells and recommend approaches and solutions to address such identified needs and problems.

2. The program shall provide for grants for programs of oil well plugging on abandoned oil wells by persons, firms, or corporations located in the state of New York.

3. Applications for grants under this program shall be evaluated based upon the following criteria:

a. the technical feasibility of the proposals;

b. the energy conservation potential of such applications;

c. the extent such closure will provide for high grade crude oil utilized for the development of high efficiency lubricants;

d. the environmental benefits to be accrued from the utilization of such technologies; and

e. the possibilities for dissemination of the closure technologies to other firms.

4. The department, in carrying out the provisions of this title, shall coordinate, where feasible, with the state energy office.

NEW YORK STATE MINED LAND RECLAMATION LAW

Section 23-2701. Short title.

23-2703. Declaration of policy.

23-2705. Definitions.

23-2709. Administration of title.

23-2711. Permits.

23-2713. Mined land-use plan.

23-2715. Financial security for reclamation.

23-2719. Enforcement.

23-2721. Judicial review.

23-2722. Interstate mining compact.

23-2723. Severability.

§ 23-2701. Short title.

This title shall be known and may be cited as the "New York State Mined Land Reclamation Law".

§ 23-2703. Declaration of policy.

1. The legislature hereby declares that it is the policy of this state to foster and encourage the development of an economically sound and stable mining industry, and the orderly development of domestic mineral resources and reserves necessary to assure satisfaction of economic needs compatible with sound environmental management practices. The legislature further declares it to be the policy of this state to provide for the management and planning for the use of these non-renewable natural resources and to provide, in conjunction with such mining operations, for reclamation of affected lands; to encourage productive use including but not restricted to the planting of forests, the planting of crops for harvest, the seeding of grass and legumes for grazing purposes, the protection and enhancement of wildlife and aquatic resources, the establishment of recreational, home, commercial, and industrial sites; to provide for the conservation, development, utilization, management and appropriate use of all the natural resources

of such areas for compatible multiple purposes; to prevent pollution; to protect and perpetuate the taxable value of property; to protect the health, safety and general welfare of the people, as well as the natural beauty and aesthetic values in the affected areas of the state.

2. For the purposes stated herein, this title shall supersede all other state and local laws relating to the extractive mining industry; provided, however, that nothing in this title shall be construed to prevent any local government from:

a. enacting or enforcing local laws or ordinances of general applicability, except that such local laws or ordinances shall not regulate mining and/or reclamation activities regulated by state statute, regulation, or permit; or

b. enacting or enforcing local zoning ordinances or laws which determine permissible uses in zoning districts. Where mining is designated a permissible use in a zoning district and allowed by special use permit, conditions placed on such special use permits shall be limited to the following:

(i) ingress and egress to public thoroughfares controlled by the local government;

(ii) routing of mineral transport vehicles on roads controlled by the local government;

(iii) requirements and conditions as specified in the permit issued by the department under this title concerning setback from property boundaries and public thoroughfare rights-of-way natural or man-made barriers to restrict access, if required, dust control and hours of operation, when such requirements and conditions are established pursuant to subdivision three of section 23-2711 of this title;

(iv) enforcement of reclamation requirements contained in mined land reclamation permits issued by the state; or

c. enacting or enforcing local laws or ordinances regulating mining or the reclamation of mines not required to be permitted by the state; or

d. enacting or enforcing local laws or ordinances requiring the

monitoring of groundwater impacts resulting from mining or the reclamation of mines within counties with a population of one million or more which draw their primary source of drinking water for a majority of county residents from a designated sole source aquifer.

3. No agency of this state shall consider an application for a permit to mine as complete or process such application for a permit to mine pursuant to this title, within counties with a population of one million or more which draw their primary source of drinking water for a majority of county residents from a designated sole source aquifer, if local zoning laws or ordinances prohibit mining uses within the area proposed to be mined.

§ 23-2705. Definitions.

As used in this title, unless the context otherwise requires:

1. "Abandoned" means the cessation of mining and reclamation activities on land affected by mining without prior notification to the department of such cessation of activities or without describing such cessation in a mined land-use plan approved by the department, and after opportunity to be heard.

2. "Affected land" and "land affected by mining" means the sum of that surface area of land or land under water which: (i) has been disturbed by mining since April first, nineteen hundred seventy-five and not been reclaimed, and (ii) is to be disturbed by mining during the term of the permit to mine.

3. "Applicant" means that person making application to the department for a mining permit.

4. "Haulageway" means all roads utilized for mining purposes, together with that area of land over which material is transported, that are located within the permitted area.

5. "Mine" means any excavation from which a mineral is to be produced for sale or exchange, or for commercial, industrial or municipal use; all haulageways and all equipment above, on or below the surface of the ground used in connection with such excavation, and all lands included in the life of the mine review by the department.

6. "Mined land-use plan" means a document, consisting of a mining plan and a reclamation plan, which describes proposals for conduct of the applicant's mining operation and reclamation of the land to be mined to achieve the purposes of this title.

7. "Mineral" means any naturally formed, usually inorganic, solid material located on or below the surface of the earth. For the purposes of this title, peat and topsoil shall be considered minerals.

8. "Mining" means the extraction of overburden and minerals from the earth; the preparation and processing of minerals, including any activities or processes or parts thereof for the extraction or removal of minerals from their original location and the preparation, washing, cleaning, crushing, stockpiling or other processing of minerals at the mine location so as to make them suitable for commercial, industrial, or construction use; exclusive of manufacturing processes, at the mine location; the removal of such materials through sale or exchange, or for commercial, industrial or municipal use; and the disposition of overburden, tailings and waste at the mine location. "Mining" shall not include the excavation, removal and disposition of minerals from construction projects, exclusive of the creation of water bodies, or excavations in aid of agricultural activities.

9. "Mining plan" means a description of the applicant's mining operation which shall include maps, plans, written materials and other documents as required by the department.

10. "Overburden" means all of the earth, vegetation and other materials which lie above or alongside a mineral deposit.

11. "Permittee" means any person who holds a valid mining permit from

the department for the boundaries of the land identified in the mined land-use plan.

12. "Person" means any individual, public or private corporation, political subdivision, government agency, department or bureau of the state, municipality, industry, partnership, association, firm, trust, estate or any other legal entity whatsoever.

13. "Person engaged in mining" means a person who is subject to this title but who is mining without a mining permit issued by the department.

14. "Reclamation" means the conditioning of the affected land to make it suitable for any uses or purposes consistent with the provisions of this title.

15. "Reclamation plan" means a description of operations to be performed by the applicant to reclaim the land to be mined over the life of the mine. The reclamation plan shall include maps, plans, the schedule for reclamation, written material and other documents as required by the department.

16. "Spoil" means any waste material removed from its natural place in the process of mining and all waste material directly connected with the cleaning and preparation of any minerals.

17. "Tailings" means material of inferior quality or value resulting from the removal, preparation or processing of minerals.

§ 23-2709. Administration of title.

1. The department shall have and be entitled to exercise the following powers and duties:

(a) to issue permits in accordance with the criteria set forth in this article and the rules and regulations promulgated thereunder;

(b) to administer and enforce the provisions of this title and any

rule or regulation promulgated thereunder or order issued pursuant thereto;

(c) to establish environmental standards and criteria for mining and reclamation of the affected land to achieve the purposes of this title;

(d) to order, pursuant to section 71-0301 of this chapter, an immediate suspension of mining or reclamation operations or operations incidental or appurtenant thereto whenever such operations are being carried on in violation of this title or of rules, regulations and orders adopted pursuant thereto;

(e) to conduct investigations and obtain data with respect to research experiments and demonstrations, and to collect and disseminate information regarding mining and reclamation;

(f) to accept grants or funds for purposes of administration of this title and research into the fields of mining and land reclamation;

(g) to cooperate with any other governmental entity to further the purposes of this title;

(h) to contract with the soil and water conservation district in the county where a mine is located to achieve the purposes of this title;

(i) to allow, upon agreement by the department and the permittee, the reclamation of unreclaimed land affected by mining prior to April first, nineteen hundred seventy-five, as a substitute for reclamation of land affected by mining after that date, provided that a net environmental benefit results from such substitution; and

(j) to determine, after notice and an opportunity for a hearing, if a mining operation has been abandoned.

2. This title shall not apply to the commissioner of general services acting with respect to lands under water pursuant to the public lands law.

3. The state geological survey shall be the state agency responsible for the collection of mineral production information for the state in association with the United States bureau of mines. The state geological survey shall also continue to be the state agency responsible for the conduct of mineral resource investigations and inventories. Such information shall be made available to the department upon request and the survey shall have access to any records of the department collected

in conjunction with the administration of this title.

§ 23-2711. Permits.

1. After September first, nineteen hundred ninety-one, any person who mines or proposes to mine from each mine site more than one thousand tons or seven hundred fifty cubic yards, whichever is less, of minerals from the earth within twelve successive calendar months or who mines or proposes to mine over one hundred cubic yards of minerals from or adjacent to any body of water not subject to the jurisdiction of article fifteen of this chapter or to the public lands law shall not engage in such mining unless a permit for such mining operation has been obtained from the department. A separate permit shall be obtained for each mine site.

2. Applications for permits may be submitted for annual terms not to exceed five years. A complete application for a new mining permit shall contain the following:

- (a) completed application forms;
- (b) a mined land-use plan;
- (c) a statement by the applicant that mining is not prohibited at that location; and
- (d) such additional information as the department may require.

3. Upon receipt of a complete application for a mining permit, for a property not previously permitted pursuant to this title, a notice shall be sent by the department, by certified mail, to the chief administrative officer of the political subdivision in which the proposed mine is to be located (hereafter, "local government"). Such notice will be accompanied by copies of all documents which comprise the complete application and shall state whether the application is a major project or a minor project as described in article seventy of this chapter.

(a) The chief administrative officer may make a determination, and notify the department and applicant, in regard to:

- (i) appropriate setbacks from property boundaries or public

thoroughfare rights-of-way,

(ii) manmade or natural barriers designed to restrict access if needed, and, if affirmative, the type, length, height and location thereof,

(iii) the control of dust,

(iv) hours of operation, and

(v) whether mining is prohibited at that location.

Any determination made by a local government hereunder shall be accompanied by supporting documentation justifying the particular determinations on an individual basis. The chief administrative officer must provide any determinations, notices and supporting documents according to the following schedule:

(i) within thirty days after receipt for a major project,

(ii) within thirty days after receipt for a minor project.

(b) If the department finds that the determinations made by the local government pursuant to paragraph (a) of this subdivision are reasonable and necessary, the department shall incorporate these into the permit, if one is issued. If the department does not agree that the determinations are justifiable, then the department shall provide a written statement to the local government and the applicant, as to the reason or reasons why the whole or a part of any of the determinations was not incorporated.

(c) A proposed mine of five acres or greater total acreage, regardless of length of the mining period, shall be a major project. The department shall, by regulation, provide a minimum thirty day public comment period on all permit applications for mined land reclamation permits classified as major projects.

4. Upon approval of the application by the department and receipt of financial security as provided in section 23-2715 of this title, a permit shall be issued by the department. Upon issuance of a permit by the department, the department shall forward a copy thereof by certified mail, to the chief executive officer of the county, town, village, or city in which the mining operation is located. The department may include in permits such conditions as may be required to achieve the purposes of this title.

5. A permit issued pursuant to this title or a certified copy thereof, must be publicly displayed by the permittee at the mine and must at all times be visible, legible, and protected from the elements.

6. The department may suspend or revoke a permit to mine for repeated or willful violation of any of the terms of the permit or provisions of this title or for repeated or willful deviation from those descriptions contained in the mined land-use plan. The department may refuse to renew a permit upon a finding that the permittee is in repeated or willful violation of any of the terms of the permit, this title or any rule, regulation, standard, or condition promulgated thereto.

7. Nothing in this title shall be construed as exempting any person from the provisions of any other law or regulation not otherwise superseded by this title.

8. Notwithstanding any other provision of law, counties, cities, towns and villages shall be exempted from the fees for the permit, application, amendment and renewal required by this article.

9. Counties, cities, towns and villages shall not be required to obtain a permit if such county, city, town or village mines or proposes to mine from any mine site less than one thousand tons or seven hundred fifty cubic yards, whichever is less, of minerals from the earth within twelve successive calendar months and which does not require a permit pursuant to title five of article fifteen of this chapter.

10. The applicant, permittee or, in the event no application has been made or permit issued, the person engaged in mining shall have the primary obligation to comply with the provisions of this title as well as the conditions of any permit issued thereunder.

11. Permits issued pursuant to this title shall be renewable. A complete application for renewal shall contain the following:

- (a) completed application forms;
- (b) an updated mining plan map consistent with paragraph (a) of

subdivision one of section 23-2713 of this title and including an identification of the area to be mined during the proposed permit term;

- (c) a description of any changes to the mined land-use plan; and
- (d) an identification of reclamation accomplished during the existing permit term.

12. The procedure for transfer of a permit issued pursuant to this title is the procedure for permit modification pursuant to article seventy of this chapter.

12-a. (a) Notwithstanding any provision of this section to the contrary, any person who engages in or proposes to engage in bluestone mining exploration shall not commence such exploration unless a written authorization for such exploration has been obtained from the department. The department may grant an authorization for bluestone mining exploration for a period of at least one hundred eighty days and not to exceed one year where the land affected by mining will not exceed one acre, and is not adjacent to any body of water. Bluestone to be removed from the site may not exceed five hundred tons in twelve successive calendar months and any overburden shall remain on the one acre site at all times. As used in this subdivision, the term "bluestone" means quartz/feldspathic sandstone of Devonian age, which is easily separated along bedding planes.

(b) Only persons with five or fewer employees shall be eligible to apply for an authorization for bluestone mining exploration, provided, however that a small business shall be eligible to apply on behalf of such a person. A person may possess no more than five authorizations for bluestone mining exploration at any one time, and no such authorizations shall be for adjacent sites. As used in this paragraph, "small business" means any business which is resident in this state, independently owned and operated, not dominant in its field, and employing not more than one hundred individuals.

(c) An application for authorization must be submitted on a form prescribed by the department at least forty-five days before exploration and removal of bluestone is expected to commence. The requirements of such application shall include, but not be limited to, a description of the proposed activity, a map showing the area to be affected by mining,

with the location of the one acre site on which mining activities are proposed and a statement that such mining activities conform with local zoning, copies of any local permits, and measures to control erosion of sediment and prevent contamination of groundwater or adverse impacts to aquifers. Upon receipt of a complete application for bluestone mining exploration authorization, for a property not previously authorized pursuant to this subdivision, a notice shall be sent by the department, by certified mail, to the chief administrative officer of the political subdivision in which the proposed bluestone mine is to be located. Such notice shall be accompanied by copies of all documents which comprise the complete application. The chief administrative officer may make a determination within thirty days after receipt accompanied by supporting documentation justifying the particular determinations on an individual basis pursuant to subparagraphs (i), (ii), (iii), (iv) and (v) of paragraph a of subdivision three of this section.

(d) An authorization for bluestone mining exploration issued pursuant to this subdivision must be publicly displayed by the holder at the one acre site and must at all times be visible, legible and protected from the elements.

(e) The person engaged in bluestone mining exploration shall complete reclamation, in accordance with requirements set forth by the department, no later than one year from the date of authorization by the department unless the person engaged in mining obtains a renewal of the authorization or a permit pursuant to this title. An authorization issued pursuant to this section may be renewed for an additional one year term upon application to the department at least thirty days prior to the expiration of the authorization. The total authorization period shall not exceed two years. Before the department may issue a bluestone mining exploration authorization, the applicant shall furnish acceptable financial security. Department review of acceptable financial security shall be governed by the provisions set forth in section 23-2715 of this title and the regulations promulgated pursuant to such section. There shall be no fee for such authorization.

(f) On or before March fifteenth, two thousand eight, the department shall submit a report to the governor and legislature regarding bluestone mining exploration in the state. Such report shall list the sites, including locations of sites, and detrimental environmental

impacts, if any, an assessment as to the degree to which the adoption of this subdivision benefits the environment, as well as an assessment of the enforcement activities undertaken against individuals authorized pursuant to this subdivision.

13. The rules and regulations adopted by the department to implement this title and the provisions of article seventy and rules and regulations adopted thereunder shall govern permit applications, renewals, modifications, suspensions and revocations under this title.

§ 23-2713. Mined land-use plan.

1. All mining and reclamation activities on the affected land shall be conducted in accordance with an approved mined land-use plan. The approved mined land-use plan shall consist of both a mining and a reclamation plan, and any other information which the department deems necessary in order to achieve the purposes of this title.

(a) The mining plan shall consist of a written and graphic description of the proposed mining operation, including the boundaries of the land controlled by the applicant, the outline of potential affected acreage and the general sequence of areas to be mined through successive permit terms. The graphic description shall include the location of the mine and shall identify the land affected by mining after April first, nineteen hundred seventy-five, including but not limited to areas of excavation; areas of overburden, tailings, and spoil; areas of topsoil and mineral stock piles; processing plant areas; haulageways; shipping and storage areas; drainage features and water impoundments. The written description of the plan shall include the applicant's mining method and measures to be taken to minimize adverse environmental impacts resulting from the mining operation.

(b) The reclamation plan shall consist of a graphic and written description of the proposed reclamation. The graphic description shall include maps and cross sections which illustrate the final physical state of the reclaimed land. The written description of the plan shall describe the manner in which the affected land is to be reclaimed, and a schedule for performing such reclamation.

(c) A draft environmental impact statement prepared pursuant to article eight of this chapter may be submitted in lieu of a mined land-use plan if the department determines that it conforms to the requirements of this section and the rules and regulations promulgated pursuant thereto.

(d) The department may, after notice and an opportunity for a hearing, impose a reclamation plan in the absence of an approved reclamation plan or upon a finding of noncompliance with or failure of an approved reclamation plan.

2. The reclamation of all affected land shall be completed in accordance with the schedule contained in the approved mined land-use plan pertaining thereto. The schedule, where possible, shall provide for orderly, continuing reclamation concurrent with mining. The permittee shall submit to the department a notice of termination of mining within thirty days after such termination. Reclamation of the affected land shall be completed within a two year period after mining is terminated, as determined by the department, unless the department deems it in the best interest of the people of the state to allow a longer period for reclamation. The permittee shall submit to the department a notice of completion of reclamation within thirty days of such completion. If the department fails to approve or disapprove the adequacy of reclamation within ninety days after receipt of the notice of completion of reclamation, the permittee may notify the department of such failure by means of certified mail return receipt requested addressed to the commissioner. If within thirty days after receipt of such notice, the department fails to mail a decision, the permittee shall be relieved of the obligation to maintain financial security in respect to reclamation; provided, however, nothing herein shall relieve the permittee of the obligation to accomplish adequate reclamation. The permittee shall file periodic reports at such times as the department shall require, indicating areas for which reclamation has been completed. The department shall inspect such areas and notify the permittee whether the reclamation is in accordance with the approved plan or whether there are deficiencies that must be corrected.

§ 23-2715. Financial security for reclamation.

1. Before the department may issue a permit, the applicant, unless exempt, shall furnish financial security to ensure the performance of reclamation as provided in the approved mined land-use plan and naming the state as beneficiary. Financial security shall be in the form of a bond from a corporate surety licensed to do business as such in the state or any other form the department may deem acceptable. Any interest accruing as a result of such security shall be the exclusive property of the permittee.

2. The department shall determine the amount, condition, and terms of the financial security. The amount shall be based upon the estimated cost of reclaiming the affected land, which shall be based on information contained in the permit application and upon such information as an investigation by the department may disclose.

3. The financial security shall remain in full force and effect until the department has approved the reclamation. At the discretion of the department, the permittee may secure the release of that portion of the financial security for affected land on which reclamation has been completed and approved by the department.

4. If the financial security shall for any reason be cancelled, within thirty days after receiving notice thereof, the permittee shall provide a valid replacement under the same conditions as described in this section. Failure to provide a replacement bond within such period may, at the discretion of the commissioner, result in the immediate suspension of the mining permit by the department.

5. If a permit is suspended or revoked, the department may require the permittee to commence reclamation upon thirty days notice.

6. If the permittee fails to commence or to complete the reclamation as required, the department may attach the financial security furnished by the permittee. In any event, the full cost of completing reclamation shall be the personal liability of the permittee and/or the person

engaged in mining and the department, acting by the attorney general, may bring suit to recover all costs to secure the reclamation not covered by the financial security. The materials, machinery, implements and tools of every description which may be found at the mine, or other assets of the permittee and/or the person engaged in mining shall be subject to a lien of the department for the amount expended for reclamation of affected lands and shall not be removed without the written consent of the department. Such lien may be foreclosed by the attorney general in the same manner as a mechanic's lien. Any and all moneys recovered shall be deposited in the environmental regulatory account pursuant to section 72-1009 of this chapter.

7. Political subdivisions, municipalities, the United States and any of its agencies and agencies of the state shall be exempt from the requirements of this section.

§ 23-2719. Enforcement.

The provisions of this title and any rules and regulations promulgated thereunder shall be enforced pursuant to title 13, article 71 of this chapter.

§ 23-2721. Judicial review.

Any act, omission, determination or order of the department or of any officer or employee thereof, pursuant to or within the scope of this title, may be reviewed in accordance with article seventy-eight of the civil practice law and rules.

§ 23-2722. Interstate mining compact.

The "interstate mining compact" is hereby enacted into law and entered into by this state with all other states legally joining therein in the form substantially as follows:

THE INTERSTATE MINING COMPACT
ARTICLE I
POLICIES AND PURPOSES

There is created the "interstate mining compact".

1.1 The party states find that:

(a) Mining and the contributions thereof to the economy and well-being of every state are of basic significance.

(b) The effects of mining on the availability of land, water and other resources for other uses present special problems which properly can be approached only with due consideration for the rights and interests of those engaged in mining, those using or proposing to use these resources for other purposes, and the public.

(c) Measures for the reduction of the adverse effects of mining on land, water and other resources may be costly and the devising of means to deal with them are of both public and private concern.

(d) Such variables as soil structure and composition, physiography, climatic conditions, and the needs of the public make impracticable the application to all mining areas of a single standard for the conservation, adaption, or restoration of mined land, or the development of mineral and other natural resources, but justifiable requirements of law and practice relating to the effects of mining on land, water, and other resources may be reduced in equity or effectiveness unless they pertain similarly from state to state for all mining operations similarly situated.

(e) The states are in a position and have the responsibility to assure that mining shall be conducted in accordance with sound conservation principles, and with due regard for local conditions.

1.2 The purposes of this compact are to:

(a) Advance the protection and restoration of land, water and other resources affected by mining.

(b) Assist in the reduction or elimination or counteracting of pollution or deterioration of land, water and air attributable to mining.

(c) Encourage, with due recognition of relevant regional, physical,

and other differences, programs in each of the party states which will achieve comparable results in protecting, conserving, and improving the usefulness of natural resources, to the end that the most desirable conduct of mining and related operations may be universally facilitated.

(d) Assist the party states in their efforts to facilitate the use of land and other resources affected by mining, so that such use may be consistent with sound land use, public health, and public safety, and to this end to study and recommend, wherever desirable, techniques for the improvement, restoration or protection of such land and other resources.

(e) Assist in achieving and maintaining an efficient and productive mining industry and in increasing economic and other benefits attributable to mining.

ARTICLE II DEFINITIONS

As used in this compact, unless the context clearly requires a different construction:

2.1 "Mining" means the breaking of the surface soil in order to facilitate or accomplish the extraction or removal of minerals, ores, or other solid matter, any activity or process constituting all or part of a process for the extraction or removal of minerals, ores, and other solid matter from its original location, and the preparation, washing, cleaning, or other treatment of minerals, ores, or other solid matter so as to make them suitable for commercial, industrial, or construction use; but shall not include those aspects of deep mining not having significant effect on the surface, and shall not include excavation or grading when conducted solely in aid of on site farming or construction.

2.2 "State" means a state of the United States, the District of Columbia, and the commonwealth of Puerto Rico, or a territory or possession of the United States.

ARTICLE III THE COMMISSION

3.1 There is created the "interstate mining commission". The commission consists of one voting member from each state. The governor

of each party state shall notify the commission in writing of the member and any alternates. An alternate may act on behalf of the member only in the member's absence. The method for selection and the expenses of each commission member shall be the responsibility of the member's respective state.

3.2 Each commission member is entitled to one vote. No action of the commission is binding unless a majority of the total membership cast their votes in the affirmative.

3.3 The commission shall elect annually from among its members a chairperson. The commission shall adopt and publish, in convenient form, by-laws, and policies which are not inconsistent with this compact, including procedure in regard to notice, conduct and recording of meetings; access by the public to records; provision of information to the public; conduct of adjudicatory hearings; and issuance of decisions.

3.4 The commission shall meet at least once annually and shall also meet upon the call of the chairperson or a commission member.

3.5 All meetings of the commission shall be open to the public with reasonable advance notice. The commission may, by majority vote, close a meeting to the public for the purpose of considering sensitive personnel or legal strategy matters; however, all commission actions and decisions shall be made in open meetings and appropriately recorded.

3.6 The commission may establish advisory committees for the purpose of advising the commission on any matters pertaining to mining.

3.7 The office of the commission shall be in a party state. The commission may appoint or contract for and compensate such limited staff necessary to carry out its duties and functions. The staff shall serve at the commission's pleasure with the exception that staff hired as the result of securing federal funds shall be hired and governed under applicable federal statutes and regulations. In selecting any staff, the commission shall assure that the staff has adequate experience and formal training to carry out the functions assigned to it by the

commission.

3.8 The commission shall:

(a) Receive and act on the petition of a non-party state to become an eligible state.

(b) Submit an annual report to, and otherwise communicate with, the governors and the appropriate officers of the legislative bodies of the commission.

(c) Hear, negotiate, and, as necessary, resolve by final decision disputes which may arise between the party states regarding this compact.

ARTICLE IV

BUDGET

4.1 The commission shall submit to each party state a budget of its estimated expenditures for such period as may be required by the laws of that party state for presentation to the legislature thereof.

4.2 Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The total amount of appropriations requested under any such budget shall be apportioned among the party states as follows: one-half in equal shares, and the remainder in proportion to the value of minerals, ores, and other solid matter mined. In determining such values, the commission shall employ such available public source or sources of information as, in its judgment, present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the source or sources used in obtaining information concerning value of minerals, ores, and other solid matter mined.

4.3 The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its by-laws. All receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant and

the report of the audit shall be included in and become part of the annual report of the commission.

4.4 The commission may accept for any of its purposes and functions and may utilize and dispose of any donations, grants of money, equipment, supplies, materials and services from any state or the United States (or any subdivision or agency thereof), or interstate agency, or from any institution, person, firm or corporation. The nature, amount and condition, if any, attendant upon any donation or grant accepted or received by the commission, together with the identity of the donor, grantor or lender, shall be detailed in the annual report of the commission.

4.5 The commission is a legal entity separate and distinct from the party states and is liable for its actions as a separate and distinct legal entity. Liabilities of the commission are not liabilities of the party state. Members of the commission are not personally liable for actions taken by them in their official capacity.

(a) Nothing in this compact alters liability for any act, omission, course of conduct or liability resulting from any casual or other relationships.

(b) Any person aggrieved by a final decision of the commission may obtain judicial review of such decision in any court of jurisdiction by filing in such court a petition for review within sixty days after the commission's final decision.

ARTICLE V POWERS

5.1 In addition to any other powers conferred upon the interstate mining commission, such commission shall have power to:

(a) Study mining operations, processes and techniques for the purpose of gaining knowledge concerning the effects of such operation, processes and techniques on land, soil, water, air, plant and animal life, recreation, and patterns of community or regional development or change.

(b) Study the conservation, adaption, improvement and restoration of land and related resources affected by mining.

(c) Make recommendations concerning any aspect or aspects of law or

practice and governmental administration dealing with matters within the purview of this compact.

(d) Gather and disseminate information relating to any of the matters within the purview of this compact.

(e) Cooperate with the federal government and any public or private entities having interest in any subject coming within the purview of this compact.

(f) Consult, upon the request of a party state and within resources available therefor, with the officials of such state in respect to any problems within the purview of this compact.

(g) Study and make recommendations with respect to any practice, process, techniques, or course of action that may improve the efficiency of mining or the economic yield from mining operations.

(h) Study and make recommendations relating to the safeguarding of access to resources which are or may become the subject of mining operations to the end that the needs of the economy for the products of mining may not be adversely affected by unplanned or inappropriate use of land and other resources containing minerals or otherwise connected with actual or potential mining sites.

ARTICLE VI STATE PROGRAMS

6.1 Each party state agrees that within a reasonable time, it will formulate and establish an effective program for the conservation and use of mined land, by the establishment of standards, enactment of laws, or the continuing of the same in force, to accomplish:

(a) The protection of the public and the protection of adjoining, and other, landowners from damage to their lands and the structures and other property thereon resulting from the conduct of mining operations or the abandonment or neglect of land and property formerly used in the conduct of such operations.

(b) The conduct of mining and the handling of refuse and other mining wastes in ways that will reduce adverse effects on the economic, residential, recreational or aesthetic value and utility of land and water.

(c) The institution and maintenance of suitable programs of adaption, restoration, and rehabilitation of mined lands.

(d) The prevention, abatement and control of water, air and soil pollution resulting from mining, present, past and future.

ARTICLE VII

ENTRY INTO FORCE AND WITHDRAWAL

7.1 This compact shall enter into force when enacted into law by any four or more states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof.

7.2 Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the withdrawing party state has given notice in writing of the withdrawal to all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

ARTICLE VIII

EFFECT ON OTHER LAWS

8.1 Nothing within this compact shall be construed to limit, repeal or supersede any other law of any party state.

ARTICLE IX

SEVERABILITY AND CONSTRUCTION

9.1 The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared by a court of competent jurisdiction to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If any provision of this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the state affected as to all severable matters.

9.2 The governor shall appoint one member and one alternate member to represent New York's interests on the interstate mining commission.

§ 23-2723. Severability.

The provisions of this title shall be severable and if any phrase, clause, sentence or provision of this title, or the applicability thereof to any person or circumstance shall be held invalid, the remainder of this title and the application thereof shall not be affected thereby.

ARTICLE 24

FRESHWATER WETLANDS

- Title 1. General provisions and public policy. (§§24-0101--24-0107).
3. Freshwater wetlands studies; notification and maps.
 (§24-0301).
5. Local implementation. (§§24-0501--24-0511).
7. Freshwater wetlands regulations. (§§24-0701--24-0705).
8. Regulation of wetlands in the Adirondack park.
 (§§24-0801--24-0805).
9. Freshwater wetlands preservation program.
 (§§24-0901--24-0905).
13. Miscellaneous provisions. (§§24-1301--24-1305).

TITLE 1

GENERAL PROVISIONS AND PUBLIC POLICY

- Section 24-0101. Short title.
24-0103. Declaration of policy.
24-0105. Statement of findings.
24-0107. Definitions.

§ 24-0101. Short title.

This article shall be known as the "Freshwater Wetlands Act".

§ 24-0103. Declaration of policy.

It is declared to be the public policy of the state to preserve, protect and conserve freshwater wetlands and the benefits derived therefrom, to prevent the despoliation and destruction of freshwater wetlands, and to regulate use and development of such wetlands to secure the natural benefits of freshwater wetlands, consistent with the general welfare and beneficial economic, social and agricultural development of the state.

§ 24-0105. Statement of findings.

1. The freshwater wetlands of the state of New York are invaluable resources for flood protection, wildlife habitat, open space, climate change mitigation through the accumulation and storage of large amounts of carbon, and water resources.

2. Considerable acreage of freshwater wetlands in the state of New York has been lost, despoiled or impaired by unregulated draining, dredging, filling, excavating, building, pollution or other activities inconsistent with the natural uses of such areas. Freshwater wetlands are in jeopardy of being lost, despoiled or impaired by such activities and because of the recent curtailment of federal wetland protections.

3. Recurrent flooding aggravated or caused by the loss of freshwater wetlands has serious effects upon natural ecosystems and communities. The increasing severity and duration of storm-related flooding due to climate change, which has caused billions of dollars of property damage across the state, makes protection of all freshwater wetlands in the state of vital importance.

4. Freshwater wetlands conservation is a matter of state concern since a wetland in one region is affected by acts on rivers, streams and wetlands of other regions.

5. The natural systems affecting freshwater wetlands overlap many localities. While many local governments individually have enacted ordinances to conserve freshwater wetlands and to reduce flood hazards and losses, effective freshwater wetlands management requires uniformity in laws to eliminate inconsistent or conflicting local laws. One locality alone lacks adequate jurisdiction to protect itself from misuse or neglect of adjacent localities.

6. Freshwater wetlands are an integral part of the unique scenic, aesthetic, wildlife, recreational, open space, ecological and natural resources of the Adirondack park and are recognized and protected by the Adirondack park agency act. The act provides a mechanism for the regulation of Adirondack wetlands by the Adirondack park agency and local governments which is consistent with both the state interest in the preservation and development of the park area and the state policy to preserve, protect and conserve freshwater wetlands expressed in this article.

7. Any loss of freshwater wetlands deprives the people of the state of some or all of the many and multiple benefits to be derived from wetlands, to wit:

- (a) flood and storm control by the hydrologic absorption and storage capacity of freshwater wetlands;

- (b) wildlife habitat by providing breeding, nesting and feeding grounds and cover for many forms of wildlife, wildfowl and shorebirds, including migratory wildfowl and rare, endangered or threatened species, fish, reptiles and amphibians, insects and other invertebrates;

- (c) protection of subsurface water resources and provision for valuable watersheds and recharging ground water supplies;

- (d) recreation by providing areas for hunting, fishing, boating, hiking, bird watching, photography, camping and other uses;

- (e) pollution treatment by serving as biological and chemical oxidation basins and carbon sinks;

- (f) erosion control by serving as sedimentation areas and filtering basins, absorbing silt and organic matter and protecting channels and harbors;

- (g) education and scientific research by providing readily accessible

outdoor bio-physical laboratories, living classrooms and vast training and education resources;

(h) open space and aesthetic appreciation by providing often the only remaining open areas along crowded river fronts and coastal Great Lakes regions;

(i) sources of nutrients in freshwater food cycles and nursery grounds and sanctuaries for freshwater fish;

(j) preservation of plant species that are rare, endangered or threatened, or exploitably vulnerable as defined in section 9-1503 of this chapter; and

(k) preservation of communities of plants and animals that are deemed by the commissioner to be rare in the state or in a region of the state.

8. Regulation of freshwater wetlands, in accordance with the agricultural exemption established in title seven hereof, is consistent with the legitimate interests of farmers and other landowners to graze and water livestock, make reasonable use of water resources, harvest natural products of the wetlands, selectively cut timber and otherwise engage in the use of land for agricultural production.

§ 24-0107. Definitions.

1. * "Freshwater wetlands" means lands and waters of the state, that are not tidal wetlands as defined in subdivision one of section 25-0103 of this chapter, that have an area of at least twelve and four-tenths acres or, if less than twelve and four-tenths acres in size, are of unusual importance, and which contain any or all of the following:

* NB Effective until January 1, 2028

* "Freshwater wetlands" means lands and waters of the state, that are not tidal wetlands as defined in subdivision one of section 25-0103 of this chapter, that have an area of at least seven and four-tenths acres or, if less than seven and four-tenths acres in size, are of unusual importance, and which contain any or all of the following:

* NB Effective January 1, 2028

(a) lands and submerged lands commonly called marshes, swamps, sloughs, bogs, and flats supporting aquatic or semi-aquatic vegetation

of the following types:

(1) wetland trees, which depend upon seasonal or permanent flooding or sufficiently water-logged soils to give them a competitive advantage over other trees; including, among others, red maple (*Acer rubrum*), willows (*Salix* spp.), black spruce (*Picea mariana*); swamp white oak (*Quercus bicolor*), red ash (*Fraxinus pennsylvanica*), black ash (*Fraxinus nigra*), silver maple (*Acer saccharinum*), American elm (*Ulmus americana*), and Larch (*Larix laricina*);

(2) wetland shrubs, which depend upon seasonal or permanent flooding or sufficiently water-logged soils to give them a competitive advantage over other shrubs; including, among others, alder (*Alnus* spp.), buttonbush (*Cephalanthus occidentalis*), bog rosemary (*Andromeda glaucophylla*), dogwoods (*Cornus* spp.), and leatherleaf (*Chamaedaphne calyculata*);

(3) emergent vegetation, including, among others, cattails (*Typha* spp.), pickerelweed (*Pontederia cordata*), bulrushes (*Scirpus* spp.), arrow arum (*Peltandra virginica*), arrowheads (*Sagittaria* spp.), reed (*Phragmites communis*), wildrice (*Zizania aquatica*), bur-reeds (*Sparganium* spp.), purple loosestrife (*Lythrum salicaria*), swamp loosestrife (*Decodon verticillatus*); and water plantain (*Alisma plantago-aquatica*);

(4) rooted, floating-leaved vegetation; including, among others, water-lily (*Nymphaea odorata*), water shield (*Brasenia schreberi*), and spatterdock (*Nuphar* spp.);

(5) free-floating vegetation; including, among others, duckweed (*Lemna* spp.), big duckweed (*Spirodela polyrhiza*), and watermeal (*Wolffia* spp.);

(6) wet meadow vegetation, which depends upon seasonal or permanent flooding or sufficiently water-logged soils to give it a competitive advantage over other open land vegetation; including, among others, sedges (*Carex* spp.), rushes (*Juncus* spp.), cattails (*Typha* spp.), rice cut-grass (*Leersia oryzoides*), reed canary grass (*Phalaris arundinacea*), swamp loosestrife (*Decodon verticillatus*), and spikerush (*Eleocharis* spp.);

(7) bog mat vegetation; including, among others, sphagnum mosses (*Sphagnum* spp.), bog rosemary (*Andromeda glaucophylla*), leatherleaf (*Chamaedaphne calyculata*), pitcher plant (*Sarracenia purpurea*), and cranberries (*Vaccinium macrocarpon* and *V. oxycoccos*);

(8) submergent vegetation; including, among others, pondweeds (*Potamogeton* spp.), naiads (*Najas* spp.), bladderworts (*Utricularia* spp.), wild celery (*Vallisneria americana*), coontail (*Ceratophyllum demersum*), water milfoils (*Myriophyllum* spp.), muskgrass (*Chara* spp.), stonewort (*Nitella* spp.), water weeds (*Elodea* spp.), and water smartweed (*Polygonum amphibium*);

(b) lands and submerged lands containing remnants of any vegetation that is not aquatic or semi-aquatic that has died because of wet conditions over a sufficiently long period, provided that such wet conditions do not exceed a maximum seasonal water depth of six feet and provided further that such conditions can be expected to persist indefinitely, barring human intervention;

(c) lands and waters substantially enclosed by aquatic or semi-aquatic vegetation as set forth in paragraph (a) of this subdivision or by dead vegetation as set forth in paragraph (b) of this subdivision, the regulation of which is necessary to protect and preserve the aquatic and semi-aquatic vegetation; and

(d) the waters overlying the areas set forth in paragraphs (a) and (b) of this subdivision and the lands underlying paragraph (c) of this subdivision.

2. "Freshwater wetlands map" shall mean a map developed by the department pursuant to section 24-0301 of this article on which are indicated the boundaries of any freshwater wetlands. Freshwater wetland maps depict the approximate location of wetlands and are not necessarily determinative as to whether a permit is required pursuant to section 24-0701 of this article.

3. "Boundaries of a freshwater wetland" shall mean the outer limit of the vegetation specified in paragraphs (a) and (b) of subdivision one of this section and of the lands and waters specified in paragraph (c) of such subdivision.

4. "Local government" shall mean a village, town, city, or county.

5. "State agency" shall mean any state department, bureau, commission, board or other agency, public authority or public benefit corporation.

6. "Person" means any corporation, firm, partnership, association, trust, estate, one or more individuals, and any unit of government or agency or subdivision thereof, including the state.

7. "Board" shall mean the freshwater wetland appeals board.

8. "Pollution" shall mean the presence in the environment of human-induced conditions, or contaminants in quantities or characteristics which are or may be injurious to human, plant or wildlife, or other animal life or to property.

9. "Unusual importance" shall mean a freshwater wetland, regardless of size, that possesses one or more of the following characteristics as determined by the department pursuant to regulations:

(a) it is located in a watershed that has experienced significant flooding in the past, or is expected to experience significant flooding in the future from severe storm events related to climate change;

(b) it is located within or adjacent to an urban area, as defined by the United States census bureau;

(c) it contains a plant species occurring in fewer than thirty-five sites statewide or having fewer than five thousand individuals statewide;

(d) it contains habitat for an essential behavior of an endangered or threatened species or a species of special concern as defined under section 11-0535 of this chapter or listed as a species of greatest conservation need in New York's wildlife action plan;

(e) it is classified by the department as a Class I wetland;

(f) it was previously classified and mapped by the department as a wetland of unusual local importance;

(g) it is a vernal pool that is known to be productive for amphibian breeding;

(h) it is located in an area designated as a floodway on the most current Digital Flood Insurance Rate Map (DFIRM) produced by the Federal Emergency Management Agency;

(i) it was previously mapped by the department as a wetland on or before December thirty-first, two thousand twenty-four;

(j) it has wetland functions and values that are of local or regional significance; or

(k) it is determined by the commissioner to be of significant importance to protecting the state's water quality.

10. "Delineation" shall mean a precise representation of a regulated freshwater wetland as defined in subdivision one of this section.

TITLE 3

FRESHWATER WETLANDS STUDIES; NOTIFICATION AND MAPS

Section 24-0301. Commissioner's study.

§ 24-0301. Commissioner's study.

1. Except as provided in subdivision three of this section, the commissioner shall supervise the maintenance of freshwater wetlands maps, which shall be available to the public for inspection and examination at the regional office of the department in which the wetlands are wholly or partly located on the department's website. Digital files of freshwater wetland maps may also be made available, upon request, to the clerk of each county, city, town, or village in which each such wetland or a portion thereof is located. The commissioner may readjust the map at any time to more accurately depict the approximate location of wetlands, provided however, that a description of such changes shall be made available on the department's website along with the date such changes were made.

2. Except as provided in subdivision three of this section, the commissioner may, upon their own initiative, and shall, upon a written request by a landowner whose land or a portion thereof may be included within a wetland, or upon the written request of another person or persons or an official body whose interests are shown to be affected, cause to be delineated the boundary line or lines of a freshwater wetland or a portion thereof. The commissioner shall undertake to delineate the boundary of a particular wetland or wetlands, or a

particular part of the boundary thereof only upon a showing by the applicant therefor of good cause for such delineation and the establishment of such line. Such delineation shall be effective for a period of five years from the date of such delineation.

3. The supervision of the maintenance of any freshwater wetlands map or portion thereof applicable to wetlands within the Adirondack park, the readjustment and precise delineation of wetland boundary lines and the other functions and duties ascribed to the commissioner by subdivisions one and two of this section shall be performed by the Adirondack park agency, which shall make such maps available for public inspection and examination at its headquarters and on the agency's website.

4. There is a rebuttable presumption that mapped and unmapped areas meeting the definition of a freshwater wetland in this article are regulated and subject to permit requirements. This presumption may be rebutted by presenting information to the department that the area does not meet the definition contained in this article. A wetland delineation by the department, or a verification by the department of a wetland delineation by another party, is required to identify the regulated freshwater wetland boundary in a particular location.

5. By January 1, 2025, in addition to any ongoing aerial photography, soil surveys or field verifications being conducted by the department, the department shall accept information from federal government sources, other state sources, local governments, colleges, universities, environmental organizations or other private agencies, regarding the location of freshwater wetlands.

6. By January 1, 2025, the department shall make educational materials available on its website to inform landowners and local governments of the process for determining how to identify freshwater wetlands.

TITLE 5

LOCAL IMPLEMENTATION

Section 24-0501. Local freshwater wetlands protection procedures.

24-0503. Transfer of function to county; supersession by department.

24-0505. Exemption from local implementation.

24-0507. Reservation of local jurisdiction.

24-0509. Relationship to other laws.

24-0511. Local freshwater wetlands protection procedures in the Adirondack park.

§ 24-0501. Local freshwater wetlands protection procedures.

1. On or after September 1, 1975, each local government may adopt, amend, and implement a freshwater wetlands protection law or ordinance in accordance with this article to be applicable to all freshwater wetlands wholly or partially within its jurisdiction. No freshwater wetlands protection law or ordinance adopted by a county pursuant to this section shall be applicable within the boundaries of any city, town or village which has adopted and is implementing a local freshwater wetlands protection law or ordinance consistent with this article.

2. Said freshwater wetlands protection law or ordinance may be in such form and with such procedures prescribed as may be determined by the local government adopting the same, or it may set forth the procedures and concepts contained in this article; provided, however, that no local freshwater wetlands protection law or ordinance enacted pursuant to subdivision one hereof shall be less protective of freshwater wetlands or effectiveness of administrative and judicial review, than the procedures set forth in this article, nor shall such local law or ordinance affect the activities exempted from permit by section 24-0701 of title seven hereof.

3. Adoption by a local government, pursuant to this article, of a local freshwater wetlands protection law or ordinance by reference to the procedures and concepts set forth herein shall be sufficient if reference is made to the procedures and concepts of this article with exceptions, additions, and modifications thereto noted; and the

adoption, once effected, shall include subsequent statutory amendments to this article as aforesaid; subject, again, to exception, addition, or modification by such municipality, without time limitation. At any time after a local adoption of the procedures contained in this article, a local government subject to this section may rescind its adoption thereof and simultaneously adopt a local freshwater wetlands protection procedure in accordance with subdivisions one and two of this section.

4. Within thirty days after the adoption of a freshwater wetlands protection law or ordinance pursuant to this article, the local government shall notify the department thereof, under such terms and conditions as the department may prescribe, together with its technical and administrative capacity to administer the act. Failure of a local government to give such notice shall constitute a transfer of function pursuant to this subdivision and section 24-0503 of this article.

5. A local government or the department shall have the right, in its regulation of freshwater wetlands within its jurisdiction, to charge such fees and expenses to an applicant for official action as shall enable it to recover the costs incurred by reason of such application.

6. Any local government which defaults or transfers its authority pursuant to subdivision four of this section or section 24-0503 of this article, may recover such authority at any time by adopting a local freshwater wetland protection local law or ordinance consistent with this article and notifying the county and the department of the adoption. Such notice shall be given by certified mail within ten days of the adoption thereof. Such local law or ordinance shall not become effective in less than sixty nor more than one hundred days from the adoption thereof.

7. The technical services of the department shall be made available to municipalities, on a fee basis, in the implementation of the procedure herein set forth.

§ 24-0503. Transfer of function to county; supersession by department.

1. In the event that a town, village, city or county shall certify in writing, as hereinafter provided, that it does not possess the technical capacity or the procedures effectively to carry out the requirements of this title, such local function shall be transferred to the county or the department, as the case may be. The certification of the town, village or city shall be by certified mail to the chief executive officer of the county, or, in the case of a county, to the commissioner.

2. In the event that the commissioner shall find that a local government does not possess the technical capacity or the implemented procedures effectively to carry out the requirements of this title, and that his failure to act will entail a default, or the potential of a default, in freshwater wetlands regulation, the commissioner may supersede the local government and order, alternatively, either that the local function be transferred to the county, or that the department itself undertake the local function, all to the extent necessary to carry out the purposes of this article. The supersession of the local government, shall be by order of the commissioner sent, by certified mail, to the chief executive officer of the local government involved.

3. In the event of transfer or supersession under subdivision one or two of this section, subsequent proceedings shall be in accordance with the further requirements of this article.

§ 24-0505. Exemption from local implementation.

The commissioner, by rule, may exempt from local implementation under this title those freshwater wetlands which, by reason of their size or special characteristics of unique environmental value or by reason of common characteristics, are appropriately to be administered pursuant to this article by the department alone. Such rule, based upon findings of fact made after public hearing, may relate to classes of wetlands based on size or particular characteristics, or to particular wetlands the characteristics of which make them subject to the exercise of the commissioner's discretion pursuant to this section. The commissioner

shall make an order to such effect in each such instance and send a certified copy thereof to the executive officer of each local government affected thereby within ten days of his signing the same; such order shall not take effect until forty days after such signing.

§ 24-0507. Reservation of local jurisdiction.

1. Except as provided in this article, jurisdiction over all areas which would qualify as freshwater wetlands less than twelve and four-tenths acres in size and are not of unusual importance is reserved to the city, town or village in which they are wholly or partially located, and the implementation of this article with respect thereto is the responsibility of said city, town or village, in accordance with section 24-0501 and title twenty-three of article seventy-one of this chapter, except that a city, town or village in the exercise of its powers under this section, shall not be subject to the provisions of subdivision four of section 24-0501, subdivisions two and three of section 24-0503, or section 24-0505 of this article.

* NB Effective until January 1, 2028

* 1. Except as provided in this article, jurisdiction over all areas which would qualify as freshwater wetlands less than seven and four-tenths acres in size and are not of unusual importance is reserved to the city, town or village in which they are wholly or partially located, and the implementation of this article with respect thereto is the responsibility of said city, town or village, in accordance with section 24-0501 and title twenty-three of article seventy-one of this chapter, except that a city, town or village in the exercise of its powers under this section, shall not be subject to the provisions of subdivision four of section 24-0501, subdivisions two and three of section 24-0503, or section 24-0505 of this article.

* NB Effective January 1, 2028

2. The department shall consult with any city, town, or village that exercises its powers under this section for the protection of freshwater wetlands.

§ 24-0509. Relationship to other laws.

No provision of this article shall be deemed to remove from any local government any authority pertaining to the regulation of freshwater wetlands, whether such wetlands are under the jurisdiction of the department or a county pursuant to subdivision 4 of section 24-0501 of this title, under the county, general city, general municipal, municipal home rule, town, village, or any other law, provided, however, that any such regulation by a local government shall be at least as protective of freshwater wetlands as the regulations in effect pursuant to the provisions of this chapter or any rule or regulation promulgated pursuant to the provisions of this article or pursuant to a local freshwater wetlands protection law or ordinance adopted by a county pursuant to the provisions of section 24-0501 of this title.

§ 24-0511. Local freshwater wetlands protection procedures in the Adirondack park.

Except for section 24-0509, this title shall not apply to freshwater wetlands protection laws or ordinances adopted by towns or villages with respect to their territories within the Adirondack park. Such laws or ordinances are governed by title eight of this article.

TITLE 7

FRESHWATER WETLANDS REGULATIONS

Section 24-0701. Permits.

24-0703. Applications for permits.

24-0705. Granting permits.

§ 24-0701. Permits.

1. Any person desiring to conduct activities on freshwater wetlands, or the regulated areas adjacent to these wetlands set forth in subdivision two of this section, must obtain a permit as provided in

this title.

2. Activities subject to regulation shall include any form of draining, dredging, excavation, removal of soil, mud, sand, shells, gravel or other aggregate from any freshwater wetland, either directly or indirectly; and any form of dumping, filling, or depositing of any soil, stones, sand, gravel, mud, rubbish or fill of any kind, either directly or indirectly; erecting any structures, roads, the driving of pilings, or placing of any other obstructions whether or not changing the ebb and flow of the water; any form of pollution, including but not limited to, installing a septic tank, running a sewer outfall, discharging sewage treatment effluent or other liquid wastes into or so as to drain into a freshwater wetland; and any other activity which substantially impairs any of the several functions served by freshwater wetlands or the benefits derived therefrom which are set forth in section 24-0105 of this article. These activities are subject to regulation whether or not they occur upon the wetland itself, if they impinge upon or otherwise substantially affect the wetlands and are located not more than one hundred feet from the boundary of such wetland. Provided, that a greater distance from any such wetland may be regulated pursuant to this article by the appropriate local government or by the department, whichever has jurisdiction over such wetland, where necessary to protect and preserve the wetland.

3. The depositing or removal of the natural products of the freshwater wetlands by recreational or commercial fishing, shell-fishing, aquaculture, hunting or trapping shall be excluded from regulated activities, where otherwise legally permitted and regulated.

4. On lands in active agricultural use or silviculture use, the activities of farmers and other landowners in grazing and watering livestock, making reasonable use of water resources, harvesting natural products of the wetlands, selectively cutting timber, draining land or wetlands for growing agricultural products and otherwise engaging in the use of wetlands or other land for growing agricultural products shall be excluded from regulated activities and shall not require a permit under subdivision one of this section, except that structures not required for

enhancement or maintenance of the agricultural productivity of the land and any filling activities shall not be excluded hereunder, and provided that the use of land that meets the definition of a freshwater wetland in section 24-0107 of this article for uses other than those referred to in this subdivision shall be subject to the provisions of this article. All activities on lands that meet the definition of a freshwater wetland shall be subject to the provisions of this article once agricultural or silviculture activities cease.

5. Public health activities, orders, and regulations of the department of health shall be excluded from regulated activities. Copies of all such public health orders and regulations affecting wetlands shall be filed with the department of environmental conservation. The commissioner may request modification of such orders or regulations if he deems such necessary to implement the policy of this article.

6. The commissioner shall review all current mosquito control projects to determine whether they are having any adverse impact on freshwater wetlands. Where any adverse impact is found, the commissioner may require modification of such projects if he deems such necessary for the implementation of the policies of this article.

7. Where dredging or filling is in navigable waters of the state or is for the reconstruction or repair of certain dams and docks, and where such activity also affects freshwater wetlands, any person undertaking such activity must seek permission under this article as well as under any other applicable law.

8. On any land that is being developed pursuant to a planned unit development ordinance or local law where freshwater wetlands are to remain as open space, development activities shall be permitted in areas contiguous to such wetlands if the local government affirms that such activities will not despoil said wetland.

§ 24-0703. Applications for permits.

1. Any person proposing to conduct or cause to be conducted a regulated activity upon any freshwater wetland shall file an application for a permit with the clerk of the local government having jurisdiction or the department, as the case may be. Review of the application shall be made by the local government or the commissioner, as the case may be, in accordance with applicable law and such rules hereunder as may be adopted by the commissioner. Such application shall include a detailed description of the proposed activity and a map showing the area of freshwater wetland directly affected, with the location of the proposed activity thereon. For any person proposing to conduct or cause to be conducted a regulated activity involving the use of a pipeline upon any freshwater wetland, such application shall also include the name of the insurance company covering such proposed activity, the amount of coverage and what is covered under the plan. The clerk or commissioner shall cause notice of such application to be mailed to all local governments where the proposed activity or any part of it is located.

2. No sooner than thirty days and not later than sixty days after the receipt by a local government of an application, and after notice of application has been published by the applicant in two newspapers having a general circulation in the area, the local government shall hold a public hearing on such application at a suitable location in the local government where the affected wetland is situated unless no notice of objection has been filed or unless the local government finds the activity to be of such a minor nature as not to affect or endanger the balance of systems within the wetlands, in which case the local government may, in the exercise of discretion, dispense with such hearing. Where the local government finds that a hearing is not necessary, a decision setting forth reasons therefor shall be prepared, shall be a matter of public record and shall be mailed to all local governments where the proposed work or any part of it is located and to all persons who filed a statement with the local government following the publication of such notice of application. All owners of record of the adjacent land and the local governments where the proposed activity is located shall be notified by certified mail of the hearing not less than fifteen days prior to the date set for such hearing. The local government shall cause notice of such hearing to be published in two

newspapers having a general circulation in the area where the affected freshwater wetlands are located. All applications and maps and documents relating thereto shall be open for public inspection at the office of the clerk of the local government in which the wetland is situated. At such hearing any person or persons filing a request for a hearing or a timely notice of appearance may appear and be heard.

3. In addition to the provisions of article 70 of this chapter and rules and regulations adopted thereunder, the rules and regulations adopted by the department pursuant to this article to implement its processing of permit applications, renewals, modifications, suspensions and revocations shall govern permit administration by the department under this article, provided however, that after the department has given notice to an applicant that an application is complete, or the application is deemed complete, the applicant shall cause a notice of application to be published in a newspaper of general circulation in the affected area as provided in rules and regulations of the department.

4. The applicant shall have the burden of demonstrating that the proposed activity will be in accord with the policies and provisions of this article. To the greatest extent practicable, such hearing shall be incorporated with any public hearing required by the town, village, general city, general municipal or environmental conservation laws in connection with approvals or permits otherwise required before commencement of regulated activities on lands containing such wetlands.

5. Any person may inquire of the department as to whether or not a given parcel of land includes a freshwater wetland subject to regulation or a regulated freshwater wetland adjacent area. The department shall give a definite answer in writing within ninety days of such request as to the status of such parcel and whether a permit is required for the proposed activity, provided that the person has a delineation verified by the department and site-specific development plans. Provided that, in the event that weather or ground conditions prevent the department from making a determination within ninety days, it may extend such period until a determination can be made. Such answer in the affirmative shall be reviewable; such an answer in the negative shall be a complete

defense to the enforcement of this article as to such parcel of land for a period of five years from the date the department issues the negative answer.

§ 24-0705. Granting permits.

1. In granting, denying or limiting any permit, the local government or the commissioner shall consider the effect of the proposed activity with reference to the public health and welfare, climate change, fishing, flood, hurricane and storm dangers, and protection or enhancement of the several functions of the freshwater wetlands and the benefits derived therefrom which are set forth in section 24-0103 of this article. The effects of the proposed activity shall be considered by the department or a local government, as the case may be, irrespective of political boundaries.

2. Duly filed notice in writing that the state or any agency or subdivision thereof is in the process of acquiring any freshwater wetlands by negotiation or condemnation shall be sufficient basis for denial of any permit.

3. No permit shall be granted under this section unless the proposed activity is consistent with the land use regulations applicable pursuant to section 24-0903 of this article within the boundaries of the local government involved and with the policy set forth in section 24-0103 of this article.

4. In granting a permit, the local government or the commissioner may limit the same or impose conditions or limitations designed to carry out the public policy set forth in this article. The local government or the commissioner may require a bond in an amount and with surety and conditions satisfactory to him securing to the state or local government, as the case may be, compliance with the conditions and limitations set forth in the permit. The local government may suspend or revoke a permit if it finds that the applicant has not complied with any of the conditions or limitations set forth in the permit or has exceeded

the scope of the activity as set forth in the application. The local government may suspend the permit if the applicant fails to comply with the terms and conditions set forth in the application. Department suspension and revocation proceedings shall be governed by the provisions of article 70 of this chapter and rules and regulations adopted thereunder and by the provisions of rules and regulations adopted by the department as provided in section 24-1301 of this article.

5. The local government or the commissioner shall state upon the record findings and reasons for all actions taken pursuant to this section.

6. Review of the determination of the local government or of the commissioner shall be, within a period of thirty days after the filing thereof, pursuant to the provisions of article seventy-eight of the civil practice law and rules. Any owner of the wetland affected and any resident or citizen of the local government shall be deemed to have the requisite standing to seek review.

7. In the event that the court finds the action reviewed constitutes a taking without just compensation, and the land so regulated merits protection under this article, the court may, at the election of the commissioner, either (i) set aside the order or (ii) require the commissioner to proceed under the condemnation law to acquire the wetlands or such less than fee rights therein as have been taken.

TITLE 8

REGULATION OF WETLANDS IN THE ADIRONDACK PARK

Section 24-0801. Permits for wetlands in the Adirondack park.

24-0803. Transfer of jurisdiction to local government.

24-0805. Land use regulations for freshwater wetlands in the Adirondack park.

§ 24-0801. Permits for wetlands in the Adirondack park.

1. As used in this title, the term "freshwater wetlands", in addition to its meaning under section 24-0107 of this article, shall mean "wetlands" as defined in subdivision sixty-eight of section eight hundred two of article twenty-seven of the executive law.

2. Where the activities otherwise subject to regulation under this article involve freshwater wetlands located within the boundaries of the Adirondack park, the inquiries referred to and the applications provided for in section 24-0703 of this article shall be made to and filed with the Adirondack park agency at its headquarters office, under such regulations and procedures as the Adirondack park agency may promulgate. The Adirondack park agency shall review the application in place of the commissioner or local government as provided in section 24-0705 of this article, having due regard for the declaration of policy and statement of findings set forth in this article and for the considerations set forth in subdivision one of section 24-0705 of this article. The agency shall in addition determine prior to the granting of any permit that the proposed activity will be consistent with the Adirondack park land use and development plan and would not have an undue adverse impact upon the natural, scenic, aesthetic, ecological, wildlife, historic, recreational or open space resources of the park, taking into account the economic and social or other benefits to be derived from the activity. Any person may seek review of a ruling made solely pursuant to the provisions of this article by the Adirondack park agency pursuant to the provisions of article seventy-eight of the civil practice law and rules.

§ 24-0803. Transfer of jurisdiction to local government.

1. Notwithstanding anything in article twenty-seven of the executive law to the contrary, the Adirondack park agency may transfer to a town or village any or all of its jurisdiction over regulated activities conducted upon, or land use and development or subdivision involving, those wetlands located on private lands which it finds, due to their size or other characteristics, are of lesser regional importance and are appropriately to be administered by such local governments alone.

2. The agency shall not transfer such jurisdiction unless the town or village (a) has adopted and implemented a local freshwater wetlands protection law or ordinance or has in a local land use program provided by local law or ordinance for the protection of such wetlands, which law or ordinance:

(i) meets the criteria set forth in subdivision two of section 24-0501 of this article,

(ii) provides for a review of regulated activities, land use and development and subdivision pursuant to the standards set forth in subdivision two of section 24-0801 of this article, and

(iii) contains at a minimum land use regulations meeting the criteria of subdivision one of section 24-0903 of this article; and

(b) possesses the technical or administrative capacity to administer the local law or ordinance.

3. In connection with a transfer of its jurisdiction pursuant to this section, the agency may impose reasonable conditions in furtherance of the policies and purposes of this article and of article twenty-seven of the executive law.

4. A local government regulating wetlands pursuant to this section shall have the right to charge such fees and expenses to an applicant for official action as shall enable it to recover the costs incurred by reason of such application.

5. The technical services of the department or the agency shall be made available to towns and villages, on a fee basis, in the implementation of the procedures set forth in this section.

§ 24-0805. Land use regulations for freshwater wetlands in the Adirondack park.

Except as to wetlands upon private lands within local governments to which jurisdiction has been transferred pursuant to section 24-0803 of this article, the Adirondack park agency shall also exercise the

functions assigned to the commissioner under section 24-0903 of this article.

TITLE 9

FRESHWATER WETLANDS PRESERVATION PROGRAM

Section 24-0901. Cooperative agreements.

24-0903. Land use regulations for freshwater wetlands.

24-0905. Tax abatement.

§ 24-0901. Cooperative agreements.

1. The commissioner shall confer with local government officials in each region to establish a program for the protection of the freshwater wetlands of the state.

2. The commissioner may enter into cooperative agreements with any city, village, town or county, or with an owner of freshwater wetlands or with any one or more of them, for the purpose of preserving and maintaining, in accordance with the policies of this article, those freshwater wetlands which are within the boundaries of such city, village, town or county.

3. The cooperative agreement shall provide that the freshwater wetlands be preserved and maintained in their natural state and may provide for access thereto to be retained by such owner for purposes compatible with the purposes of this article.

4. A cooperative agreement with any such village, town, city or county may provide for the development by personnel and facilities of the department or the payment out of funds appropriated therefor, for the purpose of preserving, maintaining, or enhancing such wetlands in accordance with the policies of this article, and for the furnishing of such personnel, facilities or funds as may be agreed upon by the parties to the cooperative agreement.

5. This section shall not prevent any freshwater wetland from being designated as part of the natural and historic preserves of the state, nor shall it prevent preservation of such lands by dedication as state parks. The office of parks and recreation shall outline to the commissioner its plans to preserve freshwater wetlands as parks and reserves as soon as possible after the effective date of this article.

§ 24-0903. Land use regulations for freshwater wetlands.

1. The commissioner shall classify freshwater wetlands according to their most appropriate uses, in light of the values set forth in section 24-0105 of this article and the present conditions of such wetlands. The commissioner shall determine what uses of such wetlands are most compatible with the foregoing and shall prepare minimum land use regulations to permit only such compatible uses. The classifications may cover freshwater wetlands in more than one governmental subdivision. Permits pursuant to section 24-0701 of this article are required whether or not a classification has been promulgated.

2. The commissioner shall upon completion of minimum land use regulations as provided in subdivision one of this section, forward the same to the local governments affected thereby. Within six months of receipt of the minimum land use regulations, the legislative body of each such local government shall submit to the commissioner proposed regulations governing the freshwater wetlands within its boundaries. Such proposed regulations shall be consistent with the purposes of this article and may be more restrictive than the minimum land use regulations as determined by the commissioner under this article. Where the proposed local wetlands use regulations do not meet the minimum land use regulations as determined by the commissioner, the proposed local regulations shall be accompanied by supporting materials setting forth, among other things, that there are overriding economic and social considerations vital to the growth and economic base of such local government that clearly require such variance.

3. If the commissioner finds that the proposals meet the conditions

stated in subdivision two of this section, the commissioner, after taking into consideration their effect on other local governments, may approve said local land use regulations.

4. In the event the commissioner does not approve local freshwater wetlands land use regulations, he shall then frame land use regulations governing such freshwater wetlands.

5. Prior to the adoption of any land use regulations governing freshwater wetlands, the commissioner shall hold a public hearing thereon in the area in which the affected freshwater wetlands are located, and give fifteen days prior notice thereof by posting on the department's website or by publication at least once in a newspaper having general circulation in the area of the local government involved. The commissioner shall promulgate the regulations and post such order on the department's website or publish such order in a newspaper having general circulation in the area of the local government affected and make such plan available for public inspection and review.

6. The commissioner shall accept and review applications to change the regulations annually.

7. Any person aggrieved by any such order or regulation may seek judicial review pursuant to article seventy-eight of the civil practice law and rules in the supreme court for the county in which the freshwater wetland is located, within thirty days after the date of the filing of the order with the clerk of the county in which the wetland is located.

8. Except as provided in section 24-0805 of this article, this section shall not apply to freshwater wetlands or portions thereof located within the Adirondack park.

§ 24-0905. Tax abatement.

Any freshwater wetland subject to land use regulations pursuant to

section 24-0903 of this article or subject to a cooperative agreement pursuant to section 24-0901 of this article shall be deemed subject to a limitation on the use of such wetlands for the purposes of property tax evaluation, in the same manner as if an easement or right had been acquired pursuant to the general municipal law. Assessed value shall be based, during the duration of such agreement or regulations, on the uses remaining to the owner thereof.

TITLE 13

MISCELLANEOUS PROVISIONS

Section 24-1301. Miscellaneous provisions.

24-1303. Severability.

24-1305. Applicability.

§ 24-1301. Miscellaneous provisions.

1. The provisions of this article shall not be construed to limit in any manner the functions, powers and duties of the commissioner or the department of environmental conservation, or of any other state department or agency, under this chapter or any other laws.

2. The commissioner, his agents or employees and the personnel of the Adirondack park agency may enter upon any lands or waters after reasonable notice and for good cause shown for the purpose of undertaking any investigations, examination, survey, or other activity for the purposes of this article.

3. The commissioner may adopt and, from time to time, amend rules and regulations consistent with this article to assist him in carrying out his functions, powers and duties hereunder.

4. Notwithstanding any other provision of this chapter, a privately owned parcel of land or part thereof within the county of Richmond that did not contain a designation as a freshwater wetland on the tentative freshwater wetlands map filed in the office of the clerk of Richmond

county in 1981 shall not be on any tentative freshwater wetlands map if the landowner has any written determination from the department pursuant to subdivision five of section 24-0703 of this article that such parcel of land or part thereof did not meet the statutory definition of a freshwater wetland. Such representations shall be considered to have been definitive when made, and such parcel or part thereof shall not be designated as a freshwater wetland on any final map filed in the office of the clerk of Richmond county pursuant to this article. The provisions of this subdivision shall not apply to any parcel of land or part thereof, purchased after January first, nineteen hundred eighty-seven, or to any such parcel or part thereof owned wholly or in part by any unit of government or agency or subdivision thereof, any authority or agency existing pursuant to governmental action, or subdivision thereof; including the state and the city of New York.

§ 24-1303. Severability.

The provisions of this article shall be severable, and if any clause, sentence, paragraph, subdivision or part of this article shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, subdivision or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 24-1305. Applicability.

The provisions of this article shall not apply to any land use, improvement or development for which final approval shall have been obtained prior to the effective date of this article from the local governmental authority or authorities having jurisdiction over such land use. As used in this section, the term "final approval" shall mean the issuance of a building permit or other authorization for the commencement of the use, improvement or development for which such permit or authorization was issued or in those local governments which

do not require such permits or authorizations, the actual commencement of the use, improvement or development of the land.

ARTICLE 25
TIDAL WETLANDS

- Title 1. General provisions and public policy
2. Wetlands inventory
 3. Program and land-use regulation for tidal wetlands
 4. Regulated activities
 6. Miscellaneous provisions

TITLE 1
GENERAL PROVISIONS AND PUBLIC POLICY

- Section 25-0101. Short title.
- 25-0102. Declaration of policy.
- 25-0103. Definitions.

§ 25-0101. Short title.

This article shall be known as the "Tidal Wetlands Act".

§ 25-0102. Declaration of policy.

It is declared to be the public policy of this state to preserve and protect tidal wetlands, and to prevent their despoliation and destruction, giving due consideration to the reasonable economic and social development of the state.

§ 25-0103. Definitions.

1. "Tidal wetlands" shall mean and include the following:
 - (a) those areas which border on or lie beneath tidal waters, such as,

but not limited to, banks, bogs, salt marsh, swamps, meadows, flats or other low lands subject to tidal action, including those areas now or formerly connected to tidal waters;

(b) all banks, bogs, meadows, flats and tidal marsh subject to such tides, and upon which grow or may grow some or any of the following: salt hay (*Spartina patens* and *Distichlis spicata*), black grass (*Juncus Gerardi*), saltworts (*Salicornia* ssp.), sea lavender (*Limonium carolinianum*), tall cordgrass (*Spartina pectinata* and *Spartina cynosuroides*), hightide bush (*Iva frutescens*), cattails (*Typha angustifolia* and *Typha latifolia*), groundsel (*Baccharis halmilifolia*), marsh mallow (*Hybiscus palustris*) and the intertidal zone including low marsh cordgrass (*Spartina alterniflora*).

2. "Commissioner" shall mean the commissioner of environmental conservation.

3. "Pollution" shall mean the presence in the environment of conditions or contaminants in quantities or characteristics which are or may be injurious to human, plant, or marine life, wildlife, or other animal life, or to property, or which unreasonably interfere with the comfortable enjoyment of life and property throughout such tidal wetlands as may be affected thereby.

4. "Person" shall mean any individual, public or private corporation, political subdivision, government agency, department or bureau of the state, bi-state authority, municipality, industry, co-partnership, association, firm, trust, estate or any other legal entity whatsoever.

5. "Municipality" shall mean a village, town, city or county.

TITLE 2

WETLANDS INVENTORY

Section 25-0201. Inventory of tidal wetlands.

25-0202. Moratorium on alteration of tidal wetlands.

§ 25-0201. Inventory of tidal wetlands.

1. The commissioner shall as soon as practicable make an inventory of all tidal wetlands in the state of New York. This inventory, and any restrictive orders issued pursuant to section 25-0302 of this act, shall comprise a part of the statewide environmental plan as provided for in section 3-0303 of the environmental conservation law.

2. The inventory shall set forth the boundaries of such wetlands using such photographic and cartographic standards and techniques as the commissioner may deem reasonable and appropriate in order to provide clear and accurate maps of the tidal wetlands of the state for the purpose of effectuating the policies and provisions of this act. Said boundaries shall generally delineate all tidal wetlands in the state as defined in section 25-0101 of this act. At least sixty days prior to the commencement of the inventory the commissioner shall file with the secretary of state a detailed description of the technical methods and requirements to be utilized in compiling the inventory, and he shall afford the public an opportunity to submit written comments thereon.

3. Upon completion of a tentative tidal wetlands boundary map for a particular area, the commissioner or his designated hearing officer shall hold a public hearing in order to afford an opportunity for any person to propose additions or deletions from such map. The commissioner shall give notice of such hearing to each owner of record of all lands designated as such wetland as shown on such maps, and also to the chief administrative officer of each municipality within whose boundary any such wetland or portion thereof is located, by certified mail, return receipt requested, not less than thirty days prior to the date set for such hearing. The commissioner shall also cause notice of such hearing to be published at least once, not more than thirty days nor fewer than ten days before the date set for such hearing, in at least two newspapers having a general circulation in the area where such wetlands are located.

4. After considering the testimony given at such hearing and any other facts which may be deemed pertinent and after considering the rights of

affected property owners and the policy and purposes of this act, the commissioner shall establish by order the final bounds of each such wetland. A copy of the order, together with a copy of the map depicting such final boundary lines, shall be filed in the office of the clerk of the county in which each such wetland is located. The commissioner shall simultaneously give notice of such order to each owner of all lands designated as such wetlands by mailing a copy of such order to such owner. The commissioner shall also simultaneously give notice of such order by certified mail to the chief administrative officer of each municipality within whose boundary any such wetland or portion thereof is located. The commissioner shall also cause a copy of such order to be published in at least two newspapers having a general circulation in the area where such wetlands are located.

5. Any person aggrieved by such order may seek judicial review pursuant to article seventy-eight of the civil practice law and rules in the supreme court for the county in which the tidal wetlands are located, within thirty days after the date of the filing of the order with the clerk of the county in which such wetlands are located.

6. The commissioner shall supervise the maintenance of such boundary maps, which shall be available to the public for inspection and examination. The statewide inventory shall be readjusted from time to time as may be necessary to reflect such natural changes as have occurred through erosion, accretion, and otherwise and also to reflect such other changes as have occurred as a result of the granting of permits pursuant to section 25-0403 of this act.

§ 25-0202. Moratorium on alteration of tidal wetlands.

1. No person shall alter the state of any tidal wetland or of any area immediately adjacent to such wetland as the commissioner may reasonably deem necessary to preserve in order to effectuate the policies and provisions of this act, prior to the effective date of the land-use regulations adopted by the commissioner pursuant to this act, unless a permit for such alteration shall have been obtained pursuant to section

15-0505 of the environmental conservation law. This moratorium shall not restrict in any way any summary action taken by the commissioner under section 71-0301 of the environmental conservation law.

2. Any person, upon a showing of hardships caused by this moratorium, may petition the commissioner for a review of the application of the moratorium to any tidal wetland or any area immediately adjacent thereto. Within thirty days of the petition being received, the commissioner shall provide the petitioner and any other person an opportunity to be heard. Notice of such hearing shall be published in at least two newspapers having a general circulation in the area where the wetlands are located, and notice of such hearing shall also be given by registered mail to the chief administrative officer of each municipality within whose boundary any such wetland or portion thereof is located. If the proposed alterations of the tidal wetlands are not contrary to the policy or any provision of this act, the commissioner may permit the alteration to continue during the moratorium, provided that permission may be revoked by the commissioner if its terms are violated and that the permission ends upon completion of the inventory for the area in which the affected wetlands are located, and provided further that any such hardship permit issued by the commissioner shall be in addition to, and not in lieu of, such permit or permits as may be required by any municipality within whose boundary such wetland or portion thereof is located.

3. Within thirty days after such permission has been granted or denied, any aggrieved person may seek judicial review of such decision pursuant to article seventy-eight of the civil practice law and rules in the supreme court for the county in which such wetlands are situated.

TITLE 3

PROGRAM AND LAND-USE REGULATION FOR TIDAL WETLANDS

Section 25-0301. Program and cooperative agreements for the protection of tidal wetlands.

25-0302. Land-use regulation of tidal wetlands.

§ 25-0301. Program and cooperative agreements for the protection of tidal wetlands.

1. Upon completion of the inventory with respect to tidal wetlands, the commissioner shall confer with the local government officials involved to establish a program for the protection of such tidal wetlands.

2. The commissioner may enter into cooperative agreements with any village, town, city or county, or with any one or more of them, for the purpose of preserving, maintaining and enhancing, in accordance with the policies of this act, those tidal wetlands included within the boundaries of such villages, towns, cities and counties.

3. A cooperative agreement with any such village, town, city or county may provide for the development by personnel and facilities of the department of environmental conservation, or the payment out of funds appropriated for the purpose, of the cost of preserving, maintaining or enhancing such tidal wetlands in accordance with the policies of this act, and for the furnishing of such personnel, facilities or funds as may be agreed upon within the cooperative agreement.

4. The cooperative agreement shall provide that the tidal wetlands be preserved and maintained in their natural or enhanced state, provided, however, that a reservation in any such agreement by a village, town, city or county of the right to operate or lease for operation shellfish beds lying within the area, and a reservation of the income from such operation or lease for the village, town, city or county shall be allowed and not considered a violation of preservation and maintenance of a natural state.

5. This section shall not prevent any tidal wetlands from being designated as portions of the state's natural and historic preserves, nor shall it prevent the dedication of any such lands as state parks. The office of parks and recreation shall outline to the commissioner its plans to preserve tidal wetlands in parklands as soon as practicable.

§ 25-0302. Land-use regulation of tidal wetlands.

1. Upon completion of the inventory the commissioner shall adopt land-use regulations governing the uses of said inventoried wetlands. In preparing such regulations the commissioner shall be guided by factors including, but not limited to, the public policy set forth in this act as well as the present and potential value of the particular wetland for marine food production, as a wildlife habitat, as an element of flood and storm control, and as a source of recreation, education and research. The commissioner shall determine what uses of inventoried wetlands may be compatible with any or all of the foregoing, and he shall prepare such appropriate land-use regulations as may permit only such compatible uses. These regulations shall be filed with the secretary of state and shall take effect thirty days after such filing. A copy of such regulations shall also be simultaneously forwarded by certified mail to the chief administrative officer of each municipality within whose boundary any such wetland or portion thereof is located. No permits may be granted by any local body, nor shall any construction or activity take place at variance with these regulations.

2. The placing of any tidal wetlands under a land-use regulation which restricts its use shall be deemed a limitation on the use of such wetlands for the purposes of property tax valuation, in the same manner as if an easement or right had been acquired under the general municipal law. Assessment shall be based on present use under the restricting regulation.

TITLE 4

REGULATED ACTIVITIES

Section 25-0401. Regulated activities.

25-0402. Application for permits.

25-0403. Granting of permits.

25-0404. Judicial review.

25-0405. Payments for extractions from or filling in wetlands.

§ 25-0401. Regulated activities.

1. After completion of the inventory prescribed in title 2 of this article with respect to any tidal wetland, no person may conduct any of the activities set forth in subdivision 2 of this section unless he has obtained a permit from the commissioner to do so. The permit issued by the commissioner shall be in addition to, and not in lieu of, such permit or permits as may be required by any municipality within whose boundary such wetland or portion thereof is located.

2. Activities subject to regulation hereunder include any form of draining, dredging, excavation, and removal either directly or indirectly, of soil, mud, sand, shells, gravel or other aggregate from any tidal wetland; any form of dumping, filling, or depositing, either directly or indirectly, of any soil, stones, sand, gravel, mud, rubbish, or fill of any kind; the erection of any structures or roads, the driving of any pilings or placing of any other obstructions, whether or not changing the ebb and flow of the tide, and any other activity within or immediately adjacent to inventoried wetlands which may substantially impair or alter the natural condition of the tidal wetland area.

3. The depositing or removal of the natural products of the tidal wetlands by recreational or commercial fishing, shellfishing, aquaculture, hunting or trapping, shall be excluded from regulation hereunder, where otherwise legally permitted.

4. Activities, orders, and regulations of the department of health or of units of local government with respect to matters of public health shall be excluded from regulation hereunder, except as hereinafter provided. Copies of all such public health orders and regulations affecting tidal wetlands shall be filed with the department of environmental conservation. The commissioner may require modification of such orders or regulations if he deems it necessary to implement the policy of this act.

5. The commissioner shall review all current mosquito control projects to determine whether they are having any adverse impact on tidal wetlands. Where any adverse impact is found, the commissioner following a public hearing, may require modification of such projects if he deems it necessary to implement the policy of this act.

6. Where the dredging or filling is in the navigable waters of the state or is for the reconstruction or repair of certain dams and docks, and where such activity also substantially affects tidal wetlands, any person undertaking such activity must seek permission under this act as well as under any other applicable law.

§ 25-0402. Application for permits.

1. Any person proposing to conduct or cause to be conducted an activity regulated under this act upon any inventoried tidal wetland shall file an application for a permit with the commissioner, in such form and containing such information as the commissioner may prescribe. The applicant shall have the burden of demonstrating that the proposed activity will be in complete accord with the policy and provisions of this act. Such application shall include a detailed description of the proposed work and a map showing the area of tidal wetland directly affected, with the location of the proposed work thereon, together with the names of the owners of record of adjacent lands and the known claimants of water rights in or adjacent to the tidal wetlands of whom the applicant has notice. The commissioner shall cause a copy of such application to be mailed to the chief administrative officer in the municipality where the proposed work or any part of it is located.

2. The rules and regulations adopted by the department to implement this article and the provisions of article 70 of this chapter and rules and regulations adopted thereunder shall govern permit applications, renewals, modifications, suspensions and revocations under this article.

§ 25-0403. Granting of permits.

1. In granting, denying or limiting any permit under this act, the commissioner shall consider the compatibility of the proposed activity with reference to the public health and welfare, marine fisheries, shellfisheries, wildlife, flood and hurricane and storm dangers, and the land-use regulations promulgated pursuant to section 25-0302 of this act.

2. Notice that the state or any agency or subdivision thereof is in the process of acquisition of any tidal wetlands by negotiation or condemnation shall be sufficient basis for denial of any permit under this section.

3. In granting a permit, the commissioner may impose such conditions or limitations as may be necessary to carry out the public policy set forth in this act. The commissioner may require a bond in an amount and with surety and conditions satisfactory to him securing to the state compliance with the conditions and limitations set forth in the permit.

§ 25-0404. Judicial review.

Any person aggrieved by the issuance, denial, suspension, or revocation of a permit may within thirty days from the date of the commissioner's order seek judicial review pursuant to article seventy-eight of the civil practice law and rules in the supreme court for the county in which the tidal wetlands affected are located. In the event that the court may find that the determination of the commissioner constitutes the equivalent of a taking without compensation, and the land so regulated otherwise meets the interest and objectives of this act it may, at the election of the commissioner, either set aside the order or require the commissioner to acquire the tidal wetlands or such rights in them as have been taken, proceeding under the power of eminent domain.

§ 25-0405. Payments for extractions from or filling in wetlands.

1. Any applicant for a permit to dredge, excavate, or remove soil, mud, sand, shells, gravel or other aggregate from any publicly-owned tidal wetland shall be required to pay to the public owner thereof such amount, which shall not be nominal, as the office of general services or its local equivalent body shall determine to be the value of the aggregate extracted. Any person aggrieved by such determination may seek judicial review pursuant to article seventy-eight of the civil practice law and rules in the supreme court for the county in which the tidal wetland is located.

2. Any applicant for a permit to dump, fill, or deposit any soil, stones, sand, gravel, mud, rubbish, or fill of any kind onto or in any publicly-owned tidal wetlands shall be required to pay to the owner such amount, which shall not be nominal, as the office of general services or its local equivalent shall determine. Any person aggrieved by such determination may seek judicial review pursuant to article seventy-eight of the civil practice law and rules in the supreme court for the county in which the tidal wetland is located.

3. Monies paid to the state under this section shall be used by the commissioner for preservation of the tidal wetlands.

TITLE 6

MISCELLANEOUS PROVISIONS

Section 25-0601. Severability.

§ 25-0601. Severability.

The provisions of this act shall be severable, and if any clause, sentence, paragraph, subdivision or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision or part thereof directly involved in the controversy in

which such judgment shall have been rendered.

ARTICLE 27

REDUCTION, COLLECTION, REUSE, RECYCLING, TREATMENT AND DISPOSAL OF SOLID WASTE

- | | | |
|-------|-------|---|
| Title | 1. | Solid and hazardous waste management policy and planning |
| | 3. | Waste transporter permits |
| | 4. | Marketing of recyclable materials |
| | 5. | State aid for implementation of resource recovery and other improved solid waste management systems |
| | 7. | Solid waste management and resource recovery facilities |
| | 9. | Industrial hazardous waste management |
| | 10. | Litter and solid waste control |
| | 11. | Industrial siting hazardous waste facilities |
| | 12. | Mitigation and remediation of certain solid waste sites and drinking water contamination |
| | 13. | Inactive hazardous waste disposal sites |
| | 14. | Brownfield cleanup program |
| | 15. | Storage, treatment, disposal and transportation of regulated medical waste |
| | 17. | Lead-acid battery recycling |
| | 18. | Rechargeable battery recycling |
| | 19. | Waste tire management and recycling |
| | 20. | Postconsumer paint collection program |
| | 21. | Mercury-added consumer products |
| | 22. | Food donation and food scraps recycling |
| | 23. | Vehicle dismantling facilities |
| | 23*2. | Wireless telephone recycling |
| | 24. | Environmental tests reporting requirements |
| | 25. | Phase-out of creosote |
| | 26. | Electronic equipment recycling and reuse |
| | 27. | Plastic bag reduction, reuse and recycling |
| | 27*2. | Drug management and disposal |
| | 28. | Bag waste reduction |
| | 29. | Mercury thermostat collection act |
| | 30. | Expanded polystyrene foam container and polystyrene loose |

- fill packaging ban
- 31. Construction and demolition waste
- 32. Small plastic bottle hospitality personal care product restrictions

TITLE I

SOLID AND HAZARDOUS WASTE MANAGEMENT POLICY AND PLANNING

Section 27-0101. Legislative purposes.

27-0103. State solid waste management plan.

27-0105. Preferred statewide hazardous waste management practices hierarchy.

27-0106. State solid waste management policy.

27-0107. Local solid waste management plans; purpose and scope.

27-0109. State assistance for local solid waste management plans.

§ 27-0101. Legislative purposes.

1. It is the purpose of the legislature of the state of New York in enacting this article to encourage the development of economical projects for the present and future collection, treatment and management of solid and hazardous waste in such a manner as will assure full consideration of all aspects of planning for proper and effective solid and hazardous waste disposal, coordinated, so far as practicable, with other related state, regional and local planning activities, and consistent with the protection of the public health, including such factors as population change, urban and metropolitan development, land use planning, water pollution and air pollution control, and the feasibility of regional resource recovery programs.

2. It is furthermore the purpose of the legislature of the state of New York to effect maximum resource recovery from solid waste on a cost-effective basis, with minimum environmental debit, energy-efficient materials recovery, prudent land use, maximum economic benefits and maximum effective private sector participation, with due concern for the

primacy of the local and regional role in resource recovery procedures upon the basis of public knowledge and consent.

§ 27-0103. State solid waste management plan.

1. For the purposes of this article, the department is designated as the official state agency with the responsibility for preparing and updating the New York state solid waste management plan (hereinafter referred to as the "plan") consistent with the state resource recovery policies declared in the New York state resource recovery policy act, with this title, with titles five and seven of this article, and with the federal "Resource Conservation and Recovery Act of 1976" and amendments thereto.

2. The commissioner shall biennially review the status of programs and information contained within the plan and make recommendations for legislation or other state action related to:

(a) comprehensive procurement policies applicable to state agencies and public authorities which will give maximum feasible encouragement to the procurement of products manufactured with stated levels of secondary materials;

(b) incentives for developing and expanding markets for promoting the return of secondary materials and other recovered resources to productive use; and

(c) analysis of packaging and other various components of the waste stream to propose changes which will conserve energy and reduce solid waste generation.

In making such recommendations and reviewing said plans the commissioner shall take into account sound principles of solid waste management and relevant considerations of natural resources conservation, energy production and employment creating opportunities and shall further take into account any relevant changes in federal and state laws, any local solid waste management plans developed pursuant to section 27-0107 of this article, and the experience of agencies, local governments, private industry, the public and the results of the public

participation contemplated by the United States Environmental Protection Agency's Guidelines for Public Participation in Programs under the Resource Conservation and Recovery Act (40 CFR Part 25). On the basis of that review, the commissioner shall modify the plan, as appropriate, and, not later than March thirty-first of every other year, shall file such modified plan with the governor and the legislature.

3. Amendments to the plan shall assure current attention to:

(a) an identification of the boundaries of those regions within the state which, as a result of urban concentration, geographic conditions, secondary materials markets, technological feasibility, and other factors, are appropriate for carrying out regional solid waste management;

(b) identification of which solid waste functions will be planned for and carried out by which local authorities, regional authorities, state authorities, agencies and public benefit corporations, giving due consideration to the compatibility of the planning and implementing functions which can be combined at the local level;

(c) identification of local, regional and state authorities and agencies which shall have responsibility for the solid waste functions identified in the plan which shall be managed and carried out by or on behalf of such entities or any combination thereof, giving due consideration to the compatibility of the planning and implementing functions which can be combined at the local level;

(c-1) identification of strategies, programs and practices, in consultation with the commissioner of the office of general services, to be undertaken by the state in the management of solid waste generated by state agencies, to ensure the attainment by the state of statewide solid waste reduction and recycling goals established in the plan. Using information obtained from individual state agencies, the plan shall set forth dates by which the state of New York as a generator of solid waste is to recover progressively increasing amounts of recyclable materials from its waste stream and attain a reduction in its waste stream, consistent with the statewide waste reduction and recycling goals identified in the plan.

(d) identification of the environmental impacts including, but not limited to, air or water pollution, or the generation of hazardous waste

resulting from the utilization of solid waste management technologies;

(e) identification and projections of changes in the waste stream that are likely to occur during the useful life of a proposed facility, on a statewide and regional basis, during the projected planning period;

(f) the status of solid waste management activities and capacity, and projected special needs within the state;

(g) an assessment of future programs and resource needs to effectuate the purposes of such plan;

(h) an assessment of alternative resource recovery practices including but not limited to source separation, waste volume reduction, community recycling centers and sanitary landfill or other environmentally sound disposal manner or practice;

(i) any local solid waste management plan submitted to the commissioner by or on behalf of any municipality;

(j) legislative recommendations appropriate to effectuate the purposes of this title; and

(k) any other recommendations as may be appropriate.

4. In the case of any region which, pursuant to the federal "Resource Conservation and Recovery Act of 1976", would be located in two or more states, the commissioner shall include in the plan an identification of such regions and the function to be performed thereby and shall submit to the governor and the legislature recommendations for the development and enactment of the interstate agreements necessary to carry out the purposes of this article.

5. In connection with developing and updating the plan, the commissioner may request and shall receive from any department, division, board, bureau, commission or other agency of the state or any political subdivision thereof or any public authority such assistance and data as may be reasonably necessary to enable the commissioner to carry out his responsibilities under this section. In making such request, the commissioner shall consult and cooperate with such municipality or other public body to ensure against unnecessary duplication of effort or other administrative inefficiency.

§ 27-0105. Preferred statewide hazardous waste management practices hierarchy.

It is hereby declared that the following preferred hazardous waste management practices hierarchy is to be used to guide all hazardous waste policies and decisions:

a. The generation of hazardous wastes is to be reduced or eliminated to the maximum extent practical;

b. Hazardous wastes that continue to be generated are to be recovered, reused or recycled to the maximum extent practical;

c. Detoxification, treatment or destruction technologies are to be utilized for hazardous wastes which cannot be reduced, recovered, reused or recycled; and

d. Land disposal of industrial hazardous wastes, except treated residuals posing no significant threat to the public health or to the environment, should be phased out as it is the least preferable method of industrial hazardous waste management.

§ 27-0106. State solid waste management policy.

In the interest of public health, safety and welfare and in order to conserve energy and natural resources, the state of New York, in enacting this section, establishes as its policy that:

1. The following are the solid waste management priorities in this state:

(a) first, to reduce the amount of solid waste generated;

(b) second, to reuse material for the purpose for which it was originally intended or to recycle material that cannot be reused;

(c) third, to recover, in an environmentally acceptable manner, energy from solid waste that can not be economically and technically reused or recycled; and

(d) fourth, to dispose of solid waste that is not being reused, recycled or from which energy is not being recovered, by land burial or other methods approved by the department.

2. State government must make an essential contribution to the development and implementation of environmentally, economically and technically viable solid waste management programs through fulfilling its responsibilities to provide programs which promote waste reduction and the expansion of markets for recovered materials, clearly articulated, responsive and consistently applied regulatory structures, and a full range of technical assistance to local governments. A state-local partnership, in which the basic responsibility for the planning and operation of solid waste management facilities remains with local governments and the state provides necessary guidance and assistance, must be forged.

3. This policy, after consideration of economic and technical feasibility, shall guide the solid waste management programs and decisions of the department and other state agencies and authorities.

§ 27-0107. Local solid waste management plans; purpose and scope.

1. Purpose and scope. (a) A planning unit may undertake and complete a timely process leading to a local solid waste management plan for such unit for at least a ten-year period. For purposes of this section and section 27-0109 of this article, "planning unit" shall mean a county, two or more counties acting jointly, a local government agency or authority established pursuant to state law for the purposes of managing solid waste, any city located in the county of Nassau, or two or more other municipalities which the department determines to be capable of implementing a regional solid waste management program.

(b) The local solid waste management plan shall:

(i) characterize the solid waste stream to be managed in the planning period and methods to increase waste diversion including, but not limited to recycling and composting;

(ii) assess existing and alternate proposed solid waste management

programs and facilities;

(iii) address to the maximum extent practicable the comments and views expressed by concerned governmental, environmental, commercial and industrial interests and the public on the waste reduction, recycling, reuse and disposal alternatives;

(iv) identify the parties with responsibility to implement each element of the plan and the steps which must be undertaken by each;

(v) set forth a timetable for implementing the plan;

(vi) describe the participation in the preparation of the plan of each municipality which has chosen to participate in such preparation; and

(vii) describe (A) measures undertaken by the municipalities participating in the planning unit to secure participation of neighboring jurisdictions, (B) the limitations, if any, imposed by the proposed plan on solid waste management alternatives available to such neighboring jurisdictions, and (C) alternatives which would be available if a local solid waste management plan including such jurisdictions were prepared. Specific written suggestions received from neighboring jurisdictions shall be summarized and reflected in the plan.

(c) Such plan shall take into account the objectives of the state solid waste management policy, provide for or take into account management of all solid waste within the planning unit, and embody, as may be appropriate to the circumstances, sound principles of solid waste management, natural resources conservation, energy production, and employment creating opportunities.

(d) Such plan is authorized to include and shall utilize, to the extent practicable, prepared resource materials or generic analyses so as to minimize the development and use of original data to degrees of detail not pertinent to the circumstances.

(e) A plan may be submitted to the department by a planning unit on its own initiative or upon the request of the participating municipalities. The department shall review such plan and advise the planning unit that:

(i) the plan contains the elements set forth in paragraph (b) of this subdivision. Thereafter such plan shall become the local solid waste management plan in effect for such municipalities; or

(ii) the plan as submitted does not contain the elements set forth in paragraph (b) of this subdivision. The department shall state the

reasons for its determination under this subparagraph.

(f) For purposes of this subdivision, the department shall not serve as lead agency as defined in subdivision six of section 8-0111 of this chapter.

(g) For purposes of this section, "solid waste" shall have the same meaning as is found in subdivision one of section 27-0701 of this article, but shall not include source, special nuclear or by-product material as defined in the atomic energy act of 1954, as amended, or hazardous waste which appears on the list or satisfies the characteristics of hazardous waste promulgated pursuant to section 27-0903 of this article or, low level radioactive waste as defined in section 29-0101 of this chapter.

2. The department shall promulgate rules and regulations in accordance with the provisions of the state administrative procedure act for the implementation of this section and section 27-0109 of this article.

§ 27-0109. State assistance for local solid waste management plans.

1. As a complement to, and in conjunction with the technical assistance provided pursuant to this chapter, and to foster and facilitate local planning, a planning unit may apply for state assistance for developing solid waste management plans pursuant to section 27-0107 of this article or to update or revise an existing plan to address the elements contained in paragraph (c) of subdivision one of such section.

2. The commissioner is authorized to contract to make a state grant, within the limit of appropriation therefor, to any planning unit for up to ninety percent of the costs to prepare, update or revise its local solid waste management plan; provided, however, that no such grant has been previously made to a planning unit which is a part of or is served by the planning unit seeking such grant. A planning unit may receive a grant pursuant to this subdivision which shall not exceed the greater of twenty-five thousand dollars or one dollar for each resident of the planning unit, based upon the current federal decennial census.

3. Applications for such assistance shall outline the proposed scope and timetable for preparation of the plan pursuant to section 27-0107 of this article. In addition, the planning unit must demonstrate its intent that the purpose of undertaking the plan is to develop a viable solution to its solid waste management needs which cannot be achieved based on an existing plan.

4. Payments authorized under this section for the preparation, update or revision of a plan shall be made as follows:

(a) not more than fifty percent of the total grant upon approval by the department of the grant request; and

(b) the balance of the total grant in not more than three periodic payments for unreimbursed costs, as provided in the contract.

5. The commissioner may, in the commissioner's discretion, deny funding to a planning unit which is within the jurisdiction of another planning unit or proposed planning unit.

TITLE 3

WASTE TRANSPORTER PERMITS

Section 27-0301. Intent and purpose.

27-0303. Definitions.

27-0305. Permits for waste transporters.

27-0307. Waste transporter permit revocation notifications.

§ 27-0301. Intent and purpose.

It is declared to be the intent and purpose of this title to protect the environment from mishandling and mismanagement of all regulated wastes transported from the site of generation to the site of ultimate treatment, storage or disposal and to prevent a discharge of wastes into the environment, whether accidental or intentional, except at a site approved for the treatment, storage or disposal of such wastes.

§ 27-0303. Definitions.

When used in this title:

1. "Disposal" means the abandonment, discharge, deposit, injection, dumping, spilling, leaking or placing of any substance so that such substance or any related constituent thereof may enter the environment. Disposal also means the thermal destruction of waste or hazardous waste and the burning of such wastes as fuel for the purpose of recovering useable energy.

2. "Industrial-commercial waste" means a waste which originates at, is generated by, or occurs as a result of any industrial or commercial activity. The forms of waste included are exemplified by but not limited to the following:

a. liquids such as: acids, alkalis, caustics, leachate, petroleum (and its derivatives), and process or treatment wastewaters;

b. sludges which are semisolid substances resulting from process or treatment operations, or residues from storage or use of liquids;

c. solids such as: solidified chemicals, paints or pigments; the end or by-products of incineration ash; foundry sand; dredge spoil;

d. contained gaseous materials;

e. hazardous waste as defined in title 9 of this article; and

f. any liquid, sludge, septage, solid, semisolid substance or contained gaseous material in which any of the foregoing is intermixed or absorbed, or onto which any of the foregoing is adhered.

3. "Person" means any individual, public or private corporation, political subdivision, government agency, department or bureau of the state or federal government, municipality, industry, co-partnership,

association, firm, trust, estate or any other legal entity.

4. "Regulated waste" means any one of the following types of waste: raw sewage, septage, sludge from a sewage or water supply treatment plant, industrial-commercial waste, low-level radioactive waste as defined in subdivision nine of this section, waste tires or waste oil.

5. "Septage" means the contents of a septic tank, cesspool or other individual sewage treatment facility which receives domestic sewage wastes.

6. "Storage" means the holding of waste for a temporary period, at the end of which the waste is processed, recovered, disposed of, or stored elsewhere.

7. "Waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, and other discarded material, including solid, liquid, semisolid or contained gaseous material resulting from industrial, commercial, mining and agricultural operations and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under article 17 of this chapter, or source, special nuclear or by-product material as defined in the Atomic Energy Act of 1954, as amended (68 Stat. 923) except as may be provided by existing agreements between the state and the federal government.

8. "Waste oil" means used engine lubricating oil and any other oil, including but not limited to, fuel oil, motor oil, gear oil, cutting oil, transmission fluid, hydraulic fluid, dielectric fluid, oil storage tank residue, animal oil, and vegetable oil, which has been contaminated by physical or chemical impurities, through use or accident, and has not subsequently been rerefined.

* 9. "Low-level radioactive waste" means radioactive material that:

a. is not high-level radioactive waste, transuranic waste, spent

nuclear fuel, or the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content; and

b. the United States nuclear regulatory commission, consistent with federal law and in accordance with paragraph a of this subdivision, classifies as low-level radioactive waste.

* NB There are 2 sb 9's

* 9. "Environment" means any water, water vapor, any land including land surface or subsurface, air, fish, wildlife, biota and all other natural resources.

* NB There are 2 sb 9's

11. "Regulated medical waste" shall have the same meaning as such term is defined in title 15 of this article.

12. "Waste tires" shall mean waste tires transported for a fee for the purpose of reuse, recycling or disposal, except those tires collected and transported incidental to the collection and transportation of solid waste.

§ 27-0305. Permits for waste transporters.

1. Except as otherwise exempted by this title, no person shall engage in the transportation of regulated waste originating or terminating at a location in this state without a permit pursuant to this section. In addition, no person shall engage in the transportation of low-level radioactive waste into, within or through this state without a permit pursuant to this section.

2. (a) The commissioner may, by regulation, exempt from the permit requirements of this title persons engaged in the transportation of:

- (1) types of wastes which do not constitute a hazard to human health and the environment;
- (2) small quantities of waste; or
- (3) wastes transported by rail, water and air carriers.

(b) The commissioner may also exempt from the permit requirements of this title persons engaged in the transportation of low-level radioactive waste only upon a showing by such person that compliance with such requirements would create a hardship on his own business activities and upon a determination that, based upon the characteristics including half life, concentration, activity, and toxicity of the specific low-level radioactive waste transported, such transport imposes no potential significant adverse impact on public health, safety or welfare, the environment, or natural resources as determined by the department in consultation with the department of health. The commissioner shall promulgate guidelines for the purpose of determining the circumstances under which such exemption may be granted. Any person granted such an exemption must comply with such conditions as specified by the commissioner. Such exemption shall be reviewed periodically as specified by the commissioner but at least once every two years. Any exemption granted hereunder may be revoked after due notice and opportunity for hearing for a violation of any provision of this title or other applicable laws, rules or regulations relating to the transportation of regulated wastes or upon a showing that the exempted person no longer meets the requisite guidelines for exemption.

3. A generator of a waste may obtain a permit pursuant to this title to transport his own waste or if he contracts with another person to remove, transport or dispose of regulated wastes. If a generator obtains such a permit, a person engaged in the removal, transportation or disposal of his waste shall not be required to obtain a permit pursuant to this title for the transportation of such wastes.

4. The department shall make rules and regulations implementing this section promulgated in accordance with the state administrative procedure act in order to carry out and enforce the intent and purposes thereof. Such rules and regulations and the provisions of article 70 of this chapter and rules and regulations adopted thereunder shall govern permit applications, permit conditions, renewals, modifications, suspensions and revocations under this section. The department shall, in promulgating any new or revised rule or regulation, accompany such rulemaking with an environmental impact statement or a written

assessment stating the extent to or means by which such rule or regulation will carry out the intent and purpose of this section. The responsibility for the issuance and review of permits and the enforcement of the provisions of this section may be delegated to regional, district or county offices of the state department of health, or to local health departments where their jurisdiction may apply.

5. Applications filed pursuant to this section shall indicate the mechanical and other equipment, holding tanks and vehicles and any place of temporary storage used or to be used by the applicant and the place or places where and the manner in which the applicant will finally dispose of the regulated wastes, and such other information as the department deems necessary. If the department determines that the proposed method of transportation, the place or manner in which the waste product is to be treated, stored or disposed of or the method or location of temporary storage will be detrimental to or substantially damage or pollute the environment or natural resources of the state, it may deny the permit or may impose such permit conditions as will adequately protect against unreasonable defilement or degradation of the natural resources of the state.

6. As a condition for the permit the department shall require every vehicle operated by the transporter to be conspicuously marked or placarded to identify, in a manner consistent with section fourteen-f of the transportation law and any rules and regulations promulgated thereunder and any related federal requirements, the regulated waste transported or its principal hazard. Further, any such vehicle shall be conspicuously marked or placarded in a like manner with the full name, including the full first name or legally registered trade name or names of the transporter and the number of the waste transporter permit issued pursuant to this section; provided, however, that such marking or placarding for any vehicle transporting low-level radioactive waste shall be consistent with federal rules and regulations. The commissioner may, by rules and regulations prescribe with respect to any specific regulated waste the minimum quantities below which no marking or placard is required, consistent with section fourteen-f of the transportation law and any rules and regulations promulgated thereunder.

7. As a condition for the permit or the exemption therefrom the department shall require the transporter, except transporters of hazardous waste subject to manifesting under section 27-0905 of this article, to make an annual report to the department, indicating the number and type of installations emptied or cleaned, the volume and nature of waste products disposed of, and the place and manner in which such waste products were finally disposed, and such other information as the department may require.

8. Such permit shall be renewed annually. The fees for such permit or renewal shall be those established by regulation promulgated pursuant to article 70 of this chapter. A renewal may be denied by the department for failure of the applicant to properly report as provided in subdivision 7 of this section.

9. The department may suspend or revoke any permit upon proof that the permittee has been found guilty of a misdemeanor in the violation of the provisions of this section as provided in section 71-1503, or if the department determines that the permittee has violated the provisions of this section, the rules and regulations implementing it or the rules and regulations adopted to implement article 70 of this chapter.

10. The department is authorized and directed to adopt rules and regulations with respect to the institution of a system of manifests associated with the transportation of low-level radioactive wastes, consistent with requirements of the United States nuclear regulatory commission, and in furtherance of the agreement between the state and the nuclear regulatory commission dated July fourth, nineteen hundred sixty-two. Such rules and regulations shall provide that a copy of the manifest shall be returned to the department.

11. The department shall issue a report based upon information made available to the department pursuant to this section, on an annual basis to the governor, the temporary president of the senate and the speaker of the assembly. Such report shall include, but not be limited to, the number, origin and destination of truckloads of low-level radioactive

waste leaving or entering the state for disposal and the types of low-level radioactive waste being transported into, through or within this state and the frequency of such movement.

12. No person shall engage in the transportation of regulated medical waste originating or terminating at a location within the state without a permit pursuant to the provisions of title 15 of this article, unless otherwise exempted therein.

§ 27-0307. Waste transporter permit revocation notifications.

After the issuance of an order of suspension or revocation of the permit of a waste transporter, the department shall publish notice of such suspension or revocation in a newspaper or newspapers having a general circulation in the area or areas served by the permittee and in the environmental notice bulletin published by the department. Such notice shall include a statement that the permittee is no longer licensed or permitted to handle such waste. The department shall publish such notice once each week for two consecutive weeks with the first publication to be completed on or before the fifteenth day following such revocation or suspension.

TITLE 4

MARKETING OF RECYCLABLE MATERIALS

Section 27-0401. Secondary materials.

27-0403. Legislative intent.

27-0405. New York state local resource reuse and development program.

§ 27-0401. Secondary materials.

1. As used in this article, "secondary materials" shall mean material recovered from or otherwise destined for the waste stream, including but not limited to, post-consumer material, industrial scrap material and

overstock or obsolete inventories from distributors, wholesalers and other companies as defined in rules and regulations promulgated by the commissioner of economic development in consultation with the commissioner but such term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

2. For the purposes of this article, the department shall assist the department of economic development in conducting secondary materials market development programs pursuant to article six of the economic development law, as added by chapter six hundred fifteen of the laws of nineteen hundred eighty-seven, and other state agencies and authorities conducting waste reduction and recycling programs.

3. The department shall assist in providing consumer education on the economic and environmental benefits of solid waste management practices and the concomitant needs for waste reduction and for consumers to actively seek consumer products which contain secondary materials or which are easily recycled or reused.

§ 27-0403. Legislative intent.

The legislature hereby finds and declares that development and implementation of local programs to conserve energy through sound solid waste management efforts can be of broad benefit to the state. Through utilization of resource reuse and other programs, primary raw materials can be conserved, energy savings can be gained, the amount of waste disposed of in landfills can be reduced, and, through proper management of the waste stream, improved operations at waste-to-energy facilities may be realized. In recognition of the potential benefits to be accrued from implementing sound solid waste management programs, the legislature hereby declares that a program directed toward enhancing the state's resource reuse efforts will provide energy, economic and environmental benefits for New York state.

§ 27-0405. New York state local resource reuse and development program.

1. The department shall design and actively implement a local resource reuse and development program which shall promote the collection, intermediate processing and marketing of waste materials that are now being disposed of as municipal solid waste in New York state. The program shall:

(a) promote the development and implementation of resource reuse programs by municipalities;

(b) serve as a clearinghouse for information regarding existing municipal resource reuse programs;

(c) identify special needs and problems facing municipalities in developing and implementing resource reuse programs, and recommend approaches and solutions to address such identified needs and problems; and

(d) provide other technical assistance to municipalities seeking to develop and implement resource reuse programs.

2. The program shall provide funding for up to seventy-five percent of the cost of municipal resource reuse programs, including the cost of planning, designing, coordinating and implementing collection, processing, marketing, public participation, promotional and other activities essential to carrying out the program. Funds shall be made available for one or more of the following purposes:

(a) an analysis of the municipal waste stream;

(b) a preliminary market survey to identify:

(1) firms in the region that currently process, broker, market or otherwise engage in resource reuse activities, and

(2) the quantity of additional waste materials that current markets could absorb;

(c) development and distribution of information based on the operation of the program and the related materials and market considerations;

(d) support of a local resource reuse coordinator who will be responsible for overseeing development and implementation of the municipal resource reuse program. Duties shall include coordinating municipal collection, intermediate processing and marketing efforts with existing local, regional and state resource reuse and market development

efforts; and

(e) development of a comprehensive resource reuse public education and promotion campaign to inform residents regarding the need for and operation of local resource reuse efforts and to increase public awareness of the benefits to be accrued from utilizing reused and recycled products. The promotional campaign shall include, but need not be limited to:

(1) public education and outreach activities such as: magazine, newspaper, television, radio and public transportation advertisements and public informational meetings and seminars; and

(2) dissemination of public information materials providing the details of the municipal program including, but not limited to items to be collected, collection locations and schedules.

3. The department shall receive applications for assistance from a municipality, acting alone or in conjunction with one or more other municipalities. Applications shall be evaluated based on the following criteria:

(a) energy savings of the proposal;

(b) technical feasibility of the proposal;

(c) municipal government commitment to the program;

(d) whether the applicant has pursued other sources of funding, including, but not limited to funding available under title nine of article fifty-one of this chapter; and

(e) demonstrated ability of the applicant to carry out the proposed program.

4. In evaluating proposals, the department shall consider the potential for coordination and consolidation of solid waste practices among municipalities within specified areas or regions, and shall encourage such cooperation and consolidation where it is practicable and would result in enhanced energy savings, environmental protection and cost effectiveness.

TITLE 5

STATE AID FOR IMPLEMENTATION OF RESOURCE

**RECOVERY AND OTHER IMPROVED SOLID
WASTE MANAGEMENT SYSTEMS**

Section 27-0501. Definitions.

27-0503. State aid.

27-0505. Powers and duties of the commissioner.

27-0507. Powers of municipalities.

27-0509. Technical assistance.

§ 27-0501. Definitions.

1. "Collection system development program" means a comprehensive review of existing solid waste collection practices and the development of designs for efficient and cost-effective systems for the systematic collection of solid waste of one or more municipalities or any portion thereof.

2. "Preparation of contract documents" means the preparation of documents for entering into contracts for (a) the design, construction, operation, financing, ownership or maintenance of a solid waste management facility; (b) a system of collection and disposal of municipal solid waste through resource recovery; and (c) the marketing of materials and energy recovered from solid waste. Such documents may include detailed construction plans and specifications, bid advertisements, requests for proposals and reports evaluating bids and proposals.

3. "Implementation feasibility project" means the investigation and evaluation of any one or more of the following: engineering, economic, environmental, technological, administrative, institutional, social and political factors affecting the acceptability of a solid waste management facility or system of which the facility is part for the purpose of determining the feasibility of constructing such proposed facility or establishing such system.

4. "Municipality" means a village, town, city or county or any designated agency thereof, or any two or more of the foregoing which are

acting jointly in connection with a solid waste management facility, a solid waste management district, or a public benefit corporation having power granted otherwise than under this article to construct, operate and maintain a solid waste management facility, including a public corporation created pursuant to agreement or compact with another state.

5. "Recycling center" means a community-based facility where separated solid waste can be stored, assembled and prepared for sale or other disposition.

6. "Resource recovery" means the separation, extraction and recovery of useable materials, energy or heat from solid waste through source separation, recycling centers or other programs, projects or facilities.

7. "Solid waste" means all materials or substances discarded or rejected as being spent, useless, worthless, or in excess to the owners at the time of such discard or rejection, including but not limited to garbage, refuse, industrial and commercial waste, sludges from air or water pollution control facilities or water supply treatment facilities, rubbish, ashes, contained gaseous material, incinerator residue, demolition and construction debris and offal, but not including sewage and other highly diluted water-carried materials or substances and those in gaseous form.

8. "Solid waste management facility" means any facility employed beyond the initial solid waste collection process, including but not limited to recycling centers, transfer stations, baling facilities, rail haul or barge haul facilities, processing systems, including resource recovery facilities or other facilities for reducing solid waste volume, sanitary landfills, plants and facilities for compacting, composting or pyrolization of solid waste, incinerators and other solid waste disposal, reduction or conversion facilities.

9. "Source separation" means the segregation of recyclable materials from the solid waste stream at the point of generation for separate collection, sale or other disposition.

10. "Secondary materials" means those commodities that have been reclaimed for reuse and are used in place of a primary or raw material in manufacturing a product.

§ 27-0503. State aid.

1. The commissioner may, in the name of the state, make or contract to make, within the limitation of appropriations therefor, a state grant for the payment to any municipality of not more than fifty percent of the eligible cost of collection system development programs, preparation of contract documents, and implementation feasibility projects.

2. The commissioner shall enter into a grant agreement pursuant to this title only upon a finding that the municipality has given due consideration to the items listed below or that such consideration will be given through the fulfillment of the terms of the proposed grant agreement. Pursuant to section 27-0505 of this title, the commissioner shall adopt guidelines relative to the criteria for making such finding. These guidelines shall require at least that relative to the proposed facility, system or actions which are to be the subject of the proposed grant agreement, due consideration shall be given to:

- (a) any relevant, prior solid waste management study or report;
- (b) reasonable alternatives which would achieve the same or similar objectives, including opportunities for utilizing:
 - (i) existing solid waste management-resource recovery alternatives;
 - (ii) existing facilities of the secondary materials industry;
 - (iii) source separation programs and recycling centers, composting programs; and
 - (iv) multi-municipal or regional arrangements for resource recovery and solid waste management;
- (c) effects on the use, conservation and production of energy; and
- (d) effects on employment.

3. Payments authorized pursuant to this title shall be made in three apportionments in accordance with the following:

- (a) the first payment, not to exceed fifty percent, less retained

percentages, of the total grant shall be payable when acceptable documents, as required to be prepared by the grant agreement, are approved by the commissioner. In the case of collection system development programs and implementation feasibility projects, such documents shall include a report containing recommended actions and a time schedule for taking such actions. In the case of preparation of contract documents, such documents shall include construction plans and specifications, bid advertisements, requests for proposals, or evaluation reports of bids or proposals containing recommended actions.

(b) the balance of the grant, less retained percentages, shall be payable:

(i) in the case of collection system development programs or implementation feasibility projects, when the municipality officially acts upon the recommendations contained in the approved report; and

(ii) in the case of preparation of contract documents, when contracts are awarded or when construction begins, whichever occurs first.

(c) the final payment shall be made after appropriate audit.

(d) the department shall oversee the use of the grant to assist the municipality.

§ 27-0505. Powers and duties of the commissioner.

In administering and enforcing the provisions of this title, the commissioner shall:

1. make an estimate of funds or appropriations for inclusion annually in the executive budget for state aid under this title including section 27-0509 hereof;

2. receive applications for state aid in such form and containing such information as he may require;

3. qualify municipalities for state aid and advise them concerning such qualification;

4. in the cases of collection system development programs and

implementation feasibility projects, approve the geographical scope and subject matter coverage thereof prior to commencement to work thereon;

5. approve prior to final payment the documents in respect to which state aid has been sought;

6. approve vouchers for payment of state aid grants;

7. adopt guidelines setting forth criteria by which to evaluate the eligibility and relative entitlement of municipalities for funding under this title; and

8. perform such other and further acts and promulgate such further rules and regulations as may be necessary, proper and desirable to carry out effectively the provisions of this title.

§ 27-0507. Powers of municipalities.

Any municipality may:

1. apply to and contract with the commissioner for state aid pursuant to this article;

2. enter into contracts for consulting, engineering and other professional services for the preparation of documents in respect to which state aid is to be sought pursuant to this title; provided, however, the contract costs negotiated between the person or firm chosen to perform such services and the applicant for state aid under this title shall be subject to the approval of the commissioner; and

3. expend money received from the state pursuant to this title only for purposes consistent therewith.

§ 27-0509. Technical assistance.

The commissioner shall prepare and distribute to municipalities, and may distribute to other persons, upon request, information relevant to the source separation of solid waste. The commissioner shall provide consultations to assist in the development of programs under this section. Such technical assistance program shall include, but not be limited to:

1. classification of recyclable materials;
2. techniques for home sorting of solid waste;
3. collection systems for separated materials which promote the efficiency of resource recovery facilities;
4. use of compartmentalized sanitation vehicles to maintain collected materials in an uncontaminated condition;
5. identification of appropriate marketing specifications and markets to assist persons who engage in preparing recovered materials for market;
6. education and public information programs which include source reduction and the relationship between solid waste and energy;
7. projections of probable changes in the waste stream due to changes in population, industry and employment in the municipality;
8. model local law or ordinance to implement source separation; and
9. other relevant information for solid waste management.

TITLE 7

SOLID WASTE MANAGEMENT AND RESOURCE RECOVERY FACILITIES

Section 27-0701. Definitions.

27-0703. Powers and duties of the department; solid waste management facilities.

- 27-0704. Land burial and disposal in the counties of Nassau and Suffolk; special provisions.
- 27-0705. Adoption of rules and regulations; public hearings.
- 27-0706. Closure requirements for certain landfills and recycling requirements for certain municipalities.
- 27-0707. Permits for new solid waste management facilities.
- 27-0711. Local laws, ordinances and regulations.
- 27-0712. Coverage of all vehicles, including barges transporting solid waste.
- 27-0715. Solid waste management technical assistance.
- 27-0717. Bureau of waste reduction and recycling.
- 27-0719. Battery management and disposal.

§ 27-0701. Definitions.

As used in this title:

1. "Solid waste" means all putrescible and non-putrescible materials or substances discarded or rejected as being spent, useless, worthless or in excess to the owners at the time of such discard or rejection, except including but not limited to garbage, refuse, industrial and commercial waste, sludges from air or water control facilities, rubbish, ashes, contained gaseous material, incinerator residue, demolition and construction debris, discarded automobiles and offal but not including sewage and other highly diluted water carried materials or substances and those in gaseous form.

2. "Solid waste management facility" means any facility employed beyond the initial solid waste collection process including, but not limited to, transfer stations, baling facilities, rail haul or barge haul facilities, processing systems, including resource recovery facilities or other facilities for reducing solid waste volume, sanitary landfills, facilities for the disposal of construction and demolition debris, plants and facilities for compacting, composting or pyrolyzation of solid wastes, incinerators and other solid waste disposal, reduction or conversion facilities.

3. "Solid waste management" means the purposeful and systematic transportation, storage, processing, recovery and disposal of solid waste.

4. "Resource recovery" means the separation, extraction and recovery of useable materials, energy or heat from solid waste through source separation, recycling centers or other programs, projects or facilities.

§ 27-0703. Powers and duties of the department; solid waste management facilities.

1. To the maximum extent feasible, the department shall carry out the provisions of this title so as to facilitate short and long term planning for solid waste disposal, to promote cooperation among neighboring localities in the planning and implementation of solid waste management programs and facilities, and to facilitate implementation of solutions to solid waste management problems confronted by localities.

2. The department shall have the power to: (a) Adopt and promulgate, amend and repeal rules and regulations governing the operation of solid waste management facilities. Such rules and regulations shall be directed at the prevention or reduction of (i) water pollution, (ii) air pollution, (iii) noise pollution, (iv) obnoxious odors, (v) unsightly conditions caused by uncontrolled release of litter, (vi) infestation of flies and vermin, and (vii) other conditions inimical to the public health, safety and welfare. In promulgating such rules and regulations, the department shall give due regard to the economic and technological feasibility of compliance therewith. Any rule or regulation promulgated pursuant hereto may differ in its terms and provisions as between particular types of solid waste management facilities and as between particular areas of the state.

(b) Provide technical assistance to municipalities and other persons engaged in solid waste management and provide training for proper operation of solid waste management facilities.

(c) Cooperate with appropriate local, state, interstate and federal

agencies to promote the operation of solid waste management facilities in a safe, sanitary, efficient and environmentally sound manner.

3. The department shall, in promulgating any new or revised rule or regulation, accompany such rule making with an environmental impact statement or a written assessment stating the extent to or means by which such rule or regulation will prevent or reduce the factors identified in subparagraphs (i) through (vii) of paragraph (a) of subdivision two of this section.

4. Siting, design, construction, and operating requirements established pursuant to subdivision two of this section for solid waste management facilities shall be embodied in rules and regulations of the department promulgated pursuant to the state administrative procedure act.

5. The commissioner shall cause program plans to be prepared for all solid waste management assistance programs of the department enacted or substantially modified by the solid waste management act of 1988 or hereafter enacted, for the program of funding small scale, low technology approaches to resource recovery pursuant to section 51-0905 of this chapter, and for the local resource reuse and development program established by section 27-0405 of this article. Such plans shall be consistent with the legislative intent and statutory authorization for such programs. Program plans shall be derived from and shall be consistent with the state solid waste management policy set forth in section 27-0106 of this article. Such plans shall be transmitted to the temporary president and the minority leader of the senate and the speaker and the minority leader of the assembly within ninety days of the effective date of this act or of the effective date of any statute authorizing such program. Program plans shall describe the goals and objectives of each program, operational priorities and administrative procedures to be established in administering each program, shall guide the development of operating procedures and administrative rules and regulations governing each program, shall set forth the manner in which the program shall be coordinated with other solid waste management programs and shall set forth a description of the operating

relationships with the department of environmental conservation, other relevant agencies and authorities and regional and local public and private organizations.

6. Notwithstanding any other provision of law or rule or regulation to the contrary, the owner or operator of a solid waste management facility engaged in the storage of one thousand or more waste tires in existence on or after the effective date of this subdivision shall submit to the department a completed application for a permit to continue to operate such facility, or cease operations and begin removal of the waste tires from the facility and dispose of or treat them in a lawful manner pursuant to a removal plan approved by the department. The owner or operator must provide financial assurance to cover the cost of closure of the facility at its maximum capacity, in a form and amount acceptable to the department, before a permit will be issued. Any owner or operator who obtained a permit pursuant to this subdivision before the effective date of the waste tire management and recycling act of 2003 shall provide such financial assurance within one hundred eighty days of the effective date of such act. Failure to provide or maintain financial assurance shall be grounds for the denial or revocation of a permit.

§ 27-0704. Land burial and disposal in the counties of Nassau and Suffolk; special provisions.

1. Definitions. As used in this section the following terms shall have the following meanings:

a. "Clean fill" shall mean material consisting of concrete, steel, wood, sand, dirt, soil, glass, or other inert material designated by the commissioner.

b. A "deep flow recharge area" shall mean a sensitive recharge area within the counties of Nassau and Suffolk within the boundaries of hydrogeologic zones I, II and III as defined in the Long Island Comprehensive Waste Treatment Management Plan of nineteen hundred seventy-eight.

c. "Downtime waste" shall mean any treatable or burnable waste accumulated during a scheduled or unscheduled maintenance period of a treatment facility.

d. "Hazardous waste" shall be defined as promulgated by the provisions of section 27-0903 of this article.

e. "Landfill" shall mean a disposal facility at which solid waste, or its residue after treatment, is intentionally placed and at which, waste shall remain after closure.

f. "Long Island Comprehensive Waste Treatment Management Plan of nineteen hundred seventy-eight" shall mean the study prepared by the Long Island Regional Planning Board pursuant to section two hundred eight of the federal water pollution control act.

g. "Treatment facility" shall mean resource recovery, incineration, composting, or other process as approved by the commissioner through which solid waste is put in order to reduce volume and toxicity.

h. "Untreatable waste" shall mean that material that because of its size or composition cannot be processed by a treatment facility.

2. The Long Island Comprehensive Waste Treatment Management Plan of nineteen hundred seventy-eight shall be kept on file in the office of the commissioner. The hydrogeologic zones and their attendant boundaries as specified in the aforementioned plan are hereby adopted. Any changes made in the boundaries and accepted by the commissioner shall be considered as automatically adopted for the purposes of this section.

3. On or after the effective date of this section and except as provided herein, no person shall commence operation, including site preparation, of a new landfill or of an expansion to an existing landfill which is located in a deep flow recharge area. However, the commissioner, after conducting a public hearing, may approve a limited expansion of any existing landfill in a deep flow recharge area for the

sole purpose of providing for solid waste disposal capacity prior to the implementation of a resource recovery system. The commissioner shall not approve any such expansion unless he finds that the owner of such landfill is a municipality that is implementing a resource recovery system which is acceptable to the commissioner and which will be operational no later than seven years after the effective date of this section and that no other feasible means of solid waste management is available, taking into account technological, economic and other essential factors.

4. On or after the effective date of this section, no person shall commence operation, including site preparation, of a new landfill or of an expansion to an existing landfill, which is located in the county of Nassau or Suffolk outside of deep flow recharge areas unless:

a. The commissioner has made an affirmative determination that such landfill will not pose a threat to groundwater quality; and

b. The owner or operator of the landfill has posted a financial guarantee such as, but not limited to, pollution liability insurance, sureties, performance bonds and/or trust funds acceptable to the commissioner securing the cost of corrective treatment, or the development of alternative water sources, should such landfill become a source of groundwater, surface water, or air pollution. The size of the financial guarantee, the financial stability of the surety, and the terms of posting shall be determined by the commissioner. Financial surety shall also be arranged to ensure the proper operation and maintenance of leachate and other collection and treatment systems for a period of time, as determined by the commissioner, after a landfill is closed; and

c. The landfill is underlain by two or more natural and/or synthetic liners each with provisions for leachate collection, and has a treatment and disposal system, all of which are approved by the commissioner. Any natural clay liners shall have a minimum compacted thickness of two feet and all liners shall have a maximum hydraulic conductivity not to exceed one times ten to the minus seven centimeters per second. If the landfill

uses two synthetic liners, the department shall require that the liners are of different chemical compositions; and

d. The landfill is designed and operated to minimize the migration of methane gas or other gases beyond the facility boundaries so as to avert the creation of a nuisance or a danger to property or public health; and

e. The landfill is prohibited from accepting industrial, commercial or institutional solid or liquid waste that is hazardous; and

f. The landfill is not located in a freshwater wetland, tidal wetland or floodplain as identified by the department.

g. Except as provided herein, the landfill accepts only material which is the product of resource recovery, incineration or composting.

Downtime waste and wastes that are untreatable by a resource recovery system may be disposed of when handled as provided in this paragraph. Downtime waste and untreatable waste that is landfilled may only be deposited in a special disposal area that is located and constructed so as to segregate these wastes and minimize their effect on residents of the surrounding area. Not more than ten percent of the annual rated capacity of a resource recovery facility may be disposed of as downtime waste per year. However, up to ten percent of the annual rated capacity of more than one resource recovery facility may be so disposed of at a single landfill.

Any such landfill may also accept wastes other than those authorized in this subdivision whenever such disposal is approved by the commissioner based upon a finding made after the opportunity for a public hearing that (i) no resource recovery facility is available to accept such waste; (ii) the owner of the landfill is making all reasonable efforts to implement a resource recovery system acceptable to the commissioner; and (iii) that the landfilling of such wastes will not have significant adverse environmental impacts. In granting any such approval, the commissioner shall impose conditions necessary to mitigate any adverse environmental impacts to the maximum extent practicable and shall impose a schedule under which the municipality shall implement an

acceptable resource recovery system.

5. Within seven years of the effective date of this section, no person shall operate a landfill existing on the effective date of this section in the counties of Nassau and Suffolk unless:

a. The owner or operator of the landfill has posted a financial guarantee such as, but not limited to, pollution liability insurance, sureties, performance bonds and/or trust funds acceptable to the commissioner securing the cost of corrective treatment, or the development of alternative water sources, should such landfill become a source of groundwater, surface water or air pollution. The size of the financial guarantee, the financial stability of the surety, and the terms of posting shall be determined by the commissioner. Financial surety shall also be arranged to ensure the proper operation and maintenance of leachate and other collection and treatment systems for a period of time, as determined by the commissioner, after a landfill is closed; and

b. The landfill is underlain by two or more natural and/or synthetic liners each with provisions for leachate collection, and has a treatment and disposal system, all of which are approved by the commissioner. Any natural clay liners shall have a minimum compacted thickness of two feet and all liners shall have a maximum hydraulic conductivity not to exceed one times ten to the minus seven centimeters per second. If the landfill uses two synthetic liners, the department shall require that the liners are of different chemical composition; and

c. The landfill is designed and operated to minimize the migration of methane gas or other gases beyond the facility boundaries so as to avert the creation of a nuisance or a danger to property or public health; and

d. The landfill does not accept industrial, commercial or institutional solid or liquid waste that is hazardous; and

e. The landfill is not located in a freshwater wetland, tidal wetland or floodplain as identified by the department.

f. Except as provided herein, the landfill accepts only material which is the product of resource recovery, incineration or composting. Downtime waste and wastes that are untreatable by a resource recovery system may be disposed of when handled as provided in this paragraph. Downtime waste and untreatable waste that is landfilled may only be deposited in a special disposal area that is located and constructed so as to segregate these wastes and minimize their effect on residents of the surrounding area. Not more than ten percent of the annual rated capacity of a resource recovery facility may be disposed of as downtime waste per year. However, up to ten percent of the annual rated capacity of more than one resource recovery facility may be so disposed of at a single landfill.

If the landfill is located outside of the deep flow recharge area, such landfill may also accept wastes other than those authorized in this subdivision whenever such disposal is approved by the commissioner based upon a finding made after the opportunity for a public hearing that (i) no resource recovery facility is available to accept such waste; (ii) the owner of the landfill is making all reasonable efforts to implement a resource recovery system acceptable to the commissioner; and (iii) that the landfilling of such wastes will not have significant adverse environmental impacts. In granting any such approval, the commissioner shall impose conditions necessary to mitigate any adverse environmental impacts to the maximum extent practicable and shall impose a schedule under which the municipality shall implement an acceptable resource recovery system.

6. Notwithstanding the other provisions of this section, the commissioner may allow, by permit, the disposal of clean fill material in the counties of Nassau and Suffolk. Such material shall not be contaminated with hazardous wastes.

§ 27-0705. Adoption of rules and regulations; public hearings.

A rule or regulation or any amendment or repeal thereof shall not be

adopted until after public hearing thereon. Notice of such hearing shall be given at least sixty days prior to the scheduled date of the hearing by public advertisement in the area of the state concerned of the date, time, place and purpose of such hearing. At such hearing, opportunity to be heard shall be given to the public. A rule or regulation or an amendment or repeal thereof shall not become effective until sixty days after certified copies thereof shall have been filed with the secretary of state.

§ 27-0706. Closure requirements for certain landfills and recycling requirements for certain municipalities.

1. For the purpose of this section the term "landfill" shall have the same meaning as such term is defined in subdivision twelve of section 27-0901 of this article.

2. a. This section shall apply to all landfills that:

(i) operated during nineteen hundred ninety-five;

(ii) did not have a valid permit to operate pursuant to this article during such year; and

(iii) accepted for disposal an average of more than eight thousand tons per day of solid waste during such year.

b. Notwithstanding any provision of law or order to the contrary, no landfill covered by this section shall accept solid waste for disposal after January first, two thousand two.

§ 27-0707. Permits for new solid waste management facilities.

1. On and after the effective date of the initial rules and regulations of the department promulgated pursuant to subdivision one of section 27-0703, no person shall commence operation, including site preparation and construction, of a new solid waste management facility until such person has obtained a permit pursuant to this title.

2. The rules and regulations adopted by the department to implement this article and the provisions of article seventy of this chapter and rules and regulations adopted thereunder shall govern permit applications, renewals, modifications, suspensions and revocations under this article. The administration of such permit applications shall be in accordance with article eight of this chapter. The rules and regulations adopted by the department to implement this article shall specify, at a minimum:

a. that an application for a permit to construct, or to renew a permit to operate, a solid waste management facility shall not be complete unless the application includes a description of how the proposed facility is consistent with the state solid waste management policy identified under section 27-0106 of this article.

b. that on or after April first, nineteen hundred ninety-one an application for a permit to construct a solid waste management facility made by or on behalf of a municipality in a planning unit shall not be complete until a local solid waste management plan which contains all of the elements set forth in paragraph b of subdivision one of section 27-0107 of this article is in effect for such municipality; provided, however, that this requirement may be waived by the commissioner for a permit to construct a solid waste management facility designed for the treatment, storage or disposal of sewage sludge and needed to implement a project described in subparagraph one of paragraph (c) of subdivision three of section ninety-seven-m of the state finance law that will expedite compliance with the Ocean Dumping Ban Act of 1988. For any such permit application submitted by a municipality prior to April first, nineteen hundred ninety-one, the department shall, upon issuance of a permit, require as a permit condition that the municipality or planning unit of which it is a part have in effect a local solid waste management plan which contains all of the elements set forth in paragraph b of subdivision one of section 27-0107 of this article by a date certain, which shall be no sooner than April first, nineteen hundred ninety-one, unless otherwise agreed by the municipality, and which shall be no later than April first, nineteen hundred ninety-two. For any such permit application submitted on behalf of a municipality

prior to April first, nineteen hundred ninety-one, the department shall require as a permit condition that the proposed solid waste management facility shall be prohibited from accepting waste from such municipality by a date certain, which shall be no sooner than April first, nineteen hundred ninety-one and no later than April first, nineteen hundred ninety-two, unless such municipality or the planning unit of which it is a part has in effect a local solid waste management plan which contains all of the elements set forth in paragraph b of subdivision one of section 27-0107 of this article. For purposes of this paragraph, "planning unit" shall have the same meaning as set forth in subdivision one of section 27-0107 of this article.

c. that a permit will be issued only if:

(1) the proposed facility will be in full compliance with the applicable rules and regulations in effect on the date of submission of the permit application; and

(2) there has been opportunity for public review and comment at relevant stages of the project planning process; and

(3) a determination has been made that the proposed facility will not result in unfair competition between municipalities and scrap dealers, processors and consumers; and

(4) the applicant has received or will receive the written opinion of counsel to each municipality or public authority which has entered into a contract, lease or rental agreement with the proposed facility that such contract, lease or rental agreement is in compliance with the applicable requirements of sections one hundred one, one hundred three and one hundred twenty-w of the general municipal law.

2-a. No exemption from the permit requirements imposed by this title shall be allowed for the establishment of a new solid waste management facility for the disposal of nonputrescible construction and demolition debris when such facility will be used for the deposition of construction and demolition debris from an offsite source when a fee or any other form of consideration is required for the privilege of using the facility for the disposal of construction and demolition debris.

2-b. The department of environmental conservation shall not issue a

permit to construct or a permit to operate a facility in Nassau county to process sewage sludge into a pellet-like product unless and until a full environmental review of the proposed facility has been conducted, including but not limited to full consideration of the impacts such facility may have upon the proximity of schools, churches, hospitals, residences, commercial districts to such facility; ambient air quality, traffic, community character and growth patterns, local aesthetics and economics, and public health and safety in the vicinity of such facility; and unless and until all relevant adverse impacts identified through the review process have been addressed by the applicant and avoided as necessary to protect the public health and safety of residents and others residing and/or working in the vicinity of any such proposed facility. The department shall conduct a minimum of one public hearing in Nassau county, as a part of such full environmental review of the proposed facility.

2-c. No permit for a solid waste management facility shall be issued for a facility located on land in agricultural production which is located within an agricultural district, or land in agricultural production that qualifies for and is receiving an agricultural assessment pursuant to section three hundred six of the agriculture and markets law. Nothing contained herein, however, shall be deemed to prohibit the issuance of such permit after appropriate review by the department when:

a. the owner of such land has entered into a written agreement which shall indicate his consent for site consideration; or

b. the applicant for the permit has made a commitment in the permit application to fund a farm land protection conservation easement within a reasonable proximity to the proposed project in an amount not less than the dollar value of any such farm land purchased; or

c. the commissioner of agriculture and markets has made a determination and the commissioner concurs that the agricultural land to be taken constitutes less than five percent of the project site.

For purposes of this subdivision, "solid waste management facility" shall have the same meaning as provided in this title, but shall not include solid waste transfer stations, or land upon which sewage sludge is applied, and determinations regarding agricultural district boundaries and agricultural assessments will be based on those in effect as of the date and initial determination is made, pursuant to article eight of this chapter, as to whether an environmental impact statement needs to be prepared for the proposed project.

3. Where a permit for a solid waste management facility has been granted, the commissioner may upon request make available such department personnel and expertise as may be needed to inform the public as to the nature of the facility which has been granted a permit, the nature of the facility operations authorized by the permit, and the effect of the permit conditions, if any, which are imposed in connection with the permit.

4. Where the commissioner denies a permit application, he shall provide to the applicant a written statement of the reasons for this determination.

5. Receipt of a permit pursuant to this section shall not relieve any person of the responsibility of constructing such facility in full compliance with any applicable laws, rules or regulations or of operating the facility in full compliance with all applicable laws, rules and regulations, including rules and regulations of the department promulgated pursuant to subdivision one of section 27-0703 and taking effect after the date application was made to the department.

6. Nothing herein shall relieve any person of the responsibility of fully complying with all applicable laws, rules and regulations, including regulations of the department, promulgated pursuant to subdivision one of section 27-0703, in the operation of a solid waste management facility not subject to the department's review under this section.

7. Notwithstanding any provision of law or order to the contrary, no

permit to construct and/or operate a solid waste management facility shall be issued for any incinerator for which a permit application was deemed complete by the department before April first, nineteen hundred eighty-six and for which no such permit was issued by the department before April first, nineteen hundred ninety-six. For the purpose of this subdivision, the term "incinerator" shall mean an enclosed device using controlled flame combustion, the primary purpose of which is to thermally break down solid, liquid or gaseous wastes, including refuse-derived fuel, producing residue that contains little or no combustible materials.

§ 27-0711. Local laws, ordinances and regulations.

Any local laws, ordinances or regulations of any governing body of a county, city, town or village which are not inconsistent with this title or with any rule or regulation which shall be promulgated pursuant to this title shall not be superseded by it, and nothing in this title or in any rule or regulation which shall be promulgated pursuant to this title shall preclude the right of any governing body of a county, city, town or village to adopt local laws, ordinances or regulations which are not inconsistent with this title or with any rule or regulation which shall be promulgated pursuant to this title provided, however, that the exercise of such right by a county shall relate only to the area thereof outside any city, village or area of any town outside the village or villages therein during such time as such city, village or town has local laws, ordinances or regulations consistent with this title or with any rule or regulation which shall be promulgated pursuant to this title. Any local laws, ordinances or regulations of a county, city, town or village which comply with at least the minimum applicable requirements set forth in any rule or regulation promulgated pursuant to this title shall be deemed consistent with this title or with any such rule or regulation.

§ 27-0712. Coverage of all vehicles, including barges transporting solid waste.

1. Legislative findings and intent. It is the purpose of this section to assure that solid waste management is conducted in a safe, sanitary, efficient and environmentally sound manner throughout the state. The legislature finds and declares that current law and regulations have not always achieved this purpose. A large percentage of solid waste is transferred and transported over water as well as by container truck. Some type of cover is necessary to protect against the spillage of waste and emission of odors during its transfer and transportation. The legislature further finds and declares that legislation is necessary to remedy this situation by requiring the responsible parties to cover such vehicles with devices which will accomplish the intent of this section.

2. A municipality or any individual, firm or corporation acting on its behalf or any other individual, firm or corporation shall not cause or permit any solid waste to be transported on any vehicle, barge, ship, or scow unless the solid waste on the vehicle, barge, ship, or scow is covered provided, however, that putrescible waste transported by rail shall be covered with sealing hard lids in a manner not inconsistent with Federal Railroad Administration regulations, and non-putrescible waste shipped by rail shall be covered with hard tarping securely fastened over the load, which shall not exceed the height of the side of the rail container, in a manner not inconsistent with Federal Railroad Administration regulations.

3. The department shall monitor and inspect such vehicles, barges, ships and scows transporting solid waste on a regular basis to insure that they are covered and in compliance with the provisions of this section.

§ 27-0715. Solid waste management technical assistance.

1. The department shall conduct a comprehensive program of technical assistance to local governments, the private sector and individuals to enhance their capabilities to properly plan for and implement solid waste management programs consistent with the state solid waste

management policy set forth in section 27-0106 of this article. This program will establish continuing and comprehensive programs of technical assistance designed to consolidate, simplify, or expedite the development and implementation of such solid waste management programs.

2. In conducting the program set forth in this section, the department shall prepare, provide and distribute to municipalities, and may distribute to other persons, information and other technical assistance concerning development and implementation of solid waste management plans, programs and facilities. Such information and assistance may be in the form of manuals, generic assessments or technical assistance documents and other written materials and, as may be appropriate, consultation services. Such information and assistance may be provided by the department directly or by contract, shall be directed toward furthering the implementation of the state solid waste management policy established pursuant to section 27-0106 of this article and the development of local solid waste management plans pursuant to section 27-0107 of this article and shall address:

(a) available techniques and technologies for various forms of solid waste management and recommendations concerning methods by which to achieve an appropriate balance among those techniques and technologies, and an assessment of their feasibility and usefulness under varying local circumstances;

(b) applicable regulatory programs and permit processes;

(c) with the assistance of the commissioner of economic development, and in cooperation with the bureau of waste reduction and recycling established pursuant to this article, assistance in developing and implementing waste reduction, source separation and recycling programs;

(d) the potential availability of financial assistance from existing state programs and other sources for any or all aspects of a proposed solid waste management program;

(e) with the assistance of the attorney general, the state comptroller, and other appropriate officers and agencies of the state, the development and implementation of contracts and service agreements, qualifications of vendors, and use of the procurement process, so as to promote compliance with the applicable provisions of the general municipal law and federal and state anti-trust statutes;

(f) model local laws or ordinances to effectively implement sound solid waste management programs, including source separation and recycling efforts and regional disposal, management, and marketing activities;

(g) generic analyses of factors associated with the construction and operation of municipal solid waste management facilities;

(h) a clearinghouse of information and suggestions from other states, agencies, and municipalities, the federal government, and other sources pertaining to development and implementation of solid waste management programs, including those relating to cost avoidance, public education and information efforts and potential host community incentives; and

(i) the availability of consultation services pertaining to the issues identified and referred to in this section.

3. In effectuating the state solid waste management policy set forth in section 27-0106 of this article, the technical assistance personnel and resources of the department and local officials should work as a team, each bringing their respective authority and responsibility to bear in the development and implementation of a viable local solid waste management program, or, as may be appropriate, as required to address specific problems associated with such programs. Accordingly, within the limits of appropriation therefor, upon designation of the local participants by a requesting local government, the department shall provide staff and other resources, as appropriate, to work jointly and in cooperation with the requesting local government on a continuing basis, as needed. State and local officials when working as a team should make available to interested parties periodic assessments of the status and effectiveness of the team's efforts.

4. In addition to providing technical assistance to municipalities and planning units in addressing the issues identified in subdivision two of section 27-0107 of this article as they relate to the particular circumstances confronted by such municipalities and planning units, the department shall assist municipalities in identifying and evaluating:

(i) alternatives available for management of current and future solid waste, including costs and impacts of specific waste management methods; and

(ii) regulatory requirements associated with the implementation of such alternatives.

5. In administering the provisions of this section, the department shall provide to the governor, the legislature, and local governments on or before December thirty-first, nineteen hundred eighty-eight and annually thereafter, a report assessing the assistance programs established pursuant to this title, including the number of municipalities and other entities which received assistance, a description of the services provided and an assessment of program effectiveness.

6. The department shall submit to the director of the division of the budget, the chairman and ranking minority member of the senate finance committee and the chairman and ranking minority member of the assembly ways and means committee an evaluation of the assistance programs established in this section, and their implementation, prepared by an entity independent of the department. Such evaluation shall be submitted by September first, nineteen hundred ninety and by September first, every two years thereafter.

7. In administering assistance programs pursuant to this section, the commissioner shall consider the potential for coordination and consolidation of solid waste management practices, including marketing efforts associated with source separation and recycling programs, among municipalities and shall encourage such cooperation and consolidation where it is practicable and would result in enhanced environmental protection and cost effectiveness.

8. To effectuate the purposes of this section, the department may request and shall be entitled to receive, from any state agency or public authority and the same are authorized to provide, such assistance, services, facilities, and data as will enable the department to carry out its functions, powers, and duties.

§ 27-0717. Bureau of waste reduction and recycling.

1. The commissioner, with the approval of the director of the division of the budget, shall establish within the department a bureau of waste reduction and recycling. Such bureau shall be a separate entity to assist in the development and promotion of local waste reduction, source separation and recycling programs. Such programs shall promote the source separation, collection, intermediate processing and marketing of waste materials that are now being disposed of as municipal solid waste in New York state. The bureau shall:

(a) promote the development and implementation of programs by municipalities;

(b) serve as a clearinghouse for information regarding existing source separation and recycling programs;

(c) identify special needs and problems in developing and implementing source separation and recycling programs, and recommend approaches and solutions to address such identified needs and problems; and

(d) coordinate its activities with other solid waste assistance programs of the department.

2. Pursuant to regulations promulgated in accordance with the state administrative procedure act, the bureau shall establish an official state recycling emblem and conduct a consumer awareness program with respect thereto. Such emblem shall be of a design to include terms or symbols for "New York State", and "recyclable" and/or "recycled" and/or "reuseable". Standards for such terms or symbols shall be developed pursuant to regulations which with respect to (a) "recyclable" shall address material for which technologies or systems for reuse as a secondary material exist; and (b) "recycled" shall address material containing a specified minimum percentage by weight of secondary materials content; and (c) "reusable" shall address ability to be repeatedly returned for refilling or reuse with the original product. Further, such regulations may stipulate prohibitions on the unauthorized use of the state recycling emblem.

3. The bureau shall implement and conduct a program of public education and information to inform the public and private sectors of the state as to the merits of the use of secondary materials and for

consumers to actively seek consumer products which contain secondary materials or which are easily recycled or reused. Such program shall communicate the importance of minimizing the need for new solid waste disposal capacity and of conserving natural resources, avoiding harm to the environment or public health, and promoting resource conservation, recovery and reuse by industry, the state of New York, public and quasi-public agencies and authorities, local governments and the general public of the state.

4. The bureau shall be responsible for the administration of the New York state local resource reuse and development program established pursuant to sections 27-0403 and 27-0405 of this article.

§ 27-0719. Battery management and disposal.

1. Legislative intent. It is the intent of the legislature to minimize the risk to the environment posed by batteries, both in consumer and non-consumer uses, whether rechargeable or nonrechargeable. Such risk is to be addressed through the elimination of mercury in zinc carbon batteries, the minimization of mercury in alkaline manganese batteries, the redesign of certain products containing rechargeable batteries, and through the development of an action plan to establish a schedule for collection systems capable of providing for the recycling or disposal of all mercuric oxide batteries, silver oxide batteries, nickel cadmium batteries, small lead acid batteries, and other types of batteries the commissioner may identify.

2. Definitions. For the purposes of this section, the following definitions shall apply:

(a) A "battery" means a device consisting of one or more cells, each cell consisting of a positive electrode, a negative electrode and an electrolyte, which is used to provide stored electrical power.

(b) An "alkaline manganese battery" means a battery consisting of a manganese dioxide positive electrode, a zinc negative electrode and an alkaline electrolyte.

(c) A "mercuric oxide battery" means a battery consisting of a

mercuric oxide positive electrode and a zinc negative electrode.

(d) A "nickel cadmium battery" means a battery consisting of a nickel positive electrode and a cadmium negative electrode.

(e) A "small lead-acid battery" means a battery consisting of positive and negative electrode materials which are leads or compounds thereof, used in nonvehicular applications and weighing less than twenty-five pounds.

(f) A "zinc carbon battery" means a battery consisting of a manganese dioxide positive electrode, a zinc negative electrode, and a non-alkaline electrolyte.

(g) A "silver oxide battery" means a battery consisting of a silver oxide positive electrode, and a zinc negative electrode.

(h) A "battery pack" means one or more batteries enclosed in a housing.

(i) A "distributor" means a seller of batteries or devices that contain batteries at the time of sale.

(j) "Easily removed" means a battery or battery pack which is either detachable or readily removable by the consumer from a consumer product without cutting or desoldering any wires.

3. Mercury reduction and elimination. (a) No person may knowingly sell or offer for sale in New York state an alkaline manganese battery manufactured on or after January first, nineteen hundred ninety-two, which contains more than 0.025 percent mercury by weight of the battery; provided, however, that for alkaline manganese batteries having sizes and shapes resembling buttons or coins, the limitation on mercury content shall be twenty-five milligrams of mercury per battery.

(b) No person may knowingly sell or offer for sale in New York state a zinc carbon battery manufactured on or after January first, nineteen hundred ninety-three that contains a mercury concentration level of more than one part per million (0.0001%) by weight.

4. Rechargeable batteries. (a) No distributor may sell or offer for sale any product which contains a nickel cadmium or small lead-acid battery or battery pack manufactured after July first, nineteen hundred ninety-three unless:

(1) In the case of consumer products, the battery can be easily

removed by the consumer, or is contained in a battery pack that is separate from the product and can be easily removed from the product.

(2) In the case of nonconsumer products, the battery can be removed or is contained in a battery pack that is separate from the product.

(3) In all cases, the battery is clearly marked as to its type, so that consumers, collectors and recyclers may easily identify chemical content.

(b) The commissioner shall authorize the sale of a consumer product or a nonconsumer product which does not comply with paragraph (a) of this subdivision, if the commissioner determines that:

(1) The product was available for sale on or before the effective date of this section, and the product cannot reasonably be redesigned and manufactured prior to July first, nineteen hundred ninety-three; provided, however, that such authorizations shall not apply to products manufactured on or after July first, nineteen hundred ninety-five; or

(2) Design of the product to comply with paragraph (a) of this subdivision would result in significant danger to public health and safety.

5. Technology assessment, collection and recycling. On or before January first, nineteen hundred ninety-three, the commissioner, in consultation with the commissioner of economic development and battery manufacturers, battery recyclers and others, shall report to the governor and the legislature on an action plan which reviews the technological feasibility of requiring the elimination of mercury from alkaline manganese batteries, and establishes a schedule for collection systems capable of providing for the recycling or disposal of all mercuric oxide batteries, silver oxide batteries, nickel cadmium batteries, small lead acid batteries, and such other type of batteries as the commissioner may identify. Such plan and schedule shall identify the appropriate role of battery manufacturers, retailers, consumers, recyclers and others in the implementation of collection systems and provide an evaluation of the feasibility of a returnable battery deposit system in New York state; provided, however, that nothing contained herein shall be deemed to authorize the commissioner to impose such system or systems.

TITLE 9

INDUSTRIAL HAZARDOUS WASTE MANAGEMENT

- Section 27-0900. Applicability.
- 27-0901. Definitions.
- 27-0903. Identification and listing of hazardous waste.
- 27-0905. Manifest system.
- 27-0907. Standards applicable to generators of hazardous waste.
- 27-0908. Hazardous waste reduction plans.
- 27-0909. Standards applicable to transporters of hazardous waste.
- 27-0910. Standards applicable to marketers of hazardous waste fuel.
- 27-0911. Standards applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities.
- 27-0912. Land disposal of hazardous waste.
- 27-0913. Permits and registrations for storage, transportation, treatment, or disposal of hazardous wastes.
- 27-0914. Unauthorized possession, disposal and dealing in hazardous wastes.
- 27-0915. Inspections and general reporting.
- 27-0916. Department authority for cleanups.
- 27-0917. Financial requirements for hazardous waste facilities.
- 27-0918. Closure and post-closure plans.
- 27-0919. Proprietary information.
- 27-0920. Reports.
- 27-0921. Short-term management.
- 27-0922. Prohibitions.
- 27-0923. Special assessments on hazardous wastes generated.
- 27-0924. Hazardous materials enforcement training program.
- 27-0925. Local assessments on hazardous waste treatment, storage and disposal facilities.
- 27-0926. Use and recycling of elemental mercury and dental amalgam by dentists.

§ 27-0900. Applicability.

It is the purpose of this title to regulate the management of hazardous waste (from its generation, storage, transportation, treatment and disposal) in this state and to do so in a manner consistent with the Federal Solid Waste Disposal Act, as amended by public law 94-580, the Resource Conservation and Recovery Act of 1976, and as further amended by public law 95-609, the Quiet Communities Act of 1978, public law 96-463, the Used Oil Recycling Act of 1980, public law 96-482, the Solid Waste Disposal Act Amendments of 1980, public law 98-616, the Hazardous and Solid Waste Amendments of 1984, public law 99-339, the Safe Drinking Water Act Amendments of 1986, and public law 99-499, the Superfund Amendments and Reauthorization Act of 1986, hereinafter referred to as "RCRA". Nothing in this title shall authorize the department to adopt or amend any rule or regulation in a manner less stringent than provided in RCRA.

§ 27-0901. Definitions.

When used in this title:

1. "Administrator" means the administrator of the federal environmental protection agency.
2. "Disposal" means the abandonment, discharge, deposit, injection, dumping, spilling, leaking or placing of any substance so that such substance or any related constituent thereof may enter the environment. Disposal also means the thermal destruction of waste or hazardous waste and the burning of such wastes as fuel for the purpose of recovering useable energy.
3. "Hazardous waste" means a waste or combination of wastes, which because of its quantity, concentration, or physical, chemical or infectious characteristics may:
 - a. Cause, or significantly contribute to an increase in mortality or

an increase in serious irreversible, or incapacitating reversible illness; or

b. Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed, or otherwise managed.

4. "Hazardous waste generation" means the act or process of producing hazardous waste.

5. "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous wastes.

6. "Manifest" means the form used for identifying the quantity, composition, and the origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment, or storage.

7. "Person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, state, federal government and any agency thereof, municipality, commission, political subdivision of a state, or any interstate body.

8. "Storage" means the containment of hazardous waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous waste.

9. "Transport" means the movement of hazardous waste from the point of generation to any intermediate points and finally to the point of ultimate storage or disposal.

10. "Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical or biological character or composition of any hazardous waste so as to neutralize such waste or as to render such waste nonhazardous, safer for transport,

amenable for recovery, amenable for storage, or reduced in volume.

11. "Waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section four hundred two of the federal Water Pollution Control Act, as amended (86 Stat. 880), or source, special nuclear or by-product material as defined in the Atomic Energy Act of 1954, as amended (68 Stat. 923) except as may be provided by existing agreements between the state of New York and the government of the United States.

12. "Landfill" means a disposal facility or part of a facility where solid waste, including hazardous waste, is placed in or on land, and which is not a land treatment facility, a surface impoundment, or an injection well.

13. "Resource recovery" means any method, technique, or process utilized to separate, process, modify, convert, treat or otherwise prepare hazardous waste so that the component materials or substances thereof may be beneficially used or reused as raw materials, exclusive of useable energy.

* 14. "Commercial hazardous waste facilities" or "commercial facilities" means a facility that receives from off-site any hazardous waste from any person that is not part of the same trust, firm, joint stock company, corporation (including a government corporation), partnership, association, state, federal government and any agency thereof, municipality, commission, political subdivisions of a state, or any interstate body except when small quantities of hazardous wastes from public bodies are accepted on an emergency basis with the approval of the commissioner on a no-cost basis.

* NB There are 2 sub 14's

* 14. "Environment" means any water, water vapor, any land including

land surface or subsurface, air, fish, wildlife, biota and all other natural resources.

* NB There are 2 sub 14's

15. "Secure landburial facility" means a land disposal facility meeting the design and operation requirements promulgated by the department pursuant to this title for the proper disposal of hazardous wastes so that such wastes are immobilized or otherwise prevented from release to the environment or rendered harmless or decomposed into harmless materials within the facility.

§ 27-0903. Identification and listing of hazardous waste.

1. The commissioner shall promulgate regulations in a manner consistent with the state administrative procedure act, setting forth the criteria for identification and listing of hazardous wastes. Based on these criteria, the commissioner shall promulgate a list of hazardous wastes (which list shall also include a sublist of acute hazardous wastes) and shall identify hazardous waste by characteristic, in a manner at least as stringent as promulgated by the administrator pursuant to RCRA. The list of hazardous wastes and the identification of hazardous waste by characteristic shall determine those hazardous wastes which shall be subject to this title.

2. Where appropriate and consistent with the provisions of RCRA, such regulations shall provide for exemptions from the provisions of this title for the management of small quantities of wastes listed or identified as hazardous when generated by research and limited use operations.

3. The regulations setting forth the criteria for identification and listing, and the list of, hazardous wastes subject to this title may be amended by the commissioner from time to time as appropriate, based upon hazardous waste conditions of particular relevance to the state. The commissioner may promulgate the appropriately amended regulations only upon a showing of the circumstances constituting the hazardous waste

conditions of particular relevance to this state, and then in a manner consistent with the state administrative procedure act.

4. Uniform treatment of waste. All waste resulting from the exploration, development, extraction or production of crude oil or natural gas, including but not limited to drilling fluids and produced waters, shall be considered hazardous waste under the law of this state and subject to all pertinent generation, transportation, treatment, storage, and disposal laws and regulations, if such waste meets the definition of hazardous waste set forth in subdivision three of section 27-0901 of this chapter. Within six months from the effective date of this subdivision, the department shall make all necessary changes to bring its regulations into compliance with this section.

§ 27-0905. Manifest system.

Not later than six months after the promulgation of regulations for hazardous wastes pursuant to paragraph one of section 27-0903 of this title, and after consultation and coordination with the commissioner of transportation, the commissioner shall promulgate in a manner consistent with the state administrative procedure act, regulations establishing a manifest system by which to monitor the transportation, storage, and disposal of hazardous waste and to assure that such acts are performed in a manner consistent with this title. Such manifest systems shall conform to that adopted by the administrator pursuant to RCRA. Where appropriate and consistent with the provisions of RCRA, the commissioner may provide for exemption from the provisions of this section for the transport of hazardous waste by the generator from one facility to another owned and operated by the generator. As a minimum such system shall require that:

1. Hazardous waste generators use a specified form identifying the composition, quantity and disposition of each shipment of hazardous waste;

2. Copies of manifest be carried during transportation of hazardous

waste; and

3. Hazardous waste generators, hazardous waste transporters and owners and operators of hazardous waste treatment, storage and disposal facilities maintain copies of manifest for at least three years.

§ 27-0907. Standards applicable to generators of hazardous waste.

Not later than eighteen months after the effective date of this title, in a manner consistent with the state administrative procedure act, the commissioner shall promulgate regulations establishing standards which shall be applicable to generators of hazardous waste identified or listed under this title, necessary to protect human health and the environment. Such standards shall establish requirements respecting:

1. Recordkeeping practices that accurately identify the quantities of such hazardous waste generated, the constituents thereof which are significant in quantity or in potential harm to human health or the environment, and the disposition of such wastes;

2. Labeling practices for any containers used for the storage, transport, or disposal of hazardous waste which will identify accurately such wastes, and be in conformance with federal transportation requirements;

3. Use of appropriate containers for hazardous waste;

4. Furnishing of information on the chemical composition of such hazardous waste to persons transporting, treating, storing, or disposing of such wastes;

5. Use of the manifest system established under section 27-0905 of this title to assure that all such waste generated is designated for treatment, storage, or disposal in treatment, storage or disposal facilities (other than facilities on the plant site where the waste is generated) for which a permit has been issued as provided in section

27-0913 of this title; and

5-a. Each manifest shall contain a certification by the generator that:

a. the generator of the hazardous waste has in place a program to reduce the volume or quantity and toxicity of such waste to the degree determined by the generator to be economically practicable or, if a hazardous waste reduction plan is required by and reviewable under section 27-0908 of this title, a program that meets the requirements of that section; and

b. the proposed method of treatment, storage or disposal is that practicable method currently available to the generator which minimizes the present and future threat to human health and the environment.

6. Submission of an annual report to the commissioner, and additional reports at such times as the commissioner deems necessary, respecting

a. the quantities and composition of hazardous wastes identified or listed under this title, generated during a specified time period;

b. the disposition of all hazardous wastes reported under paragraph a of this subdivision;

c. for each waste reported under paragraph a of this subdivision, the efforts undertaken during the year to reduce the volume or quantity and toxicity of waste generated;

d. for each waste reported under paragraph a of this subdivision, the changes in volume or quantity and toxicity of waste actually achieved during the year in question in comparison with previous years;

e. certification on the part of the generator that it has in place a program to reduce the volume or quantity and toxicity of hazardous wastes to the degree determined by the generator to be economically practicable or, if a hazardous waste reduction plan is required by and

reviewable under section 27-0908 of this title, a program that meets the requirements of that section; and

f. certification that the treatment, storage or disposal method utilized by the generator is that practicable method currently available which minimizes present and future threats to human health and the environment.

7. The commissioner shall, within eighteen months after the effective date of regulations promulgated by the department pursuant to section 27-0905 of this chapter and annually thereafter, prepare and submit a report on the generating of hazardous wastes to the governor and legislature. Such report shall include, but not be limited to, the identity of generators within the state and the quantities, composition and disposition of hazardous wastes generated in the preceding year. Such information regarding quantities, composition and disposition shall be presented in aggregated form by waste type as generated in each of the department's administrative regions. The commissioner shall withhold information on hazardous wastes pursuant to section 27-0919 of this title in order to protect trade secrets.

§ 27-0908. Hazardous waste reduction plans.

1. When used in this section, the following terms shall have the following definitions:

a. "Acute hazardous waste" means any waste identified or listed as such in the regulations promulgated under section 27-0903 of this title.

b. "Generator" means any person, by site, whose act or process produces hazardous waste or whose act first causes a hazardous waste to become subject to regulation.

c. "Hazardous waste" means any waste identified or listed as such in the regulations promulgated under section 27-0903 of this title, including "acute hazardous waste".

2. For the purposes of this section, hazardous wastes generated by any corrective action required pursuant to this title for a release from a hazardous waste treatment, storage or disposal facility, or by the remediation of an inactive hazardous waste disposal site as defined in subdivision two of section 27-1301 of this article, or by the cleanup of a release to the environment reported pursuant to article 17, 37 or 40 of this chapter, or demolition and construction debris, or wastes which are otherwise subject to the requirements of this section shall not be included in the calculation of the amount of hazardous wastes generated by a person annually, nor shall such wastes be subject to the waste reduction planning requirements for this section.

3. a. Any generator of equal to or greater than one thousand tons of hazardous waste in the calendar year nineteen hundred ninety or any subsequent calendar year shall prepare, implement and submit to the department a written hazardous waste reduction plan on or before July first of the following calendar year.

b. Any generator of equal to or greater than five hundred tons of hazardous waste in the calendar year nineteen hundred ninety-one or any subsequent calendar year shall prepare, implement and submit to the department a written hazardous waste reduction plan on or before July first of the following calendar year.

c. Any generator of equal to or greater than fifty tons of hazardous waste in the calendar year nineteen hundred ninety-two or any subsequent calendar year shall prepare, implement and submit to the department a written hazardous waste reduction plan on or before July first of the following calendar year.

d. Any generator of equal to or greater than twenty-five tons of hazardous waste in the calendar year nineteen hundred ninety-five or any subsequent calendar year shall prepare, implement and submit to the department a written hazardous waste reduction plan on or before July first of the following calendar year.

e. Notwithstanding any other provision of this subdivision, any generator required to hold a hazardous waste storage, treatment or disposal permit for the on-site management of hazardous waste pursuant to section 27-0913 of this title shall prepare and submit to the department, a written hazardous waste reduction plan on or before July first, nineteen hundred ninety-one or as part of any new permit application, and shall thereafter implement the plan.

4. The hazardous waste reduction plan required under this section shall include:

a. an identification of the amounts and types of any acute hazardous waste as reported pursuant to subdivision six of section 27-0907 of this title; and an identification of the amounts and types of hazardous wastes generated during the previous calendar year which are either (i) in amounts greater than five tons or (ii) which account for at least ninety percent of all hazardous wastes generated by such generator at that facility, whichever represents the greater amount of hazardous wastes. For each such hazardous waste, such plan shall also include:

(1) a description of the process, operation or activity that resulted in the generation of such waste;

(2) a calculation of the amount of such waste generated per unit of production output or raw material used, or other appropriate index, or a demonstration why the calculation cannot be provided; and

(3) an estimate, and bases for such estimate, of the costs incurred for managing such waste, including but not limited to, storage costs, on-site treatment or disposal costs, transportation costs, commercial disposal fees and regulatory fees or a demonstration why such calculation cannot be provided.

b. For each such waste identified pursuant to paragraph a of this subdivision, an evaluation of the technical feasibility and economic practicability, including return on investment, of implementing waste reduction processes, technologies or operational changes to reduce or eliminate the generation of such waste. Such evaluation shall consider the technical feasibility and economic practicability, where applicable, of:

(i) substitution of non-toxic or less toxic inputs to the production process which result in a reduction in the volume or toxicity of such waste;

(ii) reformulation or redesign of end products to eliminate production inputs or production processes that result in the generation of such waste;

(iii) modification or redesign of production processes, technologies or equipment which result in a reduction in the volume or toxicity of such waste;

(iv) changes in materials usage, handling and storage practices, including improved inventory control, preventive maintenance, spill and leak prevention, and waste segregation, which will reduce the volume or toxicity of such waste;

(v) the use of closed loop reclamation, reuse or recycling processes or technologies which directly recycle such wastes back into the production process; and

(vi) the use of on-site or off-site recycling technologies or processes that reduce the amount of such waste that must be treated or disposed of.

c. Establishment and description of a program for implementing technically feasible and economically practicable waste reduction alternatives. Such program shall include:

(i) establishment of a general corporate, facility or organizational waste reduction policy, including a statement of waste reduction goals, along with a plan for communicating such policy and statement of goals to relevant employees and management personnel;

(ii) a time schedule for implementing each technically feasible and economically practicable waste reduction technology, process or operational change identified pursuant to paragraph b of this subdivision;

(iii) designation of the office or department responsible for implementing the waste reduction plan;

(iv) a method of waste reduction measurement which will provide a basis for charting waste reduction trends over time; and

(v) appropriate employee training programs to assure proper implementation of the economically practicable and technically feasible

waste reduction alternatives identified pursuant to paragraph b of this subdivision.

d. An evaluation of the anticipated reduction, in tons or other appropriate measurement, in the amount of hazardous wastes produced by the generator as a result of the implementation of each of the technically feasible and economically practicable waste reduction options identified pursuant to paragraph b of this subdivision.

e. An evaluation of the extent, if any, to which the implementation of each of the technically feasible and economically practicable waste reduction options identified pursuant to paragraph b of this subdivision may result in the transference of hazardous wastes into any other environmental media and the environmental benefits, if any, of the waste reduction option resulting in such transference.

5. The hazardous waste reduction plan required pursuant to this section shall be updated at least biennially to reflect changes in the types and amounts of hazardous wastes produced by the generator. In preparing such update, the generator shall evaluate or reevaluate the technical feasibility and economic practicability of waste reduction alternatives as required pursuant to subdivision four of this section for each such waste, and, if appropriate, shall revise the schedule for implementing technically feasible and economically practicable waste reduction alternatives; provided, that no evaluation or reevaluation shall be required for such wastes no longer produced by the generator. Such update shall provide continuity with previously prepared plans.

6. As a part of its hazardous waste generator report required pursuant to subdivision six of section 27-0907 of this title, each generator required to prepare a hazardous waste reduction plan pursuant to this section shall submit to the department an annual status report describing such generator's progress in achieving its time schedule for implementing technically feasible and economically practicable waste reduction alternatives, pursuant to paragraph c of subdivision four of this section. If such generator does not implement a waste reduction technology, process or operational change identified in such time

schedule, the annual status report shall identify the reason such activity was not implemented and include a reasonable revised time schedule for implementing such waste reduction alternative. If a generator determines that any method of waste reduction chosen and implemented is not achieving the degree of waste reduction anticipated, notwithstanding commitments made in the plan or biennial update, the generator may choose and implement another waste reduction alternative more likely to achieve waste reduction. The generator shall explain such action in the annual status report and account for such action in the biennial updates pursuant to paragraphs c, d and e of subdivision four of this section.

7. On or before January first, nineteen hundred ninety-one, the department shall prepare and distribute a guidance manual to assist generators in complying with the requirements of this section.

8. The department shall review each plan submitted pursuant to this section according to the schedule provided hereafter. The submission of such plan shall not be considered a permit application within subdivision four of section 70-0105 of this chapter and shall not be deemed to be a license application within subdivision four of section one hundred two of the state administrative procedure act.

a. After July first, nineteen hundred ninety-one, the department shall review and may reject, in accordance with the standards set forth in subdivision nine of this section, those portions of such plan which address hazardous wastes which are managed in a land disposal facility.

b. After July first, nineteen hundred ninety-three, the department shall review and may reject, in accordance with the standards set forth in subdivision nine of this section, those portions of such plan which address hazardous wastes which are managed through treatment, including wastes managed through thermal destruction or wastes burned as fuel for the purpose of recovering usable energy; and

c. On or after July first, nineteen hundred ninety-five, the department shall review and may reject, in accordance with the standards

set forth in subdivision nine of this section, all plans submitted by a generator utilizing recovery, reuse or recycling, except closed loop recycling directly back into the production process, as management methods.

d. Notwithstanding any other provision of law the department shall not be authorized to reject any plan or biennial update for which a notice of deficiency pursuant to paragraph a of subdivision ten of this section has not been provided to the generator within twelve months of the date such plan or biennial update was submitted.

9. The review of hazardous waste reduction plans conducted by the department pursuant to the schedule set forth in subdivision eight of this section shall be subject to the following standards. The department may reject any plan or biennial update thereof which:

a. fails to contain all the components required pursuant to subdivision four of this section;

b. fails to apply generally accepted engineering, scientific or economic principles and practices;

c. accomplishes waste reduction by transference to other environmental media without an environmental benefit from such transference;

d. is inconsistent with the preferred hazardous waste management practices hierarchy set forth in section 27-0105 of this article;

e. involves conduct which is prohibited by any applicable law or regulation;

f. fails to provide a basis for charting waste reduction trends over time;

g. beginning with the submission of the first biennial update, fails to demonstrate reasonable progress in implementing those technically feasible and economically practicable waste reduction alternatives

chosen by the generator according to the time schedule developed pursuant to paragraph c of subdivision four of this section; or

h. beginning with the submission of the first biennial update, fails to demonstrate reasonable progress in waste reduction employing the methods of waste reduction and calculation provided in the plan, or as modified in the annual report, or fails to reevaluate the technically feasible and economically practicable waste reduction alternatives as required pursuant to subdivision five of this section.

10. a. In proposing to reject any plan or biennial update thereof, the department shall provide to the generator a notice detailing the specific deficiencies the department has identified consistent with the standards set forth in subdivision nine of this section.

b. Upon receipt of such notice, the generator shall have up to sixty days to prepare a rebuttal or to modify the plan or biennial update to address the deficiencies identified in the notice and to submit such rebuttal or modified plan or update to the department.

c. If the department determines that the plan or update should not be rejected, it shall notify the generator within thirty days of submittal of a rebuttal or modified plan or update. If the department determines that the rebuttal or modified plan or update has not adequately addressed the specific deficiencies identified in the notice, or if the rebuttal or modified plan or update is not submitted within the time period specified in paragraph b of this subdivision, the department in its discretion may require further modifications, consistent with the specific deficiencies identified in the notice, within a time to be determined by the department, or make a determination to reject such plan or update. Any determination to require further modifications shall be made and provided to the generator within thirty days of submittal of a rebuttal or modified plan or update.

d. Immediately upon making a determination to reject a plan or biennial update the department shall provide to the generator a notice of final rejection. Such notice of final rejection shall detail the

specific deficiencies consistent with the standards set forth in subdivision nine of this section.

e. Within fifteen days of the date of a notice of final rejection from the department pursuant to this subdivision, a generator may request a hearing pursuant to article three of the state administrative procedure act. The department shall notify the generator of a date and place for a hearing, to be commenced not later than sixty days from the date of such notification, unless an extension of time has been agreed to pursuant to paragraph j of this subdivision.

f. The department may not require any modification to the plan or biennial update or raise any issue at hearing not identified in the notice of final rejection provided pursuant to paragraph d of this subdivision.

g. The certification prohibition in subdivision eleven of this section shall not be effective until a determination is made by the department after hearing, or until time to request such hearing has expired.

h. Any final determination of the department is reviewable pursuant to article seventy-eight of the civil practice law and rules.

i. Such review shall be commenced within the time limits set forth in section two hundred seventeen of the civil practice law and rules.

j. Any time period specified in this subdivision may be extended in writing by mutual consent of the generator and the department.

11. Any generator who has submitted a hazardous waste reduction plan according to the time schedule set forth in subdivision three of this section, which plan has not been rejected by the department, is authorized to make the certifications required under sections 27-0907 and 27-0913 of this title; provided, however, that no such generator shall make such certifications if such plan has been rejected by the department. These restrictions shall not apply to hazardous waste generated prior to the date the plan was rejected.

12. Information required to be provided to the department under this section shall be subject to the provisions of section 27-0919 of this title.

13. On or before January first, nineteen hundred ninety-three, the department shall prepare and present to the governor and the legislature a report analyzing the desirability of requiring waste reduction pursuant to this section on the part of generators of greater than fifteen tons and less than twenty-five tons of hazardous waste per calendar year. Such report shall include the number of generators in this category, the amount of wastes produced by such generators, the environmental benefit likely to be achieved, an evaluation of the potential economic impact on industry and a description of the additional resources that the department would require to analyze and approve waste reduction plans submitted by this group of generators.

14. The department shall not impose planning and reduction requirements other than those authorized pursuant to this section for those hazardous wastes which are managed in a land disposal facility, managed through treatment, or managed through recovery, reuse or recycling and which are subject to the requirements of this section. Provided however, nothing herein shall be construed to limit the department's authority contained elsewhere in this chapter to require planning and reductions in emissions, discharges or other releases.

§ 27-0909. Standards applicable to transporters of hazardous waste.

Not later than eighteen months after the effective date of this title, and after consultation and coordination with the commissioner of transportation, and after opportunity for public hearings, the commissioner shall promulgate regulations establishing such standards which shall be applicable to transporters of hazardous waste identified or listed under this title, as may be necessary to protect human health and the environment. Such standards shall include but need not be limited to requirements respecting:

1. Recordkeeping practices that accurately identify the hazardous wastes transported, and their sources and delivery points;
2. Transportation and storage of such waste only if properly labeled;
3. Compliance with the manifest system established under section 27-0905 of this title;
4. Transportation of all such hazardous waste only to the hazardous waste treatment, storage, or disposal facility or facilities which are designated on the manifest form, a copy of which shall be presented to the generator prior to transportation, and which either hold operation permits issued under this article, are a permittee under the Federal Resource Conservation and Recovery Act of nineteen hundred seventy-six or any amendments thereof, or are otherwise duly authorized to accept hazardous waste; and
5. Requirement of a bond to meet all responsibilities in case of release of hazardous wastes causing damage as a condition to the issuance of a permit to a transporter required by this title.
6. No vehicle, vehicle container, holding tank or other equipment used to transport hazardous waste shall be used in transporting any item intended for human or animal consumption unless such waste and its residue have been completely removed. The commissioner shall promulgate regulations establishing such minimum standards and procedures necessary to insure proper cleaning and removal of hazardous waste and its residue from such equipment.

§ 27-0910. Standards applicable to marketers of hazardous waste fuel.

The commissioner shall promulgate regulations establishing standards applicable to any person who distributes or markets any fuel which is produced from (a) facilities which produce a fuel (i) from any hazardous waste identified or listed in the regulations promulgated under section

27-0903 of this title or (ii) from any such hazardous waste and any other material, or (b) any fuel which otherwise contains any such hazardous waste.

§ 27-0911. Standards applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities.

1. Standards applicable to owners and operators of hazardous waste treatment, storage and disposal facilities shall be those established in title seven of this article, and the regulations promulgated thereunder, shall be consistent with comparable standards promulgated by the administrator pursuant to RCRA, and shall also include compliance with the manifest system established in section 27-0905 of this title. Where appropriate and consistent with the provisions of RCRA, such standards may authorize the granting of exemptions from requirements, or variances in requirements, according to criteria established therein.

2. Such standards shall require corrective action, including corrective action beyond the facility boundary where necessary to protect human health and the environment, for all releases of hazardous waste or constituents from any solid waste management unit at a treatment, storage or disposal facility seeking a permit under section 27-0913 of this title, regardless of the time at which waste was placed in such unit.

§ 27-0912. Land disposal of hazardous waste.

1. The commissioner may promulgate rules and regulations restricting or prohibiting the land disposal of specified hazardous wastes which are identified or listed pursuant to section 27-0903 of this title. Such rules and regulations may also restrict or prohibit the storage of any hazardous waste, or classes of hazardous wastes, which is restricted or prohibited from one or more methods of land disposal under this section unless such storage is solely for the purpose of the accumulation of such quantities of hazardous waste as are necessary to facilitate proper

recovery, treatment, or disposal.

2. The commissioner shall make a written determination of each such waste or class of wastes for which land burial may not be adequately protective of public health and the environment. In making any such determination, the commissioner shall take into account the following factors:

a. the long-term containment uncertainties associated with land burial, and

b. characteristics of the hazardous waste which degrade containment mechanisms used in authorized hazardous waste land burial facilities, and

c. the persistence, toxicity, mobility, and propensity to bio-accumulate of such hazardous wastes and their toxic constituents.

3. The commissioner may, upon application of any person, certify that any specifically identified or listed hazardous waste or class of wastes is exempt from a restriction or prohibition against land burial established in the rules and regulations promulgated pursuant to this section. Such certification of exemption may be issued only in the event the commissioner makes a written determination that it is not practicable, for the reasonably foreseeable future, to manage such wastes by any means other than land burial, when public health, environmental and economic factors are considered together. Certificates of exemptions shall be valid for a fixed term not to exceed one year. Any such certificate of exemption shall be published in the environmental notice bulletin. Any request for a renewal, reissuance or recertification of exemption shall be treated as an application for a new certificate of exemption.

4. As used in this section, the term "land disposal" shall be deemed to include, but not be limited to, any placement of hazardous waste in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, or

underground mine or cave; and the term "land burial" means any placement of hazardous waste in or on land where the waste will remain after closure. "Land burial" is a form of "land disposal".

5. Any rules and regulations, and any amendments thereof adopted pursuant to the provisions of this section shall be subject to review pursuant to article seventy-eight of the civil practice law and rules.

§ 27-0913. Permits and registrations for storage, transportation, treatment, or disposal of hazardous wastes.

1. a. No person shall engage in storage, treatment, or disposal, including storage at the site of generation, of hazardous wastes without first having obtained a permit pursuant to title seven of this article. Such permits shall require corrective action, including corrective action beyond the facility boundary where necessary to protect human health and the environment, for all releases of hazardous waste or constituents from any solid waste management unit at a permitted treatment, storage or disposal facility, regardless of the time at which waste was placed in such unit, and shall contain schedules of compliance for such corrective action where such corrective action cannot be completed prior to issuance of the permit.

b. Where appropriate and consistent with the provisions of RCRA, the commissioner may by regulation provide for interim status for hazardous waste treatment, storage or disposal facilities. Such regulation may include, but shall not be limited to, termination provisions, corrective action provisions and requirements for modification of such facilities as may be necessary to protect human health and the environment. The condition of interim status shall not be deemed to be a permit within subdivision four of section 70-0105 of this chapter, and shall not be deemed to be a license within subdivision four of section one hundred two of the state administrative procedure act.

2. No person shall engage in the transportation of hazardous wastes without first complying with the requirements of title three of this

article.

3. The commissioner shall assure that permits authorizing hazardous waste treatment, storage, disposal or transportation are not issued to nor held by unqualified or unsuitable persons. To effectuate this purpose, and in addition to any other available grounds, the commissioner may, consistent with the policies of article twenty-three-A of the correction law and the provisions of section 70-0115 of this chapter, deny, suspend, revoke or modify any permit, renewal or modification thereto for the treatment, storage, disposal or transportation of hazardous waste, after determining in writing that such action is required to protect the public health and safety. Some of the factors which the commissioner may consider in arriving at his determination include the following:

a. The permit holder or applicant has been determined in an administrative, civil or criminal proceeding to have violated any provision of this article, any related order or determination of the commissioner, any regulation promulgated pursuant to this article, the condition of any permit issued thereunder, or any similar statute, regulation, order or permit condition of the federal or other state government.

b. Such permit holder or applicant has been denied a permit for the same or substantially similar activity based upon one or more of the provisions of this subdivision, or a similar provision of federal or other state law.

c. Such permit holder or applicant has been found in a civil proceeding to have committed a negligent or intentionally tortious act, or has been convicted in a criminal proceeding of a criminal act involving the handling, storing, treating, disposing or transporting hazardous waste.

d. Such permit holder or applicant has been convicted of a criminal offense under the laws of any state or of the United States which involves a violent felony offense, fraud, bribery, perjury, theft, or an

offense against public administration as that term is used in article one hundred ninety-five of the penal law.

e. Such permit holder or applicant has in any matter within the jurisdiction of the department knowingly falsified or concealed a material fact or knowingly submitted a false statement or made use of or made a false statement on or in connection with any document or application submitted to the department.

f. Such permit holder or applicant is either:

(i) an individual who had a substantial interest in or acted as a high managerial agent or director for any corporation, partnership, association or organization which committed an act or failed to act, and such act or failure to act could be the basis for the denial of a permit pursuant to this section or regulations promulgated thereunder if such corporation, partnership, association or organization applied for a permit under this title;

(ii) a corporation, partnership, association, organization, or any principal thereof, or any person holding a substantial interest therein, which committed an act or failed to act, and such act or failure to act could be the basis for the denial of a permit pursuant to this section or regulations promulgated thereunder if such corporation, partnership, association or organization applied for a permit under this title; or

(iii) a corporation, partnership, association or organization or any high managerial agent or director thereof, or any person holding a substantial interest therein, acting as high managerial agent or director for or holding a substantial interest in another corporation, partnership, association or organization which committed an act or failed to act, and such act or failure to act could be the basis for the denial of a permit pursuant to this section or regulations promulgated thereunder had such other corporation, partnership, association or organization applied for a permit under this title.

For the purposes of this subdivision, "high managerial agent" has the same meaning as is given that term in section 20.20 of the penal law, and "substantial interest" shall be defined in regulations promulgated by the commissioner.

4. Any act or failure to act which serves as a basis for denial or revocation of a permit pursuant to this subdivision shall have occurred within two years from the date on which the application for a permit, renewal or modification is submitted to the department or from the date on which the department serves notice of intent to revoke or modify a permit issued by the department in relation to an existing permit.

5. Any person denied a permit, renewal or modification on the grounds specified in this subdivision shall be entitled to a hearing within sixty days of such denial in the case of a new permit, or within fifteen days in the case of a renewal or modification of an existing permit. The conduct of such hearing shall be governed by article seventy of this chapter and regulations promulgated thereunder.

6. It shall be a condition of any permit issued under title 7 of this article for the treatment, storage or disposal of hazardous waste on the premises where such waste is generated that the permittee certify, in its annual report, that:

a. the generator has in place a program to reduce the volume or quantity and toxicity of hazardous wastes to the degree determined by the generator to be economically practicable or, if a hazardous waste reduction plan is required by and reviewable under section 27-0908 of this title, a program that meets the requirements of that section; and

b. the method of treatment, storage or disposal is that practicable method currently available to the generator which minimizes present and future threats to human health and the environment.

§ 27-0914. Unauthorized possession, disposal and dealing in hazardous wastes.

1. No person shall possess hazardous wastes without authorization.

2. No person shall dispose of hazardous wastes without authorization.

3. No person shall deal in hazardous wastes without authorization.

§ 27-0915. Inspections and general reporting.

1. For purposes of developing or assisting in the development of any regulation or enforcing the provisions of this title, any person who generates, stores, treats, transports, disposes of, or otherwise handles hazardous wastes shall, upon oral or written request of any officer or employee of the department, when properly identified and duly designated by the commissioner, furnish or permit such officer or employee at all reasonable times to have access to, and to copy all records relating to such wastes. For the purposes of developing or assisting in the development of any regulation or enforcing the provisions of this title, such officers or employees are authorized after proper notification and identification:

a. To enter at reasonable times any establishment or other place maintained by any person where hazardous wastes are generated, stored, treated, or disposed of;

b. To inspect and obtain samples from any person of any such wastes and samples of any containers or labeling for such wastes.

Each such inspection shall be commenced and completed with reasonable promptness. If the officer or employee obtains any samples, prior to his leaving the premises, he shall give to the owner, operator, or agent in charge a receipt describing the sample obtained and if requested a portion of each 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, operator, or agent in charge.

§ 27-0916. Department authority for cleanups.

1. The department shall have authority to clean up or return to its original state any area where hazardous wastes were disposed, possessed or dealt in unlawfully in violation of section 27-0914 of this article. For the purpose of this section "the original state of the area" shall mean the reasonably ascertainable condition of the property immediately prior to the unlawful act or if impracticable to determine such condition, the cleanup or restoration shall be done in a manner to restore the area to a reasonably sound environmental condition.

2. The department shall have the authority to contract with the environmental facilities corporation or any other person to perform necessary work in connection with such cleanup or restoration.

3. Notwithstanding any other provision of law to the contrary, the liability of any person designing, implementing or otherwise performing services related to cleanup or restoration work pursuant to a contract with the department, or an order of the department or a court for any injury to a person or property caused by or related to such services, shall be limited to acts or omissions of the person during the course of performing such services which are shown to have been the result of negligence, gross negligence or reckless, wanton or intentional misconduct. Notwithstanding any other provision of law, when (i) a verdict or decision in an action or claim for injury to a person or property caused by or related to such services is determined in favor of a claimant in an action involving a person performing such services and any other person or persons jointly liable, and (ii) the liability of the person performing such services is found to be fifty percent or less of the total liability assigned to all persons liable, and (iii) the liability of the person performing such services is not based on a finding of reckless disregard for the safety of others, or intentional misconduct, then the liability of the person performing such services to the claimant for loss relating to injury to property and for non-economic loss relating to injury to a person shall not exceed the equitable share of the person performing such services determined in accordance with the relative culpability of each person causing or contributing to the total liability for such losses; provided, however, that the culpable conduct of any person not a party to the action shall

not be considered in determining any equitable share herein if the claimant proves that with due diligence the claimant was unable to obtain jurisdiction over such person in said action. As used in this section, the term "non-economic loss" includes but is not limited to pain and suffering, mental anguish, loss of consortium or other damages for non-economic loss. However, nothing in this subdivision shall be deemed to alter, modify or abrogate the liability of any person performing such services for breach of any express warranty, limited or otherwise, or an express or implied warranty under the uniform commercial code, or to an employee of such person pursuant to the workers' compensation law, or to relieve from any liability any person who possessed, disposed of or dealt in hazardous wastes in violation of section 27-0914 of this article.

4. Section eight of the court of claims act or any other provisions 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 exercise of the department's authority pursuant to this section; provided, however, that this subdivision shall not limit any liability which may otherwise exist for unlawful, willful or malicious acts or omissions on the part of the state, state agencies, or other officers, employees or agents.

5. Moneys for actions taken by the department pursuant to this section including any sampling of wastes, soils, air, surface water and groundwater done by or on behalf of the department and any administrative expenses related thereto, shall be payable from the hazardous waste remedial fund directly to the department pursuant to section ninety-seven-b of the state finance law.

§ 27-0917. Financial requirements for hazardous waste facilities.

1. Within eighteen months after the effective date of this section, the commissioner shall promulgate regulations for hazardous waste facilities identifying financial requirements to be included as conditions in hazardous waste facility permits for the remediation of

failures during operation and after facility closure, for facility closure, and for pre-closure and post-closure facility monitoring and maintenance. In promulgating regulations pursuant to this subdivision, the department shall identify those regulations which vary from applicable federal rules and regulations. Such regulations shall:

(a) Reflect due consideration of relevant federal requirements and except where necessary to serve the public interest or where inconsistent with the purposes of this section, conform to regulations promulgated under the Resource Conservation and Recovery Act of 1976 and the Comprehensive Environmental Response Compensation and Liability Act of 1980 but shall in no case be less stringent than such federal requirements and regulations.

(b) Reflect due consideration of the sizes and locations of affected facilities, the natures and volumes of hazardous waste involved, the types of facilities (treatment, storage or disposal) and the degrees and durations of risk to human health or the environment.

(c) Provide for the establishment, administration, terms and conditions of the following methods or instruments to be used as alternatives or in combinations, in order to achieve non-duplicative coverage of the financial assurance requirements mandated by this section:

(i) Trust funds.

(ii) Surety or performance bonds.

(iii) Letters of credit.

(iv) Liability insurance or annuities.

(v) Guarantees provided by corporate or other legal or financial affiliates of the facility owner or operator.

(d) Establish:

(i) Exemptions for identified classes of facilities engaged in treatment or storage of hazardous waste for which financial assurance requirements for closure and post-closure monitoring and maintenance are unnecessary or inappropriate.

(ii) Financial criteria for the purpose of determining the financial condition of permit applicants and permit holders. Such financial criteria shall be established for the purpose of determining the relative financial viability of permit holders and applicants. The department shall establish standards of minimum financial viability

based on the criteria. Any permit holder or applicant meeting the minimum financial viability standard may select at its own discretion which of the methods or instruments described in paragraph (c) of this subdivision will be used to meet the requirements of subdivision five of this section. With respect to permit holders or applicants which do not meet the minimum financial viability standards, the commissioner may in his discretion determine which method or instrument or combination thereof shall be used to meet the requirements of subdivision five of this section. Any decision by the commissioner with respect to determining which methods or instruments are to be used shall be accompanied by a finding regarding the public interest and shall set forth the reasons therefor.

(iii) Requirements for the initial and periodic submission by permit holders and applicants to the department of up to date financial data based on the test criteria established pursuant to subparagraph (ii) of this paragraph.

(iv) The duration of such financial requirements.

(v) The method for phasing-in financial requirements for existing facilities.

2. The commissioner shall undertake an analysis of the use of a financial test as an alternative to the requirements for use of the financial assurances methods or instruments provided for in paragraph (c) of subdivision one of this section. In his analysis the commissioner shall consider relevant federal rules and regulations and their rationale, the use of such a test by other states, and the impact on affected business and industry as well as the public health and safety and any other factors he may consider relevant.

In undertaking such analysis, the commissioner shall conduct at least one public hearing and shall make a finding as to whether or not the public interest warrants the use of a financial test for the purposes stated herein and shall report such finding to the legislature within twelve months of the effective date of this section.

In the event the commissioner finds that the public interest warrants use of a financial test, the commissioner shall within eighteen months

after the effective date of this section, promulgate regulations making provisions for use of a financial test. Any such regulations shall give due consideration to relevant federal requirements and, except where necessary to serve the public interest or where inconsistent with the purposes of this section, shall conform to relevant federal regulations but shall in no case be less stringent.

3. Any owner or operator of an existing or proposed hazardous waste facility may request a modification from the department of any of the financial requirements established pursuant to subdivision one of this section. A modification may be granted in the discretion of the department if such financial requirements are found to be unnecessary or inappropriate, consistent with public interest and the purposes of this section and supported by written findings setting forth the reasons for the modification. Such modification request shall be considered a request for modification of the permit for the facility pursuant to article seventy of this chapter. In no case shall a modification granted pursuant to this subdivision eliminate or reduce the minimum requirements established in subdivision five of this section.

4. In addition to the financial requirements established pursuant to subdivision one of this section, permits for the construction and operation of certain categories of hazardous waste facilities, as those categories are defined in regulations, may, if the commissioner determines that adequate protection of the public so requires, include conditions related to any or all of the following, including responsibility for the costs thereof:

(a) On-site environmental monitors whose function shall be to monitor compliance with permit conditions. The commissioner may promulgate regulations regarding the use of such monitors.

(b) Site safety plans whereby the permittee shall establish, with the cooperation of local government officials, a community and project safety plan, including but not limited to an accident response based on a worst-case condition, on-site and off-site, a personnel training program, provisions for coordination with local emergency services and regular training exercises. Any such plan shall be subject to the approval of the department.

(c) Long term management plans, the purpose of which shall be to insure that the permittee devotes adequate resources to the examination and implementation of technologies for hazardous waste management which provide the maximum degree of environmental and public health protection practicable. The department shall, to the extent reasonably possible, make available any information or data appropriate and consistent with the purposes of this paragraph. Such a plan shall include but not be limited to the following:

(i) An overview of existing technologies being employed at the facility.

(ii) An analysis of alternate technologies available for the treatment or disposal of waste streams currently being managed or those which the applicant/permittee anticipates managing.

(iii) An assessment of marketing considerations related to the employment of alternate technologies.

(iv) An evaluation of the feasibility of financing modifications to the existing facility in order to employ the alternate technologies.

(v) A statement from the applicant/permittee regarding its intent to implement the alternate technologies, where appropriate, and a detailed discussion of the measures the applicant/permittee will take to implement the same.

5. Any permit issued by the department to construct or operate a hazardous waste facility shall, except pursuant to regulations promulgated pursuant to subdivision two of this section, require the owner or operator, or an affiliate thereof, to secure, at a minimum, one of the instruments of financial assurance provided for in paragraph (c) of subdivision one of this section. Such instruments shall be designed to insure proper facility closure, based on the estimates approved pursuant to section 27-0918 of this chapter, and coverage of personal injury and property damage to third parties caused by the operation of such facility. Such instruments shall from time to time be reviewed and updated, pursuant to regulations promulgated by the department, to insure their continued adequacy for the purposes of this section. The requirements of this subdivision shall not apply to permits granted to the state or to any facilities exempted pursuant to subparagraph (i) of paragraph (d) of subdivision one of this section.

6. If a permit holder or applicant relies upon the financial condition of a corporate parent or affiliate to meet any financial test or criteria established pursuant to this title or regulations promulgated thereunder, the parent or affiliate shall guarantee the performance of all financial assurance requirements imposed pursuant to this title, including the costs of any closure and post-closure plan.

7. Within six months after the effective date of regulations promulgated pursuant to subdivision one of this section, owners or operators of all affected existing facilities shall make application for a permit or permit modification to achieve compliance with such regulations, and immediately upon such effective date no application for a permit for any proposed affected facility shall be complete for the purposes of article seventy of this chapter without complying with such regulations. Receipt of such applications by the department shall be published in the next issue of the environmental notice bulletin following receipt.

8. In the case of permits for the construction and operation of commercial hazardous waste facilities which utilize secure landburial facilities as a primary disposal technique, such permits shall include the conditions enumerated in subdivision four of this section. In addition, the department shall establish qualifications for on-site environmental monitors to be stationed at such facilities. In order to enhance the ability of the department to monitor all aspects of a secure landfill operator the qualifications shall include a requirement that such monitors be expert in at least one of the areas of geology, chemistry or engineering. The department shall ensure that the monitors assigned to a particular facility at any one time shall, to the extent possible, have different areas of expertise as among themselves. In addition the department shall establish a rotation of monitors, when more than one such facility exists, to ensure no individual monitor is assigned to a particular facility for more than six months in any single year.

9. The commissioner shall promulgate regulations establishing

requirements of financial responsibility to assure the completion of corrective action required pursuant to subdivision two of section 27-0911 or subdivision one of section 27-0913 of this title.

§ 27-0918. Closure and post-closure plans.

1. Owners and operators of hazardous waste facilities shall submit to the department for its approval plans for the closure and post-closure monitoring and maintenance of their facilities. The department may promulgate rules and regulations concerning the contents of such plans. Such regulations shall reflect due consideration of relevant federal requirements and except where necessary to serve the public interest or inconsistent with the purposes of this section, shall conform to relevant federal regulations, but shall in no case be less stringent than such federal requirements and regulations. In the case of new facilities, such plans shall be approved prior to the effective date of the facility's operating permit. In the case of existing facilities, such plans shall be submitted to the department within six months of the effective date of this section, and shall be approved, denied or modified by the department within twelve months of submission.

2. Together with the submission of a plan for closure and post-closure monitoring and maintenance, the owner or operator of a hazardous waste facility shall submit to the department for approval a written estimate of the costs associated therewith. The estimate of closure costs must equal the cost of closure at the point in the facility's operating life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan.

3. The owner or operator shall prepare new closure and post-closure monitoring and maintenance cost estimates whenever the department or the owner or operator determines that a change in either the closure or post-closure monitoring and maintenance requirements affects the cost of closure or post-closure care respectively.

4. One year after the approval of the cost estimates as set forth in

subdivision two of this section, and annually thereafter until closure of the facility, the owner or operator shall adjust the closure and post-closure monitoring and maintenance estimates to account for inflation.

5. All estimates made pursuant to this section and revisions thereto shall be subject to the review and approval of the department.

6. The department shall periodically review the methods and instruments of financial assurances for permitted hazardous waste facilities to determine whether they are adequate in light of changed circumstances to insure proper closure and post-closure monitoring and maintenance of such facilities.

7. The provisions of this section relating to post-closure monitoring and maintenance plans and cost estimates associated therewith shall only apply to owners and operators of disposal facilities.

§ 27-0919. Proprietary information.

The department shall hold confidential any information concerning the chemical composition, quantity, method of treatment or disposal of hazardous waste or any information related thereto when shown by any person that such information, if made public, would divulge competitive business information, methods or processes entitled to protection as trade secrets of such person, except that such information may be disclosed to any officers, employees or authorized representatives of the United States or the state concerned with carrying out RCRA or the state hazardous waste program or when relevant in any proceeding thereunder.

§ 27-0920. Reports.

1. Subject to the moneys available to the department for such purposes, the department shall submit to the governor, the temporary

president of the senate and the speaker of the assembly on an annual basis a complete and detailed report setting forth:

(a) The status of all permits issued and pending for the treatment, storage, transportation or disposal of hazardous wastes pursuant to section 27-0707 and section 27-0913 of this chapter.

(b) The types and amounts of financial assurances which have been required pursuant to this section.

(c) Any other matters that the department determines relevant for inclusion.

2. On-site environmental monitors at commercial hazardous waste facilities which utilize secure landburial facilities as a primary disposal technique shall prepare a calendar-based quarterly report on the facility including a list of any violations observed and the actions taken to correct them, a list of any fines or penalties levied during the period covered, the status of any construction, improvement or expansion projects at the facility, any pertinent information or trends derived from monitoring devices and any other information useful to describing the operational status of the facility. The reports shall be made on a standard form as determined by the department and shall be filed within twenty days after the end of each calendar quarter with the appropriate department regional office, with the facility and with any municipality and county within which the facility is located. Each monitor assigned to the facility during a report period shall sign the report and shall be available to answer questions posed by the municipalities or facility operator concerning the activities described in each such report. Quarterly reports shall be kept on file at the appropriate regional office and made available to the public.

§ 27-0921. Short-term management.

1. a. The commissioner shall immediately begin preparation of a proposal for a short-term hazardous waste management program for the effective and safe disposal, treatment and storage of hazardous waste. Such program shall be coordinated with the on-going comprehensive program for the long-term treatment and disposal of hazardous waste.

b. As part of the proposal, a comprehensive study shall be made with regard to the short-term needs of New York state generators of hazardous waste consistent with the protection of public health and safety and the environment and in light of:

(1) federal and state laws, rules and regulations designed to ensure proper disposition of hazardous waste from generation to final storage or treatment which place substantial responsibilities on industry to responsibly and safely dispose of hazardous waste;

(2) the identified shortfall in existing available storage, treatment and disposal capacity, and the potential economic and environmental problems that may occur as a result of the potential disruption of operation of the presently permitted commercial industrial hazardous waste disposal, treatment and storage facilities located in New York; and

(3) the fact that it will take a period of several years before a comprehensive program for the long-term disposal and treatment of hazardous waste is in operation sufficient to replace or reduce present methods of hazardous waste disposal.

c. The proposed short-term hazardous waste management program shall incorporate the best short-term methods and means available to contain, store and treat hazardous waste. In preparing the program, consideration shall be given to the short-term needs of New York state generators of hazardous waste, to the siting of secure landfills or other storage facilities on suitable private or state-owned land, to the development and construction of such facilities in a manner to safely allow for the eventual retrieval of hazardous waste for the purpose of ultimate destruction, detoxification, or neutralization by industrial hazardous waste treatment facilities, to the options of public versus private ownership and operation of such facilities, to the ongoing efforts to establish and maintain a statewide waste exchange system, and to the establishment of incentives to encourage reduction of the amount of hazardous waste generated.

2. Not later than January first, nineteen hundred eighty-two, the commissioner shall submit to the legislature the study and the proposal

for a short-term hazardous waste management program required pursuant to subdivision one of this section, including any proposed implementing legislation and rules and regulations where appropriate.

§ 27-0922. Prohibitions.

The use of waste oil or used oil or other material which is contaminated or mixed with any chlorinated dibenzo-p-dioxin, or any other hazardous waste identified or listed according to the regulations promulgated pursuant to section 27-0903 of this title (other than a waste identified solely on the basis of ignitability), for dust suppression or road treatment is prohibited.

§ 27-0923. Special assessments on hazardous wastes generated.

1. On and after June first, nineteen hundred eighty-five, there is hereby imposed upon every person who is engaged within the state in the generation of hazardous waste identified or listed pursuant to this title a special assessment to be determined as follows:

a. Twenty-seven dollars per ton of hazardous waste generated which is disposed of in a landfill on the site where the waste is generated or which is designated for removal or removed from the site of generation for disposal in a landfill or which is designated for removal or removed from the site of generation for storage prior to disposal in a landfill;

b. Nine dollars per ton of hazardous waste generated which is designated for removal or removed from the site of generation for incineration or for storage prior to incineration;

c. Two dollars per ton of hazardous waste generated which is incinerated on the site where the waste is generated;

d. Sixteen dollars per ton of hazardous waste generated which is designated for removal or removed from the site of generation for

treatment or disposal, exclusive of disposal in a landfill or by incineration, or for storage prior to such treatment or disposal;

e. Any residues which are hazardous wastes remaining from the treatment of hazardous wastes in a facility located on the site where the wastes are generated, and which are subsequently disposed of or incinerated on such site or which are subsequently designated for removal or removed from the site of generation for disposal, incineration or treatment or for storage prior thereto, shall be subject to the special assessments imposed by this subdivision. Provided, however, any residues which are hazardous wastes remaining from the incineration of hazardous wastes in a facility located on the site where the wastes are initially generated and which are subsequently disposed of in a landfill on such site shall not be subject to the special assessments imposed by this subdivision.

f. Notwithstanding any provision of this section to the contrary, no special assessment shall be imposed under this section on the generation of universal wastes. For purposes of this paragraph, "universal wastes" shall mean those defined and listed in regulations promulgated pursuant to this title, provided that such wastes are regulated consistent with rules adopted by the administrator pursuant to RCRA for the management of universal wastes.

2. On or after June first, nineteen hundred eighty-five, there is hereby imposed upon persons holding permits or required to hold permits for the storage, treatment or disposal of hazardous waste pursuant to section 27-0913 of this title a hazardous waste disposal special assessment to be determined as follows:

a. Twenty-seven dollars per ton of hazardous waste which is received for disposal in a landfill or for storage prior to disposal in a landfill;

b. Nine dollars per ton of hazardous waste which is received for incineration or for storage prior to incineration;

c. Sixteen dollars per ton of hazardous waste which is received for treatment or disposal, exclusive of disposal in a landfill or by incineration, or for storage prior to such treatment or disposal;

d. No special assessment shall be imposed under this subdivision upon receipt for treatment or disposal, or storage prior thereto of hazardous waste where such waste was generated by persons subject to the special assessment under subdivision one of this section.

3. a. Notwithstanding any provision of this section to the contrary, no special assessment shall be imposed under this section on the resource recovery of any hazardous waste; provided, however, that any materials remaining from resource recovery which are hazardous wastes and which are subsequently disposed of, treated, or incinerated, shall be subject to the special assessments imposed by this section. For purposes of this section, resource recovery shall not include the removal of water from a hazardous waste.

b. In the case of a fraction of a ton, the special assessments imposed by this section shall be the same fraction of the amount of such special assessment imposed on a whole ton.

c. For the purpose of this section, generation of hazardous waste shall not include retrieval or creation of hazardous waste which must be disposed of under an order of or agreement with the department pursuant to title thirteen or title fourteen of this article or under a contract with the department pursuant to title five of article fifty-six of this chapter or under an order of or agreement with the United States environmental protection agency or an order of a court of competent jurisdiction, related to a facility addressed pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601 et seq.) or under a written agreement with a municipality which has entered into a memorandum of agreement with the department related to the remediation of brownfield sites as of August fifth, two thousand ten.

d. No portion of the special assessments collected pursuant to this

section shall be used for any purpose if such use, under federal law, would preclude the collection of such special assessment.

e. Notwithstanding any provision of this section to the contrary, the actual method utilized to dispose of or treat any hazardous waste shall govern the determination of the rate per ton applicable under the special assessments imposed by this section, even if such hazardous waste was designated for removal, removed, stored or received for disposal or treatment by a method different than the method actually utilized. Where any such special assessment with respect to any hazardous waste is reported and paid on the basis of a rate per ton which is greater than the rate per ton applicable to the actual method utilized to dispose of or treat such hazardous waste, the difference between the amount reported and paid and the amount due using the rate per ton applicable to the actual method utilized shall be considered an overpayment of such special assessment. The commissioner of taxation and finance shall credit or refund such overpayment in the manner provided and subject to the conditions contained in article twenty-seven of the tax law, as incorporated by subdivision six of this section.

f. No special assessment shall be imposed under this section on hazardous waste generated by or at an elementary or secondary school provided the waste results from services which are provided:

(i) under a contract with the department, or with the department's approval and in compliance with department regulations, or pursuant to an order of the department, the United States environmental protection agency or a court, related to the cleanup or remediation of a hazardous materials or hazardous waste spill, discharge, or surficial cleanup, pursuant to this chapter, other than a removal action pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601 et seq.);

(ii) under a contract with the department for, or with the department's approval and in compliance with department regulations, related to the cleanup and removal of a petroleum spill or discharge, pursuant to subdivision seven of section one hundred seventy-six of the navigation law;

(iii) under the order of a court, the department or the department of

health, or the United States environmental protection agency related to an inactive hazardous waste disposal site pursuant to section 27-1313 of this article, section thirteen hundred eighty-nine-b of the public health law, or the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601 et seq.);

(iv) voluntarily and without expectation of monetary compensation in accordance with subdivision one of section 27-1321 of this article; or

(v) under permit or order requiring corrective action pursuant to this title or the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.).

4. a. The special assessments imposed by this section shall be reported and paid to the department of taxation and finance on a quarterly basis on or before the twentieth day of the month after the end of each calendar quarter, provided, however, that the special assessments attributable to the months of June, July, August and September of nineteen hundred eighty-five shall be due on October twentieth, nineteen hundred eighty-five. The payments shall be accompanied by a return in such form as the department of taxation and finance may prescribe upon consultation with the commissioner. Provided, however, that no special assessment imposed by this section shall be required to be reported or paid with respect to any one calendar quarter if the total amount of all special assessments due for such quarter is twenty-seven dollars or less.

b. All moneys collected or received by the department of taxation and finance pursuant to this section shall be deposited daily to the credit of the comptroller with such responsible banks, banking houses or trust companies as may be designated by the comptroller. Such deposits shall be kept separate and apart from all other moneys in the possession of the comptroller. The comptroller shall require adequate security from all such depositories. Of the revenues collected under this section, the comptroller shall retain in his hands such amounts as the commissioner of taxation and finance may determine to be necessary for refunds under this section and the comptroller shall pay any refunds to which those liable for special assessments shall be entitled under the provisions of this section. The comptroller, after reserving the amount to pay such

refunds, shall, on or before the tenth day of each month, pay all special assessments, interest and penalties collected under this section and remaining to his credit in such banks, banking houses or trust companies at the close of business on the last day of the preceding month into the hazardous waste remedial fund created pursuant to section ninety-seven-b of the state finance law. Within thirty days after each quarterly reporting date, the comptroller shall certify the amount of special assessments under this section deposited in the hazardous waste remedial fund during the preceding quarter and the cumulative amount collected since the start of the current calendar year, and shall submit such certification to the governor and the chairman of the senate finance committee and the chairman of the assembly ways and means committee.

5. The commissioner and the commissioner of taxation and finance shall have the power to jointly promulgate rules and regulations necessary and appropriate to carry out the purpose of this section.

6. The provisions of article twenty-seven of the tax law shall apply to the provisions of this section in the same manner and with the same force and effect as if the language of such article had been incorporated in full into this section and had expressly referred to the special assessments under this section except that the term "special assessment" or "special assessments" when used in this section shall mean "tax" or "taxes" for the purpose of the application of article twenty-seven of the tax law as incorporated by this subdivision and except to the extent that any provision of such article is either inconsistent with a provision of this section or is not relevant to this section.

7. a. If any generator or person subject to assessment by this section fails or refuses to file a return or furnish any information requested in writing by the department of taxation and finance, said department may, from any information in its possession, make an estimate and issue an assessment against such generator or person and add a penalty of twenty-five percent of the amount of the assessment so determined. With respect to such failure or refusal to file a return or furnish any

information, the provisions of paragraph one of subsection (a) and subsection (g) of section one thousand eighty-five of the tax law shall not apply.

b. If the assessment imposed by this section or any installment or portion of the assessment is not paid on or before the date prescribed for its payment, there shall be collected as a part of the assessment, interest upon the unpaid amount at the rate of fifteen percent per annum from the date prescribed for its payment until payment is actually made to the department of taxation and finance. With respect to interest upon such unpaid amount, the underpayment rate of interest applicable to deficiencies, set by the commissioner of taxation and finance pursuant to subsection (e) of section one thousand ninety-six of the tax law, shall not apply.

§ 27-0924. Hazardous materials enforcement training program.

1. The department shall formulate and establish, no later than July first, nineteen hundred eighty-five and thereafter from time to time reformulate, a specialized educational program to be known as the "hazardous materials enforcement training program" hereinafter referred to as the "program".

a. The department shall be responsible for administration of the program and shall prescribe the curriculum which shall include, but not be limited to:

(i) a review of the provisions of this title, title three and title thirteen of this article and of title twenty-seven of article seventy-one of this chapter and any rules and regulations promulgated thereunder;

(ii) a review of the provisions of title twelve of article thirteen of the public health law and any rules and regulations promulgated thereunder;

(iii) a review of the provisions of section fourteen-f of the transportation law and any rules and regulations promulgated thereunder;

(iv) a review of the provisions of section three hundred eighty of the

vehicle and traffic law and any rules and regulations promulgated thereunder; and

(v) a description of the activities and services of the department.

b. The department shall prepare any written materials necessary or useful for the purposes of the program.

c. In preparing the curriculum for the program, the department shall consult with and receive full cooperation from the commissioners of health, transportation, and motor vehicles, the attorney general, the state fire administrator, and authorized police departments and other authorized law enforcement agencies in the state regarding the particular needs and interests of such departments and agencies relating to the contents of such curriculum.

2. The department shall notify in writing, authorized police departments and other authorized law enforcement agencies in the state of the establishment and availability of the program.

§ 27-0925. Local assessments on hazardous waste treatment, storage and disposal facilities.

1. (a) Notwithstanding any other provisions of law to the contrary, any city or town of this state, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws imposing in any such city or town an annual assessment of not more than four per centum of the gross receipts of any commercial hazardous waste facility which is located in such city or town and may make provisions for the collection thereof.

(b) In the event that a facility subject to local assessment pursuant to this subdivision is located in more than one city or town, the total annual assessment imposed shall not exceed four per centum of the gross receipts. The maximum portion of assessment revenues allowed to the cities or towns in such a situation shall be determined by multiplying the maximum total of assessment liability which can be imposed on the facility by the ratio of the population of the assessing city or town to

the total population of all the cities or towns in which the facility is located. Population shall be based on the most recent census.

2. (a) (1) Notwithstanding any other provisions of law to the contrary, any school district of this state, acting through its local legislative body, is hereby authorized and empowered to adopt a resolution imposing in any such school district an annual assessment of not more than two per centum of the gross receipts of any commercial hazardous waste facility which is located in such school district and may make provisions for the collection thereof.

(2) Any school district whose boundaries are located within the town or city in which a commercial hazardous waste facility is located shall be entitled to a proportionate share of the annual assessment of the gross receipts collected.

(3) The annual assessment revenues shall be allowed and distributed to all school districts located in the town, or city in which the commercial hazardous waste facility is located. The distribution of annual assessment revenues among the school districts located in the town or city where the facility is located shall be done on a proportionate basis, based upon the number of students of each school district residing in the town or city where the facility is located.

(4) The distribution from the school district collecting the annual assessment revenue to any other district entitled to a proportionate basis shall be made within sixty days of receipt of the annual assessment revenues.

(b) In the event that a facility subject to local assessment pursuant to this subdivision is located in more than one school district, the total annual assessment imposed shall not exceed two per centum of the gross receipts.

3. The term "gross receipts" as used in this section means all receipts from the provision of hazardous waste management services attributable to a particular industrial hazardous waste treatment storage and disposal facility without deduction therefor due to the cost of materials or equipment used, labor or services or other costs, interest or discount paid or any other expense whatsoever; provided, however, that as used in this section, gross receipts shall not include

any amounts collected or paid pursuant to section 27-0923 of this title.

4. An assessment imposed pursuant to this section shall be in addition to any and all other assessments, taxes, agreements or contracts.

§ 27-0926. Use and recycling of elemental mercury and dental amalgam by dentists.

1. No dentist shall use or possess elemental mercury in the practice of dentistry unless such elemental mercury is contained in appropriate pre-encapsulated capsules specifically designed for the mixing of dental amalgam. All dentists shall recycle any elemental mercury, including any pre-encapsulated mercury capsule waste, and dental amalgam waste generated in their dental practices in accordance with rules and regulations established by the commissioner.

2. The commissioner is hereby authorized and directed to promulgate rules and regulations necessary for the implementation of this section.

TITLE 10

LITTER AND SOLID WASTE CONTROL

Section 27-1001. Legislative findings.

27-1003. Definitions.

27-1005. Refund value.

27-1007. Mandatory acceptance.

27-1009. Refusal of acceptance.

27-1011. Beverage container requirements.

27-1012. Deposit and disposition of refund values; registration; reports.

27-1013. Redemption centers.

27-1014. Authority to promulgate rules and regulations.

27-1015. Violations.

27-1016. Public education.

27-1018. Beverage container assistance program.

27-1019. Severability.

§ 27-1001. Legislative findings.

The legislature hereby finds that litter composed of discarded beverage containers is a growing problem of state concern and a direct threat to the health and safety of the citizens of this state. Discarded beverage containers create a hazard to vehicular traffic, a source of physical injury to pedestrians and farm animals, a hazard to farm and other machinery and an unsightly accumulation of litter which must be disposed of at increasing public expense. Beverage containers also create an unnecessary addition to the state's and municipalities' already overburdened solid waste and refuse disposal systems. Unsegregated disposal of such containers creates an impediment to the efficient operation of resource recovery plants. Further, the legislature finds that the uninhibited discard of beverage containers constitutes a waste of both mineral and energy resources. The legislature hereby finds that requiring a deposit on all beverage containers, along with certain other facilitating measures, will provide a necessary incentive for the economically efficient and environmentally benign collection and recycling of such containers.

§ 27-1003. Definitions.

Whenever used in this title:

1. "Beverage" means carbonated soft drinks, water, beer, other malt beverages and a wine product as defined in subdivision thirty-six-a of section three of the alcoholic beverage control law. "Malt beverages" means any beverage obtained by the alcoholic fermentation or infusion or decoction of barley, malt, hops, or other wholesome grain or cereal and water including, but not limited to ale, stout or malt liquor. "Water" means any beverage identified through the use of letters, words or symbols on its product label as a type of water, including any flavored water or nutritionally enhanced water, provided, however, that "water" does not include any beverage identified as a type of water to which a

sugar has been added.

2. "Beverage container" means the individual, separate, sealed glass, metal, aluminum, steel or plastic bottle, can or jar used for containing less than one gallon or 3.78 liters at the time of sale or offer for sale of a beverage intended for use or consumption in this state. Beverage containers sold or offered for sale or distributed aboard aircraft or ships shall be considered as intended for use or consumption outside this state.

2-a. "Bottler" means a person, firm or corporation who:

a. bottles, cans or otherwise packages beverages in beverage containers except that if such packaging is for any other person, firm or corporation having the right to bottle, can or otherwise package the same brand of beverage, then such other person, firm or corporation shall be the bottler; or

b. imports filled beverage containers into the United States.

3. "Commissioner" means the commissioner of environmental conservation.

4. "Dealer" means every person, firm or corporation who engages in the sale of beverages in beverage containers to a consumer for off premises consumption in this state.

5. "Department" means the department of environmental conservation.

5-a. A "deposit initiator" for each beverage container for which a refund value is established under section 27-1005 of this title means:

a. the bottler of the beverage in such container;

b. the distributor of such container if such distributor's purchase of such container was not, directly or indirectly, from a registered deposit initiator;

c. a dealer of such container who sells or offers for sale such container in this state, whose purchase of such container was not, directly or indirectly, from a registered deposit initiator; or

d. an agent acting on behalf of a registered deposit initiator.

6. "Distributor" means any person, firm or corporation which engages in the sale or offer for sale of beverages in beverage containers to a dealer.

7. "Place of business" means the location at which a dealer sells or offers for sale beverages in beverage containers to consumers.

8. "Redeemer" means every person who demands the refund value provided for herein in exchange for the empty beverage container, but shall not include a dealer as defined in subdivision four of this section.

9. "Redemption center" means any person offering to pay the refund value of an empty beverage container to a redeemer, or any person who contracts with one or more dealers or distributors to collect, sort and obtain the refund value and handling fee of empty beverage containers for, or on behalf of, such dealer or distributor under the provisions of section 27-1013 of this title.

10. "Use or consumption" means the exercise of any right or power incident to the ownership of a beverage, other than the sale or the keeping or retention of a beverage for the purpose of sale.

11. "Ship" or "ships" means any ocean going vessel used to carry passengers or freight in interstate or foreign commerce.

12. "Reverse vending machine" means an automated device that uses a laser scanner, microprocessor, or other technology to accurately recognize the universal product code (UPC) on containers to determine if the container is redeemable and accumulates information regarding containers redeemed, including the number of such containers redeemed,

thereby enabling the reverse vending machine to accept containers from redeemers and to issue a scrip or receipt for their refund value.

13. "Universal product code" or "UPC code" means a standard for encoding a set of lines and spaces that can be scanned and interpreted into numbers to identify a product. Universal product code may also mean any accepted industry barcode which replaces the UPC code including EAN and other codes that may be used to identify a product.

§ 27-1005. Refund value.

No person shall sell or offer for sale a beverage container in this state unless the deposit on such beverage container is or has been collected by a registered deposit initiator and unless such container has a refund value of not less than five cents which is clearly indicated thereon as provided in section 27-1011 of this title.

§ 27-1007. Mandatory acceptance.

Except as provided in section 27-1009 of this title:

1. (a) A dealer shall accept at his or her place of business from a redeemer any empty beverage containers of the design, shape, size, color, composition and brand sold or offered for sale by the dealer, and shall pay to the redeemer the refund value of each such beverage container as established in section 27-1005 of this title. Redemptions of refund value must be in legal tender, or a scrip or receipt from a reverse vending machine, provided that the scrip or receipt can be exchanged for legal tender for a period of not less than sixty days without requiring the purchase of other goods. The use or presence of a reverse vending machine shall not relieve a dealer of any obligations imposed pursuant to this section. If a dealer utilizes a reverse vending machine to redeem containers, the dealer shall provide redemption of beverage containers when the reverse vending machine is full, broken, under repair or does not accept a type of beverage container sold or

offered for sale by such dealer and may not limit the hours or days of redemption except as provided by subdivision three of this section.

(b) Beginning March first, two thousand ten, a dealer whose place of business is part of a chain engaged in the same general field of business which operates ten or more units in this state under common ownership and whose business has at least: (i) forty thousand but less than sixty thousand square feet devoted to the display of merchandise for sale to the public shall install and maintain at least two reverse vending machines at the dealer's place of business; (ii) sixty thousand but less than eighty-five thousand square feet devoted to the display of merchandise for sale to the public shall install and maintain at least three reverse vending machines at the dealer's place of business; or (iii) eighty-five thousand square feet devoted to the display of merchandise for sale to the public shall install and maintain at least four reverse vending machines at the dealer's place of business. The requirements of paragraph (b) of this subdivision to install and maintain reverse vending machines shall not apply to a dealer that: (i) sells only beverage containers of twenty ounces or less where such beverage containers are packaged in quantities fewer than six; (ii) sells beverage containers and devotes no more than five percent of its floor space to the display and sale of consumer commodities, as defined in section two hundred fourteen-h of the agriculture and markets law; or (iii) obtains a waiver from the commissioner authorizing dealers to provide consumers with an alternative technology that: (A) determines if the container is redeemable, (B) provides protections against fraud through a system that validates each container redeemed by reading the universal product code and, except with respect to refillable containers, renders the container unredeemable, (C) accumulates information regarding containers redeemed, and (D) issues legal tender, or a scrip, receipt, or other form of credit for the refund value, that can be exchanged for legal tender for a period of not less than sixty days without requiring the purchase of other goods. Notwithstanding the foregoing, if the alternative technology does not allow consumers to immediately obtain the refund value of the redeemed container, a dealer shall be permitted to deploy such alternative technology only if it also offers an alternative that allows consumers to conveniently and immediately obtain such refund value through a reverse vending machine

or other alternative method.

(c) A dealer to which paragraph (b) of this subdivision does not apply and whose place of business is at least forty thousand square feet which does not utilize reverse vending machines to process empty beverage containers for redemption shall: (i) establish and maintain a dedicated area within such business to accept beverage containers for redemption; (ii) adequately staff such area to facilitate efficient acceptance and processing of such containers during business hours; and (iii) post one or more conspicuous signs conforming to the size and color requirements described in subdivision two of this section at each public entrance to the business which describes where in the business the redemption area is located. The commissioner may establish in rules and regulations additional standards for the efficient processing of beverage containers by such dealers.

(d) For the purposes of this subdivision on any day that a dealer is open for less than twenty-four hours, the dealer may restrict or refuse the payment of refund values during the first and last hour the dealer is open for business.

2. A dealer shall post a conspicuous sign, at the point of sale, that states:

"NEW YORK BOTTLE BILL OF RIGHTS

STATE LAW REQUIRES US TO REDEEM EMPTY RETURNABLE BEVERAGE CONTAINERS OF
THE SAME TYPE AND BRAND THAT WE SELL OR OFFER FOR SALE
YOU HAVE CERTAIN RIGHTS UNDER THE NEW YORK STATE RETURNABLE CONTAINER
ACT:

THE RIGHT to return your empties for refund to any dealer who sells the same brand, type and size, whether you bought the beverage from the dealer or not. It is illegal to return containers for refund that you did not pay a deposit on in New York state.

THE RIGHT to get your deposit refund in cash, without proof of purchase.

THE RIGHT to return your empties any day, any hour, except for the first and last hour of the dealer's business day (empty containers may

be redeemed at any time in 24-hour stores).

THE RIGHT to return your containers if they are empty and intact. Washing containers is not required by law, but is strongly recommended to maintain sanitary conditions.

The New York state returnable container act can be enforced by the New York state department of environmental conservation, the New York state department of agriculture and markets, the New York state department of taxation and finance, the New York state attorney general and/or by your local government."

Such sign must be no less than eight inches by ten inches in size and have lettering a minimum of one quarter inch high, and of a color which contrasts with the background. The department shall maintain a toll free telephone number for a "bottle bill complaint line" that shall be available from 9:00 a.m. to 5:00 p.m. each business day to receive reports of violations of this title. The telephone number shall be listed on any sign required by this section.

3. On or after June first, two thousand nine, a dealer may limit the number of empty beverage containers to be accepted for redemption at the dealer's place of business to no less than seventy-two containers per visit, per redeemer, per day, provided that:

(a) The dealer has a written agreement with a redemption center, be it either at a fixed physical location within the same county and within one-half mile of the dealer's place of business, or a mobile redemption center, operated by a redemption center, that is located within one-quarter mile of the dealer's place of business. The redemption center must have a written agreement with the dealer to accept containers on behalf of the dealer; and the redemption center's hours of operation must cover at least 9:00 a.m. through 7:00 p.m. daily or in the case of a mobile redemption center, the hours of operation must cover at least four consecutive hours between 8:00 a.m. and 8:00 p.m. daily. The dealer must post a conspicuous, permanent sign, meeting the size and color specifications set forth in subdivision two of this section, open to public view, identifying the location and hours of

operation of the affiliated redemption center or mobile redemption center; and

(b) The dealer provides, at a minimum, a consecutive two hour period between 7:00 a.m. and 7:00 p.m. daily whereby the dealer will accept up to two hundred forty containers, per redeemer, per day, and posts a conspicuous, permanent sign, meeting the size and color specifications set forth in subdivision two of this section, open to public view, identifying those hours. The dealer may not change the hours of redemption without first posting a thirty day notice; and

(c) The dealer's primary business is the sale of food or beverages for consumption off-premises, and the dealer's place of business is less than ten thousand square feet in size.

4. A deposit initiator shall accept from a dealer or operator of a redemption center any empty beverage container of the design, shape, size, color, composition and brand sold or offered for sale by the deposit initiator, and shall pay the dealer or operator of a redemption center the refund value of each such beverage container as established by section 27-1005 of this title. A deposit initiator shall accept and redeem all such empty beverage containers from a dealer or redemption center without limitation on quantity.

5. A deposit initiator's or distributor's failure to pick up empty beverage containers, including containers processed in a reverse vending machine, from a redemption center, dealer or the operator of a reverse vending machine, shall be a violation of this title.

6. In addition to the refund value of a beverage container as established by section 27-1005 of this title, a deposit initiator shall pay to any dealer or operator of a redemption center a handling fee of three and one-half cents for each beverage container accepted by the deposit initiator from such dealer or operator of a redemption center. Payment of the handling fee shall be as compensation for collecting, sorting and packaging of empty beverage containers for transport back to the deposit initiator or its designee. Payment of the handling fee may not be conditioned on the purchase of any goods or services, nor may such payment be made out of the refund value account established

pursuant to section 27-1012 of this title. A distributor who does not initiate deposits on a type of beverage container is considered a dealer only for the purpose of receiving a handling fee from a deposit initiator.

7. A deposit initiator on a brand shall accept from a distributor who does not initiate deposits on that brand any empty beverage containers of that brand accepted by the distributor from a dealer or operator of a redemption center and shall reimburse the distributor the refund value of each such beverage container, as established by section 27-1005 of this title. In addition, the deposit initiator shall reimburse such distributor for each such beverage container the handling fee established under subdivision six of this section. Without limiting the rights of the department or any person, firm or corporation under this subdivision or any other provision of this section, a distributor shall have a civil right of action to enforce this subdivision, including, upon three days notice, the right to apply for temporary and preliminary injunctive relief against continuing violations, and until arrangements for collection and return of empty containers or reimbursement of such distributor for such deposits and handling fees are made.

8. It shall be the responsibility of the deposit initiator or distributor to provide to a dealer or redemption center a sufficient number of bags, cartons, or other suitable containers, at no cost, for the packaging, handling and pickup of empty beverage containers that are not redeemed through a reverse vending machine. The bags, cartons, or containers must be provided by the deposit initiator or distributor on a schedule that allows the dealer or redemption center sufficient time to sort the empty beverage containers prior to pick up by the deposit initiator or distributor. In addition:

(a) When picking up empty beverage containers, a deposit initiator or distributor shall not require a dealer or redemption center to load their own bags, cartons or containers onto or into the deposit initiator's or distributor's vehicle or vehicles or provide the staff or equipment needed to do so.

(b) A deposit initiator or distributor shall not require empty containers to be counted at a location other than the redemption center

or dealer's place of business. The dealer or redemption center shall have the right to be present at the count.

(c) A deposit initiator or distributor shall pick up empty beverage containers from the dealer or redemption center at reasonable times and intervals as determined in rules or regulations promulgated by the department.

9. No person shall return or assist another to return to a dealer or redemption center an empty beverage container for its refund value if such container had previously been accepted for redemption by a dealer, redemption center, or deposit initiator who initiates deposits on beverage containers of the same brand.

10. A redeemer, dealer, distributor or redemption center shall not knowingly redeem an empty beverage container on which a deposit was never paid in New York state.

11. Notwithstanding the provisions of subdivision two of section 27-1009 of this title, a deposit initiator or distributor shall accept and redeem beverage containers as provided in this title, if the dealer or operator of a redemption center shall have accepted and paid the refund value of such beverage containers.

12. No person shall intentionally program, tamper with, render inaccurate, or circumvent the proper operation of a reverse vending machine to wrongfully elicit deposit monies when no valid, redeemable beverage container has been placed in and properly processed by the reverse vending machine.

§ 27-1009. Refusal of acceptance.

1. A dealer or operator of a redemption center may refuse to accept from a redeemer, and a deposit initiator or distributor may refuse to accept from a dealer or operator of a redemption center any empty beverage container which does not state thereon a refund value as established by section 27-1005 and provided by section 27-1011 of this

title.

2. A dealer or operator of a redemption center may also refuse to accept any broken bottle, corroded, crushed or dismembered container, or any beverage container which contains a significant amount of foreign material, as determined in rules and regulations to be promulgated by the commissioner.

§ 27-1011. Beverage container requirements.

1. a. Every beverage container sold or offered for sale in this state shall clearly indicate by permanently marking or embossing the container or by printing as part of the product label the refund value of the container and the words "New York" or the letters "NY".

b. Such embossing or permanent imprinting on the beverage container shall be the responsibility of the person, firm or corporation which bottles, cans or otherwise fills or packages a beverage container or a brand owner for whose exclusive account private label beverages are bottled, canned or otherwise packaged; provided, however, that the duly authorized agent of any such person, firm or corporation may indicate such refund value by a label securely affixed on any beverage container containing beverages imported into the United States. Private label beverages shall be defined as beverages purchased from a bottler in beverage containers bearing a brand name or trademark for sale at retail directly by the owner or licensee of such brand name or trademark; or through retail dealers affiliated with such owner or licensee by a cooperative or franchise agreement.

2. No deposit initiator, distributor or dealer shall sell or offer for sale, at wholesale or retail in this state, any metal beverage container designed and constructed with a ring or tab which is detachable in opening the container unless such detachable part will decompose by photodegradation or biodegradation.

3. No deposit initiator, distributor or dealer shall sell or offer for

sale in this state beverage containers connected to each other by a separate holding device constructed of plastic which does not: (a) decompose by photodegradation or biodegradation; or

(b) comply with minimum post-consumer recycled material content and hole diameter limitations as defined in rules and regulations promulgated by the department, and is recyclable and indicates a resin identification code.

§ 27-1012. Deposit and disposition of refund values; registration; reports.

1. Each deposit initiator shall deposit in a refund value account an amount equal to the refund value initiated under section 27-1005 of this title which is received with respect to each beverage container sold by such deposit initiator. Such deposit initiator shall hold the amounts in the refund value account in trust for the state. A refund value account shall be an interest-bearing account established in a banking institution located in this state, the deposits in which are insured by an agency of the federal government. Deposits of such amounts into the refund value account shall be made not less frequently than every five business days. All interest, dividends and returns earned on the refund value account shall be paid directly into said account. The monies in such accounts shall be kept separate and apart from all other monies in the possession of the deposit initiator. The commissioner of taxation and finance may specify a system of accounts and records to be maintained with respect to accounts established under this subdivision.

2. Payments of refund values pursuant to section 27-1007 of this title shall be paid from each deposit initiator's refund value account. No other payment or withdrawal from such account may be made except as prescribed by this section.

3. Each deposit initiator shall file quarterly reports with the commissioner of taxation and finance on a form and in the manner prescribed by such commissioner. The commissioner of taxation and finance may require such reports to be filed electronically. The

quarterly reports required by this subdivision shall be filed for the quarterly periods ending on the last day of May, August, November and February of each year, and each such report shall be filed within twenty days after the end of the quarterly period covered thereby. Each such report shall include all information such commissioner shall determine appropriate including but not limited to the following information:

a. the balance in the refund value account at the beginning of the quarter for which the report is prepared;

b. all such deposits credited to the refund value account and all interest, dividends or returns received on such account, during such quarter;

c. all withdrawals from the refund value account during such quarter, including all reimbursements paid pursuant to subdivision two of this section, all service charges on the account, and all payments made pursuant to subdivision four of this section; and

d. the balance in the refund value account at the close of such quarter.

4. a. Quarterly payments. An amount equal to eighty percent of the balance outstanding in the refund value account at the close of each quarter shall be paid to the commissioner of taxation and finance at the time the report provided for in subdivision three of this section is required to be filed. The commissioner of taxation and finance may require that the payments be made electronically. The remaining twenty percent of the balance outstanding at the close of each quarter shall be the monies of the deposit initiator and may be withdrawn from such account by the deposit initiator. If the provisions of this section with respect to such account have not been fully complied with, each deposit initiator shall pay to such commissioner at such time, in lieu of the amount described in the preceding sentence, an amount equal to the balance which would have been outstanding on such date had such provisions been fully complied with. The commissioner of taxation and finance may require that the payments be made electronically.

b. Refund value account shortfall. In the event a deposit initiator pays out more in refund values than it collects in deposits of refund values during the course of a quarterly period as described in subdivision three of this section, the deposit initiator may apply to the commissioner of taxation and finance for a refund of the amount of such excess payment of refund values from sources other than the refund value account, in the manner as provided by the commissioner of taxation and finance. A deposit initiator must apply for a refund no later than twelve months after the due date for filing the quarterly report for the quarterly period for which the refund claim is made. No interest shall be payable for any refund paid pursuant to this paragraph.

c. Final report. A deposit initiator who ceases to do business in this state as a deposit initiator shall file a final report and remit payment of eighty percent of all amounts remaining in the refund value account as of the close of the deposit initiator's last day of business. The commissioner of taxation and finance may require that the payments be made electronically. The deposit initiator shall indicate on the report that it is a "final report". The final report is due to be filed with payment twenty days after the close of the quarterly period in which the deposit initiator ceases to do business. In the event the deposit initiator pays out more in refund values than it collects in such final quarterly period, the deposit initiator may apply to the commissioner of taxation and finance for a refund of the amount of such excess payment of refund values from sources other than the refund value account, in the manner as provided by the commissioner of taxation and finance.

5. All moneys collected or received by the department of taxation and finance pursuant to this title shall be deposited to the credit of the comptroller with such responsible banks, banking houses or trust companies as may be designated by the comptroller. Such deposits shall be kept separate and apart from all other moneys in the possession of the comptroller. The comptroller shall require adequate security from all such depositories. Of the total revenue collected, the comptroller shall retain the amount determined by the commissioner of taxation and finance to be necessary for refunds out of which the comptroller must

pay any refunds to which a deposit initiator may be entitled. After reserving the amount to pay refunds, the comptroller must, by the tenth day of each month, pay into the state treasury to the credit of the general fund the revenue deposited under this subdivision during the preceding calendar month and remaining to the comptroller's credit on the last day of that preceding month; provided, however, that, beginning April first, two thousand thirteen, nineteen million dollars, and all fiscal years thereafter, twenty-three million dollars plus all funds received from the payments due each fiscal year pursuant to subdivision four of this section in excess of the greater of the amount received from April first, two thousand twelve through March thirty-first, two thousand thirteen or one hundred twenty-two million two hundred thousand dollars, shall be deposited to the credit of the environmental protection fund established pursuant to section ninety-two-s of the state finance law.

6. The commissioner and the commissioner of taxation and finance shall promulgate, and shall consult each other in promulgating, such rules and regulations as may be necessary to effectuate the purposes of this title. The commissioner and the commissioner of taxation and finance shall provide all necessary aid and assistance to each other, including the sharing of any information that is necessary to their respective administration and enforcement responsibilities pursuant to the provisions of this title.

7. a. Any person who is a deposit initiator under this title before April first, two thousand nine, must apply by June first, two thousand nine to the commissioner of taxation and finance for registration as a deposit initiator. Any person who becomes a deposit initiator on or after April first, two thousand nine shall apply for registration prior to collecting any deposits as such a deposit initiator. Such application shall be in a form prescribed by the commissioner of taxation and finance and shall require such information deemed to be necessary for proper administration of this title. The commissioner of taxation and finance may require that applications for registration must be submitted electronically. The commissioner of taxation and finance shall electronically issue a deposit initiator registration certificate in a

form prescribed by the commissioner of taxation and finance within fifteen days of receipt of such application or may take an additional ten days if the commissioner of taxation and finance deems it necessary to consult with the commissioner before issuing such registration certificate. A registration certificate issued pursuant to this subdivision may be issued for a specified term of not less than three years and shall be subject to renewal in accordance with procedures specified by the commissioner of taxation and finance. The commissioner of taxation and finance shall furnish to the commissioner a complete list of registered deposit initiators and shall continually update such list as warranted. The commissioner shall share any information with the commissioner of taxation and finance that is necessary for the administration of this subdivision.

b. The commissioner of taxation and finance shall have the authority to revoke or refuse to renew any registration issued pursuant to this subdivision when he or she has determined or has been informed by the commissioner that any of the provisions of this title or rules and regulations promulgated thereunder have been violated. Such violations shall include, but not be limited to, the failure to file quarterly reports, the failure to make payments pursuant to this subdivision, the providing of false or fraudulent information to either the department of taxation and finance or the department, or knowingly aiding or abetting another person in violating any of the provisions of this title. A notice of proposed revocation or non-renewal shall be given to the deposit initiator in the manner prescribed for a notice of deficiency of tax and all the provisions applicable to a notice of deficiency under article twenty-seven of the tax law shall apply to a notice issued pursuant to this paragraph, insofar as such provisions can be made applicable to a notice authorized by this paragraph, with such modifications as may be necessary in order to adapt the language of such provisions to the notice authorized by this paragraph. All such notices issued by the commissioner of taxation and finance pursuant to this paragraph shall contain a statement advising the deposit initiator that the revocation or non-renewal of registration may be challenged through a hearing process and the petition for such a challenge must be filed with the commissioner of taxation and finance within ninety days after

such notice is issued. A deposit initiator whose registration has been so revoked or not renewed shall cease to do business as a deposit initiator in this state, until this title has been complied with and a new registration has been issued. Any deposit initiator whose registration has been so revoked may not apply for registration for two years from the date such revocation takes effect.

8. The commissioner of taxation and finance may require the maintenance of such accounts, records or documents relating to the sale of beverage containers, by any deposit initiator, bottler, distributor, dealer or redemption center as such commissioner may deem appropriate for the administration of this section. Such commissioner may make examinations, including the conduct of facility inspections during regular business hours, with respect to the accounts, records or documents required to be maintained under this subdivision. Such accounts, records and documents shall be preserved for a period of three years, except that such commissioner may consent to their destruction within that period or may require that they be kept longer. Such accounts, records and documents may be kept within the meaning of this subdivision when reproduced by any photographic, photostatic, microfilm, micro-card, miniature photographic or other process which actually reproduces the original accounts, records or documents.

9. a. Any person required to be registered under this section who, without being so registered, sells or offers for sale beverage containers in this state, in addition to any other penalty imposed by this title, shall be subject to a penalty to be assessed by the commissioner of taxation and finance in an amount not to exceed five hundred dollars for the first day on which such sales or offers for sale are made, plus an amount not to exceed five hundred dollars for each subsequent day on which such sales or offers for sale are made, not to exceed twenty-five thousand dollars in the aggregate.

b. Any deposit initiator who fails to file reports, make quarterly payments or maintain accounts or records pursuant to this section, unless it is shown that such failure was due to reasonable cause and not due to negligence or willful neglect, in addition to any other penalty

imposed by this title, shall be subject to a penalty to be assessed by the commissioner of taxation and finance of not more than one thousand dollars for each quarter during which such failure occurred, and an additional penalty of not more than one thousand dollars for each quarter such failure continues.

10. The provisions of article twenty-seven of the tax law shall apply to the provisions of this title for which the commissioner of taxation and finance is responsible, including collection of refund value amounts, in the same manner and with the same force and effect as if the language of such article had been incorporated in full into this section except to the extent that any provision of such article is either inconsistent with a provision of this section or is not relevant to this section as determined by the commissioner of taxation and finance. Furthermore, for purposes of applying the provisions of article twenty-seven of the tax law, where the terms "tax" and "taxes" appear in such article, such terms shall be construed to mean "refund value" or "balance in the refund value account".

11. If any deposit initiator fails or refuses to file a report or furnish any information requested in writing by the department of taxation and finance or the department, the department of taxation and finance with the assistance of the department may, from any information in its possession, make an estimate of the deficiency and collect such deficiency from such deposit initiator.

12. a. Each deposit initiator shall provide a report to the department describing all the types of beverage containers on which it initiates deposits. The report shall include the product name, type of beverage, size and composition of the beverage container, universal product code, and any other information the department may require. Upon request, a deposit initiator shall also provide to the department a copy of the container label or a picture of any beverage container sold or offered for sale in this state on which it initiates a deposit. Such information shall be provided in a form as prescribed by the department. The department may require that such forms be filed electronically.

b. A bottler may place on a beverage container a universal product code or other distinctive marking that is specific to the state or used only in the state and any other states with laws substantially similar to this title as a means of preventing the sale or redemption of beverage containers on which no deposit was initiated.

c. A bottler or deposit initiator shall notify the department, in a form prescribed by the department, whenever a beverage container or beverage container label is revised by altering the universal product code, or whenever the container on which a universal product code appears is changed in size, composition or glass color, or whenever the container or container label on which a universal product code appears is changed to include a universal product code that is unique to the state or used only in the state and any other states with laws substantially similar to this title.

§ 27-1013. Redemption centers.

1. The commissioner is hereby empowered to promulgate rules and regulations governing (a) the circumstances in which deposit initiators, dealers and distributors, individually or collectively, are required to accept the return of empty beverage containers, including beverage containers processed through reverse vending machines and make payment therefor; (b) the sorting of the containers which a deposit initiator or distributor may require of dealers and redemption centers; (c) the collection of returned beverage containers by deposit initiators or distributors, including the party to whom such expense is to be charged, the frequency of such pick ups and the payment for refunds and handling fees thereon; (d) the right of dealers to restrict or limit the number of containers redeemed, the rules for redemption at the dealers' place of business, and the redemption of containers from a beverage for which sales have been discontinued; (e) to issue registrations to persons, firms or corporations which establish redemption centers, subject to applicable provisions of local and state laws, at which redeemers and dealers may return empty beverage containers and receive payment of the refund value of such beverage containers. Such registrations shall be

issued at no cost. Should the department require by regulations adopted pursuant to this paragraph that redemption centers must obtain a registration as a condition of operation, any redemption center in business as of March first, two thousand thirteen that previously provided the department with the notification information required by regulations in effect as of such date may continue to operate as if the department had issued such redemption center a registration required by regulations adopted under this paragraph; provided, however, that such redemption center shall provide the department with any other information required by regulations adopted pursuant to this paragraph. The department may, after due notice and opportunity of hearing, pursuant to the provisions of section 71-1709 of this chapter, deny an application or revoke a registration. In determining whether or not to revoke a registration the commissioner shall at a minimum, take into consideration the compliance history of a violator, good faith efforts of a violator to comply, any economic benefit from noncompliance and whether the violation was procedural in nature. The commissioner's determination to revoke a registration is subject to review under article seventy-eight of the civil practice law and rules; and (f) the operation of mobile redemption centers in order to ensure that to the best extent practicable containers are not proffered for redemption to a deposit initiator or distributor outside of the geographic area where such deposit initiator sells containers and initiates deposits.

2. The department may require a redemption center to obtain a permit, as an alternative to registration if such center is located at the same facility or site as another solid waste management facility otherwise subject to the requirements of title seven of this article or the regulations promulgated pursuant thereto.

3. No dealer or distributor, as defined in section 27-1003 of this title, shall be required to obtain a permit to operate a redemption center at the same location as the dealer's or distributor's place of business. Operators of such redemption centers shall receive payment of the refund value of each beverage container from the appropriate deposit initiator or distributor as provided under section 27-1007 of this title.

4. Each dealer and redemption center shall require any person tendering for redemption more than two thousand five hundred containers at one time to such dealer or redemption center to provide such person's name and address and the license plate of the vehicle used to transport the containers, or, in the case of an agent or employee of a not-for-profit corporation, a sales tax exemption certificate. The dealer or redemption center redeeming the beverage containers shall keep the information on file for a minimum of twelve months and provide same to the department upon request.

§ 27-1014. Authority to promulgate rules and regulations.

In addition to the authority of the commissioner, under sections 27-1009 and 27-1013 of this title, the commissioner shall have the power to promulgate rules and regulations necessary and appropriate for the administration of this title.

§ 27-1015. Violations.

1. Except as otherwise provided in this section and section 27-1012 of this title, any person who shall violate any provision of this title shall be liable to the state of New York for a civil penalty of not more than five hundred dollars, and an additional civil penalty of not more than five hundred dollars for each day during which each such violation continues. Any civil penalty may be assessed following a hearing or opportunity to be heard.

2. Any distributor, deposit initiator, redemption center or dealer who violates any provision of this title, except as provided in section 27-1012 of this title, shall be liable to the state of New York for a civil penalty of not more than one thousand dollars, and an additional civil penalty of not more than one thousand dollars for each day during which each such violation continues. Any civil penalty may be assessed following a hearing or opportunity to be heard.

3. It shall be unlawful for a distributor or deposit initiator, acting alone or aided by another, to return any empty beverage container to a dealer or redemption center for its refund value if the distributor or deposit initiator had previously accepted such beverage container from any dealer or operator of a redemption center or if such container was previously accepted by a reverse vending machine. A violation of this subdivision shall be a misdemeanor punishable by a fine of not less than five hundred dollars nor more than one thousand dollars and an amount equal to two times the amount of money received as a result of such violation.

4. Any person who willfully tenders to a dealer, distributor, redemption center or deposit initiator more than forty-eight empty beverage containers for which such person knows or should reasonably know that no deposit was paid in New York state may be assessed by the department a civil penalty of up to one hundred dollars for each container or up to twenty-five thousand dollars for each such tender of containers. At each location where a person tenders containers for redemption, dealers and redemption centers must conspicuously display a sign in letters that are at least one inch in height with the following information: "WARNING: Persons tendering for redemption containers on which a deposit was never paid in this state may be subject to a civil penalty of up to one hundred dollars per container or up to twenty-five thousand dollars for each such tender of containers." Any civil penalty may be assessed following a hearing or opportunity to be heard.

5. The department, the department of agriculture and markets, the department of taxation and finance and the attorney general are hereby authorized to enforce the provisions of this title and all monies collected shall be deposited to the credit of the environmental protection fund established pursuant to section ninety-two-s of the state finance law. In addition, the provisions of section 27-1005 of this title and subdivisions one, two, three, four, five, ten and eleven of section 27-1007 of this title may be enforced by a county, city, town or village and the local legislative body thereof may adopt local laws, ordinances or regulations consistent with this title providing for the

enforcement of such provisions.

* 5-a. The city of New York, Nassau county and Suffolk county are entitled to retain twenty-five percent of all monies collected as fines or penalties pursuant to enforcement of section 27-1005 of this chapter.

* NB Repealed April 1, 2031

6. (a) Any person who willfully violates or directs another to violate the requirements to collect or charge the refund value imposed by section 27-1005 or paragraph a of subdivision nine of section 27-1012 of this title on five thousand or more beverage containers in one or more separate transactions within one year shall be guilty of a class B misdemeanor.

(b) Any person, having previously been convicted of a violation of paragraph (a) of this section within the past three years, who willfully violates or directs another to violate the requirements to collect or charge the refund value imposed by section 27-1005 or paragraph a of subdivision nine of section 27-1012 of this title on five thousand or more beverage containers in one or more separate transactions within one year shall be guilty of a class A misdemeanor.

(c) Any person who willfully violates or directs another to violate the requirements to collect or charge the refund value imposed by section 27-1005 or paragraph a of subdivision nine of section 27-1012 of this title on twenty thousand or more beverage containers in one or more separate transactions within one year shall be guilty of a class E felony.

Nothing in this subdivision shall apply to common or contract carriers or warehousemen while engaged in lawfully transporting or storing such containers as merchandise, nor to any employee of such carrier or warehouseman acting within the scope of his or her employment.

7. A violation of this title, except as otherwise provided in this section and section 27-1012 of this title, shall be a public nuisance.

§ 27-1016. Public education.

The commissioner shall establish a public education program to disseminate information regarding implementation of this title. Such information shall include, but not be limited to, publication of the New York Bottle Bill of Rights as specified in subdivision two of section 27-1007 of this title; publication of information specifying the procedures necessary to establish a redemption center as provided in section 27-1013 of this title, including information regarding financial assistance available for the establishment of redemption centers as provided in section 27-1018 of this title; publication of information delineating the relevant rights and responsibilities of deposit initiators, distributors, dealers, redemption centers and redeemers under the provisions of this title; publication of information regarding the requirement that deposit initiators register with the department of taxation and finance; and publication of information on the general benefits of recycling.

§ 27-1018. Beverage container assistance program.

Notwithstanding any other provision of law to the contrary, within the limits of appropriations therefor, the commissioner shall make state assistance payments to municipalities, businesses and not-for-profit organizations located in the state for the cost of reverse vending machines located or to be located in the state. Such state assistance payments shall not exceed fifty percent of the costs of equipment, and/or the acquisition and/or rehabilitation of real property or structures located or to be located in the state related to the collecting, sorting, and packaging of empty beverage containers subject to the provisions of this title. Such payments may include costs related to the establishment of redemption centers, including mobile redemption centers. For the purposes of this section, municipalities and not-for-profit organizations shall have the meaning as defined in section 54-0101 of this chapter and businesses shall mean a dealer, distributor or redemption center as defined in this title that employs less than fifty employees.

§ 27-1019. Severability.

The provisions of this title shall be severable and if any phrase, clause, sentence or provision of this title, or the applicability thereof to any person or circumstance shall be held invalid, the remainder of this title and the application thereof shall not be affected thereby.

TITLE 11

INDUSTRIAL SITING HAZARDOUS WASTE FACILITIES

Section 27-1101. Definitions.

- 27-1102. Hazardous waste disposal capacity assurances and statewide hazardous waste facility siting plan.
- 27-1103. Criteria for siting industrial hazardous waste treatment, storage and disposal facilities.
- 27-1105. Siting industrial hazardous waste facilities.
- 27-1107. Powers of municipalities.
- 27-1109. State siting requirements.
- 27-1111. Public participation and education.
- 27-1113. Community advisory committees.
- 27-1115. Aid to local governments.

§ 27-1101. Definitions.

As used in this title, unless the context otherwise requires:

1. "Person" means any individual, public or private corporation, political subdivision, government agency, industry, partnership, association, firm, trust, estate or any other legal entity whatsoever.
2. "Corporation" means the New York state environmental facilities corporation.
3. "Board" means a facility siting board constituted pursuant to the provisions of section 27-1105 of this title.

4. "Industrial hazardous waste" shall mean an industrial waste or combination of wastes, which because of its quantity, concentration, or physical, chemical or infectious characteristics may:

a. Cause, or significantly contribute to an increase in serious irreversible, or incapacitating reversible illness; and/or

b. Pose a substantial present or potential hazard to human health or the environment and, therefore, must be segregated and excluded from the general municipal waste system and sewage collection and treatment process.

5. "Industrial hazardous waste treatment, storage and disposal facility" shall mean a specialized facility or site other than a low-level radioactive waste management facility subject to the provisions of article twenty-nine of this chapter, or a sewage treatment facility for the purpose of treating, storing, compacting, recycling, exchanging, or disposing of industrial hazardous waste materials, including treatment, compacting, resource recovery or disposal plants, equipment and furnishings thereof used for the storage, treatment, compacting, composting, shredding, coverting, utilization, processing, or final disposal of hazardous waste, including but not limited to mechanical, chemical or thermal processing systems, incinerators, sanitary landfills, other facilities for the storage, reduction or conversion of hazardous waste, including but not limited to transfer stations, baling facilities, railroad and maritime facilities, motor trucks or vehicles and appurtenances, furnishings, equipment and machinery deemed necessary thereto.

6. "Municipality" means any town, city, county or village.

7. "Treatment" means any method, technique, or process including neutralization, designed to change the physical, chemical or biological character or composition of any hazardous waste so as to neutralize such waste or as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume.

8. "Storage" means the containment of hazardous waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous waste.

9. "Disposal" means the abandonment, discharge, deposit, injection, dumping, spilling, leaking or placing of any substance so that such substance or any related constituent thereof may enter the environment. Disposal also means the thermal destruction of waste or hazardous waste and the burning of such wastes as fuel for the purpose of recovering useable energy.

10. "Environment" means any water, water vapor, any land including land surface or subsurface, air, fish, wildlife, biota and all other natural resources.

11. "Preferred hazardous waste management practices hierarchy" shall mean that policy established in section 27-0105 of this article.

§ 27-1102. Hazardous waste disposal capacity assurances and statewide hazardous waste facility siting plan.

1. The department shall immediately begin preparation of a statewide hazardous waste facility siting plan to establish a framework to guide state agencies and authorities and the facility siting board established pursuant to section 27-1105 of this title in the discharge of their responsibilities and to assure the availability of industrial hazardous waste treatment, storage and disposal facilities which:

a. have adequate capacity for the destruction, treatment or secure disposition of all hazardous wastes that are reasonably expected to be generated within the state in the next twenty years;

b. are within the state or outside the state in accordance with an interstate agreement or regional agreement or authority;

c. comply with all federal and state requirements governing such facilities; and

d. comply with the preferred hazardous waste management practices hierarchy established pursuant to section 27-0105 of this article.

2. The plan shall include but not be limited to:

a. an inventory and appraisal including the identification, location and life expectancy of all industrial hazardous waste treatment, storage and disposal facilities located within the state.

b. a compilation and analysis of existing inventories, reports and studies of the sources, composition and quantity of industrial hazardous waste generated within the state and of existing programs for waste reduction, recycling and reuse.

c. long-range projections of at least twenty years of the amounts and composition of hazardous waste which will be generated within the state and, to the extent feasible, in neighboring states.

d. a schedule for phasing out land disposal, other than treated residuals in compliance with the policy established in section 27-0105 of this article.

e. the identification, if appropriate, of areas of the state which have compatible hazardous waste generation streams and similar interests in providing regional hazardous waste management and disposal capacity to primarily service such areas.

f. a determination of the number, size, type and location by area of the state of new or expanded industrial hazardous waste treatment, storage and disposal facilities which will be needed for the proper long-term management of hazardous waste consistent with the assurances required pursuant to subdivision one of this section and an equitable geographic distribution of facilities.

g. an analysis of transportation routes and transportation risk and costs from industrial hazardous waste generators to existing or potentially suitable sites for industrial hazardous waste treatment, storage and disposal facilities.

h. recommendations on regional and statewide coordination of methods and procedures to encourage cooperative treatment, storage, disposal and transportation of industrial hazardous waste and other such hazardous waste management methods.

i. recommendations on procedures for periodically updating the statewide hazardous waste facility siting plan and for future coordination of hazardous waste management and planning on a regional basis.

3. The department shall prepare and adopt a draft statewide hazardous waste facility siting plan within six months after the effective date of this section.

4. Upon completion of the draft plan, the department shall make it available to all interested persons. The department shall publicize such plan and solicit comments. The department shall hold at least one public hearing within each region of the state to review and solicit comments on the draft plan.

5. Within twelve months after the effective date of this section, the department shall have completed public hearings on the draft plan and shall have considered comments and shall make such revisions to the draft plan as it deems necessary or appropriate. The department shall make the revised plan available to all interested persons and shall solicit comments and hold public hearings on the revised plan.

6. Within fifteen months after the effective date of this section, the department shall make any final revisions as it deems necessary or appropriate and adopt the plan. The adopted plan shall be transmitted to the governor and the legislature and made available to all interested parties.

7. Upon adoption of the plan the department shall immediately establish a schedule for siting any new or expanded industrial hazardous waste treatment, storage or disposal facilities identified as necessary in such plan.

§ 27-1103. Criteria for siting industrial hazardous waste treatment, storage and disposal facilities.

1. The commissioner shall, after investigation and opportunity for public comment, within one year from the effective date of this section, publish criteria for siting industrial hazardous waste treatment, storage and disposal facilities. Such siting criteria shall be designed to insure the maximum safety of the public from hazards associated with treatment, storage, and disposal of hazardous wastes. The commissioner shall also within one year from such effective date adopt criteria prescribing the form and content of applications for a certificate of environmental safety and public necessity to construct an industrial hazardous waste treatment, storage and disposal facility.

2. The criteria issued pursuant to subdivision one of this section for the siting of industrial hazardous waste treatment, storage and disposal facilities shall take into account, among other factors:

a. The consistency of the application with the plan adopted pursuant to section 27-1102 of this title,

b. The density of population in areas neighboring such facility,

c. The density of population in areas adjacent to delivery routes to such facility,

d. The risk of accident during the transportation of hazardous wastes,

e. The risk of contamination of ground and surface waters by leaching and runoff from such facility,

f. The risk of fires or explosions from improper storage and disposal methods,

g. The impact on the municipality where the facility is to be cited in terms of health, safety, cost and consistency with local planning, zoning or land use laws and ordinances,

h. The nature of the probable environmental impact, including specification of the predictable adverse effects on the natural environment and ecology, public health and safety, scenic, historic, cultural and recreational value, water and air quality, wildlife and an evaluation of measures to mitigate adverse effects, and

i. The future physical climate risk due to sea level rise, and/or storm surges and/or flooding, based on available data predicting the likelihood of future extreme weather events, including hazard risk analysis data if applicable.

3. The criteria issued by the commissioner pursuant to subdivision one of this section prescribing the form of an application for a certificate of environmental safety and public necessity to construct an industrial hazardous waste treatment, storage and disposal facility shall require the applicant to supply detailed information regarding:

a. The location of the proposed facility,

b. A description of the design and capacity of the facility,

c. The expected sources of hazardous wastes for the facility, the proposed methods of transporting such wastes to and from the facility, and the routes which deliveries will traverse,

d. The need for the facility,

e. The environmental impacts of the proposed facility,

f. A description of reasonable alternative locations for the proposed facility, and

g. Such other information as the commissioner shall prescribe as to whether the proposed facility is necessary and compatible with the surrounding environment and with the health, safety and welfare of neighboring populations.

§ 27-1105. Siting industrial hazardous waste facilities.

1. After the publication of siting criteria pursuant to subdivision one of section 27-1103 of this title, no person may commence construction or operation of the following industrial hazardous waste treatment, storage and disposal facilities, hereinafter referred to as "facility", without having received a certificate of environmental safety and public necessity from the facility siting board as hereinafter provided: (a) any new off-site facility;

(b) any new commercial facility, wherever situated;

(c) any new incineration facility, wherever situated;

(d) any new land disposal facility, wherever situated; and

(e) any expansion, wherever situated, of the aggregate land disposal capacity of an existing land disposal facility.

2. Notwithstanding the provisions of subdivision one of this section, the following industrial hazardous waste treatment, storage and disposal facilities shall not be subject to the provisions of this title:

(a) A facility that does not require permits pursuant to title nine of this article;

(b) A land disposal facility located at the site of an existing land disposal facility where both the existing facility is or was and the proposed facility will be used solely for the disposal of non-incinerable residues from the on-site thermal destruction or chemical or aqueous treatment of wastes generated at the site of such facilities;

(c) A facility that has been determined by the department to have no significant environmental impact pursuant to article eight of this

chapter; and

(d) Additional facilities, other than land disposal facilities, to be located at the site of an existing facility, the operation of which will be substantially similar to that of the existing facility with respect to the mode of waste management and the type and quantity of hazardous waste being managed.

3. To obtain the certificate of environmental safety and public necessity required pursuant to subdivision one of this section, the following procedures shall be followed:

(a) An application must be submitted to the department in the form required pursuant to subdivisions one and three of section 27-1103 of this title.

(b) On or before fifteen calendar days after the receipt of such application, the department shall mail written notice to the applicant whether or not the application is complete. If the application is not complete, the provisions of paragraphs (c) and (d) of subdivision one of section 70-0109 of this chapter shall be applicable. If, or when, the application is complete, the department shall, concurrent with notification to the applicant, send the application and written notice to the office of the governor requesting that a facility siting board be constituted consistent with this subdivision.

(c) Immediately upon determining that an application is complete, the department shall cause a notice of application to be published in the next available environmental notice bulletin which shall be not later than ten calendar days after the date of such notice and shall provide notice to the chief executive officer of each municipality in which the proposed project is located, and may direct the applicant to provide such reasonable notice and opportunity for comment to the public as the department deems appropriate. Such notice shall also be given to all property owners of record within three hundred feet of the subject facility. In addition, notice shall be published in at least two newspapers having a general circulation in the area in which the proposed activity is located, and in contiguous areas potentially affected by the proposed action.

(d) On or before fifteen calendar days after the receipt of such notification the governor shall constitute a facility siting board to be

composed of the commissioners of transportation, environmental conservation, health and commerce, the secretary of state and three ad hoc members appointed by the governor, two of whom must be residents of the county in which the facility is primarily proposed to be located. The three ad hoc members shall be employees of the state for the purposes of section seventeen of the public officers law. Each of the three ad hoc members shall receive the sum of two hundred dollars for each day in which he is actually engaged in the performance of his duties herein plus actual and necessary expenses incurred by him in the performance of such duties. The terms of the ad hoc members shall continue until a final determination has been made in the particular proceeding for which they were appointed. Each ex officio member of the board may by written instrument filed with the board designate an employee or officer of his department to act on his behalf relating to any or all business of the board. Five of the eight persons on the board shall constitute a quorum for the transaction of any business of the board, and the decision of five members of the board shall constitute action of the board. In addition to the requirements of the public officers law, no person shall be eligible to be an appointee of the governor to the board who holds another state or local office. The governor shall appoint the chairman of the board and the commissioner of environmental conservation shall make staff available to support the board in carrying out its responsibilities.

(e) The commissioner of the department of environmental conservation shall appoint a hearing officer who shall conduct an adjudicatory public hearing upon the application. Such hearing shall commence on or before sixty calendar days after the facility siting board is constituted. Such hearing shall be preceded by public notice, in the same form and manner as provided in paragraph (c) of this subdivision, published not less than thirty days prior to such hearing. The members of the board may at their option participate in the adjudicatory hearing. Such participation may include, but is not limited to, examination of witnesses and requesting the production of documents or witnesses.

(f) The board shall render a decision based upon the record either granting the application, denying it, or granting it upon such terms, conditions, limitations, or modifications thereof as the board may deem appropriate. The board shall deny an application to construct or operate

a facility if residential areas and contiguous populations will be endangered, if it otherwise does not conform to the siting criteria established for such facility pursuant to section 27-1103 of this title or, upon final adoption of the statewide hazardous waste facility siting plan established pursuant to section 27-1102 of this title, if it is not consistent with such plan or if the need for such facility is not identified in such plan and the board finds that the facility is not otherwise necessary or in the public interest.

(g) The board shall make the final decision on an application for a certificate of environmental safety pursuant to this title, upon the record made before the hearing officer, after receiving briefs from the parties to the hearing and exceptions to the recommended decision of such hearing officer and after hearing such oral argument as the board shall determine to be necessary. The chairman of the facility siting board shall mail its decision to the applicant, to the department, and to all parties to the hearing on or before sixty calendar days after receipt by the board of a complete record, as that term is defined in paragraphs (a) through (e) of subdivision one of section 302 of the state administrative procedure act.

(h) The provisions of article 70 of this chapter shall apply to applications pursuant to this title, to the extent such provisions are not inconsistent herewith.

§ 27-1107. Powers of municipalities.

Notwithstanding any other provision of law, no municipality may, except as expressly authorized by this article or the board, require any approval, consent, permit, certificate or other condition including conformity with local zoning or land use laws and ordinances, regarding the operation of a facility with respect to which a certificate hereunder has been granted; provided, however, that such municipality has received notice of the filing of the application therefor.

§ 27-1109. State siting requirements.

1. Within one year from the adoption of the plan required to be prepared pursuant to section 27-1102 of this title, and annually thereafter, the department shall review the implementation of the plan including the status of all existing facilities and all permit applications for new or expanded industrial hazardous waste treatment, storage, or disposal facilities.

2. If, upon completion of its annual review, the department finds that existing facilities alone or in combination with one or more pending or approved facility permit applications are sufficient to meet the schedule identified pursuant to subdivision eight of section 27-1102 of this title the department shall so notify the legislature and the governor, in writing, identifying such existing facilities and new facility applications pending or approved, and stating that no further action is necessary on the part of the state.

3. If, upon completion of its annual review, the department finds that existing facilities alone or in combination with one or more pending or approved new facility permit applications are not sufficient to meet the schedule identified pursuant to subdivision eight of section 27-1102 of this title, the department shall so notify the legislature and the governor in writing identifying in such notice the specific facilities needed to meet such schedule.

4. Upon such finding the department shall, consistent with its responsibilities under this title, immediately undertake measures and actions to assist any interested potential industrial hazardous waste treatment, storage and disposal facility owners and operators in finding an appropriate site or sites, and shall hold public hearings or briefings designed to encourage and facilitate discussion and negotiations among such potential owners and operators and any potential host community for any such facilities.

5. Within six months of a finding pursuant to subdivision three of this section, the department shall report in writing to the governor and legislature detailing the measures and actions taken pursuant to subdivision four of this section and whether or not such actions have

resulted in the filing of facility permit applications sufficient to meet the schedule identified pursuant to subdivision eight of section 27-1102 of this title. If such actions and measures have failed to result in filings sufficient to meet such schedule, the department shall include in its report the reasons for such failure and its recommendations on the actions necessary to meet such schedule including a determination as to the necessity for the state through the environmental facilities corporation under its existing powers or some other mechanism to initiate the siting and construction of those facilities necessary to meet such schedule.

6. Notwithstanding any other provision of this title, no new or pending application for a disposal facility subject to section 27-1105 of this title shall be deemed complete until the department has determined such application is consistent with the facility siting plan adopted pursuant to section 27-1102 of this title.

§ 27-1111. Public participation and education.

The department shall establish a public information program which addresses:

1. The nature and dimension of the industrial hazardous waste treatment, storage and disposal facility siting problem.

2. The need for the establishment of a statewide hazardous waste facility siting plan including the need to site any additional industrial hazardous waste treatment, storage and disposal facilities and the role of waste reduction, recycling and reuse in the planning process.

3. The necessity and opportunities for public participation in the siting and planning process.

§ 27-1113. Community advisory committees.

1. In addition to any authority conferred by any other provision of law, a county within which an industrial hazardous waste treatment, storage and disposal facility subject to this title is to be situated, shall constitute a committee for the purpose of entering into a dialogue with the applicant to develop mutually acceptable solutions to problems which may be created by the siting of the facility in the community.

2. The committee shall have no fewer than nine and no more than fifteen members. No more than one-third of the members shall be designated by the chief executive officer, or if none, the chairman of the county legislative body, of the affected county. No less than two-thirds of the members shall be designated by the chief executive officer of the affected city, town or village as the case may be, provided however, if the proposed facility is located in more than one city, town or village, the chief executive officer of such cities, towns, or villages shall have the authority to appoint an equal number of members to the local advisory committee, the total of which shall not be less than two-thirds of such committee.

3. The members of the committee shall be deemed employees of the public entity by which they were respectively designated for purposes of section eighteen of the public officers law.

4. Within fifteen days after receipt of notification of the constitution of a community advisory committee, the chairman of the board or his designee shall convene and preside over a conference between the applicant and such committee. The chairman of the facility siting board or his designee shall endeavor to foster a dialogue between the applicant and the committee, and to that end, shall convene and preside over such additional conferences as may be necessary.

§ 27-1115. Aid to local governments.

No later than the first day of April, nineteen hundred eighty-eight, the department shall submit to the legislature and the governor a report

recommending appropriate forms of state aid or assistance to local governmental units within the boundaries of which any industrial hazardous waste treatment, storage and disposal facilities subject to this title may be located. Such report shall be developed by the department and shall:

1. describe the nature of the probable impacts upon local governmental units of such facilities;

2. describe the possible forms or kinds of state or other aid or assistance which might be appropriate to mitigate or provide off-setting benefits with respect to each of the kinds of probable impacts on local governmental units identified pursuant to this section; and

3. set forth the department's specific recommendations to the legislature and the governor for the forms of kinds of state or other aid or assistance to local governmental units to mitigate or provide off-setting benefits with respect to such impacts, together with the reasons for the department's specific recommendations.

TITLE 12

MITIGATION AND REMEDIATION OF CERTAIN SOLID WASTE SITES AND DRINKING WATER CONTAMINATION

Section 27-1201. Definitions.

27-1203. Mitigation and remediation of solid waste sites.

27-1205. Mitigation of contaminants in drinking water.

27-1207. Use and reporting of the solid waste mitigation account
and the drinking water response account.

27-1209. Rules and regulations.

27-1211. Protection against liability and liability exemptions
and defenses.

§ 27-1201. Definitions.

When used in this title:

1. "Contaminant" means emerging contaminants pursuant to section eleven hundred twelve of the public health law, and, for solid waste sites, shall include parameters identified in regulations required to be tested by landfills to ensure the protection of groundwater quality.

2. "Contamination" or "contaminated" means the presence of a contaminant in any environmental media, including soil, surface water, or groundwater, sufficient to cause or substantially contribute to an exceedance of standards, criteria, and guidance values established by the department or drinking water standards, including maximum contaminant levels, notification levels, maximum residual disinfectant levels or action levels established by the department of health.

3. "Drinking water contamination site" means any area or site that is causing or substantially contributing to the contamination of one or more public drinking water supplies.

4. "Mitigation" means the investigation, sampling, management, or treatment of a solid waste site or drinking water contamination site required to ensure the availability of safe drinking water, including public water systems and individual onsite water supply systems necessary to meet standards, criteria, and guidance values established by the department or drinking water standards, including maximum contaminant levels, notification levels, maximum residual disinfectant levels, or action levels established by the department of health that can be successfully carried out with available, implementable and cost-effective technology. "Mitigation" activities include but are not limited to the installation of drinking water treatment systems, the provision of alternative water supplies, or repair of a landfill cap. "Mitigation" does not mean remediation.

5. "Solid waste site" means a site where (a) the department has a reasonable basis to suspect that the illegal disposal of solid waste occurred or, (b) a court of competent jurisdiction has determined that an illegal disposal of solid waste occurred, or (c) the department knows or has a reasonable basis to suspect that an inactive solid waste

management facility which does not have a current monitoring program is impacting or contaminating one or more drinking water supplies. Solid waste site shall not include a site which is currently subject to investigation or remediation pursuant to title thirteen or fourteen of this article or any site which completed such programs and was either delisted by or received a certificate of completion from the department.

6. "Solid waste management facility" means any facility employed for solid waste collection, processing and disposal including processing systems, including resource recovery facilities or other facilities for reducing solid waste volume, sanitary landfills, regulated facilities for the disposal of construction and demolition debris, regulated plants and facilities for compacting, composting or pyrolyzation of solid wastes, regulated mulch facilities, landspreading and soil amending operations, and incinerators.

§ 27-1203. Mitigation and remediation of solid waste sites.

1. The solid waste site priority in this state is to mitigate and remediate any solid waste site causing or substantially contributing to impairments of drinking water quality which may impact public health.

2. The department shall, in conjunction with the department of health, develop a system to select and prioritize sites for mitigation and remediation, considering the effects on the health of the state.

3. Beginning July first, two thousand nineteen and annually thereafter, the department shall prepare and submit to the governor and the legislature a comprehensive plan designed to mitigate and remediate solid waste sites. This plan shall establish a solid waste site mitigation and remediation priority list.

4. The department is authorized to conduct preliminary investigations to determine if a solid waste site is causing or substantially contributing to imminent or documented drinking water source contamination. The department, and any employee, agent, consultant or

other person acting at the direction of the department, shall have the authority to enter all solid waste sites for the purpose of preliminary investigation, mitigation and remediation, provided that the department has made a reasonable effort to identify the owner of such property to notify such owner of the intent to enter the property at least ten days in advance. 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. Any inspection of the property and each taking of samples shall take place at reasonable times and shall be commenced and completed with reasonable promptness. Such preliminary investigation shall include:

a. conducting or causing to be conducted field investigations of high priority sites identified in the plan established pursuant to subdivision three of this section for the purpose of further defining necessary mitigation and remediation, if any. To the maximum extent practicable, the department shall utilize existing information including, but not limited to, subsurface borings and any analyses or tests of samples taken from such sites by owners or operators, other responsible persons and any federal or non-federal agencies;

b. making any subsurface borings and any analyses or tests of samples taken as may be necessary or desirable to effectuate the field investigations of sites as required under this section subject to the requirements of this title. If the owner of a solid waste site can be identified, the department shall provide such owner with a minimum of ten days' written notice of the intent to take such borings or samples in accordance with the provisions of subdivision twelve of section 27-1205 of this title. 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;

c. making any record searches or document reviews as may be necessary or desirable to effectuate the purposes of this section subject to the requirements of this title.

5. If the department or the department of health, as appropriate, determines that a solid waste site poses a significant threat to the public health or environment due to hazardous waste, the department shall refer the site to the inactive hazardous waste disposal site remedial program pursuant to title thirteen of this article.

6. Where the department has determined through a preliminary investigation conducted pursuant to subdivision four of this section that a solid waste site is causing or substantially contributing to contamination of a public drinking water supply, the owner or operator of a solid waste site shall, at the department's written request, cooperate with any and all remedial measures deemed necessary and which shall be undertaken by the department, in conjunction with the department of health, for the mitigation and remediation of a solid waste site or area which is necessary 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. The department may implement necessary measures to mitigate and remediate the solid waste site within amounts appropriated for such purposes from the solid waste mitigation program.

§ 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.

§ 27-1207. Use and reporting of the solid waste mitigation program and the drinking water response program.

1. Pursuant to the clean water infrastructure act of two thousand seventeen and within the up to one hundred thirty million dollars appropriated for such purposes, mitigation and remediation efforts to address public drinking water contamination from emerging contaminants and solid waste sites causing or substantially contributing to drinking water impairment that impacts public health may be conducted in accordance with this title.

2. The solid waste mitigation program shall receive no more than fifty million dollars from the clean water infrastructure act of 2017 and be made available to the department and the department of health, as applicable, for the following purposes:

- a. enumeration and assessment of solid waste sites;
- b. investigation and environmental characterization of solid waste sites, including environmental sampling;
- c. mitigation and remediation of solid waste sites;
- d. monitoring of solid waste sites; and
- e. administration and enforcement of the requirements of section 27-1203 of this title.

3. The drinking water response program shall receive no more than twenty million dollars annually from the clean water infrastructure act of 2017 and be made available to the department and the department of health, as applicable, for the following purposes:

- a. mitigation of drinking water contamination;
- b. investigation of drinking water contamination;

c. remediation of drinking water contamination; and

d. administration and enforcement of the requirements of this title except the provisions of section 27-1203.

4. On or before July first, two thousand nineteen and July first of each succeeding year, the department shall report on the status of the programs. Such status report shall reflect information available to the department as of March thirty-first of each year, and shall include information regarding the number of sites referred to the inactive hazardous waste disposal site remedial program based on information obtained pursuant to this title and an accounting of all monies expended or encumbered from the clean water infrastructure act of two thousand seventeen during the preceding fiscal year, such accounting to separately list:

a. monies expended or encumbered for the purpose of conducting site investigations;

b. monies expended or encumbered for the purpose of conducting remedial investigations and feasibility studies;

c. monies expended for mitigation and remediation measures; and

d. an accounting of payments received and payments obligated to be received pursuant to this title, and a report of the department's attempts to secure such obligations.

5. all moneys recovered pursuant to title twelve of article twenty-seven of this chapter shall be deposited into the capital projects fund (30000), provided that such moneys recovered shall be used for the same purposes as are authorized by this title.

§ 27-1209. Rules and regulations.

The department shall promulgate rules and regulations necessary and

appropriate to carry out the purposes of this title and shall at a minimum include such provisions for requisite due process and meaningful public participation as are appropriate to any action undertaken pursuant to this title, taking into consideration the nature and degree of any public health impacts and the urgency of any need for investigation or remediation of contamination.

§ 27-1211. Protection against liability and liability exemptions and defenses.

In addition to common law defenses, the provisions of sections 27-1321 and 27-1323 of this article shall apply to a solid waste site that is causing or substantially contributing to contamination of public drinking water supplies or a drinking water contamination site pursuant to this title and shall apply to emerging contaminants in the same way applicable to hazardous materials and hazardous wastes.

TITLE 13

INACTIVE HAZARDOUS WASTE DISPOSAL SITES

Section 27-1301. Definitions.

27-1303. Identification of sites.

27-1305. Reports by the department; registry of sites.

27-1307. Reports to the department.

27-1309. Access to records and sites.

27-1311. Confidentiality.

27-1313. Remedial programs.

27-1315. Rules and regulations.

27-1316. Citizen technical assistance grants.

27-1317. New use of sites.

27-1318. Institutional and engineering controls.

27-1319. State superfund management board.

27-1321. Protection against liability.

27-1323. Liability exemptions and defenses.

27-1325. Financial responsibility provisions.

27-1327. Recovery of response costs and natural resource

damages.

27-1329. Abatement actions.

27-1331. Community participation.

§ 27-1301. Definitions.

When used in this title:

1. "Hazardous waste" means a waste which appears on the list or satisfies the characteristics promulgated by the commissioner pursuant to section 27-0903 of this article and any substance which appears on the list promulgated pursuant to section 37-0103 of this chapter; provided, however, that the term "hazardous waste" does not include:

a. Natural gas, natural gas liquids, liquefied natural gas, synthetic gas usable for fuel, or mixtures of natural gas and such synthetic gas; nor

b. The residue of emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine; nor

c. Source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the atomic energy act of 1954, if such release is subject to requirements with respect to financial protection established under section 170 of such act (42 U.S.C. 2210) or, for the purpose of section 104 of the comprehensive environmental response, compensation and liability act of 1980 (42 U.S.C. 9604), or any other response action, any source, byproduct, or special nuclear material from any processing site designated under section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7912(a)(1) or 7942(a)); nor

d. Petroleum as defined in section one hundred seventy-two of the navigation law, even if appearing on the list promulgated pursuant to section 37-0103 of this chapter.

2. "Inactive hazardous waste disposal site" means any area or structure used for the long term storage or final placement of hazardous waste including, but not limited to, dumps, landfills, lagoons and artificial treatment ponds, as to which area or structure no permit or authorization issued by the department or a federal agency for the disposal of hazardous waste was in effect after the effective date of this title and any inactive area or structure on the National Priorities List established under the authority of 42 U.S.C.A. Section 9605.

3. "Inactive hazardous waste disposal site remedial program" means activities undertaken to eliminate, remove, abate, control or monitor health and/or environmental hazards or potential hazards in connection with inactive hazardous waste disposal sites or to treat or dispose of wastes and waste contaminated materials from such sites including, but not limited to, grading, contouring, trenching, grouting, capping, excavation, transporting, incineration, chemical treatment, biological treatment or construction of leachate collection and treatment facilities.

4. "Person" means an individual, trust, firm, joint stock company, limited liability company, corporation, joint venture, partnership, association, state, municipality, commission, political subdivision of a state, public benefit corporation or any interstate body. Provided, however for purposes of this title, person shall not include a person as defined in section 27-1323 of this title.

5. "Waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, whether or not such material may eventually be used for some other purpose, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations or from community activities, and source, special nuclear or by-product material as defined in the Atomic Energy Act of 1954, as amended, except as may be provided by existing agreements between the state of New York and the government of the United States, but does not include solid or dissolved

material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under article seventeen of this chapter.

6. "Disposal" means the abandonment, discharge, deposit, injection, dumping, spilling, leaking or placing of any substance so that such substance or any related constituent thereof may enter the environment. Disposal also means the thermal destruction of waste or hazardous waste and the burning of such wastes as fuel for the purpose of recovering useable energy.

7. "Environment" means any water, water vapor, any land including land surface or subsurface, air, fish, wildlife, biota and all other natural resources.

8. "Natural resource damages" means the amount of money sought as compensation for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from the disposal of hazardous waste at an inactive hazardous waste disposal site. Damages may also include the value of the natural resource services lost for the time period from the disposal until the attainment of such restoration, rehabilitation, replacement, and/or acquisition of equivalent natural resources.

9. "Natural resources" means land, fish, wildlife, biota, air, water, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the state or a municipality.

10. "Response costs" means the state's costs of developing, implementing, and/or overseeing an inactive hazardous waste disposal site remedial program.

11. "Responsible person" or "person responsible" for the disposal of hazardous waste at a site means:

(a) any person who currently owns or operates a site or any portion thereof except for a volunteer, as defined in subdivision one of section 27-1405 of this article, that is participating under a brownfield

cleanup agreement pursuant to section 27-1407 of this article, that is in full compliance with the requirements of this chapter with respect thereto, and is not engaging with the department in bad faith with respect to any provisions of this title;

(b) any person who owned or operated a site or any portion thereof at the time of disposal of the hazardous waste;

(c) any person who generated any hazardous waste disposed at a site;

(d) any person who transported any hazardous waste to a site selected by such person;

(e) any person who disposed of any hazardous waste at a site;

(f) any person who arranged for:

(i) the transportation of any hazardous waste to a site; or

(ii) the disposal of any hazardous waste at a site; and

(g) any other person who is responsible according to the applicable principles of statutory or common law liability pursuant to subdivision four of section 27-1313 of this title and/or the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq.

12. "Disadvantaged community" shall have the same meaning as subdivision five of section 75-0101 of this chapter.

§ 27-1303. Identification of sites.

1. a. For a period of one year after the effective date of the chapter of the laws of two thousand three designating and amending this paragraph, each county shall, for the purpose of locating inactive hazardous waste disposal sites, as that term was defined on January first, two thousand three, survey its jurisdiction to determine the existence and location of suspected inactive hazardous waste disposal sites and shall annually thereafter submit a report to the department describing the location of each such suspected site and the reasons for such suspicion.

b. Commencing one year after the effective date of this paragraph, each county shall, for the purpose of locating inactive hazardous waste

disposal sites, survey its jurisdiction to determine the existence and location of suspected inactive hazardous waste disposal sites and shall, after consultation with all cities, towns, and villages within its jurisdiction, annually thereafter submit a report to the department describing the location of each such suspected site and the reasons for such suspicion.

2. Each county, after consultation with all cities, towns, and villages within its jurisdiction, shall review the information concerning such county in the registry established pursuant to section 27-1305 of this article and shall, on or before September first, nineteen hundred eighty, and annually thereafter on the first day of September of each succeeding year, provide the department with any information which might correct or supplement the information in such registry with respect to suspected inactive hazardous waste disposal sites within the jurisdiction of such county.

3. Counties shall cooperate and coordinate with local jurisdictions, regional organizations or state agencies to fulfill its responsibilities under subdivisions one and two of this section. Nothing contained within this section shall reduce the powers or responsibilities of any county, other local jurisdiction, regional organization or state agency to identify, investigate, assess or monitor any inactive hazardous waste disposal site.

4. For purposes of this section, "county" shall include each city incorporating within its boundary one or more counties but shall not include those counties incorporated within a city.

§ 27-1305. Reports by the department; registry of sites.

1. The department shall maintain and make available for public inspection, either at each of its regional offices and regional sub-offices, at the office of the county clerk or register for each county and at the office of the town clerk for each town in Suffolk and Nassau counties, or on its website, a registry of inactive hazardous

waste disposal sites in such region or, with respect to the office of the county clerk or register, in such county, or with respect to its website, the entire state. The department shall provide a written copy upon requests by any person. The department shall take all necessary action to ensure that the registry provides a complete and up-to-date listing of all such sites within the region. The department shall, on or before January first, two thousand four, and annually thereafter, transmit the updated registry to the legislature and the governor. A notice of the availability of the updated registry shall be sent to the department of health and the chief executive officer of every county. Upon identification of an inactive hazardous waste disposal site not included in the registry for the immediately preceding year, the department shall notify in writing the chief executive officer of each county, city, town and village and the public water supplier which services the area in which such site is located that such site has been so identified. For the purposes of this section, "water supplier" shall mean any public water system as such term is defined for the purposes of the sanitary code of the state of New York as authorized by section two hundred twenty-five of the public health law. Such registry shall include but need not be limited to those items among the following which the commissioner determines to be necessary:

a. A description of the sites consisting of:

(i) a general description of the site, which shall include the name, if any, of the site, the address of the site, the type and quantity of the hazardous waste disposed of at the site and the name of the current owners of the site;

(ii) an assessment by the department of any significant environmental problems at and near the site;

(iii) an assessment prepared by the department of health of any serious health problems in the immediate vicinity of the site and any health problems deemed by the department of health to be related to conditions at the site;

(iv) the status of any testing, monitoring or remedial actions in progress or recommended by the department;

(v) the status of any pending legal actions and any federal, state or local government permits or approvals concerning the site; and

(vi) an assessment of the relative priority of the need for action at each site to remedy environmental and health problems resulting from the presence of wastes at such site;

b. Address and site boundaries including tax map parcel numbers or section, block and lot numbers, and if the site is located within a disadvantaged community;

c. Time period of use for disposal of hazardous waste;

d. Name of the current owner and operator and names of any past and reported owners and operators during the time period of use for disposal of hazardous waste;

e. Names of persons responsible for the generation and transportation of hazardous waste disposed of;

f. Type and quantity of hazardous waste disposed of;

g. Manner of disposal of hazardous waste;

h. Nature of soils at the site;

i. Depth of water table at the site;

j. Location, nature and size of aquifers at the site;

k. Direction of present and historic groundwater flows at the site;

l. Location, nature and size of all surface waters at and near the site;

m. Levels of contaminants, if any, in groundwater, surface water, air and soils at and near the site resulting from hazardous wastes disposed of at the site or from any other cause and areas known to be directly affected or contaminated by wastes from the site;

n. As determined by the department of health, current quality of all drinking water drawn from or distributed through the area in which the site is located when the department of health determines that water quality may have been affected by the site in question and any known change in the quality of such drinking water over time;

o. Proximity of the site to private residences, public buildings or property, school, daycare, medical, or senior care facilities, places of work or other areas where individuals may be present, or location within a disadvantaged community; and

p. The name, address and telephone number of the public water supplier which services the area in which such site is located.

2. a. The department shall conduct investigations of the sites listed in the registry and shall investigate areas or sites which it has reason to believe should be included in the registry. The purpose of these investigations shall be to develop the information required by subdivision one of this section to be included in the registry.

b. (1) Assessment and classification. The department shall, as part of the registry, assess and, based upon new information received, reassess by March thirty-first of each year, in cooperation with the department of health, the relative need for action at each site to remedy environmental and health problems resulting from the presence of hazardous wastes at such sites including in such assessment whether sites shall be prioritized under subdivision five of this section due to site location in an area identified as a disadvantaged community; provided, however, that if at the time of such assessment or reassessment, the department has not placed a site in classification 1 or 2, as described in clauses (i) and (ii) of this subparagraph, and such site is the subject of negotiations for, or implementation of, a brownfield site cleanup agreement pursuant to title fourteen of this article, obligating the person subject to such agreement to, at a minimum, eliminate or mitigate all significant threats to the public health and environment posed by the hazardous waste pursuant to such agreement, the department shall defer its assessment or reassessment

during the period such person is engaged in good faith negotiations to enter into such an agreement and, following its execution, is in compliance with the terms of such agreement, and shall assess or reassess such site upon completion of remediation to the department's satisfaction. In making its assessments, the department shall place every site in one of the following classifications:

- (i) Causing or presenting an imminent danger of causing irreversible or irreparable damage to the public health or environment--immediate action required;

- (ii) Significant threat to the public health or environment--action required;

- (iii) Does not present a significant threat to the public health or environment--action may be deferred;

- (iv) Site properly closed--requires continued management;

- (v) Site properly closed, no evidence of present or potential adverse impact--no further action required.

(2) Prioritization. The department shall, in accordance with subdivision five of this section, prioritize remedial programs at sites placed in classification 1 or 2, as described in clauses (i) and (ii) of subparagraph one of this paragraph, that are located in disadvantaged communities, consistent with the protection of public health and the environment.

c. (1) Any owner or operator of a site listed pursuant to this section may petition the commissioner for deletion of such site, modification of the site classification, or modification of any information regarding such site by submitting a written statement in such form as the commissioner may require setting forth the grounds of the petition.

(2) Within ninety days after the submittal of such petition, the commissioner may convene an administrative hearing to determine whether a particular site should be deleted from the registry, receive a modified site classification or whether any information regarding the site should be modified. In any such hearing the burden of proof shall be on the petitioner. No less than thirty days prior to the hearing the commissioner shall cause a notice of hearing to be published in the next available environmental notice bulletin, on the department's website, and in a newspaper of general circulation in the county in which the

site is located. The commissioner shall also notify in writing any owner or operator of the site, as well as the owners of record of adjacent properties, no less than thirty days prior to the hearing. The cost of any such hearing, including the cost of any public notification, shall be at the petitioner's expense.

(3) No later than thirty days following receipt of the complete record as that term is defined in the state administrative procedure act, or following the decision not to hold a hearing the commissioner shall provide the owner or operator with a written determination accompanied by reason therefor regarding the deletion of such site, modification of the site classification or modification of any information regarding such site. Any final decision rendered by the commissioner shall be reviewable under article seventy-eight of the civil practice law and rules.

(4) The commissioner may not delete any site from the registry without providing public notice no less than sixty days prior to the proposed deletion. Such notice of deletion shall be published in the next available environmental notice bulletin, on the department's website, and in a newspaper of general circulation in the county in which the site is located. The commissioner shall also notify in writing any owner or operator of the site, if applicable, no less than sixty days prior to the proposed deletion. The commissioner shall provide a thirty-day period for submission of written comments and an opportunity for submission of oral comments at a public meeting at or near the site. The commissioner shall summarize any comments received and make the summary available to the public on the department's website. The commissioner may convene an administrative hearing to determine whether a particular site should be deleted from the registry, receive a modified site classification or whether any information regarding the site should be modified.

(5) The department shall notify, as soon as possible and within available resources all public repositories of the registry, including updating its website, of any modifications or deletions to such registry. The department shall also note any such deletions or modifications in the next annual report and publication of the registry.

(6) The department shall, within ten days of any determination notify the local governments of jurisdiction whenever a change is made in the

registry pursuant to this subdivision.

d. (1) Within seven months after the effective date of this subdivision the department shall notify by certified mail the owner of all or any part of each site or area included in the registry, of the inclusion of the site or area by mailing notice to such owner at the owner's last known address. Thereafter, fifteen days before any site or area is added to the registry, the department shall notify in writing by certified mail the owner of all or any part of such site or area of the inclusion of such site or area by mailing notice to each such owner at the owner's last known address.

(2) Notice pursuant to paragraph a of this subdivision shall include but not be limited to a description of the duties and restrictions imposed by section 27-1317 of this title and by section one thousand three hundred eighty-nine-d of the public health law.

(3) Non-receipt of any notice mailed to an owner pursuant to this subdivision shall in no way affect the responsibilities, duties or liabilities imposed on any person by this title or title XII-A of article thirteen of the public health law.

e. The department shall, in consultation with the department of health, evaluate existing site evaluation systems and shall develop a system to select and prioritize sites for remedial action. Such system shall incorporate environmental, natural resource and public health concerns, and a site's location within a disadvantaged community.

f. The department shall develop a site status reporting system and utilize such system to ensure that the registry required by subdivision one of this section provides a complete and up-to-date listing of all sites in each region.

3. The department shall, as soon as possible but in no event later than January first, nineteen hundred eighty-four, and annually thereafter prepare and submit in writing a "state inactive hazardous waste remedial plan," hereinafter referred to as "the plan" to the state superfund management board. Such board shall then approve of the plan or make such modification as it is empowered to do pursuant to section

27-1319 of this chapter and submit the approved plan or modified plan, to the governor and the legislature on or before March first, nineteen hundred eighty-four and annually thereafter. In preparing, compiling and updating the plan, the department shall:

a. Conduct or cause to be conducted field investigations of high priority sites listed in the inactive hazardous waste disposal sites registry for the purpose of further defining necessary remedial action. To the maximum extent practicable, the department shall utilize existing information including, but not limited to, subsurface borings and any analyses or tests of samples taken from such sites by owners or operators, other responsible persons and any federal or non-federal agencies.

b. Make any subsurface borings and any analyses or tests of samples taken as may be necessary or desirable to effectuate the field investigations of sites as required under this section subject to the requirements of this title.

c. Make any record searches or document reviews as may be necessary or desirable to effectuate the purposes of this section subject to the requirements of this title.

d. Consider the effects on the health, environment and economy of the state when assessing the relative priority of sites as required by this section, especially any actual or significant threat of direct human contact or contamination of groundwater or drinking water.

e. Detail the recommended strategy, methods and time frame by which remedial action at sites shall be carried out, except that no information or work product associated with actual or pending litigation shall be divulged unless otherwise required by law.

f. Estimate, with reasonable specificity, based upon the field investigations, assessments, analyses, document reviews and other appropriate data gathering, the costs of remedial action for sites included in the plan, considering the appropriate methods and techniques

as currently exist in the field of hazardous waste management and any such estimates or recommendations shall reflect such costs as are reasonably necessary to contain, alleviate or end the threat to life or health or to the environment.

4. On or before July first, nineteen hundred eighty-six and July first of each succeeding year, the department shall prepare a status report on the implementation of the plan, and an update of the policies, program objectives, methods and strategies as outlined in the plan which guide the overall inactive hazardous waste site remediation program. Such status report shall reflect information available to the department as of March thirty-first of each year, and shall include an accounting of all monies expended or encumbered from the environmental quality bond act of nineteen hundred eighty-six or the hazardous waste remedial fund during the preceding fiscal year, such accounting to separately list:

a. monies expended or encumbered for the purpose of conducting site investigations;

b. monies expended or encumbered for the purpose of conducting remedial investigations and feasibility studies;

c. monies expended or encumbered for the purpose of conducting remedial design studies;

d. monies expended or encumbered for the purpose of conducting remedial construction activities;

e. monies expended or encumbered for operation, maintenance, and monitoring activities;

f. monies expended or encumbered for interim remedial measures;

g. monies expended or encumbered for administrative personnel costs associated with activities conducted at inactive hazardous waste disposal sites;

h. monies expended or encumbered for oversight activities at inactive hazardous waste disposal sites;

i. monies expended or encumbered in stand-by contracts entered into pursuant to section 3-0309 of this chapter and the purposes for which these stand-by contracts were entered into; and

j. an accounting of payments received and payments obligated to be received pursuant to this title, and a report of the department's attempts to secure such obligations.

5. Site cleanup prioritization. The department shall, no later than January first, two thousand twenty-six, submit to the governor and legislature and publish on its website site cleanup prioritization criteria. The department shall review and update criteria as necessary. The department shall describe the criteria and processes it uses to determine the relative prioritization of sites, and an explanation of the rationale of such criteria and processes. In preparing and updating such criteria, the department shall consider the effects on the health, environment and economy of the state, with particular consideration for the effects on disadvantaged communities.

6. Status report. The department no later than December thirty-first of each year, shall, using the information available to it, submit to the governor and legislature, and make public on the department's website an inactive hazardous waste remedial program status report for the previous fiscal year. Such report shall include a status update of all registered sites and an accounting of all monies expended or encumbered from the environmental quality bond act of nineteen hundred eighty-six, the hazardous waste remedial fund, the department's natural resource damages fund, or any other monies otherwise appropriated for the implementation of this title, during the preceding fiscal year, such accounting to separately list:

(i) monies expended or encumbered for the purpose of conducting site investigations;

(ii) monies expended or encumbered for the purpose of conducting remedial investigations and feasibility studies;

(iii) monies expended or encumbered for the purpose of conducting remedial design studies;

(iv) monies expended or encumbered for the purpose of conducting remedial construction activities;

(v) monies expended or encumbered for operation, maintenance, and monitoring activities;

(vi) monies expended or encumbered for interim remedial measures;

(vii) monies expended or encumbered for oversight activities, including personnel and contractor costs, at inactive hazardous waste disposal sites;

(viii) monies expended or encumbered in stand-by contracts entered into pursuant to section 3-0309 of this chapter and the purposes for which these stand-by contracts were entered into;

(ix) an accounting of payments received and payments obligated to be received pursuant to this title, and a report of the department's attempts to secure such obligations; and

(x) an accounting of all response costs recovered statewide and natural resource damages recovered at each site, including through settlement or agreement, commissioner order, judicial determination and award, a required instrument of financial responsibility, or an environmental lien.

§ 27-1307. Reports to the department.

1. In order to facilitate the department's efforts to secure information about inactive hazardous waste disposal sites in the state, any person shall, upon the request of the department, furnish to the department, in a form and manner prescribed by the department, the following information:

a. The name and location of facilities within the state that have generated significant quantities of hazardous wastes or sites within the state which have received wastes which are now or were formerly owned or operated by such person or to or from which such person has transported such wastes;

b. A description of current and past waste generating and disposal activities at facilities identified pursuant to paragraph a of this subdivision which have generated hazardous wastes including products manufactured or services provided, generic type of processes used in the manufacturing of products or provision of services, the type and annual quantity of hazardous wastes generated in significant quantities, the locations of all sites used for the disposal of wastes generated by such facilities, the years of use of such sites for the disposal of wastes, the type and quantity of waste disposed of at such sites and the manner of disposal of hazardous wastes at such sites;

c. A description of current and past waste disposal activities at sites identified pursuant to paragraph a of this subdivision which have received wastes including years of use of such sites for the disposal of wastes, type and quantity of all hazardous wastes disposed of at such sites and the manner of disposal of hazardous wastes at such sites;

d. With respect to each site identified pursuant to paragraphs a and b of this subdivision, names of persons that have transported hazardous wastes to such sites, a description of any testing, monitoring or remedial actions undertaken or planned at such sites and any significant health or environmental problems known or suspected to exist at such sites; and

e. Any other information that the department may deem necessary to prepare the state inactive hazardous waste remedial plan or the registry required by section 27-1305 of this article.

2. In the event the person furnishing such information cannot fully comply with the request for information, such person shall set forth his efforts to comply with such request.

3. Any information submitted to the department shall be considered a "written instrument" as defined in subdivision three of section 175.00 of the penal law.

§ 27-1309. Access to records and sites.

1. 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 relating to the current and past hazardous waste generating, transporting or disposal activities of such person.

2. 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 current and past waste generating, transporting or disposal activities 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 to compel compliance with any such subpoena or any request to take such depositions.

3. 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 inactive hazardous waste disposal site and areas near such site and inspect and take samples of wastes, soils, 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.

4. 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 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 property shall otherwise agree.

5. 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; provided, that if the person so authorized in writing shall be 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.

§ 27-1311. Confidentiality.

1. The department or any other state agency shall hold confidential any information in any report to the department made pursuant to section 27-1307 of this article or any records secured by the department or any inspection, sampling or analysis made by the department pursuant to section 27-1309 of this article or obtained while implementing a remedial program pursuant to section 27-1313 of this article when the site owner or operator or a generator who contributed to any waste

disposed of at the site requests that such information is entitled to protection under paragraph (d) of subdivision two of section eighty-seven of the public officers law and rules and regulations promulgated thereunder. Release of such information shall be in accordance with article six of the public officers law.

2. Any agent, consultant, contractor or other person authorized by the commissioner pursuant to this title shall hold such information confidential. Release of any such information by any agent, consultant, contractor or other person authorized by the commissioner shall only be made after a determination by the commissioner pursuant to the procedures set forth in article six of the public officers law.

3. Nothing herein shall restrict the exchange of information between the department and its agents, consultants, contractors or other persons authorized by the commissioner pursuant to this title or between separate agents, consultants, contractors or other persons authorized by the commissioner pursuant to this title.

§ 27-1313. Remedial programs.

1. a. The department shall be responsible, as provided in this section, for inactive hazardous waste disposal site remedial programs except as provided in section one thousand three hundred eighty-nine-b of the public health law.

b. The department shall have the authority to require the development and implementation of a department-approved inactive hazardous waste disposal site remedial program.

c. 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 section; provided, however, that this paragraph 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 hazardous waste, including the cost of cleanup, pursuant to this section.

2. The department shall have the authority (a) to delegate such responsibility for a specific site to the municipality in which such site is located and (b) to contract with the environmental facilities corporation and any other person to perform necessary work in connection with such sites.

3. a. Whenever the commissioner finds that hazardous wastes at an inactive hazardous waste disposal site constitute a significant threat to the environment, he may order the owner of such site and/or any person responsible for the disposal of hazardous wastes at such site (i) to develop an inactive hazardous waste disposal site remedial program, subject to the approval of the department, at such site, and (ii) 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.

b. Whenever the commissioner, after investigation, finds:

(i) that hazardous wastes at an inactive hazardous waste disposal site constitutes a significant threat to the environment; and

(ii) that such threat is causing or presents an imminent danger of causing irreversible or irreparable damage to the environment; and

(iii) 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 c of subdivision five of this section and within the funds available to the department, develop and implement an inactive hazardous waste disposal site remedial program for such site. Findings required pursuant to this paragraph shall be in writing and may be made by the commissioner on an ex parte basis subject to judicial review.

4. Any order issued pursuant to 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 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 statutory 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 may request the participation of the attorney general in such hearings.

5. a. Whenever a person ordered to eliminate a threat to the environment pursuant to paragraph a of subdivision three of this section has failed to do so within the time limits specified in the order, the department may develop and implement an inactive hazardous waste disposal site remedial program for such site. The reasonable expenses of developing and implementing such remedial program by the department shall be paid by the person to whom the order was issued and the state may seek to recover such reasonable expenses in any court of appropriate jurisdiction.

b. In the event that the commissioner has found that hazardous wastes at a site constitute a significant threat to the environment, but after a reasonable attempt to determine who may be responsible is either unable to determine who may be responsible, or is unable to locate a person who may be responsible, the department may develop and implement an inactive hazardous waste disposal site remedial program for such site. The department shall prioritize implementation of remedial programs in accordance with subdivision five of section 27-1305 of this title. The commissioner shall make every effort, in accordance with the requirements for notice, hearing and review provided for in this title, to secure appropriate relief from any person subsequently identified or

located who is responsible for the disposal of hazardous waste at such site, including, but not limited to response costs, natural resource damages and penalties.

c. (i) Whenever the commissioner has made findings pursuant to paragraph b of subdivision three of this section or the commissioner of health has made a declaration and finding pursuant to paragraph (b) of subdivision three of section one thousand three hundred eighty-nine-b of the public health law, the department may develop and implement an inactive hazardous waste disposal site remedial program to contain, alleviate or end the threat to life or health or to the environment. The costs incurred by the department in developing and implementing such a program shall be in an amount commensurate with the actions the department deems necessary to eliminate such danger. In determining the scope, nature and content of such program, the department shall consider among others, the following factors:

(A) the technological feasibility of all actions;

(B) the nature of the danger to human health and the environment which the actions are designed to address; and

(C) the extent to which the actions would reduce such danger to human health or the environment or would otherwise benefit human health or the environment, including if the actions would benefit a disadvantaged community.

(ii) In implementing this title, the department shall consult with appropriate representatives of Indian nations on environmental and cultural resource issues related to this title of concern to either the department or Indian nations.

d. Notwithstanding the provisions of subdivision c of this section, the department shall be authorized to develop and implement an inactive hazardous waste disposal site remedial program at the site pursuant to this subdivision if, in the discretion of the department, it is cost-effective for the department to develop and implement such a remedial program. The goal of any such remedial program shall be a complete cleanup of the site through the elimination of the significant threat to the environment posed by the disposal of hazardous wastes at the site and of the imminent danger of irreversible or irreparable

damage to the environment caused by such disposal. The factors to be considered by the department in determining whether it is cost-effective to develop and implement an inactive hazardous waste disposal site remedial program at a site pursuant to this subdivision shall include, among others:

- (i) the ability of the department to determine, through the exercise of its scientific judgment, whether the elimination of the imminent danger of irreversible or irreparable damage to the environment can be achieved through limited actions;

- (ii) the ability of the department to identify the owner of the site and/or any person responsible for the disposal of hazardous wastes at such site with sufficient financial resources to develop and implement an inactive hazardous waste disposal site remedial program at such site;

- (iii) the nature of the danger to human health and the environment which the actions are designed to address; and

- (iv) the extent to which the actions would reduce such danger to human health or the environment or would otherwise benefit human health or the environment.

e. Whenever the commissioner of health makes a declaration and finding pursuant to paragraph b of subdivision three of section one thousand three hundred eighty-nine-b of the public health law, the department may implement an inactive hazardous waste site remedial program in the same manner as specified in paragraphs c and d of this subdivision.

f. The commissioner shall make every effort, in accordance with the requirements for notice, hearing and review provided for in this title to secure appropriate relief from the owner or operator of such site and/or any person responsible for the disposal of hazardous wastes at such site, including, but not limited to, response costs, natural resource damages, and penalties.

g. When a municipality develops and implements pursuant to an agreement with the department an inactive hazardous waste disposal site remedial program as approved by the department for a site which is owned or has been operated by such municipality or when the department, pursuant to an agreement with a municipality, develops and implements

such a remedial program, the commissioner shall, in the name of the state, agree in such agreement to provide from the hazardous waste remedial fund, within the limitations of appropriations therefor, seventy-five percent of the eligible design and construction costs of such remedial 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.

6. 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 statutory or common law authority.

7. Moneys for actions taken or to be taken by the department, the department of health or any other state agency in connection with the elimination of conditions dangerous to life or health pursuant to subdivision five of section thirteen hundred eighty-nine-b of the public health law or with the elimination of a significant threat to the environment pursuant to this section shall be payable directly to such agencies from the hazardous waste remedial fund pursuant to section ninety-seven-b of the state finance law. This includes any inspection or sampling of wastes, soils, air, surface water, groundwater, or other natural resources, done on behalf of a state agency whether or not such action is taken prior to the issuance of a declaration pursuant to subdivision two of section thirteen hundred eighty-nine-b of the public health law or a finding pursuant to subdivision three of this section and any administrative expenses related thereto.

8. Any duly designated officer or employee of the department or any other 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 inactive hazardous waste disposal site and areas near such site to implement an inactive hazardous waste disposal site remedial program for such site, provided 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.

9. Nothing herein contained shall be construed to limit or in any manner affect the power of the commissioner to issue an order according to the provisions of section 71-2727 of this chapter.

10. The department, by and through the commissioner, shall be authorized to exempt a person from the requirement to obtain any state or local permit or other authorization for any activity needed to implement an inactive hazardous waste disposal site remedial program pursuant to this title; provided, that the activity is conducted in a manner which satisfies all substantive technical requirements applicable to like activity conducted pursuant to a permit.

§ 27-1315. Rules and regulations.

1. The commissioner shall have the power to promulgate rules and regulations necessary and appropriate to carry out the purposes of this title. Any regulations shall include provisions which establish the procedures for a hearing pursuant to subdivision four of section 27-1313 of this title and shall ensure a division of functions between the commissioner, the staff who present the case, and any hearing officers appointed. In addition, any regulations shall set forth findings to be based on a factual record, which must be made before the commissioner determines that a significant threat to the environment exists.

2. Such rules and regulations of the department as shall be in effect on the effective date of this subdivision that shall have been promulgated to carry out the purposes of this title shall be deemed to be revised, as of the effective date of this subdivision, to include the definition of "hazardous waste" as it appears in section 27-1301 of this title.

§ 27-1316. Citizen technical assistance grants.

1. The commissioner is authorized to provide, or order a person acting under order or on consent, to provide grants to any not-for-profit corporation exempt from taxation under section 501(c)(3) of the internal revenue code who may be affected by an inactive hazardous waste disposal site remedial program. To qualify to receive such assistance, a community group must demonstrate that its membership represents the interests of the community affected by such site, and that members' health, economic well-being or enjoyment of the environment are potentially affected by such site. Such grants shall be known as technical assistance grants and may be used to obtain technical assistance in interpreting information with regard to the nature of the hazard posed by hazardous waste located at or emanating from an inactive hazardous waste disposal site or sites and the development and implementation of an inactive hazardous waste disposal site remedial program or programs. Such grants may also be used:

- (a) to advise affected residents on any health assessment; and
- (b) for training funds for the education of interested affected community members to enable them to more effectively participate in the remedy selection process.

Grants awarded under this section may not be used for the purposes of collecting field sampling data, political activity or lobbying legislative bodies.

2. The amount of any grant awarded under this section may not exceed fifty thousand dollars at any one site.

3. No matching contribution from the grant recipient shall be required for a technical assistance grant. Following a grant award, a portion of the grant shall be made available to the grant recipient, in advance of the expenditures to be covered by the grant, in five thousand dollar installments.

§ 27-1317. New use of sites.

Subsequent to the adoption of regulations by the department provided for in this section, no person may substantially change the manner in which an inactive hazardous waste disposal site on the registry prepared and maintained by the department pursuant to section 27-1305 of this title is used, without notifying the department and, pursuant to section one thousand three hundred eighty-nine-d of the public health law, the department of health. A substantial change of use shall be defined in rules and regulations adopted by the department and shall include, but not be limited to, the erection of a building or other structure on such site, the paving of such site for use as a roadway or parking lot, and the creation of a park or other public or private recreational facility on such site. Such notice shall be in writing, addressed to the commissioner and the commissioner of health and shall include a brief description of the proposed change of use. Such notice shall be submitted at least sixty days before any physical alteration of the land or construction shall occur or, in the event any alteration or construction is not required to initiate such change of use, at least sixty days before any change of use.

Subsequent to the adoption of regulations by the department provided for in this section, no person may substantially change the manner in which an inactive hazardous waste disposal site, for which a declaration has been issued by the commissioner of health pursuant to subdivision two of section one thousand three hundred eighty-nine-b of the public health law, is used without the written approval of the commissioner and the commissioner of health. The commissioner shall not approve such change of use if such new use will interfere significantly with a proposed, ongoing or completed inactive hazardous waste disposal site remedial program at such site or expose the environment or health to a significantly increased threat of harm.

§ 27-1318. Institutional and engineering controls.

(a) When the department approves a proposed remedial work plan that includes institutional controls and/or engineering controls as components of a proposed remedial program, such remedial work plan shall include:

(i) a complete description of any proposed use restrictions and/or institutional controls and the mechanisms that will be used to implement, maintain, monitor, and enforce such restrictions and controls;

(ii) a complete description of any proposed engineering controls and any operation, maintenance, and monitoring requirements, including the mechanisms that will be used to continually implement, maintain, monitor, and enforce such controls and requirements;

(iii) an evaluation of the reliability and viability of the long-term implementation, maintenance, monitoring, and enforcement of any proposed institutional or engineering controls and an analysis of the long-term costs of implementing, maintaining, monitoring and enforcing such controls, including costs that may be borne by state or local governments;

(iv) sufficient analysis to support a conclusion that effective implementation, maintenance, monitoring and enforcement of institutional and/or engineering controls can be reasonably expected;

(v) where required by the department, financial assurance to ensure the long-term implementation, maintenance, monitoring, and enforcement of any such controls; and

(vi) a requirement that any engineering control must be used in conjunction with institutional controls to ensure the continued integrity of such engineering control.

(b) Within one hundred eighty days of commencement of the remedial design, the owner of an inactive hazardous waste disposal site, and/or any person responsible for implementing a remedial program at such site, where institutional or engineering controls are employed pursuant to this title, shall execute an environmental easement pursuant to title thirty-six of article seventy-one of this chapter.

(c) The owner of an inactive hazardous waste disposal site, and/or any person responsible for implementing the remedial program at such site where institutional or engineering controls are employed pursuant to this title shall, unless otherwise provided in writing by the department, annually submit to the department a written statement by an individual licensed or otherwise authorized in accordance with article one hundred forty-five of the education law to practice the profession of engineering, or by such other expert as the department may find

acceptable certifying under penalty of perjury that the institutional controls and/or engineering controls employed at such site are unchanged from the previous certification and that nothing has occurred that would impair the ability of such control to protect the public health and environment, or constitute a violation or failure to comply with any operation and maintenance plan for such controls and giving access to such real property to evaluate continued maintenance of such controls.

§ 27-1319. State superfund management board.

1. a. There is hereby created within the department the "state superfund management board" hereinafter referred to as the board. Such board shall consist of fourteen members, including the commissioners of environmental conservation and health, or their designees, and twelve at large members appointed by the governor, two of whom shall be appointed upon recommendation of the temporary president of the senate and two of whom shall be appointed upon recommendation of the speaker of the assembly, one of whom shall be appointed upon recommendation of the minority leader of the senate and one of whom shall be appointed upon recommendation of the minority leader of the assembly, and, of the remaining six, two shall live within a municipality within which exists an inactive hazardous waste site, or sites, as listed pursuant to section 27-1305 of this title, and have been involved in a citizen's organization that has a purpose relating to the site or sites within that municipality, two shall be representatives of organizations whose prime function is the protection of natural resources and enhancement of the environmental quality of the state and two shall be representatives of industries that generate hazardous waste in the state. None of the members appointed by the governor shall be officers or employees of any state department or agency and each shall be, by professional training or experience and attainment, qualified to analyze and interpret matters pertaining to hazardous waste management and the remediation of inactive hazardous waste disposal sites.

b. No at large member of the board may appoint a designee to temporarily or permanently assume his place on the board.

2. a. The commissioner of environmental conservation shall serve as chairman of the board and the board shall elect a vice chairman from among the appointed members to preside in the absence of the chairman.

b. Of the twelve at large members appointed by the governor, each shall be reaffirmed or reappointed on January thirty-first, nineteen hundred ninety-one and every two years thereafter and each shall hold office until such time as the board shall cease to exist or until he shall resign or be removed in the manner provided by law. Any vacancy on the board shall be filled by appointment pursuant to subdivision one of this section for the unexpired balance of the term.

3. The members of the board shall serve without compensation for their services as members of the board, except that each of them shall be allowed the necessary and actual expenses which he shall incur in the performance of his duties under this section.

4. The board shall have the power, duty and responsibility to:

a. Serve as a working forum for the exchange of views, concerns, ideas, information and recommendations relating to hazardous waste management and the remediation of inactive hazardous waste disposal sites.

b. Request and receive from the department at each meeting of the board any portions of the plan or any revisions, amendments or changes available for review, and any supporting documents or other pertinent data. All information requested by or provided to the board shall also be provided to the temporary president of the senate, the speaker of the assembly, and the chairman of the senate and assembly environmental conservation committees.

c. Compel the attendance at each meeting of the board of such personnel of the department, or of other appropriate state departments or agencies, as may reasonably be expected to supply any pertinent data the board may request.

d. Monitor and review the implementation of the inactive hazardous waste site remediation program and the policies, program objectives, methods, and strategies outlined in the plan, the annual implementation status report, any plan update, the registry, and the quarterly site status reports by the department, as well as information which the board may acquire from other sources.

e. Review the hazardous waste site remediation remaining to be completed under the state inactive hazardous waste remedial plan as updated, the estimate of the costs which would be incurred in the completion of this remediation, the schedule under which the costs will be incurred, the revenues and resources expected to be available to meet these costs.

f. Review and evaluate the municipal cost sharing program established pursuant to paragraph g of subdivision five of section 27-1313 of this title and review the appropriate state and industry contribution to the inactive hazardous waste site remedial program.

g. Based upon its monitoring, reviewing and other information available to it, the board shall report to the governor and to the legislature on or before January first of each year its assessment of the implementation of the remediation program, together with its comments, suggestions, and recommendations regarding the program, its implementation, available funding and resources, and the need for steps to assure the future availability of funding.

5. a. The board shall:

1. Meet at least quarterly;

2. Keep a record of all its proceedings and provide such record to the public upon request; and

3. Determine the rules of its own procedures.

b. Seven members of the board shall constitute a quorum for the transaction of any business of the board.

6. Staff services, including recording of board proceedings, shall be performed by personnel of the department, or such state departments or other agencies as the chairman deems appropriate or desirable.

7. For the purposes of this section, the at large members of the board shall be considered officers or employees of public entities and shall be afforded such defense and indemnification provided pursuant to section eighteen of the public officers law.

8. The board shall cease to exist on the thirty-first day of March, nineteen hundred ninety-nine.

§ 27-1321. Protection against liability.

1. Notwithstanding any other provision of law to the contrary, any person who is, by professional training or experience and attainment, qualified to analyze and interpret matters pertaining to the treatment, storage, disposal, or transport of hazardous materials or hazardous wastes, and who voluntarily and without expectation of monetary compensation provides assistance or advice in mitigating the effects of an accidental or threatened discharge of any hazardous materials or hazardous wastes, or in preventing, cleaning up, or disposing of any such discharge, shall not be subject to a penalty or to civil liability for damages or injuries alleged to have been sustained by any person or entity by reason of an act or omission in the giving of such assistance or advice. For the purposes of this section, the term "hazardous materials" shall have the same meaning as that term is defined in regulations promulgated by the commissioner of transportation pursuant to section fourteen-f of the transportation law, and the term "hazardous wastes" shall mean those wastes identified or listed pursuant to section 27-0903 of this article and any rules and regulations promulgated thereunder.

2. Nothing in subdivision one of this section shall be deemed or construed to relieve from liability for damages or injuries any person who: (a) is alleged to have caused said damages or injuries as the result of gross negligence, or reckless, wanton or intentional misconduct, or (b) is under a legal duty to respond to the incident, or (c) receives compensation other than reimbursement for out-of-pocket expenses for services in rendering assistance or advice.

3. Notwithstanding any other provision of law to the contrary, the liability of any person designing, implementing or otherwise performing services related to an inactive hazardous waste disposal site remedial program or related to cleanup or restorative work which is conducted pursuant to a contract with the department or pursuant to an order of the department, the department of health or a court, for any injury to a person or property caused by or related to such services shall be limited to acts or omissions of the person during the course of performing such services which are shown to have been the result of negligence, gross negligence or reckless, wanton or intentional misconduct. Notwithstanding any other provision of law, when (i) a verdict or decision in an action or claim for injury to a person or property caused by or related to such services is determined in favor of a claimant in an action involving a person performing such services and any other person or persons jointly liable, and (ii) the liability of the person performing such services is found to be fifty percent or less of the total liability assigned to all persons liable, and (iii) the liability of the person performing such services is not based on a finding of reckless disregard for the safety of others, or intentional misconduct, then the liability of the person performing such services to the claimant for loss relating to injury to property and for non-economic loss relating to injury to a person shall not exceed the equitable share of the person performing such services determined in accordance with the relative culpability of each person causing or contributing to the total liability for such losses; provided, however, that the culpable conduct of any person not a party to the action shall not be considered in determining any equitable share herein if the claimant proves that with due diligence the claimant was unable to obtain jurisdiction over such person in said action. As used in this

section, the term "non-economic loss" includes but is not limited to pain and suffering, mental anguish, loss of consortium or other damages for non-economic loss. However, nothing in this subdivision shall be deemed to alter, modify or abrogate the liability of any person performing such services for breach of any express warranty, limited or otherwise, or an express or implied warranty under the uniform commercial code, or to an employee of such person pursuant to the workers' compensation law, or relieve from liability, including liability for the costs of cleanup, the owner or any person who is a person responsible for the disposal of hazardous wastes at the site, pursuant to section 27-1313 of this article.

§ 27-1323. Liability exemptions and defenses.

1. Lender exemption. (a) For purposes of this title no lender shall incur any liability from any statutory claims of the state as an owner or operator of a site, or a person responsible for the disposal of a hazardous waste at such site, provided such lender, without participating in the management of such site, holds indicia of ownership primarily to protect the lender's security interest in the site or, if such lender did not participate in the management of such site prior to a foreclosure on such site, notwithstanding that such lender:

(1) forecloses on such site; and

(2) after foreclosure, sells, releases (in the case of a lease finance transaction), or liquidates such site, maintains business activities, winds up operations, or takes any other measure to preserve, protect or prepare such site prior to sale or disposition; provided, however, that such lender shall take actions to sell, release (in the case of a lease finance transaction), or otherwise divest itself of such site at the earliest practicable, commercially reasonable time, on commercially reasonable terms, taking into account market conditions and legal and regulatory requirements.

(b) This exemption shall not apply to any lender that has caused or contributed to the release or threatened release of a hazardous waste from or onto the site, or to any lender that generated, transported, or disposed of, arranged for, or that caused the generation,

transportation, or disposal of hazardous waste from or onto such site.

(c) For purposes of this section:

(1) The term "participating in management" means actually participating in the management or operational affairs of a site and does not include merely having the capacity to influence, or the unexercised right to control, site operations.

(i) A lender who holds indicia of ownership primarily to protect a security interest in such site shall be considered to participate in management only if, while the borrower is in possession of such site encumbered by the security interest, the lender:

(A) exercises decision making control over the environmental compliance related to such site, such that the lender has undertaken responsibility for the hazardous waste handling or disposal practices related to such site; or

(B) exercises control at a level comparable to that of a manager of such site, such that the lender has assumed or manifested responsibility:

(I) for the overall management of such site encompassing day-to-day decision making with respect to environmental compliance; or

(II) over all or substantially all of the operational functions, excluding financial or administrative functions, of such site other than the function of environmental compliance.

(ii) The term "participate in management" does not include:

(A) Performing an act or failing to act prior to the time at which a security interest is created in a site;

(B) Holding a security interest or abandoning or releasing a security interest;

(C) Including in the terms of an extension of credit, or in a contract or security agreement relating to such extension, a covenant, warranty, or other term or condition that relates to environmental compliance;

(D) Monitoring or enforcing the terms and conditions of the extension of credit or security interest;

(E) Monitoring or undertaking one or more inspections of such site;

(F) Requiring a response action or other lawful means of addressing the release or threatened release of a hazardous waste in connection with such site prior to, during, or on the expiration of the term of the extension of credit;

(G) Providing financial or other advice or counseling in an effort to mitigate, prevent, or cure default or diminution in the value of such site;

(H) Restructuring, renegotiating, or otherwise agreeing to alter the terms and conditions of the extension of credit or security interest, exercising forbearance;

(I) Exercising other remedies that may be available under applicable law for the breach of a term or condition of the extension of credit or security agreement; or

(J) Conducting a response action under 42 U.S.C. Section 9607(d) or under the direction of an on-scene coordinator appointed under the national contingency plan if the actions do not rise to the level of participating in management within the meaning of this subparagraph.

(2) The term "extension of credit" includes a lease finance transaction:

(i) In which the lessor does not initially select the leased site and does not during the lease term control the daily operations or maintenance of such site; or

(ii) That conforms with regulations issued by the appropriate federal banking agency or the appropriate state bank supervisor (as those terms are defined in section 3 of the federal deposit insurance act (12 U.S.C. 1813)) or with regulations issued by the national credit union administration board, as appropriate.

(3) The term "financial or administrative function" includes a function such as that of a credit manager, accounts payable officer, accounts receivable officer, personnel manager, comptroller, or chief financial officer, or a similar function.

(4) The terms "foreclosure" and "foreclose" mean, respectively, acquiring and to acquire, a site through:

(i) Purchase at sale under a judgment or decree, power of sale, or nonjudicial foreclosure sale;

(ii) A deed in lieu of foreclosure or similar conveyance from a trustee;

(iii) Repossession if such site was security for an extension of credit previously contracted;

(iv) Conveyance pursuant to an extension of credit previously contracted, including the termination of a lease agreement; or

(v) Any other formal or informal manner by which the lender acquires, for subsequent disposition, title to or possession of a site in order to protect the lender's security interest.

(5) The term "lender" means:

(i) An insured depository institution as defined in section 3 of the federal deposit insurance act (12 U.S.C 1813);

(ii) An insured credit union as defined in section 101 of the federal credit union act (12 U.S.C. 1752);

(iii) A bank or association chartered under the farm credit act of 1971 (12 U.S.C. 2001 et seq.);

(iv) A leasing or trust company that is an affiliate of an insured depository institution;

(v) Any person, including a successor or assignee of any such person, that makes a bona fide extension of credit to or takes or acquires a security interest from a nonaffiliated person;

(vi) The federal national mortgage association, the federal home loan mortgage corporation, the federal agricultural mortgage corporation, or any other entity that in a bona fide manner buys or sells loans or interests in loans;

(vii) A person that insures or guarantees against a default in the repayment of an extension of credit, or acts as a surety with respect to an extension of credit, to a nonaffiliated person; and

(viii) A person that provides title insurance and that acquires a site as a result of assignment or conveyance in the course of underwriting claims and claims settlement.

(6) The term "operational function" includes a function such as that of a site or plant manager, operations manager, chief operating officer, or chief executive officer.

(7) The term "security interest" includes a right under a mortgage, deed of trust, assignment, judgment, lien, pledge, security agreement, factoring agreement, or lease, and any other right accruing to a person to secure the repayment of money, the performance of a duty, or any other obligation by a nonaffiliated person.

2. Municipal exemption. (a) For the purposes of this title no municipality or public corporation shall incur any liability from any statutory claims of the state as an owner or operator of a site, or a

person responsible for the disposal of a hazardous waste at such site:

(i) if such municipality or public corporation acquired such site involuntarily, and such municipality or public corporation retained such site without participating in the development of such site;

(ii) with respect to an airport or fire training site, if such site is owned or operated by such municipality, public corporation, or fire district and at which firefighting foam containing PFAS chemicals was used pursuant to law; or

(iii) with respect to a landfill, if such landfill is owned or operated by the municipality or public corporation.

(b) This exemption shall not apply to any municipality or public corporation that through action or inaction has intentionally, knowingly, recklessly, or through gross negligence caused or contributed to the release or threatened release of a hazardous waste from or onto the site, or to any municipality or public corporation that intentionally, knowingly, recklessly, or through gross negligence generated, transported, or disposed of, arranged for, or caused the generation, transportation, or disposal of hazardous waste, from or onto the site.

(c) When used in this section:

(1) "Public corporation" means a public corporation as defined in section sixty-five of the general construction law, a local public authority, supervisory district, improvement district within a county, city, town, or village, or Indian nation or tribe recognized by the state or the United States with a reservation wholly or partly within the boundaries of New York state, or any combination thereof.

(2) "Involuntary acquisition of ownership or control" includes but is not limited to the following:

(i) Acquisitions by a public corporation in its sovereign capacity, including but not limited to acquisitions pursuant to abandonment proceedings or bequest;

(ii) Acquisitions by a public corporation, or its agent, acting as a conservator or receiver pursuant to a clear and direct statutory mandate or regulatory authority;

(iii) Acquisitions of assets through foreclosure and its equivalents, or otherwise, by a public corporation in the course of administering a loan, loan guarantee, tax lien, or tax forbearance agreement, or loan

insurance program; or

(iv) Acquisitions by a public corporation pursuant to seizure, injunction, condemnation, or forfeiture authority; provided that such ownership or control is not retained primarily for investment purposes.

(3) "Airport" shall have the same meaning as provided in subdivision five of section two hundred forty of the general business law.

(4) "Landfill" shall mean an inactive municipal solid waste site where solid waste was intentionally placed and intended to remain and which was designed, constructed, operated, and closed pursuant to this chapter to minimize adverse environmental impacts and which was either (i) permitted by the department, or (ii) for a non-permitted site, had materially complied with requirements for permitting in accordance with department regulations to the extent the information is reasonably verifiable.

(5) "Firefighting foam containing PFAS chemicals" shall mean class B firefighting foam, as defined in paragraph (a) of subdivision one of section two hundred four-g of the general municipal law, that contains intentionally added perfluoroalkyl and polyfluoroalkyl substances, as defined in paragraph (d) of subdivision one of section two hundred four-g of the general municipal law.

(d) For the purpose of this section, the terms "foreclosure" and "foreclose" mean, respectively, acquiring or to acquire a property through:

(1) purchase at sale under a judgment or decree, power of sale, or non-judicial foreclosure sale;

(2) a deed in lieu of foreclosure, or similar conveyance, or abandonment from a person or trustee;

(3) conveyance pursuant to an extension of credit or tax forbearance previously contracted; or

(4) any other formal or informal manner by which a person acquires, for subsequent disposition, title to or possession of a site in order to protect the security interest of the public corporation or lender.

(e) "Participating in development" means the carrying out, or causing or permitting the carrying out, of any above-grade improvements to the site or any other environmental investigation or remediation, except for those improvements which are part of a site remedial program pursuant to this article or in furtherance of site safety, such as fencing or

lighting, but does not include licensing, regulatory oversight, or the mere capacity to regulate or influence, or the unexercised right to control the operation of the property. For purposes of this section, participating in development does not include:

- (1) having the capacity to influence management of a site;
- (2) having the unexercised right to control or to regulate the site or operations thereof;
- (3) holding, abandoning, or releasing a security interest or tax lien on such site;
- (4) including a condition relating to environmental compliance in a contract, permit, license, or security agreement;
- (5) monitoring or enforcing the terms and conditions of an agreement or tax forbearance agreement;
- (6) monitoring or undertaking one or more inspections of a site including, but not limited to, boring test wells;
- (7) exercising other remedies available under applicable laws;
- (8) licensing, permitting, or granting permits, certificates of occupancy and variances as allowed by law and/or regulation;
- (9) applying for or participating in federal or state statutory programs or benefits; or
- (10) declining to take any of the actions described in subparagraphs one through nine of this paragraph.

(f) Any municipality or public corporation that has taken possession of a site, or owns or operates a site, pursuant to this subdivision, shall notify the department of any release of hazardous waste within ten days of obtaining actual knowledge of such release, unless a shorter notice period is required under any other provision of law, in which case the shorter notice period controls. Failure to notify the department within the ten day or shorter notification period shall result in the loss of the exemption set forth in this section.

3. Fiduciary liability cap. For the purpose of this title, liability on the part of a fiduciary shall not exceed the assets held in the fiduciary capacity if such person is not liable independently of such person's ownership as a fiduciary or actions taken in a fiduciary capacity including, but not limited to, the fiduciary's negligently causing or contributing to the release or threatened release of

hazardous waste at such site.

(a) For purposes of this subdivision:

(1) the term "fiduciary" means a person acting for the benefit of another party as a bona fide trustee; executor; administrator; custodian; guardian of estates or guardian ad litem; receiver; conservator; committee of estates of incapacitated person; personal representative; trustee (including a successor to a trustee) under an indenture agreement, trust agreement, lease, or similar financing agreement, for debt securities, certificates of interest or certificates of participation in debt securities, or other forms of indebtedness as to which the trustee is not, in the capacity of trustee, the lender; or representative in any other capacity that the department, after providing public notice, determines to be similar to the various capacities previously described in this paragraph; and does not include either a person that is acting as a fiduciary with respect to a trust or other fiduciary estate that was organized for the primary purpose of, or is engaged in, actively carrying on a trade or business for profit, unless the trust or other fiduciary estate was created as part of, or to facilitate, one or more estate plans or because of the incapacity of a natural person or a person that acquires ownership or control of a property with the objective purpose of avoiding liability of the person or any other person.

(2) the term "fiduciary capacity" means the capacity of a person in holding title to a property, or otherwise having control of or an interest in a property, pursuant to the exercise of the responsibilities of the person as a fiduciary.

(b) Nothing in this subdivision affects the rights or immunities or other defenses that are available under law that are applicable to a person subject to this section; or creates any liability for a person or a private right of action against a fiduciary or any other person.

(c) Nothing in this subdivision applies to a person if that person acts in a capacity other than that of a fiduciary or in a beneficiary capacity and in that capacity, directly or indirectly, benefits from a trust or fiduciary relationship; or is a beneficiary and a fiduciary with respect to the same fiduciary estate and, as a fiduciary, receives benefits that exceed customary or reasonable compensation, and incidental benefits, permitted under other applicable law.

(d) This subdivision does not preclude a claim under this chapter against the assets of the estate or trust administered by the fiduciary; or a nonemployee agent or independent contractor retained by a fiduciary.

4. Affirmative defenses. (a) There shall be no liability under this title for a person otherwise liable who can establish by a preponderance of the evidence that the significant threat to the environment attributable to hazardous waste disposed at an inactive hazardous waste disposal site was caused solely by: (1) an act of God; (2) an act of war; or (3) an act or omission of a third party other than an employee or agent of such person, or than one whose act or omission occurs in connection with a contractual relationship existing directly or indirectly with such person (except where the sole contractual arrangement arises from a published tariff and acceptance for carriage by a common carrier or rail), if such person establishes by a preponderance of the evidence that: (i) such person exercised due care with respect to the hazardous waste concerned, taking into consideration the characteristics of such hazardous waste, in light of all relevant facts and circumstances, and (ii) took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions; or any combination of them.

(b) For purposes of this section, (1) the term "act of God" means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight, (2) the term "contractual relationship" includes, but is not limited to, land contracts, deeds, or other instruments transferring title or possession, unless the real property on which the site concerned is located was acquired by such person after the disposal or placement of the hazardous waste on, in, or at such site, and such person establishes one or more of the circumstances described in clause (i), (ii), or (iii) of this subparagraph by a preponderance of the evidence:

(i) At the time such person acquired the site, such person did not know and had no reason to know that any hazardous waste which is the

subject of the significant threat determination was disposed of on, in, or at the site; or

(ii) Such person is a government entity which acquired the site by escheat, or through any other involuntary transfer or acquisition or through the exercise of eminent domain authority by purchase or condemnation; or

(iii) Such person acquired the site by inheritance or bequest. In addition to establishing the foregoing, the person must establish that he or she has satisfied the requirements of clauses (i) and (ii) of subparagraph three of paragraph (a) of this subdivision, provides full cooperation, assistance, and site access to the persons that are authorized to conduct remedial actions at the site (including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial remedial action at the site), is in compliance with any land use restrictions established or relied on in connection with the remedial action at a site, and does not impede the effectiveness or integrity of any institutional and/or engineering control employed at the site in connection with a remedial action.

(c)(1) To establish that the person had no reason to know of the matter described in clause (i) of subparagraph two of paragraph (b) of this subdivision, the person must demonstrate to a court that:

(i) on or before the date on which the person acquired the site, the person carried out all appropriate inquiries, as provided in subparagraphs two and four of this paragraph, into the previous ownership and uses of the site in accordance with generally accepted good commercial and customary standards and practices; and

(ii) the person took reasonable steps to:

(A) stop any continuing release;

(B) prevent any threatened future release; and

(C) prevent or limit any human, environmental, or natural resource exposure to any previously released hazardous waste.

(2) Not later than one year after the effective date of this section, the commissioner shall by regulation establish standards and practices for the purpose of satisfying the requirement to carry out all appropriate inquiries under subparagraph one of this paragraph.

(3) In promulgating regulations that establish the standards and

practices referred to in subparagraph two of this paragraph, the commissioner shall include each of the following:

- (i) the results of an inquiry by an environmental professional;
- (ii) interviews with past and present owners, operators, and occupants of the site for the purpose of gathering information regarding the potential for contamination at the site;
- (iii) reviews of historical sources, such as chain of title documents, aerial photographs, building department records, and land use records, to determine previous uses and occupancies of the real property since the property was first developed;
- (iv) searches for recorded environmental cleanup liens against the site that are filed under federal, state, or local law;
- (v) reviews of federal, state, and local government records, waste disposal records, underground storage tank records, and hazardous waste handling, generation, treatment, disposal, and spill records, concerning contamination at or near the site;
- (vi) visual inspections of the site and of adjoining properties;
- (vii) specialized knowledge or experience on the part of the person;
- (viii) the relationship of the purchase price to the value of the property, if the property was not contaminated;
- (ix) commonly known or reasonably ascertainable information about the property;
- (x) the degree of obviousness of the presence or likely presence of contamination at the property, and the ability to detect the contamination by appropriate investigation.

(4)(i) With respect to property purchased before May thirty-first, nineteen hundred ninety-seven, in making a determination with respect to a person described in subparagraph one of this paragraph a court shall take into account:

- (A) any specialized knowledge or experience on the part of the person;
- (B) the relationship of the purchase price to the value of the property, if the property was not contaminated;
- (C) commonly known or reasonably ascertainable information about the property;
- (D) the obviousness of the presence or likely presence of contamination at the property; and
- (E) the ability of the person to detect the contamination by

appropriate inspection.

(ii) With respect to property purchased on or after May thirty-first, nineteen hundred ninety-seven, and until the commissioner promulgates the regulations described in subparagraph two of this paragraph, the procedures of the American Society for Testing and Materials, including the document known as "Standard E1527-97", entitled 'Standard Practice for Environmental Site Assessment: Phase 1 Environmental Site Assessment Process', shall satisfy the requirements in subparagraph one of this paragraph.

(5) In the case of property for residential use or other similar use purchased by a nongovernmental or noncommercial entity, a site inspection and title search that reveal no basis for further investigation shall be considered to satisfy the requirements of this subparagraph.

(d) Nothing in this subdivision shall diminish the liability of any previous owner or operator of the site who would otherwise be liable under this title. Notwithstanding this subdivision, if such person obtained actual knowledge of the release or threatened release of a hazardous waste at the site when such person owned the site and then subsequently transferred ownership of the site to another person without disclosing such knowledge, such person shall be treated as a person responsible for the disposal of hazardous waste at the site, and no defense under this subdivision shall be available to such person. Nothing in this subdivision shall affect the liability under this section of a person who, by any act or omission, caused or contributed to the release or threatened release of a hazardous waste which is the subject of such proceeding relating to such site.

5. Bona fide prospective purchaser. (a) The term "bona fide prospective purchaser" means, with respect to a site:

(1) a person who:

(i) acquires ownership of the site after October seventh, two thousand three; and

(ii) establishes by a preponderance of the evidence each of the criteria described in paragraph (b) of this subdivision; and

(2) a person:

(i) who acquires a leasehold interest in the site after October

seventh, two thousand three;

(ii) who establishes by a preponderance of the evidence that the leasehold interest is not designed to avoid liability under this title by any person; and

(iii) with respect to whom any of the following conditions apply:

(A) The owner of the site that is subject to the leasehold interest is a person described in subparagraph one of this paragraph.

(B)(I) The owner of the site that is subject to the leasehold interest was a person described in subparagraph one of this paragraph at the time the leasehold interest was acquired, but can no longer establish by a preponderance of the evidence each of the criteria described in paragraph (b) of this subdivision due to circumstances unrelated to any action of the person who holds the leasehold interest; and

(II) The person who holds the leasehold interest establishes by a preponderance of the evidence each of the criteria described in subparagraphs one, three, four, five, six, seven, and eight of paragraph (b) of this subdivision.

(C) The person who holds the leasehold interest establishes by a preponderance of the evidence each of the criteria described in paragraph (b) of this subdivision.

(b) Criteria. The criteria described in this paragraph are as follows:

(1) Disposal prior to acquisition. All disposal of hazardous waste at the site occurred before the person acquired the site.

(2) Inquiries. (i) In general. The person made all appropriate inquiries into the previous ownership and uses of the site in accordance with generally accepted good commercial and customary standards and practices in accordance with clause (ii) of this subparagraph.

(ii) Standards and practices. The standards and practices referred to in subparagraphs two, four, and five of paragraph (c) of subdivision four of this section shall be considered to satisfy the requirements of this subparagraph.

(3) Notices. The person provides all legally required notices with respect to the discovery or disposal of any hazardous waste at the site.

(4) Care. The person exercises appropriate care with respect to hazardous waste found at the site by taking reasonable steps to:

(i) stop any continuing disposal;

(ii) prevent any threatened future disposal; and

(iii) prevent or limit human, environmental, or natural resource exposure to any previously disposed hazardous waste.

(5) Cooperation, assistance, and access. The person provides full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration at a site (including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response actions or natural resource restoration at the site).

(6) Institutional control. The person:

(i) is in compliance with any land use restrictions established or relied on in connection with the response action at a site; and

(ii) does not impede the effectiveness or integrity of any institutional control employed at the site in connection with a response action.

(7) Requests; subpoenas. The person complies with any request for information or administrative subpoena issued by the commissioner under this chapter.

(8) No affiliation. The person is not:

(i) potentially liable, or affiliated with any other person that is potentially liable, for response costs at a site through:

(A) any direct or indirect familial relationship; or

(B) any contractual, corporate, or financial relationship (other than a contractual, corporate, or financial relationship that is created by the instruments by which title to the facility is conveyed or financed, by a tenancy, by the instruments by which a leasehold interest in the site is created, or by a contract for the sale of goods or services); or

(ii) the result of a reorganization of a business entity that was potentially liable.

§ 27-1325. Financial responsibility provisions.

1. The department shall promulgate regulations regarding financial responsibility for the implementation of an inactive hazardous waste disposal site remedial program.

2. Financial responsibility required by subdivision one of this

section may be established in accordance with regulations promulgated by the commissioner by any one, or any combination, of the following: insurance, guarantee, surety bond, letter of credit, or qualification as a self-insurer. In promulgating requirements under this section, the commissioner is authorized to specify policy or other contractual terms, conditions, or defenses which are necessary or are unacceptable in establishing such evidence of financial responsibility in order to effectuate the purposes of this article.

3. In any case where the responsible person is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code or where, with reasonable diligence, jurisdiction in any state or federal court within the state cannot be obtained over a responsible person likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility shall be provided under this section may be asserted directly against the guarantor providing such evidence of financial responsibility. In the case of any action pursuant to this subdivision, such guarantor shall be entitled to invoke all rights and defenses which would have been available to the responsible person if any action had been brought against the responsible person by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the responsible person.

4. The total liability of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the responsible person under this chapter. Nothing in this subdivision shall be construed to limit any other state or federal statutory, contractual or common law liability of a guarantor to its responsible person including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subdivision shall be construed to diminish the liability of any person under section 27-1313 of this article or other applicable law.

5. For the purpose of this section, the term "guarantor" means any person, other than the responsible person, who provides evidence of

financial responsibility for a responsible person under this section.

§ 27-1327. Recovery of response costs and natural resource damages.

1. Each responsible person shall be strictly liable, jointly and severally, for all response costs and for all natural resource damages resulting from the disposal of hazardous waste at an inactive hazardous waste disposal site. The commissioner may request the attorney general commence an action in a court of competent jurisdiction to recover the response costs and/or natural resource damages. The commissioner shall prioritize recovering response costs and natural resource damages at sites placed in classification 1 or 2, as described in clauses (i) and (ii) of subparagraph one of paragraph b of subdivision two of section 27-1305 of this title, that are located in disadvantaged communities.

2. A determination or assessment of natural resource damages for the purposes of this section made or adopted by the commissioner in accordance with any applicable regulations promulgated under section 27-1315 of this title or under section 9651(c) of title 42 of the United States Code shall have the force and effect of a rebuttable presumption on behalf of the commissioner in any judicial proceeding.

3. In an action to recover response costs and/or natural resource damages, the commissioner may also seek civil penalties under section 71-2705 of this chapter.

4. All amounts received to satisfy liability for natural resource damages shall be credited to the department's natural resource damages fund to be used exclusively to reimburse the reasonable costs of assessing injury, destruction, and/or loss resulting from the disposal of hazardous waste at the site for which the natural resource damages were recovered and for the restoration, rehabilitation, replacement, and/or acquisition of equivalent natural resources. Provided that any such restoration, rehabilitation, replacement and/or acquisition shall prioritize, to the maximum extent practicable, the natural resources of the site for which the damages were recovered.

5. The state shall have an environmental lien for all response costs incurred by the state and for all natural resource damages for which a judicial determination of liability has been made upon such real property located within the state:

- (a) owned by a person liable to the state for such response costs and/or natural resource damages under this title at the time a notice of environmental lien is filed; and
- (b) upon which the disposal of hazardous wastes occurred.

6. An environmental lien shall attach when:

- (a) response costs are incurred by the state and/or a judicial judgment of liability for natural resource damages is entered;
- (b) the responsible person fails to pay such costs within ninety days after a written demand therefor by the department is mailed by certified or registered mail, return receipt requested, and/or fails to pay such natural resource damages within ninety days after entry of judgment; and
- (c) a notice of environmental lien is filed by the department as provided in paragraph (a) of subdivision ten of this section; provided, however, that a copy of the notice of environmental lien is served upon the owner of the real property subject to the environmental lien within thirty days of such filing in accordance with the provisions of section eleven of the lien law.

7. (a) An environmental lien shall continue against the real property until:

- (i) the claim or judgment against the person referred to in subdivision one of this section for response costs and/or natural resource damages is satisfied or becomes unenforceable;
- (ii) the lien is released by the commissioner pursuant to this subdivision;
- (iii) the lien is discharged by payment of monies into court; or
- (iv) the lien is otherwise vacated by court order.

(b) Upon the occurrence of any event under subparagraphs (i) through (iv) of paragraph (a) of this subdivision, except where the lien is vacated by court order, the commissioner shall execute the release of an environmental lien and file the release as provided in subdivision ten

of this section. The commissioner may release an environmental lien where:

(i) a legally enforceable agreement satisfactory to the commissioner has been executed relating to the response costs and/or natural resource damages that are the subject of the lien; or reimbursing the state for such response costs and/or natural resource damages; or an owner or operator of the site subject to the lien agrees to perform remedial work, site management, or other in-kind services of sufficient value to the commissioner; or

(ii) the attachment or enforcement of the environmental lien is determined by the commissioner not to be in the public interest.

8. An environmental lien is subject to the rights of any other person, including an owner, purchaser, holder of a mortgage or security interest, or judgment lien creditor, whose interest is perfected before a lien notice has been filed as provided in subdivision ten of this section.

9. A notice of environmental lien shall state:

(a) that the lienor is the state of New York;

(b) the name of the record owner of the real property on which the environmental lien has attached;

(c) the real property subject to the lien, with a description thereof sufficient for identification;

(d) that the real property described in the notice is the property upon which a disposal of hazardous wastes occurred and that response costs have been incurred by the lienor and/or that natural resource damages have been judicially determined to be due to the lienor as a result of such disposal;

(e) that the owner is potentially liable for response costs and/or subject to a judgment for natural resource damages pursuant to this title; and

(f) that an environmental lien has attached to the described real property.

10. (a) A notice of environmental lien shall be filed in the clerk's office of the county where the property is situated. If such property is

situated in two or more counties, the notice of environmental lien shall be filed in the office of the clerk of each of such counties. The notice of lien shall be indexed by the county clerk in accordance with the provisions of section ten of the lien law. The notice of lien shall be served upon the owner of the real property subject to the lien in accordance with the provisions of section eleven of the lien law.

(b) A release of an environmental lien shall be filed in the clerk's office of each county where the notice of environmental lien was filed and shall be indexed in the manner prescribed for indexing environmental liens.

11. An environmental lien may be enforced against the property specified in the notice of environmental lien, and an environmental lien may be vacated or discharged, as prescribed in article three of the lien law; provided, however, that nothing in this article or in article three of the lien law shall affect the right of the state to bring an action to recover response costs and/or natural resource damages under section one hundred seven of the federal comprehensive environmental response, compensation, and liability act (42 U.S.C. § 9607 et seq).

12. Amounts received by the commissioner to satisfy all or part of an environmental lien for response costs shall be deposited in the department's hazardous waste remedial fund and amounts received to satisfy all or part of an environmental lien for natural resource damages shall be deposited in the department's natural resource damages fund.

13. Environmental windfall liens. (a) A bona fide prospective purchaser whose liability under this title and/or 42 U.S.C. § 9607 et seq. arises solely from being considered an owner or operator of such site shall not be subject to this subdivision as long as the bona fide prospective purchaser does not impede the performance of a response action or natural resource restoration.

(b) If there are unrecovered response costs incurred by the department at an inactive hazardous waste disposal site for which an owner or operator of the site is not liable by reason of paragraph (a) of this subdivision, and if each of the conditions described in paragraph (c) of

this subdivision are met, the department shall have an environmental windfall lien on the facility, or may by agreement with the owner or operator, obtain from the owner or operator a lien on any other property or other assurance of payment satisfactory to the department, for the unrecovered response costs.

(c) The conditions referred to in paragraph (b) of this subdivision are the following:

(i) A response action for which there are unrecovered costs of the department is carried out at the inactive hazardous waste disposal site.

(ii) The response action increases the fair market value of the site above the fair market value of the site before the response action was initiated.

(d) An environmental windfall lien under paragraph (b) of this subdivision:

(i) shall be in an amount not to exceed the lesser of:

(A) the incremental increase in fair market value of the property, above the fair market value before the response action was initiated, attributable to the response action at the time of a sale or other disposition of the property; or

(B) any unrecovered response costs not subject to an environmental lien attached to the property pursuant to subdivision five of this section;

(ii) shall arise at the time at which costs are first incurred by the department with respect to a response action at the site; and

(iii) shall be subject to the requirements of subdivisions seven, eight, nine, ten, eleven, and twelve of this section.

14. (a) Contribution. Any person may seek contribution from any other person who is liable or potentially liable under this title during or following any civil action under this section. Such claims shall be brought in accordance with this section and the civil practice law and rules, and shall be governed by New York state law. In resolving contribution claims, the court may allocate response costs among liable parties using such equitable factors as the court determines are appropriate. Nothing in this subdivision shall diminish the right of any person to bring an action for contribution in the absence of a civil action under this section.

(b) Settlement. A person who has resolved its liability to the state in an administrative or judicially approved settlement shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially liable persons unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.

(c) Persons not party to settlement. (i) If the state has obtained less than complete relief from a person who has resolved its liability to the state in an administrative or judicially approved settlement, the state may bring an action against any person who has not so resolved its liability.

(ii) A person who has resolved its liability to the state for some or all of a response action or for some or all of the costs of such action in an administrative or judicially approved settlement may seek contribution from any person who is not party to a settlement referred to in paragraph (b) of this subdivision.

(iii) In any action under this paragraph, the rights of any person who has resolved its liability to the state shall be subordinate to the rights of the state.

15. (a) Limitation on claims. No new action under this title may be commenced for natural resource damages or response costs for an inactive hazardous waste site that was the subject of any previous action commenced prior to the effective date of the chapter of the laws of two thousand twenty-five which added this subdivision, regardless of: the venue in which such previous action was commenced; the statutory or common law source of such action, including settlement agreements; the completeness or totality of permissible recovery of such action; or the finality of any such action.

(b) Actions for natural resource damages. Except as provided in paragraphs (d) and (e) of this subdivision, an initial action under this title for natural resource damages that occurs after the effective date of the chapter of the laws of two thousand twenty-five which added this subdivision, shall be commenced within three years after the later of the following:

(i) the date of the discovery of the loss and its connection with the release in question; or

(ii) for any facility listed on the federal National Priorities List, any site listed on the New York state registry of inactive hazardous waste disposal sites, or any site at which a remedial action under this chapter is otherwise scheduled: the date of completion of the remedial action, excluding operation and maintenance activities.

(c) Actions for response costs. An initial action for recovery of response costs that occurs after the effective date of the chapter of the laws of two thousand twenty-five which added this subdivision shall be commenced:

(i) for a removal action, as defined by the department in regulation, within three years after completion of the removal action, except that such cost recovery action shall be commenced within six years after a determination that continued response action is otherwise appropriate and consistent with the remedial action to be taken for continued response action; and

(ii) for a remedial action, as defined by the department in regulation, within six years after initiation of physical on-site construction of the remedial action, except that, if the remedial action is initiated within three years after the completion of the removal action, costs incurred in the removal action may be recovered in the cost recovery action brought under this subparagraph.

(d) Declaratory judgment. In any such action described in this subdivision, the court shall enter a declaratory judgment on liability for response costs or natural resource damages that will be binding on any subsequent action or actions under this title to recover further response costs or damages. A subsequent action or actions under this section for further response costs at the facility or site may be maintained at any time during the response action, but must be commenced no later than three years after the date of completion of all response action. Except as otherwise provided in this paragraph, an action may be commenced under this section for recovery of costs at any time after such costs have been incurred.

(e) Limitations on actions. No action for contribution for any response costs or natural resource damages may be commenced more than three years after:

(i) the date of judgment in any action under this section for recovery of such costs or damages; or

(ii) the date of a judicially approved settlement with respect to such costs or damages.

§ 27-1329. Abatement actions.

1. (a) Maintenance, jurisdiction, etc. When the commissioner, after investigation, determines that there may be an imminent danger to the health or welfare of the people of the state or the environment, or an actual or threatened release of hazardous waste from an inactive hazardous waste disposal site, as defined in clauses (i) and (ii), respectively, of subparagraph one of paragraph b of subdivision two of section 27-1305 of this title, is resulting in or is likely to result in irreversible or irreparable damage to natural resources, the commissioner may request the attorney general to secure such relief as may be necessary to abate such danger or threat and to grant such relief as the public interest and the equities of the case may require. The commissioner may issue such orders as may be necessary to protect public health and welfare and the environment, provided the commissioner has a reasonable belief that persons responsible for implementing such orders have adequate financial resources to comply, there is evidence sufficient to support liability of such person, and the department has made all reasonable efforts to secure voluntary agreement of such person to abate the imminent danger or threat.

(b) Any such person may request a meeting with the department to discuss reconsideration of an order, within five business days of receiving such order, if such person believes they are not liable. Such request shall include a description of the reason why such person believes they are not liable and any supporting documentation. The department shall make all practicable efforts to hold such meeting within five business days of receiving such request and shall consider its evidence of such person's liability in light of any information and documentation provided.

(c) Any such order issued by the commissioner shall be a final determination of the department and subject to challenge pursuant to article seventy-eight of the civil practice law and rules.

(d) No action may be taken under paragraph (a) of this subdivision

against a bona fide prospective purchaser, as defined in subdivision five of section 27-1323 of this title.

2. Fines; reimbursement. (a) Any person who, without sufficient cause, fails or refuses to comply with any order of the commissioner under subdivision one of this section may, in an action brought in the appropriate court of competent jurisdiction to enforce such order, be fined not more than thirty-seven thousand five hundred dollars for each day in which such violation occurs or such failure to comply continues.

(b) (i) Any person who receives and complies with the terms of any order issued under subdivision one of this section may, within sixty days after completion of the required action, petition the commissioner for reimbursement from the hazardous waste remedial fund pursuant to section ninety-seven-b of the state finance law for the reasonable costs of such action, plus interest. Any interest payable under this subparagraph shall accrue on the amounts expended from the date of expenditure at the same rate as specified for interest on investments of the hazardous substance superfund established under subchapter A of chapter 98 of title 26 of the federal comprehensive environmental response, compensation, and liability act.

(ii) If the commissioner refuses to grant all or part of a petition made under this paragraph, the petitioner may within thirty days of receipt of such refusal file an action against the department pursuant to article seventy-eight of the civil practice law and rules.

(iii) Except as provided in subparagraph (iv) of this paragraph, to obtain reimbursement, the petitioner shall establish by a preponderance of the evidence that such petitioner is not liable for response costs under section 27-1313 of this title and that costs for which such petitioner seeks reimbursement are reasonable in light of the action required by the relevant order.

(iv) A petitioner under subparagraph (i) of this paragraph may also recover its reasonable costs of response to the extent that such petitioner can demonstrate, on the administrative record, that the commissioner's decision in selecting the response action ordered was arbitrary and capricious or was otherwise not in accordance with law. Reimbursement awarded under this subparagraph shall include all reasonable response costs incurred by the petitioner pursuant to the

portions of the order found to be arbitrary and capricious or otherwise not in accordance with law.

(v) Reimbursement awarded by a court under subparagraph (iii) or (iv) of this paragraph may include appropriate costs, fees, and other expenses in accordance with section eighty-six hundred one of the civil practice law and rules.

3. The commissioner shall provide notice of the provisions of this section to known responsible persons at sites listed in clauses (i) and (ii) of subparagraph one of paragraph b of subdivision two of section 27-1305 of this title, within six months of the effective date of the chapter of the laws of two thousand twenty-five which added this section, if the commissioner intends to issue an order to such responsible persons. No such orders shall be issued within a one-year period after the effective date of the chapter of the laws of two thousand twenty-five which added this section.

§ 27-1331. Community participation.

1. To facilitate an inactive hazardous waste disposal site remedial program and enable community members to participate more fully in decisions that affect their community, the department shall provide opportunities for community involvement and shall consult with the public throughout that process, before the department forms or adopts final positions. The primary goals of the community participation program at sites are to facilitate two-way communication between the department and individuals, groups, and organizations that have expressed interest in or are affected by the site or the site's remedial program, with a special focus on sites in disadvantaged communities and to take into account the community's interests in the decision-making process associated with the remediation of sites.

2. All inactive hazardous waste disposal site remedial programs shall include community participation activities which, at a minimum, shall include, but are not limited to, the preparation of a community participation plan, establishment of a document repository, and public

notice to interested individuals and groups with a prescribed comment period at select milestones.

3. The design of each community participation plan, including the level of community involvement and the tools utilized, shall take into account the scope and scale of the proposed inactive hazardous waste disposal site remedial program, local interest and history, location within a disadvantaged community, and other relevant factors. While retaining flexibility to tailor each plan to each site, community participation plans shall embody the following principles of meaningful community participation:

a. opportunities for community involvement should be provided as early as possible in the decision-making process prior to the selection of a preferred course of action by the department and/or the responsible person;

b. activities proposed in such plan should be as reflective of the diversity of interests and perspective found within the community as possible, allowing the public the opportunity to have their views heard and considered, which may include opportunities for dialogue; and

c. full, timely, and accessible disclosure and sharing of information by the department shall be provided, including the provision of technical data and the assumptions upon which any analyses are based.

4. Each community participation plan shall include the following minimum elements:

a. an inactive hazardous waste disposal site remedial program site contact list;

b. the name and address of a document repository and proof of acceptance of this designation by the repository;

c. overview of the site's history and contamination issues, including the nature of threats to public health and the environment, once known;

d. identification of major issues of public concern related to the site and a description of any interim actions planned or taken to address the issues, if appropriate;

e. a description of the phases of the major elements of the inactive hazardous waste disposal site remedial program;

f. a description of community participation activities conducted or planned relative to the inactive hazardous waste disposal site; and

g. a description of any additional community participation activities needed to address public concerns.

5. All community participation plans will be subject to department review and approval. The citizen participation plan shall be updated during the implementation of the inactive hazardous waste disposal site remedial program.

6. Document repository. A document repository shall be established at a location accessible to the public where they can review the inactive hazardous waste disposal site remedial program documents, and an electronic repository shall also exist on the department's website.

a. Documents shall be placed in the repository, which are:

(i) approved by the department; or

(ii) otherwise designated by the department for inclusion.

b. The responsible person shall make available to the department all appropriate documents for inclusion in the repository.

TITLE 14

BROWNFIELD CLEANUP PROGRAM

Section 27-1401. Short title.

27-1403. Declaration of policy and findings of fact.

27-1405. Definitions.

- 27-1407. Request for participation.
- 27-1409. Brownfield site cleanup agreement.
- 27-1411. Work plan requirements.
- 27-1413. Alternatives analysis.
- 27-1415. Remedial program requirements.
- 27-1417. Citizen participation.
- 27-1419. Certification of completion.
- 27-1420. Brownfield cleanup program report.
- 27-1421. Liability limitation.
- 27-1425. Change of use.
- 27-1427. Reserved.
- 27-1429. Permit waivers.
- 27-1431. Access to sites.
- 27-1433. Waiver of interest or penalties or other charges on
brownfield properties.
- 27-1437. BCP-EZ program.

§ 27-1401. Short title.

This title shall be known and may be cited as the "Brownfield Cleanup Program".

§ 27-1403. Declaration of policy and findings of fact.

The legislature hereby finds that there are thousands of abandoned and likely contaminated properties that threaten the health and vitality of the communities they burden, and that these sites, known as brownfields, are also contributing to sprawl development and loss of open space. It is therefore declared that, to advance the policy of the state of New York to conserve, improve, and protect its natural resources and environment and control water, land, and air pollution in order to enhance the health, safety, and welfare of the people of the state and their overall economic and social well being, it is appropriate to adopt this act to encourage persons to voluntarily remediate brownfield sites for reuse and redevelopment by establishing within the department a

statutory program to encourage cleanup and redevelopment of brownfield sites. All remedies shall be fully protective of public health and the environment including, but not limited to, groundwater according to its classification pursuant to section 17-0301 of this chapter. A remedial program that achieves a permanent cleanup of a contaminated site, including the restoration of groundwater to its classified use, is to be preferred over a remedial program that does not do so. It is the intent of the legislature that the provisions of this brownfield cleanup program shall not be construed as limiting or otherwise affecting any authority conferred upon the department by any other provision of law.

§ 27-1405. Definitions.

1. "Applicant" shall mean a person whose request to participate in the brownfield cleanup program under this title has been accepted by the department:

(a) "Participant" shall mean an applicant who either: (i) was the owner of the site at the time of the disposal or discharge of contaminants or (ii) is otherwise a person responsible according to applicable principles of statutory or common law liability, unless such person's liability arises solely as a result of such person's ownership or operation of or involvement with the site subsequent to the disposal or discharge of contaminants.

(b) "Volunteer" shall mean an applicant other than a participant, including without limitation a person whose liability arises solely as a result of such person's ownership or operation of or involvement with the site subsequent to the disposal or discharge of contaminants, provided however, such person exercises appropriate care with respect to contamination found at the facility by taking reasonable steps to:

- (i) stop any continuing release;
- (ii) prevent any threatened future release; and
- (iii) prevent or limit human, environmental, or natural resource exposure to any previously released contamination.

2. "Brownfield site" or "site" shall mean any real property where a contaminant is present at levels exceeding the soil cleanup objectives

or other health-based or environmental standards, criteria or guidance adopted by the department that are applicable based on the reasonably anticipated use of the property, in accordance with applicable regulations. Such term shall not include real property:

(a) listed in the registry of inactive hazardous waste disposal sites under section 27-1305 of this article at the time of application to this program and given a classification as described in subparagraph one or two of paragraph b of subdivision two of section 27-1305 of this article; provided, however, real property listed in the registry of inactive hazardous waste disposal sites under subparagraph two of paragraph b of subdivision two of section 27-1305 of this article, where such real property is owned by a volunteer or under contract to be transferred to a volunteer, shall not be deemed ineligible to participate, provided that, prior to the site being accepted into the brownfield cleanup program, the department has not identified any responsible party for that property having the ability to pay for the investigation or cleanup of the property and further provided that the status of any such site as listed in the registry shall not be altered prior to the issuance of a certificate of completion pursuant to section 27-1419 of this title. The department's assessment of eligibility under this paragraph shall not constitute a finding concerning liability with respect to the property;

(b) listed on the national priorities list established under authority of 42 U.S.C. section 9605;

(c) subject to an enforcement action under title seven or nine of this article, or permitted or required to be permitted as a treatment, storage or disposal facility; provided, that nothing herein contained shall be deemed otherwise to exclude from the scope of the term "brownfield site" a hazardous waste treatment, storage or disposal facility having interim status according to regulations promulgated by the commissioner and provided further that real property owned by a volunteer or under contract to be transferred to a volunteer shall not be deemed ineligible to participate provided that, prior to the site being accepted into the brownfield cleanup program, the department has not identified any responsible party for that property having the ability to pay for the investigation or cleanup of the property;

(d) subject to an order for cleanup pursuant to article twelve of the

navigation law or pursuant to title ten of article seventeen of this chapter except such property shall not be deemed ineligible if it is subject to a stipulation agreement; or

(e) subject to any other on-going state or federal environmental enforcement action related to the contamination which is at or emanating from the site subject to the present application.

3. "Brownfield site contact list" shall mean a list of persons, government agencies, groups, or organizations, including, but not limited to the chief executive officer and zoning board of each county, city, town and village in which such site is located, in a city with a population of one million or more, any community board in which such site is located, the public water supplier which serves the area in which such site is located, any site residents, any person who has requested to be placed on the site contact list, and the administrator of any school or day care facility located on the site for the purposes of posting and/or dissemination at the facility. For the purposes of this section "water supplier" means any public water system as such term is defined for the purposes of the sanitary code of the state of New York as authorized by section two hundred twenty-five of the public health law. Provided, however, that where the site or adjacent real property contains multiple dwelling units, the applicant shall work with the department to develop an alternative method for providing such notice in lieu of mailing to each individual.

4. "Brownfield site cleanup agreement" shall mean an agreement executed in accordance with section 27-1409 of this title by an applicant and the department for the purpose of completing a brownfield site remedial program.

5. "Brownfield site remedial program" or "remedial program" shall mean all remedial activities or actions undertaken to eliminate, remove, treat, abate, control, manage, or monitor contamination at or emanating from a brownfield site, including, but not limited to, the following:

(a) remedial investigation and remedy selection activities needed to develop such a program;

(b) design activities;

(c) construction activities including without limitation grading, contouring, trenching, grouting, capping, excavating, transporting, incinerating, thermally treating, chemically treating, biologically treating, constructing leachate collection and treatment systems or application of innovative technologies approved by the department;

(d) interim remedial measures;

(e) post-construction operation, maintenance, and monitoring;

(f) restoration of the environment;

(g) involvement by local governments of jurisdiction and by the general public; or

(h) oversight by the department.

6. "Citizen participation plan" shall mean the description of citizen participation activities prepared and carried out pursuant to section 27-1417 of this title.

7. "Concentrated solid or semi-solid hazardous wastes" shall mean solid or semi-solid hazardous wastes present in surface or subsurface soil, surface water or groundwater in a concentrated form, such as precipitated metallic salts, metal oxides, or chemical sludges.

7-a. "Contaminant" shall mean hazardous waste and/or petroleum as such terms are defined in this section.

8. "Contamination" or "contaminated" shall mean the presence of a contaminant in any environmental media, including soil, surface water, groundwater, air, or indoor air.

9. "Dense non-aqueous phase liquid" or "DNAPL" shall mean a hazardous waste that is a liquid that is denser than water and does not dissolve or mix easily in water.

10. "Document repository" shall mean a repository of brownfield site remedial program documents approved by the department or released for public notice established in a publicly accessible building near the location of such site.

11. "Engineering control" shall mean any physical barrier or method employed to actively or passively contain, stabilize, or monitor contamination, restrict the movement of contamination to ensure the long-term effectiveness of a remedial program, or eliminate potential exposure pathways to contamination. Engineering controls include, but are not limited to, pavement, caps, covers, subsurface barriers, vapor barriers, slurry walls, building ventilation systems, fences, access controls, provision of alternative water supplies via connection to an existing public water supply, adding treatment technologies to such water supplies, and installing filtration devices on private water supplies.

12. "Feasible" shall mean suitable to site conditions, capable of being successfully carried out with available technology, implementable and cost effective.

13. "Financial assurance" shall include but not be limited to surety bonds, trust funds, letters of credit, insurance or a multiple of financial mechanisms as determined to be adequate by the department.

14. "Free product" shall mean an immiscible non-aqueous phase liquid, other than a dense non-aqueous phase liquid present as a liquid in surface or sub-surface soil, surface water or groundwater in a potentially mobile state.

15. "Grossly contaminated soil" shall mean soil which contains free product or residual contamination which is identifiable either visually, through the perception of odor, by elevated contaminant vapor levels, by field instrumentation, or is otherwise readily detectable.

16. "Groundwater" shall mean water below the land surface in a saturated zone of soil or rock. This includes perched water separated from the main body of groundwater by an unsaturated zone.

17. "Hazardous waste" shall mean a hazardous waste as defined in section 27-1301 of this article.

18. "Institutional control" shall mean any non-physical means of enforcing a restriction on the use of real property that limits human or environmental exposure, restricts the use of groundwater, provides notice to potential owners, operators, or members of the public, or prevents actions that would interfere with the effectiveness of a remedial program or with the effectiveness and/or integrity of operation, maintenance, or monitoring activities at or pertaining to a brownfield site.

19. "Interim remedial measures" shall mean activities to address both emergency and non-emergency site conditions, which can be undertaken without extensive investigation and evaluation, to prevent, mitigate, or remedy environmental damage or the consequences of environmental damage attributable to a site, including but not limited to, the following activities: construction of diversion ditches, collection systems, free product recovery systems, or leachate collection systems; construction of fences or other barriers; installation of water filters; provision of alternative water systems; the removal of free product; or plume control.

20. "Light Non Aqueous Phase Liquid" or "LNAPL" shall mean a contaminant that is a liquid that is lighter than water and does not dissolve or mix easily in water.

21. "Municipality" shall mean a local public authority or public benefit corporation, a county, city, town, village, school district, supervisory district, district corporation, improvement district within a county, city, town or village or Indian nation or tribe recognized by the United States with a reservation wholly or partly within the boundaries of the state, or any combination thereof.

22. "Newspaper notice" shall mean the placement of a prominently located, paid newspaper advertisement in the community bulletin section or similar local section of a newspaper of general circulation in the vicinity of the brownfield site which is the subject of the notice. Such notice shall be in English and in any other language spoken by significant numbers of people within the community.

23. "Non-aqueous phase liquid" shall mean a liquid that does not dissolve or mix easily in water.

24. "Off-site contamination" shall mean any contamination which has emanated from a brownfield site beyond the real property boundaries of such site, via movement through air, indoor air, soil, surface water or groundwater.

25. "On-site contamination" shall mean any contamination located within the real property boundaries of a brownfield site.

26. "Permanent cleanup" or "permanent remedy" shall mean a cleanup or remedy that would allow a site to be used for any purpose without restriction and without reliance on the long-term employment of institutional or engineering controls.

27. "Petroleum" shall have the meaning set forth in section one hundred seventy-two of the navigation law.

28. "Residual contamination" shall mean contamination remaining as a solid, semi-solid or immiscible liquid in surface or subsurface soil, geologic matrix pore spaces or fractures and held in place by capillary forces or other physical or chemical forces that will not drain from the formation.

29. "Affordable housing project" shall mean (a) a project as shall be defined in regulation by the department, after consultation with the division of housing and community renewal, which shall at a minimum, establish the percentage of units in the project that must be below a defined percentage of the area median income; or (b) a project situated on a brownfield site that demonstrates the project is the subject of a determination by a federal, state or local government housing agency that all or a portion of the project or site will qualify for benefits, including but not limited to real property taxation exemptions, is or will be eligible under an affordable housing program which requires that a percentage of residential rental or home ownership dwelling units be

dedicated to tenants or homeowners at a defined maximum percentage or percentages of area median income based on the occupants' households annual gross income. Such federal, state or local affordable housing program shall confer a benefit to the project. For the purposes of this subdivision, the term "benefit" shall be broadly construed, and shall include, but not be limited to, tax benefits, including real estate tax benefits, tax credits, bond financing, subsidy financing, and zoning variances or waivers. Further, the department may by regulation, after consulting with the division of housing and community renewal, exclude specific benefits from qualifying pursuant to this subdivision. To demonstrate eligibility under this subdivision, the project must present a certification of compliance or other evidence of eligibility by a federal, state, or local government affordable housing agency that such project is an affordable housing project. For purposes of this subdivision, "area median income" shall mean the area median income for the primary metropolitan statistical area or for the county if located outside a metropolitan statistical area, as determined by the United States department of housing and urban development or its successor for a family of four, as adjusted for family size.

30. "Underutilized" shall be defined in regulation by the department, after consultation with the business community and the city of New York. Such regulations shall be adopted no later than October first, two thousand fifteen and take into consideration the existing use of a property relative to allowable development under zoning, the need for substantial government assistance to redevelop and other relevant factors.

31. "Upside down" shall mean a property where the projected and incurred cost of the investigation and remediation which is protective for the anticipated use of the property equals or exceeds seventy-five percent of its independent appraised value, as of the date of submission of the application for participation in the brownfield cleanup program, developed under the hypothetical condition that the property is not contaminated.

32. "Disadvantaged community" shall mean a community that is

identified pursuant to section 75-0111 of this chapter.

33. "Renewable energy facility site" shall mean real property: (a) that is used for a renewable energy system, as defined in section sixty-six-p of the public service law; or (b) any co-located system storing energy generated from such a renewable energy system prior to delivering it to the bulk transmission, sub-transmission, or distribution system.

§ 27-1407. Request for participation.

1. A person who seeks to participate in this program shall submit a request to the department on a form provided by the department. Such form shall include information to be determined by the department sufficient to allow the department to determine eligibility and the current, intended and reasonably anticipated future land use of the site pursuant to section 27-1415 of this title. Any such person shall submit an investigation report sufficient to demonstrate that the site requires remediation in order to meet the remedial requirements of this title.

1-a. If the person is also seeking a determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit pursuant to paragraph three of subdivision (a) of section twenty-one of the tax law for a site located in a city having a population of one million or more, such person shall submit information sufficient to demonstrate that: (a) at least half of the site area is located in an environmental zone as defined in section twenty-one of the tax law; (b) the property is upside down or underutilized; (c) the project is an affordable housing project; (d) the project is within a disadvantaged community, within a designated brownfield opportunity area, and meets the conformance determinations pursuant to subdivision ten of section nine hundred seventy-r of the general municipal law; or (e) the project is being developed as a renewable energy facility site. An applicant may request an eligibility determination for tangible property credits at any time from application until the site receives a certificate of completion pursuant to section

27-1419 of this title except for sites seeking eligibility under the underutilized category.

Sites are not eligible for tangible property tax credits if: (a) the contamination from ground water or soil vapor is solely emanating from property other than the site subject to the present application; or (b) the department has determined that the property has previously been remediated pursuant to titles nine, thirteen and fourteen of this article, title five of article fifty-six of this chapter and article twelve of the navigation law such that it may be developed for its then intended use.

2. If the person chooses, such person may also submit a work plan for a site investigation or a final report describing the results of an investigation that meets the requirements of this article.

3. The department shall notify the person requesting participation in this program within thirty days after receiving such request that such request is either complete or incomplete. In the event the application is determined to be incomplete the department shall specify in writing the missing necessary information required pursuant to this article to complete the application and shall have ten days after receipt of the missing information to issue a written determination if the application is complete.

4. Upon the receipt of an application, the department shall notify the administrator of the New York environmental protection and spill compensation fund to determine whether such person has been identified as responsible for cleanup and removal costs for the discharge of petroleum at or emanating from the brownfield site for which the person is seeking participation and whether there is an outstanding claim against such person pursuant to article twelve of the navigation law. The administrator shall notify the department and the person within thirty days of such notice of any outstanding claim by the fund against such person at the brownfield site for which the person is seeking participation.

5. Upon the determination that the application is complete, the department shall commence a thirty day comment period and place a notification of receipt of request to participate in this program in the environmental notice bulletin and provide newspaper notice. The department shall also provide notice thereof in writing to the chief executive officer and zoning board of each county, city, town and village in which such brownfield site is located, residents on and/or adjacent to the site, the public water supplier which services the area in which such brownfield site is located, any person who has requested to be placed on the brownfield site contact list and the administrator of any school or day care facility located on and/or adjacent to the site for the purposes of posting and/or dissemination at the facility. For purposes of this section "water supplier" means any public water system as such term is defined for the purposes of the sanitary code of the state of New York as authorized by section two hundred twenty-five of the public health law. Provided, however, that where the site or adjacent real property contains multiple dwelling units, the person shall work with the department to develop an alternative method for providing such notice in lieu of mailing to each individual.

6. The department shall use all best efforts to expeditiously notify the applicant within forty-five days after receiving a complete application for participation that such request is either accepted or rejected, and, for any applicant seeking to receive the tangible property credit component of the brownfield redevelopment tax credit pursuant to paragraph three of subdivision (a) of section twenty-one of the tax law, shall concurrently notify the applicant whether the criteria for receiving such component as set forth in subdivision one of this section have been met.

7. In the event a final investigation report describing the results of an investigation that meets the requirements of this article was submitted with the application, the person shall establish a document repository, notify individuals on the brownfield site contact list, and provide for a thirty day comment period. Within sixty days after receiving a person's application the commissioner shall inform the person in writing that the investigation is complete or that the

investigation is incomplete and specify the missing necessary information required pursuant to this article to complete the investigation and/or the final investigation report.

8. The department shall reject such request if:

(a) the department determines that the request is for real property which does not meet the requirements of a brownfield site as defined in this title; or

(b) there is an action or proceeding relating to the brownfield site against the person who is requesting participation that is pending in any civil or criminal court in any jurisdiction, or before any state or federal administrative agency or body, wherein the state or federal government seeks the investigation, removal, or remediation of contamination or penalties;

(c) there is an order providing for the investigation, removal, or remediation of contamination relating to the brownfield site against the person who is requesting participation; or

(d) The person requesting participation is subject to an outstanding claim as provided in subdivision four of this section.

9. The department may reject such request for participation if the department determines that the public interest would not be served by granting such request. The department shall consider factors, including but not limited to, the following:

(a) The person has been determined in an administrative, civil or criminal proceeding to have violated any provision of this article, any related order or determination of the commissioner, any regulation promulgated pursuant to this article, or any similar statute, regulation, order of the federal or other state government.

(b) The person has been denied entry into this program based upon one or more of the provisions of this subdivision, or a similar provision of federal or other state law.

(c) The person has been found in a civil proceeding to have committed a negligent or intentionally tortious act, or has been convicted in a criminal proceeding of a criminal act involving the handling, storing, treating, disposing or transporting of contaminants.

(d) The person has been convicted of a criminal offense under the laws

of any state or of the United States which involves a violent felony offense, fraud, bribery, perjury, theft, or an offense against public administration as that term is used in article one hundred ninety-five of the penal law.

(e) The person has in any matter within the jurisdiction of the department knowingly falsified or concealed a material fact or knowingly submitted a false statement or made use of or made a false statement on or in connection with any document or application submitted to the department.

(f) The person is either:

(1) an individual who had a substantial interest in or acted as a high managerial agent or director for any corporation, partnership, association or organization which committed an act or failed to act, and such act or failure to act could be the basis for the denial of a request for participation pursuant to this section or regulations promulgated thereunder if such corporation, partnership, association or organization submitted a request under this title;

(2) a corporation, partnership, association, organization, or any principal thereof, or any person holding a substantial interest therein, which committed an act or failed to act, and such act or failure to act could be the basis for the denial of a request for participation pursuant to this section or regulations promulgated thereunder if such corporation, partnership, association or organization submitted a request under this title; or

(3) a corporation, partnership, association or organization or any high managerial agent or director thereof, or any person holding a substantial interest therein, acting as high managerial agent or director for or holding a substantial interest in another corporation, partnership, association or organization which committed an act or failed to act, and such act or failure to act could be the basis for the denial of a request for a participation pursuant to this section or regulations promulgated thereunder had such other corporation, partnership, association or organization submitted a request under this title.

(g) The person's participation in any remedial program under the department's oversight was terminated by the department or by a court for failure to substantially comply with an agreement or order.

For the purposes of this subdivision, "high managerial agent" has the same meaning as is given that term in section 20.20 of the penal law, and "substantial interest" shall be defined in regulations promulgated by the commissioner.

§ 27-1409. Brownfield site cleanup agreement.

The agreement shall include, but not be limited to, the following provisions:

1. One describing the boundaries of the real property that is subject to the brownfield site cleanup agreement;

2. One requiring: (a) the participant to pay for state costs, including the recovery of state costs incurred before the effective date of such agreement; provided, however, that such costs may be based on a reasonable flat-fee for oversight, which shall reflect the projected future state costs incurred in negotiating and overseeing implementation of such agreement; and

(b) with respect to a brownfield site which the department has determined constitutes a significant threat to the public health or environment the department may include a provision requiring the applicant to provide a technical assistance grant, as described in subdivision four of section 27-1417 of this title and under the conditions described therein, to an eligible party in accordance with procedures established under such program, with the cost of such a grant incurred by a volunteer serving as an offset against such state costs;

3. One setting forth a process for resolving disputes arising from the evaluation, analysis, and oversight of the implementation of the work plan as described;

4. One requiring an indemnification provision which holds the state harmless from any claim, suit, action, and cost of every name and description arising out of or resulting from the fulfillment or

attempted fulfillment of the agreement, except for those claims, suits, actions, and costs arising from the state's gross negligence or willful or intentional misconduct;

5. One authorizing the department to terminate a brownfield site cleanup agreement at any time during the implementation of such agreement if the applicant implementing such agreement fails to substantially comply with such agreement's terms and conditions;

6. One stating that the department may exempt the applicant from the requirement to obtain any state or local permit or other authorization pursuant to section 27-1429 of this title;

7. One stating that the department shall not consider the applicant an operator of such brownfield site based solely upon execution or implementation of such brownfield site cleanup agreement for purposes of remediation liability;

8. One requiring that the applicant conduct investigation and/or remediation activities pursuant to one or more work plans which are approved by the department;

9. One requiring the preparation and implementation of a citizen participation plan consistent with the requirements of this title as soon as possible following execution of the agreement but no later than prior to the preparation of a draft remedial investigation plan by the applicant which shall include a description of citizen participation activities already performed by the applicant and/or the department;

10. One requiring a waiver by the applicant, effective upon the execution of the brownfield site cleanup agreement, any right such applicant has or may have to make a claim against the state of New York pursuant to article twelve of the navigation law with respect to the brownfield site, and a release of the New York environmental protection and spill compensation fund from any and all legal or equitable claims or causes of action that such applicant may have as a result of entering into a brownfield site cleanup agreement or fulfilling a brownfield site

remedial program at such site; and

11. The inclusion of other conditions considered necessary by the department concerning the effective and efficient implementation of this title;

12. Nothing in this section shall prohibit or limit the department from terminating a brownfield site cleanup agreement at any time during its implementation if the applicant fails to comply substantially with such agreement's terms and conditions.

13. After acceptance by the department, an executed brownfield cleanup agreement shall be submitted and returned to the department with payment of a nonrefundable program fee in the amount of fifty thousand dollars, which shall be deposited to the credit of the oversight and assistance account of the hazardous waste remedial fund pursuant to section ninety-seven-b of the state finance law. The department shall waive such fee upon a demonstration of financial hardship by the applicant. To demonstrate financial hardship the applicant must show but for the program fee, remediation of the brownfield site would not be economically viable. When evaluating financial hardship, the department will consider whether the applicant has waived their rights to tax credits, whether the location of the proposed brownfield site is in a disadvantaged community or the proposed brownfield site is being developed as an affordable housing project, the assets and income of the applicant, and any other factors deemed relevant. The department shall establish regulations governing the demonstration of financial hardship. Program fees shall not qualify for any of the tax credits available for brownfield sites under sections twenty-one, twenty-two, and twenty-three of the tax law.

§ 27-1411. Work plan requirements.

1. A remedial investigation work plan shall provide for the investigation and characterization of the nature and extent of the contamination within the boundaries of the brownfield site; provided,

however, a participant shall also be required to fully investigate and characterize the nature and extent of contamination emanating from such site; and a volunteer must perform a qualitative exposure assessment pursuant to subdivision two of section 27-1415 of this title regarding contamination emanating from such site. Such work plan shall require that the applicant cause a final report to be prepared and submitted to the department that identifies the investigation activities completed pursuant to such work plan. Such final report, at a minimum, shall:

(a) Fully characterize the nature and extent of contamination at the brownfield site; a participant shall also fully characterize the nature and extent of contamination that has emanated from the brownfield site; and a volunteer shall describe the findings of the off-site exposure assessments;

(b) State whether the completed investigation has demonstrated that conditions at the brownfield site (1) require remediation in order to meet the remedial requirements of this title; or (2) meet the requirements of this title without necessity for remediation;

(c) Within twenty days of the completion of the final report the department shall make a final determination regarding whether the site poses a significant threat based on criteria promulgated pursuant to title thirteen of this article; and

(d) For it to be determined that the requirements of this title have been met without the necessity for remediation, an alternatives analysis pursuant to section 27-1413 of this title must support such determination for all sites which do not meet the requirements in Track 1 for unrestricted use and the department must have made a final determination that the site does not pose a significant threat.

2. A remedial work plan shall provide for the development and implementation of a remedial program for such contamination within the boundaries of such brownfield site; provided, however, that a participant shall also be required to provide in such work plan for the development and implementation of a remedial program for contamination that has emanated from such site.

3. Interim remedial measures. (a) Interim remedial measure work plan. For interim remedial measures that are not emergency response actions an

interim remedial measure work plan shall be prepared by the applicant containing such provisions as the department deems appropriate.

(b) Interim remedial measure report. For interim remedial measures that are not emergency response actions, an interim remedial measure report must be prepared and submitted to the department which shall include a description of all interim remedial measures completed pursuant to the interim remedial measure work plan.

4. The commissioner shall use all best efforts to expeditiously approve, modify, or reject a proposed work plan within forty-five days from its receipt or within fifteen days of the close of the comment period, whichever is later.

(a) If the commissioner rejects a proposed work plan, the commissioner shall notify the applicant and specify the reasons for rejecting same.

(b) If the commissioner approves or modifies such proposed work plan, the commissioner shall notify the applicant, in writing, that the proposed work plan has been approved or modified. If the commissioner requires a modification, the applicant may agree to modify such proposed work plan or withdraw it from consideration.

5. Within six months of the determination that a site poses a significant threat, in the event that the applicant is a volunteer, the department shall bring an enforcement action against any parties known or suspected to be responsible for contamination (other than such volunteer) at or emanating from the site according to applicable principles of statutory or common law liability. If such action cannot be brought, or does not result in the initiation of a remedial program by such party or parties at such site, the department shall use best efforts to begin a remedial program to perform the remediation of off-site contamination at such site within one year of the completion of such enforcement action or the completion of the volunteer's on-site remedial program, whichever is later. The state shall use moneys from the hazardous waste remedial fund established pursuant to section ninety-seven-b of the state finance law, and/or from the New York environmental protection and spill compensation fund established pursuant to section one hundred seventy-nine of the navigation law, as appropriate, to undertake the investigation and/or remediation of such

contamination. The state's costs incurred relative to such off-site contamination shall be recoverable by the state from the person or persons responsible.

6. An applicant shall include with every report submitted to the department a schedule for the submission of any subsequent work plan required to meet the requirements of this title.

§ 27-1413. Alternatives analysis.

1. For sites proposed to be remediated under Track 1 pursuant to section 27-1415 of this title, the applicant shall develop and evaluate at least one remedial alternative.

2. For all other sites, the applicant shall develop and evaluate at least two remedial alternatives, one of which would achieve a Track 1 cleanup. The department shall have the discretion to require the evaluation of additional alternatives at a site that has been determined to pose a significant threat. The applicant shall submit the alternatives analysis as a part of the remedial work plan to the department for review, approval, modification or rejection.

3. Unless the applicant has elected to remediate the site to Track 1, the department may require the applicant, as a condition of continuing under this program, to develop and evaluate a Track 2 cleanup pursuant to section 27-1415 of this title for such non-significant threat site upon due consideration of the following factors:

(a) the degree to which the remedy selection criteria would be better satisfied by a Track 2 cleanup;

(b) the degree of impact a Track 2 cleanup would have on the applicant's ability to successfully cleanup and/or redevelop the property;

(c) the benefit to the environment to be realized by the expeditious remediation of the property; and

(d) the economic benefit to the state to be realized by the expeditious remediation of the property.

4. For sites that the department has determined constitute a significant threat, the department shall select the remedy from a department-approved alternatives analysis prepared by the applicant.

5. For sites that the department has determined do not constitute a significant threat, the applicant may select the remedy from a department-approved alternatives analysis, which analysis shall contain at least two remedial alternatives as set forth in subdivision two of this section. Provided, however, that where the department has required the applicant to develop and evaluate a Track 2 cleanup, the department shall have the discretion to, as a condition of continuing under this program, require the applicant to implement such remedy.

§ 27-1415. Remedial program requirements.

1. Remedial programs. All remedial programs shall be protective of public health and the environment including but not limited to groundwater according to its classification pursuant to section 17-0301 of this chapter; drinking water, surface water and air (including indoor air); sensitive populations, including children; and ecological resources, including fish and wildlife. In all cases, the target risk of residual contamination at a site shall not exceed an excess cancer risk of one in one million for carcinogenic end points and a hazard index of one for non-cancer end points.

2. Investigation. (a) Remedial investigation. A remedial investigation shall fully characterize the nature and extent of contamination at and/or emanating from a brownfield site. Such investigation shall emphasize data collection and sampling and monitoring, as necessary, and includes but is not limited to: characterization of site geologic and hydrogeologic conditions, including groundwater flow, contaminant movement, and the response of the groundwater system to extraction; and assessment of the existing and potential impact of groundwater contamination on private or community water supply wells, surface water quality, air quality, and indoor air quality.

(b) Qualitative exposure assessment. A qualitative exposure assessment shall qualitatively determine the route, intensity, frequency, and duration of actual or potential exposures of humans, fish and wildlife to contaminants. Such assessment must analyze the nature and size of the population currently exposed or which may reasonably be expected to be exposed to the contaminants that are present at or emanating from a site, and shall include a determination of the reasonably anticipated future land use of the site and affected off-site areas and the reasonably anticipated future groundwater use. A qualitative exposure assessment consists of characterizing the exposure setting, identifying current and reasonably foreseeable exposure pathways, and evaluating contaminant fate and transport. Some off-site field investigation to identify and sample any potential areas of contamination may be required to support the exposure assessment.

3. Selection. The remedial program for a site shall be selected upon due consideration of the following factors:

(a) Conformance to standards and criteria that are generally applicable, consistently applied, and officially promulgated, that are either directly applicable, or that are not directly applicable but are relevant and appropriate, unless good cause exists why conformity should be dispensed with, and with consideration being given to guidance determined, after the exercise of engineering judgment, to be applicable. Such good cause exists if any of the following is present:

(i) the proposed action is only part of a complete program that will conform to such standard or criterion upon completion; or

(ii) conformity to such standard or criterion will result in greater risk to the public health or to the environment than alternatives; or

(iii) conformity to such standard or criterion is technically impracticable from an engineering perspective; or

(iv) the program will attain a level of performance that is equivalent to that required by the standard or criterion through the use of another method or approach.

(b) Overall protectiveness of the public health and the environment.

(c) Short-term effectiveness.

(d) Long-term effectiveness and permanence. A remedial program that achieves a complete and permanent cleanup of the site is to be preferred

over a remedial program that does not do so.

(e) Reduction in toxicity, mobility and/or volume of contamination with treatment. A remedial program that permanently and significantly reduces the toxicity, mobility and/or volume of contamination is to be preferred over a remedial program that does not do so. The following is the hierarchy of the remedial technologies ranked from the most preferable to the least preferable: destruction, on-site or off-site; separation/treatment, on-site or off-site; solidification/chemical fixation, on-site or off-site; control and isolation, on-site or off-site.

(f) Implementability.

(g) Cost effectiveness.

(h) Community acceptance.

(i) Land use. The current, intended, and reasonably anticipated future land uses of the site and its surroundings shall be considered in the selection of the remedy for soil remediation, provided the department determines that there is reasonable certainty associated with such use. If the use proposed for the site does not conform with applicable zoning laws or maps or the reasonably anticipated future use of the site determined by the department pursuant to this section, the department shall disapprove such use. The reasonably anticipated future use of the site and its surroundings shall be documented by the applicant and determined by the department, taking into consideration factors including, but not limited to, those listed below:

(i) Current use and historical and/or recent development patterns.

(ii) Applicable zoning laws and maps.

(iii) Brownfield opportunity areas as designated pursuant to section nine hundred seventy-r of the general municipal law.

(iv) Applicable comprehensive community master plans, local waterfront revitalization plans as provided for in article forty-two of the executive law, or any other applicable land use plan formally adopted by a municipality.

(v) Proximity to real property currently used for residential use, and to urban, commercial, industrial, agricultural, school or day care facilities and recreational areas.

(vi) Any written and oral comments submitted by members of the public on the applicant's proposed use as part of citizen participation

activities performed by the applicant pursuant to this title.

(vii) Environmental justice concerns, which for purposes of this title, include the extent to which the proposed use may reasonably be expected to cause or increase a disproportionate burden on the community in which the site is located, including low-income minority communities, or to result in a disproportionate concentration of commercial or industrial uses in what has historically been a mixed use or residential community.

(viii) Federal or state land use designations.

(ix) Population growth patterns and projections.

(x) Accessibility to existing infrastructure.

(xi) Proximity of the site to important cultural resources, including federal or state historic or heritage sites or Native American religious sites.

(xii) Natural resources, including proximity of the site to important federal, state or local natural resources, including waterways, wildlife refuges, wetlands, or critical habitats of endangered or threatened species.

(xiii) Potential vulnerability of groundwater to contamination that might emanate from the site, including proximity to wellhead protection and groundwater recharge areas and other areas identified by the department and the state's comprehensive groundwater remediation and protection program established pursuant to title thirty-one of article fifteen of this chapter.

(xiv) Proximity to floodplains.

(xv) Geography and geology.

(xvi) Current institutional controls applicable to the site.

4. Tracks. The commissioner, in consultation with the commissioner of health, shall propose within twelve months and thereafter timely promulgate regulations which create a multi-track approach for the remediation of contamination, and, commencing on the effective date of such regulations, utilize such multi-track approach. Such regulations shall provide that groundwater use in Tracks 2, 3 or 4 can be either restricted or unrestricted. The tracks shall be as follows:

Track 1: The remedial program shall achieve a cleanup level that will

allow the site to be used for any purpose without restriction and without reliance on the long-term employment of institutional or engineering controls, and shall achieve contaminant-specific remedial action objectives for soil which conform with those contained in the generic table of contaminant-specific remedial action objectives for unrestricted use developed pursuant to subdivision six of this section. Provided, however, that volunteers whose proposed remedial program for the remediation of groundwater may require the long-term employment of institutional or engineering controls after the bulk reduction of groundwater contamination to asymptotic levels has been achieved but whose program would otherwise conform with the requirements necessary to qualify for Track 1, shall qualify for Track 1.

Track 2: The remedial program may include restrictions on the use of the site or reliance on the long-term employment of engineering and/or institutional controls, but shall achieve contaminant-specific remedial action objectives for soil which conform with those contained in one of the generic tables developed pursuant to subdivision six of this section without the use of institutional or engineering controls to reach such objectives.

Track 3: The remedial program shall achieve contaminant-specific remedial action objectives for soil which conform with the criteria used to develop the generic tables for such objectives developed pursuant to subdivision six of this section but may use site specific data to determine such objectives.

Track 4: The remedial program shall achieve a cleanup level that will be protective for the site's current, intended or reasonably anticipated residential, commercial, or industrial use with restrictions and with reliance on the long-term employment of institutional or engineering controls to achieve such level. The regulations shall include a provision requiring that a cleanup level which poses a risk in exceedance of an excess cancer risk of one in one million for carcinogenic end points and a hazard index of one for non-cancer end points for a specific contaminant at a specific site may be approved by the department without requiring the use of institutional or engineering

controls to eliminate exposure only upon a site specific finding by the commissioner, in consultation with the commissioner of health, that such level shall be protective of public health and environment. Such finding shall be included in the draft remedial work plan for the site and fully described in the notice and fact sheet provided for such work plan.

5. Source removal and control measures. The following is the hierarchy of source removal and control measures ranked from most preferable to least preferable. For all applicants, the remedial program selected pursuant to this title shall address sources in the following manner:

(a) Removal and/or treatment. All free product, concentrated solid or semi-solid contaminants, dense non-aqueous phase liquid, light non-aqueous phase liquid and/or grossly contaminated soil shall be removed and/or treated; provided however if the removal and/or treatment of all such contamination is not feasible, such contamination shall be removed or treated to the greatest extent feasible.

(b) Containment. Any source remaining following removal and/or treatment pursuant to this subdivision shall be contained; provided however if full containment is not feasible, such source shall be contained to the greatest extent feasible.

(c) Elimination of exposure. Exposure to any source remaining following removal, treatment and/or containment pursuant to this subdivision shall be eliminated through additional measures, including but not limited to, as applicable, the timely and sustained provision of alternative water supplies and the elimination of volatilization into buildings; provided however if such elimination is not feasible such exposure shall be eliminated to the greatest extent feasible.

(d) Treatment of source at the point of exposure. Treatment of source at the point of exposure, including but not limited to, as applicable, wellhead treatment or the management of volatile contamination within buildings, shall be considered as a measure of last resort.

5-a. Plume stabilization shall be evaluated for all remedies and the further migration of contamination from the site shall be prevented to the extent feasible, including any actions that would be necessary to maintain and monitor such stabilization. In addition, a participant shall prevent the further migration of plumes to the extent feasible.

6. Soil cleanup objectives. (a) The regulations shall include three generic tables of contaminant-specific remedial action objectives for soil based on current, intended or reasonably anticipated future use, including: (i) unrestricted, (ii) commercial and (iii) industrial.

(b) Such objectives shall be protective of public health and the environment pursuant to subdivision one of this section, and the level of risk associated with remedial action objectives for individual contaminants listed in the table or developed by the applicant pursuant to Track 3 shall not exceed an excess cancer risk of one in one million for carcinogenic end points and a hazard index of one for non-cancer end points; provided, however, that if the background soil concentration for a contaminant in rural soils in New York state exceeds such risk level, the contaminant-specific action objective for such contaminant may be established equal to such background concentration. In developing such tables, the department shall consider:

(i) standards, criteria and guidance which are found by the department to be applicable or relevant and appropriate pursuant to paragraph (a) of subdivision three of this section;

(ii) the behaviors of children;

(iii) the protection of adjacent residential uses;

(iv) contaminants which act through similar toxicological mechanisms or have the potential for additive and/or synergistic effects, and exposure to the same contaminant or group of contaminants from other sources and routes; and

(v) the feasibility of achieving more stringent remedial action objectives, based on experience under the existing state remedial programs, particularly where toxicological, exposure, or other pertinent data are inadequate or nonexistent for a specific contaminant.

(c) The department shall update such tables of contaminant-specific remedial action objectives every five years. The initial tables shall be published in draft form for public comment with a public comment period of one hundred twenty days, and be the subject of at least three public hearings throughout the state. Subsequent tables shall be the subject of at least one public hearing and a public comment period of at least ninety days.

(d) For Track 4, exposed surface soils shall not exceed the generic

contaminant-specific remedial action objectives for soil developed for unrestricted, commercial, or industrial use pursuant to this subdivision which conforms with the site's current intended, or reasonably anticipated future use. For purposes of this section "exposed surface soils" shall mean two feet for sites used for residential use and one foot for sites used for commercial or industrial use.

7. Institutional and engineering controls.

(a) The department may approve a proposed remedial work plan that includes institutional controls and/or engineering controls as components of a proposed remedial program provided the remedial work plan includes:

(i) a complete description of any proposed use restrictions and/or institutional controls and the mechanisms that will be used to implement, maintain, monitor, and enforce such restrictions and controls, both by the applicant and by state and local government;

(ii) a complete description of any proposed engineering controls and any operation, maintenance, and monitoring requirements, including the mechanisms that will be used to continually implement, maintain, monitor, and enforce such controls and requirements, both by the applicant and by state and local government;

(iii) an evaluation of the reliability and viability of the long-term implementation, maintenance, monitoring, and enforcement of any proposed institutional or engineering controls and an analysis of the long-term costs of implementing, maintaining, monitoring and enforcing such controls, including costs that may be borne by state or local governments;

(iv) sufficient analysis to support a conclusion that effective implementation, maintenance, monitoring and enforcement of institutional and/or engineering controls can be reasonably expected;

(v) where required by the department, financial assurance to ensure the long-term implementation, maintenance, monitoring, and enforcement of any such controls; and

(vi) a requirement that any engineering control must be used in conjunction with institutional controls to ensure the continued integrity of such engineering control.

(b) Within one hundred eighty days of commencement of the remedial

design or at least three months prior to the date of the anticipated issuance of the certificate of completion, the owner of a brownfield site, and/or any person responsible for implementing a remedial program at such site, where institutional or engineering controls are employed pursuant to this title, shall execute an environmental easement pursuant to title thirty-six of article seventy-one of this chapter.

(c) The owner of a brownfield site at which institutional or engineering controls are employed pursuant to this title shall, unless otherwise provided in writing by the department, annually submit to the department a written statement by an individual licensed or otherwise authorized in accordance with article one hundred forty-five of the education law to practice the profession of engineering, or by such other expert as the department may find acceptable certifying under penalty of perjury that the institutional controls and/or engineering controls employed at such site are unchanged from the previous certification and that nothing has occurred that would impair the ability of such control to protect the public health and environment, or constitute a violation or failure to comply with any operation and maintenance plan for such controls and giving access to the department to such real property to evaluate continued maintenance of such controls.

(d) At non-significant threat sites where contaminants in groundwater at the site boundary contravene drinking water standards, such certification shall also certify that no new information has come to the owner's attention, including groundwater monitoring data from wells located at the site boundary, if any, to indicate that the assumptions made in the qualitative exposure assessment of offsite contamination are no longer valid. Every five years the owner at such sites shall certify that the assumptions made in the qualitative exposure assessment remain valid. The requirement to provide such certifications may be terminated by a written determination by the commissioner in consultation with the commissioner of health, after notice to the parties on the brownfield site contact list and a public comment period of thirty days.

(e) The commissioner shall create, update, and maintain a database system for public information purposes and to monitor and track all brownfield sites subject to this title. Data incorporated into such system for each site for which information has been collected pursuant

to this title shall include, but shall not be limited to, a site summary, name of site owner, location, status of site remedial activity, and, if one has been created pursuant to title thirty-six of article seventy-one of this chapter, a copy of the environmental easement, and a contact number to obtain additional information. Sites shall be added to such system upon the execution of a brownfield site cleanup agreement pursuant to section 27-1409 of this title. If and when an environmental easement is modified or extinguished, the copy of the environmental easement contained in the database shall be updated accordingly. Such database shall be in such a format that it can be readily searched by affected local governments and the public for purposes including but not limited to determining whether an environmental easement has been recorded for a site pursuant to title thirty-six of article seventy-one of this chapter. The database shall be available electronically. Information from this database shall be incorporated into the geographic information system created and maintained by the department pursuant to section 3-0315 of this chapter.

8. Presumptive remedial strategies. Nothing herein contained shall be deemed to require site-specific remedy selection, and the commissioner shall have the power to develop a list of presumptive remedial strategies that applicants may use to meet the requirements associated with Tracks 1 through 4 of this section. Such remedies may be developed for specific site types and/or contaminants based upon historical patterns of remedy selection and the department's scientific and engineering evaluation of performance data on technology implementation.

9. Use of innovative technologies. The commissioner, in consultation with the commissioner of health, shall consider and encourage the use of innovative technologies which will meet the remedial objectives of this title. Consistent with the provisions of section twelve hundred eighty-five-f of the public authorities law, the commissioner, in consultation with the president of the environmental facilities corporation, shall encourage the development of such technologies.

§ 27-1417. Citizen participation.

1. Citizen participation handbook. The commissioner shall prepare a citizen participation handbook for the purpose of providing guidance to applicants in the design and implementation of meaningful citizen participation plans consistent with the requirements of this section for the remediation of brownfield sites as provided in this title. Such handbook shall encourage citizen involvement by outlining opportunities and recommended methods for effective citizen participation. The commissioner shall make such handbook available to all applicants and other interested members of the public upon request and shall make it available on the department's website.

2. Citizen participation plans. (a) The design of any citizen participation plan, including the level of citizen involvement and the tools utilized, shall take into account the scope and scale of the proposed remedial program, local interest and history, and other relevant factors. While retaining flexibility, citizen participation plans shall embody the following principles of meaningful citizen participation:

(1) opportunities for citizen involvement should be provided as early as possible in the decision making process prior to the selection of a preferred course of action by the department and/or the applicant.

(2) activities proposed in such plan should be as reflective of the diversity of interests and perspective found within the community as possible, allowing the public the opportunity to have their views heard and considered, which may include opportunities for two-way dialogue.

(3) full, timely, and accessible disclosure and sharing of information by the department shall be provided, including the provision of technical data and the assumptions upon which the analyses are based.

(b) All citizen participation plans shall include the following minimum elements:

(1) identification of the interested public and preparation of a brownfield site contact list;

(2) identification of major issues of public concern related to the brownfield site;

(3) a description and schedule of public participation activities required pursuant to this section; and

(4) a description and schedule of any additional public participation activities needed to address public concerns.

3. Citizen participation requirements. (a) In addition to the formal milestones listed below, the public may provide comments at any time during the remedial program.

(b) The person submitting a request for participation, in cooperation with the department, shall provide a newspaper notice of the person's request to participate in the program. The person, in cooperation with the department, shall also provide notice thereof to the brownfield site contact list. Such notice shall provide for a thirty day public comment period following publication.

(c) Before the department finalizes the remedial investigation workplan, the applicant, in cooperation with the department, must notify individuals on the brownfield site contact list. Such notice shall include a fact sheet describing such plan and provide for a thirty day public comment period.

(d) Before the department approves a proposed remedial investigation report, the department, in consultation with the applicant, shall notify individuals on the brownfield site contact list. Such notice shall include a fact sheet describing such report.

(e) Upon the department's determination of significant threat pursuant to section 27-1411 of this title, the department must provide notice to individuals on the brownfield site contact list. Such notice shall include a fact sheet describing the basis of the department's determination.

(f) Before the department finalizes a proposed remedial work plan or makes a determination that site conditions meet the requirements of this title without the necessity for remediation pursuant to section 27-1411 of this title, the department, in consultation with the applicant, must notify individuals on the brownfield site contact list. Such notice shall include a fact sheet describing such plan and provide for a forty-five day public comment period. The commissioner shall hold a public meeting if requested by the affected community and the commissioner has found that the site constitutes a significant threat to the public health or the environment. Further, the affected community may request a public meeting at sites that do not constitute a

significant threat. (1) To the extent that the department has determined that site conditions do not pose a significant threat and the site is being addressed by a volunteer, the notice shall state that the department has determined that no remediation is required for the off-site areas and that the department's determination of a significant threat is subject to this forty-five day comment period. (2) If the remedial work plan includes a Track 2, Track 3 or Track 4 remedy at a non-significant threat site, such comment period shall apply both to the approval of the alternatives analysis by the department and the proposed remedy selected by the applicant.

(g) Before the applicant commences construction at the brownfield site, the applicant, in cooperation with the department, shall provide notice to the individuals on the brownfield site contact list.

(h) Before the department approves a proposed final engineering report, the department, in consultation with the applicant, must notify individuals on such contact list. Such notice shall include a fact sheet describing the brownfield site report, including any proposed institutional or engineering controls.

(i) Within ten days of the issuance of a certificate of completion at a site which will utilize institutional or engineering controls, the applicant, in cooperation with the department, shall provide notice to the brownfield site contact list. Such notice shall include a fact sheet describing such controls.

4. Technical assistance grants. (a) Within the limits of appropriations made available pursuant to paragraph j of subdivision three of section ninety-seven-b of the state finance law, the commissioner is authorized to provide grants to any not-for-profit corporation exempt from taxation under section 501(c)(3) of the internal revenue code at any site determined to pose a significant threat by the department and which may be affected by a brownfield site remedial program. To qualify to receive such assistance, a community group must demonstrate that its membership represents the interests of the community affected by such site. Furthermore, the commissioner is authorized to direct any applicant who is a responsible party, as defined in section 27-1313 of this article, to provide such grants. Such grants shall be known as technical assistance grants and may be used to

obtain technical assistance in interpreting information with regard to the nature of the hazard posed by contamination located or emanating from a brownfield site or sites and the development and implementation of a brownfield site remedial program or programs. Such grants may also be used to hire health and safety experts to advise affected residents on any health assessments and for the education of interested affected community members to enable them to more effectively participate in the remedy selection process. Grants awarded under this section may not be used for the purposes of collecting field sampling data, political activity or lobbying legislative bodies.

(b) The amount of any grant awarded under this section may not exceed fifty thousand dollars at any one site.

(c) No matching contribution from the grant recipient shall be required for a technical assistance grant. Following a grant award, a portion of the grant shall be made available to the grant recipient, in advance of the expenditures to be covered by the grant, in five thousand dollar installments.

§ 27-1419. Certification of completion.

1. Upon certification by the applicant that the remediation requirements of this title have been or will be achieved in accordance with the schedules provided in reports submitted to the department on the remedial work plan for the brownfield site, such applicant shall submit to the department a final engineering report prepared by an individual licensed or otherwise authorized in accordance with article one hundred forty-five of the education law to practice the profession of engineering.

2. A final engineering report shall include, at a minimum:

(a) a description of the remediation activities completed pursuant to the remedial work plan and any interim remedial measures for the brownfield site;

(b) a certification that the data submitted to the department demonstrates that the remediation requirements set forth in the remedial work plan and any other relevant provisions of this title have been or

will be achieved in accordance with the timeframes, if any, established in such work plan;

(c) the boundaries of the real property that is subject to a brownfield site cleanup agreement;

(d) a complete description of any institutional and/or engineering controls employed at the site, including the mechanisms that will be used to continually implement, maintain, monitor, and enforce such controls both by the applicant, the applicant's successors and assigns, and by state or local government;

(e) a certification that any use restrictions, institutional controls, engineering controls and/or any operation and maintenance requirements applicable to the site are contained in an environmental easement created and recorded pursuant to title thirty-six of article seventy-one of this chapter and that any affected local governments, as defined in title thirty-six of article seventy-one of this chapter have been notified that such easement has been recorded;

(f) a certification that an operation and maintenance plan has been submitted by the applicant for the continual and proper operation, maintenance, and monitoring of any engineering controls employed at the site including the proper maintenance of any remaining monitoring wells, and that such plan has been approved by the department; and

(g) a certification that any financial assurance mechanisms required by the department pursuant to this title have been executed.

3. Upon receipt of the final engineering report, the department shall review such report and the data submitted pursuant to the brownfield site cleanup agreement as well as any other relevant information regarding the brownfield site. Upon satisfaction of the commissioner that the remediation requirements set forth in this title have been or will be achieved in accordance with the timeframes, if any, established in the remedial work plan, the commissioner shall issue a written certificate of completion. The certificate shall include such information as determined by the department of taxation and finance, including but not limited to the brownfield site boundaries included in the final engineering report, the date of the brownfield site cleanup agreement, and the applicable percentages available as of the date of the certificate of completion for that site for purposes of section

twenty-one of the tax law. For those sites for which the department has issued a notice to the applicant on or after July first, two thousand fifteen or the date of publication in the state register of proposed regulations defining "underutilized" as provided in subdivision thirty of section 27-1405 of this title, whichever shall be later, that its request for participation has been accepted under subdivision six of section 27-1407 of this title, the tangible property credit component of the brownfield redevelopment tax credit pursuant to paragraph three of subdivision (a) of section twenty-one of the tax law shall only be available to the taxpayer if the criteria for receiving such tax component have been met. For those sites for which the department has issued a notice to the taxpayer after June twenty-third, two thousand eight that its request for participation has been accepted under subdivision six of section 27-1407 of this title, the applicable percentage for the site preparation credit component pursuant to paragraph two of subdivision (a) of section twenty-one of the tax law, and the on-site groundwater remediation credit component pursuant to paragraph four of subdivision (a) of section twenty-one of the tax law shall be based on the level of cleanup achieved pursuant to subdivision four of section 27-1415 of this title and the level of cleanup of soils to contaminant-specific soil cleanup objectives promulgated pursuant to subdivision six of section 27-1415 of this title, up to a maximum of fifty percent, as follows:

(a) soil cleanup for unrestricted use, the protection of groundwater or the protection of ecological resources, the applicable percentage shall be fifty percent;

(b) soil cleanup for residential use, the applicable percentage shall be forty percent, except for Track 4 which shall be twenty-eight percent;

(c) soil cleanup for commercial use, the applicable percentage shall be thirty-three percent, except for Track 4 which shall be twenty-five percent;

(d) soil cleanup for industrial use, the applicable percentage shall be twenty-seven percent, except for Track 4 which shall be twenty-two percent.

4. The commissioner shall not issue a certificate of completion to any

applicant who has been identified by the administrator of the New York environmental protection and spill compensation fund pursuant to subdivision four of section 27-1407 of this title as a person responsible for the cleanup and removal costs for the discharge of petroleum at or emanating from the brownfield site for which the applicant is seeking a certificate of completion where the applicant has not resolved any outstanding claim at such site pursuant to article twelve of the navigation law.

5. A certificate of completion issued pursuant to this section may be transferred by the applicant or subsequent holder of the certificate of completion to a successor to a real property interest, including legal title, equitable title or leasehold, in all or a part of the brownfield site for which the certificate of completion was issued. Notwithstanding any provision of this chapter to the contrary, a certificate of completion shall not be transferred to a responsible party. Further, a certificate of completion may be modified or revoked by the commissioner upon a finding that:

(a) Either the applicant, or the applicant's successors or assigns, has failed to comply with the terms and conditions of the brownfield site cleanup agreement;

(b) The applicant made a misrepresentation of a material fact tending to demonstrate that: (i) it was qualified as a volunteer; or (ii) met the criteria set forth in subdivision one-a of section 27-1407 of this title for the purpose of receiving the tangible property credit component of the brownfield redevelopment tax credit pursuant to paragraph three of subdivision (a) of section twenty-one of the tax law;

(c) Either the applicant, or the applicant's successors or assigns, made a misrepresentation of a material fact tending to demonstrate that the cleanup levels identified in the brownfield site cleanup agreement were reached; or

(d) There is good cause for such modification or revocation.

6. Upon the commissioner's determination pursuant to subdivision three or five of this section, the commissioner shall provide the applicant with notice of such determination and notice of the right to appeal such determination. The commissioner's determination shall be final unless a

hearing is requested by certified mail sent to the commissioner within thirty days after receiving notice of such determination. After such hearing, the commissioner shall give notice of final determination to such applicant. The commissioner may promulgate regulations to effectuate the purposes of this section.

7. Nothing herein shall be construed as abrogating any powers or duties of the administrator of the New York environmental protection and spill compensation fund as provided in article twelve of the navigation law.

8. A notice of such certification of completion shall be recorded and indexed in the office of the recording officer for the county or counties where such brownfield site is located in the manner prescribed by article nine of the real property law within thirty days of the issuance of the certificate of completion if the applicant is an owner or within thirty days of acquiring title to the brownfield site if the person is a prospective purchaser.

§ 27-1420. Brownfield cleanup program report.

1. The commissioner, in consultation with the commissioner of taxation and finance, shall prepare on or before April thirtieth of each year, a report concerning the brownfield cleanup program which contains the following information for the preceding fiscal year:

a. the number of requests for participation received by the department;

b. the number of remedial investigations commenced, and the number of remedial investigations completed;

c. the number of requests for participation withdrawn or terminated prior to issuance of certificate of completion;

d. for each request for participation that resulted in a certificate

of completion, the length of time from the date the department received the request, to the date the commissioner issues the certificate of completion;

e. the total number of certificates of completion issued; and

f. such other information as the commissioner may determine is relevant to the status of the administration of the program.

2. Copies of this report shall be submitted to the governor, the director of the budget, the temporary president of the senate, the speaker of the assembly, the chair of the senate finance committee, the chair of the assembly ways and means committee and the New York brownfields advisory board.

§ 27-1421. Liability limitation.

1. Notwithstanding any other provision of law and except as provided in subdivision two of this section, after the department has issued a certificate of completion for a brownfield site, the applicant shall not be liable to the state upon any statutory or common law cause of action, arising out of the presence of any contamination in, on or emanating from the brownfield site that was the subject of such certificate at any time before the effective date of a brownfield site cleanup agreement entered into pursuant to this title, except that a participant shall not receive a release for natural resource damages that may be available under law.

2. (a) The state nonetheless shall reserve all of its rights concerning, and such liability limitation shall not extend to, any further investigation and/or remediation the department deems necessary due to:

(i) environmental contamination at, on, under, or emanating from the brownfield site if, in light of such conditions, the site is no longer protective of public health or the environment; or

(ii) non-compliance with the terms of the agreement, the remedial work

plan and the certificate of completion required by this title; or

(iii) fraud committed by the applicant in its application for or participation in this program; or

(iv) a written finding by the department that a change in an environmental standard, factor, or criterion upon which the remedial work plan or no further action determination was based, renders the brownfield site remedial program implemented at the site no longer protective of public health or the environment; or

(v) a change in the brownfield site's use subsequent to the department's issuance of the certificate of completion unless additional remediation is undertaken which shall meet the standard for protection of public health and the environment that applies under this title; or

(vi) following the certificate of completion the failure of an applicant to make substantial progress toward completion of its proposed development of the site within five years, or the applicant engages in unreasonable delay and fails to complete its proposed development of the site within a reasonable time, considering the size, scope and nature of the development. Provided however, that this subparagraph shall not apply in the case where a Track 1 - unrestricted use as provided in section 27-1415 of this title is achieved.

(b) In the case of a volunteer, subparagraph (v) of paragraph (a) of this subdivision shall not apply if Track 1-unrestricted use as provided in section 27-1415 of this title is achieved.

3. The liability limitation provided pursuant to this section shall run with the land, extending to the applicant's successors or assigns through acquisition of title to the brownfield site and to a person who develops or otherwise occupies the brownfield site; provided that such persons act with due care and in good faith to adhere to the requirements of the brownfield site cleanup agreement and certificate of completion. However, such liability limitation does not extend, and cannot be transferred, to a person who is responsible for the disposal or the discharge of contaminants on such site according to applicable principles of statutory or common law liability as of the effective date of the certification of completion issued pursuant to this title, unless that person was party to the brownfield site cleanup agreement for the brownfield site pursuant to this article.

4. The provisions of this title shall not affect an action or a claim, including a statutory or common law claim for contribution or indemnification, that an applicant has or may have against a third party.

5. Nothing in this section shall be construed to affect either the liability of any person with respect to any costs, damages, or investigative or remedial activities that are not included in the brownfield site cleanup agreement or remedial investigation work plan and/or remedial work plan for the brownfield site or the state's authority to maintain an action or proceeding against any person who is not subject to the brownfield site cleanup agreement.

6. A person who has received a liability limitation under this subdivision shall not be liable for claims for contribution regarding matters addressed in the brownfield site cleanup agreement except nothing in this section shall effect the liability of the person responsible for such person's own acts or omissions causing wrongful death or personal injury. Such liability limitation does not discharge any of the persons responsible under law to investigate and remediate the contamination, but it reduces the potential liability of the others by the amount of the value associated with the remediation activities described in the final engineering report.

7. Nothing in this section shall be construed to affect the authority of the department to reach settlement with other persons consistent with its authority under applicable law.

8. Nothing in this section shall affect the liability of any person with respect to any civil action brought by a party other than the state.

9. In addition to any other powers the department may have, the department shall have the authority to periodically inspect each brownfield site to ensure that the use of the property complies with the terms and conditions of the brownfield site cleanup agreement.

§ 27-1425. Change of use.

1. At least sixty days before the start of physical alteration or construction constituting a change of use at a brownfield site or at least sixty days before a change of use at such site not involving any physical alteration or construction, as the case may be, the person or entity proposing to make a change of use shall provide written notification to the department.

2. No person shall engage in any activity at a brownfield site that is not consistent with restrictions placed upon the use of the property, or that will, or that reasonably is anticipated to: prevent or interfere significantly with a proposed, ongoing, or completed remedial program; or expose the public health or the environment to a significantly increased threat of harm or damage from such site. If the commissioner determines that a proposed change of use is prohibited pursuant to this section, he or she shall, within forty-five days after receipt of the complete notice required by this section, provide the person giving such notice with a written determination that such change of use will not be authorized, together with the reasons for such determination.

3. For the purposes of this section:

(a) "change of use" means the transfer of title to all or part of such brownfield site, the erection of any structure on such site, the creation of a park or other public or private recreational facility on such site, or any activity that is likely to disrupt or expose contamination or to increase direct human exposure; or any other conduct that will or may tend to significantly interfere with an ongoing or completed remedial program at such site and the continued ability to implement the engineering and institutional controls associated with such site.

(b) "complete notice" means a notice that adequately appraises the department of the contemplated change of use of such site and how such change of use may affect the site's proposed, ongoing, or completed remedial program.

§ 27-1429. Permit waivers.

The department, by and through the commissioner, shall be exempt for activities conducted pursuant to subdivision five of section 27-1411 of this title and shall be authorized to exempt a person from the requirement to obtain any state or local permit or other authorization for any activity needed to implement a program for the investigation and/or remediation of contamination at or emanating from a brownfield site; provided that the activity is conducted in a manner which satisfies all substantive technical requirements applicable to like activity conducted pursuant to a permit.

§ 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.

§ 27-1433. Waiver of interest or penalties or other charges on brownfield properties.

Notwithstanding any provision of law to the contrary, the governing body of any tax district shall be authorized, by resolution, to permit the enforcing officer to effect the cancellation in whole or in part of

any interest, penalties or other charges on real property where such real property is subject to the brownfield site clean-up agreement entered into by a volunteer pursuant to section 27-1409 of this title. Provided, however, that in cases where such interest, penalties, or other charges, if collected by a tax district, belong to a municipal corporation within such tax district, no reduction or remission in whole or in part of such interest, penalties, or other charges shall be made without the consent of the municipal corporation affected, which consent may be given by resolution adopted after a public hearing. Failure of such real property to receive a certificate of completion pursuant to section 27-1419 of this title or revocation of such certificate shall be grounds for revocation of any waiver of interest, penalties, or charges granted pursuant to this section.

§ 27-1437. BCP-EZ program.

1. The department may promulgate regulations to implement a program providing for the expedited investigation and/or remediation of contamination at brownfield sites (BCP-EZ program), provided that:

(a) at the time of the application, the department has determined that the brownfield site does not pose a significant threat pursuant to section 27-1411 of this title;

(b) the applicant has waived in writing any claim for tax credits pursuant to section twenty-one of the tax law on a form prescribed by the department; and

(c) the activity is conducted in a manner which satisfies all requirements applicable to like activity conducted pursuant to sections 27-1415 and 27-1417 of this title, except as provided in subdivision two of this section and the time periods specified in paragraphs (b) and (c) of subdivision three of section 27-1417 of this title.

2. For any site accepted into the BCP-EZ program pursuant to this section with a remedial work plan identifying a Track 4 remediation, if a contaminant is identified in soil in excess of the remedial action objectives contained in an applicable generic table developed pursuant to subdivision six of section 27-1415 of this title, the applicant may

use site-specific data to demonstrate to the department that the concentration of the contaminant in the soils reflects background conditions and, in that case, a contaminant-specific action objective for such contaminant equal to such background concentration may be established provided that such objective is protective of the public health and the environment and is determined in a manner acceptable to the department.

3. Upon the department's acceptance of the certification by the applicant that the remediation requirements of this title, pursuant to section 27-1419 of this title, have been achieved for the brownfield site and an environmental easement, if necessary, has been created and filed pursuant to title thirty-six of article seventy-one of this chapter, a site in the BCP-EZ program shall be eligible to receive a certificate of completion in accordance with section 27-1419 of this title; provided, however, that such certificate of completion shall not entitle the holder to any tax credits provided by section twenty-one of the tax law.

TITLE 15

STORAGE, TREATMENT, DISPOSAL AND TRANSPORTATION OF REGULATED MEDICAL WASTE

Section 27-1501. Definitions.

27-1503. Applicability.

27-1504. Regulated medical waste tracking program.

27-1505. Storage and containment of regulated medical waste.

27-1507. Treatment and disposal of regulated medical waste.

27-1509. Transfer of regulated medical waste to off-site treatment and disposal facilities.

27-1510. Standards applicable to generators of regulated medical waste.

27-1511. Standards applicable to transporter of regulated medical waste.

27-1513. Requirements for regulated medical waste treatment, storage and disposal facility.

27-1515. Rules and regulations.

27-1517. Permits for storage, transportation, treatment or disposal of regulated medical waste.

27-1519. Pilot projects.

§ 27-1501. Definitions.

1. "Regulated medical waste" shall mean regulated medical waste as defined pursuant to section thirteen hundred eighty-nine-aa of the public health law and regulations promulgated thereunder, provided, however, that "regulated medical waste" shall not include any hazardous waste identified or listed pursuant to section 27-0903 of this article, or any household waste as defined in regulations promulgated under such section.

2. "Person" shall mean an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, state or federal government and any agency thereof, municipality, commission, political subdivision of a state, or any interstate body.

3. "Storage" shall mean the containment of regulated medical waste in such a manner as not to constitute disposal of such waste.

4. "Transport" shall mean the movement of regulated medical waste from the point of generation to any intermediate points and finally to the point of ultimate disposal. For the purposes of this title, the point of generation with regard to facilities that are generator's of regulated medical waste shall be the point at which the regulated medical waste leaves the generator's facility site.

5. "Treatment" shall mean any method, technique or process designed to change the character or composition of any regulated medical waste so as to either neutralize such waste or to render such waste not infectious as approved by the commissioner of health pursuant to section thirteen hundred eighty-nine-dd of the public health law.

7. "Ownership" shall mean the possession of equity in the capital, the stock or the profits of an entity transporting regulated medical waste, including, but not limited to, property in or title to a vehicle or vessel or any exclusive lease or bailment of a motor vehicle for a period of greater than thirty days.

8. "Indirect ownership" shall mean an ownership interest in an entity that has an ownership interest in an entity transporting regulated medical waste.

9. "Substantial interest" shall mean ownership or indirect ownership of ten per centum or more.

11. "Infectious agents" shall be limited to those organisms that cause disease or an adverse health impact to humans.

§ 27-1503. Applicability.

It is the purpose of this title to regulate the transportation of regulated medical waste in a uniform manner throughout the state. All the requirements of this title shall apply to any person or persons engaged in the storage, containment, treatment, disposal or transfer of regulated medical waste off the site of the facility producing such waste. This title and the regulations promulgated pursuant hereto shall supersede all other state and local laws relating to the transportation of regulated medical waste to the extent such laws are not consistent with this title and such regulations.

§ 27-1504. Regulated medical waste tracking program.

1. The commissioner shall promulgate new regulations or amend existing regulations establishing a program for the tracking of the regulated medical waste which is generated in this state. Such regulations shall not be subject to the requirements of subdivision 2 of section 3-0301 of this chapter.

2. Such program shall:

a. Provide for tracking of the transportation of the waste from the generator to the disposal facility, except that waste that is treated need not be tracked after treatment;

b. Include a system for providing the generator of the waste with assurance that the waste was treated or received by the disposal facility; and

c. Use a uniform form for tracking provided that different forms may be required for generators of differing quantities of medical waste.

§ 27-1505. Storage and containment of regulated medical waste.

1. Containment of regulated medical waste shall be in a manner and location which affords protection from the environment and limits exposure to the public.

2. Unless otherwise approved by the department, regulated medical waste shall be contained at the generator's facility and at any other location off the site of the generator's facility only for such periods and under such conditions pursuant to rules and regulations adopted in furtherance of this title.

3. Containment of regulated medical waste shall be separate from other wastes. Containers used for the containment of regulated medical waste shall be marked with prominent warning signs on the containers with the word "infectious" or the words "regulated medical waste".

4. Regulated medical waste, except for all discarded sharps, shall be contained in bags which are impervious to moisture and have a strength sufficient to resist ripping, tearing or bursting under normal conditions of usage and of handling. The bags shall be secured so as to prevent leakage during storage, handling or transport. All bags used for

containment and disposal of regulated medical wastes shall be red in color.

5. All discarded sharps shall be contained for disposal in leakproof, rigid, puncture-resistant containers which are secured to preclude loss of the contents. Such containers shall be red in color or shall be conspicuously labeled with the word "infectious" or the words "regulated medical waste".

6. Before regulated medical waste is transported from the generator's facility, regulated medical waste contained in disposable containers shall be placed for storage or handling in disposable or reusable pails, cartons, drums or portable bins. The containment system shall be leakproof, have tight-fitting covers and be kept clean and in good repair. The containers may be of any color and shall be conspicuously labeled with the word "infectious" or the words "regulated medical waste".

7. Reusable containers for regulated medical waste shall be thoroughly washed and decontaminated each time they are emptied in conformity with procedures prescribed by the department of health, unless the surfaces of the containers have been completely protected from contamination by disposable liners, bags or other devices removed with the waste.

8. Reusable pails, drums or bins used for containment of regulated medical waste shall not be used for containment of waste to be disposed of as other wastes or for other purposes except after being decontaminated in conformity with procedures prescribed by the department of health.

9. Trash chutes shall not be used to transfer regulated medical waste between locations where it is contained.

§ 27-1507. Treatment and disposal of regulated medical waste.

1. Treatment or disposal of regulated medical waste shall be by one of

the following methods:

a. By incineration in a regulated medical waste incineration facility approved and under permit pursuant to article nineteen of this chapter which provides complete combustion of the waste to carbonized or mineralized ash. Regulated medical waste so combusted shall be disposable as nonhazardous waste provided it is not an otherwise hazardous waste as defined in the regulations promulgated under section 27-0903 of this article.

b. By discharge to sewerage system if the waste is liquid or semi-liquid except as specifically prohibited by the commissioner or the commissioner of health.

c. By decontamination by autoclaving, or by other technique approved by the department of health. Regulated medical waste so treated shall be disposed of as solid waste provided it is not otherwise a hazardous waste as defined in section 27-0903 of this article or the regulations promulgated thereunder, and is accompanied by a certificate, in a form prescribed by the commissioner of health which evidences such treatment.

d. By other method approved in writing by the commissioner of health.

2. Regulated medical wastes shall not be disposed of by burial at a landfill disposal facility, unless treated in accordance with subdivision one of this section. All sharps must be rendered unrecognizable prior to disposal.

§ 27-1509. Transfer of regulated medical waste to off-site treatment and disposal facilities.

1. No person shall transport regulated medical waste unless permitted as a regulated medical waste transporter by the department.

2. Vehicles transporting more than fifty pounds of regulated medical waste shall be identified on each side and the back of the vehicle with

the name or trademark of the transporter and with conspicuously displayed signs or decals with the word "infectious" or the words "regulated medical waste".

a. Regulated medical waste shall be transported to an off-site treatment or disposal facility in a leakproof, fully enclosed container or vehicle compartment.

b. Regulated medical waste shall not be transported in the same vehicle with other waste unless the regulated medical waste is separately contained in rigid reusable containers or kept separate by barriers from other waste, or unless all of the waste is to be treated or disposed of as regulated medical waste in accordance with the requirements of this title.

c. Regulated medical waste shall be delivered for treatment or disposal only to a facility to which delivery of such waste is authorized pursuant to this article.

d. Persons manually loading or unloading containers of regulated medical waste on or from transport vehicles shall be provided by their employer with, and shall be required to wear, protective gloves and other protective clothing as may be required by the department.

e. Surfaces of transport vehicles that have contacted spilled or leaked regulated medical waste shall be decontaminated by procedures approved by the commissioner of health.

§ 27-1510. Standards applicable to generators of regulated medical waste.

1. The commissioner shall promulgate regulations establishing standards which shall be applicable to all generators of any quantity of regulated medical waste, as may be necessary to protect human health and the environment. Such standards shall include, but need not be limited to, requirements respecting:

a. Recordkeeping practices that accurately identify the quantities of such regulated medical waste generated, and the disposition thereof;

b. Compliance with the marking, labeling and packaging requirements pursuant to section 27-1505 of this title;

c. Compliance with the tracking system pursuant to section 27-1504 of this title; and

d. Submission of an annual report to the commissioner, and additional reports at such times as the commissioner deems necessary, on such forms as the commissioner shall prescribe, respecting the quantities of regulated medical waste generated during a specified time period, and the disposition thereof.

2. Any such regulation may not exempt, but may differ in its terms as between generators of differing quantities of regulated medical waste.

§ 27-1511. Standards applicable to transporter of regulated medical waste.

1. The commissioner shall promulgate regulations establishing such standards as shall be applicable to transporters of regulated medical waste identified or listed under this title, as may be necessary to protect human health and the environment. Such standards shall include, but need not be limited to, requirements respecting:

a. Record keeping practices that accurately identify the regulated medical wastes transported, their sources and delivery points, including certification of compliance with the program to be promulgated under section 27-1504 of this title;

b. Transportation of all such regulated medical waste only to the facility or facilities approved by the department; and

c. Proof of ownership and inspection of vehicles used in transporting regulated medical waste, proof of liability insurance or other form of financial security deemed sufficient by the commissioner to meet all responsibilities in case of release of such waste causing damage as a condition to the issuance of a permit to a transporter as required by this section.

2. Except as provided in paragraph a of this subdivision, no person shall engage in the transportation of regulated medical wastes without first complying with the requirements of standards promulgated by the commissioner pursuant to subdivision one of this section and obtaining a permit issued by the department. The commissioner shall assure that permits authorizing regulated medical waste transportation are not held by unqualified or unsuitable persons pursuant to section 27-1517 of this title.

a. (i) No permit shall be required for the transportation by the generator of less than fifty pounds per month of regulated medical waste or by authorized employees of such generator acting on behalf of and under the supervision of the generator provided that (1) such waste is being transported from the point of generation for treatment or disposal to a facility approved by the department, (2) such person shall comply with the requirements of section 27-1510 of this title, (3) the generator shall have registered with the department in a form prescribed by the commissioner, which registration, at a minimum, shall designate the treatment or disposal facility and the employees acting on behalf of or under the supervision of the generator, and (4) such person would not otherwise be subject to an adverse determination under section 27-1517 of this title.

(ii) The commissioner may, after consultation with the commissioner of health, exempt a generator from the waste transporter program fees pursuant to section 72-0502 of this chapter upon a showing by such generator that compliance with such requirements would create a hardship on the generator's business activities. The commissioner shall promulgate guidelines for the purpose of determining the circumstances under which such exemption may be granted. Such exemption shall be reviewed periodically as specified by the commissioner but at least once

every two years. Any exemption granted hereunder may be revoked after due notice and opportunity for hearing for a violation of any provision of this title or other applicable laws, rules or regulations relating to the transportation of regulated wastes or upon a showing that the exempted generator no longer meets the requisite guidelines for exemption.

b. A generator of regulated medical waste may obtain a permit pursuant to this title to transport regulated medical waste.

c. The department may make rules and regulations implementing this section in order to carry out and enforce the intent and purposes thereof. Such rules and regulations and the provisions of article 70 of this chapter and rules and regulations adopted thereunder shall govern permit applications, permit conditions, renewals, modifications, suspensions and revocations under this section. The responsibility for the issuance and review of permits and the enforcement of the provisions of this section may be delegated to regional, district or county offices of the state department of health, or to local health departments where their jurisdiction may apply.

d. Applications filed pursuant to this section shall indicate the mechanical and other equipment, holding tanks and vehicles and any place of temporary storage used or to be used by the applicant and the place or places where and the manner in which the applicant will finally dispose of the regulated medical wastes, and such other information as the department deems necessary. If the department determines that the proposed method of transportation, the place or manner in which the waste product is to be treated, stored or disposed of or the method or location of temporary storage will be detrimental to the protection of public health or substantially damage or pollute the environment or natural resources of the state, it may deny the permit or may impose such permit conditions as may be necessary.

e. As a condition for the permit or the exemption therefrom the department shall require the transporter to make an annual report to the department, indicating the number and type of generators served, the

volume and nature of waste products disposed of, and the place and manner in which such waste products were finally disposed, and such other information as the department may require.

f. Such permit shall be renewed annually. The fees for such permit or renewal shall be those established pursuant to section 72-0502 of this chapter. A renewal may be denied by the department for failure of the applicant to properly report as provided in paragraph e of this subdivision.

g. The department may suspend or revoke any permit upon proof that the permittee has been found guilty of a violation of the provisions of this section as provided in title 44 of article 71 of this chapter, or if the department determines that the permittee has violated the provisions of this section, the rules and regulations implementing it or the rules and regulations adopted to implement article 70 of this chapter.

3. A transporter of regulated medical waste who has been granted a permit by the department for such activity shall notify the department within thirty days of the following occurrences:

a. Any change of substantial interest in ownership or indirect ownership or any change in name or location.

b. Ownership or control of a vehicle or container certified by the department is changed.

c. A truck, trailer, semitrailer, vacuum tank, cargo tank, or container certified by the department is involved in any spill, or in an accident which renders or may have rendered the vehicle or container in noncompliance with the requirements of this section.

§ 27-1513. Requirements for regulated medical waste treatment, storage and disposal facility.

1. Any person who operates a facility for the treatment, storage or

disposal of regulated medical waste shall have a valid and appropriate solid waste management facility permit issued by the department; except that a solid waste management facility permit shall not be required for operation of an on-site facility that is operated by a health care facility licensed pursuant to the public health law that is utilized to treat, store or dispose of regulated medical waste of the health care facility or of other generators of regulated medical waste, pursuant to written agreements with or among such other generators that shall be filed with the department of health and the department.

2. The operator of any facility used for the treatment, storage or disposal of regulated medical waste not in a category specified in subdivision one of this section shall have and shall adhere to an operation plan for the handling and disposal of regulated medical waste approved by the department. The operation plan shall include the following:

a. A method of receiving wastes which ensures that regulated medical wastes are handled separately from other wastes until treatment or disposal is accomplished and which prevents unauthorized persons from having access to or contact with the waste.

b. A method of unloading and processing of regulated medical wastes which limits the number of persons handling the wastes and minimizes the possibility of exposure of employees and the public using or visiting the facility to regulated medical waste.

c. A method of decontaminating emptied reusable regulated medical waste containers, transport vehicles or facility equipment which are known or believed to be contaminated with regulated medical waste.

d. The provision and required use of gloves and other protective clothing as shall be required by the department.

e. The means of decontamination of any person having had bodily contact with regulated medical waste while transporting the waste to the treatment or disposal site or while handling or disposing of the waste

at the site.

f. A quantification of the maximum amount of regulated medical waste to be treated, stored, or disposed of per month.

3. A new or revised operation plan for treatment, storage or disposal of regulated medical waste shall be prepared whenever there is an increase of more than twenty-five percent in the maximum quantity of regulated medical waste receiving treatment, storage or disposal per month by the facility or when changes are otherwise made in an existing operation plan.

4. Approval for acceptance of regulated medical waste at a treatment, storage or disposal facility may be withdrawn by the department for noncompliance with the operation plan.

5. As a condition of approval for such permit, any person who operates a facility for the treatment, storage and disposal of regulated medical waste shall provide:

(a) proof of liability insurance or other form of financial security deemed sufficient by the commissioner to meet all responsibilities in case of release of such waste causing damage; and

(b) certification that such activities conform with existing local zoning laws or ordinances.

§ 27-1515. Rules and Regulations.

The commissioner shall promulgate rules and regulations in conformity with the standards for storage, containment, transportation and disposal of regulated medical waste, pursuant to the provisions of this title. The commissioner shall promulgate rules and regulations, consistent with standards established by the department of health, for decontamination and treatment of regulated medical waste pursuant to the provisions of this title.

§ 27-1517. Permits for storage, transportation, treatment or disposal of regulated medical waste.

1. In order to assure that permits authorizing the storage, transportation, treatment or disposal of regulated medical waste are not issued to or held by unqualified or unsuitable persons, the commissioner may, consistent with articles twenty-three and twenty-three-a of the correction law, and the provisions of section 70-0115 of this chapter, deny, suspend, revoke or modify any permit, renewal or modification thereto for the storage, transportation, treatment or disposal of regulated medical waste, upon a written determination that such action is required to protect the public health and safety and that:

a. The permit holder or applicant has been finally determined in an administrative, civil or criminal proceeding to have violated any provision of this article, any related order or determination of the commissioner, any regulation promulgated pursuant to this article, a material condition of any permit issued thereunder, or of any substantially similar statute, regulation, order or permit condition of the federal or other state government relating to the handling, storing, treating, disposing or transporting of solid, hazardous, infectious, medical or regulated medical waste; or

b. Such permit holder or applicant has been previously denied a permit for the same or substantially similar activity based upon one or more of the provisions of this subdivision; or

c. Such permit holder or applicant has been found in a civil proceeding to have committed a negligent or intentionally tortious act in relation to the handling, storing, treating, disposing or transporting of solid, hazardous, infectious, medical or regulated medical waste, or has been convicted in a criminal proceeding of a crime involving the handling, storing, treating, disposing or transporting of solid, hazardous, infectious, medical or regulated medical waste, provided, however, that where such conviction is of a criminal offense under the laws of any other state or of the United States, such offense would constitute a crime under the laws of this state; or

d. Such permit holder has been convicted of a felony under the laws of this state involving fraud, bribery, perjury, or theft, or has been convicted under the laws of any other state or of the United States of a criminal offense which, if committed and prosecuted in this state, would constitute a similar felony under such laws of this state.

e. Such permit holder or applicant, in any matter within the jurisdiction of the department, has been determined to have knowingly falsified a material fact, or knowingly submitted a false statement, or knowingly made use of a false statement in connection with any document or application submitted to the department; or

f. Such permit holder or applicant is either:

(i) an individual who had a substantial interest in or acted as a high managerial agent or director for any corporation, partnership, association or organization which committed an act or failed to act, and such act or failure to act could be the basis for the denial of a permit pursuant to this section or regulations promulgated thereunder if such corporation, partnership, association or organization applied for a permit under this title; or

(ii) a corporation, partnership, association, or organization, or any principal thereof, or any person holding a substantial interest therein, which committed an act or failed to act, and such act or failure to act could be the basis for the denial of a permit pursuant to this section or regulations promulgated thereunder if such corporation, partnership, association or organization applied for a permit under this title; or

(iii) a corporation, partnership, association or organization or any high managerial agent or director thereof, or any person holding a substantial interest therein, acting as high managerial agent or director for or holding a substantial interest in another corporation, partnership, association or organization which committed an act or failed to act, and such act or failure to act could be the basis for the denial of a permit pursuant to this section or regulations promulgated thereunder had such other corporation, partnership, association or organization applied for a permit under this title.

For the purposes of this subdivision, "high managerial agent" has the same meaning as is given that term in section 20.20 of the penal law.

2. Any act or failure to act which serves as a basis for denial or revocation of a permit pursuant to this subdivision shall have occurred within five years from the date on which the application for a permit, renewal or modification is submitted to the department or from the date on which the department serves notice of intent to revoke or modify a permit issued by the department in relation to an existing permit.

3. Any person denied a permit, renewal or modification on the grounds specified in this section shall be entitled to a hearing within sixty days of such denial in the case of a new permit, or within fifteen days in the case of a renewal or modification of any existing permit. The conduct of such hearing shall be governed by article 70 of this chapter and regulations promulgated thereunder.

§ 27-1519. Pilot projects.

The commissioner shall cooperate with the commissioner of health to develop pilot projects pursuant to subdivision 3 of section 1389-dd of the public health law to promote the safe handling, treatment and disposal of medical waste generated in private residences. The commissioner may exempt these pilot projects from the permitting requirements of this article.

TITLE 17

LEAD-ACID BATTERY RECYCLING

Section 27-1701. Lead-acid battery recycling.

§ 27-1701. Lead-acid battery recycling.

1. Legislative findings. The legislature hereby finds that the improper disposal of lead-acid batteries is a direct threat to the

health and safety of the citizens of this state. Further, the legislature finds that the disposal of these batteries constitutes a waste of recyclable materials. Therefore, the legislature finds and declares it to be in the public interest to facilitate the collection and recycling of lead-acid batteries in this state by prohibiting the improper disposal of lead-acid batteries, establishing a financial incentive for the return of used batteries, and requiring lead-acid battery retailers and distributors to accept used batteries free of charge from the public.

2. Definitions. When used in this section:

a. "Authorized hazardous waste facility" means any hazardous waste treatment, storage and disposal facility permitted pursuant to section 27-0913 of this article which is authorized to accept lead-acid batteries.

b. "Collector" means any person who accepts lead-acid batteries in order to transfer them to a recycling facility, an authorized hazardous waste facility or another collector.

c. "Consumer" means any person who purchases a lead-acid battery for use other than resale, provided however, that consumer does not mean a person who purchases a new or used vehicle containing a lead-acid battery.

d. "Dispose" or "disposal" means the abandonment, discharge, deposit, injection, dumping, spilling, leaking or placing of any substance so that such substance or any related constituent thereof may enter the environment. Disposal also means the thermal destruction of waste or hazardous waste and the burning of such wastes as fuel for the purpose of recovering useable energy.

e. "Distributor" means any person who sells lead-acid batteries to a retailer in this state, including any manufacturer who sells to retailers in the state.

f. "Lead-acid battery" means any battery with a capacity of six or more volts which contains lead and sulfuric acid and which is used as a power source in a vehicle.

g. "Manufacturer" means any person who manufactures lead-acid batteries.

h. "Mixed municipal solid waste" means any material managed at a solid waste management facility as defined in section 27-0701 of this article.

i. "Recycling facility" means any person who processes lead-acid batteries and/or parts thereof in order to recover the materials contained therein for later use.

j. "Retailer" means any person in this state who sells new lead-acid batteries to consumers.

k. "Return incentive payment" means a payment pursuant to subdivision five of this section to a retailer from a consumer who does not return a used lead-acid battery at the time of purchasing a new lead-acid battery from such retailer.

l. "Vehicle" means any motor powered device which is self-propelled and designed for carrying persons or property or which is used for the transportation of persons, including, but not limited to, automobiles, buses, trucks, boats, motorcycles, snowmobiles and lawn and garden equipment.

3. Lead-acid battery disposal prohibitions. a. No person shall dispose of a lead-acid battery in mixed municipal solid waste or otherwise dispose of a lead-acid battery except by delivery to a retailer, distributor, collector, recycling facility or as a method of last resort to an authorized hazardous waste facility.

b. No retailer shall dispose of a lead-acid battery except by delivery to a distributor, collector, recycling facility or as a method of last resort to an authorized hazardous waste facility.

c. No distributor shall dispose of a lead-acid battery except by delivery to a collector, recycling facility or as a method of last resort to an authorized hazardous waste facility.

d. No collector shall dispose of a lead-acid battery except by delivery to a recycling facility, another collector, or as a method of last resort to an authorized hazardous waste facility.

e. No recycling facility or authorized hazardous waste facility shall store, recycle or dispose of a lead-acid battery except in accordance with regulations promulgated pursuant to this chapter.

4. Lead-acid battery collection. a. Every retailer shall accept up to two used lead-acid batteries per calendar month from any individual at no charge to such individual.

b. Every distributor shall accept up to two used lead-acid batteries per calendar month from any individual at no charge to such individual and shall accept used lead-acid batteries from any retailer to which the distributor sells lead-acid batteries at no charge to such retailer.

5. a. Any consumer purchasing a new lead-acid battery who does not return a used lead-acid battery to the retailer at the time of such purchase shall pay such retailer a return incentive payment of five dollars per lead-acid battery sold.

b. A retailer shall refund to a consumer the five dollar return incentive payment collected pursuant to this subdivision if, within thirty days of the date of the purchase of a new lead-acid battery, the consumer returns to such retailer a used lead-acid battery. Any return incentive payment not refunded to the consumer pursuant to this subdivision shall be retained by the retailer.

c. In collecting a return incentive payment pursuant to this subdivision, the retailer shall inform the consumer of the retailer's obligation to refund such return incentive payment to such consumer

should the consumer return a used lead-acid battery within thirty days.

6. Posting requirements. Every retailer and distributor shall post a conspicuous sign, open to public view, displaying the universal recycling symbol and stating: "IT IS ILLEGAL TO DISCARD VEHICLE BATTERIES. STATE LAW REQUIRES US TO ACCEPT VEHICLE BATTERIES AT NO CHARGE FOR RECYCLING."

7. Applicability of other laws. For the purposes of this section, any retailer, distributor, or collector who complies with the requirements set forth in this section shall be exempt from the provisions of titles seven and nine of this article and article seventy-two of this chapter.

8. Any provision of any local law or ordinance, or any rule or regulation promulgated thereto, governing the collection, return or recycling of lead-acid batteries which is inconsistent with any provision of this title shall upon the effective date of this title be preempted, provided, however, that such preemption shall not extend to any provision of a local law or ordinance prohibiting the illegal disposal of lead-acid batteries.

9. The provisions of this title shall be severable and if any portion thereof or the applicability thereof to any person or circumstances shall be held invalid, the remainder of this title and the application thereof shall not be affected thereby.

TITLE 18

EXTENDED PRODUCER RESPONSIBILITY FOR RECHARGEABLE BATTERIES

Section 27-1801. Short title.

27-1803. Definitions.

27-1805. Rechargeable battery disposal ban.

27-1807. Rechargeable battery recycling program.

27-1809. Enforcement of this title.

27-1811. State preemption.

§ 27-1801. Short title.

This title shall be known as and may be cited as the "Extended Producer Responsibility Law for Rechargeable Batteries".

§ 27-1803. Definitions.

When used in this title:

1. "battery manufacturer" means every person, firm or corporation that: (i) produces rechargeable batteries sold or distributed in the state, or packages such batteries for sale in the state, except that if such production or packaging is for a distributor having the right to produce or otherwise package that same brand of battery in the state, then such distributor shall be deemed to be the battery manufacturer; (ii) imports rechargeable batteries into the United States that are sold or distributed in the state; or (iii) with respect to rechargeable batteries defined in subparagraph (ii) of paragraph (a) of subdivision four of this section, if no person, firm or corporation under paragraph (i) or (ii) of this subdivision takes responsibility for the requirements under this title, "battery manufacturer" means the manufacturer of the product that comes with, or contains, the rechargeable battery at the time the product is sold;

2. "consumer" means any person who purchases one or more rechargeable batteries, or products containing such batteries at the time of sale, for personal use;

3. "place of business" means the location at which a retailer sells or offers for sale to consumers, rechargeable batteries, or products containing such batteries at the time of sale;

4. (a) "rechargeable battery" means any of the following rechargeable batteries weighing less than fifty pounds: (i) any nickel-cadmium, sealed lead, lithium ion, or nickel metal hydride battery; (ii) any battery used as the principal electric power source for an electric

scooter or bicycle with electric assist; (iii) any other such dry cell battery capable of being recharged; or (iv) battery packs containing any such batteries;

(b) "rechargeable battery" shall not include a battery used as the principal electric power source for a vehicle other than as set forth in subparagraph (ii) of paragraph (a) of this subdivision, such as, but not limited to, an automobile, boat, truck, tractor, golf cart or wheelchair; for storage of electricity generated by an alternative power source, such as solar or wind-driven generators; or for memory backup that is an integral component of an electronic device;

5. "retailer" means a person, firm or corporation that engages in the sale of rechargeable batteries, or products containing such batteries, to a consumer in the state, including, but not limited to, transactions conducted through sales outlets, catalogs, by mail, telephone or the internet. For the purposes of this section retailer shall not include a food store; and

6. "food store" means a store selling primarily food and food products for consumption or use off the premises that occupies less than fourteen thousand square feet of display space.

7. "sell" or "sale" means any transfer for consideration of title or the right to use, from a manufacturer or retailer to a person, including, but not limited to, transactions conducted through retail sales outlets, catalogs, mail, the telephone, the internet, or any electronic means; "sell" or "sale" shall not include samples, donations, and reuse.

§ 27-1805. Rechargeable battery disposal ban.

No person shall knowingly dispose of rechargeable batteries as solid waste at any time in the state.

§ 27-1807. Rechargeable battery recycling program.

1. Rechargeable batteries shall be returned to a retailer that sells such batteries that are similar in shape, size, function and weight to those to be disposed of. Rechargeable batteries contained in electronic products must be removed prior to disposal of such product.

a. Retailers having a place of business in the state shall accept from consumers at any time during normal business hours rechargeable batteries of a similar shape, size, function and weight as the retailer offers for sale; provided, however, that any acceptance of batteries from electric scooters or bicycles with electric assist shall be voluntary, and shall only be permissible at retailers which offer for sale electric scooters or bicycles with electric assist or their batteries. Retailers shall take up to ten such batteries, provided, however, with respect to rechargeable batteries defined in subparagraph (ii) of paragraph (a) of subdivision four of section 27-1803 of this title, retailers shall take up to five such batteries, per day from any person regardless of whether such person purchases replacement batteries, and retailers shall also accept as many such batteries as a consumer purchases from the retailer, except for batteries from electric scooters or bicycles with electric assist. Retailers, other than retailers not participating as a collection site who sell electric scooters or bicycles with electric assist or their batteries and no other types of rechargeable batteries, shall conspicuously post and maintain, at or near the point of entry to the place of business, a legible sign, not less than eight and one-half inches by eleven inches in size, stating that used rechargeable batteries of the size and shape sold or offered for sale by the retailer may not enter the solid waste stream, and that the retail establishment is a collection site for recycling such batteries. Such sign shall state the following in letters at least one inch in height: "It is illegal to dispose of rechargeable batteries in the state of New York as solid waste. We accept used rechargeable batteries for return to the manufacturer."

b. Retailers that sell rechargeable batteries to consumers in the state through non-retail outlets such as through catalogs, or by mail, telephone or the internet shall provide at the time of purchase or

delivery to the consumer notice of an opportunity to return used rechargeable batteries at no cost to the consumer for reuse or recycling.

c. Retailers in the state, other than retailers not participating as a collection site who sell electric scooters or bicycles with electric assist or their batteries and no other types of rechargeable batteries, shall conspicuously maintain, at a location within the retail establishment that is convenient for use by consumers, collection boxes or other suitable receptacles, supplied by the manufacturer, into which consumers may safely deposit used rechargeable batteries.

d. Retailers shall not accept rechargeable batteries defined in subparagraph (ii) of paragraph (a) of subdivision four of section 27-1803 of this title that are damaged, defective, or recalled.

e. Retailers may not sell or offer for sale to consumers in the state rechargeable batteries unless the battery manufacturer is operating in accordance with a collection, transportation, and recycling plan approved by the commissioner. The commissioner shall maintain on the department's website a list of manufacturers operating in accordance with approved plans, and the brands covered by such manufacturer's plans. No retailer shall be in violation of the requirements of this paragraph if, at the date the rechargeable battery was made available for sale, the battery manufacturer of such battery was on the list of manufacturers operating in accordance with an approved plan maintained on the department's website.

f. Retailers must be in compliance with the provisions of this subdivision no later than one hundred eighty days after the effective date of this title or, with respect to a rechargeable battery defined in subparagraph (ii) of paragraph (a) of subdivision four of section 27-1803 of this title, and with respect to the requirements of paragraph e of this subdivision one year after the effective date of the chapter of the laws of two thousand twenty-five which amended this title, or when the commissioner has approved a new or updated plan in compliance with such chapter, whichever is later.

2. Every battery manufacturer, or any combination of battery manufacturers working together, shall, at the battery manufacturer's own expense, arrange for the return of, and recycling of: all used rechargeable batteries collected by retailers; and all rechargeable batteries from electric scooters or bicycles with electric assist, and such batteries that are damaged, defective, or recalled, that are collected at permitted household hazardous waste collection sites, registered household hazardous waste collection events, appropriate municipal sites, and other collection sites described in the approved plan. Every battery manufacturer or any combination of battery manufacturers working together, shall be responsible for, at a minimum, the following:

a. (i) Within ninety days of the effective date of this title or, with respect to rechargeable batteries defined in subparagraph (ii) of paragraph (a) of subdivision four of section 27-1803 of this title, within one hundred eighty days of the effective date of the chapter of the laws of two thousand twenty-five that amended such paragraph, submittance to the commissioner of a new or updated plan that identifies the methods by which battery manufacturers will safely and promptly collect, transport, and recycle rechargeable batteries collected by retailers, permitted household hazardous waste collection sites and registered household hazardous waste collection events, appropriate municipal sites, and other collection sites described in the plan, at the expense of the battery manufacturer, including the procedures to promptly and regularly remove batteries from these locations, and provide retailers and collection sites with information on the safe handling and storage of rechargeable batteries.

(ii) With respect to rechargeable batteries defined in subparagraph (ii) of paragraph (a) of subdivision four of section 27-1803 of this title, the plan shall:

(1) propose for the department's approval a geographic distribution of collection sites to be established to maximize the opportunity for the safe collection of rechargeable batteries and be sufficient to meet the needs of consumers in an ongoing and convenient manner. Such proposal may consider registered household hazardous waste collection events,

provided however, such events shall not alone be considered sufficient to meet the needs of consumers in an ongoing and convenient manner;

(2) minimize the co-location of collection sites with residential housing, to the extent feasible;

(3) be consistent with state and local fire prevention and building code council standards;

(4) identify the criteria by which rechargeable batteries will be determined to be damaged, defective, or recalled, and how such information will be communicated to retailers and customers; and

(5) include provisions to ensure that employees of collection sites who handle or have responsibility for managing such batteries are informed about proper handling and emergency procedures.

a-1. The reimbursement to local governments of all costs incurred in relation to the collection of rechargeable batteries from electric scooters or bicycles with electric assist, including, but not limited to, costs associated with safety training and storage.

a-2. The provision of appropriate containers and other equipment to retailers and collection sites for the safe storage and handling of rechargeable batteries.

b. Submittance to the department of annual reports, on a form prescribed by the department, concerning: (i) the amount of rechargeable batteries received within the state and recycled either by number or by weight, including the weight of rechargeable batteries defined in subparagraph (ii) of paragraph a of subdivision four of section 27-1803 of this title received within the state as well as within a city with a population of one million or more; (ii) the location and address of all collection sites and events and the amount of rechargeable batteries collected at each site or event; (iii) the costs of the efforts described in subparagraphs (i) and (ii) of this paragraph, including any reimbursements to municipalities; and (iv) any other relevant information as required by the department.

c. Undertaking of efforts to educate the citizens of the state regarding the appropriate ways to recycle rechargeable batteries, which,

at a minimum, shall include:

- (i) information regarding the location of retailers, collection sites, and events, including hours of operation and rechargeable battery type acceptance;

- (ii) retailer collection site safety training and outreach, including procedures for handling, storing, and transporting damaged or recalled rechargeable batteries;

- (iii) information for relevant municipalities regarding reimbursement; and

- (iv) promotional activities in support of program implementation, including the maintenance of a website, distribution of educational materials and guidance, and the use of relevant media platforms, and other activities to maximize public awareness of collection sites.

d. Providing for the safe and prompt collection and recycling or proper disposal of batteries from electric scooters or bicycles with electric assist, collected by retailers of electric scooters, bicycles with electric assist, or their batteries and accepted by permitted household hazardous waste collection sites and registered household hazardous waste collection events, appropriate municipal sites and other collection sites described in the plan.

e. Providing for the safe and prompt collection, recycling, and disposal of damaged, defective, and recalled rechargeable batteries accepted by permitted household hazardous waste collection sites and registered household hazardous waste collection events.

2-a. A battery manufacturer may not sell, offer for sale, or distribute rechargeable batteries, excluding rechargeable batteries defined in subparagraph (ii) of paragraph (a) of subdivision four of section 27-1803 of this title, in the state unless the battery manufacturer is implementing or participating under an approved plan in accordance with this section. Provided however, beginning January first, two thousand twenty-seven, a battery manufacturer of rechargeable batteries defined in subparagraph (ii) of paragraph (a) of subdivision four of section 27-1803 of this title may not sell, offer for sale, or distribute such rechargeable batteries in the state unless the battery

manufacturer is implementing or participating under an approved plan in accordance with this section.

3. The commissioner shall approve or reject any battery manufacturer's collection, transportation, and recycling plans described in paragraph a of subdivision two of this section within ninety days of submission and, if rejected, inform the battery manufacturer in writing as to any deficiencies in said plan. Battery manufacturers shall amend and resubmit any rejected plans for reconsideration within sixty days of notification of the rejection of said plan. The commissioner shall approve or reject said plan within thirty days of resubmission and shall make any approved plan public on the department's website.

4. The commissioner shall analyze the information provided by battery manufacturers pursuant to paragraph b of subdivision two of this section and report such analysis to the governor and the legislature every two years. Provided further, that the department shall, no later than January first, two thousand thirty-one, make public a report examining voluntary collection by retailers of rechargeable batteries from electric scooters or bicycles with electric assist established pursuant to paragraph a of subdivision one of this section. Such report, shall, at a minimum:

- (i) examine information, if available, provided to the department from manufacturers in their annual reports, including any known or identified barriers to the voluntary participation of retailers to serve as collection sites, and any concerns submitted to the department;

- (ii) identify retailers participating voluntarily and examine any trends in the number and location of retailers participating voluntarily;

- (iii) evaluate the need for additional collection sites and if the existing number and location of collection sites is sufficient to meet the needs of consumers in an ongoing and convenient manner; and

- (iv) recommend to the legislature any changes to such law, including an assessment of whether it is safe and feasible to expand the collection requirements of retailers of rechargeable batteries from electric scooters or bicycles with electric assist.

5. The commissioner is authorized to promulgate any rules and regulations needed to implement this title.

6. The department, when approving or rejecting any updates to a battery manufacturer's collection, transportation, and recycling plans described in paragraph a of subdivision two of this section relating to the inclusion of batteries defined in subparagraph (ii) of paragraph (a) of subdivision four of section 27-1803 of this title, shall solicit input from the office of fire prevention and control in the division of homeland security and emergency services, and with respect to the parts of such plan directly related to the city of New York, the fire department of the city of New York.

§ 27-1809. Enforcement of this title.

1. Any person who violates the provisions of section 27-1805 of this title shall be liable for a civil penalty in the amount of fifty dollars for the first violation, one hundred dollars for a second violation committed within twelve months of a prior violation and two hundred dollars for a third or subsequent violation committed within twelve months of any prior violation.

2. Any retailer as that term is defined in section 27-1803 of this title, who violates the provisions of section 27-1807 of this title shall be liable for a civil penalty in the amount of two hundred dollars for the first violation, four hundred dollars for a second violation committed within twelve months of a prior violation, and five hundred dollars for a third or subsequent violation committed within twelve months of any prior violation.

3. Any battery manufacturer, as that term is defined in section 27-1803 of this title, who violates the provisions of section 27-1807 of this title shall be liable for a civil penalty in the amount of two thousand dollars for the first violation, four thousand dollars for a second violation committed within twelve months of a prior violation, and five thousand dollars for a third or subsequent violation committed

within twelve months of any prior violation.

4. Civil penalties under this section shall be assessed by the commissioner after a hearing or opportunity to be heard pursuant to the provisions of section 71-1709 of this chapter, or shall be assessed by the court in any action or proceeding pursuant to this section. In addition to any civil penalties, any person, retailer or manufacturer, as those terms are defined in section 27-1803 of this title, may by similar process be enjoined from continuing such violation.

5. In a city with a population of one million or more, such city shall, in addition to any authority otherwise conferred in this chapter, have concurrent authority to enforce, by an agency or agencies designated for such purpose by the mayor of such city, the provisions of section 27-1805 and subdivision one of section 27-1807 of this title. Any notice of violation issued by an agency designated by the mayor of such city charging a violation of section 27-1805 and subdivision one of section 27-1807 of this title shall be returnable to the environmental control board of such city. Such environmental control board shall have the power to impose the civil penalties set forth in subdivisions one, two and three of this section. All civil penalties collected for any violation of this title that have been imposed by the environmental control board of such city shall be paid into the general fund of such city. Such city shall share information with the department regarding enforcement, including notices of violation issued and penalties imposed and collected for violations in such city.

§ 27-1811. State preemption.

Jurisdiction in all matters pertaining to rechargeable battery recycling is, by this title, vested exclusively in the state. Any provision of any local law or ordinance, or any rule or regulation promulgated thereto, governing rechargeable battery recycling shall, upon the effective date of section 27-1805 of this title, be preempted; provided, however, that nothing in this section shall preclude a person from coordinating, for recycling or reuse, the collection of

rechargeable batteries and provided, further, however, that nothing in this section shall preclude the enforcement of this title pursuant to subdivision five of section 27-1809 of this title.

TITLE 19

WASTE TIRE MANAGEMENT AND RECYCLING

Section 27-1901. Definitions.

27-1903. Waste tire management priorities.

27-1905. Mandatory tire acceptance; notices.

27-1907. Abatement of noncompliant waste tire stockpiles.

27-1909. Market development.

27-1911. Prohibition on land burial.

27-1913. Waste tire management and recycling fee.

27-1915. Use of waste tire management and recycling fee funds.

§ 27-1901. Definitions.

When used in this title:

1. "Abatement" means the removal of a sufficient number of waste tires from a noncompliant waste tire stockpile and restoration of the site to a condition that is in substantial compliance with the rules and regulations administered by the department for waste tire storage facilities.

2. "Beneficial use" means the use of solid waste material, which would otherwise need to be placed in a landfill or disposed of through alternative means, in such a manner that the nature of the use of the material constitutes a reuse rather than disposal. Beneficial uses include incorporation of a solid waste material, which is a legitimate substitute for a raw material, into a product marketable to an end user. Waste tires which are burned as a fuel for the purposes of recovering useable energy are considered to be beneficially used only at the point at which they are burned.

3. "End use" means that a product requires no further processing or manufacturing and is used by a consumer for the product's intended application.
4. "End user" means the ultimate customer of a finished product.
5. "New tires" means tires that have never been placed on a motor vehicle wheel rim or tires placed on a motor vehicle prior to its original retail sale. It does not include recapped or resold tires.
6. "Noncompliant waste tire stockpile" means a facility, including a waste tire storage facility, parcel of property, or site so designated by the department in accordance with this title, where one thousand or more waste tires or mechanically processed waste tires have been accumulated, stored or buried in a manner that the department or a court of competent jurisdiction has determined violates any judicial administrative order, decree, law, regulation, or permit or stipulation relating to waste tires, waste tire storage facilities or solid waste.
7. "Recycle" means to use recyclables in manufacturing a product for an end use other than burning for recovery of useable energy.
8. "Recyclables" means solid waste materials that exhibit the potential to be used to make marketable products for end users.
9. "Removed from service" means removed within New York state from the service for which the tires were intended to be used when the tires and tire casings were separated for retreading.
10. "Retail sale" means the sale to any person in the state for any purpose other than resale.
11. "Tire service" means any person or business who sells or installs new tires for use on any vehicle and any person or business who engages in the retail sale of new motor vehicles. The United States of America and any of its agencies and instrumentalities, and New York state and any of its agencies, instrumentalities, public corporations, or

political subdivisions are excluded from this term.

12. "Vehicle" or "Motor Vehicle" means any device which by virtue of its design could qualify for registration pursuant to section four hundred one, four hundred ten, two thousand two hundred sixty-one, or two thousand two hundred eighty-two of the vehicle and traffic law.

13. "Waste tire" means any solid waste which consists of whole tires or portions of tires. Tire casings separated for retreading and tires with sufficient tread for resale shall be included under this term, however, crumb rubber shall not be considered a solid waste.

14. "Waste tire storage facility" means a facility at which waste tires are stored and for which a permit or registration has been issued, pursuant to department regulations.

§ 27-1903. Waste tire management priorities.

In the interest of public health, safety and welfare and in order to conserve natural resources and to promote recycling and market development for waste tires, the state of New York establishes a policy on the management of waste tires that states:

1. The waste tire management priorities in this state are:
 - (a) first, to reduce the number of waste tires generated;
 - (b) second, to remediate waste tire stockpiles in noncompliance;
 - (c) third, to recycle waste tires into value-added products;
 - (d) fourth, to beneficially use waste tires in an environmentally acceptable manner, including the beneficial use in civil engineering applications; and
 - (e) fifth, to recover, in an environmentally acceptable manner consistent with the purpose of this chapter, energy from waste tires that cannot be economically recycled or otherwise beneficially used.

2. State government must make an essential contribution to the development and implementation of environmentally, economically and

technically viable waste tire management programs. The department shall cooperate with other state agencies, including the department of economic development, New York state energy research and development authority, the department of transportation, the New York state thruway authority and the department of health, to ensure that waste tires are effectively managed and used in environmentally acceptable ways consistent with the purposes of this chapter.

§ 27-1905. Mandatory tire acceptance; notices.

1. A tire service that maintains a physical retail location in the state shall, until December thirty-first, two thousand twenty-seven:

(a) accept from a customer, waste tires of approximately the same size and in a quantity equal to the number of new tires purchased or installed by the customer;

(b) post written notice in a prominent location, which must be at least eight and one-half inches by fourteen inches in size and contain the following language:

"New York State law requires us to accept and manage waste tires from vehicles in exchange for an equal number of new tires that we sell or install. Tire retailers are required to charge a separate and distinct waste tire management and recycling fee of \$2.50 for each new tire sold.

The retailers in addition are authorized, at their sole discretion, to pass on waste tire management and recycling costs to tire purchasers. Such costs may be included as part of the advertised price of the new tire, or charged as a separate per-tire charge in an amount not to exceed \$2.50 on each new tire sold."

The written notice shall also contain one of the following statements at the end of the aforementioned language and as part of the notice, which shall accurately indicate the manner in which the tire service charges for waste tire management and recycling costs, and the amount of any charges that are separately invoiced for such costs:

"Our waste tire management and recycling costs are included in the advertised price of each new tire.", or

"We charge a separate per-tire charge of \$_____ on each new tire sold that will be listed on your invoice to cover our waste tire management and recycling costs."; and

(c) ensure that any retail advertisement of promotional material provided by or on behalf of the tire service that lists a tire price which does not include waste tire management and recycling costs contains one of the following statements conspicuously located in or on the advertisement and in the same font as the advertised price of the tire: "Additional fees relating to tire management and recycling costs may apply," or, "We charge a separate per-tire charge of \$_____ on each new tire sold that will be listed on your invoice to cover our waste tire management and recycling costs where applicable." Where the latter statement is used, it shall list the amount of the separate per-tire charge.

2. A tire service that does not maintain a physical retail location in the state shall, until December thirty-first, two thousand twenty-seven make viewable to a customer in the state a statement, prior to the purchase of new tires, that contains the following language:

"New York state law requires tire retailers to charge a separate and distinct waste tire management and recycling fee of \$2.50 for each new tire sold."

§ 27-1907. Abatement of noncompliant waste tire stockpiles.

1. No later than one year from the effective date of this title, the department shall prepare and submit to the governor and the legislature a comprehensive plan designed to abate all noncompliant waste tire stockpiles by December thirty-first, two thousand ten. This plan shall establish a noncompliant waste tire stockpile abatement priority list and schedule for abatement of each noncompliant waste tire stockpile based on potential adverse impacts upon public health, safety or welfare, the environment, or natural resources. The plan shall also include a census of compliant and non-compliant waste tire stockpiles in the state and the number of waste tires believed to be stored at each site.

2. The owner or operator of a noncompliant waste tire stockpile shall, at the department's request, submit to and/or cooperate with any and all remedial measures necessary for the abatement of noncompliant waste tire stockpiles with funds from the waste management and cleanup fund pursuant to section ninety-two-bb of the state finance law.

3. No later than two years from the effective date of this title, the department shall publish requests for proposals to seek contractors to prepare whole and mechanically processed waste tires situated at noncompliant waste tire stockpiles for arrangement in accordance with fire safety requirements and for removal for appropriate processing, recycling or beneficial use. Disposal will be considered only as a last option. The expenses of remedial and fire safety activities at a noncompliant waste tire stockpile shall be paid by the person or persons who owned, operated or maintained the noncompliant waste tire stockpile, or from the waste management and cleanup fund and shall be a debt recoverable by the state from all persons who owned, operated or maintained the noncompliant waste tire stockpile, and a lien and charge may be placed on the premises upon which the noncompliant waste tire stockpile is maintained and upon any real or personal property, equipment, vehicles, and inventory controlled by such person or persons. Moneys recovered shall be paid to the waste management and cleanup fund established pursuant to section ninety-two-bb of the state finance law.

4. If execution upon a judgment for the recovery of the expenses of any such remedial and fire safety activities at a noncompliant waste tire stockpile is returned wholly or partially unsatisfied, such judgment, if docketed in the place and manner required by law to make a judgment of a court of record a lien upon real property, shall be a first lien upon such premises, having preference over all other liens and encumbrances whatever. Notwithstanding the foregoing, such lien shall not have preference over any mortgage or other encumbrance for the benefit of the state of New York or a public benefit corporation thereof.

5. The department shall make all reasonable efforts to recover the

full amount of any funds expended from the waste management and cleanup fund for abatement or remediation through litigation or cooperative agreements. Any and all moneys recovered, repaid or reimbursed pursuant to this section shall be deposited with the comptroller and credited to such fund.

6. The department shall have authority to enter all noncompliant waste tire stockpiles for the purpose of investigation and abatement.

§ 27-1909. Market development.

No later than one year after the effective date of this title and continuing annually thereafter, the department of economic development shall:

1. assist private market development with new technologies for waste tire reuse and recycling with an emphasis on higher-value end uses in order to further create and enhance sustainable markets;

2. provide industrial and consumer education on other benefits of recycled waste tire product through the preparation of fact sheets and public workshops; and

3. prepare an annual summary report and analysis of markets and disposition of both New York state stockpiled tires and New York state annually generated waste tires. This report shall be submitted to the department and legislature by the last day of March of each year.

§ 27-1911. Prohibition on land burial.

1. No person shall knowingly dispose of waste tires in a landfill except as provided in subdivision two of this section.

2. No moneys from the waste management and cleanup fund shall be used to dispose of waste tires in a landfill unless the department has

determined that it is not feasible to convert the waste tires to a beneficial use. Department-approved beneficial uses of scrap-tire-derived material for leachate collection systems, or gas collection systems in the construction or operation of a landfill are not considered disposal.

§ 27-1913. Waste tire management and recycling fee.

1. Until December thirty-first, two thousand twenty-seven, a waste tire management and recycling fee of two dollars and fifty cents shall be charged on each new tire sold. The fee shall be paid by the purchaser to the tire service at the time the new tire or new motor vehicle is purchased; provided, however, that the fee shall be paid by a purchaser to a tire service upon installation of new tires unless the purchaser can demonstrate that the fee was previously paid to the seller.

The waste tire management and recycling fee does not apply to recapped tires.

2. Until December thirty-first, two thousand twenty-seven, the tire service shall collect the waste tire management and recycling fee from the purchaser at the time of the sale and shall remit such fee to the department of taxation and finance with the quarterly report filed pursuant to subdivision three of this section.

(a) The fee imposed shall be stated as an invoice item separate and distinct from the selling price of the tire.

(b) A tire service that maintains a physical retail location in the state shall be entitled to retain an allowance of twenty-five cents per tire from fees collected.

3. Each tire service that is a "person required to collect tax" as defined in section eleven hundred thirty-one of the tax law shall make a return to the department of taxation and finance on such form and including such information as the commissioner of taxation and finance may require. Such returns shall be due at the same time and for the same periods as the sales tax return of such tire service, in accordance with

section eleven hundred thirty-six of the tax law, and payment of all fees due for such periods shall be remitted with such returns.

4. All waste tire management and recycling fees collected by the department of taxation and finance shall be transferred to the waste management and cleanup fund pursuant to section ninety-two-bb of the state finance law.

5. (a) The provisions of article twenty-eight of the tax law, including the provisions relating to definitions, exemptions, returns, personal liability for the tax, collection of tax from the customer, payment of tax and the administration of the tax imposed, shall apply to the provisions of this section in the same manner and with the same force and effect as if the language of such article had been incorporated in full into this section and had expressly referred to the fee under this section, except to the extent that any provision of such article is either inconsistent with a provision of this section or is not relevant to this section. For purposes of this section, any reference to a tax or the taxes imposed by article twenty-eight of the tax law shall be deemed also to refer to the waste tire management and recycling fee imposed under the authority of this section unless a different meaning is clearly required.

(b) Notwithstanding the provisions of paragraph (a) of this subdivision, the exemptions provided in section eleven hundred sixteen of the tax law shall not apply to this section except with respect to the entities described in paragraphs one, two, three and six of subdivision (a) of such section.

6. (a) Until December thirty-first, two thousand twenty-seven, any additional waste tire management and recycling costs of the tire service in excess of the amount authorized to be retained pursuant to paragraph (b) of subdivision two of this section may be included in the published selling price of the new tire, or charged as a separate per-tire charge on each new tire sold. When such costs are charged as a separate per-tire charge: (i) such charge shall be stated as an invoice item separate and distinct from the selling price of the tire; (ii) the invoice shall state that the charge is imposed at the sole discretion of

the tire service; and (iii) the amount of such charge shall reflect the actual cost to the tire service for the management and recycling of waste tires accepted by the tire service pursuant to section 27-1905 of this title, provided however, that in no event shall such charge exceed two dollars and fifty cents on each new tire sold.

(b) Every tire service shall maintain accurate records of the actual costs of waste tire management and recycling incurred by such tire service, and accurate accounts of any charges or costs included in or on the sale of new tires for the purpose of waste tire management and recycling. Any tire service imposing a charge or costs for its waste tire management and recycling shall submit an annual statement of such charges or costs to the comptroller of the state of New York by the end of each calendar year. The comptroller is hereby authorized and empowered from time to time to examine the accounts and records of any tire service that imposes any costs or charges for the costs of the tire service for waste tire management and recycling as authorized by this subdivision.

§ 27-1915. Use of waste tire management and recycling fee funds.

Waste tire management and recycling fees shall be deposited in the waste management and cleanup fund established in section ninety-two-bb of the state finance law, and shall be made available for the following purposes:

1. costs of the department for the following:

(a) first-year costs:

(i) enumeration and assessment of noncompliant waste tire stockpiles; and

(ii) aerial reconnaissance to locate, survey and characterize sites environmentally, for remote sensing, special analysis and scanning;

(b) abatement of noncompliant waste tire stockpiles;

(c) administration and enforcement of the requirements of this article, exclusive of titles thirteen and fourteen; and

(d) conducting an updated market analysis of outlets for waste tire utilization including recycling and energy recovery opportunities, which

shall not include the incineration of waste tires.

2. costs of the department of economic development for the following:

- (a) conducting an updated market analysis of outlets for waste tire utilization including recycling and energy recovery opportunities;
- (b) establishment of a program to provide funds to businesses to develop technology that leads to increased markets for waste tires;
- (c) funding of demonstration projects, including, but not limited to, reuse in agricultural settings; and
- (d) administration of requirements of this section.

3. costs of the department of transportation for the following:

- (a) funding of demonstration and other projects for road base, paving and other civil engineering uses; and
- (b) administration of requirements of this section.

4. costs of the New York state thruway authority for the following:

- (a) funding of demonstration and other projects for road base, paving and other civil engineering uses; and
- (b) administration of requirements of this section.

5. costs of the New York state energy research and development authority for the following:

- (a) funding research projects which will enhance sustainable waste tire recycling activities; and
- (b) administration of requirements of this section.

6. costs of the department of health for the following:

- (a) recommendations to protect public health;
- (b) administration of requirements of this section; and
- (c) prevention or control of on-site populations of vectors, as defined in subdivision ten of section 27-2301 of this article, using techniques appropriate for protection of human health and the environment to prevent the site from being a vector breeding area.

Any funds not used for a given year shall be returned to the fund and be added to the total funds available for disbursement in the succeeding

year.

TITLE 20

POSTCONSUMER PAINT COLLECTION PROGRAM

Section 27-2001. Definitions.

27-2003. Postconsumer paint collection program.

27-2005. Reporting requirements.

27-2007. Department responsibilities.

§ 27-2001. Definitions.

As used in this title, the following terms shall have the following meanings:

1. "architectural paint" means interior and exterior architectural coatings sold in containers of five gallons or less; provided, however, that "architectural paint" shall not include industrial, original equipment or specialty coatings.

2. "commissioner" means the commissioner of environmental conservation.

3. "department" means the department of environmental conservation.

4. "environmentally sound management practices" means procedures for the collection, storage, transportation, reuse, recycling and disposal of architectural paint, to be implemented by the producer or representative organization or by the producers or representative organization's contracted partners to ensure compliance with all applicable federal, state and local laws and any regulations and ordinances for the protection of human health and the environment and these procedures shall address adequate record keeping, tracking and documenting of the final disposition of materials.

5. "postconsumer paint" means architectural paint not used and no

longer wanted by a consumer.

6. "producer" means a manufacturer of architectural paint who sells, offers for sale or distributes the architectural paint in the state.

7. "program" means the postconsumer paint collection program established pursuant to section 27-2003 of this title.

8. "recycling" means a process by which discarded products, components and by-products are transformed into new usable or marketable materials in a manner in which the original products may lose their identity. This term excludes thermal treatment or the use of postconsumer paint as a fuel substitute or for energy production.

9. "representative organization" means a not-for-profit organization established by producers to implement the postconsumer paint collection program.

10. "retailer" means a person that offers architectural paint for sale at retail in the state.

11. "Reuse" means the return of a product into the economic stream for use in the same kind of application as the product was originally intended to be used, without a change in the product's identity.

12. "Sell" or "sale" means any transfer for consideration of title or the right to use, from a manufacturer or retailer to a person, including, but not limited to, transactions conducted through retail sales outlets, catalogs, mail, the telephone, the internet, or any electronic means; this does not include samples, donations, and reuse.

§ 27-2003. Postconsumer paint collection program.

1. No later than July first, two thousand twenty, a producer, either individually or cooperatively, or a representative organization shall submit to the department for the department's approval a plan for the

establishment of a postconsumer paint collection program. Such plan shall be accompanied by a fee of five thousand dollars for an individual producer or, in the case of a representative organization or producers acting collectively, a fee of ten thousand dollars. The program will minimize public sector involvement in the management of postconsumer paint by reducing its generation, promoting its reuse and recycling and negotiating and executing agreements to collect, transport, reuse, recycle and properly dispose of postconsumer paint using environmentally sound management practices.

2. A producer may satisfy the postconsumer paint collection program requirement of this section by agreeing to participate collectively with other producers. Any such collective postconsumer paint collection program shall meet the same requirements as an individual producer. Such program shall submit a registration to the department along with a registration fee of ten thousand dollars.

3. The plan submitted by the producer or representative organization to the department under this section shall:

(a) provide a list of each participating producer and brands covered by the program.

(b) provide information on the architectural paint products covered under the program.

(c) describe how the producer or representative organization will collect, transport, recycle, and process postconsumer paint for end-of-life management, including recycling and disposal, using environmentally sound management practices.

(d) describe how it will provide for convenient and cost-effective statewide collection of postconsumer paint in the state. The producer or representative organization may coordinate the program with existing municipal waste collection infrastructure as is mutually agreeable. A paint retailer may participate, on a voluntary basis, as a paint collection site if the paint retailer volunteers to act as such and complies with all applicable laws and regulations.

(e) provide geographic modeling to determine the number and distribution of sites for collection of postconsumer paint based on the following criteria (i) at least ninety percent of New York residents

shall have a collection site within a fifteen mile radius; and (ii) one additional collection site will be established for every fifty thousand residents of an urbanized area (as defined by the United States Census Bureau), unless the producer is a small business taxpayer as defined in paragraph (f) of subdivision one of section two hundred ten of the tax law or unless otherwise approved by the commissioner.

(f) describe the intended treatment, storage, transportation and disposal options and methods for the collection of postconsumer paint. The management of paint under the program shall promote reuse and recycling.

(g) describe in detail education and outreach efforts to inform consumers and retailers about the program. These materials should include (i) information about collection opportunities for postconsumer paint; (ii) information about the charge for the operation of the program that shall be included by the producer in the price charged to the retailer of all architectural paint sold in the state; and (iii) efforts to promote the source reduction, reuse, and recycling of architectural paint.

(h) set forth the process by which an independent financial auditor will be selected and identify the criteria used by the producer or representative organization in selecting an independent auditor.

(i) identify, in detail, the operational plans for interacting with retailers on the proper handling and management of postconsumer paint.

(j) include the targeted annual collection rate.

(k) be reviewed by an independent financial auditor to assure that any added cost to paint sold in the state as a result of the postconsumer paint collection program does not exceed the costs of the program. The independent auditor shall verify that the amount added to each unit of paint will cover the costs of the postconsumer paint collection program.

4. The independent financial auditor may be selected by the department and the department shall review the work product of any such independent auditor. The department may terminate the services of any such independent auditor. The cost of any work performed by such independent auditor shall be funded by the program.

5. The department shall approve or reject a plan submitted under this

section within sixty days of submission and, if rejected, inform the producer or representative organization in writing as to any deficiencies in said plan. A producer or representative organization shall amend and resubmit any rejected plans for reconsideration within sixty days of notification of the rejection of said plan. The department shall approve or reject said plan within thirty days of resubmission.

6. Beginning not later than January first, two thousand twenty-one or six months after the plan is approved under subdivision five of this section, whichever occurs later, the producer or representative organization shall implement the postconsumer paint collection program utilizing collection sites established pursuant to paragraph (e) of subdivision three of this section.

7. Not later than the implementation date of the program, information regarding the approved plan, the names of participating producers, and the brands of architectural paint covered by the program shall be posted on the department's website and on the website of the producer and representative organization.

8. Upon implementation of the program, each producer shall include in the price of any architectural paint sold to retailers and distributors in the state the per container amount in the approved program plan. A retailer or distributor shall not deduct this amount from the purchase price.

9. A producer or retailer shall not sell, or offer for sale, architectural paint to any person in the state unless the producer and the producer's brands are registered with the department pursuant to section 27-2003 of this title on and after the date of implementation of the postconsumer paint collection program.

10. (a) A retailer shall be in compliance with this section if, on the date the architectural paint was offered for sale, the producer is listed on the department's website as implementing or participating in an approved program or if the paint brand is listed on the department's website as being included in the program.

(b) A paint collection site authorized under the provisions of this section shall not charge any additional amount for the disposal of paint when it is offered for disposal.

11. (a) A producer or the representative organization that organizes the collection, transport and processing of postconsumer paint, in an action solely to increase the recycling of architectural paint by a producer, representative organization, or retailer that affects the types and quantities being recycled or the cost and structure of any return program shall not be liable for any claim of a violation of antitrust, restraint of trade or unfair trade practice arising from conduct undertaken in accordance with the program pursuant to this section.

(b) Provided however, paragraph (a) of this subdivision shall not apply to any agreement establishing or affecting the price of paint except for the postconsumer paint collection assessment or the output or production of paint or any agreement restricting the geographic area or customers to which paint will be sold.

12. The operator of the postconsumer paint collection program shall update the plan, as needed, when there are changes proposed to the current program. A new plan or amendment will be required to be submitted to the department for approval when:

- (a) there is an addition to the products covered under the program; or
- (b) there is a revision of the program's goals; or
- (c) every four years from the date of approval of a previous plan.

The operator of the postconsumer paint collection program shall notify the department annually, in writing, if there are no changes proposed to the program and the producer or representative organization intends to continue implementation of the program as previously approved by the department.

13. Any person who becomes a producer after July first, two thousand twenty shall submit a plan to the department prior to selling or offering for sale in the state any architectural paint, and must comply with the requirements of this title.

§ 27-2005. Reporting requirements.

1. On or before October fifteenth, two thousand twenty-one, and annually thereafter, each operator of a program shall submit a report to the commissioner that details the postconsumer paint collection program for the prior year's program from July first to June thirtieth. The report shall be posted on the department's website. The report shall be posted on the website of the producer and representative organization. Said report shall include a copy of the independent audit detailed in paragraph (d) of this subdivision. Such annual report shall include:

(a) a detailed description of the methods used to collect, transport and process postconsumer paint in the state including detailing collection methods made available to consumers and an evaluation of the program's collection convenience;

(b) the overall volume of postconsumer paint collected in the state;

(c) the volume and type of postconsumer paint collected in the state by method of disposition, including reuse, recycling and other methods of processing or disposal;

(d) the total cost of implementing the program, as determined by an independent financial audit, as performed by an independent auditor;

(e) samples of all educational materials provided to consumers of architectural paint and retailers; and

(f) a detailed list of efforts undertaken and an evaluation of the methods used to disseminate such materials including recommendations, if any, for how the educational component of the program can be improved.

2. The department shall submit a report regarding the implementation of this title in this state to the governor and legislature by April first, two thousand twenty-two and every two years thereafter. The report must include, at a minimum, an evaluation of:

(a) the architectural and postconsumer paint stream in the state;

(b) disposal, recycling and reuse rates in the state for architectural paint;

(c) a discussion of compliance and enforcement related to the requirements of this title; and

(d) recommendations for any changes to this title.

§ 27-2007. Department responsibilities.

1. The department shall promulgate all necessary rules and regulations including, but not limited to, standards for reuse.

2. The department shall (a) maintain a list of producers who are implementing or participating pursuant to section 27-2003 of this title, (b) maintain a list of each such producer's brands, and (c) post such lists on the department's website.

TITLE 21

MERCURY-ADDED CONSUMER PRODUCTS

Section 27-2101. Definitions.

27-2103. Labeling.

27-2105. Disposal.

27-2107. Prohibitions.

27-2109. Advisory committee on mercury pollution.

27-2111. Regulations.

27-2113. Exemptions.

27-2115. Interstate clearinghouse.

27-2117. Phase-out of mercury-added components in motor vehicles.

27-2119. Phase-out of mercury-containing flooring.

§ 27-2101. Definitions.

As used in this title:

1. "Hazardous waste management facility" shall have the same meaning as "commercial hazardous waste facilities" as defined in section 27-0901 of this article.

2. "Collector" means any person who accepts mercury-added consumer products in order to transfer them to a solid waste management facility, a hazardous waste management facility or another collector.

3. "Consumer" means any person who purchases a mercury-added consumer product for use other than resale.

4. "Dispose" or "disposal" means the abandonment, discharge, deposit, injection, dumping, spilling, leaking or placing of any substance so that such substance or any related constituent thereof may enter the environment. Disposal also means the thermal destruction of waste or hazardous waste and the burning of such wastes as fuel for the purpose of recovering useable energy.

5. "Distributor" means any person who sells mercury-added consumer products to a retailer in this state, including any manufacturer who sells to retailers in the state.

6. "Manufacturer" means any person who manufactures mercury-added consumer products.

7. "Mercury-added consumer product" means any device or material into which elemental mercury or mercury compounds are intentionally added during such device's or material's formulation or manufacture, and in which the continued presence of mercury is required to provide a specific characteristic, appearance or quality, or to perform a specific function. Such term shall include, but not be limited to mercury-containing:

- (a) thermostats;
- (b) thermometers;
- (c) switches, whether individually or as part of another product;
- (d) medical or scientific instruments;
- (e) electrical relays and other electrical devices;
- (f) lamps; and
- (g) batteries sold to consumers, not including button batteries.

8. "Mercury-added novelty consumer product" means a mercury-added

consumer product intended mainly for personal or household enjoyment or adornment. Mercury-added novelty consumer products include, but are not limited to, items intended for use as practical jokes, figurines, adornments, toys, games, cards, ornaments, yard statues and figures, candles, jewelry, holiday decorations, items of apparel (including footwear), or similar products. A product is not a mercury-added novelty consumer product solely on the basis that it is a game with a light screen display containing mercury, or includes a removable battery containing mercury.

9. "Mercury fever thermometer" or "mercury body thermometer" means a mercury-added consumer product that is used for measuring body temperature. A product is not a "mercury fever thermometer" or "mercury body thermometer" solely on the basis that it includes a removable battery containing mercury.

10. "Solid waste" means solid waste as defined in section 27-0701 of this article.

11. "Retailer" means any person in this state who sells new mercury-added consumer products to consumers for purposes other than resale.

12. "Solid waste management facility" means a solid waste management facility as defined in section 27-0701 of this article.

13. "Elemental mercury" means the material represented by the chemical symbol Hg. Elemental Hg is a silvery-white liquid (at room temperature) with an atomic number of 80 and an atomic mass of 200.59.

14. "Mercury barometer" means a mercury-added consumer product used for measuring atmospheric pressure.

15. "Mercury esophageal dilator" or "mercury bougie tube" means a mercury-added consumer product in the form of a long, flexible tube that is passed down a patient's esophagus to dilate a narrowed area.

16. "Mercury flow meter" means a mercury-added consumer product used for measuring the flow or quantity of a moving fluid or gas.

17. "Mercury hydrometer" means a mercury-added consumer product used for measuring the specific gravity of a liquid.

18. "Mercury hygrometer" or "mercury psychrometer" means a mercury-added consumer product used for measuring the water vapor content of air.

19. "Mercury gastrointestinal tube" means a mercury-added consumer product in the form of a tube used for addressing intestinal obstructions.

20. "Mercury manometer" means a mercury-added consumer product used for measuring the pressure of liquids and gases.

21. "Mercury pyrometer" means a mercury-added consumer product used for measuring the temperature of extremely hot materials.

22. "Mercury sphygmomanometer" means a mercury-added consumer product used for measuring blood pressure in the arteries.

23. "Mercury thermometer" means a mercury-added consumer product used for measuring temperature.

24. "Mercury thermostat" means a mercury-added consumer product that uses a mercury switch to sense and control room temperature through communication with heating, ventilating or air conditioning equipment. Such term includes thermostats used to sense and control room temperature in residential, commercial, industrial and other buildings, but does not include a thermostat used to control temperature as part of a manufacturing process.

25. "Mercury relay" means a mercury-added consumer product or device that opens or closes electrical contacts to affect the operation of other devices in the same or another electrical circuit. Such term

includes mercury displacement relays and mercury contact relays but shall not include mercury wetted reed relays.

26. "Mercury switch" means a mercury-added consumer product or device that opens or closes an electrical circuit or gas valve. Such term includes mercury float switches actuated by rising or falling liquid levels, mercury tilt switches actuated by a change in the switch position, mercury pressure switches actuated by a change in pressure, and mercury temperature switches actuated by a change in temperature but shall not include mercury flame sensors. Mercury switch does not include a mercury thermostat.

27. "Household" means a single or multiple family residence.

28. "Manufacturer" means any person, firm, association, partnership, limited liability company, corporation, governmental entity, organization, combination or joint venture which is the last entity to produce or assemble a new motor vehicle that utilizes mercury-added components or, in the case of an imported motor vehicle, the importer or domestic distributor of such vehicle.

29. "Mercury-added component" means a motor vehicle component that contains greater than fifteen milligrams of mercury, which was intentionally added to such vehicle in order to provide a specific characteristic, appearance or quality, to perform a specific function, or for any other purpose. Such components shall include, but not be limited to, switches, sensors, lights and navigational systems.

30. "Mercury-added lamp" means an electric lamp to which mercury or mercury compounds are intentionally added during the manufacturing process, including, but not limited to, compact fluorescent lamps, fluorescent lamps and tubular fluorescent lamps with normal or long lifetime.

31. "Producer of mercury-added lamps" means any person who:

- (a) manufactures and sells mercury-added lamps under its own brand;
- (b) resells under its own brand equipment produced by other suppliers,

a reseller not being regarded as the producer of mercury-added lamps if the brand of the producer of mercury-added lamps appears on the equipment, as provided for in paragraph (a) of this subdivision; or

(c) serves as the importer or domestic distributor of a mercury-added lamp if the brand name owner is located outside of the United States.

32. "General purpose lights" means lamps, bulbs, tubes, or other electric devices that provide functional illumination for indoor residential, indoor commercial, and outdoor use. General purpose lights shall not include special purpose lights.

33. "Special purpose lights" means the following specialty lighting: appliance, black light, germicidal, colored, plant light, reflector, reprographic, shatter-resistant, cold temperature, sign service, and preheat.

34. "Long lifetime" means more than twenty-four thousand hours when tested on a T8 instant start ballast, a T12 rapid start ballast, or a T5 programmed start ballast, and turned on and off every three hours ("three hour starts").

§ 27-2103. Labeling.

1. Mercury-added consumer products sold or offered for sale in this state by a distributor or retailer shall be labeled by the manufacturer thereof in accordance with the provisions of this section.

2. Unless alternative labeling is approved by the commissioner pursuant to subdivision four of this section, the labeling of mercury-added consumer products shall:

(a) clearly and conspicuously inform the consumer that mercury is present in such product and that such product shall not be disposed of or placed in a waste stream destined for disposal in mixed municipal solid waste until the mercury is removed and reused, recycled or otherwise managed to ensure that the mercury does not become part of solid waste or contaminate wastewater;

(b) be conspicuous to the consumer prior to the purchase, and during the installation and removal of such product;

(c) be affixed to the product and be composed of a material sufficiently durable to remain legible and so affixed for the useful life of the product; and

(d) be printed and affixed to the product by the manufacturer thereof.

3. Automobile manufacturers shall be deemed to meet the labeling requirements of this section, with respect to either original equipment or service parts, if new automobiles bear a label on the doorpost that lists the mercury-added components that may be present in such vehicle. Such label shall, to the largest extent possible, be consistent with labeling provisions of other states. An automobile manufacturer may apply to the commissioner for approval of an alternative to the labeling requirement that would be at least as effective in providing presale notification of mercury content.

4. (a) The commissioner may promulgate rules and/or regulations specifying labeling requirements, provided, however, that any such rules and/or regulations shall allow for the use of labels adopted by other states that meet the requirements of subdivision two of this section.

(b) The commissioner shall promulgate rules and/or regulations to authorize alternative labeling, including package labeling, for mercury-added consumer products as defined in this title under the following conditions:

(i) a manufacturer must submit a written request for alternative labeling documenting that a product or class of products cannot reasonably be labeled to comply with specific requirements of this title; and

(ii) all authorizations for alternative labeling granted under this subdivision shall be valid for four years and may be renewed.

§ 27-2105. Disposal.

1. No person shall knowingly or intentionally dispose of a mercury-added consumer product in solid waste or otherwise dispose of

such a product except by separated delivery thereof to a solid waste management facility or hazardous waste management facility permitted or authorized pursuant to title seven or nine of this article.

2. No person or collector shall knowingly or intentionally dispose of any mercury-added consumer product by delivery to a resource recovery facility as permitted pursuant to title seven of this article where waste or hazardous waste is burned as fuel for the purpose of recovering usable energy.

3. No collector, solid waste management facility, or hazardous waste management facility shall knowingly or intentionally store, recycle or dispose of any mercury-added consumer product except in accordance with regulations promulgated pursuant to this article.

4. The department, in consultation with the department of health, shall develop and disseminate informational materials on the dangers of mercury-added consumer products, and the requirements of this section relating to the separation and disposal of mercury-added consumer products.

§ 27-2107. Prohibitions.

1. On and after January first, two thousand five, no person shall sell, offer for sale or distribute free of charge in the state any mercury-added novelty consumer product. A manufacturer that produces or sells mercury-added novelty consumer products shall notify retailers that sell mercury-added novelty consumer products about such product ban and inform such retailers of how to properly dispose of the remaining inventory.

2. On and after January first, two thousand five, no person shall sell, offer for sale or distribute free of charge mercury fever thermometers or mercury body thermometers except by prescription written by a physician. A manufacturer of such thermometers shall provide the buyer or the recipient with notice of mercury content, instructions on

proper disposal and instructions that clearly describe how to carefully handle the thermometer to avoid breakage and on proper cleanup should a breakage occur.

3. On or after January first, two thousand five, no person shall sell, offer for sale or distribute free of charge in the state elemental mercury, other than within a mercury-added consumer product, without requiring the final purchaser or recipient to sign a statement that the purchaser will use the mercury only for medical, pre-encapsulated dental amalgam, research, or manufacturing purposes.

4. On or after September fourth, two thousand four, no primary or secondary school in New York state may use or purchase elemental mercury. Mercury-added consumer products which are not otherwise prohibited by this title that are used by schools are not subject to this prohibition.

5. On or after January first, two thousand six, no person shall sell, offer for sale or distribute the following mercury-added consumer products:

- (a) mercury barometers;
- (b) mercury esophageal dilators, mercury bougie tubes or mercury gastrointestinal tubes;
- (c) mercury flow meters;
- (d) mercury hygrometers or mercury psychrometers; and
- (e) mercury pyrometers;

The provisions of this subdivision shall not apply to the sale or distribution of any mercury-added consumer product delineated in this subdivision if such product is used to replace a product that is a component in a larger product in use prior to January first, two thousand six, or the resale of any mercury-added consumer product delineated in this subdivision manufactured before December thirty-first, two thousand five.

6. On or after January first, two thousand seven, no person shall sell, offer for sale or distribute any mercury hydrometer or mercury

manometer. The provisions of this subdivision shall not apply to the sale or distribution of any mercury-added consumer product delineated in this subdivision if such product is used to replace a product that is a component in a larger product in use prior to January first, two thousand seven, or the resale of any mercury-added consumer product delineated in this subdivision manufactured before December thirty-first, two thousand six.

7. On or after January first, two thousand eight, no person shall sell, offer for sale or distribute any mercury switch or mercury relay individually or as a product component. The provisions of this subdivision shall not apply to the sale or distribution of any mercury-added consumer product delineated in this subdivision if such product is used to replace a product that is a component in a larger product in use prior to January first, two thousand eight, or the resale of any mercury-added consumer product delineated in this subdivision manufactured before December thirty-first, two thousand seven.

8. On or after January first, two thousand twelve, no person shall sell, offer for sale or distribute any mercury sphygmomanometer, mercury wetted reed relay, mercury flame sensor, mercury thermometer, or mercury thermostat, except for mercury thermostats used by a blind or visually impaired person. The provisions of this subdivision shall not apply to the sale or distribution of any mercury-added consumer product delineated in this subdivision if such product is used to replace a product that is a component in a larger product in use prior to January first, two thousand twelve or the resale of any mercury-added consumer product delineated in this subdivision manufactured prior to January first, two thousand twelve.

9. The provisions of subdivisions five, six, seven and eight of this section shall not apply to the sale or distribution of any mercury-added consumer product delineated in those subdivisions if the use of such product is a federal requirement. The department shall develop informational materials on the dangers of mercury-added consumer products, specifically thermometers and barometers, and disseminate such materials to antique dealers and resale establishments.

10. The department may grant a waiver from the provisions of subdivision eight of this section upon request by the manufacturer of a mercury-added consumer product.

(a) An application for a waiver shall be in the form prescribed by the department and document the basis for the requested waiver or renewal of a waiver and describe how the manufacturer will ensure that a system exists for the proper collection, transportation and processing of the mercury-added consumer products at the end of their useful life.

(b) The application must include at a minimum, information that demonstrates:

(i) there are no non-mercury alternatives that are comparable in price to, are as effective in performance as, or are as accurate and precise as the identified mercury-added consumer product;

(ii) the use of the mercury-added consumer product provides a net benefit to the environment, public health, or public safety when compared to a non-mercury alternative; or

(iii) there are other factors affecting the use of non-mercury alternatives.

(c) The manufacturer must notify the regional multi-state clearinghouse, as identified in section 27-2115 of this title, of its request for a waiver pursuant to this subdivision and provide the clearinghouse with the information required in its waiver application.

(d) The department may grant or deny, in whole or in part, a request for a waiver. In determining whether to grant or deny a waiver or waiver renewal, the department may consult with the clearinghouse, other states, or regional governmental organizations to promote consistency in the implementation of this subdivision.

(e) Waivers shall be granted for a period not to exceed two years. Upon a request by the manufacturer, the department may renew a waiver for a period not to exceed two years if the department finds that the manufacturer continues to meet the requirements for a waiver, that the manufacturer has complied with all conditions of the original waiver, and the manufacturer demonstrates that reasonable efforts have been made to remove mercury from the product subject to the waiver.

11. On and after January first, two thousand twenty-one, no producer

of mercury-added lamps shall sell, offer for sale, or distribute such lamps that fail to meet mercury content standards adopted by the department pursuant to rules and regulations. Such standards shall include what, if any, allowance should be granted for slight variations in the amount of mercury resulting from production variances. For the following general purpose lights, mercury content shall be no higher than:

(a) 2.5 milligrams for screw-based compact fluorescent lamps less than thirty watts;

(b) 3.5 milligrams for straight fluorescent T8 lamps with a normal lifetime (excluding 8-foot models) and 3.0 milligrams for straight fluorescent T5 lamps with a normal lifetime;

(c) 5.0 milligrams for straight fluorescent T8 and T5 lamps with a long lifetime;

(d) 15.0 milligrams for non-linear fluorescent T8, T5, and T12 lamps and 8-foot linear fluorescent lamps (excluding very high output models);

12. On or before December thirty-first, two thousand twenty-six, mercury content standards established in accordance with this section shall not apply to special purpose lights.

§ 27-2109. Advisory committee on mercury pollution.

1. There shall be established, within the department, an advisory committee on mercury pollution to examine, evaluate and make recommendations concerning the prevention and cleanup of mercury pollution, and the latest technology for the remediation of mercury pollution.

2. The advisory committee on mercury pollution shall consist of seven members, each appointed member to serve a term of two years, to be appointed as follows:

- (a) one member appointed by the temporary president of the senate;
- (b) one member appointed by the speaker of the assembly;
- (c) the commissioner, or his or her designee; and
- (d) four members appointed by the governor as follows:

(i) one shall be a representative of an industry that manufactures mercury-added consumer products,
(ii) one shall be a public health specialist,
(iii) one shall be a toxicologist, and
(iv) one shall be a scientist who is knowledgeable on matters relating to mercury contamination.

3. The members of such committee shall be broadly representative of the geographic areas of the state. The commissioner, or his or her designee, shall serve as the chair of the committee. Vacancies in the membership of the committee shall be filled in the manner provided for original appointments.

4. The members of the advisory committee on mercury pollution shall receive no compensation for their services, but shall be allowed their actual and necessary expenses incurred in the performance of their duties pursuant to this section.

5. To the maximum extent feasible, the advisory committee on mercury pollution shall be entitled to request and receive data from any department, division, board, bureau, commission or agency of the state or any political subdivision thereof as it may reasonably request to carry out properly its powers and duties pursuant to this section.

6. On or before February first, two thousand six, the advisory committee on mercury pollution shall submit a report to the governor and the legislature relating to:

(a) the extent of mercury contamination in the soil, waters and air of the state;

(b) the extent of any health risk from mercury contamination in the state, especially to pregnant women, children and people that use fish as a major source of food;

(c) the methods available to minimize the risk of further contamination or increased health risks to the public;

(d) the potential costs of minimizing further risk and recommendations on how to acquire the funds necessary to reduce contamination and minimize the risk of mercury-related health problems;

(e) the effectiveness of the provisions of this title in reducing mercury contamination and mercury-related health problems; and

(f) any necessary coordination with other states to effectively address mercury issues.

§ 27-2111. Regulations.

The department shall promulgate and enforce any regulations necessary to implement the provisions of this title.

Such regulations shall provide for the proper storage, recycling and disposal of mercury-added consumer products at facilities regulated pursuant to titles seven and nine of this article.

§ 27-2113. Exemptions.

1. The provisions of this title shall not apply to photographic film and paper, pharmaceutical products, biological products or any substance that may be lawfully sold over the counter without a prescription under the federal Food, Drug and Cosmetic Act, 21 USC 301 et seq. For the purposes of this subdivision, "biological product" means a virus, therapeutic serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product or an analogous product, or arsphenamine, or any other trivalent organic arsenic compound used for the prevention, treatment or cure of a disease or condition of human beings.

2. The provisions of subdivision one of section 27-2105 of this title shall not apply to mercury-containing lamps discarded by households.

3. The provisions of subdivision one of section 27-2105 of this title shall not apply to mercury-containing lamps discarded by a small business if such small business discards no more than fifteen mercury-containing lamps per month. For the purposes of this subdivision "small business" means any business which is resident in this state, independently owned and operated, not dominant in its field, and

employing not more than one hundred individuals.

§ 27-2115. Interstate clearinghouse.

1. (a) The department is authorized to participate in the regional, multi-state clearinghouse to assist in carrying out the requirements of this title. The department is authorized to collect the following information from product manufacturers or trade associations representing manufacturers of a product or component to which mercury is intentionally added during formulation or manufacture, or a product containing one or more components to which mercury is intentionally added during formulation or manufacture:

- (i) a brief description of the product or product component;
- (ii) the purpose for which mercury is used in the product or product component;
- (iii) the amount of mercury in each unit of the product or component;
- (iv) the total amount of mercury contained in all units of the product or product components; and
- (v) the name and address of the manufacturer, and the name, address and phone number of a contact person for the manufacturer.

(b) Every mercury-added consumer product or product component for which federal law governs notice in a manner that preempts state authority shall be exempt from the requirements of this subdivision.

(c) With the approval of the department, a manufacturer may supply the information required by paragraph (a) of this subdivision for a product category rather than an individual product. The manufacturer shall update and revise the information in the notification whenever there is a significant change in the information or when requested by the department.

(d) A product or product component shall not be offered for final sale, use or distributed for promotional purposes unless the manufacturer of the product or product component or a trade association representing manufacturers of the product or component has provided the information required in paragraph (a) of this subdivision.

2. The clearinghouse is authorized to maintain information on behalf

of New York state, including, but not limited to: (a) a list of all products containing mercury, including mercury-added consumer products; and (b) a file on all exemptions granted by the states.

§ 27-2117. Phase-out of mercury-added components in motor vehicles.

1. Commencing with the motor vehicle model year for the fourth year after the calendar year in which this subdivision takes effect, no manufacturer shall equip any motor vehicle sold in this state with any mercury-added component.

2. Notwithstanding the provisions of subdivision one of this section, a motor vehicle may be equipped with a mercury-added component which is necessary to comply with federal or state safety or health requirements, or for the purposes of national security, provided that the manufacturer applies for and receives an exemption from the commissioner.

3. If granted an exemption, every motor vehicle that is equipped with a mercury-added component shall be labeled by the manufacturer as required in subdivision 3 of section 27-2103 of this title.

§ 27-2119. Phase-out of mercury-containing flooring.

1. Commencing a year after the calendar year in which this section takes effect, no public or nonpublic elementary or secondary school shall install a mercury-containing floor nor shall any school install a floor over a mercury-containing floor prior to removal of the mercury-containing floor.

2. The time weighted average mercury vapor exposure for an employee or student of a public or nonpublic elementary or secondary school shall not exceed 750 ng/m (3).

3. For purposes of this section:

(a) "mercury-containing floor" shall mean a floor containing

phenyl-mercuric-acetate catalyst.

(b) "time weighted average" shall mean an employee's average airborne exposure in an eight-hour work shift of a forty-hour work week or for a person under the age of eighteen shall mean sixteen hours or less per week averaged over the school year.

TITLE 22

FOOD DONATION AND FOOD SCRAPS RECYCLING

Section 27-2201. Definitions.

27-2203. Designated food scraps generator responsibilities.

27-2205. Waste transporter responsibilities.

27-2207. Transfer facility.

27-2209. Food scraps disposal prohibition.

27-2211. Department responsibilities.

27-2213. Regulations.

27-2215. Exclusions.

27-2217. Annual Report.

27-2218. Supermarket excess edible food.

27-2219. Severability.

§ 27-2201. Definitions.

1. "Designated food scraps generator" means a person who generates at a single location an annual average of two tons per week or more of food scraps between January first, two thousand twenty-three and December thirty-first, two thousand twenty-six, an annual average of one ton per week or more of food scraps between January first, two thousand twenty-seven and December thirty-first, two thousand twenty-eight, and an annual average of one-half ton per week or more of food scraps beginning January first, two thousand twenty-nine and thereafter based on a methodology established by the department pursuant to regulations, including, supermarkets, large food service businesses, higher educational institutions, hotels, food processors, correctional facilities, and sports or entertainment venues. For a location with multiple independent food service businesses, such as a mall or college

campus, the entity responsible for contracting for solid waste hauling services is responsible for managing food scraps from the independent businesses.

2. "Food scraps" means inedible food, trimmings from the preparation of food, food-soiled paper, and edible food that is not donated. Food scraps shall not include used cooking oil, yellow grease or food from residential sources, or any food identified in regulations promulgated by the department in consultation with the department of agriculture and markets or any food which is subject to a recall or seizure due to the presence of pathogens, including but not limited to: *Listeria Monocytogenes*, confirmed *Clostridium Botulinum*, *E. coli* 0157:H7 and all salmonella in ready-to-eat foods.

3. "Organics recycler" means a facility, permitted by the department, that recycles food scraps through use as animal feed or a feed ingredient, rendering, land application, composting, aerobic digestion, anaerobic digestion, fermentation, or ethanol production. Animal scraps, food soiled paper, and post-consumer food scraps are prohibited for use as animal feed or as a feed ingredient. The proportion of the product created from food scraps by a composting or digestion facility, including a wastewater treatment plant that operates a digestion facility, or other treatment system, must be used in a beneficial manner as a soil amendment and shall not be disposed of or incinerated.

4. "Person" means any business entity, partnership, company, corporation, not-for-profit corporation, association, governmental entity, public benefit corporation, public authority, firm, or organization.

5. "Single location" means contiguous property under common ownership, which may include one or more buildings.

6. "Incinerator" shall have the same meaning as provided in section 72-0401 of this chapter.

7. "Landfill" shall have the same meaning as provided in section

72-0401 of this chapter.

8. "Transfer facility" means a solid waste management facility, whether owned or operated by a private or public entity, other than a recyclables handling and recovery facility, used oil facility, or a construction and demolition debris processing facility, where solid waste is received for the purpose of subsequent transfer to another solid waste management facility for processing, treating, disposal, recovery, or further transfer.

9. "Excess edible food" means edible food that is not sold or used by a designated food scrap generator and is still safe to be consumed but is being disposed of by the generator, but shall not include unpackaged fresh meat, fish or poultry, food damaged by pests, mold, bacteria or other contamination, food subject to governmental or producer recall due to food safety and food returned to a supplier.

10. "Food relief organization" means a religious organization or other not-for-profit that provides food for free to needy individuals, including, but not limited to, a food pantry, food bank, or soup kitchen or community-based organization that provides food for free to needy individuals.

§ 27-2203. Designated food scraps generator responsibilities.

1. Effective January first, two thousand twenty-two:

(a) all designated food scraps generators shall separate their excess edible food for donation for human consumption to the maximum extent practicable, and in accordance with applicable laws, rules and regulations related to food donation; and

(b) * except as provided in paragraph (c) of this subdivision, each designated food scraps generator that is within twenty-five miles of an organics recycler, to the extent that the recycler has capacity to accept all of such generator's food scraps based on the department's yearly estimate of an organic recyclers' capacity pursuant to section 27-2211 of this title, shall:

* NB Effective until January 1, 2027

* except as provided in paragraph (c) of this subdivision, each designated food scraps generator that is within fifty miles of an organics recycler, to the extent that the recycler has capacity to accept all of such generator's food scraps based on the department's yearly estimate of an organic recyclers' capacity pursuant to section 27-2211 of this title, shall:

* NB Effective January 1, 2027

(i) separate its remaining food scraps from other solid waste;

(ii) ensure proper storage for food scraps on site which shall preclude such materials from becoming odorous or attracting vectors, such as a container that has a lid and a latch that keeps the lid closed and is resistant to tampering by rodents or other wildlife and has sufficient capacity;

(iii) have information available and provide training for employees concerning the proper methods to separate and store food scraps; and

(iv) obtain a transporter that will deliver food scraps to an organics recycler, self-haul its food scraps to an organics recycler, or provide for organics recycling on-site via in vessel composting, aerobic or anaerobic digestion or any other method of processing organic waste that the department approves by regulation, for some or all of the food waste it generates on its premises, provided that the remainder is delivered to an organics recycler.

(c) The provisions of paragraph (b) of this subdivision shall not apply to any designated food scraps generator that has all of its food scraps processed in a mixed solid waste composting or mixed solid waste anaerobic digestion facility.

2. All designated food scraps generators shall submit an annual report to the department on or before March first, two thousand twenty-three, and annually thereafter, in an electronic format. The annual report must summarize the amount of edible food donated, the amount of food scraps recycled, the organics recycler or recyclers and associated transporters used, and any other information as required by the department.

3. A designated food scraps generator may petition the department for a temporary waiver from some or all of the requirements of this title.

The petition must include evidence of undue hardship based on:

- * (a) the designated food scraps generator does not meet the two tons per week threshold;

- * NB Effective until January 1, 2027

- * (a) the designated food scraps generator does not meet the tonnage per week threshold pursuant to subdivision one of section 27-2201 of this title;

- * NB Effective January 1, 2027

- (b) the cost of processing organic waste is not reasonably competitive with the cost of disposing of waste by landfill;

- (c) the organics recycler does not have sufficient capacity, despite the department's calculation; or

- (d) the unique circumstances of the generator.

A waiver shall be no longer than one year in duration provided, however, the department may renew such waiver.

§ 27-2205. Waste transporter responsibilities.

1. Any waste transporter that collects food scraps for recycling from a designated food scraps generator shall:

- (a) deliver food scraps to a transfer facility that will deliver such food scraps to an organics recycler unless such generator has received a temporary waiver under subdivision three of section 27-2203 of this title; or

- (b) deliver such food scraps directly to an organics recycler.

2. Any waste transporter that collects food scraps from a designated food scraps generator shall take all reasonable precautions to not deliver those food scraps to an incinerator or a landfill nor commingle the material with any other solid waste unless such commingled waste can be processed by an organics recycler or unless such generator has received a temporary waiver under subdivision three of section 27-2203 of this title.

§ 27-2207. Transfer facility.

Any transfer facility that receives food scraps from a designated food scraps generator must ensure that the food scraps are taken to an organics recycler unless such generator has received a temporary waiver under subdivision three of section 27-2203 of this title. A transfer facility shall take all reasonable precautions to not commingle the material with any other solid waste unless such commingled waste can be processed by an organics recycler.

§ 27-2209. Food scraps disposal prohibition.

Incinerators and landfills shall take all reasonable precautions to not accept food scraps from designated food scraps generators required to send their food scraps to an organics recycler as outlined under section 27-2203 of this title, after January first, two thousand twenty-two, unless the designated food scraps generator has received a temporary waiver under subdivision three of section 27-2203 of this title.

§ 27-2211. Department responsibilities.

1. The department shall publish on its website: (a) the methodology the department will use to determine who is a designated food scrap generator; (b) the waiver process; (c) procedures to minimize odors and vectors; and (d) a list of all designated food scraps generators, organics recyclers, and all waste transporters that manage source-separated organics.

2. No later than June first, two thousand twenty-one and annually thereafter, the department shall assess the capacity of each organic recycler and notify designated food scraps generators if they are required to comply with the provisions of paragraph (b) of subdivision one of section 27-2203 of this title.

3. The department shall develop and make available educational materials to assist designated food scraps generators with compliance with this title. The department shall also develop education materials on food waste minimization and encourage municipalities to disseminate these materials both on their municipal websites and in any such future mailings to their residents as they may distribute.

4. The department shall regulate organics recyclers to ensure that their activities do not impair water quality or otherwise harm human health and the environment.

§ 27-2213. Regulations.

The department shall, after one or more public hearings, promulgate rules and regulations necessary to implement the provisions of this title including: (a) the methodology the department will use to determine who is a designated food scraps generator; (b) the waiver process; (c) procedures to minimize odors and vectors; (d) a list of all designated food scraps generators, organics recyclers, and all waste transporters that manage source-separated organics; and (e) how designated food scraps generators shall comply with the provisions of paragraph (a) and subparagraph (i) of paragraph (b) of subdivision one of section 27-2203 of this title.

§ 27-2215. Exclusions.

1. This title shall not apply to any designated food scraps generators located in a city with a population of one million or more which has a local law, ordinance or regulation in place which requires the diversion of edible food and food scraps from disposal.

2. This title does not apply to hospitals, nursing homes, adult care facilities, and elementary and secondary schools.

§ 27-2217. Annual report.

No later than January first, two thousand twenty-three, and on an annual basis thereafter, the department shall submit an annual report to the governor and legislature describing the operation of the food donation and food scraps recycling program including amount of edible food donated, amount of food scraps recycled, sample educational materials, and number of waivers provided.

*** § 27-2218. Supermarket excess edible food.**

1. For the purpose of this section, "supermarket" means a physical retail store which has at the subject location more than ten thousand square feet devoted to offering food for human consumption for sale to the general public and generates an annual average of less than two tons per week of food scraps pursuant to subdivision one of section 27-2201 of this title.

2. Every supermarket shall from time to time make excess edible food available to food relief organizations. No supermarket shall be required to make available a particular quantity or level of excess edible food or to transport or distribute any excess edible food.

3. A supermarket shall be deemed in compliance with this section if it in good faith arranges with a food relief organization that has requested in writing to collect excess edible food from the supermarket for the collection of such excess edible food. The rights, liabilities or immunity of any party under this section shall be governed pursuant to the Bill Emerson Good Samaritan Food Donation Act (42 U.S.C. § 1791 et seq.), as of January seventh, two thousand eleven.

4. A supermarket may impose reasonable restrictions as to the time and manner of collection by a food relief organization so as not to interfere with its business operations.

5. A supermarket may, in accordance with any applicable laws, dispose

of any excess edible food which is not picked up by a food relief organization within a reasonable time.

6. Nothing in this section shall be construed to supersede any state or federal health laws or regulations regarding the handling of excess edible food.

7. A supermarket that does not meet the requirements of this section shall not be subject to the penalties specified in title twenty-seven of article seventy-one of this chapter.

* NB Repealed December 31, 2026

§ 27-2219. Severability.

The provisions of this title shall be severable and if any portion thereof or the applicability thereof to any person or circumstance is held invalid, the remainder of this title and the application thereof shall not be affected thereby.

*** TITLE 23**

VEHICLE DISMANTLING FACILITIES

Section 27-2301. Definitions.

27-2303. Regulation of vehicle dismantling facilities.

* NB There are 2 Title 23's

*** § 27-2301. Definitions.**

As used in this title:

1. "Container" shall mean any portable device in which a material is stored, transported, treated, disposed of or otherwise handled.

2. "Contingency plan" means a document describing organized, planned and technically coordinated and financially feasible courses of action

to be followed in case of emergency or other special conditions.

3. "Discharge" shall mean the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying or dumping of any solid waste, or solid waste constituent, including leachate, into or on any air, land or water.

4. "End of life vehicle" shall mean any motor vehicle sold, given, or otherwise disposed of as junk or salvage.

5. "Good condition" shall mean no severe rusting, apparent structural defects or deteriorations and not leaking.

6. "Groundwater" shall mean water below the land surface in a saturated zone of soil or rock. This includes perched water separated from the main body of groundwater by an unsaturated zone.

7. "Leak-resistant" or "leak-proof" shall mean designed and maintained to prevent the escape of contained liquids or other materials when appropriately closed regardless of container orientation (i.e., upright, tipped over).

8. "Mercury containing devices" shall mean any device or material into which elemental mercury or mercury compounds are intentionally added during the manufacture of such devices and which the continued presence of mercury is required to provide a specific characteristic, appearance or quality or to perform a specific function. Such items include but are not limited to convenience lighting switches, antilock brake assemblies, and high intensity discharge head lamps.

9. "Surface water" shall mean lakes, bays, sounds, ponds, impounding reservoirs, perennial streams and springs, rivers, creeks, estuaries, marshes, inlets, canals, the Atlantic ocean within the territorial limits of New York state, and all other perennial bodies of surface water, natural or artificial, inland or coastal, fresh or salt, public or private, pursuant to article 15 of this chapter.

10. "Vector" shall mean a carrier that is capable of transmitting a pathogen from one organism to another including, but not limited to, flies and other insects, rodents, birds and vermin.

11. "Vehicle dismantler" shall mean any person or entity engaged in the business of acquiring motor vehicles or trailers for the purpose of dismantling the same for parts or reselling such vehicles as scrap, but shall not include a person that receives no more than twenty-five end of life vehicles per year and stores less than fifty end of life vehicles on site at any one time.

* NB There are 2 § 27-2301's

*** § 27-2303. Regulation of vehicle dismantling facilities.**

All vehicle dismantlers owning or controlling a facility for the dismantling of end of life vehicles on site shall be subject to the requirements of this title.

1. An annual report shall be submitted to the department, to be included on the department's website, including, but not be limited to, the following:

- (a) the number of end of life vehicles received at the facility;
- (b) the number of end of life vehicles crushed and removed from the facility;
- (c) the number of end of life vehicles stored at the facility at the end of the reporting year;
- (d) the approximate area at the facility used for storage of end of life vehicles;
- (e) the quantities of waste vehicle fluids extracted from end of life vehicles received and their disposition, including the quantity sold, used on-site, stored on-site, and disposed; and
- (f) the number and if applicable nature of any violation of all applicable rules and regulations of the state.

2. All fluid draining, removal, and collection activities shall be conducted on asphalt or concrete surface or other surface that allows

equivalent protections to surface and groundwater. Such surfaces shall be cleaned daily, or more frequently when spillage has occurred, using absorbent materials that are collected and properly disposed of.

3. All fluids shall be completely drained, removed, collected, and stored for appropriate use, treatment or disposal.

4. End of life vehicles arriving at the facility shall be inspected upon arrival for leaking fluids and unauthorized waste. Leaks should be remedied or contained to avoid releases of fluids to the environment.

5. Prior to vehicle crushing or shredding, the following potential environmental contaminants shall be drained, removed, deployed, collected and/or stored, as appropriate and in accordance with best management practices:

- (a) fluids including engine oil, transmission fluid, transaxle fluid, front and rear axle fluid, brake fluid, power steering fluid, coolant, and fuel;

- (b) lead acid batteries;

- (c) small PCB capacitors, mercury switches or other mercury containing devices;

- (d) refrigerants used in automobile air conditioning systems; and

- (e) air bags are deployed or removed.

6. Fluids shall be contained in an appropriate container for the specific waste vehicle fluid. Fluids that are stored shall be placed in closed containers. The containers shall be in good condition. The containers shall be clearly and legibly marked as to contents. Containers shall be stored on a bermed asphalt or concrete surface or surface that allows equivalent protection to groundwater.

7. Lead acid batteries shall not be stored on the ground. All lead acid batteries shall be covered by a tarp or other means in a manner that severely restricts water from coming into contact with the lead acid battery. Leaking batteries shall be stored in a leakproof container separately from intact lead acid batteries and provisions shall be in place to absorb any leakage.

8. Small PCB capacitors, mercury switches and other mercury containing devices shall be stored in an appropriate labeled container for recycling or disposal.

9. No more than one thousand waste tires off vehicles shall be stored at the facility at any one time unless a permit is obtained pursuant to this title.

10. Fluids shall not be intentionally released on the ground or to surface water.

11. Ensure the safe storage of automobiles at such facilities, including the regulation of stacking automobiles.

12. Access to and use of facility shall be continuously controlled by fencing, gates, signs, or natural barriers.

13. Vegetation shall be controlled to prevent encroachment into fire access lanes or driveways at the facility and to decrease the potential of fire.

14. Ensure the safe handling, processing and storage of any residues, including, but not limited to, product left over after an automobile is crushed and parts have been extracted, in such a manner as to prevent off-site migration or run-off.

15. Dust shall be effectively controlled so to not constitute a nuisance or hazard to health, safety, or property.

16. The facility shall be maintained so as to prevent or control on-site populations of vectors using techniques appropriate for protection of human health and the environment and prevent the facility from being a vector breeding area.

17. The facility shall have a contingency plan which includes a description of the actions to be taken by facility employees in the

event of a fire, a spill or release of vehicle waste fluids, or unauthorized material is received at the facility.

18. Upon the receipt of an end of life vehicle, the date that it is received shall be recorded and maintained on-site.

* NB There are 2 § 27-2303's

* TITLE 23

WIRELESS TELEPHONE RECYCLING

Section 27-2301. Definitions.

27-2303. Wireless telephone collection.

27-2305. Preemption and severability.

* NB There are 2 Title 23's

*** § 27-2301. Definitions.**

For the purposes of this section:

1. "Wireless telephone service supplier" means a person or entity which provides wireless telephone service, as defined in paragraph (b) of subdivision one of section twelve hundred twenty-five-c of the vehicle and traffic law.

2. "Wireless telephone" shall have the same meaning as "mobile telephone" as defined in paragraph (a) of subdivision one of section twelve hundred twenty-five-c of the vehicle and traffic law.

* NB There are 2 § 27-2301's

*** § 27-2303. Wireless telephone collection.**

1. (a) Every wireless telephone service supplier engaged in the retail sale of wireless telephones shall:

(i) accept, at no charge, up to ten used wireless telephones from any person during the normal business hours of such business; or

(ii) offer to any person at no charge, the shipping of used wireless telephones to a recycling program conducted by such business. Information about such a program shall be readily available at such business locations and on its website.

(b) Every wireless telephone service supplier required to accept used wireless telephones or provide shipping at no charge for used wireless telephones pursuant to paragraph (a) of this subdivision shall conspicuously post a sign open to public view, clearly indicating that used wireless telephones are accepted or shipping is provided at no charge. Such signs may also state that used wireless telephones shall only be accepted during normal business hours, and may state such hours.

2. Every wireless telephone service supplier required to accept or pay for the shipment of used wireless telephones shall take reasonable steps to ensure each used wireless telephone accepted or shipped pursuant to this section shall either be recycled, reused or disposed of in an environmentally sound manner.

* NB There are 2 § 27-2303's

§ 27-2305. Preemption and severability.

1. Any provision of any local law or ordinance, or any rule or regulation promulgated thereto, governing the collection, return or recycling of wireless telephones shall upon the effective date of this title be preempted.

2. The provisions of this title shall be severable and if any portion thereof or the applicability thereof to any person or circumstances shall be held invalid, the remainder of this title and the application thereof shall not be affected thereby.

TITLE 24

ENVIRONMENTAL TESTS REPORTING REQUIREMENTS

Section 27-2401. Definitions.

27-2403. Notification requirements.

27-2405. Tenant notification of indoor air contamination.

§ 27-2401. Definitions.

As used in this title:

1. "Owner" shall mean any person or persons who owns a dwelling unit or commercial space located on real property.

2. "Real property" shall mean lands, tenements and hereditaments.

§ 27-2403. Notification requirements.

1. A person identified as a responsible party pursuant to title thirteen of this article or a participant as defined in paragraph (a) of subdivision one of section 27-1405 of this article shall provide within thirty days of validation of any test undertaken pursuant to this article or article twelve of the navigation law the results of any such test to any identifiable owner of real property that has been tested. In the event that such a test is undertaken by the department, the department shall provide, within thirty days of validation of such test, the results of such test to any identifiable owner of real property that has been tested.

2. Such person identified as a responsible party pursuant to title thirteen of this article or a participant as defined in paragraph (a) of subdivision one of section 27-1405 of this article knowingly failing to provide test results as required in subdivision one of this section shall be considered a violation of any order on consent or a breach of any agreement entered into with the department.

§ 27-2405. Tenant notification of indoor air contamination.

1. For purposes of this section:

a. "test results" shall include the results of any tests conducted on indoor air, subslab air, ambient air, subslab groundwater samples, and subslab soil samples; and

b. "issuer" means:

(i) a person subject to an order issued pursuant to title thirteen of this article, article twelve of the navigation law, or title twelve-A of article thirteen of the public health law,

(ii) a participant as defined in subdivision 1 of section 27-1405 of this article subject to an agreement entered into pursuant to title fourteen of this article, or

(iii) by a municipality subject to a contract entered into pursuant to title five of article fifty-six of this chapter; or

(iv) by the department.

2. Any owner of real property or any owner's agent to whom indoor air contamination test results have been provided by an issuer shall, in cases where test results exceed department of health indoor air guidelines or the occupational safety and health administration guidelines for indoor air quality, provide a fact sheet and timely notice of any public meetings required to be held to discuss such results to all tenants and occupants and upon request such test results and any closure letter, within fifteen days of receipt of such results. Generic fact sheets shall be prepared by the department of health and shall identify at a minimum the compound or contaminant of concern, reportable detection levels established by the department of health indoor air guidelines or the occupational safety and health administration guidelines for indoor air quality and health risks associated with exposure to such compound or contaminant and a means to obtain more information on the compound or contaminant.

3. For real property for which an engineering control is in place to mitigate indoor air contamination, or if the real property is subject to ongoing monitoring pursuant to an ongoing remedial program, the owner or owner's agent of real property to whom indoor air contamination test results have been provided by an issuer shall provide, or cause to be

provided, fact sheets, and upon request any test results, or closure letter received by such owner or owner's agent to any prospective tenant prior to the signing of a binding lease or rental agreement. Generic fact sheets shall be prepared by the department of health and shall identify at a minimum the compound or contaminant of concern, reportable detection levels established by the department of health indoor air guidelines or the occupational safety and health administration guidelines for indoor air quality and health risks associated with exposure to such compound or contaminant and a means to obtain more information on the compound or contaminant. Such notice shall be included in the rental or lease agreement and shall contain the following in at least twelve point type in bold face on the first page: "NOTIFICATION OF TEST RESULTS The property has been tested for contamination of indoor air: test results and additional information are available upon request."

TITLE 25

PHASE-OUT OF CREOSOTE

Section 27-2501. Definitions.

27-2503. Prohibition of manufacture, sale, and use of creosote.

27-2505. Disposal of creosote prohibited.

27-2507. Combustion of creosote.

27-2509. Powers and duties of the commissioner.

27-2511. Powers and duties of the department.

27-2513. Exemptions.

§ 27-2501. Definitions.

1. As used in this title, the term "creosote" means a substance obtained from the high temperature treatment of coal and coal tar and that is used primarily as a wood preservative.

2. As used in this title, the term "marina" shall have the same meaning as defined in section thirty-three-c of the navigation law.

§ 27-2503. Prohibition of manufacture, sale, and use of creosote.

1. Except as set forth in subdivision two of this section and section 27-2513 of this title, on and after January first, two thousand eight, creosote or products containing creosote shall not be manufactured, sold, or used in this state.

2. Wood treated with creosote that is in use in this state as of such date may continue to be used in such use.

§ 27-2505. Disposal of creosote prohibited.

On and after January first, two thousand eight, neither creosote nor any wood or other product treated with or containing creosote shall be disposed of in this state, except in a permitted facility pursuant to this section, in a landfill permitted by the department and approved by the department to accept this material and properly lined to prevent groundwater contamination, or by any method approved by the department.

§ 27-2507. Combustion of creosote.

On and after January first, two thousand eight, neither creosote or any wood or other product treated with or containing creosote shall be burned in any manner in this state, including in fireplaces and stoves, except in a facility permitted pursuant to this article and article nineteen of this chapter to burn the specific type of creosote waste.

§ 27-2509. Powers and duties of the commissioner.

1. The commissioner shall have the power and the duty to adopt such rules and regulations as he or she deems necessary for the implementation of this title.

2. The commissioner may, at his or her discretion, grant an emergency waiver to the provisions of section 27-2503 of this title on a case by case basis to persons or entities involving acts of God, war, strike, riot or other catastrophe as to which the negligence or willful misconduct on the part of such person or entity was not the proximate cause. The commissioner may adopt guidelines for applying for and granting such waivers but in no case shall a waiver be deemed in effect for any person or entity for more than one year without proper renewal.

3. The commissioner shall also have the authority to temporarily waive the provisions of section 27-2503 of this title if he or she determines such waiver to be necessary to meet the construction or reconstruction needs as a result of a declared state of emergency.

§ 27-2511. Powers and duties of the department.

The department or the commissioner, as appropriate, shall have the authority to:

1. Administer and enforce this title and any rules and regulations adopted pursuant to this title.

2. Issue such orders and initiate such proceedings as may be necessary for the enforcement of this title and any rules and regulations adopted pursuant to this title.

3. Assist affected industries in identifying reliable supplies of alternative construction materials that are both economical and effective.

§ 27-2513. Exemptions.

Notwithstanding any inconsistent provision of law, this title shall not apply to:

1. railroads, as defined in subdivisions twenty-four and twenty-nine of section two of the transportation law or within the scope of titles nine and eleven of article five of the public authorities law;

2. the operation and/or maintenance of railroad and railroad shipping facilities, including but not limited to the right of way, tracks, track sidings, team tracks and bridges;

3. any electric corporation, as defined by subdivision thirteen of section two of the public service law, nor shall it apply to the operation, use, or maintenance of any new or existing utility pole or facilities owned or used, in whole or in part, by a telephone corporation, utility company, or cable television company, as defined by subdivisions seventeen and twenty-three of section two and subdivision one of section two hundred twelve of the public service law, respectively;

4. the use of one or more utility poles by any person in connection with the suspension or support of power, communications, utility wires, lines or cables and related equipment, antennae, lighting, signals, electric or electronic devices or similar equipment or apparatus;

5. any public authority that owns and operates electric transmission or distribution lines, a municipally owned electric utility or a rural electric cooperative, nor shall it apply to the operation, use, or maintenance of any new or existing utility pole or facilities owned or used, in whole or in part, by any such public authority, municipally owned electric utility, or rural electric cooperative; and

6. until January first, two thousand ten, any existing marina or other facility for berthing and mooring of pleasure vessels, including rowboats and canoes, and the storage thereof, and any existing facility that services pleasure vessels other than an existing marina or other facility for berthing and mooring of pleasure vessels, or facility that services pleasure vessels owned and/or operated by a municipal entity. For the purpose of this section, pleasure vessel shall have the same meaning as in paragraph (c) of subdivision six of section two of the

navigation law.

TITLE 26

ELECTRONIC EQUIPMENT RECYCLING AND REUSE

Section 27-2601. Definitions.

27-2603. Manufacturer collection; recycling surcharge.

27-2605. Manufacturer electronic waste registration and responsibilities.

27-2607. Retailer requirements.

27-2609. Labeling.

27-2611. Disposal ban.

27-2613. Electronic waste collection, consolidation and recycling.

27-2615. Department responsibilities.

27-2617. Reporting requirements.

27-2619. Preemption.

27-2621. Disposition of fees.

§ 27-2601. Definitions.

As used in this title:

1. "Cathode ray tube" means a vacuum tube or picture tube used to convert an electronic signal into a visual image.

2. "Computer" means an electronic, magnetic, optical, electrochemical or other high-speed data processing device performing a logical, arithmetic or storage function, including a laptop computer and desktop computer, and includes any cable, cord, or wiring permanently affixed to or incorporated into such product, and may include both a computer central processing unit and a monitor; but such term shall not include an automated typewriter or typesetter, a portable hand-held calculator, a portable digital assistant, server, or other similar device.

3. "Computer peripheral" means a monitor; electronic keyboard;

electronic mouse or similar pointing device; facsimile machine, document scanner, or printer intended for use with a computer; and includes any cable, cord, or wiring permanently affixed to or incorporated into any such product. Computer peripheral shall not include any document scanner or printer which weighs one hundred pounds or more.

4. "Consumer" means a person located in the state who owns or uses covered electronic equipment, including but not limited to an individual, a business, corporation, limited partnership, not-for-profit corporation, the state, a public corporation, public school, school district, private or parochial school or board of cooperative educational services or governmental entity, but does not include an entity involved in a wholesale transaction between a distributor and retailer.

5. "Covered electronic equipment" means: a computer; computer peripheral; small electronic equipment; small-scale server; cathode ray tube; or television, as defined in this section. "Covered electronic equipment" does not include any motor vehicle or any part thereof; camera or video camera; portable or stationary radio; household appliances such as clothes washers, clothes dryers, refrigerators, freezers, microwave ovens, ovens, ranges or dishwashers; equipment that is functionally or physically part of a larger piece of equipment intended for use in an industrial, research and development or commercial setting; security or anti-terrorism equipment; monitoring and control instrument or system; thermostat; hand-held transceiver; telephone of any type; portable digital assistant or similar device; calculator; global positioning system (GPS) receiver or similar navigation device; a server other than a small-scale server; a cash register or retail self checkout system; a stand-alone storage product intended for use in industrial, research and development or commercial settings; commercial medical equipment that contains within it a cathode ray tube, a flat panel display or similar video display device, and is not separate from the larger piece of equipment; or other medical devices as that term is defined under the Federal Food, Drug and Cosmetic Act.

6. "Electronic waste" means covered electronic equipment that has been discarded or is no longer wanted by its owner, or for any other reason enters the waste collection, recovery, treatment, processing, or recycling system. For purposes of section 27-2611 of this title, "electronic waste" does not include the case, shell, or other enclosure of covered electronic equipment from which incorporated assemblies, sub-assemblies, components, materials, wiring, circuitry and commodities have been removed.

7. "Electronic waste collection site" means a facility at a fixed or temporary site at which electronic waste is accepted from consumers and temporarily stored for more than five days in a calendar year before such waste is transported to an electronic waste consolidation facility or electronic waste recycling facility. Electronic waste collection sites include, but are not limited to, dedicated sites and facilities for the acceptance of electronic waste, and retail stores and outlets, municipal or private electronic waste collection sites and not-for-profit donation sites that have agreed to accept electronic waste.

8. "Electronic waste consolidation facility" means a facility that receives and stores electronic waste for the purpose of organizing, categorizing or consolidating items of electronic waste before such waste is transported to an electronic waste recycling facility. Electronic waste consolidation facilities include, but are not limited to, facilities of brokers acting as intermediaries between electronic waste buyers and sellers, and regional centers at which electronic waste is organized, categorized or consolidated after being transported to such centers from electronic waste collection sites or other electronic waste consolidation facilities.

9. "Electronic waste recycling facility" means a facility at which electronic waste is recycled.

10. "Label" means a marker on the surface of covered electronic equipment conveying information; for the purposes of this title, labels must be permanent and can be attached, printed, engraved or incorporated

in any other permanent way that is obvious and visible to users of the product.

11. "Manufacturer" means a person who: (a) assembles or substantially assembles covered electronic equipment for sale in the state; (b) manufactures covered electronic equipment under its own brand name or under any other brand name for sale in the state; (c) sells, under its own brand name, covered electronic equipment sold in the state; (d) owns a brand name that it licenses to another person for use on covered electronic equipment sold in the state; (e) imports covered electronic equipment for sale in the state; or (f) manufactures covered electronic equipment for sale in the state without affixing a brand name.

"Manufacturer" does not mean a person who assembles or substantially assembles, and sells less than one thousand units of covered electronic equipment annually in this state, or whose primary business is the sale of covered electronic equipment which is comprised primarily of rebuilt, refurbished or used components. If more than one person is a manufacturer of a brand of covered electronic equipment, any such person may assume responsibility for obligations of a manufacturer of that brand under this title. If none of those persons assumes responsibility for the obligations of a manufacturer under this title, any and all such persons jointly and severally may be considered to be the responsible manufacturer of that brand for purposes of this title.

12. "Manufacturer's brands" means a manufacturer's name, brand name or brand label, and all manufacturer's names, brand names and brand labels for which the manufacturer has a legal right or interest, including those names, brand names, and brand labels of companies that have been acquired by the manufacturer or in which the manufacturer asserts a legal interest such as trademark, license, service mark, or patent.

13. "Monitor" means a separate visual display component of a computer, whether sold separately or together with a computer central processing unit, and includes a cathode ray tube, liquid crystal display, gas plasma, digital light processing or other image projection technology, greater than four inches when measured diagonally, and its case, interior wires and circuitry, and any cable cord or wiring permanently

affixed thereto or incorporated into such product.

14. "Person" means any individual, business entity, partnership, company, corporation, not-for-profit corporation, association, governmental entity, public benefit corporation, public authority, firm, organization, or any other group of individuals, or any officer or employee or agent thereof.

15. "Recycle" means to separate, dismantle or process the materials, components or commodities contained in electronic waste for the purpose of preparing the materials, components or commodities for use or reuse in new products or components thereof, but not for energy recovery or energy generation by means of combustion, gasification, pyrolysis or other means. Recycling includes the manual and mechanical separation of electronic waste to recover materials, components or commodities contained therein for the purpose of reuse or recycling, and changing the physical or chemical composition of electronic waste to segregate components for purposes of recycling those components.

16. "Retailer" means a person who sells covered electronic equipment to a person in the state through any means, including, but not limited to, transactions conducted through retail sales outlets, mail, catalogs, the telephone or the internet, or any electronic means. "Retailer" does not include a person who sells or offers for sale fewer than ten items of covered electronic equipment during a calendar year.

17. "Reuse" means the use of electronic waste that is tested and certified to be in good working order and which was removed from the waste stream for use for the same purpose for which it was manufactured, including the continued use of whole systems or components.

18. "Sell" or "sale" means any transfer for consideration of title or the right to use, from a manufacturer or retailer to a person, including, but not limited to, transactions conducted through retail sales outlets, catalogs, mail, the telephone, the internet, or any electronic means; this includes transfer of new products or used products that may have been refurbished by their manufacturer or

manufacturer-approved party and that are offered for sale by a manufacturer or retailer, but does not include consumer-to-consumer second-hand transfer. "Sell or sale" does not include: (a) the transfer of used covered electronic equipment or a lease of covered electronic equipment; or (b) wholesale transactions among a manufacturer, wholesaler and retailer.

19. "Small electronic equipment" means any portable digital music player that has memory capability and is battery-powered, video cassette recorder, a digital video disc player, digital video recorder, digital converter box, cable or satellite receiver, or electronic or video game console, and includes any cable, cord, or wiring permanently affixed to or incorporated into any such product.

20. "Small-scale server" means a computer that typically uses desktop components in a desktop form factor, but is designed primarily to be a storage host for other computers. To be considered a small-scale server, a computer must have the following characteristics: designed in a pedestal, tower, or other form factor similar to those of desktop computers such that all data processing, storage, and network interfacing is contained within one box or product; intended to be operational twenty-four hours per day and seven days a week, and unscheduled downtime is extremely low, such as on the order of hours per year; is capable of operating in a simultaneous multi-user environment serving several users through networked client units; and designed for an industry accepted operating system for home or low-end server applications.

21. "Television" means a display system containing a cathode ray tube or any other type of display primarily intended to receive video programming via broadcast, cable or satellite transmission, having a viewable area greater than four inches when measured diagonally.

§ 27-2603. Manufacturer collection; recycling surcharge.

1. (a) Beginning April first, two thousand eleven, a manufacturer of

covered electronic equipment must accept for collection, handling and recycling or reuse electronic waste for which it is the manufacturer. Such waste shall count toward the amount of electronic waste required to be accepted pursuant to subdivision four of this section.

(b) Beginning April first, two thousand eleven, a manufacturer of covered electronic equipment must accept for collection, handling and recycling or reuse one piece of electronic waste of any manufacturer's brand if offered by a consumer with the purchase of covered electronic equipment of the same type by a consumer. Such waste shall count toward the amount of the electronic waste required to be accepted pursuant to subdivision four of this section.

2. Beginning April first, two thousand eleven, each manufacturer must accept for collection, handling and recycling or reuse the manufacturer's acceptance standard as specified in subdivision four of this section.

3. Statewide recycling or reuse goal. (a) For the period from April first, two thousand eleven through December thirty-first, two thousand eleven, the statewide recycling or reuse goal for electronic waste shall be the product of the latest population estimate for the state, as published by the U.S. Census bureau multiplied by three pounds multiplied by three-quarters.

(b) For calendar year two thousand twelve, the statewide recycling or reuse goal for all electronic waste shall be the product of the latest population estimate for the state, as published by the U.S. Census bureau multiplied by four pounds.

(c) For calendar year two thousand thirteen, the statewide recycling or reuse goal for all electronic waste shall be the product of the latest population estimate for the state, as published by the U.S. Census bureau multiplied by five pounds.

(d) For calendar year two thousand fourteen and annually thereafter, the statewide recycling or reuse goal for all electronic waste is the product of the base weight multiplied by the goal attainment percentage. For the purposes of this paragraph, "base weight" means the greater of: (i) the average weight of all electronic waste collected for recycling or reuse during the previous three calendar years as reported to the

department pursuant to paragraph (b) of subdivision one of section 27-2617 of this title; or (ii) the three year average of the sum of all electronic waste collected for recycling or reuse during the previous three calendar years based on information reported to the department pursuant to paragraph (b) of subdivision one, paragraph (b) of subdivision two and paragraph (b) of subdivision three of section 27-2613 of this title.

(e) The "goal attainment percentage" means:

(i) ninety percent if the base weight is less than ninety percent of the statewide recycling or reuse goal for the previous calendar year;

(ii) ninety-five percent if the base weight is ninety percent or greater, but does not exceed ninety-five percent of the statewide recycling or reuse goal for the previous calendar year;

(iii) one hundred percent if the base weight is ninety-five percent or greater, but does not exceed one hundred five percent of the statewide recycling or reuse goal for the previous calendar year;

(iv) one hundred five percent if the base weight is one hundred five percent or greater, but does not exceed one hundred ten percent of the statewide recycling or reuse goal for the previous calendar year; and

(v) one hundred ten percent if the base weight is one hundred ten percent or greater of the statewide recycling or reuse goal for the previous calendar year.

4. Manufacturer acceptance standard. (a) For the period April first, two thousand eleven through December thirty-first, two thousand eleven and annually thereafter, each manufacturer's acceptance standard is the product of the statewide recycling or reuse goal under paragraph (a), (b), (c) or (d) of subdivision three of this section, as appropriate, multiplied by that manufacturer's market share pursuant to paragraph (b) of this subdivision.

(b) Each manufacturer's market share of electronic waste shall be determined by the department based on the manufacturer's percentage share of the total weight of covered electronic equipment sold as determined by the best available information, including, but not limited to, state sales data reported by weight. Beginning April first, two thousand eleven, and every calendar year thereafter, the department shall provide each manufacturer with a determination of its market share

of electronic waste which shall be the quotient of the total weight of the manufacturer's covered electronic equipment sold to persons in this state based on the average annual retail sales during the preceding three calendar years, as reported under sections 27-2605 and 27-2617 of this title divided by the total weight of all manufacturers covered electronic equipment sold to persons in this state based on the average annual retail sales during the preceding three calendar years, as reported under sections 27-2605 and 27-2617 of this title.

5. In the absence of a waiver by the department pursuant to subdivision three of section 27-2615 of this title, beginning in calendar year two thousand thirteen, a manufacturer that fails to meet its manufacturer's acceptance standard for the previous calendar year as required by subdivision four of this section shall be subject to a recycling surcharge, determined as follows:

(a) If a manufacturer accepts at least ninety percent but less than one hundred percent of its manufacturer's acceptance standard as required by subdivision four of this section, the surcharge shall be thirty cents multiplied by the number of additional pounds of electronic waste that should have been accepted by such manufacturer.

(b) If a manufacturer accepts at least fifty percent but less than ninety percent of its manufacturer's acceptance standard as required by subdivision four of this section, the surcharge shall be forty cents multiplied by the number of additional pounds of electronic waste that should have been accepted by such manufacturer.

(c) If a manufacturer accepts less than fifty percent of its manufacturer's acceptance standard as required by subdivision four of this section, the surcharge shall be fifty cents multiplied by the number of additional pounds of electronic waste that should have been accepted by such manufacturer.

6. The recycling surcharge shall be paid to the department with the annual report required pursuant to section 27-2617 of this title.

7. Beginning with calendar year two thousand fourteen, if a manufacturer accepts more than its manufacturer's acceptance standard as required by subdivision four of this section, the excess weight may be

used as electronic waste acceptance credits and may be sold, traded, or banked for a period no longer than three calendar years succeeding the year in which the credits were earned; provided, however, that no more than twenty-five percent of a manufacturer's obligation for any calendar year may be met with recycling credits generated in a prior calendar year.

§ 27-2605. Manufacturer electronic waste registration and responsibilities.

1. A manufacturer shall submit a registration on a form prescribed by the department to the department by January first, two thousand eleven, along with a registration fee of five thousand dollars. The department may require such form to be filed electronically. Such registration shall include:

- (a) the manufacturer's name, address, and telephone number;
- (b) the name and title of an officer, director, or other individual designated as the manufacturer's contact for purposes of this title;
- (c) a list identifying the manufacturer's brands;
- (d) a general description of the manner in which the manufacturer will comply with section 27-2603 of this title, including specific information on the manufacturer's electronic waste acceptance program in the state, and a current list of locations within the state where consumers may return electronic waste;
- (e) sales data reported by weight for the manufacturer's covered electronic equipment sold in this state for the previous three calendar years, categorized by type to the extent known. If the manufacturer cannot provide accurate state sales data, it must explain why such data cannot be provided, and estimate state sales data by (i) dividing its national sales data by weight by the national population according to the most recent census and multiplying the result by the population of the state, or (ii) another method approved by the department;
- (f) a statement disclosing whether: (i) any covered electronic device sold in this state exceeds the maximum concentration values established for lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls (PBBs), and polybrominated diphenyl ethers (PBDEs) under the

restriction of hazardous substances directive (RoHS) pursuant to 2002/95/EC of the European Parliament and Council and any amendments thereto and if so, a listing of any covered electronic equipment that is not in compliance with such directive; or (ii) the manufacturer has received an exemption from one or more of those maximum concentration values under the RoHS directive that has been approved and published by the European Commission; and

(g) any other information as the department may require.

2. A manufacturer's registration is effective upon acceptance by the department and must be updated within thirty days of any material change to the information required by subdivision one of this section.

3. Any person who becomes a manufacturer on or after January first, two thousand eleven shall register with the department prior to selling or offering for sale in the state any covered electronic equipment, and must comply with the requirements of this title.

4. No later than April first, two thousand eleven, a manufacturer shall not sell or offer for sale electronic equipment in the state unless the manufacturer has registered with the department and maintains an electronic waste acceptance program through which the manufacturer, either directly or through an agent or designee, accepts electronic waste from consumers in the state for recycling. The manufacturer shall ensure that retailers are notified of such registration.

5. The electronic waste acceptance program shall include, at a minimum:

(a) collection, handling and recycling or reuse of electronic waste pursuant to section 27-2603 of this title in a manner convenient to consumers. The following acceptance methods shall be considered reasonably convenient: (i) mail or ship back return programs; (ii) collection or acceptance events conducted by the manufacturer or the manufacturer's agent or designee, including events conducted through local governments or private parties; (iii) fixed acceptance locations such as dedicated acceptance sites operated by the manufacturer or its agent or designee; (iv) agreements with local governments, retail

stores, sales outlets and not-for-profit organizations which have agreed to provide facilities for the collection of electronic waste; (v) community collection events; and (vi) any combination of these or other acceptance methods which effectively provide for the acceptance of electronic waste for recycling or reuse through means that are available and reasonably convenient to consumers in the state. At a minimum, the manufacturer shall ensure that all counties of the state, and all municipalities which have a population of ten thousand or greater, have at least one method of acceptance that is available within such county or municipality. The department may establish additional requirements to ensure convenient collection from consumers;

(b) information on how consumers can destroy all data on any electronic waste, either through physical destruction of the hard drive or through data wiping;

(c) a public education program to inform consumers about the manufacturer's electronic waste acceptance program, including at a minimum: (i) an internet website and a toll-free telephone number and written information included in the product manual for, or at the time of sale of, covered electronic equipment that provides sufficient information to allow a consumer of covered electronic equipment to learn how to return the covered equipment for recycling or reuse, and in the case of manufacturers of computers, hard drives and other covered electronic equipment that have internal memory on which personal or other confidential data can be stored, such website shall provide instructions for how consumers can destroy such data before surrendering the products for recycling or reuse; (ii) advertisements and press releases if any; and

(d) any other information as required by the department in accordance with regulations promulgated pursuant to this article.

6. A manufacturer shall maintain records demonstrating compliance with this title and make them available for audit and inspection by the department for a period of three years.

7. A manufacturer may satisfy the electronic waste collection requirements of this section by agreeing to participate in a collective electronic waste acceptance program with other manufacturers. Any such

collective electronic waste acceptance program must meet the same requirements as an individual manufacturer. Any collective electronic waste acceptance program must include a list of manufacturers that are participating in such program along with other identifying information as may be required by the department. Such program shall submit a registration to the department along with a registration fee of ten thousand dollars.

8. A manufacturer shall be responsible for all costs associated with the implementation of the electronic waste acceptance program. The manufacturer shall not charge consumers for the collection, handling and recycling and reuse of electronic waste, provided that such prohibition shall not apply to a charge on business consumers or to charges for premium services. This prohibition shall not apply to a manufacturer's contract with a consumer for the collection, handling, recycling or reuse of electronic waste that was entered into prior to the effective date of this section. For purposes of this subdivision, "business consumer" means a for-profit entity which has fifty or more full time employees or a not-for-profit corporation with seventy-five or more full time employees, but not a not-for-profit corporation designated under section 501(c)(3) of the internal revenue code. For purposes of this subdivision, "premium services" means equipment and data security services, refurbishment for reuse by the consumer, and other custom services as may be determined by the department.

§ 27-2607. Retailer requirements.

1. At the location of sale of covered electronic equipment, a retailer shall provide purchasers of covered electronic equipment with information, if any, about opportunities for the return of electronic waste that has been provided to the retailer by a manufacturer.

2. Beginning April first, two thousand eleven, no retailer shall sell or offer for sale in the state any covered electronic equipment unless the manufacturer and the manufacturer's brands are registered with the department pursuant to section 27-2605 of this title. If the retailer

purchased covered electronic equipment from a manufacturer who fails to register by January first, two thousand eleven, or prior to the date the manufacturer withdrew its registration or the registration was revoked by the department, the retailer may continue to sell the covered electronic equipment for one hundred eighty days after April first, two thousand eleven, or the date the registration was withdrawn or revoked.

§ 27-2609. Labeling.

Beginning April first, two thousand eleven, a manufacturer may not offer for sale in the state or deliver to retailers for subsequent sale covered electronic equipment unless it has a visible, permanent label clearly identifying the manufacturer of that equipment.

§ 27-2611. Disposal ban.

1. Beginning April first, two thousand eleven, no manufacturer, retailer, or owner or operator of an electronic waste collection site, electronic waste consolidation facility or electronic waste recycling facility in the state shall dispose of electronic waste at a solid waste management facility or hazardous waste management facility, or place electronic waste for collection which is intended for disposal at a solid waste management facility or hazardous waste management facility.

2. Beginning January first, two thousand twelve, no person except for an individual or household shall place or dispose of any electronic waste in any solid waste management facility, or place electronic waste for collection which is intended for disposal at a solid waste management facility or hazardous waste management facility in this state. Persons engaged in the collection of solid waste for delivery to a solid waste management facility shall provide written information to users of such facility on the proper methods for the recycling of electronic waste.

3. Beginning January first, two thousand fifteen, no individual or

household shall place or dispose of any electronic waste in any solid waste management facility, or place electronic waste for collection which is intended for disposal at a solid waste management facility or hazardous waste management facility in this state.

4. Beginning January first, two thousand twelve, an owner or operator of a solid waste management facility or hazardous waste management facility shall educate users of such facility on the proper methods for the management of electronic waste. Such education shall include:

(a) providing written information to users of such facility on the proper methods for recycling of electronic waste; and

(b) posting, in conspicuous locations at such facility, signs stating that electronic waste may not be disposed of at the facility.

§ 27-2613. Electronic waste collection, consolidation and recycling.

1. Electronic waste collection sites. No later than January first, two thousand eleven, each person who owns or operates an electronic waste collection site in the state shall:

(a) register with the department on a form prescribed by the department. The department may require such form to be filed electronically. The registration shall include: (i) the name, address, and telephone number of the owners and the operators of the electronic waste collection site; and (ii) the name, address, and telephone number of the electronic waste collection site. Any person who commences the operation of an electronic waste collection site on or after January first, two thousand eleven shall register with the department at least thirty days prior to receiving any electronic waste at such collection site. A registration is effective upon acceptance by the department. In the case of collection sites operated by a retailer, a single registration listing the name, address, and telephone number of the individual collection sites may be submitted covering all their collection sites;

(b) beginning March first, two thousand twelve, each person operating an electronic waste collection site shall submit to the department an annual report for the period of April first, two thousand eleven through

December thirty-first, two thousand eleven and each calendar year thereafter, on a form prescribed by the department. The department may require annual reports to be filed electronically. Annual reports shall include, but not be limited to, the following information: (i) the quantity, by weight, of electronic waste received from consumers in the state; (ii) the name and address of each person to whom the electronic waste collection site sent electronic waste during the reporting period, along with the quantity, by weight, of electronic waste that was sent to each such person; and (iii) the weight of electronic waste collected on behalf of or pursuant to an agreement with each manufacturer during the reporting period. All quantities of electronic waste reported by the collection site must separately include electronic waste generated by New York state consumers and electronic waste received from or shipped outside the state;

(c) manage electronic waste in a manner that complies with all applicable laws, rules and regulations;

(d) store electronic waste (i) in a fully enclosed building with a roof, floor and walls, or (ii) in a secure container (e.g., package or vehicle), that is constructed and maintained to minimize breakage of electronic waste and to prevent releases of hazardous materials to the environment;

(e) remove electronic waste from the site within one year of the waste's receipt at the site, and maintain records demonstrating compliance with this requirement.

2. Electronic waste consolidation facilities. (a) No later than January first, two thousand eleven, each person who operates an electronic waste consolidation facility in the state shall register with the department on a form prescribed by the department. The department may require such form to be filed electronically. The registration shall include: (i) the name, address and telephone number of the owner and the operator of the facility; and (ii) the name, address and telephone number of the electronic waste consolidation facility. Any person who commences the operation of an electronic waste consolidation facility on or after January first, two thousand eleven shall register with the department at least thirty days prior to receiving any electronic waste. A registration is effective upon acceptance by the department. Any

registration required by this paragraph shall be accompanied by a registration fee of two hundred fifty dollars.

(b) Beginning March first, two thousand twelve, each person operating an electronic waste consolidation facility shall submit to the department an annual report for the period of April first, two thousand eleven through December thirty-first, two thousand eleven and each calendar year thereafter, on a form prescribed by the department. The department may require annual reports to be filed electronically. Annual reports shall include, but not be limited to, the following information: (i) the name and address of each electronic waste collection site from which the consolidation facility received electronic waste during the reporting period, along with the quantity, by weight, of electronic waste received from each collection site; (ii) the name and address of each person to whom the electronic waste consolidation facility sent electronic waste during the reporting period, along with the quantity, by weight, of electronic waste that was sent to each such person; (iii) the weight of electronic waste collected on behalf of or pursuant to an agreement with each manufacturer during the reporting period; and (iv) a certification by the owner or operator of the electronic waste consolidation facility that such a facility has complied with the requirements of this title and all other applicable laws, rules, and regulations. All quantities of electronic waste reported by the consolidation facility must separately include electronic waste generated by New York state consumers and electronic waste received from or shipped outside the state.

(c) Each person operating an electronic waste consolidation facility shall:

(i) manage electronic waste in a manner that complies with all applicable laws, rules and regulations;

(ii) store electronic waste (A) in a fully enclosed building with a roof, floor and walls, or (B) in a secure container (e.g., package or vehicle), that is constructed and maintained to minimize breakage of electronic waste and to prevent releases of hazardous materials to the environment;

(iii) have a means to control entry, at all times, to the active portion of the facility;

(iv) inform all employees who handle or have responsibility for

managing electronic waste about the proper handling and emergency procedures appropriate to the type or types of electronic waste handled at the facility;

(v) remove electronic waste from the site within one year of the waste's receipt at the site, and maintain records demonstrating compliance with this requirement; and

(vi) maintain the records required by paragraphs (a) and (b) of this subdivision and by subparagraph (v) of this paragraph on site and make them available for audit and inspection by the department for a period of three years.

(d) A person operating an electronic waste consolidation facility shall not engage in electronic waste recycling unless such person is also registered as an electronic waste recycling facility, and complies with the requirements of this section that are applicable to each type of facility.

(e) A person operating an electronic waste consolidation facility may accept electronic waste in the same manner as an electronic waste collection site provided that such person complies with the requirements of this section that are applicable to electronic waste collection sites.

3. Electronic waste recycling facilities. (a) No later than January first, two thousand eleven, each person operating an electronic waste recycling facility in the state shall register with the department on a form prescribed by the department. The department may require such form to be filed electronically. The registration shall include: (i) the name, address and telephone number of the owner and the operator of the facility; and (ii) the name, address, and telephone number of the electronic waste recycling facility. Any person who commences the operation of an electronic waste recycling facility on or after January first, two thousand eleven shall register with the department at least thirty days prior to receiving any electronic waste. A registration is effective upon acceptance by the department. Any registration required by this paragraph shall be accompanied by a registration fee of two hundred fifty dollars.

(b) Beginning March first, two thousand twelve, each person operating an electronic waste recycling facility shall submit to the department an

annual report for the period of April first, two thousand eleven through December thirty-first, two thousand eleven and each calendar year thereafter, on a form prescribed by the department. The department may require annual reports to be filed electronically. Annual reports shall include, but not be limited to, the following information: (i) the quantity, by weight, of electronic waste received from consumers in the state; (ii) the name and address of each electronic waste collection site and electronic waste consolidation facility from which electronic waste was received during the reporting period, along with the quantity, by weight, of electronic waste received from each person; (iii) the name and address of each person to whom the facility sent electronic waste or component materials during the reporting period, along with the quantity, by weight, of electronic waste or component materials thereof sent to each such person; (iv) the weight of electronic waste collected on behalf of or pursuant to an agreement with each manufacturer during the reporting period; and (v) a certification by the owner or operator of the facility that such facility has complied with the requirements of this title and all other applicable laws, rules, and regulations. All quantities of electronic waste reported by the recycling facility must separately include electronic waste generated by New York state consumers and electronic waste received from or shipped outside the state.

(c) Each person operating an electronic waste recycling facility shall:

(i) manage and recycle electronic waste in a manner that complies with all applicable laws, rules and regulations;

(ii) store electronic waste (A) in a fully enclosed building with a roof, floor and walls, or (B) in a secure container (e.g., package or vehicle), that is constructed and maintained to minimize breakage of electronic waste and to prevent releases of hazardous materials to the environment;

(iii) have a means to control entry, at all times, through gates or other entrances to the active portion of the facility;

(iv) inform all employees who handle or have responsibility for managing electronic waste about proper handling and emergency procedures appropriate to the type or types of electronic waste handled at the facility;

(v) remove electronic waste from the site within one year of the waste's receipt at the site, and maintain records demonstrating compliance with this requirement; and

(vi) maintain the records required by paragraphs (a) and (b) of this subdivision and by subparagraph (v) of this paragraph on site and make them available for audit and inspection by the department for a period of three years.

(d) A person operating an electronic waste recycling facility may also operate such facility as an electronic waste consolidation facility provided that such person complies with the requirements of this section that are applicable to each type of facility. Where a facility is operated for both purposes, only one registration fee must be paid.

(e) A person operating an electronic waste recycling facility may accept electronic waste in the same manner as an electronic waste collection site provided that such person complies with the requirements of this section that are applicable to electronic waste collection sites.

4. Except to the extent otherwise required by law, no manufacturer or person operating an electronic waste collection site, electronic waste consolidation facility or electronic waste recycling facility shall have any responsibility or liability for any data in any form stored on electronic waste surrendered for recycling or reuse, unless such person misuses or knowingly and intentionally, or with gross negligence, discloses the data. This provision shall not prohibit any such person from entering into agreements that provide for the destruction of data on covered electronic equipment.

§ 27-2615. Department responsibilities.

1. The department is authorized to promulgate rules and regulations necessary to implement and administer this title. At a minimum, the department shall promulgate rules and regulations on: standards for reuse; electronic waste acceptance credits; waivers of the recycling surcharge; and acceptable alternative methods for the determination of state sales data.

2. The department shall (a) maintain a list of manufacturers who are registered pursuant to section 27-2605 of this title, (b) maintain a list of each such manufacturer's brands, and (c) post such lists on the department's website.

3. The department may waive the recycling surcharge payable by a manufacturer under this title when the manufacturer demonstrates in an application to the department it was unable to accept the weight of electronic waste required by section 27-2603 of this title despite the manufacturer's best efforts. The application shall be made with the annual report required by section 27-2617 of this title. The application shall include such information as the department requires. A waiver provided pursuant to this subdivision shall not relieve a manufacturer from the obligation to comply with the provisions of this title not specifically addressed in such waiver.

§ 27-2617. Reporting requirements.

1. Beginning March first, two thousand twelve, for the period of April first, two thousand eleven through December thirty-first, two thousand eleven and each calendar year thereafter, a manufacturer that offers covered electronic equipment for sale in this state shall submit a report to the department on a form prescribed by the department that includes the following:

(a) sales data reported by weight for the manufacturer's covered electronic equipment sold in this state for the previous three calendar years, categorized by type to the extent known. If the manufacturer cannot provide accurate state sales data, it must explain why such data cannot be provided, and estimate state sales data by (i) dividing its national sales data by weight by the national population according to the most recent census and multiplying the result by the population of the state, or (ii) another method approved by the department;

(b) the quantity, by weight, of electronic waste collected for recycling or reuse in this state, categorized by the type of covered electronic equipment collected during the reporting period, the methods

used to accept the electronic waste, and the approximate weight of electronic waste accepted by each method used to the extent known;

(c) all quantities of electronic waste reported by the manufacturer must separately include electronic waste generated by New York state consumers and electronic waste received from or shipped outside the state: (i) the quantity, by weight, of electronic waste received directly from consumers in the state through a mail back program; (ii) the name and address of each electronic waste collection site, electronic waste consolidation facility, and electronic waste recycling facility at which electronic waste from consumers was received on behalf of the manufacturer during the reporting period, along with the quantity, by weight, of electronic waste received; and (iii) the name and address of each person to whom the manufacturer sent electronic waste or component materials during the reporting period, along with the quantity, by weight, of electronic waste or component materials thereof sent to each such person;

(d) the number of electronic waste acceptance credits purchased, sold, banked and traded during the reporting period, the number of electronic waste acceptance credits used to meet the requirements of section 27-2603 of this title, and from whom they were purchased and to whom they were sold or traded, and the number of electronic waste acceptance credits retained as of the date of the report;

(e) the amount of any recycling surcharge owed for the reporting period, with sufficient information to demonstrate the basis for the calculation of the surcharge;

(f) the names and locations of electronic waste recycling facilities utilized by the manufacturer and entities to which electronic waste is sent for reuse, whether in the state or outside the state, including details on the methods of recycling or reuse of electronic waste, any disassembly or physical recovery operation used, and the environmental management measures implemented by such recycling facility or entity;

(g) information detailing the acceptance methods made available to consumers in municipalities which have a population of greater than ten thousand and in each county of the state to meet the requirements of paragraph (a) of subdivision five of section 27-2605 of this title;

(h) a brief description of its public education program including the number of visits to the internet website and calls to the toll-free

telephone number provided by the manufacturer as required by section 27-2605 of this title;

(i) any other information as required by the department; and

(j) a signature by an officer, director, or other individual affirming the accuracy of the report.

2. The department may require annual reports to be filed electronically.

3. The report shall be accompanied by an annual reporting fee of three thousand dollars, and any recycling surcharge due pursuant to section 27-2603 of this title.

4. The department shall submit a report on implementation of the title in this state to the governor and legislature by April first, two thousand twelve and every two years thereafter. The report must include, at a minimum, an evaluation of:

(a) the electronic waste stream in the state;

(b) recycling and reuse rates in the state for covered electronic equipment;

(c) a discussion of compliance and enforcement related to the requirements of this title;

(d) recommendations for any changes to this title; and

(e) a discussion of opportunities for business development in the state related to the acceptance, collection, handling and recycling or reuse of electronic equipment in this state.

§ 27-2619. Preemption.

Jurisdiction in all matters pertaining to electronic waste recycling, including but not limited to the obligations of manufacturers, retailers, electronic waste collection sites, electronic waste consolidation facilities and electronic waste recycling facilities with respect to electronic waste recycling, is, by this title, vested exclusively in the state. Any provision of any local law or ordinance, or any rule or regulation promulgated thereto, governing covered

electronic equipment and the collection, reuse, or recycling of electronic waste shall upon the effective date of this title be preempted.

§ 27-2621. Disposition of fees.

All fees and charges collected pursuant to this title shall be deposited into the environmental protection fund established pursuant to section ninety-two-s of the state finance law.

* TITLE 27

PLASTIC BAG REDUCTION, REUSE AND RECYCLING

Section 27-2701. Definitions.

27-2703. Store operator responsibilities.

27-2705. Recycling program requirements.

27-2707. Manufacturer responsibilities.

27-2709. Department responsibility.

27-2711. Regulations.

27-2713. Preemption.

* NB There are 2 Title 27's

*** § 27-2701. Definitions.**

As used in this title:

1. "Compostable plastic bag" means a plastic bag that at a minimum meets the American Society for Testing and Materials standard D6400 for compostable plastic, as amended.

2. "Manufacturer" means the producer of a plastic carryout bag or film plastic sold to a store or the manufacturer's agent or broker who sold the plastic carryout bag or film plastic to the store.

3. "Operator" means a person in control of, or having daily

responsibility for, the daily operation of a store, which may include, but is not limited to, the owner of the store.

4. "Plastic carryout bag" means a plastic carryout bag provided by a store to a customer at the point of sale.

5. "Reusable bag" means:

(a) a bag made of cloth or other machine washable fabric that has handles; or

(b) a durable plastic bag with handles that is specifically designed and manufactured for multiple reuse.

6. "Store" means a retail establishment that provides plastic carryout bags to its customers as a result of the sale of a product and (a) has over ten thousand square feet of retail space, or (b) such retail establishment is part of a chain engaged in the same general field of business which operates five or more units of over five thousand square feet of retail space in this state under common ownership and management.

7. "Film plastic" means uncontaminated non-rigid film plastic packaging products composed of plastic resins, which include, but are not limited to, newspaper bags, dry cleaning bags and shrink-wrap.

* NB There are 2 § 27-2701's

*** § 27-2703. Store operator responsibilities.**

1. The operator of a store shall establish an at-store recycling program pursuant to the provisions of this title that provides an opportunity for a customer of the store to return to the store clean plastic carryout bags and film plastic.

2. A retail establishment that does not meet the definition of a store and that provides plastic carryout bags to customers at the point of sale may also adopt an at-store recycling program.

* NB There are 2 § 27-2703's

§ 27-2705. Recycling program requirements.

An at-store recycling program provided by the operator of a store shall require:

1. a plastic carryout bag provided by the store to have printed or displayed on the bag, in a manner visible to a consumer, the words "PLEASE RETURN TO A PARTICIPATING STORE FOR RECYCLING". Provided, however, such store shall be allowed for one year from the effective date of this subdivision to use its existing stock of plastic carryout bags. A store may also apply to the commissioner for approval of an alternative plastic bag recycling message. The commissioner shall approve or reject the proposed message within forty-five days;

2. a collection bin that is visible, easily accessible to the consumer, and clearly marked that the collection bin is available for the purpose of collecting and recycling plastic carryout bags and film plastic. This subdivision shall apply to stores not within an enclosed shopping mall and stores of at least fifty thousand square feet within an enclosed shopping mall. In the case of an enclosed shopping mall, the owner of the enclosed mall shall place bins at reasonable intervals throughout the enclosed mall area;

3. all plastic carryout bags and film plastic collected by the store to be collected, transported and recycled along with any other in-store plastic recycling, except for plastic bags that are not sufficiently free of foreign material to enter the recycling stream. Plastic carryout bags and film plastic collected by the store or the manufacturer, which are free of foreign material, shall not be disposed of in any solid waste disposal facility permitted or authorized pursuant to title seven of this article;

4. the store or its agent to maintain, for a minimum of three years, records describing the collection, transport and recycling of plastic carryout bags and film plastic collected by weight, provided however

that stores or its agents may weigh such bags, film plastic and any other in-store plastic recycling at a regional collection center. Such records shall be made available to the department upon request, to demonstrate compliance with this title; and

5. the operator of the store to (a) make reusable bags available to customers within the store for purchase, and (b) permit a reuseable bag to be used in lieu of a plastic carryout bag or paper bag.

§ 27-2707. Manufacturer responsibilities.

1. When the manufacturer accepts plastic carryout bags and film plastic for return, it or its agent shall maintain, for a minimum of three years, records describing the collection, transport and recycling of plastic carryout bags and film plastic collected by weight, provided that the manufacturer or its agents may weigh such bags, film plastic and any other plastic resins at a regional collection center. Such records shall be made available to the department upon request, to demonstrate compliance with this title.

2. Manufacturers of compostable plastic bags sold to stores in the state that are subject to the provisions of this title shall have printed on the bag, in a manner visible to the consumer, the words "COMPOSTABLE BAG -- DO NOT PLACE IN RECYCLING BIN". Provided however, such bags may be sold or distributed for one year from the effective date of this section to use the store's existing stock of compostable bags.

§ 27-2709. Department responsibility.

1. The department shall develop educational materials to encourage the reduction, reuse and recycling of plastic carryout bags and film plastic and shall make those materials available to stores required to comply with this article.

2. The department shall provide information regarding the availability of recycling facilities and companies that recycle plastic bags and film plastic, including the addresses and phone numbers of such facilities and companies to stores required to comply with this article.

§ 27-2711. Regulations.

The department is authorized to promulgate any rules and regulations necessary to implement the provisions of this title and shall promulgate, and update the most recent version of, rules and regulations pertaining to the definition of compostable as prescribed in American Society for Testing and Materials Standard D6400.

§ 27-2713. Preemption.

Jurisdiction in all matters pertaining to plastic bag and film plastic recycling is by this article vested exclusively in the state. Any provision of any local law or ordinance, or any rule or regulation promulgated thereto, governing the recycling of plastic bags and film plastic shall, upon the effective date of this title, be preempted. Provided however, nothing in this section shall preclude a person from coordinating for recycling or reuse the collection of plastic bags or film plastic.

*** TITLE 27**

DRUG MANAGEMENT AND DISPOSAL

Section 27-2701. Definition.

27-2703. Public information on the disposal of drugs.

* NB There are 2 Title 27's

*** § 27-2701. Definition.**

As used in this title, "drug" means any drug, as defined in

subdivision seven of section sixty-eight hundred two of the education law.

* NB There are 2 § 27-2701's

*** § 27-2703. Public information on the disposal of drugs.**

1. The department in consultation with the department of health, shall develop and implement a public information program on the proper disposal of drugs pursuant to this title. Such public information program shall include information on the proper storage and disposal of drugs, and on drug disposal sites.

2. The department, in consultation with the education department, shall establish a notice containing information on the proper storage and disposal of drugs, which shall be conspicuously displayed in every pharmacy registered pursuant to subdivision two of section sixty-eight hundred eight of the education law and in every other retail business authorized to sell drugs.

* NB There are 2 § 27-2703's

TITLE 28

BAG WASTE REDUCTION

Section 27-2801. Definitions.

27-2803. Plastic carryout bag ban.

27-2805. Paper carryout bag reduction fee.

27-2807. Violations.

27-2809. Preemption of local law.

§ 27-2801. Definitions.

As used in this title:

1. "Exempt bag" means a bag: (a) used solely to contain or wrap uncooked meat, fish, or poultry; (b) bags used by a customer solely to

package bulk items such as fruits, vegetables, grains, or candy; (c) bags used solely to contain food sliced or prepared to order; (d) bags used solely to contain a newspaper for delivery to a subscriber; (e) bags sold in bulk to a consumer at the point of sale; (f) trash bags; (g) food storage bags; (h) garment bags; (i) bags prepackaged for sale to a customer; (j) plastic carryout bags provided by a restaurant, tavern or similar food service establishment, as defined in the state sanitary code, to carryout or deliver food; or (k) bags provided by a pharmacy to carry prescription drugs.

2. "Plastic carryout bag" means any plastic bag, other than an exempt bag, that is provided to a customer by a person required to collect tax to be used by the customer to carry tangible personal property, regardless of whether such person required to collect tax sells any tangible personal property or service to the customer, and regardless of whether any tangible personal property or service sold is exempt from tax under article twenty-eight of the tax law.

3. "Paper carryout bag" means a paper bag, other than an exempt bag, that is provided to a customer by a person required to collect tax to be used by the customer to carry tangible personal property, regardless of whether such person required to collect tax sells any tangible personal property or service to the customer, and regardless of whether any tangible personal property or service sold is exempt from tax under article twenty-eight of the tax law.

4. "Reusable bag" means a bag: (a) made of cloth or other machine washable fabric that has handles; or (b) a durable bag with handles that is specifically designed and manufactured for multiple reuse.

5. "Person required to collect tax" means any vendor of tangible personal property subject to the tax imposed by subdivision (a) of section eleven hundred five of the tax law.

§ 27-2803. Plastic carryout bag ban.

1. No person required to collect tax shall distribute any plastic carryout bags to its customers unless such bags are exempt bags as defined in subdivision one of section 27-2801 of this title.

2. No person required to collect tax shall prevent a person from using a bag of any kind that they have brought for purposes of carrying goods.

3. Nothing in this section shall be deemed to exempt the provisions set forth in title 27 of this article relating to at store recycling.

§ 27-2805. Paper carryout bag reduction fee.

1. (a) Notwithstanding any other provision of law to the contrary, any city and any county, other than a county wholly within such a city, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing a paper carryout bag reduction fee within the territorial limits of such city or county, to take effect on or after March first, two thousand twenty. Notwithstanding the foregoing, if a county and a city wholly within such county both impose such fee, the fee imposed by such county shall not apply within the territorial limits of such city.

(b) Such paper carryout bag reduction fee, whether or not any tangible personal property is sold therewith, shall be imposed at a rate of five cents on each paper carryout bag provided by a person required to collect tax to a customer in this state; provided, however, that such paper carryout bag reduction fee shall not be imposed on paper carryout bags that are subject to a fee on the provision of such paper carryout bag pursuant to a local law or ordinance that was adopted prior to the effective date of this section. The paper carryout bag reduction fee must be reflected and made payable on the sales slip, invoice, receipt, or other statement of the price rendered to the customer.

(c) Such paper carryout bag reduction fee shall not constitute a receipt for the sale of tangible personal property subject to tax pursuant to article twenty-eight and pursuant to the authority of article twenty-nine of the tax law, and transfer of a bag to a customer by a person required to collect tax shall not constitute a retail sale.

(d) It shall be unlawful for a municipal corporation to adopt or amend a local law, ordinance or resolution requiring the imposition of any fee on the provision of a paper carryout bag except as expressly authorized by this section. Where a municipal corporation that adopted such a local law, ordinance or resolution prior to the effective date of this section is, or is located in, a county that has imposed a paper carryout bag reduction fee pursuant to this section, such municipal corporation shall be prohibited from requiring the imposition of a fee on any provision of paper carryout bags that occurs more than one year after such county paper carryout bag reduction fee takes effect.

2. Any such local law, ordinance or resolution adopted pursuant to this section shall state the amount of the paper carryout bag reduction fee and the date on which a person required to collect tax shall begin to add such paper carryout bag reduction fee to the sales slip, invoice, receipt, or other statement of the price rendered to its customers. No such local law, ordinance or resolution shall be effective unless a certified copy of such law, ordinance or resolution is mailed by registered or certified mail to the commissioner of taxation and finance in accordance with the provisions of subdivisions (d) and (e) of section twelve hundred ten of the tax law.

3. The paper carryout bag reduction fee imposed by this section shall not apply to any customer using the supplemental nutritional assistance program, special supplemental nutrition program for women, infants and children, or any successor programs used as full or partial payment for the items purchased.

4. The paper carryout bag reduction fee must be reported and paid to the commissioner of taxation and finance on a quarterly basis on or before the twentieth day of the month following each quarterly period ending on the last day of February, May, August and November, respectively. The payments must be accompanied by a return in the form and containing the information the commissioner of taxation and finance may prescribe.

5. Any sales slip, invoice, receipt, or other statement of price

furnished by a person required to collect tax to a customer shall separately state the paper carryout bag reduction fee and shall state the number of bags provided to the customer.

6. (a) Except as otherwise provided in this section, any paper carryout bag reduction fee imposed under the authority of this section shall be administered and collected by the commissioner of taxation and finance in a like manner as the taxes imposed by articles twenty-eight and twenty-nine of the tax law. All the provisions of articles twenty-eight and twenty-nine of the tax law, including the provisions relating to definitions, exemptions, returns, personal liability for the tax, collection of tax from the customer, payment of tax and the administration of the taxes imposed by such article, shall apply to the paper carryout bag reduction fee imposed under the authority of this section, with such modifications as may be necessary in order to adapt the language of those provisions to the paper carryout bag reduction fee imposed under the authority of this section. Those provisions shall apply with the same force and effect as if the language of those provisions had been set forth in full in this section, except to the extent that any of those provisions is either inconsistent with a provision of this section or is not relevant to the paper carryout bag reduction fee imposed under the authority of this section. For purposes of this section, any reference in this chapter to a tax or the taxes imposed by articles twenty-eight and twenty-nine of the tax law shall be deemed also to refer to the paper carryout bag reduction fee imposed under the authority of this section unless a different meaning is clearly required.

(b) Notwithstanding the provisions of paragraph (a) of this subdivision:

(1) the exemptions provided for in section eleven hundred sixteen of the tax law, other than the exemptions in paragraphs one, two and three of subdivision (a) of such section, shall not apply to the paper carryout bag reduction fees imposed under the authority of this section;

(2) the credit provided in subdivision (f) of section eleven hundred thirty-seven of the tax law shall not apply to this section.

(c) Notwithstanding the provisions of paragraph (a) of this subdivision or subdivision (a) of section eleven hundred forty-six of

the tax law, the commissioner of taxation and finance may, in his or her discretion, permit the commissioner or his or her authorized representative to inspect any return related to the paper carryout bag reduction fee filed under this section, or may furnish to the commissioner or his or her authorized representative any such return or supply him or her with information concerning an item contained in any such return, or disclosed by any investigation of a liability under this section.

7. All paper carryout bag reduction fee monies and any related penalties and interest remitted to the commissioner of taxation and finance under this section, except as hereinafter provided, shall be deposited daily with such responsible banks, banking houses, or trust companies as may be designated by the state comptroller. Of the revenues deposited, the comptroller shall retain in the comptroller's hands such amount as the commissioner of taxation and finance may determine to be necessary for refunds or reimbursements of the fees collected or received pursuant to this section, out of which the comptroller shall pay any refunds or reimbursements of such fees to which persons shall be entitled under the provisions of this section. The comptroller, after reserving such refund and reimbursement fund shall, on or before the twelfth day of each month, pay to the appropriate fiscal officers of the counties or cities imposing tax under subdivision one of this section an amount equal to forty percent of the paper carryout bag reduction fee monies and any related penalties and interest collected by the commissioner of taxation and finance in respect of each such county or city in the preceding calendar month to be used for the purpose of purchasing and distributing reusable bags, with priority given to low- and fixed-income communities. Provided further that at the end of each fiscal year, any funds which have not been used for the purpose defined in this section shall be returned to the comptroller and be deposited into the general fund to be used for the purpose of purchasing and distributing reusable bags with priority given to low- and fixed-income communities. Any remaining amount of paper carryout bag reduction fee monies and any related penalties and interest shall be deposited monthly into the environmental protection fund established pursuant to section ninety-two-s of the state finance law.

§ 27-2807. Violations.

1. Any person required to collect tax who violates any provision of section 27-2803 of this title shall receive a warning notice for the first such violation. A person required to collect tax shall be liable to the state of New York for a civil penalty of two hundred fifty dollars for the first violation after receiving a warning and five hundred dollars for any subsequent violation in the same calendar year. For purposes of this section, each commercial transaction shall constitute no more than one violation. A hearing or opportunity to be heard shall be provided prior to the assessment of any civil penalty.

2. The department, the department of agriculture and markets, and the attorney general are hereby authorized to enforce the provisions of this title, and all monies collected shall be deposited to the credit of the environmental protection fund established pursuant to section ninety-two-s of the state finance law.

§ 27-2809. Preemption of local law.

Jurisdiction in all matters pertaining to plastic carryout bags is vested exclusively in the state.

*** TITLE 29**

MERCURY THERMOSTAT COLLECTION ACT

Section 27-2901. Definitions.

27-2903. Mercury-containing thermostat collection.

27-2905. Thermostat wholesaler and retailer requirements.

27-2907. Department responsibilities.

27-2909. Disposal prohibition.

* NB Repealed January 1, 2027

*** § 27-2901. Definitions.**

1. "Collection program" means a system for the collection, transportation, recycling, and disposal of out-of-service mercury thermostats that is financed and managed or provided by a thermostat manufacturer individually or collectively with other thermostat manufacturers in accordance with this section.
2. "Mercury thermostat" means a product or device that uses a mercury switch to sense and control room temperature through communication with heating, ventilation, or air-conditioning equipment and includes thermostats used to sense and control room temperature in residential, commercial, industrial and other buildings but does not include a thermostat used to sense and control temperature as part of a manufacturing process.
3. "Out-of-service mercury thermostat" means a mercury thermostat that is removed, replaced or otherwise taken out of service.
4. "Qualified contractor" means a person engaged in the business of installation, service or removal of heating, ventilation, and air-conditioning components who employs seven or more service technicians or installers.
5. "Qualified local government authorities" means any municipal corporation or planning unit as defined in section 27-0107 of this article, or county departments of health.
6. "Thermostat manufacturer" means a person who owns or owned a name brand of one or more mercury thermostats sold in the state.
7. "Thermostat retailer" means a person who sells thermostats of any kind primarily to homeowners or other nonprofessionals through any sale or distribution mechanism including sales using the internet or catalogs.
8. "Thermostat wholesaler" means a person who is engaged in the

distribution and wholesale selling of heating, ventilation or air-conditioning components, including thermostats, to contractors, and whose total wholesale sales account for eighty percent or more of its total sales. A thermostat manufacturer is not, by virtue of manufacturing, a thermostat wholesaler.

* NB Repealed January 1, 2027

*** § 27-2903. Mercury-containing thermostat collection.**

1. Each thermostat manufacturer shall, individually or collectively, with other thermostat manufacturers, establish and maintain a program for the collection, transportation, recycling, disposal and proper management of out-of-service mercury thermostats in accordance with the provisions of this section.

2. Each thermostat manufacturer shall, individually or collectively with other thermostat manufacturers through a collection program, do the following:

(a) On and after July first, two thousand fourteen, compile a list of thermostat wholesalers in the state and offer each thermostat wholesaler containers for the collection of out-of-service mercury thermostats.

(b) On and after July first, two thousand fourteen, make collection containers available to all qualified contractors, thermostat wholesalers, thermostat retailers, and qualified local government authorities that request a container. Each thermostat manufacturer shall with each container include information regarding the proper management of out-of-service mercury thermostats.

(c) Establish a system to collect, transport, recycle, dispose and properly manage out-of-service mercury thermostats from all collection sites.

(d) Not include any fees or other charges to consumers or persons participating in the program. Each thermostat wholesaler, qualified contractor, qualified local government authority, or thermostat retailer that is provided with one or more collection containers may be charged a fee not to exceed twenty-six dollars to replace any collection container that is misplaced, stolen or otherwise lost.

(e) Beginning July first, two thousand fourteen, conduct education and outreach efforts, including, but not limited to the following:

(i) establish and maintain a public website for the dissemination of educational materials to promote the collection of out-of-service mercury thermostats. This website shall include templates of the educational materials on the internet website in a form and format that can be easily downloaded and printed. The link to this website shall be provided to the department;

(ii) contact thermostat wholesalers at least once a year to encourage their support and participation in educating customers on the importance of statutory requirements for the collection and proper management of out-of-service mercury thermostats;

(iii) create and maintain a web-based program that allows contractors and consumers to identify collection sites for out-of-service mercury thermostats in the state and provide a list of collection sites to the department; and

(iv) develop informational articles, press releases, and news stories pertaining to the importance of and opportunities for collecting and recycling out-of-service mercury thermostats and distribute those materials to trade publications, local media, and stakeholder groups.

(f) On or before July first, two thousand fourteen, develop and update as necessary educational and other outreach materials for distribution to contractors, contractor associations and consumers. These materials shall be made available for use by participating thermostat wholesalers, thermostat retailers, contractors, and qualified government authorities. The materials shall include, but not be limited to, the following:

(i) signage, such as posters and cling signage, that can be prominently displayed to promote the collection of out-of-service mercury thermostats to contractors and consumers; and

(ii) written materials or templates of materials for reproduction by thermostat wholesalers and thermostat retailers to be provided to customers at the time of purchase or delivery of a thermostat. The materials shall include, but not be limited to, information on the importance of properly managing out-of-service mercury thermostats and opportunities for the collection of these thermostats.

(g) Provide an opportunity for the department to review and offer feedback and suggestions on the collection program.

3. The collection programs established by thermostat manufacturers under this section shall be designed to achieve collectively the following statewide goals:

(a) For calendar year two thousand fifteen, the collection of no less than fifteen thousand five hundred out-of-service mercury thermostats;

(b) For calendar years two thousand sixteen through two thousand twenty-three, the collection goals shall be established by the department. The department shall establish collection goals no later than October first, two thousand fifteen. The collection goals established by the department shall achieve the maximum feasible number of out-of-service mercury thermostats in the state. In developing the collection goals, the department shall take into account, at a minimum, (i) the effectiveness of collection programs for out-of-service mercury thermostats in the state and other states, including education and outreach efforts, (ii) collection requirements in other states, including those states with the highest collection goals, (iii) any reports or studies on the number of out-of-service mercury thermostats that are available for collection in this state, other states, and nationally, and (iv) other relevant factors. Prior to establishing the collection goals, the department shall consult with stakeholder groups that include, at a minimum, representatives of thermostat manufacturers, environmental groups, municipal recyclers, thermostat wholesalers, qualified contractors, and thermostat retailers.

(c) Thermostat manufacturers shall implement any collection program revisions approved by the department within ninety days.

4. If the collection programs do not collectively achieve the collection goals provided for in subdivision three of this section for calendar year two thousand fifteen or any year thereafter the department, after conducting stakeholder consultations, may require modifications to one or more collection programs that the department determines are necessary to achieve the collection goals. Modifications required by the department may include improvements to outreach and education conducted under the collection program, expansion of the number and location of collection sites established under the program, modification of the roles of participants, and a five dollar financial

incentive in the form of either cash or coupon offered by the manufacturer to contractors and consumers for each out-of-service mercury thermostat returned to a collection site.

5. No later than April first, two thousand fifteen, and no later than April first of each year thereafter, each thermostat manufacturer shall, individually or collectively with other thermostat manufacturers, submit an annual report on its collection program to the department covering the one-year period ending December thirty-first of the previous year. Each report shall be posted on the manufacturer's or program operator's respective internet website. The annual report shall include the following:

- (a) the number of out-of-service mercury thermostats collected and managed under this section during the previous calendar year;

- (b) the estimated total amount of mercury contained in the out-of-service mercury thermostats collected under this section during the previous calendar year;

- (c) a list of all thermostat wholesalers, contractors, qualified local government authorities, and thermostat retailers participating in the program as mercury thermostat collection sites and the number of out-of-service mercury thermostats returned by each;

- (d) an accounting of the program's administrative costs;

- (e) a description of outreach strategies employed under paragraph (e) of subdivision two of this section;

- (f) examples of outreach and educational materials used under paragraph (e) of subdivision two of this section;

- (g) the internet website address of addresses where the annual report may be viewed online;

- (h) a description of how the out-of-service mercury thermostats were managed;

- (i) any modifications that the thermostat manufacturer is planning to make in its collection program; and

- (j) the identification of a collection program contact and the business phone number, mailing address, and e-mail address for the contact.

6. All contractors, thermostat wholesalers, thermostat manufacturers,

and thermostat retailers participating in the program shall handle and manage the out-of-service mercury thermostats in a manner that is consistent with the requirements for the disposal of hazardous waste.

7. On and after July first, two thousand fourteen, no thermostat wholesaler shall sell, offer to sell, distribute, or offer to distribute thermostats unless the wholesaler participates as a collection site for out-of-service mercury thermostats or requests and receives a waiver from the department following a demonstration that such participation would pose an undue burden.

* NB Repealed January 1, 2027

*** § 27-2905. Thermostat wholesaler and retailer requirements.**

No thermostat wholesaler or thermostat retailer shall sell, offer for sale or distribute any thermostat for final sale unless the manufacturer of such thermostat is listed on the department's website, in accordance with the provisions of this title.

* NB Repealed January 1, 2027

*** § 27-2907. Department responsibilities.**

1. No later than June first, two thousand fifteen, the department shall maintain on its website information regarding the collection and proper management of out-of-service mercury thermostats in the state. The information shall include the following:

(a) a description of the collection programs established under this section;

(b) a report on the progress towards achieving the statewide collection goals set forth in this title; and

(c) a list of all thermostat wholesalers, contractors, qualified local government authorities, and thermostat retailers participating in the program as collection sites.

2. No later than November first, two thousand eighteen, the department

shall submit a written report to the governor and the legislature regarding the effectiveness of the collection programs established under this section, information on the number of out-of-service thermostats collected, how the out-of-service thermostats were managed, and an estimate of the number of thermostats that are available for collection. The department shall use this information to recommend whether the provisions of this section should be extended, along with any other statutory changes. In preparing the report, the department shall consult with mercury thermostat manufacturers, environmental organizations, municipal recyclers, and other interest groups.

* NB Repealed January 1, 2027

*** § 27-2909. Disposal prohibition.**

1. No transporter shall knowingly commingle mercury-added thermostats with solid waste or recyclable materials.

2. No transporter shall knowingly deliver mercury-added thermostats or knowingly cause such materials to be delivered to:

(a) an incinerator;

(b) a landfill;

(c) a transfer station; or

(d) anyone who the transporter knows or should know will either commingle such materials with other solid waste or deliver such materials to an incinerator or a landfill for disposal.

3. No operator of an incinerator or a landfill shall knowingly accept mercury-added thermostats for disposal.

4. No operator of a transfer station shall knowingly commingle mercury-added thermostats with other solid waste or cause such materials to be transferred to an incinerator or landfill for disposal.

5. Each landfill and transfer station shall post, in a conspicuous location at the facility, a sign stating that mercury-added thermostats are not accepted at the facility.

* NB Repealed January 1, 2027

TITLE 30

**EXPANDED POLYSTYRENE FOAM CONTAINERS AND POLYSTYRENE LOOSE FILL
PACKAGING BAN**

Section 27-3001. Definitions.

27-3003. Expanded polystyrene foam containers and polystyrene
loose fill packaging ban.

27-3005. Exemptions and waivers.

27-3007. Preemption.

27-3009. Severability.

§ 27-3001. Definitions.

For the purposes of this title, the following terms shall have the following meanings:

1. "Covered food service provider" means a person engaged in the business of selling or distributing prepared food or beverages for on-premise or off-premise consumption including but not limited to: (a) food service establishments, caterers, temporary food service establishments, mobile food service establishments, and pushcarts as defined in the New York State Sanitary Code; (b) retail food stores as defined in article 28 of the agriculture and markets law; (c) delicatessens; (d) grocery stores; (e) restaurants; (f) cafeterias; (g) coffee shops; (h) hospitals, adult care facilities, and nursing homes; and (i) elementary and secondary schools, colleges, and universities.

2. "Disposable food service container" means a bowl, carton, clamshell, cup, lid, plate, tray, or any other product that is designed or used for the temporary storage or transport of a prepared food or beverage including a container generally recognized by the public as being designed for single use.

3. "Expanded polystyrene foam" means expanded foam thermoplastics

utilizing a styrene monomer and processed by any number of techniques. Such term shall not include rigid polystyrene.

4. "Manufacturer" means every person, firm or corporation that produces or imports polystyrene loose fill packaging or expanded polystyrene containers that are not wholly encapsulated or encased within a more durable container and are designed or intended to be used for cold storage that is sold, offered for sale, or distributed in the state.

5. "Polystyrene loose fill packaging" means a void-filling packaging product made of expanded polystyrene foam that is used as a packaging fill, commonly referred to as packing peanuts.

6. "Prepared food" means food or beverages that are cooked, chopped, sliced, mixed, brewed, frozen, heated, squeezed, combined or otherwise prepared on the premises of a covered food service provider for immediate consumption and require no further preparation to be consumed. Prepared food includes but is not limited to ready to eat takeout foods and beverages.

7. "Rigid polystyrene" means plastic packaging made from rigid, polystyrene resin that has not been expanded, extruded, or foamed.

8. "Store" means a retail or wholesale establishment other than a covered food service provider.

§ 27-3003. Expanded polystyrene foam containers and polystyrene loose fill packaging ban.

1. (a) Beginning January first, two thousand twenty-two, no covered food service provider or store shall sell, offer for sale, or distribute disposable food service containers that contain expanded polystyrene foam in the state.

(b) Beginning January first, two thousand twenty-two, no manufacturer or store shall sell, offer for sale, or distribute polystyrene loose

fill packaging in the state.

(c) Beginning January first, two thousand twenty-six, no covered food service provider, manufacturer or store shall sell, offer for sale, or distribute expanded polystyrene containers that are not wholly encapsulated or encased within a more durable container and are designed or intended to be used for cold storage, including but not limited to coolers and ice chests.

2. The department is authorized to promulgate any other such rules and regulations as it shall deem necessary to implement the provisions of this title including criteria related to what constitutes comparable costs pursuant to subdivision two of section 27-3005 of this title.

§ 27-3005. Exemptions and waivers.

1. Notwithstanding any inconsistent provision of law, this title shall not apply to:

(a) Prepackaged food filled or sealed prior to receipt at a covered food service provider; or

(b) Raw meat, pork, seafood, poultry or fish sold for the purpose of cooking or preparing off-premises by the customer; or

* (c) Expanded polystyrene containers that are not wholly encapsulated or encased within a more durable container and are used for cold storage for:

(i) drugs and medical devices as defined in the federal food, drug, and cosmetic act (21 U.S.C. Sec. 301 et seq.);

(ii) animal biologics, including vaccines, bacterins, antisera, diagnostic kits, and other products of biological origin, and other packaging materials regulated by the United States department of agriculture under the virus, serum, toxin act (21 U.S.C. 151-159), including vaccines;

(iii) tissues as defined in section forty-three hundred sixty of the public health law or biological products as defined in the federal Public Health Service Act (42 U.S.C. Sec 262);

(iv) temperature-sensitive samples, cultures or specialized laboratory reagents requiring cold storage during shipment, either delivered to or

received from:

(A) the department of agriculture and market's food laboratory pursuant to its duties under the agriculture and markets law; or

(B) laboratories for testing to help ensure human health, animal health, and/or food safety pursuant to statutory or regulatory requirements of, or standards established under, programs administered by the department, the department of health, the department of agriculture and markets, the United States department of agriculture and/or the United States food and drug administration; or

(v) microbial cultures used for dairy, meat, or fermented beverage manufacturing and requiring cold storage during shipment or delivery to dairy or meat processing plants or breweries and wineries as defined in section three of the alcoholic beverage control law.

* NB Effective until January 1, 2030

* (c) Expanded polystyrene containers that are not wholly encapsulated or encased within a more durable container and are used for cold storage for:

(i) drugs and medical devices as defined in the federal food, drug, and cosmetic act (21 U.S.C. Sec. 301 et seq.);

(ii) animal biologics, including vaccines, bacterins, antisera, diagnostic kits, and other products of biological origin, and other packaging materials regulated by the United States department of agriculture under the virus, serum, toxin act (21 U.S.C. 151-159), including vaccines;

(iii) tissues as defined in section forty-three hundred sixty of the public health law or biological products as defined in the federal Public Health Service Act (42 U.S.C. Sec 262); or

(iv) temperature-sensitive samples, cultures or specialized laboratory reagents requiring cold storage during shipment, either delivered to or received from:

(A) the department of agriculture and market's food laboratory pursuant to its duties under the agriculture and markets law; or

(B) laboratories for testing to help ensure human health, animal health, and/or food safety pursuant to statutory or regulatory requirements of, or standards established under, programs administered by the department, the department of health, the department of agriculture and markets, the United States department of agriculture

and/or the United States food and drug administration.

* NB Effective January 1, 2030 until January 1, 2035

* (c) Expanded polystyrene containers that are not wholly encapsulated or encased within a more durable container and are used for cold storage for:

(i) drugs and medical devices as defined in the federal food, drug, and cosmetic act (21 U.S.C. Sec. 301 et seq.);

(ii) animal biologics, including vaccines, bacterins, antisera, diagnostic kits, and other products of biological origin, and other packaging materials regulated by the United States department of agriculture under the virus, serum, toxin act (21 U.S.C. 151-159), including vaccines; or

(iii) tissues as defined in section forty-three hundred sixty of the public health law or biological products as defined in the federal Public Health Service Act (42 U.S.C. Sec 262).

* NB Effective January 1, 2035

2. Any facility, regardless of its income, including soup kitchens, food pantries and places of worship, operated by a not-for-profit corporation or by a federal, state, or local government agency that provides food to needy individuals at no or nominal charge, and any covered food service provider having an annual gross income under five hundred thousand dollars per location as stated on the income tax filing for the most recent tax year and that: (a) does not operate ten or more locations within the state; and (b) is not operated pursuant to a franchise agreement may request from the department, in a manner and form established by the department, a financial hardship waiver of the requirements of section 27-3003 of this title. Such waiver request may apply to one or more disposable food service containers sold, offered for sale, or distributed by any such covered food service provider. The department shall grant a waiver if such covered food service provider demonstrates that there is no alternative product of comparable cost that is not composed of expanded polystyrene foam and that the purchase or use of an alternative product that is not composed of expanded polystyrene foam would create an undue financial hardship. Such financial hardship waiver shall be valid for twelve months and shall be renewable upon application to the department.

§ 27-3007. Preemption.

1. Except as provided in subdivisions two and three of this section, this title shall supersede and preempt all local laws, ordinances or regulations governing the sale, offer for sale, or distribution of disposable food service containers or containers designed or intended to be used for cold storage containing expanded polystyrene foam and polystyrene loose fill packaging.

2. Any local law, ordinance or regulation of any county shall not be preempted if such local law, ordinance or regulation provides environmental protection equal to or greater than the provisions of this title or any rules or regulations promulgated hereunder, and such county files with the department a written declaration of its intent to administer and enforce such local law, ordinance or regulation.

3. This title shall not apply in a city with a population of one million or more which has a local law, ordinance or regulation in place which restricts the sale, offer for sale, or distribution of expanded polystyrene containers and polystyrene loose fill packaging.

§ 27-3009. Severability.

If any clause, sentence, paragraph, section or part of this title shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

TITLE 31

CONSTRUCTION AND DEMOLITION DEBRIS

Section 27-3101. Waste tracking documents.

§ 27-3101. Waste tracking documents.

1. All generators in a city with a population of one million or more that generate construction and demolition debris, as defined in section 71-2702 of this chapter, shall provide waste transporters with a waste tracking document for each construction and demolition debris shipment, in a form prescribed or approved by the department, specifying the quantity and type of construction and demolition debris, and signed and dated by an authorized representative of the generator and with a certification in a form prescribed by the department, which shall contain a certification by the generator that the information therein is true, accurate and complete.

2. All transporters of construction and demolition debris generated in a city with a population of one million or more shall:

(a) not accept a shipment of debris that does not match the quantity or type listed on the debris tracking document;

(b) have the debris tracking document signed by the receiving location or facility upon delivery of the solid debris and provide a copy of the tracking document to the receiving location or facility.

3. Failure to maintain such tracking documents is a class A misdemeanor.

TITLE 32

SMALL PLASTIC BOTTLE HOSPITALITY PERSONAL CARE PRODUCT RESTRICTIONS

Section 27-3201. Definitions.

27-3203. Small plastic bottle hospitality personal care products.

27-3205. Violations.

27-3207. Preemption of local law.

§ 27-3201. Definitions.

As used in this title:

1. "Hotel" means a building or portion of a building which is regularly used and kept open as such for the lodging of guests. Hotel includes an apartment hotel, a motel or a boarding house, whether or not meals are served.

2. "Hospitality personal care product" means a product provided by a hotel and intended to be applied to or used on the human body or any part thereof for cleansing, conditioning, or moisturizing. Hospitality personal care product includes, but is not limited to, shampoo, conditioner, lotion, and liquid soap.

3. "Small plastic bottle" means a plastic container with less than a twelve ounce capacity that is intended to be non-reusable by the end user.

§ 27-3203. Small plastic bottle hospitality personal care products.

Effective January first, two thousand twenty-five for all hotels with fifty rooms or more and January first, two thousand twenty-six for all hotels with less than fifty rooms, a hotel shall not provide any small plastic bottle containing a hospitality personal care product.

§ 27-3205. Violations.

1. A hotel that violates a provision of this title shall receive a warning notice for the first such violation, detailing the hotel's requirement to correct the violation within thirty days from the date the notice is sent. A hotel shall be liable to the state for a civil penalty of two hundred fifty dollars for the first violation after receiving a warning and failing to correct the violation within thirty days and five hundred dollars for any subsequent violation in the same calendar year. A hearing or opportunity to be heard shall be provided

prior to the assessment of any civil penalty.

2. The department is hereby authorized to enforce the provisions of this title and all monies collected shall be deposited to the credit of the environmental protection fund established pursuant to section ninety-two-s of the state finance law.

§ 27-3207. Preemption of local law.

Jurisdiction in all matters pertaining to restrictions on the provision of small plastic bottle hospitality personal care products is vested exclusively in the state.

TITLE 33

EXTENDED PRODUCER RESPONSIBILITY FOR CARPET

Section 27-3301. Definitions.

27-3303. Producer plan.

27-3305. Producer responsibilities.

27-3307. Retailer requirements.

27-3309. Department responsibilities.

27-3311. Carpet stewardship advisory board.

27-3313. Labeling and design requirements.

27-3315. Post-consumer content requirements.

27-3317. Penalties.

27-3319. Limits on liability for antitrust, restraint of trade,
or unfair trade practices.

27-3321. Rules and regulations.

§ 27-3301. Definitions.

For the purposes of this title, the following terms shall have the following meanings:

1. "Brand" means a name, symbol, word, or mark that attributes the

product to the owner or licensee of the brand as the producer.

2. "Carpet" means a manufactured article that is (a) used by a consumer, (b) affixed or placed on the floor or building walking surface as a decorative or functional building interior or exterior feature, and (c) primarily constructed of a top surface of synthetic or natural face fibers or yarns or tufts attached to a backing system made of synthetic or natural materials. "Carpet" includes, but is not limited to, a commercial or residential broadloom carpet, modular carpet tiles, artificial turf, a pad or underlayment used in conjunction with a carpet. "Carpet" does not include handmade rugs, area rugs, or mats.

3. "Closed loop recycling" means recycling in which materials that are reclaimed are returned to the original process or processes in which they were generated and they are reused in the production process.

3-a. "Carpet collection program" or "program" means a program financed and implemented by producers, either individually, or through a representative organization, that provides for, but is not limited to, the collection, transportation, reuse, recycling, proper end-of-life management, or an appropriate combination thereof, of discarded carpet.

4. "Collection site" means a permanent location in the state at which discarded carpet may be returned by a consumer. Collection sites shall accept all types of carpet as defined by this title regardless of brand.

5. "Consumer" means a person located in the state who purchases, owns, leases, or uses carpet, including but not limited to an individual, a business, corporation, limited partnership, not-for-profit corporation, the state, a public corporation, public school, school district, private or parochial school, or board of cooperative educational services or governmental entity.

6. "Discarded carpet" means carpet that a consumer has used and disposed of in the state and is no longer used for its manufactured purpose.

7. "Energy recovery" means the process by which all or a portion of solid waste materials are processed or combusted in order to utilize the heat content or other forms of energy derived from such solid waste materials.

8. "Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS substances" means a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.

9. "Producer" means any person who manufactures carpet that is sold, offered for sale, or distributed in the state under the manufacturer's own name or brand. "Producer" includes:

(a) the owner of a trademark or brand under which carpet is sold, offered for sale, or distributed in this state, whether or not such trademark or brand is registered in the state; and

(b) any person who imports a carpet into the United States that is sold or offered for sale in the state and that is manufactured by a person who does not have a presence in the United States.

10. "Recycling" means to separate, dismantle or process the materials, components or commodities contained in discarded carpet for the purpose of preparing the materials, components, or commodities for use or reuse in new products or components. "Recycling" does not include: (a) energy recovery or energy generation by any means, including but not limited to, combustion, incineration, pyrolysis, gasification, solvolysis, waste to fuel or any chemical conversion process; or (b) landfill disposal of discarded carpet or discarded product component materials.

11. "Recycling rate" means the percentage of discarded carpet that is managed through recycling or reuse, as defined by this title, and is computed by dividing the amount of recycled output derived from collected carpet, plus any pounds sent for reuse by the estimated total amount of discarded carpet generated during a program year.

12. "Representative organization" means a not-for-profit organization established by a producer or group of producers to implement the carpet collection program.

13. "Retailer" means any person who sells or offers for sale carpet to a consumer in the state.

14. "Reuse" means the return of a product into the economic stream for use in the same kind of application as the product was originally intended to be used, without a change in the product's identity.

15. "Sell" or "sale" means any transfer for consideration of title or the right to use, from a manufacturer or retailer to a person, including, but not limited to, transactions conducted through retail sales outlets, catalogs, mail, the telephone, the internet, or any electronic means; this does not include samples, donations, and reuse.

§ 27-3303. Producer plan.

1. No later than December thirty-first, two thousand twenty-five, a producer, either individually or cooperatively with one or more producers, or a representative organization shall submit to the department for the department's approval a plan for the establishment of a carpet collection program that meets the collection requirements described in this section.

2. A producer may satisfy the carpet collection program requirement of this section by agreeing to participate collectively with other producers. Any such collective carpet collection program shall notify the department.

3. A producer or representative organization shall update the plan, as needed, when there are changes proposed to the current program. A new plan or amendment will be required to be submitted to the department for approval when:

- (a) there is a revision of the program's goals; or
- (b) every three years from the date of approval of a previous plan.

4. The plan submitted by the producer or representative organization

to the department under this section shall, at a minimum:

(a) provide a list of each participating producer and brands covered by the program;

(b) provide information on the products covered by the program;

(c) describe how the producer or representative organization will collect, transport, recycle, and process carpet;

(d) describe how the program will provide for collection of carpet in the state, free of cost and in a manner convenient to consumers and carpet installers, including how the program will achieve, at a minimum, a convenience standard which ensures that all counties of the state and all municipalities which have a population of ten thousand or greater have at least one permanent collection site and one additional permanent collection site for every thirty thousand people located in those areas, that accepts carpet from consumers during normal business hours; however, with respect to a city having a population of one million or more, after consultation with the department of sanitation of such city, the department may otherwise establish an alternative convenience standard. The producer or representative organization may coordinate the program with existing municipal waste collection infrastructure as is mutually agreeable. Convenience standards shall be evaluated by the department periodically and the department may require additional collection locations to ensure adequate consumer convenience;

(e) describe in detail education and outreach efforts to inform consumers, carpet installers and others engaged in the management of discarded carpet about the program including, at a minimum, an internet website and a toll-free telephone number and written information included at the time of sale of carpet that provides sufficient information to allow a consumer to learn how to return such carpet for disposal, recycling or reuse;

(f) describe the methods to be used to reuse or recycle discarded carpet;

(g) describe the methods to be used to manage or dispose of discarded carpet that cannot be recycled or reused;

(h) describe how the program will meet annual performance goals, as determined by the department, provided that at a minimum, the program shall achieve the following recycling rates:

(i) a thirty percent recycling rate for carpets of which ten percent

shall be closed-loop recycling by five years after the plan is approved by the department pursuant to section 27-3309 of this title;

(ii) a fifty percent recycling rate for carpets of which twenty percent shall be closed-loop recycling by ten years after the plan is approved by the department pursuant to section 27-3309 of this title; and

(iii) a seventy-five percent recycling rate for carpets, of which forty percent shall be closed-loop recycling by fifteen years after the plan is approved by the department pursuant to section 27-3309 of this title;

(i) describe what, if any, incentives will be used to encourage retailer participation;

(j) describe the outreach and education methods that will be used to encourage municipal landfill and transfer station participation;

(k) describe the sources of data and methodology for estimating the amount of carpet discarded in the state annually; and

(l) any other information as specified by the department.

§ 27-3305. Producer responsibilities.

1. Beginning not later than July first, two thousand twenty-six, the producer or representative organization shall implement the carpet collection program utilizing collection sites established pursuant to paragraph (d) of subdivision four of section 27-3303 of this title.

2. A producer shall not sell, or offer for sale, carpet to any person in the state unless the producer is implementing or participating under an approved plan.

3. The program shall be free to the consumer, convenient and adequate to serve the needs of consumers in all areas of the state on an ongoing basis.

4. A producer or representative organization shall maintain records demonstrating compliance with the provisions of this title and make them available for audit and inspection by the department for a period of

three years. The department shall make such records available to the public upon request in accordance with the provisions of the state freedom of information law and the regulations promulgated thereunder. Record holders shall submit the records required to comply with the request within sixty working days of written notification by the department of receipt of the request.

5. A producer or representative organization shall be responsible for all costs associated with the implementation of the carpet collection program, including but not limited to the cost of collection. A producer, producers or representative organization shall pay costs incurred by the department in the administration and enforcement of this title. Exclusive of fines and penalties, the department shall only be reimbursed its actual cost of administration and enforcement.

6. Any person who becomes a producer on or after December thirty-first, two thousand twenty-five shall submit a plan to the department, or notify the department that it has joined an existing plan, prior to selling or offering for sale in the state any carpet, and shall comply with the requirements of this title.

7. On or before July first, two thousand twenty-seven, and annually thereafter, a producer or representative organization shall submit a report to the department that includes, for the previous program year, a description of the program, including, but not limited to, the following:

- (a) a detailed description of the methods used to collect, transport, and process carpet in the state, including detailing collection methods made available to consumers and an evaluation of the program's collection convenience;

- (b) identification of all collection sites in the state;

- (c) the weight of all of the producer's carpet collected in the state by method of disposition, including reuse, recycling and other methods of processing or disposal;

- (d) an evaluation of whether the performance goals and recycling rates have been achieved;

- (e) the total cost of implementing the program;

(f) samples of all educational materials provided to consumers and a detailed list of efforts undertaken and an evaluation of the methods used to disseminate such materials including recommendations, if any, for how the educational component of the program can be improved; and

(g) any other information required by the department.

8. On or before January first of each program year following implementation of the plan pursuant to section 27-3303 of this title, each producer, group of producers or representative organization shall submit a report to the department that assesses compliance with performance goals and describes any modifications necessary to achieve such goals.

§ 27-3307. Retailer requirements.

1. Beginning July first, two thousand twenty-six, no retailer may sell or offer for sale carpet in the state unless the producer of such carpet is participating in a carpet collection program. A retailer shall be in compliance with this section if, on the date the carpet was offered for sale, the producer is listed on the department's website as implementing or participating in an approved program or if the carpet brand is listed on the department's website as being included in the program.

2. Any retailer may participate, on a voluntary basis, as a designated collection site pursuant to a carpet collection program and in accordance with all applicable laws and regulations.

§ 27-3309. Department responsibilities.

1. The department shall (a) maintain a list of producers who are implementing or participating pursuant to section 27-3303 of this title, (b) maintain a list of each such producer's brands, and (c) post such lists on the department's website.

2. Beginning July first, two thousand twenty-six, the department shall

post on its website the location of all collection sites identified to the department by the producer in its plans and annual reports.

3. The department shall post on its website each producer plan approved by the department.

4. Within ninety days after receipt of a proposed plan or plan amendment, the department shall approve or reject the plan or the plan amendment. If the plan or plan amendment is approved, the department shall notify the producer or representative organization in writing. If the department rejects the plan or plan amendment, the department shall notify the producer or representative organization in writing stating the reason for rejecting the plan or plan amendment. A producer or representative organization whose plan is rejected shall submit a revised plan to the department within thirty days of receiving a notice of rejection. If the department rejects the subsequent proposal, the producer or producers at issue shall be out of compliance and subject to enforcement provisions.

5. The department shall submit a report regarding the implementation of this title in this state to the governor and legislature by April first, two thousand twenty-seven and every two years thereafter. The report shall include, at a minimum, an evaluation of:

- (a) the stream of carpet in the state;
- (b) disposal, recycling and reuse rates in the state for carpet;
- (c) a discussion of compliance and enforcement related to the requirements of this title; and
- (d) recommendations for any changes to this title.

6. Starting four years after the plan is approved by the department pursuant to this section, the department shall impose a penalty of twenty-five cents per pound to be assessed on the producer or representative organization for the number of additional pounds of carpet that would have needed to be recycled through the program to achieve the performance goals specified in the approved stewardship plan. All penalties collected pursuant to this section shall be paid over to the commissioner for deposit to the environmental protection

fund established pursuant to section ninety-two-s of the state finance law.

§ 27-3311. Carpet stewardship advisory board.

1. There is hereby established within the department the carpet stewardship advisory board to make recommendations to the commissioner regarding producer plans required by this title.

2. The board shall be composed of thirteen voting members. Such members shall include:

- (a) one representative of carpet producers;
- (b) two representatives of carpet retailers;
- (c) one representative of carpet recyclers;
- (d) two representatives of carpet collectors;
- (e) one representative of a company that utilizes discarded carpet to manufacture a new product;
- (f) one representative of a carpet installer association;
- (g) one representative from a statewide environmental organization;
- (h) one representative from a statewide waste disposal association;
- (i) one representative from the New York product stewardship council;
- (j) one representative from a consumer organization; and
- (k) one representative from a statewide recycling organization.

3. The members shall be appointed as follows:

- (a) two members to be appointed by the temporary president of the senate;
 - (b) two members to be appointed by the speaker of the assembly;
 - (c) one member to be appointed by the minority leader of the senate;
 - (d) one member to be appointed by the minority leader of the assembly;
- and
- (e) seven members to be appointed by the executive.

4. Such appointments shall be made no later than the first day of January following the date on which this title takes effect. The members shall designate a chair from among the members by majority vote. Board

members shall receive no compensation but shall be entitled to their necessary and actual expenses incurred in the performance of their board duties.

5. The board shall meet at least biannually by call of the chair.

§ 27-3313. Labeling and design requirements.

1. On and after one year after the plan is approved by the department pursuant to section 27-3309 of this title, carpet sold or offered for sale in the state shall be accompanied by the following identifying information:

- (a) Name of the producer and contact information; and
- (b) Carpet material, composition, and type of construction.

2. On and after December thirty-first, two thousand twenty-six, no carpet sold or offered for sale in the state shall contain or be treated with PFAS substances for any purpose.

§ 27-3315. Post-consumer content requirements.

All carpet sold in the state shall be manufactured with the following minimum amounts from post-consumer sources:

1. within one year after the plan is approved by the department pursuant to section 27-3309 of this title, a minimum of ten percent post-consumer content;

2. within four years thereafter, a minimum of twenty percent post-consumer content; and

3. five years thereafter, a minimum of thirty percent post-consumer content.

§ 27-3317. Penalties.

Any producer, representative organization, or retailer who violates any provision of or fails to perform any duty imposed pursuant to this title shall be liable for a civil penalty not to exceed five hundred dollars for each violation and an additional penalty of not more than five hundred dollars for each day during which such violation continues. Civil penalties shall be assessed by the department after a hearing or opportunity to be heard pursuant to the provisions of section 71-1709 of this chapter.

§ 27-3319. Limits on liability for antitrust, restraint of trade, or unfair trade practices.

1. A producer, representative organization, or retailer shall not be liable for any claim of a violation of antitrust, restraint of trade, or unfair trade practice laws arising from the performance of an action required to be undertaken by this title or which is necessary to implement or participate under a producer plan approved by the department, solely to increase the collection and recycling of carpet, which affects the types and quantities being collected and recycled or the cost and structure of such collection program that the producer, representative organization, or retailer is participating in pursuant to this title.

2. Provided, however, subdivision one of this section shall not apply to any agreement establishing or affecting the price of carpet, except, as necessary, to fulfill producer responsibility under subdivision five of section 27-3305 of this title, the output or production of carpet, or restricting the geographic area or customers to which carpet will be sold.

§ 27-3321. Rules and regulations.

The department is authorized to promulgate any rules and regulations

necessary to implement this title.

ARTICLE 28

POLLUTION PREVENTION

Section 28-0101. Declaration of policy.

28-0103. Declaration of purpose.

28-0105. Definitions.

28-0107. Powers and duties of the department.

28-0109. Small business pollution prevention and environmental compliance assistance program.

28-0111. Pollution prevention and environmental compliance coordinating council.

28-0112. Pollution prevention institute program.

28-0113. Pollution prevention program evaluation.

§ 28-0101. Declaration of policy.

It is declared to be the policy of the state of New York to promote affordable and cost effective methods to reduce energy and resource consumption and reduce or eliminate the use of hazardous substances and the generation of such substances, pollution or waste at the source in order to conserve, improve and protect New York's environment and natural resources; enhance the health, safety and welfare of its citizens; and increase the economic competitiveness of New York businesses.

§ 28-0103. Declaration of purpose.

It is the purpose of this article to:

1. promote pollution prevention as a means for preventing the risks associated with the use and production of hazardous substances, including risks to public health and the environment;

2. promote pollution prevention as a means for reducing energy and resource consumption, and reducing or eliminating the generation of hazardous substances, pollution and waste;

3. promote implementation of affordable and cost effective methods of achieving pollution prevention as means of sustaining and safeguarding the competitive advantage of New York businesses, large and small, and advancing innovation in the reduction of energy and resource consumption and the reduction or elimination of hazardous substances, pollution and waste;

4. promote voluntary implementation of pollution prevention as a means for meeting the requirements of state or federal environmental laws or regulations; and

5. promote coordination and cooperation between all federal, state and local agencies and private organizations administering programs related to pollution prevention, energy consumption, resource consumption, the use and generation of hazardous substances, or the generation of waste or pollution.

§ 28-0105. Definitions.

As used in this article, the following words and phrases shall mean:

1. "Hazardous substance" shall mean any substance listed as a substance hazardous to public health, safety or the environment in regulations promulgated pursuant to article 37 of this chapter.

2. "Local agency" shall mean any local agency, board, district, commission or governing body, including any city, county, or other political subdivision of the state.

3. "Pollution prevention" shall mean changes in production methods, work practices, raw materials or the provision of services that reduce energy or resource consumption, or that reduce, avoid or eliminate the

use of hazardous substances or the generation of such substances, pollutants or waste per unit of product or service provided, so as to reduce risks to public health or the environment, without shifting risks between individuals or environmental media. Such term shall include the redesign, modification, upgrade or replacement of processes, procedures, equipment or technology; reformulation or redesign of products, substitution of inputs or raw materials; improvements in housekeeping, maintenance, training or inventory control; and extended use or reuse of materials through methods integral to the production process or provision of service, such as in-process, closed-loop recycling. Such term shall not include incineration, energy recovery from the combustion of waste, transfer from one medium of release or discharge to another medium, off-site or out-of-production recycling, end-of-pipe treatment, or any practice which alters the physical, chemical or biological characteristics or volume of a hazardous substance, pollutant or solid waste through a process or activity which itself is not integral to and necessary for the production of a product or the providing of a service.

4. "Pollutant" shall mean any substance, contaminant, waste or emission which contributes to pollution.

5. "Solid waste" shall mean a solid waste as such term is defined by subdivision 1 of section 27-0701 of this chapter.

6. "State agency" shall mean any state department, agency, board, public benefit corporation, public authority or commission.

§ 28-0107. Powers and duties of the department.

Consistent with the policy of the state as it is declared in section 28-0101 of this article, the department shall have the power to:

1. Develop, coordinate, implement and measure policies, planning and programs to promote pollution prevention, including but not limited to, technical assistance programs and the identification of alternative compliance approaches that incorporate pollution prevention;

2. Provide education, training, outreach and technical assistance, including on-site technical assistance, to the public regarding pollution prevention, including but not limited to businesses, not-for-profit organizations and state and local agencies;

3. Track, monitor and analyze efforts to achieve pollution prevention and the effects of pollution prevention on the consumption of energy and natural resources; the use of hazardous substances; and the generation of hazardous substances, pollution and waste;

4. Promote the consideration of opportunities for pollution prevention throughout the department's programs, including the provision of information on pollution prevention options, technical information and technical assistance to permit applicants, owners and operators of facilities that are subject to departmental inspections, and to persons who are subject to departmental enforcement actions;

5. Develop policies to facilitate, support and encourage the provision of pollution prevention and compliance assistance, including on-site technical assistance, by all department staff, including regulatory program staff, to businesses, not-for-profit organizations, state and local agencies or other persons who request such assistance, including the adoption of policies to address how the department will respond if violations are identified in the course of providing such assistance;

6. Coordinate pollution prevention outreach and technical assistance with inspection and enforcement efforts, including the targeting of specific sectors for concentrated outreach prior to inspection and enforcement and the establishment of a technical assistance referral system;

7. Provide opportunities for training in pollution prevention to all appropriate department staff on an annual basis;

8. Promote and encourage the adoption of environmental management systems as a way to achieve pollution prevention and continually improve

environmental, economic and management performance across a range of organizations and settings, including state and local agencies, businesses, and not-for-profit organizations;

9. Develop pollution prevention information that can be distributed by other state agencies and public authorities that are involved in the regulation of, or provision of financial assistance to businesses, municipalities and not-for-profit organizations;

10. Coordinate and cooperate with federal, state and local agencies, public and private organizations, and groups administering programs or engaged in activities related to pollution prevention, energy consumption, resource consumption, the use and generation of hazardous substances, or the generation of waste or pollution; and

11. Encourage, support and undertake research, development and technology transfer in support of pollution prevention, and coordinate and cooperate with federal, state and local agencies, businesses and business associations, public and private organizations, and groups engaged in pollution prevention research, development and technology transfer, including educational, civic and research organizations, colleges, universities, institutes or foundations.

§ 28-0109. Small business pollution prevention and environmental compliance assistance program.

1. The commissioner is hereby authorized and directed to establish, develop and implement a small business pollution prevention and environmental compliance assistance program. The purpose of such program shall be to:

a. assist eligible businesses to achieve pollution prevention and improved environmental performance;

b. assist eligible businesses to comply with the provisions of and rules adopted pursuant to this chapter; and

c. support all environmental and regulatory programs carried out pursuant to this chapter, including permitting, facility inspection and enforcement activities. For the purposes of this section, "eligible business" shall mean a small to medium-sized business, not-for-profit organization or municipality which employs less than five hundred persons on a full-time basis.

2. The commissioner, after providing notice and opportunity for public hearing, may exclude from the small business pollution prevention and environmental compliance assistance program any category of regulated entity that the commissioner determines to have sufficient technical and financial capabilities to meet the requirements of this chapter without such assistance. The department may designate eligibility for assistance based on whether an eligible business has sufficient technical and financial capabilities to comply with federal and state law without such assistance. Such determination or designation shall be based on criteria formally adopted by the department as guidance or regulation therefor. Such program shall include:

a. the development, collection and coordination of information concerning pollution prevention and compliance methods, and programs to encourage lawful cooperation among eligible businesses and other persons to further comply with the provisions of this chapter;

b. adequate mechanisms for assisting eligible businesses with pollution prevention, environmental compliance and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, and products and methods of operation that help to achieve pollution prevention;

c. the provision of assistance for eligible businesses in:

- (i) determining applicable requirements of this chapter and rules and regulations promulgated pursuant thereto,
- (ii) submitting complete permit applications, and
- (iii) receiving permits issued by the department in a timely and efficient manner;

d. adequate mechanisms for referring eligible businesses to qualified auditors, or to the extent possible, offering eligible businesses and responding to requests from eligible businesses for audits of the operations of such businesses to determine compliance with this chapter and rules and regulations promulgated pursuant thereto;

e. procedures for offering eligible businesses and responding to requests from eligible businesses for technical, pollution prevention and environmental compliance assistance including, but not limited to:

(i) on-site technical assistance and consultations regarding the identification and implementation of opportunities to achieve pollution prevention or enhance compliance, including the adoption of comprehensive pollution prevention plans or environmental management systems;

(ii) assistance in the modification of any work practice and the identification of affordable and cost effective alternative technologies or technological improvements to achieve pollution prevention or to achieve compliance with or to establish compliance procedures pursuant to this chapter and rules and regulations promulgated pursuant thereto; and

(iii) the establishment of a schedule of milestones for implementing such work practice or method of pollution prevention or compliance preceding any applicable compliance date, based on the technology and financial capability of such eligible business. No modification shall be recommended unless it is in compliance with the applicable requirements of environmental laws;

f. procedures for soliciting input from and exchanging information with the small business pollution prevention and environmental compliance ombudsman program created pursuant to section 138 of the economic development law, regarding pollution prevention opportunities and compliance requirements for small businesses;

g. adequate mechanisms for the collection and dissemination of information to eligible businesses, including the development of guidance manuals and the establishment of a toll-free telephone number

dedicated to answering questions involving pollution prevention and small business compliance;

h. procedures for assuring the confidentiality of information received from eligible businesses;

i. the identification of individuals, firms and/or state and local agencies with a distinctive competence in areas related to pollution prevention and compliance with environmental laws, rules and regulations, and a demonstrated ability to serve eligible businesses, for the purpose of referring eligible businesses with identified needs to consultants or agencies with relevant expertise; and

j. the provision of information on state-sponsored programs offering financial or technical assistance and on funding available from private lenders to eligible businesses, and of aid to such businesses in applying for financial assistance or funding.

3. In developing and implementing the small business pollution prevention and environmental compliance assistance program, the department shall consult with the pollution prevention and environmental compliance coordinating council as created pursuant to section 28-0111 of this article, the environmental facilities corporation, the small business pollution prevention and environmental compliance ombudsman program as created pursuant to section 138 of the economic development law and the office of waste prevention services as created pursuant to article 14 of the economic development law.

§ 28-0111. Pollution prevention and environmental compliance coordinating council.

1. There is hereby established a pollution prevention and environmental compliance coordinating council which shall:

a. provide guidance to the department on the development and implementation of pollution prevention programs, including the small

business pollution prevention and environmental compliance assistance program and the identification of alternative compliance approaches that incorporate pollution prevention;

b. coordinate the activities of the department, the environmental facilities corporation, the department of economic development, the New York state energy research and development authority and the New York foundation for science, technology and innovation to promote pollution prevention and environmental compliance;

c. make periodic reports to the governor and the legislature concerning the effectiveness of pollution prevention programs, including the adequacy of funding available, and difficulties encountered; and

d. make recommendations for the development of programs to further promote pollution prevention and assist small businesses, including technical and financial assistance programs.

2. The pollution prevention and environmental compliance coordinating council shall include the commissioner, the president of the environmental facilities corporation, the commissioner of economic development, the chairperson of the New York state energy research and development authority, and the executive director of the New York foundation for science, technology and innovation; or their designees. The council shall consult with representatives of businesses; organizations whose prime function is the enhancement of the environmental quality of the state; municipalities, not-for-profit organizations and private contractors which provide pollution prevention and compliance assistance; and any other parties the coordinating council deems appropriate.

3. The coordinating council shall meet at least quarterly and shall designate one of its members to serve as chairperson and one of its members to serve as secretary for the development and dissemination of reports and advisory opinions. For the first year of its existence, the coordinating council shall designate the commissioner or his or her designee to serve as chairperson.

§ 28-0112. Pollution prevention institute program.

1. There is hereby established the New York state pollution prevention institute program. The "pollution prevention institute" shall mean an institute whose mission is to promote one or more of the purposes of section 28-0103 of this article through research, development, technology demonstration, technology transfer, education, outreach, recognition and training programs in a manner consistent with the definition of pollution prevention and the principles of pollution prevention established by this article, including but not limited to green chemistry and reuse and remanufacturing.

2. The commissioner is hereby directed to award, on a competitive basis, within amounts appropriated, after consultation with the pollution prevention and environmental compliance coordinating council, state assistance payments to one public or private university or non-profit institution, or more as part of a consortium, to establish, operate and maintain a pollution prevention institute in New York state consistent with the principles established by this article.

§ 28-0113. Pollution prevention program evaluation.

Within thirty-six months after the effective date of this article, the department shall, in coordination with the environmental facilities corporation and the department of economic development, prepare and submit to the governor and the legislature a report evaluating the programs proposed, adopted or implemented pursuant to this article. The evaluation shall include:

1. an identification of the specific measures taken to develop and implement such programs;

2. an evaluation of the resources available to implement such programs and whether those resources are sufficient; and

3. an analysis of the adequacy of measures taken to assist small businesses in achieving pollution prevention and complying with this chapter.

ARTICLE 29

LOW-LEVEL RADIOACTIVE WASTE FACILITIES

TITLE 1. Siting.

3. Commission for siting low-level radioactive waste disposal facilities
5. Advisory committee on permanent disposal facilities siting and disposal method selection
7. Financial assurance

TITLE 1

SITING

Section 29-0101. Definitions.

29-0103. Siting criteria for permanent disposal facilities.

29-0105. Certification of site and disposal method selection.

§ 29-0101. Definitions.

For the purposes of this article:

1. "Low-level radioactive waste" means radioactive material that:

a. is not high-level radioactive waste, transuranic waste, spent nuclear fuel, or the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content; and

b. the United States nuclear regulatory commission, consistent with federal law and in accordance with paragraph a of this subdivision, classifies as low-level radioactive waste.

2. "Low-level radioactive waste management facilities" means facilities authorized pursuant to section eighteen hundred fifty-four-c of the public authorities law for permanent disposal of low-level radioactive waste and any associated facilities for treatment and handling of such waste, including, but not limited, to facilities for purposes of stabilization, volume reduction, or protection of health and safety of workers or members of the public from potential exposure to hazards.

3. "Permanent disposal facilities" means low-level radioactive waste management facilities for permanent disposal of low-level radioactive waste generated within the state of New York, other than such waste which is a federal responsibility pursuant to the provisions of federal law pertaining to state and federal responsibilities for disposal of low-level radioactive waste.

4. "Shallow land burial" means emplacement of low-level radioactive waste in or within the upper thirty meters of the surface of the earth in trenches, holes, or other excavations in which only soil provides structural integrity, a barrier to migration of low-level radioactive waste from or subsurface water into such excavation, or a barrier to entry of surface water to such excavation or in a manner that fails to allow during the institutional control period for monitoring and control of releases of radioactivity.

5. "State agency" means any office, department, board, commission, bureau, division, council, authority, corporation, agency, or instrumentality of the state.

6. "Commission" means the commission for siting low-level radioactive waste disposal facilities created pursuant to section 29-0301 of this article.

§ 29-0103. Siting criteria for permanent disposal facilities.

1. No later than July thirty-first, nineteen hundred eighty-seven, the department shall publish draft regulations which specify the criteria for siting permanent disposal facilities and shall promulgate final regulations no later than December thirty-first, nineteen hundred eighty-seven. Such regulations shall be specific to the types of disposal methods which may be employed at a permanent disposal site and shall include criteria for:

- a. above ground, engineered, monitored disposal;
- b. underground mined repository disposal; and
- c. where practicable, other disposal methods for which there are applicable regulations but in no event including shallow land burial.

Such regulations shall specify the minimum characteristics a disposal site and a disposal method must have under existing federal and state law to be acceptable for use for permanent disposal facilities.

2. The department shall hold hearings on the proposed siting criteria regulations.

3. In adopting the siting criteria regulations the department shall not be subject to the requirements of sections two hundred two-a, two hundred two-b and two hundred two-c of the state administrative procedure act.

§ 29-0105. Certification of site and disposal method selection.

1. Upon application by the commission, the department shall certify that the commission's selection of the site or sites and disposal method or methods pursuant to section 29-0305 of this article is in conformance with the applicable siting criteria promulgated pursuant to section 29-0103 of this title; shall certify that, with modifications proposed by the department, the selection would be in conformance with the applicable siting criteria; or shall refuse to certify such selection

and shall specify the manner in which such selection fails to meet the applicable siting criteria. Such certification or refusal to certify shall be based upon the record. The department shall hold public hearings with respect to the draft environmental impact statement and with respect to the application for certification. Such hearings and such certification or refusal to certify shall be completed within one hundred eighty days of the commission's submission of a complete application for certification.

2. The department shall publish in the state register notice of its decision on the application for certification of the site and disposal method selection.

3. The department's decision on the application for certification of the site and disposal method selection and the accompanying final environmental impact statement shall be submitted by the department to the governor, the legislature, and the chairman of the New York state energy research and development authority. In addition to any other information otherwise required for a final environmental impact statement, such statement shall include:

a. copies of the minutes of the public hearing held on the draft environmental impact statement on siting and disposal method selection and of recommendations from the advisory committee established pursuant to section 29-0501 of this article, and the department's responses to the views, comments, information, and recommendations therein; and

b. a listing providing a brief description, identification, or reference for each report, study, or other document relied upon by the department for information supporting its analyses or conclusions.

* TITLE 3

COMMISSION FOR SITING LOW-LEVEL RADIOACTIVE WASTE DISPOSAL FACILITIES

Section 29-0301. Appointment of the commission.

29-0303. Duties of the commission.

29-0305. Operation of the commission.

29-0307. Cooperation with other agencies.

29-0309. Tenure of the commission.

* NB Commission existence pursuant to § 29-0309

*** § 29-0301. Appointment of the commission.**

1. There is hereby created a commission for siting low-level radioactive waste disposal facilities. The commission shall consist of seven members appointed by the governor whose appointment shall be effective when issued. The members of the commission, to the extent practicable, shall be competent and knowledgeable concerning low-level radioactive waste and shall be qualified as follows:

a. a geologist;

b. a medical doctor;

c. a health physicist;

d. a professional engineer;

e. a social scientist;

f. an environmentalist who represents a non-profit environmental organization;

g. a private citizen who shall be designated to act as chairperson.

2. The chairperson shall appoint an executive director to the commission.

3. In the event of resignation of one of the commission members, the governor shall appoint a replacement. Each member shall receive the sum of two hundred dollars for each day in which the member is actually and primarily engaged in the performance of the duties specified herein plus actual and necessary expenses incurred by such member in the performance

of such duties.

4. The members of the commission, the executive director and any employees of the commission shall be considered public officers for purposes of the public officers law.

5. Four of the seven members of the commission shall constitute a quorum for the transaction of business of the commission and the decision of four members of the commission shall constitute action of the commission; provided, however, that no application for certification pursuant to section 29-0105 of this article shall be made except upon the affirmative vote of four or more members of the commission.

* NB Commission existence pursuant to § 29-0309

*** § 29-0303. Duties of the commission.**

1. The commission shall immediately commence the preparation of a siting and disposal method selection which shall, upon certification by the department, be the site or sites and method or methods for permanent disposal facilities which shall be constructed or operated by the energy research and development authority pursuant to section eighteen hundred fifty-four-c of the public authorities law.

2. The commission shall evaluate all reasonable alternative disposal methods including but not limited to deep vertical shaft mined disposal and above ground monitored retrievable disposal and issue a report providing full documentation of its evaluation of all disposal methods it has considered, and selecting and justifying a tentative preferred disposal method and any method-specific site selection criteria. After opportunity for review and comment by the citizen advisory committee and an independent technical and scientific evaluation panel established pursuant to subdivision eleven of this section, the commission shall issue a report and draft a generic, non-site specific, environmental impact statement selecting and justifying a preferred disposal method and any related method-specific site selection criteria. The commission shall select as its preferred disposal method that method which is

projected best to meet applicable regulatory criteria and performance objectives and maintain exposure to the general public as low as reasonably achievable, taking into account engineering and economic feasibility compared to other available disposal methods. The preferred disposal method and accompanying draft generic environmental impact statement shall be submitted to the department as an application for decision. The standards and procedures by which the department shall administer the commission's application are set forth in subdivision four of section 70-0117 of this chapter and implementing regulations. Consistent with the department's decision on preferred disposal method or methods, the commission shall proceed to select the site or sites for permanent disposal facilities in accordance with subdivisions five through eight of this section.

3. The commission shall issue a report concerning all lands excluded from consideration for siting permanent disposal facilities, which report shall include information sufficient to permit full independent review and evaluation by the citizen advisory committee and by an independent technical and scientific evaluation panel, established pursuant to subdivision eleven of this section, of the basis for such exclusion.

4. The commission shall also make available for full independent review and evaluation by the citizen advisory committee and by an independent technical and scientific evaluation panel, established pursuant to subdivision eleven of this section, the reports and other documents which serve as the basis for or otherwise provide its detailed explanation or justification for its decisions made prior to September first, nineteen hundred eighty-nine, to select or narrow the range of alternatives it was considering for sites for permanent disposal facilities.

5. Upon completing the preparation of its site and final disposal method selection, the commission shall submit its application for certification of this selection by the department pursuant to section 29-0105 of this article. The commission shall simultaneously deliver a copy of its draft environmental impact statement and application to the

governor, the legislature, the chairman of the energy research and development authority, the citizen advisory committee and the county government of each county within which was located any portion of a site for which the commission conducted detailed characterization studies.

6. The site and disposal method selection and the application for certification, together with the department's certification thereof, shall be considered a single action for purposes of article eight of this chapter and judicial review. The commission shall prepare a draft environmental impact statement to accompany its application for certification, the scope of which must be approved by the department. For purposes of satisfying the requirements of article eight of this chapter, the department shall be the lead agency. The commission shall recommend a site specific mitigation program as part of the environmental impact statement that will serve as an additional measure to offset adverse economic, social, and environmental impacts and serve as a form of compensation to the affected area.

7. The commission's site and disposal method selection shall identify a site or sites and appropriate disposal method or methods for permanent disposal facilities. Such site or sites shall not include the western New York nuclear service center. The commission shall take into account the following factors in the selection of the permanent disposal facility site or sites and disposal method or methods:

a. the nature and probability of the impacts on public health and safety, including predictable adverse effects from:

(i) accidents during transportation of low-level radioactive waste to such facilities;

(ii) contamination of ground or surface water by leaching and runoff from such facilities; and

(iii) fires or explosions from improper storage or disposal of volatile, combustible, or potentially explosive materials, if any, which may compose a portion of the low-level radioactive waste to be delivered to such facilities;

b. the nature of the probable environmental impacts, including the

predictable adverse effects on the natural environment and ecology, scenic, historic, agricultural, cultural, and recreational values, water and air quality, and wildlife;

c. the potential for avoidance or mitigation of harm from the unanticipated release of low-level radioactive waste or contaminated materials;

d. the ability for retrieval or recovery of such waste;

e. differences in the density of population in the vicinity of the potential sites;

f. the adequacy of routes and means for transportation of low-level radioactive waste to such facilities;

g. the nature of the probable impact of such facilities on local governmental units within which such facilities would be located; and

h. the comparative economic implications, including those resulting from engineering considerations, of the potential site or sites and disposal methods for such facilities.

8. The commission shall select one site for a permanent disposal facility after consideration of all relevant public health and safety, environmental and economic factors, provided, however, that an additional site may be selected if the commission finds that the use of an additional site presents specific advantages with respect to such factors. To the extent the commission determines that different disposal methods are appropriate for different categories of low-level radioactive waste with differing physical or chemical characteristics, the commission may select more than one disposal method to be utilized at each particular site, specifying the particular disposal methods to be utilized at such site for particular categories of such waste; provided that utilization of the disposal methods selected at the site selected shall be capable of meeting or exceeding applicable requirements of state and federal regulations. The site or sites

selected shall be of sufficient capacity to provide for disposal, using the selected disposal methods, of all low-level radioactive waste estimated by the commission to be generated in New York and to require disposal at low-level radioactive waste management facilities for a period of at least thirty years.

9. In performing its duties, the commission shall hold periodic meetings which shall be publicly noticed pursuant to article seven of the public officers law.

10. Whenever the commission makes a decision to:

(i) select, or narrow the range of alternatives it is considering for, disposal methods or sites for permanent disposal facilities,

(ii) establish the plans for pre-characterizing or characterizing, or otherwise gathering site-specific data for, candidate sites for permanent disposal facilities, or

(iii) project the types, quantities, or activity levels of low-level radioactive wastes which might be disposed of at permanent disposal facilities,

it shall promptly issue a report or other document which serves as the basis for or otherwise provides its detailed explanation or justification for that decision. Such report or other document shall include information sufficient to permit full independent review and evaluation by the department, the citizen advisory committee and by an independent technical and scientific evaluation panel, established pursuant to subdivision eleven of this section, of the nature, sources, and quality of any specific data relied upon, the nature of assumptions made, and the specific analytical methods, procedures, or techniques employed, including modelling and calculations performed, and any other information and analyses upon which the commission would intend to rely in justifying its decisions to any reviewing body. The report shall be made available to the public upon request. The commission shall simultaneously have published in the state register, and send to any person who has requested to be placed on the commission's mailing list, notice of availability of that report or other document and provide a copy of the report or other document to the governor, the speaker of the assembly, the majority leader of the senate, the minority leader of the

assembly, the minority leader of the senate, the citizen advisory committee, and any independent technical and scientific evaluation panel established pursuant to subdivision eleven of this section.

11. Pursuant to contract, the department of health shall arrange to have one or more independent panels of technical and scientific experts review and evaluate the commission's decision and report on its selection of a tentative preferred disposal method and decisions and report on lands excluded from consideration for siting permanent disposal facilities, issued in accordance with subdivisions two and three of this section, and each other decision made and related report issued by the commission pursuant to subdivision four or ten of this section. For each such commission decision and report, the independent technical and scientific evaluation panel or panels shall assess the nature, sources and quality of any specific data the commission relied upon, the nature of assumptions made, and the specific analytical methods, procedures or techniques employed, including modelling and calculations performed, and any other information and analyses relied upon for the commission's decision. The department of health may engage more than one panel to assess a commission decision and report, in order to provide for complete coverage of those matters in the review and evaluation of that decision and report. Upon completion of each such review and evaluation, any independent technical and scientific evaluation panel shall provide a written report containing its findings, conclusions and recommendations to the commission, the citizen advisory committee, the department of health and the department of environmental conservation.

12. Whenever the commission receives written comments or a report from the citizen advisory committee or any independent technical and scientific evaluation panel established pursuant to subdivision eleven of this section, it shall provide a detailed written response, within a reasonable time, addressing the points made in the comments or report. Upon receipt of any such report the commission shall cause it to be made available to the public upon request and submitted to the governor, the majority leader of the senate, the speaker of the assembly, the minority leader of the senate and the minority leader of the assembly. Notice of

such report shall be published by the commission in the state register and sent to any person who has requested to be placed on the commission's mailing list.

* NB Commission existence pursuant to § 29-0309

*** § 29-0305. Operation of the commission.**

1. The commission may hire or contract with such persons as it deems necessary, convenient, or desirable to carry out its duties pursuant to this title.

2. Officers and employees of the commission shall be appointed in accordance with civil service rules; provided, however, that officers and employees of state departments and agencies may be transferred to the commission without examination and without loss of any civil service status or rights. Each employee who is transferred pursuant to this subdivision is deemed to be on leave of absence from his or her former position during the tenure of the commission. No such transfer may, however, be made except with the approval of the head of the state department or agency involved, the director of the budget and the chairman of the commission, and in compliance with the rules and regulations of the civil service commission of the state.

3. After the department has approved, pursuant to subdivision 2 of section 29-0303 of this title, a preferred disposal method, the commission, its employees, agents, consultants, or contractors may, after proper notification and identification, enter at reasonable times upon such lands, waters or premises as in the judgment of the commission may be necessary, convenient, or desirable for the purpose of making surveys, soundings, borings, and examinations to accomplish any purposes authorized by this title, the commission being liable for actual damage done. Each such entry shall be commenced and completed with reasonable promptness. If the officer or employee obtains any samples prior to his leaving the premises, he shall give to the owner, operator, or agent in charge a receipt describing the sample obtained and, if requested, a portion of each 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, operator, or agent in charge.

4. The commission shall require all computerized data generated by its staff and contractors, when obtainable by the public pursuant to article six of the public officers law, to be made available in a format that is accessible for general use.

* NB Commission existence pursuant to § 29-0309

*** § 29-0307. Cooperation with other agencies.**

1. All agencies and authorities of the state, municipalities, and political subdivisions of the state are hereby directed to cooperate with the commission in order to facilitate and expedite the responsibilities and duties of the commission. To the extent practicable and not otherwise inconsistent with law and upon the request of the commission, any agency or authority of the state shall provide copies of existing studies, surveys, plans, data, and other materials in its possession to the commission.

2. The commission shall assure that the advisory committee appointed pursuant to section 29-0501 of this article has a timely opportunity to provide information and recommendations to the commission on all aspects of its activities pursuant to section 29-0303 of this title.

3. In consultation and cooperation with the advisory committee established pursuant to section 29-0501 of this article, the commission shall keep the public informed of its activities in developing the draft environmental impact statement required by section 29-0303 of this title and encourage the public to participate by providing views, comments, information, and analysis concerning siting and disposal method selection for permanent disposal facilities.

4. The department of audit and control and the department of law are hereby directed to expedite the processing of all contracts associated

with carrying out the provisions of this section.

* NB Commission existence pursuant to § 29-0309

*** § 29-0309. Tenure of the commission.**

The commission shall continue in existence only until final judicial review of the department's certification of the commission's selection pursuant to section 29-0105 of this article.

* NB Commission existence pursuant to this section.

TITLE 5

**ADVISORY COMMITTEE ON PERMANENT DISPOSAL FACILITIES SITING
AND DISPOSAL METHOD SELECTION**

Section 29-0501. Citizen advisory committee on permanent disposal facilities siting and disposal method selection.

29-0503. State agency actions on licenses, permits, or approvals for low-level radioactive waste management facilities.

29-0505. General provisions on environmental review and judicial review.

29-0507. State licenses, permits, and other approvals exclusive.

29-0509. Aid to local governments.

§ 29-0501. Citizen advisory committee on permanent disposal facilities siting and disposal method selection.

1. A citizen advisory committee on siting and disposal method selection for permanent disposal facilities is hereby established independent of the commission and shall continue in existence until the department has issued its final environmental impact statement pursuant to section 29-0105 of this article. The members shall be appointed by the governor and shall consist of: two representatives of non-profit environmental organizations; two health physicists or medical doctors knowledgeable of radiation health effects; two representatives of

low-level radioactive waste generators in New York; a private citizen residing in New York who is technically competent and knowledgeable concerning low-level radioactive waste; four private citizens, residing in New York who are knowledgeable concerning low-level radioactive waste, of whom one shall be knowledgeable and experienced in agricultural production and one in local public health services; and one elected local government representative of each county in which a candidate site has been identified, which county shall be represented until such time as no candidate site is being considered therein and, upon issuance of the commission's draft environmental impact statement pursuant to subdivision six of section 29-0303 of this article, three private citizens from the county within which each proposed site is primarily located. The governor shall designate the chairman from among the members of the committee. No member shall receive any compensation, but shall be entitled to reimbursement for actual and necessary expenses in performing the duties of the citizen advisory committee.

2. The citizen advisory committee shall:

a. meet at least bi-monthly to provide information and review activities of the commission and the department pursuant to sections 29-0103, 29-0105, 29-0303 and 29-0509 of this article and to receive a written report from the commission, the department and the energy research and development authority on plans and progress in carrying out activities and duties pursuant to the low-level radioactive waste management act. In particular, the citizen advisory committee shall provide information and recommendations in response to the commission's draft environmental impact statements prepared pursuant to section 29-0303 of this article, including reviewing public views, comments, and information submitted in response thereto;

b. review and comment semi-annually on the commission's plans and schedule for carrying out the provisions of section 29-0303 of this article;

c. have minutes taken of each meeting of the citizen advisory committee and make them available to the public within ten working days

from the date of the meeting, and a video or audio record of any meeting sponsored by the committee shall be kept, copies of which shall be made available at the actual cost of reproduction;

d. consult with and advise the commissioner of health in planning and carrying out a public information and education program on low-level radioactive waste pursuant to the provisions of article twenty-four-C of the public health law;

e. hire an executive director, and clerical support, and may contract for necessary specialized services;

f. facilitate the public review and comment process and issue reports containing the committee's comments and recommendations concerning:

(i) the candidate disposal method selection process;

(ii) the site selection process, including previously excluded lands and voluntary sites;

(iii) site characterization;

(iv) the process for matching the site with the preferred disposal method;

(v) the draft environmental impact statement; and

(vi) the manner in which the commission carries out its responsibilities to keep the public informed of its activities;

g. make copies of its reports available to the public upon request and submit copies to the governor, the majority leader of the senate, the speaker of the assembly, the minority leader of the senate and the minority leader of the assembly; and

h. exercise and perform such other advisory functions related to the commission's or the department's activities conducted pursuant to sections 29-0103, 29-0105, 29-0303 and 29-0509 of this article as the chairman of the commission or commissioner of environmental conservation may request.

3. The department of health shall provide such administrative support services to the citizen advisory committee as may be determined

reasonable for the proper execution of the committee's responsibilities.

4. All agencies and authorities of the state are hereby directed to cooperate with the citizen advisory committee in order to facilitate and expedite the responsibilities and duties of the committee.

§ 29-0503. State agency actions on licenses, permits, or approvals for low-level radioactive waste management facilities.

1. With respect to any particular permanent disposal facilities, all applications for state licenses, permits, or other approvals required for those facilities shall be submitted contemporaneously to the respective state agencies with jurisdiction to grant such licenses, permits, or other approvals; and shall be accompanied by a draft environmental impact statement for those facilities and a list identifying each state license, permit, or other approval for which such applications have been submitted and the jurisdictional state agency for such license, permit, or other approval.

2. Notwithstanding any other provision of law, all applications to a single state agency for required state licenses, permits, or other approvals for particular low-level radioactive waste management facilities shall be consolidated by such state agency and considered in a single proceeding, which shall be completed as expeditiously as possible.

3. All state agencies to which applications for required licenses, permits, or other approvals for particular low-level radioactive waste management facilities have been submitted shall keep each other informed of the procedural status of such applications and the proceedings thereon.

4. With respect to the proceedings on applications for required state licenses, permits, and other approvals for particular low-level radioactive waste management facilities:

a. If any such license, permit, or other approval for the particular low-level radioactive waste management facilities in question is within the jurisdiction of the department, the department shall be the lead agency with respect to environmental review of all applications to state agencies for such licenses, permits, or other approvals.

b. No later than thirty days after submission to the lead agency and other state agencies of such applications, the lead agency and each such other state agency shall give notice to the applicant that such applications within their respective jurisdictions have been determined to be complete or have been determined to be incomplete; provided, however, that when there is a requirement pursuant to federal law for a tentative determination or draft permit to be prepared prior to public notice or hearing, the time within which the agency shall make its determination whether or not the application is complete shall be extended by thirty days. If any such application has been determined to be incomplete, such notice shall include a detailed list of specific deficiencies in such application.

c. No later than sixty days after the lead agency and other jurisdictional state agencies have made their respective determinations that such applications within their respective jurisdictions are complete, the lead agency shall begin public hearings on the draft environmental impact statement and all other matters related to such applications. Any state agency, other than the lead agency, which determines to conduct public hearings with respect to any action or proceeding before it on such applications shall conduct such public hearings jointly with the public hearings conducted by the lead agency with respect to such facilities. The department shall hold an issues conference prior to the commencement of the hearing. At least one hearing shall be held at a reasonably convenient location in the general geographic vicinity of each of the proposed sites.

d. No later than one hundred fifty days after the commencement of such hearings for any low-level radioactive waste management facilities, such hearings and the period for the receipt of any written comments, arguments, or analyses with respect to matters raised in such hearings

shall have been completed.

e. No later than ninety days after completion of such hearings and the period for the receipt of written comments, arguments, or analyses with respect to matters raised in such hearings, the lead agency shall issue a final environmental impact statement related to the applications which were the subject of such hearings. In addition to any other information otherwise required for a final environmental impact statement, such statement shall include:

(i) Copies of the minutes of the public hearings held on the draft environmental impact statement associated with a state agency action on a license, permit, or approval for a low-level radioactive waste management facility, and the department's responses to the views, comments, information and recommendations thereon; and

(ii) A listing providing a brief description, identification, or reference for each report, study, or other document relied upon by the department for information supporting its analyses or conclusions.

f. The lead agency shall keep each other state agency before which any such application is pending informed of the progress of its development of the final environmental impact statement. Immediately upon issuance of the final environmental impact statement, the lead agency shall deliver a copy to each such other state agency. No later than thirty days after the issuance of such final environmental impact statement, the lead agency and each such other state agency shall issue their decisions with respect to such licenses, permits, and other approvals with any reasonable modifications or conditions which the lead agency, and each such other state agency, respectively, finds required in accordance with the provisions of law and regulations applicable to its respective action or proceeding. Each agency shall publish notice in the state register of its decision with respect to such licensing or other approval. Each such decision shall be based upon the administrative record for the respective action or proceeding.

5. In any action or proceeding of the department or any other state agency on any application for a required state license, permit, or other approval for any low-level radioactive waste management facilities,

including any related draft or final environmental impact statement proposed or submitted in connection with such application, the following matters as determined by statute or certified pursuant to section 29-0105 of this article shall not be in issue:

- a. the need for such facilities or the alternative of no action;
- b. the site or sites of such facilities;
- c. for permanent disposal facilities, the disposal methods to be utilized;
- d. the nature or type of facilities as specifically required or authorized by statute; and
- e. the classes of waste which may be stored or disposed of at such facilities.

§ 29-0505. General provisions on environmental review and judicial review.

Notwithstanding any other provision of law:

1. In the event of any inconsistency between the provisions of this article and the provisions of article eight or seventy of this chapter, or regulations issued pursuant thereto, the provisions of this article shall have precedence and apply to the exclusion of such provisions of article eight or seventy of this chapter or the regulations issued pursuant thereto.

2. a. Any person aggrieved by any administrative action or proceeding in connection with the adoption of siting criteria regulations pursuant to section 29-0103 of this article, with a certification or refusal to certify a site or disposal method selection pursuant to section 29-0105 of this article or with the issuance or denial of a required state license, permit, or other approval for low-level radioactive waste management facilities may seek judicial review of such administrative

action or proceeding in accordance with the provisions of this subdivision. Any such special proceeding for judicial review shall be brought in the appellate division of the supreme court of the judicial department embracing the county wherein the site of the facilities is located, or, if the certification or the application for a state license, permit, or other approval is denied, the county wherein the commission or applicant proposed to site or locate the facilities. Such review may be initiated only by the filing of a petition in such court within thirty days after publication in the state register of notice of the administrative action or decision, together with proof of service of a demand on the commission, the department, and other state agencies, as applicable, for the filing with the court of a copy of the administrative record. Upon receipt of such petition and demand, a copy of the administrative record and any decision shall forthwith be delivered by the commission, the department, or other state agency, as applicable, to the court. The petition and any subsequent appeal shall be heard on the administrative record without requirement of reproduction. No objection that has not been urged on the administrative record shall be considered by the court, unless the failure or neglect to urge such objection below shall be excused because the information underlying such objection was unknown at the time of the administrative proceeding or because of other extraordinary circumstances.

b. If such facilities are proposed to be sited or located in more than one judicial department, such proceeding may be brought in any one but only one of such departments. If petitions are filed in more than one court, the court in which a petition was first filed shall retain exclusive jurisdiction of the proceeding, and all other petitions shall be transferred forthwith to said court. Upon motion by any party to the proceeding, or on its own motion, said court may transfer the proceedings to the appellate division in any other judicial department for good cause. The jurisdiction of the appellate division shall be exclusive and its judgment and order shall be final, subject to review by the court of appeals in the same manner and form and with the same effect as provided for appeals in a special proceeding. All such special proceedings shall be heard and determined by the appellate division and by the court of appeals as expeditiously as possible and with precedence

over all other matters except special proceedings under the election law.

c. Except as otherwise provided in this subdivision, article seventy-eight of the civil practice law and rules shall apply to special proceedings and appeals therefrom taken pursuant to this subdivision.

§ 29-0507. State licenses, permits, and other approvals exclusive.

Notwithstanding any other provision of law, no county, city, village, town, or special district, or any agency or instrumentality thereof, may prohibit, or require any license, permit, other approval, or condition related to, the construction or operation of low-level radioactive waste management facilities for which required state licenses, permits, or other approvals have been issued. Nothing in this section shall preclude any county, city, village, town, or special district, or any agency or instrumentality thereof, from requesting, proposing, or advocating imposition of reasonable conditions on the construction or operation of low-level radioactive waste management facilities in any proceeding upon an application for a required state license, permit, or other approval for such facilities.

§ 29-0509. Aid to local governments.

No later than the first day of April, nineteen hundred eighty-seven, the department shall submit to the legislature and the governor a report recommending appropriate forms of state aid to local governmental units within the boundaries of which any low-level radioactive waste management facilities may be located. Such report shall be developed by the department and shall:

1. describe the nature of the probable impacts upon local governmental units, including both impacts normally expected from the presence, construction, operation, maintenance, closure, and post-closure care of such low-level radioactive waste management facilities and impacts which

might result from an emergency or other abnormal or unusual event associated with the operation, maintenance, closure, or post-closure care of such low-level radioactive waste facilities;

2. describe the possible forms or kinds of aid or assistance which might be appropriate to mitigate or provide off-setting benefits with respect to each of the kinds of probable impacts on local governmental units identified pursuant to this section; and

3. set forth the department's specific recommendations to the legislature and the governor for the forms or kinds of state assistance to local governmental units to mitigate or provide off-setting benefits with respect to such impacts, together with the reasons for the department's specific recommendations.

TITLE 7

FINANCIAL ASSURANCE

Section 29-0701. Financial requirements for low-level radioactive waste disposal facilities.

29-0703. Closure and post-closure plans.

§ 29-0701. Financial requirements for low-level radioactive waste disposal facilities.

1. Within eighteen months after the effective date of this section, the commissioner shall promulgate regulations applicable to facilities for the permanent disposal of low-level radioactive waste which identify financial requirements to be included as conditions in permits for facilities for the management of low-level radioactive waste. Such conditions shall provide for the remediation of failures during operation and after facility closure, for facility closure, and for pre-closure and post-closure facility monitoring and maintenance. Such regulations shall:

a. Reflect due consideration of the sizes and locations of affected

facilities, the natures and volume of low-level radioactive waste involved, the types of facilities and the degrees and durations of risk to human health or the environment.

b. Provide for the establishment, administration, terms and conditions of the following methods or instruments to be used as alternatives or in combinations, in order to achieve non-duplicative coverage of the financial assurance requirements mandated by this section:

(i) Trust funds.

(ii) Surety or performance bonds.

(iii) Letters of credit.

(iv) Liability insurance or annuities.

(v) Guarantees provided by corporate or other legal or financial affiliates of the facility owner or operator.

c. Establish the duration of such financial requirements.

2. Any owner or operator of such a facility for the management of low-level radioactive waste may request a modification of any of the financial requirements established pursuant to subdivision one of this section. A modification may be granted in the discretion of the department if such financial requirements are found to be unnecessary or inappropriate, consistent with the public interest and the purposes of this section and supported by written findings setting forth the reasons for the modification. Such a modification request shall be considered a request for modification of the permit for the facility. In no case shall a modification granted pursuant to this subdivision eliminate or reduce the minimum requirements established in subdivision four of this section.

3. In addition to the financial requirements established pursuant to subdivision one of this section, any permits for such facilities for the management of low-level radioactive waste issued by the department may, if it is determined that adequate protection of the public so requires, include conditions related to any or all of the following, including responsibility for the costs thereof:

a. On-site environmental monitors whose function shall be to monitor compliance with permit conditions. The commissioner may promulgate regulations regarding the use of such monitors.

b. Site safety plans whereby the permittee shall establish, with the cooperation of local government officials, a community and project safety plan, including but not limited to an accident response based on a worst-case condition, on-site and off-site, a personnel training program, provisions for coordination with local emergency services and regular training exercises. Any such plan shall be subject to the approval of the department.

4. Any permits for such facilities for the management of low-level radioactive waste issued by the department shall require the owner or operator to provide, at a minimum, one of the methods or instruments of financial assurance provided for in paragraph b of subdivision one of this section. Such methods or instruments shall be designed to insure proper facility closure, based on the estimates approved pursuant to section 29-0703 of this title, and coverage of personal injury and property damage to third parties caused by the operation of such facility. Such methods or instruments shall from time to time be reviewed and updated, pursuant to regulations promulgated by the department, to insure their continued adequacy for the purposes of this section.

§ 29-0703. Closure and post-closure plans.

1. Any permits for such facilities for the management of low-level radioactive waste issued by the department shall require owners and operators of facilities for the permanent disposal of low-level radioactive waste to submit to the department for its approval plans for the closure and post-closure monitoring and maintenance of their facilities. The department may promulgate rules and regulations concerning the contents of such plans. Such plans shall be approved prior to the effective date of the facilities' operating permit.

2. Together with the submission of a plan for closure and post-closure monitoring and maintenance, the owner or operator of such facilities for the permanent disposal of low-level radioactive waste shall submit to the department for approval a written estimate of the costs associated with closure at the estimated point in the facilities' operating life when the extent and manner of their operation would make closure the most expensive, as indicated by the closure plan.

3. The owner or operator shall prepare new closure and post-closure monitoring and maintenance cost estimates whenever a change in the closure and post-closure monitoring and maintenance requirements affects the cost of the closure or post-closure care.

4. One year after the approval of the cost estimates as set forth in subdivision two of this section, and annually thereafter until closure of the facilities, the operator's closure and post-closure monitoring and maintenance estimates shall be adjusted to account for inflation.

5. All estimates made pursuant to this section and revision thereto shall be subject to the review and approval of the department.

6. The methods and instruments of financial assurances for permitted facilities for permanent disposal of low-level radioactive waste shall be periodically reviewed by the department to determine whether they are adequate in light of changed circumstances to insure proper closure and post-closure monitoring and maintenance of such facilities.

ARTICLE 30

DECOMMISSIONING NUCLEAR POWER PLANT DISCHARGES INTO THE HUDSON RIVER

Section 30-0101*. Legislative findings.

30-0103. Unlawful discharges.

* NB Section 30-0101 inadvertently added as 30-101

* § 30-101. Legislative findings.

1. The legislature finds that while the energy and economic output generated by nuclear power plants are beneficial to the state and its residents, discharges into waters of the state of radiological agents from nuclear power plants have various adverse and substantial economic impacts on the state and its residents.

2. The legislature further finds that communities with interests in the Hudson River are concerned with the economic impacts on local real estate values and economic development with respect to the discharge of waste from nuclear power plants into waters of the state during plant decommissioning, which effect is no longer balanced by countervailing economic benefits of the plant to those communities that the plant provided during operation.

3. The legislature further finds that other methods of managing waste from decommissioning nuclear power plants are available and would not result in the same economic impacts.

4. The legislature therefore finds and declares that it is the duty of the state to act to preserve the economic vitality of affected communities.

* NB Section inadvertently added as 30-101 instead of 30-0101

§ 30-0103. Unlawful discharges.

To the extent not subject to preemption by federal law, and notwithstanding any other state or local law, rule, or regulation to the contrary, it shall be unlawful to discharge any radiological substance into the Hudson River in connection with the decommissioning of a nuclear power plant.

ARTICLE 33

PESTICIDES

- Title 1. Definitions
 3. General provisions

5. Testing of pesticide samples
7. Registration of pesticides
9. Permits and certification
- 9-A. Special permits and certification for commercial application of aquatic antifouling paints
10. Special requirements for commercial and residential lawn applications
11. Protection of grape growing areas
12. Pesticide sales and use data base and recordkeeping and reporting
13. Unlawful acts
15. Seizure

TITLE 1 DEFINITIONS

Section 33-0101. Definitions.
33-0103. Exemptions.

§ 33-0101. Definitions.

1. "Active ingredient" means:

a. In the case of a pesticide other than a plant regulator, defoliant or desiccant, an ingredient which will prevent, destroy, repel, or mitigate insects, fungi, rodents, weeds, or other pests.

b. In the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or their produce.

c. In the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant.

d. In the case of a desiccant, an ingredient which will artificially

accelerate the drying of plant tissue.

2. "Adulterated" shall apply to any pesticide if its strength or purity falls below the professed standard or quality as expressed on labeling or under which it is sold, or if any substance has been substituted wholly or in part for the article, or if any valuable constituent of the article has been wholly or in part abstracted.

3. "Affected area" means the area defined in a petition for the protection of a grape growing area.

4. "Agency" means any state agency; municipal corporation; public authority; college, as that term is defined in the education law; railroad, as that term is defined in the railroad law; or telegraph, telephone, telegraph and telephone, pipeline, gas, electric, or gas and electric corporation as those terms are defined in the transportation corporations law, which applies pesticides.

5. "Agricultural commodity" means any plant or part thereof, or animal, or animal product, produced by a person (including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters or other comparable persons) primarily for sale, consumption, propagation or other use by man or animals.

6. "Aircraft" means any contrivance now known, or hereafter invented, used or designed for navigation of, or flight in, the air.

7. "Antidote" means the most practical immediate treatment in case of poisoning and includes first-aid treatment.

8. "Application of pesticide" means any application of pesticides by aircraft or ground equipment.

9. "Business registration" means the requirement of each person or business providing services of commercial application of pesticides, either entirely or as part of the business, to register with the

department.

10. "Certified applicator" means any individual who is certified to use or supervise the use of any pesticide in any category of use covered by his certification.

11. "Commercial application" means any application of any pesticide except as defined in private or residential application of pesticides.

12. "Defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

13. "Degradation" means the decomposition of a compound by stages, exhibiting well-defined intermediate products.

14. "Desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

15. "Development" means natural and normal growth before harvest.

16. "Experimental use permit" means a permit issued to an applicant for the use of a limited amount of a pesticide not registered pursuant to this article to accumulate data necessary to apply to register the pesticide.

17. "Fungi" means all non-chlorophyll-bearing thallophytes (that is, all non-chlorophyll-bearing plants of a lower order than mosses and liverworts) as, for example, rusts, smuts, mildews, molds, yeast, and bacteria, except those on or in living man or other animals.

18. "Fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any fungi.

19. "General use pesticide" means a pesticide which does not meet the state criteria for a restricted pesticide as established under authority of section 33-0303 of this article.

20. "Grape grower" means a producer of grapes for profit.

21. "Grape vineyard" means lands upon which grapevines are maintained and harvested for profit.

22. "Ground equipment" means any machine or device (other than aircraft) for use on land or water, designed for, or adaptable to use in applying pesticide as spray, dust, aerosol, fog, or in any other form.

23. "Herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed.

24. "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class Insecta, comprising six-legged, usually winged forms, as, for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as, for example, spiders, mites, ticks, centipedes, and wood lice, except those on or in living man. This term shall also include hematodes.

25. "Inert ingredient" means an ingredient which is not an active ingredient.

26. "Ingredient statement" means either:

a. A statement of the name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the pesticide; and

b. If the pesticide contains arsenic in any form, a statement of the percentage of total and water soluble arsenic, each calculated as elemental arsenic.

27. "Insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any

insects which may be present in any environment whatsoever, except those on or in living man.

28. "Label" means the written, printed, or graphic matter on, or attached to, the pesticide, or its immediate container and any outside containers or wrappers.

29. "Labeling" means all labels and other written, printed, or graphic matter:

a. Upon the pesticide or any of its containers or wrappers;

b. Accompanying the pesticide at any time;

c. To which reference is made on the label or in literature accompanying the pesticide, except when accurate, non-misleading reference is made to current official publications of the United States Department of Agriculture or Interior, the United States Public Health Service, state agricultural experiment stations, state colleges of agriculture, or other similar federal institutions or official agencies of this state or other states authorized by law to conduct research in the field of pesticides.

30. "Major source of agricultural income" means that the producers of grapes within the affected area obtain at least ten percent of their gross income as a group in any five year period from the production of grapes.

31. "Metabolite" means any of the various organic compounds produced by metabolism.

32. "Misbranded" shall apply to any pesticide:

a. If its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

b. If it is an imitation of or is offered for sale under the name of another pesticide; or if its labeling bears any reference to registration under this article;

c. If the labeling accompanying it does not contain instructions for use which are necessary and, if complied with, adequate for the protection of the public;

d. If the label does not contain a warning or caution statement which may be necessary and, if complied with, adequate to prevent injury to health and the environment;

e. If the label is not visible and readable on the outside of the marketing package which is presented or displayed under customary conditions of purchase;

f. If any word, statement, or other information required by or under the authority of this article to appear on the labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

g. If in the case of an insecticide, fungicide, or herbicide, when used as directed or in accordance with commonly recognized practice, it shall be injurious to living man or other vertebrate animals or vegetation, except weeds, to which it is applied, or to the person applying such pesticide; or

h. If in the case of a plant regulator, defoliant, or desiccant when used as directed it shall be injurious to living man or other vertebrate animals, or vegetation to which it is applied, or to the person applying such pesticide; provided, that physical or physiological effects on plants or parts thereof shall not be deemed injurious, when this is the purpose for which the plant regulator, defoliant, or desiccant was applied, in accordance with the label claims and recommendations.

i. If its labeling in any other way fails to conform to the labeling requirements of the Federal Insecticide, Fungicide, and Rodenticide Act of 1972, as amended.

33. "Person" means any individual, partnership, association, corporation, organized group of persons whether incorporated or not, private or public authority, state government or agency, political subdivision, governmental agency or any other legal entity whatever.

34. "Pest" means (1) any insect, rodent, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria or other micro-organism (except viruses, bacteria or other micro-organisms on or in living man or other living animals) which the commissioner declares to be a pest.

35. "Pesticide" means:

a. Any substance or mixture or substances intended for preventing, destroying, repelling, or mitigating any pest; and

b. Any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant.

36. "Pesticide business" means any person providing commercial application of pesticides for hire.

37. "Plant regulator" means any substance or mixture of substances, intended through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of ornamental or crop plants or their produce, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

38. "Private application" means any application of any pesticide for the purpose of producing an agricultural commodity

a. on property owned or rented by the applicator or the applicator's employer, or

b. if applied without compensation other than the barter of personal services between producers of agricultural commodities, on property owned or rented by a party to such a barter transaction.

39. "Proximity" means a radial distance of two miles from the site of damage to grape vineyards.

40. "Registrant" means the person registering any pesticide pursuant to the provisions of this article.

41. "Residential application" shall mean the application of general use pesticides by ground equipment on property owned or leased by the applicator, excluding any establishment selling or processing food and any residential structure other than the specific dwelling unit in which the applicator resides.

42. "Restricted use pesticide" means a pesticide, as defined in this article and determined as provided in section 33-0303:

a. Which (1) either (a) persists in the environment, or (b) accumulates as either the pesticide per se, a pesticide metabolite, or a pesticide degradation product in plant or animal tissue or product, and is not excreted or eliminated within a reasonable period of time, and which may be transferred to other forms of life; and (2) which by virtue of such persistence or accumulation creates a present or future risk of harmful effects on any organism other than the target organisms; or

b. Which the commissioner finds is so hazardous to man or other forms of life that restrictions on its sale, purchase, use, or possession are in the public interest.

43. "Rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating rodents or any other vertebrate animals which the commissioner shall declare to be

a pest.

44. "Target organisms" means those organisms which the pesticide is intended to inhibit or destroy pursuant to its registered labeled usage.

45. "Weed" means any plant which grows where not wanted.

46. "Commercial lawn application" means the application of pesticide to ground, trees, or shrubs on public or private outdoor property. For the purposes of this article the following shall not be considered commercial lawn application:

a. the application of pesticide for the purpose of producing an agricultural commodity;

b. residential application of pesticides;

c. the application of pesticides around or near the foundation of a building for the purpose of indoor pest control;

d. the application of pesticides by or on behalf of agencies except that agencies shall be subject to visual notification requirements pursuant to section 33-1003 where such application is within one hundred feet of a dwelling, multiple dwelling, public building or public park; and

e. the application of pesticides on golf courses or turf farms.

47. "Major change in labeling" shall mean any new label or labeling or any amended label or labeling for a pesticide product which contains an active ingredient previously registered and which (a) results in a major change in the use pattern for the active ingredient; (b) changes the classification of the active ingredient or the product to general use or restricted use; increases the application rate; changes the percent concentration of an active ingredient other than an increase due to changes in methods of analysis; adds a previously-registered active ingredient or deletes any active ingredient; or (c) any other change

which significantly increases the potential exposure of any non-target organism or which increases the potential for a significant impact to humans, property or the environment.

48. "Residential lawn application" means the application of general use pesticides to ground, trees or shrubs on property owned by or leased to the individual making such application. For the purposes of this article the following shall not be considered residential lawn application:

a. The application of pesticides for the purpose of producing an agricultural commodity;

b. The application of pesticides around or near the foundation of a building for the purpose of indoor pest control;

c. The application of pesticides by or on behalf of agencies except that agencies shall be subject to visual notification requirements pursuant to section 33-1003 of this article where such application is within one hundred feet of a dwelling, multiple dwelling, public building or public park; and

d. The application of pesticides on golf courses or turf farms.

49. "Abutting property" shall mean any property which has any boundary or boundary point in common with the property on which the pesticide is to be applied.

§ 33-0103. Exemptions.

1. The provisions of subdivisions 1 through 5 inclusive of section 33-0303 and titles 5, 7, 11, 13 and 15 of this article shall not apply to:

a. Any carrier while lawfully engaged in transporting a pesticide within this state, if such carrier shall, upon request, permit the

commissioner or his designated agent to copy all records showing the transactions in and movement of the articles;

b. The manufacturer or shipper of a pesticide for experimental use only:

(1) By or under the supervision of an agency of this state or of the federal government authorized by law to conduct research in the field of pesticides which has a valid experimental permit issued by the commissioner, or

(2) By others having a valid experimental permit issued by the commissioner if the pesticide is not sold and if the container thereof is plainly and conspicuously marked "For experimental use only--Not to be sold," together with the manufacturer's name and address. However, if such a written permit has been obtained from the commissioner, pesticides may be sold for experimental purposes subject to such restrictions and conditions as may be set forth in the permit.

2. No article shall be deemed in violation of this article when intended solely for export to a foreign country, and when prepared or packed according to the specifications or directions of the purchaser. If not so exported, all of the provisions of this article shall apply.

3. Notwithstanding any other provision of this article, registration is not required in the case of a pesticide shipped from one plant within this state to another plant within this state operated by the same person.

TITLE 3

GENERAL PROVISIONS

Section 33-0301. Declaration of policy and purposes.

33-0303. Powers and duties of the commissioner and the department.

33-0304. Fees.

33-0305. Severability.

§ 33-0301. Declaration of policy and purposes.

The purpose of this article is to regulate the registration, commercial use, purchase and custom application of pesticides. Pesticides, properly used for the control of insects, fungi, weeds, and nematodes, and as defoliants, desiccants, and plant regulators and for related purposes, are valuable, important and necessary to the welfare, health, economic well-being and productive and industrial capabilities of the people of this state. However, such materials, if improperly used, may injure health, property and wildlife. It is hereby declared to be a matter of legislative determination that the regulation of the registration, commercial use, purchase and custom application of pesticides is needed in the public interest and that in the exercise of the police power all persons be required to register or obtain permits before engaging in such activities.

§ 33-0303. Powers and duties of the commissioner and the department.

1. Jurisdiction in all matters pertaining to the distribution, sale, use and transportation of pesticides, is by this article vested exclusively in the commissioner.

2. All authority vested in the commissioner by this article may be executed with like force and effect by employees of the department designated by the commissioner; however, all hearings held under this article except those held under the provisions of title 9 shall be conducted by the commissioner or by a person designated by him for that purpose, and any decision rendered after any such hearing shall be made by the commissioner.

3. The commissioner is authorized, after a hearing:

a. To declare as a pest any form of plant or animal life or virus which is injurious to plants, men, domestic animals, articles, or substances;

b. To determine whether pesticides are highly toxic to man, and to promulgate a list of such pesticides;

c. To determine standards of coloring or discoloring for pesticides, and to subject pesticides to the requirements of paragraph d of subdivision 1 of section 33-1301;

d. To promulgate a list of restricted use pesticides and the usages of such pesticides that may be permitted subject to whatever conditions or limitations which the commissioner deems appropriate to fully protect the public interest; provided, however, that no hearing shall be required on individual additions to such list unless requested sixty days after notice has been provided in the environmental notice bulletin as prescribed in section 3-0306 of such law, as added by chapter seven hundred fourteen of the laws of nineteen hundred seventy-five, by the applicant or an interested party; and

e. To adopt, promulgate and issue such rules and regulations as he may deem necessary to carry out and give full force and effect to the provisions of this article. However, rules and regulations regarding business registration and certification may be adopted only after a public hearing. Such rules and regulations may prescribe methods to be used in the application of pesticides, including the time, place, manner and method of application and equipment used, and may restrict or prohibit use of materials in designated areas during specified periods of time, and shall encompass all reasonable factors which he deems necessary to prevent damage or injury to health, property and wildlife. Rules and regulations shall be filed and open for public inspection at the principal office of the department and shall be filed with the Secretary of State. The commissioner shall promulgate a regulation authorizing the use of alternative containers for pesticides by pesticide users.

4. In order to avoid confusion endangering the public health, or the life or health of any other non-target organisms, resulting from diverse requirements, particularly as to labeling and coloring of pesticides, and to avoid increased costs to the people of this state due to the

necessity of complying with diverse requirements in the manufacture and sale of pesticides, it is desirable that there should be uniformity between the requirements of the several states and the federal government relating to pesticides. To this end the commissioner is authorized, after due public hearing, to adopt by regulation such regulations, applicable to and in conformity with the primary standards established by this article, as have been or may be prescribed with respect to pesticides by departments or agencies of the United States government.

5. The commissioner may require the submission of the complete formula of any pesticide whenever he deems it necessary in the administration of this article. The commissioner, of his own motion or upon complaint, may cause an examination to be made to determine whether any pesticide complies with the requirements of this article. If it shall appear from such examination that a pesticide fails to comply with the provisions of this article, the commissioner shall cause notice to be given to the offending person in the manner provided in section 71-2903, and the proceedings shall be as provided in such article provided that pesticides may be seized and confiscated as provided in title 15 of this article 33.

6. The commissioner may cooperate with any other agency of the state or its subdivisions or with any agency of any other state or of the federal government for the purpose of carrying out the provisions of this article and of securing uniformity of regulations.

7. The commissioner, in consultation with the commissioner of education and the commissioner of health, shall develop guidance on pesticide alternatives to facilitate compliance with section four hundred nine-k of the education law and three hundred ninety-g of the social services law.

§ 33-0304. Fees.

All fees collected pursuant to this article shall be deposited into

the environmental conservation special revenue fund to the credit of the environmental regulatory account; provided, however, that the first five million dollars collected pursuant to this article shall be deposited into the environmental protection fund established pursuant to section ninety-two-s of the state finance law.

§ 33-0305. Severability.

If any provision of this article is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, by a court of competent jurisdiction, the constitutionality of the remainder of the article, and the applicability thereof to other persons and circumstances shall not be affected.

TITLE 5

TESTING OF PESTICIDE SAMPLES

Section 33-0501. Testing of pesticide samples.

§ 33-0501. Testing of pesticide samples.

1. The commissioner shall take and seal samples of pesticides in duplicate in the presence of at least one witness and shall, tender, and, if accepted, deliver to the person in charge of the pesticide one of such samples.

2. The department shall examine, analyze, or test, or cause to be examined, analyzed or tested the pesticide samples taken under the provisions of this article.

3. At least every two years the department shall make public the results of examinations, analyses, trials, and tests of any sample or samples so procured, together with such additional information as circumstances advise. These published results shall be the property of the state of New York and shall not be used for advertising or

regulatory purposes by any person or agency, government or otherwise without the commissioner's permission.

TITLE 7

REGISTRATION OF PESTICIDES

Section 33-0701. Scope of registration.

33-0703. Application for registration.

33-0704. Review of applications to register pesticides.

33-0705. Fee for registration.

33-0707. Disclosure of pesticide formulas.

33-0709. Requirements for registration.

33-0711. Procedure when registration is denied.

33-0713. Cancellation of registration.

33-0714. Water quality monitoring for pesticides.

33-0715. Advisory committees.

33-0717. Public hearing regarding registration.

33-0719. Suspension of pesticide registration.

33-0721. Judicial review.

33-0723. Experimental use permits.

33-0725. Approved agricultural uses.

§ 33-0701. Scope of registration.

Every pesticide which is used, distributed, sold, or offered for sale within this state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state shall be registered every two years with the office of the commissioner; provided that any pesticide imported into this state, which is registered under the provisions of any federal act providing for the registration of pesticides may, in the discretion of the commissioner, be exempted from registration under this article, when sold or distributed in the unbroken immediate container in which it was originally shipped.

§ 33-0703. Application for registration.

The applicant shall file with the commissioner a statement including:

1. The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicant;
2. The name of the pesticide;
3. A complete copy of the labeling accompanying the pesticide and a statement of all claims to be made for it including directions for use;
4. If requested by the commissioner a full description of the tests made and their results upon which the claims are based. In the case of registration of a pesticide which has been registered for the previous year, a statement shall be required only with respect to information which is different from that furnished when the pesticide was last registered; and
5. For restricted use pesticides, if requested by the commissioner a Spanish or other language translation of the label including directions for use.

§ 33-0704. Review of applications to register pesticides.

1. For registration applications subject to review pursuant to subdivisions two through five of this section, an application for pesticide registration shall be determined by the commissioner to be complete or incomplete within sixty days of receipt of an application for registration. If the commissioner does not issue a determination of completeness or incompleteness within sixty days of receipt of an application for registration, the application shall be deemed complete. Upon reaching a determination of completeness or incompleteness, the commissioner shall send written notice to the applicant. If the application is determined to be incomplete, the commissioner shall

include a statement of the reasons for which the application was determined to be incomplete. The resubmission of the application or the submission of additional information in response to a request for additional information shall commence a new sixty calendar day period for department review of the additional information for purposes of determining completeness.

2. The commissioner shall issue or deny registration of a pesticide which contains an active ingredient not previously registered by the commissioner or which contains an active ingredient previously registered for which a major change in labeling is proposed within one hundred fifty days of a determination that such application is complete. If registration of such pesticide is not granted or denied within such period, the applicant may submit to the commissioner, in the form prescribed by the commissioner, a request to grant or deny the registration. If the registration is not granted or denied within thirty days following the receipt of such a request, the registration shall be deemed granted. Any denial of registration shall specify the grounds for denial.

3. The commissioner shall issue or deny registration of a pesticide to meet a special local need within sixty days of a determination that such application is complete. If registration of such pesticide is not granted or denied within such period, the applicant may submit to the commissioner, in the form prescribed by the commissioner, a request to grant or deny the registration. If the registration is not granted or denied within ten business days following receipt of such a request, the registration shall be deemed granted. Any denial of registration shall specify the grounds for denial.

4. The commissioner shall issue or deny registration of a pesticide which contains an active ingredient previously registered and which does not propose a major change in labeling within ninety days of a determination that such application is complete. If registration of such pesticide is not granted or denied within such period, the applicant may submit to the commissioner, in the form prescribed by the commissioner, a request to grant or deny the registration. If the registration is not

granted or denied within thirty days following the receipt of such a request, the registration shall be deemed granted. Any denial of registration shall specify the grounds for denial.

5. The commissioner shall grant or deny registration of amended labeling of a pesticide product previously registered, other than a major change in labeling, within thirty days following a determination that the application to register the amended labeling is complete. If registration of such amended labeling is not granted or denied within thirty days of a determination that the application is complete, the applicant may submit, in the form prescribed by the commissioner, a request to grant or deny registration of the amended labeling. If registration of the amended labeling is not granted or denied within thirty days following receipt of such a request, the registration shall be deemed granted. Any denial shall specify the grounds for denial.

6. At any time during the review of an application to register a pesticide the commissioner may request reasonable additional information from the applicant with regard to any matter contained in the application when such additional information is necessary for the commissioner to make a decision on the registration application. Such request shall not extend any time period within which a registration decision must be made.

7. A request that the commissioner apply for an emergency exemption from a federal act providing for the registration of pesticides for a use of a pesticide for which no registration has been issued under such federal act shall be filed with the commissioner at least one hundred five days prior to the date on which such use is proposed to commence. Within thirty days of receipt of such a request, the commissioner shall determine whether the materials submitted with the request are adequate to support an application for an emergency exemption, and shall so inform the person submitting the request. If a request is determined to be adequate to support an application for an emergency exemption, an application shall be filed by the commissioner at least sixty days prior to the date upon which such use is proposed to commence.

8. Any time period specified in this section may be extended with the consent of the applicant.

9. The commissioner shall promulgate rules and regulations necessary and appropriate to carry out the purposes of this title, which shall include a definition of a complete application to register a pesticide. Regulations defining a complete application to register a pesticide shall be promulgated not later than April 1, 1993.

§ 33-0705. Fee for registration.

The applicant for registration shall pay a fee as follows:

a. Six hundred dollars for each pesticide proposed to be registered, provided that the applicant has submitted to the department proof in the form of a federal income tax return for the previous year showing gross annual sales, for federal income tax purposes, of three million five hundred thousand dollars or less; and

b. For all others, six hundred twenty dollars for each pesticide proposed to be registered.

§ 33-0707. Disclosure of pesticide formulas.

The commissioner, whenever he deems it necessary in the administration of subdivisions 1 through 5 inclusive of section 33-0303 and titles 5, 7, 11, 13 and 15 of this article, may require the submission of the complete formula of any pesticide. Notwithstanding the provisions of this article, information relative to formulas of products acquired by authority of this section may be revealed, when necessary under this section, to an advisory committee, or to any federal or state department or agency consulted, or at a public hearing, or in findings of fact issued by the commissioner.

§ 33-0709. Requirements for registration.

If it appears to the commissioner that the composition of the pesticide is such as to warrant the proposed claims for it, and if the pesticide and its labeling and other material required to be submitted comply with the requirements of this article, he shall register the pesticide.

§ 33-0711. Procedure when registration is denied.

If the commissioner shall decide that the pesticide does not warrant the proposed claims for it or if the pesticide and its labeling and other material required to be submitted do not comply with the provisions of this article, he shall notify the applicant for registration of the manner in which the pesticide, labeling, or other material required to be submitted fail to comply with this article so as to afford the registrant an opportunity to make the necessary corrections. If, upon receipt of such notice, the applicant for registration does not make the corrections, the commissioner shall refuse to register the article, and shall notify the applicant of his action and the reasons for his refusal. Whenever an application for registration is refused, the applicant, within thirty days after service of notice of such refusal, may file a petition requesting that the matter be referred to an advisory committee or file objections and request a public hearing in accordance with section 33-0717.

§ 33-0713. Cancellation of registration.

1. The commissioner, in accordance with the procedures specified in this article may cancel the registration of a pesticide whenever it does not appear that the article or its labeling or other material required to be submitted complies with the provisions of this article.

2. Whenever the commissioner determines that registration of a pesticide should be canceled, he shall notify the registrant of his

action and the reasons therefor.

3. A cancellation of registration shall be effective thirty days after service of the foregoing notice unless within such time the registrant (a) makes the necessary corrections; (b) files a petition requesting that the matter be referred to an advisory committee; or (c) files objections and requests a public hearing.

§ 33-0714. Water quality monitoring for pesticides.

The department, in coordination with the United States Geological Survey National Water Quality Assessment Program, the New York State Water Resources Institute, and other parties, shall conduct a water quality monitoring program to provide an adequate understanding of the health and environmental impacts of pesticide use in the state. The department shall utilize this program, as it deems necessary, in: making pesticide registration decisions; reviewing suspensions and cancellations of pesticide registrations in the state; and assessing the status, trends, and health impacts of any pesticide contamination of ground and surface waters on Long Island and throughout the state.

§ 33-0715. Advisory committees.

1. The commissioner on his own motion, may at any time refer matters concerning registration of pesticides or the suspension or cancellation of such registration, to an advisory committee. Each advisory committee shall be composed of experts, qualified in the subject matter and of adequately diversified professional background selected by the department and shall include one or more representatives from the state college of agriculture. The committee shall not have more than seven members. Advisory committee members shall not receive a salary or other compensation, but shall be reimbursed for their necessary traveling and subsistence expenses while serving away from their places of residence. All costs may be assessed against the petitioner, unless the matter was referred to the advisory committee upon the motion of the commissioner

without a petition. The commissioner shall furnish the committee with adequate clerical and other assistance, and shall by rules and regulations prescribe the procedures to be followed by the committee.

2. Whenever the applicant or registrant requests an advisory committee hearing or the commissioner determines that a matter should be referred to an advisory committee, the commissioner shall submit the application for registration of the article and all relevant data before him to the committee forthwith. The petitioner, as well as representatives of the department shall have the right to consult with the advisory committee. As soon as practicable after any such submission, but not later than sixty days, the committee shall, after independent study of the data submitted by the commissioner and all other pertinent information available to it, submit a report and recommendation to the commissioner as to the registration of the article, together with all underlying data and a statement of the reasons or basis for the recommendations. After due consideration of the views of the committee and all other data before him the commissioner shall, within ninety days after receipt of the report and recommendations of the advisory committee, make his determination and issue an order, with findings of fact, with respect to registration of the article and notify the applicant for registration or registrant of his decision. The applicant for registration, or registrant, may file objections and request a public hearing within sixty days from the date of the commissioner's order made after receiving the report and recommendations of the advisory committee.

§ 33-0717. Public hearing regarding registration.

In the event a hearing is requested, the commissioner shall, after due notice, hold a public hearing for the purpose of receiving evidence relevant and material to the issues raised by the objections. Any report, recommendations, underlying data, and reasons certified to the commissioner by an advisory committee shall be made a part of the record of the hearing, if relevant and material. Upon request of the commissioner, petitioner, or hearing officer, the advisory committee shall designate one of its members to appear and testify at the hearing

with respect to its report and recommendations. However, any other member of the advisory committee may also appear and testify at the hearing. As soon as practicable after completion of the hearing, the commissioner shall evaluate the data and reports before him, act upon the objections and issue an order granting, denying, or canceling the registration. Such order shall be based only on substantial evidence of record at such hearing, including any report, recommendations, underlying data, and reason certified to the commissioner by an advisory committee, and shall set forth detailed findings of fact upon which the order is based. In connection with consideration of any registration or application for registration under this section, the commissioner may consult with any federal agency or any other state department or agency.

§ 33-0719. Suspension of pesticide registration.

Notwithstanding any other provision of this article, the commissioner may, by order, suspend the registration of a pesticide immediately when he finds that such action is necessary to prevent an imminent hazard to the public or any other non-target organism. In such case, he shall give the registrant prompt notice of such action and afford the registrant the opportunity to have the matter submitted to an advisory committee and for an expedited hearing under this article.

§ 33-0721. Judicial review.

Final orders of the commissioner under this title shall be subject to review under article 78 of the Civil Practice Law and Rules instituted within thirty days after receipt by the applicant for registration or registrant of the commissioner's order.

§ 33-0723. Experimental use permits.

1. The commissioner is hereby authorized to apply to the United States environmental protection agency for certification pursuant to section

five of the Federal Insecticide, Fungicide and Rodenticide Act of 1972, as amended, to issue experimental use permits, and to establish by regulation any requirements as are necessary to qualify for such certification.

2. After certification by the administrator of the United States environmental protection agency to issue experimental use permits, the commissioner is hereby authorized to issue such permits as shall be required for the shipment, delivery, or use of a pesticide product which is to be tested to determine the scope of limitations of its usefulness and the effect of its use on human life and the environment. Such permits may be issued for products for use only in experimental programs under the supervision of qualified persons and broad scale testing under normal conditions of use. The commissioner may require such information and data concerning the product and the proposed testing program as is deemed necessary to make determinations on the merits of the pesticides being tested.

3. The commissioner is authorized to exempt from the requirement for experimental use permits substances or mixtures of substances in early research stages such as those being put through laboratory or greenhouse tests or limited scale field trials or other tests for the purpose of determining pesticide value and from which the user does not expect to receive any benefit in pest control.

§ 33-0725. Approved agricultural uses.

A pesticide shall be used in accordance with its labeling. Unless the labeling specifically prohibits such use, a pesticide registered for use in New York state may be used for agricultural purposes only in a dosage, concentration or frequency less than that specified on the labeling.

TITLE 9 PERMITS AND CERTIFICATION

Section 33-0901. Commercial permits.

33-0903. Purchase permits.

33-0905. Pesticide applicator certification.

33-0907. Pesticide business and agency registration.

33-0909. Denial or revocation of certification or registration.

33-0911. Certification and registration fees.

§ 33-0901. Commercial permits.

1. A commercial permit is required for the distribution, sale, offer for sale, purchase for the purpose of re-sale or possession for the purpose of re-sale of a restricted use pesticide.

2. Any person desiring such a permit shall file an application containing such information required by the commissioner and in a form prescribed by the commissioner. The commissioner shall examine the application and shall issue or refuse to issue the permit requested therein. The commissioner shall impose whatever restrictions or conditions on the permit he deems appropriate in order to fully protect the public interest. Such a permit shall not be valid for more than two years as determined by the commissioner. A separate permit is required for each location in the state, and a fee for each location in the state of six hundred dollars is required.

3. Upon the sale by a commercial permit holder of a restricted use pesticide to a purchase permit holder, the commercial permit holder shall cancel the permit in a manner to be prescribed by the commissioner.

4. The holder of a commercial permit may purchase restricted use pesticides for re-sale without being required to obtain and present a purchase permit, as provided for in section 33-0903.

5. The holder of a commercial permit must maintain and make available to the commissioner or his agents, for at least two years, accurate and detailed records accounting for all restricted use pesticides acquired

by him and disposed of by him, including, but not limited to dates, names and addresses of all suppliers and the quantities acquired from each, and the names, addresses, permit numbers or certification identification card numbers of all purchasers, and the quantities purchased by each.

6. The reasons for the denial of an application or revocation of a commercial permit may include, but not be limited to, the commissioner being satisfied of one or more of the following:

a. That any statement in the application or upon which the permit was issued is or was false or misleading;

b. That the applicant or permit holder does not have adequate facilities for the storage and distribution of restricted use pesticides;

c. That the applicant or permit holder has engaged in fraudulent business practices relating to the sale and distribution of pesticides;

d. That the applicant or permit holder has failed to comply with any provision of subdivisions 1 through 5 inclusive of section 33-0303 and titles 5, 7, 11, 13 and 15 of this article or rules and regulations of the department made pursuant thereto; or

e. That the applicant or permit holder has failed to demonstrate that he has sufficient knowledge and experience concerning the proper use and application of pesticides.

7. A formal hearing shall not be required and the commissioner's decision in denying or revoking a permit shall be final unless the applicant or permit holder institutes a review within the time and in the manner prescribed by article 78 of the Civil Practice Law and Rules.

§ 33-0903. Purchase permits.

1. A purchase permit or certification identification card is required for the purchase, possession or use of a restricted use pesticide.

2. Any person desiring such a permit shall file an application containing such information required by the commissioner and in a form prescribed by the commissioner. The commissioner shall examine the application and shall issue or refuse to issue the permit requested therein. The commissioner shall not issue a permit to so purchase, possess or use a particular pesticide if there is a reasonably less dangerous alternative available capable of performing the task required. The commissioner shall impose whatever restrictions or conditions on the permit he deems appropriate in order to fully protect the public interest.

3. Upon the purchase by a purchase permit holder of a restricted use pesticide he shall present his purchase permit and have it cancelled by the commercial permit holder selling the pesticide in a manner to be prescribed by the commissioner.

4. The reasons for the denial of an application or revocation of a permit may include, but not be limited to, the commissioner being satisfied of one or more of the following:

a. That any statement in the application or upon which the permit was issued, is or was false or misleading;

b. That the applicant or permit holder failed to justify his need for the quantity and types of restricted use pesticides requested;

c. That the applicant or permit holder stored, applied, used or disposed of any pesticide contrary to the registered labeled usage or contrary to the conditions specified in his permit;

d. That the applicant or permit holder has failed to comply with any provisions of this article or rules and regulations of the department made pursuant thereto; or

e. That the applicant or permit holder has failed to demonstrate that he has sufficient knowledge and experience concerning the proper use, application and disposal of pesticides.

5. A formal hearing shall not be required and the commissioner's decision in denying or revoking a permit shall be final unless the applicant or permit holder institutes a review within the time and in the manner prescribed by article 78 of the Civil Practice Law and Rules.

6. The commissioner is authorized to exempt holders of a pesticide applicator certification from the requirement of obtaining a purchase permit as provided for herein. Such exemption shall apply only to those restricted use pesticides designated by the commissioner.

§ 33-0905. Pesticide applicator certification.

1. Any person who engages in the commercial or private application of pesticides or the sale of restricted use pesticides shall be certified by the commissioner except as provided in subdivision two of this section. No certification shall be valid unless the certified person also holds a valid identification card issued by the commissioner.

2. The provisions of this article relating to registration and certification shall not apply to:

a. residential application of pesticides as defined in this article;
or

b. private application of a general use pesticide as defined in this article.

2-a. The commissioner may, pursuant to paragraph e of subdivision three of section 33-0303 of this article, adopt regulations on the use of pesticides including the appropriate method and setting for the use of pesticides classified by the United States environmental protection agency as an exempt material under 40 CFR part 152.25, often called

minimum risk pesticides, which are exempt from the requirements of the Federal Insecticide, Fungicide and Rodenticide Act. Such regulations shall encompass all factors necessary to prevent damage or injury to health, property and wildlife.

3. a. Application for pesticide applicator certification shall be made to the commissioner. The application shall be on a form prescribed by the commissioner and shall be accompanied by the fee or fees provided in section 33-0911.

b. An applicant for certification shall satisfy the commissioner as to his knowledge and experience concerning the proper use and application of pesticides and pesticide application equipment through examination prior to initial certification. Recertification shall be by training, workbook, or examination as required by the commissioner.

c. Upon certification, the commissioner shall certify the applicant for the appropriate category of certification and shall issue a certification identification card to the applicant. The certification may restrict the applicant to the use of a certain type or types of equipment or materials.

d. Except as provided in paragraph e of this subdivision, pesticide applicator certifications shall be valid for three years after which every applicator shall recertify according to the requirements then in effect. Certification identification cards shall be valid for three years.

e. Private applicator certifications shall be valid for five years after which every such applicator shall recertify according to the requirements then in effect. Private applicator certification identification cards shall be valid for five years.

g. The commissioner is authorized to provide all examinations, training materials, applications, and any other forms or written materials necessary for a private and/or commercial applicator certification in Spanish for applicants whose primary language is

Spanish and for other languages if the commissioner deems it necessary. The commissioner may require applicants for registration of pesticides to make available pesticide label information and instructions in Spanish and other languages, when necessary, for applicators certified in Spanish or other languages.

4. Certified pesticide applicators shall maintain such records and shall furnish such reports concerning the application of pesticides as the commissioner shall require. All records required to be kept under this section shall be available for inspection by the commissioner.

5. a. Every certified applicator shall, prior to the application of a pesticide within or on the premises of a dwelling, supply the occupants therein with a copy of the information, including any warnings, contained on the label of the pesticide to be applied. Such information shall be supplied in either a written, digital or electronic format which shall be determined by the occupants of such dwelling, provided however that the certified applicator must also have a written copy of such information in his/her possession.

b. Except as provided in paragraph c of this subdivision, every certified applicator shall, prior to the application of a pesticide within or on the premises of a multiple dwelling, building, or structure other than a dwelling supply the owner or his agent, with a copy of the information, including all warnings, contained on the label of the pesticide to be applied. Such information shall be supplied in either a written, digital or electronic format which shall be determined by the owner or his or her agent, provided however that the certified applicator must also have a written copy of such information in his or her possession. Such owner or agent shall make available upon request at reasonable times such information in written or electronic form if available to the occupants or residents of such multiple dwelling, building, or structure.

c. In the case where an occupant of a multiple dwelling unit retains a certified applicator to apply pesticides within such unit, such certified applicator shall, prior to the application of a pesticide,

supply any information, including all warnings, contained on the label of the pesticides to the occupants.

d. For the purposes of this subdivision:

(i) A "dwelling" is any building or structure or portion thereof which is occupied in whole or in part as the home, residence or sleeping place for one or two families;

(ii) A "multiple dwelling" shall mean any dwelling which is to be occupied by or is occupied as the residence or home of three or more families living independently of each other;

(iii) A "multiple dwelling unit" shall mean that portion of a multiple dwelling occupied by one or more persons as the residence or home of such persons; and

(iv) "Premises" shall mean land and improvements or appurtenances or any part thereof.

§ 33-0907. Pesticide business and agency registration.

1. Any pesticide business or agency as defined in this article shall register with the commissioner.

2. Applications for pesticide business or agency registration shall be made to the commissioner. The application shall be on a form prescribed by the commissioner and shall provide such information as the commissioner shall require.

3. An applicant for pesticide business or agency registration shall satisfy standards, as determined by the commissioner to be appropriate, with respect to knowledge and experience concerning the proper use and application of pesticides and pesticide equipment.

4. Business or agency registration shall be valid for three years.

§ 33-0909. Denial or revocation of certification or registration.

1. The commissioner, after due notice and opportunity of hearing to an applicant, certified applicator, or registered pesticide business or agency, may deny an application or revoke a certificate or registration upon a determination that:

a. any statement in the application or upon which the certificate or registration was issued is or was false or misleading;

b. the applicant or certified applicator has been convicted of a felony;

c. the applicant, certified applicator, or registered business or agency applied or used any pesticide contrary to the registered label usage;

d. the applicant, certified applicator, or registered business or agency has engaged in fraudulent business practices in the application of pesticides;

e. the applicant, certified applicator, or registered business or agency has failed to comply with any provision of this article or rules and regulations of the department made pursuant thereto; or

f. the applicant or certified applicator has failed to demonstrate that he has sufficient knowledge and experience concerning the proper use and application of pesticides.

2. The commissioner's determination to refuse or revoke certification or registration shall be final unless the aggrieved party institutes a proceeding under article seventy-eight of the civil practice law and rules within thirty days of service on him by personal service or by certified mail of the commissioner's order.

§ 33-0911. Certification and registration fees.

1. Every applicant for pesticide applicator certification shall pay an

examination fee of one hundred dollars for each examination.

2. Fees for pesticide applicator certification shall be four hundred fifty dollars for commercial pesticide applicator certification in one individual category, one hundred fifty dollars for each additional category and one hundred fifty dollars for each additional sub-category chosen. For private applicators a fee of twenty-five dollars for the initial certified private applicator and five dollars for subsequent applicators on the same farm or business shall be charged at the time of initial certification, renewal of certification or recertification.

3. Pesticide businesses shall pay a registration fee of nine hundred dollars. When the applicant regularly maintains or operates more than one business address a fee may be required for each of the applicant's business addresses in the state. Any agency which is a state agency, municipal corporation, public authority, or college shall be exempt from any fee for registration.

TITLE 9-A

SPECIAL PERMITS AND CERTIFICATION FOR COMMERCIAL APPLICATION OF AQUATIC ANTIFOULING PAINTS

Section 33-0920. Definitions.

33-0921. Aquatic antifouling paint applicator certification.

33-0922. Aquatic antifouling paint business registration.

33-0923. Denial or revocation of certification or registration.

33-0924. Certification and registration fees.

33-0925. Sanctions.

§ 33-0920. Definitions.

For the purposes of this title:

1. "Aquatic antifouling paint application business" shall mean a business that commercially applies aquatic antifouling paints.

2. "Aquatic antifouling paints" are pesticide products used on vessel hulls, boat bottoms, structures and other marine surfaces to inhibit the growth of aquatic organisms.

3. "Application of aquatic antifouling paint" shall mean the commercial application of aquatic antifouling paints.

4. "Aquatic antifouling paint applicator" shall be a person certified by the department pursuant to section 33-0921 of this title.

§ 33-0921. Aquatic antifouling paint applicator certification.

1. Notwithstanding any other provision of law or regulation pursuant to this title, a person who is certified by the commissioner as an aquatic antifouling paint applicator may engage in the commercial application of aquatic antifouling paint.

2. Application for aquatic antifouling paint applicator certification shall be made to the commissioner. The application shall be on a form prescribed by the commissioner and shall be accompanied by the fee or fees provided in section 33-0911 of this article.

3. An applicant for aquatic antifouling paint applicator certification shall successfully complete a comprehensive twenty-hour training course approved by the department including eight hours of category-specific training which includes topics related to the safe and proper use, handling, storage and disposal of aquatic antifouling paints and/or satisfy the commissioner as to the applicant's knowledge and experience concerning the proper use and application of aquatic antifouling paint and application equipment through examination prior to initial certification. The commissioner may consider appropriate experience of the applicant as specified in regulations when determining eligibility for examination.

4. Aquatic antifouling paint applicator certification shall be valid for three years after which every applicator shall recertify.

Recertification shall require no more than five hours of course work by training, workbook, or examination as required by the commissioner.

5. No certification shall be valid unless the certified person also holds a valid identification card issued by the commissioner. Certification identification cards shall be valid for three years.

6. Certified aquatic antifouling paint applicators shall maintain such records and shall furnish such reports concerning the application of aquatic antifouling paints as the commissioner shall require. All records required to be kept under this section shall be available for inspection by the commissioner.

§ 33-0922. Aquatic antifouling paint business registration.

1. Notwithstanding any other provision of law or regulation pursuant to this title, an aquatic antifouling paint application business as defined in this title shall register with the commissioner.

2. Applications for aquatic antifouling paint application business registration shall be made to the commissioner and applicants shall provide such information as the commissioner shall require. The application shall be on a form prescribed by the commissioner and shall be accompanied by the fee or fees provided in section 33-0911 of this article.

3. An applicant for aquatic antifouling paint application business shall satisfy standards, as determined by the commissioner to be appropriate, with respect to knowledge and experience concerning the proper use and application of aquatic antifouling paint application and equipment. In addition to any other standards determined by the commissioner to be appropriate, an applicant shall: (a) employ at least one person who is a certified commercial pesticide applicator or technician certified in the application of aquatic antifouling paint or an aquatic antifouling paint applicator at each location required to be registered; or (b) have entered into a contract with another registered

business that employs a person who is a certified commercial pesticide applicator or technician certified in the application of aquatic antifouling paint or an aquatic antifouling paint applicator, pursuant to which contract such registered business has agreed to apply aquatic antifouling paint at each such location for such applicant.

4. Business registration shall be valid for three years.

5. When engaged in the commercial application of aquatic antifouling paints, an aquatic antifouling paint application business shall ensure that such aquatic antifouling paints are only applied by an employee who is a certified commercial pesticide applicator or technician certified in the application of aquatic antifouling paint or an aquatic antifouling paint applicator, or a person who is a certified commercial pesticide applicator or technician certified in the application of aquatic antifouling paint or an aquatic antifouling paint applicator employed by another registered business with which such business has contracted to apply aquatic antifouling paints; provided, however, that until such time as authorization for pesticide application by pesticide apprentices is repealed, aquatic antifouling paint registered as a general use pesticide may be applied by a commercial pesticide apprentice who is at least seventeen years of age and employed by such business (a) working under the direct supervision of a certified commercial pesticide applicator, or (b) working under the supervision of a certified pesticide technician qualified in aquatic antifouling paints, if such application is otherwise done in compliance with the rules and regulations of the department, and who, during the handling and application of such paint, utilizes appropriate safety equipment including but not limited to a respirator, eye protection and skin protection.

6. Such aquatic antifouling paint application business shall, for a period of five years, maintain for inspection by the department an annual report listing the names and certification numbers of all employees or contractors engaged in the application of aquatic antifouling paints on behalf of such business during the prior twelve months.

§ 33-0923. Denial or revocation of certification or registration.

The commissioner, after due notice and opportunity of hearing to an applicant, certified applicator, or registered pesticide business or agency, may deny an application or revoke a certificate or registration pursuant to section 33-0909 of this article.

§ 33-0924. Certification and registration fees.

All fees established by the commissioner for certification and registration pursuant to this title shall be the same as those established by section 33-0911 of this article.

§ 33-0925. Sanctions.

Notwithstanding any other provision of law or regulation pursuant to this title and/or any provision of this article as it relates to the application of aquatic antifouling paints, any person who violates any provision of this title or any rule, regulation or order issued thereunder shall be liable to the people of this state for a civil penalty of up to one thousand dollars for a first violation to be assessed by the commissioner after a hearing or opportunity to be heard. In determining the amount of the penalty, the commissioner shall take into account whether the violation posed an immediate threat to the environment or the health and safety of the public. Any subsequent violation of this title and/or any provision of this article as it relates to the application of aquatic antifouling paints would be subject to the appropriate sanctions pursuant to sections 71-2907 and 71-2911 of this chapter.

TITLE 10

SPECIAL REQUIREMENTS FOR COMMERCIAL AND RESIDENTIAL LAWN APPLICATIONS

Section 33-1001. Requirements and restrictions.
33-1003. Visual notification.
33-1004. Lawn applications; certain municipalities.
33-1005. Rules and regulations.
33-1005*2. Commissioner's regulations.

§ 33-1001. Requirements and restrictions.

1. Prior to any commercial lawn application the applicator shall enter into a written contract with the owner of the property or his or her agent specifying the approximate date or dates of application, number of applications, and total cost for the service to be provided.

2. Prior to any commercial lawn application the applicator shall supply the property owner or his or her agent with a copy of:

a. a list of substances to be applied including brand names and generic names of active ingredients;

b. any warnings that appear on the label of pesticides to be applied that are pertinent to the protection of humans, animals or the environment; and

c. the company name, address, telephone number, business registration number and applicator certification identification card number.

Such information shall be supplied in either a written, digital or electronic format which shall be determined by the owner or his or her agent provided however that the applicator must also have a written copy of such information in his or her possession.

3. In the event that application on the date or dates specified becomes infeasible, the person who is to provide such application shall give the owner or his agent oral or written notice of the proposed alternate date or dates, and shall receive acceptance of such alternate date or dates from the owner or his agent prior to initiating commercial

lawn application.

4. Persons providing commercial lawn applications shall maintain copies of all contracts required pursuant to subdivision one of this section.

§ 33-1003. Visual notification.

1. All persons providing commercial lawn application shall affix markers to be placed within or along the perimeter of the area where pesticides will be applied. Markers are to be placed so as to be clearly visible to persons immediately outside the perimeter of such property. Such markers shall be posted at least twelve inches above the ground and shall be at least four inches by five inches in size.

2. The markers required pursuant to this section shall be in place on the day during which the pesticide is being applied and shall instruct persons not to enter the property and not to remove the signs for a period of at least twenty-four hours. Such instruction shall be printed boldly in letters at least three-eighths of an inch in height.

§ 33-1004. Lawn applications; certain municipalities.

1. Notwithstanding any other provision of law to the contrary, any county not contained entirely within a city, and any city with a population of one million or more, may, after public hearing, adopt a local law comprised of the following provisions in their entirety and without exception including all applicable definitions as provided in this article:

a. All retail establishments that sell general use pesticides for commercial or residential lawn application shall display a sign meeting standards, established by the commissioner pursuant to subdivision one of section 33-1005 of this article, in a conspicuous place, and such sign shall be placed as close as possible to the place where such

pesticides are displayed.

b. (i) At least forty-eight hours prior to any commercial lawn application of a pesticide, the person or business making such application shall supply written notice, as defined in subdivision three of section 33-1005 of this article to:

A. occupants of all dwellings, as defined in paragraph d of subdivision five of section 33-0905 of this article, on abutting property with a boundary that is within one hundred fifty feet of the site of such application; and to owners, owners' agents, or other persons in a position of authority for all other types of premises, as defined in paragraph d of subdivision five of section 33-0905 of this article, that are on abutting property with a boundary that is within one hundred fifty feet of the site of such application. Owners or owners' agents of multiple family dwellings shall supply such written notice to the occupants of such multiple family dwellings and for all other types of premises, owners, owners' agents or other persons in a position of authority shall post such written notice in a manner specified by the commissioner; and

B. owners, owners' agents or other persons in positions of authority for multiple family dwellings, the property of which is the site of such application. Owners, or owners' agents of multiple family dwellings shall supply such written notice to the occupants of such multiple family dwellings in a manner specified by the commissioner.

(ii) The prior notification provisions of this paragraph shall not apply to the following:

A. the application of anti-microbial pesticides and anti-microbial products as defined by FIFRA in 7 U.S.C. Section 136 (mm) and 136 q (h) (2);

B. the use of an aerosol product with a directed spray, in containers of eighteen fluid ounces or less, when used to protect individuals from an imminent threat from stinging and biting insects, including venomous spiders, bees, wasps and hornets. This section shall not exempt from

notification the use of any fogger product or aerosol product that discharges to a wide area;

C. the use of non-volatile insect or rodent bait in a tamper resistant container;

D. the application of a pesticide classified by the United States Environmental Protection Agency as an exempt material under 40 CFR Part 152.25;

E. the application of a pesticide which the United States Environmental Protection Agency has determined satisfies its reduced risk criteria, including a biopesticide;

F. the use of boric acid and disodium octaborate tetrahydrate;

G. the use of horticultural soap and oils that do not contain synthetic pesticides or synergists;

H. the application of a granular pesticide, where granular pesticide means any ground applied solid pesticide that is not a dust or powder;

I. the application of a pesticide by direct injection into a plant or the ground;

J. the spot application of a pesticide, where spot application means the application of pesticide in a manually pressurized or non-pressurized container of thirty-two fluid ounces or less to an area of ground less than nine square feet;

K. the application of a pesticide to the ground or turf of any cemetery; and

L. an emergency application of a pesticide when necessary to protect against an imminent threat to human health, provided, however, that prior to any such emergency application, the person providing such application shall make a good faith effort to supply the written notice

required pursuant to this title. Upon making an emergency application, the person making such application shall notify the commissioner of health, using a form developed by such commissioner for such purposes that shall include minimally the name of the person making such application, the pesticide business registration number or certified applicator number of the person making such application, the location of such application, the date of such application, the product name and United States Environmental Protection Agency registration number of the pesticide applied and the reason for such application.

c. (i) All persons performing residential lawn applications treating an area more than one hundred square feet shall affix markers to be placed within or along the perimeter of the area where pesticides will be applied. Markers are to be placed so as to be clearly visible to persons immediately outside the perimeter of such property. Markers shall be posted at least twelve inches above the ground and shall be at least four inches by five inches in size. Such markers shall be in both the English and Spanish languages, and any other languages if the commissioner deems it necessary pursuant to rules and regulations.

(ii) The markers required pursuant to this paragraph shall be in place on the day during which the pesticide is being applied and shall instruct persons not to enter the property and not to remove the signs for a period of at least twenty-four hours. Such instruction shall be printed boldly in letters at least three-eighths of an inch in height.

2. Any county not contained entirely within a city or any city with a population of one million or more that adopts a local law pursuant to the provisions of this section, shall, in addition to any authority otherwise conferred in this chapter, have concurrent authority to enforce such local law administratively, provided however that all sanctions, which shall be assessed after providing a hearing or opportunity to be heard, shall be as specified in section 71-2907 of this chapter and shall be payable to and deposited with the enforcing municipality.

2-a. Within twenty days after the adoption of a local law pursuant to this section, the clerk or other officer designated by the legislative

body shall forward one certified copy thereof to the commissioner and one to the attorney general.

2-b. Any local law adopted pursuant to this section shall take effect on the first day of January after it shall have been adopted.

3. The commissioner of health shall review any emergency form submitted pursuant to this section to ensure that the circumstance did warrant such emergency application. Such forms shall be kept on file at the department of health for three years from the date of application and shall be made available to any person upon request.

*** § 33-1005. Rules and regulations.**

The commissioner shall have the power to promulgate the rules and regulations necessary and appropriate to carry out the purposes of this title.

* NB There are 2 § 33-1005's

*** § 33-1005. Commissioner's regulations.**

For purposes of implementing section 33-1004 of this article in any county not contained entirely within a city or any city with a population of one million or more that has adopted a local law pursuant to such section:

1. The commissioner shall promulgate rules and regulations establishing uniform standards for a consumer pesticide use information sign which shall be placed in retail establishments that sell general use pesticides for commercial or residential lawn application. This sign shall be in both the English and Spanish languages, and any other languages if the commissioner deems it necessary pursuant to rules and regulations, and shall contain the following information:

a. a warning notice directing consumers to follow directions on

labels;

b. a provision to inform the customer of the posting requirements set forth in paragraph c of subdivision one of section 33-1004 of this article; and

c. a recommendation that the customer notify neighbors prior to the application of pesticides so that such neighbors may take precautions to avoid pesticide exposure.

2. The commissioner shall prepare and publish, in consultation with the commissioner of health, educational materials, in both the English and Spanish languages and any other languages if the commissioner deems it necessary, explaining the requirements of paragraphs b and c of subdivision one of section 33-1004 of this article and section three hundred ninety-c of the social services law and the human and environmental health effects of lawn care pesticides.

3. a. The commissioner shall promulgate rules and regulations specifying the following: the content and form of the written notice required in paragraph b of subdivision one of section 33-1004 of this article, with the content consisting minimally of the following:

(i) the address of the premises where application is to be done;

(ii) the name and telephone number and pesticide business registration number or certified applicator number of the person providing the application;

(iii) the specific date of each pesticide application and two alternative dates to the proposed date of application when, due to weather conditions, the pesticide application on the proposed date is precluded;

(iv) the product name or names and the United States Environmental Protection Agency registration number or numbers of the pesticide or pesticides to be applied;

(v) a prominent statement that reads: "This notice is to inform you of a pending pesticide application to: 1. a neighboring property; or 2. this premise. You may wish to take precautions to minimize pesticide exposure to yourself, family members, pets or family possessions.

Further information about the product or products being applied, including any warnings that appear on the labels of such pesticide or pesticides that are pertinent to the protection of humans, animals or the environment, can be obtained by calling the National Pesticides Telecommunications Network at 1-800-858-7378 or the New York State Department of Health Center for Environmental Health Info line at 1-800-458-1158".

b. The commissioner shall review and revise as necessary the phone numbers required to appear in notices pursuant to this section and pursuant to section four hundred nine-h of the education law and section three hundred ninety-c of the social services law. Notwithstanding the provisions of the state administrative procedure act, such phone numbers shall be established as a rule by publication in the environmental notice bulletin.

c. The written notice required by paragraph b of subdivision one of section 33-1004 of this article shall be in both the English and Spanish languages, and any other languages if the commissioner deems it necessary pursuant to rules and regulations.

4. The commissioner shall promulgate rules and regulations specifying: the manner in which persons providing commercial lawn application shall supply written notice as required under paragraph b of subdivision one of section 33-1004 of this article including, but not limited to, mailing, or leaving with a responsible adult or in a conspicuous location on the premises or abutting property; the manner in which the owner or owner's agent of multiple family dwellings covered under paragraph b of subdivision one of section 33-1004 of this article shall supply such written notice to the occupants of such multiple family dwellings; and for all other premises covered under paragraph b of subdivision one of section 33-1004 of this article, the manner in which the owner, owner's agent or other person in a position of authority shall supply such written notice. Such rules and regulations shall specify a manner in which persons providing commercial lawn applications may provide an option to occupants of dwellings to decline further notices.

5. The commissioner is hereby authorized to promulgate rules and regulations, not inconsistent with any other provisions of law, specifying procedures for the department's investigation and processing of alleged violations of paragraph c of subdivision one of section 33-1004 of this article that pertain to persons performing residential lawn applications. Such uniform procedures may require complaints to be in the form of a sworn statement containing the facts upon which an alleged violation is based and may provide that the department is not required to perform any testing or sampling in relation to the investigation of any such alleged violations.

* NB There are 2 § 33-1005's

TITLE 11

PROTECTION OF GRAPE GROWING AREAS

Section 33-1101. Petition for protection of a grape growing area.

33-1103. Public hearing.

33-1105. Orders.

§ 33-1101. Petition for protection of a grape growing area.

1. The requirements for a petition for protection of a grape growing area are as follows:

a. The petition must be in a form prescribed by the commissioner;

b. The petition must be signed by ten or more grape growers in the same or contiguous towns in the state;

c. The petition must allege that the use of 2,4-D (2,4 Dichlorophenoxyacetic acid), 2,4-5-T (Trichlorophenoxyacetic acid) or MCP (2 Methyl, 4 Chlorophenoxyacetic acid) in proximity to grape vineyards or crops of grapes described in the petition has proved harmful to the development of grapevines or the grape crop in the affected area in the same or any prior year; and

d. The petition must request that the use of such chemical substances be prohibited or restricted within the affected area.

2. In counting the required number of petitioners, joint tenants or tenants by the entireties shall be counted as one signer.

3. The commissioner shall ascertain whether at least ten of the signers of the petition are grape growers and owners of grape vineyards within the affected area.

§ 33-1103. Public hearing.

1. If the commissioner determines that the petition is properly filed, he shall hold a public hearing.

2. The commissioner shall give at least ten days' notice of the time and place at which the hearing will be held, as follows:

a. By posting in at least five of the most public places within the affected area; and

b. By notice by mail to each of the petitioners and to each manufacturer, supplier and dealer furnishing the chemical substances complained of within the affected area, so far as is known to the commissioner, after diligent inquiry.

3. Proof of notice shall be evidenced by affidavit of the commissioner appended to the minutes of the hearing at which the petition is considered.

§ 33-1105. Orders.

1. If the commissioner finds, from testimony adduced, that:

a. There has been actual damage to grapevines or grape crops within the affected area; and

b. Such damage was caused by the use of the chemical substance complained of in the petition, and by that cause alone; and

c. Such use was upon lands within the affected area or in proximity to the affected area, or upon the damaged crop itself; and

d. The commercial production of grapes within the affected area constitutes a major source of agricultural income within the affected area; then the commissioner may issue his order prohibiting or restricting the use of 2,4-D (2,4-D Dichlorophenoxyacetic acid), 2,4-5-T (Trichlorophenoxyacetic acid) or MCP (2 Methyl, 4 Chlorophenoxyacetic acid) within or in proximity to the affected area for a period of time to be specified in the order. The affected area may be altered by description in the order of the commissioner, if the commissioner finds that such alteration should be made to effectuate the purposes of the petition. All restrictions upon the use of 2,4-D (2,4-Dichlorophenoxyacetic acid), 2,4-5-T (Trichlorophenoxyacetic acid) or MCP (2 Methyl, 4 Chlorophenoxyacetic acid) within or in proximity to the affected area shall be set forth in the order with particularity.

2. The order shall continue in effect from year to year unless modified or rescinded by the commissioner. Not later than February 15 of each year, the commissioner shall give notice of the order by publication in a newspaper of general circulation in the area affected. The notice shall state the terms of the order in general language and that the order will continue in effect for the period of time specified in the order, unless a petition for modification or rescission of the order, signed by ten or more grape growers or fifty or more persons not grape growers in the affected area is filed with the commissioner on or before March 1 of such year.

3. If a request for modification or rescission is received, the commissioner shall hold a hearing after giving notice as provided in section 33-1103. After the hearing, the commissioner shall make such

findings as the evidence adduced justifies and may continue, modify, or rescind the order. If the commissioner modifies or rescinds the order, he shall give notice of his action as provided in subdivision 4 of this section.

4. All orders shall be effected upon posting the same prominently in at least five of the most public places within the affected area. They shall also be published in a newspaper having general circulation in the areas affected but such publication shall not be a condition precedent to their effectiveness.

TITLE 12

PESTICIDE SALES AND USE DATA BASE AND RECORDKEEPING AND REPORTING

Section 33-1201. Pesticide sales and use computer data base.

33-1203. Access to pesticide information.

33-1205. Recordkeeping and reporting.

33-1207. Recordkeeping and reporting by importers and manufacturers.

§ 33-1201. Pesticide sales and use computer data base.

1. a. The department shall develop a pesticide sales and use computer data base. The data base shall be maintained at the department.

b. Such data base shall consist of all information compiled from reports submitted to the department pursuant to sections 33-1205 and 33-1207 of this title. Such reports shall be entered into and maintained on a computerized data base and shall be updated annually. Information obtained for and contained in the data base shall be accessible by interested parties only to the extent permitted pursuant to the provisions of subdivision two of this section and paragraph a of subdivision 1 of section 33-1203 of this title.

2. The commissioner shall prepare an annual report summarizing pesticide sales, quantity of pesticides used, category of applicator and

region of application. Pesticide data shall be compiled and reported by both EPA registration number and by active ingredient. The commissioner shall not provide the name, address, or any other information which would otherwise identify a commercial or private applicator, or any person who sells or offers for sale restricted use or general use pesticides to a private applicator, or any person who received the services of a commercial applicator. In accordance with article six of the public officers law, proprietary information contained within such record, including price charged per product, shall not be disclosed. The report shall be posted on the department's website annually by December thirty-first and be submitted to the governor, the temporary president of the senate and the speaker of the assembly.

§ 33-1203. Access to pesticide information.

1. a. The commissioner shall, upon written request of an interested party, in printed or electronic form, as requested by such party provide the information on pesticides submitted to the department pursuant to sections 33-1205 and 33-1207 of this title. Such information shall be provided by county or counties, or five-digit zip code or codes as selected by the interested party making the written request. Pesticide data shall be provided by EPA registration number, product name and active ingredient. The commissioner shall not provide the name, address, or any other information which would otherwise identify a commercial or private applicator, or any person who sells or offers for sale restricted use or general use pesticides to a private applicator, or any person who received the services of a commercial applicator. In accordance with article six of the public officers law, proprietary information contained within such record, including price charged per product, shall not be disclosed. The provisions of this paragraph shall not apply to the provision of pesticide data to the commissioner of health, the health research science board and researchers pursuant to title one-B of article twenty-four of the public health law.

b. The department shall, upon request from the department of health, compile pesticide application information by nine-digit zip code and

provide the information to the commissioner of health for researchers entitled to receive information pursuant to paragraph (d) of subdivision one of section twenty-four hundred eleven of the public health law provided, however, if the nine-digit zip code cannot be determined, the information shall be compiled by town or city.

2. The fees for copies of information shall not exceed twenty-five cents per photocopy not in excess of nine inches by fourteen inches, or the actual cost of reproducing any information.

§ 33-1205. Recordkeeping and reporting.

1. All commercial applicators shall maintain pesticide use records for each pesticide application containing the following:

- a. EPA registration number;
- b. product name;
- c. quantity of each pesticide used;
- d. date applied;
- e. location of application by address (including five-digit zip code).

Such records shall be maintained for a period of not less than three years. All commercial applicators shall file, at least annually, a report or reports containing such information with the department in an electronic format developed or accepted by the department consistent with system file specifications or on scannable forms, if developed by the department, on or before February first for the prior calendar year. All commercial applicators shall also maintain corresponding records of the dosage rates, methods of application and target organisms for each pesticide application. These records shall be maintained on an annual basis and retained for a period of not less than three years and shall be available for inspection upon request by the department.

2. a. Every person who sells or offers for sale restricted use pesticides to private applicators shall issue a record to the private applicator of each sale of a restricted use pesticide or a general use pesticide used in agricultural crop production to such applicator. Such record of each sale shall include the following:

1. EPA registration number;
2. product name of the pesticide purchased;
3. quantity of the pesticide purchased;
4. date purchased;

5. location of intended application by address (including five-digit zip code) or if address is unavailable by town or city (including five-digit zip code) if the location of intended application differs from the billing address that appears on the record.

Every person who sells or offers for sale restricted use pesticides to private applicators shall file, at least annually, a report or reports containing such information with the department in an electronic format developed or accepted by the department consistent with system file specifications or on scannable forms, if developed by the department, on or before February first for the prior calendar year. The department shall not use the reports filed pursuant to this paragraph for enforcement purposes.

b. All private applicators shall maintain, at a minimum, records of the restricted pesticides purchased, crop treated by such, method of application, and date of application or applications. This information shall be maintained on an annual basis and retained for a minimum of three years, and shall be available for inspection upon request by the department.

c. A private applicator shall, upon request, within six months,

provide site-specific information relating to pesticide applications to any researcher entitled to receive information pursuant to paragraph (d) of subdivision one of section twenty-four hundred eleven of the public health law, provided, however, such request shall not be granted during planting and harvesting unless at a time and in a manner that is mutually convenient.

§ 33-1207. Recordkeeping and reporting by importers and manufacturers.

1. Each person manufacturing or compounding a registered restricted use pesticide in this state, or importing or causing a registered restricted use pesticide to be imported into this state for use, distribution, or storage, shall maintain records of all sales within the state during the preceding year of each restricted use pesticide product which he or she has imported, manufactured or compounded. The record of each restricted use pesticide product shall include:

- a. EPA registration number;
- b. container size; and
- c. number of containers sold to New York purchasers.

2. Such records shall be maintained for a period of not less than three years. All manufacturers and importers shall file an annual report containing such information with the department in an electronic format developed or accepted by the department consistent with system file specifications on or before February first for the prior calendar year.

TITLE 13

UNLAWFUL ACTS

Section 33-1301. Unlawful acts.

33-1303. Registration not a defense.

§ 33-1301. Unlawful acts.

It shall be unlawful:

1. For any person to distribute, sell, offer for sale or use within this state or deliver for transportation or transport in intrastate commerce or between points within this state through any point outside this state any of the following:

a. Any pesticide which has not been registered pursuant to the provisions of this article or any pesticide if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration, or if the composition of a pesticide differs from its composition as represented in connection with its registration; provided that in the discretion of the commissioner a change in the labeling or formula of a pesticide may be made within a registration period without requiring reregistration of the product.

* b. Except as specified in regulation authorizing alternative pesticide containers, any pesticide unless it:

(1) is in the registrant's or the manufacturer's unbroken immediate container, and there is affixed to such container, and to the outside container or wrapper of the retail package, if there be one, through which the required information on the immediate container cannot be clearly read, a label bearing (i) the name and address of the manufacturer, registrant, or person for whom manufactured;

(ii) the name, brand, or trade-mark under which said article is sold; and

(iii) the net weight or measure of the content; subject, however, to such reasonable variations as the commissioner may permit; or

(2) meets the requirements of subparagraph one of this paragraph except that the container has been accidentally damaged during handling prior to sale and the damage has been repaired by such person in accordance with his or her own specific "minor repair program" approved by the United States environmental protection agency pursuant to its October ninth, two thousand nine pesticide container repair interim policy. A copy of the approved program shall be forwarded to the

department within thirty days of approval and shall be kept at the person's place of business and be available for department review upon request.

* NB Effective until July 1, 2028

* b. Except as specified in regulation authorizing alternative pesticide containers, any pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container, and there is affixed to such container, and to the outside container or wrapper of the retail package, if there be one, through which the required information on the immediate container cannot be clearly read, a label bearing:

(1) The name and address of the manufacturer, registrant, or person for whom manufactured;

(2) The name, brand, or trade-mark under which said article is sold; and

(3) The net weight or measure of the content; subject, however, to such reasonable variations as the commissioner may permit.

* NB Effective July 1, 2028

c. Any pesticide which contains any substance or substances in quantities highly toxic to man, determined as provided in section 33-0303, unless the label shall bear, in addition to any other matter required by this article:

(1) The skull and crossbones;

(2) The word "poison" prominently, in red, on a background of distinctly contrasting color; and

(3) A statement of an antidote for the pesticide.

d. The pesticide commonly known as standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, and barium fluosilicate, unless they have been distinctly colored or discolored as provided by regulations issued in accordance with this article, or any other white powder pesticide which the commissioner, after investigation of and after public hearing on the necessity for such action for the protection of the public health and the feasibility of such coloration or discoloration, shall, by regulation, require to be distinctly colored or discolored; unless it has been so colored or discolored; provided, that

the commissioner may exempt any pesticide to the extent that it is intended for a particular use or uses from the coloring or discoloring required or authorized by this section if he determines that such coloring or discoloring for such use or uses is not necessary for the protection of the public health.

e. Any pesticide which is adulterated or misbranded.

2. For any person to detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in this article or regulations promulgated hereunder, or to add any substance to, or take any substance from, a pesticide in a manner that may defeat the purpose of this article.

3. For any person to use for his own advantage or to reveal, other than to the commissioner or proper officials or employees of the state or to the courts of this state in response to a subpoena, or to physicians, or in emergencies to pharmacists and other qualified persons, for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of this article.

4. For any person to store or dispose of any pesticide, or of any container which holds or has held a pesticide, except in compliance with the rules and regulations of the commissioner.

5. For any person to distribute, sell, offer for sale, purchase for the purpose of re-sale, or possess for the purpose of re-sale any restricted use pesticide without a commercial permit issued by the commissioner.

6. For a commercial permit holder to sell restricted use pesticides except to the holder of a non-cancelled purchase permit or to the holder of a commercial permit or a certified applicator.

7. For any person to purchase or possess, except for the purpose of re-sale, or use any restricted use pesticide without a purchase permit issued by the commissioner or without being a certified applicator.

8. For any person to engage in application of pesticides without a pesticide applicator certificate registration issued by the commissioner, except while working under the direct supervision of a certified applicator.

8-a. For any person or business to engage in the business of applying pesticides unless the business is registered by the commissioner.

9. For any person to use 2,4-D (2,4-Dichlorophenoxyacetic acid), 2,4-5-T (Trichlorophenoxyacetic acid) or MCP (2 Methyl, 4 Chlorophenoxyacetic acid) within or in proximity to an affected area, in violation of an order of the commissioner prohibiting or restricting such use.

10. For any person to remove or dispose of a seized or quarantined pesticide by sale or otherwise without the commissioner's permission.

11. In cities with a population of one million or more, it shall be unlawful to use any pesticide containing the active ingredient 4-aminopyridine, including but not limited to Avitrol.

12. For any state department, agency, public benefit corporation or any pesticide applicator employed thereby as a contractor or subcontractor to apply glyphosate on state property, provided that the application of glyphosate on state property is permitted only for (a) direct application in circumstances when there is no actual or significant threat of direct human exposure and no effective and practicable alternative, and (b) for the following uses, pursuant to regulations promulgated by the department:

- (i) to maintain critical infrastructure;
- (ii) to manage roadside vegetation to ensure public safety;
- (iii) habitat management for the control of invasive species identified pursuant to title seventeen of article nine of this chapter, pests of significant public health importance, noxious weeds designated by the department as injurious to ecosystem health, and the protection of critical native plant species; and

(iv) for research purposes to develop sustainable alternatives for agricultural and environmental usages, as well as research regarding the environmental motility of glyphosate.

The department shall post information on its website regarding glyphosate usage pursuant to this section, including amount and location, by April first of each year.

13. a. It shall be unlawful for any person to apply or treat outdoor ornamental plants and turf, except for the production of agricultural commodities or structural commercial applications within one foot of a building foundation perimeter to manage structural pests provided that the application is not conducted on any blooming plant, with a pesticide containing:

(1) the active ingredients imidacloprid, thiamethoxam or acetamiprid on or after December thirty-first, two thousand twenty-six;

(2) the active ingredients clothianidin or dinotefuran effective December thirty-first, two thousand twenty-four.

b. (1) The provisions of paragraph a of this subdivision shall not apply where the department, by written order, determines that:

(i) a valid environmental emergency exists;

(ii) the pesticide would be effective in addressing the environmental emergency; and

(iii) no other, less harmful pesticide or pest management practice would be effective in addressing the environmental emergency.

(2) Any such order shall include the basis for the department's determination and specify the approved time period, geographic scope, and purpose of the permitted use of such pesticide. An order issued pursuant to this section shall be valid for a period not to exceed one year.

c. The provisions of this subdivision shall not apply to pesticide applications by, or under the supervision of, a certified applicator for treatment against invasive species affecting woody plants.

d. For the purposes of this subdivision "environmental emergency"

means: an occurrence of any pest which presents a significant risk of harm or injury to the environment, or significant harm, injury, or loss to agricultural crops, including, but not limited to, any exotic or foreign pest.

e. Applicators using a pesticide containing the active ingredients imidacloprid, thiamethoxam, acetamiprid, clothianidin, or dinotefuran pursuant to paragraph b or c of this subdivision must take a department approved neonicotinoid course annually and maintain a record of this course for three years.

§ 33-1303. Registration not a defense.

In no event shall registration of a pesticide, be construed as a defense for the commission of any offense prohibited under subdivisions 1 through 7 of section 33-1301.

TITLE 15

SEIZURE

Section 33-1501. Pesticides which may be seized.

33-1503. Procedure following seizure.

§ 33-1501. Pesticides which may be seized.

1. Any pesticide that is distributed, sold, offered for sale or used within this state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state may be seized for confiscation or be made the subject of a stop-use order:

a. If it is adulterated or misbranded, or if it has not been registered as required under this article;

b. If it fails to bear on its label the information required by this

article;

c. If it is a white powder pesticide and is not colored as required under this article;

d. If a permit required by this article has not been issued in respect to such pesticide; or

e. If there is probable cause to believe a pesticide is being used in violation of any provision of this article, title three of article fifteen of this chapter or rules or regulations promulgated pursuant to any such provision.

2. Whenever the commissioner or his duly authorized representative shall find distributed, sold, exposed or offered for sale within this state any pesticide which is adulterated or misbranded as defined in this article, or which fails to bear on its label the information required by this article, or which is not colored or registered as required under this article, or for which a permit has not been issued for its sale, offer for sale, purchase, possession or use as required by this article, he may seize or destroy such pesticide.

3. Whenever the commissioner finds, or has probable cause to believe, that a pesticide is being used in violation of any provision of this article, title three of article fifteen of this chapter, or rules and regulations promulgated pursuant thereto, the commissioner may issue a stop-use order requiring the user of the pesticide immediately to cease using such pesticide and immediately to remove such pesticide to the specified location. Within thirty days of the issuance of a stop-use order, the commissioner shall either rescind the stop-use order or commence a proceeding to seize and destroy such pesticides.

§ 33-1503. Procedure following seizure.

1. Whenever the commissioner finds, or has probable cause to believe, that any pesticide is adulterated or misbranded or improperly labeled,

or is not colored within the meaning of this article, or is not registered as required under this article, or for which a permit has not been issued for its sale, offer for sale, purchase, possession or use as required by this article, he may affix to such pesticide a tag or other appropriate marking giving notice that such pesticide is or is suspected of being adulterated or misbranded, or improperly labeled, or not colored, or not registered as required under this article, or for which a permit has not been issued for its sale, offer for sale, purchase, possession or use as required by this article, and has been quarantined, and warning all persons not to remove or dispose of such pesticide, by sale or otherwise, until permission for removal or disposal is given by the commissioner or his duly authorized representative.

2. Before destruction of any pesticide following seizure or quarantine, the commissioner shall give the owner, proprietor or custodian of such pesticide ten days' notice in writing, to be served either personally or by mail, of a hearing for the owner, proprietor, or custodian, to show cause why such pesticide should not be destroyed or otherwise disposed of in accordance with the provisions of law.

3. Following such hearing, the commissioner shall render a decision in writing and filed with the department, and a copy thereof shall be served either personally or by mail on the owner, proprietor, or custodian of such pesticide, but formal findings of fact shall not be required to be made or filed. The decision shall be subject to review under article 78 of the Civil Practice Law and Rules instituted within thirty days after receipt by the owner, proprietor or custodian of such pesticide of a copy of the commissioner's decision.

4. Whenever any pesticide is seized or quarantined as provided in this section, the destruction and disposition thereof, together with any necessary storage, handling or other incidentals between the time of seizure or quarantine and the destruction and disposition thereof, shall be the responsibility, both financially and otherwise, of the owner, proprietor or custodian of such pesticide; provided, however, that such destruction and disposition shall be carried out only under the direction and immediate supervision of the commissioner or his duly

authorized representative.

ARTICLE 34

COASTAL EROSION HAZARD AREAS

Section 34-0101. Statement of findings.

34-0102. Declaration of policy.

34-0103. Definitions.

34-0104. Identification of coastal erosion hazard areas.

34-0105. Local regulation of coastal erosion hazard areas.

34-0106. County regulation of coastal erosion hazard areas.

34-0107. Department regulation of coastal erosion hazard areas.

34-0108. Rules and regulations.

34-0109. Administration; applications for permits.

34-0110. Provision of technical assistance.

34-0111. Severability.

34-0112. Judicial review.

34-0113. Applicability.

§ 34-0101. Statement of findings.

1. Certain sections of the coastline of the state of New York are prone to erosion from action of the adjacent water bodies. Such erosion may be caused by the action of waves, currents running along the shore, tides, wind-driven water and ice as well as human activities such as construction and shipping. Such areas are also prone to erosion caused by the wind, runoff of rain water along the surface of the land, or groundwater seepage as well as by human activities such as construction, navigation and certain forms of recreation.

2. Coastal erosion causes extensive damage to publicly and privately owned property and to natural resources as well as endangering human lives. When this occurs, individuals and private businesses suffer significant economic losses, as does the state's economy, either directly through property damage or indirectly through loss of economic return. Large public expenditures may also be necessitated for the

removal of debris and damaged structures and replacement of essential public facilities and services.

3. Man often contributes to erosion-related problems by building without considering the potential for damage to property, by undertaking activities which destroy natural protective features such as dunes or vegetation and by building structures intended for erosion prevention which may exacerbate erosion conditions on adjacent or nearby property, and by water action produced by wakes from boats.

4. Programs to build erosion protective structures, either with private or public funds, are costly, often only partially effective over time, and may even be harmful to adjacent or nearby properties, and in some sections of the state major erosion protective structures of great length would be required to effectively reduce future damages due to erosion.

§ 34-0102. Declaration of policy.

It is declared to be the public policy of the state of New York that:

1. Those areas of the state's coastline most prone to erosion hazards should be identified.

2. Any activities, development or other actions in such erosion hazard areas should be undertaken in such manner as to minimize damage to property, and to prevent the exacerbation of erosion hazards. Such actions may be restricted or prohibited if necessary to protect natural protective features or to prevent or reduce erosion impacts.

3. Local governments should be encouraged to use all authorities that can be applied within the identified erosion hazard areas to achieve these objectives.

4. Public actions, such as the provision of additional municipal services, which are likely to encourage new permanent activities or

development within coastal erosion hazard areas should not occur unless such hazard areas have been protected by erosion protection structures or non-structural measures which are most likely to prevent damage from effects of erosion during the anticipated life of the proposed activities or development.

5. Publicly-financed structures to minimize erosion damage should be utilized only where necessary to protect human life, existing investment in development or new development which requires a location within the erosion hazard area or adjacent coastal waters to be able to function. Both publicly and privately financed erosion protective structures should be designed to minimize damage to other man-made property or to natural protective features or to other natural resources; long term costs of such structures should be carefully weighed against public benefits before construction is undertaken.

§ 34-0103. Definitions.

1. "Activities or development" shall mean any land use, construction or placement by any person of a structure, or any action which materially alters the condition of land, including grading and excavating or other disturbance of soil. The term shall include the division of land into lots, parcels or sites.

2. "Coastal erosion" or "erosion" shall mean loss or displacement of land along the coastline due to the action of waves, currents running along the shore, tides, wind-driven water or water-borne ice or other impacts of coastal storms. It shall also mean loss or displacement of land along the coastline due to the action of wind, runoff of surface waters, or groundwater seepage.

3. "Coastal erosion hazard area" or "erosion hazard area" shall mean those areas of the coastline:

(a) Which are determined as likely to be subject to erosion within a forty-year period. The inland boundary of such areas shall be determined on the basis of shoreline recession analysis and other pertinent studies

and surveys by starting at the bluff edge or most landward point of active erosion and measuring along a line which is normal to the line of mean high water a distance which is forty times the long-term average annual rate of shoreline recession, where such average annual recession rate is at least one foot; or

(b) Which constitute natural protective features, the alteration of which might reduce or destroy the protection afforded other lands against erosion, or lower the reserves of sand or other natural materials available to replenish storm losses through natural processes.

The erosion hazard area is to be identified as provided in section 34-0104 of this article and shall be the area within which new activities or development shall be reviewed to effectuate the policies and purposes of this article to minimize damage caused by erosion to structures and to prevent damage to natural protective features caused by activities or development, as provided for in section 34-0108 of this article.

4. "Coastline" shall mean the lands adjacent to the state's coastal waters, including lakes Erie and Ontario, the St. Lawrence and Niagara rivers, the Hudson river south of the federal dam at Troy, the East river, the Harlem river, the Kill van Kull and Arthur Kill, Long Island sound and the Atlantic ocean, their connecting water bodies, bays, harbors, shallows and marshes.

5. "Erosion protective structure" shall mean a structure specifically designed to reduce or prevent erosion including man made protection features created by landfill or deposition.

6. "Land" shall mean the earth, on or below the surface of the ground, including water and air above.

7. "Local government" shall mean a village, town (outside the area of any incorporated village), city or county.

8. "Natural protective features" shall mean without limitation, beaches, dunes, shoals, bars, spits, barrier islands, bluffs and

wetlands; associated natural vegetation shall also be considered as part of such natural protective features.

9. "Person" shall mean any individual, public or private corporation, political subdivision, government agency, partnership, association, firm, trust, estate or any other legal entity whatsoever.

10. "State agency" shall mean any department, bureau, commission, board, public authority or other agency of the state, including any public benefit corporation, any member of which is appointed by the governor.

11. "Structure" shall mean any object constructed, installed or placed on land or in water, including, but not limited to, buildings, permanent sheds, mobile homes, tanks, bulkheads, piers, docks, groins, jetties and any additions or alterations thereto.

12. "Significant fish and wildlife habitat" shall mean habitats which are essential to the survival of a large portion of a particular fish or wildlife population, support rare or endangered species, are found at a very low frequency within a geographic area, support fish or wildlife populations having significant commercial or recreational value or would be difficult or impossible to replace.

§ 34-0104. Identification of coastal erosion hazard areas.

1. The commissioner shall as soon as practicable, but no later than thirty months after the effective date of this article, after the adoption of rules and regulations pursuant to subdivision one of section 34-0108 of this article, and in full cooperation with and consultation with local governments in which such land is located prepare a preliminary identification of the erosion hazard areas of the state's coastline. The identification may, in the discretion of the commissioner, be carried out on a regional basis, with priority given to the identification of critical erosion areas. Such preliminary identification shall include, for each such area, a map showing the area

subject to erosion, a statement of the long-term average annual rate of loss of land in such area from erosion, if applicable, and an identification of any land areas containing or comprising natural protective features the alteration of which might reduce or destroy the protection afforded other lands against erosion, or lower the reserves of sand or other natural materials available to replenish storm losses through natural processes.

2. Upon completion of a preliminary identification of an erosion hazard area, the commissioner or his designated hearing officer shall hold a public hearing in a place reasonably accessible to residents of the affected area in order to afford an opportunity for any person to propose changes in such preliminary identification. The commissioner shall give notice of such hearing to each owner of record, as shown on the latest completed tax assessment rolls, of lands included within such area, and also to the chief executive officer and clerk of each local government within the boundaries of which any portion of such area may be located, by certified mail at least thirty days prior to the date set for such hearing, and shall insure that a copy of the preliminary identification is available for public inspection at a convenient location in such local government. The commissioner shall also cause notice of such hearing to be published at least once, not more than thirty days nor fewer than ten days before the date set for such hearing, in at least one newspaper having general circulation in the area involved and in the environmental notice publication provided for under section 3-0306 of this chapter.

3. After considering the testimony given at such hearings and the potential erosion hazard in accordance with the purposes and policies of this article, and after consultation with affected local governments, the commissioner shall issue the final identification of the erosion hazard areas. Such final identification shall not be made less than sixty days from the date of the public hearing required by subdivision two hereof. A copy of such final identification shall be filed in the office of the clerk of each local government in which such area or any portion thereof is located. Notice that such final identification has been made shall be given each owner of lands included within the erosion

hazard area, as such ownership is shown on the latest completed tax assessment rolls, by certified mail in any case where a notice by certified mail was not sent pursuant to subdivision two of this section, and in all other cases by first class mail. Such notice shall also be given at such time to the chief executive officer of each local government within the boundaries of which such erosion hazard area or any portion thereof is located.

4. The commissioner shall review the boundaries of each erosion hazard area identified pursuant to this section ten years from the date of its identification and every ten years thereafter. The commissioner may revise erosion hazard area maps not sooner than twelve months after the occurrence of a major man made or natural event or a major coastal storm if he determines that topographical changes or loss of structural protection at the end of such a twelve month period and as a result of such event or such storm justify, pursuant to the regulations of the department, adjustment of the erosion hazard area boundary by twenty-five feet or more. Following such review, the commissioner shall adjust the boundaries of such erosion hazard area to effect any additions, deletions or technical changes, or to reflect any changes due to erosion, accretion or other natural or man-made changes. The commissioner shall follow the procedures set forth in subdivisions two and three of this section with respect to any lands which are proposed to be added to or deleted from an erosion hazard area because of an adjustment of the boundaries of such erosion hazard area pursuant to this subdivision.

5. The commissioner shall maintain a current file of maps or descriptions of all erosion hazard areas pursuant to this article, which shall be available to the public for inspection and examination at the regional office of the department in which the area is wholly or partly located and in the office of the clerk of each local government in which each such area or part thereof is located.

§ 34-0105. Local regulation of coastal erosion hazard areas.

1. Within six months after the date on which a final identification of an erosion hazard area is filed with the clerk of a city, town or village pursuant to subdivision three of section 34-0104 of this article, such city, town or village shall submit to the commissioner an erosion hazard area ordinance or local law applicable to that portion of such area located within its jurisdiction. Then the commissioner shall review and certify such regulations as being consistent with the purposes of this article and in accordance with minimum standards promulgated under section 34-0108 of this article. All such ordinances or local laws shall include a map or other identification of the erosion hazard area subject to regulation, and zoning regulations, subdivision regulations, site plan approval regulations or any other applications of the police power, as such regulations may be authorized by the municipal home rule law or other state enabling legislation, for the reasonable and prudent use of erosion hazard areas in accordance with minimum standards promulgated by the commissioner pursuant to section 34-0108 of this article. Nothing in this article shall be construed to increase the powers of any city, town or village; provided, however, that to carry out the purpose of this article, any regulations adopted in compliance with the provisions of this subdivision may be made applicable to only that portion of such city, town or village which is located within the erosion hazard area. The commissioner shall provide whatever technical assistance he may deem necessary for preparation of an ordinance or local law pursuant to this section.

2. Such erosion hazard area ordinance or local law shall be subject to public notification and review and, be submitted to the commissioner for approval as to its consistency with the minimum standards promulgated pursuant to section 34-0108 of this article; the commissioner shall act to approve or disapprove such ordinance or local law within thirty working days of its receipt. If the commissioner disapproves the ordinance or local law, he shall notify the city, town or village in writing of the reasons for such disapproval, or modification necessary for approval. The commissioner shall issue findings as part of his decision.

3. In the case of the commissioners disapproval of a local law or

ordinance under subdivision two of this section, the commissioner, at his discretion, may extend the six month period for the adoption of an erosion hazard area local law or ordinance for a reasonable time period not to exceed an additional six months, during which time, the local government may adopt and re-submit a new or modified local law or ordinance to the commissioner for approval as provided in subdivision two of this section. During such extension period, provisions of section 34-0106 of this article shall not apply.

4. Prior to the adoption of any amendment to an approved erosion hazard area ordinance or local law, the local government shall notify the commissioner, who shall within fifteen days after receipt of such notification advise the local government whether such amendment conforms to the minimum standards promulgated pursuant to section 34-0108 of this article. Any amendment to such ordinance or local law that relates to such minimum standards shall be subject to approval by the commissioner as provided in subdivision two of this section.

5. The commissioner shall revoke his approval of an erosion hazard area ordinance or local law if he determines, after notice and hearing relative thereto, that the affected city, town or village has failed to administer or enforce such ordinance or local law to adequately carry out the purposes and policies of this article. In the event of such revocation, the provisions of subdivision seven of section 34-0106 of this article or the provisions of subdivision three of section 34-0107 of this article shall apply.

6. Where an application is made for any permit, variance or other form of approval required pursuant to any local law or ordinance enacted or adopted and approved by the commissioner pursuant to this section, for any activity or development within a designated erosion hazard area, the city, town or village to which such application is made shall ascertain what, if any, other permit, variance or hearing procedures or applications are required with regard to such activity or by any governing body of the state or any of its subdivisions pursuant to any federal, state or local law or ordinance. Such city, town or village, at the request of the applicant, shall consolidate and coordinate said

application, permit, variance and hearing procedures, as required by each such governing authority, into a single, comprehensive hearing and review procedure with regard to such activity or development. However, nothing contained in this section shall be deemed to limit or restrict the state, its subdivisions or any other governing authorities, which are properly a party to such consolidated review proceeding, from the independent exercise of such discretionary authority with respect to the issuance, denial or modification of such permits, variances or other forms of approval as they may have been granted by law.

§ 34-0106. County regulation of coastal erosion hazard areas.

1. If a city, other than a city which wholly includes one or more counties, a town or village fails to submit an erosion hazard area ordinance or local law to the commissioner within the time specified in subdivision one of section 34-0105 of this article, as such time may be extended by the commissioner under subdivision three of such section or if an ordinance or local law has been disapproved pursuant to subdivision two of such section, the commissioner shall notify the clerk of the legislative body of the county in which such city, town or village is located. Within six months from receipt of such notification, such county shall submit to the commissioner a county erosion hazard area local law meeting the criteria specified in subdivision one of section 34-0105 of this article, applicable to the erosion hazard area of such city, town or village. Notwithstanding any other provisions of law, whether general or special, or any provision of local law or ordinance, to carry out the purposes of this section, counties shall, within the erosion hazard area subject to such county local law, be deemed to possess the same implementation powers as could be exercised by the city, town or village within which the erosion hazard area is situated. The commissioner shall provide whatever technical assistance he may deem necessary for preparation of a local law pursuant to this section.

2. Such county erosion hazard area local law shall be subject to public notification and review and, be submitted to the commissioner for

approval as to its consistency with the minimum standards promulgated pursuant to section 34-0108 of this article; the commissioner shall act to approve or disapprove such local law within thirty working days of its receipt. If the commissioner disapproves the local law, he shall notify the county legislative body in writing of the reasons for such disapproval or modification necessary for approval. The commissioner shall issue findings as part of his decision.

3. In case of disapproval of a county erosion hazard area local law under subdivision two of this section, the commissioner at his discretion may extend the six month period for adoption of such local law for a reasonable time period not to exceed an additional six months, during which time, the county may adopt and re-submit a new or modified county erosion hazard area local law to the commissioner for approval as provided in subdivision two of this section.

4. Prior to the adoption of any amendment to an approved county erosion hazard area local law, the county shall notify the commissioner, who shall within fifteen days after receipt of such notification advise the county whether such amendment relates to the minimum standards promulgated pursuant to section 34-0108 of this article. Any amendment to such local law that relates to such minimum standards shall be subject to approval by the commissioner as provided in subdivision two of this section.

5. Nothing in this section shall be construed to prohibit any city, town or village from adopting and enforcing any ordinances or local laws, or exercising any other lawful powers within any area governed by an approved county erosion hazard area local law; provided, however, that to the extent of any inconsistency between a city, town or village ordinance or local law and an approved county erosion hazard area local law, the latter shall apply.

6. In any city, town or village where there is in effect a county erosion hazard area local law adopted pursuant to this section, nothing herein shall be construed as preventing such city, town or village from submitting, at any time, an erosion hazard area ordinance or local law

to the commissioner for approval pursuant to section 34-0105 of this article. If such ordinance or local law is approved by the commissioner, he shall immediately notify the affected county, and the county local law shall cease to apply to the affected erosion hazard area from the date of receipt by the county of such notification.

7. (a) If approval of a city (other than a city which wholly includes one or more counties), town or village erosion hazard area ordinance or local law is revoked by the commissioner pursuant to subdivision four of section 34-0105 of this article, the commissioner may designate the county in which such city, town or village is located to administer and enforce such city, town or village ordinance or local law so as to insure compliance of activities or development in the affected erosion hazard area with the minimum standards promulgated pursuant to section 34-0108 of this article. Such county shall be deemed to possess all administrative and enforcement powers included in such city, town or village ordinance or local law.

(b) The commissioner shall reinstate approval of the city, town or village ordinance or local law when the commissioner is satisfied that the city, town or village will carry out the purposes and policies of this article, at which time administration and enforcement by the county pursuant to this subdivision shall cease, and the city, town or village shall administer and enforce such ordinance or local law.

8. The commissioner shall revoke his approval of a county erosion hazard area local law, or shall revoke his designation pursuant to subdivision six of this section of a county to administer and enforce a city, town or village ordinance or local law, if he determines, after notice and hearing relative thereto, that the affected county has failed to administer or enforce such ordinance or local law to adequately carry out the purposes and policies of this article. In the event of such revocation, the provisions of subdivision three of section 34-0107 of this article shall apply.

9. Where an application is made for any permit, variance or other form of approval required pursuant to any local law enacted and approved by the commissioner pursuant to this section, for any activity or

development within a designated erosion hazard area, the county to which such application is made shall ascertain what, if any, other permit, variance or hearing procedures or applications are required with regard to such activity or development by any governing body of the state or its subdivisions pursuant to any federal, state or local law or ordinance. Such county, at the request of the applicant, shall consolidate and coordinate said application, permit, variance and hearing procedures, as required by each such governing authority, into a single, comprehensive hearing and review procedure with regard to such activity or development. However, nothing contained in this section shall be deemed to limit or restrict the state, its subdivisions, or any other governing authorities, which are properly a party to such consolidated review proceeding, from the independent exercise of such discretionary authority with respect to the issuance, denial or modification of such permits, variances or other forms of approval as they may have been granted by law.

§ 34-0107. Department regulation of coastal erosion hazard areas.

1. If a city which wholly includes one or more counties fails to submit an erosion hazard area local law or ordinance to the commissioner within the time specified in subdivision one of section 34-0105 of this article, as such time may be extended by the commissioner under subdivision three of such section, or if such local law or ordinance has been disapproved pursuant to subdivision two of such section, or if a county fails to submit an erosion hazard area local law to the commissioner within the time specified in subdivision one of section 34-0106 of this article as such time may be extended by the commissioner under subdivision three of such section, or if a county local law has been disapproved pursuant to subdivision two of such section, the commissioner shall, within ninety days after such failure or disapproval, as the case may be, issue and enforce regulations which apply the minimum standards promulgated pursuant to section 34-0108 of this article within the affected erosion hazard area.

2. Prior to the issuance of regulations applicable to a particular

erosion hazard area pursuant to subdivision one of this section, the commissioner shall hold a public hearing thereon in the affected city, town or village, and shall give at least fifteen days prior notice thereof by publication at least once in a newspaper having general circulation therein. The commissioner shall issue the regulations within thirty days after the close of such hearing, shall publish a summary of such regulations in a newspaper having general circulation in the affected city, town or village, and shall make such regulations available for public inspection. Such regulations shall not take effect until thirty days after the filing thereof with the clerk of the affected county.

3. If the commissioner does not designate, pursuant to subdivision eight of section 34-0106 of this article, a county to administer and enforce a city, town or village erosion hazard area ordinance or local law for which approval has been revoked pursuant to subdivision five of section 34-0105 of this article, or if the commissioner, pursuant to subdivision seven of section 34-0106 of this article, revokes his approval of a county erosion hazard area local law or, pursuant to such subdivision revokes his designation of a county to administer and enforce a city, town or village erosion hazard area ordinance or local law, he shall administer and enforce the affected ordinance or local law in such manner as to insure compliance of activities or development in the affected erosion hazard area with the minimum standards promulgated pursuant to section 34-0108 of this article. The commissioner may designate such county to commence administration and enforcement of an ordinance or local law subject to this subdivision upon receiving satisfactory assurance that such administration and enforcement will be undertaken in such manner as to adequately carry out the purposes and policies of this article.

4. Nothing in this section shall be construed to prohibit any local government from adopting and enforcing any ordinances or local laws, or exercising any other lawful powers within any area governed by erosion hazard area regulations adopted pursuant to this section; provided, however, that to the extent of any inconsistency between a county, city, town or village ordinance or local law and erosion hazard area

regulations adopted pursuant to this section, the latter shall apply.

5. In any city, town or village where there are in effect erosion hazard area regulations issued by the commissioner pursuant to this section, nothing herein shall be construed as preventing such city, town or village from submitting, at any time, an erosion hazard area ordinance or local law to the commissioner for approval pursuant to section 34-0105 of this article, or for any county to provide such regulation in absence of local law or ordinance, pursuant to section 34-0106 of this article. Before county assumption of such regulation, there shall be notification given to the city, town or village of such intention by the county, and any objections shall be reviewed and considered by the commissioner before approving such county regulation. When a county, city, town or village local law or ordinance is approved by the commissioner, the erosion hazard area regulations issued by the commissioner pursuant to this section shall cease to apply, and a notice to that effect shall be filed with the clerks of the affected local governments.

6. Consistent with the provisions and purposes of article seventy of this chapter, where an application is made to the commissioner for a permit pursuant to section 34-0109 of this article for any activity or development within a designated erosion hazard area, the commissioner shall ascertain what, if any, other permit, variance or hearing procedures or applications are required with regard to such activity or development by any governing body of the state or any of its subdivisions pursuant to any federal, state or local law or ordinance. The commissioner, at the request of the applicant shall consolidate and coordinate said application, permit, variance and hearing procedures, as required by each such governing authority, into a single, comprehensive hearing and review procedure with regard to such activity or development. However, nothing contained in this section shall be deemed to limit or restrict the state, its subdivisions or any other governing authorities, which are properly a party to such consolidated review proceeding, from the independent exercise of such discretionary authority with respect to the issuance, denial or modification of such permits, variances or other forms of approval as they may have been

granted by law.

§ 34-0108. Rules and regulations.

1. After consultation with affected state agencies and representatives of local governments, and after conducting public hearings and review of any other comments submitted, the commissioner shall adopt rules and regulations implementing the provisions of this article within one hundred eighty days after the effective date hereof.

2. The rules and regulations adopted by the commissioner shall include a procedure pursuant to which any owner of land in an erosion hazard area identified pursuant to section 34-0104 of this article may appeal from the inclusion of such land in such erosion hazard area. Such procedure shall provide that the sole basis for such appeal shall be technical information indicating either (a) that the long-term average annual recession or other method used in identifying the erosion hazard area was incorrect, or (b) that an area has been identified as a natural protective area erroneously, and that the commissioner shall decide such appeal within thirty days after receipt thereof, and shall adjust the boundaries of the identified erosion hazard area or identified natural protective features accordingly.

3. The rules and regulations adopted by the commissioner pursuant to sections 34-0105, 34-0106 and 34-0107 of this article shall establish minimum standards and criteria to be applied to activities or development in erosion hazard areas. Such standards and criteria shall be used to deny, condition or modify a proposed action, if necessary, to implement the policies and purposes of this article. Standards and criteria promulgated pursuant to this section shall include but shall not be limited to:

(a) minimum setback requirements for structures within coastal erosion hazard areas taking into consideration recession rates, the useful life of the proposed structure, and the protection afforded by natural protective features and existing erosion protection structures.

(b) regulation of activities or development, including placement of

erosion protection structures or use of non-structural measures so there will be no measurable increase in erosion to the development site or at other locations.

(c) regulation of activities or development, including placement of erosion protection structures, so as to minimize adverse effects upon natural protective features, existing erosion protection structures or natural resources, such as significant fish and wildlife habitat.

(d) standards and criteria shall provide that erosion protection structures that are proposed for construction or reconstruction shall have a reasonable probability of controlling long-term erosion on the immediate site for a period of at least thirty years and that a long-term maintenance program is provided for such structures; however such standards and criteria may allow for such protection structures to be constructed of materials which by themselves have a working life of less than thirty years, when the maintenance program assures that they will be regularly maintained and replaced as necessary to attain the required thirty years of erosion protection.

(e) restoration and stabilization standards for activities which are to be undertaken in connection with activities or development to insure that land areas are maintained and where necessary restored to minimize erosion on the site or to other nearby lands.

4. The rules and regulations shall provide procedure pursuant to which the strict application of their standards and criteria may be varied or modified in cases where practical difficulty or unnecessary hardship is shown, provided that in granting any such variance, the following criteria are met:

(a) for any proposed activities and development where public funds are utilized the public benefits clearly outweigh the long-range adverse effects.

(b) no reasonable prudent alternative site is available.

(c) all responsible means and measures to mitigate adverse impacts on natural systems in the area have been incorporated into the project design and will be implemented at the developer's expense.

(d) the development will be reasonably safe from flood and erosion damage.

(e) the variance provided will be the minimum necessary to overcome

the practical difficulty or unnecessary hardship which was the basis for requesting such variance.

5. Notwithstanding section 34-0105 or 34-0106 of this article, in the case of any department, bureau, commission, board or other agency of the state, or any public benefit corporation, any member of which is appointed by the governor, a permit shall be obtained from the department pursuant to section 34-0109 of this article provided, however, in cases where there is a local law or ordinance in effect the commissioner shall make a finding prior to the issuance of the permit that the conditions of such local law or ordinance have been met, insofar as such conditions relate to the standards and criteria adopted pursuant to section 34-0108 of this article.

§ 34-0109. Administration; applications for permits.

1. Applicability. (a) Where the commissioner has, pursuant to subdivision one of section 34-0107 of this article, issued regulations which apply the minimum standards promulgated pursuant to section 34-0108 of this article to activities or development within any erosion hazard area, any person proposing to undertake activities or development subject to such regulations shall obtain a permit as provided in this section.

(b) A proposed activity or development in an erosion hazard area shall be deemed an action that is likely to require the preparation of an environmental impact statement pursuant to subparagraph (i) of paragraph (c) of subdivision two of section 8-0113 of this chapter.

2. Applications for permits. (a) An application for a permit shall be submitted in such form and manner as the commissioner may prescribe, and shall contain a detailed description of the proposed development which is sufficient to enable the commissioner to make the findings and determinations required by this section.

(b) Review by the commissioner of applications for permits pursuant to this section shall be governed by the provisions of article seventy of this chapter.

3. Decision. (a) No permit shall be granted pursuant to this section unless the commissioner shall find that the proposed activity complies with the minimum standards promulgated pursuant to section 34-0108 of this article as such standards are applied to the affected erosion hazard area by the regulations issued by the commissioner pursuant to section 34-0107 of this article.

(b) In granting a permit, the commissioner may limit such permit or impose reasonable conditions or limitations designed to carry out the public policy set forth in this article. Upon a finding that the applicant has a record of non-compliance with the terms and conditions of permits, the commissioner may require a bond or other form of financial security in amount and with surety and conditions satisfactory to him to secure compliance with the terms, conditions and limitations set forth in the permit. The commissioner may suspend or revoke a permit if he finds that the applicant has not complied with any of the terms, conditions or limitations set forth in the permit.

§ 34-0110. Provision of technical assistance.

The commissioner shall encourage and assist affected local governments in the preparation and implementation of erosion hazard area ordinances and local laws. When an erosion hazard area has been identified pursuant to section 34-0104 of this article, the commissioner shall provide to the affected local governments whatever technical assistance may be necessary to enable such local governments to prepare and adopt erosion hazard area ordinances or local laws meeting the requirements of section 34-0105 of this article or section 34-0106 of this article, as the case may be. Such efforts shall include, as may be necessary, maps, model erosion hazard area regulations, and other information.

§ 34-0111. Severability.

The provisions of this article shall be severable, and if any clause, sentence, paragraph, subdivision or part of this article shall be

adjudged invalid by a court of competent jurisdiction, such order or judgment shall be confined in its operation to the controversy in which it was rendered, and shall not affect or invalidate the remainder of any provision of any section or the application of any part thereof to any other person or circumstance.

§ 34-0112. Judicial review.

Any person aggrieved by an act, order, determination or decision of the commissioner made pursuant to this article may seek judicial review pursuant to article seventy-eight of the civil practice law and rules in the supreme court for the county in which the erosion hazard area affected is located.

§ 34-0113. Applicability.

The provisions of this article shall not apply to any activities or development for which final approval shall have been obtained from the local government or other authorities having jurisdiction over such activities or development, if such final approval was obtained prior to the date of approval of erosion hazard area regulations by the commissioner pursuant to section 34-0105 or 34-0106 of this article, or promulgation of such regulations pursuant to section 34-0107 of this article. As used in this section, the term "final approval" shall mean:

1. in the case of subdivision of land, conditional or preliminary approval of such plat pursuant to section two hundred seventy-six of the town law, section 7-728 of the village law or section thirty-two of the general city law; provided, however, that final plat approval is granted within six months of preliminary plat approval.

2. in the case of a site plan not involving the subdivision of land, approval by the appropriate body or office of a city, town or village of the site plan.

3. in those cases not covered by subdivision one or two of this section, the issuance of a building permit or other authorization for the commencement of the activities or development for which such permit or authorization was issued or in those local governments which do not require such permits or authorizations, the actual commencement of the activities or development.

ARTICLE 35

DETERGENTS AND OTHER HOUSEHOLD CLEANSING PRODUCTS

Section 35-0101. Scope of article.

35-0103. Definitions.

35-0105. Distribution and sale of household cleansing products;
possession or use of household cleansing products
containing phosphorus by commercial establishments
restricted.

35-0107. Powers and duties of commissioner.

35-0109. Notice of public hearing held pursuant to this article;
hearing procedure.

§ 35-0101. Scope of article.

By the enactment of this article the state fully exercises the exclusive right to regulate and control the labelling and ingredients of household cleansing products distributed, sold, offered, or exposed for sale in this state, within the scope and limitations of this article. The terms "regulation" and "control" include prohibitions or other restrictions on the distribution, sale, offering or exposing for sale of such products in this state. In order to assure statewide uniformity, such regulation and control by any political subdivision of the state of such products is prohibited after June 25, 1971 provided, however, that any such regulation and control in effect on June 1, 1971 shall be unaffected by this section.

§ 35-0103. Definitions.

The following terms, whenever used or referred to in this article, shall have the following meaning unless a different meaning clearly appears from the context:

1. "Household cleansing product" means any product, including but not limited to soaps and detergents, containing a surfactant as a wetting or dirt emulsifying agent and used primarily for domestic or commercial cleaning purposes, including but not limited to, the cleansing of fabrics, dishes, food utensils and household and commercial premises. Household cleansing product shall not mean foods, drugs, cosmetics, insecticides, fungicides and rodenticides or cleansing products used primarily in industrial manufacturing, production and assembling processes as provided by the commissioner by rule and regulation.

2. "Person" means any individual, partnership, firm or corporation.

3. "Phosphorus" means elemental phosphorus.

4. "Commercial establishment" means any premises used for the purpose of carrying on or exercising any trade, business, profession, vocation, or commercial or charitable activity, including but not limited to laundries, hospitals, and food or restaurant establishments.

§ 35-0105. Distribution and sale of household cleansing products; possession or use of household cleansing products containing phosphorus by commercial establishments restricted.

1. No person shall distribute, sell, offer or expose for sale in this state any household cleansing product unless its wrapper or container shall be plainly labeled as provided in this subdivision. The commissioner may by rule or regulation exempt products shipped or distributed in bulk from provisions of this subdivision. The wrapper or container of every household cleansing product must list the weight of each ingredient which the commissioner determines may affect adversely

human health or the environment, including but not limited to phosphorus. Such listing shall be by percentage of total weight of such product and by grams per recommended use, in descending order of predominance. Labeling of ingredients shall be in accordance with the nomenclature established by regulation of the commissioner. The percentage by weight in the container and the weight in grams per recommended use level of each ingredient shall be expressed to at least two significant figures or as specified by the commissioner. Analyses to determine actual composition shall be performed in accordance with rules and regulations of the commissioner.

2. a. (1) No household cleansing product, except those used in dishwashers, food and beverage processing equipment, and dairy equipment, shall be distributed, sold, offered or exposed for sale in this state which contains a phosphorus compound other than such trace concentrations as may be authorized by the commissioner by regulation.

(2) No household cleansing product used in dishwashers shall be distributed, sold, offered or exposed for sale in this state which contains a phosphorus compound in excess of five-tenths percent by weight expressed as phosphorus.

(3) No household cleansing product used in food and beverage processing equipment and dairy equipment shall be distributed, sold, offered or exposed for sale in this state which contains a phosphorus compound in excess of eight and seven-tenths percent by weight expressed as phosphorus.

b. No owner, occupant, or person in control of a commercial establishment shall possess or use or authorize any other person by way of service contract or other arrangement to possess or use in this state any household cleansing product which contains a phosphorus compound in excess of the amount allowed for such product under paragraph a of this subdivision.

3. No person shall distribute, sell, offer or expose for sale in this state any household cleansing product which does not comply with regulations of the commissioner promulgated pursuant to subdivision 3 of section 35-0107.

4. No household cleansing product shall be distributed, sold, offered or exposed for sale in this state which contains 1,4-dioxane other than such trace concentrations; such trace concentrations shall not exceed two parts per million by December thirty-first, two thousand twenty-two; and further, shall not exceed one part per million by December thirty-first, two thousand twenty-three.

5. No later than May first, two thousand twenty-five, and every two years thereafter, the department, in consultation with the department of health, shall review such trace concentration thresholds and determine whether such concentrations shall be lowered to better protect human health and the environment.

6. A manufacturer of a household cleansing product, otherwise subject to the requirements of subdivision four of this section, may apply to the department for a one-year waiver from such requirements for a specific household cleansing product, upon such proof that the manufacturer has taken steps to reduce the presence of 1,4-dioxane in that product and is unable to comply with the requirements of subdivision four of this section. Thereafter, a manufacturer may apply for one additional one-year waiver for such product, upon such the satisfaction of such similar proof.

7. The department is authorized to promulgate such rules and regulations as it shall deem necessary to implement the provisions of this section, including rules and regulations with respect to any allowable trace concentrations.

§ 35-0107. Powers and duties of commissioner.

1. The commissioner is hereby authorized to promulgate regulations requiring manufacturers of household cleansing products distributed, sold or offered for sale in this state, to furnish to the commissioner for the public record as herein provided information regarding such products in a form prescribed by the commissioner including the nature

and extent of investigations and research performed by the manufacturer concerning the effects of such products on human health and the environment. These reports shall be available to the public at the department of environmental conservation, except those portions the manufacturer determines, subject to the approval of the commissioner, would be, if disclosed, seriously prejudicial to the manufacturer's legitimate interest in trade secrets and economics of operation.

2. No later than February 1, 1973 the commissioner shall prepare and submit a comprehensive report to the governor and legislature on the status of progress made in research and development to provide a safe and effective substitute for phosphates in household cleansing products.

3. Whenever the commissioner finds, after investigation, that any ingredient of household cleansing products distributed, sold, offered or exposed for sale in this state, other than an ingredient for which limitations are set forth in subdivision 2 of section 35-0105, will or is likely to materially affect adversely human health or the environment, he may, after public hearing, restrict or limit by regulation the use of such ingredient in such products.

§ 35-0109. Notice of public hearing held pursuant to this article; hearing procedure.

1. Notice of public hearing shall be by publication in two newspapers most likely to give notice to the people of this state of such hearings at least once in each of three successive weeks, provided, however, that notice of public hearing shall be given to the manufacturer or manufacturers of such household cleansing products in writing, whenever practicable or in such other form as in the commissioner's judgment will reasonably notify such manufacturer of said hearing. Such hearing shall not be conducted less than sixty days following the date of first publication of notice of such hearing.

2. The commissioner may adopt other appropriate regulations prescribing the procedures to be followed at such hearings.

ARTICLE 36

PARTICIPATION IN FLOOD INSURANCE PROGRAMS

Section 36-0101. Declaration of findings.

36-0103. Definitions.

36-0105. Local responsibility.

36-0107. Powers of local governments.

36-0109. Sanctions.

36-0111. Flood hazard evaluation of state facilities, lands and programs.

36-0113. Miscellaneous.

§ 36-0101. Declaration of findings.

The legislature finds and declares that:

1. It is in the interest of the people of this state to provide for participation in the national flood insurance program as enacted by the congress of the United States;

2. The essence of the national flood insurance program is the regulation of land uses within areas identified by the director of the federal emergency management agency as areas of special flood hazard. Land use regulation is principally a matter of local concern; therefore, local governments have the principal responsibility for enacting appropriate land use regulations that will meet federal standards and permit the sale of flood insurance in such communities;

3. Providing for the availability of flood insurance for all residents of the state is the policy of the state; all local governments with land use jurisdiction over any area of special flood hazard must comply with all national flood insurance program requirements so that the residents of such local communities may purchase flood insurance; and

4. All publicly owned facilities within any identified area of special

flood hazard must be in compliance with the national flood insurance program requirements.

§ 36-0103. Definitions.

1. "Area of special flood hazard" means any area subject to a one percent or greater chance of flooding in any given year as determined by the federal emergency management agency.

2. "Local government with land use jurisdiction" means a city; a town as to all areas within such town outside the limits of any village; and a village.

3. "National flood insurance program" means that act of congress codified as chapter fifty of title forty-two of the United States code, all acts amendatory thereof and all regulations promulgated thereunder.

§ 36-0105. Local responsibility.

1. Every local government with land use jurisdiction over any area of special flood hazard that was, prior to the effective date of this article, a participant in the national flood insurance program shall continue to maintain such participation in the national flood insurance program.

2. Every local government with land use jurisdiction over any area of special flood hazard that was not, prior to the effective date of this article, directly participating in the national flood insurance program but was relying on state administration of the minimum land use regulations necessary to meet the requirements of the national flood insurance program, must apply for and complete all requirements for participation in the national flood insurance program.

3. Any local government that, after the effective date of this article, is notified by the federal emergency management agency of the

existence of an area of special flood hazard within the bounds of such local government shall promptly, within the time frames required by the national flood insurance program, apply for and complete all requirements for participation in the national flood insurance program.

4. Any local government that, prior to the effective date of this article, was notified by the federal emergency management agency of the existence within its bounds of an area of special flood hazard and that has not qualified as of the effective date of this article for participation in the national flood insurance program shall, within the time frames required by the national flood insurance program, apply for and complete all requirements for participation in the national flood insurance program.

§ 36-0107. Powers of local governments.

Notwithstanding any other law:

1. All local governments with land use jurisdiction over any area of special flood hazard shall, and are authorized to, take any action necessary to achieve and maintain participation in the national flood insurance program.

2. Any local law or ordinance adopted for the purpose of qualifying a local government as a participant in the national flood insurance program shall apply to any construction or improvement undertaken within any such local government by any county, city, town, village, school district or public improvement district.

§ 36-0109. Sanctions.

Any local government with land use jurisdiction that fails to qualify for participation in the national flood insurance program, or that has had its participation terminated by the federal emergency management agency, faces sanctions under federal law including, in areas of special

flood hazard, ineligibility for flood disaster aid, ineligibility for federally provided loans or federally guaranteed financing, including residential and other mortgages granted by any banking institution that is a member of the federal deposit insurance corporation or other federal instrumentality. The state of New York will cooperate with the federal government in the enforcement of these sanctions.

§ 36-0111. Flood hazard evaluation of state facilities, lands and programs.

1. State agencies shall take affirmative action to minimize flood hazards and losses in connection with state-owned and state-financed buildings, roads and other facilities, the disposition of state land and properties, the administration of state and state-assisted planning programs, and the preparation and administration of state building, sanitary and other pertinent codes. Such action shall include, but not be limited to, requirements for the evaluation and reduction of flood hazards in the siting, planning, construction and maintenance of such facilities and the administration of such programs; needed and economically feasible flood-proofing and other protective measures of existing state facilities; and appropriate flood hazard restrictions binding upon purchasers and persons acquiring state lands and properties, or interests therein, and their successors.

2. The commissioner shall assist state agencies in determining and evaluating flood hazards and alternative protective measures, and shall promulgate regulations, in consultation with the director of the budget, to govern the review by the commissioner of potential flood hazards at proposed construction sites of state, and state-financed facilities. Such regulations shall ensure that reviews thereunder shall be coordinated with those of appropriate environmental impact statements, project notification and review systems, and state capital construction funding requests.

3. The department, pursuant to designation by the governor, shall act as the state coordinating agency for the national flood insurance

program in order to assist in its review of state agency activities and to serve as a resource for local governments.

§ 36-0113. Miscellaneous.

1. In order to assure the continued availability of flood insurance in any community described in subdivision two or four of section 36-0105 of this article while it completes the process of qualifying as a participant in the national flood insurance program, the department is authorized and directed to provide technical assistance necessary to enable such local governments to assume their responsibilities in as expeditious a manner as possible.

2. The commissioner shall review, and appropriately amend or repeal, all regulations of the department relating to the implementation of the former article thirty-six of the environmental conservation law which was repealed by the same chapter of the laws of nineteen hundred ninety-two that enacted this article thirty-six.

3. Nothing contained in this article shall be construed to affect the validity of any local law or ordinance heretofore enacted by any local government.

4. If any provision of this article or the application thereof to any person or circumstances shall be adjudged invalid by a court of competent jurisdiction, such order or judgment shall be confined in its operation to the controversy in which it was rendered, and shall not affect or invalidate the remainder of any provision of any section or the application of any part thereof to any other person or circumstances and to this end the provisions of this article are hereby declared to be severable.

ARTICLE 37

**SUBSTANCES HAZARDOUS OR ACUTELY HAZARDOUS TO PUBLIC HEALTH, SAFETY
OR THE ENVIRONMENT**

TITLE I
SUBSTANCES HAZARDOUS TO THE ENVIRONMENT

- Section 37-0101. Definitions.
- 37-0103. Lists of substances hazardous or acutely hazardous to public health, safety or the environment.
- 37-0105. Rules and regulations.
- 37-0107. Prohibition against storage or release.
- 37-0109. Chromated copper arsenate pressure treated lumber; public facilities.
- 37-0111. Prohibition against brominated flame retardants.
- 37-0113. Lead and mercury-added wheel weights; prohibited.
- 37-0115. Lead-containing jewelry.
- 37-0117. Prohibition of cosmetic products and personal care products containing 1,4-dioxane or mercury.
- 37-0119. Prohibition against certain uses of trichloroethylene.
- 37-0119*2. Coal tar; prohibited.
- 37-0121. Prohibition against the use of perfluoroalkyl and polyfluoroalkyl substances in apparel.

TITLE II
HAZARDOUS PACKAGING

- Section 37-0201. Legislative findings and intent.
- 37-0203. Definitions.
- 37-0205. Prohibitions.
- 37-0207. Exemptions.
- 37-0209. Prohibition on the use of perfluoroalkyl and polyfluoroalkyl substances in food packaging.
- 37-0211. Violations.
- 37-0213. Reports.
- 37-0215. Rules and regulations.

TITLE III
GOVERNMENT AGENCY REPORTING OF TOXIC CHEMICAL RELEASES

- Section 37-0301. Definitions.
- 37-0303. Applicability.
- 37-0305. Toxic chemical release form.
- 37-0307. Availability of information.

TITLE 5

BISPHENOL A

- Section 37-0501. Short title.
- 37-0503. Definitions.
- 37-0505. Child care products.
- 37-0507. Product labeling.
- 37-0509. Preemption.
- 37-0511. Rules and regulations.

TITLE VII

TRIS

- Section 37-0701. Short title.
- 37-0703. Definitions.
- 37-0705. Child care products.
- 37-0707. Preemption.
- 37-0709. Rules and regulations.

TITLE IX

TOXIC CHEMICALS IN CHILDREN'S PRODUCTS

- Section 37-0901. Definitions.
- 37-0903. Applicability.
- 37-0905. Chemicals of concern and high-priority chemicals.
- 37-0907. Reporting on the use of chemicals.
- 37-0909. Sales prohibition.
- 37-0911. Children's product safety council; established.
- 37-0913. Notice to retailers and the public.
- 37-0915. Enforcement and implementation.
- 37-0917. Regulations.

TITLE X

REGULATION OF CHEMICALS IN UPHOLSTERED FURNITURE, MATTRESSES AND ELECTRONIC ENCLOSURES

- Section 37-1001. Definitions.
- 37-1003. Furniture and mattresses.
- 37-1005. Exemptions.
- 37-1007. Electronic display.
- 37-1009. Reporting.
- 37-1011. Certification of compliance.
- 37-1013. Severability.
- 37-1015. Regulations.

TITLE 11

REGULATION OF COATED OR TREATED SEEDS

Section 37-1101. Unlawful acts.

TITLE I

SUBSTANCES HAZARDOUS TO THE ENVIRONMENT

- Section 37-0101. Definitions.
- 37-0103. Lists of substances hazardous or acutely hazardous to public health, safety or the environment.
- 37-0105. Rules and regulations.
- 37-0107. Prohibition against storage or release.
- 37-0109. Chromated copper arsenate pressure treated lumber; public facilities.
- 37-0111. Prohibition against brominated flame retardants.
- 37-0113. Lead and mercury-added wheel weights; prohibited.
- 37-0115. Lead-containing jewelry.
- 37-0117. Prohibition of cosmetic products and personal care products containing 1,4-dioxane or mercury.
- 37-0119. Prohibition against certain uses of trichloroethylene.
- 37-0119*2. Coal tar; prohibited.
- 37-0121. Prohibition against the use of perfluoroalkyl and polyfluoroalkyl substances in apparel and outdoor apparel for severe wet conditions.

§ 37-0101. Definitions.

As used in this article, unless the context requires otherwise:

1. "Oral LD (rat) toxicity" means a calculated dose of a substance which is expected to cause the death of fifty percent of an experimental rat population when administered orally.

2. "Inhalation LC (rat) toxicity" means a calculated concentration of substance in air, exposure to which is expected to cause death of fifty percent of an experimental rat population when inhaled.

3. "Dermal LD (rabbit) toxicity" means a calculated dose of a substance which is expected to cause the death of fifty percent of an experimental rabbit population when applied to the skin.

4. "Brominated flame retardants" refers generally to any product containing a mixture of chemicals known as brominated diphenyl ether to prevent, reduce or retard the risk of fire in electronic devices, furniture, and textiles.

5. "Polybrominated diphenyl ether" (PBDE) is a mixture of brominated diphenyl ethers, usually marketed as pentabromodiphenyl ether or octabromodiphenyl ether, according to how many hydrogen atoms in the diphenyloxide structure are replaced with bromine atoms.

6. "Process", as used in section 37-0111 of this title, shall not include the processing of metallic recyclables containing pentabrominated diphenyl ether or octabrominated diphenyl ether that is conducted in compliance with all applicable federal, state, and local laws.

7. "Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS" shall mean a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.

§ 37-0103. Lists of substances hazardous or acutely hazardous to public health, safety or the environment.

1. No later than two years from the date on which this section as hereby amended takes effect, the commissioner shall promulgate and thereafter from time to time amend regulations consistent with the state administrative procedure act which contain:

(a) A list of substances hazardous to the public health, safety or the environment, as required by paragraph (b) of subdivision ten of section 71-2702 of this chapter, which meet the following criteria:

(i) because of their quantity, concentration, or physical, chemical or

infectious characteristics cause physical injury or illness when improperly treated, stored, transported, disposed of, or otherwise managed; or

(ii) pose a present or potential hazard to the environment when improperly treated, stored, transported, disposed of, or otherwise managed; or

(iii) because of their toxicity or concentration within biological chains, present a demonstrated threat to biological life cycles when released into the environment.

(b) A list of substances acutely hazardous to public health, safety or the environment, as required by paragraph (b) of subdivision eleven of section 71-2702 of this chapter, which meet the following criteria:

(i) A. have an oral LD (rat) toxicity of less than 50 milligrams per kilogram; or

B. have an inhalation LC (rat) toxicity of less than 2 milligrams per liter; or

C. have a dermal LD (rabbit) toxicity of less than 200 milligrams per kilogram; or

(ii) cause or are capable of causing death, serious illness or serious physical injury to any person or persons as a consequence of release into the environment.

2. In promulgating a list pursuant to paragraph (a) of subdivision one of this section, the commissioner shall include the following:

(a) substances whose manufacture, processing, contribution in commerce, use, possession or disposal is banned, prohibited or limited pursuant to the federal Toxic Substances Control Act (15 U.S.C. 2601 et seq.) as of January 1, 2008, as amended from time to time;

(b) substances and pesticides whose use or possession is prohibited pursuant to the federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 135 et seq.) as of January 1, 2008, as amended from time to time; and

(c) substances defined as hazardous substances pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act (26 U.S.C. 4611 et seq.; 42 U.S.C. 9601 et seq.) as of January 1, 2008, as

amended from time to time.

§ 37-0105. Rules and regulations.

The department is hereby authorized to promulgate rules and regulations pertaining to the storage and release to the environment of substances hazardous or acutely hazardous to public health, safety or the environment. Such rules and regulations may require the users of substances which may meet the criteria upon which the lists referred to in paragraphs (a) and (b) of subdivision one of section 37-0103 of this chapter are based to furnish to the department for the public record any information regarding such substances which the said user may have, and the nature and extent of research performed by said user concerning the effects of such substances on human health and the environment. Prior to promulgation of rules and regulations hereunder, public hearings shall be held upon notice in two newspapers in the locality of said public hearings, at least two times per week in each of three successive weeks. Such hearings shall be conducted not less than sixty (60) days following the date of last publication.

§ 37-0107. Prohibition against storage or release.

No person shall store or release to the environment substances hazardous or acutely hazardous to public health, safety or the environment in contravention of rules and regulations promulgated pursuant hereto.

§ 37-0109. Chromated copper arsenate pressure treated lumber; public facilities.

1. The state, and any political subdivision thereof, school district, board of cooperative educational services or public authority, and any agency of any such entity shall be prohibited from constructing, any structure on any playground owned or operated by such an entity, which

uses lumber which is pressure treated with chromated copper arsenate.

2. The state, and any political subdivision thereof, school district, board of cooperative educational services or public authority, and any agency of any such entity shall maintain and operate all (a) structures constructed with lumber which is pressure treated with chromated copper arsenate, which is on any playground owned or operated by such an entity, or (b) picnic tables constructed with lumber which is pressure treated with chromated copper arsenate, which is on any facility owned or operated by such an entity, in such a manner as to minimize chromated copper arsenate from leaching from such structure or picnic table. Every such entity shall maintain the ground cover surrounding any such structure or picnic table in a manner to minimize exposure to potential chromated copper arsenate contamination.

3. The commissioner shall compile and publish information on the dangers and hazards to public health and the environment of the use of chromated copper arsenate pressure treated lumber. In addition, the commissioner shall compile and publish a list of less toxic materials which may be used as an alternative to the use of chromated copper arsenate pressure treated lumber. The department shall also compile and publish information on non-toxic methods and materials that are available to adequately maintain playground structures and picnic tables constructed with chromated copper arsenate pressure treated lumber in a manner that minimizes chromated copper arsenate from leaching from such structures and picnic tables. The department shall insure that the information compiled and published pursuant to this subdivision is widely disseminated to the general public.

§ 37-0111. Prohibition against brominated flame retardants.

1. Manufacture, process, or distribution of brominated flame retardants. (a) No person shall manufacture, process or distribute in commerce a product, or a flame-retardant part of a product, containing more than one-tenth of one per centum of pentabrominated diphenyl ether or octabrominated diphenyl ether, by mass.

(b) The commissioner may waive the provisions of this section in whole or in part upon a finding by the commissioner, in consultation with the commissioners of health and labor in a particular instance that there is no significant threat to the public health.

2. Administration. (a) The commissioner is hereby authorized and directed to prescribe such rules and regulations, including provisions for maintenance of records relating to products, fabrics or related materials, and for the labeling for a product, fabric or related material, as may be necessary and proper for purposes of administration and enforcement of this article.

(b) The commissioner is hereby empowered to order the recall of or confiscation of consumer products offered for sale which do not meet the standards set forth in or pursuant to this section.

(c) The commissioner may obtain from any person by regulation or subpoena issued pursuant thereto such information in the form of testimony, books, records, or other writings as is pertinent to the findings or determinations which he or she is required or authorized to make pursuant to this section.

All information reported to or otherwise obtained by the commissioner or his or her representative pursuant to this section which information contains or relates to a trade secret shall be considered confidential, except that such information may be disclosed to other officers or employees concerned with carrying out this section or when relevant in any proceeding under this section.

3. Guaranty. (a) No person shall be subject to prosecution under this section if such person: (1) establishes a guaranty received in good faith signed by and containing the name and address of the person residing in the United States by whom the product, fabric or related material guaranteed was manufactured or from whom it was received, to the effect that reasonable and representative tests showing that the product, fabric or related material covered by the guaranty, or used in the product, fabric or related material covered by the guaranty meets the requirements of this section; and (2) has not, by further processing, affected the flammability of the product, fabric or related

material covered by the guaranty which he or she received. Such guaranty shall be either: (A) a separate guaranty specifically designating the product, fabric or related material guaranteed, in which case it may be on the invoice or other paper relating to such product, fabric or related material; or (B) a continuing guaranty filed with the department or with the federal trade commission applicable to any product, fabric or related material handled by a guarantor, in such form as the department or the federal trade commission by rules or regulations may prescribe; or (C) a continuing guaranty given by seller to buyer applicable to any product, fabric or related material sold or to be sold to buyer by seller in a form as the department or the federal trade commission by rules or regulations may prescribe.

(b) The furnishing with respect to any product, fabric or related material, of a false guaranty, except by a person relying upon a guaranty to the same effect received in good faith and signed by and containing the name and address of the person residing in the United States by whom the product, fabric or related material guaranteed was manufactured or from whom it was received, with reason to believe the product, fabric or related material falsely guaranteed may be introduced, sold or transported in commerce, is unlawful.

4. Exclusions. (a) The provisions of this section shall not apply to any common carrier, contract carrier or freight forwarder with respect to a product, fabric or related material shipped or delivered for shipment through the state for commerce in another state or country.

(b) As used in this section, "distribute in commerce" shall not include the resale of products manufactured prior to January first, two thousand six or replacement parts manufactured prior to January first, two thousand six.

5. Violations. A violation of any provision of this section or any rule or regulation of the commissioner promulgated hereunder is a misdemeanor. Each product, fabric or related material made, sold or exposed for sale, shall constitute a separate violation.

6. Severability. The provisions of this section shall be severable and and if any portion thereof or the applicability thereof to any person or

circumstances shall be held to be invalid, the remainder of this title and the application thereof shall not be affected thereby.

§ 37-0113. Lead and mercury-added wheel weights; prohibited.

1. On and after April first, two thousand eleven any person replacing or balancing a tire on a motor vehicle required to be registered under article fourteen of title four of the vehicle and traffic law, shall not use a wheel weight or other product for balancing motor vehicle wheels if the weight or other balancing product contains more than 0.1 percent lead by weight.

2. On and after April first, two thousand eleven, a person shall not sell or offer to sell or distribute weights or other products for balancing motor vehicle wheels if the weight or other balancing product contains more than 0.1 percent lead by weight.

3. On and after April first, two thousand twelve, a person may not sell a new motor vehicle that is equipped with a weight or other product for balancing motor vehicle wheels if the weight or other balancing product contains more than 0.1 percent lead by weight.

4. On or after April first, two thousand eighteen, any person replacing or balancing a tire on a motor vehicle required to be registered under article fourteen of title four of the vehicle and traffic law, shall not use a wheel weight or other product for balancing motor vehicle wheels if the weight or other balancing product contains mercury that was intentionally added during the manufacture of the product.

5. On and after April first, two thousand eighteen, a person shall not sell or offer to sell or distribute weights or other products for balancing motor vehicle wheels if the weight or other balancing product contains mercury that was intentionally added during the manufacture of the product.

6. For purposes of this section, the following terms shall have the following meanings:

a. "New motor vehicle" means a motor vehicle that is required to be registered under article fourteen of title four of the vehicle and traffic law that has not been previously sold to any person except a distributor, wholesaler or motor vehicle dealer for resale.

b. "Person" means any individual, firm, association, partnership, corporation, organization, or joint venture.

§ 37-0115. Lead-containing jewelry.

For purposes of this section, the following terms shall have the following definitions:

1. "Body piercing jewelry" means any part of jewelry that is manufactured or sold for placement in a new piercing or a mucous membrane, but does not include any part of that jewelry that is not placed within a new piercing or a mucous membrane.

2. "Children" means children under the age of twelve.

3. "Children's jewelry" means jewelry that is made for, marketed for use by, or marketed to, children and includes jewelry that meets any of the following conditions:

(a) Represented in its packaging, display, or advertising, as appropriate for use by children.

(b) Sold in conjunction with, attached to, or packaged together with other products that are packaged, displayed, or advertised as appropriate for use by children.

(c) Sized for children and not intended for use by adults.

(d) Sold in any of the following:

(1) A vending machine.

(2) Retail store, catalogue, or online web site, in which a person exclusively offers for sale products that are packaged, displayed, or

advertised as appropriate for use by children.

(3) A discrete portion of a retail store, catalogue, or online web site, in which a person offers for sale products that are packaged, displayed, or advertised as appropriate for use by children.

4. "Jewelry" means any of the following ornaments worn by a person:

(a) ankle bracelet;

(b) arm cuff;

(c) bracelet;

(d) brooch;

(e) chain;

(f) crown;

(g) cuff link;

(h) hair accessory;

(i) earring;

(j) necklace;

(k) decorative pin;

(l) ring;

(m) body piercing jewelry;

(n) jewelry placed in the mouth for display or ornament;

(o) any charm, bead, chain, link, pendant, or other component of the items listed in this definition;

(p) a charm, bead, chain, link, pendant, or other attachment to shoes or clothing that can be removed and may be used as a component of an item listed in this definition;

(q) a watch in which a timepiece is a component of an item listed in this definition, excluding the timepiece itself if the timepiece can be removed from the ornament.

5. Effective January first, two thousand twenty-one, no manufacturer shall sell, or offer for sale, children's jewelry that contains a total lead content in any component part of the item that is more than 0.004% (40 parts per million) but less than 0.01% (100 parts per million) by total weight or a lower standard for lead content as may be established by federal or state law or rule unless that item bears a warning statement that indicates that at least one component part of the item contains lead.

The warning statement for children's jewelry shall contain at least the following: "WARNING: CONTAINS LEAD. MAY BE HARMFUL IF EATEN OR CHEWED. "

A manufacturer is in compliance if the warning statement is provided on the children's jewelry or on the label on the immediate container of the children's jewelry.

The warning statement requirement does not apply to any children's jewelry:

(a) for which federal law governs warning in a manner that preempts state authority;

(b) if the component parts of the children's jewelry containing lead are inaccessible to a child through normal and reasonably foreseeable use and abuse as defined by the United States Consumer Product Safety Commission;

(c) if the component parts in question are exempt from third-party testing as determined by the United States Consumer Product Safety Commission; or

(d) to children's jewelry resold or offered for resale, or distributed by consumers for consumer use.

§ 37-0117. Prohibition of cosmetic products and personal care products containing 1,4-dioxane or mercury.

1. The term "cosmetic product" shall mean any article (a) intended to be rubbed, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for beautifying, promoting attractiveness, or altering the appearance, and (b) intended for use as a component of any such article. The term "cosmetic product" shall not include any personal care product as defined in this section for which a prescription is required for distribution or dispensation as provided in section two hundred eighty-one of the public health law or section sixty-eight hundred ten of the education law.

2. The term "personal care product" shall mean any product intended for cleaning or cleansing any part of the body, such as the skin and hair, and including but not limited to, hair shampoo, hair conditioner, soap, bath gels and other bath products. The term "personal care product" shall not include any product for which a prescription is required for distribution or dispensation as provided in section two hundred eighty-one of the public health law or section sixty-eight hundred ten of the education law.

3. No person shall sell or offer for sale any cosmetic product containing 1,4-dioxane, other than such trace concentrations, that exceeds ten parts per million by December thirty-first, two thousand twenty-two.

4. No person shall sell or offer for sale any personal care product containing 1,4-dioxane, other than such trace concentrations, as authorized by the commissioner, in consultation with the department of health, by regulation; and further, such trace concentrations for personal care products shall not exceed two parts per million by December thirty-first, two thousand twenty-two and one part per million by December thirty-first, two thousand twenty-three.

5. No later than May first, two thousand twenty-five, and every two years thereafter, the department, in consultation with the department of health, shall review such trace concentration thresholds and determine whether such concentrations shall be lowered to better protect human health and the environment.

6. The department is authorized to promulgate such rules and regulations as it shall deem necessary to implement the provisions of this section, including rules and regulations with respect to any allowable trace concentrations.

7. A manufacturer of a cosmetic product or personal care product, otherwise subject to the requirements of subdivisions three and four of this section, may apply to the department for a one-year waiver from such requirements for a specific cosmetic product or personal care

product, and upon such proof that the manufacturer has taken steps to reduce the presence of 1,4-dioxane in that product and is unable to comply with the requirements of subdivisions three and four of this section. Thereafter, a manufacturer may apply for one additional one-year waiver for such product, upon its satisfaction of such similar proof.

8. No person shall sell or offer for sale any cosmetic product or personal care product containing mercury, other than in trace amounts identified by the department, in consultation with the department of health, in regulations. Any such trace amounts shall be consistent with the permissible concentrations of trace amounts allowed by the food and drug administration as (a) unavoidable under conditions of good manufacturing practice, or (b) necessary for use as a preservative in the absence of an effective and safe nonmercurial preservative substitute in cosmetic products intended for use only in the area of the eye. For the purposes of this subdivision "mercury" shall mean elemental mercury Hg, mercuric iodide, mercury oxide, mercurous chloride, ethyl mercury, phenyl mercuric salts, ammoniated mercury, amide chloride of mercury, mercury sulfide or cinnabaris, or mercury iodide.

*** § 37-0119. Prohibition against certain uses of trichloroethylene.**

1. No person shall use trichloroethylene as a vapor degreaser, an intermediate chemical to produce other chemicals, a refrigerant, or an extraction solvent or in any other manufacturing or industrial cleaning process or use.

2. For purposes of this section:

(a) "Extraction solvent" means a solvent used to separate a specific substance from a mixture.

(b) "Refrigerant" means a chemical that is used as a heat carrier in a cooling mechanism and that changes from liquid to gas and back again in the refrigeration cycle.

(c) "Trichloroethylene" means a chemical with the Chemical Registry Abstract Services Number of 79-01-6.

(d) "Vapor degreaser" means a substance boiled to a vapor that condenses onto metal parts, causing beading and dripping, and that removes contaminants from the parts.

3. Severability. The provisions of this section shall be severable and if any portion thereof or the applicability thereof to any person or circumstance is held invalid, the remainder of this section and the application thereof shall not be affected thereby.

* NB There are 2 § 37-0119's

*** § 37-0119. Coal tar; prohibited.**

1. A person shall not sell or offer for sale a pavement product containing coal tar.

2. A person shall not apply a pavement product that is labeled as containing coal tar on a driveway or parking area.

3. For purposes of this section, the following terms shall have the following meanings:

a. "Coal tar" means a viscous substance obtained by the destructive distillation of coal and containing levels of polycyclic aromatic hydrocarbons (PAHs) in excess of ten thousand milligrams per kilogram.

b. "Pavement product" means a material that is for use on an asphalt or concrete surface, including but not limited to sealcoat.

* NB There are 2 § 37-0119's

§ 37-0121. Prohibition against the use of perfluoroalkyl and polyfluoroalkyl substances in apparel and outdoor apparel for severe wet conditions.

1. After January first, two thousand twenty-five, no person shall sell or offer for sale in this state any new, not previously used, apparel

containing perfluoroalkyl and polyfluoroalkyl substances as intentionally added chemicals.

2. In addition to the provisions of subdivision one of this section, one year after the department's adoption of the regulations required by this subdivision, but no later than January first, two thousand twenty-seven, no person shall sell or offer for sale in this state any new, not previously used, apparel containing perfluoroalkyl and polyfluoroalkyl substances at or above a level that the department shall establish in regulation.

3. On or after January first, two thousand twenty-eight, no person shall sell or offer for sale in this state any new, not previously used, outdoor apparel for severe wet conditions containing perfluoroalkyl and polyfluoroalkyl substances: (a) at or above a level that the department shall establish in regulation, or (b) as intentionally added chemicals.

4. For the purposes of this section, the following terms shall have the following meanings:

(a) "Intentionally added chemical" means a chemical in a product that serves an intended function or technical effect in the product or product component, including the PFAS within intentionally added chemicals and PFAS that are intentional breakdown products of an added chemical that also have a functional or technical effect in the product or product component.

(b) "Apparel" means clothing items intended for regular wear or formal occasions including, but not limited to, undergarments, shirts, pants, skirts, dresses, overalls, bodysuits, vests, dancewear, suits, saris, scarves, tops, leggings, leisurewear, formal wear, outdoor apparel, onesies, bibs, and diapers. "Apparel" shall not include:

(i) professional uniforms that are worn to protect the wearer from health or environmental hazards, including personal protective equipment; or

(ii) outdoor apparel for severe wet conditions.

(c) "Outdoor apparel" means clothing items intended primarily for outdoor activities, including but not limited to, hiking, camping, skiing, climbing, bicycling, and fishing.

(d) "Outdoor apparel for severe wet conditions" means outdoor apparel that are extreme and extended use products designed for outdoor sports experts for applications that provide protection against extended exposure to extreme rain conditions or against extended immersion in water or wet conditions, such as from snow, in order to protect the health and safety of the user and that are not marketed for general consumer use.

(e) "Manufacturer" means a person, firm, association, partnership, or corporation:

(i) that produces or whose brand name is affixed to apparel or outdoor apparel for severe wet conditions; or

(ii) in the case of apparel or outdoor apparel for severe wet conditions that was imported into the United States, "manufacturer" means the importer or first domestic distributor of the apparel or outdoor apparel for severe wet conditions if no person who is a manufacturer within the meaning of subparagraph (i) of this paragraph has a presence in the United States.

5. No person that sells or offers for sale any apparel or outdoor apparel for severe wet conditions shall be held in violation of this section if they can show that they relied in good faith on the written assurance of the manufacturer that such apparel or outdoor apparel for severe wet conditions meets the requirements of this section. Such written assurance shall take the form of a certificate of compliance stating that such apparel or outdoor apparel for severe wet conditions is in compliance with the requirements of this section. The certificate of compliance shall be signed by an authorized official of the manufacturer.

6. In addition to any other applicable penalties, it shall be a violation of this section to provide a certificate of compliance as contemplated by subdivision five of this section when the applicable apparel or outdoor apparel for severe wet conditions does not satisfy the limitations on the presence of perfluoroalkyl and polyfluoroalkyl substances set forth in subdivisions one, two and three of this section.

TITLE II
HAZARDOUS PACKAGING

Section 37-0201. Legislative findings and intent.

37-0203. Definitions.

37-0205. Prohibitions.

37-0207. Exemptions.

37-0209. Prohibition on the use of perfluoroalkyl and
polyfluoroalkyl substances in food packaging.

37-0211. Violations.

37-0213. Reports.

37-0215. Rules and regulations.

§ 37-0201. Legislative findings and intent.

The legislature finds and declares that:

1. The management of solid waste can pose a wide range of hazards to public health and safety and to the environment; and

2. Packaging comprises a significant percentage of the overall solid waste stream; and

3. The presence of heavy metals in packaging is a part of the total concern in light of their likely presence in emissions or ash when packaging is incinerated, or in leachate when packaging is landfilled; and

4. Lead, mercury, cadmium and hexavalent chromium, on the basis of available scientific and medical evidence, are of particular concern; and

5. It is desirable as a first step in reducing the toxicity of packaging waste to eliminate the addition of these heavy metals to packaging; and

6. The intent of this title is to achieve this reduction in toxicity

without impeding or discouraging the expanded use of post-consumer materials in the production of packaging and its components.

§ 37-0203. Definitions.

For the purposes of this title, the term:

1. "Distributor" shall mean any person, firm, association, partnership or corporation, who or which imports or causes to be imported into the state, any container, whether filled or unfilled, used to package products.

2. "Manufacturer" shall mean a person, firm, association, partnership or corporation, who or which makes containers to be used to package products.

3. "Package" means a container providing a means of marketing, protecting or handling a product and shall include a unit package, an intermediate package and a shipping container. "Package" shall also mean and include, but not be limited to, such unsealed receptacles as carrying cases, crates, cups, pails, rigid foil and other trays, wrappers and wrapping films, bags and tubs.

4. "Packaging component" means any individual assembled part of a package such as, but not limited to, any interior or exterior blocking, bracing, cushioning, weatherproofing, exterior strapping, coatings, closures, inks and labels.

5. "Food packaging" means a package or packaging component that is intended for direct food contact and is comprised, in substantial part, of paper, paperboard, or other materials originally derived from plant fibers.

6. "Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS substances" shall mean, for the purposes of food packaging, a class of fluorinated organic chemicals containing at least one fully fluorinated

carbon atom.

§ 37-0205. Prohibitions.

1. No package or packaging component shall be offered for sale or for promotional purposes by a manufacturer or distributor which includes in the package itself, or in any packaging component, inks, dyes, pigments, adhesives, stabilizers or any other additives to which lead, cadmium, mercury or hexavalent chromium has been included as an element during manufacture or distribution in excess of the concentration levels set forth in subdivision three of this section.

2. No product shall be offered for sale or for promotional purposes by a manufacturer or distributor in a package which includes, in the package itself or in any of its packaging components, inks, dyes, pigments, adhesives, stabilizers or any other additives to which lead, cadmium, mercury or hexavalent chromium has been included as an element during manufacture or distribution in excess of the concentration levels set forth in subdivision three of this section.

3. The sum of the concentration levels of lead, cadmium, mercury or hexavalent chromium present in any package or packaging component shall not exceed the following prior to incineration:

600 parts per million by weight (0.06%), effective January 1, 1992

250 parts per million by weight (0.025%), effective January 1, 1993

100 parts per million by weight (0.01%), effective January 1, 1994.

§ 37-0207. Exemptions.

All packaging and packaging components shall be subject to this title except the following:

1. Those packages or packaging components which have been delivered to a distributor or manufacturer prior to January 1, 1992; or those packages or packaging components with a code indicating date of manufacture that were manufactured prior to January 1, 1992; or

2. Those packages or packaging components to which lead, cadmium, mercury or hexavalent chromium have been added in the manufacturing, forming, printing or distribution process in order to comply with health or safety requirements of federal law or for which there is no practicable alternative, as determined by the commissioner, provided that the manufacturer of a package or packaging component must petition the department for any exemption from the provisions of this title for a particular package or packaging component based on either criterion; provided further that the department may grant a two year exemption if warranted by the circumstances; and provided further that such an exemption may upon meeting either criterion of this subdivision be renewed for two years; or

3. Packages and packaging components that exceed the maximum levels set forth in subdivision three of section 37-0205 of this title only because of the addition of post-consumer materials, provided that the exemption for this subdivision shall expire on January 1, 1996.

4. Until January first, nineteen hundred ninety-four, any glass container that is intended for reuse or refilling that uses pigments in or on the container that exceed the maximum levels set forth in subdivision three of section 37-0205 of this title.

§ 37-0209. Prohibition on the use of perfluoroalkyl and polyfluoroalkyl substances in food packaging.

1. No person shall distribute, sell or offer for sale in this state food packaging containing perfluoroalkyl and polyfluoroalkyl (PFAS) substances as intentionally added chemicals.

2. For purposes of this section, "intentionally added chemical" shall

have the same meaning as subdivision eleven of section 37-0901 of this article.

§ 37-0211. Violations.

1. A violation of any of the provisions of this title or any rule or regulation promulgated pursuant thereto shall be punishable in the case of a first violation, by a civil penalty not to exceed ten thousand dollars. In the case of a second and any further violation, the liability shall be for a civil penalty not to exceed twenty-five thousand dollars for each violation.

2. No manufacturer or distributor of a product shall be held in violation of this title who can show that, in the purchase of a package or packaging component, he or she relied in good faith on the written assurance of the manufacturer of such packaging or packaging component that such packaging or packaging component met the requirements of this title. Such written assurance shall take the form of a certificate of compliance stating that a package or packaging component is in compliance with the requirements of this title, provided however, where compliance is achieved under an exemption provided in subdivision two or three of section 37-0207 of this title, the certificate shall state the specific basis upon which the exemption is claimed. The certificate of compliance shall be signed by an authorized official of the manufacturing or distributing company.

§ 37-0213. Reports.

The department shall include a report on the effectiveness of this title as part of its annual solid waste management plan as required by section 27-0103 of this chapter. The report shall contain a review of other toxic substances contained in packaging and recommend additions to the list of hazardous ingredients set forth in this title in order to further reduce the toxicity of packaging waste, and shall contain a recommendation whether to continue the recycling exemption as it is

provided for in subdivision three of section 37-0207 of this title, and a description of the nature of the substitutes used in lieu of the lead, mercury, cadmium, or hexavalent chromium. The department may include recommendations of the source reduction council of the conference of North-Eastern governors in the report. Recommendations made by the department to eliminate toxic substances contained in packaging shall include a determination of whether the ingredient presents or will present an unreasonable risk to health or the environment, based upon a recognized risk assessment protocol and taking into account the magnitude and severity of the harm against the benefits of the substance or mixture to society as well as the availability of substitutes for the substance or mixture and other adverse effects which such proposed action to eliminate such ingredient may have on society.

§ 37-0215. Rules and regulations.

The commissioner shall have the power to adopt such rules and regulations to provide for the effective application and enforcement of this title. The commissioner, to the extent practicable and appropriate, shall utilize the standards designated by the American Society for Testing and Materials in determining "unit packaging", "intermediate packages" and "shipping containers".

TITLE 3

GOVERNMENT AGENCY REPORTING OF TOXIC CHEMICAL RELEASES

Section 37-0301. Definitions.

37-0303. Applicability.

37-0305. Toxic chemical release form.

37-0307. Availability of information.

§ 37-0301. Definitions.

As used in this title, the following terms shall have the following meanings:

1. "Facility" means all buildings, equipment, structures, and other stationary items located on a single site or adjacent sites and owned or operated by the same person (or by any person who controls, is controlled by, or is under common control with, such person).

2. "State agency" means:

(a) each state department;

(b) division of military and naval affairs, division of state police, division of housing and community renewal, division for youth, office of general services, office of parks, recreation and historic preservation, and state university of New York;

(c) any division, board, commission, office, or bureau of any state department which is required to obtain a permit issued by the department or which undertakes an activity for which it must register with the department; and

(d) dormitory authority of the state of New York, facilities development corporation, metropolitan transportation authority (including the operations of all of its operating units), New York state energy research and development authority, New York state environmental facilities corporation, New York state olympic regional development authority, New York state thruway authority, New York state urban development corporation, port authority of New York and New Jersey, and power authority of the state of New York.

3. The term "manufacture" means to produce, prepare, import, or compound a toxic chemical.

4. The term "process" means the preparation of a toxic chemical, after its manufacture, for distribution in commerce in the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing such chemical, or as part of an article containing the toxic chemical.

5. The term "release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or

discarding of barrels, containers, and other closed receptacles) of any hazardous chemical, extremely hazardous substance, or toxic chemical.

6. The term "toxic chemical" means a substance on the list described in 42 U.S.C. § 11023(c).

§ 37-0303. Applicability.

The provisions of this title shall apply to every facility owned by, or operated on behalf of, a state agency that manufactures or processes greater than twelve thousand five hundred pounds per year of a toxic chemical, or otherwise uses greater than five thousand pounds per year of a toxic chemical.

§ 37-0305. Toxic chemical release form.

1. The owner or operator of each facility subject to the requirements of this title shall complete a toxic chemical release form as published pursuant to subsection (g) of 42 U.S.C. § 11023, as amended and subsections (a) and (b) of 42 U.S.C. § 13106, as amended for each toxic chemical listed pursuant to subsection (c) of 42 U.S.C. § 11023, as amended that was manufactured or processed in quantities greater than twelve thousand five hundred pounds per year, or otherwise used in quantities greater than five thousand pounds per year at each facility during the preceding calendar year. Such form shall be submitted to the commissioner on or before July first, nineteen hundred ninety-six and thereafter on or before July first and shall contain data reflecting releases during the preceding calendar year.

2. The commissioner may require that submittal be on diskette or other compatible electronic media.

3. A facility specified in section 37-0303 of this title is exempt from the reporting requirement set forth in subdivision one of this section if the owner or operator of the facility certifies in writing to

the commissioner that no toxic chemical is manufactured or processed in quantities greater than twelve thousand five hundred pounds per year, or otherwise used in quantities greater than five thousand pounds per year at the facility. The certification must be submitted to the commissioner by the first applicable reporting date set forth in subdivision one of this section. Such facility is exempt from further reporting unless a toxic chemical is manufactured or processed in quantities exceeding twelve thousand five hundred pounds per year, or otherwise used in quantities exceeding five thousand pounds per year at the facility. The commissioner may request, from the owner or operator, documentation to support a claim that a facility qualified for this exemption.

§ 37-0307. Availability of information.

1. The release forms required under this title are intended to provide information to government agencies and the public, including citizens of communities surrounding covered facilities. The release form shall be available to inform persons about releases of toxic chemicals to the environment; to assist government agencies, researchers, and other persons in the conduct of research and data gathering; to aid in the development of appropriate regulations, guidelines, and standards; and for similar purposes. Each release form shall be printed out upon request and made available during normal working hours to the general public at the main office of the department and at the regional office that encompasses the region in which the facility is located.

2. The commissioner shall maintain in a computer data base a toxic chemical inventory based on data submitted to the commissioner pursuant to this title. Such data shall be made available upon request as a printout and diskette, as per request.

3. By December thirty-first of each year, the commissioner shall issue a written report that shall be available at no charge to the public in which the information compiled pursuant to this title is summarized for each facility subject to the provisions of this title.

TITLE 5
BISPHENOL A

Section 37-0501. Short title.
37-0503. Definitions.
37-0505. Child care products.
37-0507. Product labeling.
37-0509. Preemption.
37-0511. Rules and regulations.

§ 37-0501. Short title.

This title shall be known and may be cited as the "bisphenol A-free children and babies act".

§ 37-0503. Definitions.

As used in this title, "child care product" means all pacifiers and unfilled beverage containers to be used by children under three years old for the consumption of liquids including pacifiers, baby bottles, baby bottle liners and cups, cup lids, straws and sippy cups.

§ 37-0505. Child care products.

1. Beginning December first, two thousand ten, no person, firm, partnership, association, limited liability company or corporation shall sell or offer for sale any child care product intended for use by a child three years of age or younger containing bisphenol A.

2. The provisions of this section shall not apply to the sale or distribution of child care products resold or offered for resale, or distributed by consumers for consumer use.

§ 37-0507. Product labeling.

The commissioner may authorize product labeling of products that do not contain bisphenol A. The label on such products may prominently state "Bisphenol A Free" or "BPA-Free" to inform consumers that the product does not contain the chemical bisphenol A.

§ 37-0509. Preemption.

Jurisdiction in all matters pertaining to bisphenol A which are regulated pursuant to the provisions of this title shall be vested exclusively in the state.

§ 37-0511. Rules and regulations.

The department is authorized to promulgate such rules and regulations as it shall deem necessary to implement the provisions of this title.

TITLE VII

TRIS

Section 37-0701. Short title.

37-0703. Definitions.

37-0705. Child care products.

37-0707. Preemption.

37-0709. Rules and regulations.

§ 37-0701. Short title.

This title shall be known and may be cited as the "TRIS-free children and babies act".

§ 37-0703. Definitions.

As used in this title:

1. "Child care product" means a consumer product intended for use by children under three years of age, such as baby products, toys, car seats, nursing pillows, crib mattresses, and strollers.

2. "TRIS" shall include TCEP (TRIS (2-chloroethyl) phosphate) and TDCPP (TRIS (1,3-dichloro-2-propyl) phosphate).

§ 37-0705. Child care products.

1. Beginning December first, two thousand thirteen, no person, firm, partnership, association, limited liability company or corporation shall sell or offer for sale any child care product intended for use by a child three years of age or younger containing TRIS.

2. The provisions of this section shall not apply to the sale or distribution of child care products resold or offered for resale, or distributed by consumers for consumer use.

§ 37-0707. Preemption.

Jurisdiction in all matters pertaining to TRIS which are regulated pursuant to the provisions of this title shall be vested exclusively in the state.

§ 37-0709. Rules and regulations.

The department is authorized to promulgate such rules and regulations as it shall deem necessary to implement the provisions of this title.

TITLE IX

TOXIC CHEMICALS IN CHILDREN'S PRODUCTS

Section 37-0901. Definitions.

37-0903. Applicability.

37-0905. Chemicals of concern and high-priority chemicals.

37-0907. Reporting on the use of chemicals.

37-0909. Sales prohibition.

37-0911. Children's product safety council; established.

37-0913. Notice to retailers and the public.

37-0915. Enforcement and implementation.

37-0917. Regulations.

§ 37-0901. Definitions.

As used in this title, unless the context otherwise indicates, the following terms have the following meanings.

1. "Children's apparel" means any item of clothing that consists of fabric or related material intended or promoted for use in children's clothing. Children's apparel does not mean protective equipment designed to prevent injury, including, but not limited to, bicycle helmets, athletic supporters, knee pads or elbow pads.

2. "Chemical" means a substance with a distinct molecular composition or a group of structurally related substances and includes the breakdown products of the substance or substances that form through decomposition, degradation or metabolism.

3. " Chemical of concern" means a chemical identified by the department by rule pursuant to subdivision one of section 37-0905 of this title.

4. "Children" means a person or persons aged twelve and under.

5. "Children's product" means a consumer product primarily intended for, made for or marketed for use by children, such as baby products, toys, car seats, school supplies, personal care products as defined in

section 37-0117 of this article, a product designed or intended by the manufacturer to help a child with sucking or teething, to facilitate sleep, relaxation, or the feeding of a child, and children's novelty products, children's jewelry as defined in section 37-0115 of this article, children's bedding, furniture, furnishings, and apparel. "Children's product" does not include (a) batteries; (b) consumer electronic products and their component parts including but not limited to personal computers, audio and video equipment, calculators, wireless phones, game consoles, video toys that can be connected to a video screen and are operated at a nominal voltage exceeding twenty-four volts and handheld devices incorporating a video screen, used to access interactive software and their associated peripherals, accessories and peripherals to children's electronic products including plugs, keyboards and headphones, interactive software, intended for leisure and entertainment, such as computer games, and their storage media, such as compact disks; or (c) sporting equipment including bicycles and tricycles, skis, snow boards, sleds, and roller skates; and hunting and fishing equipment or components thereof; (d) science kits including chemistry sets and model rockets; (e) toy engines and sets of darts with metallic points; (f) motor vehicles or their component parts, watercraft or their component parts, all-terrain vehicles or their component parts, or off-highway motorcycles or their component parts.

6. "Consumer product" means any product that is regularly used or purchased to be used for personal, family or household purposes. Consumer product shall not mean: (a) a food or beverage or an additive to a food or beverage regulated by the United States Food and Drug Administration; or (b) a drug, biologic or medical device regulated by the United States Food and Drug Administration.

7. "Distributor" means a person who sells children's products to retail establishments on a wholesale basis.

8. "Manufacturer" means any person who currently manufactures a children's product or whose brand name is affixed to the children's product. In the case of a children's product that was imported into the United States, "manufacturer" includes the importer or first domestic

distributor of the children's product if the person who currently manufactures or assembles the children's product or whose brand name is affixed to the children's product does not have a presence in the United States.

9. "Practical quantification limit" means the lowest level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions.

10. "High-priority chemical" means (a) a chemical designated pursuant to paragraph (a) of subdivision two of section 37-0905 of this title; and

(b) a chemical adopted by the department pursuant to paragraph (b) of subdivision two of section 37-0905 of this title.

11. "Intentionally added chemical" means a chemical in a product that serves an intended function in the product component.

12. "Toy" means a product designed or intended by the manufacturer to be used by children at play.

13. "Trace contaminant" means a trace amount of a chemical or chemicals that is incidental to manufacturing, including an unintended by-product of chemical reactions during the manufacture of the children's product, a trace impurity in feed-stock, an incompletely reacted chemical mixture, or a degradation product.

14. "Very persistent" means having a half-life greater than or equal to one of the following: (a) a half-life in soil or sediment of greater than one hundred eighty days; (b) a half-life greater than or equal to sixty days in water or evidence of long-range transport.

15. "Very bioaccumulative" means having a bioconcentration factor or bioaccumulation factor greater than or equal to five thousand, or if neither are available, having a log Kow greater than 5.0.

§ 37-0903. Applicability.

1. New children's products. The provisions of this title shall apply to chemicals of concern and high-priority chemicals in children's products sold or distributed as new and does not apply to used children's products that are sold or distributed for free at secondhand stores, yard sales, on the internet or donated to charities.

2. Exceptions. (a) The requirements of this title shall not apply to high priority chemicals used in or for industry or manufacturing, including chemicals processed or otherwise used in or for industrial or manufacturing processes and not included in the final product.

(b) Combustion. The requirements of this title shall not apply to high-priority chemicals generated solely as combustion by-products or that are present in combustible fuels.

(c) Small business exception. The requirements of this title shall not apply to children's product manufacturers that employ five persons or fewer and are independently owned and operated.

(d) Retailers. A retailer is exempt from the requirements of this title unless that retailer knowingly sells a children's product containing a high-priority chemical after the effective date of its prohibition for which that retailer has received notification pursuant to section 37-0913 of this title.

§ 37-0905. Chemicals of concern and high-priority chemicals.

1. Chemicals of concern.

(a) Within two years of the effective date of this title, the department, in consultation with the department of health, shall promulgate a list of chemicals of concern. A chemical may be listed as a chemical of concern if it has been identified by a government entity and/or identified on the basis of credible scientific evidence as being:

(i) a carcinogen, reproductive or developmental toxicant, neurotoxicant, asthmagen, or endocrine disruptor;

(ii) persistent, bioaccumulative and toxic; or

(iii) very persistent and very bioaccumulative.

(b) The department shall review lists codified or promulgated in other states as chemicals of concern to determine if such chemicals meet the criteria of paragraph (a) of this subdivision. The department at a minimum shall consider:

- (i) 1,1,2,2-Tetrachloroethane (CAS 79-34-5)
- (ii) 1,1,3,3-Tetramethyl-4-butylphenol; 4-tert-octylphenol (CAS 140-66-9)
- (iii) 1,4-Dioxane (CAS 123-91-1)
- (iv) 2,2',3,3',4,4',5,5',6,6'-Decabromodiphenyl ether; BDE-209 (CAS 1163-19-5)
- (v) 2,4-Diaminotoluene (CAS 95-80-7)
- (vi) 2-Aminotoluene (CAS 95-53-4)
- (vii) 2-Ethylhexanoic acid (CAS 149-57-5)
- (viii) 2-Ethyl-hexyl-2, 3, 4, 5 tetrabromobenzoate (TBB) (CAS 183658-27-7)
- (ix) 2-Ethyl-hexyl-4-methoxycinnamate (CAS 5466-77-3)
- (x) 2-Methoxyethanol (CAS 109-86-4)
- (xi) 3,3'-Dimethylbenzidine and dyes metabolized to 3,3'-Dimethylbenzidine (CAS 119-93-7)
- (xii) 4-Nonylphenol; 4-NP and its isomer mixtures including CAS 84852-15-3 and CAS 25154-52-3 (CAS 104-40-5)
- (xiii) Acetaldehyde (CAS 75-07-0)
- (xiv) Acrylonitrile (CAS 107-13-1)
- (xv) Aniline (CAS 62-53-3)
- (xvi) Antimony & antimony compounds (CAS 7440-36-0)
- (xvii) Arsenic & arsenic compounds (CAS 7440-38-2) including arsenic trioxide & dimethyl arsenic (CAS 75-60-5)
- (xviii) Asbestos (CAS 1332-21-4)
- (xix) Benzene (CAS 71-43-2)
- (xx) Benzene, pentachloro (CAS 608-93-5)
- (xxi) Benzophenone-2 (BP-2); 2,2',4,4'-tetrahydroxybenzophenone (CAS 131-55-5)
- (xxii) Bis(2-ethylhexyl) tetrabromophthalate (TBPH) (CAS 26040-51-7)
- (xxiii) Bis(chloromethyl) propane-1-3-diyltetrakis-(2-chloroethyl) bis(phosphate)(V6)(CAS 38051-10-4)
- (xxiv) Bisphenol A (CAS 80-05-7)
- (xxv) Bisphenol F (CAS 620-92-8)

(xxvi) Bisphenol S (CAS 80-09-1)
(xxvii) Butyl benzyl phthalate (BBP) (CAS 85-68-7)
(xxviii) Butylated Hydroxyanisole; (BHA) (CAS 25013-16-5)
(xxix) C.I. solvent yellow 14 (CAS 842-07-9)
(xxx) Cadmium & cadmium compounds (CAS 7440-43-9)
(xxxi) Carbon disulfide (CAS 75-15-0)
(xxxii) Chlorinated paraffins (CAS 108171-26-2)
(xxxiii) Cobalt & cobalt compounds (CAS 7440-48-4)
(xxxiv) Decabromodiphenyl ethane (DBPE) (CAS 84852-53-9)
(xxxv) Di-2-ethylhexyl phthalate (CAS 117-81-7)
(xxxvi) Di-(2-methoxyethyl) phthalate (DMEP) (CAS 117-82-8)
(xxxvii) Dicyclohexyl phthalate (DCHP) (CAS 84-61-7)
(xxxviii) Diethyl phthalate (CAS 84-66-2)
(xxxix) Diisobutyl phthalate (DIBP) (CAS 84-69-5)
(xl) Di-n-hexyl phthalate (CAS 84-75-3)
(xli) Di-n-octyl phthalate (DNOP) (CAS 117-84-0)
(xlii) Dipentyl phthalate (DPP) (CAS 131-18-0)
(xliii) Ethylene glycol (CAS 107-21-1)
(xliv) Ethylene glycol monoethyl ester (CAS 110-80-5)
(xlv) Ethyl hexyl d-phenol phosphate (EHDPP) (CAS 1241-94-7)
(xlvi) Formaldehyde (CAS 50-00-0)
(xlvii) Hexabromocyclododecane (HBCD) (CAS 25637-99-4)
(xlviii) Hexachlorobenzene (CAS 118-74-1)
(xlix) Hexachlorobutadiene (CAS 87-68-3)
(l) Isopropylated triphenyl phosphate (IPTPP) (CAS 68437-41-7)
(li) Mercury & mercury compounds (CAS 7439-97-6) including methyl mercury (CAS 22967-92-6)
(lii) Methyl ethyl ketone (CAS 78-93-3)
(liii) Methyl paraben (CAS 99-76-3)
(liv) Methylene chloride (CAS 75-09-2)
(lv) N-methylpyrrolidone (CAS 872-50-4)
(lvi) Nickel and nickel compounds (CAS N/A)
(lvii) N-nitrosodimethylamine (CAS 62-75-9)
(lviii) N-nitrosodiphenylamine (CAS 86-30-6)
(lvix) Perchloroethylene (CAS 127-18-4)
(lx) Perfluorooctanoic acid (PFOA & related substances) (CAS 335-67-1)
(lxi) Perfluorooctanyl sulphonic acid and its salts (PFOS) (CAS

1763-23-1)

(lxii) Phenol (CAS 108-95-2)

(lxiii) Phenol, 4-octyl- (CAS 1806-26-4)

(lxiv) P-hydroxybenzoic acid (CAS 99-96-7)

(lxv) Propyl paraben (CAS 94-13-3)

(lxvi) Styrene (CAS 100-42-5)

(lxvii) Tetrabromobisphenol A (CAS 79-94-7)

(lxviii) Tetrachloroethene (CAS 127-18-4)

(lxix) Toluene (CAS 108-88-3)

(lxx) Tricresyl phosphate (TCP) (CAS 1330-78-5)

(lxxi) Tri-n-butyl phosphate (TNBP) (CAS 126-73-8)

(lxxii) Triphenyl phosphate (TPP) (CAS 115-86-6)

(lxxiii) Tris(1-chloro-2-propyl) phosphate (TCPP) (CAS 13674-84-5)

(lxxiv) Tris(2-chloroethyl) phosphate (CAS 115-96-8)

(lxxv) Tris(2,3-dibromopropylphosphate) (CAS 126-72-7)

(lxxvi) Vinyl chloride (CAS 75-01-4)

(lxxvii) Organohalogen flame retardants

(c) The department, in consultation with the department of health, shall periodically review the list of chemicals of concern and may through regulation add or remove a chemical from the list on the basis of credible scientific evidence. The department may remove a chemical from the list of chemicals of concern if, upon review, it determines on the basis of credible scientific evidence that such chemical no longer meets the criteria for listing under paragraph (a) of this subdivision.

2. High-priority chemicals. (a) The following chemicals are designated high priority chemicals for purposes of this title:

(i) Tris (1, 3 dichloro-2-propyl) phosphate (CAS 13674-87-8)

(ii) Benzene (CAS 71-43-2)

(iii) Mercury and mercury compounds, including methyl mercury (CAS 7439-97-6)

(iv) Asbestos (CAS 1332-21-4)

(v) Arsenic and arsenic compounds (CAS 7440-38-2) including arsenic trioxide (CASRN 1327-53-3) and dimethyl arsenic (CASRN 75-60-5)

(vi) Cadmium (CAS 7440-43-9) (other than toy coatings)

(vii) Organohalogen flame retardants in upholstered bedding or furniture

(b) The department shall periodically review the list of high priority chemicals and may by rule add to the list of high-priority chemicals if the criteria of paragraph (a) of subdivision one of this section are met and the chemical is present in a children's product and meets any of the following criteria:

(i) The chemical or its metabolites have been found through biomonitoring to be present in humans;

(ii) The chemical has been found through sampling and analysis to be present in household dust, indoor air, drinking water or elsewhere in the home environment;

(iii) The chemical has been found through monitoring to be present in fish, wildlife or the natural environment; or

(iv) The sale or use of the chemical or a children's product containing the chemical has been banned in another state or states within the United States because of the health effects of such chemical or the children's product safety council established pursuant to section 37-0911 of this title has recommended the chemical be listed as a high-priority chemical. The department shall, as part of its periodic review, consider whether the sale or use of a chemical or a children's product containing the chemical has been banned in another state or within the United States because of the health effects of such chemical.

(c) The department, in consultation with the department of health, may remove a chemical from the list of high priority chemicals if it determines on the basis of credible scientific evidence that such chemical no longer meets the criteria of paragraph (b) of this subdivision.

§ 37-0907. Reporting on the use of chemicals.

1. Reporting of chemical use. No later than twelve months after a chemical of concern or high-priority chemical appears on the lists promulgated pursuant to section 37-0905 of this title, every manufacturer who offers a children's product for sale or distribution in this state that contains a chemical of concern or a high-priority chemical shall report such chemical use at or above practical quantification limits to the department, provided however, that the

department may, through regulation, establish an alternative threshold for the reporting of trace contaminants.

(a) This report must at a minimum identify the children's product, the high-priority chemical or chemicals of concern contained in the children's product and the intended purpose of such chemicals. The department may also require reporting of the following information:

(i) the amount of such chemical in the children's product; or

(ii) information on the likelihood that the chemical will be released from the children's product to the environment during the product's life cycle and the extent to which users of the product are likely to be exposed to the chemical.

(b) The department is authorized to direct submission of such report to the interstate chemicals clearinghouse and may otherwise provide for reciprocal data sharing with other states which require reporting of the same information.

2. Waiver of reporting. Upon application by a manufacturer, the commissioner may waive all or part of the reporting requirements under subdivision one of this section for one or more specified uses of a high-priority chemical. In making such determination, the commissioner may consider: (a) if substantially equivalent information is already publicly available or that the information is not needed for the purposes of this chapter, (b) similar waivers granted by other states, and (c) whether the specified use or uses are minor in volume.

3. Fees. The manufacturer shall pay a fee upon submission of a report of chemical use pursuant to subdivision one of this section or a waiver request pursuant to subdivision two of this section to cover the department's reasonable costs in the administration and enforcement of this title. Exclusive of fines and penalties, the state shall only recover its actual cost of administration and enforcement.

§ 37-0909. Sales prohibition.

1. Effective January first, two thousand twenty-three, no person shall distribute, sell or offer for sale in this state a children's product in

which tris (1, 3 dichloro-2-propyl) phosphate (CAS 13674-87-8), benzene (CAS 71-43-2),, or asbestos (CAS 1332-21-4) is intentionally added. This provision shall not apply: (a) to a children's product solely based on its containing an enclosed battery or enclosed electronic components; (b) where state regulation of children's products is preempted by federal law; (c) where the chemical is present as a trace contaminant; or (d) to an inaccessible component of a children's product that during reasonable, foreseeable use and abuse of the product would not come into direct contact with a child's skin or mouth, as determined by the department. The commissioner may exempt a children's product from this prohibition if, in the commissioner's judgment, the lack of availability of the children's product could pose an unreasonable risk to public health, safety or welfare.

2. (a) To the extent allowed by federal law, the department may, by regulation, prohibit the distribution, sale, or offer for sale in this state of a children's product that contains a chemical added to the high-priority chemicals list pursuant to section 37-0905 of this title, or a chemical recommended for prohibition by the children's product safety council pursuant to paragraph (b) of subdivision five of section 37-0911 of this title.

(b) In developing rules to prohibit a chemical pursuant to this subdivision, the department shall rely on credible scientific evidence and consider information relevant to the hazards based on the quantitative extent of potential exposures to the chemical under its intended or reasonably anticipated conditions of use.

§ 37-0911. Children's product safety council; established. 1. There shall be established, within the department, the children's product safety council. Such council shall be composed of ten members as follows:

- (a) the commissioner, or the commissioner's designee, who shall be the chair of the council;
- (b) the commissioner of health or his or her designee;
- (c) a designee of the commissioner with expertise in epidemiology, toxicology or health risk assessment;

(d) a designee of the commissioner of health with expertise in epidemiology, toxicology or health risk assessment; and

(e) six members appointed by the governor, two of whom shall be recommended by the temporary president of the senate, and two by the speaker of the assembly.

2. (a) Of the four members appointed to the children's product safety council and recommended by the temporary president of the senate and the speaker of the assembly, the temporary president of the senate and the speaker of the assembly shall each recommend:

(i) one member who has expertise in pediatrics; and

(ii) one member who has a background or expertise in toxicology or health risk assessment.

(b) Of the two additional members appointed to the children's product safety council, the governor shall appoint members who have a background in environmental health and safety, risk assessment or medicine.

(c) The members of such council appointed pursuant to paragraph (e) of subdivision one of this section shall serve terms of two years.

(d) The members appointed pursuant to paragraph (e) of subdivision one of this section shall each serve his or her term of office or until his or her successor is appointed; provided that any vacancy in the position of an appointed member shall be filled in the same manner as the original appointment and only for the unexpired term of the vacancy.

3. The members of the children's product safety council shall receive no compensation for their services, but shall be allowed their actual and necessary expenses incurred in the performance of their duties pursuant to this title.

4. The children's product safety council shall meet at such times and places as may be determined by its chair. The council shall meet at a minimum of two times per year. All meetings shall be open to the public pursuant to article seven of the public officers law. A majority of the members of such council shall constitute a quorum for the transaction of business. Action may be taken, and motions and resolutions adopted, at any meeting by the affirmative vote of a majority of the full membership of the council.

5. (a) The council shall make recommendations to the department relating to those chemicals, which the department may list as high-priority chemicals pursuant to section 37-0905 of this title. The council shall provide the department with its first list of recommended high-priority chemicals no later than one year from the initial meeting of the council, and the council shall update the list annually thereafter. In determining what chemicals shall be recommended as high-priority chemicals the council shall, at a minimum, consider the criteria of paragraph (b) of subdivision two of section 37-0905 of this title;

(b) The council shall make recommendations to the department relating to those chemicals which should be prohibited by the department pursuant to subdivision two of section 37-0909 of this title.

(i) In determining what chemicals shall be recommended for prohibition, the council shall, at a minimum, consider those chemicals listed as high-priority chemicals pursuant to section 37-0905 of this title.

(ii) The council shall provide the department with its first list of such chemicals no later than two years from the initial meeting of the council. The council shall update the list, including a review of the chemicals listed as high-priority chemicals pursuant to section 37-0905 of this title, annually thereafter.

6. The children's product safety council shall be entitled to request and receive information from any state, municipal department, board, commission or agency that may be required or are deemed necessary for the purposes of such council.

7. Before the council advances any recommendation to the department, the council shall provide an opportunity for public and stakeholder comments. Final recommendations of the council shall be posted on the department's website within thirty days after the council adopts such recommendations.

§ 37-0913. Notice to retailers and the public.

1. A manufacturer of a children's product containing a high-priority chemical shall notify persons that offer the children's product for sale or distribution in the state, in a form prescribed by the department, of the use of such high-priority chemical and provide such persons with information regarding the toxicity of such chemical, except that this subdivision shall apply to trace contaminants in a manner consistent with section 37-0907 of this title.

2. The department shall provide information to the public about children's products containing chemicals of concern or high priority chemicals by posting such information as reported by the manufacturers on the department's website, provided however, that the department shall not be held liable for the accuracy of a manufacturer's report.

§ 37-0915. Enforcement and implementation.

1. Failure to provide notice. A children's product containing a high-priority chemical may not be sold, offered for sale or distributed for sale in this state unless the manufacturer has provided a report to the department required under section 37-0907 of this title by the date required in such section. The commissioner may exempt a children's product from this prohibition if, in the commissioner's judgment, the lack of availability of the children's product could pose an unreasonable risk to public health, safety or welfare.

2. Statement of compliance. The department may request the manufacturer of the children's product to provide a statement of compliance on a form provided by the department, within fifteen days of receipt of a request from the department. The statement of compliance shall:

(a) attest that the children's product does not contain the high-priority chemical; or

(b) attest that notification required by section 37-0913 of this title has been provided;

(c) attest that the manufacturer has notified persons who sell the

product in this state that the sale of the children's product is prohibited;

(d) attest that the presence of a high-priority chemical is only as a trace contaminant; or

(e) attest that the chemical prohibited pursuant to subdivision two of section 37-0909 of this title is only present in an inaccessible component of the children's product.

§ 37-0917. Regulations.

The department may adopt any rules and regulations it deems necessary to implement the provisions of this title.

TITLE 10

REGULATION OF CHEMICALS IN UPHOLSTERED FURNITURE, MATTRESSES AND ELECTRONIC ENCLOSURES

Section 37-1001. Definitions.

37-1003. Furniture and mattresses.

37-1005. Exemptions.

37-1007. Electronic display.

37-1009. Reporting.

37-1011. Certification of compliance.

37-1013. Severability.

37-1015. Regulations.

§ 37-1001. Definitions.

As used in this title:

1. "Consumer product" means any product that is regularly used or purchased to be used for personal, family or household purposes. Consumer product shall not mean: (a) a food or beverage or an additive to a food or beverage regulated by the United States Food and Drug Administration; or (b) a drug, biologic or medical device regulated by

the United States Food and Drug Administration.

2. "Covered flame retardant chemical" means any chemical that meets both of the following criteria:

(a) A functional use for the chemical is to resist or inhibit the spread of fire or as a synergist to chemicals that resist or inhibit the spread of fire; and

(b) The chemical is one of the following: a halogenated, organophosphorus, organonitrogen, or nanoscale chemical. As used in this title:

(i) "Halogenated chemical" is any chemical that contains one or more halogen elements, including fluorine, chlorine, bromine, or iodine.

(ii) "Organophosphorus chemical" is any chemical that contains one or more carbon elements and one or more phosphorus elements.

(iii) "Organonitrogen chemical" is any chemical that contains one or more carbon elements and one or more nitrogen elements.

3. "Custom upholsterer" means a person who, either by himself or herself or through employees or agents, repairs, reupholsters, recovers, restores, or renews upholstered furniture. A custom upholsterer shall not include any manufacturer of new, ready to be sold furniture, or new made to order furniture.

4. "Electronic display" means a consumer product with a display screen and associated electronics that, as its primary function, displays visual information from wired or wireless sources and is available for purchase by individuals or households for personal use in a residential space. Electronic display shall not include: (a) any electronic display with a screen area smaller than or equal to one hundred square centimeters or fifteen and one-half square inches; (b) projectors; (c) virtual reality headsets; (d) all-in-one video conference systems; or (e) displays that are integrated with appliances and are not available for purchase as separate products by end-users.

5. "Gel foam mattress" means a mattress in which interior foam layers are composed of polyurethane foam or latex foam which has a polyurethane-based gel material either mixed with the foam or applied to

the outer surface of polyurethane or latex foam, or a mattress in which the core or padding layers are composed solely of gel material.

6. "Intentionally added" shall have the same meaning as "intentionally added chemical" in subdivision eleven of section 37-0901 of this article.

7. "Mattress" means a ticking filled with a resilient material used alone or in combination with other products intended or promoted for sleeping upon.

8. "Memory foam mattress" means a mattress which contains interior layers of foam composed of viscoelastic polyurethane foam or low-resistance polyurethane foam.

9. "Organohalogen flame retardant chemical" means a chemical that meets both of the following criteria:

(a) A functional use for the chemical is to resist or inhibit the spread of fire or as a synergist to chemicals that resist or inhibit the spread of fire; and

(b) The chemical contains one or more halogen elements, including fluorine, chlorine, bromine, or iodine, bonded to carbon.

10. "Reupholstered furniture" means furniture whose original fabric, padding, decking, barrier material, foam, or other resilient filling has been replaced by a custom upholsterer, that has not been sold since the time of the replacement.

11. "Ticking" means the outermost layer of fabric or related material that encloses the core and upholstery materials of a mattress or mattress pad. A mattress ticking may consist of several layers of fabric or related materials quilted together.

12. "Upholstered furniture" means any item of furniture, that consists, in whole or in part, of leather, plastic, fabric or other material that contains cotton, wool, polyurethane or other natural or synthetic material that is placed in cushions or on the frame of the

furniture.

13. "Upholstered or reupholstered furniture component" means the separate constituent parts of upholstered furniture, specifically cover fabrics, barrier materials, resilient filling materials, and decking materials.

§ 37-1003. Furniture and mattresses.

1. Beginning December first, two thousand twenty-four, no person shall sell or offer for sale in the state of New York any new, not previously owned, upholstered furniture or mattress, that contains, or a constituent component of which contains, any covered flame retardant chemical, individually or in combination, that is any of the following:

- (a) At or above levels set by the department in regulation; or
- (b) Intentionally added.

2. Beginning December first, two thousand twenty-five, a custom upholsterer in the state of New York shall not repair, reupholster, re-cover, restore, or renew upholstered furniture or reupholstered furniture using replacement components that contain any covered flame retardant chemical, individually or in combination, that is any of the following:

- (a) At or above levels set by the department in regulation; or
- (b) Intentionally added.

§ 37-1005. Exemptions.

The prohibitions in section 37-1003 of this title shall not apply to the following:

1. Electronic components of mattresses, reupholstered furniture, or upholstered furniture, or any associated casing for such electronic components.

2. Upholstered or reupholstered furniture components other than those identified in subdivision thirteen of section 37-1001 of this title.

3. Thread or fiber when used for stitching mattress components together.

4. The natural fibers wool, silk, and other animal fibers whether used singly or in combination with other materials.

5. Textiles made using modacrylic fiber components without antimony trioxide when used internally as a barrier material in a memory foam or gel foam mattress or aramid fibers when used in the fabric that covers the bottom (non-sleep surface) of a mattress that has a sleeping surface on only one side of the mattress. This exemption shall expire on January first, two thousand twenty-six.

§ 37-1007. Electronic display.

Beginning December first, two thousand twenty-four, no person shall sell or offer for sale in the state of New York any electronic display that contains, in the enclosure or stand of such electronic display, any organohalogen flame retardant chemical, individually or in combination, that is any of the following:

- (a) At or above levels set by the department in regulation; or
- (b) Intentionally added.

§ 37-1009. Reporting.

1. For the purposes of this section, "manufacturer" shall mean a person who: (a) assembles or substantially assembles electronic displays for sale in the state; (b) manufactures electronic displays, under its own brand name or under any other brand name, for sale in the state; (c) sells, under its own brand name, electronic displays in the state; (d) owns a brand name that it licenses to another person for use on electronic displays sold in the state; (e) imports electronic displays

for sale in the state; or (f) manufactures electronic displays for sale in the state without affixing a brand name.

2. Beginning one year after the effective date of this title, no electronic display shall be sold in the state unless the manufacturer has submitted an annual report identifying all of the organohalogen flame retardant chemicals used in the enclosure or stand of the electronic display in a form determined by the department.

§ 37-1011. Certification of compliance.

1. For the purpose of this section the following terms shall have the following meanings:

(a) "covered products" shall mean:

(i) mattresses, upholstered furniture, or electronic displays; or

(ii) upholstered or reupholstered furniture components for custom upholsterers.

(b) "manufacturer" shall mean a person who, for sale in the state:

(i) assembles or substantially assembles covered products;

(ii) manufactures covered products under its own brand name or under any other brand name;

(iii) sells covered products under its own brand name;

(iv) owns a brand name that it licenses to another person for use on covered products;

(v) imports covered products; or

(vi) manufactures covered products without affixing a brand name.

2. No person that sells covered products shall be held in violation of this title if they can show that they relied in good faith on the written assurance of the manufacturer that such covered products met the requirements of this title. Such written assurance shall take the form of a certificate of compliance stating that such covered product is in compliance with the requirements of this title, provided however, where compliance is achieved under an exemption provided in section 37-1005 of this title, the certificate shall state the specific basis upon which the exemption is claimed. The certificate of compliance shall be signed

by an authorized official of the manufacturer.

§ 37-1013. Severability.

If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 37-1015. Regulations.

The department may adopt any rules and regulations it deems necessary to implement the provisions of this title.

TITLE 11

REGULATION OF COATED OR TREATED SEEDS

Section 37-1101. Unlawful acts.

§ 37-1101. Unlawful acts.

1. Beginning January first, two thousand twenty-nine, it shall be unlawful for any person to sell, offer for sale or use, or distribute within the state any corn, soybean or wheat seeds coated or treated with pesticides, as defined in subdivision thirty-five of section 33-0101 of this chapter, with the active ingredients clothianidin, imidacloprid, thiamethoxam, or any other neonicotinoid as determined by the department in regulation unless a valid waiver is issued by the department to the user pursuant to subdivision two of this section.

2. The commissioner in consultation with the commissioner of agriculture and markets may issue a waiver to allow the use of such seeds for the production of agricultural commodities.

(a) No such waiver shall be valid for more than two years.

(b) Such waiver shall be granted only if at a minimum the following conditions are met:

(i) the farm owner must complete an integrated pest management training;

(ii) a pest risk assessment and a pest risk assessment report must be completed;

(iii) any such seeds may only be planted on the farm property or properties identified in the pest risk assessment report; and

(iv) the farm owner must maintain current records of such pest risk assessment report and records of when treated seeds are planted, both of which shall be subject to review upon request by the department.

(c) The commissioner in consultation with the commissioner of agriculture and markets shall promulgate any appropriate regulations prior to undertaking this waiver process.

(d) The department shall annually report to the legislature on the number of waivers granted.

ARTICLE 38

CHLOROFLUOROCARBON COMPOUNDS

Section 38-0101. Declaration of policy.

38-0103. Definitions.

38-0105. Distribution and sale of products containing
chlorofluorocarbon compounds.

38-0107. Regulation of the use of chlorofluorocarbon compounds.

38-0109. Notice of public hearing.

38-0111. Severability.

§ 38-0101. Declaration of policy.

It is hereby declared to be the policy of the state to protect present

and future New Yorkers from the dangers inherent in the depletion of the world's ozone layer, by restricting the distribution and sale of chlorofluorocarbon compounds as specified herein.

§ 38-0103. Definitions.

The following terms, whenever used or referred to in this article, shall have the following meaning unless a different meaning clearly appears from the context:

1. "Chlorofluorocarbon compounds" shall mean one or more of the following substances used alone or in combination with other compounds: CFC-11, CFC-12, CFC-113, CFC-114, or CFC-115.

2. "Ozone" means an allotropic, triatomic form of oxygen, chemically described as O₃.

3. "Halon compounds" shall mean one or more of the following substances: halon-1211, halon-1301 and halon-2402.

4. "Person" shall mean any person, business enterprise or state authority, locality or municipality.

5. "Motor vehicle" shall mean motor vehicle as defined by section one hundred twenty-five and omnibus as defined by section one hundred twenty-six of the vehicle and traffic law.

6. "Motor vehicle air conditioner" means mechanical vapor compression refrigeration equipment used to cool the drivers or passenger compartment of any motor vehicle.

7. "Approved motor vehicle refrigerant recapturing equipment" means equipment that is certified by Underwriters Laboratories (or another independent standards testing organization acceptable to the department) to meet the Underwriters Laboratories standard applicable to equipment for the removal and storage of used CFC refrigerants from motor vehicle

air conditioners (Underwriters Laboratories standards 1963, October 2, 1989) unless such standard is modified by the commissioner through regulation. Equipment purchased before the date of such certification shall be considered approved if the manufacturer provides proof that the model is functionally identical to a model which is certified pursuant to this section.

8. "Approved motor vehicle refrigerant recycling equipment" means equipment that is certified by Underwriters Laboratories (or another independent standards testing organization acceptable to the department) to meet the society of automotive engineers standard applicable to equipment for the extraction and reclamation of refrigerant from motor vehicle air conditioners (SAE standard J-1990, October, 1989), unless such standard is modified by the commissioner through regulation. Equipment purchased before the date of such certification shall be considered approved if the manufacturer provides proof that the model is functionally identical to the model which is certified pursuant to this section.

9. "Properly using" approved motor vehicle refrigerant recycling equipment means using such equipment in conformity with the Society of Automotive Engineers standard establishing the recommended service procedure for containment of CFC-12 refrigerant (SAE standard J-1989 or revisions thereof).

10. "Recycle" means to decontaminate, reclaim, or reprocess CFC refrigerants captured from a motor vehicle air conditioner or refrigeration system for reuse, or to destroy such compounds by methods approved by either the United States Environmental Protection Agency or the commissioner.

11. "Refrigeration system" shall mean and shall be limited to: refrigerators used in retail stores, cold storage warehouse refrigeration systems, and air conditioning systems in large buildings, including but not limited to, those systems commonly referred to as chillers.

§ 38-0105. Distribution and sale of products containing chlorofluorocarbon compounds.

3. The commissioner shall be prepared to implement regulations developed pursuant to section 38-0107 of this chapter limiting or prohibiting the distribution, sale, or offer or exposure for sale of any aerosol spray can containing a restricted use chlorofluorocarbon compound as of January first, nineteen hundred seventy-eight should the commissioner affirmatively find pursuant to that section that the distribution, sale, or offer or exposure for sale of restricted use chlorofluorocarbon compounds will create significant environmental or public health hazards.

§ 38-0107. Regulation of the use of chlorofluorocarbon compounds.

1. The commissioner shall by regulation provide that:

(a) On and after January first, nineteen hundred ninety-one, no person repairing or servicing motor vehicle air conditioners shall knowingly vent into the atmosphere the chlorofluorocarbon compounds contained in such air conditioners and shall capture for recycling or capture and recycle, to the greatest extent possible, the chlorofluorocarbon compounds during servicing and repair of such air conditioners by properly using approved refrigerant recycling equipment provided, however, that the provisions of this paragraph shall not apply to any automobile repair shop with less than four covered bays, until January first, nineteen hundred ninety-two;

(b) On and after January first, nineteen hundred ninety-two, no motor vehicle air conditioners shall be disposed of by any means without first having had the chlorofluorocarbon refrigerants contained within mechanical cooling systems captured for recycling. Such recapture shall be performed by the person accepting the motor vehicle air conditioners for recycling or dismantling. In making captured chlorofluorocarbon compound refrigerants, which are captured from disposed of motor vehicle mobile air conditioning systems, suitable for reentry into the market place, the captured chlorofluorocarbon compound refrigerants must be

recycled to a uniform level of quality such as that specified by the Air-Conditioning and Refrigeration Institution (ARI) Standard 700 "Specifications for Fluorocarbon Refrigerants";

(c) On and after January first, nineteen hundred ninety-two, no chlorofluorocarbon compounds shall knowingly be vented into the atmosphere or otherwise be improperly disposed of during the repair, servicing or disposal of refrigeration systems but instead shall to the greatest extent possible be captured for recycling. In making captured chlorofluorocarbon compound refrigerants, which are captured from a refrigeration system, suitable for reentry into the market place, the captured chlorofluorocarbon compound refrigerants must be recycled to a uniform level of quality such as that specified by the Air-Conditioning and Refrigeration Institute (ARI) Standard 700 "Specification for Fluorocarbon Refrigerants".

(d) On and after January first, nineteen hundred ninety-two, no containers containing less than fifteen pounds of chlorofluorocarbon compounds, commonly used for recharging automotive air conditioners, shall be sold or offered for sale within the state except for sales to persons meeting the requirements of section three hundred ninety-eight-c of the vehicle and traffic law and who have obtained for use in their business approved motor vehicle refrigerant recycling equipment or approved motor vehicle refrigerant recapturing equipment or to persons for purposes of resale only. Persons wishing to purchase chlorofluorocarbon compounds in containers with a capacity less than fifteen pounds must show proof of compliance with the requirements of this section.

2. The commissioner is hereby directed upon application by an interested party to determine, after a hearing, whether any uses, including but not limited to medical uses, of chlorofluorocarbon compounds and halon compounds are so necessary to human health, safety and welfare that they should be exempted from the application of this section and section three hundred ninety-nine-t of the general business law or, upon a finding that appropriate refrigerant recycling equipment does not exist in sufficient quantities, to phase in compliance with the provisions of subdivision one of this section by postponing the compliance dates therein. Upon receiving an application to phase in

compliance with the provisions of paragraph (a), (b), or (c) of subdivision one of this section, the commissioner shall approve or deny the application within ninety days. If the commissioner fails to act within ninety days, the application shall automatically be granted for one hundred eighty days or until such time as the commissioner renders a decision, whichever is longer.

Any action of the commissioner under this article shall be subject to judicial review in a proceeding under article seventy-eight of the civil practice law and rules instituted within thirty days of its effective date.

3. Any local law, ordinance, rule or regulation relating to sale, use, reuse, reclamation, or disposal of chlorofluorocarbon compounds must be identical to or the same as the provisions of this article and the rules and regulations adopted hereunder.

§ 38-0109. Notice of public hearing.

Notice of public hearing shall be by publication in two newspapers likely to give notice to the people of the state of such hearings at least once in each of three successive weeks. In addition, the commissioner shall give notice by letter to the manufacturers of chlorofluorocarbon compounds known to the commissioner whenever practicable.

§ 38-0111. Severability.

The provisions of this act shall be severable, and if any clause, sentence, paragraph, subdivision or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision or part thereof directly involved in the controversy in which such judgment shall have been rendered.

ARTICLE 39
**SEWAGE SYSTEM CLEANERS AND ADDITIVES USED
IN RESTRICTED GEOGRAPHICAL AREAS**

Section 39-0101. Declaration of policy.

39-0103. Definitions.

39-0105. Prohibition of sale and use.

39-0107. Powers and duties of the commissioner.

§ 39-0101. Declaration of policy.

It is declared to be the public policy of this state to prevent the pollution of water resources in restricted geographical areas through the use of sewage system cleaners and additives by establishing a regulatory program restricting the use of such products.

§ 39-0103. Definitions.

The following terms, whenever used or referred to in this article, shall have the following meanings:

1. "Sewage system cleaner" means (a) any solid or liquid material intended or used primarily for the purpose of cleaning, treating, or unclogging any part of a sewage system or (b) any solid or liquid material intended or used primarily for the purpose of continuously or automatically deodorizing or disinfecting any part of a sewage system including but not limited to solid cakes or devices placed in plumbing fixtures. Excluded from the definition are products intended or used primarily in the manual surface cleaning, scouring, treating, deodorizing or disinfecting of common plumbing fixtures.

2. "Sewage system" means any part of a wastewater disposal system, including but not limited to all toilets, urinals, piping, drains, sewers, septic tanks, distribution boxes, absorption fields, seepage

pits, cesspools, and dry wells.

3. "Hydrocarbon chemical" means any compound composed of carbon and hydrogen.

4. "Restricted chemical material" means (a) any halogenated hydrocarbon chemical (aliphatic or aromatic) including but not limited to trichloroethane, tetrachloroethylene, methylene chloride, halogenated benzenes, carbon tetrachloride, or (b) any aromatic hydrocarbon chemical including but not limited to benzene, toluene, naphthalene, or (c) any halogenated phenol derivative in which a hydroxide group and two or more halogen atoms are substituted onto the aromatic carbons of a benzene ring including but not limited to trichlorophenol, pentachlorophenol, or (d) acrolein, acrylonitrile, or benzidine.

5. "Restricted geographic areas" means Nassau and Suffolk counties.

§ 39-0105. Prohibition of sale and use.

1. No person shall distribute, sell, offer or expose for sale in restricted geographical areas any sewage system cleaner or additive containing any restricted chemical material in excess of one part per hundred by weight.

2. No person shall use, introduce or apply or cause any other person to use, introduce or apply in any sewage system, surface waters, or groundwaters in restricted geographical areas any sewage system cleaner or additive containing any restricted chemical material in excess of one part per hundred.

§ 39-0107. Powers and duties of the commissioner.

1. The commissioner shall, within three calendar months after the effective date of this article, promulgate regulations establishing methods for identification and quantification of ingredients in sewage

system cleaners and additives used in restricted geographical areas.

2. The commissioner shall, within three calendar months after the effective date of this article, promulgate regulations requiring manufacturers of sewage system cleaners or additives distributed, sold or offered for sale in restricted geographical areas to furnish to the commissioner existing information regarding chemical components including the nature and extent of investigations and research performed by the manufacturer concerning the effects of such products on the quality of groundwaters, provided, however, that in lieu of furnishing said information, such manufacturers may refer the commissioner to any federal or state agency which has obtained said information, to the extent that said information is available to the commissioner from any such agency.

3. Whenever the commissioner finds, after investigation and public hearing, that any ingredient other than a restricted chemical material in a sewage system cleaner or additive distributed, sold, offered or exposed for sale in restricted geographical areas is likely to have a dangerous, deleterious or injurious effect upon the public health or environment, he shall prohibit or restrict in restricted geographical areas the sale, distribution, offer or exposure for sale or use by any person of sewage system cleaners or additives containing such ingredients.

4. The commissioner shall hold confidential any information obtained pursuant to subdivision two of this section when shown by any manufacturer that such information, if made public, would divulge competitive business information, methods or processes entitled to protection as trade secrets of such manufacturers.

ARTICLE 40

HAZARDOUS SUBSTANCES BULK STORAGE ACT

Section 40-0101. Legislative findings and declarations.

40-0103. Applicability.

40-0105. Definitions.

40-0107. Registration and fees.
40-0109. Access to records and facilities.
40-0111. Corrective actions and reporting.
40-0113. Rules and regulations.
40-0115. Sales of hazardous substances.
40-0117. Compliance with regulations.
40-0119. Trade secret information.
40-0121. Preemption and delegation.
40-0123. Severability.

§ 40-0101. Legislative findings and declarations.

The legislature finds and declares that the lands, water and air of New York state constitute an irreplaceable resource upon which is founded the well-being of public health, economic vitality and the state's environment. These resources may be contaminated by releases of hazardous substances from active and abandoned storage facilities. Once these resources are contaminated, they cannot be completely restored to their original state and therefore, contamination of the resources must be prevented through improved safeguards in storage, handling and processing of hazardous substances.

The legislature finds and declares these releases to be a threat to the public health and welfare and hereby exercises the power of the state to prevent these releases from occurring through the establishment of a state regulatory program governing existing, new and abandoned facilities.

§ 40-0103. Applicability.

This article applies to all storage facilities which are used for the storage of hazardous substances, except that this article shall not apply to any storage facilities, regulated under:

1. Title 7, 9 or 11 of article 27 of this chapter;

2. The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. § 1671 et seq.);
3. The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. § 2001 et seq.);
4. The Natural Gas Act (15 U.S.C. § 717 et seq.);
5. The Liquefied Natural and Petroleum Gas Act (Title 17 of article 23 of this chapter); or
6. Provisions relating to liquid petroleum pipeline corporations (article 3-C of the public service law); or
7. The Atomic Energy Act of 1954, as amended (42 U.S.C. § 2011 et seq.).

§ 40-0105. Definitions.

1. "Abandoned storage facility" means a storage facility which is no longer being maintained in accordance with this article or the regulations promulgated thereunder.
2. "Authorization" means the possession, where required, of a valid license, permit or certificate issued by an agency of the state of New York or the federal government or an order issued by the commissioner or the administrator of the federal environmental protection agency under applicable statutes, rules or regulations regarding the possession or release of hazardous substances or otherwise engaging in conduct which is exempt under applicable statutes, rules or regulations from the requirements of possessing such a license, permit, certificate or order.
3. "Environment" means any water, water vapor, any land including land surface or subsurface, air, fish, wildlife, biota and all other natural resources.

4. "Hazardous substance" means any substance listed as a substance hazardous to the public health, safety or the environment in regulations promulgated pursuant to article thirty-seven of this chapter; provided however, that the term "hazardous substance" shall not include petroleum as defined in section 17-1003 of this chapter.

5. "Modified storage facility" means a storage facility at which there has occurred substantial reconditioning or repair of an existing tank or storage vessel or associated pipes, lines or fixtures or replacement of a substantial portion of the storage facility.

6. "Operator" means any person who leases, operates, controls or supervises a facility.

7. "Owner" means any person who has legal title to a facility.

8. "Person" or "persons" means any individual, public or private corporation, political subdivision, government agency, municipality, co-partnership, association, firm, consortium, joint venture, interstate body, trust, estate or any other legal entity whatsoever.

9. "Release" means any unauthorized pumping, pouring, spilling, leaking, emitting, discharging, escaping, emptying, leaching or disposing, directly or indirectly, of a hazardous substance so that the substance or any related constituent thereof, or any degradation product of such a substance or of a related constituent thereof, may enter the environment.

10. "Storage facility" or "facility" means a single property or contiguous or adjacent properties used for a common purpose which are owned or operated by the same person on or in which are located one or more tanks which are used for the storage or containment of hazardous substances.

11. "Tank" means a device or holding vessel designed to contain an accumulation of a hazardous substance which is constructed of

non-earthen materials that provide structural support. The term "tank" includes all associated pipes, lines, fixtures, and other ancillary equipment.

Such term shall not include:

a. non-stationary tanks, barrels, drums, containers or other holding vessels stored at a facility for a period of less than ninety days, or where individual capacity of such non-stationary tanks, barrels, drums, containers, or other holding vessels at a facility is less than one thousand kilograms (2,200 lbs.);

b. flow-through process tanks or other equipment wherein physical, chemical or biological changes take place as part of a process;

c. septic tanks, stormwater or wastewater collection systems;

d. capacitors or transformers containing polychlorinated biphenyls;

e. above ground tanks on an operating farm used solely to store or contain hazardous substances which will be used for agricultural purposes on such farm; or

f. tanks which have been permanently closed in accordance with regulations promulgated pursuant to section 40-0113 of this chapter.

§ 40-0107. Registration and fees.

1. On or before July first, nineteen hundred eighty-seven, the department shall promulgate a schedule of registration fees per storage facility for the cost of inspecting such facilities and based on the size and type of such facilities, which shall not exceed:

a. one hundred twenty-five dollars per facility, up to two hundred fifty facilities at a single contiguous site; and

b. seventy-five dollars per facility in excess of two hundred fifty facilities at a single contiguous site.

In no case shall the registration fees charged to an owner exceed fifty thousand dollars for storage facilities located at a single contiguous site. Fees shall be paid to the department at the time of registration or registration renewal. Registration shall be renewed every two years or whenever title to a storage facility is transferred, whichever first occurs. Registration shall be on forms and in accordance with procedures prescribed by the department.

2. Within one year of the promulgation of the schedule of registration fees pursuant to subdivision one of this section, all owners shall identify and register each storage facility with the department.

3. The fees established pursuant to this section are intended to provide revenues sufficient to meet the costs incurred by the department in implementing the provisions of this article on and after the promulgation of the schedule of registration fees. All fees collected pursuant to this section shall be paid to the state comptroller for deposit in the miscellaneous special revenue fund, hazardous substances bulk storage account, and shall be subject to appropriation and allocation pursuant to the state finance law. Expenditures from the hazardous substances bulk storage account of the miscellaneous special revenue fund shall be limited to the costs of the department related to this article. The commissioner shall, on or before December thirty-first, nineteen hundred eighty-eight, report to the legislature and the governor on the adequacy of the fee schedule in providing sufficient revenues necessary to implement the provisions of this article.

§ 40-0109. Access to records and facilities.

1. To carry out the purpose of this article and any rule, regulation or order issued thereunder, the department may, at reasonable times:

a. have the right to entry to, upon, or through any storage facility in which a hazardous substance is stored or in which any records are required to be maintained;

b. have access to and copy any records required to be maintained;

c. inspect any equipment, practice or method which is required by the provisions of this article; and

d. have access to and inspect any monitoring stations or conduct tests or take samples to identify any actual or suspected release of a hazardous substance resulting from the operation of the facility, including the right to take split samples.

2. Any person storing a hazardous substance may be required to furnish the department with information on the storage facility, repairs or replacements, hazardous substances stored, storage and handling practices, or results of tests, monitoring and inspections.

§ 40-0111. Corrective actions and reporting.

1. Where a release of any hazardous substance is suspected or appears probable, the department may order the owner to inspect any storage facility, location and/or associated equipment suspected to be the source of the release and to test for tightness and structural soundness. If the owner fails to conduct such tests within ten days of notification of such an order the department may conduct such tests. The reasonable expenses of conducting such tests incurred by the department shall be paid by the owner.

2. It shall be unlawful to continue operation of any tank where a continuing release to the environment is occurring. The contents of such a tank shall be promptly removed to a secure storage location. The department may prohibit deliveries of hazardous substances to any tank (i) that is leaking or (ii) where a leak appears probable. If the source of the leak or a probable leak cannot be determined, the department may

prohibit deliveries to any tank or tanks that may be the probable source of a leak until such time as the source has been identified, at which time the prohibition on delivery will apply to the leaking tank or tanks. In addition, the department may prohibit deliveries of hazardous substances to any tank that is in violation of any requirement prescribed by regulation pursuant to this title related to:

- a. installing required equipment for spill prevention, overfill protection, leak detection, corrosion protection or secondary containment;

- b. performing leak detection or inspections of tank systems;

- c. properly operating or maintaining leak detection; or

- d. properly operating or maintaining spill, overfill or corrosion protection equipment.

- (i) The department shall attach a tag to the tank or tanks to identify those tanks to which delivery is prohibited and provide a written notice to the owner and operator specifying the reasons for the prohibition of delivery.

- (ii) As promptly as possible thereafter, not to exceed fifteen days, the commissioner shall provide the owner or operator an opportunity to be heard and to present proof that such conditions or activity does not violate the provisions of this section or of the rules or regulations adopted pursuant to this title. The commissioner shall adopt rules and regulations describing the procedure to be followed in the prohibition of hazardous substance deliveries. In adopting such rules and regulations the department shall allow for the owner or operator at any time to submit information to the department to demonstrate that the owner or operator is in compliance with the requirements or has corrected the violation that prompted the department to prohibit deliveries of hazardous substances and to allow the tank or tanks to be, as promptly as possible, brought back into operation, not to exceed two business days from the department's determination that a tank is in compliance. The department shall use its best efforts to timely determine compliance.

(iii) Unless otherwise authorized by the department, no person shall tamper with or remove, or cause the tampering with or removal of, a tag attached to any tank under the provisions of this subdivision.

(iv) No person shall deliver, cause the delivery of, deposit, or accept a hazardous substance to any tank or tanks to which a tag is affixed pursuant to this subdivision.

3. Any person who is the owner of, or in actual or constructive possession or control of, a hazardous substance, as defined in section 40-0105 of this article, or any employee or agent thereof, or any person in a contractual relationship therewith who inspects, tests or repairs any portion of the facility which was or is used for the storage of hazardous substances, shall promptly notify the department as soon as he has knowledge of the release of a reportable quantity of a hazardous substance into the environment.

§ 40-0113. Rules and regulations.

1. The department, on or before July first, nineteen hundred eighty-eight, shall promulgate rules and regulations to implement this article. Such rules and regulations may differ as required based on the nature of the hazardous substance stored, the type or class of storage facility, and the degree of environmental protection required.

The regulations shall include but are not limited to:

a. A list of hazardous substances described by subdivision four of section 40-0105 of this article. Such list shall indicate the minimum quantity of each such hazardous substance the storage of which shall be subject to regulation pursuant to this article. Such list shall also indicate the minimum quantity of each such hazardous substance which, if released into the environment, shall be deemed to be a reportable quantity.

b. Minimum standards and schedules for design, construction, installation, operation, maintenance, repair, monitoring, testing and

inspection of facilities. Schedules shall be based on factors such as type of facility, type and quantity of hazardous substances stored, facility age, condition and construction type, soil conditions, location of facility relative to water supplies, surrounding population, and other environmental factors including but not limited to future physical climate risk due to sea level rise, and/or storm surges and/or flooding, based on available data predicting the likelihood of future extreme weather events, including hazard risk analysis data if available.

c. Requirements for maintaining records pursuant to this article.

d. Requirements for reporting releases and corrective action in response to such releases, and for taking such corrective action pursuant to this article.

e. Provision for variances from specific provisions, provided it can be shown to the satisfaction of the department that the new or alternate design, practice or method used or proposed to be used provides protection equal to or greater than the requirements of the regulations. The regulations shall also include policies, procedures and criteria for reviewing such variance requests.

f. Criteria whereby facilities are properly closed and thereby released from testing and inspection requirements.

g. Requirements for maintaining such evidence of financial responsibility as is deemed necessary and desirable for operating, maintaining or closing storage facilities pursuant to this article.

Evidence of financial responsibility shall be established in accordance with such regulations and may include, but shall not be limited to any one or any combination of the following: insurance, guarantee, surety bond, letter of credit, or qualification as a self-insurer.

h. Rules and training requirements for operators of hazardous substance storage facilities. The department shall specify training

requirements for:

- (i) persons having primary responsibility for on-site operation and maintenance of storage tank systems;
- (ii) persons having daily on-site responsibility for the operation and maintenance of storage tank systems; and
- (iii) daily, on-site employees having primary responsibility for addressing emergencies presented by a spill or release from a storage tank system.

2. Nothing in this article shall authorize the department to adopt or amend any rule or regulation in a manner less stringent than provided in the Federal Resource Conservation and Recovery Act of 1976, as amended, and in rules and regulations promulgated pursuant thereto.

§ 40-0115. Sales of hazardous substances.

1. The manufacturer or distributor of a hazardous substance must provide the operator of the storage facility which purchases such substances with technical guidance and recommended practices for the storage and handling of such substances.

2. No delivery of a hazardous substance may be made to a storage facility that is not registered pursuant to section 40-0107 of this article.

§ 40-0117. Compliance with regulations.

It shall be unlawful to operate, maintain or close a storage facility other than in compliance with the regulations promulgated pursuant to this article.

§ 40-0119. Trade secret information.

Disclosure to the public by the department of any information required

to be provided under this article which is claimed to be a trade secret or confidential business information, shall be treated as such pursuant to the provisions of the freedom of information law (article six of the public officers law).

§ 40-0121. Preemption and delegation.

1. Any local law or ordinance which is inconsistent with any provision of this article or any rule or regulation promulgated thereunder shall be preempted.

2. Notwithstanding subdivision one of this section, the department may approve and formally delegate the administration and enforcement of the provisions of this article to any county or to any city with a population of one million or more, provided that, upon written application from such county or city, the department determines that the local law or ordinance affords an equal or greater level of environmental protection than is afforded by the requirements of this article or of the rules and regulations promulgated thereunder. In approving and delegating the activities provided for under this article, the department shall set forth the terms and conditions of such approval and delegation necessary to meet its responsibility under this article, including the reservation of the right to take enforcement actions.

3. Notwithstanding any other provision of law, if a county, or a city with a population of one million or more, has a local law or ordinance which would be approvable under subdivision two of this section, except with respect to enforcement or penalties for violations, such county or city may, after being so notified in writing by the department, adopt a local law or ordinance authorizing enforcement authority and penalty provisions equivalent to those provided in title forty-three of article seventy-one of this chapter.

4. Upon formal delegation, the delegated county or city may directly assess and receive the fees authorized by section 40-0107 of this article, provided that any such fees so received are used for the

purpose of administering and enforcing the provisions of the approved local law or ordinance. In no event shall duplicate fees be assessed by both the department and by any delegated county or city.

§ 40-0123. Severability.

The provisions of this article shall be severable and if any phrase, clause, sentence or provision of this article, or the applicability thereof to any person or circumstance shall be held invalid, the remainder of this article and the application thereof shall not be affected thereby.

ARTICLE 41

**POWERS AND DUTIES OF THE DEPARTMENT APPLICABLE ONLY TO
THE SIXTH PARK REGION**

Section 41-0101. Sixth park region; definition.

41-0103. Regulation of navigation.

41-0105. Acquisition, maintenance and operation of parks, state recreational and historic facilities and services.

41-0107. Approval of certain applications and projects.

§ 41-0101. Sixth park region; definition.

The sixth region shall consist of the counties of Hamilton and Essex and those portions of the counties of Saint Lawrence, Lewis, Oneida, Clinton, Franklin, Herkimer, Fulton, Ulster, Saratoga, Warren, Washington, Greene, Delaware and Sullivan lying within the Adirondack or Catskill parks as defined in section 9-0101 of this chapter.

§ 41-0103. Regulation of navigation.

The department shall, within the sixth park region, administer articles 3 and 11 of the Navigation Law.

§ 41-0105. Acquisition, maintenance and operation of parks, state recreational and historic facilities and services.

The department shall, within the sixth park region, consistent with section 9-0109 of this chapter, acquire, establish, maintain and operate parks, state recreational and historic facilities and services, and all the functions, powers, duties and obligations relating thereto, possessed by the department immediately preceding the effective date of this chapter, are hereby continued.

§ 41-0107. Approval of certain applications and projects.

Approval by the commissioner shall be required for all applications for funds under, and for all projects undertaken pursuant to the following provisions of the Conservation Law, if the funds are to be used, or the projects undertaken, in the sixth park region as defined by section 41-0101: (a) section 1-0312, the Land and Water Conservation Fund; (b) title 7 of article 1, the Park and Recreation Land Acquisition Act and (c) title 8 of article 1, Park, Marine, Forest Recreation and Historic Site Development.

ARTICLE 42

HISTORIC HUDSON-HOOSIC RIVERS PARTNERSHIP

Section 42-0101. Definitions.

42-0103. The Historic Hudson-Hoosic Rivers Partnership.

42-0105. The Historic Hudson-Hoosic Rivers Partnership Reserve.

42-0107. Powers and duties of the partnership.

42-0109. Stewardship plan.

42-0111. Appropriations by municipalities.

42-0113. Cooperation of state agencies.

42-0115. Stewardship fund.

42-0117. Siena College revolutionary war institute.

§ 42-0101. Definitions.

1. "Partnership" shall mean the organization established as the Historic Hudson-Hoosic Rivers Partnership pursuant to section 42-0103 of this article.

2. "Reserve" shall mean a region in which there is a combination of publicly and privately owned lands and land uses, within a defined area where there are traditional patterns including agriculture and open space, town settlement and economic activity, which due to their pattern and configuration, and because of the need for sustained productivity could best be protected, developed and managed through the development of a comprehensive stewardship plan addressing matters including, but not limited to, collaborative agriculture and open space protection, tourism development and revitalization of main streets, recreational development, and protection and interpretation of natural and cultural heritage.

3. "Historic Hudson-Hoosic Rivers area" or "area" shall mean the contiguous area in Saratoga, Washington and Rensselaer counties within the towns of Saratoga, Stillwater, Northumberland, Easton, Fort Edward, Waterford, Halfmoon, Greenwich, Schaghticoke, Hoosick, Moreau, White Creek, Cambridge, Kingsbury, Corinth and Pittstown; the villages of South Glens Falls, Cambridge, Hudson Falls, Valley Falls, Schaghticoke, Corinth and Hoosick Falls; and the city of Mechanicville.

4. "Historic Hudson-Hoosic Rivers fund" or "fund" shall be the fund established pursuant to section 42-0115 of this article.

§ 42-0103. The Historic Hudson-Hoosic Rivers Partnership.

1. The Historic Hudson-Hoosic Rivers Partnership is hereby established in the department to be a body corporate and public, and to consist of up to thirty-seven voting members. The following individuals shall be invited to become members: the supervisor of the town of Saratoga, the

supervisor of the town of Fort Edward, the supervisor of the town of Greenwich, the supervisor of the town of Easton, the supervisor of the town of Stillwater, the supervisor of the town of Waterford, the supervisor of the town of Northumberland, the supervisor of the town of Halfmoon, the supervisor of the town of Mechanicville, the supervisor of the town of White Creek, the supervisor of the town of Cambridge, the supervisor of the town of Moreau, the supervisor of the town of Schaghticoke, the supervisor of the town of Pittstown, the supervisor of the town of Hoosick, the supervisor of the town of Kingsbury, the supervisor of the town of Corinth, the mayor of the city of Mechanicville, the mayor of the village of Schuylerville, the mayor of the village of Victory, the mayor of the village of Stillwater, the mayor of the village of Fort Edward, the mayor of the village of Greenwich, the mayor of the village of South Glens Falls, the mayor of the village of Cambridge, the mayor of the village of Hudson Falls, the mayor of the village of Valley Falls, the mayor of the village of Schaghticoke, the mayor of the village of Corinth, the mayor of the village of Hoosick Falls and the mayor of the village of Waterford. In addition, six members shall be appointed as follows: two shall be appointed by the governor, two shall be appointed by the temporary president of the senate and two shall be appointed by the speaker of the assembly. The commissioner and the commissioners of agriculture and markets, and parks, recreation and historic preservation shall be nonvoting ex-officio members of the partnership. The six appointed members of the partnership, two of which shall be residents of Saratoga county, two of which shall be residents of Rensselaer county and two of which shall be residents of Washington county, shall by training, education and experience or attainment be qualified to analyze, interpret and/or support matters relevant to historical, environmental, economic or scenic preservation work of the partnership. Each ex-officio member of the partnership may designate a representative to attend, in his or her place, meetings of the partnership and to act in his or her behalf at meetings and with respect to the business of the partnership.

2. The term of office for appointees shall be four years. Members may serve on the partnership until they resign or are replaced. In the event of a vacancy occurring other than by the expiration of a member's term,

such vacancy shall be filled for the balance of the unexpired term in the same manner as the original appointment.

3. A majority of the members of the partnership shall constitute a quorum.

4. The members of the partnership shall receive no compensation for their services, but shall be entitled to reimbursement for their expenses actually and necessarily incurred in the performance of their duties.

5. Notwithstanding any inconsistent provisions of law, general, special or local, no officer or employee of the state or any civil division thereof, shall be deemed to have forfeited or shall forfeit his or her office or employment by reason of his or her acceptance of membership on the partnership.

6. At the initial meeting, the partnership shall elect officers, who shall serve at the pleasure of the partnership.

8. The partnership shall meet at least once every two months until approval of the plan by the commissioner as provided pursuant to section 42-0109 of this article, and at least once every quarter thereafter.

9. Every state agency and public corporation having jurisdiction of land within municipalities located within the Historic Hudson-Hoosic Rivers Partnership Reserve shall, to the fullest extent practicable, cooperate and assist the partnership in carrying out the provisions of this article.

§ 42-0105. The Historic Hudson-Hoosic Rivers Partnership Reserve.

The area encompassed within the municipal boundaries in the towns of Saratoga, Stillwater, Northumberland, Easton, Fort Edward, Waterford, Halfmoon, Moreau, Schaghticoke, Cambridge, White Creek, Pittstown, Hoosick, Kingsbury, Corinth and Greenwich; the villages of South Glens

Falls, Cambridge, Hudson Falls, Valley Falls, Schaghticoke, Corinth and Hoosick Falls; and the city of Mechanicville is hereby designated to be the Historic Hudson-Hoosic Rivers Partnership Reserve.

§ 42-0107. Powers and duties of the partnership.

The partnership shall have the power:

1. To sue and be sued.
2. To make by-laws for the management and regulation of its affairs.
3. To make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this article.
4. To appoint and remove an executive officer, officers, agents and employees, and prescribe their duties and qualifications and fix their compensation.
5. To contract for professional and technical assistance and advice, including retaining or employing counsel, private consultants and independent contractors.
6. To accept gifts, grants, loans, or contributions from, and enter into contracts or other transactions with, the United States and the state or any commission of either of them, any municipality, any public or private corporation, individual or other legal entity, and to use any such gifts, grants, loans or contributions to advance any of its corporate purposes.
7. To conduct scientific, economic and environmental studies.
8. To conduct environmental education programs.
9. To facilitate and provide passive recreational activities including

hiking, nature study and photography.

10. To make recommendations regarding necessary facilities including paths and trails, education center and related parking areas.

11. To assist individuals, corporations, associations and public entities on ways to protect the resources of the reserve.

12. To prepare an annual report on the conduct of its activities which shall include a recommended budget for the next year.

13. To adopt and use a seal.

14. To construct or cause to have constructed necessary facilities, including paths and trails, a visitor education center, and related parking areas on the land described in section three of the chapter of the laws of two thousand fifteen that added this subdivision.

15. To exercise and perform such other powers and duties as shall have been or may be conferred by law.

§ 42-0109. Stewardship plan.

1. The partnership shall develop a stewardship plan which shall represent the fundamental document defining the recommended protection and beneficial public use goals for the reserve and the means and techniques for their attainment. To the fullest extent practicable, the plan shall be consistent with the state open space plan and the Erie Canalway National Heritage Corridor preservation and management plan, as such plans are amended. The plan shall include, but need not be limited to:

a. A survey or inventory of the following, together with the establishment of management priorities therefor:

- (i) historic resources;
- (ii) scenic resources;

- (iii) recreational uses; and
- (iv) farmland and agricultural related uses.

b. An economic plan that shall include but not be limited to:

(i) A main street element for traditional commercial streets in reserve communities;

(ii) A tourism plan with elements of branding, marketing and promotion; and

(iii) A strategy for small enterprise business financing and support to nurture entrepreneurs interested in launching business activity in the reserve particularly relating to services for tourists and businesses adaptively using historic structures.

c. Regional cost sharing opportunities helping municipalities in the reserve to approach common matters collectively through agreements.

d. An education program including publications and guided activities.

e. A financial plan for implementation of plan recommendations.

2. A draft plan shall be submitted to the commissioner, the commissioner of parks, recreation and historic preservation and secretary of state within thirty months of the effective date of this article. The commissioner, in consultation with the commissioner of parks, recreation and historic preservation and secretary of state, may approve the plan, may return the plan to the partnership with recommendations for approval, or may reject such plan. Prior to submission of the draft plan, the partnership shall hold at least one public hearing on the draft plan in each county for which the plan is applicable. The local legislative body of each city, town or village within the boundaries designated by the draft plan must approve the plan following the public hearing or hearings and before it is submitted to the commissioner. A copy of the approved plan shall be provided to the governor, the temporary president of the senate and the speaker of the assembly.

3. Not less than once every five years the partnership shall review

the plan, and shall include as part of such review a public hearing in each county for which the plan is applicable. The partnership shall propose amendments to the management plan as they are deemed to be necessary and appropriate.

§ 42-0111. Appropriations by municipalities.

To effectuate the purposes of this article, the local legislative bodies of the towns, villages and city within the reserve and the counties of Saratoga, Washington and Rensselaer may appropriate and pay over to the partnership moneys to be expended by the partnership to carry out its functions pursuant to this article.

§ 42-0113. Cooperation of state agencies.

To effectuate the purposes of this article, the partnership may request from any department, board, bureau, commission or other agency of the state, and the same are authorized to provide, such cooperation and assistance, services and data as will enable the partnership properly to carry out its functions pursuant to this article.

§ 42-0115. Stewardship fund.

1. There is hereby established in the joint custody of the state comptroller and the commissioner of taxation and finance a special fund to be known as the "Historic Hudson-Hoosic Rivers fund".

2. Moneys in the fund shall consist of all moneys appropriated for the purpose of such fund, donations to the partnership and all moneys transferred to such fund pursuant to law. Any interest received by the comptroller on money on deposit in the fund shall be retained in and become part of the fund.

3. Moneys in the fund may be used, pursuant to appropriation, by the

partnership for its purposes under this article.

§ 42-0117. Siena College revolutionary war institute.

The partnership may enter into an agreement with the Siena College revolutionary war institute to provide diverse, academically based education opportunities based on the historic resources of the Historic Hudson-Hoosic Rivers Partnership Reserve for local schools, residents in the reserve and visitors to the reserve to learn about our nation's birth and democratic foundations.

ARTICLE 43

LAKE GEORGE PARK COMMISSION

Section 43-0101. Legislative intent.

43-0103. Definitions.

43-0105. Lake George park commission; continuation.

43-0107. Powers.

43-0109. Expenses; employees.

43-0110. Wastewater management.

43-0111. Commercial use in zones.

43-0112. Stormwater management and stream corridor management.

43-0113. Appropriations by municipalities in certain counties.

43-0115. Restrictions on use of signs and advertising devices.

43-0117. Operation of ferries and certain other boats, barges
and vessels restricted.

43-0119. Land use restrictions within Lake George park.

43-0121. Compliance with sewage disposal requirements.

43-0123. Environmental review.

43-0125. Regulatory and user fees.

§ 43-0101. Legislative intent.

The preservation and enhancement of natural beauty in the state, the preservation and conservation of pure water supplies and other natural

resources, the preservation and development of natural resources and recreational facilities for the benefit of the public, the promotion of the study of history, natural science, and lore, the conservation and protection of state lands in the forest preserve and areas adjacent thereto, and the promotion and preservation of the health and welfare of the public residing, sojourning, or visiting therein being the concern of the state, the legislature hereby declares it to be in the public interest to preserve, protect, conserve and enhance the unique natural scenic beauty and to promote the study of the history, natural science, and lore of Lake George and the area near or adjacent thereto and to provide means whereby owners of real property near or adjacent to the lake, other interested individuals, corporations, associations, organizations, and municipalities bordering on the lake may preserve, protect and enhance the natural scenic beauty of the lake and its surrounding countryside and regulate the use of the lake and the area near or adjacent thereto for appropriate residential, conservation, health, recreational, and educational purposes.

§ 43-0103. Definitions.

As used in this article:

1. "Lake George park" means the bed, waters, islands, and shore of Lake George and all land in the counties of Essex, Warren and Washington surrounding said lake and situate within the following described boundaries:

Beginning at the southwesterly corner of lot 18 of the Crane Brush Patent in the northerly bounds of the Ogilvie Patent, running from thence northerly along the westerly bounds of the said lot 18 and the easterly bounds of lot 11 of the said Crane Brush Patent, to the northwesterly corner of the said lot 18 and the northeasterly corner of the said lot 11; thence westerly along the northerly bounds of the said lot 11 to the southeasterly corner of lot 12, Crane Brush Patent; thence northerly along the easterly bounds of the said lot 12 to the northeasterly corner thereof in the southerly bounds of lot 13, Crane

Brush Patent; thence easterly along the southerly bounds of a portion of the southerly bounds of the said lot 13 to the southeasterly corner thereof and the southwesterly corner of lot 16, Crane Brush Patent; thence northerly along the westerly bounds of the said lot 16 to the northwesterly corner thereof in the southerly bounds of lot 3, Garland Patent; thence easterly along the southerly bounds of lot 3, Garland Patent to the southeasterly corner thereof; thence northerly along the easterly bounds of the said lot 3 to the northeasterly corner thereof in the southerly bounds of the Norman Patent; thence northerly, crossing the said Norman Patent in a straight line, to the southeasterly corner of lot 10, McDonald Patent; thence northerly along the easterly bounds of the said lot 10 to the northeasterly corner thereof in the southerly bounds of Porter's Patent; thence westerly along the southerly bounds of lots 7 and 6, Porter's Patent to the southwesterly corner of the said lot 6; thence northerly along the westerly bounds of the said lot 6, Porter's Patent, to the northwesterly corner thereof; thence running in a straight line northerly, crossing the remaining portion of Porter's Patent and also crossing Robert's Patent, to the southwesterly corner of lot 86, Northwest Bay Tract; thence northwesterly along the westerly bounds of lots 86, 91 and 99, Northwest Bay Tract, to the northwesterly corner of the said lot 99; thence easterly along the northerly bounds of the said lot 99 to the southwesterly corner of lot 116, Brant Lake Tract; thence northerly along the westerly bounds of lots 116, 117, and 118, Brant Lake Tract, to the northwesterly corner of the said lot 118; thence easterly along the northerly bounds of lots 118, and 113, Brant Lake Tract to the northeasterly corner of the said lot 113; thence northerly along the westerly bounds of lots 87 and 88, Brant Lake Tract, to the northwesterly corner of the said lot 88; thence easterly along the northerly bounds of lots 88, 79, 56, 47, 24 and 15, Brant Lake Tract, to the northeasterly corner of the said lot 15 and to a point in the westerly bounds of the Hague Tract; thence northerly along the westerly bounds of the Hague Tract to the northwesterly corner of lot 38, Hague Tract; thence easterly along the northerly bounds of the said lot 38 to the northeasterly corner thereof; thence northerly along the westerly bounds of a portion of the westerly bounds of lot 37 and the westerly bounds of lot 36, Hague Tract, to the northwesterly corner of the said lot 36; thence easterly along a portion of the northerly bounds

of the said lot 36 to the southwesterly corner of lot 33, Hague Tract; thence northerly along the westerly bounds of lots 33, 30 and a portion of lot 29, Hague Tract, to the Warren-Essex County line; thence running northeasterly along the said county line to the center of Trout Brook; thence northerly, downstream, along Trout Brook as it winds and turns, to the intersection of Trout Brook with State Highway Route 9N; thence southwesterly along said State Highway to the intersection of the said State Highway with Alexandria Avenue south of Ticonderoga Village; thence easterly along Alexandria Avenue, crossing the outlet of Lake George, and continuing along said Alexandria Avenue and said line extended, to the American Telephone and Telegraph Company's telephone cable line; thence southerly along said telephone cable line to the north bounds of lot 77 of the Alexander Turner Patent; thence westerly along the north bounds of lot 77 and lot 79 of said Patent to the northwest corner of lot 79; thence southerly along the west bounds of lots 79, 80, 81, 82, 83, and 84 to the southwest corner of said lot 84; thence westerly along the division line between lots 85 and 67 of said Turner Patent to the northwest corner of lot 67; thence southerly along the west bounds of lots 67, 16, 17, 18, 19 and 20 of said Turner Patent to the division line between the Town of Putnam and the Town of Dresden; thence westerly along said town line to the northwest corner of lot 52 of the aforesaid Turner Patent; thence southerly along the west bounds of lots 52, 51, and 50 of said Turner Patent, to the division line between the Turner Patent and the South Bay Tract; thence southwesterly along said division line to the northwest corner of lot 148, South Bay Tract; thence southerly along the west bounds of lots 148 and 149 of the South Bay Tract to the north line of lot 162 of said tract; thence westerly along the north line of said lot 162 to the northwest corner thereof; thence southerly along the west bounds of lots 162, 161, 160, 159, 158 and 44 to the southwest corner of said lot 44; thence westerly along the southerly bounds of lots 39 and 22, South Bay Tract, to the southwesterly corner of the said lot 22; thence southerly along the westerly bounds of lot 23, South Bay Tract to the southwesterly corner thereof; thence westerly along the southerly bounds of lot 12, South Bay Tract, to the southwesterly corner thereof; thence southerly along the westerly bounds of lot 11 of South Bay Tract to the southwest corner of lot 11; thence westerly along the south bounds of lot 77 to the

southwest corner thereof; thence southerly along the west bounds of lots 76, 75, and 74 of the South Bay Tract to the southwest corner of lot 74; thence westerly along the south bounds of lots 89, 99, 105, and 118 of the South Bay Tract to the southwest corner of lot 118; thence southerly along the west bounds of lots 117, 116, and 115 to the division line between the South Bay Tract and the Westfield Tract; thence westerly along said division line to the northwest corner of lot 56 of the Westfield Tract; thence southerly along the westerly bounds of lots 56 and 49 of the Westfield Tract to the southwesterly corner of the said lot 49; thence westerly along the southerly bounds of lot 50, Westfield Tract to the southwesterly corner of the said lot 50; thence southerly along the westerly bounds of lots 43 and 42, of the Westfield Tract to the southwesterly corner of the said lot 42; thence running in a straight line crossing lots 37 and 31 of the Westfield Tract to the northwesterly corner of lot 25 of the Westfield Tract; thence westerly along the southerly bounds of an unnumbered lot, and the southerly bounds of lot 28, Westfield Tract and the southerly bounds of lot 47, Lake George Tract, to the southwesterly corner of the said lot 47, and the northwesterly corner of lot 46, and the northeasterly corner of lot 45, Lake George Tract; thence southerly along the easterly bounds of lots 45, 39, 37 and 27, Lake George Tract; to the southeasterly corner of the said lot 27; thence westerly along the southerly bounds of the said lot 27 to the easterly bounds of lot 28, Lake George Tract; thence southerly along a portion of the easterly bounds of the said lot 28 and the easterly bounds of lot 29, Lake George Tract to the southeasterly corner of the said lot 29; thence westerly along the southerly bounds of the said lot 29 and a portion of the southerly bounds of lot 30, being also along a portion of the northerly bounds of lot 23, and the northerly bounds of lot 24, all in Lake George Tract, to the northwesterly corner of the said lot 24; thence southerly along the westerly bounds of the said lot 24 to the southwesterly corner thereof; thence westerly along a portion of the northerly bounds of lot 18, Lake George Tract, to the northwesterly corner thereof; thence southerly along the easterly bounds of lots 17, 15, 16, 14, 12, 9 and a portion of lot 5, Lake George Tract and continuing the same course southerly to the center of the Farm to Market Road; thence westerly in the center of the said road to the Warren-Washington County Line; thence southerly along

the said county line to the northeasterly corner of the Queensbury Patent; thence westerly along the northerly bounds of the Queensbury Patent to the southeasterly corner of the Hasborne Patent; thence northerly along the easterly bounds of the Hasborne Patent to the northeasterly corner thereof; thence westerly along the northerly bounds of the Hasborne Patent and the northerly bounds of the Fairlie Patent to the northwesterly corner of the said Fairlie Patent; thence southerly along a portion of the westerly bounds of the Fairlie Patent to the northeasterly corner of lot 18, French Mountain Tract; thence westerly along the northerly bounds of lots 18, 20, 21, and 25 of the French Mountain Tract to the northwesterly corner of the said lot 25; thence running in a straight line westerly crossing the southerly portion of the Houghton Patent to the northwesterly corner of lot 60, Luzerne Tract; thence southerly along the westerly bounds of the said lot 60 to the southwesterly corner thereof; thence westerly along the southerly bounds of lots 59, 58 and 57, Luzerne Tract to the southwesterly corner of the said lot 57; thence northerly along a portion of the westerly bounds of the said lot 57 to the southeasterly corner of lot 66, Luzerne Tract; thence westerly along the southerly bounds of the said lot 66 to the southwesterly corner thereof; thence northerly along a portion of the westerly bounds of the said lot 66 to the northeasterly corner of lot 67, Luzerne Tract and being in the southerly bounds of the Randall Location; thence westerly along the southerly bounds of the said Randall Location to the southwesterly corner thereof; thence northerly along the westerly bounds of the said Randall Location and the westerly bounds of lots 75, 78, 83, 93, 98 and 107, Luzerne Tract, to a point in the southerly bounds of lot 113, Luzerne Tract; thence westerly along a portion of the southerly bounds of the said lot 113 to the southwesterly corner thereof; thence northerly along the westerly bounds of the said lot 113 to the northwesterly corner thereof in the southerly bounds of the J. Ross Patent; thence easterly along a portion of the southerly bounds of the J. Ross Patent to the southeasterly corner thereof; thence northerly along the easterly bounds of the said J. Ross Patent to the northeasterly corner thereof; thence running in a straight line northerly to the southeasterly corner of the J. Thurman Farm; thence northerly along a portion of the easterly bounds of the said J. Thurman Farm to the northwesterly corner of lot 143, Luzerne Tract; thence

easterly along the northerly bounds of the said lot 143, Luzerne Tract, to the northeasterly corner thereof in the westerly bounds of the McCauley Patent; thence northerly along a portion of the McCauley Patent to the northwesterly corner thereof; thence easterly along a portion of the northerly bounds of the McCauley Patent to the southwesterly corner of lot 6, David Smith Patent; thence easterly along the southerly bounds of lots 6, 7, and 22 of the said Smith Patent to the southeasterly corner of the said lot 22; thence northerly along the easterly bounds of lots 22, 21, 20, 19, 18, 17, 16, and 15 of the said Smith Patent to the northeasterly corner of the said lot 15 in the southerly bounds of lot 29 of the James Abeel 3000 acre Patent; thence westerly along a portion of the southerly bounds of the said lot 29 to the southwesterly corner thereof; thence northerly along the westerly bounds of lots 29, 27, 26, 22, 21 and 16 of the said James Abeel 3000 acre Patent to the northwesterly corner of the said lot 16; thence westerly along the northerly bounds of lot 17, of the James Abeel 3000 acre Patent to the northwesterly corner thereof; thence northerly along the westerly bounds of lots 14, 11, 8, 5 and 2 of the James Abeel 3000 acre Patent to a point in the southerly bounds of lot 33, Northwest Bay Tract; thence westerly along a portion of the southerly bounds of the said lot 33 to the southwesterly corner thereof, the same being the southeasterly corner of the John Campbell Patent; thence northerly and northeasterly along the easterly and southeasterly bounds of the said John Campbell Patent to the southeasterly corner of the Ogilvie Patent; thence northeasterly along the southeasterly bounds of the said Ogilvie Patent to the northeasterly corner thereof at the southeasterly corner of lot 10 of the Crane Brush Patent; thence westerly along the southerly bounds of the said lots 10 and 18 to the point and place of beginning.

2. "Zone" means any area of land within the Lake George park in which the use of land for commercial purposes is prohibited, restricted, or controlled pursuant to the provisions of this article, local law or ordinance, agreement, restrictive covenant, or otherwise.

3. "Commercial purposes" means use of lands, including structures thereon for any purpose from which a profit may be derived, other than a lease or rental of residential property for single, private family

residential purposes.

4. "Commission" means the Lake George park commission.

5. "Surface water runoff" means water which flows over the land and does not percolate into the soil.

6. "Stormwater runoff" means any surface water runoff or runoff in channels which results directly either from a rain storm or from the melting of snowpack.

§ 43-0105. Lake George park commission; continuation.

There shall continue to be in the department a commission to be known as "Lake George park commission." Such commission shall be a body corporate and politic. It shall consist of the commissioner, ex officio, and nine members to be appointed by the governor, by and with the advice and consent of the senate, at least two of whom shall reside in the county of Essex, two in the county of Warren and two in the county of Washington and at least three of whom shall be members of a civic, protective or service association in the Lake George area. In making appointments pursuant hereto the governor shall give consideration to nominations made by such associations in such area. The members shall be appointed for overlapping nine year terms of office running from April first of the year in which such terms shall, respectively, commence, provided, however, that of the members first appointed one shall be appointed for a one-year term of office beginning April 1, 1961, one for a two-year term of office, one for a three-year term of office, one for a four-year term of office, one for a five-year term of office, one for a six-year term of office, one for a seven-year term of office, one for an eight-year term of office and one for a nine-year term of office, each of which shall commence on such date. An appointment to fill a vacancy shall be made for the remainder of the affected term of office. The officers thereof shall consist of a chairman, vice-chairman and secretary-treasurer to be elected by the commission. The members of the commission shall receive no compensation but may be reimbursed for

expenses necessarily incurred in the performance of their duties.

§ 43-0107. Powers.

The commission shall have power to:

1. Sue and be sued.
2. Make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this article.
3. Establish and maintain such facilities as may be necessary for the transacting of its business.
4. Utilize, to the extent feasible, the staff and facilities of existing state agencies, pursuant to an allocation to be made by the director of the budget.
5. Hold hearings and subpoena witnesses in the exercise of its powers, functions and duties provided for by this article.
6. Contract for professional and technical assistance and advice.
7. Contract for and to accept assistance, including but not limited to gifts, grants or loans of funds or of property from the federal government or any agency or instrumentality thereof, or from any agency or instrumentality of the state, or from any other public or private source and to comply, subject to the provisions of this article, with the terms and conditions thereof, subject to the approval of the director of the budget.
8. Adopt, amend and repeal, after public hearing according to the provisions of the state administrative procedure act (except in the case of rules and regulations that related to the organization or internal management of the agency), such rules and regulations, consistent with

this article, as it deems necessary to administer this article, and to do any and all things necessary or convenient to carry out the purpose and policies of this article and to exercise all powers granted by law.

9. Adopt, amend and repeal, after public hearing according to the provisions of the state administrative procedure act, rules and regulations relating to tree-cutting within the park; provided, however, that nothing herein shall prevent a municipality from adopting a law, code, ordinance or regulation which is more stringent than such rules and regulations adopted by the commission.

10. Encourage individuals, corporations, associations and organizations to acquire real property or interests or rights in real property for the preservation of open space characterized by natural scenic beauty or conditions enhancing parkwide qualities, and to preserve such lands or interests or rights in real property through the establishment of land trusts and other lawful means for protecting and preserving such lands.

11. Encourage and assist in the creation of special local improvement districts for purposes including control of storm water runoff problems and the acquisition of significant environmental areas, including wetlands, to control such problems.

12. Study, monitor and inspect for pollution from any source within the park and to enforce the provisions of this article and any regulations promulgated pursuant thereto, cooperate with, aid and assist municipalities and state agencies in enforcing the laws affecting or applying to Lake George and the area lying within the park and undertake projects to abate pollution and preserve water quality.

13. Take into consideration the cumulative impact upon all of the resources of the park in making any determination or taking actions pursuant to the powers of this article.

14. Intervene in proceedings before state agencies including the department and the Adirondack park agency on matters affecting the park.

15. Encourage individuals, corporations, associations, and organizations to preserve and enhance the natural scenic beauty of Lake George and lands within the Lake George park.

16. Adopt, sponsor, and encourage the use of forms of deeds, agreements, covenants, and other legal documents by means of which owners of real property within the Lake George park may voluntarily prohibit, restrict, and control the use thereof for commercial purposes.

17. Encourage owners of real property within the Lake George park by written instruments to prohibit, restrict, or control voluntarily the use of such real property for commercial purposes.

18. Acquire interests or rights in real property within the Lake George park for the purpose of prohibiting, restricting, or controlling the use of such real property for commercial purposes.

19. Establish rules, regulations, and procedures by or pursuant to which the commission may authorize or permit a necessary or desirable use of land or prevent unnecessary hardship in an individual or particular instance by altering or modifying in whole or in part any restriction contained in any conveyance to or agreement with the commission or which the commission has power to alter or modify.

20. Encourage, cooperate with, aid, and assist municipalities lying wholly or partly within the Lake George park in the preparation and adoption of zoning laws or ordinances and other local legislation prohibiting, restricting, regulating, or controlling the uses of real property for commercial purposes within the Lake George park.

21. Make maps and plans for proposed or permanent zones.

22. Establish as a proposed zone any area of land, exclusive of state or municipally owned land, lying within the Lake George park.

23. Alter, reduce, or extend any such proposed zone.

24. Establish as a permanent zone any area of land, exclusive of state or municipally owned land, lying within the Lake George park in which the use of all real property for commercial purposes is (a) prohibited, or (b) restricted or controlled.

25. Alter or extend a permanent zone under the procedure applicable to the original establishment of a permanent zone.

26. Enter upon any land, water, or premises within the Lake George park at reasonable times for the purpose of making surveys.

27. Cooperate with, aid, and assist municipalities and law enforcement agencies in enforcing laws affecting or applying to Lake George and the area lying within the Lake George park.

28. In cooperation with existing law enforcement agencies, arrange for the appointment of patrolmen who, within the Lake George park, shall have the powers set forth in section 71-0202 of this chapter in respect to the enforcement of all laws and local ordinances or laws pertaining to Lake George or the Lake George park. Pursuant to this subdivision, members and employees of the commission may be appointed patrolmen but if appointed shall serve without compensation. Such patrolmen shall have the right to use sirens, display flags, or other identifying insignia and wear badges while engaged in law enforcement activities within the Lake George park.

29. Promote the study of the history, historical significance, natural science, and lore of Lake George and the area within the Lake George park and in cooperation with the Education Department to preserve the historical relics found in or near Lake George.

30. Encourage individuals, corporations, associations, organizations, and municipalities to protect and preserve the purity of the waters of Lake George.

31. Establish advisory committees and enlist and accept the support

and cooperation of organizations of property owners or others interested in promoting the purposes and objectives of this article.

32. Do all things necessary or convenient to carry out the powers expressly granted by this article.

§ 43-0109. Expenses; employees.

The commission may appoint employees and agents and fix their compensation within moneys available therefor. Such compensation and the other necessary expenses of the commission shall be paid from moneys received by the commission from appropriations from the state including from the Lake George park trust fund pursuant to section ninety-seven-h of the state finance law or one or more municipalities in the counties of Essex, Warren or Washington, or from gifts or contributions, which the commission is hereby authorized to accept. Moneys appropriated for use of the commission by the state shall be paid out of the state treasury on the audit and warrant of the Comptroller on vouchers certified or approved by the chairman of the commission or by an officer or employee of the commission designated in writing by the chairman.

§ 43-0110. Wastewater management.

1. The commission, in consultation with the department, the department of health and each municipality located in whole or in part within the park, and subject to approval by the department and department of health, shall adopt, after public hearing according to the provisions of the state administrative procedure act, rules and regulations for the discharge of sewage or treated sewage effluent onto the land or into the groundwater of the park to ensure optimum protection of ground and surface waters within the park. Such rules and regulations may be more stringent than rules and regulations adopted by the department. For purposes of this section, the discharges shall include sewage or treated sewage effluent applied to the soil or entering the groundwater through runoff, seepage, percolation, spray irrigation and ground and spring

water flow.

2. The rules and regulations adopted by the commission under subdivision one of this section shall be applicable to all development within the park with respect to the discharge of wastewater; provided, however, that nothing shall prevent a municipality from adopting a law, code, ordinance or regulation which is more stringent than such rules and regulations adopted by the commission.

3. The commission may delegate all or some of its authority under this section to any municipality located in whole or in part within the park subject to such conditions as the commission may establish.

§ 43-0111. Commercial use in zones.

On and after (a) the establishment, alteration, or extension of a permanent zone, (b) the filing of the order establishing, altering, or extending such zone, together with the map and description thereof, in the office of the clerk of each county in which such zone is located, (c) the recording in the appropriate county clerk's office of the written instruments by which the use for commercial purposes of all real property in such zone is prohibited, restricted, or controlled, and (d) notice of the establishment, alteration, or extension of such zone has been published four times in a newspaper having general circulation in the area in which such zone is located, no real property within such zone shall be used for commercial purposes except as authorized or permitted by the terms of the order establishing, altering, or extending such zone or as authorized or permitted pursuant to subdivision 5 of section 43-0107 of this article.

§ 43-0112. Stormwater management and stream corridor management.

1. Stormwater management plans for lands where development is occurring or may occur in the future. The commission shall adopt, after public hearing according to the provisions of the state administrative

procedure act, rules and regulations for the preparation of local stormwater management plans and stormwater regulatory programs. Such rules and regulations shall be developed in consultation with the department, the Adirondack park agency and each municipality located in whole or in part within the park, and shall be subject to approval by the department and Adirondack park agency.

a. Within eighteen months of the effective date of such rules and regulations of the commission, each municipality located in whole or in part within the Lake George park shall prepare a stormwater management plan and a stormwater regulatory control program which implements such plan consistent with such rules and regulations and subject to the approval of the commission.

b. Stormwater management plans and their implementing stormwater control regulatory programs shall be designed:

(1) to prevent any increase in stormwater runoff from any development in order to reduce flooding, siltation and streambank erosion; and

(2) to prevent any increase in pollution caused by stormwater runoff from development, which would otherwise degrade the quality of water in Lake George and its tributaries and render it unfit for human consumption, interfere with water-based recreation or adversely affect aquatic life.

c. In addition to pollution standards, the stormwater control regulatory program shall incorporate a standard which requires that the total annual volume of surface water runoff which flows from any specific site during and following development shall not exceed that which prevailed prior to development. The methods used to determine the annual volumes of surface water runoff shall be developed by the commission and incorporated in the rules and regulations for the preparation of the local stormwater management plans and regulatory control programs.

d. Any municipality located in whole or in part within the park may enter into an agreement with the commission for the commission to develop the municipality's stormwater management plan. Such an agreement

must be entered into within ninety days of the effective date of the commission's rules and regulations adopted pursuant to this subdivision and, if such agreement is not made in such time period and the municipality fails to meet the requirement of paragraph a of this subdivision, the commission shall be deemed to have the authority to develop such plan.

2. Stormwater management study for sites and areas where development has occurred prior to the effective date of this section. The commission, in consultation with the department, the Adirondack park agency and each municipality located in whole or in part within the park, and subject to the approval by the department and Adirondack park agency, shall prepare a study of the feasibility of reducing the impacts of stormwater runoff in areas of the park where development has already occurred. This study shall assess the impact of stormwater runoff on water quality from existing development, identify cost effective measures to control stormwater runoff, and propose funding mechanisms for implementation of such measures. The commission shall complete the study within two years of the effective date of this section. Upon completion of the study of the commission, the study's recommendations shall be incorporated by the commission into the stormwater management plan and by each municipality into its stormwater regulatory control program, subject to the approval of the commission.

3. Implementation. In addition to existing powers and authorities therefor, each municipality located in whole or in part within the park is hereby authorized and empowered to adopt and implement a stormwater regulatory control program consistent with the provisions of this section. If the commission finds that any such municipality has failed to adopt such program, to incorporate recommendations pursuant to subdivision two of this section or to implement such program, the commission is hereby authorized and empowered to assume the authority of the municipality that has failed to act, adopt and implement a stormwater regulatory program consistent with the provisions of this section for the municipality subject to the commission's finding.

4. Nothing in this section shall be construed to limit the

department's authority to regulate discharges or stormwater.

5. The commission shall, after consultation with the department, the department of health, the Adirondack park agency and each municipality located in whole or in part within the park, further promulgate regulations relative to stream corridor management which shall include standards for the location of roads, stream channelization, the frequency of stream crossings, and timber harvesting and vegetative cutting restrictions within designated stream corridors. The regulations adopted pursuant to this section may be stricter than regulations promulgated by the department.

6. In cooperation with local lake associations and educational institutions, the commission shall continue existing water quality monitoring programs to monitor water quality in Lake George to determine the effectiveness of control measures, and to identify sources of ground and surface water contamination for investigation and enforcement purposes.

§ 43-0113. Appropriations by municipalities in certain counties.

The governing body of any municipality in the counties of Essex, Warren or Washington may raise, appropriate and pay over to the commission moneys to be expended by the commission for any of the purposes hereof.

§ 43-0115. Restrictions on use of signs and advertising devices.

1. In order to preserve and enhance the natural beauty of the Lake George park, to protect and conserve the investment of the state in forest lands, islands, state campsites and other interests in real property in said park; to preserve and regulate the said park for public uses for the resort of the public for recreation, transportation, pleasure, air, light and enjoyment and to keep it open, safe, clean and in good order for the welfare of society and to prevent the unrestricted

use of signs, and advertising structures and devices in said park, no person, partnership, association or corporation shall, except as provided in subdivisions two and three of this section, erect or maintain or allow to be erected or maintained within the boundaries of the Lake George park any advertising sign or advertising structure or device of any kind, except under written permit from Lake George park commission.

2. The provisions of this section shall not apply to:

a. Signs erected or maintained upon a parcel of land used for business purposes in connection with the principal business or principal businesses conducted thereon, provided that:

(1) Not more than two such signs are erected on such parcel of land, and such signs are located at least fifty feet apart, and

(2) No such sign has an area of more than forty-eight square feet, and

(3) No such sign extends more than twenty feet above ground level, and

(4) No such sign is placed within ten feet of a highway right of way, and

(5) No such sign is illuminated by or contains a flashing, intermittent, rotating, or moving light or lights, and

(6) No such sign moves or the visible portion thereof contains any moving or animated parts.

b. A sign erected or maintained within an incorporated village.

c. A sign erected by the state, a county, a town or an agency or department thereof.

3. To effectuate the purposes enumerated in subdivision 1 of this section, the commission shall establish uniform written rules and procedures for the application for and granting of permits for the erection or maintenance of signs, advertising structures and devices for which permits are required to be obtained from it under this section. Such rules and procedures shall contain provisions for the granting of the requisite permit for any such sign, advertising structure or device erected prior to the effective date of this section for a period of time

not exceeding the remaining or undepreciated useful life of such sign, advertising structure or device as determined by an appropriate depreciation formula, provided that no such sign shall be permitted after July 1, 1973. For such purpose, until July 1, 1973, the commission shall authorize the use of a formula commonly used for income tax purposes or the depreciation formula used in the depreciation schedules of the income tax returns of the owner of such sign, advertising structure or device.

4. Any action of the commission by which an application for a permit under this section is denied shall be reviewable pursuant to the provisions of article 78 of the Civil Practice Law and Rules.

§ 43-0117. Operation of ferries and certain other boats, barges and vessels restricted.

1. No person, partnership, or corporation shall operate a ferry or other boat transporting motor vehicles on the waters of Lake George without first obtaining a permit for such operation from the Lake George park commission.

2. No person, partnership or corporation shall operate a night club, restaurant, dance hall or other place of amusement, or engage in the business of selling or offering for sale any kind of food or beverage on or from a boat, barge or vessel on the waters of Lake George without first obtaining a permit for such operation from the Lake George park commission. The provisions of this subdivision shall not apply to any such operation in existence prior to January 1, 1963.

3. No person, partnership or corporation shall operate, propel or tow a boat, barge, vessel or other floating object used as, or as a vehicle for, an advertising sign or advertising structure or device on the waters of Lake George without first obtaining a permit therefor from the Lake George park commission.

4. In order to protect and preserve the water quality of Lake George,

to provide reasonable public access to Lake George without overcrowding, congestion or safety hazards, and to protect the resources of Lake George, the commission shall, consistent with the purposes of this article, promulgate regulations relative to the permitting of boats, the registration and the regulation of docks, wharfs and moorings, the regulation of marinas, the limits of speed and sound on Lake George, the regulation of recreational activities such as regatta-type events, water skiing, parasailing and other similar activities, and the regulation of tour boats, boat rentals and other rental activities. Following the promulgation of such regulations: (a) no person shall construct any dock, wharf, mooring, marina or put any such structure to use without first obtaining a permit from the commission, and (b) no person shall operate any boat or vessel, or undertake any regulated activity without complying with such regulations and obtaining a permit from the commission, if required.

5. To effectuate the purposes enumerated in subdivision four of this section, pending adoption by the commission of rules and regulations relative to the registration and regulation of docks, wharfs, moorings, and marinas, the provisions of part 646 of Title VI of the codes, rules and regulations of the state of New York shall be continued; provided, however, that such regulations shall be administered by the commission.

§ 43-0119. Land use restrictions within Lake George park.

1. No real property lying within the boundaries of the Lake George park shall be used for the operation of a junk yard, automobile grave yard, second-hand automobile parts yard, automobile service station selling petroleum products or repairing motor vehicles, circus, carnival, shooting gallery, outdoor drive-in theatre, commercial dance hall, slaughter house, house trailer camp, trailer court, campsite or similar use operated for commercial purposes in which dwelling facilities are normally occupied for temporary periods, public dump or public dumping ground, boarding stable or business offering riding horses for hire without a permit therefor having been first obtained from the village within which such real property is located, or if such

real property is not located within a village, from the town within which such real property is located.

2. No such permit shall be granted by any village or town board until after a public hearing has been held on the application therefor. Such a public hearing shall be held only after notice thereof has been published in a newspaper having general circulation in such village or town at least ten days before such hearing and notice thereof has been served on the department, Lake George park commission and all owners of real property within five hundred feet of the premises for which application for such permit is made at least ten days before such hearing.

3. The village or town board, in granting or denying any application for such a permit shall consider:

a. the statements made in the application for such permit, all facts presented at such hearing and other facts known to such board,

b. the effect of the proposed use on the general welfare, safety and health of the public and on the general welfare of the municipality,

c. the character of the area in which the real property is located,

d. the suitability of the real property for the use proposed in the application,

e. whether the proposed use is consistent with the purposes and intent of this article,

f. whether the real property lies within a zone or proposed zone in which the proposed use is or is proposed to be prohibited, and

g. whether the proposed use is consistent with standards for the granting or denying of applications for such permits established by such boards in furtherance of the purposes of this article.

4. The action of a village or town board granting or denying any application for such a permit shall be reviewable pursuant to article 78 of the Civil Practice Law and Rules.

5. The board of trustees of such a village or the town board of such a town may fix reasonable fees for the making of applications for permits pursuant to this section and reasonable fees for the issuance of such permits.

§ 43-0121. Compliance with sewage disposal requirements.

1. Where a provision of this chapter, or rules or regulations issued pursuant thereto, or the Public Health Law or state sanitary code requires that the sewage disposal facilities of a building or structure proposed to be erected or constructed comply with the requirements thereof, no such building or structure shall be erected, constructed or thereafter occupied within the boundaries of the Lake George park without a permit therefor having been first obtained from the village within which the real property on which it is to be erected, constructed or thereafter occupied is located, or if such real property is not located within a village, from the town within which such real property on which it is to be erected, constructed or thereafter occupied is located.

2. No such permit for erection or construction shall be granted by any such village or town board until the applicant therefor has obtained the approval required under the provisions of this chapter, or rules or regulations issued pursuant thereto, or under the Public Health Law or state sanitary code and no such permit for occupancy shall be granted by any such village or town board until the applicant therefor has obtained the approval required under the provisions of this chapter, or rules or regulations issued pursuant thereto, or under the Public Health Law or state sanitary code.

3. The board of trustees of such a village or a town board of such a town may fix reasonable fees for such permits and may each delegate its

power to issue such permits to an officer or employee of the village or town, as the case may be.

4. The action of a village or town board, or of an authorized officer or employee thereof, in granting or denying any application for such a permit shall be reviewable pursuant to article 78 of the Civil Practice Law and Rules.

5. Such a village board of trustees, town board, the Lake George park commission or any voter or taxpayer of the village or town in which such a building or structure is located shall have the right to bring a proceeding to enjoin the construction, continued construction or occupancy of any building or structure which is erected, constructed or occupied without compliance with the requirements of this section.

§ 43-0123. Environmental review.

Notwithstanding any other provision of law, rule or regulation to the contrary, the commission shall be deemed to be a state agency for purposes of article 8 of this chapter. The commission shall offer assistance to local agencies within the park regarding implementation of such article.

§ 43-0125. Regulatory and user fees.

1. The legislature finds that comprehensive environmental regulatory management and conservation within the Lake George park are essential to protect an important part of the environmental resources of the state and the public health and welfare. It further declares that regulated entities and users of the unique resources of Lake George park should bear a significant portion of the costs of regulation, management and conservation activities which assure the protection and continued beneficial use of the resources of the park.

2. The following annual fees to be paid to the commission are hereby

established:

(a) Dock, wharf and mooring fees. The owner of a dock, wharf or mooring within the park used for non-commercial residential purposes shall pay an annual fee of fifty dollars. The owner of a dock or wharf within the park used for commercial purposes shall pay an annual fee of five dollars per linear foot for each such dock. The owner of a mooring used for commercial purposes shall pay an annual fee of one hundred dollars for each mooring. New docks constructed for commercial use after the effective date of this section shall pay a first time fee of ten dollars per linear foot and five dollars per linear foot annually thereafter.

(b) Boat fees. In addition to the registration required by the state, any mechanically propelled boat or vessel with ten horsepower or more used on Lake George shall have an annual permit issued by the commission. The fee therefor for boats twenty feet or less in length overall shall be forty dollars; for boats twenty-one to twenty-five feet in length overall, fifty dollars; and for boats over twenty-five feet in length overall, fifty dollars plus seven dollars and fifty cents for each foot by which the length overall exceeds twenty-five feet; for boats over twenty-five feet in length overall outfitted for overnight use, fifty dollars plus thirty dollars for each foot by which the overall length exceeds twenty-five feet. The commission may establish a one week use permit for twenty dollars. The commission may establish a one day use permit for twelve dollars for any mechanically propelled boat or vessel with ten horsepower or more.

3. The commission may charge a fee to an applicant for a permit in order to recover the costs incurred in reviewing and acting upon an application for such permit.

4. Except as otherwise provided by law, all fees collected pursuant to this section shall be deposited to the credit of the Lake George park trust fund pursuant to section ninety-seven-h of the state finance law.

ARTICLE 44

HUDSON RIVER VALLEY GREENWAY

Section 44-0101. Legislative intent.

44-0103. Definitions.

44-0105. Hudson river valley greenway communities council.

44-0107. Powers and duties of the council.

44-0109. Designation.

44-0111. Greenway heritage conservancy for the Hudson river valley.

44-0113. Powers and duties of the conservancy.

44-0115. State agency reports and consistency.

44-0117. Hudson river valley geographic information systems.

44-0119. Greenway compact.

44-0121. Greenway trail.

§ 44-0101. Legislative intent.

The Hudson river valley region possesses unique scenic beauty, natural and cultural resources of state and national significance. Efforts including the creation of a state management program for the Hudson estuarine district and fishery, establishment of the heritage task force for the Hudson river valley, establishment of five state designated urban cultural parks in the valley and the preparation of numerous local government waterfront revitalization programs in the valley have been undertaken in recent years to protect and enhance the special places of scenic, cultural and ecological importance. It is the intention of the legislature that these efforts be continued and strengthened under the cooperative program of the Hudson river valley greenway in order to continue and advance the state's commitment to the preservation, enhancement and development of the world-renowned scenic, natural, historic, cultural and recreational resources of the Hudson river valley while continuing to emphasize economic development activities and remaining consistent with the tradition of municipal home rule.

§ 44-0103. Definitions.

As used in this article, the following words and terms shall have the

following meanings unless the context indicates another or different meaning or intent:

1. "Hudson river valley" shall mean the areas of Bronx and New York counties designated pursuant to section 44-0109 of this article, the counties of Westchester, Rockland, Putnam, Orange, Dutchess, Ulster, Columbia, Greene, Albany, Rensselaer, Saratoga and Washington, excluding any area of Greene county within the Catskill park, as defined in subdivision two of section 9-0101 of this chapter.

2. "Compact" or "greenway compact" shall mean the overall greenway plan adopted by the council pursuant to section 44-0119 of this article.

3. "Conservancy" or "greenway heritage conservancy" shall mean the greenway heritage conservancy for the Hudson river valley, a public benefit corporation, reestablished pursuant to section 44-0111 of this article.

4. "Council" shall mean the Hudson river valley greenway communities council reenacted pursuant to section 44-0105 of this article.

5. "Countryside" shall mean the cities, towns and villages within the greenway which do not border the Hudson river.

6. "Greenway criteria" or "criteria" shall mean natural and cultural resource protection, regional planning, economic development, public access and heritage environmental education identified as the basis for attaining the goal of a Hudson river valley greenway.

7. "Greenway" shall mean the area designated as the Hudson river valley greenway pursuant to section 44-0109 of this article.

8. "Greenway districts" or "districts" shall mean areas made of neighboring communities within the greenway and designated by the council for the purpose of regional planning.

9. "Greenway trail" or "trail" means the trail established pursuant to

section 44-0121 of this article.

10. "Participating community" shall mean a county, city, town or village which has adopted the regional plan for its district pursuant to section 44-0119 of this article.

11. "Riverside" shall mean the cities, towns and villages within the greenway which border the Hudson river and shall include the city of New York, with respect to areas of Bronx and New York counties designated pursuant to section 44-0109 of this article.

12. "Chief elected official of a county" shall mean the county executive, or if there is none, the chairman of the board of supervisors, or if there is neither, any other officers possessing similar powers and duties.

13. "Fund" shall mean the Hudson river valley greenway fund established in section ninety-seven-n of the state finance law.

§ 44-0105. Hudson river valley greenway communities council.

1. The governor's council on the Hudson river valley is hereby recreated within the executive department to be the Hudson river valley greenway communities council. The council shall consist of a total of twenty-seven voting members. The governor shall appoint two members, one of whom shall be the chairperson. The legislative body of each town, city or village other than the city of New York which is adjacent to the Hudson river may forward the names of a recommended council appointee to the chief elected official of the county in which it is incorporated. One voting member shall be appointed from among the names forwarded by the towns, cities and villages by the chief elected official of each of the ten counties of Westchester, Putnam, Dutchess, Columbia, Rensselaer, Albany, Greene, Ulster, Orange and Rockland, and two voting members shall be appointed by the mayor of the city of New York after consultation with the presidents of the boroughs of the Bronx and Manhattan. Two voting members shall be appointed by the temporary

president of the senate, one of whom must reside in the countryside and two voting members shall be appointed by the speaker of the assembly, one of whom must reside in the countryside. One voting member shall be appointed by the minority leader of the senate and one voting member shall be appointed by the minority leader of the assembly. Such appointed legislative representatives may designate a duly authorized representative to attend council meetings and to act in their place. The following seven members shall be ex officio members: the commissioner, the commissioner of parks, recreation and historic preservation, the secretary of state and the commissioners of general services, transportation, agriculture and markets and economic development or their designated representatives who, to the extent practicable, shall be residents of the Hudson valley. All persons responsible for appointing members of the council shall be mindful of the importance of assuring adequate representation on the council of the interests of various municipal entities, conservationists, business owners and operators, persons engaged in agricultural pursuits, minorities and educators. Notwithstanding the foregoing provisions of this subdivision, in the event that there is no vacancy in the membership of the council and there is no member of the council who is a member of an organized sporting association, club or society, the membership of the council shall be increased to twenty-eight voting members. The twenty-eighth voting member shall be a representative of the organized sporting community and shall be selected from the population of the Hudson river valley by a vote of the council. In the event of a vacancy occurring in the office of any member, such vacancy shall be filled in the same manner as the original appointment. The members of the council shall serve without compensation, except that members shall be allowed their necessary and actual expenses incurred in the performance of their duties under this article. Any person other than an ex officio member who serves as a member of the council, shall not serve as a member of the conservancy.

2. The council shall meet at least once every two months and shall encourage attendance at such meetings of representatives from local governments in the greenway and other interested parties. Copies of the minutes of each meeting with the date of the next scheduled meeting

shall be made available to interested parties at their request.

3. Every state agency and public corporation having jurisdiction of land or water within the greenway or of programs relating to the purposes and goals of this article shall, to the fullest extent practicable, offer full cooperation and assistance to the council in carrying out the provisions of this article.

4. Every local agency with programs relating to the greenway may offer assistance to the council in carrying out the provisions of this article.

§ 44-0107. Powers and duties of the council.

The council shall have the power:

1. To make by-laws for the management and regulation of its affairs.
2. To make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this article.
3. To appoint an executive officer, officers, agents and employees, and prescribe their duties and qualifications and fix their compensation.
4. To utilize, to the extent feasible, the staff and facilities of existing state agencies, pursuant to an allocation to be made by the state division of the budget.
5. To contract for professional and technical assistance and advice.
6. To contract for and to accept assistance, including but not limited to gifts, grants, or loans of funds or personal property from the federal government or any agency or instrumentality thereof, or from any agency or instrumentality of the state, or from any other public or

private source and to comply, subject to the provisions of this article, with the terms and conditions thereof. Notwithstanding the provision of section eleven of the state finance law, the council may accept gifts, grants, devises and bequests, whether conditional or unconditional providing that any gifts, grants, devises and bequests be consistent with greenway criteria.

7. To conduct scientific, environmental, economic, tourism and cultural studies within the valley that are germane to the greenway criteria.

8. To annually review and update the recommendations of the governor's council on the Hudson river valley and prepare objectives to advance each of the five greenway criteria: natural and cultural resources protection, regional planning, economic development including agriculture and urban redevelopment, public access and heritage education.

9. To review and comment as an interested agency during the environmental review process pursuant to article eight of this chapter on proposed actions within the greenway, and upon the filing of a draft environmental impact statement for any such action to require the lead agency to conduct a hearing under article eight of this chapter.

10. To review and comment on capital and long range plans of state agencies as they affect the criteria, objectives and plans of the greenway.

11. To review and comment on actions pursuant to section seventy-five of the public lands law within the greenway for their consistency with the public's right and interest in land under water for the purposes of navigation and commerce, fishing, bathing, natural resource conservation, recreation and access to the waters and lands underwater of the state.

12. To review and comment upon the annual work plan submitted by the conservancy.

13. To jointly designate and develop in agreement with the conservancy model greenway projects to demonstrate the implementation of greenway planning and make contracts for assistance to municipalities and nonprofit entities within the greenway therefor.

14. To designate multi-county planning districts or subregions based on environmental, economic and social factors linking counties, cities, towns and villages and the recommendations of municipal officials from such counties and their political subdivisions for the purpose of development of the greenway compact, provided that the areas of Bronx and New York counties designated pursuant to section 44-0109 of this article shall be deemed to be a multi-county planning district and region and shall not be linked with any other county, city, town or village in a multi-county planning district or region.

15. To make recommendations on expanding the geographical area of the greenway to include Washington county and the remainder of Saratoga county.

16. To encourage individuals, corporations, associations and public entities to protect and preserve the unique resources of the greenway and make grants to municipalities and nonprofit entities within the greenway therefor.

17. To make available or to cause to make available dispute resolution services for conflicts over land use regulation between units of government and/or between interests including development, conservation and neighborhood interests upon request of all parties in dispute.

18. To organize and meet with a committee of county planners within the greenway regarding regional projects and the provision of planning services.

19. To prepare an annual report on the conduct of its activities which shall include a recommended budget for the next year to be sent to the governor and the legislature.

20. To exercise and perform such other powers and duties as shall have been or may be from time to time conferred by law.

21. To utilize the staff and facilities of existing local agencies to the extent that local agencies make them available.

22. To take any actions necessary to carry out the functions, powers and duties imposed by this article.

23. To purchase the maximum insurance coverage practicable and affordable from revenues in the fund, to be effective upon the adoption by a community of a regional plan, from any duly authorized insurer in this state, against any liability of any participating community or its agents that may result from its acquisition of land, consistent with its regional plan, or the adoption or implementation of any land use control including, but not limited to, a zoning law or ordinance; provided, however, such insurance shall not apply to any such claim that results from the intentional wrongdoing, recklessness, gross negligence or an unlawful discriminatory practice as provided in subdivisions two, two-a, three-b, four, paragraphs (a) and (b) of subdivision five and subdivisions six, seven, fourteen and eighteen of section two hundred ninety-six of the executive law and 42 U.S.C. § § 1981, 1983 by such community or its agents. Except with respect to New York city, the council shall purchase such insurance and begin coverage upon the adoption by a community of a regional plan, and maintain such insurance for all participating communities. Nothing herein shall require the council to purchase or provide coverage for New York city.

§ 44-0109. Designation.

The Hudson river valley greenway is hereby designated to include the counties, including all cities, towns and villages therein, of Westchester, Rockland, Orange, Putnam, Dutchess, Ulster, Columbia, Greene, Albany, Rensselaer, Saratoga and Washington; provided the greenway shall not include any area of Greene county within the Catskill

park as defined in subdivision two of section 9-0101 of this chapter. In addition, in the city of New York the greenway shall include the areas of Bronx and New York counties that are both adjacent to the Hudson River and included as of the effective date of this section within the boundaries of such city's waterfront revitalization program prepared pursuant to article forty-two of the executive law. For purposes of the powers and duties of the council and conservancy regarding the Hudson river valley, such powers and duties shall be limited to the geographic area of the greenway as designated in this section.

§ 44-0111. Greenway heritage conservancy for the Hudson river valley.

1. It is hereby found, determined and declared that the reestablishment of the greenway heritage conservancy for the Hudson river valley and the carrying out of its corporate purposes is in all respects for the benefit of the people of the state of New York, for the preservation and enhancement of the natural and historic resources of the Hudson river valley and in furtherance of their welfare and prosperity, and is a public purpose, in that the conservancy will be performing an essential governmental function in the exercise of the powers conferred upon it by this title and the conservancy shall not be required to pay taxes or assessments upon any of the real property interests or rights acquired by it or under its jurisdiction or control, or upon its activities in the operation and maintenance of such property interests or rights or use of any moneys, revenues or other income received by the conservancy. All contributions of real or personal property interests or rights made to the conservancy whether by gift, devise or bequest shall to the extent deductible for federal income tax purposes, be deductible for purposes of the tax law to the extent provided therein.

2. The heritage task force for the Hudson river valley is hereby reestablished in the executive department to be the greenway heritage conservancy for the Hudson river valley a body corporate and politic constituting a public benefit corporation and to consist of seventeen voting members and nine non-voting members. All voting members shall

reside within the greenway and may designate representatives to act in their stead. The governor shall appoint three voting members, one of whom shall also be the chairperson. Two voting members shall be appointed by the temporary president of the senate; two voting members shall be appointed by the speaker of the assembly; one voting member shall be appointed by the minority leader of the senate; one voting member shall be appointed by the minority leader of the assembly and eight voting members shall be appointed by the council. A member of the council may not be appointed to be a voting member of the conservancy. The commissioner and the commissioners of the state departments of transportation, agriculture and markets and economic development and the offices of parks, recreation and historic preservation and general services, the secretary of state, the chairman of the state senate committee on environmental conservation and the chairman of the state assembly committee on environmental conservation, or such members' designated representatives, shall be nonvoting, ex-officio members of the conservancy. The term of office of voting members commencing as of the effective date of this section shall be four years except that five of the first voting members appointed pursuant to this section shall have a two-year term and that another five of the first voting members appointed pursuant to this section shall have a three-year term. Each member appointed to such task force by the commissioner before enactment of this section, shall continue in office until a quorum of voting members has been appointed. In the event of a vacancy occurring in the office of any member, such vacancy shall be filled for the balance of the unexpired term, if applicable, in the same manner as the original appointment.

3. The conservancy shall actively seek qualified candidates for membership and shall recommend such candidates to the governor.

§ 44-0113. Powers and duties of the conservancy.

The conservancy shall have the power:

1. To sue on causes of action consistent with the purposes and its

responsibilities under this article and with respect to contracts to which it is a party, but not for general enforcement of state or local environmental or planning laws, provided that the right to sue, other than with respect to contracts, to which it is a party, shall be limited to causes of action arising within the boundaries of the greenway; and to be sued.

2. To make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this article.

3. To establish and maintain such facilities as may be necessary for the transacting of its business.

4. To appoint an executive officer, officers, agents, employees, and prescribe their duties and qualifications and fix their compensation.

5. To utilize, to the extent feasible the staff and facilities of existing state agencies.

6. To hold hearings in the exercise of its powers, functions and duties provided for by this article.

7. To contract for professional and technical assistance and advice.

8. To contract for and to accept assistance, including but not limited to gifts, grants or loans of funds or of property from the federal government or any agency or instrumentality thereof, or from any agency or instrumentality of the state, or from any other public or private source and to comply, subject to the provisions of this article, with the terms and conditions thereof, subject to the applicable general policies of the director of the budget.

9. To encourage individuals, corporations, associations, organizations and public agencies to preserve and enhance the natural scenic beauty and heritage of the Hudson river valley and the lands, water, exemplary natural communities, aesthetic and cultural resources of the Hudson

river valley, as well as manage and conserve the fish, wildlife and endangered plant and animal species, and to increase public access to the waters of the Hudson river.

10. To acquire, in the name of the state, interests or rights in real property including title by gift or devise anywhere within the greenway, or by purchase solely for the purposes of a riverside park or development of the greenway trail, or by easement for the conservation, management and preservation of open space characterized by natural scenic beauty, heritage, natural resource values or conditions enhancing regional qualities of the Hudson river valley provided, however, that notwithstanding any other provision of law, transfers of such interests or rights in real property may be made to municipalities or not-for-profit corporations which contract to hold such property for the beneficial enjoyment of the people of the state and in no event shall such land be sold by any such municipality or not-for-profit corporation except for purposes consistent with the beneficial enjoyment of the people of the state. Additionally, notwithstanding this or any other provision of law, neither the state, nor any of its instrumentalities, may transfer, to the conservancy, any interests or rights in real property upon which the state is making property tax payments or payments in lieu of taxes, unless provision is made for the continuance of such payments by the conservancy from monies available in the fund.

11. To continue the existing subsidiary nonprofit corporation and create committees and appoint members thereto to assist and advise the conservancy in carrying out its functions, powers and duties and in coordinating the activities of the conservancy with state and local agencies functioning within the Hudson river valley.

12. To intervene in proceedings before state agencies including the department on matters affecting the Hudson river valley.

13. To encourage and assist in the creation of special local improvement districts consistent with the purposes of this article.

14. To identify land and water areas in the Hudson river valley that

are suited for designation as scenic areas under the provisions of article forty-nine of this chapter and for subsequent development of resource management plans.

15. To provide technical assistance to county and local officials, landowners and interested organizations with regard to resource protection, conservation and management of renewable natural resources and preservation methods and techniques, including but not limited to: natural resource inventories, scenic and conservation easements, deed restrictions, local land trust, innovative zoning techniques, establishment of urban cultural parks, historic preservation methods and viewshed analysis.

16. To encourage and assist state, county and local governments with the implementation of procedures for identifying and designating critical areas under the state environmental quality review act, and to provide similar support for utilization of scenic impact project review guidelines.

17. To help to advance, guide and coordinate on a priority basis the acquisition of land and water areas possessed of scenic, natural, historical, recreational or cultural significance, for the purpose of preserving or enhancing such areas; and to do so in cooperation with appropriate public and private agencies.

18. To initiate the preparation of comprehensive and systematic inventories and studies of the natural, scenic, historic, cultural and recreational resources of the Hudson river valley.

19. To provide local governments and the private sector with improved liaison, interpretation and focus relative to a variety of state and federal programs which bear on the Hudson river valley and its shorelands, including coastal management; basin level B study; wild, scenic and recreational rivers; urban cultural parks; fisheries management; estuarine sanctuaries; areas of national concern; historic preservation; tourism and outdoor recreation; and grants-in-aid.

20. To help develop and implement a comprehensive program and plan at the state, county and local levels for resource preservation, renewable natural resource management and enhancement in scenic highway corridors.

21. To annually prepare a work plan of intended projects and activities of the conservancy and present such plan to the council for its review and comment and report periodically to the governor, the legislature and the council on the conduct of its activities, but not less than once a year, and to provide a copy of each report to appropriate public and private entities within the Hudson river valley which request a copy of the report.

22. To exercise and perform such other powers and duties as shall have been or may be from time to time conveyed or imposed by law.

23. To encourage individuals, corporations, associations and public entities to protect and preserve unique resources of the greenway and make grants to municipalities and non-profit entities within the greenway therefor.

24. To whenever in the opinion of the conservancy it would be in the public interest, after prior approval of the director of the budget, request the temporary assignment and transfer of certain employees of any board, commission, agency or department of the state or its political subdivisions, and said board, commission, agency or department, if in its opinion such transfer will not interfere with the performance of its duties and functions may make such assignment and transfer of said employees to the conservancy. Such assignment and transfer or extension thereof shall not in any way affect the civil service status, continuity of service, retirement plan status, right to compensation, grade or compensation or other rights or privileges of any employee so transferred.

25. To submit title to all interests or rights in real property proposed to be acquired by the conservancy for examination and approval by the attorney general of the state who shall also furnish any and all necessary legal services and advice required to assist the conservancy

in accomplishing its corporate purposes.

26. When funds are available, and with the approval of the governor, enter into an agreement with a municipality or district within which real property interests or rights have been acquired by the conservancy providing for the payment of moneys in lieu of anticipated tax revenues whenever the conservancy shall determine that undue hardship justifying such financial relief has been created by such acquisition.

27. To enforce that no officer, member or employee of the conservancy shall receive or may be lawfully entitled to receive any pecuniary profit from the operation thereof except, to the extent available from the fund, for expenses actually and necessarily incurred, including reasonable compensation to employees for services in effecting one or more of the purposes set forth herein.

28. To continue to provide certain programmatic contractual services to the department as has heretofore been the practice.

29. To jointly designate and develop model greenway projects in agreement with the council to demonstrate the implementation of greenway planning and make grants for assistance to municipalities and non-profit entities within the greenway therefor.

30. To promote the greenway as a single, tourism destination site in conjunction with the designation and development of the greenway trail.

31. To assist in the preservation of farmlands within the greenway for continued agricultural use.

32. To take any actions necessary to carry out the functions, powers and duties imposed by this article.

33. Notwithstanding any other section of law the conservancy shall not have the power of eminent domain or to acquire property by eminent domain.

34. Notwithstanding any other section of law, the conservancy may exercise its powers within the county of New York only for the purposes of designating, developing, or causing to be developed a trail pursuant to section 44-0121 of this article. For the purposes of this subdivision, "trail" means a linear corridor or pathway, walkway or bikeway used solely for public transportation and recreation. The council or the conservancy shall not develop, construct or caused to be developed or constructed any landfill, pier or structure over water located west of the existing bulkhead or shoreline; nor shall the council or the conservancy develop, construct or cause to be developed or constructed any commercial or residential uses on any trail developed pursuant to this subdivision.

§ 44-0115. State agency reports and consistency.

1. The council in carrying out its functions and responsibilities under this article, shall consult with, cooperate with, and, to the maximum extent practicable, coordinate its activities with other interested state agencies.

2. The following officers of state agencies with program responsibilities that affect aspects of the greenway criteria shall prepare and submit to the council a program statement which shall detail actions in the areas of planning, development, use, assistance and regulation that can support and assist or would conflict with the establishment and management of the greenway including the compact and development of the trail:

a. commissioner of the office of parks, recreation and historic preservation regarding the state historic preservation program, the state urban cultural park program, state parks within the greenway, outdoor recreation and trail planning;

b. commissioner of economic development regarding the state tourism program including the identification of potential tourism destination areas within the greenway and recommendations for a system of

interactive information outlets throughout the greenway and the impact of greenway criteria on economic development activities;

c. commissioner of environmental conservation regarding the management of natural resources including plants, fish and wildlife and natural communities and protecting environmental quality;

d. commissioner of transportation regarding access and transportation;

e. secretary of state regarding the coastal zone management program and other planning programs administered by the department of state;

f. commissioner of the office of general services regarding the stewardship and disposition of state property; and

g. the commissioner of agriculture and markets regarding the contribution of agricultural activities and programs to greenway criteria.

Each such officer shall annually review such statements and submit revisions and updates to the council as appropriate.

3. After the compact is in effect, any state agency conducting, funding or approving activities directly affecting greenway resources shall, to the fullest extent practicable, consult with, cooperate with, and coordinate its activities with the council and the appropriate participating community. Any such state agency shall conduct or support such activities in a manner which is, to the maximum extent practicable, consistent with the compact in addition to requirements of other laws, including those of article forty-two of the executive law. The compact shall be incorporated as part of the reviews of actions pursuant to the state environmental quality review act as provided in article eight of this chapter and the New York state historic preservation act of 1980. For purposes of section 8-0113 of this chapter, the commissioner shall incorporate consideration of the greenway in rules and regulations adopted pursuant to such section. The council shall review and comment in writing upon the statement and effects on the greenway program, made

pursuant to section 8-0109 of this chapter and section 14.09 of the parks, recreation and historic preservation law.

4. Nothing in this article shall preempt the authority and responsibilities of the department pursuant to article eleven of this chapter.

§ 44-0117. Hudson river valley geographic information systems.

The conservancy shall continue, update and maintain the Hudson river valley geographic information system and make available information therefrom to counties, cities, towns and villages within the greenway. The conservancy may charge a fee for such information to cover the cost of providing the information.

§ 44-0119. Greenway compact.

1. The council shall guide and support a cooperative planning process to establish a voluntary regional compact among the counties, cities, towns and villages of the greenway to further the recommended criteria of natural and cultural resource protection, conservation and management of renewable natural resources, regional planning, economic development, public access and heritage education.

2. Initially, the council shall offer technical assistance from the conservancy and state agencies to the riverside communities in attaining the goal of establishing and having maximum effective implementation of local planning and zoning through natural and cultural resources inventories, the adoption of a comprehensive zoning ordinance or local law, master plan, site plan and subdivision plat review consistent with the greenway criteria. The council shall also encourage the use of cluster zoning, historic preservation ordinances, transfer of development rights, conservation easements, designation of critical environmental areas and other zoning techniques where appropriate to attain local planning and environmental objectives and participation in

the coastal management program and the state urban cultural park program. The council and the conservancy may each, consistent with their respective responsibilities as provided in this article, enter into contracts not to exceed fifty percent of project cost with riverside communities and in consultation with appropriate state agencies for purposes of administering grants pursuant to this subdivision including, but not limited to, grants to conduct natural and cultural resources inventories, prepare or update a master plan, a zoning ordinance, a transfer of development rights ordinance, a local government waterfront revitalization program, an urban cultural park feasibility study or management plan or a tourism development feasibility study or plan. Any community which receives a grant pursuant to this subdivision may, at the discretion of the council or the conservancy, contribute its fifty percent of the project cost in the form of an in kind or other non-monetary contribution.

3. Not later than four years after the effective date of this article, the council shall convene meetings of the chief elected officials of counties, cities, towns and villages or their designated representatives for each of the subregional districts designated by the council. Such officials in each district shall organize to prepare, or cause to be prepared within twenty-four months, a comprehensive regional plan for their district to be submitted to the council. The conservancy shall offer technical assistance in preparation of such plans and amendments thereof. Within funds available therefor, the council shall grant funds to meet the cost of each regional plan and amendments thereof. Each such regional plan shall address the gateway criteria and the objectives adopted by the council by provisions including, but not limited to, identifying developments of regional impact and areas of regional concern including, but not limited to identifying necessary public facilities and infrastructure consistent with such criteria and objectives and providing for the voluntary adoption by action of a local legislative body and implementation of relevant provisions by each participating county, city, town and village. The council shall review each regional plan for its consistency with the gateway criteria and objectives and to assure that the regional plans conform to establish an overall gateway compact. Upon finding such consistency and conformance,

the council shall approve the regional plan and, upon approving all the regional plans, shall produce an overall greenway plan to be known as the compact. If the local officials in any district fail to produce a regional plan for their district or submit such plan which the council cannot approve, the council may prepare or cause to be prepared a district plan which cities, towns and villages in such district may voluntarily adopt by local law to become participating communities. The council's actions shall not be inconsistent with the requirements of article forty-two of the executive law in approving any regional plan.

4. Upon approval by the council of a regional plan, each county, city, town or village within the district for which the plan was prepared and which adopted the plan by its local legislative body shall become a participating community in the greenway compact by adopting the regional plan as provided in such plan.

4-a. Notwithstanding any other provision of this article, the mayor of the city of New York may submit those portions of such city's waterfront revitalization program, prepared pursuant to article forty-two of the executive law and adopted through the process for the adoption and amendment of plans contained in the charter of such city, as such program applies to areas within the greenway, as the regional plan for the region comprised of the areas of Bronx and New York counties designated pursuant to section 44-0109 of this article. The mayor of such city may submit amendments to such regional plan adopted through the process for the adoption and amendment of plans contained in the charter of such city. Any such plan or amendment thereof submitted pursuant to this subdivision shall be deemed to have been approved pursuant to this section and, upon submission of such plan, the areas of the city of New York designated pursuant to section 44-0109 of this article and which are also included within such plan shall be deemed to be a participating community and, unless otherwise specified, the mayor of such city shall exercise the authority granted to such participating community. Solely for purposes of subdivision five of this section the plan submitted by the city of New York pursuant to this section and any amendments thereto shall not be deemed a generic environmental impact statement or regional plan.

4-b. Nothing contained in this article shall be deemed to affect, impair or supersede the provisions of any city charter, local law, rule or other local requirements and procedures heretofore or hereafter adopted, including, but not limited to, any such provisions relating to the zoning and use of land.

5. A regional plan prepared consistent with the procedures of section 8-0109 of this chapter relating to the preparation and contents of an environmental impact statement shall be considered a generic environmental impact statement. Actions proposed in conformance with the conditions and thresholds established in such regional plan will require no further compliance with article eight of this chapter.

6. Notwithstanding any other provision of law, any state agency may provide in implementing a ranking system for allocating funds for infrastructure, land acquisition or park assistance projects a preference not to exceed the equivalent of an advantage of five percent for such projects which are identified in a regional plan approved pursuant to this section.

* 7. For each such participating community there shall be indemnity from the state in the event of legal actions brought against the community or its agents that may result from the community's acquisition of land consistent with its regional plan or the adoption or implementation of any land use control including, but not limited to, a zoning law or ordinance. Such indemnity shall not apply to the counties of New York and Bronx for such legal actions brought as a result of New York City's adoption of a regional plan or amendments thereto pursuant to subdivision four-a of this section. Such indemnity shall apply to the extent that any such claim exceeds the insurance coverage obtained by the council pursuant to subdivision twenty-three of section 44-0107 of this article; provided, however, such indemnity shall not apply to any such claim that results from intentional wrongdoing, recklessness, gross negligence or an unlawful discriminatory practice as provided in subdivisions two, two-a, three-b, four, paragraphs (a) and (b) of subdivision five and subdivisions six, seven, fourteen and eighteen of section two hundred ninety-six of the executive law and 42 U.S.C. § 8

1981, 1983 by such community or its agents. In any claim against a participating community of unlawful discriminatory practice, the attorney general shall not represent the defendant or defendants; provided, however, that if the plaintiff is not the prevailing party, the defendant or defendants shall be reimbursed by the state for all reasonable attorneys' fees and litigation expenses incurred in the defense of the action.

* NB Repealed December 31, 2027

8. Pursuant to a chapter of the laws of New York to be enacted, authority shall be granted for a community to utilize other innovative zoning techniques in carrying out the compact.

9. In addition to any other funds available from the state, participating communities and nonprofit entities designated by such communities shall be eligible for capital, program and planning matching grants from the council and the conservancy including, but not limited to grants for municipal historic preservation projects to acquire, restore or rehabilitate property listed on the state or national registers of historic places or for educational programs related to such historic places, municipal park projects for the acquisition, development or improvement of recreational facilities or the acquisition of land for open space conservation and management of renewable natural resources and natural resource protection including the preservation of endangered species and their natural communities, waterfront revitalization projects to acquire land for public access to the Hudson river or to protect river resources or to clear waterfront sites for public or private water dependent uses or to develop, improve or rehabilitate water dependent or waterfront facilities including wharfs and piers, consistent with a local waterfront revitalization program, urban cultural park projects for planning, program, acquisition or development consistent with the purposes of article thirty-five of the parks, recreation and historic preservation law, tourism marketing projects, development and commercial revitalization and community development programs and projects, natural resources inventories, agriculture preservation projects and public and private infrastructure improvement related to the development of the greenway trail, from money

appropriated from the Hudson river valley greenway fund. The state share of the cost of such projects shall not exceed fifty percent of the total project cost. Such grants shall be made by the council and the conservancy consistent with their respective responsibilities as provided in this article. The council and conservancy shall enter into contracts with participating communities and in consultation with appropriate state agencies for the purpose of administering these grants.

10. The council and conservancy shall create a committee comprised of three members from each who shall establish a procedure by which other grants not delineated herein, which are consistent with the greenway criteria, shall be made.

11. Notwithstanding any other provision of law, participating communities shall be eligible to take part in and receive grants and loans from the urban development corporation's urban and community development program and regional economic development program.

12. The council may, after holding a public hearing in the appropriate district, withdraw its approval of a regional plan where it finds that there has been a significant failure to implement such plan by a majority of the participating counties, cities, towns and villages within the district. When approval has been withdrawn from a regional plan, the communities therein may not have the benefits of participating communities pursuant to subdivisions five through nine of this section. The council shall report such withdrawal of approval to the governor and the legislature stating the reasons for such action consistent with subdivisions one through six of this section.

13. The council may promulgate rules and regulations providing for maintaining and updating the compact.

§ 44-0121. Greenway trail.

1. The conservancy shall designate and develop or cause to be

developed a trail or pathway system consistent with the greenway criteria connecting the city of New York from the southernmost boundary of the area designated as the greenway to the Erie canal lock two park in the town of Waterford, Saratoga county to be known as the Hudson river valley greenway trail. To the fullest extent practicable, the trail shall:

a. be located with direct physical or, if not physical, visual access to the Hudson river;

b. be planned for both sides of the Hudson river;

c. have segments that can be restricted to non-motorized use;

d. utilize existing heritage trails, bikeways, scenic highways, railroad rights of way and esplanades and make connections with other trails including trails along tributaries of the Hudson river;

e. highlight and link existing parks, urban cultural parks and historic sites;

f. provide for interpretive signage and opportunities to experience the unique natural and cultural heritage of the valley;

g. reflect the natural and cultural diversity;

h. involve state and local agencies and private organizations in the planning, development and maintenance of the trail of the greenway;

i. use the services of local school districts and the youth conservation corps to participate in trail development and maintenance;

j. have segment management plans prepared for each segment of the trail to assure uniform maintenance and upkeep; and

k. have connections to pathways that highlight the character and resources of the countryside communities.

2. The greenway trail to the extent practicable shall be completed on or before June first, two thousand five; provided that the conservancy shall submit a plan for the trail to the governor and legislature within twenty-four months of the effective date of this section and shall to the extent practicable dedicate and open significant sections of the trail on or before June first, two thousand. Planning for the trail shall commence with the council and the conservancy sponsoring a Hudson river valley greenway trail symposium to prepare a plan of action for the planning and development of the trail. Representatives of local governments in the greenway, interested nonprofit organizations, representatives of the state and federal government, planners and landscape architects along with any other interested parties shall be invited to participate in the symposium.

3. The department and the office of parks, recreation and historic preservation, the department of transportation and the office of general services are hereby authorized and directed to support and assist in the planning and development of the trail.

ARTICLE 45

STATE NATURE AND HISTORICAL PRESERVE TRUST

Section 45-0101. Declaration of findings and purpose.

45-0103. Short title.

45-0105. Definitions.

45-0107. State nature and historical preserve trust;
continuation.

45-0111. Functions, powers and duties.

45-0113. Acquisition and dedication of real property.

45-0115. Disposition of real property.

45-0117. Jurisdiction and administration.

§ 45-0101. Declaration of findings and purpose.

The overwhelming approval by the people of section 4 of article XIV of

the Constitution, clearly demonstrates the public awareness and desire to preserve the great natural resources and heritage of the state.

Accordingly, the legislature now finds it necessary to provide for a state nature and historical preserve to assure the protection of lands, outside of forest preserve counties, of special natural beauty, wilderness character or geological, ecological, or historical significance so that present and future generations may share their ecological, educational and recreational value.

Lands dedicated to the preserve shall include only those lands in state ownership in need of the highest level of protection. The dedication of ecologically significant lands to the preserve is intended for unique and irreplaceable state-owned lands that are relatively undisturbed and not presently being actively managed through modern forest management practices, including old-growth forests.

§ 45-0103. Short title.

This article may be cited as the "State Nature and Historical Preserve Act".

§ 45-0105. Definitions.

As used or referred to in this article unless a different meaning clearly appears from the context:

1. The term "trust" shall mean the state nature and historical preserve trust continued by section 45-0107 of this article.

2. The term "trustee" shall mean the commissioner of environmental conservation.

3. The term "real property" shall mean lands and waters, including improvements thereon, structures, and hereditaments, title to which may

be in fee simple absolute or any lesser interest, including but not limited to, easements, rights of way, uses, leases, licenses and every estate, interest or right, legal or equitable.

4. The term "preserve" shall mean the state nature and historical preserve, as referred to in section 4 of article XIV of the State Constitution.

5. The term "lands of ecological significance" shall mean state-owned lands and waters that harbor plants, animals or ecological communities that are rare in New York state or exemplary occurrences of more common ecological communities. For the purposes of this article, the term "exemplary occurrences of an ecological community" means a representative, high quality example of a given ecological community type, characterized by a distinctive assemblage of interacting plant and animal populations, including old-growth forests.

6. The term "old-growth forest" shall mean a parcel of at least ten acres which includes all of the following: an abundance of late successional tree species, at least one hundred eighty to two hundred years of age in a contiguous forested landscape that has evolved and reproduced itself naturally, with the capacity for self perpetuation, arranged in a stratified forest structure consisting of multiple growth layers throughout the canopy and forest floor, featuring canopy gaps formed by natural disturbances creating an uneven canopy and a conspicuous absence of multiple stemmed trees and coppices. Typically, old-growth forest sites also are characterized by an irregular forest floor containing an abundance of coarse woody materials which are often covered by mosses and lichens, show limited signs of human disturbance since European settlement, have distinct soil horizons that include definite organic, mineral, alluvial accumulation, and unconsolidated layers, and have an understory that displays well developed and diverse surface herbaceous layers.

§ 45-0107. State nature and historical preserve trust; continuation.

There is hereby continued in the department the state nature and historical preserve trust.

§ 45-0111. Functions, powers and duties.

The trustee shall have the duty of assisting the legislature and the governor in implementing the policy of the state as set forth in section 4 of article XIV of the State Constitution, and in order to carry out such purposes he shall have the following functions, powers and duties:

1. To recommend to the Governor and legislature real property to be included in the preserve. In making such recommendations, the trustee shall first find that such real property qualifies for inclusion in the preserve because of its natural beauty, wilderness character, it contains old-growth forest, or is of other geological, ecological or historical significance. Such recommendation shall include, where appropriate, the estimated value or cost of the real property, justification for its inclusion in the preserve, and provision for management, care, custody and control of the real property. When the trustee identifies a parcel of state land which may be an old-growth forest, the trustee shall evaluate the parcel, and if it meets the criteria of an old-growth forest, recommend the parcel be included in the preserve. When the trustee recommends property be placed in the preserve to protect old-growth forest, such recommendation shall include provisions that the old-growth forest be protected with minimum management or disturbance that only considers passive recreational opportunities with no construction of public amenities. In those provisions, the protection of the old-growth forest from invasive species and diseases may be considered. Such real property may include, but not be limited to real property presently owned in the name of the state, unconditional or conditional grants, gifts and bequests to the state of real property, and real property recommended by the trustee for acquisition.

2. To prepare and submit an annual report to the Governor and the legislature on or before February first on the activities of the trust.

3. To undertake research and studies related to activities of the trust.

4. To maintain a current inventory of all real property which has been dedicated to the preserve.

5. To request any state agency to render assistance in carrying out the purposes of this article. Any state agency is authorized to render such assistance to the trustee.

6. To make such rules and regulations as the trustee may determine necessary for the purposes of properly carrying out his functions, powers and duties, and to do all things necessary or convenient for carrying out the foregoing functions.

§ 45-0113. Acquisition and dedication of real property.

1. For the purposes of this article, the department may, when authorized by an act of the legislature, and when funds are available therefor, acquire in the name of the people of the state of New York fee title or any lesser interest in real property by any method of acquisition, including, but not limited to, appropriation, condemnation, purchase, conditional or unconditional gift, bequest or devise, in accordance with any powers of the department to acquire real property.

2. Only real property owned by the state or real property acquired under this article or sections 51-0705, 52-0701 or 52-0901, or articles fifty-four and fifty-six of this chapter, or real property dedicated to the Albany Pine Bush preserve pursuant to article forty-six of this chapter may be dedicated for the purposes of this article. Such dedication may be effected only by law.

§ 45-0115. Disposition of real property.

Real property dedicated to the preserve shall not be taken or otherwise disposed of except by law enacted by two successive regular sessions of the legislature.

§ 45-0117. Jurisdiction and administration.

1. The department is hereby authorized to manage and exercise custody and control over lands dedicated pursuant to this article or to contract with any city, county, town or village, or any combination thereof, or any state agency or the Albany Pine Bush commission established under article forty-six of this chapter for the management, custody and control of such real property subject to such conditions as may be approved by the director of the budget.

2. The lands dedicated to the preserve are enumerated as follows:

a. Skenoh Island in the town of Canandaigua, county of Ontario more fully described in chapter three hundred fifty-two of the laws of nineteen hundred seventy-five.

b. Showy Lady Slipper parcel in the town of New Hudson, county of Allegany more fully described in chapter one hundred thirty-three of the laws of nineteen hundred seventy-seven.

c. Parrish Gully in the town of Italy, county of Yates more fully described in chapter one hundred thirty-three of the laws of nineteen hundred seventy-seven.

d. Clark Gully in the towns of Middlesex and Italy, county of Yates more fully described in chapter one hundred thirty-three of the laws of nineteen hundred seventy-seven.

e. Cicero Swamp in the town of Cicero, county of Onondaga more fully described in chapter one hundred thirty-three of the laws of nineteen hundred seventy-seven.

f. Labrador Hollow in the town of Fabius, county of Onondaga and the town of Truxton, county of Cortland more fully described in chapter three hundred thirty-six of the laws of nineteen hundred eighty-six.

g. Reinstein Woods in the town of Cheektowaga, county of Erie more fully described in chapter five hundred twenty-two of the laws of nineteen hundred eighty-nine.

h. Bog Brook in the town of Southeast and Patterson, county of Putnam more fully described in chapter five hundred twenty-two of the laws of nineteen hundred eighty-nine.

i. The Oak Brush Plain State Preserve in the towns of Babylon and Huntington, county of Suffolk more fully described in chapter six hundred thirty-five of the laws of nineteen hundred eighty-seven.

j. The David A. Sarnoff Pine Barrens in the town of Southampton, county of Suffolk more fully described in chapter two hundred forty-nine of the laws of nineteen hundred ninety-three.

k. The Rocky Point Natural Resources Management Area in the town of Brookhaven, county of Suffolk more fully described in chapter two hundred forty-nine of the laws of nineteen hundred ninety-three.

l. State lands dedicated to the Albany Pine Bush preserve pursuant to article forty-six of this chapter.

m. The Camillus forest unique area in the town of Camillus, county of Onondaga more fully described in chapter four hundred sixty-three of the laws of two thousand five.

n. The Zoar Valley Unique Area in the Towns of Otto and Persia, county of Cattaraugus and the town of Collins, county of Erie more fully described in the chapter of the laws of two thousand seven which added this paragraph.

3. Lands dedicated to the preserve are declared to be put to their

highest, best and most important use and are to be held for one or more of the following purposes:

a. As natural areas for maintaining plants, animals and natural communities, including preservation of old-growth forests dedicated to the preserve specifically for that purpose;

b. As reservoirs of natural materials and ecological processes that contribute to the state's biological diversity;

c. As field laboratories for scientific research and education in the natural sciences, including the fields of biology, conservation, ecology, geology, natural history and paleontology; and

d. As places of natural and historical interest and beauty which provide the public with passive recreational opportunities including, where appropriate, fishing, hunting and trapping, or commercial fishing opportunities that are compatible with protecting the ecological significance, historic features and natural character of the area.

4. The department, or the city, county, town, village or state agency exercising control over the site pursuant to subdivision one of this section, shall develop a written stewardship plan for each site dedicated to the preserve. Such plan shall include a description of stewardship activities required to monitor, protect, enhance and where appropriate actively manage the ecological, scenic, wilderness, geological or historic resources that merited dedication of the site to the preserve. Such plan shall also provide for passive recreational uses, including, where appropriate, fishing, hunting and trapping, or commercial fishing opportunities that are compatible with protecting the ecological significance, historic features and natural character of the site.

5. Nothing in this article shall be construed to diminish an existing property right held by any person who owns any interest in any real property that is located adjacent to any real property dedicated to the preserve.

ARTICLE 46

ALBANY PINE BUSH PRESERVE COMMISSION

Section 46-0101. Legislative declaration and intent.

46-0103. Definitions.

46-0105. Albany Pine Bush preserve commission.

46-0107. Albany Pine Bush preserve.

46-0109. Powers and duties of the commission.

46-0111. Management plan.

46-0113. Appropriations by municipalities.

46-0115. Cooperation of state agencies.

§ 46-0101. Legislative declaration and intent.

The pitch pine-scrub oak barrens or pine barrens in the city of Albany and towns of Guilderland and Colonie and known as the "Albany Pine Bush" or "Pine Bush" is a landscape of rare and endangered natural communities and species identified by the New York natural heritage program. Its location at the center of a major urban area makes it especially valuable as an open space resource and, if properly managed, as a passive recreation area and educational laboratory.

Both state, municipal and private actions have been taken to protect the remaining Albany Pine Bush. Because of the fragile qualities of the Pine Bush and its dependence on periodic fires, effective, coordinated management of the remaining Albany Pine Bush is essential.

The legislature hereby declares it to be in the public interest to protect and manage the Albany Pine Bush by establishing an Albany Pine Bush preserve consisting of dedicated public and dedicated private land and a commission made up of representatives of state and local governments and private citizens to manage the preserve for purposes of its protection and controlled and appropriate recreation and education purposes.

§ 46-0103. Definitions.

As used in this article:

1. "Albany Pine Bush preserve" or "preserve" shall mean lands in the city of Albany and towns of Guilderland and Colonie in the county of Albany characterized by the growth of pitch pine and scrub oak, pine barrens, vernal ponds and/or the presence of sand dunes which are dedicated for protection and beneficial public use pursuant to section 46-0107 of this article. Land which lacks such physical or vegetative characteristics may be dedicated pursuant to section 46-0107 of this article as a protective or buffer zone for other dedicated lands, or otherwise supports the management of the preserve.

2. "Albany Pine Bush preserve commission" or "commission" shall mean the Albany Pine Bush preserve commission created pursuant to section 46-0105 of this article.

§ 46-0105. Albany Pine Bush preserve commission.

1. The Albany Pine Bush preserve commission is hereby established in the department to be a body corporate and public and to consist of eleven voting members who shall be as follows: the commissioner, the commissioner of the state office of parks, recreation and historic preservation, the mayor of the city of Albany, the town supervisors of the towns of Colonie and Guilderland, the chief executive officer of the county of Albany, the state director of the New York field office of the nature conservancy and four members to be appointed by the governor with the advice and consent of the Senate. The four appointed private citizen members of the commission shall be by training, education, experience or attainment qualified to analyze or interpret or support matters relevant to the protection, maintenance and/or management of the Albany Pine Bush. Each of the seven ex-officio members may designate a representative to attend, in his or her place, meetings of the commission and to act in his or her behalf. The Governor shall

designate the chairman. The term of office of the four private citizen members shall be four years. In the event of a vacancy occurring other than by the expiration of a member's term, such vacancy shall be filled for the balance of the unexpired term in the same manner as the original appointment. A majority of the members of the commission shall constitute a quorum.

2. The members of the commission shall receive no compensation for their services, but shall be reimbursed for their expenses actually and necessarily incurred in the performance of their duties hereunder. Members and staff of the commission shall be considered state employees for the purposes of sections seventeen and nineteen of the public officers law.

§ 46-0107. Albany Pine Bush preserve.

The commissioner shall maintain a record of the boundaries of the lands which have been dedicated to the Albany Pine Bush preserve in text and depicted on a map.

1. Land owned by the state may be dedicated to be part of the preserve only by action by the commissioner, the commissioner of the state office of parks, recreation and historic preservation or the commissioner of the state office of general services, provided that state land dedicated hereunder may also be dedicated to be part of the state nature and historical preserve pursuant to article forty-five of this chapter.

2. Land owned by a local government may be dedicated to be part of the preserve only by action of its local legislative body.

3. Land owned by private persons or organizations may be dedicated to be part of the preserve only through the voluntary execution of a conservation easement pursuant to article forty-nine of this chapter, and the acceptance of such instrument by the commission; provided, however, that the commission shall not have the power or authority, without the consent of the landowner, to require as a condition of or a

prerequisite for obtaining any permit, license or other authorization to conduct any activity within or adjacent to the preserve, that any lands be dedicated to the preserve.

4. Every proposed dedication shall be reviewed and approved by the commission.

5. The commission shall have no authority to control or manage any private land unless such land has been dedicated pursuant to this section or the owner thereof has executed a voluntary written agreement with the commission authorizing the specific management actions which may be taken by the commission.

6. Land owned by the commission shall be dedicated to be part of the preserve upon acquisition by the commission.

§ 46-0109. Powers and duties of the commission.

The commission shall have the power:

1. To sue and be sued.

2. To make by-laws for the management and regulation of its affairs.

3. To make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this article.

4. To appoint an executive officer, officers, agents and employees, and prescribe their duties and qualifications and fix their compensation.

5. To utilize, to the extent feasible, the staff and facilities of existing state and local agencies, pursuant to an allocation to be made by the state division of the budget or the chief executive officer of the local government as applicable.

6. To contract for professional and technical assistance and advice.

7. To contract for and to accept assistance, including but not limited to gifts, grants, easements or loans of funds or real property or personal property from the federal government or any agency or instrumentality thereof, or from any agency or instrumentality of the state, or from any other public or private source and to comply, subject to the provisions of this article, with the terms and conditions thereof, subject to the approval of the division of the budget. Notwithstanding the provision of section eleven of the state finance law, the commission may accept gifts, grants, devises and bequests, whether conditional or unconditional, with the approval of the director of the budget.

8. To conduct scientific and environmental studies.

9. Notwithstanding the provisions of section 9-1105 of this chapter or any other provision of law, to take, or cause to be taken, necessary and appropriate fire management actions to protect the flora and fauna of the preserve provided that:

(i) such actions have been approved in writing by the commissioner and are pursuant to a written plan for the conduct of the requested burn, which plan shall include provisions for limiting the area to be burned and restricting the burn to that area, as well as emergency suppression procedures; and

(ii) no burning shall be conducted until the chief or other official in charge of the fire department or company within whose territorial jurisdiction the proposed burn is located has been given the opportunity to review and comment on the written plan and the fire department or company dispatcher has been notified of the actual date and time and estimated duration of such action; and

(iii) no burning shall be prescribed within seventy-five feet of privately owned land within or adjacent to the preserve which has not been dedicated to the preserve, except upon the approval of such adjacent landowner.

10. To construct, or cause to have constructed, necessary facilities including paths and trails, an environmental education center and related parking areas on no more than five percent of the preserve.

11. To conduct environmental education programs.

12. To facilitate and provide passive recreational activities including hiking, nature study and photography.

13. To control access and use of the preserve as is necessary and appropriate to maintain the ecological community of the preserve including establishment of an admission control system by permit on either a group or individual.

14. To review and approve proposed dedications to the preserve and recommend additions to the preserve.

15. To advise and assist state agencies, municipalities and private property owners whose land adjoins the preserve on land use and management techniques that are compatible with the land management needs of the preserve.

16. To encourage individuals, corporations, associations and public entities to protect and preserve the unique resources of the preserve.

17. To prepare an annual report on the conduct of its activities which shall include a recommended budget for the next year.

18. To exercise and perform such other powers and duties as shall have been or may be from time to time conferred by law.

19. To acquire real property as may be necessary for the purposes and functions of the commission. Such real property may be acquired in the name of the commission by purchase, exchange, gift, devise, bequest, or by other legal means.

§ 46-0111. Management plan.

1. The commission shall prepare or cause to be prepared within thirty months of the effective date of this section a management plan for the preserve; provided that elements of the management plan may be prepared and submitted for approval before the entire plan is completed. Such plan shall cover management of all dedicated lands. At least one public hearing on the draft management plan, or element thereof separately submitted for approval or amendment thereto shall be held. The local legislative bodies of the city of Albany and the towns of Guilderland and Colonie, the county of Albany, the commissioner, the commissioner of the state office of parks, recreation and historic preservation and the state director of the nature conservancy may review the management plan, elements thereof separately submitted for approval and amendments thereto.

2. The management plan shall be the fundamental document defining the protection and beneficial public use goals for the preserve and the means and techniques for their attainment. The management plan shall include, but need not be limited to:

a. A survey or inventory of the following, together with the establishment of management priorities therefor:

- (i) natural plant and wildlife resources;
- (ii) historic resources;
- (iii) erosion control needs and stream protection;
- (iv) trails, trail development and use; and
- (v) other recreational uses.

b. A fire management plan.

c. A plan for the enforcement of laws pertaining to public use activities, which shall be implemented by rules and regulations for the administration and use of lands dedicated to the preserve which are promulgated by the commissioner.

d. An education program including publications and guided activities.

e. A financial plan for implementation of the management plan recommendations.

3. Not less than once every five years the commission shall review the management plan, and shall include as part of such review a public hearing. The commission shall propose amendments to the management plan as they are deemed to be necessary and appropriate.

§ 46-0113. Appropriations by municipalities.

To effectuate the purposes of this article, the local legislative bodies of the county of Albany, city of Albany and towns of Colonie and Guilderland may appropriate and pay over to the commission moneys to be expended by the commission to carry out its functions thereunder.

§ 46-0115. Cooperation of state agencies.

To effectuate the purposes of this article, the commission may request from any department, board, bureau, commission or other agency of the state, and the same are authorized to provide, such cooperation and assistance, services and data as will enable the commission properly to carry out its functions thereunder.

ARTICLE 47

COUNTY AND REGIONAL ENVIRONMENTAL MANAGEMENT COUNCILS

Section 47-0101. Short title.

47-0103. Declaration of policy.

47-0105. Establishment of county environmental management councils; members and officers.

47-0107. Powers of council.

47-0109. Appropriation of council.

47-0111. Assistance of department of environmental conservation.

47-0113. Regional environmental management councils.

47-0115. Reimbursement.

47-0117. Annual report.

§ 47-0101. Short title.

This article shall be known as the local environmental protection act.

§ 47-0103. Declaration of policy.

The legislature hereby finds and declares that the management and conservation of our environment is essential to the health and wellbeing of the people of the state. Local county or regional understanding of the importance of all aspects of the environment is necessary for the most balanced use of natural resources. Local participation in planning of activities which influence the ecological balance of the locality and therefore the state is important. It is in the best interest of the citizens of the state to have environmental management councils which shall be responsible for reviewing and advising local and state government, and where resources within the county are influenced, the federal government, on present and proposed methods of using, protecting and conserving the environment for the benefit of all the people.

§ 47-0105. Establishment of county environmental management councils; members and officers.

1. The county governing body of any county may establish a county environmental management council. Such council may be constituted within the organized structure of county government so as to provide for effective coordination among all agencies of the county for the purposes of this article. The council shall consist of one member of each city, town, and village conservation advisory council within the county. Additional members as the county appointing authority may provide, shall be appointed to serve at the pleasure of the county appointing authority, for a term not to exceed two years. The presiding officer or

chairman shall be appointed by the county appointing authority from among the members of the council. In addition, the county appointing authority may appoint members of the county governing body and the heads of those county departments whose work particularly affects or is particularly affected by environmental considerations, as ex officio members of the council. For the purposes of this article, the term county appointing authority shall mean the body or officer of a county authorized by law to make appointments.

2. The county appointing authority is hereby authorized notwithstanding any inconsistent provision of law to appoint up to four members to the council who are between the ages of sixteen and twenty-one.

3. Nothing contained in this article shall be deemed to prohibit the establishment of a county environmental agency pursuant to other provisions of law.

§ 47-0107. Powers of council.

1. The council may advise on all matters affecting the preservation, conservation and ecologically suitable use of the natural resources of the county.

2. The council shall review the state of the county environment as a whole, and shall prepare and submit an annual report of its findings to the county's governing body. This report also shall include an account of the council's activities and accomplishments which shall be based on accurate records of its meetings and other works.

3. The council in cooperation with the county planning agency and other appropriate agencies, shall prepare a plan for the protection of the county's environment and the management of its natural resources, and shall transmit it to the county governing body as soon as practicable after the effective date of the establishment of the council. In addition, each such council shall obtain from the department

of environmental conservation a copy of the state environmental plan. To the extent practicable, the preparation, content and subsequent revision, if any, of the county environmental plan shall be coordinated with the state environmental plan and a copy of said county plan and any subsequent revision shall be filed with the state commissioner of environmental conservation.

4. It shall investigate and recommend to the county governing body ecologically sound methods of planning the use of the county's resources.

5. The council shall keep an index of all open areas within the county, with the plan of obtaining information pertinent to sound ecological utilization of such areas including land owned by any municipality within the county. It shall keep an index of all open marsh lands, swamps, and all other wet lands in a like manner, and may recommend a program for their ecologically suitable utilization.

5-a. The council shall develop and maintain an inventory of natural resources within the county and such other environmental information as may be appropriate. Said inventory shall include wetlands and open spaces and may include, but not be limited to, factors relating to geology, soils, slope, water resources, vegetation, wildlife habitat, unique natural areas, and scenic, historic, and archaeological sites.

6. The council may cooperate with and assist such other governmental or non-governmental boards or organizations in the preparation of plans or reports or the review of proposals or applications as the county may direct.

7. The council may also conduct research into the land area of the county and may seek to coordinate the activities of unofficial bodies organized for similar purposes. It may advertise, prepare, print and distribute books, maps, charts, and pamphlets if in its judgment it deems them necessary for its work.

8. In those counties in which a county executive officer exercises

supervisory and managerial responsibility for agencies in the executive branch of county government, pursuant to charter or local law, the council shall submit the reports described in subdivisions 2 and 3 to both the county governing body and said executive officer.

9. When authorized by resolution of the county governing body, a council may accept by gift, grant, bequest, or otherwise, money or other personal property in the name of the county, for use in furtherance of the provisions of this article. A county governing body may accept by gift, conditional or unconditional grant, devise or otherwise, real property in fee, or any lesser interest including conveyance with limitations or reversions, for the purposes of this article.

In addition, upon the written recommendation of the council, the county governing body may acquire by purchase in fee or any lesser interest, through negotiation or by condemnation, such real or personal property as may be needed to fulfill the purpose of this article.

§ 47-0109. Appropriation of council.

The county may provide for compensation to be paid to the members of the council and may make such appropriations as it may see fit for expenses incurred by the council including appointment of such clerks and other employees as may be necessary for the conduct of the council's official business.

§ 47-0111. Assistance of department of environmental conservation.

To assist a council in carrying out its functions, powers and duties the department of environmental conservation may upon request:

1. Prepare reports outlining objectives, priorities and proposed relationships of the council to the local governing body;
2. Prepare descriptions of work to be undertaken, advantageous

techniques to be used and suggested roles of council members;

3. Provide research on conservation facts and procedures;

4. Provide, on a consulting basis, technical and research assistance as may be required to assist the council in carrying out its work and to enable the council to offer recommendations to the local governing body; and

5. Describe particular areas of natural resources within the territorial limits of the council which require particular attention.

§ 47-0113. Regional environmental management councils.

1. If in the opinion of the governing bodies of two or more counties, the protection and management of the environment of the area could be effectively or efficiently provided by a regional council these counties may enter into agreement to establish a regional environmental management council for the several counties agreeing to the consolidation.

2. The membership of the regional councils shall be made up of members of county environmental councils or individuals eligible to be members of county environmental councils. Members shall be appointed by the several county governing bodies to assure fair representation, but in no case shall there be more than twenty official members of the regional council other than ex officio members.

3. The regional council shall supercede and replace the individual county councils and shall exercise all those powers otherwise accruing to the county councils.

4. The county governing bodies of the several counties agreeing to the formation of such a council may appropriate such funds as they see fit for the work of the regional council including the compensation of members, the retention of staff and other assistance, the preparation

and printing of reports, maps, books, charts, and pamphlets and the cost of other items related to their work.

§ 47-0115. Reimbursement.

Up to one-half of the expenditures during the state fiscal year of any county or regional environmental management council established pursuant to this article shall be reimbursed to the counties out of funds appropriated by the state to the Department of Environmental Conservation for this purpose. Provided, however, that any county environmental agency established pursuant to a provision of law other than this article shall be entitled to such reimbursement if the commissioner of the department of environmental conservation finds that the powers, duties, and reporting lines for the major reports of such council are substantially the same as those provided in section 47-0107 of this article, and that the membership structure thereof either complies with the provisions of subdivision one of section 47-0105 of this article or that such membership structure is designed to encourage local participation and coordination in the planning of activities to influence the ecological balance of the locality. Necessary and appropriate rules and regulations for administration of the local assistance purposes of this act may be promulgated by the commissioner.

§ 47-0117. Annual report.

The commissioner shall submit an annual report to the governor and the legislature describing the operation of the local assistance program established by this article. The annual report shall include a description of activities conducted by each county and regional environmental management council and the activities conducted by the department in performing said activities pursuant to section 47-0115 of this article.

ENVIRONMENTAL JUSTICE

Section 48-0101. Declaration of policy.

48-0103. Definitions.

48-0105. Permanent environmental justice advisory group.

48-0107. Powers and duties.

48-0109. Agency responsibilities.

48-0111. Environmental justice interagency coordinating council.

48-0113. Separability.

§ 48-0101. Declaration of policy.

1. It is hereby declared to be the policy of this state that all people, regardless of race, color, religion, national origin or income, have a right to fair treatment and meaningful involvement in the development, implementation and enforcement of laws, regulations and policies that affect the quality of the environment.

2. It shall further be the policy of the state that no group of people, including a racial, ethnic or socioeconomic group, should be disproportionately exposed to pollution or bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal or commercial operations, or the execution of federal, state or local programs and policies.

3. It shall further be the policy of the state that no group of people, including a racial, ethnic or socioeconomic group, should suffer from inequitable allocation of public resources or financial assistance for environmental protection and stewardship, including environmental remediation, pollution prevention, open space acquisition and/or other protection and stewardship activities.

4. It shall further be the policy of the state that opportunities for citizen involvement in the development of laws, regulations and policies that affect the quality of the environment be as reflective of the diversity of interests and perspective found within the affected community as possible, including those of racial, ethnic and

socioeconomic groups; that such opportunities be provided as early as possible in the decision making process; that such opportunities provide full, timely and accessible disclosure of public records and sharing of information by the government agency or agencies involved, including the provision of technical data and the assumptions upon which any analyses are based; and that such opportunities allow all people, regardless of race, color, religion, national origin or income, the opportunity to have their views heard and considered, including opportunities for two-way dialogue.

§ 48-0103. Definitions.

As used in this article:

1. "Advisory group" means the permanent environmental justice advisory group established by section 48-0105 of this article.

2. "Agency" means any state department, agency, board, bureau, commission, division, office, council, or any public authority or public benefit corporation.

3. "Environmental justice" means the fair treatment and meaningful involvement of all people regardless of race, color, religion, national origin or income with respect to the development, implementation and enforcement of laws, regulations and policies affecting the quality of the environment.

4. "Fair treatment" means that no group of people, including a racial, ethnic or socioeconomic group, should be disproportionately exposed to pollution or bear a disproportionate share of the negative environmental consequences resulting from execution of federal, state and local programs and policies, and further means that no such group of people should suffer from inequitable allocation of public resources or financial assistance for environmental protection and stewardship, including environmental remediation, pollution prevention, open space acquisition and other protection and stewardship activities.

5. "Meaningful involvement" means the provision of opportunities for citizen participation in decision making that are as reflective of the diversity of interests and perspective found within the affected community as possible, including those of racial, ethnic and socioeconomic groups; that are provided as early as possible in the decision making process; that provide full, timely and accessible disclosure of public records and sharing of information by the government agency or agencies involved, including the provision of technical data and the assumptions upon which any analyses are based; and that allow all people, regardless of race, color, religion, national origin or income, the opportunity to have their views heard and considered, including opportunities for two-way dialogue.

§ 48-0105. Permanent environmental justice advisory group.

1. The permanent environmental justice advisory group is hereby established in the department to consist of sixteen members, as follows:

(a) Five members shall be representatives of community-based organizations that advise or assist minority and low-income communities on environmental matters; and

(b) Four members shall be representatives of businesses that hold state-issued permits or otherwise operate subject to this chapter.

(c) One of the members appointed pursuant to each of paragraphs (a) and (b) of this subdivision shall be appointed by the temporary president of the senate, and one of the members appointed pursuant to each of paragraphs (a) and (b) of this subdivision shall be appointed by the speaker of the assembly. One member shall be appointed by the minority leader of the senate and one member shall be appointed by the minority leader of the assembly. The remaining members shall be representatives of state or national organizations promoting environmental conservation, researchers, educators and members of the general public. The other members appointed pursuant to this subdivision shall be appointed by the governor. The replacement of any member shall be in accordance with the provisions contained in this section for appointment of members.

2. (a) Each member of the advisory group shall serve for a term of four years or until his or her successor is appointed. A member appointed to fill a vacancy shall serve the remainder of the term of the member he or she is appointed to succeed. The members of the advisory group shall receive no compensation for their services but shall be reimbursed for their expenses actually and necessarily incurred in the performance of their duties hereunder.

(b) The advisory group shall select a chair from among the members. The advisory group shall meet as frequently as necessary, but not less than three times per year. Such meetings shall be held at such locations as the advisory group may determine. All such meetings shall be subject to the open meetings law. At least one meeting annually shall be held jointly with the environmental justice interagency coordinating council established pursuant to section 48-0111 of this article.

§ 48-0107. Powers and duties.

The advisory group shall have the power and duty to:

1. adopt a model environmental justice policy applicable generally to state agencies that engage in activities or operations that may have a significant effect on the environment, including but not limited to through the adoption of rules and regulations, issuance of permits, acquisition or maintenance of property, or approval, funding or undertaking of projects. Such policy shall be adopted not later than one year after the effective date of this article. The advisory group shall develop the model policy in consultation with representatives of minority and low-income communities, regulated parties, the environmental justice interagency coordinating council and other state agencies and the public and shall hold a public hearing thereon in each judicial department. Notice of such hearings and notice of the adoption of the model policy shall be published in the state register;

2. make recommendations to the governor, legislature and state agencies on measures to improve such policies;

3. provide comments on any proposed rule, regulation or policy of a state or federal agency related to environmental justice;
4. conduct public hearings with respect to any matter within the scope of its functions, powers and duties; and
5. adopt, amend and repeal by-laws governing its organization and operation.

§ 48-0109. Agency responsibilities.

1. Each state agency that engages in activities or operations that have a significant effect on the environment, including but not limited to through the adoption of rules and regulations, issuance of permits, acquisition or maintenance of property, or approval, funding or undertaking of projects, shall be guided in its decision making on such activities or operations by an environmental justice policy. Each such agency shall adopt rules and regulations setting forth its environmental justice policy not later than two years after the adoption of a model environmental justice policy pursuant to section 48-0107 of this article.

2. Each state agency subject to the requirements of subdivision one of this section shall:

(a) appoint a staff member of the agency to serve as environmental justice coordinator, to provide information to the public on the policies, activities and operations of the agency related to environmental justice and to act as liaison to the environmental justice advisory group;

(b) notify the advisory group of the appointment of an environmental justice coordinator; and

(c) develop an environmental justice training plan which includes the provision of workshops and written materials to appropriate staff regarding environmental justice and implementation of the agency's environmental justice policy.

§ 48-0111. Environmental justice interagency coordinating council.

1. There is hereby established an environmental justice interagency coordinating council which shall have the power and duty to:

(a) coordinate the activities of agencies required to adopt an environmental justice policy pursuant to section 48-0109 of this article in development and implementation of such policies; and

(b) serve as a clearinghouse for state agencies and the public for information on environmental justice policies, environmental justice coordinators in state agencies and related activities of state agencies, and maintain information services, including but not limited to an Internet site and a toll-free telephone number, to inform the public on environmental justice.

2. The environmental justice coordinating council shall include the commissioner; the commissioner of the department of economic development; the commissioner of the department of transportation; the president of the environmental facilities corporation; the president of the New York State energy research and development authority; the chairman of the public service commission; the chairman of the power authority of the State of New York; or their designees; and every staff member chosen by an agency to serve as environmental justice coordinator pursuant to section 48-0109 of this article. The council shall consult with the permanent environmental justice advisory group; representatives of minority and low-income communities, including community-based organizations that advise or assist minority and low-income communities on environmental matters; representatives of businesses that hold state-issued permits or otherwise operate subject to this chapter; representatives of local governments; representatives of local, state, or national organizations promoting environmental conservation; researchers and educators; and any other parties the council deems appropriate.

3. The coordinating council shall meet at least bi-annually and shall designate one of its members to serve as chairperson and one of its

members to serve as secretary for the development and dissemination of minutes and reports. All such meetings shall be subject to the open meetings law. At least one meeting annually shall be held jointly with the permanent environmental justice advisory group established pursuant to section 48-0105 of this article. Each member shall be entitled to designate in writing a representative to attend meetings in his or her place and to vote or otherwise act on his or her behalf in his or her absence.

§ 48-0113. Separability.

If any clause, sentence, paragraph, section or part of this article shall be adjudged by any court of competent jurisdiction to be invalid, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which the judgment shall have been rendered.

ARTICLE 49

PROTECTION OF NATURAL AND MAN-MADE BEAUTY

Title 1. Natural and man made beauty

2. State Land Acquisition
3. Conservation easements
5. State geological trail

TITLE 1

NATURAL AND MAN MADE BEAUTY

Section 49-0101. Legislative findings.

49-0103. General functions, powers and duties of the department.

49-0105. Functions, powers and duties of other departments and agencies.

49-0107. Assistance of other agencies.

49-0109. Reports.

49-0111. Grants or gifts.

49-0113. Thirty by thirty conservation goal.

§ 49-0101. Legislative findings.

The legislature hereby finds and declares that:

The state enjoys an abundance of natural and man-made beauty which greatly enriches the lives of the people of this state. The preservation, enhancement and promotion of this beauty will contribute significantly to the enjoyment of the people who live and work in the state, as well as the millions of visitors who come to the state each year. Further efforts by state government are needed to coordinate and promote programs contributing to the natural and man-made beauty, and to provide advice and assistance to local governments.

§ 49-0103. General functions, powers and duties of the department.

The department shall have the power and it shall be its duty to:

1. Develop, after consultation with local governments and interested persons, groups and institutions, policies and programs to preserve and enhance the natural and man-made beauty of the state, and encourage, facilitate and assist in the coordination of the activities of the various state agencies in furtherance of such policies and programs.

2. Advise, encourage and assist local governments in the development and coordination of policies, programs and activities, and in the full utilization of powers vested in local governments by the Constitution and laws of the state, to preserve and enhance the natural and man-made beauty of the state.

3. Conduct and coordinate studies, surveys and inventories of the vast natural and man-made resources contributing to the beauty of the state by virtue of their scenic, aesthetic, or cultural values.

4. Designate scenic sites, areas, and highways in the state and develop programs for their preservation and enhancement, including but not limited to programs to discourage littering, defacement, and blighting of such scenic sites, areas and highways.

5. Promote the application of aesthetic considerations in the location, design, construction and maintenance of state lands, projects and buildings.

6. Serve as a clearing house for information relating to the preservation and enhancement of natural and man-made beauty.

§ 49-0105. Functions, powers and duties of other departments and agencies.

Nothing contained in this article shall be deemed to derogate or detract in any way from the functions, powers and duties prescribed by law of any other department or agency of the state nor to interrupt or preclude the direct relationships of any such department or agency with public corporations and districts for the carrying out of such functions, powers and duties.

§ 49-0107. Assistance of other agencies.

To effectuate the purposes of this article, the department may request and receive from any other department, division, board, bureau, commission or other agency of the state or any political subdivision thereof or any public authority such assistance, information and data as will enable the department properly to carry out its powers and duties hereunder.

§ 49-0109. Reports.

The department shall from time to time report to the Governor, and

shall make an annual report to the governor and the legislature, not later than May first, concerning the work of the department pursuant to this article, in the preceding calendar year.

§ 49-0111. Grants or gifts.

The department, with the approval of the Governor, may accept as agent of the state any gift, devise or bequest, whether conditional or unconditional (notwithstanding the provisions of section 11 of the State Finance Law), and including federal grants, for any of the purposes of this article. Any moneys so received may be expended by the department to effectuate any purpose of this article, subject to the same limitations as to approval of expenditures and audit as are prescribed for state moneys appropriated for the purposes of this article.

*** § 49-0113. Thirty by thirty conservation goal.**

1. It shall be the goal of the state to support and contribute to national efforts to conserve at least thirty percent of United States lands and inland waters and at least thirty percent of United States ocean areas by the year two thousand thirty.

2. The department in consultation with the commissioner of the office of parks, recreation and historic preservation, shall develop strategies and a methodology to achieve the goal, including but not limited to:

- (a) coordination with the state land acquisition plan;
- (b) prioritizing protections for water sources and sole source aquifers, including wetlands protections;
- (c) protections and restoration projects for preserving and increasing biodiversity, including habitat restoration, with a focus on habitats of endangered and threatened species including resilient and connected lands and corridors providing means for wildlife migration and habitation;
- (d) expanding access to nature and nature's benefits and equitable outdoor access in communities in every region;

(e) consideration of a broad range of landscapes including urban, suburban and rural natural areas, wetlands, forests, and watersheds;

(f) consideration of the state's economic sustainability, including preservation of food security and consultation with the department of agriculture and markets on issues related to farmland preservation of working lands;

(g) increasing climate resilience, including reducing risk from extreme weather events including cooling urban landscapes and natural solutions to prevent erosion and flooding;

(h) collaboration with federal and state research institutions to utilize innovative scientific observation technology to better understand the state's conservation needs and biodiversity and threats thereto;

(i) implementing actions in a manner that includes consideration of the urgency of meeting the goal while still preserving public input and involvement;

(j) collaboration with tribal partners to incorporate tribal expertise and traditional ecological knowledge to better understand the state's conservation needs and biodiversity and threats thereto; and

(k) participating in regional, national, and international efforts to advance biodiversity protection, including preventing extinctions.

3. Conservation measures shall be undertaken in ways that serve all communities, including low-income, disadvantaged and vulnerable communities, including by ensuring meaningful opportunities for public input and involvement.

4. The department shall post the draft strategies and methodology developed to meet the goal no later than July first, two thousand twenty-four and hold at least one public hearing thereon. The department shall post the final goal strategies and methodology on its website.

5. The department shall maintain and, at least annually, update its website to provide information with regard to the implementation and status of the goal.

* NB Repealed January 1, 2031

TITLE 2
STATE LAND ACQUISITION

Section 49-0201. Definitions.

49-0203. State land acquisition policy.

49-0205. Comprehensive inventory of lands having statewide or regional significance.

49-0207. State land acquisition plan.

49-0209. Regional advisory committees.

49-0211. State land acquisition advisory council.

49-0213. Annual report.

49-0215. Annual budget request.

§ 49-0201. Definitions.

As used in this title, the following terms shall include and mean:

1. "Office" shall mean the state office of parks, recreation and historic preservation.

2. "Commissioners" shall mean the state commissioner of environmental conservation and the state commissioner of parks, recreation and historic preservation.

§ 49-0203. State land acquisition policy.

1. The purpose of the land acquisition program of the department and the office is to provide for the conservation, protection, and preservation of open space, natural, historic and cultural resources and the enhancement of recreational opportunities.

2. The department and the office shall first consider in each acquisition whether acquisition of conservation easement or other less than full fee title interests would fulfill the purposes for which the particular acquisition is sought. If it is determined that a

conservation easement or other interest would fulfill such purposes, the department or the office will use its best efforts to acquire such easement or interest, where practicable.

3. The department and the office shall consider future physical climate risk due to sea level rise, and/or storm surges and/or flooding, based on available data predicting the likelihood of future extreme weather events, including hazard risk analysis data if applicable.

4. It is the policy of the state, acting through the department and the office, to pursue acquisitions through voluntary agreement to the maximum extent practicable to achieve the purposes of this article. Accordingly, the process of eminent domain shall only be used when reasonable efforts to obtain a voluntary agreement have been exhausted. Notwithstanding any provision of law to the contrary, the department and the office shall tender to the owner of any lands proposed for acquisition by eminent domain an offer to purchase such lands for the value thereof as determined by the department or the office in accordance with section three hundred three of the eminent domain procedure law. Such offer must have been made for at least ninety days before the department or office makes a finding pursuant to article two of the eminent domain procedure law to acquire the land by eminent domain; however, such ninety day period shall not be required in those cases in which the respective commissioner has made a written determination that there is a significant risk of immediate and irreversible environmental degradation. In the event that the department or office undertakes the process of eminent domain and prior to the public hearing required by section two hundred one of the eminent domain procedure law, the respective commissioner shall give notice of such undertaking to the state land acquisition advisory council, created pursuant to section 49-0211 of this title. The foregoing provisions of this paragraph shall not apply to lands acquired pursuant to article sixteen or title thirteen of article twenty-seven of this chapter or lands with respect to which the owner has consented to the use of eminent domain or where the use of eminent domain is required to quiet title.

The commissioners shall also provide the state land acquisition advisory council with the determinations and findings required by section two hundred four of the eminent domain procedure law.

§ 49-0205. Comprehensive inventory of lands having statewide or regional significance.

1. In order to help provide a basis for a strategy for the preservation of land resources in the state and the preparation of the state land acquisition plan, the department and the office shall prepare a comprehensive inventory of protected and unprotected resources having statewide or regional environmental, historic, cultural or recreational significance. Such inventory shall include the following:

a. open space, forest land and park land owned by federal, state and local governmental entities including lands containing old-growth forest dedicated to the state nature and historical preserve pursuant to article forty-five of this chapter;

b. forest land in private ownership under the terms of section four hundred eighty-a of the real property tax law;

c. wetlands protected by articles twenty-four and twenty-five of this chapter;

d. agricultural areas, including agricultural districts created pursuant to article twenty-five-AA of the agriculture and markets law as recommended by the commissioner of agriculture and markets;

e. water resources, including wild, scenic and recreational rivers, streams and aquifer recharge areas protected by article fifteen of this chapter;

f. marine and other coastal resources, including coastal erosion hazard areas protected by article thirty-four of this chapter;

g. open space lands, forest lands and park lands dedicated by other than governmental entities to ecological, wildlife management, forest management or recreational purposes; and

h. lands which possess statewide or regional significance for historic, cultural, ecological, open space, outdoor recreation, resource protection or wildlife management purposes, including the purpose of restoring extirpated species, and preserving old-growth forests.

2. Such inventory, in such segments and such form as may be readily available at any given time, shall be available to the regional land acquisition advisory committees and other members of the public.

*** § 49-0207. State land acquisition plan.**

1. The department and the office shall prepare a state land acquisition plan to guide selection of projects for state acquisition taking into account regional advisory committee priorities and the department's and office's assessment of need for land acquisition projects. Such plan shall also take into account the goal of the state to facilitate the conservation of at least thirty percent of land in New York state by the year two thousand thirty pursuant to section 49-0113 of this article. Such plan shall include an identification of:

a. lands, by region and category, for which acquisition is of a high priority in order to carry out the purposes of this title;

b. lands, by region, having statewide or regional environmental, historic, cultural or recreational significance that are threatened with diminishment of resource value;

c. the department's and office's priorities of categories of land, by region, for future acquisition; and

d. lands, by region, having statewide or regional environmental, historic, cultural or recreational significance which should be

considered for state acquisition, but which do not qualify for acquisition under present law.

2. Such plan shall include consideration of the inventory prepared pursuant to section 49-0205 of this title and shall identify those areas within the state which are not adequately protected in such categories.

3. In preparing such plan, the department and office shall:

a. conduct one or more public hearings in each of the department's administrative regions.

b. consult with:

(i) the regional advisory committees;

(ii) officials of departments and agencies of the state having duties and responsibilities concerning the protection of open space and natural, environmental, historic, cultural or recreational resources;

(iii) officials and representatives of local governments in the state; and

(iv) persons, organizations and groups interested in the protection of open space and natural, environmental, historic, cultural or recreational resources of the state.

c. request and receive from any department, division, board, bureau, commission or any other agency of the state or any political subdivision thereof or any public authority such assistance and data as may be necessary to enable the department and office to carry out its responsibilities under this section.

4. The department and office shall prepare a draft plan and shall propose, no later than January thirty-first, nineteen hundred ninety-one, a schedule of public hearings thereon.

5. On or before January thirty-first, nineteen hundred ninety-two and every three years thereafter, the department and office shall submit the plan to the governor, the majority leader of the senate and the speaker of the assembly. Upon approval by the governor such plan shall become a

guide for the implementation of the acquisition programs of the department and office.

* NB Effective until January 1, 2031

* § 49-0207. State land acquisition plan.

1. The department and the office shall prepare a state land acquisition plan to guide selection of projects for state acquisition taking into account regional advisory committee priorities and the department's and office's assessment of need for land acquisition projects. Such plan shall include an identification of:

a. lands, by region and category, for which acquisition is of a high priority in order to carry out the purposes of this title;

b. lands, by region, having statewide or regional environmental, historic, cultural or recreational significance that are threatened with diminishment of resource value;

c. the department's and office's priorities of categories of land, by region, for future acquisition; and

d. lands, by region, having statewide or regional environmental, historic, cultural or recreational significance which should be considered for state acquisition, but which do not qualify for acquisition under present law.

2. Such plan shall include consideration of the inventory prepared pursuant to section 49-0205 of this title and shall identify those areas within the state which are not adequately protected in such categories.

3. In preparing such plan, the department and office shall:

a. conduct one or more public hearings in each of the department's administrative regions.

b. consult with:

(i) the regional advisory committees;

(ii) officials of departments and agencies of the state having duties and responsibilities concerning the protection of open space and natural, environmental, historic, cultural or recreational resources;

(iii) officials and representatives of local governments in the state; and

(iv) persons, organizations and groups interested in the protection of open space and natural, environmental, historic, cultural or recreational resources of the state.

c. request and receive from any department, division, board, bureau, commission or any other agency of the state or any political subdivision thereof or any public authority such assistance and data as may be necessary to enable the department and office to carry out its responsibilities under this section.

4. The department and office shall prepare a draft plan and shall propose, no later than January thirty-first, nineteen hundred ninety-one, a schedule of public hearings thereon.

5. On or before January thirty-first, nineteen hundred ninety-two and every three years thereafter, the department and office shall submit the plan to the governor, the majority leader of the senate and the speaker of the assembly. Upon approval by the governor such plan shall become a guide for the implementation of the acquisition programs of the department and office.

* NB Effective January 1, 2031

§ 49-0209. Regional advisory committees.

1. There are hereby established regional advisory committees in each of the department's regions to provide the department and office with advice and recommendations from the public on the implementation of the land acquisition programs of the department and office and in order to provide the public with information regarding the activities of the department and office pursuant to this title.

2. Each regional committee shall:

- a. recommend policies and priorities for protection of lands in the region potentially eligible for state acquisition;
- b. recommend to the department and office specific studies or assessments which would assist in the development of land acquisition policies and priorities for the region;
- c. establish working liaison relationships with neighboring regional advisory committees where such liaison will further overall land acquisition objectives;
- d. develop guidelines for use in identifying priorities of land acquisition and recommending specific parcels for possible acquisition. Such guidelines may include:
 - (i) the priority ranking of properties for the region;
 - (ii) the degree to which an acquisition will help to meet a regional or statewide need;
 - (iii) the future costs and benefits which may be associated with the project;
 - (iv) the economic impact on adjacent parcels, the community or region and the local governments therein; and
 - (v) the ecological value of the project taking into account the type, variety and relative scarcity of the resources therein.
- e. advise the commissioners and the state land acquisition advisory council annually with respect to plans and priorities for their respective region, and communicate at such other times as may be needed to fulfill its responsibilities.
- f. review the state land acquisition plan prepared by the department and office pursuant to section 49-0207 of this title at least biennially and make recommendations regarding such plan as it affects the region.
- g. review any community preservation project plans developed pursuant to section six-s of the general municipal law.

3. Regional advisory committee members shall be knowledgeable of, and concerned with, the land preservation, conservation, historic, cultural, recreation and acquisition goals of this chapter. No employee of the department or office shall serve on a regional committee. At any time that a member of a regional committee has or may have a direct or indirect financial interest in or resulting from the acquisition or decision not to acquire an interest in land pursuant to this title, such member shall not participate in any discussion or deliberation of the committee concerning such acquisition.

4. A regional advisory committee shall consist of at least thirteen, and not more than twenty-three members. Each county outside the city of New York or the city of New York in the case of a county contained within the city of New York shall appoint members to its region's advisory committee in a manner designed to provide equal representation for all counties within a region on such committee, provided that the total number of local government appointees to a regional advisory committee shall not exceed one-half of the committee's membership. The commissioners shall appoint to each regional advisory committee additional members equal to one more than the total number of members eligible for appointment by local government. Each member of a regional advisory committee shall be a resident of that region, provided however, the commissioners may appoint to each regional advisory committee up to two members who are not residents of that region. Each regional committee shall meet as it may deem necessary to carry out its responsibilities.

5. Regional committees may request and shall receive from the department and the office such assistance and data as may be determined reasonable for the proper execution of their responsibilities.

6. Regional committees shall be established no later than September first, nineteen hundred ninety, and shall make initial recommendations no later than December first, nineteen hundred ninety, to the commissioners and the state land acquisition advisory council and shall report at least biennially thereafter.

§ 49-0211. State land acquisition advisory council.

1. The council shall consist of seven members: the commissioner of environmental conservation and the commissioner of parks, recreation and historic preservation, and the following officials or their designees: the governor, the majority leader of the senate, the speaker of the assembly, the minority leader of the senate and the minority leader of the assembly. The governor shall appoint the chair. Persons serving as a member of the council pursuant to designation shall serve at the pleasure of the designating authority, without compensation, but shall be entitled to receive reimbursement of reasonable expenses necessarily incurred in the performance of their duties pursuant to the provisions of this title.

2. The provisions of section seventy-four of the public officers law shall be applicable to the members of the council in connection with their duties under this article. At any time that a member of the council has or may have a direct or indirect financial interest in or resulting from the proposed acquisition or decision not to acquire land or an interest in land, such member shall not participate in any discussion or deliberation of the council concerning such land or interest.

3. The advisory council shall:

a. advise and make recommendations to the commissioners regarding acquisition goals and priorities to ensure a balance of statewide and regional interests in acquisition;

b. have an opportunity to review and make recommendations regarding specific parcels proposed by the commissioners for acquisition prior to the approval by the department or the office of any parcel for acquisition; and

c. review the annual reporting of the regional advisory committees,

any community preservation project plans developed pursuant to section six-s of the general municipal law, the department and the office, and the state land acquisition plan.

4. Notwithstanding the provisions of article six of the public officers law, no records of the advisory council shall be available for public inspection. Notwithstanding the provisions of article seven of the public officers law, no meeting or proceeding of the advisory council shall be open to the public. All proceedings of the advisory council shall be confidential. Members of the advisory council may participate in a meeting by means of a conference telephone or similar communications equipment and may exchange information by mail.

5. In carrying out its responsibilities pursuant to this article, the council shall take into account the regional and state land acquisition priorities and policies.

§ 49-0213. Annual report.

No later than January thirty-first, nineteen hundred ninety-one, and on an annual basis thereafter, the commissioners shall report on the department's and the office's land acquisition activities, including:

1. lands acquired, whether in fee title or by easement, funds obligated and disbursed and acreage obtained over the past year and cumulatively since the effective date of this title;
2. a description of the state's land acquisition plans and priorities for the coming year; and
3. the recommendations of the regional advisory committees.

§ 49-0215. Annual budget request.

The commissioners' annual budget request for land acquisition

reappropriations shall include an itemization of contracts obligated from such appropriations as of the date of such submission.

TITLE 3

CONSERVATION EASEMENTS

Section 49-0301. Declaration of policy and statement of purpose.

49-0303. Definitions.

49-0305. Conservation easements; certain common law rules not applicable.

49-0307. Procedures for modifying or extinguishing conservation easement.

49-0309. Scope of this title.

49-0311. Severability.

§ 49-0301. Declaration of policy and statement of purpose.

The legislature hereby finds and declares that in order to implement the state policy of conserving, preserving and protecting its environmental assets and natural and man-made resources, the preservation of open spaces, the preservation, development and improvement of agricultural and forest lands, the preservation of areas which are significant because of their scenic or natural beauty or wetland, shoreline, geological or ecological, including old-growth forest, character, and the preservation of areas which are significant because of their historical, archaeological, architectural or cultural amenities, is fundamental to the maintenance, enhancement and improvement of recreational opportunities, tourism, community attractiveness, balanced economic growth and the quality of life in all areas of the state.

§ 49-0303. Definitions.

When used in this title:

1. "Conservation easement" means an easement, covenant, restriction or other interest in real property, created under and subject to the provisions of this title which limits or restricts development, management or use of such real property for the purpose of preserving or maintaining the scenic, open, historic, archaeological, architectural, or natural condition, character, significance or amenities of the real property in a manner consistent with the public policy and purpose set forth in section 49-0301 of this title, provided that no such easement shall be acquired or held by the state which is subject to the provisions of article fourteen of the constitution.

2. "Not-for-profit conservation organization" means a not-for-profit corporation organized inter alia for the conservation or preservation of real property and which has the power to acquire interests in real property. Such organization must have qualified as exempt for federal tax purposes pursuant to Section 501 (c)(3) of the internal revenue code or any similar successor statutory provision.

3. "Public body" means the state or a municipal corporation as that term is defined in section two of the general municipal law or the United States of America acting by and through the department of the interior. Such term shall further include the Palisades interstate park commission; the Central Pine Barrens joint planning and policy commission; and a soil and water conservation district as that term is defined in section three of the soil and water conservation districts law.

4. "Third party enforcement right" means a right which may be granted in a conservation easement which empowers a public body or a not-for-profit conservation organization which is not a holder of the easement to enforce any of the terms of the easement.

§ 49-0305. Conservation easements; certain common law rules not applicable.

1. A conservation easement may be created or conveyed only by an

instrument which complies with the requirements of section 5-703 of the general obligations law and which is subscribed by the grantee. It shall be of perpetual duration unless otherwise provided in such instrument.

2. A conservation easement shall be modified or extinguished only pursuant to the provisions of section 49-0307 of this title. Any such modification or extinguishment shall be set forth in an instrument which complies with the requirements of section 5-703 of the general obligations law or in an instrument filed in a manner prescribed for recording a conveyance of real property pursuant to section two hundred ninety-one of the real property law.

3. (a) A conservation easement shall be held only by a public body or not-for-profit conservation organization, except that the state shall not be authorized or empowered to acquire or hold any conservation easement which is subject to the provisions of article fourteen of the constitution.

(b) Any conservation easement created pursuant to this title shall not limit, restrict or modify the right to construct, operate or continue the use of any facility, or impede any activity, duly authorized under the applicable provisions of the federal natural gas act (15 U.S.C. §§ 717-717 w).

4. A conservation easement shall be duly recorded and indexed as such in the office of the recording officer for the county or counties where the land is situate in the manner prescribed by article nine of the real property law. The easement shall describe the property encumbered by the easement by adequate legal description or by reference to a recorded map showing its boundaries and bearing the seal and signature of a licensed land surveyor, or if the easement encumbers the entire property described in a deed of record, the easement may incorporate by reference the description in such deed, otherwise it shall refer to the liber and page of the deed or deeds of the record owner or owners of the real property burdened by the conservation easement. An instrument for the purpose of creating, conveying, modifying or terminating a conservation easement shall not be effective unless recorded. A person causing any such document to be so recorded shall forthwith forward a copy thereof

to the department, which shall maintain a file of conservation easements.

5. A conservation easement may be enforced in law or equity by its grantor, its holder or by a public body or any not-for-profit conservation organization designated in the easement as having a third party enforcement right, and is enforceable against the owner of the burdened property. Enforcement shall not be defeated because of any subsequent adverse possession, laches, estoppel or waiver. No general law of the state which operates to defeat the enforcement of any interest in real property shall operate to defeat the enforcement of any conservation easement unless such general law expressly states the intent to defeat the enforcement of such easement or provides for the exercise of the power of eminent domain. It is not a defense in any action to enforce a conservation easement that:

- (a) It is not appurtenant to an interest in real property;
- (b) It can be or has been assigned to another holder;
- (c) It is not of a character that has been recognized traditionally at common law;
- (d) It imposes a negative burden;
- (e) It imposes affirmative obligations upon the owner of any interest in the burdened property, or upon the holder;
- (f) The benefit does not touch or concern real property; or
- (g) There is no privity of estate or of contract.

6. The holder of a conservation easement, its agents, employees, or other representatives may enter and inspect the property burdened by a conservation easement in a reasonable manner and at reasonable times to assure compliance with the restriction.

7. The department shall promulgate regulations establishing standards for conservation easements which shall specify but not be limited to:

- (a) the minimum term for a conservation easement as is necessary and appropriate to achieve the policy and purpose of this title, except that such standards shall not preclude taxpayers who own or convey conservation easements from qualifying for benefits under federal or state tax laws when such benefits would otherwise be available by virtue

of such ownership or conveyance; and

(b) standards and procedures which require each conservation easement held by a public body to include terms under which the easement shall be modified where the commissioner has found after a non-adjudicatory public hearing at which the public shall be given opportunity to be heard, that such easement is inconsistent with any other interest in land required for the local gathering, transmission or distribution of gas, electricity, water, telephone or cable television services and that no reasonable alternative exists for the local gathering, transmission or distribution of such service. Notice of any such hearing shall be given to the public pursuant to thirty days published notice in the state register, the environmental notice bulletin and in a newspaper having general circulation in the county where the real property burdened by the easement is situated and individual notice shall be given in writing to any person who may be entitled to enforce such easement pursuant to the provisions of subdivision five of this section at such address as such person shall file with the commissioner.

8. Where a conservation easement is modified pursuant to subdivision seven of this section, or pursuant to any regulations promulgated thereunder, such easement shall be modified only to the minimum extent necessary to accommodate the local gathering, transmission or distribution of gas, electricity, water, telephone or cable television service.

9. Written notice shall be provided to the director of the budget and notice published in the state register and the environmental notice bulletin at least thirty days prior to the acquisition, or entry into a contract for the acquisition, on behalf of the state of any conservation easement.

§ 49-0307. Procedures for modifying or extinguishing conservation easement.

1. A conservation easement held by a not-for-profit conservation organization may only be modified or extinguished:

- (a) as provided in the instrument creating the easement; or
- (b) in a proceeding pursuant to section nineteen hundred fifty-one of the real property actions and proceedings law; or
- (c) upon the exercise of the power of eminent domain.

2. A conservation easement held by a public body outside the Adirondack park or Catskill park, as defined in section 9-0101 of this chapter, may only be modified or extinguished:

- (a) as provided in the instrument creating the easement; or
- (b) in a proceeding pursuant to section nineteen hundred fifty-one of the real property actions and proceedings law; or
- (c) upon the exercise of the power of eminent domain; or

* (d) where land subject to a conservation easement or an interest in such land is required for a major utility transmission facility which has received a certificate of environmental compatibility and public need pursuant to article seven of the public service law or a major electric transmission facility which has received a siting permit pursuant to article VIII of the public service law, upon the filing of such certificate or permit in a manner prescribed for recording a conveyance of real property pursuant to section two hundred ninety-one of the real property law or any other applicable provision of law.

* NB Effective until December 31, 2040

* (d) where land subject to a conservation easement or an interest in such land is required for a major utility transmission facility which has received a certificate of environmental compatibility and public need pursuant to article seven of the public service law or is required for a major steam electric generating facility which has received a certificate of environmental compatibility and public need pursuant to article eight of the public service law, upon the filing of such certificate in a manner prescribed for recording a conveyance of real property pursuant to section two hundred ninety-one of the real property law or any other applicable provision of law.

* NB Effective December 31, 2040

3. A conservation easement held by a public body inside the Adirondack park or the Catskill park, as defined in section 9-0101 of this chapter, may be modified or extinguished:

(a) as provided in the instrument creating the easement; or
(b) upon the exercise of the power of eminent domain; or
(c) unless such easement is held by the state, in a proceeding pursuant to section nineteen hundred fifty-one of the real property actions and proceedings law; or

(d) where such easement is held by the state, upon a determination by the commissioner, after a non-adjudicatory public hearing, at which the public shall be given opportunity to be heard, that the easement can no longer substantially accomplish its original purposes or any of the purposes set forth in section 49-0301 of this title. Notice of any such hearing shall be given to the public pursuant to thirty days published notice in the state register, the environmental notice bulletin and in a newspaper having general circulation in the county where the real property burdened by the easement is situated and individual notice shall be given in writing to any person who may be entitled to enforce such easement pursuant to subdivision five of section 49-0305 of this title at such address as such person shall file with the commissioner; or

* (e) where land subject to a conservation easement or an interest in such land is required for a major utility transmission facility which has received a certificate of environmental compatibility and public need pursuant to article seven of the public service law, a major electric transmission facility which has received a siting permit pursuant to article VIII of the public service law, or a major electric generating facility or repowering project which has received a certificate of environmental compatibility and public need pursuant to article ten of the public service law, upon the filing of such certificate or permit in a manner prescribed for recording a conveyance of real property pursuant to section two hundred ninety-one of the real property law or any other applicable provision of law, provided that such certificate or permit contains a finding that the public interest in the conservation and protection of the natural resources, open spaces and scenic beauty of the Adirondack or Catskill parks has been considered.

* NB Effective until December 31, 2040

* (e) where land subject to a conservation easement or an interest in such land is required for a major utility transmission facility which

has received a certificate of environmental compatibility and public need pursuant to article seven of the public service law or is required for a major steam electric generating facility which has received a certificate of environmental compatibility and public need pursuant to the former article eight of the public service law, or a major electric generating facility or repowering project which has received a certificate of environmental compatibility and public need pursuant to article ten of the public service law, upon the filing of such certificate in a manner prescribed for recording a conveyance of real property pursuant to section two hundred ninety-one of the real property law or any other applicable provision of law, provided that such certificate contains a finding that the public interest in the conservation and protection of the natural resources, open spaces and scenic beauty of the Adirondack or Catskill parks has been considered.

* NB Effective December 31, 2040

4. Where a conservation easement is modified or extinguished pursuant to paragraph (d) of subdivision two or paragraph (e) of subdivision three of this section, such easement shall be modified or extinguished only to the minimum extent necessary to accommodate the facility which is the subject of the certificate of environmental compatibility and public need.

5. Nothing in this section shall be construed to preclude the extinguishment or modification of a conservation easement pursuant to the applicable provisions of the federal natural gas act (15 U.S.C. §§ 717-717 w).

§ 49-0309. Scope of this title.

This title shall not affect any interests or rights in real property which are not conservation easements, and shall not affect the rights of owners to convey any interests in real property which they could now create under existing law without reference to the terms of this title. Nothing in this title shall diminish the powers granted by any other law to acquire interests or rights in real property by purchase, gift,

eminent domain or otherwise and to use the same for public purposes. Nothing in this title shall be construed to alter the authority otherwise available to any public body to acquire conservation easements for the purposes of section 49-0301 of this title by eminent domain.

§ 49-0311. Severability.

The provisions of this title shall be severable, and if any clause, sentence, paragraph, subdivision or part of this title shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision or part thereof directly involved in the controversy in which such judgment shall have been rendered; provided that if a conservation easement created pursuant to this title is determined by any court of competent jurisdiction to be land or water or an interest in land or water subject to the provisions of article fourteen of the constitution then the authority of the state to hold or acquire such easement and the conveyance to the state of such easement shall be void ab initio.

TITLE 5

STATE GEOLOGICAL TRAIL

Section 49-0501. Designation of geoparks and other sites.

49-0503. Establishment of state geological trail.

49-0505. State geological planning and advisory council.

§ 49-0501. Designation of geoparks and other sites.

1. For the purposes of this title, a "geopark" is an area or territory of the state encompassing one or more sites of scientific importance, for not only geological reasons but also by virtue of their archaeological, ecological and cultural value.

2. The commissioner shall study and may designate areas, territories and sites within the state which constitute geoparks and other sites which have geological significance. Such geoparks and sites may include, but not be limited to:

a. Cayuga heights, along state route thirty-four in the county of Tompkins;

b. Cascadilla creek, along University avenue in the city of Ithaca, county of Tompkins;

c. Ithaca Falls park Fall creek, along Lincoln street in the city of Ithaca, county of Tompkins;

d. Taughannock Falls state park, in the county of Tompkins;

e. Niagara river gorge and Power Plant Haul road, in the county of Niagara;

f. Whirlpool state park, in the county of Niagara;

g. the mouth of Eighteen Mile creek at Lake Erie, in the county of Erie;

h. Buffalo creek at Bullisi road, in the county of Erie;

i. Fall brook along state route sixty-three, in the town of Geneseo, county of Livingston;

j. LeRoy quarry, in the town of LeRoy, county of Genesee;

k. the Potsdam sandstone at Ausable chasm, in the county of Clinton;

l. Ausable falls, in the county of Clinton;

m. Whiteface mountain, in the county of Essex;

- n. the Chattermarks on Bear mountain, in the county of Rockland;
- o. the erratic and groves in Central park, in the county of New York;
- p. the glacial channel in Central park, in the county of New York;
- q. the burrows in sandstone in Watkins Glen, in the county of Schuyler;
- r. the upper devonian shale, siltstone and sandstone in Watkins Glen gorge, in the county of Schuyler;
- s. Watkins Glen state park, in the county of Schuyler;
- t. Letchworth state park, in the county of Wyoming;
- u. Penn Dixie fossil park and nature preserve, in the county of Erie;
- v. Lafarge quarry, in the county of Ulster;
- w. Seneca stone quarry, in the county of Seneca;
- x. Taughannock park road in Taughannock Falls state park, in the county of Tompkins;
- y. State route four and twenty-two, in the town of Whitehall, county of Washington;
- z. Rondaxe road on Bald mountain, in the town of Webb, county of Herkimer;
- aa. Cannan road, in the towns of East Martinsburg and Knox, county of Lewis;
- bb. Barnet garnet mine, in the county of Warren;
- cc. John Boyd Thacher state park, in the county of Albany;

- dd. the Petrified Sea Gardens, in the county of Saratoga;
- ee. Lester park, in the county of Saratoga;
- ff. Saratoga Springs state park, in the county of Saratoga;
- gg. Skytop Lane quarry, in the county of Delaware;
- hh. Sidney Mountain quarry, in the county of Delaware;
- ii. Sidney Mountain Bluestone quarry, in the county of Delaware;
- jj. Sidney Center outcrops, in the county of Delaware;
- kk. Sheetz quarry, in the county of Delaware;
- ll. Pine Hill road, in the county of Delaware;
- mm. Chimney Bluffs state park, in the county of Wayne;
- nn. Wiscory Falls, in the county of Allegany;
- oo. White creek, in the county of Allegany;
- pp. Sixtown creek, in the county of Allegany;
- qq. Rushford Dam park, in the county of Allegany;
- rr. Caneadea Gorge overlook, in the county of Allegany;
- ss. Buttermilk Falls state park, in the county of Cayuga;
- tt. Chittenango Falls state park, in the county of Madison;
- uu. Cohoes Falls, in the county of Saratoga;

vv. Clarksville cave, in the county of Albany;

ww. Joralemon town park, in the county of Albany;

xx. Normanskill gorge, in the county of Albany;

yy. Barton garnet mine, in the county of Warren;

zz. Kimberlite dike, in the county of Onondaga;

aaa. Howes Cave quarry, in the county of Schoharie;

bbb. Howe Caverns, in the county of Schoharie;

ccc. Kaaterskill Falls, in the county of Greene;

ddd. Knox cave, in the county of Albany;

eee. Manorkill Falls, in the county of Schoharie;

fff. McFail's Cave nature preserve, in the county of Schoharie;

ggg. Montauk Point, in the county of Suffolk;

hhh. Montour Falls, in the county of Schuyler;

iii. Niagara Falls state park, in the county of Niagara;

jjj. Onesquethaw Cave, in the county of Albany;

kkk. Stark's Knob, in the county of Saratoga;

lll. Cairo Fossil Forest, in the county of Greene;

mmm. Gilboa Fossil Forest, in the county of Schoharie; and

nnn. Herkimer Diamond Mines, in the county of Herkimer.

3. For each area, territory and site designated pursuant to subdivision two of this section, the commissioner, in cooperation with the commissioners of transportation and economic development, may:

a. establish a management plan designed to foster socio-economic development that is sustainable;

b. establish methods for conserving and enhancing its geological heritage; and

c. establish best practices for conservation.

§ 49-0503. Establishment of state geological trail.

1. The commissioner, in cooperation with the commissioners of transportation and economic development, shall establish a state geological trail to include the areas, territories and sites designated by the commissioner pursuant to subdivision two of section 49-0501 of this title. The purpose of such trail shall be to identify and promote such areas, territories and sites to the public, and promote the economic, scientific, cultural and conservation aspects thereof.

2. To the greatest extent practicable, the state geological trail shall include areas and sites across the state going east and west, and north and south throughout the entire state. Consideration shall be given to having the designated portions of the state geological trail intersect at the city of Albany, in recognition of its importance in the geology of the state. In designating the state geological trail consideration shall also be given to scientific and/or scenic importance relating to geological, and related cultural, ecological and archeological features.

3. In developing and approving such trail, the commissioner shall ensure that proposed trail routes do not conflict with existing scenic byways designated pursuant to section three hundred forty-nine-dd of the

highway law or wine trails designated pursuant to section three hundred forty-three-k of the highway law, and ensure that the trail route is designed and laid out so that it is relatively simple and easy to follow for users and contains few branches or laterals that dead end.

§ 49-0505. State geological planning and advisory council.

1. For the purposes of this title, "advisory council" means the state geological planning and advisory council established pursuant to this section.

2. There shall be established within the department the state geological planning and advisory council. The advisory council shall be composed of ten members as follows:

a. the commissioner, or his or her designee who is an officer or employee of the department;

b. the commissioner of economic development, or his or her designee who is an officer or employee of the department of economic development;

c. the commissioner of parks, recreation and historic preservation, or his or her designee who is an officer or employee of the office of parks, recreation and historic preservation;

d. the commissioner of transportation, or his or her designee who is an officer or employee of the department of transportation;

e. two members appointed by the governor, of whom:

(1) one shall have been or is engaged in trail planning and/or management, and

(2) one shall teach geology or be a geology professional;

f. two members appointed by the temporary president of the senate, having expertise in the field of ecology, conservation or trail planning; and

g. two members appointed by the speaker of the assembly, having expertise in the field of ecology, conservation or trail planning.

3. The members of the advisory council appointed pursuant to paragraphs e, f and g of subdivision two of this section shall serve terms of four years. Vacancies in the membership of the advisory council shall be filled in the manner provided for original appointments.

4. The commissioner, or his or her designee, shall be the chair of the advisory council. The advisory council shall meet not less than three times each calendar year, and more frequently at the call of the chair.

5. The advisory council may establish:

a. criteria for signage on the state geological trail, including means of providing information about geological features associated with each particular portion of such trail. Provided, however, that all such signage shall comply with the New York state manual and specifications for a uniform system of traffic control devices as such manual and specifications may be amended from time to time, certified by a licensed professional engineer who specializes in traffic operations. For the purposes of this section, the term "New York state manual and specifications for a uniform system of traffic control devices" shall mean the national manual of uniform traffic control devices promulgated by the federal highway administration pursuant to subpart (f) of part 655 of title 23 of the code of federal regulations and the New York state supplement adopted by the commissioner of transportation pursuant to section sixteen hundred eighty of the vehicle and traffic law; and

b. state geological trail publications, guidelines for interpretive programs and themes relating to portions of the state geological trail, and an internet website providing directional information on educational institutions that have programs relating to the geological and conservation aspects of the portions of the state geological trail.

ARTICLE 51

IMPLEMENTATION OF ENVIRONMENTAL QUALITY BOND ACT OF 1972

- Title
1. General provisions
 3. Water quality improvement projects
 5. Air quality improvement projects
 7. Land preservation and improvement projects
 9. Solid waste recovery and management
 11. Park lands preservation projects

TITLE 1

GENERAL PROVISIONS

- Section 51-0101. Definitions.
- 51-0103. Allocation of moneys.
- 51-0105. State assistance application procedure.
- 51-0107. Powers and duties of the commissioner.
- 51-0109. Powers and duties of a municipality.

§ 51-0101. Definitions.

As used in this article the following terms shall mean and include:

1. "Commissioner" shall mean the commissioner of environmental conservation except that within and for the purposes of title eleven of this article, the commissioner of parks and recreation.

2. "Department" shall mean the department of environmental conservation.

3. "Federal assistance" except for federal public works act funds granted for New York city's Betts avenue incinerator and Hamilton avenue transfer station and as otherwise defined in this article, shall mean funds available, other than by loan, from the federal government to a municipality, either directly or through allocation by the state for construction or program purposes pursuant to any federal law or program.

4. "Governing body" shall mean

a. in the case of a town, a town board;

b. in the case of a county outside of the city of New York, the county board of supervisors or other elective governing body;

c. in the case of a city or village, the local legislative body thereof, as the term is defined in the municipal home rule law;

d. in the case of a public benefit corporation, the board of directors, members or trustees thereof;

e. in the case of a school district, the board of education thereof;

f. in the case of a supervisory district, the board of cooperative educational services thereof.

5. "Lands" shall mean lands, improvements and structures thereon or rights, franchises, and interests therein, lands under water and riparian rights, and shall also mean any and all interests in lands less than full title, including without limitations, easements, permanent or temporary, rights of way, uses, leases, licenses, and any other estate, interests or right in lands, legal or equitable.

6. "Municipality," except as otherwise defined within this article, shall mean a city, county, town, village, public benefit corporation or school district or an improvement district within a city, county, town or village, or any combination thereof.

7. "Office" shall mean the office of parks and recreation.

§ 51-0103. Allocation of moneys.

The moneys received by the state from the sale of bonds pursuant to the environmental quality bond act of nineteen hundred seventy-two shall

be expended pursuant to appropriations, in the following amounts and (a) for deposit in the water pollution control revolving fund established by section twelve hundred eighty-five-j of the public authorities law, or (b) as specifically provided for in titles 3, 5, 7, 9 and 11 of this article:

1. For preserving, enhancing, restoring and improving the quality of water as set forth in title 3 of this article or in section twelve hundred eighty-five-j of the public authorities law and section 17-1909 of this chapter, six hundred fifty million dollars (\$650,000,000); and

2. For preserving, enhancing, restoring and improving the quality of air as set forth in title 5 of this article, one hundred fifty million dollars (\$150,000,000); and

3. For preserving, enhancing, restoring and improving the quality of land as set forth in titles 7, 9 and 11 of this article, three hundred fifty million dollars (\$350,000,000).

§ 51-0105. State assistance application procedure.

1. A municipality upon the recommendation of its governing body may submit an application for state assistance toward the cost of any project which is eligible for state assistance pursuant to this article to the commissioner in such form and containing such information as he may require.

2. The commissioner shall review such project application and may approve, disapprove or recommend modifications thereto consistent with applicable law, criteria, standards or rules and regulations relative to such projects.

3. Upon approval of a project application, a municipality may enter into a contract as further provided within this article with the commissioner for payment of state assistance to be received pursuant to this article.

§ 51-0107. Powers and duties of the commissioner.

In administering the provisions of this article, the commissioner:

1. shall make an itemized estimate of funds or appropriations required annually for inclusion in the executive budget.
2. may in the name of the state as further provided within this article contract to make, within the limitations of appropriations available therefor, a state grant for payment to a municipality representing the state share of the cost of a project approved and to be undertaken pursuant to this article. Such contracts shall be subject to approval by the state comptroller and as to form by the attorney general.
3. shall approve vouchers for the payment of local assistance pursuant to an approved contract. All such payments shall be paid on the audit and warrant of the state comptroller.
4. may perform such other and further acts and promulgate such rules and regulations as may be necessary, proper or desirable to carry out the provisions of this article.

§ 51-0109. Powers and duties of a municipality.

A municipality shall have the power and authority to:

1. undertake and carry out any project for which state assistance is received or to be received pursuant to this article and maintain and operate such project.
2. expend money received from the state pursuant to this article for costs incurred in conjunction with the approved project.

3. perform such other and further acts as may be necessary, proper or desirable to carry out a project or obligation, duty or function related thereto.

TITLE 3

WATER QUALITY IMPROVEMENT PROJECTS

Section 51-0303. Definitions.

51-0305. Contracts for water quality improvement projects.

§ 51-0303. Definitions.

As used in this title, the following terms shall mean and include:

2. "Construction". The erection, building, acquisition, alteration, reconstruction, improvement or extension of sewage treatment works; the inspection and supervision thereof; and the engineering, architectural, legal, fiscal and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other actions necessary thereto;

3. "Eligible project". A water quality improvement project for the construction of sewage treatment works,

a. for which a permit has been issued by the department,

b. which is, in the judgment of the commissioner, in accord with applicable comprehensive studies and reports,

c. which is approved for federal pollution abatement assistance,

d. which conforms with applicable law, rules and regulations, and

e. which is, in the judgment of the commissioner, necessary for the accomplishment of the state water pollution control program;

4. "Federal pollution abatement assistance". Funds available to a municipality, either directly or through allocation by the state, from the federal government as grants for construction of sewage treatment works, pursuant to the federal water pollution control act and acts amendatory thereto;

5. "Municipality". A city, county, town, village, the New York state environmental facilities corporation, a sewer authority within a city, or an improvement district or district corporation within a city, county, town or village, or Indian tribes residing within New York state, or any combination thereof;

6. "Project cost". The actual cost or estimated reasonable cost, whichever is lower, of construction of an eligible project;

7. "Water quality improvement project". A sewage treatment works for the purpose of treating, neutralizing or stabilizing sewage, including treatment or disposal plants, the necessary intercepting, outfall and outlet sewers, pumping stations integral to such plants or sewers, equipment and furnishings thereof and their appurtenances.

§ 51-0305. Contracts for water quality improvement projects.

1. The commissioner, in the name of the state, may enter into contracts with municipalities having power to construct, operate and maintain sewage treatment works, and any such municipality may enter into a contract with the commissioner concerning eligible projects. Any such contract may include such provisions as may be agreed upon by the parties thereto, and shall include, in substance, the following provisions:

a. Current estimate of the reasonable cost of the project as determined by the commissioner at the time of execution of the contract. The commissioner shall not be precluded by section two hundred twenty of this title from determining a reasonable cost for any project enumerated in such section different from the estimated cost of such section.

b. An agreement by the commissioner to pay to the municipality, during the progress of construction subject to final computation and determination of the total state grant upon completion of the entire project reflecting the project cost, a portion of the non-federal share of the cost of any project, phase or portion thereof approved for a federal treatment works construction grant, determined by the following formulae:

(i) for any project which has received a Federal Clean Water Act section 202(a)(1) grant in an amount which is that per centum of the cost of construction authorized for federal fiscal years beginning July first, nineteen hundred seventy-one and ending September thirtieth, nineteen hundred eighty-four, inclusive, an amount that is one-half of the non-federal share of the cost of the eligible project, not to exceed thirty percent thereof;

(ii) for any project which has received a grant pursuant to Federal Clean Water Act section 202(a)(1) or section 201 as amended in nineteen hundred eighty-one, which is that reduced per centum of the costs of construction authorized for federal fiscal years beginning on and after October first, nineteen hundred eighty-four, an amount that is two-thirds of the non-federal share of the eligible cost of the project, not to exceed thirty percent thereof;

(iii) for any project or portion of a project which has received a federal grant for utilization of innovative or alternative treatment processes and techniques pursuant to the provisions of section 202(a)(2) of the Federal Clean Water Act, thirty percent of the cost of the innovative or alternative portion of the eligible project, provided that the local share of the innovative or alternative portion will be a minimum of seven and one-half percent.

c. An agreement by the municipality

1. to proceed expeditiously with, and complete, the project in accordance with plans approved by the department,

2. to commence operation of the sewage treatment works on completion of the project, and not to discontinue operation or dispose of the

sewage treatment works without the approval of the commissioner,

3. to operate and maintain the sewage treatment works in accordance with applicable provisions of law, the state sanitary code or rules and regulations of the commissioner,

4. to provide for the payment of the municipality's share of the cost of the project.

d. A provision that, in the event that federal pollution abatement assistance which was not included in the calculation of the state payment pursuant to paragraph b of this subdivision becomes available to the municipality, the amount of the state payment shall be recalculated with the inclusion of such additional federal assistance and the municipality shall either:

1. pay to the state the amount by which the state payment actually made exceeds the state payment determined by the recalculation or

2. if such additional federal pollution abatement assistance has not been received by the municipality, authorize the state to receive and retain an amount from the federal government equal to the amount to which it would be entitled under subparagraph 1 hereof.

2. In connection with each contract, the commissioner shall keep adequate records of the amount of the payment by the state pursuant to paragraph b of subdivision one of this section of the amount of federal assistance received by the municipality. Such records shall be retained by the commissioner and shall establish the basis for recalculation of the state payment as required by paragraph d of subdivision one of this section.

TITLE 5

AIR QUALITY IMPROVEMENT PROJECTS

Section 51-0501. Allocation of moneys.

51-0503. Definitions.

51-0505. Approval of projects.

51-0507. Contracts for municipal air quality improvement projects.

§ 51-0501. Allocation of moneys.

The moneys received by the state from the sale of bonds pursuant to the environmental quality bond act of nineteen hundred seventy-two shall be expended in the following amounts pursuant to appropriation therefor:

1. For state air quality improvement projects, fifty million dollars (\$50,000,000) for upgrading state facilities including the Pilgrim, Kings Park, Middletown, Hudson River, Harlem Valley, St. Lawrence, Utica, Marcy, Binghamton, Rochester and Gowanda State Hospitals; Green Haven, Wallkill, Auburn and Attica Correctional Facilities; the Wassaic, Craig and West Seneca State Schools; State University units at Binghamton and Buffalo; the Hudson Training School for Girls; Syracuse Psychiatric Hospital; and the Albion State Institution.

2. For municipal air quality improvement projects, one hundred million dollars (\$100,000,000).

§ 51-0503. Definitions.

As used in this title, the following terms shall include and mean:

1. "Air quality improvement project." a. The upgrading of an existing incinerator, furnace or boiler and appurtenances thereto owned and operated by the state or a municipality, or

b. The establishment of a solid waste recovery and management project, as defined in subdivision two of section 51-0903 of this article, which directly enables permanent closure of an incinerator that is operating in a manner not in compliance with applicable air pollution control regulations and which project in all other respects qualifies for state

assistance pursuant to title nine of this article.

2. "Cost." The cost of upgrading including the cost of all systems, facilities, machinery and equipment, engineering and architectural services, plans and specifications, consultant and legal services, and other direct expenses incident to such upgrading less any federal assistance received or to be received.

3. "Municipality." A city, county, town, village or school district or an improvement district within a city, county, town or village, or any combination thereof.

4. "Upgrading." Construction, reconstruction, renovation, or other process or activity necessary to insure that an existing incinerator or furnace or boiler meets air quality emission standards promulgated by the commissioner.

§ 51-0505. Approval of projects.

1. Air quality improvement projects shall be undertaken pursuant to this title only with the approval of the commissioner, and in the case of municipal projects, pursuant to an approved contract for state assistance.

2. In reviewing projects, the commissioner shall give due consideration to:

a. the urgency of the need for upgrading to meet ambient air quality standards;

b. the age and condition of the incinerator, furnace or boiler;

c. the economic feasibility of upgrading;

d. expected increased efficiency;

e. expected life of any public facility associated with the incinerator, furnace, or boiler;

f. the reduction in air contaminants required to bring the incinerator, furnace, or boiler emissions into compliance with the applicable air quality standards.

g. in the case of a project defined in paragraph b of subdivision one of section 51-0503 of this title, the matters required to be taken into account under sections 51-0905 and 51-0907 of this article.

3. The state share of the cost of a municipal air quality improvement project shall not exceed fifty (50) percent of the cost thereof.

§ 51-0507. Contracts for municipal air quality improvement projects.

1. The commissioner, in the name of the state, may enter into contracts with municipalities to undertake air quality improvement projects, and any such municipality may enter into a contract with the commissioner. Any such contract may include such provisions as may be agreed upon by the parties thereto, and shall include, in substance, the following provisions:

a. An estimate of the reasonable cost of the project as determined by the commissioner;

b. An agreement by the commissioner to pay to the municipality, during the progress of construction or following completion of construction as may be agreed upon by the parties, an amount, not to exceed 50 percent of the cost of the project;

c. An agreement by the municipality

(1) to proceed expeditiously with, and complete, the project as approved by the commissioner,

(2) to operate and maintain the upgraded incinerator, furnace, or boiler in accordance with applicable law and rules and regulations, and,

in the case of a project defined in paragraph b of subdivision one of section 51-0503 of this title, the agreement shall include the provisions contemplated by paragraph c of subdivision one of section 51-0907 of this article,

(3) to apply for and make reasonable efforts to secure federal assistance, if any, for the project,

(4) to secure the approval of the commissioner before applying for such federal assistance, in order to maximize the amounts of such assistance received or to be received for all projects in New York state,

(5) to provide for the payment of the municipality's share of the cost of the project;

d. A provision that, in the event that federal assistance which was not included in the calculation of the state payment becomes available to the municipality, the amount of the state payment shall be recalculated with the inclusion of such federal assistance and the municipality shall pay to the state the amount by which the state payment actually made exceeds the state payment determined by the recalculation.

2. In connection with each contract, the commissioner shall keep adequate records of the amount of the payment by the state and of the amount of federal assistance, if any, received by the municipality. Such records shall be retained by the commissioner and shall establish the basis for recalculation of the state payment as required herein.

TITLE 7

LAND PRESERVATION AND IMPROVEMENT PROJECTS

Section 51-0701. Allocation of moneys.

51-0703. Definitions.

51-0705. Approval and execution of state projects.

51-0709. Approval of municipal wetlands restoration projects.

51-0711. Contracts for municipal wetlands restoration projects.

51-0713. Restriction of alienation of wetlands.

§ 51-0701. Allocation of moneys.

The moneys received by the state from the sale of bonds sold pursuant to the environmental quality bond act of nineteen hundred seventy-two shall be expended pursuant to appropriations therefor in accordance with the following allocations, supplemented by such federal assistance as may be available:

1. For forest preserve projects, fifty-nine million dollars (\$59,000,000) of which fifteen million dollars (\$15,000,000) is allocated for land acquisition in the Catskill Park and forty-four million dollars (\$44,000,000) is allocated for land acquisition in the Adirondack Park.

2. Wetland preservation and restoration projects, twenty-seven million dollars (\$27,000,000) of which four million dollars (\$4,000,000) is allocated for wetlands restoration projects; eighteen million dollars (\$18,000,000) is allocated for the acquisition of five thousand (5,000) acres of tidal wetlands; and five million dollars (\$5,000,000) is allocated for the acquisition of fifty thousand (50,000) acres of freshwater wetlands.

3. For unique area preservation projects, ten million dollars (\$10,000,000) of which four million five hundred thousand dollars (\$4,500,000) is allocated for projects in the Hudson Valley-Metropolitan New York-Long Island area; three million dollars (\$3,000,000) is allocated for projects in the Central New York area; and two million five hundred thousand dollars (\$2,500,000), is allocated for projects in the Western New York area. Unique area preservation projects outside forest preserve counties shall be undertaken only upon the recommendation of the state nature and historical preserve trust and shall be recommended by the commissioner for inclusion in the state nature and historical preserve.

4. For stream rights acquisition projects, three million dollars (\$3,000,000).

5. For public access to state land projects, eight million dollars (\$8,000,000) to provide access to presently inaccessible state lands such as the High Tor Area, Erwin Area, Capital District Area, Pharsalia Area, Cicero Swamp, Perch River Area, and Tug Hill Area wildlife management lands and reforestation areas in Clinton, St. Lawrence, Lewis, Washington, Jefferson, Oneida, Cattaraugus, Steuben, Schuyler, Allegany, Chautauqua, Schoharie, Broome, Delaware, Tioga, Tompkins and Cortland Counties.

§ 51-0703. Definitions.

As used in this title, the following terms shall mean and include:

1. "Forest Preserve Project." A state project to acquire lands as additions to the forest preserve within the Adirondack and Catskill Parks.

2. "Wetlands Preservation Project." A state project to preserve through acquisition biologically productive and vulnerable wetlands because of their unique and irreplaceable values.

3. "Wetlands Restoration Project." A state or municipal project to renovate dikes, levies, ditches, berms and other water level regulation works; to establish vegetation, plants, and shrubs, or such other necessary or desirable work to achieve optimum productivity of wetlands.

4. "Unique Area Preservation Project." A state project to acquire lands of special natural beauty, wilderness character, geological, ecological or historical significance for the state nature and historical preserve and similar lands within a forest preserve county outside the Adirondack and Catskill Parks.

5. "Stream Rights Acquisition Project." A state project to acquire fishing rights on quality streams.

6. "Public Access to State Lands Project." A state project to provide access to otherwise inaccessible reforestation, game management or multiple use lands through land acquisition and development of unpaved trails.

7. "Wetlands." Land and lands under water which may be permanently, temporarily or intermittently covered with fresh or salt-water and commonly referred to as flood basins or flats, meadows, marshes, shrub swamps, wooded swamps, swamps or bogs.

8. "Cost." The cost of an approved project shall include engineering and architectural services, plans and specifications, consultant and legal services, and other direct expenses incident to such project less any federal assistance received or to be received.

9. "Municipality." A city, county, town or village, or improvement district within a city, county, town or village or any combination thereof.

§ 51-0705. Approval and execution of state projects.

1. State forest preserve, stream rights acquisition, wetlands preservation or restoration, unique area preservation, and public access to state lands projects shall be undertaken pursuant to this title only with the approval of the commissioner.

2. Such projects as have been approved by the commissioner shall be executed by the department in the manner provided for by applicable law.

§ 51-0709. Approval of municipal wetlands restoration projects.

1. A municipal wetlands restoration project shall be undertaken pursuant to this title only with the approval of the commissioner, and pursuant to an approved contract for state assistance.

2. In reviewing applications for municipal wetland restoration projects, the commissioner shall give due consideration to:

- a. the urgency of need to restore such wetlands;
- b. the potential ecological value of such wetlands;
- c. the potential value of such wetlands for flood and storm water control and pollution and sediment filtering;
- d. the level of biological productivity which will be achieved by restoration thereof.

§ 51-0711. Contracts for municipal wetlands restoration projects.

1. The commissioner, in the name of the state, may enter into contracts with municipalities owning wetlands, and any such municipality may enter into a contract with the commissioner. Any such contract may include such provisions as may be agreed upon by the parties thereto, and shall include, in substance, the following provisions:

a. An estimate of the reasonable cost of the project as determined by the commissioner.

b. An agreement by the commissioner to pay to the municipality, during the progress of restoration or following completion of restoration as may be agreed upon by the parties, an amount equal to the actual cost of restoration or the estimated reasonable cost whichever is the lesser.

c. An agreement by the municipality

(1) to dedicate in perpetuity the wetlands to be restored to assure their preservation.

(2) to proceed expeditiously with, and complete, the project as approved by the department.

(3) to thereafter maintain the wetlands in the condition to which they have been restored.

(4) to apply for and make reasonable efforts to secure federal assistance for the project.

(5) to secure the approval of the commissioner before applying for federal assistance, in order to maximize the amounts of such assistance received or to be received for all projects in New York state.

d. A provision that, in the event that federal assistance which was not included in the calculation of the state payment pursuant to paragraph b of this subdivision becomes available to the municipality, the amount of the state payment shall be recalculated with the inclusion of such additional federal assistance and the municipality shall pay to the state the amount by which the state payment actually made exceeds the state payment determined by the recalculation.

2. In connection with each contract, the commissioner shall keep adequate records of the amount of the payment by the state pursuant to paragraph b of subdivision one of this section and of the amount of federal assistance received by the municipality. Such records shall be retained by the commissioner and shall establish the basis for recalculation of the state payment.

§ 51-0713. Restriction of alienation of wetlands.

Any wetlands acquired or restored in part or in whole with state moneys pursuant to this title shall not be sold, leased or otherwise disposed of or used for any purpose inconsistent with the character or value of such wetlands.

No structure shall be placed thereon except water level regulation works necessary to preserve, restore or maintain the biological productivity thereof.

TITLE 9

SOLID WASTE RECOVERY AND MANAGEMENT

Section 51-0901. Allocation of moneys.

51-0903. Definitions.

51-0905. Approval of municipal solid waste management projects.

51-0907. Contracts for municipal solid waste management projects.

§ 51-0901. Allocation of moneys.

Of the moneys received by the state from the sale of bonds pursuant to the environmental quality bond act of nineteen hundred seventy-two, one hundred seventy-five million dollars (\$175,000,000) shall be expended pursuant to appropriations thereof, for municipal solid waste management projects, including at least five million dollars (\$5,000,000) of this amount which shall be earmarked for resource recovery equipment, source separation equipment, or both, for the implementation of small scale, low-technology approaches to resource recovery, including source separation programs, recycling centers, composting projects and other solid waste recovery and management projects with a design capacity of less than one hundred tons per day.

§ 51-0903. Definitions.

As used in this title, the following terms shall mean and include:

1. "Solid Waste." All materials or substances discarded or rejected as being spent, useless, worthless or in excess to the owners at the time of such discard or rejection, including but not limited to garbage, refuse, industrial and commercial waste, sludges from air or water pollution control facilities or water supply treatment facilities, rubbish, ashes, contained gaseous materials, incinerator residue, demolition and construction debris and offal but not including sewage and other highly diluted water carried materials or substances and those in gaseous form.

2. "Solid Waste Recovery and Management Project." Resource recovery equipment, source separation equipment, disposal equipment or any

combination thereof required by a solid waste recovery and management system.

3. "Solid Waste Recovery and Management System." A municipal program to provide environmentally sound recovery or disposal of collected solid waste through facilities planned, designed, assembled and constructed to assure environmental protection and to maximize the potential for resource recovery.

4. "Resource Recovery Equipment." Structures, machinery, or devices, singly or in combination, designed, constructed and required to separate, process, modify, convert, treat, or prepare collected solid waste so that component materials or substances or recoverable resources may be used as a raw material or for their productive purposes.

5. "Disposal Equipment." Structures, machinery or devices at a disposal site necessary to efficient and environmentally-sound land disposal of solid wastes, including but not limited to machinery or devices designed to move earth during burial of wastes or to increase the density of wastes buried or to be buried. "Disposal Equipment" shall also mean facilities, except vehicles, in which collected solid waste is temporarily stored and concentrated prior to transport to a disposal site.

6. "Municipality." A city, county, town, village, public benefit corporation having power granted otherwise than under this article to construct, operate and maintain solid waste management projects, or an improvement district within a city, county, town or village, or any combination thereof.

7. "Cost." The cost of resource recovery equipment, source separation equipment or disposal equipment including interest prior to and during construction, engineering and architectural surveys, plans and specifications, and consultants and legal services and other direct expenses incident to a solid waste management project, exclusive of land acquisition, and expenses incident thereto, less any federal assistance received or to be received.

8. "Source separation equipment" shall mean:

(a) Add-ons or trailers designed to modify collection vehicles to allow sorting and separation of collected wastes held for the purpose of recycling or collection vehicles whose function and design are exclusively for such purpose;

(b) Containers for the source separation and temporary storage of recyclable wastes by residents or business prior to collection;

(c) Bins, sheds or other facilities for the temporary storage of materials prior to transport for the purposes of recycling.

§ 51-0905. Approval of municipal solid waste management projects.

1. Municipal solid waste recovery and management projects shall be undertaken pursuant to this title only with the approval of the commissioner, and pursuant to an approved contract or contracts for state assistance.

2. In reviewing applications for solid waste recovery and management projects, the commissioner shall give due consideration to:

a. the adequacy of the municipality's solid waste recovery and management system and its relationship to the needs or plans of other area municipalities;

b. the suitability and feasibility of the project in relation to the solid waste recovery and management system and the area to be served;

c. the proportion of solid waste for which resource recovery is contemplated;

d. implementation of the system or components thereof and their expected terms of usefulness, singly or in combination;

e. present and projected population, land use, and rates and composition of solid waste generation;

f. potential or contemplated markets for recovered resources;

g. potential or contemplated opportunities for direct relationships with other public facilities, such as for processing residual materials from existing incinerators or treating sludge from a sewage treatment plant;

h. intergovernmental arrangements integral to the project;

i. non-governmental arrangements integral to the project;

j. the urgency of the project, in relationship to all solid waste management project needs in the state;

k. environmental soundness, including assurance that the project will meet all applicable law, criteria, rules or regulations.

3. The state share of the cost of a municipal solid waste management project shall not exceed fifty percent of the cost of resource recovery equipment and source separation equipment and twenty-five percent of the cost of disposal equipment. The commissioner may not otherwise limit the state's share of the cost of small scale, low technology approaches to resource recovery.

4. The commissioner shall annually review the status of projects which have been the subject of appropriations in furtherance of this title to determine whether sufficient progress has been made to warrant continuance of such appropriations. In making such determination, the commissioner shall take into account whether and to what extent progress has been made in accomplishing a project feasibility study, preparation and distribution of a request for proposals, the award of a design contract, the award of a construction contract, the commencement of construction, the profferment of bonds by the municipality, or other factors reasonably indicative of progress upon the project. Primary consideration shall be given to the reallocation of funds to meet the requirements of section 51-0901 of this title relative to small scale,

low-technology approaches. The commissioner shall annually submit his determination made hereunder, reflecting reallocations as appropriate, to the governor in a form and at a time sufficient to be taken into account by the governor and legislature in fulfilling their budgetary responsibilities.

§ 51-0907. Contracts for municipal solid waste management projects.

1. The commissioner, in the name of the state, may enter into contracts with municipalities which may include such provisions as may be agreed upon by the parties thereto, and shall include, in substance, the following provisions:

a. An estimate of the reasonable cost of the project as determined by the commissioner.

b. An agreement by the commissioner to pay to the municipality, during the progress of construction or following completion of construction as may be agreed upon by the parties, an amount, not to exceed fifty percent of the cost of resource recovery equipment and source separation equipment, and twenty-five percent of the cost of disposal equipment.

c. An agreement by the municipality:

(1) to proceed expeditiously with, and complete, the project as approved by the commissioner;

(2) to commence operation of the project upon its completion and not to dispose of the project or any portion thereof or change its use without the approval of the commissioner;

(3) to operate and maintain the solid waste management project in accordance with applicable law and rules and regulations of the commissioner;

(4) to apply for and make reasonable efforts to secure federal assistance for the project;

(5) to secure the approval of the commissioner before applying for federal assistance, in order to maximize the amounts of such assistance received or to be received for all projects in New York state;

(6) to provide for the payment of the municipality's share of the cost of the project.

d. A provision that, in the event that federal assistance which was not included in the calculation of the state payment becomes available to the municipality, the amount of the state payment shall be recalculated with the inclusion of such federal assistance and the municipality shall pay to the state the amount by which the state payment actually made exceeds the state payment determined by the recalculation.

2. In connection with each contract, the commissioner shall keep adequate records of the amount of the payment by the state and of the amount of federal assistance, if any, received by the municipality. Such records shall be retained by the commissioner and shall establish the basis for recalculation of the state payment as required herein.

TITLE 11

PARK LANDS PRESERVATION PROJECTS

Section 51-1101. Allocation of moneys.

51-1103. Definitions.

51-1105. Approval and execution of projects.

§ 51-1101. Allocation of moneys.

The moneys received by the state from the sale of bonds sold pursuant to the environmental quality bond act of nineteen hundred seventy-two shall be expended in the following amounts pursuant to appropriations therefor:

1. For metropolitan park projects, forty million dollars
(\$40,000,000);

2. For open space preservation projects, fifteen million dollars
(\$15,000,000);

3. For waterway projects, nine million dollars (\$9,000,000);
4. For trailway projects, four million dollars (\$4,000,000).

§ 51-1103. Definitions.

As used in this title, the following terms shall mean and include:

1. "Metropolitan Park Project." A state project to provide new and expanded public recreational opportunities in or near an urban population center to relieve serious overcrowding and prevent further deterioration of urban recreation systems through land acquisition.
2. "Open Space Preservation Project." A state project to acquire rapidly disappearing open or natural lands in or near urban or suburban areas necessary to serve the recreation needs thereof.
3. "Waterway Project." A state project to acquire selected lands on major rivers, lakes, and coastal waters to provide public access to protect the right of public use of such waters.
4. "Trailway Project." A state project to acquire lands and to develop recreation trails thereon necessary to close gaps in the statewide interconnecting trails network before irreversible development occurs.

§ 51-1105. Approval and execution of projects.

1. Metropolitan park, open space preservation, waterway, and trailway projects shall be undertaken pursuant to this title only with the approval of the commissioner.
2. Such projects as have been approved by the commissioner shall be executed by the office in the manner provided by applicable law.

ARTICLE 52

IMPLEMENTATION OF ENVIRONMENTAL QUALITY BOND ACT OF 1986

Title 1. General provisions.

3. Hazardous waste site remediation projects.

7. Land acquisition, preservation and improvement projects.

9. Historic preservation, municipal park and urban cultural parks projects.

TITLE 1

GENERAL PROVISIONS

Section 52-0101. Definitions.

52-0103. Allocation of moneys.

52-0105. State assistance application procedure for title three of this article.

52-0107. Powers and duties of the commissioner for title three of this article.

52-0109. Powers and duties of a municipality.

52-0111. Equal employment opportunity program.

52-0113. Minority and women-owned business enterprise program.

§ 52-0101. Definitions.

As used in this article the following terms shall mean and include:

1. "Commissioner" means the commissioner of environmental conservation except that within and for the purposes of title nine of this article, the term shall mean the commissioner of parks, recreation and historic preservation.

2. "Cost" means the cost of an approved project, which shall include engineering and architectural services, plans and specifications, consultant and legal services, and other direct expenses incident to such project less any federal assistance received or to be received and any other assistance from responsible parties or otherwise.

3. "Department" means the department of environmental conservation.

4. "Environmentally sensitive lands project" means a state project to preserve aquifer recharge areas, areas of exceptional scenic beauty or exceptional forest character, open space, pine barrens, public access, trailways, unique character, wetlands, and wildlife habitat, as defined below:

(a) "Aquifer recharge area" means the location at which water can enter an aquifer directly or indirectly.

(b) "Exceptional forest character" means forest possessed of such attributes as maturity of growth, scientific harvesting potential, aesthetic appeal or recreational opportunity.

(c) "Exceptional scenic beauty" means land forms, water bodies, geologic formations and vegetation which possess significant scenic qualities or significantly contribute to scenic values.

(d) "Open space" means open or natural land in or near urban or suburban areas necessary to serve the scenic or recreation needs thereof.

(e) "Pine barrens" means a natural community of such biota as pitch pine, jack pine, and scrub oak which may be found associated with a variety of natural resources.

(f) "Public access" means access to lands for public use, including stream rights and waterways.

(g) "Trailways" means recreational trails developed under guidelines established for the development of a statewide trails system.

(h) "Unique character" means lands of special natural beauty, wilderness character, geological, ecological or historical significance suitable for the state nature and historic preserve and similar lands within a forest preserve county outside the Adirondack and Catskill parks.

(i) "Wetlands" means freshwater wetlands as defined in article twenty-four of this chapter and tidal wetlands as defined in article twenty-five of this chapter.

(j) "Wildlife habitat" means specific areas essential for the conservation of threatened and endangered species which require special management considerations or protection for maintenance of such species.

5. "Federal assistance" shall mean funds available, other than by loan, from the federal government, either directly or through allocation by the state for construction or program purposes pursuant to any federal law or program.

6. "Forest preserve project" means a state project to acquire land as additions to the forest preserve or to acquire conservation easements created pursuant to title three of article forty-nine of this chapter within the Adirondack and Catskill parks.

7 "Governing body" means

- (a) in the case of a town, a town board;
- (b) in the case of a county outside of the city of New York, the county board of supervisors or other elective governing body;
- (c) in the case of a city or village, the local legislative body thereof, as the term is defined in the municipal home rule law;
- (d) in the case of a public benefit corporation, the board of directors, members or trustees thereof;
- (e) in the case of a school district, the board of education thereof;
- (f) in the case of a supervisory district, the board of cooperative educational services thereof.

8. "Hazardous waste" shall have the definition set forth in title nine of article twenty-seven of this chapter.

9. "Hazardous waste site remediation project" means the same as the term "inactive hazardous waste disposal site remedial program" as defined in subdivision three of section 27-1301 of this chapter.

10. "Historic preservation project" means:

(a) State historic preservation projects. A state project undertaken by the office of parks, recreation and historic preservation to improve, restore or rehabilitate state historic properties listed on the state or national registers of historic places to protect the historic, cultural or architectural significance thereof.

(b) Municipal historic preservation project. A project undertaken by a

municipality to improve, restore or rehabilitate municipal property listed on the state or national registers of historic places to protect the historic, cultural or architectural significance thereof.

(c) Not-for-profit historic preservation projects. A project undertaken by a not-for-profit corporation for the acquisition, improvement, restoration or rehabilitation of property listed on the state or national registers of historic places to protect the historic, cultural or architectural significance thereof.

11. "Landfill" means a disposal facility or part of one at which solid waste, or its residue after treatment, is intentionally placed in or on land, at which solid waste will remain after closure, and which is not a landspreading facility, a surface impoundment, or an injection well.

12. "Lands" mean lands, improvements and structures thereon or rights, franchises, and interests therein, lands under water and riparian rights, and shall also mean any and all interests in lands less than full title, including without limitations, easements, permanent or temporary, rights of way, uses, leases, licenses, and any other estate, interests or rights in lands, legal or equitable.

13. "Municipal landfill closure project" means activities undertaken to close, including by reclamation, a landfill owned or operated by a municipality to achieve compliance with regulations promulgated by the department.

14. "Municipal park project" means a project including an urban cultural park undertaken by a municipality for the acquisition, development or improvement of outdoor or indoor recreation facilities, including, but not limited to site acquisition, improvement, construction, reconstruction and improvement of structures, roads and parking facilities.

15. "Municipality", except as otherwise defined within this article, means a city, county, town, village, public benefit corporation or school district or an improvement district within a city, county, town or village, or Indian tribe residing within New York state, or any

combination thereof.

16. "Not-for-profit corporation" means a corporation formed pursuant to the not-for-profit corporation law and qualified for tax-exempt status under section 501(c)(3) of the federal internal revenue code.

17. "Office" means the office of parks, recreation and historic preservation.

18. "Solid waste" shall have the definition set forth for such term in title seven of article twenty-seven of this chapter.

19. "Urban cultural park" shall have the definition set forth for such term in title G of article thirty-one of the parks, recreation and historic preservation law.

§ 52-0103. Allocation of moneys.

The moneys received by the state from the sale of bonds pursuant to the environmental quality bond act of nineteen hundred eighty-six shall be expended in the following amounts pursuant to appropriations and as specifically provided for in titles three, seven and nine of this article, and title five of article fifty-four of this chapter:

1. For remediation of hazardous waste sites, as set forth in title three of this article and for the closure of municipal landfills, as set forth in title five of article fifty-four of this chapter, one billion two hundred million dollars of which: (i) up to one hundred million dollars shall be made available for state assistance payments toward the cost of the closure of municipal landfills, as set forth in title five of article fifty-four of this chapter; and (ii) up to one hundred thousand dollars shall be made available for the study of hazardous substance waste disposal sites, as defined in section 27-1316 of this chapter; and

2. For acquisition, preservation and improvement of lands, for

historic preservation, and for municipal parks, as set forth in titles seven and nine of this article chapter, two hundred fifty million dollars.

§ 52-0105. State assistance application procedure for title three of this article.

1. A municipality upon the recommendation of its governing body may submit an application for state assistance toward the cost of a project which is eligible for state assistance pursuant to title three of this article to the commissioner in such form and containing such information as he may require.

2. The commissioner shall review such project application and may approve, disapprove or recommend modifications thereto consistent with applicable law, criteria, standards or rules and regulations relative to such projects.

3. Upon approval of a project application, a municipality shall enter into a contract as further provided within this article with the commissioner for payment of state assistance to be received pursuant to this article.

4. For purposes of this section, "state assistance" shall mean a grant pursuant to title three of this article.

§ 52-0107. Powers and duties of the commissioner for title three of this article.

In administering the provisions of title three of this article, the commissioner:

1. shall make an itemized estimate of funds or appropriations by project required annually for inclusion in the executive budget.

2. may, in the name of the state, as further provided within this article, contract to make, within the limitations of appropriations available therefor, a state assistance payment to a municipality representing the state share of the cost of a project approved and to be undertaken pursuant to title three of this article. Such contracts shall be subject to approval by the state comptroller and, as to form, by the attorney general.

3. may, in the name of the state, as further provided within this article, enter into contracts, within the limitations of appropriations available therefor, with public benefit corporations and private contractors for services contemplated by this article to be funded hereunder.

4. shall approve vouchers for the payment of assistance pursuant to an approved contract. All such payments shall be paid on the audit and warrant of the state comptroller.

5. may perform such other and further acts as may be necessary, proper or desirable to carry out the provisions of this article.

§ 52-0109. Powers and duties of a municipality.

A municipality shall have the power and authority to:

1. undertake and carry out any project for which state assistance in the form of a grant is received or is to be received pursuant to this article and maintain and operate such project.

2. expend money received from the state pursuant to this article for costs incurred in conjunction with the approved project.

3. perform such other and further acts as may be necessary, proper or desirable to carry out a project or obligation, duty or function related thereto.

§ 52-0111. Equal employment opportunity program.

1. All contracts for design, construction, services and materials pursuant to this article of whatever nature and all documents soliciting bids or proposals therefor shall contain or make reference to the following provisions:

a. The contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability, or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group persons and women are afforded equal opportunity without discrimination. Such programs shall include, but not be limited to, recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, rates of pay or other forms of compensation, and selections for training or retraining, including apprenticeship and on-the-job training.

b. At the request of the department or the office, the contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding and which is involved in the performance of the contract with the agency to furnish a written statement that such employment agency, labor union or representative shall not discriminate because of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will cooperate in the implementation of the contractor's obligations hereunder.

c. The contractor will state, in all solicitations or advertisements for employees placed by or on behalf of the contractor in the performance of the contract with the agency, that all qualified applicants will be afforded equal employment opportunity without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

d. The contractor will include the provisions of paragraphs a through c of this subdivision in every subcontract or purchase order in such a manner that such provisions will be binding upon each subcontractor or vendor as to its work in connection with the contract with the agency.

2. The department and the office shall establish procedures and guidelines to ensure that contractors and subcontractors undertake programs of affirmative action and equal employment opportunity as required by this section. Such procedures may require after notice in a bid solicitation, the submission of an affirmative action program prior to the award of any contract, or at any time thereafter, and may require the submission of compliance reports relating to the operation and implementation of any affirmative action program adopted hereunder. The department or the office may take appropriate action including contractual sanctions for non-compliance to effectuate the provisions of this section and shall be responsible for monitoring compliance with this article.

§ 52-0113. Minority and women-owned business enterprise program.

1. a. In the performance of projects pursuant to this article minority and women-owned business enterprises shall be given the opportunity for meaningful participation. The department or the office shall establish measures and procedures to secure meaningful participation and identify those contracts and items of work for which minority and women-owned business enterprises may best bid to actively and affirmatively promote and assist their participation in the projects, so as to facilitate the award of a fair share of contracts to such enterprises; provided, however, that nothing in this article shall be construed to limit the ability of the department or office to assure that qualified minority and women-owned business enterprises may participate in the program. For purposes hereof, minority business enterprise shall mean any business enterprise which is at least fifty-one per centum owned by, or in the case of a publicly owned business, at least fifty-one per centum of the stock of which is owned by citizens or permanent resident noncitizens who are Black, Hispanic, Asian or American Indian, Pacific Islander or

Alaskan natives and such ownership interest is real, substantial and continuing and have the authority to independently control the day to day business decisions of the entity for at least one year; and women-owned business enterprise shall mean any business enterprise which is at least fifty-one per centum owned by, or in the case of a publicly owned business, at least fifty-one per centum of the stock of which is owned by citizens or permanent resident noncitizens who are women, and such ownership interest is real, substantial and continuing and have the authority to independently control the day to day business decisions of the entity for at least one year.

The provisions of this paragraph shall not be construed to limit the ability of any minority or women-owned business enterprise to bid on any contract.

b. In the implementation of this section, the department or the office shall consider compliance by any contractor with the requirements of any federal, state, or local law concerning minority and women-owned business enterprises, which may effectuate the requirements of this section. If the department or the office determines that by virtue of the imposition of the requirements of any such law, in respect to capital project contracts, the provisions thereof duplicate or conflict with such law, the department may waive the applicability of this section to the extent of such duplication or conflict.

c. Nothing in this section shall be deemed to require that overall state and federal requirements for participation of minority and women-owned business enterprises in programs authorized under this article be applied without regard to local circumstances to all projects or in all communities.

2. In order to implement the requirements and objectives of this section, the department and the office shall establish procedures to monitor the contractors' compliance with provisions hereof, provide assistance in obtaining competing qualified minority and women-owned business enterprises to perform contracts proposed to be awarded, and take other appropriate measures to improve the access of minority and

women-owned business enterprises to these contracts.

TITLE 3

HAZARDOUS WASTE SITE REMEDIATION PROJECTS

Section 52-0301. Projects; authorization and approval.

52-0303. Contracts with municipalities.

§ 52-0301. Projects; authorization and approval.

The commissioner is authorized to directly develop and implement, and to cause and to approve development and implementation by municipalities or by other parties, of hazardous waste site remediation projects consistent with title thirteen of article twenty-seven of this chapter and section ninety-seven-b of the state finance law.

§ 52-0303. Contracts with municipalities.

With respect to a project which the commissioner has determined pursuant to paragraph g of subdivision five of section 27-1313 of this chapter to be eligible for funding, funding by the state shall be up to an amount of seventy-five percent of the eligible cost and the commissioner and the municipality shall enter into a contract which, in addition to such other terms and conditions that the commissioner may deem to be appropriate, provides as follows:

1. The current estimate of the cost of the project as determined by the commissioner at the time of execution of the agreement.
2. An agreement by the commissioner to periodically reimburse the municipality for costs incurred during the progress of the project. Such payments shall be subject to final computation and determination of the total state share of the eligible costs of the entire project.
3. An agreement by the municipality to proceed expeditiously with and

complete the project in accordance with plans approved for payment of the municipality's share of the project cost.

4. A provision that in the event that any federal payments and responsible party payments become available which were not included in the calculation of the state share pursuant to subdivision two of this section, the amount of the state share shall be recalculated accordingly and the municipality shall pay to the state for deposit in the design and construction account of the hazardous waste remedial fund established under section ninety-seven-b of the state finance law the amount by which the state payment actually made exceeds the recalculated state share.

5. For purposes of this section, the term "eligible cost" means the non-federal share of the approved project cost less amounts collected from responsible parties as contemplated by title thirteen of article twenty-seven of this chapter.

TITLE 7

LAND ACQUISITION, PRESERVATION AND IMPROVEMENT PROJECTS

Section 52-0701. Approval and execution of state projects.

§ 52-0701. Approval and execution of state projects.

1. State environmentally sensitive land projects and forest preserve projects shall be undertaken pursuant to the provisions of this article only with the approval of the commissioner.

2. The commissioner shall make an itemized estimate of funds or appropriations required annually for inclusion in the executive budget.

3. The commissioner shall, after hearings and prior to the approval of any environmentally sensitive land projects and forest preserve projects, promulgate rules and regulations which shall include but need not be limited to: eligibility requirements, departmental ranking and

review processes, project approval guidelines and criteria, and funding distribution for forest preserve projects and for each type of environmentally sensitive lands project as defined in subdivision four of section 52-0101 of this article.

4. Real property acquired with monies provided through this title shall not be sold or disposed of, or used for any purpose inconsistent with the natural resource value for which it was acquired, without the express authority of the legislature. Prior to the implementation of any sale, disposal, or change of use authorized by the legislature, the agency authorized to sell, dispose of or change the use of any such lands shall first provide substitute lands of equal fair market value, equivalent natural resource value and similarly suitable location as approved by the commissioner.

TITLE 9

HISTORIC PRESERVATION, MUNICIPAL PARK AND URBAN CULTURAL PARKS PROJECTS

Section 52-0901. Approval and execution of projects.

52-0903. Municipal regulations; limitations.

52-0905. Contracts.

52-0907. Restriction on alienation.

52-0909. Powers and duties of the commissioner.

52-0911. Compliance with the law.

§ 52-0901. Approval and execution of projects.

1. State historic preservation projects. State historic preservation projects may be undertaken pursuant to the provisions of this article only with the approval of the commissioner.

2. Municipal historic preservation projects. The commissioner and a municipality may enter into a contract for the undertaking by the municipality of a municipal historic preservation project. Municipal historic preservation projects shall be recommended to the commissioner by the governing body of the municipality and when approved by the

commissioner, may be undertaken by the municipality pursuant to this title and any other applicable provision of law. The state share of the cost of a municipal preservation project in no event shall exceed fifty percent of the cost, less any federal assistance received or to be received for the project. To assure the availability of funds for as wide a range of projects as possible, the commissioner may, in his discretion, limit the dollar amount that may be made available for any project. For the purpose of determining the amount of the state share, the cost of the project shall not be more than the amount set forth in the application for a state share made by a municipality and approved by the commissioner. The state share of the cost of a project shall be paid on audit and warrant of the state comptroller on a certificate of availability of the director of the budget.

3. Not-for-profit historic preservation projects. The commissioner and a not-for-profit corporation may enter into a contract for the undertaking by the not-for-profit corporation of a not-for-profit historic preservation project. A not-for-profit historic preservation project shall be recommended to the commissioner by the governing body of a not-for-profit corporation which demonstrates to the satisfaction of the commissioner that it is capable of operating and maintaining such property for the benefit of the public. Upon approval by the commissioner, such project may be undertaken pursuant to the provisions of this title and any other applicable provision of law. The state share of the cost of a not-for-profit historic preservation project shall in no event exceed fifty percent of the cost, less any state assistance from any source other than pursuant to this title and less any federal assistance, received or to be received for such project. To assure the availability of funds for as wide a range of projects as possible, the commissioner may, in his discretion, limit the dollar amount that may be made available for any project. For the purpose of determining the amount of the state share, the cost of the project shall not be more than the amount set forth in the application for a state share made by a not-for-profit corporation and approved by the commissioner. The state share of the costs of a project shall be paid on audit and warrant of the state comptroller on certificate of availability of the director of the budget.

4. Municipal park projects. The commissioner and a municipality may enter into a contract for the undertaking by the municipality of a municipal park project. Municipal park projects shall be recommended to the commissioner by the governing body of the municipality, and when approved by the commissioner, may be undertaken by the municipality pursuant to this title and any other applicable provisions of law. The state share of the cost of a municipal park project in no event shall exceed fifty percent of the approved project cost, less any federal assistance received or to be received for the project. To assure the availability of funds for as wide a range of projects as possible, the commissioner may, in his discretion, limit the dollar amount that may be made available for any project. For the purpose of determining the amount of the state share, the cost of the project shall not be more than the amount set forth in the application for a state share made by a municipality and approved by the commissioner. The state share of the cost of a project shall be paid on audit and warrant of the state comptroller on certificate of availability of the director of the budget.

5. Urban cultural park projects. a. State urban cultural park system projects including state environmental, cultural or recreational facilities and sites within state designated urban cultural parks and interpretive/visitor center facilities in each such park as such projects are identified in a management plan prepared pursuant to section 35.05 of the parks, recreation and historic preservation law shall be undertaken pursuant to the provisions of this article only with the approval of the commissioner and the director of the budget. The state share of interpretive/visitor center facility projects shall be one hundred percent of the cost and such projects shall be subject to an agreement by the local urban cultural park management entity to operate such facility.

b. Local urban cultural park resource projects. The commissioner and a municipality, public corporation or not-for-profit corporation may enter into a contract subject to the approval of the director of the budget for the undertaking by the municipality, public corporation or

not-for-profit corporation of a local urban cultural park project including parkwide and district projects identified in a management plan prepared pursuant to section 35.05 of the parks, recreation and historic preservation law. To assure the availability of funds for as wide a range of projects as possible, the commissioner may, in his discretion, limit the dollar amount that may be made available for any project. For the purpose of determining the amount of the state share, the cost of the project shall not be more than the amount set forth in the application for a state share made by the municipality, public corporation or not-for-profit corporation and approved by the commissioner. The state share of the cost of a project shall be paid on audit and warrant of the state comptroller on certificate of availability of the director of the budget.

§ 52-0903. Municipal regulations; limitations.

A municipality which acquires, develops, improves, restores or rehabilitates property with funds made available pursuant to this title may establish reasonable rules and regulations by local law or otherwise to assure the proper administration and development thereof, provided that no such rule or regulation which restricts the use of such lands or facilities by non-residents of the municipality shall be effective without the express approval of the commissioner.

§ 52-0905. Contracts.

The commissioner shall impose such contractual requirements and conditions upon any municipality and any not-for-profit corporation which receive funds pursuant to this title as may be necessary and appropriate to assure that a public benefit shall accrue from the use of public funds by such municipality and not-for-profit corporation. Such conditions may include, but shall not be limited to limitations on the right of the municipality or not-for-profit corporation to demolish or convey such property, provisions for public access where appropriate, the granting of facade easements to the state, a requirement that all

plans for restoration, rehabilitation, improvement, demolition or other physical change must be subject to the commissioner's approval, and such other conditions which shall assure the preservation and protection of the project.

§ 52-0907. Restriction on alienation.

Real property acquired, developed, improved, restored or rehabilitated by a municipality pursuant to subdivision four of section 52-0901 of this title with funds made available pursuant to this title shall not be sold or disposed of or used for other than public park purposes without the express authority of an act of the legislature, which shall provide for the substitution of other lands of equal fair market value and reasonably equivalent usefulness and location to those to be discontinued, sold or disposed of, and such other requirements as shall be approved by the commissioner.

§ 52-0909. Powers and duties of the commissioner.

1. In administering the provisions of this title, the commissioner:

(a) shall make an itemized estimate of funds or appropriations by project required annually for inclusion in the executive budget.

(b) may in the name of the state as further provided within this article contract to make, within the limitations of appropriations available therefor, a state grant for payment to a municipality or not-for-profit corporation representing the state share of the costs of a project approved and to be undertaken pursuant to this article. Such contracts shall be subject to approval by the state comptroller and as to form by the attorney general.

(c) may in the name of the state as further provided within this title enter into contracts with public benefit corporations and private contractors for services contemplated by this article to be funded hereunder.

(d) shall approve vouchers for the payment of assistance pursuant to an approved contract. All such payments shall be paid on the audit and

warrant of the state comptroller.

(e) shall promulgate, after hearings and prior to the receipt of application and/or approval of projects, rules and regulations which shall include but need not be limited to: eligibility requirements, application procedures, office ranking and review processes, project approval guidelines and criteria, and funding distribution for municipal park projects and for each type of historic preservation project.

(f) may perform such other and further acts as may be necessary, proper or desirable to carry out the provisions of this title.

2. All actions taken by the commissioner pursuant to this title shall be consistent with provisions of the federal internal revenue code necessary for the preservation of tax exempt status of bonds issued under the authority granted by the environmental quality bond act of nineteen hundred eighty-six.

§ 52-0911. Compliance with the law.

Every applicant for funds to be made available pursuant to this title shall comply with all applicable state, federal and local laws.

ARTICLE 53

TREE CONSERVATION AND URBAN FORESTRY

Title 1. Tree conservation.

3. Urban forestry programs.

TITLE 1

TREE CONSERVATION

Section 53-0101. Legislative purpose.

53-0103. General functions of the department.

53-0105. Reports.

53-0107. Grants or gifts.

§ 53-0101. Legislative purpose.

There is a direct relationship between the planting of trees, shrubs and associated vegetation in sufficient number in populated areas and the health, safety, and welfare of communities. Trees and such vegetation abate noise, provide welcome shade to people, preserve the balance of oxygen in the air by removing carbon dioxide and fostering air quality, and add color and verdure to human construction. They also stabilize the soil and control water pollution by preventing soil erosion and flooding, yield advantageous microclimatic effects, and provide a natural habitat for wildlife. The destructive and indiscriminate removal of trees and related vegetation causes increased municipal costs for proper drainage control, impairs the benefits of occupancy of existing residential properties and impairs the stability and value of both improved and unimproved real property in the area of destruction, and adversely affects the health, safety, and general welfare of the inhabitants of the state. In the interests of a greener and more livable state, it is determined by the legislature that an affirmative program to encourage the conservation and planting of trees, shrubs and other vegetation is necessary in the public interest in order that coming generations will continue to enjoy and benefit by our care in a green New York.

§ 53-0103. General functions of the department.

The department may:

1. Act in an advisory capacity to state agencies in matters relating to neighborhood improvement and to advise such agencies in regard to developing organized tree and other planting programs to promote urban neighborhood improvement and to enhance and conserve existing tree and green space resources particularly where state action results in a substantial destruction of trees or related vegetation.

2. Advise, encourage and assist local governments in the development and coordination of policies, programs and activities, and in the full

utilization of powers vested in local governments by the constitution and laws of the state, to organize such tree and other planting programs, to promote urban neighborhood improvement and to promote tree and green space protection and maintenance.

3. Act as a clearinghouse for information on urban neighborhood improvement programs and organized tree and other planting programs in accordance with this article.

4. Prepare and circulate model ordinances, relating to trees, appropriate to be used in implementation of section ninety-six-b of the general municipal law or other applicable municipal authority, including but not limited to ordinances or local laws for designation by municipalities of historic or specimen trees, stands and groves, or old-growth forests, and to provide for the recognition and protection thereof.

5. Take such other steps as are necessary to carry out the purpose of this article, including the appointment of advisory committees, boards and task forces.

§ 53-0105. Reports.

The department shall from time to time report to the governor, and shall make an annual report to the governor and the legislature, not later than May first, concerning the effectiveness of this article in carrying out the legislative purpose pursuant to this article, in the preceding calendar year.

§ 53-0107. Grants or gifts.

The department, with the approval of the governor, may accept as agent of the state any gift, devise or bequest, whether conditional or unconditional (notwithstanding the provisions of section eleven of the state finance law), and including federal grants, for any of the

purposes of this article. Any moneys so received may be expended by the department to effectuate any purpose of this article, subject to the same limitations as to approval of expenditures and audit as are prescribed for state moneys appropriated for the purposes of this article.

TITLE 3

URBAN FORESTRY PROGRAMS

Section 53-0301. Legislative purpose.

53-0303. Definitions.

53-0305. Designation of commissioner.

53-0307. Funding of department; municipal authorization for local urban forestry and arboriculture programs.

§ 53-0301. Legislative purpose.

The legislature finds and declares that:

1. It is the purpose of this title to promote a comprehensive urban forestry program to assure positive benefit from urban trees planned and managed with adequate recognition of the physical, biotic and social surroundings in which they are encouraged to grow and provide their benefits.

2. Trees can serve as a vital link between man in the urban setting and his environment, if properly planned and managed.

3. Trees and shrubs can improve the quality of urban environments by helping to prevent erosion, by providing shade, modifying extremes of temperature and humidity, helping to reduce noise and air pollution, and enhancing the aesthetic quality of life. Also, vegetation in urban green space can contribute to urban water shed management and provide habitats for desirable urban wildlife.

4. Growing conditions in urban areas for trees and associated plants

are frequent and recurrent problems because of highway and street widening, sidewalk reconstruction, air pollution, modified drainage, erosion, soil fertility depletion, insects and disease, mechanical hazards and other adverse influences resulting from concentrated use of land. On the other hand, many mature urban areas have large tracts of open space on which more urban vegetation could be grown.

5. Improved and expanded urban tree programs for planting and maintenance of trees and associated vegetation in urban areas would help make urban areas more pleasant and healthful places to live, work and visit; and

6. Trees are an important economic asset and resource to urban areas by increasing land values and by modifying extremes of temperature, humidity and winds and thereby have an important role in reducing the amount of energy consumed in heating and cooling many urban buildings and homes.

§ 53-0303. Definitions.

As used in this title:

1. "Urban forestry" means the planning, establishment, protection and other management of trees and other vegetation in urban areas for present and potential contribution to the physiological, sociological, and economic well-being of urban society. An important component of urban forestry is "arboriculture" which more specifically includes the planting, growing, maintenance and protection of trees and shrubs, individually and in small groups.

2. "Urban forestry plan" means a comprehensive plan for the selection, establishment, maintenance and management of existing and future trees and associated vegetation in an urban area, which plan shall, to the maximum extent possible, present an analysis of physical, biotic, and social conditions of present and potential sites for vegetation, and of improvement needs, opportunities and planned projects within an urban

area.

3. "Urban areas" means cities, villages or towns with a population density of greater than one thousand persons per square mile.

4. "Contributed funds" means money donated by residents of an urban area and others to an urban area for urban forestry or arboriculture within that urban area.

5. "Public funds" means money appropriated by a non-federal government entity for urban forestry or arboriculture within that urban area.

6. "Vacant public land" means any land owned by a state agency, public authority, public benefit corporation or municipal corporation that is not used, is unoccupied or idle; including rights-of-ways but excluding land subject to use restrictions under law.

7. "Municipal forester" means a municipal official appointed by the chief executive officer of a municipal corporation to act as a liaison with the department and the public for the purposes set forth in this article.

§ 53-0305. Designation of commissioner.

For the purposes of this title, the commissioner is designated as the appropriate state official to coordinate federal funding of urban forestry and arboriculture programs and by regulation may provide for the submission and approval of urban forestry and arboriculture plans. The department will also provide technical assistance to urban areas for urban forestry and arboriculture, and encourage the participation of municipal foresters, private agencies, organizations, firms, and individuals to furnish urban forestry and arboricultural services in order to carry out the purposes of this title. The commissioner may take steps necessary to facilitate the cooperation of private agencies and organizations with municipalities for the purposes of this article, including long-term contracts with private parties for the use of vacant

public lands in or around urban areas, subject to other requirements of state law and the jurisdiction of other public agencies with respect thereto, for purposes of urban forestry and arboriculture under this article, and to provide trees and shrubs for planting in accordance with an approved urban forestry or arboricultural plan. This program shall be administered in cooperation with the Cornell cooperative extension and the soil and water conservation districts to avoid duplication between these agencies and the department.

§ 53-0307. Funding of department; municipal authorization for local urban forestry and arboriculture programs.

In the absence of federal legislation funding the department's participation under section 53-0305, no duty is imposed on the department hereunder. Federal funding, however, is not a prerequisite to local implementation of municipal urban forestry or arboriculture programs, as herein provided; and any municipality may implement a local urban forestry or arboriculture program within its jurisdiction under the authority of this title and chapter. All charges and expenses incurred under this section by a town shall be a charge upon the taxable property of that part of the town outside any incorporated village.

ARTICLE 54

ENVIRONMENTAL PROTECTION ACT

- Title
1. General provisions
 3. Open space land conservation projects
 5. Non-hazardous municipal landfill closure projects and municipal landfill gas management projects
 7. Municipal waste reduction or recycling projects
 9. Park, recreation and historic preservation projects
 11. Local waterfront revitalization plans and coastal rehabilitation projects
 13. Long Island central pine barrens area and south shore estuary reserve planning
 15. Climate smart community projects

TITLE 1
GENERAL PROVISIONS

Section 54-0101. Definitions.

54-0103. Powers and duties of the commissioner or secretary.

54-0105. Powers and duties of a municipality.

54-0107. Other powers not affected.

54-0109. Fiscal reporting.

§ 54-0101. Definitions.

As used in this article, unless otherwise specified within any title of this article, the following terms shall mean and include:

1. "Commissioner" means the commissioner of environmental conservation; except that within and for the purposes of the projects undertaken by the office pursuant to title nine of this article, the term shall mean the commissioner of the office of parks, recreation and historic preservation.

2. "Cost" means the cost of an approved project, which shall include engineering and architectural services, plans and specifications, consultant and legal services, and other direct expenses incident to such project less any federal assistance received or to be received and any other assistance from other parties.

3. "Department" means the department of environmental conservation.

4. "Facility" means any structure or site improvement including paths, trails, roads, bridges, ramps and buildings.

5. "Federal assistance" means funds available, other than by loan, from the federal government, either directly or through allocation by the state for construction or program purposes pursuant to any federal law or program.

6. "Governing body" means:

a. in the case of a county outside of the city of New York, the county board of supervisors or other elective governing body;

b. in the case of a city or village, the local legislative body thereof, as the term is defined in the municipal home rule law;

c. in the case of a town, the town board;

d. in the case of a public benefit corporation, the board of directors, members or trustees thereof;

e. in the case of a public authority, the governing board of directors, members, or trustees thereof;

f. in the case of a not-for-profit corporation, the board of directors thereof or such other body designated in the certificate of incorporation to manage the corporation; and

g. in the case of an Indian tribe or nation, any governing body recognized by the United States or the state of New York.

7. "Municipality" means a local public authority or public benefit corporation, a county, city, town, village, or Indian tribe or nation residing within New York state, or any combination thereof. For the purposes of title 5 and title 9 of this article, municipality shall also include state agencies, state public authorities and state public benefit corporations. For the purposes of title 7 and title 9 of this article, the term municipality shall also include a school district and a supervisory district.

8. "Not-for-profit corporation" means a corporation formed pursuant to the not-for-profit corporation law and qualified for tax-exempt status under the federal internal revenue code.

9. "Office" means the office of parks, recreation and historic preservation.

10. "Solid waste" shall have the definition set forth in title 5 of article 27 of this chapter but shall not include hazardous waste as defined in title 9 of article 27 of this chapter.

11. "State assistance payment" means the payment of monies by the state for projects authorized by the environmental protection fund, to preserve, enhance, restore and improve the quality of the state's environment.

12. "Secretary" means the secretary of state.

§ 54-0103. Powers and duties of the commissioner or secretary.

In administering the provisions of this article the respective commissioner or the secretary:

1. shall make an itemized estimate of funds or appropriations requested annually for inclusion in the executive budget;

2. may, in the name of the state, as further provided within this article, contract to make, within the limitations of appropriations available therefor, state assistance payments to a municipality toward the cost of a project approved and to be undertaken pursuant to this article, or to a not-for-profit corporation toward the costs of a project approved and to be undertaken pursuant to titles three and nine of this article. Such contracts shall include provisions to maximize awareness for the public that a source of funding for such project is the New York state environmental protection fund. Such provisions shall not require any expenditure of funds beyond that which the municipality may decide if it communicates to the public regarding the project. Such contracts shall be subject to approval by the state comptroller and, as to form, by the attorney general;

3. may, in the name of the state, enter into contracts, within the limitations of appropriations available therefor, with not-for-profit corporations, public benefit corporations, and private contractors for services contemplated by this article to be funded hereunder. Such contracts shall include provisions to maximize awareness for the public that a source of funding for such services is the New York state environmental protection fund. Such provisions shall not require any expenditure of funds beyond that which the not-for-profit corporations, public benefit corporations, and private contractors may decide if it communicates to the public regarding the project. Such contracts shall be subject to approval by the state comptroller and, as to form, by the attorney general;

4. shall approve vouchers for the payments pursuant to an approved contract. All such payments shall be paid on the audit and warrant of the state comptroller; and

5. may perform such other and further acts as may be necessary, proper or desirable to carry out the provisions of this article.

§ 54-0105. Powers and duties of a municipality.

A municipality shall have the power and authority to:

1. Undertake and carry out any project for which state assistance payments pursuant to contract are received or are to be received pursuant to this article and maintain and operate such project;

2. Expend money received from the state pursuant to this article for costs incurred in conjunction with the approved project; and

3. Perform such other and further acts as may be necessary, proper or desirable to carry out a project or obligation, duty or function related thereto.

§ 54-0107. Other powers not affected.

Nothing in this article shall be construed to limit or restrict any powers of the commissioner or any other agency pursuant to any other provision of law.

§ 54-0109. Fiscal reporting.

1. No later than fifteen days after the end of each fiscal year quarter, the department shall report to the director of the budget, the chairperson of the senate finance committee, the chairperson of the assembly ways and means committee and the public on the status of each project receiving state assistance payments pursuant to this article. Each state agency, department, public authority or public benefit corporation administering any project or program pursuant to this article shall assist the department in the preparation of the report and shall provide information as required by the department. Such report shall include as applicable for each category, subcategory and project:

- (a) total appropriations;
- (b) total project costs;
- (c) total commitments;
- (d) total outstanding encumbrances;
- (e) total year to date disbursements;
- (f) total life to date disbursements; and
- (g) total remaining uncommitted balance.

2. Such report shall also contain the percentage and amount of funding directed to facilitate disabled access to department and office of parks, recreation and historic preservation owned or managed facilities.

TITLE 3

OPEN SPACE LAND CONSERVATION PROJECTS

Section 54-0301. Definitions.

54-0303. Open space land conservation projects.

§ 54-0301. Definitions.

For purposes of this title, "open space land conservation projects" shall mean acquisition projects including the purchase of conservation easements undertaken by the commissioner and/or the commissioner of the office of parks, recreation and historic preservation listed in the state open space land acquisition plan prepared pursuant to title 2 of article 49 of this chapter.

§ 54-0303. Open space land conservation projects.

1. The commissioner and the commissioner of the office of parks, recreation and historic preservation are authorized to undertake open space land conservation projects.

2. a. The commissioner of the office of parks, recreation and historic preservation may enter into an agreement for the maintenance and operation of open space land conservation projects in urban areas or metropolitan park projects by a municipality, or a not-for-profit corporation or unincorporated association which demonstrates to the commissioner's satisfaction that the future physical climate risk due to sea level rise, and/or storm surges and/or flooding, based on available data predicting the likelihood of future extreme weather events, including hazard risk analysis data if applicable, has been considered and the municipality, not-for-profit corporation or unincorporated association is financially or otherwise capable of operating and maintaining the project for the benefit of the public and of maximizing public access to such project. Any such agreement shall contain such provisions as shall be necessary to ensure that its operation and maintenance are consistent with and in furtherance of this article and shall be subject to the approval of the director of the budget, the comptroller and, as to form, the attorney general.

b. The commissioner, pursuant to appropriation therefor and in order to further the purposes of article forty-six of this chapter, may make

available to the Albany Pine Bush preserve commission, established by article forty-six of this chapter, moneys for the operation of such commission, including the management of lands under the jurisdiction of such commission in accordance with a management plan prepared as specified in section 46-0111 of this chapter.

3. The cost of an open space land conservation project shall include the cost of preparation of a management plan for the preservation and beneficial enjoyment of the land acquired except where such considerations have already been undertaken as part of an existing plan applicable to the newly acquired land.

4. To the fullest extent practicable, it is the policy of the state to promote an equitable regional distribution of open space land conservation funds, consistent with the purpose of this title, taking into account regional differences in real property values, ecological resources and recreational opportunities.

5. No project, which was not listed on the state land acquisition plan as of the effective date of this title, shall be proposed for acquisition by the state under this title, pursuant to the state land acquisition plan, if any town, village or city within which such a project is located, by resolution, within ninety days of notification by the state of its interest in acquiring such project, objects to such acquisition. Such objection shall be transmitted to the commissioner through the regional land acquisition advisory committee and shall prevent the state from undertaking such acquisition.

6. No monies shall be expended for acquisition by eminent domain of any open space land conservation project except in accordance with the state land acquisition policy set forth in section 49-0203 of this chapter.

7. No monies shall be expended for open space land conservation projects except pursuant to an appropriation therefor.

TITLE 5

NON-HAZARDOUS MUNICIPAL LANDFILL CLOSURE PROJECTS AND MUNICIPAL LANDFILL GAS MANAGEMENT PROJECTS

Section 54-0501. Definitions.

- 54-0503. Eligibility to receive state assistance payments for municipal landfill closure projects.
- 54-0504. Eligibility to receive state assistance payments for municipal landfill gas management projects.
- 54-0505. Criteria for municipal landfill closure projects.
- 54-0506. Criteria for municipal landfill gas management projects.
- 54-0507. State assistance application procedure.
- 54-0509. Contracts for state assistance payments for municipal landfill closure projects and municipal landfill gas management projects.
- 54-0511. Loans for municipal landfill closure projects and municipal landfill gas management projects.
- 54-0513. Powers and duties of the commissioner.
- 54-0515. Powers and duties of a municipality.

§ 54-0501. Definitions.

As used in this title the following terms shall mean and include:

1. "Landfill" means a disposal facility or part of one at which solid waste, or its residue after treatment, is intentionally placed in or on land, and at which solid waste will remain after closure and which is not a land spreading facility, a surface impoundment, or an injection well.

2. "Municipal landfill closure project" means activities undertaken to close, including by reclamation, a landfill owned or operated by a municipality to achieve compliance with regulations promulgated by the department, or activities undertaken to implement a landfill gas management system.

3. "Cost" means the capital cost of a municipal landfill closure project or a municipal landfill gas management project, including engineering and architectural services, plans and specifications, consultant and legal services, and other direct capital expenses incident to such project, less any federal or other assistance for such project received or to be received.

4. "Landfill gas management system" means an active system for the control, capture, and management of gas created within and emitted from a solid waste landfill.

5. "Municipal landfill gas management project" means activities undertaken to implement a landfill gas management system at an active landfill which is owned or operated by a municipality.

§ 54-0503. Eligibility to receive state assistance payments for municipal landfill closure projects.

Any municipality which is the owner or operator of a landfill may apply for state assistance payments toward the cost of a municipal landfill closure project upon showing that the following criteria, in addition to applicable rules and regulations, have been met:

1. The landfill site has not been classified pursuant to subparagraph one or two of paragraph b of subdivision four of section 27-1305 of this chapter. Sites which have been removed from the registry may apply for state assistance payments.

2. The municipality has an obligation to close the landfill by a specific date pursuant to an administrative order, court order or permit which requires the municipality to cease acceptance of waste at the site within eighteen months of the date the application for state assistance payment is approved.

3. A closure investigation report which complies with the requirements of applicable regulations of the department, including a demonstration

that future physical climate risk due to sea level rise, and/or storm surges and/or flooding, based on available data predicting the likelihood of future extreme weather events, including hazard risk analysis data if applicable, has been considered, shall have been submitted.

4. The municipality has agreed, upon project approval, to waive any right to state assistance for closure of the site under section 27-1313 of this chapter.

§ 54-0504. Eligibility to receive state assistance payments for municipal landfill gas management projects.

Any municipality which is the owner or operator of a landfill may apply for state assistance payments toward the cost of a municipal landfill gas management project. Any application for a municipal landfill gas management project must comply with all applicable rules and regulations promulgated by the department.

§ 54-0505. Criteria for municipal landfill closure projects.

1. State assistance payments shall be approved only for closure projects that include plans for closure, post-closure and construction in accordance with the department's solid waste management regulations applicable to new projects which were in effect six months prior to the date of submittal of the final application.

2. Municipal landfill closure project costs incurred prior to April first, nineteen hundred ninety-three shall not be eligible for state assistance payments funded pursuant to this article.

3. Prior to processing applications for state assistance payments for projects pursuant to this section, the commissioner shall promulgate, in consultation with the director of the budget, rules and regulations which shall include criteria for determining eligible expenditures and

procedures governing the commitment and disbursement of funds appropriated in accordance with this section. The commissioner also shall promulgate rules and regulations which shall include application procedures, review processes, and project approval guidelines and criteria.

§ 54-0506. Criteria for municipal landfill gas management projects.

Municipal landfill gas management project costs incurred prior to April first, nineteen hundred ninety-three shall not be eligible for state assistance payments funded pursuant to this article.

§ 54-0507. State assistance application procedure.

1. A municipality, upon the approval of its governing body, may submit an application to the commissioner, in such form and containing such information as the commissioner may require, for state assistance payments toward the cost of a project which is within the state of New York and which is eligible for state assistance pursuant to this title.

2. The commissioner shall review such project application and may approve, disapprove or recommend modifications thereto consistent with applicable law, criteria, standards or rules and regulations relative to such projects. In reviewing applications for projects pursuant to this section, the commissioner shall give due consideration to:

a. the urgency of need to provide state assistance payments for the project in relation to the provision of monies for other project needs in the state known at the time such application is made;

b. any adverse environmental impact resulting from the municipal landfill, including effects on groundwater; and

c. the ability of the municipality to pay for the costs of closure.

3. No monies shall be expended for non-hazardous municipal landfill closure projects or municipal landfill gas management projects except pursuant to an appropriation therefor.

§ 54-0509. Contracts for state assistance payments for municipal landfill closure projects and municipal landfill gas management projects.

After approval of the application, the commissioner and the municipality shall enter into a contract for state assistance payments toward the cost of such project which shall include the following provisions:

1. A current estimate of the cost of the project as determined by the commissioner at the time of the execution of the contract.

2. An agreement by the commissioner to make state assistance payments toward the cost of the project by periodically reimbursing the municipality for costs incurred during the progress of the project. For a municipal landfill closure project, which does not include a landfill gas management system, such reimbursement shall be a maximum of either fifty percent of the cost, or ninety percent of the cost for a municipality with a population smaller than thirty-five hundred as determined by the current federal decennial census, or two million dollars, whichever is less. For a landfill gas management system, which is part of a municipal landfill closure project, reimbursement shall be a maximum of either fifty percent of the cost, or ninety percent of the cost for a municipality with a population smaller than thirty-five hundred as determined by the current federal decennial census, or two million dollars, whichever is less. For a municipal landfill gas management project, reimbursement shall be a maximum of either fifty percent of the cost, or ninety percent of the cost for a municipality with a population smaller than thirty-five hundred as determined by the current federal decennial census, or two million dollars, whichever is less. Project costs are subject to final computation and determination by the commissioner upon completion of the project, and shall not exceed

the maximum cost set forth in the contract. For purposes of this subdivision, the approved project cost shall be reduced by the amount of any specific state assistance payments for municipal landfill closure or municipal landfill gas management project purposes received by the municipality from any source; provided, however, that non-specific state assistance payments, such as amounts paid pursuant to section fifty-four of the state finance law, shall not be included in such cost reduction.

3. An agreement by the municipality to proceed expeditiously with the project and to complete the project in accordance with plans and reports approved by the department and with the conditions of applicable permits, administrative orders or judicial orders.

§ 54-0511. Loans for municipal landfill closure projects and municipal landfill gas management projects.

1. A municipality eligible for a state assistance payment pursuant to subdivision two of section 54-0509 of this title and which has a population smaller than thirty-five hundred as determined by the current federal decennial census is also eligible for a loan to a maximum of the unfunded portion of such project.

2. Loans pursuant to this title shall be without interest and for a term not to exceed twenty years.

3. Loan repayments under this title shall be deposited to the credit of the environmental protection fund pursuant to subdivision two of section ninety-two-s of the state finance law.

4. A municipality obtaining a loan under subdivision one of this section shall enter into a contract with the commissioner. That contract shall contain the following provisions:

a. the loan shall be repaid in appropriate equal installments. There shall be a one percent per month surcharge for each month of delinquent payment added to any such installment tendered more than sixty days

after the due date.

b. in the event a municipality shall fail to make any payment due to the state pursuant to this title, the commissioner shall certify to the comptroller and notify the chairman of the assembly ways and means committee, the chairman of the senate finance committee, the director of the division of the budget and the governing body of the municipality that such municipality has failed to make such payment. Such certificate shall be in the form as may be determined by the commissioner provided such certificate shall specify the exact amount of principal and surcharge required to satisfy such municipality's unpaid obligation. The comptroller, upon receipt of such certificate from the commissioner, shall withhold from such municipality any state aid payable to it to the extent necessary to meet the certified amount of principal and surcharge due the commissioner and shall immediately pay over to the environmental protection fund the amount so withheld.

§ 54-0513. Powers and duties of the commissioner.

In administering the provisions of this title the commissioner:

1. shall make an itemized estimate of funds or appropriations requested annually for inclusion in the executive budget;
2. may, in the name of the state, as further provided within this article, contract to make, within the limitations of appropriations available therefor, state assistance payments and loans toward the costs of an approved project. Such contracts shall be subject to approval by the state comptroller and, as to form, by the attorney general;
3. shall approve vouchers for the payments pursuant to an approved contract. All such payments shall be paid on the audit and warrant of the state comptroller; and
4. may perform such other and further acts as may be necessary, proper or desirable to carry out the provisions of this article.

§ 54-0515. Powers and duties of a municipality.

A municipality shall have the power and authority to:

1. Undertake and carry out any project for which state assistance payments and loans pursuant to contract are received or are to be received pursuant to this article and maintain and operate such project;
2. Expend money received from the state pursuant to this article for costs incurred in conjunction with the approved project; and
3. Perform such other and further acts as may be necessary, proper or desirable to carry out a project or obligation, duty or function related thereto.

TITLE 7

MUNICIPAL WASTE REDUCTION OR RECYCLING PROJECTS

Section 54-0701. Definitions.

- 54-0703. Approval of state assistance payments for municipal recycling or waste reduction projects.
- 54-0705. Rules and regulations.
- 54-0707. State assistance application procedure.
- 54-0709. Contracts for state assistance payments for waste reduction or municipal recycling projects.

§ 54-0701. Definitions.

As used in this title the following terms shall mean and include:

1. "Cost" means the capital cost of a municipal recycling project including engineering and architectural services, surveys, plans and specifications; consultant and legal services; lands acquired pursuant to the conditions set forth in section 54-0709 of this title, and other

direct capital expenses incident to such a project, less any federal assistance or other assistance received or to be received. "Cost" shall also include the capital, planning and promotional costs associated with waste reduction projects, the costs related to household hazardous waste collection and disposal programs, and the costs related to planning, educational and promotional activities associated with a recyclables recovery program. "Cost" shall also include beverage container assistance program grants to municipalities and not-for-profit organizations pursuant to section 27-1018 of this chapter. Provided, however, "cost" shall exclude any cost incurred prior to April first, nineteen hundred ninety-three, and shall further exclude costs related to planning, educational and promotional activities associated with a recyclables recovery program incurred prior to April first, two thousand.

2. "Recyclables recovery equipment" means structures, machinery or devices, singly or in combination, designed, constructed and required primarily to separate, process, modify, convert, treat, or prepare collected solid waste, which is included as part of a recyclables recovery program so that component materials or substances or recoverable resources may be used as a raw material for new products or for useful purposes other than for energy recovery, and for the collection and preparation for disposal of household hazardous waste.

3. "Recyclables recovery program" means a program undertaken by a municipality consistent with requirements of section one hundred twenty-aa of the general municipal law to provide for the environmentally sound recovery of recyclables, primarily involving the collection, aggregation and processing of recyclable materials for their use as raw materials for new products or for other useful purposes other than for energy recovery, through facilities planned, designed and constructed to ensure environmental protection and to maximize the potential for recyclables recovery. A recyclables recovery program also shall mean planning, educational and promotional activities to increase public awareness of and participation in recycling. Such program shall have been approved by the commissioner and undertaken consistent with any local solid waste management plan pursuant to section 27-0107 of

this chapter.

4. "Recycling project" means recyclables recovery equipment, source separation equipment, a recyclables recovery program or any combination thereof required by a recyclables recovery program and the reimbursement to municipalities and not-for-profit corporations, as such terms are defined in section 54-0101 of this article, for the cost of a redemption center as defined in section 27-1003 of this chapter.

5. "Source separation equipment" means municipally-owned:

a. Add-ons or trailers designed to modify collection vehicles to allow sorting and separation of collected wastes held for the purpose of recycling;

b. Containers for the source separation and temporary storage of recyclable wastes by commercial, industrial and institutional generators, and for the source separation and temporary storage of recyclable wastes by single family and multiple family dwellings prior to collection;

c. Bins, sheds or other facilities for the temporary storage of materials prior to transport for the purposes of recycling; and

d. Collection vehicles specifically designed to hold and transport source separated recyclables.

6. "Waste reduction projects" means projects undertaken to reduce the volume or toxicity of material entering the municipal solid waste stream, by reducing the volume or toxicity of such material at the point of generation. Waste reduction projects shall include planning and educational or promotional activities to increase public awareness of methods to prevent the generation of waste including the reuse of certain materials, substitution of non-toxic household products, and the promotion of backyard composting.

7. "Household hazardous waste" shall mean solid waste emanating from

households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas) which but for their point of generation, would be a hazardous waste under title 9 of article 27 of this chapter or a "pesticide" as defined in article 33 of this chapter.

§ 54-0703. Approval of state assistance payments for municipal recycling or waste reduction projects.

1. State assistance payments toward the cost of municipal recycling or waste reduction projects shall be made pursuant to this title with the approval of the commissioner pursuant to an approved contract or contracts.

2. In reviewing applications for state assistance payments for municipal recycling or waste reduction projects, the commissioner shall give due consideration to:

a. the adequacy of the municipality's waste reduction or recycling program and its relationship to the needs and plans of other municipalities; provided, however, that such adequacy shall be determined in part by the efforts undertaken to date by the municipality to implement a mandatory source separation law or ordinance required pursuant to section one hundred twenty-aa of the general municipal law;

b. the suitability and feasibility of the project in relation to the recycling program and the area to be served;

c. the proportion of solid waste for which waste reduction or recyclables recovery is contemplated and the extent to which the project is consistent with the statewide solid waste reduction and recycling goals established under the state solid waste management plan, pursuant to section 27-0103 of this chapter;

d. the potential for coordination and consolidation of solid waste management practices among municipalities within specified areas,

regions or planning units;

e. the implementation of the system or components thereof and their expected terms of usefulness, singly or in combination;

f. the present and projected population, land use, and rates and composition of solid waste generation;

g. the potential or contemplated markets for recovered recyclables and the extent to which the full avoided costs of proper collection, transportation and disposal of source separated recyclables are, or are projected to be, greater than the cost of collection, transportation and sale of said recyclables less the amount received from the sale of said recyclables;

h. the intergovernmental arrangements integral to the project;

i. the non-governmental arrangements integral to the project;

j. the urgency of the project, in relationship to all recyclables recovery program needs in the state; and

k. the environmental soundness of the project, including assurance that the project will meet all applicable laws, criteria, and rules and regulations.

3. State assistance payments toward the cost of a waste reduction or municipal recycling project shall not exceed fifty percent of the cost, and in the aggregate such payments shall in no event exceed two million dollars. Such costs are subject to final computation and determination by the commissioner upon completion of the project, and shall not exceed the maximum eligible cost set forth in the contract.

§ 54-0705. Rules and regulations.

Prior to processing applications for state assistance payments toward

the cost of municipal waste reduction or recycling projects, the commissioner shall promulgate, in consultation with the director of the budget and the commissioner of economic development, rules and regulations which shall include criteria for determining eligible expenditures and procedures for governing the commitment and disbursement of funds appropriated in accordance with this title. The commissioner, in consultation with the commissioner of economic development, shall also promulgate rules and regulations which shall include application procedures, review processes, and project approval guidelines and criteria.

§ 54-0707. State assistance application procedure.

1. A municipality, upon the approval of its governing body, may submit an application to the commissioner, in such form and containing such information as the commissioner may require, for state assistance payments toward the cost of a project which is within the state of New York and which is eligible for state assistance pursuant to this title.

2. The commissioner shall review such project application and may approve, disapprove or recommend modifications thereto consistent with applicable law, criteria, standards or rules and regulations relative to such projects.

3. Upon approval of a project application, a municipality shall enter into a contract, as further provided within this article, with the commissioner for state assistance payments toward the cost of such project to be received pursuant to this article.

4. No monies shall be expended for municipal waste reduction or recycling projects except pursuant to an appropriation therefor.

§ 54-0709. Contracts for state assistance payments for waste reduction or municipal recycling projects.

1. The commissioner may, in the name of the state, enter into contracts with municipalities to provide state assistance payments toward the cost of waste reduction or municipal recycling projects. Such contracts shall include the following provisions:

a. an estimate of the costs of the project as determined by the commissioner;

b. an agreement by the commissioner to make state assistance payments toward the cost of the project by periodically reimbursing the municipality, during the progress of project development or following completion of the project as may be agreed upon by the parties, in an amount not to exceed the amounts established elsewhere in this title; and

c. an agreement by the municipality:

(i) to proceed expeditiously with and complete the project as approved by the commissioner;

(ii) to operate and maintain the waste reduction or municipal recycling project in accordance with applicable law and rules and regulations;

(iii) to provide for the payment of the municipality's share of the cost of the project;

(iv) to continue, upon evaluation of its effectiveness, operation of the project and not to dispose of the project or any portion thereof or change its use without the approval of the commissioner;

(v) to assume the full cost of any continued operation of the project;

(vi) to repay within one year of notification by the commissioner, any state assistance payments made toward the cost of the project or an equitable portion of such monies declared appropriate by the commissioner, if the municipality:

(A) fails to complete the project as approved;

(B) fails to continue operation of the project;

(C) disposes of the project, or any portion thereof, without the prior written approval of the commissioner; or

(D) changes the use of the project, or any portion thereof, without the prior written approval of the commissioner.

No repayment, however, shall be required where the commissioner determines that such failure, disposition or change of use was immediately necessary to protect public health and safety;

(vii) to apply for and make reasonable efforts to secure federal assistance for the project; and

(viii) to not sell, lease or otherwise dispose of or use lands acquired under this title for any purpose inconsistent with the project under which such land is acquired.

2. In connection with each contract, the commissioner shall keep adequate records of the amount of the payment by the state and of the amount of federal assistance, if any, received by the municipality. Such records shall be retained by the commissioner and shall establish the basis for recalculation of the state payment as required herein.

TITLE 9

PARK, RECREATION AND HISTORIC PRESERVATION PROJECTS

Section 54-0901. Definitions.

54-0903. Approval and execution of projects.

54-0905. Municipal regulations; limitations.

54-0907. Contracts.

54-0909. Restriction on alienation.

54-0911. Rules and regulations.

§ 54-0901. Definitions.

As used in this title the following terms shall mean and include:

1. "Municipal park project" means a project undertaken by a municipality or a not-for-profit corporation for the planning, structural assessment, acquisition, development or improvement of recreational facilities including construction of structures, roads and parking facilities.

2. "Historic preservation project" means a project undertaken by a

municipality or a not-for-profit corporation to acquire, improve, restore or rehabilitate property listed on the state or national registers of historic places to protect the historic, cultural or architectural significance thereof or a project for planning or structural assessments for such properties. "Historic preservation project" shall also mean a project undertaken by the office to improve, restore or rehabilitate state historic properties listed on the state or national registers of historic places to protect the historical, cultural or architectural significance thereof or a project for planning relating to or structural assessments of such properties.

3. "Heritage area project" means a project undertaken by or through a municipality, public benefit corporation or a not-for-profit corporation for the planning, structural assessment, acquisition and development of sites and facilities identified in a management plan prepared and/or approved by the commissioner in accordance with the provisions of section 35.05 of the parks, recreation and historic preservation law.

4. "Costs" means the cost of an approved project, which shall include engineering and architectural services, plans and specifications, consultant and legal services, and other direct expenses incident to such project.

§ 54-0903. Approval and execution of projects.

1. State historic preservation projects may be undertaken pursuant to the provisions of this article and other applicable provisions of law only with the approval of the commissioner.

2. All historic preservation projects, municipal park projects and heritage area projects shall be undertaken in the state of New York. Except for state projects undertaken by the office at state historic properties, the total amount of the state assistance payments toward the cost of any such project shall in no event exceed fifty percent of the cost, provided however, that in the case of a project located in an area which, according to the most recent census data available, has a poverty

rate of at least ten percent for the year to which the data relates, state assistance payments toward the cost of any such project shall in no event exceed seventy-five percent of the cost. For the purpose of determining the amount of the state assistance payments, the cost of the project shall not be more than the amount set forth in the application for state assistance payments approved by the commissioner. The state assistance payments toward the cost of a project shall be paid on audit and warrant of the state comptroller on a certificate of availability of the director of the budget.

3. a. The commissioner and a municipality may enter into a contract for the undertaking by the municipality of an historic preservation project. Such historic preservation projects shall be recommended to the commissioner by the governing body of the municipality and, when approved by the commissioner, may be undertaken by the municipality pursuant to this title and any other applicable provision of law.

b. The commissioner and a not-for-profit corporation may enter into a contract for the undertaking by the not-for-profit corporation of an historic preservation project. Such an historic preservation project shall be recommended to the commissioner by the governing body of a not-for-profit corporation which demonstrates to the satisfaction of the commissioner that it is capable of operating and maintaining such property for the benefit of the public. Upon approval by the commissioner, such project may be undertaken pursuant to the provisions of this title and any other applicable provision of law.

4. a. The commissioner and a municipality may enter into a contract for the undertaking by the municipality of a municipal park project. Municipal park projects shall be recommended to the commissioner by the governing body of the municipality, and when approved by the commissioner, may be undertaken by the municipality pursuant to this title and any other applicable provisions of law. The office shall assess existing parks and recreational opportunities in the municipalities where the municipal park project is located and shall give preference to projects which are in or primarily serve areas where demographic and other relevant data for such areas demonstrate that the

areas are densely populated and have sustained physical deterioration, decay, neglect or disinvestment, or where a substantial proportion of the residential population is of low income or is otherwise disadvantaged and is underserved with respect to the existing recreational opportunities in the area.

b. The commissioner and a not-for-profit corporation may enter into a contract for the undertaking by the not-for-profit corporation of a municipal park project. Such a contract shall be contingent upon the approval of the governing body of each municipality in which the project is located. Such a project shall be recommended to the commissioner by the governing body of a not-for-profit corporation which demonstrates to the satisfaction of the commissioner that it is capable of operating and maintaining such project for the benefit of the public. Upon approval by the commissioner, such project may be undertaken pursuant to the provisions of this title and any other applicable provision of law. The office shall assess existing parks and recreational opportunities in the municipalities where the municipal park project is located and shall give preference to projects which are in or primarily serve areas where demographic and other relevant data for such areas demonstrate that the areas are densely populated and have sustained physical deterioration, decay, neglect or disinvestment, or where a substantial proportion of the residential population is of low income or is otherwise disadvantaged and is underserved with respect to the existing recreational opportunities in the area.

5. The commissioner and a municipality, public benefit corporation or not-for-profit corporation may enter into a contract, subject to the approval of the director of the budget, for the undertaking by or through the municipality, public benefit corporation or not-for-profit corporation of a local heritage area or urban cultural park project including parkwide and district projects identified in a management plan prepared pursuant to section 35.05 of the parks, recreation and historic preservation law. Such projects shall be subject to an agreement by the local heritage area or urban cultural park management entity to operate or cause to be operated any public facility resulting from such project.

6. No monies shall be expended for park, recreation and historic preservation projects except pursuant to an appropriation therefor.

§ 54-0905. Municipal regulations; limitations.

A municipality which acquires, develops, improves, restores or rehabilitates property with funds made available pursuant to this title may establish reasonable rules and regulations by local law or otherwise to assure the proper administration and development thereof, provided that no such rule or regulation which restricts the use of such lands or facilities by non-residents of the municipality shall be effective without the approval of the commissioner.

§ 54-0907. Contracts.

1. The commissioner shall impose such contractual requirements and conditions upon any municipality and any not-for-profit corporation which receive state assistance payments pursuant to this title as may be necessary and appropriate to ensure that a public benefit shall accrue from the use of public funds by such municipality or not-for-profit corporation. Such conditions shall include limitations on the right of the municipality or not-for-profit corporation to demolish or convey such property, provisions for public access or use where appropriate, the granting of facade easements to the state, a requirement that all plans for restoration, rehabilitation, improvement, demolition or other physical change must be subject to the commissioner's approval, and such other conditions which shall assure the preservation and protection of the project.

2. Any not-for-profit corporation which receives state assistance payments pursuant to this title for the acquisition of land for outdoor recreation or conservation purposes shall execute a contract with the commissioner which shall include the following:

a. An agreement to make and keep the lands accessible to the public

unless the commissioner determines that public accessibility would be detrimental to the lands or any natural resources associated therewith;

b. An agreement not to sell, lease, exchange or donate the lands except to the state, a local government unit or another qualifying tax exempt non-profit organization for recreation and conservation purposes approved by the commissioner; and

c. An agreement to execute and convey to the state at no charge a conservation easement, pursuant to title three of article forty-nine of this chapter, over the lands to be acquired with state assistance payments.

§ 54-0909. Restriction on alienation.

1. Real property acquired, developed, improved, restored or rehabilitated by or through a municipality pursuant to paragraph a of subdivision four of section 54-0903 of this title or undertaken by or on behalf of the city of New York with funds made available pursuant to this title shall not be sold, leased, exchanged, donated or otherwise disposed of or used for other than public park purposes without the express authority of an act of the legislature, which shall provide for the substitution of other lands of equal environmental value and fair market value and reasonably equivalent usefulness and location to those to be discontinued, sold or disposed of, and such other requirements as shall be approved by the commissioner.

2. Real property acquired by a not-for-profit organization with funds made available pursuant to paragraph b of subdivision four of section 54-0903 of this title shall not be used in violation of an agreement entered into pursuant to the provisions of paragraph b of subdivision two of section 54-0907 of this title, or sold, leased, exchanged, donated or otherwise disposed of without the express authority of an act of the legislature.

§ 54-0911. Rules and regulations.

The commissioner shall adopt, prior to the acceptance of applications for municipal park, historic preservation and urban cultural park projects, rules and regulations which shall include eligibility requirements, application procedures, office ranking and review processes, project approval guidelines and criteria, and funding distribution necessary for all state assistance payment programs established pursuant to section 54-0903 of this title.

TITLE 11

LOCAL WATERFRONT REVITALIZATION PLANS AND COASTAL REHABILITATION PROJECTS

Section 54-1101. Local waterfront revitalization programs.

54-1103. Coastal rehabilitation projects.

54-1105. State assistance payments for coastal rehabilitation projects.

54-1107. State assistance application procedure and standards.

54-1109. Contracts for state assistance payments for coastal rehabilitation.

54-1111. State projects.

§ 54-1101. Local waterfront revitalization programs.

1. The secretary is authorized to provide on a competitive basis, within amounts appropriated, state assistance payments and/or technical assistance as defined in section nine hundred seventeen of the executive law, to municipalities toward the development of any local waterfront revitalization program, pursuant to article forty-two of the executive law including planning projects to mitigate future physical climate risks and updates to existing local waterfront revitalization program plans to mitigate future physical climate risks. Eligible costs include planning, studies, preparation of local laws, and construction projects.

2. State assistance payments and/or technical assistance, as defined

in section nine hundred seventeen of the executive law, shall not exceed seventy-five percent of the cost of the program provided, however, in environmental justice communities, such assistance payments and/or technical assistance shall not exceed eighty-five percent of the cost of the program. For the purpose of determining the amount of state assistance payments, costs shall not be more than the amount set forth in the application for state assistance payments approved by the secretary. The state assistance payments shall be paid on audit and warrant of the state comptroller on a certificate of availability of the director of the budget.

3. The secretary shall have the power to approve vouchers for payments pursuant to an approved contract.

4. No moneys shall be expended as authorized by this section except pursuant to an appropriation therefor.

5. The secretary shall impose such contractual requirements and conditions upon any municipality which receives state assistance payments pursuant to this article as may be necessary and appropriate to ensure that a public benefit shall accrue from the use of such funds by the municipality including but not limited to, a demonstration that future physical climate risk due to sea level rise, and/or storm surges and/or flooding, based on available data predicting the likelihood of future extreme weather events, including hazard risk analysis data if applicable, has been considered.

§ 54-1103. Coastal rehabilitation projects.

As used in this title, "coastal rehabilitation project" shall mean those projects which serve a public purpose for beach nourishment necessary to maintain the natural functions of beach areas, maintenance of the natural passage of sand along coastal areas, emergency breach closures and similar activities undertaken by the state, a municipality, or a not-for-profit corporation which demonstrates to the commissioner's satisfaction that it is financially and otherwise capable of operating

and maintaining the project, for the restoration and rehabilitation of coastal areas diminished, damaged or destroyed by natural forces.

§ 54-1105. State assistance payments for coastal rehabilitation projects.

1. The commissioner is authorized to provide on a competitive basis, within amounts appropriated, state assistance payments to a municipality or a not-for-profit corporation toward the cost of any coastal rehabilitation project approved by the commissioner provided that the commissioner determines that future physical climate risk due to sea level rise, and/or storm surges and/or flooding, based on available data predicting the likelihood of future extreme weather events, including hazard risk analysis data if applicable, has been considered.

2. The commissioner and a municipality or not-for-profit corporation may enter into a contract for the undertaking of a coastal rehabilitation project. Such project shall be recommended to the commissioner by the governing body of the municipality or not-for-profit corporation as that term is defined pursuant to subdivision six of section 54-0101, and when approved by the commissioner, undertaken by the municipality or not-for-profit corporation pursuant to this article and any other applicable provisions of law.

3. State assistance payments shall not exceed fifty percent of the project cost or two million dollars, whichever is less. Such costs are subject to final computation and determination by the commissioner upon completion of the project, and shall not exceed the maximum eligible cost set forth in the contract.

4. Prior to processing applications for state assistance payments toward the cost of coastal rehabilitation projects, the commissioner shall promulgate rules and regulations which shall include criteria for determining eligible expenditures and procedures for governing the commitment and disbursement of funds appropriated in accordance with this title. The commissioner shall also promulgate rules and regulations

which shall include application procedures, review processes, and project approval guidelines and criteria consistent with section 54-1107.

§ 54-1107. State assistance application procedure and standards.

In the case of coastal rehabilitation projects, a municipality or not-for-profit corporation, upon the approval of its governing body, may submit an application to the commissioner, in such form and containing such information as the commissioner may require, for state assistance payments toward the cost of a project which is within the state of New York and which is eligible for state assistance pursuant to this title. The commissioner shall review such project application and may approve, disapprove or recommend modifications thereto consistent with applicable law, criteria, standards or rules and regulations relative to such projects. Such criteria and standards shall include, but not be limited to: the consistency of the project with the Coastal Erosion Hazard Areas Act, article 34 of this chapter, notwithstanding paragraph d of subdivision three of section 34-0108 of this chapter; the official coastal policies of the state pursuant to article 42 of the executive law; the extent of natural damages to the coastal area and the suitability and feasibility of the project in relation to maintaining natural resource features and functions; the importance of the coastal area to recreational resources, fish and wildlife resources, and/or endangered or threatened species habitat; and the public benefits provided by the project.

Upon approval of a project application, a municipality or not-for-profit corporation shall enter into a contract, as further provided within this article, with the commissioner for state assistance payments toward the cost of such project to be received pursuant to this article.

§ 54-1109. Contracts for state assistance payments for coastal rehabilitation.

1. The commissioner may, in the name of the state, enter into contracts with municipalities or not-for-profit corporations, to provide state assistance payments toward the cost of coastal rehabilitation projects which shall include the following provisions:

a. an estimate of the costs of the project as determined by the commissioner;

b. an agreement by the commissioner to make state assistance payments toward the cost of the project by periodically reimbursing the municipality or not-for-profit corporation during the progress of project development or following completion of the project as may be agreed upon by the parties, in an amount not to exceed the amounts established elsewhere in this title; and

c. an agreement by the municipality or not-for-profit corporation:

(i) to proceed expeditiously with and complete the project as approved by the commissioner;

(ii) to undertake and maintain the coastal rehabilitation project in accordance with applicable law and rules and regulations;

(iii) to provide for the payment of the municipality's or not-for-profit corporation's share of the cost of the project;

(iv) to assume the full cost of any additional elements or continued operation of the project;

(v) to repay within one year of notification by the commissioner, any state assistance payments made toward the cost of the project or an equitable portion of such monies declared appropriate by the commissioner, if the municipality or not-for-profit corporation fails to complete the project as approved. No repayment, however, shall be required where the commissioner determines that such failure, disposition or change of use was immediately necessary to protect public health and safety;

(vi) to apply for and make reasonable efforts to secure federal assistance for the project; and

(vii) to not sell, lease, or otherwise dispose of or use lands rehabilitated under this title for any purpose inconsistent with the

project for a period of seven years from the commissioner's approval of the project.

2. In connection with each contract, the commissioner shall keep adequate records of the amount of the payment by the state and of the amount of federal assistance, if any, received by the municipality or not-for-profit corporation. Such records shall be retained by the commissioner and shall establish the basis for recalculation of the state payment as required herein.

§ 54-1111. State projects.

The commissioner is authorized, within amounts appropriated, to directly undertake a coastal rehabilitation project pursuant to this title in accordance with section 1 of chapter 535 of the laws of 1945, as amended, or as specifically appropriated, on state lands or state lands underwater.

TITLE 13

LONG ISLAND CENTRAL PINE BARRENS AREA AND SOUTH SHORE ESTUARY RESERVE PLANNING

Section 54-1301. Long Island central pine barrens area planning.

54-1303. Long Island south shore estuary reserve planning.

§ 54-1301. Long Island central pine barrens area planning.

In order to further the purposes of article 57 of this chapter, the commissioner shall provide, within amounts appropriated from the environmental protection fund, state assistance payments for the preparation of the comprehensive central pine barrens land use plan pursuant to section 57-0121 of this chapter. State assistance payments may be made to the central pine barrens joint planning and policy commission established in article 57 of this chapter for all eligible costs incurred after April first, nineteen hundred ninety-three. No

monies shall be expended for Long Island central pine barrens area planning except pursuant to an appropriation therefor.

§ 54-1303. Long Island south shore estuary reserve planning.

In order to further the purposes of article forty-six of the executive law, the commissioner shall provide, within amounts appropriated from the environmental protection fund, state assistance payments for the preparation of the comprehensive management plan for the Long Island south shore estuary reserve as provided for in section nine hundred sixty-six of the executive law. State assistance payments may be made to the Long Island south shore estuary reserve council established by section nine hundred sixty-four of the executive law for all eligible costs incurred after April first, nineteen hundred ninety-four. No moneys shall be expended for Long Island south shore estuary reserve management planning except pursuant to an appropriation therefor.

TITLE 15

CLIMATE SMART COMMUNITY PROJECTS

Section 54-1501. Definition.

54-1503. Climate smart community projects.

54-1505. Eligibility to receive state assistance payments for climate smart community projects.

54-1507. Criteria for climate smart community projects.

54-1509. State assistance application procedure.

54-1511. State assistance payments for climate smart community projects.

54-1513. Climate change mitigation easements.

54-1515. Contracts for state assistance payments for climate smart community projects.

54-1517. Powers and duties of the commissioner.

54-1519. Powers and duties of a municipality.

54-1521. Clean vehicle projects.

54-1523. Climate adaptation and mitigation projects.

54-1525. Restriction on alienation.

§ 54-1501. Definition.

For purposes of this title, "climate smart community projects" shall mean adaptation and mitigation projects, including flood mitigation and coastal and riparian resiliency, greenhouse gas reductions outside the power sector and climate change adaptation planning, and clean vehicle projects.

§ 54-1503. Climate smart community projects.

The commissioner, pursuant to appropriation therefor, is authorized to undertake climate smart community projects.

§ 54-1505. Eligibility to receive state assistance payments for climate smart community projects.

Any municipality may apply for state assistance payments toward the cost of a climate smart community project. Any application must comply with all applicable rules and regulations determined by the department.

§ 54-1507. Criteria for climate smart community projects.

Costs incurred prior to April first, two thousand sixteen, shall not be eligible for state assistance payments funded pursuant to this title. Projects must demonstrate an ability to identify, mitigate and/or adapt to climate change vulnerability and risk or demonstrate potential to reduce greenhouse gas emissions outside the power sector.

§ 54-1509. State assistance application procedure.

1. A municipality, upon the approval of its governing body, may submit

an application to the commissioner, in such form and containing such information as the commissioner may require, for state assistance payments toward the cost of a project which is within the state of New York and which is eligible for state assistance pursuant to this title.

2. The commissioner shall review such project application and may approve, disapprove or recommend modifications thereto consistent with applicable law, criteria, standards or rules and regulations relative to such projects. In reviewing applications for projects pursuant to this section, the commissioner shall give due consideration to:

a. the urgency of need to provide state assistance payments for the project in relation to the provision of monies for other project needs in the state known at the time such application is made;

b. the project's contribution to the state's climate goals; and

c. the ability of the municipality to pay for the costs of the climate smart community project.

§ 54-1511. State assistance payments for climate smart community projects.

1. Unless otherwise specified by law, the commissioner is authorized to provide on a competitive basis, within amounts appropriated, state assistance payments to a municipality toward the cost of any climate smart community project approved by the commissioner provided that the commissioner determines that future physical climate risk due to sea level rise, and/or storm surges and/or flooding, based on available data predicting the likelihood of future extreme weather events, including hazard risk analysis data if applicable, has been considered, except that such determination shall not apply to rebates for eligible purchases pursuant to section 54-1521 of this title.

2. The commissioner and a municipality may enter into a contract for the undertaking of a climate smart community project. Such project shall

be recommended to the commissioner by the governing body of the municipality, and when approved by the commissioner, undertaken by the municipality pursuant to this article and any other applicable provisions of law.

3. State assistance payments shall not exceed fifty percent of the project cost or two million dollars, whichever is less, provided however if a municipality meets criteria established by the department relating to either financial hardship or disadvantaged communities pursuant to section 75-0101 of this chapter, the commissioner may authorize state assistance payments of up to eighty percent of the project cost or two million dollars, whichever is less. Such costs are subject to final computation and determination by the commissioner upon completion of the project, and shall not exceed the maximum eligible cost set forth in the contract. A determination of financial hardship shall be based on criteria that clearly indicates that the municipality is experiencing significant and widespread financial distress, with primary consideration given to whether a municipality has a median household income at or below eighty percent of the state median household income.

4. The commissioner shall promulgate rules and regulations which shall include criteria for determining eligible expenditures and procedures for governing the commitment and disbursement of funds appropriated in accordance with this title. The commissioner shall also promulgate rules and regulations which shall include application procedures, review processes, and project approval guidelines and criteria.

§ 54-1513. Climate change mitigation easements.

A municipality which develops, improves, restores or rehabilitates real property that is not owned by the municipality pursuant to this title with funds made available pursuant to this title shall obtain a climate change mitigation easement from the owner of the real property. Climate change mitigation easements shall be enforced as conservation easements are enforced in section 49-0305 of this chapter.

§ 54-1515. Contracts for state assistance payments for climate smart community projects.

1. After approval of the application, the commissioner may, in the name of the state, enter into contracts with municipalities, to provide state assistance payments toward the cost of climate smart community projects, which shall include the following provisions:

a. an estimate of the costs of the project as determined by the commissioner;

b. an agreement by the commissioner to make state assistance payments toward the cost of the project by periodically reimbursing the municipality during the progress of project development or following completion of the project as may be agreed upon by the parties, in an amount not to exceed the amounts established elsewhere in this title; and

c. an agreement by the municipality:

(i) to proceed expeditiously with and complete the project as approved by the commissioner;

(ii) to undertake and maintain the climate smart community project in accordance with applicable law and rules and regulations;

(iii) to provide for the payment of the municipality's share of the cost of the project;

(iv) to assume the full cost of any additional elements or continued operation of the project;

(v) to repay within one year of notification by the commissioner, any state assistance payments made toward the cost of the project or an equitable portion of such monies declared appropriate by the commissioner, if the municipality fails to complete the project as approved. No repayment, however, shall be required where the commission determines that such failure, disposition or change of use was immediately necessary to protect public health and safety; and

(vi) to apply for and make reasonable efforts to secure federal assistance for the project.

2. In connection with each contract, the commissioner shall keep adequate records of the amount of the payment by the state, if any, received by the municipality. Such records shall be retained by the commissioner and shall establish the basis for recalculation of the state payment as required herein.

3. The commissioner shall impose such contractual requirements and conditions upon any municipality which receives state assistance payments pursuant to this title as may be necessary and appropriate to ensure that a public benefit shall accrue from the use of public funds by such municipality. Such conditions shall include limitations on the right of the municipality to demolish or convey such property, provisions for public access or use where appropriate, a requirement that all plans for restoration, rehabilitation, improvement, demolition or other physical change must be subject to the commissioner's approval, and such other conditions which shall assure the preservation and protection of the project.

§ 54-1517. Powers and duties of the commissioner.

In administering the provisions of this title the commissioner:

1. shall make an itemized estimate of funds or appropriations requested annually for inclusion in the executive budget;

2. may, in the name of the state, as further provided within this article, contract to make, within the limitations of appropriation available therefor, state assistance payments toward the costs of an approved project. Such contracts shall be subject to approval by the state comptroller and, as to form, by the attorney general;

3. shall approve vouchers for the payments pursuant to an approved contract. All such payments shall be paid on the audit and warrant of the state comptroller; and

4. may perform such other and further acts as may be necessary, proper or desirable to carry out the provisions of this article.

§ 54-1519. Powers and duties of a municipality.

A municipality shall have the power and authority to:

1. undertake and carry out any project for which state assistance payments pursuant to contract are received or are to be received pursuant to this article and maintain and operate such project;

2. expend money received from the state pursuant to this article for costs incurred in conjunction with the approved project; and

3. perform such other and further acts as may be necessary, proper or desirable to carry out a project or obligation, duty or function related thereto.

§ 54-1521. Clean vehicle projects.

1. As used in this section, the following terms shall have the following meanings:

a. "eligible infrastructure project" shall mean any facility (not including a building and its structural components) that is publicly available and used primarily for the public charging and/or fueling of eligible vehicles as defined in this section, including but not limited to fast chargers, that has received required federal, state and local permits and authorizations, and complies with applicable zoning ordinances.

b. "eligible purchase" shall mean the purchase by a municipality to own or lease for a period of not less than thirty-six months of an eligible vehicle placed into service on or after April first, two thousand sixteen at a dealer located within New York.

c. "eligible vehicle" means and includes a new motor vehicle that:

- (i) has four wheels;
- (ii) was manufactured for use primarily on public streets, roads and highways;
- (iii) the powertrain of which has not been modified from the original manufacturer's specifications;
- (iv) has a maximum speed capability of at least fifty-five miles per hour; and
- (v) is propelled at least in part by an electric motor and associated power electronics which provide acceleration torque to the drive wheels sometime during normal vehicle operation, and that draws electricity from a hydrogen fuel cell or from a battery that:
 - (A) has a capacity of not less than four kilowatt hours; and
 - (B) is capable of being recharged from an external source of electricity.

2. a. Until April 1, 2029, the commissioner, in consultation with the New York state energy research and development authority, is authorized to issue rebates until the annual allocation is exhausted to municipalities toward the cost of any eligible infrastructure projects which support the development of clean vehicles.

b. The department, in consultation with the New York state energy research and development authority, shall determine the amount of the rebate for eligible infrastructure projects, provided that an applicant for such eligible infrastructure project rebate may receive a maximum rebate of two hundred fifty thousand dollars per facility, provided however that infrastructure projects that will maximize access by multiple public users who might otherwise not have access may receive a maximum of three hundred thousand dollars per facility.

3. a. Until April 1, 2029, the commissioner, in consultation with the New York state energy research and development authority, is authorized to issue rebates until the annual allocation is exhausted to municipalities toward the cost of eligible purchases of clean vehicles.

b. The department, in consultation with the New York state energy research and development authority, shall determine the amount of the rebate taking into consideration the electric range of the vehicle, provided that a rebate of an eligible purchase shall be not less than two thousand five hundred dollars per vehicle and not more than thirty thousand dollars per vehicle.

4. The department, in consultation with the New York state energy research and development authority, shall promulgate rules to implement and administer this title including rules relating to the forms required to claim a rebate, the required documentation for establishing eligibility for a rebate, procedures and guidelines for claiming a rebate, and the collection of economic impact data from applicants and any other requirements the department and New York state energy research and development authority deem necessary. The department shall determine and publish on its website on an ongoing basis the amount of available funding for rebates remaining in each fiscal year.

5. No later than April first, two thousand eighteen and annually thereafter, the department shall issue a report to the temporary president of the senate and the speaker of the assembly detailing the status of its program to encourage the deployment of clean vehicles. Such report shall include:

a. the amount of funding dedicated by the department for the program in the preceding year;

b. the number of eligible purchases and eligible infrastructure projects for which a rebate was awarded;

c. the amount and geographic distribution of rebates; and

d. any other information the department deems necessary.

§ 54-1523. Climate adaptation and mitigation projects.

1. The commissioner is authorized to provide on a competitive basis, within amounts appropriated, state assistance payments to a municipality toward the cost of any climate adaptation or mitigation projects. Such projects shall include:

a. the construction of natural resiliency measures, conservation or restoration of riparian areas and tidal marsh migration areas;

b. nature-based solutions such as wetland protections, including mapping and restoration of freshwater wetlands, to address physical climate risk due to sea level rise, and/or storm surges and/or flooding, based on available data predicting the likelihood of future extreme weather events, including hazard risk analysis data if applicable;

c. relocation or retrofit of facilities to address physical climate risk due to sea level rise, and/or storm surges and/or flooding based on available data predicting the likelihood of future extreme weather events, including hazard risk analysis data if applicable;

d. flood risk reduction;

e. greenhouse gas emission reductions outside the power sector;

f. enabling communities to become certified under the climate smart communities program, including by developing natural resources inventories, right sizing of municipal fleets and developing climate adaptation strategies;

g. climate change adaptation planning and supporting studies, including but not limited to vulnerability assessment and risk analysis of municipal drinking water, wastewater, and transportation infrastructure;

h. to establish and implement easily-replicated renewable energy projects, including solar arrays, heat pumps and wind turbines in public low-income housing in suburban, urban and rural areas; and

i. land acquisition, including but not limited to flood mitigation and coastal riparian resiliency; provided, however, no monies shall be expended for acquisition by eminent domain.

2. To the fullest extent practicable, it is the policy of the state to promote an equitable regional distribution of climate adaptation and mitigation projects, consistent with the purpose of this title, taking into account regional differences in climate change risks, socioeconomic conditions and ecological resources.

§ 54-1525. Restriction on alienation.

Real property acquired, developed, improved, restored or rehabilitated by a municipality pursuant to paragraph (i) of subdivision one of section 54-1523 of this title with funds made available pursuant to this title shall not be sold or disposed of or used for other than public purposes without the express authority of an act of the legislature, which shall provide for the substitution of other lands of equal environmental and fair market value and reasonably equivalent usefulness and location to those to be discontinued, sold or disposed of, and such other requirements as shall be approved by the commissioner.

ARTICLE 55

SOLE SOURCE AQUIFER PROTECTION

Section 55-0101. Declaration of policy.

55-0103. Legislative findings.

55-0105. Purpose.

55-0107. Definitions.

55-0109. Special groundwater protection areas; nomination.

55-0111. Special groundwater protection areas; designation.

55-0113. Special groundwater protection areas; Long Island designation.

55-0115. Comprehensive management plan; contents.

55-0117. Comprehensive management plan; approval.

55-0119. Local land use regulation within a special groundwater

protection area.

§ 55-0101. Declaration of policy.

It is declared to be the public policy of this state to provide funds for the preparation and implementation of groundwater watershed protection plans in order to maintain existing water quality in special groundwater protection areas within federally designated sole source aquifer areas contained within counties having a population of one million or more and to further the implementation of nonpoint source controls for the protection of the potable supply underlying the entire recharge area.

§ 55-0103. Legislative findings.

The legislature finds that:

1. The scientific evidence of groundwater contamination is mounting;
2. Such contamination, once it occurs, is often irreversible;
3. Within this area subject to sole source aquifer designation, due to their particular rate of recharge and associated hydrogeological conditions, certain groundwater recharge watershed areas are particularly critical for the maintenance of large volumes of high quality groundwater for long periods of time;
4. In the face of mounting cases of groundwater contamination from toxic organic compounds, nutrients, salts and other pollutants, the state needs a program for the designation, protection and management of special groundwater protection areas;
5. It is desirable to maintain natural vegetative and hydrogeologic conditions in special groundwater protection areas;

6. Prevention of the contamination of high quality groundwater and the protection of special groundwater protection areas costs substantially less than measures to mitigate harm following contamination; and

7. There is a demonstrated need to protect, preserve and enhance the land and water resources of special groundwater protection areas through a new program which combines the capabilities and resources of the local, state and federal governments and the private sector.

8. Some of the nonpoint source control strategies developed for the special groundwater protection areas can be used to minimize further contamination in developed deep aquifer recharge areas.

§ 55-0105. Purpose.

It is the purpose of this article to:

1. Establish procedures for the designation of special groundwater protection areas within designated sole source aquifer areas contained within counties having a population of one million or more;

2. Acknowledge the variations in hydrogeology, water quality, and land uses within designated areas, and the existence of certain areas which are of vital importance in maintaining water quality in the designated sole source aquifer area;

3. Assure that such vital areas within designated sole source aquifer areas are protected and managed in such a way as to maintain or improve existing water quality;

4. Establish procedures for the development and implementation of a site-specific comprehensive management plan for each designated special groundwater protection area;

5. Initiate the implementation of a portion of the state groundwater management program using the Long Island sole source aquifer region as a

model for future state-wide application; and

6. Establish guidelines for federal-state cooperation in the planning, funding and implementation of special groundwater protection area plans.

§ 55-0107. Definitions.

Unless the context otherwise requires, the definitions in this section shall govern the construction of the following terms as used in this article:

1. "Plan" shall mean the comprehensive management plan established pursuant to section 55-0115 of this article.

2. "Recharge" shall mean the downward movement of water to the water table through the soil overlying an aquifer.

3. "Special groundwater protection area" shall mean recharge watershed area within a designated sole source area contained within counties having a population of one million or more which is particularly important for the maintenance of large volumes of high quality groundwater for long periods of time.

4. "Watershed" shall mean an area where water drains into a specific basin or reservoir, or, for groundwater, a region where water is abundantly recharged to the subsurface groundwater reservoir.

§ 55-0109. Special groundwater protection areas; nomination.

1. Any municipality or person may nominate a special groundwater protection area within a federally designated sole source aquifer contained within counties having a population of one million or more.

2. Such a nomination petition shall be sent to the commissioner and shall include the following information:

(a) whether the special groundwater protection area is a recharge zone for groundwater with a present or future water supply potential;

(b) whether the special groundwater protection area is largely undeveloped with tracts of natural vegetation, or natural geological conditions;

(c) whether the groundwater which is recharged through the special groundwater protection area is of high quality;

(d) whether the hydrogeologic conditions are such that development could lead to degradation of water quality;

(e) whether portions of the groundwater within the sole source aquifer area are already contaminated with toxic organics, nutrients, salts or other pollutants so as to warrant special protection for areas which recharge high quality groundwater;

(f) whether maintenance of existing high quality in the groundwater recharged through the special groundwater protection area would have significant economic, social, ecological, recreational or aesthetic benefits for the sole source aquifer area; and

(g) whether degradation of such groundwater would have significant economic, social, ecological, recreational and aesthetic costs for the area.

3. The nomination petition shall also identify:

(a) the preliminary boundaries of the special groundwater protection area or areas;

(b) a brief outline of the plan of work;

(c) a tentative membership list for any advisory committees; and

(d) a reasonable budget request for the project.

§ 55-0111. Special groundwater protection areas; designation.

1. The commissioner shall review all petitions of nomination for special groundwater protection areas. If a petition complies with all the requirements of section 55-0109 of this article, the commissioner shall certify such compliance and approve the petition. The commissioner shall determine within thirty days of receipt of the petition, the completeness of the petition and respond to the petitioner

of his findings. The commissioner shall have ninety days from the date of receipt to certify in writing to the petitioner that a petition has been approved, approved with modifications, or disapproved. If a petition is disapproved, the commissioner shall include in the notification to the petitioner the reasons for disapproval and allow the petitioner to resubmit the petition. Any petition resubmission shall reinitiate the review process. If the commissioner does not respond to the petitioner within the time prescribed, the petition shall be considered to be approved.

2. Once a petition has been officially approved, the designated planning entity shall be eligible for such funds to develop the plan and comply with all the requirements of this article for a period not to exceed three years.

§ 55-0113. Special groundwater protection areas; Long Island designation.

1. Nine areas shall be designated for the purposes of this article as special groundwater protection areas. They are identified as follows:

(a) the North Hills area of the town of North Hempstead, Nassau county;

(b) the area of the Northeastern villages of the town of Oyster Bay, Nassau county;

(c) the Woodbury road-West Pulaski road area, town of Huntington, Suffolk county;

(d) the West Hills area of the town of Huntington, Suffolk county;

(e) the Oak Brush Plains of the towns of Babylon and Huntington, Suffolk county;

(f) the Setauket Pine Barrens, town of Brookhaven, Suffolk county;

(g) the Central Pine Barrens of the towns of Brookhaven, Riverhead and Southampton, Suffolk county;

(h) the South Fork Morainal Forest of the towns of Southampton and East Hampton, Suffolk county; and

(i) the Hither Hills area of the town of East Hampton, Suffolk county.

2. Such areas identified for Long Island in this section shall be addressed concurrently as a single planning project in order to insure consistency and uniformity in the development of a management plan that recognizes the regional importance of the special groundwater protection areas.

3. The preliminary boundaries of the special groundwater protection areas designated in subdivision one of this section shall be those identified in the state groundwater management plan except for said areas designated in paragraphs (a) and (b) of subdivision one of this section which shall be the same as those areas adopted by the Nassau County Board of Health pursuant to article ten of the Nassau County Public Health Ordinance on December twelfth, nineteen hundred eighty-four. Final boundaries shall be determined on the basis of information developed in accordance with the requirements of section 55-0115 of this article.

4. Other areas not identified in this section can be petitioned for according to the guidelines set forth in section 55-0109 of this article.

5. The Long Island regional planning board is designated as the planning entity for the nine special groundwater protection areas herein identified on Long Island, and is authorized to carry out the planning work specified in this article.

6. An advisory group to be known as the "special groundwater protection area advisory council" shall be established. The voting membership shall consist of representatives of the following organizations: one member from the Nassau county department of health; one member from the Nassau county department of public works; one member from the Nassau county planning commission; two members from the Suffolk county department of health services; one member from the New York state department of environmental conservation; one member from the New York state department of health; two members from the New York state legislative commission on water resource needs of Long Island; two members from conservation organizations having property or other

interests in one or more of the special groundwater protection areas; and a member from each town which contains part or all of a special groundwater protection area. The special groundwater protection area advisory council shall serve as an advisory group to the Long Island regional planning board and shall assist in the development, review, and implementation of the management plan.

7. The Long Island regional planning board shall submit an outline of the plan of work designed to complete the requirements of sections 55-0115 and 55-0117 of this article, acceptable to the commissioner and a budget request, therefor.

8. No municipality located within a special groundwater protection area designated in paragraph (a) of subdivision one of this section shall use public funds to acquire land within such special groundwater protection area being used as a recreational facility or open space at the time of proposed acquisition unless such land is being offered for sale or a change of use for such land is proposed by the owner thereof.

§ 55-0115. Comprehensive management plan; contents.

The designated planning entity shall prepare the plan for the special groundwater protection area. The plan shall be designed to ensure the non-degradation of the high quality of groundwater recharged within the special groundwater protection area. Where local plans already exist which effectuate the goals of this article, such local plans shall be evaluated and incorporated as is appropriate into the work of the planning entity. Such plan shall include but not be limited to:

1. A determination of the quality of the existing groundwater recharged through said special groundwater protection area, the natural recharge capabilities of the special groundwater protection area watershed and the dependence of any natural ecosystems in the special groundwater protection area on the water quality and natural recharge capabilities of said area;

2. An identification of all known existing and potential point and non-point sources of groundwater degradation;

3. Development of specific watershed rules and regulations pursuant to section eleven hundred of the public health law, which are designed to accomplish the purposes of this article;

4. A map showing the detailed boundary of the special groundwater protection area or areas as well as a precise written description of such boundaries;

5. A resource assessment which determines the amount and type of human development and activity which the ecosystem can sustain while still maintaining existing ground and surface water quality and protecting unique ecological features;

6. The identification and proposal of limits on federal, state and local government financially assisted activities and projects which, directly or indirectly, may contribute, in any way whatsoever, to any degradation of such groundwater or any loss of natural surface and subsurface infiltration or purification capability of the special groundwater protection area watershed;

7. Development of a comprehensive statement of land use management as it pertains to the maintenance and enhancement of groundwater quality and quantity;

8. Proposal of limits on land uses that might have an adverse impact on water quality and/or recharge capabilities in the special groundwater protection area;

9. Consideration and proposal of specific techniques, including, but not limited to: clustering, large lot zoning, purchase, exchange or donation of conservation easements or development rights, and other innovative measures sufficient to achieve the objectives of this section;

10. Designation of specific areas within special groundwater protection areas suitable and appropriate for public acquisition; and

11. A program for local governmental implementation of the comprehensive management plan described in this subdivision in a manner that will insure the continued, uniform, consistent protection of this area in accord with the purposes of this article.

§ 55-0117. Comprehensive management plan; approval.

1. The planning entity shall:

(a) consult with appropriate officials of any local, state or federal agency which has jurisdiction over lands and waters within the area;

(b) consult with the officials of any municipality which has jurisdiction over lands and waters within areas designated or proposed as special groundwater protection areas;

(c) consult with interested professional, scientific and citizens' organizations;

(d) consult with citizen's advisory committees;

(e) transmit any draft and final plan to all affected municipalities for review and comment; and

(f) conduct public hearings at places within the area, and at such other places as may be appropriate, for the purpose of providing interested persons with an opportunity to express their views with respect to matters covered by the plan.

2. The plan shall be submitted to the commissioner. The plan shall be accompanied by a transmittal letter in which the planning entity certifies that:

(a) the plan when implemented will achieve its stated water quality objectives and protect the ecological values of the special groundwater protection area which are significant for maintenance of water quality;

(b) the plan requires the exercise of land use and zoning responsibilities to the greatest extent practicable to regulate the use of land and water resources in a manner consistent with the purposes of this article;

(c) the planning entity has afforded adequate opportunity, including public hearings, for public governmental involvement in the preparation and review of the plan, and whether such review and comment thereon were considered in the plan; and

(d) the extent to which adequate assurances have been received from appropriate local officials that the recommended implementation program identified in the plan will be initiated within a reasonable time after the date of approval of the plan and such program will insure effective implementation of the local aspects of the plan.

3. The commissioner shall review the plan and within ninety days certify that the plan conforms with all applicable state laws, official rules and regulations, state water resource management plans, and where submitted, the nominating petition as defined in section 55-0109 of this article. As part of the review and certification process, the commissioner shall also certify the boundaries.

4. If the commissioner finds that the plan is still not in compliance with applicable state law, official rules and regulations, and state water resource management plans, after a second review, he shall withhold approval of all outstanding planning entity claims for reimbursement pending satisfactory revision of the plan.

5. Upon certification of the plan and the boundaries, the identified area or areas are officially adopted by the commissioner as special groundwater protection areas.

6. Upon adoption of the boundaries by the planning entity, the special groundwater protection areas shall be designated as critical environmental areas as defined by regulations pursuant to section 8-0113 of this chapter and an environmental impact statement shall be prepared pursuant to section 8-0109 of this chapter for any action found to have a significant impact upon such areas. Such statement shall meet the requirements of the most detailed environmental impact statement required by section 8-0109 of this chapter or by any rule or regulation promulgated pursuant to such section. Upon certification of the plan by the commissioner, such statement shall include a detailed statement of

the effects of any proposed action on, and its consistency with, the comprehensive management plan of the special groundwater protection area program, as implemented by the commissioner pursuant to this article.

§ 55-0119. Local land use regulation within a special groundwater protection area.

Any land use regulation enacted by any town or village located within a special groundwater protection area which includes a definition of "open space" must consider the impact of such definition on the water quality and/or recharge capabilities of the area. Any such definition of "open space" may also consider other purposes of open space, including, but not limited to, protection of habitat, farmland, forest, air quality, view shed protection and recreation. Provided however, that any definition of open space that allows for or includes recreational uses, must provide clear guidance as to which recreational uses, improvements or facilities serve the purpose of protecting water quality and/or recharge capabilities. "Land use regulation" shall mean an ordinance or local law enacted by a municipality with responsibility for zoning and includes any zoning, subdivision, special use permit or site plan regulation or any other regulation which prescribes the appropriate use of property, or scale, location and intensity of development.

ARTICLE 56

IMPLEMENTATION OF THE CLEAN WATER/CLEAN AIR BOND ACT OF 1996

- Title 1. General provisions
2. Safe drinking water projects
 3. Clean water projects
 4. Solid waste projects
 5. Environmental restoration projects
 6. Air quality projects

TITLE 1

GENERAL PROVISIONS

Section 56-0101. Definitions.

56-0103. Allocation of moneys.

56-0105. Powers and duties.

56-0107. Powers and duties of a municipality.

56-0109. Sale of bonds; certain limitations.

56-0111. Consistency with federal tax law.

56-0113. Compliance with other law.

§ 56-0101. Definitions. As used in this article the following terms shall mean and include:

1. "Aquatic habitat restoration project" means the planning, design, construction, management, maintenance, reconstruction, revitalization, or rejuvenation activities intended to improve waters of the state of ecological significance or any part thereof, including, but not limited to ponds, bogs, wetlands, bays, sounds, streams, rivers, or lakes and shorelines thereof, to support a spawning, nursery, wintering, migratory, nesting, breeding, feeding, or foraging environment for fish and wildlife and other biota.

2. "Clean water project" means a project undertaken pursuant to title 3 of this article but shall not include navigational dredging projects.

3. "Combined or separate sewer overflow abatement" means the planning, design, construction of, or improvement to, a system that prevents, eliminates, or partially eliminates raw untreated sewage from entering the receiving water as the result of a precipitation event, including but not limited to temporary storage tanks, pumping stations related thereto, sewer pipe, and pilot or demonstration technologies.

4. "Cost" means the cost of an approved project, which shall include appraisal, surveying, engineering and architectural services, plans and specifications, consultant and legal services, construction and other direct expenses incident to such project less any federal or state funds, other than those provided pursuant to this article, for such project received or to be received.

5. "Drinking water infrastructure project" or "water supply project" means the planning, design, construction, improvement, or acquisition of facilities, equipment, sites, or buildings for the supply, control, treatment, distribution, and transport of drinking water and the testing and monitoring to ensure the integrity and quality of such water intended to improve drinking water facilities including achievement of compliance with the federal safe drinking water act or other applicable federal law and state drinking water quality goals and standards taking into consideration the water resources management strategy prepared pursuant to title twenty-nine of article fifteen of this chapter.

6. "Environmental compliance assistance project" means the planning, design, construction, improvement, maintenance, or acquisition of facilities, production processes, equipment, buildings or water or wastewater infrastructure for compliance with environmental laws and regulations or other pollution avoidance activities.

7. "Environmental restoration project" means a project to investigate or to remediate contamination pursuant to title five of this article.

8. "Federal assistance" means funds available, other than by loan, from the federal government, either directly or through allocation by the state for construction or program purposes pursuant to any federal law or program.

9. "Governing body" means:

(a) in the case of a county outside of the city of New York, the county board of supervisors or other elective governing body;

(b) in the case of a city or village, the local legislative body thereof, as the term is defined in the municipal home rule law;

(c) in the case of a town, the town board;

(d) in the case of a school district, the board of education thereof;

(e) in the case of a supervisory district, the board of cooperative educational services thereof;

(f) in the case of a public benefit corporation, the board of directors, members or trustees thereof;

(g) in the case of a public authority, the governing board of directors, members, or trustees thereof;

(h) in the case of a not-for-profit corporation, the board of directors thereof or such other body designated in the certificate of incorporation to manage the corporation; and

(i) in the case of an Indian tribe, any governing body recognized by the United States or the state of New York.

10. "Air quality project" means a project undertaken pursuant to title six of this article.

11. "Hazardous substances" mean substances found on the list of substances hazardous to the public health, safety or the environment promulgated pursuant to article 37 of this chapter and petroleum, as that term is defined in subdivision fifteen of section one hundred seventy-two of the navigation law.

12. "Heritage area project" means a project undertaken by or through a municipality, public benefit corporation or a not-for-profit corporation identified in a management plan prepared and approved by the commissioner of the office of parks, recreation and historic preservation in accordance with the provisions of section 35.05 of the parks, recreation and historic preservation law.

13. "Historic preservation project" means a project undertaken by a municipality or a not-for-profit corporation to acquire, improve, restore or rehabilitate property listed on the state or national registers of historic places, including, but not limited to, projects at zoos, botanical gardens, and aquaria, to protect the historic, cultural, archeological, or architectural significance thereof, or undertaken by the office of parks, recreation and historic preservation to improve, restore or rehabilitate state historic properties listed on the state or national registers of historic places to protect the historical, cultural or architectural significance thereof.

14. "Marine holding tank" means any container aboard any vessel, as defined in section two of the navigation law, that is designed and used

for the purpose of collecting and storing treated or untreated sewage from marine toilets.

15. "Municipality" means a local public authority or public benefit corporation, a county, city, town, village, school district, supervisory district, district corporation, improvement district within a county, city, town or village, or Indian nation or tribe recognized by the state or the United States with a reservation wholly or partly within the boundaries of New York state, or any combination thereof. In the case of aquatic habitat restoration projects, the term municipality shall include the state.

16. "Not-for-profit corporation" means a corporation formed pursuant to the not-for-profit corporation law and qualified for tax-exempt status under the federal internal revenue code.

17. "Office" means the office of parks, recreation and historic preservation.

18. "Open space land conservation project" means acquisition projects undertaken with willing sellers including, but not limited to, the purchase of conservation easements, undertaken by the commissioner, the commissioner of the office of parks, recreation and historic preservation or by municipalities pursuant to article twenty-five-AAA of the agriculture and markets law.

19. "Park project" means a project undertaken by a municipality, state agency, public benefit corporation, public authority, or not-for-profit corporation for the acquisition, development or improvement of parks, preserves, beaches, shorefronts, recreational sites and facilities including construction of structures, roads and parking facilities.

20. "Pollution prevention project" means the planning, design, construction, improvement, maintenance or acquisition of facilities, production processes, equipment or buildings owned or operated by municipalities for the reduction, avoidance, or elimination of the use of toxic or hazardous substances or the generation of such substances or

pollutants so as to reduce risks to public health or the environment, including changes in production processes or raw materials; such projects shall not include incineration, transfer from one medium of release or discharge to another media, off-site or out-of-production recycling, end-of-pipe treatment or pollution control.

21. "Responsible party" means a party responsible under applicable principles of statutory or common law liability to remediate the contamination located at, or emanating from, real property subject to an environmental restoration project.

22. "Safe drinking water project" means a project undertaken pursuant to title 2 of this article.

23. "Small business" means any business which is resident in this state, independently owned and operated, not dominant in its field, and employs not more than one hundred individuals.

24. "Solid waste project" means a project undertaken pursuant to title 4 of this article.

25. "Solid waste" shall have the definition set forth in title 5 of article 27 of this chapter but shall not include hazardous waste as defined in title 9 of article 27 of this chapter.

26. "State assistance payment" means payment of the state share of the cost of projects authorized by this act to preserve, enhance, restore and improve the quality of the state's environment.

27. "Stormwater collecting system" means systems of conduits and all other constructions, devices, and appliances appurtenant thereto, designed and used to collect and carry stormwater and surface water, street wash, and other wash and drainage waters to a point source for discharge.

28. "Vessel pumpout station" means a project for the planning, design, acquisition or construction of a permanent or portable device capable of

removing human sewage from a marine holding tank.

29. "Wastewater treatment improvement project" means the planning, design, construction, acquisition, enlargement, extension, or alteration of a sewage treatment plant to treat, neutralize, stabilize, eliminate or partially eliminate sewage or reduce pollutants in treatment plant effluent or to create mechanisms to transport wastewater to a treatment plant, including permanent or pilot demonstration wastewater treatment, outfall and dispersal apparatus, pumping stations integral to such plants or sewers, sewer pipes, combined sewer overflow abatement, stormwater collecting systems, vessel pumpout stations, or equipment or furnishings thereof.

30. "Waterbodies" means waters or waters of the state as defined in section 17-0105 of this chapter except private waters which do not provide public access.

31. "Water quality improvement project" means:

(a) wastewater treatment improvement projects;

(b) non-point source abatement and control program projects developed pursuant to section eleven-b of the soil and water conservation districts law, title 14 of article 17 of this chapter, section 1455b of the federal coastal zone management act, or article forty-two of the executive law;

(c) aquatic habitat restoration projects; and

(d) pollution prevention projects.

32. "Contamination" or "contaminated" shall have the same meaning as provided in section 27-1405 of this chapter.

§ 56-0103. Allocation of moneys.

The moneys received by the state from the sale of bonds pursuant to the Clean Water/Clean Air Bond Act of 1996 shall be disbursed in the following amounts pursuant to appropriations as specifically provided for in titles 2, 3, 4, 5, and 6 of this article:

1. For creation of a state safe drinking water program as set forth in title 2 of this article, three hundred fifty-five million dollars (\$355,000,000).

2. For preserving, enhancing, restoring and improving the quality of water as set forth in title 3 of this article, seven hundred ninety million dollars (\$790,000,000).

3. For solid waste projects as set forth in title 4 of this article, one hundred seventy-five million dollars (\$175,000,000).

4. For restoring and improving contaminated areas and returning them to productive use as set forth in title 5 of this article, two hundred million dollars (\$200,000,000).

5. For preserving, enhancing, restoring and maintaining the quality of the air as set forth in title 6 of this article, two hundred thirty million dollars (\$230,000,000).

§ 56-0105. Powers and duties.

In administering the provisions of this article the respective commissioner or the secretary of state:

1. shall make an itemized estimate of funds or appropriations requested annually for inclusion in the executive budget;

2. shall, in the name of the state, as further provided within this article, contract to make, within the limitations of appropriations available therefor, state assistance payments toward the cost of a project approved, and to be undertaken pursuant to this article;

3. shall approve vouchers for the payments pursuant to an approved contract; and

4. may perform such other and further acts as may be necessary, proper or desirable to carry out the provisions of this article.

5. Shall give a priority and preference to a project in any brownfield opportunity area designated pursuant to section nine hundred seventy-r of the general municipal law.

§ 56-0107. Powers and duties of a municipality.

A municipality shall have the power and authority to:

1. Undertake and carry out any project for which state assistance payments pursuant to contract are received or are to be received pursuant to this article and maintain and operate such project;

2. Expend money received from the state pursuant to this article for costs incurred in conjunction with the approved project; and

3. Perform such other and further acts as may be necessary, proper or desirable to carry out a project or obligation, duty or function related thereto.

§ 56-0109. Sale of bonds; certain limitations.

Notwithstanding any other section of law, no money received by the state from the sale of bonds pursuant to the Clean Water/Clean Air Bond Act of 1996 shall be used to fund any project committed to by the state in any agreement with New York city regarding the New York city watershed.

§ 56-0111. Consistency with federal tax law.

All actions taken pursuant to this article shall be reviewed for consistency with provisions of the federal internal revenue code and

regulations thereunder, in accordance with procedures established in connection with the issuance of any tax exempt bonds pursuant to this article, to preserve the tax exempt status of such bonds.

§ 56-0113. Compliance with other law.

Every recipient of funds to be made available pursuant to this article shall comply with all applicable state, federal and local laws.

TITLE 2

SAFE DRINKING WATER PROJECTS

Section 56-0201. Safe drinking water projects.

§ 56-0201. Safe drinking water projects.

Of the moneys received by the state from the sale of bonds pursuant to the Clean Water/Clean Air Bond Act of 1996, three hundred fifty-five million dollars (\$355,000,000) shall be used for the capitalization of a drinking water revolving fund administered by the environmental facilities corporation pursuant to section one thousand two hundred eighty-five-m of the public authorities law and by the department of health pursuant to title four of article eleven of the public health law to finance drinking water infrastructure projects pursuant to the provisions of paragraph a of subdivision three of section one thousand two hundred eighty-five-m of the public authorities law, including financing of the state match for federal capitalization grants for the drinking water revolving fund.

TITLE 3

CLEAN WATER PROJECTS

Section 56-0301. Allocation of moneys.

56-0303. Management programs, plans and projects.

56-0305. Application procedure.

56-0307. Open space land conservation projects.

56-0309. Park, historic preservation and heritage area projects.

56-0311. Dam safety projects.

§ 56-0301. Allocation of moneys.

Of the moneys received by the state from the sale of bonds pursuant to the Clean Water/Clean Air Bond Act of 1996, five hundred ten million dollars (\$510,000,000) shall be available for disbursements for state assistance payments to municipalities or county soil and water conservation districts for water quality improvement projects in accordance with section 56-0303 and for dam safety projects pursuant to section 56-0311 of this article. One hundred fifty million dollars (\$150,000,000) shall be available for disbursements for projects developed pursuant to section 56-0307, fifty million dollars shall be available for municipal park projects, and historic preservation, and heritage area projects developed pursuant to section 56-0309 of this article and fifty million dollars shall be available for state park projects. Thirty million dollars (\$30,000,000) shall be available for environmental compliance assistance projects to enhance water quality.

§ 56-0303. Management programs, plans and projects.

1. Of the moneys received by the state from the sale of bonds pursuant to the Clean Water/Clean Air Bond Act of 1996, five hundred twenty-five million dollars (\$525,000,000) shall be allocated to water quality improvement projects identified as follows:

(a) Twenty-five million dollars (\$25,000,000) shall be available for state assistance payments to municipalities for the cost of water quality improvement projects intended to implement the Hudson River estuary plan as set forth in section 11-0306 of this chapter.

(b) Two hundred million dollars (\$200,000,000) shall be available for state assistance payments to municipalities for the cost of water quality improvement projects intended to implement the Long Island Sound comprehensive conservation and management plan developed pursuant to

section 320 of the federal clean water act.

(c) Fifteen million dollars (\$15,000,000) shall be available for state assistance payments to municipalities for the cost of water quality improvement projects intended to implement the Lake Champlain management plan developed pursuant to the federal Lake Champlain special designation act of 1990.

(d) Seventy-five million dollars (\$75,000,000) shall be available for state assistance payments to municipalities for the cost of water quality improvement projects intended to implement the Onondaga Lake plan developed pursuant to the consent order issued by the United States District Court for the Northern District of New York agreed to among Onondaga County, the state of New York, and the Atlantic States Legal Foundation, Inc. Provided, however, that such municipality shall adhere to the construction timetable set forth in said plan and shall provide the department with periodic updates as to the progress of said construction and the prospect of any pilot or demonstration technologies set forth in said plan. The commissioner shall have discretion not to make any disbursement until these conditions have been met to his or her satisfaction and upon the approval of the state comptroller.

(e) Twenty-five million dollars (\$25,000,000) shall be available for state assistance payments to municipalities for the cost of water quality improvement projects intended to implement the New York/New Jersey harbor comprehensive conservation and management plan, developed pursuant to section 320 of the federal clean water act.

(f) Twenty-five million dollars (\$25,000,000) shall be available for state assistance payments to municipalities for the cost of water quality improvement projects intended to implement the department's great lakes program developed in accordance with the federal great lakes critical programs act of 1990 and the great lakes water quality agreement of 1987, as amended, between the governments of Canada and the United States of America.

(g) Twenty-five million dollars (\$25,000,000) shall be available for state assistance payments to municipalities for the cost of water quality improvement projects for the finger lakes and their tributaries which are approved by the secretary of state pursuant to article forty-two of the executive law or by the commissioner.

(h) For state assistance payments for the cost of water quality

improvement projects intended for any waters of the state for projects to support a study of groundwater quality in Long Island or open space land conservation projects which have been (a) approved by the commissioner, (b) identified in plans in accordance with section 1455b of the federal coastal zone management act or article forty-two of the executive law and approved by the secretary of state, or (c) developed in accordance with title eleven-b of article two of the soil and water conservation districts law and approved by the state soil and water conservation committee and commissioner of agriculture and markets.

(i) Twenty-five million dollars (\$25,000,000) shall be available for the expenses of projects at facilities owned by the state of New York which enhance the quality of the waters of the state by remedying environmental deficiencies or complying with environmental laws and regulations.

(j) Fifty million dollars (\$50,000,000) shall be available to municipalities for wastewater treatment improvement projects and the cost of municipal flood control projects in villages, towns, and cities with a population of seventy-five thousand or less.

(k) Thirty million dollars (\$30,000,000) shall be available for state assistance payments to municipalities for the cost of water quality improvement projects intended to implement the comprehensive conservation management plan for the peconic estuary developed pursuant to section 320 of the federal clean water act and for the comprehensive management plan for the south shore estuary reserve plan developed pursuant to article forty-six of the executive law.

(l) Thirty million dollars (\$30,000,000) shall be available for state assistance payments through the environmental facilities corporation to villages, towns, and cities with a population of less than one million, for environmental compliance assistance projects for businesses which enhance the quality of the waters of the state through compliance with environmental laws and regulations, or to remedy or prevent environmental deficiencies.

(1) The president of the environmental facilities corporation is authorized to provide state assistance payments to villages, towns, and cities with a population less than one million, for implementation of environmental compliance assistance projects which enhance the quality of the waters of the state.

(2) A village, town, and city with a population of less than one million may submit an application to the president, in such form and manner as the president may require, for state assistance payments toward the cost of environmental compliance assistance projects.

(3) Upon receipt of a request for state assistance application, the president shall review and, within ninety days from the receipt of a complete application, may approve, disapprove, or recommend modifications thereto consistent with applicable law criteria, standards, or rules and regulations relative to such projects.

(m) Notwithstanding any provision of law to the contrary, amounts allocated in paragraphs (a), (b), (c), (d), (e), (f) and (g) of this subdivision may be interchanged between such paragraphs and may be interchanged to amounts allocated in paragraph (h) of this subdivision.

2. At least three wastewater treatment improvement projects funded pursuant to this title shall be projects designed to refine innovative technologies for use in the physical environment of New York state and serve as a catalyst for technology transfer. Such technologies may include, but shall not be limited to, technologies that reduce the amount and toxicity of sewage sludge and effluent; increase reliability and cost efficiency; reduce energy consumption; or achieve more reliable pathogen destruction.

§ 56-0305. Application procedure.

1. Any municipality or soil and water conservation district may make an application for such state assistance payment, in a manner, form, and time frame and containing such information as the respective commissioner, the president of the environmental facilities corporation or the secretary of state may require. Subject to the provisions of section thirty-two of the chapter of the laws of 1996 which added this section, the respective commissioner, the president of the environmental facilities corporation or the secretary of state shall review such application and may approve, disapprove, or recommend modifications thereto consistent with applicable law, criteria, standards, or rules and regulations relative to such projects.

2. In reviewing such applications for eligibility, the respective commissioner, the president of the environmental facilities corporation or the secretary of state shall give due consideration to:

(a) the suitability and feasibility of the project in relation to the goals of the applicable program or plan;

(b) the priority of the project in relationship to other projects proposed under the same program or plan. Highest priority shall be granted to projects which will provide the greatest reduction in pollutants or most significant habitat improvement. For water quality improvement projects which have been developed with the assistance of, or by any other state agencies, the respective commissioner, the president of the environmental facilities corporation or secretary of state shall be consulted with when determining the priority of the project;

(c) the availability of matching funds on the part of the municipality or the soil and water conservation district to finance the municipality's or soil and water conservation district's share of the project cost. In submitting the application, the municipality or soil and water conservation district shall submit proof to the satisfaction of the respective commissioner, the president of the environmental facilities corporation or secretary of state of the availability of such matching funds; and

(d) the urgency of the need to provide state assistance payments for the project in relation to the availability of other funding sources and the municipality's or soil and water conservation district's ability to finance such project based on the availability of other moneys including federal funds.

3. Upon approval of an application for such assistance payment, the respective commissioner, the president of the environmental facilities corporation or the secretary of state and the municipality or soil and water conservation district shall enter into a contract for such payment toward the cost of the approved project which shall include the following provisions:

(a) A current estimate of the cost of the project as determined by the respective commissioner, the president of the environmental facilities

corporation or the secretary of state at the time of the execution of the contract and a specific timetable for progress and completion of the project;

(b) An agreement by the respective commissioner, the president of the environmental facilities corporation or secretary of state to make state assistance payments toward the cost of the project by periodically reimbursing the municipality or soil and water conservation district for costs incurred during the progress of the project to the maximum agreed upon state share. Such costs are subject to final computation and determination by the respective commissioner, the president of the environmental facilities corporation or secretary of state upon completion of the project; and

(c) An agreement by the municipality or soil and water conservation district to proceed expeditiously with the project and to complete the project in accordance with the timetable set out in the contract as so approved by the respective department or authority and with the conditions of applicable permits, administrative orders, or judicial orders. A finding by the respective commissioner, the president of the environmental facilities corporation or secretary of state that the municipality or soil and water conservation district has not met the conditions of the contract in good faith shall constitute a material breach of the contract.

§ 56-0307. Open space land conservation projects.

1. The commissioner and the commissioner of the office of parks, recreation and historic preservation are authorized to undertake open space land conservation projects, in cooperation with willing sellers. In undertaking projects, the respective commissioner shall give consideration to the plan prepared pursuant to section 49-0207 of this chapter. Projects shall develop, expand or enhance water quality protection or public access to water bodies, including but not limited to coastlines, aquifers, watersheds, lakes, rivers and streams.

2. Projects which are not identified in the state land acquisition plan prepared pursuant to section 49-0207 of this chapter shall not be

proposed for acquisition by the state under this section if any town, village, or city within which such project is located notifies the state of its objection to such acquisition. Such objection shall be transmitted by resolution within ninety days of the notification by the state of its interest in such acquisition to the commissioner of the office of parks, recreation and historic preservation and shall effectively prevent the state from undertaking such acquisition.

3. The commissioner or the commissioner of the office of parks, recreation and historic preservation may enter into an agreement for the maintenance and operation of open space land conservation projects outside the Adirondack or Catskill Parks undertaken pursuant to this section by a municipality, a not-for-profit corporation, or unincorporated association which demonstrates to the commissioner's satisfaction that it is financially or otherwise capable of operating and maintaining the project for the benefit of the public and of maximizing public access to such project. Any such agreement shall contain such provisions as shall be necessary to ensure that its operation and maintenance are consistent with, and in furtherance of, this article and shall be subject to the approval of the director of the budget, the comptroller and, as to form, the attorney general.

4. The cost of an open space land conservation project shall include the cost of preparation of a management plan for the preservation and beneficial enjoyment of the land acquired pursuant to this section except where such considerations have already been undertaken as part of any existing plan applicable to the newly acquired land.

5. The commissioner of agriculture and markets is authorized to provide state assistance payments to county agricultural and farmland protection boards, or to municipalities provided the proposed project is endorsed for funding by the agricultural and farmland protection board for the county in which the municipality is located, for implementation of projects identified in agricultural protection plans pursuant to the program as set forth in article twenty-five-AAA of the agriculture and markets law.

§ 56-0309. Park, historic preservation and heritage area projects.

1. For purposes of this section "commissioner" means the commissioner of the office of parks, recreation and historic preservation.

2. Park projects and historic preservation projects may be undertaken by the office pursuant to the provisions of this article and other applicable provisions of law pursuant to the approval of the commissioner.

3. All historic preservation projects, park projects and heritage area projects shall be undertaken in the state of New York. Except for projects undertaken by the state, the total amount of the state assistance payments toward the cost of any such project shall not exceed fifty percent of the cost. For the purpose of determining the amount of the state assistance payments, the cost of the project shall not be more than the amount set forth in the application for state assistance payments approved by the commissioner. Park and heritage area projects shall develop, expand, or enhance public access to water bodies, promote water based recreation, or enhance the natural, cultural, or historic aspects of water bodies.

4. The commissioner and a municipality may enter into a contract for the undertaking by the municipality of an historic preservation project. Such historic preservation projects shall be recommended to the commissioner by the governing body of the municipality and, when approved by the commissioner, may be undertaken by the municipality pursuant to this title and any other applicable provision of law.

5. The commissioner and a not-for-profit corporation may enter into a contract for the undertaking by the not-for-profit corporation of an historic preservation project. Such a historic preservation project shall be recommended to the commissioner by the governing body of a not-for-profit corporation which demonstrates to the satisfaction of the commissioner that it is capable of operating and maintaining such property for the benefit of the public. Upon approval by the

commissioner, such project may be undertaken pursuant to the provisions of this title and any other applicable provision of law.

6. The commissioner and a municipality may enter into a contract for the undertaking by the municipality of a park project. Such park projects shall be recommended to the commissioner by the governing body of the municipality, and when approved by the commissioner, may be undertaken by the municipality pursuant to this title and any other applicable provisions of law. The office shall also assess existing parks and recreational opportunities in the municipalities where the park project is located and shall give preference to projects which are in or primarily serve areas where demographic and other relevant data for such areas demonstrate that the areas are densely populated and have sustained physical deterioration, decay, neglect or disinvestment, or where a substantial proportion of the residential population is of low income or is otherwise disadvantaged and is underserved with respect to the existing recreational opportunities in the area.

7. The commissioner and a not-for-profit corporation may enter into a contract for the undertaking by the not-for-profit corporation of a park project on behalf of a municipality. Such a contract shall be contingent upon the approval of the governing body of each municipality in which the project is located. Such a project shall be recommended to the commissioner by the governing body of a not-for-profit corporation which demonstrates to the satisfaction of the commissioner that it is capable of operating and maintaining such project for the benefit of the public. Upon approval by the commissioner, such project may be undertaken pursuant to the provisions of this title and any other applicable provision of law. The office shall assess existing parks and recreational opportunities in the municipalities where the park project is located and shall give preference to projects which are in or primarily serve areas where demographic and other relevant data for such areas demonstrate that the areas are densely populated and have sustained physical deterioration, decay, neglect or disinvestment, or where a substantial proportion of the residential population is of low income or is otherwise disadvantaged and is underserved with respect to the existing recreational opportunities in the area.

8. The commissioner and a municipality, public benefit corporation or not-for-profit corporation may enter into a contract, subject to the approval of the director of the budget, for the undertaking by or through the municipality, public benefit corporation or not-for-profit corporation of a heritage area project including parkwide and district projects identified in a management plan prepared pursuant to section 35.05 of the parks, recreation and historic preservation law. Such projects shall be subject to an agreement by the heritage area management entity to operate or cause to be operated any public facility resulting from such project.

9. A municipality which acquires, develops, improves, restores or rehabilitates property with funds made available pursuant to this title may establish reasonable rules and regulations by local law or otherwise to assure the proper administration and development thereof, provided that no such rule or regulation which restricts the use of such lands or facilities by non-residents of the municipality shall be effective without the approval of the commissioner.

10. The commissioner shall impose such contractual requirements and conditions upon any municipality and any not-for-profit corporation which receive state assistance payments pursuant to this title as may be necessary and appropriate to ensure that a public benefit shall accrue from the use of public funds by such municipality or not-for-profit corporation. Such conditions shall include limitations on the right of the municipality or not-for-profit corporation to demolish or convey such property, provisions for public access or use where appropriate, the granting of facade easements to the state, a requirement that all plans for restoration, rehabilitation, improvement, demolition or other physical change must be subject to the commissioner's approval, and such other conditions which shall assure the preservation and protection of the project.

11. Any not-for-profit corporation which receives state assistance payments pursuant to this section for the acquisition of land for outdoor recreation or conservation purposes shall execute a contract

with the commissioner which shall include the following:

(a) An agreement to make and keep the lands accessible to the public unless the not-for-profit corporation can demonstrate to the commissioner's satisfaction that public accessibility would be detrimental to the lands or any natural resources associated therewith;

(b) An agreement not to sell, lease, exchange or donate the lands except to the state, a local government unit or another qualifying tax exempt non-profit organization for recreation and conservation purposes consistent with this title and approved by the commissioner; and

(c) An agreement to execute and convey to the state at no charge a conservation easement, pursuant to title three of article forty-nine of this chapter, over the lands to be acquired with state assistance payments.

12. Real property acquired, developed, improved, restored or rehabilitated by or through a municipality for park projects undertaken pursuant to this section with funds made available pursuant to this section shall not be sold, leased, exchanged, donated or otherwise disposed of or used for other than public park purposes without the express authority of an act of the legislature, which shall provide for the substitution of other lands of equal environmental value and fair market value and reasonably equivalent usefulness and location to those to be discontinued, sold or disposed of, and such other requirements as shall be approved by the commissioner.

13. Real property acquired by a not-for-profit organization with funds made available pursuant to this section for park projects undertaken pursuant to this section shall not be used in violation of an agreement entered into pursuant to this section, or sold, leased, exchanged, donated or otherwise disposed of without the express authority of an act of the legislature.

14. The commissioner shall adopt, prior to the acceptance of applications for park, historic preservation and heritage area projects, rules and regulations which shall include eligibility requirements, application procedures, office ranking and review processes, project approval guidelines and criteria, and funding distribution necessary for

all state assistance payment programs established pursuant to this title.

15. Notwithstanding any other provision of law, no state assistance payment under this article may be applied, with respect to any project located within the area of New York county bounded by (a) the northern boundary of Fifty-ninth street and Fifty-ninth street extended; (b) the United States pierhead line; (c) the northern boundary of the area known as Battery Park City; and (d) eight hundred feet inland easterly from the United States bulkhead line:

(i) for, other than for recreational use or access inland of the existing bulkhead line, any roads, bridges, ramps or parking facilities or sewers or water mains;

(ii) for any site improvement, including sewers, or water mains, to support residential, industrial or commercial development;

(iii) to excavate, place fill or plantings in, or place any piling, platform or structure, including a floating structure, in the Hudson river; or

(iv) to plan, evaluate or study any project involving such excavation or placement as described in subparagraph (iii) of this paragraph; and provided further that no contract, or subcontract, with a public benefit corporation, public authority, or any other person or entity, or municipality other than the city of New York shall be entered into for any state assistance payments under this article with respect to any project, or portion thereof, located in the area described in this subdivision without the affirmative approval of the community board or boards wherein the project, or portion thereof, will be located.

16. Notwithstanding the provisions of this section, moneys received from the sale of bonds pursuant to the Clean Water/Clean Air Bond Act of 1996, and available for disbursements for projects developed pursuant to this section, shall also be available for state assistance payments to municipalities and not-for-profit corporations for the capital cost of projects described in subdivision nine of section 44-0119 of this chapter and subject to the review delineated in subdivision ten of section 44-0119 of this chapter. Such monies shall be subject to appropriation.

§ 56-0311. Dam safety projects.

Of the moneys received by the state from the sale of the bonds pursuant to the Clean Water/Clean Air Bond Act of 1996, fifteen million dollars shall be used for state assistance payments to municipalities for the cost of dam safety projects which have been approved by the commissioner.

TITLE 4

SOLID WASTE PROJECTS

Section 56-0401. Allocation of moneys.

56-0403. Municipal landfill projects.

56-0405. Municipal recycling projects.

56-0407. Fresh Kills landfill closure project.

§ 56-0401. Allocation of moneys.

Of the moneys received by the state from the sale of bonds pursuant to the Clean Water/Clean Air Bond Act of 1996 to be used for solid waste projects, fifty million dollars (\$50,000,000) shall be available for disbursements for municipal landfill projects, excluding any landfill closure project in the city of New York; fifty million dollars (\$50,000,000) shall be available for disbursements for municipal recycling projects, of which twenty-five million dollars (\$25,000,000) shall be available for municipal recycling projects in the city of New York; and seventy-five million dollars (\$75,000,000) shall be available for disbursements for the closure of Fresh Kills Landfill in the city of New York.

§ 56-0403. Municipal landfill projects.

1. As used in this title the following terms mean and include:

(a) "Landfill" means a disposal facility or part of one at which solid waste, or its residue after treatment, is intentionally placed in or on land, and at which solid waste will remain after closure and which is not a land spreading facility, a surface impoundment, or an injection well.

(b) "Municipal landfill closure project" means activities undertaken to close, including by reclamation, a landfill owned or operated by a municipality to achieve compliance with regulations promulgated by the department, or activities undertaken to implement a landfill gas management system project.

(c) "Landfill gas management system" means a system for the control, capture, and management of gas created within and emitted from a solid waste landfill.

(d) "Adirondack landfill project" means a project undertaken by the state and a municipality or municipalities, where such project has the effect of eliminating the potential for the disposal of waste originating outside the Adirondack park at a municipal solid waste landfill located within the Adirondack park.

2. A municipality, upon the approval of its governing body, may submit an application to the commissioner, in such form and containing such information as the commissioner may require, for state assistance payments toward the cost of a municipal landfill closure project incurred after April first, nineteen hundred ninety-three or Adirondack landfill project which is within the state of New York and which is eligible for state assistance pursuant to this title.

3. The commissioner shall review such project application and may approve, disapprove or recommend modifications thereto consistent with applicable law, criteria, standards or rules and regulations relative to such projects. In reviewing applications for projects pursuant to this section, the commissioner shall give due consideration to:

(a) the urgency of need to provide state assistance payments for the project in relation to the provision of monies for other project needs in the state known at the time such application is made;

(b) any adverse environmental impact resulting from the municipal landfill, including effects on groundwater; and

(c) the ability of the municipality to pay for the costs of the project.

4. After approval of an application, the commissioner and the municipality shall enter into a contract for state assistance payments toward the cost of such project which shall include the following provisions:

(a) A current estimate of the cost of the project as determined by the commissioner at the time of the execution of the contract.

(b) An agreement by the commissioner to make state assistance payments toward the cost of the project by periodically reimbursing the municipality for costs incurred during the progress of the project to a maximum of either fifty percent of the cost, or ninety percent of the cost for a municipality with a population smaller than thirty-five hundred as determined by the current federal decennial census, or two million dollars, whichever is less. The commissioner may consider landfill gas management projects separately from landfill closure projects. Such costs are subject to final computation and determination by the commissioner upon completion of the project. For purposes of this subdivision, the approved project cost shall be reduced by the amount of any specific state assistance payments for landfill closure purposes received by the municipality from any source; provided, however, that non-specific state assistance payments such as amounts paid pursuant to section fifty-four of the state finance law, shall not be included in such cost reduction.

(c) An agreement by the municipality to proceed expeditiously with the project and to complete the project in accordance with plans and reports approved by the department and with the conditions of applicable permits, administrative orders or judicial orders.

5. In administering the provisions of this title the commissioner:

(a) shall make an itemized estimate of funds or appropriations requested annually for inclusion in the executive budget;

(b) may, in the name of the state, as further provided within this article, contract to make, within the limitations of appropriations available therefor, state assistance payments toward the costs of an approved project. Such contracts shall be subject to approval by the

state comptroller and, as to form, by the attorney general;

(c) shall approve vouchers for the payments pursuant to an approved contract. All such payments shall be paid on the audit and warrant of the state comptroller; and

(d) may perform such other and further acts as may be necessary, proper or desirable to carry out the provisions of this article.

6. A municipality shall have the power and authority to:

(a) undertake and carry out any project for which state assistance payments and loans pursuant to contract are received or are to be received pursuant to this article and maintain and operate such project;

(b) expend money received from the state pursuant to this article for costs incurred in conjunction with an approved project; and

(c) perform such other and further acts as may be necessary, proper or desirable to carry out a project or obligation, duty or function related thereto.

7. Any municipal solid waste landfill or portion thereof that has closed or is in the process of closing that is required by federal or state law or regulation to install a landfill gas management system shall be eligible for state assistance for such landfill gas management system project pursuant to this section.

8. Notwithstanding paragraph (b) of subdivision four of this section, the commissioner, the commissioners of the Adirondack park agency, and such other state agencies as may be appropriate, may enter into an agreement with a municipality or municipalities for an Adirondack landfill project, the capital costs of which shall be eligible for state assistance payments pursuant to this section. Such project may be part of a locally created, region wide solution to the solid waste problems within the adirondack park.

§ 56-0405. Municipal recycling projects.

1. As used in this section the following terms mean:

(a) "Recyclables recovery equipment" means structures, machinery or

devices, singly or in combination, designed, constructed and required primarily to separate, process, modify, convert, treat, or prepare collected solid waste, including household hazardous waste, which is included as part of a recyclables recovery program so that component materials or substances or recoverable resources may be used as a raw material for new products or for useful purposes other than for energy recovery.

(b) "Recyclables recovery program" means a program undertaken by a municipality consistent with requirements of section one hundred twenty-aa of the general municipal law to provide for the environmentally sound recovery of recyclables, primarily involving the collection, aggregation and processing of recyclable materials for their use as raw materials for new products or for other useful purposes other than for energy recovery, through facilities planned, designed and constructed to ensure environmental protection and to maximize the potential for recyclables recovery. Such program shall have been approved by the commissioner and undertaken consistent with any local solid waste management plan pursuant to section 27-0107 of this chapter.

(c) "Recycling project" means recyclables recovery equipment, source separation equipment, a recyclables recovery program or any combination thereof required by a recyclables recovery program.

(d) "Source separation equipment" means municipally owned:

(i) add-ons or trailers designed to modify collection vehicles to allow sorting and separation of collected wastes held for the purpose of recycling;

(ii) containers for the source separation and temporary storage of recyclable wastes by commercial, industrial and institutional generators, and for the source separation and temporary storage of recyclable materials by single family and multiple family dwellings prior to collection;

(iii) bins, sheds or other facilities for the temporary storage of materials prior to transport for the purposes of recycling; and

(iv) collection vehicles specifically designed to hold and transport source-separated recyclables.

2. State assistance payments toward the cost of municipal recycling projects shall be made pursuant to this title with the approval of the

commissioner.

3. In reviewing applications for state assistance payments for municipal recycling projects, the commissioner shall give due consideration to:

(a) the adequacy of the municipality's recycling program and its relationship to the needs and plans of other municipalities; provided, however, that such adequacy shall be determined in part by the efforts undertaken to date by the municipality to implement a mandatory source separation law or ordinance required pursuant to section one hundred twenty-aa of the general municipal law;

(b) the suitability and feasibility of the project in relation to the recycling program and the area to be served;

(c) the proportion of solid waste for which recyclables recovery is contemplated and the extent to which the project is consistent with the statewide solid waste recycling goals established under the state solid waste management plan, pursuant to section 27-0103 of this chapter;

(d) the potential for coordination and consolidation of solid waste management practices among municipalities within specified areas, regions or planning units;

(e) the implementation of the system or components thereof and their expected terms of usefulness, singly or in combination;

(f) the present and projected population, land use, and rates and composition of solid waste generation;

(g) the potential or contemplated markets for recovered recyclables and the extent to which the full avoided costs of proper collection, transportation and disposal of source separated recyclables are, or are projected to be, greater than the cost of collection, transportation and sale of said recyclables less the amount received from the sale of said recyclables;

(h) the intergovernmental arrangements integral to the project;

(i) the non-governmental arrangements integral to the project;

(j) the urgency of the project, in relationship to all recyclables recovery program needs in the state; and

(k) the environmental soundness of the project, including assurance that the project will meet all applicable laws, criteria, and rules and regulations.

4. A municipality, upon the approval of its governing body, may submit an application to the commissioner, in such form and containing such information as the commissioner may require, for state assistance payments toward the cost of municipal recycling projects incurred after April first, nineteen hundred ninety-three which is within the state of New York and which is eligible for state assistance pursuant to this title. The commissioner shall review such project application and may approve, disapprove or recommend modifications thereto consistent with applicable law, criteria, standards or rules and regulations relative to such projects. Upon approval of a project application, a municipality shall enter into a contract, as further provided within this article, with the commissioner for state assistance payments toward the cost of such project to be received pursuant to this article.

5. The commissioner may, in the name of the state, enter into contracts with municipalities to provide state assistance payments toward the cost of municipal recycling projects which shall include the following provisions:

- (a) an estimate of the costs of the project as determined by the commissioner;

- (b) an agreement by the commissioner to make state assistance payments toward the cost of the project by periodically reimbursing the municipality, during the progress of project development or following completion of the project as may be agreed upon by the parties, in an amount not to exceed the amounts established elsewhere in this title; and

- (c) an agreement by the municipality:

- (i) to proceed expeditiously with and complete the project as approved by the commissioner;

- (ii) to operate and maintain the municipal recycling project in accordance with applicable laws and rules and regulations;

- (iii) to provide for the payment of the municipality's share of the cost of the project;

- (iv) to continue, upon evaluation of its effectiveness, operation of the project and not to dispose of the project or any portion thereof or change its use without the approval of the commissioner;

(v) to assume the full cost of any continued operation of the project and to assume the full cost of any continued operation for a period no less than three years;

(vi) to repay within one year of notification by the commissioner, any state assistance payments made toward the cost of the project or an equitable portion of such moneys declared appropriate by the commissioner, if the municipality:

(A) fails to complete the project as approved;

(B) fails to continue operation of the project;

(C) disposes of the project, or any portion thereof, without the prior written approval of the respective commissioner; or

(D) changes the use of the project, or any portion thereof, without the prior written approval of the commissioner. No repayment, however, shall be required where the commissioner determines that such failure, disposition or change of use was immediately necessary to protect public health and safety;

(vii) to apply for and make reasonable efforts to secure federal assistance for the project; and

(viii) to not sell, lease or otherwise dispose of or use lands acquired under this title for any purpose inconsistent with the project under which such land is acquired.

In connection with each contract, the commissioner shall keep adequate records of the amount of the payment by the state and of the amount of federal assistance, if any, received by the municipality. Such records shall be retained by the commissioner and shall establish the basis for recalculation of the state payment as required herein.

§ 56-0407. Fresh Kills landfill closure project.

1. The commissioner, in the name of the state, may enter into a contract with the city of New York for state assistance payments for the Fresh Kills landfill closure project.

2. After approval of an application, the commissioner and the municipality shall enter into a contract for state assistance payments

toward the cost of such project which shall include the following provisions:

(a) A current estimate of the cost of the project as determined by the commissioner at the time of the execution of the contract.

(b) An agreement by the commissioner to make state assistance payments toward the cost of the project by periodically reimbursing the municipality for costs incurred during the progress of the project. Such costs are subject to final computation and determination by the commissioner upon completion of the project. For purposes of this subdivision, the approved project cost shall be reduced by the amount of any specific state assistance payments for landfill closure purposes received by the municipality from any source; provided, however, that non-specific state assistance payments, such as amounts paid pursuant to section fifty-four of the state finance law, shall not be included in such cost reduction.

(c) An agreement by the municipality to proceed expeditiously with the project and to complete the project in accordance with plans and reports approved by the department and with the conditions of applicable permits, administrative orders or judicial orders.

TITLE 5

ENVIRONMENTAL RESTORATION PROJECTS

Section 56-0501. Allocation of moneys.

56-0502. Definitions.

56-0503. Environmental restoration projects; state assistance.

56-0505. Environmental restoration projects; criteria.

56-0507. Recovery of state assistance.

56-0508. Foreclosure of a tax lien.

56-0509. Liability limitation.

56-0511. Change of use.

56-0513. Permit waivers.

56-0515. Access to sites.

§ 56-0501. Allocation of moneys.

1. Of the moneys received by the state from the sale of bonds pursuant to the Clean Water/Clean Air Bond Act of 1996, two hundred million dollars (\$200,000,000) shall be available for disbursements for environmental restoration projects.

2. Beginning in state fiscal year two thousand fifteen--two thousand sixteen, environmental restoration projects may be funded using the proceeds of bonds issued pursuant to section twelve hundred eighty-five-q of the public authorities law provided that funding for such projects shall conform to the limitations provided in subdivision one of such section.

§ 56-0502. Definitions.

1. "Community based organization" shall mean a not-for-profit corporation, exempt from taxation under section 501(c)(3) of the internal revenue code whose stated mission is promoting reuse of brownfield sites within a specified geographic area in which the community based organization is located, which has twenty-five percent or more of its board of directors residing in the community in such area; and represents a community with a demonstrated financial need.

"Community based organization" shall not include any not-for-profit corporation that has caused or contributed to the release or threatened release of contamination from or onto the brownfield site, or any not-for-profit corporation that generated, transported, or disposed of, or that arranged for, or caused, the generation, transportation, or disposal of contamination from or onto the brownfield site. This definition shall not apply if more than twenty-five percent of the members, officers or directors of the not-for-profit corporation are or were employed by or receiving compensation from any person responsible for a site under title thirteen of article twenty-seven of this chapter or article twelve of the navigation law or under applicable principles of statutory or common law liability.

1-a. "Contamination" or "contaminated" shall have the same meaning as provided in section 27-1405 of this chapter.

2. "Cost", for purposes of this title, shall have the same meaning as provided in subdivision four of section 56-0101 of this article, except that such term shall not include the requirement to reduce the cost of an approved project in accordance with any federal or state funds for the project received or to be received by the municipality.

3. "Environmental restoration investigation project" shall mean a project, undertaken in accordance with the requirements of this title, to investigate contamination located in, on, or emanating from real property held in title by a municipality.

4. "Environmental restoration remediation project" shall mean a project, undertaken in accordance with the requirements of this title, to remediate contamination located in, on, or emanating from real property held in title by a municipality.

5. "Municipality", for purposes of this title, shall have the same meaning as provided in subdivision fifteen of section 56-0101 of this article, except that such term shall not refer to a municipality that generated, transported, or disposed of, arranged for, or that caused the generation, transportation, or disposal of contamination located at real property proposed to be investigated or to be remediated under an environmental restoration project. For purposes of this title, the term municipality includes a municipality acting in partnership with a community based organization.

6. "State assistance", for purposes of this title, shall mean in the case of a contract authorized by subdivision one of section 56-0503 of this title, payments made to a municipality to reimburse the municipality for the state share of the costs incurred by the municipality to undertake an environmental restoration project or in the case of a written agreement authorized by subdivision three of section 56-0503 of this title, costs incurred by the state to undertake an environmental restoration project but not reimbursed by a municipality.

§ 56-0503. Environmental restoration projects; state assistance.

1. The commissioner may enter into a contract with a municipality to provide state assistance to such municipality to undertake an environmental restoration project. The amount of state assistance payment for such project shall be up to an amount of:

(a) ninety percent of the eligible costs of such project, subject to the provisions set forth in paragraph (b) of this subdivision;

(b) one hundred percent of the eligible costs of any remediation directed by the department to be undertaken outside the boundaries of the real property that is subject to an environmental restoration project approved by the department.

2. In addition to such other terms and conditions that the commissioner may deem to be appropriate, a contract authorized by subdivision one of this section shall provide as follows:

(a) An estimate of the cost of such project as determined by the commissioner at the time of such contract's execution;

(b) An agreement by the commissioner to periodically reimburse the municipality for eligible costs incurred during the progress of such project. Such payments shall be subject to final computation and determination of the total state assistance share of the eligible costs of the entire environmental restoration project;

(c) A provision that the municipality shall assist in identifying a responsible party by searching local records, including property tax rolls, or document reviews, and if, in accordance with the required departmental approval of any settlement with a responsible party, any responsible party payments become available to the municipality, before, during or after the completion of an environmental restoration project, which were not included when the state share was calculated pursuant to this section, the state assistance share shall be recalculated, and the municipality shall pay to the state, for deposit into the environmental restoration project account of the hazardous waste remedial fund established under section ninety-seven-b of the state finance law, the difference between the original state assistance payment and the recalculated state share. Recalculation of the state share shall be done each time a payment from a responsible party is received by the

municipality;

(d) A provision that if any monies received from the disposition of the real property subject to an environmental restoration project exceed the municipality's cost of such property, including taxes owed to the municipality upon acquisition, and the municipality's cost of the environmental restoration project, the amount of such excess necessary to reimburse the state of New York for the state assistance provided to the municipality under this title shall be paid to the state of New York for deposit into the environmental restoration project account of the hazardous waste remedial fund established under section ninety-seven-b of the state finance law;

(e) An agreement by the municipality to proceed expeditiously with and complete such project in accordance with plans approved for payment of the municipality's share of such project's cost;

(f) An agreement by the municipality that it shall prepare and implement a public participation plan for environmental restoration projects undertaken pursuant to this title. The requirements of the plan shall be governed by decision of the municipality to proceed with remediation of the property under this title. However, in all cases, implementation of the plan shall be completed as part of the project. In those cases where the municipality does not intend to proceed with remediation of the property, the plan shall provide timely and accessible disclosure of the results of the investigation to the interested public. The plan shall provide for adequate public notice of the availability of the investigation results; an opportunity for submission of written comments; and a filing of a notice of the results of the investigation as authorized by subdivision three of section three hundred sixteen-b of the real property law. Where the municipality intends to proceed with remediation of the property under this title, the plan shall provide opportunities for early, inclusive participation prior to the selection of a preferred course of action, facilitate communication, including dialogue among the municipality, the department, and the interested public, and provide timely and accessible disclosure of information. At a minimum, the design of the plan shall take into account the scope and scale of the proposed environmental restoration remediation project, local interest, and other relevant factors. The plan shall also provide for: adequate public notice of the

availability of a draft remedial plan; a forty-five day period for submission of written comments; a public meeting on such plan if substantive issues are raised by members of the affected community; and technical assistance if so requested by members of the affected community. Provided, however, that the requirements of this subdivision shall not apply to interim remedial measures undertaken as part of an environmental restoration project to address emergency site conditions. In such instance, the department or such persons implementing the interim remedial measure or making the request shall conduct public participation activities as the department deems necessary and appropriate under such circumstances.

(g) An agreement by the municipality that it shall put into place any engineering and/or institutional controls (including environmental easements pursuant to title thirty-six of article seventy-one of this chapter) that the department may deem necessary to allow the contemplated use to proceed, that such engineering and/or institutional controls shall be binding on such municipality, any successor in title, and any lessees and that any successors in title and any lessees cannot challenge state enforcement of such controls;

(h) In the event that such engineering controls and/or institutional controls are necessary, the municipality shall develop a plan consistent with the requirements set forth in section 27-1415 of this chapter. Such plan shall be approved by the department. Failure to implement the plan or maintain such controls shall constitute a violation of such contract and shall terminate for the duration of such failure the protection afforded under subdivision one of section 56-0509 of this title;

(i) In the event that an easement is required, such municipality shall cause such easement to be recorded and indexed in accordance with the requirements set forth in title thirty-six of article seventy-one of this chapter; and

(j) A provision that exempts a municipality and any successor in title from the requirement to obtain any state or local permit or other authorization for any activity needed to implement a project to investigate or remediate contamination pursuant to this title; provided that the activity is conducted in a manner which satisfies all substantive technical requirements applicable to like activity conducted pursuant to a permit.

3. The department may undertake an environmental restoration project on behalf of a municipality upon request. If the department undertakes the project on behalf of the municipality, the state shall enter into a written agreement with the municipality and the agreement shall require the municipality to periodically provide its share to the state for costs incurred during the progress of such project. The municipality's share shall be the same as would be required under subdivision one of this section. The agreement shall include all provisions specified in subdivision two of this section as appropriate.

§ 56-0505. Environmental restoration projects; criteria.

1. The department shall determine the eligibility of an environmental restoration project for state assistance under this title based upon the following criteria:

(a) the benefit to the environment realized by the expeditious remediation of the property proposed to be subject to such project;

(b) the economic benefit to the state by the expeditious remediation of the property proposed to be subject to such project;

(c) the potential opportunity of the property proposed to be subject to such project to be used for public recreational purposes;

(d) real property in a designated brownfield opportunity area pursuant to section nine hundred seventy-r of the general municipal law; and

(e) the opportunity for other funding sources to be available for the remediation of such property, including, but not limited to, enforcement actions against responsible parties (other than the municipality to which state assistance was provided under this title; or a successor in title, lender, or lessee who was not otherwise a responsible party prior to such municipality taking title to the property), state assistance payments pursuant to title thirteen of article twenty-seven of this chapter, and the existence of private parties willing to remediate such property using private funding sources. Highest priority shall be granted to projects for which other such funding sources are not available.

2. The department shall not enter into a contract with a municipality pursuant to section 56-0503 of this title for an environmental restoration project for any site listed in the registry of inactive hazardous waste sites under section 27-1305 of this chapter and given a classification as described in subparagraph one or two of paragraph b of subdivision two of such section 27-1305.

3. The remediation objective of an environmental restoration remediation project shall meet the same standard for protection of public health and the environment that applies to remedial actions undertaken pursuant to section 27-1313 of this chapter.

4. After completion of such project, the municipality may use the property for public purposes or may dispose of it. If the municipality shall dispose of such property by sale to a responsible party, such party shall pay to such municipality, in addition to such other consideration, an amount of money constituting the amount of state assistance provided under this title plus accrued interest and transaction costs and the municipality shall deposit that money into the environmental restoration project account of the hazardous waste remedial fund established under section ninety-seven-b of the state finance law.

5. In the event that an environmental restoration project's remediation objective shall not have been attained to the department's satisfaction at the time of the municipality's disposition of such property, such municipality shall be liable to ensure that such objective is attained within the time called for in the state assistance contract.

§ 56-0507. Recovery of state assistance.

1. A municipality receiving state assistance under this title undertakes an environmental restoration project as agent of the state with respect to the incurrence of eligible costs.

2. The state shall make all reasonable efforts to recover the full amount of any state assistance provided under this title through litigation brought under this section or other statute or under the common law, or through cooperative agreements, with responsible parties (other than the municipality to which state assistance was provided under this title; or a successor in title, lender, or lessee who was not otherwise a responsible party prior to the municipality's taking title to such property).

3. Any and all monies recovered or reimbursed pursuant to this section shall be deposited into the environmental restoration project account of the hazardous waste remedial fund established under section ninety-seven-b of the state finance law.

§ 56-0508. Foreclosure of a tax lien.

Notwithstanding any general, special or local law or ordinance to the contrary:

1. upon the commencement of a proceeding to foreclose a tax lien, the taxing district bringing the proceeding or any taxing district other than the one foreclosing the tax lien, having any right, title, or interest in, or lien upon, any parcel described in the petition of foreclosure may upon twenty days notice to all parties having any right, title, or interest in, or lien upon such parcel, move, at a special term in the court in which the foreclosure proceeding was brought, for an order granting such taxing district the temporary incidents of ownership of such parcel for the sole purpose of entering the parcel and conducting an environmental restoration investigation project upon such parcel.

2. unless prior to the return date of the motion brought pursuant to this section the parcel has been redeemed by a party having the right of redemption, the court shall enter an order granting such relief to such taxing district, or, if more than one taxing district applies for such right, to the taxing district which the court determines has the

greatest public interest, but, where possible and proper, preferences for such relief should be accorded first to cities and villages, second to towns, and third to counties. Such order shall be granted upon such terms and conditions as the court shall deem just and proper to permit the environmental investigation to go on unhindered as well as to protect the interests of all other parties having a right, title, or interest in such parcel. Such order shall act as a stay to the foreclosure action on such parcel until the environmental restoration investigation project has been completed and the final investigation report filed with the court pursuant to subdivision four of this section or such other time as the court may deem proper, and particularly upon a finding by the court that the investigation has not been carried out in an expeditious manner.

3. such temporary incidents of ownership by such taxing district shall also qualify it as being the owner of such property to be eligible for funding from the state of New York for such environmental restoration investigation project under this article or for such funding from any source pursuant to any other state, federal, or local law, but such incidents of ownership shall not be sufficient to qualify it as the owner of such property for the purposes of holding it wholly or partially liable for any damages, past, present, or future from any release of any hazardous material, substance, or contaminant into the air, ground, or water, unless such release was caused by such taxing district.

4. within thirty days of the completion of the environmental restoration investigation project and the receipt by the taxing jurisdiction of the final report of such investigation, such taxing jurisdiction shall file such report with the court on notice to the court and all other parties of record, and the stay of the foreclosure shall be lifted (unless lifted earlier by a prior court order), and all incidents of temporary ownership of the taxing jurisdiction that was awarded such taxing district, except any right for the environmental restoration investigation project to be funded, shall cease to exist, and nothing in this subdivision shall preclude the taxing jurisdiction that conducted the environmental restoration investigation project or

the taxing jurisdiction that commenced the foreclosure action, if it is a different taxing jurisdiction than the taxing jurisdiction which conducted the investigation, from withdrawing the parcel from foreclosure pursuant to section eleven hundred thirty-eight of the real property tax law.

5. all costs associated with any environmental restoration investigation project conducted pursuant to the authority of this section shall be added to the taxes owed to, and the tax lien of, the taxing district that undertook the environmental restoration investigation project pursuant to this section.

§ 56-0509. Liability limitation.

1. (a) Notwithstanding any other provision of law and except as provided in subdivision two of this section and in paragraph (h) of subdivision two of section 56-0503 of this title, the following shall not be liable to the state upon any statutory or common law cause of action, or to any person upon any statutory cause of action arising out of the presence of any contamination in or on property at any time before the effective date of a contract entered into pursuant to this title or written agreement pursuant to subdivision three of section 56-0503 of this title:

(i) a municipality receiving state assistance under this title to undertake, or under written agreement pursuant to subdivision three of section 56-0503 of this title for the state to undertake an environmental restoration project and complying with the terms and conditions of the contract or written agreement pursuant to subdivision three of section 56-0503 of this title providing such assistance; and

(ii) a successor in title to the real property subject to an environmental restoration project; any lessee of such property; and any person that provides financing to such party relative to the remediation, restoration, or redevelopment of such property; provided that such successor in title, lessee, or lender did not generate, arrange for, transport, or dispose, and did not cause the generation, arrangement for, transportation, or disposal of any contamination

located at such property, and did not own such property.

(b) Notwithstanding any other provision of this title, any person seeking the benefit of this subdivision shall bear the burden of proving that a cause of action, or any part thereof, is attributable solely to contamination present in or on such parcel before the effective date of such contract.

2. Subdivisions one and three of this section shall not apply to relieve any municipality, successor in title, lessee, or lender from liability arising from:

(a) failing to implement such project to the department's satisfaction or failing to comply with the terms and conditions of the contract;

(b) fraudulently demonstrating that the cleanup levels identified in or to be identified in accordance with such project were reached;

(c) causing the release or threat of release at the property subject to such project of any contamination after the effective date of such contract; or

(d) changing such property's use from the intended use as identified in the contract pursuant to section 56-0503 of this title to a use requiring a lower level of residual contamination unless the additional remedial activities are undertaken which shall meet the same standard for protection of public health and the environment that applies to remedial actions undertaken pursuant to 27-1313 of this chapter so that such use can be implemented with sufficient protection of public health and the environment.

3. The state shall indemnify and save harmless any municipality, successor in title, lessee, or lender identified in paragraph (a) of subdivision one of this section in the amount of any judgment or settlement, obtained against such municipality, successor in title, lessee, or lender in any court for any common law cause of action arising out of the presence of any contamination in or on property at anytime before the effective date of a contract entered into pursuant to this title. Such municipality, successor in title, lessee, or lender shall be entitled to representation by the attorney general, unless the attorney general determines, or a court of competent jurisdiction determines, that such representation would constitute a conflict of

interest, in which case the attorney general shall certify to the comptroller that such party is entitled to private counsel of its choice, and reasonable attorneys' fees and expenses shall be reimbursed by the state. Any settlement of such an action shall be subject to the approval of the attorney general as to form and amount, and this subdivision shall not apply to any settlement of any such action which has not received such approval.

4. A municipality receiving state assistance and any successor in title shall implement a department-approved environmental sampling program and, in the event that conditions on such property are not sufficiently protective of human health for its current use due to environmental conditions related to the property subject to such project that were unknown to the department as of the effective date of such contract or due to information received in whole or in part after the department's approval of such project's final engineering report and certification, take such emergency measures that are necessary to maintain sufficient protection of human health for such property's current use until such conditions are addressed; and the department shall take such measures as it may determine are necessary to return such property to a condition sufficiently protective of human health using monies from the environmental restoration project account of the hazardous waste remedial fund established under section ninety-seven-b of the state finance law.

5. In addition to any other powers the department may have, including, but not limited to, the powers set forth in section 56-0515 of this title, the department shall have the authority to periodically inspect property to ensure that the use of the property complies with the terms and conditions of the contract and any engineering and/or institutional controls placed on the property.

§ 56-0511. Change of use.

1. At least sixty days before the start of physical alteration or construction constituting a change of use at a property investigated or

remediated under an environmental restoration project, or at least sixty days before a change of use at such a property not involving any physical alteration or construction, as the case may be, the person or entity proposing to make a change of use shall provide written notification to the department and the clerks of the county and other municipalities in which such property is located.

2. No person shall engage in any activity at a property investigated or remediated under an environmental restoration project that is not consistent with restrictions placed upon the use of the property, or that will, or that reasonably is anticipated to: prevent or interfere significantly with a proposed, ongoing, or completed project; or expose the public health or the environment to a significantly increased threat of harm or damage from such property. If the commissioner determines that a proposed change of use is prohibited pursuant to this section, he or she shall, within forty-five days after receipt of the complete notice required by this section, provide the person giving such notice with a written determination that such change of use will not be authorized, together with the reasons for such determination.

3. For the purposes of this section:

(i) "change of use" means the transfer of title to all or part of property subject to an environmental restoration project, the erection of any structure on such property, and the creation of a park or other public or private recreational facility on such property, or any activity that is likely to disrupt or expose contamination or to increase direct human exposure; or any other conduct that will or may tend to significantly interfere with an ongoing or completed environmental restoration project.

(ii) "complete notice" means a notice that adequately apprises the department of the contemplated physical alteration of the property and how such alteration may affect the property's proposed, ongoing, or completed project, or of the proposed new owner's ability to implement the engineering and institutional controls associated with the property.

§ 56-0513. Permit waivers.

1. The department shall be exempt from the requirement to obtain any state or local permit or other authorization for any activity needed to implement a project to investigate or remediate contamination pursuant to this title; provided that the activity is conducted in a manner which satisfies all substantive technical requirements applicable to like activity conducted pursuant to a permit.

2. The department, by and through the commissioner, shall be authorized to exempt any agent, consultant, or contractor of the department from the requirement to obtain any state or local permit or other authorization for any activity needed to implement a project to investigate or remediate contamination pursuant to this title; provided that the activity is conducted in a manner which satisfies all substantive technical requirements applicable to like activity conducted pursuant to a permit.

§ 56-0515. 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, so authorized in writing by the commissioner, to enter upon any property which has or may have a contamination on such property, and/or areas near such property, for the following purposes:

(a) To inspect and take samples of such contaminate 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 cleanup, removal, remediation, or restoration 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.

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 contamination 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 contamination 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 contamination 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 to compel compliance therewith.

TITLE 6

AIR QUALITY PROJECTS

Section 56-0601. Allocation of monies.

56-0603. State clean-fueled vehicle projects.

56-0605. Clean-fueled buses projects.

56-0607. Other air quality projects.

56-0609. Clean air for schools projects.

56-0611. Environmental compliance projects.

§ 56-0601. Allocation of monies.

Of the monies received by the state from the sale of bonds pursuant to the Clean Water/Clean Air Bond Act of 1996, two hundred thirty million dollars (\$230,000,000), of which five million dollars (\$5,000,000) shall be available for diesel-fueled school bus retrofit equipment projects, shall be used to fund air quality projects as set forth in this title.

§ 56-0603. State clean-fueled vehicle projects.

1. The office of general services is authorized, consistent with the strategy developed pursuant to subdivision three of section two hundred one-a of the executive law, to conduct a project to acquire clean-fueled vehicles and to develop and acquire the associated infrastructure including depot construction.

2. For the purposes of this section, the term "clean-fueled vehicle" shall mean any motor vehicle as defined in section one hundred twenty-five of the vehicle and traffic law, that uses electricity, including electricity generated from solar energy, either stored or generated on-board, as its primary motive force, or that is fueled by compressed natural gas, propane, methanol, hydrogen or ethanol.

§ 56-0605. Clean-fueled buses projects.

1. The New York state energy research and development authority in cooperation with the department of transportation is authorized to make state assistance payments to "clean-fueled buses projects".

2. For the purposes of this section, the term "clean-fueled bus" shall mean any motor vehicle having a seating capacity of fifteen or more passengers in addition to the driver and used for the transportation of persons on public highways, that is fueled by compressed natural gas, propane, methanol, hydrogen, biodiesel or ethanol, or uses electricity, including electricity generated from solar energy, either stored or generated on-board, as its primary motive force. For the purposes of this section, the term "diesel-fueled school bus retrofit equipment" shall mean equipment and/or technologies, including, but not limited to, particulate traps or filters and catalytic converters that reduce emissions of particulate matter, hydrocarbons, oxides of nitrogen, carbon monoxide, or toxic air pollutants.

3. Any municipality, state agency or department, state public authority, or school district upon the approval of its governing body, may submit an application to the authority, in such a form and containing such information as the authority may require, for state assistance payments toward the cost of acquisition of clean-fueled buses, purchase and installation of diesel-fueled school bus retrofit equipment on diesel-fueled school buses and for installation of infrastructure, including depot construction directly associated with such acquisitions. The authority shall suballocate to the department such funds as are necessary for the development of a single facility to evaluate heavy duty vehicle emissions.

4. The authority shall review such application, and may approve, disapprove or recommend modifications thereto consistent with applicable law, criteria, standards or rules and regulations relative to such application. Reasons for disapproval shall be provided to the applicant in writing.

5. After approval of the application, the authority and the municipality, state agency or department, state public authority, or school district shall enter into a contract for state assistance payments towards the cost of such project which shall include the following provisions:

(a) A current estimate of the cost of the project as determined by the authority at the time of the execution of the contract;

(b) An agreement by the authority to make state assistance payments towards the cost of the project; and

(c) An agreement by the municipality, state agency or department, state public authority, or school district to proceed expeditiously with the project and to complete the project in accordance with plans approved by the authority and provide reports as required by the authority.

§ 56-0607. Other air quality projects.

Of monies received by the state from the sale of bonds pursuant to the Clean Water/Clean Air Bond Act of 1996, up to twenty million dollars (\$20,000,000) shall be available for disbursements for air quality projects pursuant to this section.

The commissioner is authorized in consultation with other state agencies as may be necessary, to make state assistance payments or to enter into contracts in the name of the state for projects that will enhance the quality of the state's environment and the state's air quality.

§ 56-0609. Clean air for schools projects.

1. Of the monies received by the state from the sale of bonds pursuant to the Clean Water/Clean Air Bond Act of 1996, one hundred twenty-five million dollars (\$125,000,000) shall be available for disbursements for clean air for schools projects.

The power authority is authorized to undertake clean air for schools projects for elementary, middle and secondary schools. The power authority may undertake such projects in cooperation with local gas and electric corporations and/or energy service companies.

For the purposes of this section, "clean air for schools projects" shall mean projects to improve air quality by schools including, but not limited to, projects that replace coal-fired furnaces and heating systems with furnaces and systems fired by oil or gas.

2. Any school district may make an application to the power authority for state assistance payments from funds made available under this article toward the costs of clean air for schools projects.

a. The power authority shall review such applications and may approve, deny, or recommend modifications thereto, consistent with applicable law and consistent with criteria, standards, or rules and regulations, as the power authority may establish, relative to such projects. In the event that an application is denied, the power authority shall provide, in writing, reasons for the denial to the applicant.

b. In reviewing such applications, the power authority shall give due consideration to the following criteria:

(i) the extent to which the project provides the greatest improvement in air quality both within the school and in the surrounding neighborhood;

(ii) the age of the system being replaced; and

(iii) the potential for energy cost savings from efficiency improvements.

c. Upon approval of an application, the power authority may enter into a contract with the school district to undertake a clean air for schools project.

3. Notwithstanding any provision of law to the contrary, the comptroller is authorized and directed to release monies constituting state assistance payments, in amounts set forth in a schedule approved

by the director of the budget, to the power authority for the purposes authorized by this section. Any monies constituting state assistance payments made available to the power authority for the purposes specified by this section shall not be subject to the requirements of section one thousand thirteen of the public authorities law.

§ 56-0611. Environmental compliance projects.

Of moneys made available under this title thirty million dollars (\$30,000,000) shall be made available for state assistance payments through the environmental facilities corporation to villages, towns, and cities with a population of less than one million, for small business environmental compliance assistance projects which enhance the quality of the air of the state through compliance with environmental laws and regulations, or by remedy or prevention of environmental deficiencies.

1. The president of the environmental facilities corporation is authorized to provide state assistance payments to villages, towns, and cities with a population of less than one million, for implementation of small business environmental compliance assistance projects which enhance the quality of the air of the state.

2. A village, town, and city with a population of less than one million may submit an application to the president, in such form and manner as the president may require, for state assistance payments toward the cost of environmental compliance assistance projects.

3. Upon receipt of a request for a state assistance application, the president shall review the request and, within ninety days from the receipt of a complete application, may approve, disapprove, or recommend modifications thereto consistent with applicable law criteria, standards, or rules and regulations relative to such projects.

ARTICLE 57

LONG ISLAND PINE BARRENS MARITIME RESERVE ACT

- Title 1. Long Island Pine Barrens Maritime Reserve Act.
2. Peconic Bay Region Watershed Protection Act.

TITLE 1
**LONG ISLAND PINE BARRENS MARITIME
RESERVE ACT**

- Section 57-0101. Short title.
- 57-0103. Legislative declaration.
- 57-0105. Legislative findings and intent.
- 57-0107. Definitions.
- 57-0109. Establishment of Long Island Pine Barrens maritime reserve; core preservation area and compatible growth area.
- 57-0111. Long Island Pine Barrens maritime reserve council.
- 57-0113. Duties of the council.
- 57-0115. Comprehensive management plan.
- 57-0117. Dedications to the Long Island Pine Barrens preserve; legislative protection.
- 57-0119. Central Pine Barrens joint planning and policy commission.
- 57-0121. Central Pine Barrens comprehensive land use plan; interim regulations.
- 57-0123. Implementation of the Central Pine Barrens comprehensive land use plan.
- 57-0125. Addition of towns.
- 57-0127. Cooperation of state and municipal agencies.
- 57-0129. Acceptance of monies.
- 57-0131. Limitations on regulation of hunting, fishing and recreation activities; nonregulation of federal conservation activities.
- 57-0133. Affect on other laws.
- 57-0135. Judicial review.
- 57-0136. Penalties and enforcement.
- 57-0137. Severability.

§ 57-0101. Short title.

This title shall be known and may be cited as the "Long Island Pine Barrens maritime reserve act".

§ 57-0103. Legislative declaration.

The legislature hereby declares it to be in the public interest to protect and manage the Pine Barrens-Peconic Bay system, in the county of Suffolk, by establishing a Long Island Pine Barrens maritime reserve. It is further in the public interest to establish a council made up of representatives of state and local governments and private citizens to prepare a comprehensive management plan and make recommendations to preserve, protect and enhance the natural, recreational, economic and educational values of the region, which the state and local governments may adopt. In addition, it is further in the public interest to establish a commission made up of a governor's appointee, the county executive of Suffolk county and the supervisors of the towns of Brookhaven, Riverhead and Southampton to prepare, oversee and participate in the implementation of a comprehensive land use plan for the Central Pine Barrens area to guide development therein in a manner suitable to the needs for preservation of the core preservation area and compatible growth and development in the compatible growth area.

§ 57-0105. Legislative findings and intent.

The legislature hereby finds that eastern Long Island contains a maritime region of statewide importance known as the Pine Barrens-Peconic Bay system.

The legislature finds that within the Pine Barrens-Peconic Bay system the federal, state, county and local governments own and manage significant properties in the form of parks, preserves, historic sites and protected open space, where there is an interdependent and reciprocal relationship between human activities and natural processes,

and where fishing, agriculture and tourism have been the dominant industries for more than three hundred fifty years.

The legislature also finds that within the Pine Barrens-Peconic Bay system natural processes have created unique landforms such as Robin's Island, Shelter Island, Gardiners' Island, Fisher's Island, Long Island's North and South Forks, and numerous wetlands, bluffs and beaches.

The legislature finds that the Long Island Pine Barrens, an area encompassing over one hundred thousand acres in the county of Suffolk, is of critical importance to the state because it overlies the largest source of pure groundwater in New York. The Pine Barrens are interconnected to the Peconic Bay system by the Peconic River, the longest groundwater river in New York, and the ecologic and hydrologic integrity of this system should be protected in a comprehensive plan adopted by the state and individual local governments.

The legislature also finds that the Pine Barrens-Peconic Bay system contains one of the greatest concentrations and diversities of endangered, threatened and special concern species of plants and animals to be found in the state, and that protection of their habitats is in the best interest of the people of New York.

The legislature further finds that the Pine Barrens-Peconic Bay system contains many other unique natural, agricultural, historical, cultural and recreational resources that are mutually supportive and ultimately dependent upon maintenance of the hydrologic and ecologic integrity of this region.

Therefore, the legislature finds that the purpose of this title is to allow the state and local governments to protect, preserve and properly manage the unique natural resources of the Pine Barrens-Peconic Bay system and to encourage coordination of existing programs and studies affecting land and water resources in the region and to protect the value of the existing public and private investment that has already been made to acquire land in the region.

The legislature further finds that a portion of the system known as the Central Pine Barrens area requires the preparation and implementation of a state supported regional comprehensive land use plan that will provide for the preservation of the core preservation area, protection of the Central Pine Barrens area and for the designation of compatible growth areas to accommodate appropriate patterns of development and regional growth with recognition of the rights of private land owners and the purpose of preservation of the core area.

The legislature recognizes that the provisions of this title may restrict the beneficial use of some lands currently in private ownership. These restrictions are deemed to be necessary and desirable to protect and preserve the hydrologic and ecologic integrity of the Central Pine Barrens area as well as the public's health and welfare for future generations. The legislature intends that a comprehensive regional land use plan be implemented whereby private landowners whose property is located within the Central Pine Barrens area are afforded an opportunity to receive benefits from the plan such as transferable development rights, conservation easements, rights and values transfers, purchase of development rights and/or fee acquisition with monetary compensation.

§ 57-0107. Definitions.

As used in this title, the following terms shall mean and include:

1. "Council" shall mean the Long Island Pine Barrens maritime reserve council created by section 57-0111 of this title.

2. "Long Island Pine Barrens maritime reserve" shall mean the reserve created pursuant to section 57-0109 of this title.

3. "Long Island Pine Barrens preserve" or "preserve" shall mean lands within the Long Island Pine Barrens Maritime reserve that are critical to the protection of the hydrologic and ecologic integrity of the region

including land characterized by the growth of pitch pine, dwarf pine and/or scrub oak pine barrens which are dedicated for protection and beneficial public use pursuant to section 57-0117 of this title. Lands which are not deemed critical may be dedicated pursuant to section 57-0117 of this title as a protective or buffer zone for other dedicated lands, or to otherwise support the management of the preserve.

4. "Peconic Bay system" shall mean the series of interconnected bodies of surface waters, including Flanders Bay, Great Peconic Bay, Little Peconic Bay, Noyack Bay, Shelter Island Sound, Southold Bay, Northwest Harbor, Orient Harbor, Gardiners Bay, Napeague Bay, Fort Pond Bay, the western portion of Block Island Sound, other semi-enclosed bays and harbors contiguous thereto, and all of the tidal creeks and freshwater streams that discharge into these interconnected basins.

5. "Plan" shall mean the comprehensive management plan created pursuant to section 57-0115 of this title.

6. "Reserve" shall mean a region in which there is a combination of publicly and privately owned lands and land uses, within a defined area where there are traditional cultural patterns including agriculture, finfishing, shellfishing and tourism, which due to their pattern and configuration, and because of the need for sustained productivity could best be protected and managed through the development of a comprehensive management plan around a preserve of protected, publicly owned lands and/or privately owned land dedicated for such purposes.

7. "Land use plan" shall mean the comprehensive Central Pine Barrens land use plan pursuant to section 57-0121 of this title, including the generic environmental impact statement thereon.

8. "Commission" shall mean the Central Pine Barrens Joint Planning and Policy Commission established pursuant to section 57-0119 of this title.

9. "Advisory committee" shall mean the Central Pine Barrens advisory committee to the commission established pursuant to subdivision nine of section 57-0119 of this title.

* 10. "Central Pine Barrens area" shall mean the contiguous area as described and bounded as follows:

Beginning at a point where the southerly side of Route 25A intersects the easterly side of Miller Place Road; thence southward along the easterly boundary of Miller Place Road to Helme Avenue; thence southward along the easterly boundary of Helme Avenue to Miller Place-Middle Island Road; thence southward along the easterly boundary of Miller Place-Middle Island Road to Whiskey Road; thence westward along the southerly boundary of Whiskey Road to Mount Sinai-Coram Road; thence southward along the easterly boundary of Mount Sinai-Coram Road to Middle Country Road (Route 25); thence westward along the southerly boundary of Route 25 to Patchogue-Mount Sinai Road (County Route 83); thence southward along the easterly boundary of County Route 83 to Bicycle Path Drive; thence southeastward along the easterly side of Bicycle Path Drive to Mt. McKinley Avenue; thence southward along the easterly boundary of Mt. McKinley Avenue to Granny Road; thence northeastward along the northerly boundary of Granny Road to Port Jefferson-Patchogue Road (Route 112); thence southward along the easterly boundary of Route 112 to Horse Block Road (County Route 16); thence eastward along the northerly boundary of County Route 16 to Maine Avenue; thence northward along the westerly boundary of Maine Avenue to Fire Avenue; thence eastward along the northerly boundary of Fire Avenue to John Roe Smith Avenue; thence southward along the easterly boundary of John Roe Smith Avenue to Jeff Street; thence eastward along the northerly boundary of Jeff Street to Hagerman Avenue; thence southward along the easterly boundary of Hagerman Avenue to the Long Island Expressway (Route 495); thence eastward along the northerly boundary of Route 495 to the westerly side of Yaphank Avenue (County Road 21); thence southward along the westerly side of Yaphank Avenue to the south side of the Long Island Expressway (Route 495); thence eastward along the southerly side of the Long Island Expressway (Route 495) to the easterly side of Yaphank Avenue; thence southward along the easterly side of Yaphank Avenue, crossing Sunrise Highway (Route 27) to the south side of Montauk Highway (County Road 80); thence southwestward along the south side of Montauk Highway (County Road 80) to South Country Road; thence southward along the easterly side of South Country Road to

Fireplace Neck Road; thence southward along the easterly side of Fireplace Neck Road to Beaver Dam Road; thence eastward along the northerly side of Beaver Dam Road to the westerly boundary of the Carmans River and the lands owned by the United States known as Wertheim National Wildlife Refuge (the "Refuge"); thence generally westerly and southerly to the waters of Bellport Bay; thence generally easterly across the Bay and northerly along the easterly boundary of the Refuge, including all lands currently part of the Refuge and any lands which may become part of the Refuge in the future, to the east side of the southern terminus of Smith Road; thence northward along the easterly side of Smith Road to the southwesterly corner of the property identified as District 200, Section 974.50, Block 1, Lot 11; thence eastward, northward and westward in a counter-clockwise direction along the southern, eastern and northern boundaries of that property to the easterly side of Smith Road; thence northward along the east side of Smith Road to Merrick Road; thence northeasterly along the northerly side of Merrick Road to the easterly side of Surrey Circle and the southwest corner of the property identified as District 200, Section 880, Block 3, Lot 58.1; running thence easterly along the southerly side of said lot to the west side of William Floyd Parkway (County Road 46); thence northerly along the westerly side of William Floyd Parkway (County Road 46), crossing Route 27, to the Long Island Railroad (LIRR); thence eastward along the northerly boundary of the Long Island Rail Road tracks 7,500 feet; thence southward 500 feet; thence eastward 525 feet to the intersection of North Street and Manor-Yaphank Road; thence southward along the easterly boundary of Manor-Yaphank Road to Moriches-Middle Island Road; thence eastward along the northerly boundary of Moriches-Middle Island Road to a point due north of the easterly boundary of Cranford Boulevard; thence southward across Moriches-Middle Island Road and along the easterly boundary of Cranford Boulevard to the south-western corner of the property identified as District 200, Section 645, Block 3, Lot 29.1; thence southeastward along the southerly boundary of said property to its intersection with property identified as District 200, Section 712, Block 9, Lot 1; thence generally southward along the westerly boundary of said property to its intersection with the northerly side of the eastward extension of Grove Drive, known as Grove Street; thence southward crossing Grove Street to

its south side; thence westward along the southerly boundary of the Grove Street road extension to the northwestern corner of the property identified as District 200, Section 749, Block 3, Lot 41.1; and comprised of parcels owned by the county of Suffolk and the town of Brookhaven; thence southward to the southwestern corner of property identified as District 200, Section 749, Block 3, Lot 43; thence eastward along the southerly boundary of said property to the west side of Lambert Avenue; thence crossing Lambert Avenue to its easterly side; thence southward along the easterly boundary of Lambert Avenue to the northerly boundary of the Sunrise Highway Service Road; thence northeastward along the northerly boundary of the Sunrise Highway Service Road to Barnes Road; thence northward along the westerly boundary of Barnes Road to the northeastern corner of property identified as District 200, Section 750, Block 3, Lot 40.2; thence westward along the northerly boundary of said property to the property identified as District 200, Section 713, Block 1, Lot 2; thence westward along the northerly boundary of property identified as District 200, Section 713, Block 1, Lot 2 and District 200, Section 713, Block 1, Lot 1; thence northward along the westerly side of Weeks Avenue to the northeastern corner of property identified as District 200, Section 713, Block 3, Lot 1; thence westward along the northerly boundary of said property to Michigan Avenue; thence northward along the easterly boundary of Michigan Ave to Moriches-Middle Island Road; thence across Moriches-Middle Island Road to its north side; thence eastward along the northerly boundary of Moriches-Middle Island Road to Sunrise Highway (Route 27); thence eastward along the northerly boundary of Route 27 to an old railroad grade (unpaved); thence southeastward along the northerly boundary of the old railroad grade (unpaved) to Old County Road (Route 71); thence eastward along the northerly boundary of Route 71 to the Long Island Rail Road tracks; thence eastward along the northerly boundary of the Long Island Rail Road tracks to Montauk Highway; thence eastward along the northerly boundary of Montauk Highway to Route 24; thence northward along the westerly boundary of Route 24 to Sunrise Highway (Route 27); thence eastward along the northerly boundary of Route 27 to Squiretown Road; thence northward along the westerly boundary of Squiretown Road to Upper Red Creek Road; thence westward along the southern boundary of Upper Red Creek to Lower Red Creek Road;

thence southward along the easterly boundary of Lower Red Creek Road to Hubbard County Park; thence westward along the northern boundary of Hubbard County Park to Riverhead-Hampton Bays Road (Route 24); thence westward along the southerly boundary of Route 24 to Peconic Avenue; thence northward along the westerly boundary of Peconic Avenue to the Riverhead-Southampton border; thence westward along the Riverhead-Southampton border and the Riverhead-Brookhaven border to the Forge Road Bridge; thence northward along the westerly boundary of the Forge Road Bridge to Forge Road; thence northwestward along the westerly boundary of Forge Road to the railroad tracks; thence northward along the westerly boundary of Forge Road (unpaved) to the intersection of Route 25 and River Road; thence westward along the southerly boundary of River Road to Edwards Avenue; thence northward along the westerly boundary of Edwards Avenue 3,800 feet; thence westward 4,400 feet to an unnamed, unpaved road; thence northward along the westerly boundary of the unnamed, unpaved road 150 feet; thence westward and northwestward along the eastern boundary of the United States Navy/Grumman Aerospace Corporation property (as of 1982) up to its intersection with Middle Country Road (Route 25); thence westward along the southerly boundary of Route 25 to the intersection of Route 25 and 25A; thence northeastward, westward, and southwestward along the eastern and northern boundary of the United States Navy/Grumman Aerospace Corporation (as of 1982) and located immediately east of Route 25A, to its intersection with Route 25A; thence westward along the southerly boundary of Route 25A to a point due south of the southeast corner of the parcel identified as District 200, Section 128, Block 1, lot 3.1; thence northward across Route 25A to its northerly side at the southeast corner of parcel identified as District 200, Section 128, Block 1, Lot 3.1; thence northward along the easterly side of the property identified as District 200, Section 128, Block 1, lot 3.1 to its intersection with the southerly boundary of District 200, Section 128, Block 1, Lot 1; thence eastward, northward and westward along the southerly, easterly and northerly sides of the parcel identified as District 200, section 128, Block 1, lot 1 to the southeast corner of the parcel identified as District 200, Section 82, Block 1, Lot 5.2; thence northward along the east side of this parcel to its intersection with the south side of North Country Road; thence northward crossing North Country Road to its

northerly side; thence eastward along the northerly side of North Country Road to the Brookhaven Town-Riverhead Town line; thence in a generally northwestward direction along said town line to a point in Wading River Creek with the coordinates 40.96225 latitude and -72.863633 longitude; thence westward a distance of approximately 90 feet to the easterly side of LILCO Road; thence southward along LILCO Road to its intersection with the north side of North Country Road; thence westward along the north side of North Country Road to the southeast corner of the parcel identified as District 200, Section 39, Block 1, Lot 2; thence in a northward and westward direction along the easterly and northerly sides of said parcel to its northwest corner; thence northward along the westerly boundary of the parcel identified as District 200, Section 83, Block 1, Lot 1.4 to its northwest corner; and the southerly shoreline of Long Island Sound thence westward along the northerly side of the parcel identified as District 200, Section 39, Block 1, Lot 1.2 and the southerly extent of Long Island Sound to the northwest corner of the property identified as District 200, Section 39, Block 1, Lot 1.2; thence southward along the westerly boundary of said property to North Country Road; thence southward crossing North Country Road to its southerly side; thence west along the southerly boundary of North Country Road to the northwestern corner of property identified as District 200, Section 82, Block 1, Lot 1.1; thence south along the westerly boundary of said property and the westerly boundary of the property identified as District 200, Section 82, Block 1, Lot 1.2 to the northwest corner of property identified as District 200, Section 82, Block 1, Lot 5.1; thence southward along the westerly boundary of said property and along the easterly boundary of property identified as District 200, Section 81, Block 1, Lot 14.8 and along the easterly boundary of property identified as District 200, Section 105, Block 3, Lot 1 to the northeast corner of the property identified as District 200, Section 105, Block 3, Lot 5; thence southward along the easterly boundary of said property to the north side of Route 25A; thence southward crossing Route 25A to its south side; thence westward along the southerly boundary of Route 25A to the point or place of beginning, and excluding three distinct areas described as follows: The first area defined as beginning at a point where the westerly side of William Floyd Parkway (County Road 46) meets northerly side of the Long Island

Railroad (LIRR); thence westward along the northerly side of the LIRR to Moriches-Middle Island Road; thence generally northwestward along the northerly side of Moriches-Middle Island Road to the southerly side of Long Island Expressway (Route 495); thence eastward along the southerly side of the Long Island Expressway (Route 495) to the westerly side of William Floyd Parkway (County Road 46); thence southward along the westerly side of William Floyd Parkway (County Road 46) and containing the subdivision known as RB Industrial Park, to the point or place of beginning and the second area defined as the property described as District 200, Section 39, Block 1, Lot 1.1 and the third area defined as all parcels of real property identified as follows:

district 200, section 749, block 6, lot 24;

district 200, section 749, block 6, lot 25;

district 200, section 750, block 2, lot 27.1;

district 200, section 749, block 6, lot 14;

district 200, section 713, block 1, lot 2;

district 200, section 750, block 2, lot 38;

district 200, section 750, block 2, lot 39;

district 200, section 749, block 6, lot 26;

district 200, section 749, block 6, lot 22;

district 200, section 713, block 3, lot 2.3;

district 200, section 713, block 3, lot 2.1;

district 200, section 786, block 3, lot 13;

district 200, section 786, block 3, lot 14.2;

district 200, section 750, block 2, lot 8;

district 200, section 749, block 6, lot 13;

district 200, section 749, block 6, lot 20.2;

district 200, section 786, block 3, lot 7;

district 200, section 749, block 6, lot 23.1;

district 200, section 749, block 6, lot 20.1;

district 200, section 674, block 1, lot 39;

district 200, section 749, block 3, lot 15;

district 200, section 712, block 9, lot 1;

district 200, section 674, block 1, lot 38;

district 200, section 750, block 3, lot 40.1;

district 200, section 749, block 6, lot 21;

district 200, section 674, block 1, lot 35;

district 200, section 786, block 3, lot 1.1;

district 200, section 749, block 3, lot 43;

district 200, section 750, block 3, lot 19.1;

district 200, section 750, block 3, lot 19.2;

district 200, section 750, block 3, lot 19.3;

district 200, section 750, block 3, lot 19.4;
district 200, section 750, block 3, lot 19.5;
district 200, section 750, block 3, lot 19.6;
district 200, section 750, block 3, lot 19.7;
district 200, section 750, block 2, lot 7.1;
district 200, section 750, block 2, lot 7.2;
district 200, section 750, block 2, lot 37;
district 200, section 713, block 1, lot 1;
district 200, section 786, block 3, lot 3;
district 200, section 786, block 3, lot 4;
district 200, section 786, block 3, lot 6;
district 200, section 786, block 3, lot 1.2;
district 200, section 786, block 3, lot 8;
district 200, section 750, block 3, lot 25.1;
district 200, section 750, block 3, lot 26.1;
district 200, section 750, block 3, lot 39.1;
district 200, section 750, block 3, lot 6.1;
district 200, section 750, block 2, lot 24;
district 200, section 750, block 2, lot 35;

district 200, section 750, block 2, lot 36.1;

district 200, section 750, block 3, lot 42.1;

district 200, section 750, block 3, lot 5.1;

district 200, section 749, block 7, lot 15;

district 200, section 749, block 7, lot 16;

district 200, section 786, block 3, lot 9;

district 200, section 750, block 3, lot 37.1;

district 200, section 749, block 6, lot 10;

district 200, section 749, block 6, lot 7;

district 200, section 786, block 3, lot 14.1;

district 200, section 749, block 6, lot 23.2;

district 200, section 749, block 6, lot 11;

district 200, section 749, block 6, lot 5;

district 200, section 750, block 2, lot 21.1;

district 200, section 750, block 3, lot 35.1;

district 200, section 750, block 3, lot 35.2;

district 200, section 749, block 6, lot 9;

district 200, section 749, block 7, lot 18.1;

district 200, section 750, block 2, lot 20;

district 200, section 750, block 2, lot 22.1;

district 200, section 750, block 2, lot 25.2;

district 200, section 750, block 2, lot 25.1;

district 200, section 750, block 2, lot 33;

district 200, section 750, block 3, lot 40.2;

district 200, section 750, block 2, lot 23.1;

district 200, section 750, block 2, lot 34;

district 200, section 750, block 3, lot 41.1;

district 200, section 750, block 2, lot 18;

district 200, section 749, block 7, lot 14;

district 200, section 749, block 7, lot 43;

district 200, section 749, block 6, lot 4.4;

district 200, section 749, block 6, lot 12.3.

* NB Effective until ... (see 58/2018 Pt. CC § 5 for expiration provisions)

* 10. "Central Pine Barrens area" shall mean the contiguous area as described and bounded as follows:

Beginning at a point where the southerly side of Route 25A intersects the easterly side of Miller Place Road; thence southward along the easterly boundary of Miller Place Road to Helme Avenue; thence southward along the easterly boundary of Helme Avenue to Miller Place-Middle Island Road; thence southward along the easterly boundary of Miller

Place-Middle Island Road to Whiskey Road; thence westward along the southerly boundary of Whiskey Road to Mount Sinai-Coram Road; thence southward along the easterly boundary of Mount Sinai-Coram Road to Middle Country Road (Route 25); thence westward along the southerly boundary of Route 25 to Patchogue-Mount Sinai Road (County Route 83); thence southward along the easterly boundary of County Route 83 to Bicycle Path Drive; thence southeastward along the easterly side of Bicycle Path Drive to Mt. McKinley Avenue; thence southward along the easterly boundary of Mt. McKinley Avenue to Granny Road; thence northeastward along the northerly boundary of Granny Road to Port Jefferson-Patchogue Road (Route 112); thence southward along the easterly boundary of Route 112 to Horse Block Road (County Route 16); thence eastward along the northerly boundary of County Route 16 to Maine Avenue; thence northward along the westerly boundary of Maine Avenue to Fire Avenue; thence eastward along the northerly boundary of Fire Avenue to John Roe Smith Avenue; thence southward along the easterly boundary of John Roe Smith Avenue to Jeff Street; thence eastward along the northerly boundary of Jeff Street to Hagerman Avenue; thence southward along the easterly boundary of Hagerman Avenue to the Long Island Expressway (Route 495); thence eastward along the northerly boundary of Route 495 to the westerly side of Yaphank Avenue (County Road 21); thence southward along the westerly side of Yaphank Avenue to the south side of the Long Island Expressway (Route 495); thence eastward along the southerly side of the Long Island Expressway (Route 495) to the easterly side of Yaphank Avenue; thence southward along the easterly side of Yaphank Avenue, crossing Sunrise Highway (Route 27) to the south side of Montauk Highway (County Road 80); thence southwestward along the south side of Montauk Highway (County Road 80) to South Country Road; thence southward along the easterly side of South Country Road to Fireplace Neck Road; thence southward along the easterly side of Fireplace Neck Road to Beaver Dam Road; thence eastward along the northerly side of Beaver Dam Road to the westerly boundary of the Carmans River and the lands owned by the United States known as Wertheim National Wildlife Refuge (the "Refuge"); thence generally westerly and southerly to the waters of Bellport Bay; thence generally easterly across the Bay and northerly along the easterly boundary of the Refuge, including all lands currently part of the Refuge and any lands which may

become part of the Refuge in the future, to the east side of the southern terminus of Smith Road; thence northward along the easterly side of Smith Road to the southwesterly corner of the property identified as District 200, Section 974.50, Block 1, Lot 11; thence eastward, northward and westward in a counter-clockwise direction along the southern, eastern and northern boundaries of that property to the easterly side of Smith Road; thence northward along the east side of Smith Road to Merrick Road; thence northeasterly along the northerly side of Merrick Road to the easterly side of Surrey Circle and the southwest corner of the property identified as District 200, Section 880, Block 3, Lot 58.1; running thence easterly along the southerly side of said lot to the west side of William Floyd Parkway (County Road 46); thence northerly along the westerly side of William Floyd Parkway (County Road 46), crossing Route 27, to the Long Island Railroad (LIRR); thence eastward along the northerly boundary of the Long Island Rail Road tracks 7,500 feet; thence southward 500 feet; thence eastward 525 feet to the intersection of North Street and Manor-Yaphank Road; thence southward along the easterly boundary of Manor-Yaphank Road to Moriches-Middle Island Road; thence eastward along the northerly boundary of Moriches-Middle Island Road to Sunrise Highway (Route 27); thence eastward along the northerly boundary of Route 27 to an old railroad grade (unpaved); thence southeastward along the northerly boundary of the old railroad grade (unpaved) to Old County Road (Route 71); thence eastward along the northerly boundary of Route 71 to the Long Island Rail Road tracks; thence eastward along the northerly boundary of the Long Island Rail Road tracks to Montauk Highway; thence eastward along the northerly boundary of Montauk Highway to Route 24; thence northward along the westerly boundary of Route 24 to Sunrise Highway (Route 27); thence eastward along the northerly boundary of Route 27 to Squiretown Road; thence northward along the westerly boundary of Squiretown Road to Upper Red Creek Road; thence westward along the southern boundary of Upper Red Creek to Lower Red Creek Road; thence southward along the easterly boundary of Lower Red Creek Road to Hubbard County Park; thence westward along the northern boundary of Hubbard County Park to Riverhead-Hampton Bays Road (Route 24); thence westward along the southerly boundary of Route 24 to Peconic Avenue; thence northward along the westerly boundary of Peconic Avenue to the

Riverhead-Southampton border; thence westward along the Riverhead-Southampton border and the Riverhead-Brookhaven border to the Forge Road Bridge; thence northward along the westerly boundary of the Forge Road Bridge to Forge Road; thence northwestward along the westerly boundary of Forge Road to the railroad tracks; thence northward along the westerly boundary of Forge Road (unpaved) to the intersection of Route 25 and River Road; thence westward along the southerly boundary of River Road to Edwards Avenue; thence northward along the westerly boundary of Edwards Avenue 3,800 feet; thence westward 4,400 feet to an unnamed, unpaved road; thence northward along the westerly boundary of the unnamed, unpaved road 150 feet; thence westward and northwestward along the eastern boundary of the United States Navy/Grumman Aerospace Corporation property (as of 1982) up to its intersection with Middle Country Road (Route 25); thence westward along the southerly boundary of Route 25 to the intersection of Route 25 and 25A; thence northeastward, westward, and southwestward along the eastern and northern boundary of the United States Navy/Grumman Aerospace Corporation (as of 1982) and located immediately east of Route 25A, to its intersection with Route 25A; thence westward along the southerly boundary of Route 25A to the point or place of beginning, and excluding one distinct area described as follows: The area defined as beginning at a point where the westerly side of William Floyd Parkway (County Road 46) meets northerly side of the Long Island Railroad (LIRR); thence westward along the northerly side of the LIRR to Moriches-Middle Island Road; thence generally northwestward along the northerly side of Moriches-Middle Island Road to the southerly side of Long Island Expressway (Route 495); thence eastward along the southerly side of the Long Island Expressway (Route 495) to the westerly side of William Floyd Parkway (County Road 46); thence southward along the westerly side of William Floyd Parkway (County Road 46) and containing the subdivision known as RB Industrial Park, to the point or place of beginning.

* NB Effective ... (see 58/2018 Pt. CC § 5 for expiration provisions)

* 11. "Core preservation area" shall mean the core preservation area of the Central Pine Barrens area which comprise the largest intact areas of undeveloped pine barrens as described and bounded as follows:

Beginning at a point where the northwestern corner of the New York

State Rocky Point Natural Resource Management Area (the "NYS Rocky Point Land") intersects the southerly side of NYS Route 25A; thence generally southward and eastward along the generally westerly and southerly boundaries of the NYS Rocky Point Land (including the Currans Road Pond State Wildlife Management Area, all adjacent or contiguous undeveloped Town of Brookhaven parks, preserves, open space areas, or reserved areas, and the crossings of the undeveloped Suffolk County property known as the Port Jefferson - Westhampton road right of way, Whiskey Road, County Route 21, and Currans Road), and including those properties identified as District 200, Section 346, Block 1, Lots 3 and 4, to the point where the NYS Rocky Point Land meets the northerly side of NYS Route 25 (Middle Country Road); thence eastward along the northerly boundary of NYS Route 25 to the southeastern corner of that property west of Woodlots Road which is identified as District 200, Section 349, Block 2, Lot 1.3; thence northward along the easterly boundary of that property to the Suffolk County Pine Trail Nature Preserve; thence eastward and southeastward along the southerly boundary of the Suffolk County Pine Trail Nature Preserve where the Preserve is adjacent to developed parcels or parcels in agricultural or horticultural use, or along a line parallel to, and 100 (one hundred) feet south of, the Preserve where the Preserve is adjacent to parcels which are undeveloped as of June 1, 1993, to County Route 46; thence southward along the easterly boundary of County Route 46 to NYS Route 25; thence eastward along the southerly boundary of NYS Route 25 to the Suffolk County Pine Trail Nature Preserve; thence southward along the westerly boundary of the Suffolk County Pine Trail Nature Preserve where the Preserve is adjacent to developed parcels, or along a line parallel to, and 100 (one hundred) feet west of, the Preserve where the Preserve is adjacent to parcels which are undeveloped as of June 1, 1993, to the northern boundary of the United States land known as Brookhaven National Laboratory; thence generally westward along the northerly boundary of Brookhaven National Laboratory to County Route 46 (William Floyd Parkway); thence generally northwestward on a straight line to the intersection of Sally Lane and Pond Lane; thence westward along the southerly side of Pond Lane to Ruth Lane; thence northward along the westerly side of Ruth Lane to NYS Route 25; thence westward along the northerly side of NYS Route 25 to the southeast corner of the NYS Middle

Island State Game Farm and Environmental Education Center; thence northward, westward, and southward along the easterly, northerly, and westerly boundaries of the NYS Middle Island State Game Farm and Environmental Education Center to NYS Route 25; thence westward along the southerly side of NYS Route 25, excluding all parcels abutting that road which are developed as of June 1, 1993, to Giant Oak Road; thence southward along the easterly side of Giant Oak Road to Medford Road; thence southwestward along the southeasterly side of Medford Road crossing to the west side of Smith Road; thence southerly along the westerly side of Smith Road to the southeast corner of District 200, Section 406, Block 1, Lot 6; thence westward and northward along the southerly and westerly sides of said parcel to the southerly side of the developed lands known as Strathmore Ridge; thence westward, northward and eastward along the southerly, westerly and northerly sides of the developed lands known as Strathmore Ridge to the westerly side of Smith Road; thence northerly along the westerly side of Smith Road to the southerly side of NYS Route 25; thence westerly along the southerly side of NYS Route 25, to the northwestern corner of that property which is identified as District 200, Section 406, Block 1, Lot 4.3; thence southerly along the westerly boundary of that property and continuing southward along the westerly sides of the properties identified as District 200, Section 406, Block 1, Lot 4.6; District 200, Section 406, Block 1, Lot 4.4 and District 200, Section 504, Block 1, Lot 2 to the southerly side of Longwood Road; thence eastward along the southerly side of Longwood Road to the northwest corner of the property identified as District 200, Section 504, Block 1, Lot 7.2; thence southward and westward along the generally westerly boundary of that parcel to the eastern end of Rugby Lane (also known as Rugby Avenue or Rugby Road), a paper street shown on Suffolk County tax maps District 200, Sections 500, 502, and 503; thence westward along the northerly boundary of Rugby Lane, across County Route 21, to the westerly boundary of County Route 21 (Yaphank - Middle Island Road); thence southward along the westerly boundary of County Route 21 to the northeastern corner of the parcel identified as District 200, Section 529, Block 1, Lot 28, and which is coterminous with the southerly boundaries of the parcels located on the south side of Rustic Lane; thence westward along the northerly boundary of that parcel to the southwest corner of the parcel identified as

District 200, Section 528, Block 5, Lot 2; thence northward along a portion of the easterly boundary of the Carmans River, which comprises the easterly boundary of the parcel identified as District 200, Section 528, Block 5, Lot 1, to its intersection with the southern boundary of the Suffolk County Nature Preserve parcel identified as District 200, Section 500, Block 1, Lot 1.4; thence eastward along the southern boundary of that parcel to the southeast corner of that parcel; thence northward along the easterly boundary of that Suffolk County Nature Preserve parcel to the southeast corner of the Suffolk County Nature Preserve parcel identified as District 200, Section 500, Block 1, Lot 3.1, thence generally northward along the easterly boundary of that parcel to the north side of East Bartlett Road; thence easterly along the north side of East Bartlett Road to the east side of County Road 21; thence southerly along the east side of County Road 21 to the southwest corner of District 200, Section 501, Block 1, Lot 2.1; thence easterly and northerly along the southern and eastern sides of that property and northward along the easterly side of District 0200, 50100, Block 0100, Lot 002002 and across to the north side of Longwood Road; thence westerly along the north side of Longwood Road to the southeast corner of District 200, Section 482, Block 1, Lot 3.1; thence northward and eastward along the easterly and southerly boundaries of that parcel to the northwest corner of the parcel identified as District 200, Section 483, Block 2, Lot 1.4; thence eastward along the southerly property boundary of the parcel identified as District 200, Section 482, Block 1, Lot 4 to the southeast corner of that parcel; thence northward along the easterly boundary of that parcel to the northeast corner of that parcel; thence eastward and northward along the southerly and easterly boundaries of the parcel identified as District 200, Section 456, Block 2, Lot 4 to the northeast corner of that parcel; thence generally northerly and westerly along the easterly and northerly boundary of Prosser Pines County Nature Preserve to County Road 21; thence westward (directly across County Route 21) along the southerly boundary of the property identified as District 200, Section 434, Block 1, Lot 12.1, to the southwest corner of the property identified as District 200, Section 434, Block 1, Lot 14.3, adjacent to the eastern side of Cathedral Pines County Park; thence northward along the eastern boundary of Cathedral Pines County Park to the southeast corner of the property identified as

District 200, Section 402, Block 1, Lot 23.1, thence continuing northward along the easterly boundary of that property to the southerly side of Lafayette Road; thence westward along the southerly side of Lafayette Road to the eastern boundary of the property identified as District 200, Section 402, Block 1, Lot 24.7; thence generally in a counter-clockwise direction along the easterly, northerly, westerly and northerly boundaries of that property to the easterly boundary of the parcel identified as District 200, Section 402, Block 1, Lot 19.2; thence northerly along the easterly side of said lot to the southeast corner of the property identified as District 200, Section 402, Block 1, Lot 20, thence westward and northward along the southerly and westerly sides of that property to the southerly side of NYS Route 25; thence westward along the southerly boundary of NYS Route 25 to the northwestern corner of the parcel identified as District 200, Section 402, Block 1, Lot 16.4; thence generally southward along the westerly boundary of that parcel to the northerly boundary of the parcel identified as District 200, Section 454, Block 1, Lot 9.1; thence westward along the northerly boundary of that parcel to East Bartlett Road; thence southward along the easterly boundary of East Bartlett Road to its intersection with Ashton Road; thence westward to the northeastern corner of the old filed map shown on District 200, Section 499; thence westward and southward along the northerly and westerly boundaries of the old filed map shown on Suffolk County tax maps District 200, Sections 498, 499, and 527 to Hillcrest Road; thence eastward along the southerly boundary of Hillcrest Road to Ashton Road; thence southward along the easterly side of Ashton Road to Granny Road; thence eastward along the southerly side of Granny Road to the northwesterly corner of District 200, Section 547, Block 1, Lot 18.1; thence generally southward, westward, southward, eastward and northward in a counter-clockwise direction along the western, northern, southern and eastern boundaries of said parcel to the southeast corner of the parcel identified as District 200, Section 548, Block 1, Lot 3; thence northward along the easterly boundary of that parcel to its northeast corner; thence generally northward, northeastward and eastward along the westerly, northwesterly and northerly sides of German Boulevard to its intersection with the northeasterly side of Lakeview Boulevard; thence southeastward along the northeasterly side of Lakeview Boulevard to the

westerly boundary of the parcel identified as District 200, Section 611, Block 1, Lot 5; thence northward along the westerly boundary of that parcel to its northwest corner; thence southward along the westerly boundary of the parcel identified as District 200, Section 579, Block 3, Lot 1, comprising part of the western bank of the Carmans River also known as Upper Lake, to the northerly side of Mill Road, also known as County Route 101; thence eastward along the northerly side of Mill Road to the northeast corner of the parcel identified as District 200, Section 579, Block 3, Lot 19; thence westerly along the northerly boundary of that parcel to the eastern boundary of the parcel identified as District 200, Section 579, Block 3, Lot 1; thence northward along the easterly side of that parcel, comprising part of the eastern bank of the Carmans River also known as Upper Lake, to the southwest corner of the parcel identified as District 200, Section 548, Block 2, Lot 5.1; thence eastward along the southern boundary of that parcel to its southeast corner; thence eastward across County Route 21 to its easterly side; thence northward along the easterly boundary of County Route 21 to the southwest corner of the Suffolk County Nature Preserve parcel known as Warbler Woods and identified as District 200, Section 551, Block 1, Lot 4; thence generally eastward along the southerly boundary of the Warbler Woods parcel and then southward along the westerly boundary of an extension of that parcel's southerly boundary to the southeast corner of the southern terminus of Harold Road; thence generally westward, southward and westward in a counter-clockwise direction along the northerly, westerly, northerly and westerly boundaries of the Suffolk County Nature Preserve parcel known as Fox Lair, and identified as District 200, Section 580, Block 3, Lot 24.2, to the northwest corner of the parcel Suffolk County Water Authority parcel identified as District 200, Section 580, Block 3, Lot 24.6; thence southward, eastward and southward along the westerly boundary and southerly boundaries of that Suffolk County Water Authority parcel to Main Street; thence eastward along the north side of Main Street to the southeast corner of said Suffolk County Water Authority parcel to its southeast corner; thence northward along the easterly boundary of that parcel to the southwest property boundary of the Suffolk County Nature Preserve parcel known as Fox Lair and identified as District 200, Section 580, Block 3, Lot 24.2, thence generally eastward, southward, eastward, northward and eastward

along the southerly boundaries of said parcel and eastward along the southerly boundary of the Suffolk County Nature Preserve parcel identified as District 200, Section 583, Block 1, Lot 4.1, to the west side of the unimproved north-south oriented road known variously as Smith Road, Longwood Road and Private Road; thence southward along the westerly boundary of Smith Road to the north side of the Long Island Expressway; thence westward along the northerly boundary of the Long Island Expressway to the south side of Main Street in Yaphank; thence westward along the southerly boundary of Main Street in Yaphank to the westernmost extent along Main Street of the Southaven County Park boundary; thence westward across County Road 21 to the western boundary of the County Road 21 right-of-way; thence southward along the western boundary of the County Road 21 right-of-way to the northerly side of the parcel identified as District 200, Section 611, Block 3, Lot 16, comprising the northerly bank of the Carmans River known as Lower Lake; thence westward along the northerly side of that property to the southwest corner of the parcel identified as District 200, Section 612, Block 4, Lot 1; thence northward along the westerly boundary of that parcel to the southerly side of County Route 21 known as Main Street; thence westward along the southerly side of County Route 21 known as Main Street to the northeast corner of the parcel identified as District 200, Section 612, Block 2, Lot 12; thence southward along the easterly boundary of that parcel to the southeast corner of the parcel identified as District 200, Section 612, Block 2, Lot 11; thence westward and northwestward along the northerly and northeasterly boundaries of the Town of Brookhaven parcel identified as District 200, Section 611, Block 3, Lot 9 to the south side of Mill Road, also known as County Road 101; thence generally westward and southward along the southerly side of Mill Road and continuing southward along the eastern side of Patchogue-Yaphank Road, also known as County Road 101, to the southerly side of Gerard Road; thence eastward along the southerly side of Gerard Road to its westerly boundary known as the map of Grand Heights, filed in the offices of the Suffolk County clerk; thence southward along the westerly map line of the filed map known as Grand Heights to the north side of the Long Island Expressway NYS Route 495; thence easterly along the northerly side of the Long Island Expressway NYS Route 495 to the westerly side of County Route 21 known as Yaphank Avenue; thence

southward along the westerly side of Yaphank Avenue to the south side of the Long Island Expressway; thence eastward along the south side of the Long Island Expressway to the westerly boundary of Southaven County Park, thence generally southward along the westerly boundary of Southaven County Park to the northeast corner of the lands of Suffolk County identified as District 200, Section 665, Block 2, Lot 1; thence generally southward along the easterly boundary of said lot, crossing the LIRR and Park Street and continuing southward along the westerly boundary of Davenport Avenue as shown on the old filed map known as Bellhaven Terrace; thence southward and eastward along the westerly and southerly boundaries of the parcel identified as District 200, Section 744, Block 1, Lot 10 to the westerly boundary of the parcel identified as District 200, Section 781, Block 1, Lot 3.1; thence continuing southerly along the westerly boundary of that parcel to the easterly boundary of Gerard Road; thence southward along the easterly boundary of Gerard Road to Victory Avenue; thence eastward along the northerly boundary of Victory Avenue to a point where the west bank of the Carmans River passes under Victory Avenue and Route 27; thence south under Route 27 to the southerly side of Montauk Highway also known as County Road 80; thence westward along the southerly side of Montauk Highway County Road 80, including lands owned by the United States known as Wertheim National Wildlife Refuge (the "Refuge"), to the eastern side of Old Stump Road; thence southward along the easterly side of Old Stump Road to the northerly side of Beaver Dam Road; thence eastward along the northerly side of Beaver Dam Road to the lands owned by the United States known as Wertheim National Wildlife Refuge (the "Refuge"), including the Carmans River; thence generally westerly and southerly to the waters of Bellport Bay; thence generally easterly across the Bay and northerly along the easterly boundary of the Refuge, including all lands currently part of the Refuge and any lands which may become part of the Refuge in the future to the east side of the southern terminus of Smith Road; thence northward along the easterly side of Smith Road to the southwesterly corner of the property identified as District 200, Section 974.50, Block 1, Lot 11; thence eastward, northward and westward in a counter-clockwise direction along the southern, eastern and northern boundaries of that property to the easterly side of Smith Road; thence northward along the easterly side of Smith Road to the northerly side of

Montauk Highway County Road 80; thence northeasterly to the southwesterly corner of the property identified as District 200, Section 849, Block 2, Lot 2; thence eastward along the northerly boundary of Montauk Highway to the southeasterly corner of the property identified as District 200, Section 850, Block 3, Lot 8; thence northward to the northeasterly corner of that parcel, including all lands owned by the United States known as Wertheim National Wildlife Refuge (the "Refuge") at any time between June 1, 1993 and the present, and any lands which may become part of the Refuge in the future; thence northwestward across Sunrise Highway (NYS Route 27) to the southwesterly corner of the property identified as District 200, Section 850, Block 2, Lot 1; thence northward along the westerly boundary of that parcel across to the northerly boundary of Victory Avenue; thence westward along the northerly boundary of Victory Avenue to the westerly boundary of River Road; thence northward along the westerly boundary of River Road to the north side of the Long Island Rail Road right-of-way; thence easterly along the northerly side of the Long Island Rail Road right-of-way to the north side of Moriches-Middle Island Road; thence generally northward and westward along the northerly side of Moriches-Middle Island Road to the northerly side of the Long Island Expressway; thence westward along the northerly boundary of the Long Island Expressway to the southeasterly corner of the Longwood Greenbelt property (the property identified as District 200, Section 583, Block 2, Lot 1.1); thence northward along the easterly boundary of the Longwood Greenbelt property to its northeast corner; thence eastward to the southwesterly corner of the property known as District 200, Section 552, Block 1, Lot 8; thence generally northeastward along the easterly boundary of the property identified as District 200, Section 552, Block 1, Lot 1.7 to the northeasterly corner of that parcel; thence eastward along the southerly boundaries of the parcels identified as District 200, Section 504, Block 1, Lot 8, and District 200, Section 504, Block 1, Lot 11, to the westerly boundary of the William Floyd Parkway (County Route 46); thence northward along the westerly side of County Route 46 to a point 2000 (two thousand) feet south of the southern bank of the Peconic River crossing of County Route 46; thence generally southeastward along a line parallel to, and 2000 (two thousand) feet generally south or southwest of, and parallel to, the southernmost bank of the Peconic River to a

point where the Peconic River crosses the unpaved, unnamed, north-south firebreak and patrol road on the eastern half of the Brookhaven National Laboratory property; thence southward and southwestward along the easterly and southeasterly boundaries of the unpaved, unnamed, north-south firebreak and patrol road starting on the eastern half of the Brookhaven National Laboratory property to the Brookhaven National Laboratory road known as Brookhaven Avenue; thence due westward along a straight line to the Brookhaven National Laboratory road known as Princeton Avenue; thence westward along the southerly boundary of Princeton Avenue to the unnamed Laboratory road which diverts southwest in the vicinity of the Laboratory gate house; thence southwestward along the southerly side of the unnamed Laboratory road just described to County Route 46; thence southward along the easterly side of County Route 46 to NYS Route 495; thence eastward along the northerly boundary of NYS Route 495 to County Route 111; thence southeastward along the northerly boundary of County Route 111 to NYS Route 27 (Sunrise Highway); thence generally southward across NYS Route 27 to the westernmost extent along NYS Route 27 of the undeveloped portion (as of June 1, 1993) of the parcel assemblage comprised of those parcels identified as District 200, Section 594, Block 2, Lot 4 and District 900, Section 325, Block 1, Lot 41.2; thence southward along the westerly boundary of the undeveloped portion (as of June 1, 1993) of that parcel assemblage to County Route 71 (Old Country Road); thence eastward along the northerly boundary of County Route 71 to the southeastern corner of the Suffolk County Nature Preserve lands which run from NYS Route 27 south to County Route 111 and which adjoin the easterly side of the preceding assemblage; thence northward along the easterly boundary of that Suffolk County Nature Preserve assemblage (crossing the County Route 111 right of way) to NYS Route 27; thence eastward along the southerly boundary of NYS Route 27 to the westerly end of 19th Street as shown in the old filed map contained within the tax map identified as District 900, Section 276, Block 2; thence southward along the westerly boundary of that old filed map (shown in District 900, Sections 276, 302, 303, 327, and 328), and coterminous with the westerly side of those parcels along the westerly side of Oishei Road, to County Route 71; thence eastward along the northerly boundary of County Route 71 to the southeasterly corner of the parcel identified as District 900, Section

328, Block 2, Lot 19; thence northward along the easterly boundary of that old filed map surrounding Oishei Road, and coterminous with the easterly side of those parcels along the easterly side of Oishei Road, to a point along that line due west of the northwesterly corner of the parcel containing the Suffolk County facilities identified as District 900, Section 331, Block 1, Lot 1; thence due eastward along a straight line to the northwesterly corner of that parcel; thence eastward along the northerly boundary of that parcel to its northeasterly corner shown in District 900, Section 307; thence due eastward along a straight line to Summit Boulevard; thence southward along the westerly side of Summit Boulevard to County Route 71; thence eastward along the northerly side of County Route 71, excluding all parcels abutting that road which are developed as of June 1, 1993, to the Long Island Rail Road tracks; thence eastward along the northerly boundary of the Long Island Rail Road tracks to County Route 31 (Old Riverhead Road); thence northward along the westerly boundary of County Route 31 to that point opposite the point along the easterly side of County Route 31 (north of the Stewart Avenue intersection) at which the undeveloped portion (as of June 1, 1993) of the Suffolk County Airport (Gabreski Airport) occurs; thence generally northward, eastward and southward around the westerly, northerly and easterly boundaries of the undeveloped portion (as of June 1, 1993) of the airport property (excluding from the Core Preservation Area those portions of the airport property which are occupied by the runways, their associated maintenance areas, and those areas identified for future use in the Suffolk County Airport Master Plan approved by the County Legislature) to the Long Island Rail Road tracks (including in the Core Preservation Area those portions of the airport property which are adjacent to the Quogue Wildlife Refuge's westerly boundary and which are in their natural state); thence eastward along the northerly boundary of the Long Island Rail Road tracks to the southeasterly corner of the Town of Southampton parcel identified as District 902, Section 1, Block 1, Lot 22.1; thence generally northward and eastward along the easterly border of that parcel and the Town of Southampton parcels to the immediate north identified as District 900, Section 313, Block 1, Lot 42.1 and District 900, Section 287, Block 1, Lot 1.55 to County Route 104; thence northward along the westerly boundary of County Route 104 to a point 1000 (one thousand) feet southward of NYS Route 27;

thence eastward along a line parallel to, and 1000 (one thousand) feet south of, NYS Route 27, to the westerly boundary of the parcel identified as District 900, Section 252, Block 1, Lot 1; thence southward along the westerly boundary of that parcel to the Long Island Rail Road tracks; thence eastward along the northerly boundary of the Long Island Rail Road tracks to Montauk Highway; thence eastward along the northerly boundary of Montauk Highway to that point where the boundary of Sears-Bellows County Park heads northward along the eastern side of the Munns Pond portion; thence northward along the easterly boundary of Sears-Bellows County Park, to NYS Route 27; thence eastward along the northerly boundary of NYS Route 27 to NYS Route 24 (Riverhead - Hampton Bays Road); thence generally northwestward and westward along the southwesterly boundary of NYS Route 24 to the easternmost extent along NYS Route 24 of the Suffolk County Parkland known as Flanders or Hubbard County Park; thence generally northward, westward, and southward along the easterly, northerly, and westerly boundaries of Flanders or Hubbard County Park, including all adjacent or contiguous undeveloped Town of Southampton parks, preserves, open space areas, or reserved areas, to NYS Route 24; thence westward along the southerly boundary of NYS Route 24 to Pleasure Drive; thence southward along the easterly boundary of Pleasure Drive a distance of 2000 (two thousand) feet, excluding all parcels abutting that road which are developed as of June 1, 1993; thence generally westward along a straight line to the southernmost extent of the NYS David Sarnoff Preserve along the westerly boundaries of the parcels on the westerly side of Brookhaven Avenue; thence generally northward and westward along the easterly and northerly boundary of the NYS David Sarnoff Pine Barrens Preserve, crossing County Routes 105 and 104, to County Route 63 (Riverhead-Moriches Road); thence generally westward and northward along the northerly boundary of the Suffolk County Cranberry Bog County Nature Preserve to County Route 51; thence southwesterly along the westerly side of County Route 51 to the boundary of the Cranberry Bog County Nature Preserve; thence westward and northward along the northeasterly boundary of Cranberry Bog County Nature Preserve to County Route 94 (also known as NYS Route 24, or Nugent Drive); thence eastward along the northerly side of County Route 94 to the County Route 94A bridge; thence northward along the westerly side of the County Route 94A bridge to the Riverhead-Southampton border;

thence westward along the Riverhead-Southampton border, and the Riverhead-Brookhaven Border, to the Forge Road Bridge; thence northward along the westerly boundary of the Forge Road Bridge to Forge Road; thence northwestward along the westerly boundary of Forge Road to the Long Island Rail Road tracks; thence northward along the westerly boundary of Forge Road (unpaved) to the intersection of NYS Route 25 and River Road; thence westward along the southerly boundary of River Road to Edwards Avenue; thence westward along the southerly boundary of River Road (Grumman Boulevard or Swan Pond Road) to the southeast corner of that parcel containing Conoe (or Canoe) Lake and identified as District 600, Section 137, Block 1, Lot 1; thence northward, westward, and southward along the borders of that parcel containing Conoe (or Canoe) Lake to River Road (Grumman Boulevard); thence westward along the northerly boundary of Grumman Boulevard to the southeasternmost corner of the undeveloped portion (as of June 1, 1993) of the United States Navy/Grumman Corporation property located on the north side of Grumman Boulevard and adjacent to the Grumman entrance known as the South Gate; thence due north along the easternmost edge of that undeveloped portion (as of June 1, 1993) of the United States Navy/Grumman Corporation property to NYS Route 25; thence along a straight line to the northerly side of NYS Route 25 to a point occupied by the southeasternmost corner of the parcel assemblage comprised of District 600, Section 75, Block 3, Lot 10.1, and District 600, Section 96, Block 1, Lot 14, and otherwise known as Camp Wauwepex; thence northward, westward, and generally southward along the easterly, northerly, and generally westerly boundaries of the Camp Wauwepex assemblage to NYS Route 25; thence westward along the northerly side of NYS Route 25 to Montauk Trail; thence northeastward along the northwesterly side of Montauk Trail to Panamoka Trail; thence northward along the westerly side of Panamoka Trail, excluding all parcels abutting that road which are developed as of June 1, 1993, to Matinecock Trail; thence westward along the southerly side of Matinecock Trail to the easterly boundary of Brookhaven State Park; thence generally northward along the easterly boundary of Brookhaven State Park, including all adjacent or contiguous undeveloped Town of Brookhaven parks, preserves, open space areas, or reserved areas, to its intersection with NYS Route 25A; thence eastward along the southerly boundary of Route 25A to a point due south of the

southeast corner of the parcel identified as District 200, Section 128, Block 1, Lot 3.1; thence northward across Route 25A to its northerly side at the southeast corner of parcel identified as District 200, Section 128, Block 1, Lot 3.1; thence northward along the easterly side of the property identified as District 200, Section 128, Block 1, Lot 3.1 to its intersection with the southerly boundary of District 200, Section 128, Block 1, Lot 1; thence eastward, northward and westward along the southerly, easterly and northerly sides of the parcel identified as District 200, Section 128, Block 1, Lot 1 to the southeast corner of the parcel identified as District 200, Section 82, Block 1, Lot 5.2; thence northward along the east side of this parcel to its intersection with the south side of North Country Road; thence northward crossing North Country road to its northerly side; thence eastward along the northerly side of North Country Road to the Brookhaven Town-Riverhead Town line; thence in a generally northwestward direction along said town line to a point in Wading River Creek with the coordinates 40.96225 latitude and -72.863633 longitude; thence westward a distance of approximately 90 feet to the easterly side of LILCO Road; thence southward along LILCO Road to its intersection with the north side of North Country Road; thence westward along the north side of North Country Road to the southeast corner of the parcel identified as District 200, Section 39, Block 1, Lot 2; thence in a northward and westward direction along the easterly and northerly sides of said parcel to its northwest corner; thence northward along the westerly boundary of the parcel identified as District 200, Section 83, Block 1, Lot 1.4 to its northwest corner and the shoreline of Long Island Sound; thence westward along the northerly side of the parcel identified as district 200, section 39, Block 1, lot 1.2 and the southerly extent of the Long Island Sound to the northwest corner of the property identified as District 200, Section 39, Block 1, Lot 1.2; thence southward along the westerly boundary of said property to North Country Road; thence southward crossing North Country Road to its southerly side; thence west along the southerly boundary of North Country Road to the northwestern corner of the property identified as District 200, Section 82, Block 1, Lot 1.1; thence south along the westerly boundary of said property and the westerly boundary of the property identified as District 200, Section 82, Block 1, Lot 1.2 to the northwest corner of property

identified as District 200, Section 82, Block 1, Lot 5.1; thence southward along the westerly boundary of said property and along the easterly boundary of property identified as District 200, Section 81, Block 1, Lot 14.8 and along the easterly boundary of property identified as District 200, Section 105, Block 3, Lot 1 to the northeast corner of property identified as District 200, Section 105, Block 3, Lot 5; thence southward along the easterly boundary of said property to the north side of Route 25A; thence eastward along the north side of Route 25A to a point directly north of the northeast corner of the Shoreham-Wading River school district property, identified as District 200, Section 243, Block 1, Lot 3; thence southward, crossing Route 25A to its southerly boundary and the northeast corner of the Shoreham-Wading river school district property, identified as District 200, Section 243, Block 1, Lot 3; thence southward and westward, along the easterly and southerly boundaries of the aforesaid parcel to its southwest corner; thence southward along the easterly boundary of the Shoreham-Wading River school district property identified as District 200, Section 243, Block 1, Lot 1.10 to its southeast corner; thence westward, northward, eastward, southward, eastward, northward, westward, northward, westward and northward in a clockwise fashion along the southerly and westerly boundaries of the aforesaid Shoreham-Wading River school district property to NYS Route 25A; thence westward along the southerly side of NYS Route 25A to County Route 46; thence southward along the easterly side of County Route 46 to its intersection with the Suffolk County Pine Trail Nature Preserve; thence westward along the northerly boundary of the Suffolk County Pine Trail Nature Preserve where the Preserve is adjacent to developed parcels or parcels in agricultural or horticultural use, or along a line parallel to, and 100 (one hundred) feet north of, the Preserve where the Preserve is adjacent to parcels which are undeveloped as of June 1, 1993, to the southeastern corner of the parcel west of Woodlots Road and identified as District 200, Section 291, Block 1, Lot 14.1; thence northward and westward along the easterly and northerly boundaries of that parcel to Whiskey Road; thence westward along the southerly side of Whiskey Road to Wading River Hollow Road; thence northward along the westerly side of Wading River Hollow Road to the boundary of the NYS Rocky Point Land; thence generally northward along the easterly boundary of the NYS Rocky Point Land, including all

adjacent or contiguous undeveloped Town of Brookhaven parks, preserves, open space areas, or reserved areas, to NYS Route 25A; thence westward along the southerly side of NYS Route 25A, excluding those parcels abutting that road which are developed as of June 1, 1993, and those lands identified for the reroute of Route 25A by the NYS Department of Transportation, to the northeastern corner of the parcel identified as District 200, Section 102, Block 3, Lot 1.4; thence southward along the westerly boundary of that parcel to the parcel identified as District 200, Section 102, Block 3, Lot 1.6; thence generally westward and southward along the westerly boundaries of that parcel and the adjoining southerly parcel identified as District 200, Section 102, Block 3, Lot 1.5 to the boundary of the NYS Rocky Point Land; thence westward along the northerly boundary of the NYS Rocky Point Land to County Route 21; thence generally westward along a straight line across County Route 21 to the northernmost extent along County Route 21 of the NYS Rocky Point Land; thence generally westward along the generally northerly boundary of the NYS Rocky Point Land to the point or place of beginning, and excluding the area defined as beginning at a point where the southerly boundary of NYS Route 25 meets the easterly side of the Suffolk County Pine Trail Nature Preserve; thence southeastward along the easterly side of the Suffolk County Pine Trail Nature Preserve where the Preserve is adjacent to developed parcels, or along a line parallel to, and 100 (one hundred) feet east of, the Preserve where the Preserve is adjacent to parcels which are undeveloped as of June 1, 1993, to the Long Island Lighting Company high voltage transmission lines; thence northward along the westerly side of the Long Island Lighting Company high voltage transmission lines to NYS Route 25; thence westward along the southerly side of NYS Route 25 to the point or place of beginning; and excluding four distinct areas described as follows: Area One is the area defined as beginning at a point where the southerly boundary of NYS Route 25 meets the easterly side of the Suffolk County Pine Trail Nature Preserve; thence southeastward along the easterly side of the Suffolk County Pine Trail Nature Preserve where the Preserve is adjacent to developed parcels, or along a line parallel to, and 100 (one hundred) feet east of, the Preserve where the Preserve is adjacent to parcels which are undeveloped as of June 1, 1993, to the Long Island Lighting Company high voltage transmission lines; thence northward along the

westerly side of the Long Island Lighting Company high voltage transmission lines to NYS Route 25; thence westward along the southerly side of NYS Route 25 to the point or place of beginning; Area Two is the area defined as beginning at the northwest corner of the parcel identified as District 200, Section 552, Block 1, Lot 3; thence eastward, southwestward and generally northward along the northerly, southeasterly and westerly boundaries of that parcel, containing the sewage treatment facility known as the Dorade facility, to the point of beginning; Area three is defined as the parcel identified as district 200, section 82, block 1, lot 3; Area four is defined as the property identified as district 200, section 39, block 1, lot 1.1;

and including in the core preservation area only the municipally owned lands and the property identified as District 200, Section 750, Block 3, Lot 44; within the area beginning at a point on the southeasterly corner of the intersection of Moriches-Middle Island Road and Cranford Boulevard and thence southward along the easterly boundary of Cranford Boulevard to the southwestern corner of property identified as District 200, Section 645, Block 3, Lot 29.1; thence southeastward along the southerly boundary of said property to its intersection with property identified as District 200, Section 712, Block 9, Lot 1; thence generally southward along the westerly boundary of said property to its intersection with the northerly side of the eastward extension of Grove Drive, known as Grove Street; thence southward crossing Grove Street to its south side; thence westward along the southerly boundary of the Grove Street road extension to the northwestern corner of the property identified as District 200, Section 749, Block 3, Lot 41.1 and comprised of parcels owned by the county of Suffolk and the town of Brookhaven; thence southward to the southwestern corner of property identified as District 200, Section 749, Block 3, Lot 43; thence eastward along the southerly boundary of said property to the west side of Lambert Avenue; thence crossing Lambert Avenue to its easterly side; thence southward along the easterly boundary of Lambert Avenue to the northerly boundary of the Sunrise Highway Service Road; thence northeastward along the northerly boundary of the Sunrise Highway Service Road to Barnes Road; thence northward along the westerly boundary of Barnes Road to the northeastern corner of the property identified as District 200, Section

750, Block 3, Lot 40.2; thence westward along the northerly boundary of property identified as District 200, Section 713, Block 1, Lot 2; thence westward along the northerly boundary of property identified as District 200, Section 713, Block 1, Lot 1; thence northward along the westerly side of Weeks Avenue to the northeastern corner of property identified as District 200, Section 713, Block 3, Lot 1; thence westward along the northerly boundary of said property to Michigan Avenue; thence northward along the easterly boundary of Michigan Avenue to Moriches-Middle Island Road; thence westward along the southerly boundary of Moriches-Middle Island Road to the point of beginning.

* NB Effective until ... (see 58/2018 Pt. CC § 5 for expiration provisions)

* 11. "Core preservation area" shall mean the core preservation area of the Central Pine Barrens area which comprise the largest intact areas of undeveloped pine barrens as described and bounded as follows:

Beginning at a point where the northwestern corner of the New York State Rocky Point Natural Resource Management Area (the "NYS Rocky Point Land") intersects the southerly side of NYS Route 25A; thence generally southward and eastward along the generally westerly and southerly boundaries of the NYS Rocky Point Land (including the Currans Road Pond State Wildlife Management Area, all adjacent or contiguous undeveloped Town of Brookhaven parks, preserves, open space areas, or reserved areas, and the crossings of the undeveloped Suffolk County property known as the Port Jefferson - Westhampton road right of way, Whiskey Road, County Route 21, and Currans Road), and including those properties identified as District 200, Section 346, Block 1, Lots 3 and 4, to the point where the NYS Rocky Point Land meets the northerly side of NYS Route 25 (Middle Country Road); thence eastward along the northerly boundary of NYS Route 25 to the southeastern corner of that property west of Woodlots Road which is identified as District 200, Section 349, Block 2, Lot 1.3; thence northward along the easterly boundary of that property to the Suffolk County Pine Trail Nature Preserve; thence eastward and southeastward along the southerly boundary of the Suffolk County Pine Trail Nature Preserve where the Preserve is adjacent to developed parcels or parcels in agricultural or horticultural use, or along a line parallel to, and 100 (one hundred) feet south of, the

Preserve where the Preserve is adjacent to parcels which are undeveloped as of June 1, 1993, to County Route 46; thence southward along the easterly boundary of County Route 46 to NYS Route 25; thence eastward along the southerly boundary of NYS Route 25 to the Suffolk County Pine Trail Nature Preserve; thence southward along the westerly boundary of the Suffolk County Pine Trail Nature Preserve where the Preserve is adjacent to developed parcels, or along a line parallel to, and 100 (one hundred) feet west of, the Preserve where the Preserve is adjacent to parcels which are undeveloped as of June 1, 1993, to the northern boundary of the United States land known as Brookhaven National Laboratory; thence generally westward along the northerly boundary of Brookhaven National Laboratory to County Route 46 (William Floyd Parkway); thence generally northwestward on a straight line to the intersection of Sally Lane and Pond Lane; thence westward along the southerly side of Pond Lane to Ruth Lane; thence northward along the westerly side of Ruth Lane to NYS Route 25; thence westward along the northerly side of NYS Route 25 to the southeast corner of the NYS Middle Island State Game Farm and Environmental Education Center; thence northward, westward, and southward along the easterly, northerly, and westerly boundaries of the NYS Middle Island State Game Farm and Environmental Education Center to NYS Route 25; thence westward along the southerly side of NYS Route 25, excluding all parcels abutting that road which are developed as of June 1, 1993, to Giant Oak Road; thence southward along the easterly side of Giant Oak Road to Medford Road; thence southwestward along the southeasterly side of Medford Road crossing to the west side of Smith Road; thence southerly along the westerly side of Smith Road to the southeast corner of District 200, Section 406, Block 1, Lot 6; thence westward and northward along the southerly and westerly sides of said parcel to the southerly side of the developed lands known as Strathmore Ridge; thence westward, northward and eastward along the southerly, westerly and northerly sides of the developed lands known as Strathmore Ridge to the westerly side of Smith Road; thence northerly along the westerly side of Smith Road to the southerly side of NYS Route 25; thence westerly along the southerly side of NYS Route 25, to the northwestern corner of that property which is identified as District 200, Section 406, Block 1, Lot 4.3; thence southerly along the westerly boundary of that property and continuing

southward along the westerly sides of the properties identified as District 200, Section 406, Block 1, Lot 4.6; District 200, Section 406, Block 1, Lot 4.4 and District 200, Section 504, Block 1, Lot 2 to the southerly side of Longwood Road; thence eastward along the southerly side of Longwood Road to the northwest corner of the property identified as District 200, Section 504, Block 1, Lot 7.2; thence southward and westward along the generally westerly boundary of that parcel to the eastern end of Rugby Lane (also known as Rugby Avenue or Rugby Road), a paper street shown on Suffolk County tax maps District 200, Sections 500, 502, and 503; thence westward along the northerly boundary of Rugby Lane, across County Route 21, to the westerly boundary of County Route 21 (Yaphank - Middle Island Road); thence southward along the westerly boundary of County Route 21 to the northeastern corner of the parcel identified as District 200, Section 529, Block 1, Lot 28, and which is coterminous with the southerly boundaries of the parcels located on the south side of Rustic Lane; thence westward along the northerly boundary of that parcel to the southwest corner of the parcel identified as District 200, Section 528, Block 5, Lot 2; thence northward along a portion of the easterly boundary of the Carmans River, which comprises the easterly boundary of the parcel identified as District 200, Section 528, Block 5, Lot 1, to its intersection with the southern boundary of the Suffolk County Nature Preserve parcel identified as District 200, Section 500, Block 1, Lot 1.4; thence eastward along the southern boundary of that parcel to the southeast corner of that parcel; thence northward along the easterly boundary of that Suffolk County Nature Preserve parcel to the southeast corner of the Suffolk County Nature Preserve parcel identified as District 200, Section 500, Block 1, Lot 3.1, thence generally northward along the easterly boundary of that parcel to the north side of East Bartlett Road; thence easterly along the north side of East Bartlett Road to the east side of County Road 21; thence southerly along the east side of County Road 21 to the southwest corner of District 200, Section 501, Block 1, Lot 2.1; thence easterly and northerly along the southern and eastern sides of that property and northward along the easterly side of District 0200, 50100, Block 0100, Lot 002002 and across to the north side of Longwood Road; thence westerly along the north side of Longwood Road to the southeast corner of District 200, Section 482, Block 1, Lot 3.1; thence northward and

eastward along the easterly and southerly boundaries of that parcel to the northwest corner of the parcel identified as District 200, Section 483, Block 2, Lot 1.4; thence eastward along the southerly property boundary of the parcel identified as District 200, Section 482, Block 1, Lot 4 to the southeast corner of that parcel; thence northward along the easterly boundary of that parcel to the northeast corner of that parcel; thence eastward and northward along the southerly and easterly boundaries of the parcel identified as District 200, Section 456, Block 2, Lot 4 to the northeast corner of that parcel; thence generally northerly and westerly along the easterly and northerly boundary of Prosser Pines County Nature Preserve to County Road 21; thence westward (directly across County Route 21) along the southerly boundary of the property identified as District 200, Section 434, Block 1, Lot 12.1, to the southwest corner of the property identified as District 200, Section 434, Block 1, Lot 14.3, adjacent to the eastern side of Cathedral Pines County Park; thence northward along the eastern boundary of Cathedral Pines County Park to the southeast corner of the property identified as District 200, Section 402, Block 1, Lot 23.1, thence continuing northward along the easterly boundary of that property to the southerly side of Lafayette Road; thence westward along the southerly side of Lafayette Road to the eastern boundary of the property identified as District 200, Section 402, Block 1, Lot 24.7; thence generally in a counter-clockwise direction along the easterly, northerly, westerly and northerly boundaries of that property to the easterly boundary of the parcel identified as District 200, Section 402, Block 1, Lot 19.2; thence northerly along the easterly side of said lot to the southeast corner of the property identified as District 200, Section 402, Block 1, Lot 20, thence westward and northward along the southerly and westerly sides of that property to the southerly side of NYS Route 25; thence westward along the southerly boundary of NYS Route 25 to the northwestern corner of the parcel identified as District 200, Section 402, Block 1, Lot 16.4; thence generally southward along the westerly boundary of that parcel to the northerly boundary of the parcel identified as District 200, Section 454, Block 1, Lot 9.1; thence westward along the northerly boundary of that parcel to East Bartlett Road; thence southward along the easterly boundary of East Bartlett Road to its intersection with Ashton Road; thence westward to the

northeastern corner of the old filed map shown on District 200, Section 499; thence westward and southward along the northerly and westerly boundaries of the old filed map shown on Suffolk County tax maps District 200, Sections 498, 499, and 527 to Hillcrest Road; thence eastward along the southerly boundary of Hillcrest Road to Ashton Road; thence southward along the easterly side of Ashton Road to Granny Road; thence eastward along the southerly side of Granny Road to the northwesterly corner of District 200, Section 547, Block 1, Lot 18.1; thence generally southward, westward, southward, eastward and northward in a counter-clockwise direction along the western, northern, southern and eastern boundaries of said parcel to the southeast corner of the parcel identified as District 200, Section 548, Block 1, Lot 3; thence northward along the easterly boundary of that parcel to its northeast corner; thence generally northward, northeastward and eastward along the westerly, northwesterly and northerly sides of German Boulevard to its intersection with the northeasterly side of Lakeview Boulevard; thence southeastward along the northeasterly side of Lakeview Boulevard to the westerly boundary of the parcel identified as District 200, Section 611, Block 1, Lot 5; thence northward along the westerly boundary of that parcel to its northwest corner; thence southward along the westerly boundary of the parcel identified as District 200, Section 579, Block 3, Lot 1, comprising part of the western bank of the Carmans River also known as Upper Lake, to the northerly side of Mill Road, also known as County Route 101; thence eastward along the northerly side of Mill Road to the northeast corner of the parcel identified as District 200, Section 579, Block 3, Lot 19; thence westerly along the northerly boundary of that parcel to the eastern boundary of the parcel identified as District 200, Section 579, Block 3, Lot 1; thence northward along the easterly side of that parcel, comprising part of the eastern bank of the Carmans River also known as Upper Lake, to the southwest corner of the parcel identified as District 200, Section 548, Block 2, Lot 5.1; thence eastward along the southern boundary of that parcel to its southeast corner; thence eastward across County Route 21 to its easterly side; thence northward along the easterly boundary of County Route 21 to the southwest corner of the Suffolk County Nature Preserve parcel known as Warbler Woods and identified as District 200, Section 551, Block 1, Lot 4; thence generally eastward along the southerly boundary of the Warbler

Woods parcel and then southward along the westerly boundary of an extension of that parcel's southerly boundary to the southeast corner of the southern terminus of Harold Road; thence generally westward, southward and westward in a counter-clockwise direction along the northerly, westerly, northerly and westerly boundaries of the Suffolk County Nature Preserve parcel known as Fox Lair, and identified as District 200, Section 580, Block 3, Lot 24.2, to the northwest corner of the parcel Suffolk County Water Authority parcel identified as District 200, Section 580, Block 3, Lot 24.6; thence southward, eastward and southward along the westerly boundary and southerly boundaries of that Suffolk County Water Authority parcel to Main Street; thence eastward along the north side of Main Street to the southeast corner of said Suffolk County Water Authority parcel to its southeast corner; thence northward along the easterly boundary of that parcel to the southwest property boundary of the Suffolk County Nature Preserve parcel known as Fox Lair and identified as District 200, Section 580, Block 3, Lot 24.2, thence generally eastward, southward, eastward, northward and eastward along the southerly boundaries of said parcel and eastward along the southerly boundary of the Suffolk County Nature Preserve parcel identified as District 200, Section 583, Block 1, Lot 4.1, to the west side of the unimproved north-south oriented road known variously as Smith Road, Longwood Road and Private Road; thence southward along the westerly boundary of Smith Road to the north side of the Long Island Expressway; thence westward along the northerly boundary of the Long Island Expressway to the south side of Main Street in Yaphank; thence westward along the southerly boundary of Main Street in Yaphank to the westernmost extent along Main Street of the Southaven County Park boundary; thence westward across County Road 21 to the western boundary of the County Road 21 right-of-way; thence southward along the western boundary of the County Road 21 right-of-way to the northerly side of the parcel identified as District 200, Section 611, Block 3, Lot 16, comprising the northerly bank of the Carmans River known as Lower Lake; thence westward along the northerly side of that property to the southwest corner of the parcel identified as District 200, Section 612, Block 4, Lot 1; thence northward along the westerly boundary of that parcel to the southerly side of County Route 21 known as Main Street; thence westward along the southerly side of County Route 21 known as

Main Street to the northeast corner of the parcel identified as District 200, Section 612, Block 2, Lot 12; thence southward along the easterly boundary of that parcel to the southeast corner of the parcel identified as District 200, Section 612, Block 2, Lot 11; thence westward and northwestward along the northerly and northeasterly boundaries of the Town of Brookhaven parcel identified as District 200, Section 611, Block 3, Lot 9 to the south side of Mill Road, also known as County Road 101; thence generally westward and southward along the southerly side of Mill Road and continuing southward along the eastern side of Patchogue-Yaphank Road, also known as County Road 101, to the southerly side of Gerard Road; thence eastward along the southerly side of Gerard Road to its westerly boundary known as the map of Grand Heights, filed in the offices of the Suffolk County clerk; thence southward along the westerly map line of the filed map known as Grand Heights to the north side of the Long Island Expressway NYS Route 495; thence easterly along the northerly side of the Long Island Expressway NYS Route 495 to the westerly side of County Route 21 known as Yaphank Avenue; thence southward along the westerly side of Yaphank Avenue to the south side of the Long Island Expressway; thence eastward along the south side of the Long Island Expressway to the westerly boundary of Southaven County Park, thence generally southward along the westerly boundary of Southaven County Park to the northeast corner of the lands of Suffolk County identified as District 200, Section 665, Block 2, Lot 1; thence generally southward along the easterly boundary of said lot, crossing the LIRR and Park Street and continuing southward along the westerly boundary of Davenport Avenue as shown on the old filed map known as Bellhaven Terrace; thence southward and eastward along the westerly and southerly boundaries of the parcel identified as District 200, Section 744, Block 1, Lot 10 to the westerly boundary of the parcel identified as District 200, Section 781, Block 1, Lot 3.1; thence continuing southerly along the westerly boundary of that parcel to the easterly boundary of Gerard Road; thence southward along the easterly boundary of Gerard Road to Victory Avenue; thence eastward along the northerly boundary of Victory Avenue to a point where the west bank of the Carmans River passes under Victory Avenue and Route 27; thence south under Route 27 to the southerly side of Montauk Highway also known as County Road 80; thence westward along the southerly side of Montauk Highway County

Road 80, including lands owned by the United States known as Wertheim National Wildlife Refuge (the "Refuge"), to the eastern side of Old Stump Road; thence southward along the easterly side of Old Stump Road to the northerly side of Beaver Dam Road; thence eastward along the northerly side of Beaver Dam Road to the lands owned by the United States known as Wertheim National Wildlife Refuge (the "Refuge"), including the Carmans River; thence generally westerly and southerly to the waters of Bellport Bay; thence generally easterly across the Bay and northerly along the easterly boundary of the Refuge, including all lands currently part of the Refuge and any lands which may become part of the Refuge in the future to the east side of the southern terminus of Smith Road; thence northward along the easterly side of Smith Road to the southwesterly corner of the property identified as District 200, Section 974.50, Block 1, Lot 11; thence eastward, northward and westward in a counter-clockwise direction along the southern, eastern and northern boundaries of that property to the easterly side of Smith Road; thence northward along the easterly side of Smith Road to the northerly side of Montauk Highway County Road 80; thence northeasterly to the southwesterly corner of the property identified as District 200, Section 849, Block 2, Lot 2; thence eastward along the northerly boundary of Montauk Highway to the southeasterly corner of the property identified as District 200, Section 850, Block 3, Lot 8; thence northward to the northeasterly corner of that parcel, including all lands owned by the United States known as Wertheim National Wildlife Refuge (the "Refuge") at any time between June 1, 1993 and the present, and any lands which may become part of the Refuge in the future; thence northwestward across Sunrise Highway (NYS Route 27) to the southwesterly corner of the property identified as District 200, Section 850, Block 2, Lot 1; thence northward along the westerly boundary of that parcel across to the northerly boundary of Victory Avenue; thence westward along the northerly boundary of Victory Avenue to the westerly boundary of River Road; thence northward along the westerly boundary of River Road to the north side of the Long Island Rail Road right-of-way; thence easterly along the northerly side of the Long Island Rail Road right-of-way to the north side of Moriches-Middle Island Road; thence generally northward and westward along the northerly side of Moriches-Middle Island Road to the northerly side of the Long Island Expressway; thence

westward along the northerly boundary of the Long Island Expressway to the southeasterly corner of the Longwood Greenbelt property (the property identified as District 200, Section 583, Block 2, Lot 1.1); thence northward along the easterly boundary of the Longwood Greenbelt property to its northeast corner; thence eastward to the southwesterly corner of the property known as District 200, Section 552, Block 1, Lot 8; thence generally northeastward along the easterly boundary of the property identified as District 200, Section 552, Block 1, Lot 1.7 to the northeasterly corner of that parcel; thence eastward along the southerly boundaries of the parcels identified as District 200, Section 504, Block 1, Lot 8, and District 200, Section 504, Block 1, Lot 11, to the westerly boundary of the William Floyd Parkway (County Route 46); thence northward along the westerly side of County Route 46 to a point 2000 (two thousand) feet south of the southern bank of the Peconic River crossing of County Route 46; thence generally southeastward along a line parallel to, and 2000 (two thousand) feet generally south or southwest of, and parallel to, the southernmost bank of the Peconic River to a point where the Peconic River crosses the unpaved, unnamed, north-south firebreak and patrol road on the eastern half of the Brookhaven National Laboratory property; thence southward and southwestward along the easterly and southeasterly boundaries of the unpaved, unnamed, north-south firebreak and patrol road starting on the eastern half of the Brookhaven National Laboratory property to the Brookhaven National Laboratory road known as Brookhaven Avenue; thence due westward along a straight line to the Brookhaven National Laboratory road known as Princeton Avenue; thence westward along the southerly boundary of Princeton Avenue to the unnamed Laboratory road which diverts southwest in the vicinity of the Laboratory gate house; thence southwestward along the southerly side of the unnamed Laboratory road just described to County Route 46; thence southward along the easterly side of County Route 46 to NYS Route 495; thence eastward along the northerly boundary of NYS Route 495 to County Route 111; thence southeastward along the northerly boundary of County Route 111 to NYS Route 27 (Sunrise Highway); thence generally southward across NYS Route 27 to the westernmost extent along NYS Route 27 of the undeveloped portion (as of June 1, 1993) of the parcel assemblage comprised of those parcels identified as District 200, Section 594, Block 2, Lot 4 and District

900, Section 325, Block 1, Lot 41.2; thence southward along the westerly boundary of the undeveloped portion (as of June 1, 1993) of that parcel assemblage to County Route 71 (Old Country Road); thence eastward along the northerly boundary of County Route 71 to the southeastern corner of the Suffolk County Nature Preserve lands which run from NYS Route 27 south to County Route 111 and which adjoin the easterly side of the preceding assemblage; thence northward along the easterly boundary of that Suffolk County Nature Preserve assemblage (crossing the County Route 111 right of way) to NYS Route 27; thence eastward along the southerly boundary of NYS Route 27 to the westerly end of 19th Street as shown in the old filed map contained within the tax map identified as District 900, Section 276, Block 2; thence southward along the westerly boundary of that old filed map (shown in District 900, Sections 276, 302, 303, 327, and 328), and coterminous with the westerly side of those parcels along the westerly side of Oishei Road, to County Route 71; thence eastward along the northerly boundary of County Route 71 to the southeasterly corner of the parcel identified as District 900, Section 328, Block 2, Lot 19; thence northward along the easterly boundary of that old filed map surrounding Oishei Road, and coterminous with the easterly side of those parcels along the easterly side of Oishei Road, to a point along that line due west of the northwesterly corner of the parcel containing the Suffolk County facilities identified as District 900, Section 331, Block 1, Lot 1; thence due eastward along a straight line to the northwesterly corner of that parcel; thence eastward along the northerly boundary of that parcel to its northeasterly corner shown in District 900, Section 307; thence due eastward along a straight line to Summit Boulevard; thence southward along the westerly side of Summit Boulevard to County Route 71; thence eastward along the northerly side of County Route 71, excluding all parcels abutting that road which are developed as of June 1, 1993, to the Long Island Rail Road tracks; thence eastward along the northerly boundary of the Long Island Rail Road tracks to County Route 31 (Old Riverhead Road); thence northward along the westerly boundary of County Route 31 to that point opposite the point along the easterly side of County Route 31 (north of the Stewart Avenue intersection) at which the undeveloped portion (as of June 1, 1993) of the Suffolk County Airport (Gabreski Airport) occurs; thence generally northward, eastward and southward around the westerly,

northerly and easterly boundaries of the undeveloped portion (as of June 1, 1993) of the airport property (excluding from the Core Preservation Area those portions of the airport property which are occupied by the runways, their associated maintenance areas, and those areas identified for future use in the Suffolk County Airport Master Plan approved by the County Legislature) to the Long Island Rail Road tracks (including in the Core Preservation Area those portions of the airport property which are adjacent to the Quogue Wildlife Refuge's westerly boundary and which are in their natural state); thence eastward along the northerly boundary of the Long Island Rail Road tracks to the southeasterly corner of the Town of Southampton parcel identified as District 902, Section 1, Block 1, Lot 22.1; thence generally northward and eastward along the easterly border of that parcel and the Town of Southampton parcels to the immediate north identified as District 900, Section 313, Block 1, Lot 42.1 and District 900, Section 287, Block 1, Lot 1.55 to County Route 104; thence northward along the westerly boundary of County Route 104 to a point 1000 (one thousand) feet southward of NYS Route 27; thence eastward along a line parallel to, and 1000 (one thousand) feet south of, NYS Route 27, to the westerly boundary of the parcel identified as District 900, Section 252, Block 1, Lot 1; thence southward along the westerly boundary of that parcel to the Long Island Rail Road tracks; thence eastward along the northerly boundary of the Long Island Rail Road tracks to Montauk Highway; thence eastward along the northerly boundary of Montauk Highway to that point where the boundary of Sears-Bellows County Park heads northward along the eastern side of the Munns Pond portion; thence northward along the easterly boundary of Sears-Bellows County Park, to NYS Route 27; thence eastward along the northerly boundary of NYS Route 27 to NYS Route 24 (Riverhead - Hampton Bays Road); thence generally northwestward and westward along the southwesterly boundary of NYS Route 24 to the easternmost extent along NYS Route 24 of the Suffolk County Parkland known as Flanders or Hubbard County Park; thence generally northward, westward, and southward along the easterly, northerly, and westerly boundaries of Flanders or Hubbard County Park, including all adjacent or contiguous undeveloped Town of Southampton parks, preserves, open space areas, or reserved areas, to NYS Route 24; thence westward along the southerly boundary of NYS Route 24 to Pleasure Drive; thence southward along the easterly

boundary of Pleasure Drive a distance of 2000 (two thousand) feet, excluding all parcels abutting that road which are developed as of June 1, 1993; thence generally westward along a straight line to the southernmost extent of the NYS David Sarnoff Preserve along the westerly boundaries of the parcels on the westerly side of Brookhaven Avenue; thence generally northward and westward along the easterly and northerly boundary of the NYS David Sarnoff Pine Barrens Preserve, crossing County Routes 105 and 104, to County Route 63 (Riverhead-Moriches Road); thence generally westward and northward along the northerly boundary of the Suffolk County Cranberry Bog County Nature Preserve to County Route 51; thence southwesterly along the westerly side of County Route 51 to the boundary of the Cranberry Bog County Nature Preserve; thence westward and northward along the northeasterly boundary of Cranberry Bog County Nature Preserve to County Route 94 (also known as NYS Route 24, or Nugent Drive); thence eastward along the northerly side of County Route 94 to the County Route 94A bridge; thence northward along the westerly side of the County Route 94A bridge to the Riverhead-Southampton border; thence westward along the Riverhead-Southampton border, and the Riverhead-Brookhaven Border, to the Forge Road Bridge; thence northward along the westerly boundary of the Forge Road Bridge to Forge Road; thence northwestward along the westerly boundary of Forge Road to the Long Island Rail Road tracks; thence northward along the westerly boundary of Forge Road (unpaved) to the intersection of NYS Route 25 and River Road; thence westward along the southerly boundary of River Road to Edwards Avenue; thence westward along the southerly boundary of River Road (Grumman Boulevard or Swan Pond Road) to the southeast corner of that parcel containing Conoe (or Canoe) Lake and identified as District 600, Section 137, Block 1, Lot 1; thence northward, westward, and southward along the borders of that parcel containing Conoe (or Canoe) Lake to River Road (Grumman Boulevard); thence westward along the northerly boundary of Grumman Boulevard to the southeasternmost corner of the undeveloped portion (as of June 1, 1993) of the United States Navy/Grumman Corporation property located on the north side of Grumman Boulevard and adjacent to the Grumman entrance known as the South Gate; thence due north along the easternmost edge of that undeveloped portion (as of June 1, 1993) of the United States Navy/Grumman Corporation property to NYS Route 25; thence along a straight line to the northerly

side of NYS Route 25 to a point occupied by the southeasternmost corner of the parcel assemblage comprised of District 600, Section 75, Block 3, Lot 10.1, and District 600, Section 96, Block 1, Lot 14, and otherwise known as Camp Wauwepex; thence northward, westward, and generally southward along the easterly, northerly, and generally westerly boundaries of the Camp Wauwepex assemblage to NYS Route 25; thence westward along the northerly side of NYS Route 25 to Montauk Trail; thence northeastward along the northwesterly side of Montauk Trail to Panamoka Trail; thence northward along the westerly side of Panamoka Trail, excluding all parcels abutting that road which are developed as of June 1, 1993, to Matinecock Trail; thence westward along the southerly side of Matinecock Trail to the easterly boundary of Brookhaven State Park; thence generally northward along the easterly boundary of Brookhaven State Park, including all adjacent or contiguous undeveloped Town of Brookhaven parks, preserves, open space areas, or reserved areas, to its intersection with NYS Route 25A; thence westward along the southerly side of NYS Route 25A to the northeast corner of the Shoreham-Wading River school district property; thence southward, westward, and northward along the easterly, southerly, and westerly boundaries of the Shoreham-Wading River school district property to NYS Route 25A; thence westward along the southerly side of NYS Route 25A to County Route 46; thence southward along the easterly side of County Route 46 to its intersection with the Suffolk County Pine Trail Nature Preserve; thence westward along the northerly boundary of the Suffolk County Pine Trail Nature Preserve where the Preserve is adjacent to developed parcels or parcels in agricultural or horticultural use, or along a line parallel to, and 100 (one hundred) feet north of, the Preserve where the Preserve is adjacent to parcels which are undeveloped as of June 1, 1993, to the southeastern corner of the parcel west of Woodlots Road and identified as District 200, Section 291, Block 1, Lot 14.1; thence northward and westward along the easterly and northerly boundaries of that parcel to Whiskey Road; thence westward along the southerly side of Whiskey Road to Wading River Hollow Road; thence northward along the westerly side of Wading River Hollow Road to the boundary of the NYS Rocky Point Land; thence generally northward along the easterly boundary of the NYS Rocky Point Land, including all adjacent or contiguous undeveloped Town of Brookhaven parks, preserves,

open space areas, or reserved areas, to NYS Route 25A; thence westward along the southerly side of NYS Route 25A, excluding those parcels abutting that road which are developed as of June 1, 1993, and those lands identified for the reroute of Route 25A by the NYS Department of Transportation, to the northeastern corner of the parcel identified as District 200, Section 102, Block 3, Lot 1.4; thence southward along the westerly boundary of that parcel to the parcel identified as District 200, Section 102, Block 3, Lot 1.6; thence generally westward and southward along the westerly boundaries of that parcel and the adjoining southerly parcel identified as District 200, Section 102, Block 3, Lot 1.5 to the boundary of the NYS Rocky Point Land; thence westward along the northerly boundary of the NYS Rocky Point Land to County Route 21; thence generally westward along a straight line across County Route 21 to the northernmost extent along County Route 21 of the NYS Rocky Point Land; thence generally westward along the generally northerly boundary of the NYS Rocky Point Land to the point or place of beginning, and excluding the area defined as beginning at a point where the southerly boundary of NYS Route 25 meets the easterly side of the Suffolk County Pine Trail Nature Preserve; thence southeastward along the easterly side of the Suffolk County Pine Trail Nature Preserve where the Preserve is adjacent to developed parcels, or along a line parallel to, and 100 (one hundred) feet east of, the Preserve where the Preserve is adjacent to parcels which are undeveloped as of June 1, 1993, to the Long Island Lighting Company high voltage transmission lines; thence northward along the westerly side of the Long Island Lighting Company high voltage transmission lines to NYS Route 25; thence westward along the southerly side of NYS Route 25 to the point or place of beginning; and excluding two distinct areas described as follows: Area One is the area defined as beginning at a point where the southerly boundary of NYS Route 25 meets the easterly side of the Suffolk County Pine Trail Nature Preserve; thence southeastward along the easterly side of the Suffolk County Pine Trail Nature Preserve where the Preserve is adjacent to developed parcels, or along a line parallel to, and 100 (one hundred) feet east of, the Preserve where the Preserve is adjacent to parcels which are undeveloped as of June 1, 1993, to the Long Island Lighting Company high voltage transmission lines; thence northward along the westerly side of the Long Island Lighting Company high voltage

transmission lines to NYS Route 25; thence westward along the southerly side of NYS Route 25 to the point or place of beginning; Area Two is the area defined as beginning at the northwest corner of the parcel identified as District 200, Section 552, Block 1, Lot 3; thence eastward, southwestward and generally northward along the northerly, southeasterly and westerly boundaries of that parcel, containing the sewage treatment facility known as the Dorade facility, to the point of beginning.

* NB Effective ... (see 58/2018 Pt. CC § 5 for expiration provisions)

12. "Compatible growth area" shall mean the compatible growth area which comprises that area within the central pine barrens, but outside the core preservation area as defined.

13. "Development" shall mean the performance of any building activity or mining operation, the making of any material change in the use or intensity of use of any structure or land and the creation or termination of rights of access or riparian rights. Without limitation, the following activities or uses shall be taken for the purposes of this title to involve development as defined in this subdivision:

(a) a change in type of use of a structure or land or, if the ordinance or rule divides uses into classes, a change from one class of use designated in an ordinance or rule to a use in another class so designated;

(b) a material increase in the intensity of use of land or environmental impacts as a result thereof;

(c) commencement of mining, excavation or material alteration of grade or vegetation on a parcel of land excluding environmental restoration activities;

(d) material alteration of a shore, bank or flood plain of a river, stream, lake, pond, or artificial body of water;

(e) re-establishment of a use which has been abandoned for one year;

(f) departure from the normal use for which development permission has been granted, or material failure to comply with the conditions of an ordinance, rule or order granting the development permission under which the development was commenced or is continued.

The following operations or uses do not constitute development for the purposes of this title:

(i) public improvements undertaken for the health, safety or welfare of the public. Such public improvements shall be consistent with the goals and objectives of this title, and shall include, but not be limited to, maintenance of an existing road or railroad track;

(ii) work by any utility not involving substantial engineering redesign for the purpose of inspection, maintenance or renewal on established utility rights-of-way or the likes, and any work pertaining to water supply for the residents of Suffolk county;

(iii) work for the maintenance, renewal, replacement, reconstruction, improvement, or alteration of any existing structure or additions to an existing residence or residential property owned by an association formed for the common interest in real property;

(iv) the use of any structure or land devoted to dwelling uses for any purposes customarily incidental and otherwise lawful;

(v) the use of any land for the purpose of agriculture or horticulture;

(vi) work by a utility performed for the purpose of public health, safety, or welfare and consistent with the goals and objectives of this title;

(vii) existing or expanded recreational use consistent with the purposes of this title including scouting activities, the maintenance or expansion of facilities associated with or necessary for such scouting activities including, but not limited to, the addition, modification, expansion or replacement of structures necessary for such activities and such clearing as may be reasonably required for the maintenance or expansion of scouting activities;

(viii) a change in use of land or structure from a use within a class specified in an ordinance or rule to another use in the same class;

(ix) residential development on any subdivision, residential clustered development, land division or site plan which has received preliminary or final approval on or before June first, nineteen hundred ninety-three, providing the lots to be built upon conform to the lot area requirements of the current zoning, are subject to the three year exemption contained in section two hundred sixty-five-a of the town law, or are subject to an exemption from an upzoning adopted by a town board;

(x) in the core preservation area, construction of one single family home and customary accessory uses thereto on those parcels identified in the comprehensive land use plan adopted by the commission in June of nineteen hundred ninety-five and as amended on February twenty-first, two thousand one;

(xi) in the compatible growth area, construction of single family homes and customary accessory uses thereto on any lot held on June 1, 1993 in ownership singly and separately from adjacent lots;

(xii) in the compatible growth area, continuation of existing non-conforming uses, and activities permitted by special permit or special exception, including renewals of said special permits or exceptions;

(xiii) in the compatible growth area, land divisions or subdivisions in the compatible growth area consisting of five or fewer residential lots which conform to the lot area requirement of the existing zoning for the subject parcel;

(xiv) in the compatible growth area, renovations, reconstructions, additions or extensions to existing commercial or industrial uses providing the addition or extension conforms to the uses permitted in the zoning district in which said parcel is located and which does not increase existing square footage by more than twenty-five percent; or

(xv) in the core preservation area, the state or public corporation projects on parcels identified in the comprehensive land use plan adopted by the commission in June of nineteen hundred ninety-five, as amended on February twenty-first, two thousand one and October twentieth, two thousand four.

Development as designated in an ordinance, rule, or development permit includes all other development customarily associated with it unless otherwise specified.

14. "Agriculture" or "horticulture" shall mean any production of plants or animals useful to man, including but not limited to: forage or sod crops; grains and feed crops; dairy animals and dairy products; poultry and poultry products; livestock, including beef cattle, sheep, swine, horses, ponies, mules or goats, and including the breeding and grazing of any or all of such animals; bees and apiary products; fur

animals; trees and forest products; fruits of all kinds including wineries; vegetables; nursery, floral, ornamental and greenhouse products and farmstands for selling products raised or produced on site and other associated structures required for their production.

§ 57-0109. Establishment of Long Island Pine Barrens maritime reserve; core preservation area and compatible growth area.

1. The region encompassing and distinguished by the Peconic Bay system, lands which gather and transmit precipitation as either groundwater or runoff into the Peconic Bay system, lands characterized by the growth of pitch pine, dwarf pine and/or scrub oak pine barrens including lands currently under the review and jurisdiction of the Suffolk county Pine Barrens review commission and lands used in traditional patterns for agriculture, finfishing, shellfishing and tourism and made up of all lands and waters located in the towns of Riverhead, Southold, Shelter Island, Southampton and East Hampton and the portion of the town of Brookhaven east of a north south line defined by extending County Road 83 to the northern most and southern most extension to their respective water boundaries of Brookhaven town and the town's incorporated villages is hereby established and designated to be the Long Island Pine Barrens Maritime reserve.

2. Within the reserve and within forty-five days of the effective date of this subdivision, the commission shall file with the secretary of state the maps of the Central Pine Barrens area classifying and depicting the core preservation area as defined, which comprises the largest essentially intact areas of undeveloped pine barrens ecology, and the compatible growth area where appropriate patterns of development and regional growth shall be permitted and shall file a certified copy thereof with the county clerk of Suffolk county and the clerk of each town or village whose boundaries are included within the Central Pine Barrens area. Notice of the filing and availability of such map shall be published at least twice in the paper of general circulation in the county of Suffolk. An affected property owner may petition the commission for precise delineation or adjustment of boundary as it

applies to the affected property. The commission shall have discretionary powers to modify the boundaries of the core preservation area by up to three hundred feet as circumstances warrant after notification to the affected property owner or owners, except no boundary defined by a state or county highway or navigable waterway shall be modified to extend beyond such highway or waterway.

§ 57-0111. Long Island Pine Barrens maritime reserve council.

1. There is hereby established, within the department, a Long Island Pine Barrens maritime reserve council to help local governments and the state coordinate the efforts of all municipal, county, state and federal agencies involved in the management of the preserve and to oversee and prepare a comprehensive intergovernmental management plan for the Long Island Pine Barrens maritime reserve that the state and local governments may adopt.

2. The council shall be composed of seventeen voting members. The governor shall appoint three members. The county executive of the county of Suffolk, with the advice and consent of the county legislature, shall appoint four members. The town supervisors of the towns of Riverhead, Southold, Shelter Island, Southampton, East Hampton and Brookhaven shall each appoint one member. The commissioner or his or her designee, the commissioner of parks, recreation and historic preservation or his or her designee, the secretary of state or his or her designee for purposes of matters related to coastal resources and the commissioner of economic development or his or her designee for purposes of tourism shall serve as ex-officio members. All members, except ex-officio members shall be residents of the county of Suffolk and shall have demonstrated expertise in the functional areas to be addressed by the commission. All initial appointments shall be made within sixty days of the effective date of this title.

3. Members of the council shall serve for a term of two years or thereafter until a successor is appointed. A chairperson shall be designated by the governor. The council shall elect a vice-chairperson

and such other officers as it may determine are necessary for the conduct of its duties.

4. Ten members of the council shall constitute a quorum.

5. The members of the council shall serve without compensation.

§ 57-0113. Duties of the council.

The council shall have the following powers and duties:

1. to conduct scientific and environmental studies;

2. to review and approve proposed dedications of lands to the Long Island Pine Barrens maritime preserve and recommend additional dedications to such maritime preserve;

3. to utilize to the extent feasible, the staff and facilities of state agencies, subject to the approval of the director of the budget, and local agencies to carry out the provisions of this title;

4. to hold public hearings;

5. to contract within amounts appropriated for or otherwise available for professional and technical assistance or advice;

6. to meet not less than once every two months and to encourage the attendance at such meetings of representatives of local governments and interested parties affected by the deliberations of the council;

7. to send copies of the minutes of each meeting to each town and village within the Long Island Pine Barrens maritime reserve, the members of the assembly and senators representing such area and any other interested party upon request;

8. to encourage individuals, corporations, associations and public

entities to protect and preserve the unique resources of the reserve including the preserve; and

9. to contract for and to accept assistance, including but not limited to gifts, easements or loans of funds or real property or personal property from the federal government or any agency or instrumentality thereof, or from any agency or instrumentality of the state, or from any other public or private source and to comply, subject to the provisions of this title, with the terms and conditions thereof, subject to the approval of the division of the budget. Notwithstanding the provisions of section eleven of the state finance law, the commission may accept gifts, grants, devises and bequests, whether conditional or unconditional, with the approval of the director of the budget.

§ 57-0115. Comprehensive management plan.

1. The council shall, after holding public hearings, prepare and adopt a comprehensive management plan for the Long Island Pine Barrens maritime reserve, which the state and local governments may adopt. Such plan shall include, but not be limited to:

a. a statement of the public values of the area, including their educational, ecological and hydrological values, together with the general goals and policies which will best protect and enhance such values;

b. a map of the area, delineating the boundaries of the Long Island Pine Barrens maritime reserve;

c. a brief and general historical overview regarding the lands of the Long Island Pine Barrens maritime reserve;

d. an inventory of all public lands and lands available for public use within the Long Island Pine Barrens maritime reserve specifying use, facilities for public use, and the management agency with jurisdiction over the property;

e. management guidelines for the preservation, recreational and educational use of resources of the Long Island Pine Barrens maritime reserve;

f. management guidelines for protecting and supporting indigenous economic activities like agriculture, fishing, recreation and tourism;

g. a plan for protection and management for dedicated land in the Long Island Pine Barrens preserve including:

(1) A survey or inventory of the following, together with the establishment of management priorities therefor:

- (i) natural plant and wildlife resources;
- (ii) historic resources;
- (iii) erosion control needs and stream protection;
- (iv) trails, trail development and use; and
- (v) other recreational uses.

(2) Recommendations for the enforcement of laws pertaining to public use activities, which can be implemented by rules and regulations for the administration and use of lands dedicated to the preserve.

(3) Recommendations for acquisition of open space suitable for dedication in the preserve.

(4) Recommendations for institutional arrangements to coordinate management of dedicated land held by separate owners;

h. a local participation plan, which describes how local citizens, officials and members of the tourism, agricultural and fishing industries will participate in the planning and implementation of the management program and which contains a statement identifying support for such program by the participating local governments; and

i. a financial statement estimating the necessary costs and potential funding sources to carry out recommendations in the study over a five year period and the benefits therefrom.

2. A draft plan shall be prepared and made available to the public and the local governments within the Long Island Pine Barrens maritime

reserve prior to adopting the plan. The council shall hold public hearings at different locations within the Long Island Pine Barrens maritime reserve. There shall be two public hearings on the draft plan and there shall also be a public hearing on the completed plan before the plan is submitted to the commissioner.

§ 57-0117. Dedications to the Long Island Pine Barrens preserve; legislative protection.

1. The commissioner shall maintain a record of the boundaries of the lands which have been dedicated to the Long Island Pine Barrens preserve in text and depicted on a map.

2. Land owned by the state within the Long Island Pine Barrens maritime reserve may be dedicated to be part of the Long Island Pine Barrens preserve by the action of the commissioner or the commissioner of parks, recreation and historic preservation, or by action of the legislature.

3. Land owned by a local government within the Long Island Pine Barrens maritime reserve may be dedicated to the Long Island Pine Barrens preserve by the action of its local legislative body.

4. Land owned by private individuals within the Long Island Pine Barrens maritime reserve may be dedicated to be part of the Long Island Pine Barrens preserve by the execution of a conservation easement.

5. Land in the core preservation area which come in the public domain shall be deemed to be dedicated to the Long Island Pine Barrens Preserve.

6. Except for the core preservation area which shall be deemed to be dedicated to the preserve, the council shall review and must approve each dedication of land to the preserve.

7. No publicly owned real property, dedicated to the Long Island Pine

Barrens preserve, shall be alienated except by law enacted by two successive regular sessions of the legislature, but easements for public water supply purposes may be maintained consistent with local ordinances.

8. The council shall have no authority to manage any private land unless such land has been voluntarily dedicated pursuant to this title or the owner has executed a voluntary written agreement with the council authorizing the specific management actions taken.

9. Nothing contained in this title shall affect any previous dedication of state land to the State Nature and Historic preserve. Any state land dedicated to the Long Island Pine Barrens preserve may also be dedicated to the State Nature and Historic preserve.

§ 57-0119. Central Pine Barrens joint planning and policy commission.

1. It is hereby found, determined and declared that the Long Island Central Pine Barrens area is a major resource area of statewide significance where the hydrological and ecological integrity is endangered; that a public entity representative of town, county and state government is necessary and appropriate to plan, manage and oversee land use within the Central Pine Barrens area of Long Island Pine Barrens Maritime reserve in the public interest for present and future generations; and that the Central Pine Barrens joint planning and policy commission created by this section and its purposes are in all respects for the benefit of the people of the state of New York and are a public purpose.

2. There is hereby established, the Central Pine Barrens joint planning and policy commission to consist of five voting members: one member appointed by the governor who will serve at the pleasure of the governor and four ex officio members who are the county executive of Suffolk county, the supervisor of the town of Brookhaven, the supervisor of the town of Riverhead and the supervisor of the town of Southampton. Each ex officio member may appoint a designated representative, by

official authority filed with the commission, to exercise his or her powers and perform his or her duties, including the right to vote, on the commission. The commission shall elect one of its members as chairperson. Four members shall constitute a quorum for the transaction of any business or the exercise of any power or function of the commission. An affirmative vote of three or more members shall be required to pass a resolution or otherwise exercise any functions or powers of the commission, except the adoption of the plan which requires a unanimous vote of the commission.

3. The commission shall hold its initial meeting within thirty days of enactment of this section, following public notice by the county executive.

4. Every state agency and public corporation having jurisdiction of land or water within the Central Pine Barrens area or of programs relating to the purposes and goals of this title shall, to the fullest extent practicable, offer full cooperation and assistance to the commission in carrying out the provisions of this title.

5. Every local or regional agency with activities relating to the Central Pine Barrens area may offer assistance to the commission in carrying out the provisions of this title.

6. The commission shall have the power:

(a) To prepare, adopt, enforce and ensure implementation of the comprehensive land use plan, with the advice of the advisory committee;

(b) To sue and be sued;

(c) To make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this title;

(d) To establish and maintain such facilities as may be necessary for the transacting of its business;

(e) To appoint an executive officer, officers, agents, employees, and prescribe their duties and qualifications and fix their compensation;

(f) To utilize to the extent feasible the staff and facilities of existing state and county agencies, pursuant to an agreement to be made

by the state or by the county of Suffolk;

(g) To hold hearings in the exercise of its powers, functions and duties provided for by this title;

(h) To contract for professional and technical assistance and advice;

(i) To contract for and to accept any assistance, including but not limited to gifts, grants or loans of funds or of property from the federal government or any agency or instrumentality thereof, or from any agency or instrumentality of the state, or from any other public or private source and to comply, subject to the provisions of this title, with the terms and conditions thereof;

(j) To establish regulations, values, and standards which may include a system of bonuses and incentives in order to purchase, sell, hold and trade development rights as defined in paragraph a of subdivision one of section two hundred sixty-one-a of the town law; such transfers may cross municipal and special district boundaries;

(k) To adopt, amend and repeal, after public hearing (except in the case of rules and regulations that relate to the organization or internal management of the agency), such rules and regulations, consistent with this title, as it deems necessary to administer this title, and to do any and all things necessary or appropriate to carry out the purposes and policies of this title and exercise powers granted by law;

(k-1) To purchase the maximum insurance, practicable and affordable from revenues in the Pine Barrens fund pursuant to section ninety-seven-o of the state finance law, from any duly authorized insurer in this state, against any liability subject to indemnity pursuant to subdivision six of section 57-0123 of this chapter;

(k-2) To acquire, hold lands and interest in land, and utilize the power of eminent domain within available funds in the Pine Barrens fund pursuant to section ninety-seven-o of the state finance law or made available by local, county, or state government;

(l) To provide scientific and technical assistance or to make grants to municipalities, towns and the county for revisions of local master plans, or the relevant ordinances designed to bring such plans and ordinances into conformance with the comprehensive land use plan prepared and adopted by the commission. The commission may make such grants from any funds which may be appropriated or otherwise made

available to it for such purpose;

(m) To establish and maintain an education and outreach program relating to the commission's work;

(n) To convene conferences, seminars, meetings, technical sessions on its own or in coordination with federal, state, county, town or private organizations as deemed necessary relative to its responsibilities;

(o) To report periodically to the governor and the legislature on the conduct of its activities not less than once a year, furnishing a copy of each such report to the legislative bodies of Suffolk county and the towns and villages in whole or in part within the Central Pine Barrens area;

(p) To assist local, county and state government in prioritization and negotiation with private landowners whose property is restricted by the land use plan, to evaluate the impact of any restrictions and develop a package of benefits; and

(q) To have and exercise such other incidental and usual powers as are necessary and appropriate to carry out its duties.

7. The commission shall within six months of the first meeting of the commission:

(a) Inventory all private parcels within the core preservation area.

(b) Upon completion of the inventory, notify property owners and assign and calculate the development yield for each property located in the core preservation area. Development yield may be calculated in accordance with such factors as area, floor area, floor area ratios, density, height limitations or other criteria that will effectively quantify a value for establishing development rights in a reasonable and uniform manner that will carry out the objectives of this title.

8. The commission shall within twelve months of the first meeting of the commission:

(a) Identify receiving districts within and without the Central Pine Barrens sufficient to receive and transfer of rights and values of the core preservation area and for the continuation of an adequate program of development rights or development values.

(b) Consider the fiscal impact of the established transfer of development rights and values system.

9. There is hereby created a Central Pine Barrens advisory committee to actively assist and advise the commission in the preparation, adoption and implementation of the Central Pine Barrens comprehensive land use plan. The committee shall consist of not more than twenty-eight members which shall include representatives of environmental groups, economic development and real estate interests, farmers, water suppliers, civic groups, planners, biologists, water quality scientists and recreational interests. The members of the committee shall serve without compensation. The initial members of the advisory committee shall include a representative of the Long Island Association, Long Island Builders Institute, Association For A Better Long Island, Long Island Board of Realtors, Long Island Farm Bureau, Suffolk County Water Authority, SUNY at Stony Brook, Regional Plan Association, Long Island Pine Barrens Society, Group For The South Fork, The Nature Conservancy, North Fork Environmental Council, Open Space Council, Long Island Greenbelt Trail Conference, Environmental Defense Fund, Eastern Suffolk Board of Realtors, Southampton Alliance, South Fork Promotion Committee or their successors and interests, a member from the Long Island regional planning board, two members from the New York state legislative commission on water resource needs of Long Island and a civic representative from each of the towns of Southampton, Brookhaven and Riverhead designated by the supervisor thereof. The committee may be expanded as necessary to incorporate other interests in the development and preservation of the Central Pine Barrens preserve. Each member shall serve at the pleasure of the entity which designated it. The committee by a majority vote shall elect a chairperson. The commission shall meet periodically with the advisory committee, make available working draft and other documents, and shall provide services to the advisory committee as are necessary and appropriate to carry out its functions under this title.

§ 57-0121. Central Pine Barrens comprehensive land use plan; interim regulations.

1. As soon as practicable and within twelve months of the effective

date of this section, the commission shall, after consultation with the advisory committee, prepare or cause to be prepared a draft comprehensive land use plan and generic environmental impact statement thereon which shall be part of the plan for the Central Pine Barrens area. The land use plan shall be designed to preserve the Pine Barrens ecology and to ensure the high quality of groundwater within the Central Pine Barrens area and to balance the public and private interests in development and in protection of the Pine Barrens ecology consistent with the objectives of the land use plan. Where local plans exist, the commission shall evaluate and incorporate such plans as is appropriate in the land use plan.

2. The land use plan for the Central Pine Barrens area shall be designed to:

(a) protect, preserve and enhance the functional integrity of the Pine Barrens ecosystem and the significant natural resources, including plant and animal populations and communities, thereof;

(b) protect the quality of surface water and groundwater;

(c) discourage piecemeal and scattered development;

(d) promote active and passive recreational and environmental educational uses that are consistent with the land use plan; and

(e) accommodate development, in a manner consistent with the long term integrity of the Pine Barrens ecosystem and to ensure that the pattern of development is compact, efficient and orderly.

3. The land use plan with respect to the core preservation area shall be designed to protect and preserve the ecologic and hydrologic functions of the Pine Barrens by:

(a) preserving the Pine Barrens area in their natural state thereby insuring the continuation of Pine Barrens environments which contain the unique and significant ecologic, hydrogeologic and other resources representative of such environments;

(b) promoting compatible agricultural, horticultural and open space recreational uses within the framework of maintaining a Pine Barrens environment and minimizing the impact of such activities thereon;

(c) prohibiting or redirecting new construction or development;

(d) accommodating specific Pine Barrens management practices, such as

prescribed burning, necessary to maintain the special ecology of the preservation area;

(e) protecting and preserving the quality of surface and groundwaters; and

(f) coordinating and providing for the acquisition of private land interests as appropriate and consistent with available funds.

4. The land use plan with respect to the compatible growth areas shall be designed to:

(a) preserve and maintain the essential character of the existing Pine Barrens environment, including plant and animal species indigenous thereto and habitats therefor;

(b) protect the quality of surface and groundwaters;

(c) discourage piecemeal and scattered development;

(d) encourage appropriate patterns of compatible residential, commercial, agricultural, and industrial development in order to accommodate regional growth influences in an orderly way while protecting the Pine Barrens environment from the individual and cumulative adverse impacts thereof;

(e) accommodate a portion of development redirected from the preservation area. Such development may be redirected across municipal boundaries; and

(f) allow appropriate growth consistent with the natural resource goals pursuant to this title.

5. Preparation of the land use plan shall be based on the following planning studies and reports:

(a) Previously undertaken and current groundwater and ecological studies pertaining to the reserve, generally, and the Central Pine Barrens area, specifically;

(b) General planning studies of the reserve, generally, and the Central Pine Barrens area, specifically, including but not limited to:

(i) population and population distribution;

(ii) amount, type, intensity, and general location of commerce, industry and agricultural production;

(iii) amount, type, quality, and general location of housing;

(iv) general location and extent of existing or currently planned

major transportation, utility, and community facilities;

(v) amount, general location, and interrelationship of different categories of land use;

(vi) areas, sites, or structures of historical, archaeological, architectural, or scenic significance;

(vii) natural resources, including air, water, open spaces, forests, soils, rivers, wetlands and other waters, shorelines, fisheries, wildlife, vegetation, threatened species, and minerals; and

(viii) any other matter found to be important to preservation and future development.

(c) Scientific research prepared for other hydrological or ecological areas analogous to the reserve, generally, and the Central Pine Barrens area specifically. Such studies and reports may include, but are not limited to those undertaken by the New Jersey Pinelands commission or Cape Code commission.

(d) Public improvement studies including but not limited to the area or subareas within the Central Pine Barrens area or outside such area having an aggregation of sites with development potential to facilitate application of transfer of development rights that could create the need for new public improvements and/or public improvement expansions;

(e) Advisory committee recommendations or reports.

6. The land use plan shall provide for, address and include but not be limited to the following:

(a) Statements of objectives, policies and standards as they pertain to the purposes of this title and the land use plan.

(b) A map depicting the core preservation area.

(c) A map depicting compatible growth areas in the Central Pine Barrens area where orderly and environmentally compatible development can be encouraged and to which development potential within the preserve may be transferred.

(d) A phased public improvement element for providing the public facilities necessary for carrying out the goals for the core preservation and compatible growth areas.

(e) Identification and mapping of critical resource areas within the Central Pine Barrens area which are of regional or statewide significance. Such areas shall include fragile lands, significant

shorelands of rivers, lakes, and streams; freshwater wetlands; significant wildlife habitats; unique scenic or historic features; and rare or valuable ecosystems and geological formations which are of regional or statewide significance.

(f) Identification of sending districts in core preservation and compatible growth areas and receiving districts in compatible growth areas and outside the Central Pine Barrens area for the purpose of providing for the transfer of development rights and values to further the preservation and development goals of the land use plan and methodologies and standards for procedural equity and appropriate values in establishing rights and values consistent with the provisions of section two hundred sixty-one-a of the town law.

(g) Identification of land suitable for agricultural use and necessary and appropriate strategies to protect land capable of agricultural production.

(h) Development criteria and performance standards.

(i) An intergovernmental coordination and consistency component establishing the ways in which state and local programs and policies may best be coordinated to promote the goals and implement the policies of the land use plan.

(j) A financial component analyzing the public and private costs of developing and implementing the land use plan which shall include:

(i) detailed costs including those for infrastructure improvements, acquisition of fee simple or other interests in lands for preservation or recreation purposes, compensation guarantees, general administrative costs and any anticipated extraordinary or continuing costs; and

(ii) the source of revenue for covering such costs, including, but not limited to, grants, donations and loans from local, state and federal departments and agencies and from the private sector.

(k) A program for state, county and local governmental implementation of the comprehensive land use plan and the various elements thereof in a manner that will insure the continued, uniform, and consistent protection of the Pine Barrens ecosystem and development objectives including:

(i) minimum standards for the adoption, as required in this title, of municipal and county plans, codes and ordinances concerning the development and use of land including, but not limited to, standards for

minimum lot sizes, site clearance and wetland setbacks, appropriate population and densities and regulated or prohibited uses for specific portions of the Pine Barrens area and procedures for determining hardship consistent with the purposes and provisions of this title;

(ii) guidelines and standards for review of projects of regional significance which because of scale of intensity of use or location are likely to impede implementation of the land use plan; and

(iii) guidelines for consistency with the land use plan by state, county and local agencies.

(l) Professional staffing requirements necessary to carry out the land use plan.

(m) Land protection mechanisms, including, but not limited to, acquisition, conservation easements, rights and values transfers, purchase of development rights, donations and clustering, planned unit development, land trusts, exchanges between privately and publicly owned lands, or other zoning activities consistent with the provisions of this title.

(n) Provisions for use of best management practices, in all natural resource-dependent commercial and industrial activities, including agriculture, horticulture and related activities.

(o) Provisions for restoration of natural and cultural resources where such resources have been damaged, lost, or otherwise impaired. Such work shall address restoration of Pine Barrens habitats, stream and shore revitalization, historic structures, traditional industries demonstration programs, and strengthening of community character which will be consistent with the provisions of the comprehensive management plan pursuant to section 57-0115 of this title.

(p) Provisions for cumulative impact analyses, both environmental and economic, for the effects of development, preservation, financial policies and related factors upon the Central Pine Barrens area, its private and public open space, its residents and constituents, school and other special districts, and other pertinent aspects or demographic sectors.

(q) Recommendations for further legislation at the state, county, and local levels as may be necessary to fully implement the provisions of this title.

(r) Provisions for management and stewardship of natural and cultural

resources which shall include coordination by owners of public lands which will be consistent with the provisions of the comprehensive management plan pursuant to section 57-0115 of this title.

(s) Provisions for appropriate and relevant scientific research relating to the species, ecological communities and processes, natural landscape features, and surface and groundwater resources of the Central Pine Barrens necessary to ensure and enhance the long-term management of the preserve. Such research may be addressed in a cooperative effort with the state university of New York at Stony Brook through its biological research station, established by the department of ecology and evolution.

(t) Provisions for fire management for controlled, prescribed burning, and responses to unanticipated fires. This shall include coordination among the department and local fire departments.

(u) Description of developments of regional significance.

The land use plan shall also, as funds permit, provide for a follow-up plan to be undertaken by the commission for a partnership infrastructure and sustainable development plan for the reserve. Based on the land use plan and the comprehensive management plan, such follow up plan shall be designed to (i) coordinate the activities of all governmental entities in the provision of infrastructure necessary to support orderly development in the compatible growth areas and support of sustainable development in the reserve outside of the preserve; and (ii) coordinate and focus investment in sustainable development efforts.

7. Notwithstanding any provision contrary to any other provisions of article eight of this chapter, the commission shall be the lead agency for the generic environmental impact statement which is part of the land use plan. Such generic environmental impact statement shall be prepared in accordance with the provisions of article eight of this chapter.

8. In order to effectuate the purposes and provisions of this title, no person, public corporation or the state shall undertake or otherwise engage in development within the Central Pine Barrens area prior to approval and implementation of the land use plan except as provided by this section. No amendments to the existing town or village zoning laws,

ordinances or regulations affecting development within the Central Pine Barrens area shall take effect prior to the approval of the land use plan as provided in this chapter except that a town may as part of a zoning ordinance adopted pursuant to article sixteen of the town law or by local law pursuant to other enabling law, provide for a planned unit development or planned development district ordinance for a development for which the designated lead agency, on or before June first, nineteen hundred ninety-three, accepted a draft environmental impact statement or draft generic environmental impact statement under article eight of this chapter. The provisions of this section shall not apply to development in the compatible growth area for which:

(a) the designated lead agency, on or before June first, nineteen hundred ninety-three, accepted a draft environmental impact statement or draft generic environmental impact statement or issued a conditioned negative declaration or a negative declaration under article eight of this chapter, or

(b) all required municipal and state permits and approvals were issued on or before June first, nineteen hundred ninety-three (except that a building permit need not have been issued by said date), or

(c) The designated lead agency, after June first, nineteen hundred ninety-three and prior to ninety days immediately following adoption of this section or as extended at the discretion of the commission in its interim rules and regulations adopted pursuant to section nine herein, issues on an active application a conditioned negative declaration or a negative declaration under article eight of this chapter and which does conform to the use and lot area requirements of the zoning in effect in the relevant municipality on June first, nineteen hundred ninety-three, and does not necessitate a use variance. Notwithstanding the foregoing, in the event a commissioner within thirty days of receiving notice of said issuance requests review of the action by the full commission, the development shall be subject to the interim rules and regulations and reviewed as provided for in section nine herein.

In the event that an event referred to herein (acceptance of a draft environmental impact statement or draft generic environmental impact statement; issuance of a conditioned negative declaration or negative declaration; or issuance of a required permit or approval) is annulled

or vacated by a court of competent jurisdiction and such judicial action has not been reversed by a superior court, then, for purposes of this section, such event shall be deemed not to have taken place.

Notwithstanding any other provision of law, any development which includes land within the core preservation area for which the designated lead agency, on or before June first, nineteen hundred ninety-three, accepted a draft environmental impact statement or draft generic environmental impact statement shall not require a supplemental draft or generic environmental impact statement under article eight of this chapter solely because such development includes land within the core preservation area.

9. Within three months of the effective date of this section, the commission shall publish interim goals and standards for development and for hardship before the land use plan is implemented in compatible growth areas identified in the map. The commission may vary the procedures and time periods for compliance with article eight of this chapter as necessary and appropriate to comply with the three month deadline of this subdivision. Upon such publication, development may proceed in such compatible growth areas subject to existing laws, regulations and approval procedures and subject to the review and approval of the commission. Any person, the state or a public corporation applying for development in such compatible growth areas who has received all necessary local and state approvals may petition the commission for approval of the development. Within thirty days of an application being received, the commission shall provide the applicant and any other interested party an opportunity to be heard. Notice of such hearing shall be published in a newspaper having a general circulation in the Central Pine Barrens area, and notice of such hearing shall also be given by registered mail to the chief administrative officer of each town and village within whose boundary any proposed development is located. If the proposed development is consistent with the commission's interim goals and standards, the commission shall approve the development and may include conditions for approval. If the applicant seeks an exemption based upon a demonstration of hardship, the commission may approve development in the compatible growth area upon

the finding that such interim goals and standards caused an unnecessary hardship. In making such finding the commission shall consider the criteria for a use variance pursuant to section two hundred sixty-seven-b of the town law. The commission must make a decision within one hundred twenty days of receipt of a complete application. If the commission fails to make a decision within one hundred twenty days, the development shall be deemed to be approved by the commission, unless extended by mutual agreement of the applicant and commission.

10. Any person, the state or a public corporation upon a showing of hardship caused by the provisions of subdivision eight of this section on development in the core preservation area, may apply to the commission for a permit exempting such applicant from such subdivision eight in connection with any proposed development in the core preservation area. Such application for an exemption pursuant to the demonstration of hardship within the core preservation area shall be approved only if the person satisfies the following conditions and extraordinary hardship or compelling public need is determined to have been established under the following standards or for development by the state or a public corporation or proposed for land owned by the state or a public corporation compelling public need is determined to have been established under the following standards:

(a) The particular physical surroundings, shape or topographical conditions of the specific property involved would result in an extraordinary hardship, as distinguished from a mere inconvenience, if the provisions of this act are literally enforced. A person shall be deemed to have established the existence of extraordinary hardship only if he or she demonstrates, based on specific facts, that the subject property does not have any beneficial use if used for its present use or developed as authorized by the provisions of this title, and that this inability to have a beneficial use results from unique circumstances peculiar to the subject property which:

(i) Do not apply to or affect other property in the immediate vicinity;

(ii) Relate to or arise out of the characteristics of the subject property rather than the personal situation of the applicant; or

(iii) Are not the result of any action or inaction by the applicant or

the owner or his or her predecessors in title including any transfer of contiguous lands which were in common ownership on or after June 1, 1993.

(b) A person, the state or a public corporation shall be deemed to have established compelling public need if the applicant demonstrates, based on specific facts, one of the following:

(i) The proposed development will serve an essential health or safety need of the municipalities in the Central Pine Barrens such that the public health and safety require the requested waiver, that the public benefits from the proposed use are of a character that overrides the importance of the protection of the core preservation area as established in this title, that the proposed use is required to serve existing needs of the residents, and that no feasible alternatives exist outside the core preservation area to meet the established public need and that no better alternatives exist within the county; or

(ii) The proposed development constitutes an adaptive reuse of an historic resource designated by the commission and said reuse is the minimum relief necessary to ensure the integrity and continued protection of the designated historic resource and further that the designated historic resource's integrity and continued protection cannot be maintained without the granting of a permit.

(c) An application for a permit in the core preservation area shall be approved only if it is determined that the following additional standards also are met:

(i) The granting of the permit will not be materially detrimental or injurious to other property or improvements in the area in which the subject property is located, increase the danger of fire, endanger public safety or result in substantial impairment of the resources of the core preservation area;

(ii) The waiver will not be inconsistent with the purposes, objectives or the general spirit and intent of this title; or

(iii) The waiver is the minimum relief necessary to relieve the extraordinary hardship, which may include the granting of a residential development right to other lands in the compatible growth area that may be transferred or clustered to those lands to satisfy the compelling public need.

Any waiver or exemption granted under the provisions of this part shall only be considered an exemption or waiver of the particular standard of this title which the commission waived. It shall not constitute an approval of the entire development proposal. Nor shall it constitute a waiver from any requirements contained within any local, county or state law or ordinance.

Within thirty days of the application being received, the commission shall provide the applicant and any other interested party an opportunity to be heard. Notice of any public hearing conducted in connection with an application for such a permit shall be published in a newspaper of general circulation in the Central Pine Barrens area. If the proposed development is not contrary to the policy or any provision of this title and meets the standards of extraordinary hardship or public need herein, and the commission so finds, it may issue a permit allowing the development or such development subject to appropriate conditions or modifications to occur, provided that permission may be revoked by the commission if its terms are violated, and provided further that any such hardship permit issued by the commission shall be in addition to, and not in lieu of, such permit or permits as may be required by any state agency or municipality within whose boundary such development is located. The time within which the commission must decide a core preservation area hardship application for which a negative declaration has been made by the commission pursuant to article eight of this chapter is one hundred twenty days from receipt of such application. The time within which the commission must decide a core preservation area hardship application for which a positive declaration has been made by the commission pursuant to article eight of this chapter is sixty days from issuance of a findings statement by the commission pursuant to article eight of this chapter. If the commission fails to make a decision within the aforesaid time periods, the development shall be deemed to be approved by the commission, unless extended by mutual agreement of the applicant and commission.

11. In preparation of the land use plan, the commission shall:

(a) consult with appropriate officials of any regional, state or federal agency which has jurisdiction over lands and waters within the

Central Pine Barrens area;

(b) consult with the officials of any municipality which has jurisdiction over lands and waters within the Central Pine Barrens area;

(c) consult with interested professional, scientific and citizens' organizations; and

(d) consult with citizens' committees.

12. Following consultation with the advisory committee and within the twelve month period established therefor, the commission shall publish the draft land use plan. Within three months of such publication, the commission shall hold public informational meetings in the towns of Brookhaven, Riverhead and Southampton and at least one public hearing within the Central Pine Barrens area. During this period the commission shall receive and review comments on the draft land use plan-generic environmental impact statement from state and local governments and the public and within three months, the commission shall recommend a revised comprehensive land use plan pursuant to this title to the respective town boards of such towns for their ratification and adoption. Within two months of the commission recommending the plan to the respective town boards, the town boards shall perform a comprehensive review of the plan and shall provide final comments to the commission. The commission at its discretion may modify the plan as requested by the town representatives. After modifying the plan as necessary, the commission shall prepare a draft supplemental generic environmental impact statement and a final generic environmental impact statement, and the towns and commission shall adopt the necessary statement of findings pursuant to article eight of this chapter. Ratification and adoption of the plan by the town boards of Brookhaven, Riverhead, and Southampton shall represent commitment to implementation of the provisions contained therein. Upon ratification and adoption by such three towns, the commission itself will formally adopt the plan-generic environmental impact statement and its provisions shall be in full force. Adoption by the commission shall only be upon the signature of the governor, county executive of Suffolk county, supervisor of the town of Brookhaven, supervisor of the town of Riverhead and supervisor of the town of Southampton.

13. Not less than once every five years after the land use plan has become effective, the commission shall review and, if appropriate, make amendments to the land use plan and update the generic impact statement. Within each such period, the commission shall hold a public hearing and shall receive comments on the effectiveness of implementation of the land use plan. Not less than thirty days before voting on an amendment to the land use plan, the commission shall publish notice thereof in a newspaper of general circulation in the Central Pine Barrens area.

§ 57-0123. Implementation of the Central Pine Barrens comprehensive land use plan.

1. Within three months after the land use plan has been adopted by the commission, each town board and village board with jurisdiction within the Central Pine Barrens area shall adopt and amend as necessary land use and zoning regulations, by local law or ordinance, rule or regulation to conform their land use regulations to the land use plan. Such action shall not be subject to the provisions of article eight of this chapter if it is in conformance with the conditions and thresholds of the land use plan. At least thirty days before adoption thereof, the town or village board shall submit the proposed regulations to the commission for its review and approval. Within ten days of receipt of such proposed regulations, the commission shall review and approve such proposed regulations, or if it does not approve them, return them with comments on what needs to be done to make them approvable. For each jurisdiction, the land use plan shall be deemed to be implemented upon adoption by the town or village board of approved land use regulations. The interim regulation provisions of subdivisions eight, nine, and ten of section 57-0121 of this title shall remain in effect for each town or village until it has adopted approved land use regulations to conform to the adopted comprehensive management plan. Within villages that were incorporated on or before June 30, 1993, whose land use and zoning regulations are approved by the commission consistent with the land use plan pursuant to section 57-0121 of this title, development which conforms to such land use and zoning regulations and does not have significant adverse impacts on the goals of the land use plan shall not

be subject to review by the commission. After town or village land use regulations have been approved and upon a finding that a town or village has changed such regulations in a manner substantially inconsistent with the land use plan or has administered its approved land use regulations in a manner substantially inconsistent with the land use plan, the commission shall withdraw approval of such land use regulations and the provisions of subdivisions eight, nine and ten of section 57-0121 of this title shall be reinstituted. Such withdrawal of approval shall be made not before fourteen days after the commission holds a public hearing in the affected town or village on the proposed withdrawal. Notice of such hearing shall be published in a newspaper having general circulation in the Central Pine Barrens area and notice of such hearing shall also be given by registered mail to the affected supervisor or mayor.

2. (a) The commission shall have jurisdiction to review and approve all proposed development in critical resource areas and developments of regional significance as identified in the land use plan and proposed developments found by the commission after petition by a commissioner to have significant adverse impact on the land use plan. Any commissioner may petition the commission to assert review jurisdiction over a proposed development outside of a critical resource area or which is other than a project of regional significance which has a significant adverse impact on the goals of the land use plan. If the commissioner by majority vote asserts jurisdiction, such project or action shall be subject to review by the commission. For the purposes of review and identification of projects coming under the jurisdiction of the commission by virtue of critical resource area or area of regional impact or at the request of any commission member, the commission shall designate the responsible planning entity or staff for the purposes of advising the commission with respect to such applications or projects. To the fullest extent possible, the commission shall consolidate and coordinate its review with the appropriate local government. A person, the state or a public corporation proposing development in a critical resource area or development of regional significance shall apply to the commission for approval of the development. Applications shall be made to the commission on forms and in such manner as the land use plan and

commission shall designate.

(b) The commission must make a decision within one hundred twenty days of the receipt of a complete application. If the commission fails to make a decision within one hundred twenty days, the development shall be deemed to be approved by the commission, unless extended by mutual agreement of the applicant and the commission. The commission must make a decision within one hundred twenty days of asserting jurisdiction over a project that is before the commission based on the petition by a commissioner. If the commission fails to make a decision within one hundred twenty days of the date of asserting jurisdiction, the development shall be deemed to be approved by the commission, unless extended by mutual agreement of the applicant and the commission.

3. (a) Subsequent to the adoption of the land use plan, the provisions of any other law, ordinance, rule or regulation to the contrary notwithstanding, no application for development within the Central Pine Barrens area shall be approved by any municipality or county or agency thereof or the commission, and no state approval, certificate, license, consent, permit, or financial assistance for the construction of any structure or the disturbance of any land within such area shall be granted, unless such approval or grant conforms to the provisions of such land use plan; provided, however, that the commission by majority vote is hereby authorized to waive strict compliance with such plan or with any element or standard contained therein, for an application for development of any person, upon finding that such waiver is necessary to alleviate hardship for proposed development in the core preservation area according to the conditions and finding of extraordinary hardship or compelling public need pursuant to subdivision ten of section 57-0121 of this title, or for an application for development by the state or public corporation or proposed for land owned by the state or public corporation finding that such waiver is necessary to alleviate hardship for proposed development in the core preservation area according to the conditions and finding of compelling public need pursuant to subdivision ten of section 57-0121 of this title, and every application is consistent with the purposes and provisions of this article and would not result in substantial impairment of the resources of the Central Pine Barrens area.

(b) The commission by majority vote is also authorized to waive strict compliance with such plan or with any element or standard contained therein, upon finding that such waiver is necessary to alleviate hardship for development proposed by any person, the state or a public corporation in the compatible growth area according to the conditions and findings of hardship pursuant to subdivision nine of section 57-0121 of this title, is consistent with the purposes and provisions of this title and would not result in substantial impairment of the resources of the Central Pine Barrens area.

(c) The commission must make a decision within the time periods established pursuant to subdivision ten of section 57-0121 of this title. If the commission fails to make a decision within the aforesaid time periods, the development shall be deemed to be approved by the commission, unless extended by mutual agreement of the applicant and the commission. The aforesaid time period and the processing and review of an application shall be suspended by the commission with notice to the applicant where a proceeding pursuant to section 57-0136 of this title is pending against the applicant with respect to the property at issue or otherwise arising out of the ownership or use of such property.

4. Notwithstanding any inconsistent provisions in article eight of this chapter and within towns and villages with approved land use regulations, actions wholly within the Central Pine Barrens area in conformance with the conditions and thresholds of the land use plan and the generic environmental impact statement thereof shall require no further environmental impact statement with respect to impacts addressed in such generic environmental impact statement. Further project-specific compliance with article eight of this chapter may be required. Upon ratification by the towns and adoption of the land use plan by the commission, the consistency provisions of article fifty-five are no longer required.

5. Notwithstanding any other provision of law, any state agency may provide in implementing a ranking system for allocating funds for infrastructure, land acquisition, farmland preservation or park assistance projects a preference not to exceed the equivalent of an advantage of five percent for such projects which are identified in a

land use plan.

6. For the county of Suffolk, and each town or village implementing regulations wholly within the Central Pine Barrens area approved by the commission, there may be defense by and shall be indemnity from the state in the event of legal actions or proceedings brought against any such municipalities or their agents, servants, officials or employees that may result from the municipal acquisition of land consistent with the land use plan or comprehensive management plan or the adoption or implementation of any land use control including, but not limited to, the provisions of a zoning law, ordinance, or regulation consistent with this title or required by the minimum standards and criteria of the land use plan. Indemnity shall not apply to any such claim in which a final court determination results in a finding of intentional wrongdoing, recklessness, or an unlawful discriminatory practice including the finding that the land use control was intended to exclude a particular group or individual, or gross negligence on the part of such municipality or its agents, servants, officials, or employees. Actions or proceedings brought under subdivisions two, two-a, three-b, four, paragraphs (a) and (b) of subdivision five and subdivisions six, seven, fourteen, and eighteen of section two hundred ninety-six of the executive law and 42 U.S.C. 55 1981, 1983, 1988 shall be indemnified by the state only so far as the grievance alleged in such action or proceeding was the result of an act consistent with this title or the plan.

(a) Such indemnity shall apply only to the extent that any such claim exceeds any insurance coverage obtained by the commission from revenues in the Pine Barrens fund.

(b) Such indemnity shall be conditioned upon (i) delivery by the governing body or its agent against whom the legal action or proceeding was commenced to the attorney general or an assistant attorney general at an office of the department of law in the state the original or a copy of any summons, complaint, process, notice, demand or pleading within fifteen days after such document is served upon such governing body or its agent, and (ii) the full cooperation of the governing body or its agents against whom the action or proceeding was commenced in the defense of such action or proceeding and in defense of any action or

proceeding against the state based upon the same act or omission, and in the prosecution of any appeal.

(c) There shall be no indemnity in the event of a settlement between or among the parties to such legal action or proceeding in those instances in which the attorney general is not providing the defense for the governing body or its agents, unless such settlement is approved by the commission with the concurrence of the attorney general.

7. Notwithstanding any other provision of law to the contrary and in addition to any existing authority therefor, a town or village in implementing regulations approved by the commission and acting in furtherance of the land use plan may enter into an agreement to condition a zoning amendment.

§ 57-0125. Addition of towns.

1. The legislature finds that in order to facilitate regional planning for Long Island, local governments within the reserve but located outside of the Central Pine Barrens area may similarly benefit from the planning effort undertaken by the commission. Therefore, after the completion, ratification, and adoption of the comprehensive land use plan and upon application to the commission, the towns of East Hampton, Shelter Island, and Southold may elect, by duly adopted resolution of their town boards, to join the commission or establish a similar planning effort for those areas outside the Central Pine Barrens area and within the reserve that warrant and would benefit from such regional efforts consistent with the goals and objectives of this title.

2. All benefits and obligations which accrue to municipalities which participate with the commission shall be afforded to the municipalities of the South and North Fork which elect to voluntarily participate in this process, subject to the obligations of this title. Such benefits may include funding for the development and implementation of regional plans. The provisions of this title with respect to the interim provisions shall not apply. To the extent feasible, towns electing to develop and implement such regional plans consistent with this title,

shall utilize the commission and its supportive structure.

3. Upon completion, ratification, and adoption of the comprehensive land use plan, and an expressed interest on the part of the towns of East Hampton, Shelter Island, or Southold, the commission shall establish criteria for participating in this process. Such criteria may not include the imposition of a moratorium or restriction of development as a requirement for participation.

§ 57-0127. Cooperation of state and municipal agencies.

The council may request and shall be provided with such cooperation, assistance, services and data, from any department, agency, advisory board, task force, commission, bureau or any other agency having jurisdiction over land or water within the Long Island Pine Barrens maritime reserve, as are necessary to carry out the council's function pursuant to this title. The council shall coordinate its actions with the region 1 regional advisory committee, established by section 49-0209 of this chapter. Every state agency is authorized to provide, within amounts appropriated therefor and subject to the approval of the director of the budget, such assistance and services as the council may request.

§ 57-0129. Acceptance of monies.

The council may accept any grant or appropriation from federal, state and municipal sources and any gift for use to carry out the provisions of this title. Such monies shall be expended by the council to carry out the provisions of this title, except that such expenditures shall not exceed the grants, appropriations and gifts received by the council.

§ 57-0131. Limitations on regulation of hunting, fishing and recreation activities; nonregulation of federal conservation activities.

Nothing in this title shall be interpreted to authorize the regulation of hunting, shellfishing, fishing, trapping, possession of wildlife or other recreational activities in the Long Island Pine Barrens maritime reserve, except as otherwise provided by law. This title shall not apply to any action undertaken by any federal agency or federal department in fulfillment of its obligations or duties pursuant to any federal law, federal regulation, federal agency policy, or federal management activity relating to wildlife, game or nongame species management, habitat protection, or migratory species protection.

§ 57-0133. Affect on other laws.

Except as otherwise provided in the provisions of this title, this title shall not affect:

1. the police powers, local planning powers, zoning powers or authority to regulate land uses by villages and towns within the Long Island Pine Barrens maritime reserve; or
2. the police power of the state to regulate any activity carried upon any lands, in the Long Island Pine Barrens maritime reserve; or
3. the authority of any state or public agency in the management of any state or public lands in the Long Island Pine Barrens maritime reserve.

§ 57-0135. Judicial review.

Any person aggrieved by a final determination by any governing body acting under this title, may within thirty days from the date of such determination seek judicial review pursuant to article seventy-eight of the civil practice law and rules in the supreme court. The commission shall be a party to any such proceeding. In the event that the court finds that the determination of such governing body constitutes the

equivalent of taking without just compensation, the commission may set aside the determination of such governing body, or if the land so regulated otherwise meets the goals and objectives of this title and if the commission or the governing body has sufficient funds therefor, the commission or the governing body may acquire such land or interest in lands as have been taken, proceeding under the power of eminent domain. All issues in any proceeding under the power of eminent domain shall have preference over all other civil actions or proceedings.

§ 57-0136. Penalties and enforcement.

1. Violations. (a) All of the rights and remedies provided for in this section are in addition to all of the rights and remedies available to the villages and towns located within the "Central Pine Barrens Area" as specifically defined in subdivision ten of section 57-0107 of this title. All of the rights and remedies provided for in this section are in addition to all of the rights and remedies available to the attorney general as provided for in state law.

(b) With respect to any land use conduct within the Central Pine Barrens Area that violates any provision of an applicable village or town law, the responsibility for enforcement of such violation shall lie with the applicable village or town in the first instance as provided for in the laws of the respective town or village. The applicable village or town shall provide written notice to the commission of all such enforcement efforts. In the event the applicable village or town does not commence an enforcement action within sixty days from the receipt of a written notice to the applicable village or town of any land use conduct within the Central Pine Barrens Area that may violate any provision of an applicable village or town law, the commission, or the attorney general at the request of the commission or upon his or her own initiative, may institute enforcement action for such violation as set forth in subdivisions two, three and four of this section.

(c) With regard to any violation of this title, the land use plan adopted by the commission, any regulation promulgated by the commission, or any order, determination or permit condition issued by the commission, there shall be independent jurisdiction among the village or

town in which such violation occurred or is occurring to investigate and prosecute such violation as set forth in subdivisions two, three and four of this section. The commission or the attorney general at the request of the commission or upon the attorney general's own initiative shall also have independent jurisdiction to investigate and prosecute such violation as set forth in subdivisions two, three and four of this section.

The party initiating such a prosecution shall consult with the other governmental entities named in this section before initiating such an action, except in a case involving a threat of irreparable harm or imminent violation or repeated violations of this title, the land use plan adopted by the commission, any regulation promulgated by the commission, or any order, determination or permit condition issued by the commission.

(d) With regard to any land use conduct within the Central Pine Barrens Area that is a violation of the applicable village or town law in addition to being a violation of the specific requirements of this title, the land use plan adopted by the commission, or the terms or conditions of any order, permit or determination issued by the commission, the commission, or the attorney general at the request of the village or town, may jointly institute with the village and town an enforcement action as set forth in subdivisions two, three and four of this section. In such event, any penalties or fines collected shall be deposited with the applicable village or town to be maintained in a segregated account to be used exclusively for the acquisition of real property or transferable development rights interests or capital projects associated with enhancement and/or restoration of the natural resources and ecosystems located within the Central Pine Barrens Area.

2. Civil penalties. (a) For a violation that takes place in the "core preservation area" as defined in subdivision eleven of section 57-0107 of this title, any person who violates any provision of this title, the land use plan adopted by the commission, any regulation promulgated by the commission, or the terms or conditions of any order, permit, or determination issued by the commission pursuant to this title shall be liable for a civil penalty of not more than twenty-five thousand dollars

for each violation and an additional civil penalty of not more than one thousand dollars for each day that such violation continues.

(b) For a violation that takes place in the "compatible growth area" as defined in subdivision twelve of section 57-0107 of this title, any person who violates any provision of this title, the land use plan adopted by the commission, any regulation promulgated by the commission, or the terms or conditions of any order, permit, or determination issued by the commission pursuant to this title shall be liable for a civil penalty of not more than ten thousand dollars for each violation and an additional civil penalty of not more than one thousand dollars for each day that such violation continues.

3. Criminal penalties. (a) For a violation that takes place in the "core preservation area" as defined in subdivision eleven of section 57-0107 of this title, any person who willfully or intentionally violates any provision of this title, the land use plan adopted by the commission, any regulation promulgated by the commission, or the terms or conditions of any order, permit, or determination issued by the commission pursuant to this title shall be guilty of a misdemeanor punishable by a fine of not more than twenty-five thousand dollars for each violation and an additional fine of not more than one thousand dollars for each day that such violation continues.

(b) For a violation that takes place in the "compatible growth area" as defined in subdivision twelve of section 57-0107 of this title, any person who willfully or intentionally violates any provision of this title, the land use plan adopted by the commission, any regulation promulgated by the commission, or the terms or conditions of any order, permit, or determination issued by the commission pursuant to this title shall be guilty of a misdemeanor punishable by a fine of not more than ten thousand dollars for each violation and an additional fine of not more than one thousand dollars for each day that such violation continues.

4. Additional remedies. (a) Alternatively, or in addition to an action seeking civil penalties or criminal fines or imprisonment as provided by subdivisions two and three of this section, the commission, the Suffolk county district attorney or the attorney general may institute any

appropriate action or proceeding to prevent, restrain, enjoin, correct, or abate any violation of, or to enforce, any provision of this title, the land use plan adopted by the commission, any regulation promulgated by the commission, or the terms or conditions of any order, permit, or determination issued by the commission pursuant to this title. The court in which the action or proceeding is brought may order the person responsible for the violation to take such affirmative measures as are necessary to correct or remediate the violation. Such an action or proceeding may also seek restitution for any such violation.

(b) In addition to the penalties set forth in subdivisions two and three of this section, a police officer or peace officer may immediately impound any all-terrain vehicle, as defined in section twenty-two hundred eighty-one of the vehicle and traffic law, provided that such seizure is conducted pursuant to section five hundred eleven-b of the vehicle and traffic law. A five hundred dollar surcharge may be added to any such impoundment.

§ 57-0137. Severability.

The provisions of this title shall be severable and if any portion thereof or the applicability thereof to any person or circumstances shall be held invalid, the remainder of this title and the application thereof shall not be affected thereby.

TITLE 2

PECONIC BAY REGION WATERSHED PROTECTION ACT

Section 57-0201. Short title.

57-0203. Definitions.

57-0205. Plan contents.

57-0207. Plan adoption.

57-0209. Plan implementation.

57-0211. State funding.

57-0213. Defense, attorneys' fees, court costs.

§ 57-0201. Short title.

This title shall be known and may be cited as the "Peconic Bay region watershed protection act".

§ 57-0203. Definitions.

1. "Study area" shall mean those lands within the Long Island Pine Barrens maritime reserve designated by a town for study in order to protect groundwater and surface watersheds within the Peconic estuary watershed.

2. "Protection area" shall mean those lands identified by a town for preservation and protection in perpetuity after completion of a comprehensive plan amendment and generic environmental impact statement in order to protect groundwater and surface watersheds.

3. "Town" shall mean the towns of East Hampton, Riverhead, Shelter Island, Southampton, and Southold in the county of Suffolk.

4. "Development" shall mean the performance of any building activity or mining operation, the making of any material change in the use or intensity of use of any structure or land and the creation or termination of rights of access or riparian rights. Without limitation, the following activities or uses shall be taken for the purposes of this title to involve development as defined in this subdivision:

(a) a change in type of use of a structure or land or, if a zoning ordinance divides uses into classes, a change from one class of use designated in a zoning ordinance to a use in another class so designated;

(b) a material increase in the intensity of use of land or environmental impacts as a result thereof;

(c) commencement of mining, excavation, or material alteration of grade or vegetation on a parcel of land excluding environmental restoration activities;

(d) material alteration of a shore, bank, or flood plain of a river,

stream, lake, pond, or artificial body of water;

(e) re-establishment of a use which has been abandoned for one year; and

(f) departure from the normal use for which development permission has been granted, or material failure to comply with the conditions of an ordinance, rule or order granting the development permission under which the development was commenced or is continued.

The following operations or uses do not constitute development for the purposes of this title:

(i) public improvements undertaken for the health, safety, or welfare of the public. Such public improvements shall be consistent with the goals and objectives of this title, and shall include, but not be limited to, maintenance of an existing road or railroad track;

(ii) work by any utility not involving substantial engineering redesign for the purpose of inspection, maintenance or renewal on established utility rights-of-way or the likes, and any work pertaining to water supply for the residents of Suffolk county;

(iii) work for the maintenance, renewal, replacement, reconstruction, improvement, or alteration of any existing structure or additions to an existing residence or residential property owned by an association formed for the common interest in real property;

(iv) the use of any structure or land devoted to dwelling uses for any purposes customarily incidental and otherwise lawful;

(v) the use of land for the purpose of agriculture or horticulture;

(vi) work by a utility performed for the purpose of public health, safety, or welfare and consistent with the goals and objectives of this title;

(vii) existing or expanded recreational use consistent with the purposes of this title including scouting activities, the maintenance or expansion of facilities associated with or necessary for such scouting activities including, but not limited to, the addition, modification, expansion, or replacement of structures necessary for such activities and such clearing as may be reasonably required for the maintenance or expansion of scouting activities; and

(viii) a change in use of land or structure from a use within a class specified in a zoning ordinance to another use in the same class.

Development as designated in an ordinance, rule, or development permit includes all other development customarily associated with it unless otherwise specified.

5. "Plan" shall mean a comprehensive management plan prepared by a town to protect groundwater and surface watersheds.

6. "Peconic estuary watershed" shall mean the area located on the eastern end of Long Island, New York, and bordered by Long Island's north and south forks. The major river discharging freshwater into the estuary is the Peconic River. The eastern end of the Peconic estuary watershed is an imaginary line through Block Island Sound between Plum Island and Montauk Point, beyond which lies the open sea. The western boundary is at the headwaters of the Peconic River, just west of the William Floyd Parkway. The Peconic estuary watershed also includes those land areas that contribute groundwater and stormwater runoff to the river and estuary.

§ 57-0205. Plan contents.

1. Protection areas. The plan shall provide for protection areas within the study area that are designed to protect and preserve watershed functions in the Peconic Bay watershed by:

- (a) preserving lands in their natural state;
- (b) promoting compatible agricultural, horticultural, and open space recreational uses;
- (c) prohibiting development or redirecting development outside the protection areas;
- (d) accommodating necessary management practices;
- (e) protecting the quality of surface waters and groundwaters; and
- (f) coordinating and providing for the acquisition of private lands interests as appropriate and consistent with available funds.

2. Permit provisions for development. (a) Any person, upon a showing of extraordinary hardship or compelling public need caused by the

provisions of subdivision one of this section, may apply to the town board for a permit exempting such person from the development prohibition provided for in subdivision one of this section. Such application for a permit shall be approved if the applicant satisfies the standards for either extraordinary hardship or compelling public need. In the case where a governmental entity is the applicant a permit may be granted only upon a showing of compelling public need.

(b) Extraordinary hardship shall be deemed to have been met if the applicant has established, based upon specific facts, that the subject property does not have any beneficial use if used for its present use or developed as permitted by the provisions of subdivision one of this section and that this inability to have a beneficial use results from unique circumstances peculiar to the subject property which: (i) do not apply to or affect other property in the immediate vicinity; (ii) relate to or arise out of characteristics of the subject property, rather than the personal situation of the applicant; or (iii) do not arise out of the action or inaction of the applicant.

(c) Compelling public need shall be deemed to have been met if:

(i) the proposed development will serve an essential health or safety need of the town;

(ii) the public benefits from the proposed development would override the preservation of the protection area;

(iii) that the proposed use is required to serve the existing needs of the residents; and

(iv) no feasible alternatives exist outside the protection area to meet the established public need.

(d) A permit for development in the protection area shall also meet the following additional standards:

(i) the granting of the permit will not be materially detrimental or injurious to other property or improvements in the protection area in which the property is located or endanger public safety or result in the substantial impairment of the resources of the protected area;

(ii) the permit will not be inconsistent with the purposes, objectives, or general spirit and intent of this title; and

(iii) the permit is the minimum relief necessary.

(e) The town board shall make a decision on such application within sixty days of the receipt of a complete application for a permit.

§ 57-0207. Plan adoption.

1. After completion of a draft plan consistent with the requirements of section 57-0205 of this title, the town board shall hold a public hearing on said draft plan upon not less than ten days notice to the public. Notice shall be provided in the same manner as for the adoption of a local law.

2. The town board shall receive and review all comments on the draft plan before final adoption.

3. The town board shall adopt the final plan by resolution.

§ 57-0209. Plan implementation.

1. Implementation of the final plan shall be accomplished by a local law which amends the zoning and other codes of the town to conform to the recommendations of the plan.

2. Where the town seeks the benefits from the state of defense, attorneys' fees, court costs and state funding as provided by sections 57-0211 and 57-0213 of this title, the plan and local law shall be submitted to the commissioner.

3. Where the commissioner certifies by resolution that the plan and local law are in compliance with this title, then the benefits of sections 57-0211 and 57-0213 of this title shall accrue to the town.

4. The commissioner shall render a decision upon certification within ninety days of submission by the town.

5. The town, from time to time, but not less than once every five years after the plan has been adopted, shall cause the plan to be reviewed, and if appropriate, amended. Where the plan is amended, the

procedures for adoption, implementation, and certification shall be the same as for its original adoption, implementation and certification.

§ 57-0211. State funding.

Projects which implement the plan, including the acquisition of interests in real property for the purpose of protecting open spaces or open areas where such properties are part of the state open space plan, shall be eligible for state funding under the environmental protection fund, pursuant to article fifty-four of this chapter, where such projects meet the existing eligibility requirements of such article, subject to available appropriation. No funding shall be provided unless the commissioner determines that a town is in compliance with all the provisions of this title.

§ 57-0213. Defense, attorneys' fees, court costs.

1. For each town adopting a local law implementing regulations in the protection areas consistent with this title, there shall be a defense by the state against any damages, losses, costs, or expenses of any kind or nature incurred or suffered by such town or its agents, servants, officials or employees, in the event of legal actions or proceedings brought against the town or its agents, servants, officials, or employees that may result from the municipal acquisition of land or the adoption or implementation of a local law consistent with this title.

2. The state shall pay reasonable attorneys' fees and court costs incurred by each town in connection with such legal actions or proceedings, including any appeal.

3. Such defense shall be conditioned upon:

(a) delivery by the town board or its agent, servant, official or employee against whom the legal action or proceeding was commenced to the attorney general or an assistant attorney general at an office of the department of law in the state, the original or a copy of any

summons, complaint, process, notice, demand, or pleading within thirty days after such document is served upon the town board or such other party; and

(b) the full cooperation of the town board or such other party against whom the action or proceeding was commenced in the defense of such action or proceeding and in defense of any action or proceeding against the state based upon the same act or omission, and in the prosecution of any appeal.

ARTICLE 58

IMPLEMENTATION OF THE "CLEAN WATER, CLEAN AIR, AND GREEN JOBS ENVIRONMENTAL BOND ACT OF 2022 "

Title 1. General Provisions.

3. Restoration and flood risk reduction.

5. Open space land conservation and recreation.

7. Climate change mitigation.

9. Water quality improvement and resilient infrastructure.

11. Environmental justice and reporting.

13. Labor standards.

TITLE 1

GENERAL PROVISIONS

Section 58-0101. Definitions.

58-0103. Allocation of moneys.

58-0105. Powers and duties.

58-0107. Powers and duties of a municipality.

58-0109. Consistency with federal tax laws.

58-0111. Compliance with other law.

§ 58-0101. Definitions.

As used in this article the following terms shall mean and include:

1. "Bonds" shall mean general obligation bonds issued pursuant to the

"clean water, clean air, and green jobs environmental bond act of 2022 " in accordance with article VII of the New York state constitution and article five of the state finance law.

2. "Cost" means the expense of an approved project, which shall include but not be limited to appraisal, surveying, planning, engineering and architectural services, plans and specifications, consultant and legal services, site preparation, demolition, construction and other direct expenses incident to such project.

3. "Department" shall mean the department of environmental conservation.

4. "Disadvantaged communities" shall mean a community that is identified pursuant to section 75-0111 of this chapter.

5. "Endangered or threatened species project" means a project to restore, recover, or reintroduce an endangered, threatened, or species of special concern pursuant to a recovery plan or restoration plan prepared and adopted by the department, including but not limited to the state's wildlife action plan.

6. "Flood risk reduction project" means projects that use nature-based solutions where possible to reduce erosion or flooding, and projects which mitigate or adapt to flood conditions.

7. "Green buildings project" means (i) installing, upgrading, or modifying a renewable energy source at a state-owned building or for the purpose of converting or connecting a state-owned building or a public school building, or portion thereof, to a renewable energy source; (ii) reducing energy use or improving energy efficiency or occupant health at a state-owned building or a public school building; (iii) installing a green roof at a state-owned building or a public school building; (iv) installation of renewable heating and cooling systems at a state-owned building or a public school building; or (v) emission reduction projects.

8. "Municipality" means a local public authority or public benefit corporation, a county, city, town, village, school district, supervisory district, district corporation, improvement district within a county, city, town or village, or Indian nation or tribe recognized by the state or the United States with a reservation wholly or partly within the boundaries of New York state, or any combination thereof.

9. "Nature-based solution" means projects that are supported or inspired by nature or natural processes and functions and that may also offer environmental, economic, and social benefits, while increasing resilience. Nature-based solutions include both green and natural infrastructure.

10. "Open space land conservation project" means purchase of fee title or conservation easements for the purpose of protecting lands or waters and/or providing recreational opportunities for the public that (i) possess ecological, habitat, recreational or scenic values; (ii) protect the quality of a drinking water supply; (iii) provide flood control or flood mitigation values; (iv) constitute a floodplain; (v) provide or have the potential to provide important habitat connectivity; (vi) provide open space for the use and enjoyment of the public; or (vii) provide community gardens in urban areas.

11. "Recreational infrastructure project" means the development or improvement of state and municipal parks, campgrounds, nature centers, fish hatcheries, and infrastructure associated with open space land conservation projects.

12. "State assistance payment" means payment of the state share of the cost of projects authorized by this article to preserve, enhance, restore and improve the quality of the state's environment.

13. "State entity" means any state department, division, agency, office, public authority, or public benefit corporation.

14. "Water quality improvement project" for the purposes of this title, means projects designed to improve the quality of drinking and

surface waters.

15. "Wetland and stream restoration project" means activities designed to restore freshwater and tidal wetlands, and streams of the state, for the purpose of enhancing habitat, increasing connectivity, improving water quality, and flood risk reduction.

§ 58-0103. Allocation of moneys.

The moneys received by the state from the sale of bonds pursuant to the environmental bond act of 2022 shall be disbursed in the following amounts pursuant to appropriations as specifically provided for in titles three, five, seven, and nine of this article:

1. Not less than one billion one hundred million dollars (\$1,100,000,000) for restoration and flood risk reduction as set forth in title three of this article.

2. Up to six hundred fifty million dollars (\$650,000,000) for open space land conservation and recreation as set forth in title five of this article.

3. Up to one billion five hundred million dollars (\$1,500,000,000) for climate change mitigation as set forth in title seven of this article.

4. Not less than six hundred fifty million dollars (\$650,000,000) for water quality improvement and resilient infrastructure as set forth in title nine of this article.

§ 58-0105. Powers and duties.

In implementing the provisions of this article the department is hereby authorized to:

1. Administer funds generated pursuant to the "clean water, clean air,

and green jobs environmental bond act of 2022 ".

2. In the name of the state, as further provided within this article, contract to make, within the limitations of appropriations available therefor, state assistance payments toward the cost of a project approved, and to be undertaken pursuant to this article.

3. Approve vouchers for the payments pursuant to an approved contract.

4. Enter into contracts with any person, firm, corporation, not-for-profit corporation, agency or other entity, private or governmental, for the purpose of effectuating the provisions of this article.

5. Promulgate such rules and regulations and to develop such forms and procedures necessary to effectuate the provisions of this article, including but not limited to requirements for the form, content, and submission of applications by municipalities for state financial assistance.

6. Delegate to, or cooperate with, any other state entity in the administration of this article.

7. Perform such other and further acts as may be necessary, proper or desirable to carry out the provisions of this article.

§ 58-0107. Powers and duties of a municipality.

A municipality shall have the power and authority to:

1. Undertake and carry out any project for which state assistance payments pursuant to contract are received or are to be received pursuant to this article and maintain and operate such project.

2. Expend money received from the state pursuant to this article for costs incurred in conjunction with the approved project.

3. Apply for and receive moneys from the state for the purpose of accomplishing projects undertaken or to be undertaken pursuant to this article.

4. Perform such other and further acts as may be necessary, proper or desirable to carry out a project or obligation, duty or function related thereto.

§ 58-0109. Consistency with federal tax law.

All actions undertaken pursuant to this article shall be reviewed for consistency with provisions of the federal internal revenue code and regulations thereunder, in accordance with procedures established in connection with the issuance of any tax exempt bonds pursuant to this article, to preserve the tax exempt status of such bonds.

§ 58-0111. Compliance with other law.

Every recipient of funds to be made available pursuant to this article shall comply with all applicable state, federal and local laws.

TITLE 3

RESTORATION AND FLOOD RISK REDUCTION

Section 58-0301. Allocation of moneys.

58-0303. Programs, plans and projects.

§ 58-0301. Allocation of moneys.

Of the moneys received by the state from the sale of bonds pursuant to the environmental bond act of 2022, not less than one billion one hundred million dollars (\$1,100,000,000) shall be available for disbursements for restoration and flood risk reduction projects

developed pursuant to section 58-0303 of this title. Not more than two hundred fifty million dollars (\$250,000,000) of this amount shall be available for projects pursuant to subdivision two of section 58-0303 of this title and not less than one hundred million dollars (\$100,000,000) each shall be available for coastal rehabilitation and shoreline restoration projects and projects which address inland flooding, pursuant to paragraph a of subdivision one of section 58-0303 of this title.

§ 58-0303. Programs, plans and projects.

1. Eligible restoration and flood risk reduction projects include, but are not limited to costs associated with:

a. (1) projects identified in state and regional management and restoration programs and plans including but not limited to the Great Lakes Action Agenda, Mohawk River Basin Action Agenda, Ocean Action Plan, Hudson River Estuary Action Agenda, Long Island Sound Comprehensive Conservation and Management Plan, South Shore Estuary Reserve Comprehensive Management Plan, Peconic Estuary Comprehensive Conservation and Management Plan, Delaware Action Plan, Susquehanna Action Plan, forest management framework for New York City and New York/New Jersey Harbor Estuary Plan;

(2) local waterfront revitalization plans prepared pursuant to article forty-two of the executive law; and

(3) coastal rehabilitation and shoreline restoration projects, including nature-based solutions;

b. flood risk reduction projects including but not limited to: acquisition of real property; moving, lifting or raising of existing flood-prone infrastructure or structures; relocation, repair, or raising of flood-prone or repeatedly flooded roadways; and projects to remove, alter, or right-size dams, bridges, and culverts, but shall not include routine construction or maintenance undertaken by the state and municipalities which does not provide flood risk reduction benefits; and

c. restoration projects including but not limited to: floodplain, wetland and stream restoration projects; forest conservation; endangered and threatened species projects; and habitat restoration projects, including acquisition of fee title and easements, intended to improve the lands and waters of the state of ecological significance or any part thereof, including, but not limited to forests, ponds, bogs, wetlands, bays, sounds, streams, rivers, or lakes and shorelines thereof, to support a spawning, nursery, wintering, migratory, nesting, breeding, feeding, or foraging environment for fish and wildlife and other biota.

2. The commissioner and the commissioner of the division of housing and community renewal are authorized pursuant to paragraph b of subdivision one of this section to purchase private real property identified as at-risk to flooding, from willing sellers. The commissioner of the division of housing and community renewal shall be authorized to transfer to any state agency or public authority any real property in order to carry out the purposes of this article. In connection therewith, the housing trust fund corporation shall be authorized to create a subsidiary corporation to carry out the program authorized under this subdivision. Such subsidiary corporation shall have all the privileges, immunities, tax exemption and other exemptions of the agency to the extent the same are not inconsistent with this section.

a. The commissioner and the commissioner of the division of housing and community renewal or any other department or state agency that has received funds suballocated pursuant to this section may enter into agreements with municipalities, and not-for-profit corporations for the purpose of implementing a program pursuant to this section.

b. The department and the division of housing and community renewal shall prioritize projects in communities based on past flood risk or those that participate in the federal emergency management agency's (FEMA) community rating system.

c. Any state agency or authority, municipality, or not-for-profit corporation purchasing private real property may expend costs associated

with:

- (1) the acquisition of real property, based upon the pre-flood fair market value of the subject property;
- (2) the demolition and removal of structures and/or infrastructure on the property; and
- (3) the restoration of natural resources to facilitate beneficial open space, flood mitigation, and/or shoreline stabilization.

d. Notwithstanding any provision of law to the contrary, any structure which is located on real property purchased pursuant to this program shall be demolished or removed, provided that it does not serve a use or purpose consistent with paragraph f of this subdivision.

e. Notwithstanding any provision of law to the contrary, real property purchased with funding pursuant to this program shall be property of the state, municipality, or a not-for-profit corporation.

f. Notwithstanding any provision of law to the contrary, real property purchased with funding pursuant to this program shall be restored and maintained in perpetuity in a manner that, aims to increase ecosystem function, provide additional flood damage mitigation for surrounding properties, protect wildlife habitat, and wherever practicable and safe, allow for passive and/or recreational community use. Municipal flood mitigation plans, resilience, waterfront revitalization plans or hazard mitigation plans, when applicable, shall be consulted to identify the appropriate restoration and end-use of the property.

g. All or a portion of the appropriation in this section may be provided to the department or the division of housing and community renewal or suballocated to any other department, state agency or state authority.

h. Private real property identified as at-risk to flooding should generally be limited to those: (1) identified as being within the one hundred-year floodplain on the most recent FEMA flood insurance maps; (2) flooded structures that would qualify for buyout under criteria generally applicable to FEMA post-emergency acquisitions; (3) structures

identified in a state, federal, local or regional technical study as suitable for the location of a flood risk management or abatement project in areas immediately proximate to inland or coastal waterways; or (4) structures located in coastal or riparian areas that have been determined by a state, federal, local or regional technical study to significantly exacerbate flooding in other locations.

3. The department, the office of parks, recreation, and historic preservation and the department of state are authorized to provide state assistance payments or grants to municipalities and not-for-profit corporations and undertake projects pursuant to paragraph a of subdivision one of this section.

4. The department and the office of parks, recreation, and historic preservation are authorized to provide state assistance payments or grants to municipalities and not-for-profit corporations and undertake projects pursuant to paragraph b of subdivision one of this section. Culvert and bridge projects shall be in compliance with the department's stream crossing guidelines and best management practices, and engineered for structural integrity and appropriate hydraulic capacity including, where available, projects flows based on flood modeling that incorporates climate change projections and shall not include routine construction or maintenance undertaken by the state or municipalities.

5. The department and the office of parks, recreation, and historic preservation are authorized to provide state assistance payments or grants to municipalities and not-for-profit corporations and undertake projects pursuant to paragraph c of subdivision one of this section.

6. Provided that for the purposes of selecting projects for funding under paragraphs b and c of subdivision one of this section, the relevant agencies shall develop eligibility guidelines and post information on the department's website in the environmental notice bulletin providing for a thirty-day public comment period and upon adoption post such eligibility guidelines on the relevant agency's website.

TITLE 5

OPEN SPACE LAND CONSERVATION AND RECREATION

Section 58-0501. Allocation of moneys.

58-0503. Programs, plans and projects.

§ 58-0501. Allocation of moneys.

Of the moneys received by the state from the sale of bonds pursuant to the environmental bond act of 2022 to be used for open space land conservation and recreation projects, up to six hundred fifty million dollars (\$650,000,000) shall be available for programs, plans, and projects developed pursuant to section 58-0503 of this title, however, not more than seventy-five million dollars (\$75,000,000) shall be made available for the creation of a fish hatchery, or the improvement, expansion, repair or maintenance of existing fish hatcheries, not less than three hundred million dollars (\$300,000,000) shall be made available for open space land conservation projects pursuant to paragraph a of subdivision one of section 58-0503 of this title and not less than one hundred fifty million dollars (\$150,000,000) shall be made available for farmland protection pursuant to paragraph b of subdivision one of section 58-0503 of this title.

§ 58-0503. Programs, plans and projects.

1. Eligible open space working lands conservation and recreation projects include, but are not limited to:

- a. costs associated with open space land conservation projects;
- b. costs associated with purchasing conservation easements to protect farmland pursuant to article twenty-five-aaa of the agriculture and markets law; and
- c. costs associated with recreational infrastructure projects.

2. The department or the office of parks, recreation and historic preservation are authorized to undertake open space land conservation projects, in cooperation with willing sellers pursuant to subdivision one of this section and may enter into an agreement for purchase of real property or conservation easements on real property by a municipality or a not-for-profit corporation. Any such agreement shall contain such provisions as shall be necessary to ensure that the purchase is consistent with, and in furtherance of, this title and shall be subject to the approval of the comptroller and, as to form, the attorney general. In undertaking such projects, such commissioners shall consider the state land acquisition plan prepared pursuant to section 49-0207 of this chapter. Further, the department or the office of parks, recreation and historic preservation are authorized to provide state assistance payments to municipalities for eligible projects consistent with paragraphs a and c of subdivision one of this section.

3. The cost of an open space land conservation project shall include the cost of preparing a management plan for the preservation and beneficial public enjoyment of the land acquired pursuant to this section except where such a management plan already exists for the acquired land.

4. The department and the department of agriculture and markets are authorized to provide, pursuant to paragraph b of subdivision one of this section, farmland preservation implementation grants to county agricultural and farmland protection boards pursuant to article twenty-five-aaa of the agriculture and markets law, or to municipalities, soil and water conservation districts or not-for-profit corporations for implementation of projects.

5. The department is authorized to expend moneys to purchase equipment, devices, and other necessary materials and to acquire fee title or conservation easements in lands for monitoring, restoration, recovery, or reintroduction projects for species listed as endangered or threatened or listed as a species of special concern pursuant to section 11-0535 of this chapter.

6. The department or the office of parks, recreation and historic preservation are authorized to expend moneys for the planning, design, and construction of projects to develop and improve parks, campgrounds, nature centers, fish hatcheries, and other recreational facilities.

7. The commissioner and a not-for-profit corporation may enter into a contract for the undertaking by the not-for-profit corporation of an open space land acquisition project.

8. Real property acquired, developed, improved, restored or rehabilitated by or through a municipality pursuant to paragraph a of subdivision one of this section or undertaken by or on behalf of a municipality with funds made available pursuant to this title shall not be sold, leased, exchanged, donated or otherwise disposed of or used for other than public park purposes without the express authority of an act of the legislature, which shall provide for the substitution of other lands of equal environmental value and fair market value and reasonably equivalent usefulness and location to those to be discontinued, sold or disposed of, and such other requirements as shall be approved by the commissioner.

9. Provided that for the purposes of selecting projects for funding under paragraphs a and b of subdivision one of this section, the relevant agencies shall develop eligibility guidelines and post information on the department's website in the environmental notice bulletin providing for a thirty day public comment period and upon adoption post such eligibility guidelines on the relevant agency's website.

TITLE 7

CLIMATE CHANGE MITIGATION

Section 58-0701. Allocation of moneys.

58-0703. Programs, plans and projects.

§ 58-0701. Allocation of moneys.

Of the moneys received by the state from the sale of bonds pursuant to the environmental bond act of 2022, up to one billion five hundred million dollars (\$1,500,000,000) shall be made available for disbursements for climate change mitigation projects developed pursuant to section 58-0703 of this title. Not less than four hundred million dollars (\$400,000,000) of this amount shall be available for green buildings projects, not less than one hundred million dollars (\$100,000,000) for climate adaptation and mitigation projects pursuant to paragraph c of subdivision one of section 58-0703 of this title, not less than two hundred million dollars (\$200,000,000) shall be available for disbursement to reduce or eliminate water pollution or air pollution affecting disadvantaged communities pursuant to paragraphs f and g of subdivision one of section 58-0703 of this title, and not less than five hundred million dollars (\$500,000,000) for costs associated with the purchase of or conversion to zero emission school buses and supporting infrastructure as set forth in paragraph h of subdivision one of section 58-0703 of this title.

§ 58-0703. Programs, plans and projects.

1. Eligible climate change mitigation projects include, but are not limited to:

a. costs associated with green building projects, projects that increase energy efficiency or the use or siting of renewable energy on state-owned buildings or properties including buildings owned by the state university of the state of New York, city university of the state of New York, community colleges, and public schools;

b. costs associated with projects that utilize natural and working lands to sequester carbon and mitigate methane emissions from agricultural sources, such as manure storage through cover and methane reduction technologies;

c. costs associated with implementing climate adaptation and mitigation projects pursuant to section 54-1523 of this chapter;

d. costs associated with urban forestry projects such as forest and habitat restoration, for purchase and planting of street trees and for projects to expand the existing tree canopy and bolster community health;

e. costs associated with projects that reduce urban heat island effect, such as installation of green roofs, open space protection, community gardens, cool pavement projects, projects that create or upgrade community cooling centers, and the installation of reflective roofs where installation of green roofs is not possible;

f. costs associated with projects to reduce or eliminate air pollution from stationary or mobile sources of air pollution affecting disadvantaged communities;

g. costs associated with projects which would reduce or eliminate water pollution, whether from point or non-point discharges, affecting disadvantaged communities; and

h. costs associated with the purchase or conversion to zero emission school buses, including costs associated with the supporting infrastructure.

2. The department, the department of agriculture and markets, the office of parks, recreation and historic preservation, the New York state energy research and development authority and the office of general services are authorized to provide state assistance payments or grants to municipalities and not-for-profit corporations or undertake projects pursuant to this section.

3. Provided that for the purposes of selecting projects for funding under this section, the relevant agencies shall develop eligibility guidelines and post information on the department's website in the environmental notice bulletin providing for a thirty-day public comment

period and upon adoption post such eligibility guidelines on the relevant agency's website.

TITLE 9

WATER QUALITY IMPROVEMENT AND RESILIENT INFRASTRUCTURE

Section 58-0901. Allocation of moneys.

58-0903. Programs, plans and projects.

§ 58-0901. Allocation of moneys.

Of the moneys received by the state from the sale of bonds pursuant to the environmental bond act of 2022 for disbursements for state assistance for water quality improvement projects as defined by title one of this article, not less than six hundred fifty million dollars (\$650,000,000) shall be available for water quality improvement projects developed pursuant to section 58-0903 of this title. Not less than two hundred million dollars (\$200,000,000) of this amount shall be available for wastewater infrastructure projects undertaken pursuant to the New York state water infrastructure improvement act of 2017 pursuant to paragraph e of subdivision one of section 58-0903 of this title, and not less than two hundred fifty million dollars (\$250,000,000) shall be available for municipal stormwater projects pursuant to paragraph a of subdivision one of section 58-0903 of this title.

§ 58-0903. Programs, plans and projects.

1. Eligible water quality improvement project costs include, but are not limited to:

a. costs associated with grants to municipalities for projects that reduce or control storm water runoff, using green infrastructure where practicable;

b. costs associated with projects that reduce agricultural nutrient

runoff and promote soil health such as projects which implement comprehensive nutrient management plans, other agricultural nutrient management projects, and non-point source abatement and control programs including projects developed pursuant to sections eleven-a and eleven-b of the soil and water conservation districts;

c. costs associated with projects that address harmful algal blooms such as abatement projects and projects focused on addressing nutrient reduction in freshwater and marine waters, wastewater infrastructure systems that treat nitrogen and phosphorus, and lake treatment systems;

d. costs associated with wastewater infrastructure projects including but not limited to extending or establishing sewer lines to replace failing septic systems or cesspools and projects as provided by section twelve hundred eighty-five-u of the public authorities law;

e. costs associated with projects to reduce, avoid or eliminate point and non-point source discharges to water including projects authorized by the New York state water improvement infrastructure act of 2017 and section twelve hundred eighty-five-s of the public authorities law;

f. costs associated with the establishment of riparian buffers to provide distance between farm fields and streams or abate erosion during high flow events; and

g. costs associated with lead service line replacement pursuant to section eleven hundred fourteen of the public health law.

2. The department and the New York state environmental facilities corporation are authorized to provide state assistance payments or grants to municipalities for projects authorized pursuant to paragraphs a, b, and d of subdivision one of this section.

3. The department of agriculture and markets shall be authorized to make state assistance payments to soil and water conservation districts for the cost of implementing agricultural environmental management plans, including purchase of equipment for measuring and monitoring soil

health and soil conditions.

4. The department is authorized to make grants available to not-for-profits and academic institutions for paragraphs b, c, and f of subdivision one of this section, and make state assistance payments to municipalities and undertake projects pursuant to this section.

5. Provided that for the purposes of selecting projects for funding of this section, the relevant agencies shall develop eligibility guidelines and post information on the department's website in the environmental notice bulletin providing for a thirty-day public comment period and upon adoption post such eligibility guidelines on the relevant agency's website.

TITLE 11

ENVIRONMENTAL JUSTICE AND REPORTING

Section 58-1101. Benefits of funds.

58-1103. Reporting.

§ 58-1101. Benefits of funds.

The department shall make every effort practicable to achieve a goal that forty percent of the funds pursuant to this article benefit disadvantaged communities; however, disadvantaged communities shall receive no less than thirty-five percent of the benefit of the funds pursuant to this article.

§ 58-1103. Reporting.

1. No later than sixty days following the end of each fiscal year, each department, agency, public benefit corporation, and public authority receiving an allocation or allocations of appropriation financed from the clean water, clean air, and green jobs environmental bond act of 2022 shall submit to the commissioner in a manner and form

prescribed by the department, the following information as of March thirty-first of such fiscal year, within each category listed in this title: the total appropriation; total commitments; year-to-date disbursements; remaining uncommitted balances; and a description of each project.

2. No later than one hundred twenty days following the end of each fiscal year, the department shall submit to the governor, the temporary president of the senate, and the speaker of the assembly a report that includes the information received. A copy of the report shall be posted on the department's website.

TITLE 13 LABOR STANDARDS

Section 58-1301. Labor standards.

§ 58-1301. Labor standards.

1. Projects funded pursuant to this article shall require compliance with prevailing wage requirements pursuant to section two hundred twenty of the labor law.

2. Any state entity or municipality receiving at least twenty-five million dollars (\$25,000,000) from funds allocated pursuant to this article for a project costing greater than fifty million dollars (\$50,000,000) shall require use of apprenticeship agreements as defined by article twenty-three of the labor law.

3. (a) Any state entity or municipality receiving at least twenty-five million dollars (\$25,000,000) from funds allocated pursuant to this article for a project which involves the construction, reconstruction, alteration, maintenance, moving, demolition, excavation, development or other improvement of any building, structure or land, shall be subject to section two hundred twenty-two of the labor law.

(b) Any privately owned project receiving funds allocated pursuant to

this title which utilizes a project labor agreement on such project shall not be subject to article eight of the labor law.

4. If determined applicable, a municipality or state entity may require that the private owner of a project, or a third party acting on the owner's behalf, enter into a labor peace agreement with at least one bona fide labor organization either: (a) where such bona fide labor organization is actively representing non-construction employees; or (b) upon notice by a bona fide labor organization that is attempting to represent non-construction employees. For purposes of this section "labor peace agreement" means an agreement between an entity and labor organization that, at a minimum, protects the state's proprietary interests by prohibiting labor organizations and members from engaging in picketing, work stoppages, boycotts, and any other economic interference.

5.(a) Any municipality or state entity, or a third party acting on behalf and for the benefit of the municipality or state entity, in each contract for construction, reconstruction, alteration, repair, improvement or maintenance of a project receiving funds under this article that is a public work, shall ensure that such contract contains a provision that the structural iron and structural steel used or supplied in the performance of the contract or any subcontract thereto and that is permanently incorporated into the public work, shall be produced or made in whole or substantial part in the United States, its territories or possessions. In the case of a structural iron or structural steel product, all manufacturing must take place in the United States, from the initial melting stage through the application of coatings, except metallurgical processes involving the refinement of steel additives. For the purposes of this subdivision, "permanently incorporated" shall mean an iron or steel product that is required to remain in place at the end of the project contract, in a fixed location, affixed to the public work to which it was incorporated. Iron and steel products that are capable of being moved from one location to another are not permanently incorporated into a public work.

(b) The provisions of paragraph (a) of this subdivision shall not apply if the head of the department, agency, or municipal entity

constructing the public work, in his or her sole discretion, determines that the provisions would not be in the public interest, would result in unreasonable costs, or that obtaining such steel or iron in the United States would increase the cost of the contract by an unreasonable amount, or such iron or steel, including without limitation structural iron and structural steel, cannot be produced or made in the United States in sufficient and reasonably available quantities and of satisfactory quality.

ARTICLE 70

UNIFORM PROCEDURES

Section 70-0101. Purpose.

70-0103. Legislative findings and declarations.

70-0105. Definitions.

70-0107. Rules and regulations; applicability.

70-0109. Time periods for department action on permit applications.

70-0111. Minor projects.

70-0113. Confidentiality.

70-0115. Permit modifications, suspensions, revocations, renewals, reissuances and recertifications.

70-0116. Emergency authorization.

70-0117. Special provisions.

70-0118. Disproportionate impacts on disadvantaged communities.

70-0119. Public hearings.

70-0121. Severability.

§ 70-0101. Purpose.

It is the purpose of this article to establish uniform review procedures for major regulatory programs of the department and to establish time periods for department action on permits under such programs.

§ 70-0103. Legislative findings and declarations.

The legislature finds and declares that:

1. It is the intent of the legislature to assure the fair, expeditious and thorough administrative review of regulatory permits.
2. It is the intent of the legislature that, to the extent feasible and appropriate, statutory and regulatory procedures shall be made uniform and inconsistencies and redundancies shall be eliminated.
3. It is the intent of the legislature to establish reasonable time periods for administrative agency action on permits.
4. It is the intent of the legislature to encourage public participation in government review and decision-making processes and to promote public understanding of all government activities.
5. It is the intent of the legislature that, to the maximum extent feasible, a comprehensive project review approach shall replace separate and individual permit application reviews.

§ 70-0105. Definitions.

Unless the context otherwise requires, the definitions in this section shall govern the construction of the following terms as used in this article:

1. "Environmental notice bulletin" shall mean the publication of the department published pursuant to section 3-0306 of this chapter.
2. "Complete application" shall mean an application for a permit which is in an approved form and is determined by the department to be complete for the purpose of commencing review of the application but which may need to be supplemented during the course of review as to matters contained in the application in order to enable the department

to make the findings and determinations required by law. A complete application shall include such draft impact statement as may be required pursuant to article eight of this chapter.

3. "Minor project" shall mean a proposed project which by its nature and with respect to its location will not have a significant impact on the environment and will not exceed criteria established in rules and regulations adopted by the department pursuant to subdivision one of section 70-0107 of this article.

4. "Permit" shall mean any permit, certificate, license or other form of department approval, modification, suspension, revocation, renewal, reissuance or recertification issued in connection with any regulatory program referred to in subdivision three of section 70-0107 of this article as further specified by rule and regulation.

5. "Project" shall mean any activity that requires one or more department permits.

6. "Emergency" shall mean a natural or an accidental human-made event which presents an immediate threat to life, health, property, or natural resources.

§ 70-0107. Rules and regulations; applicability.

1. The department, after public hearing, shall adopt rules and regulations to assure the efficient and expeditious administration of this article. Such rules and regulations shall include but not be limited to provisions regarding notice, review, public participation and public hearings.

2. Notwithstanding any inconsistent provisions of this chapter or any rule or regulation of the department, the procedures provided in this article and in rules and regulations adopted by the department pursuant to subdivision one of this section shall govern the review by the department of applications for permits for proposed projects and

modifications, suspensions, revocations, renewals, reissuances and recertifications of permits under the regulatory programs of the department specified in subdivision three of this section. Such procedures shall also apply to any government entity to which the commissioner has delegated powers to administer such programs pursuant to section 3-0301 of this chapter, to the extent specified in such delegation.

3. The following regulatory programs of this chapter shall be subject to the procedures provided in this article:

- (a) protection of waters (title five of article fifteen);
- (b) water supply and water transport (title fifteen of article fifteen);
- (c) wild, scenic and recreational rivers system (title twenty-seven of article fifteen), except for that part of article twenty-four administered by the Adirondack park agency, which shall be subject to the procedures provided in section eight hundred nine of the executive law;
- (d) certifications under section 401 of the federal water pollution control act amendments of 1972 (public law 92-500) pursuant to article three of this chapter;
- (e) state pollutant discharge elimination system (title eight of article seventeen);
- (f) realty subdivisions: sewerage service (title fifteen of article seventeen);
- (g) air pollution control (article nineteen);
- (h) liquefied natural and petroleum gas (title seventeen of article twenty-three);
- (i) mined land reclamation (title twenty-seven of article twenty-three);
- (j) freshwater wetlands (article twenty-four), except for that part of article twenty-four administered by the Adirondack park agency, which shall be subject to the procedures provided in section eight hundred nine of the executive law;
- (k) tidal wetlands (article twenty-five);
- (l) collection, treatment and disposal of refuse and other solid waste (article twenty-seven); and

(m) coastal erosion hazard areas (article thirty-four).

§ 70-0109. Time periods for department action on permit applications.

1. (a) On or before fifteen calendar days after the receipt of an application for a permit which has been filed in a manner and in a form prescribed by the department, the department shall mail written notice to the applicant of its determination whether or not the application is complete.

(b) If the department fails to mail written notice to an applicant of its determination whether or not an application is complete within such fifteen calendar day period, the application shall be deemed complete.

(c) If the department determines the application is not complete, the notice shall include a concise statement of the respects in which the application is incomplete.

(d) The resubmission of the application or the submission of such additional information shall commence a new fifteen calendar day period for department review of the additional information for purposes of determining completeness.

(e) If the department determines the application is complete, the notice shall so state.

2. (a) Immediately upon determining that an application is complete, the department shall cause a notice of application to be published in the next available environmental notice bulletin which shall be not later than ten calendar days after the date of such determination and not less than once during the fifteen calendar day period following such determination in a newspaper having general circulation in the area in which the project is proposed to be located, and shall provide notice to the chief executive officer of each municipality in which the proposed project is located, and may direct the applicant to provide such reasonable notice and opportunity for comment to the public as the department deems appropriate. Newspaper publications shall be provided by the applicant.

(b) The time period for public comment on a permit application shall be stated in the notice of application.

3. (a) Within the time periods specified in subparagraphs (i) and (ii) of this subdivision and subject to the provisions of subdivisions four, five and six of this section, the department shall make a decision on an application for a permit by mailing the applicant a permit, a permit with conditions or a statement that the permit applied for has been denied.

(i) In the case of an application for a permit for which no public hearing has been held, such decision shall be mailed on or before ninety calendar days after the department mails written notice to the applicant that the application is complete or on or before ninety calendar days after the application is deemed complete pursuant to the provisions of this article.

(ii) In the case of an application for a permit for which a public hearing has been held, the department shall mail its decision to the applicant and to all parties to the hearing on or before sixty calendar days after receipt by the department of a complete record, as that term is defined in paragraphs (a) through (e) of subdivision one of section three hundred two of the state administrative procedure act.

(b) If the department fails to mail a decision on an application for a permit within the time periods specified, the applicant may cause notice of such failure to be made to the department by means of certified mail return receipt requested addressed to the commissioner. If, within five working days after the receipt of such notice, the department fails to mail a decision, the application shall be deemed approved and a permit deemed granted subject to any standard terms or conditions applicable to such a permit. However, no permit shall be deemed approved where such permit is issued in lieu of a federal permit pursuant to an authorization granted to the state pursuant to either Public Law 94-580, the "Federal Resource Conservation and Recovery Act of 1976", or Title V of Public Law 101-549, the "Clean Air Act", and where the issuance of a permit in such a manner is contrary to such authorization.

4. The time periods for a department decision on an application for a permit as specified in subdivision three of this section shall be suspended pending receipt by the department of any final environmental impact statement and any explicit findings related to a proposed project

as may be required pursuant to article eight (environmental quality review) of this chapter when the department is not the lead agency as that term is used in rules and regulations adopted by the department pursuant to section 8-0113 of said article.

5. The department shall make no decision and no permit shall be deemed granted until the applicant has paid all applicable fees and costs.

6. Any time period specified in this article may be waived and extended for good cause by written request by the applicant with the consent of the department, or by the written request of the commissioner or his designee with the consent of the applicant.

§ 70-0111. Minor projects.

(a) On or before fifteen calendar days after the receipt of an application for a permit for a minor project, the department shall mail written notice to the applicant of its determination whether or not the application is complete. If the department fails to mail written notice to an applicant of its determination whether or not an application is complete within such fifteen calendar day period, the application shall be deemed complete.

(b) Within forty-five calendar days after the department mails written notice to the applicant that an application for a permit for a minor project is complete or within forty-five calendar days after the application is deemed complete pursuant to the provisions of this article and subject to the provisions of subdivisions four, five, and six of section 70-0109, the department shall make a decision on the application by mailing the applicant a permit, a permit with conditions or a statement that the permit applied for has been denied.

(c) If the department fails to make a decision on an application for a permit for a minor project within such forty-five calendar day period, then the provisions of paragraph (b) of subdivision three of section 70-0109 shall apply.

(d) The department may provide, by rule and regulation pursuant to section 70-0107 of this article, for the issuance of general permits covering minor projects. Such general permits may be issued following

such events as natural disasters or acts of God which lead numbers of individuals to seek to undertake similar types of minor projects that are of a remedial nature. Such permits may be issued only upon a written statement of necessity by the commissioner justifying the issuance of such general permit and may be issued only for a specified duration of time.

§ 70-0113. Confidentiality.

The provisions of section eighty-eight of article six of the public officers law shall apply to information confidentially disclosed by applicants to the department, except as otherwise provided in this chapter.

§ 70-0115. Permit modifications, suspensions, revocations, renewals, reissuances and recertifications.

1. Upon the provision of notice stating the grounds for its action and giving an opportunity for hearing to the permit holder, the department may modify, suspend or revoke a permit.

2. A permit holder may make written request to the department for the renewal, reissuance, recertification or modification of an existing permit. Such a request shall be accompanied by sufficient information supporting the request for the departmental action sought.

(a) In the case of a request (i) which does not involve a material change in permit conditions, then applicable law, environmental conditions or technology since the date of issuance of the existing permit, or (ii) for which an opportunity for public comment or hearing or both is not required by applicable law, the department shall on or before fifteen calendar days after the receipt of a request mail a written determination to the permit holder of its decision on the request. If the decision is to deny the request, the permit holder shall be afforded an opportunity for hearing and notice of such decision shall be given by the department in the next available issue of the

environmental notice bulletin.

(b) In the case of a request which may involve a material change as described in paragraph (a) of this subdivision, or for which an opportunity for public comment or hearing or both is required by applicable law, the department shall on or before fifteen calendar days after the receipt of a request mail a written determination to the permit holder that the request shall be treated as an application for a new permit.

(c) In the case of a request for the renewal, reissuance, recertification or modification of an existing state pollutant discharge elimination system permit issued in lieu of a national pollutant discharge elimination system permit the request shall be treated as an application for a new permit. Any other request may be treated as an application for a new permit.

(d) In the case of a request for the renewal, reissuance, recertification or modification of an existing permit issued pursuant to article nineteen of this chapter, the request may be treated as an application for a new permit.

If, pursuant to paragraph (a) or (b) of this subdivision, the department fails to mail a written determination to the permit holder within such fifteen calendar day period, then the provisions of paragraph (b) of subdivision three of section 70-0109 of this chapter shall apply.

§ 70-0116. Emergency authorization.

1. The department may waive the procedural requirements of this article to issue an emergency authorization for an action which is immediately necessary to respond to an emergency.

2. Emergency authorization may be given only if the department makes a finding of emergency. Such emergency authorization may be issued for a term not to exceed thirty days. It may be renewed for one term not to exceed thirty days. On or before sixty days from the department's original approval, the action must be concluded or the authorized party

must file with the department a complete application for a permit and be subject to all the procedural requirements of this article.

3. The department must be notified prior to the commencement of the action. If circumstances warrant immediate action by a state or local government agency such that prior notice to the department is not possible, then the department must be notified by that agency within twenty-four hours after commencement of the action. In any event, the department must respond by either granting or denying emergency authorization within two business days of its receipt of such notice.

4. Actions taken pursuant to a grant of emergency authorization must be carried out in a manner that will cause the least change, modification or adverse impact to life, health, property or natural resources. The department may attach conditions to its emergency authorizations and shall enforce them in order to assure compliance with this and other regulatory standards that would apply to such actions absent an emergency.

5. The department may require plans or any other information it deems necessary to review the proposed action to determine whether emergency authorization is warranted and whether the proposed action is consistent with regulatory standards.

6. The department shall issue an order summarily suspending an action taken before the grant of an emergency authorization if the department finds that no emergency exists or the department shall issue an order suspending an emergency authorization if the department finds that the action is no longer immediately necessary to protect life, health, property or natural resources. Such action shall be ceased immediately upon receipt of such order by the authorized party.

7. (a) Violations will be enforced pursuant to article seventy-one of this chapter.

(b) A person who violates any provision of this section or any term or condition of an emergency authorization shall also be required to perform restoration, mitigation, or elimination of environmental damage,

which is necessary as a direct result of that action. In the event that such person fails to undertake such work, the department or its agent may enter upon the lands and waters where the action took place and perform restoration or other activities which may be necessary to mitigate or eliminate environmental damage caused by such action. Should the department undertake such work, or cause it to be undertaken, the full cost for it shall be charged to and become the responsibility of the person who conducted the action.

8. The provisions of this section and the regulations promulgated hereunder shall apply notwithstanding any inconsistent provision of law.

§ 70-0117. Special provisions.

1. (a) An applicant may submit simultaneously all applications for permits associated with a proposed project in order to facilitate a comprehensive project review.

(b) Except for good cause shown by the applicant, the department may require an applicant to submit simultaneously any or all applications for permits associated with a proposed project when, in the department's judgment, it is necessary to facilitate a comprehensive review of the project.

2. At any time during the review of an application for a permit or a request by a permit holder for the renewal, reissuance, recertification or modification of an existing permit, the department may request additional information from the applicant or permit holder with regard to any matter contained in the application or request when such additional information is necessary for the department to make any findings or determinations required by law. Such a request shall not extend any time period for department action contained in this article. Failure by the applicant or permit holder to provide such information may be grounds for denial by the department of the application or request.

3. Where there is a requirement pursuant to federal law for a

tentative determination or draft permit to be prepared prior to public notice or hearing, the time within which the department shall make its determination whether or not the application is complete shall be extended by forty-five calendar days. This subdivision shall not apply to applications for state pollutant discharge elimination system permits for the discharge of sewage (as defined in section 17-0105 of this chapter) only.

4. In conjunction with one or more applications for permits, the department may, on request of an applicant undertake a conceptual review of a proposed project evaluating the general approvability or nonapprovability of a proposed project, including all proposed phases or segments thereof, subject to the development and submission of more detailed plans and information and such additional applications for permits in the future as may be necessary. The department shall, in rules and regulations, establish criteria and guidelines for the conceptual review of proposed projects. The department shall establish, in rules and regulations adopted pursuant to section 70-0107 of this chapter, procedures governing the conceptual review of proposed projects.

5. (a) Under the state pollutant discharge elimination system program (article seventeen of this chapter), the department may issue a general permit, upon application or on its own initiative, to cover ballast discharges from vessels, including tankers, while moored in port which (i) are within a stated geographical area, (ii) involve the same or substantially similar type of operations, (iii) discharge the same types of pollutants, (iv) require the same effluent limitations or operating conditions, (v) require the same or similar monitoring, and (vi) which will result in minimal adverse cumulative impacts.

(b) General permits can only be issued if the department determines such discharges, by virtue of their nature and location, are more appropriately controlled under a general permit than under individual permits.

(c) Any general permit issued under this subdivision shall set forth the conditions which shall apply to any discharge authorized by such general permit.

(d) The department may require any person authorized by a general permit to apply for and obtain an individual permit and the department shall adopt rules and regulations specifying circumstances under which an individual permit may be required.

(e) General permits shall be governed by the procedures set forth in this article for the review of major projects and shall be subject to the provisions of article seventy-two of this chapter.

6. (a) Under the state pollutant discharge elimination system program (article seventeen of this chapter), the department may issue a general permit, upon application or on its own initiative, to cover a category of point sources of one or more discharges within a stated geographical area which (i) involve the same or substantially similar types of operations, (ii) discharge the same types of pollutants, (iii) require the same effluent limitations or operating conditions, (iv) require the same or similar monitoring, and (v) which will result in minimal adverse cumulative impacts.

(b) General permits can only be issued for the following categories of discharges, if, by virtue of their nature and location, the department determines such discharges are more appropriately controlled under a general permit than under individual permits:

(i) separate storm sewers or stormwater conveyance systems; or

(ii) less than ten thousand gallons per day of sewage effluent without the admixture of industrial waste or other wastes; or

(iii) thermal discharges of less than one million gallons per day.

(c) Any general permit issued under this subdivision shall set forth the conditions which shall apply to any discharge authorized by such general permit.

(d) The department may require any person authorized by a general permit to apply for and obtain an individual permit and the department shall adopt rules and regulations specifying circumstances under which an individual permit may be required.

(e) General permits shall be governed by the procedures set forth in this article for the issuance of major permits.

7. Notwithstanding any other provision of law, the department shall not charge any application fee or any other fee for any activity

undertaken pursuant to an adopt-a-park, shoreline, roadway or lake program pursuant to section two hundred seventy-seven of the general municipal law.

8. (a) All persons required to obtain a permit from the department pursuant to section 24-0701 of this chapter shall submit to the department an application fee in an amount not to exceed the following:

(i) one hundred dollars per application for a modification to any existing permit issued pursuant to section 24-0701 of this chapter;

(ii) three hundred dollars per application for one new single family dwelling and customary appurtenances thereto;

(iii) five hundred dollars per application for multiple new single family dwellings, or a new multiple family dwelling and customary appurtenances thereto;

(iv) one thousand dollars per application for new commercial or industrial structures or improvements;

(v) one hundred dollars per application for a permit for any other project as defined in this article.

(b) All persons required to obtain a permit from the department pursuant to section 25-0402 of this chapter shall submit to the department an application fee in an amount not to exceed the following:

(i) three hundred dollars per application for a permit for a minor project as defined in this article or modification to any existing permit issued pursuant to section 25-0402 of this chapter;

(ii) two thousand dollars per application for subdivision of land or new commercial or industrial structures or improvements;

(iii) one thousand dollars per application for a permit for a project as defined in this article.

(c) Fees collected pursuant to paragraph (a) of this subdivision shall be deposited to the credit of the conservation fund. Fees collected pursuant to paragraph (b) of this subdivision shall be deposited to the credit of the marine resources account of the conservation fund.

(d) Application fees required pursuant to this subdivision will not be required for any state department.

9. Applicants for major projects. Applicants for major projects for the regulatory programs of paragraphs (a), (f), (h), (i), (j), (k) and

(m) of subdivision 3 of section 70-0107 of this article shall be required to demonstrate that future physical climate risk due to sea level rise, and/or storm surges and/or flooding, based on available data predicting the likelihood of future extreme weather events, including hazard risk analysis data if applicable, has been considered.

§ 70-0118. Disproportionate impacts on disadvantaged communities.

1. For the purposes of this section:

(a) "Disadvantaged communities" shall have the same meaning as subdivision five of section 75-0101 of this chapter.

(b) "Applicable permit" shall mean a permit, excluding a general permit, applied for pursuant to:

(i) title fifteen of article fifteen of this chapter for a facility withdrawing and using over twenty million gallons per day of water for cooling purposes;

(ii) article seventeen of this chapter;

(iii) article nineteen of this chapter;

(iv) title seventeen of article twenty-three of this chapter; or

(v) title three, title seven, title nine or title eleven of article twenty-seven of this chapter.

2. (a) When a new project subject to an applicable permit may cause or contribute more than a de minimis amount of pollution to any disproportionate pollution burden on a disadvantaged community, the department shall require the applicant to prepare or cause to be prepared an existing burden report.

(b) In the case of an application for renewal or modification of an applicable permit not subject to the provisions of paragraph (a) of this subdivision which may cause or contribute more than a de minimis amount of pollution to any disproportionate pollution burden on a disadvantaged community the department shall require the applicant to prepare or cause to be prepared an existing burden report; provided, however that the department may elect not to require such existing burden report if the permit would serve an essential environmental, health, or safety need of the disadvantaged community for which there is no reasonable

alternative.

(c) Notwithstanding the requirements of paragraphs (a) or (b) of this subdivision, no existing burden report shall be required for an application for a renewal of a permit if an existing burden report has been prepared with respect to such permit within the previous ten years.

3. (a) When considering an application for an applicable permit, the department shall consider the existing burden report, if any, and an administrative record that includes, but is not limited to, comments received from the public in the disadvantaged community.

(b) The department shall not issue an applicable permit for a new project if it determines that the project will cause or contribute more than a de minimis amount of pollution to a disproportionate pollution burden on the disadvantaged community.

(c) In the case of an application for a modification of an applicable permit, the department shall not issue an applicable permit if it determines that the issuance of the permit would significantly increase the existing disproportionate pollution burden on the disadvantaged community.

(d) In the case of an application for renewal of an applicable permit, the department shall not issue an applicable permit if it determines that the project would significantly increase the existing disproportionate pollution burden on the disadvantaged community.

4. The department shall require actions to implement any appropriate operational changes which would reduce the pollution burden on the disadvantaged community as a condition of an applicable permit, only if such actions are reasonable and practicable, as determined by the department.

5. The department, in consultation with the department of health, shall develop the scope of the existing burden report and may adapt such requirements based on whether a permit application is for a new project, modification, or a renewal of a permit. The department shall provide for at least a thirty-day public comment period prior to finalizing the scope of the report. The report shall provide for an assessment of the following information:

(a) relevant baseline data on existing burdens, including from relevant criteria used to designate the particular disadvantaged communities pursuant to subdivision one of section 75-0111 of this chapter;

(b) the environmental or public health stressors already borne by the disadvantaged community as a result of existing conditions located in or affecting the disadvantaged community;

(c) the potential or projected contribution of the proposed action to existing pollution burdens in the community; and

(d) existing and potential benefits of the project to the community including increased housing supply, or alleviation of existing pollution burdens that may be provided by the project, including operational changes to the project that would reduce the pollution burden on the disadvantaged community.

§ 70-0119. Public hearings.

1. After evaluating an application for a permit and any comments of department staff, other state agencies or units of government or members of the public, the department shall, on or before sixty calendar days after it mails notice to the applicant that the application is complete or on or before sixty days after the application is deemed complete pursuant to the provisions of this article, determine whether or not to conduct a public hearing on the application and mail written notice to the applicant of a determination to conduct a public hearing. Such determination shall be based on whether the evaluation or comments raise substantive and significant issues relating to any findings or determinations the department is required to make pursuant to this chapter, including the reasonable likelihood that a permit applied for will be denied or can be granted only with major modifications to the project because the project as proposed may not meet statutory or regulatory criteria or standards; provided, however, where any comments received from members of the public or otherwise raise substantive and significant issues relating to the application and resolution of any such issue may result in denial of the permit or the imposition of significant conditions thereon, the department shall hold a public

hearing on the application.

2. If a public hearing is to be held, it shall commence on or before ninety calendar days after the department mails written notice to the applicant that the application is complete or on or before ninety calendar days after the application is deemed complete pursuant to the provisions of this article. Reasonable notice of the hearing shall be given to the applicant and to persons who have made written request to participate in it and notice to the public shall be given by publication of a notice of hearing in the environmental notice bulletin, in a newspaper as otherwise required by law, and in such other manner as the department may direct, if any.

3. The department may require an applicant to pay the cost of renting a hearing room and of preparing a transcript associated with a public hearing conducted pursuant to this article. Prior to commencing a public hearing pursuant to this article, the department may require an applicant to post a bond or other suitable undertaking to assure payment of such costs.

4. When an applicant has submitted applications for one or more permits associated with a project and more than one public hearing is required, including public hearings pursuant to article eight of this chapter, said public hearings shall be consolidated into a single public hearing at the request of the applicant wherever practicable. Public hearings associated with a project shall also be consolidated or held jointly with one or more other state or local agencies, whenever practicable.

5. Public hearings pursuant to this article shall be conducted as provided in rules and regulations adopted by the department pursuant to section 70-0107 and as provided in the state administrative procedure act.

§ 70-0121. Severability.

The provisions of this article shall be severable, and if any clause, sentence, paragraph, subdivision or part of this article shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder, but shall be confined in its operation to the clause, sentence, paragraph, subdivision or part thereof directly involved in the controversy in which such judgment shall have been rendered.

ARTICLE 71

ENFORCEMENT

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|-------|--|
| Title | 1. Effect of the Penal Law and Criminal Procedure Law. |
| | 2. General law enforcement provisions. |
| | 3. Summary abatement. |
| | 4. Delegation of enforcement. |
| | 5. Enforcement of provisions derived from former Conservation law. |
| | 7. Enforcement of article 9. |
| | 9. Enforcement of articles 11 and 13--the Fish and Wildlife Law. |
| | 11. Enforcement of article 15. |
| | 12. Enforcement of article 22. |
| | 13. Enforcement of article 23. |
| | 15. Enforcement of title 25 of article 27. |
| | 17. Enforcement of provisions derived from Public Health Law. |
| | 19. Enforcement of titles 1 through 11 and 15 through 19 inclusive of article 17 and spills of bulk liquids. |
| | 21. Enforcement of article 19 and air pollution emergency rules and regulations. |
| | 22. Enforcement of title 23 of article 23. |
| | 23. Enforcement of article 24. |
| | 25. Enforcement of article 25. |
| | 27. Enforcement of article 27 and article 71. |
| | 29. Enforcement of article 33. |
| | 31. Enforcement of article 35. |
| | 33. Enforcement of article 43. |
| | 35. Miscellaneous enforcement provisions. |
| | 36. Environmental easements. |

- 37. Enforcement of article 37.
- 38. Enforcement of article 38.
- 39. Enforcement of article 39.
- 40. Other general provisions.
- 41. Enforcement of article 72.
- 43. Enforcement of article 40.
- 44. Enforcement of title 15 of article 27.

TITLE 1

EFFECT OF THE PENAL LAW AND CRIMINAL PROCEDURE LAW

Section 71-0101. Effect of the Penal Law and Criminal Procedure Law.

§ 71-0101. Effect of the Penal Law and Criminal Procedure Law.

Notwithstanding any provision of this chapter, the provisions of the Penal Law and of the Criminal Procedure Law control over the provisions of this chapter to the same extent they controlled over the provisions of law from which this chapter is derived, on the date immediately preceding the effective date of this chapter.

For the purpose of section 80.10 of the penal law all fines contained within this chapter, and not already so designated, shall be deemed special corporate fines.

TITLE 2

GENERAL LAW ENFORCEMENT PROVISIONS

Section 71-0201. General law enforcement authority.

71-0202. Enforcement; designated employees to have certain powers.

71-0203. Uniform appearance ticket and simplified information.

71-0205. Verification or affirmation of accusatory instruments.

71-0207. Pleas by mail.

71-0209. Convictions; bail forfeitures; failure to appear.

71-0211. Disposition of fees and penalties.

71-0213. Mandatory surcharge.

§ 71-0201. General law enforcement authority.

Every police officer and any employee of the department as may be designated by the commissioner, shall enforce the provisions of this chapter, and the rules, and regulations and orders enacted or promulgated thereunder. Such officers shall be authorized to issue an appearance ticket or, in lieu thereof, a uniform appearance ticket or, in lieu thereof, a uniform appearance ticket and simplified information as provided in section 71-0203, for any violation of this chapter or rule, regulation or order adopted thereunder. Law enforcement officers of the Fish and Wildlife Service of the United States Department of the Interior or the National Marine Fisheries Service of the United States Department of Commerce may enforce the provisions of articles 11 and 13 of this chapter and shall be authorized to issue an appearance ticket or, in lieu thereof, a uniform appearance ticket and simplified information as provided in section 71-0203, for any violation of article 11, article 13 or rule, regulation or order adopted pursuant to such article.

§ 71-0202. Enforcement; designated employees to have certain powers.

Such employees as may be designated by the commissioner shall be authorized to issue uniform appearance tickets, simplified traffic informations, simplified parks informations, simplified environmental conservation informations, and uniform navigation summons and/or complaint, when acting pursuant to their special duties.

§ 71-0203. Uniform appearance ticket and simplified information.

1. The commissioner shall prescribe the form of an appearance ticket and simplified information for all cases involving a violation of any provision of this chapter or of any rule, regulation or order adopted or

promulgated thereunder, or of any class or category of such cases, and to establish procedures for proper administrative controls over the disposition thereof.

2. The chief executive officer of each local police force including county, town, city and village police departments, sheriffs and the superintendent of state police shall prepare or cause to be prepared such records and reports as may be prescribed hereunder.

3. The commissioner shall have the power to adopt such rules and regulations as may be deemed necessary to accomplish the purposes and enforce the provisions of this section including requirements for reporting by trial courts having jurisdiction over such offenses.

4. Any person who disposes of any uniform appearance ticket and simplified information in any other manner than that prescribed by law, rule or regulation shall be guilty of a class B misdemeanor.

5. The provisions of this section shall not apply to any offense for which a uniform summons and complaint is prescribed by the commissioner of motor vehicles pursuant to section two hundred seven of the vehicle and traffic law or by the commissioner of parks and recreation pursuant to article twenty-seven of the parks and recreation law.

§ 71-0205. Verification or affirmation of accusatory instruments.

1. When an appearance ticket as authorized under section 71-0203 has been served by an officer described in section 71-0201, any supervisor of such enforcement officer to whom the service of the appearance ticket is reported is hereby authorized to administer to such enforcement officer all necessary oaths in connection with the execution of the accusatory instrument to be presented in court by such enforcement officer in the prosecution of the offense involved.

2. A simplified information need not be verified if it is affirmed by the issuing officer, under penalty of perjury.

§ 71-0207. Pleas by mail.

A defendant charged with a violation of any provision of this chapter or rule, regulation or order promulgated or adopted thereunder may himself plead guilty to the charge in open court. He may also submit to the magistrate having jurisdiction, in person, by duly authorized agent, or by registered mail, a statement (a) that he waives arraignment in open court and the aid of counsel, (b) that he pleads guilty to the offense as charged, (c) that he elects and requests that the charge be disposed of and the fine or penalty fixed by the court, (d) of any explanation that he desires to make concerning the offense charged, and (e) that he makes all statements under penalty of perjury. Thereupon the magistrate may proceed as though the defendant had been convicted upon a plea of guilty in open court, provided however, that any imposition of fine or penalty hereunder shall be deemed tentative until such fine or penalty shall have been paid and discharged in full. If upon receipt of the aforesaid statement the magistrate shall deny the same, he shall thereupon notify the defendant of this fact, and that he is required to appear before the said magistrate at a stated time and place to answer the charge which shall thereafter be disposed of pursuant to the applicable provisions of law.

§ 71-0209. Convictions; bail forfeitures; failure to appear.

1. The trial court or clerk thereof shall certify to the commissioner the facts of any case involving a violation of any provision of this chapter, or of any rule, regulation or order adopted pursuant thereto,
 (a) within five days of the date of conviction of such violation;
 (b) within five days of a forfeiture of bail in such case; or
 (c) within ninety days of a failure of the defendant to appear on the initial date of appearance, or any adjourned date for appearance or trial.

2. The commissioner may, by regulation, provide for the form and

content of such certification and limit the violations for which certifications shall be required. Such certifications shall be presumptive evidence of the facts therein contained and may, in the discretion of the commissioner, be recorded in the records of the department. In the event a conviction which has been so recorded is subsequently reversed, the commissioner, upon receiving due notice thereof, shall record such fact in such records.

3. Upon the conviction of any person of a violation for which a certification must be made to the commissioner, pursuant to this section, the court or clerk shall also enter such conviction on any license or certificate issued by the department if such entry is required by the regulations of the commissioner.

§ 71-0211. Disposition of fees and penalties.

1. Notwithstanding any other provisions of law to the contrary, all fines and penalties collected pursuant to title nineteen of this article, except amounts required to be paid into the conservation fund pursuant to subdivision two of section 71-1929 of such title; title twenty-one of this article; title twenty-seven of this article, except amounts required to be paid into the hazardous waste remedial fund pursuant to subdivision two of section 71-2725 of such title; and title forty-one of this article shall be paid into the general fund to the credit of the state purposes account.

2. Unless otherwise provided in this chapter, not later than the tenth day of each month, all fines, penalties and forfeitures collected for violations of this chapter or rules, regulations, local laws or ordinances adopted thereunder under judgment of any town or village court, shall be paid over by such court to the comptroller of the state, with a statement accompanying the same, setting forth the action or proceeding in which such moneys were collected, the name and residence of the defendant, the nature of the offense, and the fines and penalty imposed. The comptroller shall pay these funds into the general fund of the state.

All fines and penalties collected for violations of this chapter by courts operating pursuant to section thirty-nine of the judiciary law shall be paid to the state commissioner of taxation and finance on a monthly basis no later than ten days after the last day of each month. All such fines and penalties shall be the property of the state.

§ 71-0213. Mandatory surcharge.

1. Whenever proceedings result in a conviction for an offense under this chapter there shall be levied, in addition to any sentence required or permitted by law, the following mandatory surcharges: (a) in the amount of twenty-five dollars for violations of sportfishing regulations set forth in 6 NYCRR 10; (b) in the amount of seventy-five dollars for all other offenses under this chapter provided, however, that convictions for offenses under articles seventeen, nineteen or twenty-seven of this chapter shall be subject to a mandatory surcharge equal to the greater of seventy-five dollars or six percent of any penalty or fine imposed. The mandatory surcharge shall be paid to the clerk of the court who shall remit such mandatory surcharge to the state comptroller provided, however, that in cases where the conviction was rendered by a town or a village justice court, the clerk of such court shall pay twenty-five dollars of such surcharge to the chief fiscal officer of the town or village in the case of surcharges resulting from paragraph (b) of this subdivision and ten dollars in the case of surcharges resulting from paragraph (a) of this subdivision and shall pay the remaining amounts of such mandatory surcharges to the state comptroller in the same manner as provided in section 71-0211 of this article. The comptroller shall pay such monies into the state treasury to the credit of the general fund.

2. Any person who has paid a mandatory surcharge under the authority of this section which is ultimately determined not to be required by this section shall be entitled to a refund of such mandatory surcharge upon application to the state comptroller. The state comptroller shall require such proof as is necessary to determine whether a refund is

required by law.

TITLE 3
SUMMARY ABATEMENT

Section 71-0301. Summary abatement.

§ 71-0301. Summary abatement.

Notwithstanding any inconsistent provisions of law, whenever the commissioner finds, after investigation, that any person is causing, engaging in or maintaining a condition or activity which, in his judgment, presents an imminent danger to the health or welfare of the people of the state or results in or is likely to result in irreversible or irreparable damage to natural resources, and relates to the prevention and abatement powers of the commissioner and it therefore appears to be prejudicial to the interests of the people of the state to delay action until an opportunity for a hearing can be provided, the commissioner may, without prior hearing, order such person by notice, in writing wherever practicable or in such other form as in the commissioner's judgment will reasonably notify such person whose practices are intended to be proscribed, to discontinue, abate or alleviate such condition or activity, and thereupon such person shall immediately discontinue, abate or alleviate such condition or activity. As promptly as possible thereafter, not to exceed fifteen days, the commissioner shall provide the person an opportunity to be heard and to present proof that such condition or activity does not violate the provisions of this section. The commissioner shall adopt any other appropriate rules and regulations prescribing the procedure to be followed in the issuance of such orders. Any person who violates any of the provisions of, or who fails to perform any duty imposed by this section, or any rule, regulation or order promulgated by the commissioner hereunder, shall be liable to a civil penalty of not more than twenty-five hundred dollars for each such violation and an additional penalty of not more than five hundred dollars for each day during which such violation continues, and, in addition thereto, such

person may be enjoined from continuing such violation. Penalties and injunctive relief provided herein shall be recoverable in an action brought by the attorney general at the request and in the name of the commissioner.

TITLE 4

DELEGATION OF ENFORCEMENT

Section 71-0401. Delegation of civil enforcement authority.

71-0403. Delegation of criminal enforcement authority.

§ 71-0401. Delegation of civil enforcement authority.

Whenever the attorney general is authorized under this chapter to initiate or prosecute a civil action or proceeding on behalf of the department, such authority may in the discretion of the attorney general be delegated to the department, to initiate or prosecute any such action or proceeding.

§ 71-0403. Delegation of criminal enforcement authority.

Whenever the attorney general is authorized under this chapter to prosecute a criminal proceeding on behalf of the department, such authority may in the discretion of the attorney general be delegated to the department, to initiate or conduct any such prosecution. Provided, however, that in any event the district attorney of the county in which the violation occurs may initiate or conduct any such prosecution.

TITLE 5

ENFORCEMENT OF PROVISIONS DERIVED FROM FORMER CONSERVATION LAW

Section 71-0501. Applicability of this title.

71-0503. Investigation by department.

71-0505. Suits and prosecution.

- 71-0507. Actions for penalties generally.
- 71-0509. Costs in actions by the people.
- 71-0511. Judgments; how enforced.
- 71-0513. Jurisdiction of courts in criminal cases.
- 71-0517. Witnesses not excused from testifying.
- 71-0519. Compromise of civil penalty.
- 71-0521. Certificate by court or justice.
- 71-0523. Power of the department to settle or compromise an action.
- 71-0525. Powers of designated departmental officers and employees and members of the state police.

§ 71-0501. Applicability of this title.

This title shall apply to sections 3-0109 through 3-0115 inclusive and sections 3-0305 and 3-0307 of article 3; articles 9, 11, 13 and 15; titles 7, 9, 11 and 13 of article 21; articles 23 and 24; and articles 43, 45 and 47 of this chapter.

§ 71-0503. Investigation by department.

1. Any investigation, inquiry or hearing which the department has power to undertake or to hold may be undertaken or held by or before the commissioner, the deputy commissioner or the head of a division, or before any other officer or employee of the department designated for such purpose by written order of the commissioner, filed in the office of the department. All investigations, inquiries, hearings and decisions of the commissioner, the deputy commissioner or the head of a division, shall be and be deemed to be the investigations, inquiries, hearings and decisions of the department, and every order or decision made by the commissioner, and every order or decision made by the deputy commissioner or a head of division and approved and confirmed by the commissioner and ordered filed in the office of the department, shall be and be deemed to be the order or decision of the department.

2. The commissioner, deputy commissioner, a head of a division, or an officer or employee of the department duly designated by the commissioner, shall have the power to administer oaths in any proceedings which the department is required or authorized by law to conduct.

3. The department shall have power to subpoena and require the attendance in this state of witnesses and the production by them of books and papers pertinent to the investigations and inquiries which it is authorized to make under any provision of this chapter listed in section 71-0501 or under titles 5 through 15 inclusive and title 33 of this article and to examine them and such public records as it shall require in relation thereto, and for the purpose of such examinations the department shall possess all the powers conferred by the Legislative Law upon a committee of the Legislature or by the Civil Practice Law and Rules upon a board or committee, and may invoke the power of any court of record in the state to compel the attendance and testifying of witnesses and the production by them of books and papers as aforesaid. A subpoena issued under this section shall be regulated by the Civil Practice Law and Rules.

4. In any investigation or inquiry by or upon any hearing before the department, the commissioner, his deputy or any other officer conducting the investigation, inquiry or hearing may confer immunity in accordance with the provisions of section 50.20 of the Criminal Procedure Law.

§ 71-0505. Suits and prosecution.

1. The commissioner shall have the power to bring actions suits or proceedings as in his judgment may be necessary or proper to perform any of the powers, functions or duties imposed upon him or upon the department or any division thereof by any of the provisions of this chapter listed in section 71-0501 or under titles 5 through 15 inclusive and title 33 of this article or to prevent the violation by any person, public or private, of any of the provisions thereof; and shall have the power to defend such actions, suits or proceedings as may arise through

the performance of any of the powers, duties or functions imposed upon him or upon the department or any division thereof.

2. It shall be the duty of the Attorney General, when requested by the department, to appoint an Assistant Attorney General, and such assistants as may be necessary and assign them to the department. Such Assistant Attorney General and assistants shall receive salaries, to be fixed by the Attorney General within the appropriation therefor. It shall be the duty of such assistant, in the name of the Attorney General, to conduct all prosecutions for penalties imposed by the provisions of this chapter listed in section 71-0501 or under titles 5 through 15 inclusive and title 33 of this article and to bring all actions, suits and proceedings, which the department shall be authorized to institute and maintain, and to defend all actions, suits and proceedings brought against the department, its officers or employees of or on account of any act or any thing done by the said department, its officers or employees when such act or thing was, in the opinion of the Attorney General, done in the discharge of any official duty or in reasonable exercise of authority.

3. No action, suit or proceeding in which the title to lands of the state in forest preserve counties shall be involved shall be withdrawn or discontinued, nor shall judgment therein against the state be entered on consent except on special permission of the court and after application made in open court, on which application all the terms and conditions of the settlement shall be fully stated in writing and the reasons therefor set forth at length.

§ 71-0507. Actions for penalties generally.

1. Actions for penalties for violation of any provisions of this chapter listed in section 71-0501 or under titles 5 through 15 inclusive and title 33 of this article, except as otherwise expressly provided,

a. Shall be in the name of the "People of the State of New York";

b. Must be brought on order of the department; and

c. May be compromised, settled and discontinued as provided in sections 71-0505 and 71-0519 and subdivision 11 of section 11-0505.

2. Such actions, if in justices' courts, may be brought in any town of the county in which the penalty is incurred, or, if the defendant resides in another county, in any town of the county in which the defendant resides.

3. Moneys received by a town justice or a village justice in any action for a penalty brought under the provisions of this chapter listed in section 71-0501 of titles 5 through 15 inclusive and title 33 or upon the settlement or compromise thereof, or a fine for a violation of the provisions of this chapter listed in section 71-0501 and titles 5 through 15 inclusive and title 33 of this article shall be paid to the State Comptroller as provided in section 27 of the Town Law and section 4-410 of the village law. From the moneys so received, the State Comptroller shall pay all lawful fees for services rendered in such actions when instituted by order of the department or upon information of a conservation officer, regional and assistant regional conservation officer, special game protector, district ranger, forest ranger, or member of the state police. The balance of such moneys arising from penalties under articles 11 or 13 or title 9 of this article or upon the settlement or compromise thereof or from fines for violations of any of the provisions of articles 11 or 13 or title 9 of this article after the payment of lawful fees shall be credited by the Comptroller to the conservation fund. The Comptroller shall adjust and settle his account with the conservation fund in the manner provided by section 99-a of the State Finance Law. The balance of all other such moneys after payment of lawful fees shall be credited by the Comptroller to the general fund.

4. All moneys received by any other person or court in an action for a penalty brought under the provisions of this chapter listed in section 71-0501 and titles 5 through 15 inclusive and title 33 of this article or upon the settlement or compromise thereof, or a fine for a violation of the provisions of this chapter listed in section 71-0501 and titles 5

through 15 inclusive and title 33 of this article, shall be paid by such person or court to the department within thirty days after receipt thereof. The department shall pay the expenses of collection and the lawful fees of magistrates and constables for services performed in criminal actions brought upon information of a conservation officer, regional and assistant regional conservation officer, special game protector, district ranger, forest ranger, or member of the state police. Such moneys derived from fines or penalties for violations of articles 11 or 13 or title 9 of this article or from the settlement or compromise thereof shall be paid by the department to the Commissioner of Taxation and Finance and credited to the conservation fund. All other moneys so received by the department shall be paid to the Commissioner of Taxation and Finance and credited to the general fund.

§ 71-0509. Costs in actions by the people.

In case of recovery of any amount in an action brought for a penalty under the provisions of this chapter listed in section 71-0501 or under titles 5 through 15 inclusive and title 33, of this article or any action authorized by such law as amended, in any court of record the people shall be entitled to recover full costs, of course, and at the rates as provided for civil actions.

§ 71-0511. Judgments; how enforced.

Judgments recovered under the provisions of this chapter listed in section 71-0501 or under titles 5 through 15 inclusive and title 33 of this article may be enforced by contempt.

§ 71-0513. Jurisdiction of courts in criminal cases.

1. Except as provided in subdivision 2 of this section, County Courts, and subject to the power of removal provided in the Criminal Procedure Law, district courts, the New York City criminal court, town courts and

village courts shall have, in the first instance, concurrent jurisdiction of offenses committed under the provisions of this chapter listed in section 71-0501 or under titles 5 through 15 inclusive and title 33 of this article, provided, however, that an action before a town court shall be brought in the town in which the offense was committed or an adjoining town, and that an action before a County Court shall be brought in the county in which the offense was committed. A warrant shall be returnable before the local criminal court issuing the same.

2. This section does not apply to offenses committed under articles 11 and 13 or title 9 of this article.

§ 71-0517. Witnesses not excused from testifying.

No person shall be excused from testifying or producing any books, papers or other documents in any civil or criminal action or proceeding taken or had under the provisions of this chapter listed in section 71-0501 or under titles 5 through 15 inclusive and title 33 of this article, upon the ground that his testimony might tend to convict him of a crime, or subject him to a penalty or forfeiture. But no person shall be prosecuted, punished or subjected to any penalty or forfeiture for or on account of any act, transaction, matter or thing concerning which he shall, under oath, have testified or produced documentary evidence, and no testimony so given or produced shall be received against him upon any criminal investigation or proceeding; provided, however, that no person so testifying shall be exempt from prosecution or punishment for any perjury committed by him in his testimony. Nothing herein contained is intended to give, or shall be construed as in any manner giving, unto any corporation, immunity of any kind.

§ 71-0519. Compromise of civil penalty.

1. A person who has violated any of the provisions of this chapter listed in section 71-0501 or under titles 5 through 15 inclusive and

title 33 of this article, and who desires to compromise and settle his civil liability therefor, may appear with any conservation officer, regional and assistant regional conservation officer, special game protector, district ranger, forest ranger, or member of the state police, before a court or justice having jurisdiction in civil actions, and thereupon such person may, upon the consent of the representative of the department appearing, compromise and settle his liability for civil penalties, for an amount agreed upon between said court or justice, the representative of the department and the person who committed such violation.

2. The agreed amount shall not be less than ten dollars nor more than the amount for which such person would be liable in a civil action for penalties; provided that any person who has violated the provisions of this chapter listed in section 71-0501 or under titles 5 through 13 inclusive and titles 27 and 33 of this article, involving the taking of a deer with the aid of an artificial light, or has illegally taken a deer prior to the first day of the open season or after the last day of the open season in the county in which taken, or has otherwise illegally taken a deer, and who desires to compromise and settle his civil liability therefor, may, in the manner herein provided, compromise and settle his liability for civil penalties under the provisions of this chapter listed in section 71-0501 or under titles 5 through 13 inclusive and titles 27 and 33 of this article, in an amount not less than one hundred dollars nor more than the amount for which such person would be liable in a civil action for penalties.

3. If such compromise be made, such person shall forthwith subscribe his name to a statement setting forth concisely the facts constituting such violation, the amount agreed upon, and that a judgment may be entered against him for that sum. Upon said statement being sworn to before and filed with said court or justice, he shall forthwith enter in his civil docket a record of the proceedings and amount of the judgment.

4. Said court or justice shall upon the entry of such judgment be entitled to a fee of two dollars and fifty cents to be paid by the person who committed such violation, provided, however, that if the

justice is a justice of a town or village, such fee shall be the property of the town or village of which he is an officer, and shall be paid by said justices to the State Comptroller in the same manner as other fees received by such justice.

5. A judgment entered as provided herein may be enforced by an execution against the property of the defendant, but no body execution shall issue thereon. Such judgment shall be a bar to a criminal action for the same violation, if satisfied within thirty days from the date of the entry thereof.

6. Whenever a person who desires to compromise and settle his civil liability pursuant to the provisions of this section is an infant over the age of fourteen years, upon his appearance for such purpose, the court or justice before whom such appearance is made, may, upon the application of such person appoint a person to appear as his guardian for the purpose of compromising and settling his said civil liability. The written consent of the person so appointed must be filed with the court or justice before his appointment.

§ 71-0521. Certificate by court or justice.

The court or justice, other than a town justice or a village police justice, before whom any person shall be tried or before whom a compromise of the civil penalties for a violation of any provision of this chapter listed in section 71-0501 or under titles 5 through 15 inclusive and title 33 of this article, shall have been made, or the clerk of the court, if there be a clerk, shall, at the termination of such trial or proceeding, forthwith mail or deliver to the department at Albany, or to its representative at such trial or proceeding, a certified statement of the disposition of the case or proceeding, giving the date thereof, the name of the defendant, the name of the person upon whose information the action or proceeding was instituted, the date and place of the violation, the name of each witness sworn in support of the charges, and the costs of the court or fees of the justice, and the fees of the constable, if any. Provided, however, that a town justice or a

village police justice before whom any person shall be tried or before whom a compromise of the civil penalties for a violation of any provision of this chapter listed in section 71-0501 or under titles 5 through 15 inclusive and title 33 of this article, shall have been made shall forthwith mail or deliver to the department at Albany or to its representative in attendance at such trial or proceeding such certified statement, and within the first ten days of the month following the termination of such trial or proceeding deliver to the State Comptroller at Albany a statement in such form as the Comptroller may require. The Comptroller upon receipt of such statement shall, as provided in section 71-0507, audit the bills of the justice of the peace and the constable for fees in such trial or proceeding and shall pay to the persons entitled thereto the amounts allowed by such audit and shall charge same to the conservation fund.

§ 71-0523. Power of the department to settle or compromise an action.

The department shall empowered to settle or compromise in its discretion any action or cause of action to recover a penalty under the provisions of this chapter listed in section 71-0501 or under titles 5 through 15 inclusive and title 33 of this article, as it may deem advantageous to the state.

§ 71-0525. Powers of designated departmental officers and employees and members of the state police.

1. All police officers, such employees as may be designated by the commissioner, and all peace officers, when acting pursuant to their special duties, shall enforce the provisions of this chapter listed in section 71-0501 or under titles 5 through 15 inclusive and title 33 of this article, or of judgments obtained for violation thereof, and shall have, particularly, the following powers:

a. To execute all warrants and search warrants issued for violation of articles 11 and 13 and titles 9 of this article and to serve subpoenas

issued for examination, investigation or trial of offenses against any of its provisions;

b. To search without search warrant any boat or vehicle of any kind, any box, locker, basket, creel, crate, game bag, package or any container of any nature and the contents of any building other than a dwelling whenever they have cause to believe that any provision of this article or of any law for the protection of fish, shellfish, crustacea, wildlife, game or protected insects has been or is being violated, and to use such force as may be necessary for the purpose of examination and search;

c. To search any dwelling and its contents, provided they have a search warrant to do so;

d. To arrest without warrant any person committing in their presence a misdemeanor under this chapter listed in section 71-0501 or under titles 5 through 15 inclusive and title 33 of this article and to take such person immediately before a magistrate having jurisdiction for trial.

2. A peace officer, acting pursuant to his special duties or a police officer shall have the same powers as environmental conservation officers and state police under the fish and wildlife law, except the power to search without a warrant.

TITLE 7

ENFORCEMENT OF ARTICLE 9

Section 71-0701. Applicability of title.

71-0703. Penalties.

71-0705. Enforcement.

71-0707. Resisting or obstructing departmental agent or employee.

71-0709. Injury to state lands.

71-0711. Injury to municipal or private lands.

71-0712. Timber theft and trespass education-training.

71-0713. Recovery for damages from fires.

71-0715. Rules of evidence applicable to forest fire cases.

§ 71-0701. Applicability of title.

In addition to the provisions of sections 71-0101 and 71-0301, and titles 5 and 40 of this article, the provisions of this title shall be applicable to the enforcement of article 9 of this chapter.

§ 71-0703. Penalties.

In order to secure the enforcement of the several sections of article 9 the following fines and civil penalties are provided:

1. Except as otherwise provided in subdivision 4, 5, 6 or 7 of this section, any person who violates any provision of article 9 or the rules, regulations or orders promulgated pursuant thereto or the terms of any permit issued thereunder, or who fails to perform any duty imposed by any provision thereof shall be guilty of a violation, and, upon conviction, shall be punished by a fine of not more than two hundred fifty dollars, or by imprisonment for not more than fifteen days, or by both such fine and imprisonment, and in addition thereto shall be liable to a civil penalty of not less than ten nor more than one hundred dollars.

2. The violation of any of the provisions of the following sections shall subject the person guilty thereof to the following civil penalties in addition to the liability prescribed in subdivision 1 of this section:

- a. Section 9-1113 of this chapter, two dollars per tree;
- b. Subdivision 3 of section 9-1105 of this chapter, twenty-five dollars per day;
- c. Subdivision 4 of section 9-1105 of this chapter, and subdivision 1

of section 9-1117 of this chapter, ten dollars per mile per day;

d. Section 9-1115 of this chapter, ten dollars per mile;

e. Subdivision 2 of section 9-1117 of this chapter, one hundred dollars per each offense; and

f. Section 9-1119 of this chapter, one hundred dollars per day per locomotive.

With respect to the penalty for violation of subdivision 4 of section 9-1105 of this chapter, the owner and every person engaged in such cutting shall be liable therefor; however, the liability for penalty shall not arise until the expiration of twenty days after service, personally or by mail upon the alleged violator at his last known place of residence of a written notice of failure to comply with the requirements of subdivision 4 of section 9-1105 of this chapter.

3. Any person who molests, injures, removes, destroys or withholds supplies or other material maintained for forest fire protection purposes shall be guilty of a violation and shall be punishable and liable to a civil penalty as provided in subdivision 1 of this section.

4. Any person who sets fire wilfully in violation of subdivision 1 of section 9-1105 of this chapter shall be guilty of a felony.

5. In addition to any prosecution as provided under article one hundred fifty-five of the penal law, any person who violates subdivision 1 of section 9-0303 or section 9-1501 of this chapter except where the lawful exercise of an easement or right of way on land not owned by the state is involved shall be guilty of a class A misdemeanor. Upon conviction, such person shall be sentenced to a fine and/or imprisonment as provided in the penal law.

6. (a) In addition to any other penalty provided by law, any person who violates subdivision 1 of section 9-0303 of this chapter shall be liable to a civil penalty of two hundred fifty dollars per tree or

treble damages, based on the stumpage value of such tree or both. Where the order or decision finds that the defendant established by clear and convincing evidence, that when such defendant committed the violation, he or she had cause to believe that the land was his or her own, or that he or she had an easement or right of way across such land which permitted such action, damages shall be awarded on the basis of the stumpage value of such tree or trees in the market as if they were privately owned. Notwithstanding the foregoing, this section shall not be construed to authorize the cutting of timber or removal of trees where such action would otherwise be violative of any provision of the state constitution or law.

(b) In addition to any other penalty provided by law, a person who violates section 9-1501 of this chapter shall be liable for a civil penalty of two hundred fifty dollars per tree or treble damages or both, based on the stumpage value of such tree or trees. Where the order or decision finds that the defendant established by clear and convincing evidence, that when such defendant committed the violation, he or she had cause to believe that the land was his or her own or that he or she had an easement or right of way across such land which permitted such action, damages shall be awarded on the basis of the stumpage value of such tree or trees. Notwithstanding the foregoing, this section shall not be construed to authorize the cutting of timber or removal of trees where such action would otherwise be violative of any provision of the state constitution or law.

(c) For purposes of this subdivision, "stumpage value" shall mean the current fair market value of a tree as it stands prior to the time of sale, cutting, or removal. Stumpage value shall be determined by one or more of the following methods: the sale price of the tree in an arm's-length sale, a review of solicited bids, the stumpage price report prepared by the department of environmental conservation, comparison with like sales on trees on state or private lands, or other appropriate means to assure that a fair market value is established within an acceptable range based on the appropriate geographic area.

7. In addition to the penalties otherwise provided, any person who violates any of the provisions of subdivision 1 of section 9-0303 or section 9-1501 of this chapter may be ordered by the commissioner or the

court to make reparations for any permanent and substantial damage caused to the land or the improvements thereon as a result of such violation. Such reparations shall be of such kind, nature and extent as will reasonably restore the lands affected by the violation to their condition immediately before the violation and may be made by physical restoration of such lands and/or by the assessment of a monetary payment to make such restoration.

8. Any person who violates any provision of any proclamation issued by the governor pursuant to the provisions of section 9-1101 of this chapter shall be guilty of a violation and shall be punishable and liable to a civil penalty as provided in subdivision 1 of this section.

9. a. Any person who transports, sells, imports or introduces invasive species, in violation of the regulations promulgated pursuant to section 9-1709 of this chapter shall be subject to the following:

For any first violation in lieu of a penalty there may be issued a written warning by the department and there may also be issued education materials at the discretion of the department regarding requirements related to invasive species. Such person shall, however, for any subsequent violation thereafter be subject to a fine of no less than two hundred fifty dollars.

b. Any nursery grower licensed pursuant to article fourteen of the agriculture and markets law, any person who owns or operates a public vessel as such term is defined in paragraph (a) of subdivision six of section two of the navigation law, or any person who owns or operates a commercial fishing vessel who transports, sells, imports or introduces invasive species in violation of the regulations promulgated pursuant to section 9-1709 of this chapter, shall be subject to a fine of not less than six hundred dollars upon the first penalty. Upon the second penalty such person shall be subject to a fine of not less than two thousand dollars. Upon a subsequent penalty and after a hearing or opportunity to be heard upon due notice the following penalties may apply: (i) such nursery grower may be subject to the revocation procedures of section one hundred sixty-three-c of the agriculture and markets law (ii) such

person's vessel registration may be suspended or (iii) such person's fishing permit may be revoked by the department.

10. Any person who violates section 9-1710 of this chapter shall be guilty of a violation and shall be punishable and liable to a civil penalty as provided in subdivision one of this section, provided, however, that for any first violation in lieu of a penalty there shall be issued a written warning by the department and there shall also be issued education materials at the discretion of the department regarding requirements related to invasive species. Such person shall be subject to a fine of up to one hundred fifty dollars for a second offense, up to two hundred fifty dollars for a third offense, and no less than two hundred fifty dollars nor more than one thousand dollars for a fourth or subsequent offense.

§ 71-0705. Enforcement.

1. All police officers and peace officers, when acting pursuant to their special duties, shall have the power to arrest without warrant any person committing an offense under the provisions of article 9 and may take such persons immediately before a magistrate having jurisdiction for trial, and exercise such other powers of peace officers as may be necessary for the enforcement of the provisions of article 9. No employees, police officers or peace officers shall compromise or settle any violation of article 9 without the order of the department.

2. In lieu of arrests, such persons designated pursuant hereto may issue appearance tickets as provided for in article one hundred fifty of the criminal procedure law to persons committing an offense other than a felony under the provisions of this article.

§ 71-0707. Resisting or obstructing departmental agent or employee.

Any person who resists or obstructs an authorized agent or employee of the department while he is engaged in carrying out any provision of

section 9-0305 shall be guilty of a violation which shall be punishable by a fine not exceeding one hundred dollars and by an additional fine of not exceeding twenty-five dollars for each additional day of such resistance or obstruction.

§ 71-0709. Injury to state lands.

Any person who intentionally or negligently causes a fire which burns on or over state lands shall be liable to the state for treble damages and, in addition, to a civil penalty of ten dollars for every tree killed or destroyed by such fire. Damages to state lands and timber shall be ascertained and determined at the same rate of value as if such property were privately owned.

§ 71-0711. Injury to municipal or private lands.

Any person who causes a fire which burns on or over lands belonging to another person or to a municipality shall be liable to the party injured (a) for actual damages in case of fire negligently caused or (b) for the higher of actual damages or damages at the rate of five dollars for each tree killed or destroyed in case of fire wilfully caused.

§ 71-0712. Timber theft and trespass education-training.

Within such funds as may be specifically appropriated therefor, the commissioner is hereby authorized to seek the cooperation and assistance of the attorney general's office and the office of court administration to develop and provide educational-training programs for municipal justice courts, district attorneys and law enforcement agencies in relation to the control and prosecution of timber theft and trespass.

§ 71-0713. Recovery for damages from fires.

The state, a municipality or any person may sue for and recover damages under section 71-0709 and 71-0711, notwithstanding the distance from the place where the fire was set or started and notwithstanding the same may have burned over and across several separate, intervening and distinct tracts, parcels or ownerships of land.

§ 71-0715. Rules of evidence applicable to forest fire cases.

1. Prima facie cause on railroad right of way. The fact that a fire originates upon the right of way of a railroad shall be prima facie evidence that the fire was caused by the negligence of the railroad company.

2. Prima facie cause in clearing lands. Whenever a fire has been set for the purpose specified in subdivision 5 of section 9-1105 in any of the fire towns it shall be prima facie evidence that the fire was started by the owner or occupant of the land.

TITLE 9

**ENFORCEMENT OF ARTICLES 11 AND 13--THE FISH AND
WILDLIFE LAW**

Section 71-0901. Applicability of title.

71-0903. Accessories guilty as principals.

71-0905. Penal Law, Criminal Procedure Law and other laws not affected.

71-0907. Powers and duties of enforcement officers.

71-0909. Forfeitures.

71-0911. Search warrants; when issued.

71-0913. Reciprocal enforcement of violations in boundary waters.

71-0915. Abatement of nuisances.

71-0917. Presumptions from possession.

71-0919. Punishment of violations of Fish and Wildlife Law.

71-0921. Misdemeanors.

71-0923. Violations.

71-0924. Illegal commercialization of fish, shellfish,
crustaceans, and wildlife.
71-0925. Civil penalties.
71-0927. Mandatory license revocation.

§ 71-0901. Applicability of title.

In addition to the provisions of sections 71-0101, 71-0301 and title 5 of this article the provisions of this title shall be applicable to the enforcement of articles 11 and 13 of this chapter. This title shall also apply to enforcement undertaken pursuant to the functions, powers, duties and obligations of the Department of Environmental Conservation provided for in section 41-0105.

§ 71-0903. Accessories guilty as principals.

1. A person who counsels or aids in a violation of any provision of the Fish and Wildlife Law or a regulation or order of the department pursuant to the Fish and Wildlife Law, or knowingly shares in any of the proceeds of such a violation by receiving or possessing fish, game, wildlife, shellfish, crustacea or protected insects is guilty of the violation which he counsels or aids, or the proceeds of which he knowingly shares.

2. In any case where possession, transportation, buying or selling of fish, game, wildlife, shellfish, crustacea or insects is unlawful solely because the taking thereof was unlawful, such possession, transportation, buying or selling by a person other than a person guilty of the unlawful taking shall be punishable only if done with knowledge that the taking was unlawful.

§ 71-0905. Penal Law, Criminal Procedure Law and other laws not affected.

1. No provision or language of the Fish and Wildlife Law shall be construed as amending, repealing, superseding or limiting any provision of the Penal Law, Criminal Procedure Law or other law, except to the extent that such provision or language is expressly stated to be applicable notwithstanding such law, or notwithstanding any other law. Except to such extent, any provisions of the Fish and Wildlife Law inconsistent with the provisions of any other law shall be deemed to be effective for the purposes of the Fish and Wildlife Law only.

§ 71-0907. Powers and duties of enforcement officers.

1. All officers and employees, designated by the commissioner, and all peace officers, when acting pursuant to their special duties and all police officers, shall enforce all laws of the state relating to fish, wildlife, shellfish, crustacea, protected insects and game. Such officers may include conservation officers, regional and assistant regional conservation officers, special game protectors, inspectors of the office of parks and recreation, bay constables, and forest rangers.

2. All police officers, and all peace officers, when acting pursuant to their special duties, and all officers and employees of the department, as may be designated by the commissioner, shall enforce the provisions of title 21 of article 11 of the Fish and Wildlife Law, and the provisions of article 71 applicable thereto, except that the department and its enforcement officers are not obligated to enforce the provisions of section 11-2113 prohibiting trespass upon lands privately owned, other than licensed game preserves and shooting preserves, unless the trespass committed consists of (a) hunting, fishing or trapping or disturbing wildlife; or (b) cutting, pulling or digging of trees; or (c) the removal of trees.

3. The officers named in subdivision 1 shall enforce the provisions of this chapter listed in section 71-0501 or under titles 5 through 15 inclusive and title 33 of this article or of judgments obtained for violation thereof, and shall have, particularly, the powers stated in subdivision 4. Peace officers shall have the same powers as conservation

officers, and state police under the Fish and Wildlife Law, except the power to search without warrant.

4. Officers named in subdivision 1 shall have power:

a. To execute all warrants and search warrants issued for violation of the Fish and Wildlife Law and to serve subpoenas issued for examination, investigation or trial of offenses against any of its provisions;

b. To search without search warrant any boat or vehicle of any kind, any box, locker, basket, creel, crate, game bag, package or any container of any nature and the contents of any building other than a dwelling whenever they have cause to believe that any provision of this article or of any law for the protection of fish, shellfish, crustacea, wildlife, game or protected insects has been or is being violated, and to use such force as may be necessary for the purpose of examination and search;

c. To search any dwelling and its contents, provided they have a search warrant to do so;

d. To arrest without warrant any person committing in their presence a misdemeanor under the provisions of this chapter listed in section 71-0501 or under titles 5 through 15 inclusive and title 33 of this article and to take such person immediately before a magistrate having jurisdiction for trial;

e. To seize as evidence without warrant any fish, shellfish, crustacea, wildlife, game, or parts thereof, protected insects or plumage as defined in section 11-1729, whenever they have cause to believe it is possessed or transported in violation of law, or it bears evidence of illegal taking, or it is possessed or transported under circumstances making the possession or transportation presumptive evidence of illegal taking;

f. To seize as evidence without warrant

(1) Any net, trap or other device constituting a nuisance as defined

in section 71-0915;

(2) Any net, trap or device other than a boat, a vehicle, or aircraft or a firearm when they have cause to believe that its possession or use is in violation of any provision of the Fish and Wildlife Law or regulation pursuant thereto;

(3) Any firearm, when they have cause to believe that it has been used in a violation of the Fish and Wildlife Law constituting a misdemeanor involving the illegal taking or attempting to take wild deer;

(4) Any rakes, tongs, dredges, or device other than a boat or vehicle used, or in possession for purpose of use, for the taking of shellfish in violation of subdivisions 1 or 2 of section 13-0309. For the purposes of this paragraph "device" includes a bird, dog, or other animal used in or as an aid in taking fish or wildlife, any jack light, spot light or other artificial light other than a headlight attached in proper position to a motor vehicle, any hunting appliance or apparatus and any fishing or netting gear or tackle. This paragraph does not limit any power of seizure pursuant to warrant.

(5) Any boat or vehicle, when they have probable cause to believe it has been used for the taking of shellfish in violation of subdivision 2 or 3 of section 13-0309 of this chapter by a person possessing, at the time of such use, commercial shellfish harvesting gear or shellfish in excess of two pecks. For the purposes of this subparagraph "commercial shellfish harvesting gear" shall mean rakes, tongs, dredges and other devices commonly used to harvest shellfish for commercial purposes.

5. To retain custody of and provide for the safekeeping of any thing seized as provided in paragraph e or f of subdivision 4 of this section, or deposit it for safekeeping with any police officer, as he deems appropriate, subject to regulations of the department, or of the Superintendent of State Police in the case of a member of the state police, and subject to order of any court having jurisdiction, until determination of any prosecution, civil or criminal, arising from the violation or alleged violation with respect to which they are evidence.

6. No officer named in subdivision 1 shall compromise or settle out of court any civil liability for any violation of the Fish and Wildlife Law.

7. No person shall fail or refuse to comply with any lawful order or directive of any conservation officer or other person duly empowered to enforce all laws of the state relating to fish, wildlife, shellfish, crustacea, protected insects and game.

8. Notwithstanding section 13-0334 of this chapter to the contrary, a. where a commercial fishing vessel, lawfully operating under the fishing permits of another state: (1) encounters or is forecasted to encounter unsafe weather conditions defined as high winds thirty-five knots or greater or waves ten feet or higher or ice or other adverse condition that make the continuation of the voyage unsafe and poses a risk to life and property, or (2) experiences a mechanical problem, that makes the continuation of the voyage unsafe and poses a risk to life and property including compromised hull integrity or pump failures or (3) experiences a significant medical emergency which requires immediate medical attention necessary to protect the health of any person on board, or (4) experiences loss of essential gear such as support systems that renders the vessel unable to remain at sea said commercial fishing vessel may dock at a New York port. A sinking vessel or a vessel leaking oil or fuel may be otherwise directed when the safety of persons is maintained and the vessel poses a significant threat to the waters of New York. The commercial fishing vessel may be required by the department to independently verify the reason for the unscheduled dockage with a mechanic deemed qualified by New York state, the National Weather Service or a medical professional, as appropriate. b. The fishing vessel shall immediately notify the department and the permitting state as soon as the danger is known and communication signals allow. The commercial fishing vessel shall provide the department with: (1) details on the vessel including the vessel captain's name; (2) identity of the permitting state; (3) the nature of the problem; (4) identity of the intended docking location, estimated time of arrival, and quantities and types of fish on board and, (5) a call back phone number or other method of contact. c. The commercial fishing vessel shall not offload cargo without the express authorization of and supervision by department personnel. Authorization to offload fish may be granted where the fish on board the vessel will become unmarketable due to the duration of the

unscheduled dockage. Authorization may be limited according to the willingness of the permitting state to accept the fish under that state's fish allocation.

§ 71-0909. Forfeitures.

1. If the defendant in any prosecution, civil or criminal, for a violation involving the taking of deer with the aid of an artificial light, is held liable or found guilty, or shall effect a civil settlement of any action or cause of action in favor of the state arising out of such violation, the defendant's interest in all things seized as provided in paragraph f of subdivision 4 of section 71-0907 in connection with such violation shall be declared confiscated by and forfeit to the state. Unless a claim of ownership by some other person is made to the department within thirty days after the date of seizure and is established by order of a court or to the satisfaction of the department, all such things shall be disposed of as the department shall direct.

2. If the defendant in any prosecution, civil or criminal, for a violation involving the illegal taking, possession, or transportation of any fish, shellfish, crustacea, wildlife, game or protected insects, is held liable or found guilty, the ownership and right of possession thereof shall be deemed vested or revested in the state for all purposes, notwithstanding any claim of the defendant or of any other person to private ownership lawfully acquired prior to the act or possession constituting such violation, unless such claim shall be established or the operation of this subdivision shall be stayed by order of a court having jurisdiction of the prosecution or an appeal therefrom, or of the subject matter of the claim, before judgment in such prosecution is rendered. If any such claim is asserted by or on behalf of any person in the course of any such prosecution, the court in which the proceedings are had may make such order, or may stay the judgment for such time as he deems proper to permit determination of the claim or application for a stay of the operation of this subdivision.

3. If the defendant is held liable or found guilty in any prosecution, civil or criminal, for a violation involving: a. the illegal use of a net or other device, other than a boat, vehicle, aircraft or firearm, the use of which is prohibited under any and all circumstances for taking the species for which it was used in the violation involved, or is so prohibited except in accordance with a permit issued by the department or; b. possession of nets in any case where such possession is prohibited by section 11-1517 or subdivision 16 of section 13-0343, or if the defendant shall effect a civil settlement of any action or cause of action in favor of the state arising out of such violation, the defendant's interest in the device shall be forfeited to the state. Unless a claim of ownership of such device shall be made to the department by some other person within thirty days thereafter, and shall be established by order of a court or to the satisfaction of the department, such device shall be disposed of as the department shall direct.

4. If the defendant is held liable or found guilty in any prosecution, civil or criminal, of the taking of shellfish in violation of subdivisions 1 or 2 of section 13-0309 or if the defendant shall effect a civil compromise of any action or cause of action in favor of the state arising out of such violation, the defendant's interest in any and all rakes, tongs, dredges or devices other than a boat or vehicle, used for the purpose of taking shellfish in violation of such provisions shall be forfeited to the state. Unless a claim of ownership of such device shall be made to the department by some other person within thirty days thereafter, and shall be established by order of a court or to the satisfaction of the department, such device shall be disposed of as the department shall direct.

4-a. In addition to any other penalties imposed by this chapter, the violation of subdivision 2 or 3 of section 13-0309 of this chapter shall be punishable by forfeiture of any boat or vehicle employed in the violation of such subdivisions.

5. a. For the purposes of this section, a claim of ownership shall mean any lawful interest, including a part interest or security

interest.

b. A claim of ownership shall not prevent vesting or revesting of ownership and right of possession in the state pursuant to subdivision 2 of this section unless the person establishing it either establishes a right of ownership exclusive of any interest in the defendant or shall purchase or redeem from the state any interest of the defendant by payment to the state of the value thereof together with the reasonable expenses of safekeeping of such property between the time of seizure and such redemption. Establishment of a claim of ownership shall not in any event prevent such revesting in the state if the state shall establish that the illegal possession or transportation of which the defendant is held liable or found guilty was expressly or impliedly permitted by the person establishing the claim of ownership.

c. Establishment of a claim of ownership consisting of a part ownership or a security interest shall not entitle the person establishing it to delivery of property as to which the interest of the defendant is declared confiscated or forfeit as provided in subdivision 1 of this section or is forfeited as provided in subdivisions 3 and 4 of this section unless the person establishing it shall redeem any interest of the defendant by payment to the state of the value thereof together with the reasonable expenses of safekeeping of such property between the time of seizure and such redemption. Establishment of a claim of ownership shall not in any event entitle the person establishing it to delivery of the property if the state shall establish that the illegal use or possession of such property, in the manner or for the purposes or in the circumstances making such use or possession illegal, was expressly or impliedly permitted by the person establishing such claim of ownership.

d. Where a person establishing a claim of ownership is required to purchase or redeem any interest of the defendant in a civil or criminal prosecution in order to be entitled to delivery of property in which such claim of ownership is established, such interest of the defendant must be so purchased or redeemed not less than ten days after the price of purchase or redemption shall have been fixed by order of the court or

agreed between the person whose claim is so established and the department. The department shall have power to enter into such agreement on behalf of the state. If a person establishing a claim of ownership shall fail to purchase or redeem the interest of the defendant within the time provided in this subdivision, or such longer time as may be provided by order of the court or agreement of the department, he shall be deemed to have abandoned his claim of ownership, and the property may be disposed of as if no such claim had been asserted.

e. All moneys received in payment of the price of redemption or purchase of the defendant's interest shall be deposited in the conservation fund provided by section 83 of the State Finance Law.

6. A person asserting a claim of ownership as provided in this section shall have the burden of proof.

7. In any action or proceeding in which any person asserts a claim of ownership with respect to property in which the interest of the defendant is declared confiscated and forfeited as provided in subdivision 1 of this section or is forfeited as provided in subdivision 3 of this section, the testimony of such person, or of the defendant in the civil or criminal prosecution, or of both, shall not be deemed sufficient to establish his claim unless corroborated by documentary evidence or by testimony of some other person not interested in the event.

§ 71-0911. Search warrants; when issued.

Whenever it appears probable that fish, wildlife or game, shellfish, crustacea, protected insect, or parts thereof taken or possessed contrary to the Fish and Wildlife Law are concealed, or that a net possessed contrary thereto is concealed, any local criminal court having criminal jurisdiction shall issue a search warrant for the discovery thereof in accordance with the practice provided in article 690 of the Criminal Procedure Law, as far as it is applicable.

§ 71-0913. Reciprocal enforcement of violations in boundary waters.

If and when the state of Vermont, or the state of New Jersey, or the state of Pennsylvania, or the state of Connecticut, or the state of Rhode Island, as the case may be, shall enact a similar law for the arrest and punishment of violations of the conservation law or fish laws of such state or of the provisions listed in section 71-0501 or under titles 5 through 15 inclusive and title 33 of this article, committed or attempted by any person fishing in any waters or parts thereof lying between such state and the state of New York, any conservation officer or other person, who is authorized to make arrests for violations of the conservation or fish laws of such state or of the provisions listed in section 71-0501 or under titles 5 through 15 inclusive and title 33 of this article, shall have power and authority to make arrests on any part of such waters between such state and the State of New York, or the shores thereof, and to take the person so arrested for trial to the state in which the violation was committed and there to prosecute him according to the laws of such state.

§ 71-0915. Abatement of nuisances.

1. The following are declared to be nuisances which may be abated as provided in this section:

a. Any trap, snare or net, set or used without permit from the Department for taking a wild bird;

b. Any trap set or used in violation of section 11-1101;

c. Any net, bait-line, set line, eel weir or pot, tip-up, baitfish trap, or other device for taking fish or crustacea, and any device for taking insects, set or used in violation of any law or regulation under which use of the device is prohibited, or its use is prohibited at the time or place, or in the manner or circumstances in which it is used, except where the violation consists only in the fact that the device was

set or used without first obtaining a license and, under laws and regulations in effect at the time the device is set or used, such license is issuable upon application therefor and payment of the fee, if any, applicable thereto.

2. Nuisances defined in paragraph a of subdivision 1 may be abated summarily by any person. Nuisances defined in paragraph a, b or c of subdivision 1 may be abated by any conservation officer.

3. Upon abatement of such nuisance, the conservation officer shall take into custody the net or device so used in any case where the person guilty of the violation is not present or cannot be identified at the time the nuisance is abated. If the net or device is thereafter forfeited as provided in section 71-0909, or, not being so forfeited, shall remain unclaimed by the owner for thirty days, it shall be disposed of as the department shall direct.

4. In any case where the person guilty of the violation is arrested or served with a summons at the time of the abatement of the nuisance, the conservation officer may seize the net or other device as evidence.

5. Upon abatement of any nuisance defined in this section, any fish, crustacea, wildlife or protected insect trapped, confined, hooked or caught shall be:

a. Released, permitted to escape, or returned to the water or other habitat; or

b. Destroyed; or

c. Seized as evidence; or

d. Taken into custody for future disposition pursuant to section 11-0519, as may be appropriate to the circumstances, the kind of animal involved and its condition.

6. Action taken by an enforcement officer as provided in this section

or pursuant to this section and section 11-0519 shall not subject him or the state to liability, even though it is subsequently determined that the trap, net or other device involved was not in violation of law, if it is established that the enforcement officer had reasonable grounds to believe that it constituted a nuisance as provided in this section.

§ 71-0917. Presumptions from possession.

1. Possession of any fish, shell-fish, crustacea or game, or parts thereof, at a time when there is no open season anywhere in the state for the species possessed, shall be presumptive evidence that it was taken unlawfully.

2. Possession of any fish, shell-fish, crustacea, wildlife or protected insect shall be presumptive evidence that it was taken by the possessor.

§ 71-0919. Punishment of violations of Fish and Wildlife Law.

1. Any person who violates any provision of the Fish and Wildlife Law or any lawful order, rule or regulation of the department promulgated pursuant thereto or the terms of any permit issued thereunder, and any person, including a public officer, who fails to perform any duty thereby imposed on him:

a. In the case of offenses specified in section 71-0921 of this chapter, is guilty of a misdemeanor, punishable as provided in that section, and

b. In the case of any other offense, is guilty of a violation, punishable as provided in section 71-0923 of this chapter, and

c. In addition thereto is liable in either case to the penalties provided in the schedule set forth in section 71-0925 or provided elsewhere in this chapter; and

d. In the cases provided in sections 11-0719 and 11-2115, is liable to revocation of licenses to hunt, fish or trap or for bowhunting privilege or muzzle-loading privilege, disqualification for such licenses and/or for bowhunting privilege or muzzle-loading privilege and denial of the ability to obtain any hunting, fishing or trapping license and bowhunting privilege and muzzle-loading privilege, as provided in those sections; and

e. In the case of violations for which such forfeiture or revocation is provided, is subject to revocation or forfeiture of other licenses issued pursuant to the Fish and Wildlife Law; and

f. In the cases provided in section 71-0909, is liable to forfeiture and confiscation of property involved in such violations, as provided in that section.

g. In the case of having a license privilege revoked or suspended by a participating state in the Interstate Wildlife Violator Compact enacted under title twenty-five of article eleven of this chapter, the violation and subsequent revocation or suspension in the participating state shall constitute the basis for revocation or suspension in this state for the same privileges and period of time.

§ 71-0921. Misdemeanors.

The following acts are misdemeanors, punishable as herein provided, when they are done in violation of the section or subdivision thereof specified, or if no section is specified, in violation of any section of the Fish and Wildlife Law:

1. (a) The illegal taking of big game prior to the first day of the open season or after the last day of the open season in the county or part thereof where taken, or the taking of big game with aid of an artificial light. Each such misdemeanor for a violation of this paragraph shall be punishable by imprisonment for not more than one year

or by a fine of not less than five hundred dollars nor more than three thousand dollars, or by both such imprisonment and fine.

(b) Any illegal taking of a deer, other than a taking described in paragraph (a) of this subdivision, such misdemeanor shall be punishable by imprisonment for not more than one year or by a fine of not less than two hundred fifty dollars nor more than two thousand dollars, or by both such imprisonment and fine.

2. The illegal taking of a bear less than one year old or the taking of a bear by a means or method not permitted by this chapter. Such misdemeanor shall be punishable by imprisonment for not more than one year or by a fine of not more than two thousand dollars, or by both such imprisonment and fine. The sale of bear gallbladder/bile in violation of paragraph b of subdivision nine of section 11-0917 of this chapter shall be punishable by a fine of five thousand dollars per violation.

3. Possession, use or discharge of a firearm in violation of subdivision 1, 2, 4, 5, or 6 of section 11-0931 of this chapter. Each such misdemeanor shall be punishable by imprisonment for not more than three months or by a fine of not less than two hundred dollars nor more than one thousand dollars, or by both such imprisonment and fine.

4. a. Violations of:

(1) subdivision one of section 13-0309 of this chapter involving the taking of shellfish from uncertified shellfish lands, or the possession, transportation, sale or trafficking in shellfish so taken;

(2) subdivision two of section 13-0309 of this chapter involving the taking of shellfish between sunset and sunrise;

(3) subdivision ten of section 13-0309 of this chapter involving the possession of a stick dredge after one prior conviction under such subdivision for such activity;

(4) subdivision one of section 13-0311 of this chapter involving the taking of shellfish without the required digger's permit;

(5) subdivision seven of section 13-0311 of this chapter involving the taking of shellfish while one's digger's permit is suspended or revoked;

(6) subdivision one of section 13-0315 of this chapter involving the processing, transportation, shipment or sale of shellfish without the

required shipper's or processor's permit;

(7) regulations promulgated by the department pursuant to section 13-0319 of this chapter involving the failure to tag or seal shellfish or the falsifying of any information required on any tag or seal required by said regulations;

(8) subdivision five of section 13-0325 of this chapter, regarding the taking of undersized clams, where the taking involves more than twenty-four percentum of clams of less than legal size;

(9) regulations promulgated by the department pursuant to section 13-0327 of this chapter, regarding the taking of undersized scallops, where the taking involves more than twenty-four percentum of scallops of less than legal size; and

(10) section 13-0344 of this chapter involving the dumping of objects into the water after being signaled by a police officer or peace officer to stop for inspection.

b. Each such misdemeanor identified in paragraph a of this subdivision shall be punishable as follows:

(1) For a first conviction for any of the violations listed in paragraph a of this subdivision, by imprisonment for not more than sixty days, a fine of not less than two hundred fifty dollars nor more than one thousand dollars plus, if applicable, an amount equal to the market value of the shellfish involved in the violation, or by both such imprisonment and fine.

(2) For a second conviction for any of the violations listed in paragraph a of this subdivision, by imprisonment for not more than ninety days, a fine of not less than five hundred dollars nor more than twenty-five hundred dollars plus, if applicable, an amount equal to three times the market value of the shellfish involved in the violation, or by both such imprisonment and fine.

(3) For a third or subsequent conviction for any of the violations listed in paragraph a of this subdivision, by imprisonment for not more than one hundred eighty days, a fine of not less than one thousand dollars nor more than ten thousand dollars plus, if applicable, an amount equal to three times the market value of the shellfish involved in the violation, or by both such imprisonment and fine.

(4) Provided, further, that all equipment or conveyances used to

harvest, transport or traffic in such illegal shellfish may be forfeited for any third or subsequent conviction of the above violations, in addition to such penalties or imprisonment. Such forfeiture shall be in addition to any forfeiture authorized by section 71-0909 of this article.

5. a. Violations of:

(1) subdivision three of section 13-0309 of this chapter involving the illegal use of dredges, scrapes or other devices operated by power or by boats propelled by motor or other mechanical means for the purpose of taking shellfish;

(2) subdivision eight of section 13-0309 of this chapter involving the operation, use or placing, for whatever purpose, of dredges, rakes, tongs or other devices for the taking of shellfish in uncertified shellfish lands after a prior conviction under such subdivision for such activity;

(3) subdivision nine of section 13-0309 of this chapter involving the altering, damaging, mutilating, moving or carrying away of buoys or markers used to designate the uncertified waters of the state;

(4) subdivision five of section 13-0325 of this chapter regarding the taking of undersized clams, where the taking involves between ten and twenty-four percentum of clams of less than legal size; and

(5) regulations promulgated by the department pursuant to section 13-0327 of this chapter, regarding the taking of undersized scallops, where the taking involves between ten and twenty-four percentum of scallops of less than legal size.

b. Each such misdemeanor identified in paragraph a of this subdivision shall be punishable as follows:

(1) For a first conviction of any of the violations listed in paragraph a of this subdivision, by imprisonment for not more than thirty days, a fine of not less than two hundred fifty dollars nor more than five hundred dollars plus, if applicable, an amount equal to the market value of the shellfish involved in the violation, or by both such imprisonment and fine.

(2) For a second conviction for any of the violations listed in paragraph a of this subdivision, by imprisonment not to exceed sixty

days, a fine of not less than five hundred dollars nor more than one thousand dollars plus, if applicable, an amount equal to the market value of the shellfish involved in the violation, or by both such imprisonment and fine.

(3) For a third or subsequent conviction for any of the violations listed in paragraph a of this subdivision, by imprisonment for not more than one hundred eighty days, a fine of not less than one thousand dollars nor more than five thousand dollars plus, if applicable, an amount equal to the market value of the shellfish involved in the violation, or by both such imprisonment and fine.

6. Violations of paragraph b of subdivision 3 or subdivision 5 or 12 of section 13-0329 of this chapter. Each such misdemeanor shall be punishable by imprisonment for not more than one year or by a fine of not less than five hundred dollars nor more than two thousand dollars, or by both such imprisonment and fine.

7. Violations of subdivision 7 or 11 of section 13-0329 of this chapter. Each such misdemeanor shall be punishable by imprisonment for not more than ninety days or by a fine of not less than five hundred dollars nor more than one thousand dollars, or by both such imprisonment and fine.

8. Making a false statement in applying for a license, privilege or permit under the Fish and Wildlife Law, or for a certificate in lieu of a lost license or privilege or a duplicate hunting license tag under title 7 of article 11 of this chapter. Each such misdemeanor shall be punishable by imprisonment for not more than three months, or by a fine of not more than two hundred dollars, or by both such imprisonment and fine. In addition, the department may immediately revoke the license, privilege, permit or certificate for which application was made for the remainder of its effective term.

9. Failure to give the department the prompt notification required under subdivision 10 of section 13-0301 of this chapter, when the specified buoys or markers are destroyed. Each such misdemeanor shall be punishable by imprisonment for not more than one year or by a fine of

not more than one thousand dollars, or by both such imprisonment and fine.

10. Violation of subdivision 10 of section 11-0901 involving the illegal taking of a moose. Each such misdemeanor shall be punishable by imprisonment for not more than one year or by a fine of not more than two thousand dollars, or by both such imprisonment and fine.

10-a. Violations of subdivision fourteen of section 11-0901 of this chapter involving unlawful contests, competitions, tournaments and derbys to take wildlife. Each such violation shall be punishable by a fine of not less than five hundred dollars nor more than two thousand dollars.

11. Any person who violates the provisions of section 11-0537 of this chapter, in the case of a first violation, shall be guilty of a class B misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed five thousand dollars or by imprisonment not to exceed ninety days, or both; provided that in the case of a second or subsequent violation such person shall be guilty of a class A misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed ten thousand dollars or imprisonment not to exceed one year, or both; provided, further, that the commission of each taking or other act prohibited by section 11-0537 of this chapter with respect to a bald or golden eagle shall constitute a separate violation of this section; provided, further, that one-half of any such fine, but not to exceed two thousand five hundred dollars, shall be paid to the person or persons giving information which leads to conviction.

12. Any violation of section 13-0344 of this chapter is punishable by imprisonment for not more than thirty days, or by a fine of not less than two hundred fifty dollars nor more than one thousand dollars, or by both such fine and imprisonment.

13. Violations of subdivision one or two of section 11-1904 of this chapter. Each such misdemeanor shall be punishable by a fine of not more than two thousand five hundred dollars, or by imprisonment for not more

than one year, or by both such fine and imprisonment; except that where the person convicted of violating such subdivision has gained money or property through the commission of the violation, in lieu of the two thousand five hundred dollar maximum fine provided for herein, the court may impose a fine in accordance with the provisions of subdivision five of section 80.05 of the penal law.

14. Violation of subparagraph one, two or four of paragraph b of subdivision one of section 11-0719 of this chapter involving the revocation and suspension of hunting, trapping, or fishing licenses. Each such misdemeanor shall be punishable by imprisonment for not more than ninety days, or by a fine of not less than five hundred dollars nor more than one thousand dollars, or by both such imprisonment and fine.

§ 71-0923. Violations.

1. Any offense specified in section 71-0919 of this article, unless made a misdemeanor by section 71-0921 of this article or another provision of such chapter, shall be a violation, punishable, except as otherwise provided in this section, by imprisonment for not more than fifteen days, or by a fine of not more than two hundred fifty dollars, or by both such fine and imprisonment.

2. A violation of subdivision 1 of section 11-0705 of this chapter shall be punishable as follows:

a. As provided in subdivision 1 of this section, if the violation consisted of a refusal to exhibit a license on demand of any environmental conservation officer or other person;

b. By forfeiture of the license and by a fine of not more than twenty-five dollars if the violation was committed while exercising the privileges of a special antlerless deer license and consisted of failure of the offender to have on his person a license held by him entitling him to exercise those privileges.

3. A violation of subdivision 2 of section 11-0705 of this chapter shall be punishable by forfeiture of licenses and tags issued pursuant to this chapter which authorizes the holder to hunt wildlife and by a fine of not more than twenty-five dollars.

4. When a license or license tag is forfeited as provided in this section, the licensee shall surrender it to any environmental conservation officer, special game protector or any other person authorized by the department to receive it. Such forfeiture does not prevent the procurement of another license.

5. A violation of subdivision one of section 11-0923 is punishable by imprisonment for not more than ten days, or by a fine of not less than two hundred dollars, or by both such fine and imprisonment.

6. A first conviction for a violation of subdivision eight of section 13-0309 of this chapter, involving devices for taking shellfish in uncertified lands, or a violation of subdivision ten of section 13-0309 of this chapter, involving possession of a stick dredge, shall be punishable as a violation under this section.

8. Any violation of sections 13-0329, 13-0330, 13-0331, 13-0333, 13-0334, 13-0335, subdivision one of section 13-0337, 13-0338, 13-0339, 13-0339-a, 13-0340, 13-0340-a through 13-0340-g, 13-0341, 13-0342, 13-0343, 13-0347, and 13-0349 of this chapter, or of any regulation adopted pursuant to the foregoing sections, shall be punishable by imprisonment of not more than fifteen days or by a fine of the greater of two hundred fifty dollars or:

a. for violations involving one to five fish, shellfish or crustaceans, twenty-five dollars for each fish, shellfish or crustacean taken or possessed in violation of the above sections;

b. for violations involving six to twenty-five fish, shellfish or crustaceans, fifty dollars for each fish, shellfish or crustacean taken or possessed in violation of the above sections;

c. for violations involving more than twenty-five fish, shellfish or crustaceans, one hundred dollars for each fish, shellfish or crustacean taken or possessed in violation of the above sections; or by both such fine and imprisonment.

For purposes of determining the applicable fine pursuant to this subdivision, the number of fish, crustaceans or shellfish shall be the aggregate number involved in the violation, regardless of species.

9. A violation of section 11-0110 of this chapter is punishable by imprisonment for not more than ten days, or by a fine of not more than two hundred fifty dollars, or by both such fine and imprisonment.

10. A violation of subdivision twelve of section 11-1101 of this chapter is punishable by imprisonment of not more than ten days, or by a fine of not more than one hundred dollars, or by both such fine and imprisonment.

11. A violation of subdivision eight of section 11-0505 of this chapter shall be punishable by a fine of not more than fifty dollars.

12. A violation of section 11-1906 of this chapter shall be punishable by a fine of not more than two thousand five hundred dollars.

§ 71-0924. Illegal commercialization of fish, shellfish, crustaceans, and wildlife.

Notwithstanding any other provision of this chapter, when a violation involves the sale, trade or barter of fish, shellfish, crustaceans, wildlife, or parts thereof, the sale, trade or barter of which is prohibited by the fish and wildlife law, the following additional penalties shall be imposed:

1. where the value of fish, shellfish, crustaceans, wildlife, or parts thereof, is two hundred fifty dollars or less, the offense shall be a violation punishable by a fine of five hundred dollars and/or not more

than fifteen days of imprisonment;

2. where the value of fish, shellfish, crustaceans, wildlife, or parts thereof, is more than two hundred fifty dollars but does not exceed one thousand five hundred dollars, the offense shall be a misdemeanor punishable by a fine of five thousand dollars and/or not more than one year of imprisonment;

3. where the value of fish, shellfish, crustaceans, wildlife, or parts thereof, exceeds one thousand five hundred dollars, the offense shall constitute a class E felony under the provisions of the penal law; and

4. where the value of ivory articles, as defined in section 11-0535-a of this chapter, exceeds twenty-five thousand dollars, the offense shall constitute a class D felony under the provisions of the penal law.

5. For the purposes of this section the value of fish, shellfish, crustaceans and wildlife shall be the fair market value of or actual price paid for such resource, whichever is greater. For purposes of this section, "sale" shall include the acts of selling, trading or bartering and all related acts, such as the act of offering for sale, trade or barter, and shall also include the illegal possession of fish, shellfish, wildlife or crustacea with intent to sell. It shall be presumptive evidence of possession with intent to sell when such fish, shellfish, wildlife or crustacea is possessed in quantities exceeding the allowable recreational quantities, or is possessed in a retail or wholesale outlet commonly used for the buying or selling of such fish, shellfish, wildlife or crustacea, provided, however, that nothing in this subdivision shall preclude the admission of other evidence which may serve to independently prove a defendant's intent to sell.

§ 71-0925. Civil penalties.

The penalties referred to in section 71-0919, to which a person is liable upon violation of provisions of the Fish and Wildlife Law or any order, rule or regulation of the department, shall be:

1. Unless another penalty is specifically provided for in this subdivision or elsewhere in the Fish and Wildlife Law, two hundred dollars and an additional penalty of one hundred dollars for each fish, bird or animal or part thereof, other than shellfish or crustacea, involved in the violation; an additional penalty of one hundred dollars for each bushel of shellfish or each crustacean, including lobster, or part thereof, plus an amount equal to the market value or actual price paid, whichever is greater, of the shellfish or crustacea involved in the violation;

2. Except as provided in subdivision 3 or another provision of the Fish and Wildlife Law, if the violation relates to deer, bear, elk, except captive bred and raised North American elk (*Cervus elaphus*), moose, caribou, antelope, wild turkey, lynx, beaver, or a part thereof, two hundred dollars, and an additional penalty of two hundred dollars for each such animal or part thereof involved in the violation;

3. (a) If the violation involves the illegal taking of a deer prior to the first day of the open season or after the last day of the open season in the county or part of a county in which taken, or the taking of deer with aid of an artificial light, not less than five hundred dollars and not more than one thousand dollars for the first deer taken and a further penalty of not less than five hundred dollars and not more than one thousand dollars for each succeeding deer taken; provided, however, that any person having been held liable for a violation pursuant to this paragraph in the preceding five years shall be subject to a fine of not less than seven hundred fifty dollars and not more than two thousand dollars for the first deer taken and a further penalty of not less than seven hundred fifty dollars and not more than two thousand dollars for each succeeding deer taken;

(b) If the violation involves any illegal taking of a wild deer, other than a taking described in paragraph (a) of this subdivision, five hundred dollars for the first deer taken and a further penalty of five hundred dollars for each succeeding deer taken;

4. If the violation was an act prohibited by section 11-1321 or by

subdivision 2 of section 11-0503, or by subdivision 2 of section 11-0505, or section 13-0345, five hundred dollars, and an additional penalty of ten dollars for each fish taken, killed or possessed in violation thereof;

5. If the violation was any act prohibited by subdivision 1 of section 11-0503, not less than five hundred dollars nor more than one thousand dollars for each offense and an additional penalty of ten dollars for each fish killed in violation thereof;

6. If the violation was a violation of paragraph b of subdivision 4 of section 11-0321, a violation of subdivision 1 of section 11-2113, or a violation of section 11-2115, not less than twenty-five dollars nor more than one hundred dollars; and in addition, as determined by the court, to either actual damages or the sum of ten dollars for each sign injured, defaced or removed in violation of section 11-2113, which shall be payable to the person sustaining the damage, injury, defacement or removal of such sign, and costs of suit, all of which may be recovered in the same action;

7. If the violation was a violation of sections 13-0329, 13-0330, 13-0331, 13-0333, 13-0334, 13-0335, subdivision one of section 13-0337, 13-0338, 13-0339, 13-0339-a, 13-0340, 13-0340-a through 13-0340-g, 13-0341, 13-0342, 13-0343, 13-0347, and 13-0349 of this chapter, or of any regulation adopted pursuant to the foregoing sections, the greater of two hundred fifty dollars or:

a. for violations involving one to five fish, shellfish or crustaceans, twenty-five dollars for each fish, shellfish or crustacean taken or possessed in violation of the above sections;

b. for violations involving six to twenty-five fish, shellfish or crustaceans, fifty dollars for each fish, shellfish or crustacean taken or possessed in violation of the above sections;

c. for violations involving more than twenty-five fish, shellfish or crustaceans, one hundred dollars for each fish, shellfish or crustacean

taken or possessed in violation of the above sections.

For purposes of determining the applicable fine pursuant to this subdivision, the number of fish, crustaceans or shellfish shall be the aggregate number involved in the violation, regardless of species;

7-a. If the violation was a violation of subdivision 1 or 2 of section 13-0309, or section 13-0323 or 13-0327, or section 13-0344, not less than two hundred fifty dollars nor more than one thousand dollars for each offense;

7-b. If the violation was a violation of subdivision one or two of section 13-0325 of this chapter there shall be a minimum penalty of twenty-five dollars and a maximum of two hundred fifty dollars per container or bushel involved in the violation.

7-c. If the violation was a violation of subdivision 4 or 5 of section 13-0333, not less than two thousand five hundred dollars nor more than ten thousand dollars for each offense;

8. If a violation of subdivisions 1 or 2 of section 13-0309 occurs during the time when a permit or license to take shellfish has been suspended or revoked pursuant to the provisions of subdivision 3 of section 13-0311 or subparagraph (3) of paragraph b of subdivision 1 of section 11-0719, not less than five hundred dollars nor more than fifteen hundred dollars for each offense, and in addition the forfeiture to the state of the tongs, rakes, dredges or devices other than boats used by or in connection with such illegal taking;

9. If the violation was a failure by any public officer to perform any duty imposed by the Fish and Wildlife Law or by any rule or regulation of the department, one hundred dollars;

10. If the violation was an act prohibited by section 11-2117, one hundred dollars, one-half of which shall be payable to the owner or occupant of the damaged property, in addition to the actual damages, if any, recoverable by the person sustaining the damage;

11. If the violation involved the illegal taking or possessing of muskrats taken from a registered muskrat marsh covered by a permit under section 11-1109, when the violation is committed by the registrant holding the permit or other person designated in writing to trap on the marsh of such registrant, while the permit is in force, not less than one hundred dollars nor more than five hundred dollars;

12. If the violation was a violation of section 11-1731; relating to bird plumage for fish-fly tying, five hundred dollars.

13. If the violation was an act prohibited by subdivision two of section 11-0535 or by section 11-0536 of this chapter, or by any lawful rule or regulation of the department promulgated pursuant thereto, not more than four thousand dollars, and an additional penalty of not more than seven hundred dollars for each fish, shellfish, crustacea, wildlife or part thereof involved in the violation. If the violation was an act prohibited by any regulation of the department promulgated pursuant to subdivision three of section 11-0535 of this chapter, then such penalty shall be not more than two thousand dollars, and an additional penalty of not more than four hundred dollars for each fish, shellfish, crustacea, wildlife or part thereof involved in the violation.

14. If the violation was a violation of subdivision ten of section 11-0901 involving the illegal taking of a moose, two thousand dollars.

15. If the violation was a first or second violation of section 11-0514 of this chapter, a fine of up to five hundred dollars for each animal for each act of importation, possession, introduction, sale, offer for sale, distribution, transportation or otherwise marketing or trading. For a third or subsequent separate violation of section 11-0514 of this chapter, the greater of a. a fine of one thousand dollars for each animal for each act of importation, breeding, possession, introduction, sale, offer for sale, distribution, transportation or otherwise marketing or trading or b. an amount equal to three times (1) the financial security provided by customers for the opportunity to take the animal or (2) the value of a boar for meat

production or as breeding stock.

16. If the violation was an act prohibited by section 11-0535-a of this chapter, not more than three thousand dollars or not more than two times the value of the article involved, whichever is greater. If the violation is a second or subsequent violation of such section 11-0535-a, not more than six thousand dollars or not more than three times the value of the article involved, whichever is greater.

17. If the violation was an act prohibited by section 11-0535-b of this chapter, not more than one thousand dollars or not more than two times the value of the article involved, whichever is greater. If the violation is a second or subsequent violation of such section 11-0535-b, not more than two thousand dollars or not more than three times the value of the article involved, whichever is greater.

§ 71-0927. Mandatory license revocation.

1. Anyone convicted of violating the prohibition against harvesting, taking, possessing or transporting shellfish under facts and circumstances meeting the criteria for imposition of sanctions pursuant to subdivision 3 of section 71-0924; or anyone convicted two or more times within five years of violating the prohibition against harvesting, taking, possessing or transporting shellfish under facts and circumstances meeting the criteria for imposition of sanctions pursuant to subdivision 2 of section 71-0924, or of violating subdivision 1 or 2, paragraph e or f of subdivision 3, subdivision 6, 8, 9, 10, 11, or 13 of section 13-0309, section 13-0317, subdivision 2 of section 13-0323, section 13-0325, subdivision 3 or 5 of section 13-0327, or section 13-0344 of this chapter shall have his license to take and land shellfish revoked and shall not be relicensed for a minimum of five years thereafter, in addition to any other sanction imposed pursuant to this article.

1-a. Anyone convicted two or more times within five years of violating subdivision 4, 5 or 7 of section 13-0333 of this chapter shall have his

license to take and land menhaden revoked and shall not be relicensed for a minimum of five years thereafter, in addition to any other sanction imposed pursuant to this article.

2. Anyone convicted of unlawfully harvesting, taking, possessing or transporting any marine fish, shellfish or crustacea under facts and circumstances meeting the criteria for imposition of sanctions pursuant to subdivision 3 of section 71-0924; or anyone convicted two or more times within five years of unlawfully harvesting, taking, possessing or transporting any marine fish, shellfish or crustacea under facts and circumstances meeting the criteria for imposition of sanctions pursuant to subdivision 2 of section 71-0924, or of violating subdivision 1, paragraph c of subdivision 2, subdivision 5, 6, 7 or 9 of section 13-0329, or section 13-0344 of this chapter shall have his license to take and land lobsters revoked and shall not be relicensed for a minimum of five years thereafter, in addition to any other sanction imposed pursuant to this article.

3. Any person convicted of violating the prohibition against harvesting, taking, possessing or transporting any marine food fish under facts and circumstances meeting the criteria for imposition of sanctions pursuant to subdivision 3 of section 71-0924; or any person convicted two or more times within five years of violating the prohibition against harvesting, taking, possessing or transporting any marine food fish under facts and circumstances meeting the criteria for imposition of sanctions pursuant to subdivision 2 of section 71-0924, or of violating section 13-0344 of this chapter, shall have his license to take and land marine food fish revoked and shall not be licensed for a minimum of five years thereafter, in addition to any other sanctions imposed pursuant to this article.

4. The provisions of this section shall be in addition to the ability of the department to suspend licenses pursuant to section 13-0309, 13-0311 or 13-0329 of this chapter or any other provision of law. Revocations pursuant to this section shall be automatic upon the second conviction and shall not require any hearing for the revocation.

5. For the purposes of this section, convictions shall only include convictions for violations of this chapter and shall not include convictions for violation of department regulations promulgated pursuant to this chapter. Conviction shall also not include an admission of guilt through stipulation or a consent order or a compromise of civil penalty under section 71-0519 of this article.

6. Any person who has had his license revoked pursuant to subdivision 1 or 2 of this section may, more than sixty days subsequent to such revocation, apply to the commissioner for a reinstatement of such license. The commissioner may reinstate such revoked license for such period as determined by the commissioner and upon such conditions deemed appropriate and necessary to protect the public health and natural resources of the state, including, but not limited to the posting of bond.

TITLE 11

ENFORCEMENT OF ARTICLE 15

Section 71-1101. Applicability of title.

71-1103. Power to sue.

71-1105. Enforcement of subdivision 4 of section 15-0313.

71-1107. Punishment for violations of title 5 of article 15.

71-1109. Enforcement of subdivisions 1 and 4 of section 15-0507.

71-1111. Enforcement of subdivision 3 of section 15-0511.

71-1112. Enforcement of title eight of article fifteen.

71-1113. Enforcement of sections 15-1505 and 15-1506.

71-1115. Enforcement of section 15-1525.

71-1117. Enforcement of section 15-1745.

71-1121. Enforcement of subdivision 2 of section 15-1947.

71-1123. Enforcement of section 15-2133.

71-1125. Enforcement of section 15-2315.

71-1127. Violations; civil liability.

71-1129. Emergencies excepted.

71-1131. Violations; criminal liability.

§ 71-1101. Applicability of title.

In addition to the provisions of sections 71-0101 and 71-0301 and title 5 of this article, the provisions of this title shall be applicable to the enforcement of article 15.

§ 71-1103. Power to sue.

The department may bring actions, suits or proceedings as in its judgment may be necessary and proper to enable it to perform any of the duties imposed upon it by the provisions of article 15 except section 15-1713 thereof as amended or to prevent the violation by any person or public corporation of any of the provisions thereof; and may defend such actions, suits or proceedings as may arise through the performance of any duties or functions imposed upon it by the provisions of article 15 except section 15-1713 thereof, as amended.

§ 71-1105. Enforcement of subdivision 4 of section 15-0313.

Any violation of subdivision 4 of section 15-0313 shall be a violation, punishable by a fine of not more than one thousand eight hundred dollars, and in addition thereto, by a civil penalty of not more than one thousand eight hundred dollars.

§ 71-1107. Punishment for violations of title 5 of article 15.

1. A violation of section 15-0501, 15-0503 or 15-0505, shall constitute a misdemeanor, punishable by a fine of not to exceed ten thousand dollars, or by imprisonment not to exceed one year or by both such fine and imprisonment and, in addition thereto, by a civil penalty of not more than five thousand dollars.

2. A subcontractor, employee or agent of such person or public corporation, or of a state department who knowingly and intentionally

acts, or a prime contractor of such person, public corporation or state department who acts with or without an intention to violate the provisions of title 5 of article 15, in disregard of specifications provided in a construction contract protecting against stream damage, shall be guilty of a violation punishable by a fine of not less than twenty-five dollars, nor more than two hundred fifty dollars, or by imprisonment for not more than fifteen days, or by both such fine and imprisonment, and, in addition, thereto, by a civil penalty of not more than five thousand dollars.

§ 71-1109. Enforcement of subdivisions 1 and 4 of section 15-0507.

1. Any owner violating subdivision 1 of section 15-0507 or any regulations promulgated pursuant thereto may be liable for a penalty not to exceed five hundred dollars for each and every offense; every violation of such subdivision shall be a separate and distinct offense; and in case of a continuing violation, every day's continuance thereof shall be deemed a separate and distinct offense.

2. Any owner violating subdivision 4 of section 15-0507 may be liable for a penalty not to exceed five thousand dollars for each and every offense; every violation of an order referred to in such subdivision shall be a separate and distinct offense; and in case of a continuing violation, every day's continuance thereof shall be deemed a separate and distinct offense.

§ 71-1111. Enforcement of subdivision 3 of section 15-0511.

Any person or local public corporation violating subdivision 3 of section 15-0511 may be liable for a penalty not to exceed five thousand dollars for each and every offense; every violation of an order referred to in such subdivision shall be a separate and distinct offense; and in case of a continuing violation, every day's continuance thereof shall be deemed a separate and distinct offense.

§ 71-1112. Enforcement of title eight of article fifteen.

1. The attorney general, on his own initiative or at the request of the commissioner, or the corporation counsel, at the request of the city of New York shall bring an action to restrain or enjoin any violation of any provision of title eight of article fifteen of this chapter or any provision of any rule or regulation promulgated pursuant to such title. The commissioner shall furnish the attorney general or the corporation counsel with such material, evidentiary matter or proof as may be requested by either of them in connection with such action.

2. Notwithstanding the provisions of any other law, the venue of any action commenced or proceeding brought pursuant to this section may be in the county of Albany.

§ 71-1113. Enforcement of sections 15-1505 and 15-1506.

1. The department shall enforce the provisions of sections 15-1505 and 15-1506 of this chapter and the Supreme Court by injunction may upon application of the department prevent any unauthorized diversion or transportation.

2. Any person who violates the provisions of section 15-1506 of this chapter or the rules, regulations, orders or determinations of the commissioner promulgated thereto or the terms of any permit issued thereunder, shall be liable for a civil penalty not less than twenty-five hundred dollars nor more than ten thousand dollars per day of such violation.

§ 71-1115. Enforcement of section 15-1525.

Any person violating the provisions of section 15-1525 shall be guilty of a violation punishable by a fine of not more than one thousand dollars, and in addition thereto, shall be liable for a civil penalty of

not more than fifteen hundred dollars.

§ 71-1117. Enforcement of section 15-1745.

1. Any person or public corporation violating subdivision 1 of section 15-1745, shall be guilty of a violation punishable by a fine of not more than five thousand dollars.

2. In addition, the department may, in an action instituted by it in any court of competent jurisdiction, recover from any such person or public corporation the sum of one hundred fifty dollars per day for each day that such person or public corporation continues to take, draw, divert or make use of any part or portion of such waters.

3. The department may bring actions through the Attorney General to enjoin violations of section 15-1745.

4. The prima facie evidence provision in subdivision 2 of section 15-1745 shall apply in all proceedings, criminal or civil, under this section 71-1117.

§ 71-1121. Enforcement of subdivision 2 of section 15-1947.

Violation of subdivision 2 of section 15-1947 shall constitute a violation, punishable by a fine of not more than one thousand dollars, and in addition thereto, a civil penalty of not more than fifteen hundred dollars.

§ 71-1123. Enforcement of section 15-2133.

1. Any neglect of the provisions of section 15-2133 by any officer or person in charge of any reservoir shall be a violation punishable by a fine of not more than one thousand dollars, and in addition thereto, by a civil penalty of not more than fifteen hundred dollars.

2. Any person violating the provisions of subdivision 3 of section 15-2133 shall be guilty of a violation punishable by a fine of not more than one thousand dollars, and in addition thereto, shall be liable for a civil penalty of not more than fifteen hundred dollars.

§ 71-1125. Enforcement of section 15-2315.

Any person who violates the provisions of the first sentence of section 15-2315 shall be guilty of a violation punishable by a fine of not more than one thousand dollars, and in addition thereto, shall be liable for a civil penalty of not more than fifteen hundred dollars.

§ 71-1127. Violations; civil liability.

1. Any person who violates any of the provisions of, or who fails to perform any duty imposed by article 15 except section 15-1713, or who violates or who fails to comply with any rule, regulation, determination or order of the department heretofore or hereafter promulgated pursuant to article 15 except section 15-1713, or any condition of a permit issued pursuant to article 15 of this chapter, or any determination or order of the former water resources commission or the department heretofore promulgated pursuant to former article 5 of the Conservation Law, shall be liable for a civil penalty of not more than two thousand five hundred dollars for such violation and an additional civil penalty of not more than five hundred dollars for each day during which such violation continues, and, in addition thereto, such person may be enjoined from continuing such violation as otherwise provided in article 15 except section 15-1713.

2. The penalties provided by subdivision 1 of this section shall be recoverable in an action instituted in the name of the department by the Attorney General upon the request of the department.

3. An action or cause of action for the recovery of a penalty under

article 15 or sections 71-1103 through 71-1129 inclusive may be settled or compromised in an amount to be approved by the department either before or after proceedings are brought to recover such penalties and prior to the entry for judgment therefor.

§ 71-1129. Emergencies excepted.

The civil liabilities imposed upon persons violating the provisions of article 15, except section 15-1713, shall not be construed to include any violation which was caused by an act of God, war, strike, riot or other catastrophe as to which negligence or willful misconduct on the part of such person was not the proximate cause.

§ 71-1131. Violations; criminal liability.

Except as otherwise specifically provided, any person who violates any of the provisions of article 15 of this chapter, or any rule, regulation or order promulgated pursuant thereto, or the terms of any permit issued thereunder shall be guilty of a violation punishable by a fine of not more than five hundred dollars.

TITLE 12

ENFORCEMENT OF ARTICLE 22

Section 71-1201. Applicability of title.

71-1203. Penalties.

71-1205. Enforcement.

71-1207. Rights of aggrieved individuals.

§ 71-1201. Applicability of title.

The provisions of this title shall be applicable to the enforcement of article twenty-two of this chapter.

§ 71-1203. Penalties.

Any person who violates the provisions of article twenty-two of this chapter shall be subject to a civil penalty not to exceed ten thousand dollars for each day during which such violation occurred; provided, however, that the total penalty to be imposed shall not exceed one million dollars.

§ 71-1205. Enforcement.

1. The attorney general shall, at the request of the commissioner, or may, on his own initiative, seek equitable relief to restrain any violation or threatened violation of article twenty-two of this chapter.

2. The attorney general shall, at the request of the commissioner, or may, on his own initiative, commence a civil action to recover damages, including punitive damages, for any willful, reckless or negligent violation of the provisions of such article suffered by reason of a violation thereof. The costs including but not limited to filing fees and costs for expert witnesses incurred by the attorney general in prosecuting any such action shall be assessed against any person who violates such provisions.

§ 71-1207. Rights of aggrieved individuals.

The provisions of this title shall not affect, impair or in any manner restrict or limit the rights of any person seeking damages arising out of a violation of article twenty-two of this chapter.

TITLE 13

ENFORCEMENT OF ARTICLE 23

Section 71-1301. Applicability of this title.

71-1303. Subpoenas, testimony and enforcement thereof.

71-1305. Offenses.
71-1307. Sanctions.
71-1309. Aiders and abettors.
71-1311. Injunction against violations.

§ 71-1301. Applicability of this title.

In addition to the provisions of sections 71-0101 and 71-0301 of this article, the provisions of this title shall be applicable to the enforcement of article 23 of this chapter except as otherwise provided in article 23 of this chapter.

§ 71-1303. Subpoenas, testimony and enforcement thereof.

1. To aid in the administration of article 23, the commissioner or any person designated by him may issue subpoenas in his name requiring the attendance and giving of testimony by witnesses and the production of books, papers and other 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 any 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 article 23, 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 hereunder 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.

2. The provisions of this section shall apply only to the administration of article 23.

§ 71-1305. Offenses.

It shall be unlawful for any person to:

1. Waste oil or gas.

2. Violate any of the provisions of or fail to perform any duty imposed by article 23 of this chapter or any rule or regulation promulgated thereunder or any order or condition of any permit of the department made pursuant thereto.

3. Abandon a mine without the approval of the department before all affected land has been reclaimed. A mine shall be considered as abandoned when mining and reclamation activities shall cease on land affected by mining without prior notification to the department or without describing such cessation in a mined land use plan approved by the department.

4. Commence operations for the drilling or redrilling of a well for oil or gas or solution mining, or an intake well, or for the storage of oil or gas without first obtaining a permit from the department as.

5. Abandon any oil, gas or solution mining well, or an intake well, or a well for the storage of oil or gas without first obtaining a permit from the department.

6. Store gas underground in any manner, unless the storage operator has received such right by grant, lease or other agreement or is operating in compliance with section 23-1301 of this chapter and is authorized to maintain condemnation proceedings pursuant to section 23-1303 of this chapter.

§ 71-1307. Sanctions.

1. Administrative sanctions. Any person who violates any provision of article 23 of this chapter or commits any offense described in section 71-1305 of this title shall be liable to the people of the state for a civil penalty not to exceed eight thousand dollars and an additional penalty of two thousand dollars for each day during which such violation continues, to be assessed by the commissioner after a hearing or opportunity to be heard. The commissioner, acting by the attorney general, may bring suit for collection of such assessed civil penalty in any court of competent jurisdiction. Such civil penalty may be released or compromised by the commissioner before the matter has been referred to the attorney general; and where such matter has been referred to the attorney general, any such penalty may be released or compromised and any action commenced to recover the same may be settled and discontinued by the attorney general with the consent of the commissioner. In addition, the commissioner shall have the power, following a hearing conducted pursuant to rules and regulations adopted by the department, to direct the violator to cease the violation and reclaim and repair the affected site to a condition acceptable to the commissioner, to the extent possible within a reasonable time and under the direction and supervision of the commissioner. Any such order of the commissioner shall be enforceable in any action brought by the commissioner in any court of competent jurisdiction. Any civil penalty or order issued by the commissioner under this subdivision shall be reviewable in a proceeding under article seventy-eight of the civil practice law and rules.

2. Civil sanctions. In lieu of seeking administrative sanctions, the commissioner may refer any violation described in subdivision 1 of this section to the attorney general who shall be empowered to bring a civil suit to seek any of the sanctions described in subdivision 1 of this section. Any such sanctions imposed may be released or compromised or the action may be settled and discontinued by the attorney general with the consent of the commissioner.

3. Criminal sanctions. Any person who, having any of the culpable mental states defined in sections 15.05 and 20.20 of the penal law, violates any provision of article 23 of this chapter or commits any offense described in section 71-1305 of this title shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed one thousand dollars for each day during which such violation continues or by imprisonment for a term of not more than one year, or by both such fine and imprisonment. If the conviction is for a subsequent offense committed after a first conviction of such person under this subdivision, punishment shall be by a fine not to exceed eight thousand dollars for each day during which such violation continues or by imprisonment for a term of not more than one year, or by both such fine and imprisonment.

4. This section shall not affect the rights of any other person seeking damages arising out of a violation.

5. All fines collected pursuant to this section shall be paid into the environmental protection fund established pursuant to section ninety-two-s of the state finance law.

§ 71-1309. Aiders and abettors.

Any person knowingly aiding or abetting any other person in the violation of any provision of article 23, or any rule, regulation, or order of the department made pursuant thereto shall be subject to the same punishment and penalty as that prescribed by this title for the violation by such other person.

§ 71-1311. Injunction against violations.

1. Whenever it appears that any person is violating or threatening to violate any provision of article 23 of this chapter or is committing any offense described in section 71-1305 of this title, the department, acting by the Attorney General, may bring suit against such person in

any court of competent jurisdiction to restrain such person from continuing such violation or from carrying out the threat of violation. In any such suit, the court shall have jurisdiction to grant to the department without bond or other undertaking, such prohibitory or mandatory injunctions as the facts may warrant, including temporary restraining orders and preliminary injunctions.

2. If the department, acting by the Attorney General, shall fail to bring suit to enjoin a violation or threatened violation of any provision of article 23, or any rule, regulation, or order of the department made pursuant hereto, within ten days after receipt of written request to do so by any person who is or will be adversely affected by such violation, the person making such request may bring suit in his own behalf to restrain such violation or threatened violation in any court in which the department might have brought suit. The department shall be made a party in such suit in addition to the person violating or threatening to violate a provision of article 23, or a rule, regulation, or order of the department, and the action shall proceed and injunctive relief may be granted to the department without bond, or other undertaking in the same manner as if suit had been brought by the department.

TITLE 15

ENFORCEMENT OF TITLE 25 OF ARTICLE 27

Section 71-1501. Applicability of this title.

71-1503. Enforcement of title 25 of article 27.

§ 71-1501. Applicability of this title.

In addition to the provisions of sections 71-0101 and 71-0301 of this article, the provisions of this title shall apply to the enforcement of title 25 of article 27 of this chapter.

§ 71-1503. Enforcement of title 25 of article 27.

For any first violation by any person who violates any of the provisions of, or who fails to perform any duty imposed by title 25 of article 27 or any regulation promulgated by the commissioner pursuant to such title 25, in lieu of a penalty, there may be issued a written warning by the department and there may also be issued educational materials at the discretion of the department regarding the requirements of title 25 of article 27. Such person shall, however, for any subsequent violation thereafter, be liable to a civil penalty of not more than twenty-five hundred dollars for each such violation and an additional penalty of not more than five hundred dollars for each day during which such violation continues and, in addition thereto, such person may be enjoined from continuing such violation. Penalties and injunctive relief provided pursuant to this title may also be recoverable in an action brought by the attorney general at the request of the commissioner.

TITLE 17

ENFORCEMENT OF PROVISIONS DERIVED FROM PUBLIC HEALTH LAW

Section 71-1701. Applicability of this title.

71-1703. Legal presumptions; evidence.

71-1705. Rules and regulations of the department; evidence.

71-1707. Violations of health laws or regulations; penalties.

71-1709. Formal hearings; notice and procedure.

71-1711. Willful violation of health laws.

71-1713. Obstructing health officer in performance of his duty.

71-1715. Enforcement: against officers.

71-1717. Examination and inspection of public works.

71-1719. Summary action.

71-1721. Commissioner's enforcement power and duty.

71-1723. Issuance of subpoenas; compelling the attendance and testimony of witnesses.

71-1725. Assessment of Penalties.

§ 71-1701. Applicability of this title.

This title shall be applicable to the enforcement of titles 1 through 11 and titles 15 through 19 of article 17; article 19; and titles 1 and 33 of article 27.

§ 71-1703. Legal presumptions; evidence.

1. The actions, proceedings, authority, and orders of the department in enforcing the provisions of this chapter listed in section 71-1701, and of titles 17 through 21 inclusive of this article applying them to specific cases shall at all times be regraded as in their nature judicial, and shall be treated as prima facie just and legal.

2. The written reports of state and local health officers, inspectors, investigators, nurses and other representatives of state and local health officers on questions of fact pertaining to, concerning or arising under and in connection with complaints, alleged violations, investigations, proceedings, actions, authority and orders, related to the enforcement of this chapter, the sanitary code or any local health regulation shall be presumptive evidence of the facts so stated therein, and shall be received as such in all courts and places. The persons making such reports shall be exempt from personal liability for the statements therein made, if they have acted in good faith.

§ 71-1705. Rules and regulations of the department; evidence.

The rules and regulations of the department promulgated pursuant to the provisions of this chapter listed in section 71-1701, and of titles 17 through 21 inclusive of this article, or the statutes from which they were derived, may be read in evidence from the official compilation of codes, rules and regulations of the state of New York, or supplement thereto. To entitle any copy of the said rules and regulations, other than those in the official compilation or supplement thereto, to be read in evidence there shall be contained in the same book or pamphlet a

printed certificate of the Secretary of State that such copy is a correct transcript of the text of the said rules and regulations as published in the official compilation or supplement thereto. For such a certificate the secretary of state shall collect such a fee as he shall deem just and reasonable.

§ 71-1707. Violations of health laws or regulations; penalties.

1. Any person who violates, disobeys or disregards any term or provision of this chapter listed in section 71-1701, or of titles 17 through 21 inclusive of this article or of any lawful notice, order or regulation pursuant thereto for which a civil penalty is not otherwise expressly prescribed by law, shall be liable to the people of the state for a civil penalty of not to exceed one thousand dollars for every such violation.

2. The penalty provided for in subdivision one of this section may be recovered by an action brought by the commissioner in any court of competent jurisdiction.

3. Nothing in this section contained shall be construed to alter or repeal any existing provision of law declaring such violations or any of them to be misdemeanors or felonies or prescribing the penalty therefor.

4. Such civil penalty may be released or compromised by the commissioner before the matter has been referred to the Attorney General, and where such matter has been referred to the Attorney General, any such penalty may be released or compromised and any action commenced to recover the same may be settled and discontinued by the Attorney General with the consent of the commissioner.

§ 71-1709. Formal hearings; notice and procedure.

1. The commissioner, or any person designated by him for this purpose, may issue subpoenas and administer oaths in connection with any hearing

or investigation under or pursuant to the provisions of this chapter listed in sections 71-1701 and 71-2503, and of titles 17 through 21 inclusive and title 43 of this article, and it shall be the duty of the commissioner and any persons designated by him for such purpose to issue subpoenas at the request of and upon behalf of the respondent.

2. The commissioner and those designated by him shall not be bound by the laws of evidence in the conduct of hearing proceedings, but the determination shall be founded upon sufficient legal evidence to sustain it.

3. Notice of hearing shall be served at least fifteen days prior to the date of the hearing, provided that, whenever because of danger to the public health it appears prejudicial to the interests of the people of the state to delay action for fifteen days, the commissioner may serve the respondent with an order requiring certain action or the cessation of certain activities immediately or within a specified period of less than fifteen days and the commissioner shall provide an opportunity to be heard within fifteen days after the date the order is served.

4. Service of notice of hearing or order shall be made by personal service or by registered or certified mail. Where service, whether by personal service or by registered or certified mail, is made upon an infant, incompetent, partnership, corporation, governmental subdivision, board or commission, it shall be made upon the person or persons designated to receive personal service by article 3 of the Civil Practice Law and Rules.

5. The Attorney General may prefer charges, attend hearings, present the facts, and take any and all proceedings in connection therewith.

6. At a hearing, the respondent may appear personally, shall have the right of counsel, and may cross-examine witnesses against him and produce evidence and witnesses in his behalf.

7. Following a hearing, the commissioner may make appropriate

determinations and issue an order in accordance therewith.

8. The commissioner may adopt, amend and repeal administrative rules and regulations governing the procedures to be followed with respect to hearings, such rules to be consistent with the policy and purpose of the provisions of this chapter listed in section 71-1701, and of titles 17 through 21 inclusive and title 43 of this article and the effective and fair enforcement of their provisions.

9. The provisions of this section shall be applicable to all hearings held pursuant to the provisions of this chapter listed in section 71-1701, and of titles 17 through 21 inclusive and title 43 of this article, except where other provisions of such articles, titles, sections and subdivisions applicable thereto are inconsistent therewith, in which event such other provisions shall apply.

§ 71-1711. Willful violation of health laws.

1. A person who willfully violates or refuses or omits to comply with any lawful order or regulation prescribed by any local board of health or local health officer, is guilty of a misdemeanor; except, however, that where such order or regulation applies to a tenant with respect to his own dwelling unit or to an owner occupied one or two family dwelling, such person is guilty of an offense for the first violation punishable by a fine not to exceed fifty dollars and for a second or subsequent violation is guilty of a misdemeanor punishable by a fine not to exceed five hundred dollars or by imprisonment not to exceed six months or by both such fine and imprisonment.

2. A person who willfully violates any provision of this chapter listed in section 71-1701, or of titles 17 through 21 inclusive of this article, or any regulation lawfully made or established by any public officer or board under authority of such provisions, the punishment for violating which is not otherwise prescribed by such provisions or any other law, is punishable by imprisonment not exceeding one year, or by a fine not exceeding two thousand dollars or by both.

§ 71-1713. Obstructing health officer in performance of his duty.

A person who wilfully opposes or obstructs a health officer or physician charged with enforcement of the health laws, in performing any legal duty, is guilty of a misdemeanor.

§ 71-1715. Enforcement: against officers.

The performance of any duty or the doing of any act enjoined, prescribed or required by the provisions of this chapter listed in section 71-1701, or by titles 17 through 21 inclusive of this article, may be enforced by a proceeding pursuant to article 78 of the Civil Practice Law and Rules at the instance of the department or of a local board of health, or of any citizen of full age resident of the municipality where the duty should be performed or the act done.

§ 71-1717. Examination and inspection of public works.

For purposes of enforcing the provisions of this chapter listed in section 71-1701, and of titles 17 through 21 inclusive of this article, all persons having the control, charge or custody of any public structure, work or ground, or of any plan, description, outline, drawing or chart thereof or relating thereto, made, kept or controlled by or under any public authority, shall permit and facilitate the examination, inspection and copying thereof by the commissioner, or by any person authorized by him to make such examination or inspection of such copies.

§ 71-1719. Summary action.

Whenever the commissioner, after investigation, is of the opinion that any person is causing, engaging in or maintaining a condition or activity which in his opinion constitutes danger to the health of the

people, and that it therefore appears to be prejudicial to the interest of the people to delay action for fifteen days until an opportunity for a hearing can be provided in accordance with the provisions of section 71-1709, the commissioner shall order the person, including any state agency or political subdivision having jurisdiction, by written notice to discontinue such dangerous condition or activity or take certain action immediately or within a specified period of less than fifteen days. As promptly as possible thereafter, within not to exceed fifteen days, the commissioner shall provide the person an opportunity to be heard and to present any proof that such condition or activity does not constitute a danger to the health of the people. This section shall apply only to enforcement of the provisions of this chapter listed in section 71-1701, and of titles 17 through 21 inclusive of this article.

§ 17-1721. Commissioner's enforcement power and duty.

The commissioner shall have the power and the duty to enforce this title and the provisions of this chapter listed in section 71-1701.

§ 71-1723. Issuance of subpoenas; compelling the attendance and testimony of witnesses.

The commissioner may issue subpoenas, compel the attendance of witnesses and compel them to testify in any matter or proceeding before him, brought under this title or the provisions of this chapter listed in section 71-1701. In any such matter or proceeding the commissioner may also require a witness to attend and give testimony in a county where he resides or has a place of business without the payment of any fees.

§ 71-1725. Assessment of Penalties.

The commissioner may assess any penalty prescribed for a violation of or a failure to comply with any provision contained in this title or

listed in section 71-1701, or any lawful notice, order or regulation prescribed by the commissioner under any such provision, one thousand dollars for every such violation or failure, which penalty may be assessed after a hearing or an opportunity to be heard.

TITLE 19

ENFORCEMENT OF TITLES 1 THROUGH 11 AND 15 THROUGH 21 INCLUSIVE OF ARTICLE 17 AND SPILLS OF BULK LIQUIDS

Section 71-1901. Applicability of this title.

71-1903. Enforcement of section 17-1703.

71-1905. Enforcement of section 17-1705.

71-1907. Enforcement of section 17-1707.

71-1909. Enforcement of section 17-1709.

71-1911. Enforcement of section 17-1711.

71-1913. Enforcement of section 17-1713.

71-1915. Enforcement of section 17-1715.

71-1917. Approval and enforcement of orders issued under section 17-1717.

71-1919. Actions by municipalities to prevent discharge of sewage into waters.

71-1921. Enforcement of section 17-1729.

71-1923. Enforcement of section 17-1735.

71-1925. Penalties.

71-1927. Enforcement of titles 1 through 11 inclusive and title 19 of article 17.

71-1929. Violations; civil liability.

71-1931. Injunctions.

71-1932. Definitions.

71-1933. Violations; criminal liability.

71-1935. Emergencies excepted.

71-1937. Jurisdiction of courts in criminal cases.

71-1939. Local enforcement.

71-1941. Penalties and liability for spills of bulk liquids.

71-1943. Enforcement of section 17-1743.

71-1945. Enforcement of title 21 of article 17.

§ 71-1901. Applicability of this title.

In addition to the provisions of section 71-0101 and 71-0301 and title 17 of this article, the provisions of this title shall be applicable to the enforcement of titles 1 through 11 and 15 through 19 inclusive of article 17.

§ 71-1903. Enforcement of section 17-1703.

A violation of the provisions of section 17-1703 shall be a misdemeanor.

§ 71-1905. Enforcement of section 17-1705.

Any person violating any provision of section 17-1705 shall forfeit to the county where the violation occurred the sum of fifty dollars for every such violation.

§ 71-1907. Enforcement of section 17-1707.

1. Every person violating any provision of section 17-1707 shall forfeit to the municipality having a local board of health where the violation occurs the sum of twenty-five dollars for the first day when the violation takes place, and the sum of ten dollars for every subsequent day that such violation is repeated or continued.

2. The board of health of any such municipality shall examine into any alleged offense against section 17-1707 and cause the same to be abated, if found to exist.

§ 71-1909. Enforcement of section 17-1709.

1. Any board of health named in subdivision 1 of section 17-1709 shall examine into any alleged offense against section 17-1709 within its jurisdiction and cause the same to be abated, by injunction or otherwise, if found to exist.

2. Any person violating any provision of section 17-1709 shall be guilty of a misdemeanor, and punishable by a fine of not more than seven hundred fifty dollars or by imprisonment for not more than one year or by both such fine and imprisonment.

§ 71-1911. Enforcement of section 17-1711.

Any person violating any provision of section 17-1711 shall be guilty of an offense, and punishable by a fine of not more than seventy-five dollars.

§ 71-1913. Enforcement of section 17-1713.

1. Any board of health named in subdivision 1 of section 17-1713 shall examine into any alleged offense against section 17-1713 within its jurisdiction and cause the same to be abated, by injunction or otherwise, if found to exist.

2. Any person violating any provision of section 17-1713 shall be guilty of a misdemeanor, and punishable by a fine of not more than five hundred dollars or by imprisonment for not more than one year or by both such fine and imprisonment.

§ 71-1915. Enforcement of section 17-1715.

1. Any person violating any provision of section 17-1715 shall be guilty of a misdemeanor, and punishable by a fine of not more than five hundred dollars or by imprisonment for not more than one year or by both such fine and imprisonment.

2. It shall be the duty of the board of health of any municipality where any violation of section 17-1715 shall occur to cause the same to be abated; provided that any person aggrieved by any such fall, flow or discharge may also cause such abatement, by injunction or other appropriate action or proceeding.

§ 71-1917. Approval and enforcement of orders issued under section 17-1717.

An order issued under section 17-1717 shall not be valid until approved by the Governor and the Attorney General, and when so approved it shall be the duty of the Attorney General to enforce such order.

§ 71-1919. Actions by municipalities to prevent discharge of sewage into waters.

1. Any incorporated city or village in the state of New York, which has made such provision for the disposal of its sewage as not to pollute or contaminate therewith any river, stream, lake or other body of water, may have and maintain an action in the Supreme Court to prevent the discharge of any sewage or substance deleterious to health, or which shall injure the potable qualities of the water in any river, stream, lake or other body of water, from which such incorporated city or village shall take or receive its water supply, provided, that such river, stream, lake or other body of water is wholly, or in part, within the boundaries of the county in which such plaintiff is located.

2. Whenever action shall be brought under the provisions of this section, it shall be the duty of the Supreme Court upon proof of the existence of facts justifying the bringing and maintenance of such action under the provisions of this section to render a judgment in which shall be incorporated a mandatory injunction requiring the person, body, board, corporation, municipality, village, county or town, being a defendant to said action which directly or indirectly, or by its

servants, agents or officers shall discharge or dispose of its sewage, or any other substance deleterious to health or which shall injure the potable qualities of the water in such wise as that the same shall enter into any river, stream, lake or other body of water, from which such plaintiff shall take or receive its water supply, within such reasonable time as may be prescribed by the court, to take such action as shall prevent such discharge or the disposal of such sewage or other substance into such waters, or the pollution thereof, with such further directions in the premises as may be proper and desirable to effect such purpose, provided that such river, stream, lake or other body of water is wholly, or in part, within the boundaries of the county in which such plaintiff is located.

§ 71-1921. Enforcement of section 17-1729.

1. Any person putting in or constructing or maintaining a conduit, discharge pipe or other means of discharging or casting any refuse or waste matter in violation of section 17-1729 shall forfeit to the people of the state five dollars a day for each day the same is used or maintained for such purpose, to be collected in an action brought by the commissioner.

2. The commissioner may maintain an action in the name of the people to restrain a violation of section 17-1729.

§ 71-1923. Enforcement of section 17-1735.

Upon receipt of a report from a local board of health under subdivision 2 of section 17-1735 the commissioner shall investigate the matter immediately and shall hold a hearing and give the person or persons charged with such violation or noncompliance an opportunity to present evidence on his or their behalf, and upon ascertaining that a violation or noncompliance exists, he may bring an action in the name of the people of the state in a court of record against the person or persons responsible for the violation or noncompliance for the recovery

of the penalties incurred and for an injunction against the continuation of the violation or noncompliance.

*** § 71-1925. Penalties.**

1. The penalty for the discharge of sewage from any public sewer system into any of the waters of the state without a duly issued permit for which a permit is required by title 17 of article 17 shall be five hundred dollars, and a further penalty of fifty dollars per day for each day the violation is continued.

2. The penalty for the discharge of sewage from any public sewer system into any of the waters of the state without filing a report for which a report is required to be filed with the board of health of the municipality shall be fifty dollars.

3. The penalty for the discharge of refuse or waste matter from any shop, factory, mill or industrial establishment for which a permit is required by title 17 of article 17 without such permit shall be one hundred dollars and ten dollars per day for each day the violation is continued.

4. The penalty for the discharge of refuse or waste matter from any shop, mill, factory or industrial establishment, without filing a report where a report is required by title 17 of article 17 to be filed shall be twenty-five dollars and five dollars per day for each day the violation is continued.

5. The penalty for discharging into any of the waters of the state any other matter prohibited by section 17-1701 besides that specified above, shall be twenty-five dollars and five dollars per day for each day the violation is continued.

* NB Expired September 1, 1973

§ 71-1927. Enforcement of titles 1 through 11 inclusive and title 19 of

article 17.

The commissioner is hereby authorized to:

1. Institute or cause to be instituted in a court of competent jurisdiction proceedings to compel compliance with the provisions of titles 1 through 11 inclusive and title 19 of article 17 or the determinations and orders of the commissioner.

2. Settle or compromise, with the approval of the Attorney General, any action or cause of action for the recovery of a penalty under titles 1 through 11 inclusive and title 19 of article 17 as he may deem advantageous to the state.

§ 71-1929. Violations; civil liability.

1. A person who violates any of the provisions of, or who fails to perform any duty imposed by titles 1 through 11 inclusive and title 19 of article 17, or the rules, regulations, orders or determinations of the commissioner promulgated thereto or the terms of any permit issued thereunder, shall be liable to a penalty of not to exceed thirty-seven thousand five hundred dollars per day for each violation, and, in addition thereto, such person may be enjoined from continuing such violation as hereinafter provided. Violation of a permit condition shall constitute grounds for revocation of such permit, which revocation may be accomplished either as provided in paragraph f of subdivision 4 of section 17-0303 or by order of judgment of the supreme court as an alternate or additional civil penalty in an action brought pursuant to subdivision 3 of this section.

2. Any penalties for violations of titles 1 through 11 inclusive and title 19 of article 17 resulting in the killing of fish or shellfish, shall be credited to the conservation fund established by section 83 of the State Finance Law and shall be available for the uses and purposes of such fund.

3. The penalties provided by subdivisions one and two shall be recoverable in an action brought by the Attorney General.

4. An action or cause of action for the recovery of a penalty under this title may be settled or compromised by the Attorney General after proceedings are brought to recover such penalties and prior to the entry for judgment therefor.

§ 71-1931. Injunctions.

It shall be the duty of the Attorney General upon the request of the commissioner to bring an action for an injunction against any person violating any of the provisions of titles 1 through 11 inclusive and title 19 of article 17 or violating any rule or regulation promulgated pursuant thereto, or any order or determination of the commissioner or a condition of any certificate or permit issued by the department; provided, however, that the department or the commissioner shall furnish the Attorney General with such material, evidentiary matter or proof as may be requested by the Attorney General for the prosecution of such an action. In any action for an injunction brought pursuant hereto any finding of the commissioner or hearing officer or panel appointed and designated by the commissioner shall be prima facie evidence of the fact or facts found therein.

§ 71-1932. Definitions.

As used in section 71-1933 of this title, the following terms shall have the following meanings:

1. "Hazardous substance" means any substance which:

a. is identified or listed as a hazardous waste or acute hazardous waste in regulations promulgated pursuant to section 27-0903 of this chapter and all amendments thereto, regardless of whether at the time of release the substance was actually a waste; or

b. appears on the list of substances hazardous or acutely hazardous to public health, safety or the environment promulgated pursuant to paragraphs (a) and (b) of subdivision one of section 37-0103 of this chapter and all amendments thereto.

2. "Organization" means a legal entity, other than a government, established or organized for any purpose, including, a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union or any other association of persons.

3. "Person" means an individual, public or private corporation, responsible corporate officer, political subdivision, government agency, department or bureau of the state or federal government, municipality, industry, co-partnership, association, firm, trust, estate or any other legal entity whatsoever.

4. "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand and industrial, municipal and agricultural waste.

5. "Serious bodily injury" means "serious physical injury" as defined in subdivision ten of section ten of the penal law.

6. "Sewer system" means pipe lines or conduits, pumping stations, and force mains, and all other constructions, devices, and appliances appurtenant thereto, used for conducting sewage, industrial waste or other wastes to a point of ultimate disposal.

7. "Treatment works" means any plant, disposal field, lagoon, pumping station, constructed drainage ditch or surface water intercepting ditch, incinerator, area devoted to sanitary landfills, or other work not specifically mentioned herein, installed for the purpose of treating, neutralizing, stabilizing, or disposing of sewage, industrial wastes or other wastes.

§ 71-1933. Violations; criminal liability.

1. Any person who, having any of the culpable mental states defined in section 15.05 of the penal law, shall violate any of the provisions of titles 1 through 5, 9 through 11 and 19 of article 17 or the rules, regulations, orders or determinations of the commissioner promulgated thereto, or the terms of any permit issued thereunder, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than three thousand seven hundred fifty dollars nor more than thirty-seven thousand five hundred dollars per day of violation or by imprisonment for a term of not more than one year, or by both such fine and imprisonment. If the conviction is for an offense committed after a first conviction of such person under this subdivision, punishment shall be by a fine of not more than seventy-five thousand dollars per day of violation, or by imprisonment for not more than two years, or by both.

2. No prosecution under this section shall be instituted until after final disposition of an appeal or review, if any, provided by section 17-0909 or its predecessor, section 1244 of the Public Health Law.

3. Any person who with criminal negligence, as defined in section 15.05 of the penal law,

a. violates

i. any provision of title 7 or 8 of article 17 of this chapter, or

ii. the rules or regulations promulgated thereunder, or

iii. any term of any permit issued thereunder, or

iv. any requirement imposed in a pretreatment program approved pursuant to section 402(a)(3) or 402(b)(8) of the Federal Water Pollution Control Act (33 USC § 1342(a)(3) or § 1342(b)(8)) or approved

pursuant to title 7 or 8 of article 17 of this chapter, or

v. any final administrative orders issued pursuant to this article where an opportunity for a hearing is provided, or

b. introduces into a sewer system or publicly owned treatment works any pollutant or hazardous substance

i. when such person knew that such introduction was likely to cause personal injury or property damage, except if that introduction was in compliance with all applicable federal, state or local requirements or permits, or

ii. which causes the treatment works to violate any term of any permit issued under title 7 or 8 of article 17 of this chapter or the rules or regulations promulgated thereunder except if that introduction was in compliance with all applicable federal, state or local requirements or permits; shall be guilty of a class A misdemeanor.

4. Any person who knowingly, as defined in section 15.05 of the penal law,

a. violates

i. any provision of title 7 or 8 of article 17 of this chapter, or

ii. the rules or regulations promulgated thereunder, or

iii. any term of any permit issued thereunder, or

iv. any requirement imposed in a pretreatment program approved pursuant to section 402(a)(3) or 402(b)(8) of the Federal Water Pollution Control Act (33 USC § 1342(a)(3) or § 1342(b)(8)) or approved pursuant to title 7 or 8 of article 17 of this chapter, or

v. any final administrative orders issued pursuant to this article where an opportunity for a hearing was provided, or

b. introduces into a sewer system or publicly owned treatment works any pollutant or hazardous substance

i. when such person knew that such introduction was likely to cause personal injury, except if that introduction was in compliance with all applicable federal, state or local requirements or permits, or

ii. which causes the treatment works to violate any term of any permit issued under title 7 or 8 of article 17 of this chapter or the rules or regulations promulgated thereunder except if that introduction was in compliance with all applicable federal, state or local requirements or permits; shall be guilty of a class E felony.

5. Any person who intentionally, as defined in section 15.05 of the penal law,

a. violates

i. any provision of title 7 or 8 of article 17 of this chapter, or

ii. the rules or regulations promulgated thereunder, or

iii. any term of any permit issued thereunder, or

iv. any final administrative orders issued pursuant to this article where an opportunity for a hearing was provided, and

b. knows at that time that he thereby places another person who is not a participant in the crime in imminent danger of death or serious bodily injury shall be guilty of a class C felony.

c. for the purpose of paragraphs a and b of this subdivision:

in determining whether a defendant who is an individual knew that his conduct placed another person in imminent danger of death or serious bodily injury

(a) the person is responsible only for actual awareness or actual belief that he possessed; and

(b) knowledge possessed by a person other than the defendant but not by the defendant himself may not be attributed to the defendant.

6. For purposes of subdivisions three, four and five of this section, a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

7. Any person who, with intent to deceive, makes any false material statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to title 7 or 8 of article 17 of this chapter or who intentionally falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained pursuant to title 7 or 8 or article 17 of this chapter shall be guilty of a class E felony.

8. a. When a person is convicted of a crime under the provisions of this section, the sentence of the court shall be as follows:

i. A fine, as set forth in paragraph b of this subdivision;

ii. A sentence of imprisonment, as set forth in paragraph c of this subdivision; or

iii. Any combination of such fine or imprisonment.

b. Fines. A sentence to pay a fine shall be a sentence to pay an amount fixed by the court, not exceeding:

i. \$750,000 for a class C felony committed by an organization as defined in section 71-1932 of this title;

ii. \$375,000 for a class C felony;

iii. \$75,000 per day of continuing violation for a class E felony defined under subdivision four of this section but in no event less than \$7,500; and \$15,000 for a class E felony defined under subdivision seven of this section;

iv. \$37,500 per day of continuing violation for a class A misdemeanor but in no event less than \$3,750.

c. Imprisonment. A sentence of imprisonment shall be a sentence of imprisonment authorized by article seventy of the penal law.

9. All prosecutions under this section shall be instituted by the department or the commissioner and shall be conducted by the Attorney General in the name of the people of the state of New York.

10. In the prosecution of any criminal proceeding under this section by the Attorney General and, in any proceeding before a grand jury in connection therewith, the Attorney General shall exercise all the powers and perform all the duties which the District Attorney would otherwise be authorized or required to exercise or perform, and in such a proceeding the District Attorney shall exercise such powers and perform such duties as are requested of him by the Attorney General.

§ 71-1935. Emergencies excepted.

The civil and criminal liabilities imposed by sections 71-1929 and 71-1933 of this title upon persons violating the provisions of titles 1 through 11 inclusive and title 19 of article 17 and by sections 71-1929 and 71-1933 of this title shall not be construed to include any violation which was caused by an act of God, war, strike, riot or other catastrophe as to which negligence or willful misconduct on the part of such person was not the proximate cause.

§ 71-1937. Jurisdiction of courts in criminal cases.

County courts shall have, in the first instance, jurisdiction of felonies committed under titles 1 through 11 inclusive and title 19 of article 17 and sections 71-1929 through 71-1939 of this article. Subject to the power of removal provided in the Criminal Procedure Law, police courts shall have, in the first instance, concurrent jurisdiction of misdemeanors committed under titles 1 through 11 inclusive and title 19 of article 17 and sections 71-1929 through 71-1939 of this article. An action before a justice of the peace shall be brought in the town in which the offense was committed or an adjoining town and an action before a county court shall be brought in the county in which the offense was committed. A warrant shall be returnable before the magistrate or county judge issuing the same.

§ 71-1939. Local enforcement.

1. The health commissioner of any county or part-county health district or city is hereby authorized and empowered to bring an action in any court of competent jurisdiction for the recovery of any penalty provided in section 71-1929 for any violation of the provisions of titles 1 through 11 inclusive and title 19 of article 17 and sections 71-1929 through 71-1939 of this article occurring in the district or city in which such health commissioner has jurisdiction,

a. from a source described in subdivision 5 of section 17-0701, or

b. resulting from a failure to comply with the terms of a permit issued by such county or city pursuant to subdivision 6 of section 17-0701. Such health commissioner may, in his discretion, compromise any penalty sued for in such action at any stage thereof before judgment.

2. Any penalty collected pursuant to this section shall be paid to the district or city, except that any penalty for a violation resulting in the killing of fish or shellfish shall be credited to the conservation fund established by section 83 of the State Finance Law, and shall be available for the uses and purposes of such fund.

3. a. The health commissioner of any county which has been approved by the commissioner pursuant to section 17-1017 of this chapter to administer and enforce a local law or ordinance related to the provisions of title ten of article seventeen of this chapter is hereby authorized and empowered to bring an action in any court of competent jurisdiction for the recovery of any penalty provided in section 71-1929 of this title for any violation of title ten of article seventeen of this chapter occurring in the county in which the county health commissioner has jurisdiction.

b. All fines and penalties collected pursuant to this subdivision shall be paid to the district or county, provided, however, that one-quarter of such fines and penalties received shall be paid to the general fund to the credit of the state purposes account.

4. Within three days after bringing any action authorized by this section said health commissioner shall by registered mail serve upon the Attorney General and the commissioner a copy of the summons and complaint, if any, in such action, with a statement as to the date or dates of service thereof upon the defendant or defendants, or, if a complaint has not been served with the summons, a statement of the particulars of the violation or violations upon which such action was based. The Attorney General is hereby authorized to intervene in any such action in order to protect the interests of the state.

§ 71-1941. Penalties and liability for spills of bulk liquids.

1. Except where the owner of or a person in actual or constructive possession or control of more than one thousand one hundred gallons, in bulk, of any liquid including petroleum which, if released, would or would be likely to pollute the lands or waters of the state including the groundwaters thereof can prove that the entry or presence of any part of such liquid onto such lands or into or in such waters causing or contributing to a condition therein in contravention of the standards adopted or deemed adopted by the water pollution control board or any of

its legal successors was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States or New York State Government or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or person shall be liable for a penalty of not more than three thousand seven hundred fifty dollars for an initial incident resulting in or contributing to such a contravention and for an additional penalty not to exceed seven hundred fifty dollars for each day during which such contravention or contribution thereto continues, and in addition shall be liable to the people of the state of New York for the actual costs incurred by or on behalf of the people of the state for the removal or neutralization of such liquid and for any and all reasonable measures taken or attempted to reduce, limit or diminish the extent or effect of such contravention.

2. Such penalty or reimbursement or both due the people of the state by reason of the liability provided in subdivision one of this section may be assessed by the commissioner by order after a hearing or hearings noticed and conducted and reviewable as provided in title nine of article seventeen, or opportunity to be heard, or be recovered in an action or actions brought by the attorney general.

3. In assessing the amount of any such penalty the commissioner or court shall consider:

a. The type, extent and amount of damage which resulted from such incident.

b. The degree of care taken by or on behalf of the party charged to prevent the occurrence of the incident.

c. The efforts made by or on behalf of the party charged to reduce or mitigate the damage which resulted from the incident.

§ 71-1943. Enforcement of section 17-1743.

Any person who fails to so notify the department of such release, discharge or spill into the waters of the state as described in section 17-1743 of this chapter shall, upon conviction, be fined not more than three thousand seven hundred fifty dollars or imprisoned for not more than one year, or both.

§ 71-1945. Enforcement of title 21 of article 17.

1. Except as otherwise provided in this section, any person who violates any provision of title 21 of article 17 of this chapter or any rule, regulation or order issued thereunder shall be liable to the people of the state for a civil penalty not to exceed five hundred dollars for a first violation, and not to exceed one thousand dollars for each subsequent violation, to be assessed by the commissioner after a hearing or opportunity to be heard.

2. Any owner or owner's agent, or occupant of a household who violates any provision of title 21 of article 17 of this chapter or any rule, regulation or order issued thereunder shall, for a first violation be issued a written warning and be provided educational materials. Upon a second violation, the owner or owner's agent, or occupant of a household shall be liable to the people of the state for a civil penalty not to exceed one hundred dollars, and for any subsequent violations shall be liable to the people of the state for a civil penalty not to exceed two hundred fifty dollars. No owner or owner's agent of a household shall be held liable for any violation by an occupant. Such penalties may be assessed by the commissioner after a hearing or opportunity to be heard.

TITLE 21

ENFORCEMENT OF ARTICLE 19 AND AIR POLLUTION EMERGENCY

RULES AND REGULATIONS

Section 71-2101. Applicability of this title.

71-2103. Violations; civil liability.

71-2105. Criminal liability for violations.

71-2107. Injunctions.

71-2109. Emergencies excepted.

71-2111. Enforcement of air pollution emergency rules and regulations.

71-2113. Violations of section 19-0304 of article 19 of this chapter.

71-2115. Penalty assessment criteria.

§ 71-2101. Applicability of this title.

In addition to the provisions of section 71-0101 and 71-0301 and title 17 of this article, the provisions of this title shall be applicable to the enforcement of article 19.

§ 71-2103. Violations; civil liability.

1. Except as provided in section 71-2113, any person who violates any provision of article nineteen or any code, rule or regulation which was promulgated pursuant thereto; or any order except an order directing such person to pay a penalty by a specified date issued by the commissioner pursuant thereto, shall be liable, in the case of a first violation, for a penalty not less than five hundred dollars nor more than eighteen thousand dollars for said violation and an additional penalty of not to exceed fifteen thousand dollars for each day during which such violation continues. In the case of a second or any further violation, the liability shall be for a penalty not to exceed twenty-six thousand dollars for said violation and an additional penalty not to exceed twenty-two thousand five hundred dollars for each day during which such violation continues. In addition thereto, such person may be enjoined from continuing such violation as hereinafter provided.

2. The penalty provided for in subdivision 1 of this section shall be recoverable in an action brought by the Attorney General.

3. An action or cause of action for the recovery of a penalty under article 19 may be settled or compromised by the Attorney General after

proceedings are brought to recover such penalties prior to the entry of judgment therefor.

4. Any fines collected for violations of section 19-0320 of this chapter shall be deposited in the clean air fund, to the credit of the mobile source account, in accordance with the provisions of section ninety-seven-00 of the state finance law.

§ 71-2105. Criminal liability for violations.

1. Except as provided in section 71-2113, any person who shall wilfully violate any of the provisions of article 19 or any code, rule or regulation promulgated pursuant thereto or any final determination or order of the commissioner made pursuant to article 19 shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine, in the case of a first conviction, of not less than five hundred dollars nor more than eighteen thousand dollars or by imprisonment for a term of not more than one year, or by both such fine and imprisonment, for each separate violation. If the conviction is for an offense committed after the first conviction of such person under this subdivision, such person shall be punished by a fine not to exceed twenty-six thousand dollars, or by imprisonment, or by both such fine and imprisonment. Each day on which such violation occurs shall constitute a separate violation.

2. No prosecution under this section shall be instituted until after final disposition of an appeal or review, if any, provided by section 19-0511.

3. All prosecutions under this section shall be instituted by the commissioner and shall be conducted by the Attorney General in the name of the people of the state of New York.

4. In the prosecution of any criminal proceeding under this section by the Attorney General and, in any proceeding before a grand jury in connection therewith, the Attorney General shall exercise all the powers

and perform all the duties which the District Attorney would otherwise be authorized or required to exercise or perform, and in such a proceeding the District Attorney shall exercise such powers and perform such duties as are requested of him by the Attorney General.

§ 71-2107. Injunctions.

It shall be the duty of the attorney general upon the request of the commissioner to bring an action for an injunction against any person violating a provision of article nineteen; any code, rule or regulation promulgated pursuant thereto; or any order of the commissioner issued pursuant thereto; provided, however, that the commissioner shall furnish the attorney general with such material, evidentiary matter, or proof as may be requested by the attorney general for the prosecution of such action. In any action for injunction brought pursuant to this title, any finding of the commissioner shall be prima facie evidence of the fact or facts found therein.

§ 71-2109. Emergencies excepted.

The civil liabilities which shall be imposed pursuant to the provisions of this title upon persons violating the provisions of any code, rule or regulation shall not be so construed as to include any violation which was caused by an act of God, war, strike, riot, catastrophe or other condition as to which negligence or willful misconduct on the part of such person was not the proximate cause.

§ 71-2111. Enforcement of air pollution emergency rules and regulations.

Any person who violates any of the provisions of any regulation promulgated by the commissioner under authority of paragraph y of subdivision one of section 3-0301 shall be liable for a civil penalty of not more than twenty-five hundred dollars for each such violation and an additional penalty of not more than five hundred dollars for each day

during which such violation continues, and, in addition thereto, such persons may be enjoined from continuing such violation. Penalties and injunctive relief provided herein shall be recoverable in an action brought by the attorney general at the request and in the name of the commissioner.

§ 71-2113. Violations of section 19-0304 of article 19 of this chapter.

1. Civil and administrative sanctions. Any person who violates any of the provisions of, or who fails to perform any duty imposed by section 19-0304 of this chapter, or any rule or regulation promulgated pursuant thereto, or any term or condition of any certificate or permit issued pursuant thereto, or any final determination or order of the commissioner made pursuant to article 19 of this chapter concerning a violation of section 19-0304 of this chapter shall be liable in the case of a first violation, for a civil penalty not to exceed thirty-seven thousand five hundred dollars and an additional penalty of not more than thirty-seven thousand five hundred dollars for each day during which such violation continues, to be assessed by the commissioner after an opportunity to be heard pursuant to the provisions of section 71-1709 of this article, or by the court in any action or proceeding pursuant to section 71-2107 of this title, and, in addition thereto, such person may by similar process be enjoined from continuing such violation and any permit or certificate issued to such person may be revoked or suspended or a pending renewal application denied. In the case of a second and any further violation, the liability shall be for a civil penalty not to exceed seventy-five thousand dollars for each such violation and an additional penalty not to exceed seventy-five thousand dollars for each day during which such violation continues.

2. Criminal sanctions. Any person who, having any of the culpable mental states defined in section 15.05 of the penal law, shall violate any of the provisions of or who fails to perform any duty imposed by section 19-0304 of this chapter, or any rules and regulations promulgated pursuant thereto, or any term or condition of any certificate or permit issued pursuant thereto, or any final

determination or order of the commissioner made pursuant to article 19 of this chapter concerning a violation of section 19-0304 of this chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall for a first conviction be punished by a fine not to exceed thirty-seven thousand five hundred dollars per day of violation or by imprisonment for a term of not more than one year, or both such fine and imprisonment. If the conviction is for an offense committed after a first conviction of such person under this subdivision, punishment shall be by a fine not to exceed seventy-five thousand dollars per day of violation, or by imprisonment for not more than two years or by both such fine and imprisonment.

§ 71-2115. Penalty assessment criteria.

In determining the amount of any fine, penalty or sentence imposed pursuant to this title, the commissioner or the court shall take into consideration any evidence introduced by a party regarding the economic impact of a penalty on a business, the compliance history of a violator, good faith efforts of a violator to comply, any economic benefit obtained from noncompliance, the amount of risk or damage to public health or the environment caused by a violator, whether the violation was procedural in nature, or such other factors as justice may require.

TITLE 22

ENFORCEMENT OF TITLE 23 OF ARTICLE 23

Section 71-2201. Enforcement of title 23 of article 23 of this chapter.

§ 71-2201. Enforcement of title 23 of article 23 of this chapter.

Administrative and civil sanctions. 1. Any person who violates any of the provisions of, or who fails to perform any duty imposed by title 23 of article 23 except the duty to accept used oil pursuant to section 23-2307 or any person subject to section 23-2308 or any rule or regulation promulgated pursuant thereto, or any term or condition of any

certificate or permit issued pursuant thereto, or any final determination or order of the commissioner made pursuant to this section shall be liable for a civil penalty not to exceed one thousand dollars for each such violation and an additional penalty of not more than five hundred dollars for each day during which such violation continues, to be assessed by the commissioner after a hearing or opportunity to be heard pursuant to the provisions of section 71-1709 of this chapter, and, in addition thereto, such person may by similar process be enjoined from continuing such violation and any permit or certificate issued to such person may be revoked or suspended or a pending renewal application denied.

2. Any person who refuses to accept used oil as required pursuant to subdivision two of section 23-2307 shall be liable for a civil penalty not to exceed one hundred dollars.

3. Any person who violates any provision of section 23-2308 of this chapter shall be subject to a civil penalty not to exceed two hundred fifty dollars for each violation.

4. Notwithstanding any other provision of law, any person who shall violate the provisions of paragraph (c) of subdivision one of section 23-2307 or paragraph (d) of subdivision two of section 23-2307 of this chapter shall be liable for a civil penalty of not more than five hundred dollars, and an additional civil penalty of not more than five hundred dollars for each day during which such violation continues, not to exceed ten thousand dollars.

TITLE 23

ENFORCEMENT OF ARTICLE 24

Section 71-2301. Applicability of title.

71-2303. Violation; penalties.

71-2305. Enforcement.

71-2307. Abatement of pollution.

§ 71-2301. Applicability of title.

In addition to the provisions of sections 71-0101, 71-0301 and title five of this article, the provisions of this title shall be applicable to the enforcement of article twenty-four of this chapter.

§ 71-2303. Violation; penalties.

1. Civil sanctions. a. Any person who violates, disobeys or disregards any provision of article twenty-four, including title five and section 24-0507 thereof or any rule or regulation, local law or ordinance, permit or order issued pursuant thereto, shall be liable to the people of the state for a civil penalty of not to exceed eleven thousand dollars for every such violation, to be assessed, after a hearing or opportunity to be heard upon due notice and with the rights to specification of the charges and representation by counsel at such hearing, by the commissioner or local government or in an action initiated by the attorney general pursuant to section 71-2305 of this title or on the attorney general's own initiative. Each violation shall be a separate and distinct violation and, in the case of a continuing violation, each day's continuance thereof shall be deemed a separate and distinct violation. Such penalty assessed by the commissioner or local government may be recovered in an action brought by the attorney general at the request and in the name of the commissioner or local government in any court of competent jurisdiction. Such civil penalty may be released or compromised by the commissioner or local government before the matter has been referred to the attorney general; and where such matter has been referred to the attorney general, any such penalty may be released or compromised and any action commenced to recover the same may be settled and discontinued by the attorney general with the consent of the commissioner or local government. In addition, the commissioner or local government shall have power, following a hearing held in conformance with the procedures set forth in section 71-1709 of this article, to direct the violator to cease violating the act and to restore the affected freshwater wetland to its condition prior to the violation, insofar as that is possible within a reasonable time and

under the supervision of the commissioner or local government. Any such order of the commissioner or local government shall be enforceable in an action brought by the attorney general at the request and in the name of the commissioner or local government in any court of competent jurisdiction. Any civil penalty or order issued by the commissioner or local government pursuant to this subdivision shall be reviewable in a proceeding pursuant to article seventy-eight of the civil practice law and rules.

b. Upon determining that significant damage to the functions and benefits of a freshwater wetland is occurring or is imminent as a result of any violation of article twenty-four of this chapter, including but not limited to (i) activity taking place requiring a permit under article twenty-four of this chapter but for which no permit has been granted or (ii) failure on the part of a permittee to adhere to permit conditions, the commissioner or local government shall have power to direct the violator to cease and desist from violating the act. In such cases the violator shall be provided an opportunity to be heard within ten days of receipt of the notice to cease and desist.

2. Criminal sanctions. Any person who violates any provision of article twenty-four of this chapter, including any rule or regulation, local law or ordinance, permit or order issued pursuant thereto, shall, in addition, for the first offense, be guilty of a violation punishable by a fine of not less than two thousand nor more than five thousand dollars; for a second and each subsequent offense he shall be guilty of a misdemeanor punishable by a fine of not less than four thousand nor more than ten thousand dollars or a term of imprisonment of not less than fifteen days nor more than six months or both. In addition to these punishments, any offender may be punishable by being ordered by the court to restore the affected freshwater wetland or adjacent area to its condition prior to the offense, insofar as that is possible. The court shall specify a reasonable time for the completion of such restoration, which shall be effected under the supervision of the commissioner or local government. Each offense shall be a separate and distinct offense and, in the case of a continuing offense, each day's continuance thereof shall be deemed a separate and distinct offense.

3. All fines collected pursuant to this section shall be paid into the environmental protection fund established pursuant to section ninety-two-s of the state finance law.

§ 71-2305. Enforcement.

1. The attorney general, upon their own initiative or upon complaint of the commissioner or local government, shall prosecute persons alleged to have violated article twenty-four of this chapter.

2. The commissioner or local government shall have the right to seek equitable relief to restrain any violation or threatened violation of any provisions of article twenty-four.

3. In exercising its authority pursuant to title eight of article twenty-four of this chapter, the Adirondack park agency shall have authority to exercise the powers of the commissioner to enforce article twenty-four set forth in this title; provided, however, that nothing herein contained shall empower the agency to exercise the powers granted the commissioner by section 71-0525 of this article.

§ 71-2307. Abatement of pollution.

Where any freshwater wetlands have been damaged or endangered by pollution or are subject to pollution, the commissioner shall take all appropriate action to abate the pollution. The commissioner may restrict or order cessation of solid waste disposal, deep well disposal, or liquid waste disposal where such is polluting a given freshwater wetland.

TITLE 25

ENFORCEMENT OF ARTICLE 25

Section 71-2501. Applicability of this title.

71-2503. Violation; penalties.

71-2505. Enforcement.

71-2507. Pollution of tidal wetlands.

§ 71-2501. Applicability of this title.

The provisions of this title shall be applicable to the enforcement of article twenty-five.

§ 71-2503. Violation; penalties.

1. Administrative sanctions.

a. Any person who violates, disobeys or disregards any provision of article twenty-five shall be liable to the people of the state for a civil penalty of not to exceed ten thousand dollars for every such violation, to be assessed, after a hearing or opportunity to be heard, by the commissioner. Each violation shall be a separate and distinct violation and, in the case of a continuing violation, each day's continuance thereof shall be deemed a separate and distinct violation. The penalty may be recovered in an action brought by the commissioner in any court of competent jurisdiction. Such civil penalty may be released or compromised by the commissioner before the matter has been referred to the attorney general; and where such matter has been referred to the attorney general, any such penalty may be released or compromised and any action commenced to recover the same may be settled and discontinued by the attorney general with the consent of the commissioner.

b. Upon determining that significant damage to the functions and benefits of tidal wetlands is occurring or is imminent as a result of any violation of article twenty-five, including but not limited to (i) activity taking place requiring a permit under article twenty-five but for which no permit has been granted or (ii) failure on the part of a permittee to adhere to permit conditions, the commissioner shall have power to direct the violator to cease and desist from violating the act.

In such cases the violator shall be provided an opportunity to be heard within ten days of receipt of the notice to cease and desist.

c. Following a hearing held pursuant to section 71-1709 of this article, the commissioner shall have power to direct the violator to cease and desist from violating the act and to restore the affected tidal wetland or area immediately adjacent thereto to its condition prior to the violation, insofar as that is possible within a reasonable time and under the supervision of the commissioner. Any order of the commissioner shall be enforceable in an action brought by the commissioner in any court of competent jurisdiction. Any civil penalty or order issued by the commissioner under this subdivision shall be reviewable in a proceeding under article seventy-eight of the civil practice law and rules.

2. Criminal sanctions. Any person who violates any provision of article twenty-five shall, in addition, for the first offense, be guilty of a violation punishable by a fine of not less than five hundred nor more than five thousand dollars; for a second and each subsequent offense such person shall be guilty of a misdemeanor punishable by a fine of not less than one thousand nor more than ten thousand dollars or a term of imprisonment of not less than fifteen days nor more than six months or both. In addition to or instead of these punishments, any offender shall be punishable by being ordered by the court to restore the affected tidal wetland or area immediately adjacent thereto to its condition prior to the offense, insofar as that is possible. The court shall specify a reasonable time for the completion of the restoration, which shall be effected under the supervision of the commissioner. Each offense shall be a separate and distinct offense and, in the case of a continuing offense, each day's continuance thereof shall be deemed a separate and distinct offense.

3. The proceeds of any penalty or fine assessed under this section shall be deposited to the credit of the marine resources account of the conservation fund.

§ 71-2505. Enforcement.

The attorney general, on his own initiative or at the request of the commissioner, shall prosecute persons who violate article twenty-five. In addition the attorney general, on his own initiative or at the request of the commissioner, shall have the right to recover a civil penalty of up to ten thousand dollars for every violation of any provision of such article, and to seek equitable relief to restrain any violation or threatened violation of such article and to require the restoration of any affected tidal wetland or area immediately adjacent thereto to its condition prior to the violation, insofar as that is possible, within a reasonable time and under the supervision of the commissioner. In the case of a continuing violation, each day's continuance thereof shall be deemed a separate and distinct violation.

§ 71-2507. Pollution of tidal wetlands.

Where any tidal wetlands are subject to pollution, the commissioner and attorney general shall take all appropriate action to abate the pollution. In addition, the commissioner may restrict or order cessation of solid waste disposal, deep well disposal, or liquid waste disposal where such is polluting a given area of tidal wetland. Where pesticides, chemical products, or fertilizer residues are the polluting agents, the commissioner shall confer with other appropriate public officials to limit the use of such substances at their source; after appropriate consultations, the commissioner may make such rules and regulations as he deems necessary under section 3-0301 of the environmental conservation law.

TITLE 27

ENFORCEMENT OF ARTICLE 27 AND ARTICLE 71

Section 71-2701. Applicability of title.

71-2702. Definitions.

71-2703. Violations of title 3 or 7 of article 27 of this chapter.

- 71-2705. Violations of titles 9, 11 and 13 of article 27 of this chapter.
- 71-2706. Enforcement of section 27-1311.
- 71-2707. Unlawful possession of hazardous wastes in the second degree.
- 71-2709. Unlawful possession of hazardous wastes in the first degree.
- 71-2710. Endangering public health, safety or the environment in the fifth degree.
- 71-2711. Endangering public health, safety or the environment in the fourth degree.
- 71-2712. Endangering public health, safety or the environment in the third degree.
- 71-2713. Endangering public health, safety or the environment in the second degree.
- 71-2714. Endangering public health, safety or the environment in the first degree.
- 71-2715. Unlawful dealing in hazardous wastes in the second degree.
- 71-2717. Unlawful dealing in hazardous wastes in the first degree.
- 71-2719. Presumptions.
- 71-2720. Exemption.
- 71-2721. Enforcement of Article 27 and this title.
- 71-2722. Enforcement of section 27-1701 of this chapter.
- 71-2723. Procedure for determining the amount of the cost of disposing of wastes or of restoring an area to its original state following a defendant's conviction under sections 27-0914, 71-2707, 71-2709, 71-2710, 71-2711, 71-2712, 71-2713, 71-2714, 71-2715 and 71-2717 of this chapter.
- 71-2724. Enforcement of title 21 of article 27.
- 71-2725. Disposition of penalties and fines.
- 71-2726. Payment of rewards for aid in apprehension and conviction of persons guilty of felony or misdemeanor.
- 71-2727. Enforcement of articles 27 and 71 of this chapter.

71-2728. Enforcement of title 27 of article 27 of this chapter.
71-2729. Enforcement of title 26 of article 27 of this chapter.
71-2730. Enforcement of title 30 of article 27 of this chapter.

§ 71-2701. Applicability of title.

In addition to the provisions of sections 71-0101 and 71-0301 of this article, the provisions of this title shall be applicable to the enforcement of article 27 and to this title.

§ 71-2702. Definitions.

As used in section 27-0914 of this chapter, and this title, the following terms shall have the following meanings:

1. "Hazardous wastes" means:

(a) Those wastes identified or listed in regulations promulgated pursuant to section 27-0903 of this chapter and all amendments thereto;

(b) Acute hazardous wastes and;

(c) Waste oils, including but not limited to, used engine lubricating oil, fuel oil, motor oil, gear oil, cutting oil, transmission fluid, hydraulic fluid, dielectric fluid, oil storage tank residue, animal oil, and vegetable oil, which have been contaminated by physical or chemical impurities, through use or accident, and have not been subsequently rerefinned, and which fail one or more of the characteristic tests listed in regulations promulgated pursuant to section 27-0903 of this chapter and all amendments thereto or which contain any waste identified or listed in regulations promulgated pursuant to section 27-0903 of this chapter and all amendments thereto.

2. "Acute hazardous wastes" means those wastes identified or listed as "acute hazardous wastes" in regulations promulgated pursuant to section 27-0903 of this chapter and all amendments thereto.

3. "Authorization" means the possession, where required, of a valid

license, permit or certificate issued by an agency of the state of New York or the federal government or an order issued by the commissioner or the administrator of the federal environmental protection agency under applicable statutes, rules or regulations regarding the possession or release of hazardous or acutely hazardous wastes or substances hazardous or acutely hazardous to public health, safety or the environment or otherwise engaging in conduct which is exempt under applicable statutes, rules or regulations from the requirements of possessing such a license, permit, certificate or order.

4. "Site of generation" means premises where hazardous wastes are produced, used, or stored pursuant to authorization or registration under the federal solid waste disposal act or under article twenty-seven of this chapter, and all contiguous property owned or leased by the owner or lessor of said premises, including contiguous property which may be otherwise divided by a public or private right-of-way, provided the entrance and exit between the properties is at a crossroads intersection, and access is by crossing as opposed to going along the right-of-way, and non-contiguous property owned or leased by the owner or lessor of said premises, but connected by a right-of-way which he controls and to which the public does not have access.

5. "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any substance so that such substance or any related constituent thereof may enter the environment, or the abandonment of any substance. Disposal also means the thermal destruction of waste or hazardous waste and the burning of such wastes as fuel for the purpose of recovering useable energy.

6. "Primary water supply" means a body of surface water, fresh or saline or water in a saturated zone or stratum beneath the surface of land or water, best usage of which includes being used for drinking, culinary or food processing, including potable mineral waters, and so classified in regulations promulgated pursuant to section 15-0313 or 17-0301 of this chapter, as amended.

7. "Water" includes lakes, bays, ponds, rivers, streams, and other

waters as further defined in subdivision two of section 17-0105 of this chapter.

8. "Pound" means an avoirdupois pound.

9. "Gallon" means a unit of liquid capacity equal to two hundred thirty-one cubic inches or four quarts.

10. "Substance hazardous to public health, safety or the environment" means any substance which:

(a) is identified or listed as a hazardous waste in regulations promulgated pursuant to section 27-0903 of this chapter and all amendments thereto, regardless of whether at the time of release the substance was actually a waste; or

(b) appears on the list in regulations promulgated pursuant to paragraph (a) of subdivision one of section 37-0103 of this chapter and all amendments thereto.

11. "Substance acutely hazardous to public health, safety or the environment" means any substance which:

(a) is listed as an acute hazardous waste in regulations promulgated pursuant to section 27-0903 of this chapter and all amendments thereto, regardless of whether at the time of release the substance was actually a waste; or

(b) appears on the list in regulations promulgated pursuant to paragraph (b) of subdivision one of section 37-0103 of this chapter and all amendments thereto.

12. "Environment" means any water, water vapor, any land including land surface or subsurface, air, fish, wildlife, biota, and all other natural resources.

13. "Release" means any pumping, pouring, emitting, emptying, or leaching, directly or indirectly, of a substance so that the substance or any related constituent thereof, or any degradation product of such a substance or of a related constituent thereof, may enter the environment, or the disposal of any substance.

14. "Abandonment" means the intentional relinquishment or forsaking of all possession or control of any substance. In any prosecution under this title, it is an affirmative defense to an allegation of abandonment that the defendant surrendered possession or control of such substance to another party who knowingly and voluntarily consented to assume such possession or control.

15. For the purposes of section 27-3101 of this chapter and subdivision five of section 71-2712, subdivisions seven, eight and nine of section 71-2713 and subdivision three of section 71-2714 of this title:

(a) "construction and demolition debris" shall mean waste resulting from construction, remodeling, repair and demolition of structures, buildings and roads, including but not limited to excavated material. Construction and demolition debris shall not include, even if generated from construction, remodeling, repair and demolition activities, municipal solid waste and such other materials that may be listed for exclusion from this definition pursuant to regulations promulgated by the department.

(b) "excavated material" means excess soil, rock, fill, or other material excavated during construction or maintenance activities. "Fill" shall include soil or other granular, compactible material that is authorized for use pursuant to regulations promulgated by the department.

§ 71-2703. Violations of title 3 or 7 of article 27 of this chapter.

1. Civil and administrative sanctions. a. Any person who violates any of the provisions of, or who fails to perform any duty imposed by title 3 or 7 of article 27 of this chapter or any rule or regulation promulgated pursuant thereto, or any term or condition of any certificate or permit issued pursuant thereto, or any final determination or order of the commissioner made pursuant to this title shall be liable for a civil penalty not to exceed seven thousand five hundred dollars for each such violation and an additional penalty of not

more than one thousand five hundred dollars for each day during which such violation continues, to be assessed by the commissioner after an opportunity to be heard pursuant to the provisions of section 71-1709 of this article, or by the court in any action or proceeding pursuant to section 71-2727 of this title, and, in addition thereto, such person may by similar process be enjoined from continuing such violation and any permit or certificate issued to such person may be revoked or suspended or a pending renewal application denied.

b. i. Any person who violates any of the provisions of, or who fails to perform any duty imposed by, title 3 or 7 of article 27 of this chapter, or any rule or regulation promulgated pursuant thereto, or any term or condition of any certificate or permit issued pursuant thereto and thereby causes the release of solid waste into the environment, shall be liable for a civil penalty not to exceed eleven thousand two hundred fifty dollars for each such violation and an additional penalty of not more than eleven thousand two hundred fifty dollars for each day during which such violation continues, to be assessed by the commissioner after an opportunity to be heard pursuant to the provisions of section 71-1709 of this article, or by the court in any action or proceeding pursuant to section 71-2727 of this title, and, in addition thereto, such person may by similar process be enjoined from continuing such violation and any permit or certificate issued to such person may be revoked or suspended or a pending renewal application denied.

ii. Any person who violates any of the provisions of, or who fails to perform any duty imposed by, title 3 or 7 of article 27 of this chapter, or any rule or regulation promulgated pursuant thereto, or any term or condition of any certificate or permit issued pursuant thereto and thereby causes the release of more than ten cubic yards of solid waste into the environment, shall be liable for a civil penalty not to exceed twenty-two thousand five hundred dollars for each such violation and an additional penalty of not more than twenty-two thousand five hundred dollars for each day during which such violation continues, to be assessed by the commissioner after an opportunity to be heard pursuant to the provisions of section 71-1709 of this article, or by the court in any action or proceeding pursuant to section 71-2727 of this title, and,

in addition thereto, such person may by similar process be enjoined from continuing such violation and any permit or certificate issued to such person may be revoked or suspended or a pending renewal application denied.

c. The court in any action or proceeding pursuant to section 71-2727 of this chapter may exercise all powers exercisable by the commissioner.

2. Criminal sanctions. a. Any person who, having any of the culpable mental states defined in section 15.05 of the penal law, shall violate any of the provisions of or who fails to perform any duty imposed by title 3 or 7 of article 27 of this chapter, or any rules and regulations promulgated pursuant thereto, or any final determination or order of the commissioner made pursuant to this title shall be guilty of a violation and, upon conviction thereof, shall be punished by a fine of not less than one thousand five hundred dollars nor more than fifteen thousand dollars per day of violation or by imprisonment for not more than fifteen days or by both such fine and imprisonment.

b. i. Any person who shall violate paragraph a of this subdivision and thereby causes or attempts to cause the release of more than ten cubic yards of solid waste into the environment shall be guilty of a class B misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than three thousand seven hundred fifty dollars per day nor more than twenty-two thousand five hundred dollars per day of violation, or by imprisonment for a term in accordance with the penal law, or by both such fine and imprisonment.

ii. Any person who shall violate paragraph a of this subdivision and thereby causes or attempts to cause the release of more than ten cubic yards of solid waste into the environment, after having been convicted of a violation of this subdivision within the preceding five years, shall be guilty of a class A misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than three thousand seven hundred fifty dollars per day nor more than thirty-seven thousand five hundred dollars per day of violation, or by imprisonment for a term in accordance with the penal law, or by both such fine and imprisonment.

c. i. Any person who shall violate paragraph a of this subdivision and thereby causes or attempts to cause the release of more than seventy cubic yards of solid waste into the environment shall be guilty of a class A misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than three thousand seven hundred fifty dollars per day nor more than thirty-seven thousand five hundred dollars per day of violation, or by imprisonment for a term in accordance with the penal law, or by both such fine and imprisonment.

ii. Any person who shall violate paragraph a of this subdivision and thereby causes or attempts to cause the release of more than seventy cubic yards of solid waste into the environment, after having been convicted of a violation of this subdivision within the preceding five years, shall be guilty of a class E felony and, upon conviction thereof, shall be punished by a fine of not less than seven thousand five hundred dollars per day nor more than seventy-five thousand dollars per day of violation, or by imprisonment for a term in accordance with the penal law, or by both such fine and imprisonment.

3. Additional sanctions. Any person who violates any of the provisions of, or who fails to perform any duty imposed by title 7 of article 27, with regard to the construction and operation of facilities for the disposal of construction and demolition debris or any rule or regulation promulgated pursuant thereto, or any term or condition of any certificate or permit issued pursuant thereto or any final determination or order of the commissioner made pursuant to this title shall be liable for a civil penalty not to exceed fifteen thousand dollars and each day of such deposition shall constitute a separate violation and said civil penalty is in addition to any other fines or penalties which may be applied pursuant to this title.

4. Definition. As used in this section, the following term shall have the following meaning "release" means any pumping, pouring, emitting, emptying, discharge, deposit, injection, dumping, spilling or placing of a substance.

5. Penalty assessment criteria. In determining the amount of any fine, penalty or sentence imposed pursuant to this section, the commissioner or the court shall take into consideration any evidence introduced by a party regarding the economic impact of a penalty on a business, the compliance history of a violator, good faith efforts of a violator to comply, any economic benefit obtained from noncompliance, the amount of risk or damage to public health or the environment caused by a violator, whether the violation was procedural in nature, or such other factors as justice may require.

§ 71-2705. Violations of titles 9, 11 and 13 of article 27 of this chapter.

1. Civil and administrative sanctions. Any person who violates any of the provisions of, or who fails to perform any duty imposed by titles 9, 11 and 13 of article 27 or any rule or regulation promulgated pursuant thereto, or any term or condition of any certificate or permit issued pursuant thereto, or any final determination or order of the commissioner made pursuant to this title shall be liable in the case of a first violation, for a civil penalty not to exceed sixty-five thousand dollars and an additional penalty of not more than sixty-five thousand dollars for each day during which such violation continues, to be assessed by the commissioner after an opportunity to be heard pursuant to the provisions of section 71-1709 of this article, or by the court in any action or proceeding pursuant to section 71-2727 of this title, and, in addition thereto, such person may by similar process be enjoined from continuing such violation and any permit or certificate issued to such person may be revoked or suspended or a pending renewal application denied. In the case of a second and any further violation, the liability shall be for a civil penalty not to exceed one hundred twenty-five thousand dollars for each such violation and an additional penalty not to exceed one hundred twenty-five thousand dollars for each day during which such violation continues.

2. Criminal sanctions. Any person who, having any of the culpable mental states defined in section 15.05 of the penal law, shall violate

any of the provisions of or who fails to perform any duty imposed by titles 9, 11 and 13 of article 27 or any rules and regulations promulgated pursuant thereto, or any term or condition of any certificate or permit issued pursuant thereto, or any final determination or order of the commissioner made pursuant to this title shall be guilty of a misdemeanor and, upon conviction thereof, shall for a first conviction be punished by a fine not to exceed sixty-five thousand dollars per day of violation or by imprisonment for a term of not more than one year, or both such fine and imprisonment. If the conviction is for an offense committed after a first conviction of such person under this subdivision, punishment shall be by a fine not to exceed one hundred twenty-five thousand dollars per day of violation, or by imprisonment for not more than two years or by both such fine and imprisonment.

§ 71-2706. Enforcement of section 27-1311.

Any person not subject to subdivision four of section seventy-four of the public officers law, who knowingly and willfully discloses confidential information which is entitled to protection under article six of the public officers law and section 27-1311 of this chapter shall be guilty of a misdemeanor.

§ 71-2707. Unlawful possession of hazardous wastes in the second degree.

No person shall:

1. Knowingly possess more than one hundred gallons or one thousand pounds, whichever is less, of an aggregate weight or volume of hazardous wastes at a place other than the site of generation; or

2. Recklessly possess more than two hundred gallons or two thousand pounds, whichever is less, of an aggregate weight or volume of hazardous wastes at a place other than the site of generation.

Unlawful possession of hazardous wastes in the second degree is a class E felony.

§ 71-2709. Unlawful possession of hazardous wastes in the first degree.

No person shall:

1. Knowingly possess acute hazardous wastes at a place other than the site of generation; or

2. Knowingly possess more than fifteen hundred gallons or fifteen thousand pounds, whichever is less, of an aggregate weight or volume of hazardous wastes at a place other than the site of generation; or

3. Recklessly possess more than twenty-five hundred gallons or twenty-five thousand pounds, whichever is less, of an aggregate weight or volume of hazardous wastes at a place other than the site of generation.

Unlawful possession of hazardous waste in the first degree is a class D felony.

§ 71-2710. Endangering public health, safety or the environment in the fifth degree.

A person is guilty of endangering public health, safety or the environment in the fifth degree when with criminal negligence he engages in conduct which causes the release of more than five gallons or fifty pounds, whichever is less, of an aggregate weight or volume of a substance hazardous to public health, safety or the environment.

Endangering public health, safety or the environment in the fifth degree is a class B misdemeanor.

§ 71-2711. Endangering public health, safety or the environment in the fourth degree.

A person is guilty of endangering public health, safety or the environment in the fourth degree when:

1. With criminal negligence, he engages in conduct which causes the release of a substance acutely hazardous to public health, safety or the environment; or

2. With criminal negligence, he engages in conduct which causes the release of more than one hundred gallons or one thousand pounds, whichever is less, of an aggregate weight or volume of a substance hazardous to public health, safety or the environment; or

3. He knowingly or recklessly engages in conduct which causes the release of a substance hazardous to public health, safety or the environment.

Endangering public health, safety or the environment in the fourth degree is a class A misdemeanor.

§ 71-2712. Endangering public health, safety or the environment in the third degree.

A person is guilty of endangering public health, safety or the environment in the third degree when:

1. He recklessly engages in conduct which causes the release of a substance acutely hazardous to public health, safety or the environment; or

2. He recklessly engages in conduct which causes the release of more than two hundred gallons or two thousand pounds, whichever is less, of an aggregate weight or volume of a substance hazardous to public health, safety or the environment; or

3. He recklessly engages in conduct which causes the release of more than one hundred gallons or one thousand pounds, whichever is less, of an aggregate weight or volume of a substance hazardous to public health, safety or the environment and such release creates a substantial risk of physical injury to any person who is not a participant in the crime; or

4. He or she knowingly engages in conduct which causes the release of more than one hundred gallons or one thousand pounds, whichever is less, of an aggregate weight or volume of a substance hazardous to public health, safety or the environment; or

5. With intent to dispose of construction and demolition debris, he or she intentionally engages in conduct that causes the unlawful disposal or release of either ten cubic yards or more, or twenty thousand pounds or more, of construction and demolition debris, as defined in section 71-2702 of this title.

Endangering public health, safety or the environment in the third degree is a class E felony.

§ 71-2713. Endangering public health, safety or the environment in the second degree.

A person is guilty of endangering public health, safety or the environment in the second degree when:

1. He knowingly engages in conduct which causes the release of a substance hazardous to public health, safety or the environment and such release causes physical injury to any person who is not a participant in the crime; or

2. He knowingly engages in conduct which causes the release of a substance acutely hazardous to public health, safety or the environment or the release of a substance which at the time of the conduct he knows

to meet any of the criteria set forth in paragraph (b) of subdivision one of section 37-0103 of this chapter; or

3. He knowingly engages in conduct which causes the release of more than one thousand five hundred gallons or fifteen thousand pounds, whichever is less, of an aggregate weight or volume of a substance hazardous to public health, safety or the environment; or

4. He recklessly engages in conduct which causes the release of a substance acutely hazardous to public health, safety or the environment and such release causes physical injury to any person who is not a participant in the crime; or

5. He knowingly engages in conduct which causes the release of more than one hundred gallons or one thousand pounds, whichever is less, of an aggregate weight or volume of a substance hazardous to public health, safety or the environment and such substance enters water; or

6. He or she knowingly or recklessly engages in conduct which causes the release of a substance hazardous to public health, safety or the environment and such substance enters a primary water supply; or

7. With intent to dispose of construction and demolition debris, he or she intentionally engages in conduct that causes the unlawful disposal or release of either seventy cubic yards or more, or one hundred forty thousand pounds or more, of construction and demolition debris, as defined in section 71-2702 of this title; or

8. With intent to dispose of a hazardous substance on the property of another he or she intentionally engages in conduct that causes the unlawful disposal or release of a hazardous substance; or

9. He or she recklessly disposes of any acutely hazardous substance on any property.

Endangering public health, safety or the environment in the second degree is a class D felony.

§ 71-2714. Endangering public health, safety or the environment in the first degree.

A person is guilty of endangering public health, safety or the environment in the first degree when:

1. He intentionally engages in conduct which causes the release of a substance acutely hazardous to public health, safety or the environment or the release of a substance which at the time of the conduct he knows to meet any of the criteria set forth in paragraph (b) of subdivision one of section 37-0103 of this chapter when he is aware that such conduct creates a substantial risk of serious physical injury to any person who is not a participant in the crime; or

2. He or she knowingly engages in conduct which causes the release of a substance acutely hazardous to public health, safety or the environment or the release of a substance which at the time of the conduct he or she knows to meet any of the criteria set forth in paragraph (b) of subdivision one of section 37-0103 of this chapter and such release causes physical injury to any person who is not a participant in the crime;

3. With intent to dispose of an acutely hazardous substance, he or she intentionally engages in conduct that causes the unlawful disposal or release of an acutely hazardous substance on any property.

Endangering public health, safety or the environment in the first degree is a class C felony.

§ 71-2715. Unlawful dealing in hazardous wastes in the second degree.

No person shall:

1. With intent that another person possess or dispose of hazardous

wastes without authorization, solicit, request, command, importune or otherwise attempt to cause such other person to engage in such conduct; or

2. Believing it probable that he is rendering aid to a person who intends to possess or dispose of hazardous wastes without authorization, engage in conduct which provides such person with the means or opportunity for the commission thereof and which in fact aids such person to commit such act.

Unlawful dealing in hazardous waste in the second degree is a class A misdemeanor.

§ 71-2717. Unlawful dealing in hazardous wastes in the first degree.

No person shall:

1. Remove, assist in the removal, or make available for removal, more than one hundred gallons or one thousand pounds, whichever is less, of an aggregate weight or volume of hazardous wastes intending that such wastes are to be possessed or disposed of by a person who does not have authorization; or

2. Solicit, agree to receive or receive a benefit for possession or disposal of hazardous wastes intending that the possession or disposal is to be done without authorization; or

3. Offer, agree to confer, confer upon another or authorize or direct anyone to offer, agree to confer or confer upon another a benefit for possession or disposal of hazardous wastes intending that the person who is to perform such possession or disposal does not have authorization.

Unlawful dealing in hazardous waste in the first degree is a class E felony.

§ 71-2719. Presumptions.

1. Possession of fifteen hundred gallons or fifteen thousand pounds, whichever is less, of an aggregate weight or volume of hazardous wastes or substances hazardous to public health, safety or the environment, shall be presumptive evidence of knowledge on the part of the person in possession that the material is a hazardous waste or a substance hazardous to public health, safety or the environment; and

2. Possession of five gallons or fifty pounds, whichever is less, of an aggregate weight or volume of acute hazardous wastes or substances acutely hazardous to public health, safety or the environment shall be presumptive evidence of knowledge on the part of the person in possession that the material is an acute hazardous waste or a substance acutely hazardous to public health, safety or the environment.

§ 71-2720. Exemption.

1. For activities requiring a New York state or federal license, permit or certificate or which are subject to an order of the commissioner or the administrator of the federal environmental protection agency, the provisions of sections 71-2707 through 71-2714 of this chapter shall not apply to persons who possess and whose conduct is subject to and in compliance with such a valid license, permit, certificate or order or to persons whose conduct has been granted interim status pursuant to the federal solid waste disposal act as amended by the resource conservation and recovery act of 1976 (42 U.S.C. sec. 6901 et seq.) or pursuant to article 27 of this chapter or the rules and regulations promulgated thereunder.

2. In addition, no person who meets the requirements for an exemption from a New York state or federal license, permit, certificate or order shall be deemed in violation of sections 71-2707 through 71-2714 for engaging in conduct which would otherwise require such a license, permit, certificate or order.

3. No officer or employee of a municipal corporation shall be deemed in violation of sections 71-2707 through 71-2714 of this chapter if the possession or release was caused by such officer or employee pursuant to the reasonable exercise of his or her official powers, duties or functions on behalf of such corporation.

§ 71-2721. Enforcement of Article 27 and this title.

1. When a person is convicted of a crime under the provisions of this title, the sentence of the court shall be as follows:

(a) A fine, as set forth in subdivision two of this section;

(b) Following a hearing in accordance with the procedures set forth in section 71-2723 of this chapter, payment of the cost of legally disposing of the hazardous waste unlawfully possessed and restoring to its original state the area where substances were released unlawfully in violation of sections 27-0914, 71-2710, 71-2711, 71-2712, 71-2713 and 71-2714 of this chapter;

(c) Any other sentence authorized by law, including imprisonment; or

(d) Any combination of such fine, payment of the cost of disposal and restoration, and any other sentence authorized by law, including imprisonment.

2. Fines. A sentence to pay a fine shall be a sentence to pay an amount fixed by the court, not exceeding the higher of:

(a) Three hundred thousand dollars for a class C felony;

(b) Two hundred twenty-five thousand dollars for a class D felony;

(c) One hundred fifty thousand dollars for a class E felony;

(d) Thirty-seven thousand five hundred dollars for a class A misdemeanor;

(e) Fifteen thousand dollars for a class B misdemeanor; or

(f) Double the amount of the defendant's gain from the commission of the crime.

§ 71-2722. Enforcement of section 27-1701 of this chapter.

Administrative and civil sanctions. 1. Any person who knowingly or intentionally violates any of the provisions or fails to perform any duty imposed by section 27-1701 of this chapter, except the duty to accept a lead-acid battery pursuant to subdivision four of such section, shall be liable for a civil penalty not to exceed seventy-five dollars for each violation, provided that such civil penalty shall be in addition to any other penalties authorized under other state or local laws governing the illegal disposal of lead-acid batteries.

2. Any retailer or distributor who refuses to accept a lead-acid battery as required pursuant to subdivision four of section 27-1701 of this chapter shall be liable for a civil penalty not to exceed seven hundred fifty dollars.

3. Penalties under this section shall be assessed by the commissioner after a hearing or opportunity to be heard pursuant to the provisions of section 71-1709 of this article, and, in addition thereto, any person found to have violated the provisions of section 27-1701 of this chapter may by similar process be enjoined from continuing such violation. For the purposes of this section, disposal of each lead-acid battery except as authorized pursuant to subdivision three of section 27-1701 of this chapter shall constitute a separate violation.

4. In the city of New York, the provisions of title seventeen of article twenty-seven of this chapter shall be enforceable by an agency or agencies designated for such purpose by the mayor of such city, and notice of violation shall be returnable to the environmental control board of such city which shall have the power to impose civil penalties as provided in subdivisions one and two of this section. Outside the city of New York, the provisions of such title seventeen shall be enforceable by a local agency or agencies duly designated by the commissioner.

5. All civil penalties and fines collected for any violation of such title seventeen shall be paid over to the commissioner for deposit in the general fund; provided however, that all civil penalties collected for any violation of such title seventeen which have been imposed by the

environmental control board of the city of New York, or a local adjudicatory body pursuant to subdivision four of this section, shall be paid into an environmental fund of such city or locality.

§ 71-2723. Procedure for determining the amount of the cost of disposing of wastes or of restoring an area to its original state following a defendant's conviction under sections 27-0914, 71-2707, 71-2709, 71-2710, 71-2711, 71-2712, 71-2713, 71-2714, 71-2715 and 71-2717 of this chapter.

1. Order directing a hearing. In any case where the court is of the opinion that the sentence should consist of or include the amount of the cost of legally disposing of a hazardous waste when such waste is unlawfully possessed or restoring to its original state the area where a substance was unlawfully released in violation of sections 27-0914, 71-2710, 71-2711, 71-2712, 71-2713 and 71-2714 of this chapter, the court shall order a hearing to determine the amount of the cost of such disposal or restoration. For the purposes of this section, the "original state of the area" shall mean the reasonably ascertainable condition of the property immediately prior to the unlawful disposal or if impracticable to determine such condition, then it shall be the reasonable environmentally sound condition of the property. The order must be filed with the clerk of the court and must specify a date for the hearing not less than ten days after the filing of the order.

2. Notice of hearing. Upon receipt of the order, the clerk of the court must send a notice of the hearing to the defendant, his counsel and the people. Such notice must specify the time and place of the hearing and the fact that the purpose thereof is to determine the amount of the cost of legally disposing of a hazardous waste when such waste is unlawfully possessed or restoring to its original state the area where a substance was released unlawfully in violation of sections 27-0914, 71-2710, 71-2711, 71-2712, 71-2713 and 71-2714 of this chapter.

3. Hearing. When the defendant appears for the hearing the court must ask him whether he wishes to make any statement or offer any evidence

with respect to the amount of the cost of legally disposing of the hazardous waste when such waste is unlawfully possessed or restoring to its original state the area where a substance was released unlawfully in violation of sections 27-0914, 71-2710, 71-2711, 71-2712, 71-2713 and 71-2714 of this chapter.

4. Burden and standard of proof; evidence. At any hearing held pursuant to this section the burden of proof rests upon the people. For the purpose of any hearing held pursuant to this section, a finding:

(a) as to the amount of the cost of legally disposing of the hazardous waste when such waste is unlawfully possessed;

(b) as to the amount of the cost of legally restoring to its original state the area where the substance was released unlawfully in violation of sections 27-0914, 71-2710, 71-2711, 71-2712, 71-2713 and 71-2714 of this chapter must be based upon a preponderance of the evidence. The defendant shall be permitted to rebut any evidence offered by the people.

5. Conclusion of hearing. At any time during the pendency of a hearing pursuant to this section the court may, in its discretion, terminate the hearing without making any finding, provided the court states on the record its reasons for the termination. In all other cases the court shall enter its findings and judgment upon the record at the conclusion of the hearing.

6. Judgment. (a) The judgment may require the defendant to pay an amount for the disposal of hazardous wastes or the restoration of the property or to perform duties of disposal or restoration or to perform both.

(b) When the court orders the defendant to pay an amount for the disposal of hazardous wastes or the restoration of the property, the provisions of article four hundred twenty of the criminal procedure law shall govern the collection of the amount which shall be paid to the commissioner for deposit to the credit of the hazardous waste remedial fund established by section ninety-seven-b of the state finance law.

(c) Where the court orders the defendant to perform duties of the disposal of hazardous wastes or the restoration to the property the

court may authorize the department to supervise and report to it on the conduct of such duties; provided, however, that, 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 exercise of the department's authority as so conferred by the court; and provided further that this subdivision shall not limit any 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.

(d) In order to most likely assure the disposal of the hazardous wastes or the restoration of the property, where there are two or more defendants the court may apportion the costs or assign the performance duties of disposal or restoration, or both, between or among the defendants as the interests of justice may appear to the court.

§ 71-2724. Enforcement of title 21 of article 27.

1. Any person who knowingly or intentionally violates any provision of or fails to perform any duty pursuant to title twenty-one of article twenty-seven of this chapter, except subdivision one of section 27-2105 of this chapter, shall upon the first finding of such a violation be liable for a civil penalty not to exceed one hundred dollars. Any person convicted of a second or subsequent violation shall be liable for a civil penalty not to exceed five hundred dollars for each violation.

2. Any person who knowingly or intentionally violates or fails to perform any duty imposed by subdivision one of section 27-2105 of this chapter shall upon the first finding of such a violation be provided with educational materials describing the requirements for mercury disposal and the effects of improper mercury disposal, and be warned that future violations shall result in the imposition of a fine. Any person convicted of a second violation shall be liable for a civil penalty not to exceed fifty dollars. Any person convicted of a third violation shall be liable for a civil penalty not to exceed seventy-five dollars. Any person convicted of a fourth or subsequent violation shall

be liable for a civil penalty not to exceed one hundred dollars for each violation.

3. Penalties under this section shall be assessed by the commissioner after a hearing or opportunity to be heard pursuant to the provisions of section 71-1709 of this article, and, in addition thereto, any person found to have violated title twenty-one of article twenty-seven of this chapter may by similar process be enjoined from continuing such violation.

4. All civil penalties and fines collected for any violation of title twenty-one of article twenty-seven of this chapter shall be paid over to the commissioner for deposit in the environmental protection fund established by section ninety-two-s of the state finance law.

§ 71-2725. Disposition of penalties and fines.

1. a. All penalties and fines accumulated prior to April first, nineteen hundred eighty-eight, pursuant to sections 71-2705, 71-2721 and 71-2723 of this title shall be paid over to the commissioner for deposit to the credit of the hazardous waste remedial fund established by section ninety-seven-b of the state finance law.

b. All penalties and fines collected pursuant to sections 71-2705, 71-2721 and 71-2723 of this title shall be paid into the general fund to the credit of the state purposes account.

2. All moneys collected in any action brought on behalf of the state for damage resulting from improper or unlawful dissemination or disposal of hazardous wastes shall be paid over to the commissioner for deposit to the credit of the hazardous waste remedial fund established by section ninety-seven-b of the state finance law.

§ 71-2726. Payment of rewards for aid in apprehension and conviction of persons guilty of felony or misdemeanor.

The commissioner is authorized to offer and pay rewards of not more than twenty-five thousand dollars for information which leads to the detection, arrest and conviction of a person guilty of felony or misdemeanor pursuant to the provisions of this title; provided, however, that no police officer, as that term is defined under subdivision thirty-four of section 1.20 of the criminal procedure law, peace officer, as that term is defined in section 2.10 of the criminal procedure law, or any other authorized law enforcement officer or official shall be entitled, directly or indirectly, to collect or receive any such reward or part thereof.

§ 71-2727. Enforcement of articles 27 and 71 of this chapter.

1. The commissioner, after investigation, notice and an opportunity to be heard, may issue, modify and revoke orders prohibiting violations of any of the provisions of article 27 or 71 or of any rule or regulation promulgated pursuant thereto and requiring the taking of such remedial measures as may be necessary or appropriate.

2. The attorney general, on his own initiative, or at the request of the commissioner, may initiate any appropriate action or proceeding to enforce any provision of article 27 or 71 or any rule or regulation promulgated pursuant thereto and any order issued or penalty assessed pursuant to this title.

3. a. The commissioner, after investigation, notice and an opportunity to be heard, may issue, modify and revoke orders requiring corrective action, including corrective action beyond the facility boundary where necessary to protect human health and the environment, for all releases of hazardous waste or constituents from any solid waste management unit at any treatment, storage or disposal facility which is either permitted or seeking a permit under title 7 or 9 of article 27 of this chapter, regardless of the time at which waste was placed in such unit.

b. Whenever on the basis of any information the commissioner

determines that there is or has been a release of hazardous waste or constituents into the environment from a facility which has or has had interim status according to regulations adopted pursuant to title 7 or 9 of article 27 of this chapter but which has not received a final status permit pursuant to such regulations, the commissioner may issue an order requiring corrective action or such other response measures as he deems necessary to protect human health or the environment.

§ 71-2728. Enforcement of title 27 of article 27 of this chapter.

1. Any person who knowingly or intentionally violates any provision of or fails to perform any duty imposed pursuant to title 27 of article 27 of this chapter shall upon the first finding of such a violation be provided with a warning that future violations shall result in the imposition of a fine. Any person convicted of a second violation shall be liable for a civil penalty not to exceed one hundred dollars. Any person convicted of a third or subsequent violation shall be liable for a civil penalty not to exceed five hundred dollars.

2. Penalties under this section shall be assessed by the commissioner after a hearing or opportunity to be heard pursuant to the provisions of section 71-1709 of this article and, in addition thereto, any person found to have violated title 27 of article 27 of this chapter may by similar process be enjoined from continuing such violation.

3. All civil penalties and fines collected for any violation of title 27 of article 27 of this chapter shall be paid over to the commissioner for deposit in the environmental protection fund established by section ninety-two-s of the state finance law.

§ 71-2729. Enforcement of title 26 of article 27 of this chapter.

1. a. Any consumer, as defined in title twenty-six of article twenty-seven of this chapter, who violates any provision of, or fails to perform any duty imposed by, section 27-2611 of this chapter, shall be

liable for a civil penalty not to exceed one hundred dollars for each violation.

b. Any person, except a consumer, manufacturer, or an owner or operator of an electronic waste collection site, electronic waste consolidation facility, or electronic waste recycling facility as these terms are defined in title twenty-six of article twenty-seven of this chapter, who violates any provision, or fails to perform any duty imposed by section 27-2611 of this chapter, shall be liable for a civil penalty not to exceed two hundred fifty dollars for each violation.

c. Any manufacturer, or any person operating an electronic waste collection site, an electronic waste consolidation facility, or an electronic waste recycling facility as those terms are defined in title twenty-six of article twenty-seven of this chapter, who:

i. fails to submit any report, registration, fee, or surcharge to the department as required by title twenty-six of article twenty-seven of this chapter shall be liable for a civil penalty not to exceed one thousand dollars for each day such report, registration, fee, or surcharge is not submitted; and

ii. violates any other provision of title twenty-six of article twenty-seven of this chapter or fails to perform any duty imposed by such title, except for subdivision four of section 27-2603 of this chapter, shall be liable for a civil penalty for each violation not to exceed one thousand dollars for the first violation, two thousand five hundred dollars for the second violation and five thousand dollars for the third and subsequent violations of this title within a twelve-month period.

d. Any retailer, as defined by section 27-2601 of this chapter, who violates any provision of title twenty-six of article twenty-seven of this chapter or fails to perform any duty imposed by such title, shall be liable for a civil penalty for each violation not to exceed two hundred fifty dollars for the first violation, five hundred dollars for the second violation and one thousand dollars for the third and

subsequent violations of this title in a twelve-month period.

e. Civil penalties under this section shall be assessed by the commissioner after a hearing or opportunity to be heard pursuant to the provisions of section 71-1709 of this article, or by the court in any action or proceeding pursuant to this section, and, in addition thereto, such person may by similar process be enjoined from continuing such violation.

2. All penalties collected pursuant to this section shall be paid over to the commissioner for deposit to the environmental protection fund established pursuant to section ninety-two-s of the state finance law.

§ 71-2730. Enforcement of title 30 of article 27 of this chapter.

1. Any person who shall violate section 27-3003 of this chapter shall be liable to the state of New York for a civil penalty of not more than two hundred fifty dollars for the first violation, not more than five hundred dollars for the second violation in the same calendar year, and not more than one thousand dollars for the third and each subsequent violation in the same calendar year. A hearing or opportunity to be heard shall be provided prior to the assessment of any civil penalty.

2. (a) The department, the department of agriculture and markets, the department of health, and the attorney general are hereby authorized to enforce the provisions of section 27-3003 of this chapter.

(b) The provisions of section 27-3003 of this chapter may also be enforced by a county and the local legislative body thereof may adopt local laws, ordinances or regulations consistent with this title providing for the enforcement of such provisions. Provided that a violation of this title may not be enforced by both the state and a county, and provided further that any county that has filed a written declaration pursuant to subdivision two of section 27-3007 of this title shall not enforce the provisions of this title.

3. Any fines that are collected by the state during proceedings by the

state to enforce the provisions of section 27-3003 of this chapter shall be paid into the environmental protection fund established pursuant to section ninety-two-s of the finance law.

* 4. Any fines that are collected by a county during proceedings by the county to enforce the provisions of section 27-3003 of this title within the county shall be retained by the county.

* NB Repealed January 1, 2030

TITLE 28

ENFORCEMENT OF ARTICLE 30

Section 71-2801. Applicability of title.

71-2803. Penalties.

71-2805. Attorney general enforcement.

§ 71-2801. Applicability of title.

In addition to the provisions of sections 71-0101 and 71-0301 of this article, the provisions of this title shall be applicable to the enforcement of article 30 of this chapter and to this title.

§ 71-2803. Penalties.

Any person who violates section 30-0103 of this chapter shall be liable for a civil penalty not to exceed thirty-seven thousand five hundred dollars for the first day of the violation, not to exceed seventy-five thousand dollars for the second day of the violation, and not to exceed one hundred fifty thousand dollars per violation thereafter. For purposes of this section, each day in which a violation occurs shall be considered a separate violation.

§ 71-2805. Attorney general enforcement.

The penalties provided by section 71-2803 of this title shall be

recoverable in an action brought by the attorney general.

TITLE 29 - ENFORCEMENT OF ARTICLE 33

Section 71-2901. Applicability of this title.

71-2903. Investigations.

71-2905. Immunity of witnesses.

71-2907. Sanctions.

71-2909. Aiders and abettors.

71-2911. Injunction against violations.

71-2913. Act of officer or agent deemed act of principal.

71-2915. Disposal of fines and moneys recovered.

§ 71-2901. Applicability of this title.

This title shall apply to the enforcement of article 33 of this chapter.

§ 71-2903. Investigations.

1. The commissioner, or any officer of the department when authorized by the commissioner, may investigate and report as to all matters within or pertaining to the powers and jurisdiction of the department for the purpose of carrying into effect the provisions of article 33 of this chapter or this title and the rules of the department made pursuant thereto.

2. To aid in the administration of article 33, the commissioner or any person designated by him may issue subpoenas in his name requiring the attendance and giving of testimony by witnesses and the production of books, papers and other 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

any subpoena issued by a board or committee except that in the case of hearings, proceedings, or investigations before or conducted by the department neither any person certified to apply pesticides nor the holder of a business registration issued pursuant to article 33, nor an employee of such registration holder or, nor an officer or stockholder in a registered 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 hereunder 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.

§ 71-2905. Immunity of witnesses.

In any investigation, hearing or inquiry, conducted pursuant to article 33 of this chapter or this title or the rules of the department made pursuant thereto, the commissioner, or his deputy or other officer presiding at such investigation, hearing or inquiry, may confer immunity in accordance with the provisions of section 50.20 of the criminal procedure law.

§ 71-2907. Sanctions.

1. Administrative sanctions. Except as otherwise provided in this subdivision, any person who violates any provision of article 33 of this chapter or any rule, regulation or order issued thereunder or commits any offense described in section 33-1301 of this chapter shall be liable to the people of the state for a civil penalty not to exceed five thousand dollars for a first violation, and not to exceed ten thousand dollars for a subsequent offense, to be assessed by the commissioner after a hearing or opportunity to be heard. Notwithstanding any provision of law to the contrary, an owner or owner's agent of a

multiple dwelling or owner, owner's agent or a person in a position of authority for all other types of premises, as such terms are defined in paragraph d of subdivision five of section 33-0905 of this chapter, who violates any provision of a local law adopted pursuant to subdivision one of section 33-1004 of this chapter relating to paragraph b of such subdivision, and a person, who violates any provision of a local law adopted pursuant to subdivision one of section 33-1004 of this chapter relating to paragraph c of such subdivision, and a person who violates the provisions of subdivision three of section three hundred ninety-c of the social services law shall, for a first such violation, in lieu of a penalty, be issued a written warning and shall also be issued educational materials pursuant to subdivision two of section 33-1005 of this chapter. Such person shall, however, for a second violation, be liable to the people of the state for a civil penalty not to exceed one hundred dollars, and not to exceed two hundred fifty dollars for any subsequent violation, such penalties to be assessed by the commissioner after a hearing or opportunity to be heard.

Notwithstanding any provision of law to the contrary, any person who violates the provisions of a local law adopted pursuant to subdivision one of section 33-1004 of this chapter relating to paragraph a of such subdivision, shall be issued a warning for the first violation and shall be provided seven days to correct such violation; and shall be liable to the people of the state for a civil penalty not to exceed one hundred dollars for a second violation, and not to exceed two hundred fifty dollars for a subsequent violation, to be assessed by the commissioner after a hearing or opportunity to be heard. The commissioner, acting by the attorney general, may bring suit for collection of such assessed civil penalty in any court of competent jurisdiction. Such civil penalty may be released or compromised by the commissioner before the matter has been referred to the attorney general; and where such matter has been referred to the attorney general, any such penalty may be released or compromised and any action commenced to recover the same may be settled and discontinued by the attorney general with the consent of the commissioner. Any civil penalty assessed by the commissioner under this subdivision shall be reviewable in a proceeding under article 78 of the civil practice law and rules.

2. Civil sanctions. In lieu of seeking administrative sanctions, the commissioner may refer any violation described in subdivision 1 of this section to the attorney general who shall be empowered to bring a civil suit to seek any of the sanctions described in subdivision 1 of this section. Any such sanctions imposed may be released or compromised or the action may be settled and discontinued by the attorney general with the consent of the commissioner.

3. Criminal sanctions. Any person who, having the culpable mental states defined in subdivision one or two of section 15.05 or in section 20.20 of the penal law, violates any provision of article 33 of this chapter or any rule, regulation thereunder or commits any offense described in section 33-1301 of this chapter, except an offense relating to the application of a general use pesticide shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed five thousand dollars for each day during which such violation continues or by imprisonment for a term of not more than one year, or by both such fine and imprisonment. If the conviction is for a subsequent offense committed after a first conviction of such person under this subdivision, punishment shall be by a fine not to exceed ten thousand dollars for each day during which such violation continues or by imprisonment for a term of not more than one year, or by both such fine and imprisonment. When a violation consists of the manufacture or production of any prohibited article, each day during which or any part of which such manufacture or production is carried on or continued, shall be deemed a separate violation. Any person who violates any provision of article 33 of this chapter or any rule or regulation thereunder or commits any offense described in section 33-1301 of this chapter relating to the use of a general use pesticide shall be guilty of a violation and, upon conviction thereof, shall be punished by a fine not to exceed twenty-five hundred dollars. If the conviction is for a subsequent offense committed after the first such conviction of such person under this subdivision, punishment shall be by a fine not to exceed five thousand dollars. Prosecution hereunder may be conducted by either the attorney general or the district attorney consistent with section 71-0403 of this article. With respect to violations of section

33-1004 of this chapter, penalties imposed pursuant to this subdivision may be assessed only against a person providing a commercial lawn application.

4. When a violation consists of the sale, or the offering or exposing for sale or exchange of any prohibited article or substance, the sale of each one of several packages shall constitute a separate violation, and each day on which any such article or substance is offered or exposed for sale or exchange shall constitute a separate violation. When the use of any such article or substance is prohibited, each day during which or any part of which such article or substance is so used or furnished for use, shall constitute a separate violation, and the furnishing of the same for use to each person to whom the same may be furnished shall constitute a separate violation. When the storage of any article is prohibited beyond a certain period, each day during which or any part of which any article is so stored beyond the period provided for by article 33 of this chapter or this title shall constitute a separate violation.

5. This section shall not affect the rights of any other person seeking damages arising out of a violation.

§ 71-2909. Aiders and abettors.

Any person knowingly aiding or abetting any other person in the violation of any provision of article 33 of this chapter or any rule, regulation, or order of the department made pursuant thereto shall be subject to the same punishment and penalty as that prescribed by this title for the violation by such other person.

§ 71-2911. Injunction against violations.

Whenever it appears that any person is violating or threatening to violate any provision of article 33 of this chapter or any rule, regulation or order issued thereunder or is committing any offense described in section 33-1301 of this chapter, the department, acting by

the attorney general, may bring suit against such person in any court of competent jurisdiction to restrain such person from continuing such violation or from carrying out the threat of violation. In any such suit, the court shall have jurisdiction to grant to the department without bond or other undertaking, such prohibitory or mandatory injunctions as the facts may warrant, including temporary restraining orders or preliminary injunctions.

§ 71-2913. Act of officer or agent deemed act of principal.

In construing and enforcing the provisions of article 33 of this chapter or this title relating to penalties, the act of a director, officer, agent or other person acting for or employed by a person, association or corporation subject to the provisions of article 33 of this chapter or this title and acting within the scope of his employment, shall be deemed the act of such person, association or corporation.

§ 71-2915. Disposal of fines and moneys recovered.

Except as otherwise provided in article 33 of this chapter or this title, all moneys recovered, either as fines, penalties, forfeitures or otherwise, for the violation of any of the provisions of article 33 of this chapter or this title, or of the rules of the department, and all bail forfeited by persons charged with such violations, shall be the property of the state. Moneys so recovered by town justices shall be paid to the state comptroller in accordance with the provisions of section 27 of the town law and moneys so recovered by village justices to the state comptroller in accordance with the provisions of section 4-410 of the village law. The same disposal shall be made of all moneys recovered upon any bond given by any officer by virtue of the provisions of article 33 of this chapter or this title. The comptroller shall deposit all such moneys into the general fund to the credit of the state purposes account.

TITLE 31

ENFORCEMENT OF ARTICLE 35

Section 71-3101. Applicability of this title.

71-3103. Enforcement of article 35.

§ 71-3101. Applicability of this title.

In addition to the provisions of sections 71-0101 and 71-0301 the provisions of this title shall apply to the enforcement of article 35 of this chapter.

§ 71-3103. Enforcement of article 35.

Any person who violates any of the provisions of, or who fails to perform any duties imposed by article 35 or any regulation promulgated by the commissioner thereunder, shall be liable to a civil penalty of not more than twenty-five hundred dollars for each such violation and an additional penalty of not more than five hundred dollars for each day during which such violation continues, and, in addition thereto, such person may be enjoined from continuing such violation. Penalties and injunctive relief provided herein shall be recoverable in an action brought by the Attorney General at the request and in the name of the commissioner.

TITLE 33

ENFORCEMENT OF ARTICLE 43

Section 71-3301. Applicability of this title.

71-3303. Civil and administrative sanctions.

71-3305. Administrative procedures.

71-3307. Criminal sanctions.

§ 71-3301. Applicability of this title.

This title shall apply to the enforcement of article forty-three of this chapter. In addition to the provisions contained herein, the provisions of sections 71-0101 and 71-0301 and titles two and five of this article shall apply to enforcement of article forty-three of this chapter; provided, however, whenever such sections reference the department or commissioner, such references shall be deemed to be references to the Lake George park commission for the purposes of this article.

§ 71-3303. Civil and administrative sanctions.

1. Any person who violates any provision of, or fails to perform any duty imposed by article forty-three of this chapter or any rule or regulation promulgated pursuant thereto, or any term or condition of any certificate or permit issued pursuant thereto, or any final determination or order of the Lake George park commission made pursuant to article forty-three of this chapter shall be liable for a civil penalty not to exceed five hundred dollars for each such violation and an additional penalty of five hundred dollars for each day during which such violation continues, to be assessed by the Lake George park commission after an opportunity to be heard, or by the court in any action or proceeding initiated by the attorney general in the name of the Lake George park commission. In addition thereto, such person may, by similar process, be enjoined from continuing such violation, and any permit or certificate issued to such person may be revoked or suspended, or a pending renewal application denied based upon such violation.

2. Such civil penalty may be released or compromised by the Lake George park commission before the matter has been referred to the attorney general; and, where such matter has been referred to the attorney general, any such penalty may be released or compromised and any action commenced to recover the same may be settled and discontinued by the attorney general with the consent of the Lake George park commission.

§ 71-3305. Administrative procedures.

1. In any proceeding initiated by the Lake George park commission pursuant to this title, the commission or any person designated by the commission for this purpose, may issue subpoenas and administer oaths in connection with any hearing or investigation under or pursuant to the provisions of this chapter, and it shall be the duty of the Lake George park commission and any persons designated by it for such purpose to issue such subpoenas at the request of and on behalf of any respondent.

2. The Lake George park commission and those persons designated by it shall not be bound by the laws of evidence in the conduct of hearing proceedings, but the determination shall be founded upon sufficient legal evidence to sustain it.

3. All proceedings where the administrative penalties sought by the Lake George park commission exceeds five thousand dollars, shall be referred to the commissioner for processing in accordance with the procedures specified in section 71-1709 of this chapter, except that, following the processing of such proceedings, the Lake George park commission shall make appropriate determinations and issue an order in accordance therewith in lieu of such action by the commissioner. All proceedings where the administrative penalties sought are less than or equal to five thousand dollars, may either be referred to the commissioner as provided herein, or the Lake George park commission may appoint a hearing officer who must be an attorney admitted to practice law in the state of New York, who shall preside over such hearing and report to the Lake George park commission regarding the hearing. The commission shall establish by rules and regulations regarding qualifications of such hearing officers and appointment procedures, including per diem fees not to exceed two hundred fifty dollars.

§ 71-3307. Criminal sanctions.

Any person who, having any of the culpable mental states defined in

section 15.05 of the penal law, shall violate any of the provisions of or who fails to perform any duty imposed by article forty-three of this chapter or any rules or regulations promulgated thereto, or any final determination or order of the Lake George park commission shall be guilty of a violation, and, upon conviction thereof, shall be punished by a fine not to exceed five hundred dollars for each violation and five hundred dollars for each day such violation shall continue.

TITLE 35

MISCELLANEOUS ENFORCEMENT PROVISIONS

Section 71-3501. Putting noisome or unwholesome substances or maintaining noisome business on or near highway.

71-3503. Throwing gas tar or refuse into public waters.

§ 71-3501. Putting noisome or unwholesome substances or maintaining noisome business on or near highway.

A person, who deposits, leaves or keeps, on or near a highway or route of public travel, either on the land or on the water, any noisome or unwholesome substance, or establishes, maintains or carries on, upon or near a public highway or route of public travel, either on the land or on the water, any business, trade or manufacture which is noisome or detrimental to public health, is guilty of a misdemeanor, punishable by a fine of not less than one hundred dollars, or by imprisonment not less than three nor more than six months, or both.

§ 71-3503. Throwing gas tar or refuse into public waters.

A person, who throws or deposits gas tar, or the refuse of a gas house or gas factory, or offal, refuse, or any other noxious, offensive, or poisonous substance into any public waters, or into any sewer or stream running or entering into such public waters, is guilty of a misdemeanor.

TITLE 36

ENVIRONMENTAL EASEMENTS

Section 71-3601. Declaration of policy and statement of purpose.

71-3603. Definitions.

71-3605. Environmental easements; certain common law rules not applicable.

71-3607. Coordination with local governments.

71-3609. Scope of this title.

71-3611. Severability.

§ 71-3601. Declaration of policy and statement of purpose.

The legislature hereby finds and declares that contaminated site remedial programs are an important and necessary component of the state's policy of restoring and revitalizing real property located throughout New York state. The legislature further finds that when an environmental remediation project leaves residual contamination at levels that have been determined to be safe for a specific use, but not all uses, or includes engineered structures that must be maintained or protected against damage to be effective, it is necessary to provide an effective and enforceable means of ensuring the performance of maintenance, monitoring or operation requirements, and of ensuring the potential restriction of future uses of the land, including restrictions on drilling for or pumping groundwater for as long as any residual contamination remains hazardous. The legislature declares, therefore, that it is in the public interest to create environmental easements because such easements are necessary for the protection of human health and the environment and to achieve the requirements for remediation established at contaminated sites.

§ 71-3603. Definitions.

When used in this title:

1. "Affected local government" shall mean every municipality in which

land subject to an environmental easement is located.

2. "Environmental easement" shall mean an interest in real property, created under and subject to the provisions of this title which contains a use restriction and/or a prohibition on the use of land in a manner inconsistent with engineering controls; provided that no such easement shall be acquired or held by the state which is subject to the provisions of article fourteen of the constitution.

§ 71-3605. Environmental easements; certain common law rules not applicable.

1. An environmental easement shall be granted by the title owners of the relevant real estate only by an instrument, that complies with the requirements of section 5-703 of the general obligations law.

2. The title owners shall furnish to the department abstracts of title and other documents sufficient to enable the department to determine that the easements shall be enforceable. An environmental easement shall be in a form prescribed by the department. An environmental easement shall describe the property encumbered by the easement by adequate legal description or by reference to a recorded map showing its boundaries and bearing the seal and signature of a licensed land surveyor or, if the easement encumbers the entire property described in a deed of record, the easement may incorporate by reference the description in such deed, otherwise it shall refer to the liber and page of the deed or deeds of the record owner or owners of the real property burdened by the environmental easement. An environmental easement shall:

- (a) name the state, acting through the department, as grantee;
- (b) contain a complete description of any use restrictions and/or engineering control to which the real property is subject;
- (c) run with the land, binding the owner of the land and the owner's successors and assigns;
- (d) include an acknowledgment by the commissioner of acceptance of the easement by the department; and
- (e) include an agreement to incorporate, either in full or by

reference, the environmental easement in any leases, licenses, or other instruments granting a right to use the property that may be affected by such easement.

3. Until such time as the environmental easement is extinguished, the property deed and all subsequent instruments of conveyance relating to the subject property shall state in at least fifteen-point bold-faced type: "This property is subject to an environmental easement held by the New York state department of environmental conservation pursuant to title 36 of article 71 of the environmental conservation law."

4. An environmental easement granted pursuant to this title shall be enforceable in perpetuity. After the recording of the easement, each instrument transferring an interest in the area affected by the easement shall include a specific reference to the recorded easement.

5. An environmental easement granted pursuant to this section may be extinguished or amended only by a release or amendment of the easement executed by the commissioner and filed with the office of the recording officer for the county or counties where the land is situated in the manner prescribed by article nine of the real property law.

6. For any person who intentionally violates an environmental easement the department may revoke the certificate of completion provided by section 27-1419 of this chapter as to the relevant real estate.

7. An environmental easement shall be held only by the state, except that the state shall not be authorized or empowered to acquire or hold any environmental easement which is subject to the provisions of article fourteen of the constitution.

8. An environmental easement shall be duly recorded and indexed as such in the office of the recording officer for the county or counties where the land is situate in the manner prescribed by article nine of the real property law. The property deed and all subsequent instruments of conveyance relating to the property encumbered by the easement shall reference, by book and page number, the environmental easement. Such

deed and instrument shall also specify that the eligible property is subject to the restrictions contained in such easement. An instrument for the purpose of creating, conveying, modifying, or terminating an environmental easement shall not be effective unless recorded.

9. The department shall include a copy of each environmental easement in the database created pursuant to section 27-1415 of this chapter and make such database readily searchable.

10. An environmental easement may be enforced in law or equity by its grantor, by the state, or any affected local government as defined in section 71-3603 of this title. Such easement is enforceable against the owner of the burdened property, any lessees, and any person using the land. Enforcement shall not be defeated because of any subsequent adverse possession, laches, estoppel, reversion or waiver. No general law of the state which operates to defeat the enforcement of any interest in real property shall operate to defeat the enforcement of any environmental easement unless such general law expressly states the intent to defeat the enforcement of such easement or provides for the exercise of the power of eminent domain. It is not a defense in any action to enforce an environmental easement that:

- (a) it is not appurtenant to an interest in real property;
- (b) it is not of a character that has been recognized traditionally at common law;
- (c) it imposes a negative burden;
- (d) it imposes affirmative obligations upon the owner of any interest in the burdened property;
- (e) the benefit does not touch or concern real property;
- (f) there is no privity of estate or of contract; or
- (g) it imposes an unreasonable restraint on alienation.

11. Agents, employees, or other representatives of the state may enter and inspect the property burdened by an environmental easement in a reasonable manner and at reasonable times to assure compliance with the restriction.

12. The department may promulgate regulations establishing standards

and procedures for environmental easements.

§ 71-3607. Coordination with local governments.

1. Whenever the department is granted an environmental easement, it shall provide each affected local government with a copy of such easement and shall also provide a copy of any documents modifying or terminating such environmental easement.

2. Whenever an affected local government receives an application for a building permit or any other application affecting land use or development of land that is subject to an environmental easement and that may relate to or impact such easement, the affected local government shall notify the department and refer such application to the department. The department shall evaluate whether the application is consistent with the environmental easement and shall notify the affected local government of its determination in a timely fashion, considering the time frame for the local government's review of the application. The affected local government shall not approve the application until it receives approval from the department.

§ 71-3609. Scope of this title.

This title shall not affect any interests or rights in real property which are not environmental easements, and shall not affect the rights of owners to convey any interests in real property which they could now create under existing law without reference to the terms of this title. Nothing in this title shall diminish the powers granted by any other law to acquire interests or rights in real property by purchase, gift, eminent domain, or otherwise and to use the same for public purposes.

§ 71-3611. Severability.

The provisions of this title shall be severable, and if any clause,

sentence, paragraph, subdivision, or part of this title shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, or part thereof directly involved in the controversy in which such judgment shall have been rendered; provided that if an environmental easement created pursuant to this title is determined by any court of competent jurisdiction to be land or water or an interest in land or water subject to the provisions of article fourteen of the constitution, then the authority of the state to hold or acquire such easement and the conveyance to the state of such easement shall be void ab initio.

TITLE 37

ENFORCEMENT OF ARTICLE 37

Section 71-3701. Applicability of this title.

71-3703. Enforcement of article 37.

71-3705. Enforcement of section 37-0115.

§ 71-3701. Applicability of this title.

In addition to the provisions of sections 71-0101 and 71-0301 of this article, the provisions of this title shall apply to the enforcement of article 37 of this chapter.

§ 71-3703. Enforcement of article 37.

1. Any person who violates any of the provisions of, or who fails to perform any duty imposed by section 37-0107 or any rule or regulation promulgated pursuant hereto, shall be liable for a civil penalty not to exceed two thousand five hundred dollars for each such violation and an additional penalty of not more than five hundred dollars for each day during which such violation continues, and, in addition thereto, such person may be enjoined from continuing such violation.

2. Any person who violates any of the provisions of, or who fails to perform any duty imposed by section 37-0505 or any rule or regulation promulgated pursuant hereto, shall be liable for a civil penalty not to exceed one thousand dollars for each day during which such violation continues, and in addition thereto, such person may be enjoined from continuing such violation. Such person shall for a second violation be liable to the people of the state for a civil penalty not to exceed two thousand five hundred dollars for each day during which such violation continues.

3. Any person who violates any of the provisions of, or who fails to perform any duty imposed by section 37-0705 or any rule or regulation promulgated pursuant hereto, shall be liable for a civil penalty not to exceed one thousand dollars for each day during which such violation continues, and in addition thereto, such person may be enjoined from continuing such violation. Such person shall for a second violation be liable to the people of the state for a civil penalty not to exceed two thousand five hundred dollars for each day during which such violation continues.

4. Any person who violates any of the provisions of, or who fails to perform any duty imposed by section 37-0117 or any rule or regulation promulgated pursuant hereto, shall be liable for a civil penalty not to exceed one thousand dollars for each day during which such violation continues, and in addition thereto, such person may be enjoined from continuing such violation. Such person shall for a second violation be liable to the people of the state for a civil penalty not to exceed two thousand five hundred dollars for each day during which such violation continues.

5. Any person who violates any of the provisions of or who fails to perform any duty imposed by sections 37-1003 and 37-1007 of this chapter or any rule or regulation promulgated pursuant hereto, shall be liable for a civil penalty not to exceed one thousand dollars for each day during which such violation continues, and in addition thereto, such person may be enjoined from continuing such violation. Such person shall

for a second violation be liable to the people of the state for a civil penalty not to exceed two thousand five hundred dollars for each day during which such violation continues.

6. Any person who violates any of the provisions of, or who fails to perform any duty imposed by section 37-0121 of this chapter or any rule or regulation promulgated pursuant hereto, shall be liable for a civil penalty not to exceed one thousand dollars for each day during which such violation continues, and in addition thereto, such person may be enjoined from continuing such violation. Such person shall for a second violation be liable to the people of the state for a civil penalty not to exceed two thousand five hundred dollars for each day during which such violation continues.

7. Any person who violates any of the provisions of, or who fails to perform any duty imposed by section 37-1101 of this chapter or any rule or regulation promulgated pursuant hereto, shall be liable for a civil penalty not to exceed one thousand dollars for each day during which such violation continues, and in addition thereto, such person may be enjoined from continuing such violation. Such person shall for a second violation be liable to the people of the state for a civil penalty not to exceed two thousand five hundred dollars for each day during which such violation continues.

§ 71-3705. Enforcement of section 37-0115.

1. Any person who violates any provision of or fails to perform any duty imposed by section 37-0115 of this chapter shall upon the first finding of such a violation be liable for a civil penalty not to exceed five hundred dollars for each violation. Any person convicted of a second or subsequent violation shall be liable for a civil penalty not to exceed twenty-five hundred dollars for each violation.

2. All civil penalties and fines collected for any violation of section 37-0115 of this chapter shall be paid over to the commissioner for deposit in the environmental protection fund established by section

ninety-two-s of the state finance law.

TITLE 38

ENFORCEMENT OF ARTICLE 38

Section 71-3801. Applicability of this title.

71-3803. Enforcement of article thirty-eight.

§ 71-3801. Applicability of this title.

In addition to the provisions of section 71-0101 and 71-0301 of this chapter, the provisions of this title shall apply to the enforcement of article thirty-eight of this chapter.

§ 71-3803. Enforcement of article thirty-eight.

Any person who violates any of the provisions of, or who fails to perform any duty imposed by article thirty-eight or any regulation promulgated by the commissioner thereunder, shall be liable to a civil penalty of not more than twenty-five hundred dollars for each such violation and an additional penalty of not more than five hundred dollars for each day during which such violation continues, and, in addition thereto, such person may be enjoined from continuing such violation. Penalties and injunctive relief provided herein shall be recoverable in an action brought by the attorney general acting alone or at the request of the commissioner.

TITLE 39

ENFORCEMENT OF ARTICLE 39

Section 71-3901. Applicability of this title.

71-3903. Violations; penalties.

71-3905. Enforcement.

71-3907. Warrants; seizure.

§ 71-3901. Applicability of this title.

The provisions of this title shall be applicable to the enforcement of article thirty-nine.

§ 71-3903. Violations; penalties.

1. Administrative sanctions. Any person who violates, disobeys or disregards any provision of article thirty-nine shall be liable to the people of the state for a civil penalty of not to exceed three thousand dollars for every such violation, to be assessed by the commissioner after a hearing or opportunity to be heard. The penalty may be recovered in an action brought by the commissioner in any court of competent jurisdiction. Such civil penalty may be released or comprised by the commissioner before the matter has been referred to the attorney general; and where such matter has been referred to the attorney general, any such penalty may be released or comprised and any action commenced to recover the same may be settled and discontinued by the attorney general with the consent of the commissioner. In addition, the commissioner shall have power, following a hearing, to direct the violator to cease his violation of article thirty-nine and, where appropriate, to recall any sewage system cleaners or additives sold or distributed in violation of said article. Any such order of the commissioner shall be enforceable in an action brought by the commissioner in any court of competent jurisdiction. Any civil penalty or order issued by the commissioner under this subdivision shall be reviewable in a proceeding under article seventy-eight of the civil practice law and rules commenced within thirty days of such penalty or order.

2. Criminal sanctions. Any person who knowingly violates any provision of section 39-0105 of this chapter shall, in addition to the sanctions provided in subdivision one of this section, for the first offense, be guilty of a violation punishable by a fine of not less than five hundred nor more than one thousand dollars; for a second and each subsequent

offense he shall be guilty of a misdemeanor punishable by a fine of not less than one thousand nor more than three thousand dollars or a term of imprisonment of not more than six months or both. In addition to or instead of these sanctions, any offender shall be punishable by being ordered by the court to recall any sewage system cleaners or additives sold or distributed in violation of article thirty-nine. The court shall specify a reasonable time for the completion of the recall. Each offense shall be a separate and distinct offense and, in the case of a continuing offense, each day's continuance thereof shall be deemed a separate and distinct offense.

§ 71-3905. Enforcement.

The attorney general or a district attorney, at the request of the attorney general or the commissioner, may prosecute persons who violate article thirty-nine. In addition the attorney general, on his own initiative or at the request of the commissioner, shall have the right to recover a civil penalty of not to exceed three thousand dollars for every violation of any provision of said article, and to seek equitable relief to restrain any violation or threatened violation of such article and to require the recall of any sewage system cleaners or additives sold or distributed in violation of said article.

§ 71-3907. Warrants; seizure.

Any police officer shall have authority to execute any warrant to search for and seize any sewage system cleaners or additives sold, distributed or offered or exposed for sale in violation of article thirty-nine. Such cleaners or additives shall be held pending proceedings in any court of competent jurisdiction, and upon conviction or upon the entry of a judgment restraining the sale, distribution or offer or exposure for sale of said cleaners or additives on the ground that said items were sold, distributed or exposed or offered for sale in violation of article thirty-nine, the seized items shall be forfeited and, upon forfeiture, destroyed under the supervision of the

commissioner. Where property has been seized pursuant to the provisions of this article from a person who was not convicted of an offense or subject to a restraining order, a notice of the institution of a forfeiture proceeding shall be served on that person, and the person shall be allowed to appear and shall be given an opportunity to be heard at the forfeiture proceeding.

TITLE 40

OTHER GENERAL PROVISIONS

Section 71-4001. General criminal penalty.

71-4003. General civil penalty.

§ 71-4001. General criminal penalty.

Except as otherwise specifically provided elsewhere in this chapter or in the penal law, (a) a person who violates any provision of this chapter, or any rule, regulation or order promulgated pursuant thereto, or the terms or conditions of any permit issued thereunder, shall be guilty of a violation; (b) each day on which such violation occurs shall constitute a separate violation; and (c) for each such violation the person shall be subject upon conviction to imprisonment for not more than fifteen days or to a fine of not more than nine hundred dollars, or to both such imprisonment and such fine.

§ 71-4003. General civil penalty.

Except as otherwise specifically provided elsewhere in this chapter, a person who violates any provision of this chapter, or any rule, regulation or order promulgated pursuant thereto, or the terms or conditions of any permit issued thereunder, shall be liable to a civil penalty of not more than one thousand dollars, and an additional civil penalty of not more than one thousand dollars for each day during which each such violation continues. Any civil penalty provided for by this chapter may be assessed following a hearing or opportunity to be heard.

TITLE 41

ENFORCEMENT OF ARTICLE 72

Section 71-4101. Applicability of this title.

71-4103. Enforcement of article seventy-two.

§ 71-4101. Applicability of this title.

The provisions of this title shall be applicable to the enforcement of article seventy-two.

§ 71-4103. Enforcement of article seventy-two.

Any person who violates any of the provisions of article seventy-two of this chapter or the regulations promulgated thereunder shall be liable for a civil penalty of up to one thousand dollars in addition to any amount assessed as a penalty pursuant to subdivision five of section 72-0201 of this chapter, except that any person who fails to pay fees required pursuant to section 72-0303 of this chapter shall be subject to penalty provisions pursuant to subdivision twelve of section 72-0201 of this chapter.

TITLE 43

ENFORCEMENT OF ARTICLE 40

Section 71-4301. Applicability of title.

71-4303. Violations of article forty of this chapter.

71-4305. Enforcement of article forty of this chapter.

§ 71-4301. Applicability of title.

The provisions of this title shall apply to the enforcement of article forty of this chapter.

§ 71-4303. Violations of article forty of this chapter.

1. Civil and administrative sanctions. Any person who violates any of the provisions of, or who fails to perform any duty imposed by, article forty of this chapter or any rule or regulation promulgated thereunder, or any terms or conditions of any certificate or permit issued pursuant thereto, or any final determination or order of the commissioner made pursuant to this title, shall be liable in the case of a civil penalty not to exceed twenty-five thousand dollars and an additional penalty of not more than twenty-five thousand dollars for each day during which such violation continues, to be assessed by the commissioner after an opportunity to be heard pursuant to the provisions of section 71-1709 of this article or by a court in any action or proceeding pursuant to this title, and, in addition thereto such person may by similar process be enjoined from continuing such violation. In addition, upon the provision of notice stating the grounds for its action and giving an opportunity for hearing, the commissioner may revoke, suspend or deny a certificate or a renewal of a certificate issued pursuant to article forty of this chapter. In the case of a second violation, the liability shall be for a civil penalty not to exceed fifty thousand dollars for such violation and an additional penalty not to exceed fifty thousand dollars for each day during which such violation continues.

2. Criminal sanctions. Any person who, having any of the culpable mental states defined in section 15.05 of the penal law, shall violate any of the provisions of or who fails to perform any duty imposed by article forty of this chapter or any rules or regulations promulgated pursuant thereto, or any term or condition of any certificate or permit issued pursuant thereto, or any final determination or order of the commissioner made pursuant to this title shall be guilty of a misdemeanor and, upon conviction thereof, shall for a first conviction be punished by a fine not to exceed twenty-five thousand dollars per day of violation or by imprisonment for a term of not more than one year, or by both such fine and imprisonment. If the conviction is for an offense committed after a first conviction of such person under this

subdivision, punishment shall be by a fine not to exceed fifty thousand dollars per day of violation, or by imprisonment for not more than two years or by both such fine and imprisonment.

§ 71-4305. Enforcement of article forty of this chapter.

1. The commissioner, after investigation, notice and an opportunity to be heard, may issue, modify and revoke orders prohibiting violations of any of the provisions of article forty or of any rule or regulation promulgated pursuant thereto and requiring the taking of such remedial measures as may be necessary or appropriate.

2. The attorney general, on his own initiative after consultation with the commissioner or at the request of the commissioner, may initiate any appropriate action or proceeding to enforce any provision of article forty of this chapter or any rule or regulation promulgated pursuant thereto or any order issued or penalty assessed pursuant to this title.

TITLE 44

ENFORCEMENT OF TITLE 15 of ARTICLE 27

Section 71-4400. Applicability of title.

71-4401. Definitions.

71-4402. Violations of title 15 of article 27 of this chapter.

71-4403. Unlawful possession of regulated medical waste in the second degree.

71-4404. Unlawful possession of regulated medical waste in the first degree.

71-4405. Unlawful release of regulated medical waste in the fourth degree.

71-4406. Unlawful release of regulated medical waste in the third degree.

71-4407. Unlawful release of regulated medical waste in the second degree

71-4408. Unlawful release of regulated medical waste in the first degree.

- 71-4409. Unlawful dealing in regulated medical waste.
- 71-4410. Affirmative defense.
- 71-4411. Enforcement of title 15 of article 27.
- 71-4412. Disposition of penalties and fines.

§ 71-4400. Applicability of title.

The provisions of this title shall be applicable to the enforcement of title 15 of article 27 of this chapter.

§ 71-4401. Definitions.

As used in this title, the following terms shall have the following meanings:

1. "Regulated medical waste" means regulated medical waste as defined in title 15 of article 27 of this chapter.
2. "Pound" means an avoirdupois pound.
3. "Gallon" means a unit of liquid capacity equal to two hundred thirty-one cubic inches or four quarts.
4. "Environment" means any water, water vapor, any land including land surface or subsurface, air, fish, wildlife, biota, and all other natural resources.
5. "Release" means any pumping, pouring, emitting, emptying, or leaching, directly or indirectly, of a substance so that the substance or any related constituent thereof, or any degradation product of such a substance or of a related constituent thereof, may enter the environment, or the disposal of any substance.
6. "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any substance so that such substance or

any related constituent thereof may enter the environment, or the abandonment of any substance.

7. "Abandonment" means the intentional relinquishment or forsaking of all possession or control of any substance. In any prosecution under this title, it is an affirmative defense to an allegation of abandonment that the defendant surrendered possession or control of such substance to another party who knowingly and voluntarily consented to assume such possession or control.

8. "Intentionally, knowingly, recklessly and criminal negligence" shall have the same meanings as defined in section 15.05 of the penal law.

9. "Criminal transaction" shall have the same meaning as defined in section 40.10 of the criminal procedure law.

§ 71-4402. Violations of title 15 of article 27 of this chapter.

1. Civil and administrative sanctions.

Any person who violates any of the provisions of, or who fails to perform any duty imposed by title 15 of article 27 of this chapter, or any rule or regulation promulgated pursuant thereto, or any term or condition of any certificate or permit issued pursuant thereto, or any final determination or order of the commissioner made pursuant to this title shall be liable in the case of a first violation, for a civil penalty not to exceed twenty-five thousand dollars and an additional penalty of not more than twenty-five thousand dollars for each day during which such violation continues, to be assessed by the commissioner after an opportunity to be heard pursuant to the provisions of section 71-1709 of this chapter, or by the court in any action or proceeding pursuant to section 71-2727 of this chapter, and, in addition thereto, such persons may by similar process be enjoined from continuing such violation and any permit or certificate issued to such person may be revoked or suspended or a pending renewal application denied. In the

case of a second and any further violation, the liability shall be for a civil penalty not to exceed fifty thousand dollars for each such violation and an additional penalty not to exceed fifty thousand dollars for each day during which such violation continues.

2. Criminal sanctions.

a. Any person who violates any of the provisions of or who fails to perform any duty imposed by title 15 of article 27 of this chapter or any rules and regulations promulgated pursuant thereto, or any term or condition of any certificate or permit issued pursuant thereto, or any final determination or order of the commissioner made pursuant to this title shall be guilty of a violation and, upon conviction thereof, shall be punished by a fine not to exceed five thousand dollars per day of violation, or by imprisonment for a term of not more than fifteen days, or by both such fine and imprisonment.

b. Any person who, intentionally, knowingly, or recklessly shall violate any of the provisions of or who fails to perform any duty imposed by title 15 of article 27 of this chapter or any rules and regulations promulgated pursuant thereto, or any term or condition of any certificate or permit issued pursuant thereto, or any final determination or order of the commissioner made pursuant to this title shall be guilty of a class B misdemeanor and, upon conviction thereof, shall for a first conviction be punished by a fine not to exceed fifteen thousand dollars per day of violation or by imprisonment for a term of not more than ninety days, or both such fine and imprisonment. If the conviction is for an offense committed after a first conviction of such person under this paragraph, within the preceding five years, such person shall be guilty of a class A misdemeanor and upon conviction, punishment shall be by a fine not to exceed fifty thousand dollars per day of violation, or by imprisonment for not more than one year or by both such fine and imprisonment.

§ 71-4403. Unlawful possession of regulated medical waste in the second degree.

No person shall:

1. Knowingly and intentionally possess more than twenty gallons or two hundred pounds, whichever is less, of an aggregate weight or volume of regulated medical waste at a place other than the facility at which such waste was generated; or

2. Recklessly possess more than forty gallons or four hundred pounds, whichever is less, of an aggregate weight or volume of regulated medical waste at a place other than the facility at which such waste was generated.

3. The provisions of this section shall not apply to any person for acts undertaken in compliance with the provisions of titles 3 and 15 of article 27 of this chapter or the rules, regulations, permits or orders promulgated pursuant thereto.

Unlawful possession of regulated medical waste in the second degree is a class A misdemeanor.

§ 71-4404. Unlawful possession of regulated medical waste in the first degree.

No person shall:

1. Knowingly and intentionally possess more than three hundred gallons or three thousand pounds, whichever is less, of an aggregate weight or volume of regulated medical waste at a place other than the facility at which such waste was generated; or

2. Recklessly possess more than five hundred gallons or five thousand pounds, whichever is less, of an aggregate weight or volume of regulated medical waste at a place other than the facility at which such waste was generated.

3. The provisions of this section shall not apply to any person for acts undertaken in compliance with the provisions of titles 3 and 15 of article 27 of this chapter or the rules, regulations, permits or orders promulgated pursuant thereto.

Unlawful possession of regulated medical waste in the first degree is a class E felony.

§ 71-4405. Unlawful release of regulated medical waste in the fourth degree.

A person is guilty of unlawful release of regulated medical waste in the fourth degree when such person with criminal negligence, engages in conduct which causes the release to the environment of regulated medical waste.

Unlawful release of regulated medical waste in the fourth degree is a class B misdemeanor.

§ 71-4406. Unlawful release of regulated medical waste in the third degree.

A person is guilty of unlawful release of regulated medical waste in the third degree when such person:

1. Recklessly engages in conduct which causes the release to the environment of regulated medical waste; or

2. Knowingly engages in conduct which causes the release to the environment of regulated medical waste.

Unlawful release of regulated medical waste in the third degree is a class A misdemeanor.

§ 71-4407. Unlawful release of regulated medical waste in the second degree.

A person is guilty of unlawful release of regulated medical waste in the second degree when such person:

1. Knowingly or recklessly engages in conduct which causes the release to the environment of regulated medical waste which includes any quantity of regulated medical waste which is capable at the time of transport, or at any time thereafter, of causing disease, or physical injury; or

2. Knowingly or recklessly engages in conduct constituting a single criminal transaction which causes the release to the environment of more than five hundred gallons or five thousand pounds, whichever is less, of regulated medical waste.

Unlawful release of regulated medical waste in the second degree is a class E felony.

§ 71-4408. Unlawful release of regulated medical waste in the first degree.

A person is guilty of unlawful release of regulated medical waste in the first degree when such person:

1. Knowingly engages in conduct which causes the release to the environment of regulated medical waste, which includes any quantity of regulated medical waste which is capable at the time of transport, or at any time thereafter, of causing serious physical injury or death to any person who is not a participant in the crime; or

2. Knowingly engages in conduct constituting a single criminal transaction which causes the release to the environment of more than one thousand gallons or ten thousand pounds, whichever is less, of an aggregate weight or volume of regulated medical waste.

Unlawful release of regulated medical waste in the first degree is a class D felony.

§ 71-4409. Unlawful dealing in regulated medical waste.

No person shall, with intent to cause an unlawful release of regulated medical waste as defined in section 71-4407 or 71-4408 of this article:

1. transfer, transport, repackage or convey such waste to another person, thereby causing such other person to possess, store, transport or dispose of such waste in violation of section 27-1505, 27-1507 or 27-1509 of this chapter; or

2. receive or agree to receive a benefit in exchange for possessing, storing, transporting or disposing of regulated medical waste in violation of section 27-1505, 27-1507 or 27-1509 of this chapter; or

3. confer or offer or agree to confer a benefit upon another person to induce them to possess, store, transport or dispose of regulated medical waste in violation of section 27-1505, 27-1507 or 27-1509 of this chapter.

Unlawful dealing in regulated medical waste is a class E felony.

§ 71-4410. Affirmative defense.

In any prosecution or proceeding pursuant to title 15 of article 27 it is an affirmative defense that the articles being discarded have been treated in accordance with subdivision one of section 27-1505.

§ 71-4411. Enforcement of title 15 of article 27.

1. When a person is convicted of a crime under the provisions of this

title, the sentence of the court shall be as follows:

(a) A fine, as set forth in subdivision two of this section, or in paragraph b of subdivision two of section 71-4402 of this title for the misdemeanor set forth therein;

(b) Following a hearing in accordance with the procedures set forth in section 71-2723 of this article, payment of the cost of restoring to its original state the area where regulated medical waste was released unlawfully in violation of the provisions of this article, provided, however, that references to "hazardous waste" shall be deemed to mean "regulated medical waste" for the purpose of such hearing and such determination;

(c) Any other sentence authorized by law, including imprisonment; or

(d) Any combination of such fine, payment of the cost of restoration, and any other sentence authorized by law, including imprisonment.

2. Fines. A sentence to pay a fine shall be a sentence to pay any amount fixed by the court, not exceeding the higher of:

(a) one hundred fifty thousand dollars for a class D felony;

(b) one hundred thousand dollars for a class E felony;

(c) fifty thousand dollars for a class A misdemeanor;

(d) fifteen thousand dollars for a class B misdemeanor; or

(e) double the amount of the defendant's gain from the commission of the crime.

§ 71-4412. Disposition of penalties and fines.

1. Notwithstanding any provision of law to the contrary, all penalties and fines collected pursuant to section 71-4411 of this title shall be paid over to the commissioner for deposit into the general fund to the credit of the state purposes account.

2. All moneys collected in any action brought on behalf of the state for damage resulting from improper or unlawful disposal of regulated medical waste shall be paid over to the commissioner for deposit to the credit of the environmental enforcement account.

ARTICLE 72

ENVIRONMENTAL REGULATORY PROGRAM FEES

- Title 1. Declaration of policy; definitions
2. Annual program costs and fees
 3. Air quality control program fee
 4. Hazardous waste program fee
 5. Waste transporter program fee
 6. State pollutant discharge elimination system program fee
 7. Water transport permit program fee
 10. Mined land reclamation program fees

TITLE I

DECLARATION OF POLICY; DEFINITIONS

- Section 72-0101. Declaration of policy.
- 72-0103. Definitions.

§ 72-0101. Declaration of policy.

The legislature of the state of New York hereby declares that comprehensive environmental regulatory management programs are essential to protect New York state's environmental resources and the public's health and welfare. It further declares that those regulated entities which use or have an impact on the state's environmental resources should bear the costs of the regulatory provisions which permit the use of these resources in a manner consistent with the environmental, economic and social needs of the state. The legislature further declares that regulatory fees are an appropriate mechanism to pay a portion of the costs of the department's regulatory functions and programs and a portion of the costs to fund the cleanup of inactive hazardous waste disposal sites and that such fees should be borne by the state's regulated entities in order to further strengthen the state's capabilities to achieve its environmental quality objectives. The legislature further declares that the department's regulatory programs and corresponding costs vary according to certain relevant technical

criteria which shall be considered in determining adjustments to fees as provided in this chapter.

§ 72-0103. Definitions.

When used in this article:

"State environmental regulatory program" means any of the regulatory or permit programs for which fees are assessed under this article.

TITLE 2

ANNUAL PROGRAM COSTS AND FEES

Section 72-0201. Fees and penalties.

72-0202. Collection of annual program fees.

72-0203. Annual report.

§ 72-0201. Fees and penalties.

1. a. Notwithstanding any general or special law to the contrary, all persons who require a permit or approval pursuant to a state environmental regulatory program, or who are subject to regulation under a state environmental regulatory program shall submit a fee as authorized under this article annually to the department, on such forms and at such times as specified by the department.

b. Notwithstanding any general or special law to the contrary, one-half of all monies collected by the department pursuant to section 72-0502 of this article shall be deposited in the hazardous waste remedial fund, created pursuant to section ninety-seven-b of the state finance law.

c. Notwithstanding any general or special law to the contrary, all monies collected by the department pursuant to subdivision twelve of this section and section 72-0303 of this article shall be deposited in the operating permit program account of the clean air fund created

pursuant to section ninety-seven-00 of the state finance law.

d. Notwithstanding any general or special law to the contrary, all monies collected by the department pursuant to title ten of this article shall be deposited in the mined land reclamation program account created pursuant to section 72-1011 of this article.

e. Notwithstanding any general or special law to the contrary, all monies collected by the department pursuant to section 72-0402 of this article shall be deposited as follows: (i) fifteen percent in the environmental protection fund established by section ninety-two-s of the state finance law not to exceed two million one hundred thousand dollars; and (ii) seventy-one percent in the industry fee transfer account of the hazardous waste remedial fund established by subdivision one of section ninety-seven-b of the state finance law.

2. All persons subject to regulation under a state environmental regulatory program including those persons holding existing permits, certificates or approvals under such programs shall be liable for fees authorized by this article on and after April first, nineteen hundred eighty-three.

3. Liability for fees authorized by this chapter for persons receiving new permits, certificates or approvals shall equal the annual fee established pursuant to this title and prorated from the date of issuance.

4. Payment of fees shall be due within thirty days of billing by the department.

5. If the amount of the fee is not paid within forty-five days of the last date prescribed under subdivision four of this section, a penalty shall be imposed on such deficiency. The amount of such penalty shall not exceed five percent of such deficiency per month and the total penalty shall not exceed twenty-five percent of the deficiency.

Notice of the determination of a penalty, and notice of the right to

appeal such determination shall be given to the person liable for the payment of the fee and any penalty due. The penalty as determined pursuant to this subdivision shall be finally and irrevocably assessed unless a hearing is requested by certified mail to the commissioner within thirty days after receiving notice of the determination of a penalty, or unless the commissioner on his own motion shall redetermine such penalty. After such hearing the commissioner shall give notice of final determination to the person against whom the fee and penalty is assessed. No such penalty as defined in this subdivision shall be assessed until after the expiration of the period in which a hearing may be requested, or after the issuance of a final determination following a hearing, whichever comes later.

6. In addition to any penalty that may be assessed pursuant to subdivision five of this section, there shall be collected interest upon the unpaid amount at the underpayment rate set by the commissioner of taxation and finance pursuant to section one thousand ninety-six of the tax law, minus four percentage points. Such interest shall accrue thirty days from the date prescribed for fee payment until payment is actually made to the department.

7. In the event that a person fails to pay any fee as finally determined, such determination to be final when all administrative and judicial appeals thereof, if any, have been completed, the department may suspend, until the fee is paid, the permit, certificate or approval for the activity which is subject to that fee.

8. The commissioner shall promulgate regulations necessary to effectuate the purposes of this article. Such regulations may also include provisions regarding hearings to resolve disputed fee and penalty determinations.

9. a. In the event a penalty or interest is collected pursuant to subdivision five or six of this section for fees due under section 72-0402, or section 72-0502 of this article, one-half of the penalty or interest shall be deposited by the department in the industry fee transfer account of the hazardous waste remedial fund.

b. In the event a penalty or interest is collected pursuant to subdivision five or six of this section for fees due under section 72-0403 of this article, such penalty or interest shall be deposited in the industry fee transfer account of the hazardous waste remedial fund established by subdivision one of section ninety-seven-b of the state finance law.

10. No portion of the fees collected pursuant to this article shall be used for any purpose if such use, under federal law, would preclude the collection of such a fee.

11. a. All fees collected pursuant to this article shall be paid into the environmental conservation special revenue fund to the credit of the environmental regulatory account, unless herein provided otherwise.

b. Moneys of such account shall include interest earnings on any account balances and shall be available for appropriation and allocation for the purposes of carrying out the provisions of this chapter.

c. The moneys of the account shall be paid out on the audit and warrant of the comptroller on vouchers certified or approved by the commissioner or his duly designated representative.

d. Notwithstanding the provisions of any general or special law, no moneys shall be available from the account until a certificate of allocation and a schedule of amounts to be available therefor shall have been issued by the director of the budget, and a copy of such certificate filed with the comptroller. Such certificate may be amended from time to time by the director of the budget and a copy of each such amendment shall be filed with the comptroller.

e. Any reference to the environmental enforcement account in any special or general law shall be deemed to be a reference to the environmental regulatory account.

12. Notwithstanding any other provision of this section, any person

who fails to pay fees required pursuant to section 72-0303 of this article shall pay a penalty of fifty per centum of the unpaid fee amount, plus interest on the unpaid fee amount computed in accordance with section 6621(a)(2) of the United States internal revenue code of 1986 (Public Law 99-514, 26 U.S.C. section 1 et seq.) from the date the fee was required to be paid.

§ 72-0202. Collection of annual program fees.

1. Bills issued for the air quality control, hazardous waste, and state pollutant discharge elimination system annual program fees due for the state fiscal year beginning April first, nineteen hundred eighty-five shall cover the period April first, nineteen hundred eighty-five through December thirty-first, nineteen hundred eighty-five. The fee for the period April first, nineteen hundred eighty-five through December thirty-first, nineteen hundred eighty-five shall be equal to three-quarters of the amount calculated in the manner prescribed by sections 72-0302, 72-0402 and 72-0602 of this article.

2. Air quality control, hazardous waste, and state pollutant discharge elimination system program fees for periods beginning after December thirty-first, nineteen hundred eighty-five shall be calculated based upon the calendar year.

3. Waste transporter program fees shall be calculated based upon the permit year.

§ 72-0203. Annual report.

Notwithstanding any other provision of law, the department shall submit, no later than January fifteenth in each year, a report to the governor, the chairmen of the senate finance committee and assembly ways and means committee, consisting of a summary and analysis of all moneys paid pursuant to this article and all penalties, fines and other sums collected or received pursuant to titles nineteen, twenty-one and

twenty-seven of article seventy-one of this chapter. The report shall also include data relating to the moneys paid pursuant to this article to the costs of regulation by permit category as defined in this article.

TITLE 3

AIR QUALITY CONTROL PROGRAM FEE

Section 72-0301. Definitions.

72-0302. State air quality control fees.

72-0303. Operating permit program fees.

§ 72-0301. Definitions.

When used in this title:

1. The "Act" shall mean the Clean Air Act, 42 U.S.C. §7401 et seq., as amended by P.L. 101-549, November 15, 1990.

2. "Actual emissions" means the emissions which were emitted to the ambient air, and shall include fugitive emissions if such emissions are considered in determining whether a source is a major air contamination source.

3. "Air contamination source" means all sources required to obtain a permit, certificate or approval pursuant to article nineteen of this chapter.

4. "Combustion installation" means one or more furnace, device, engine or turbine in which fossil fuel or wood is burned with air or oxygen and the air contaminant emissions include only those products resulting from:

a. combustion of the fuel;

b. additives or impurities in the fuel; and

c. material introduced for the purpose of altering air contaminant emissions.

A combustion installation may consist of:

(1) a single furnace exclusively connected to an air cleaning device or stack; or

(2) two or more furnaces connected to a common air cleaning device or stack.

5. "Emission point" means any conduit, chimney, duct, vent, flue, stack or other functionally equivalent opening through which regulated air contaminants are emitted to the ambient air.

6. "Fugitive emissions" means those emissions of a regulated air contaminant that could not reasonably pass through an emission point.

7. "Gasoline dispensing site" means any site where gasoline is dispensed into portable containers used to fuel any motor from any stationary storage container or containers and that is required to obtain a permit pursuant to article nineteen of this chapter.

8. "Incinerator" means any structure or furnace in which combustion takes place and type 0, 1, 2, 3 or 4 refuse, as classified in Table 1 of 6 NYCRR Appendix 2, is used as a fuel, alone or in conjunction with fossil fuel.

9. "Major air contamination source" shall have the meaning set forth in subdivision 19 of section 19-0107 of this chapter.

10. "Permitted emission" means those emissions of a regulated air contaminant which are authorized by permit to be emitted.

11. "Person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, state, federal government and any agency thereof, municipality, commission, political subdivision of a state or any

interstate body.

12. "Potential to emit" means the maximum capacity of a stationary source to emit any regulated air contaminant under its physical and operational design. Any physical or operational limitation on the capacity of such source to emit a regulated air contaminant, including air pollution control equipment and restrictions on the hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design if the limitation is enforceable by the commissioner and the administrator of the United States environmental protection agency provided, however, that physical or operational limitations enforceable by the commissioner shall be treated as part of a source's design, if the commissioner is given such authorization by the administrator.

13. "Process air contamination source" means:

a. any industrial, commercial, agricultural or other activity, operation, manufacture or treatment (except incineration of type 0, 1, 2, 3 and 4 refuse, as classified in Table 1 of 6 NYCRR Appendix 2, open burning and operation of combustion installations) in which chemical, biological or physical properties of the material or materials are changed, and which emits air contaminants to the outdoor atmosphere; or

b. any system which removes air contamination from any industrial, commercial, agricultural or other activity, operation, manufacture or treatment (except incineration of type 0, 1, 2, 3 and 4 refuse, as classified in Table 1 of 6 NYCRR Appendix 2, open burning and operation of combustion installations) and transports them from their point of generation to the outdoor atmosphere.

14. "Regulated air contaminant" shall have the meaning set forth in subdivision twenty-two of section 19-0107 of this chapter.

15. "Severe ozone nonattainment area" means that part of the state designated pursuant to section 7407 of the Act as not meeting the national ambient air quality standard for ozone, as classified under

section 7511 of the Act.

16. "State air quality control program" means those activities of the department as specified in titles three and five of article nineteen of this chapter relating to air pollution and air contamination and any related enforcement activities.

§ 72-0302. State air quality control fees.

1. All persons, except those required to pay a fee under section 72-0303 of this title, who are required to obtain a permit, registration or approval pursuant to the state air quality control program and the rules and regulations adopted by the department hereunder shall submit to the department a per emission point fee in an amount established as follows:

a. \$11,000.00 for a stationary combustion installation having a maximum operating heat input equal to or greater than fifty million British thermal units per hour as stated on the most recent application for a permit or registration to operate and which emits or has the potential to emit equal to or greater than any one of the following:

- (i) one hundred tons per year of oxides of nitrogen, or if located in a severe ozone nonattainment area, twenty-five tons per year; or
- (ii) one hundred tons per year of sulfur dioxide; or
- (iii) one hundred tons per year of particulates.

b. \$2,000.00 for all stationary combustion installations which are not included under paragraph a of this subdivision and which have a maximum operating heat input greater than fifty million British thermal units per hour as stated on the most recent application for a permit or registration to operate.

c. \$100.00 for a stationary combustion installation having a maximum operating heat input less than fifty million British thermal units per hour as stated on the most recent application for a permit or registration to operate.

d. \$2,000.00 for a process air contamination source for an annual emission rate equal to or greater than twenty-five tons per year of any one of the following: sulfur dioxide, nitrogen dioxide, total particulates, carbon monoxide, total volatile organic compounds and other specific air contaminants. The annual emission rate shall be the actual annual emission rate as stated on the most recent application for a permit or registration to operate. In the event that hours of operation have not been specified on the application then maximum possible hours of operation (8760 hours) will be used to calculate actual annual emissions.

e. \$160.00 for a process air contamination source, except a gasoline dispensing site, for an annual emission rate less than twenty-five tons per year of any one of the following: sulfur dioxide, nitrogen dioxide, total particulates, carbon monoxide, total volatile organic compounds and other specific air contaminants. The annual emission rate shall be the actual annual emission rate as applied for on the most recent application for a permit or registration to operate. In the event that hours of operation have not been specified on the application then maximum possible hours of operation (8760 hours) will be used to calculate actual annual emissions.

f. \$2,000.00 for an incinerator capable of charging two thousand pounds of refuse per hour or greater. The charging capacity will be established in accordance with the application for the most recent permit or registration to operate the incinerator source and will be calculated on an emission point basis.

g. \$160.00 for an incinerator with a maximum design charge rate of less than two thousand pounds of refuse per hour. The charging capacity will be established in accordance with the application for the most recent permit or registration to operate the incinerator source and will be calculated on an emission point basis.

Provided, however, that where a city or county is delegated the authority to administer the state air quality control program, or any

portion thereof, pursuant to paragraph p of subdivision two of section 3-0301 of this chapter and such city or county collects a fee in connection with the issuance of a permit, registration or approval pursuant to the state air quality control program, no additional liability for fees under this section shall accrue for the particular combustion installation, incinerator or process air contamination source that is subject to the delegation.

§ 72-0303. Operating permit program fees.

* 1. Commencing January first, two thousand fifteen and every year thereafter, all sources of regulated air contaminants identified pursuant to subdivision one of section 19-0311 of this chapter shall submit to the department an annual base fee of two thousand five hundred dollars. This base fee shall be in addition to the fees listed below. Commencing January first, nineteen hundred ninety-four and every year thereafter all sources of regulated air contaminants identified pursuant to subdivision one of section 19-0311 of this chapter shall submit to the department an annual fee not to exceed the per ton fees described below. The per ton fee is assessed on each ton of emissions up to seven thousand tons annually of each regulated air contaminant as follows: sixty dollars per ton for facilities with total emissions less than one thousand tons annually; seventy dollars per ton for facilities with total emissions of one thousand or more but less than two thousand tons annually; eighty dollars per ton for facilities with total emissions of two thousand or more but less than five thousand tons annually; and ninety dollars per ton for facilities with total emissions of five thousand or more tons annually. Such fee shall be sufficient to support an appropriation approved by the legislature for the direct and indirect costs associated with the operating permit program established in section 19-0311 of this chapter. Such fee shall be established by the department and shall be calculated by dividing the amount of the current year appropriation from the operating permit program account of the clean air fund by the total tons of emissions of regulated air contaminants that are subject to the operating permit program fees from sources subject to the operating permit program pursuant to section 19-0311 of this chapter up to seven thousand tons annually of each

regulated air contaminant from each source; provided that, in making such calculation, the department shall adjust their calculation to account for any deficit or surplus in the operating permit program account of the clean air fund established pursuant to section ninety-seven-00 of the state finance law; any loan repayment from the mobile source account of the clean air fund established pursuant to section ninety-seven-00 of the state finance law; and the rate of collection by the department of the bills issued for the fee for the prior year.

Notwithstanding the provisions of the state administrative procedure act, such calculation and fee shall be established as a rule by publication in the Environmental Notice Bulletin no later than thirty days after the budget bills making appropriations for the support of government are enacted or July first, whichever is later, of the year such fee will be effective. In no event shall the fee established herein be any greater than the maximum fee identified pursuant to this section.

* NB Effective until January 1, 2027

* 1. Commencing January first, two thousand twenty-seven and every year thereafter, all sources of regulated air contaminants identified pursuant to subdivision one of section 19-0311 of this chapter shall submit to the department an annual base fee of eight thousand five hundred dollars per facility. This base fee shall be in addition to the fees listed below. Commencing January first, two thousand twenty-seven and every year thereafter, all sources of regulated air contaminants identified pursuant to subdivision one of section 19-0311 of this chapter shall submit to the department an annual fee not to exceed the per ton fees described below. The per ton fee is assessed on each ton of emissions of each regulated air contaminant as follows: two hundred dollars per ton for facilities with total emissions less than one thousand tons annually; two hundred twenty-five dollars per ton for facilities with total emissions of one thousand or more but less than two thousand tons annually; two hundred fifty dollars per ton for facilities with total emissions of two thousand or more but less than five thousand tons annually; and three hundred dollars per ton for facilities with total emissions of five thousand or more tons annually. Such fees shall be sufficient to support an appropriation approved by

the legislature for the direct and indirect costs associated with the operating permit program established in section 19-0311 of this chapter. Such fees shall be established by the department and shall be calculated by dividing the amount of the current year appropriation from the operating permit program account of the clean air fund by the total tons of emissions of regulated air contaminants, including hazardous air pollutants, that are subject to the operating permit program fees from sources subject to the operating permit program pursuant to section 19-0311 of this chapter; provided that, in making such calculation, the department shall adjust their calculation to account for any deficit or surplus in the operating permit program account of the clean air fund established pursuant to section ninety-seven-00 of the state finance law and the rate of collection by the department of the bills issued for the fees for the prior year.

Notwithstanding the provisions of the state administrative procedure act, such calculation and fees shall be established as a rule by publication in the Environmental Notice Bulletin no later than thirty days after the budget bills making appropriations for the support of government are enacted or July first, whichever is later, of the year such fees will be effective. In no event shall the fees established herein be any greater than the maximum fee identified pursuant to this section.

- * NB Effective January 1, 2027

- * 2. Bills issued for the fee shall be based on actual emissions for the prior calendar year, as demonstrated to the department's satisfaction, or in the absence of such demonstration, on permitted emissions, or, where there is no permit, on potential to emit. Persons required to submit an emissions statement to the department shall use such statement to demonstrate actual emissions under this section.

- * NB Effective until January 1, 2027

- * 2. Bills issued for the fees established by subdivision one of this section shall be based on actual emissions for the prior calendar year, as demonstrated to the department's satisfaction, or in the absence of such demonstration, on permitted emissions, or, where there is no permit, on potential to emit. Persons required to submit an emissions statement to the department shall use such statement to demonstrate

actual emissions under this section.

* NB Effective January 1, 2027

3. Effective January first, nineteen hundred ninety-seven through December thirty-first, nineteen hundred ninety-eight, and notwithstanding the requirements of the state administrative procedure act, the cap of twenty-five dollars per ton shall increase by the percentage, if any, by which the consumer price index exceeds the consumer price index for the calendar year nineteen hundred eighty-nine.

a. The consumer price index for any calendar year is the average of the consumer price index for all urban consumers published by the United States department of labor, as of the close of the twelve-month period ending on August thirty-first of each calendar year.

b. The revision of the consumer price index for the calendar year nineteen hundred eighty-nine shall be used in the event the department of labor revises its method of determining the consumer price index.

4. The fees established pursuant to this section shall not be assessed on emissions of carbon monoxide or any class I or II substance subject to a standard promulgated pursuant to section 7671 of the Act.

5. Any regulated air contaminant subject to the fees imposed pursuant to this section which qualifies as both a volatile organic compound and a hazardous air pollutant regulated pursuant to section 7412 of the Act shall not be counted under both categories for the purpose of assessing fees.

6. On or before April first, nineteen hundred ninety-four, and biennially thereafter, the department of audit and control shall prepare and submit to the governor and the legislature an audit on the fiscal status of the operating permit program created pursuant to section 19-0311 of this chapter. Such audit shall include:

a. an assessment of the actual direct and indirect costs of the operating permit program incurred, and the revenues received from fees

imposed pursuant to this section and penalties imposed pursuant to subdivision twelve of section 72-0201 of this article during the previous fiscal year;

b. an estimate of the direct and indirect costs of the operating permit program that will be incurred, and the revenues estimated to be received from fees imposed pursuant to this section and penalties imposed pursuant to subdivision twelve of section 72-0201 of this article during the current fiscal year; and

c. an estimate of any balance in the account that will be available at the end of the current fiscal year.

7. The department may reduce the fee charged for categories of stationary sources, taking into account the financial resources of such sources, consistent with the provisions of section 7661f(f) of the Act.

8. If a city or county shall be delegated the authority to administer the operating permit program established pursuant to section 19-0311 of this chapter it may collect the fees established pursuant to this section and no additional liability for fees under this section shall accrue for any such source.

9. No later than September thirtieth, nineteen hundred ninety-four and before September thirtieth of each subsequent year, the department shall report to the governor, the legislature and the department of audit and control on: (i) the actual direct and indirect costs of the operating permit program incurred, and the revenues received pursuant to fees imposed by this section, during the previous fiscal year; (ii) the estimated direct and indirect costs of the operating permit program that will be incurred, and the anticipated revenues received or anticipated to be received pursuant to fees imposed by this section, during the current fiscal year; (iii) an estimate of the direct and indirect costs of the operating permit program that will be incurred, and the tonnages of pollutants anticipated to be subject to the fees imposed by this section, during the subsequent fiscal year; (iv) an estimate of any balance in the operating permit program account of the clean air fund

that will be available at the end of the current fiscal year; (v) a recommendation regarding adjustments to the fees imposed under this section necessary to assure that the operating permit program account has adequate funds to finance the direct and indirect cost of the operating permit program during future fiscal years; and (vi) the number of operating permit applications upon which the department has taken final action in the previous fiscal year, the average review time per permit, the number of person hours spent per permit, and the number of completed permit applications which are pending final action. Reports and accountings required to be filed with the administrator of the United States environmental protection agency may serve to satisfy this requirement.

TITLE 4

HAZARDOUS WASTE PROGRAM FEE

Section 72-0401. Definitions.

72-0402. Hazardous waste program fees.

§ 72-0401. Definitions.

When used in this title:

1. "Characteristic hazardous waste" means a waste which satisfies the characteristics promulgated by the commissioner pursuant to title nine of article twenty-seven of this chapter and is not listed hazardous waste as defined in subdivision ten of this section.

2. "Disposal" means the abandonment, discharge, deposit, injection, dumping, spilling, leaking or placing of any substance so that such substance or any related constituent thereof may enter the environment. Disposal also means the thermal destruction of waste or hazardous waste and the burning of such wastes as fuel for the purpose of recovering useable energy.

3. "Facility operator" means the person who is responsible for the

operation of a treatment, storage or disposal facility as defined in subdivision sixteen of this section.

4. "Facility owner" means the person who owns a facility or part of a facility.

5. "Generator" means any person, by site, whose act or process produces hazardous waste or whose act first causes a hazardous waste to become subject to regulation.

6. "Hazardous waste" means a waste identified or listed as hazardous pursuant to title nine of article twenty-seven of this chapter.

7. "Hazardous waste generation" means the act or process of producing hazardous waste.

8. "Incinerator" means an enclosed device using controlled flame combustion, the primary purpose of which is to thermally break down solid, liquid, or gaseous combustible hazardous wastes, producing residue that contains little or no combustible materials.

9. "Landfill" means a disposal facility or part of a facility where solid waste, including hazardous waste, is placed in or on land, and which is not a land treatment facility, a surface impoundment, or an injection well.

10. "Listed hazardous waste" means a waste which appears on the list promulgated by the commissioner pursuant to title nine of article twenty-seven of this chapter.

11. "Person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, state, federal government and any agency thereof, municipality, commission, political subdivision of a state, or any interstate body.

12. "State hazardous waste program" means those activities of the

department as specified in titles three, seven, nine, and eleven of article twenty-seven of this chapter related to hazardous waste and any related enforcement activities.

13. "Storage" means the containment of hazardous waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous waste.

14. "Surface impoundment" or "impoundment" means a facility or part of a facility which is a natural topographical depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of solid waste in semi-solid or liquid form, and which is not an injection well.

15. "Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical or biological character or composition of any hazardous waste so as to neutralize such waste or as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume.

16. "Treatment, storage or disposal facility" or "facility" means all contiguous land and structures, other appurtenances and improvements on the land, used for treating, storage or disposing of hazardous waste. A facility may consist of several treatment, storage or disposal operational units. For purposes of this title, a facility subject to regulation under section 307(b) of the Clean Water Act shall not be assessed a separate fee for the pre-treatment of hazardous wastes.

17. "Environment" means any water, water vapor, any land including land surface or subsurface, air, fish, wildlife, biota and all other natural resources.

19. "Wastewater" means liquid waste that contains:

a. a minimum of ninety-five percent water by weight, and

b. a maximum of one percent by weight of total organic carbon, and

c. a maximum of one percent by weight of total suspended solids (i.e., total filterable solids).

§ 72-0402. Hazardous waste program fees.

1. a. For the period beginning January 1, 2010, all generators of equal to or greater than fifteen tons per year of hazardous waste shall submit annually to the department a fee in the amount of one hundred thirty dollars per ton of hazardous waste generated not to exceed \$300,000, except not to exceed \$400,000 for those with greater than 4,000 tons generated and less than or equal to 10,000 tons generated, and not to exceed \$800,000 for those with greater than 10,000 tons generated.

b. \$3,000 for generators of equal to or greater than fifteen tons per year of hazardous wastewater, payable in addition to fees for hazardous wastes, other than wastewater, as required by paragraph a of this subdivision.

c. \$6,000 for generators of equal to or greater than fifteen thousand tons per year of hazardous wastewater, payable in addition to the fees for hazardous wastes, other than wastewater, as required by this subdivision.

d. No fee shall be payable for waste resulting from services which are provided:

(i) under a contract with the department, or with the department's written approval and in compliance with department regulations, or pursuant to an order of the department, the United States environmental protection agency or a court of competent jurisdiction, related to the cleanup or remediation of a hazardous materials or hazardous waste spill, discharge, or surficial cleanup, pursuant to this chapter; or

(ii) under a contract for, or with the department's approval and in compliance with department regulations for, the cleanup and removal of a

petroleum spill or discharge, pursuant to subdivision seven of section one hundred seventy-six of the navigation law; or

(iii) under the order of a court, the department or the department of health, or the United States environmental protection agency related to an inactive hazardous waste disposal site pursuant to section 27-1313 of this chapter, section thirteen hundred eighty-nine-b of the public health law, or the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601 et seq.); or

(iv) voluntarily and without expectation of monetary compensation in accordance with subdivision one of section 27-1321 of this chapter; or

(v) under permit or order requiring corrective action pursuant to title nine of article twenty-seven of this chapter, title twenty-seven of article seventy-one of this chapter or the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.); or

(vi) under a brownfield site cleanup agreement with the department pursuant to section 27-1409 of this chapter or under a written agreement with a municipality which has entered into a memorandum of agreement with the department related to the remediation of brownfield sites as of August fifth, two thousand ten; or

(vii) under an environmental restoration project state assistance contract with the department pursuant to section 56-0503 of this chapter.

e. Notwithstanding any other provision of this section, no fee shall be payable for the generation of universal wastes. For purposes of this paragraph, "universal wastes" shall mean those defined and listed in regulations promulgated pursuant to this title, provided that such wastes are regulated consistent with rules adopted by the administrator pursuant to RCRA for the management of universal wastes.

f. In any case where a generator either (i) recycles more than ninety percent of the total tons of hazardous waste or more than ninety percent of the total tons of hazardous wastewater which it generated during that calendar year, as certified to the commissioner, or (ii) recycles more than four thousand tons of hazardous waste or more than four thousand tons of hazardous wastewater which it generated in that calendar year, as certified to the commissioner, the fee imposed pursuant to this

section shall be calculated and imposed based upon the net amount of hazardous waste or the net amount of hazardous wastewater generated that is not recycled in that calendar year, rather than upon the gross amounts of hazardous waste and hazardous wastewater generated in such calendar year.

2. All facility operators required to obtain a permit or certificate for the treatment, storage or disposal of hazardous waste pursuant to title nine of article twenty-seven of this chapter shall submit annually to the department a fee in an amount to be determined for all methods of hazardous waste treatment, storage or disposal as follows:

a. \$12,000 for each facility that receives less than or equal to one thousand tons per year of hazardous waste; and

b. \$30,000 for each facility that receives greater than one thousand tons per year of hazardous waste.

In addition, the fee determined pursuant to this section shall include:

(i) \$100,000 for each facility when the gross receipts tax is below 3.3 million dollars per year; \$200,000 for each facility when the gross receipts tax is between 3.3 million dollars per year and 4.4 million dollars per year; and \$300,000 for each facility when the gross receipts tax exceeds 4.4 million dollars per year for which a permit pursuant to title nine of article twenty-seven of this chapter is required to operate one or more landfills to receive hazardous waste at such facility, except that such fee shall be \$100,000 if such facility is used by the facility operator or owner for the disposal of hazardous waste generated solely by such facility operator or owner; and

(ii) \$10,000 for each incinerator as defined in section 72-0401 of this title which is and each unit which burns listed hazardous waste for energy recovery located at the facility operator's hazardous waste treatment, storage or disposal facility; and

(iii) \$10,000 for each unit which burns listed hazardous waste for energy recovery at the facility operator's hazardous waste treatment, storage or disposal facility; and

(iv) \$24,000 for each facility which provides for the treatment, storage or disposal of hazardous waste in one or more surface impoundments.

3. All facility operators required to obtain a permit, certificate or approval for the post-closure care period pursuant to title nine of article twenty-seven of this chapter shall submit annually to the department a fee in the amount of \$3,000 for each such closed hazardous waste management facility.

4. Bills issued for annual hazardous waste program fees shall be based upon actual hazardous waste generated for the prior calendar year, as demonstrated to the department's satisfaction. During the first year of implementation of this subdivision, bills will be based on the average quantity of hazardous waste generated for the previous three calendar years.

TITLE 5

WASTE TRANSPORTER PROGRAM FEE

Section 72-0501. Definitions.

72-0502. Waste transporter program fees.

§ 72-0501. Definitions.

1. "Industrial-commercial waste" means a waste which originates at, is generated by, or occurs as a result of any industrial or commercial activity. The forms of waste included are exemplified by but not limited to the following:

a. liquids such as: acids, alkalis, caustics, leachate, petroleum (and its derivatives), and process of treatment wastewaters;

b. sludges which are semisolid substances resulting from process or treatment operations, or residues from storage or use of liquids;

c. solids such as: solidified chemicals, paints or pigments; the end or by-products of incineration ash; foundry sand; dredge spoil;

d. contained gaseous materials;

e. hazardous waste as defined in title nine of article twenty-seven of this chapter; and

f. any liquid, sludge, septage, solid, semisolid substance or contained gaseous material in which any of the foregoing is intermixed or absorbed, or onto which any of the foregoing is adhered.

2. "Low-level radioactive waste" means radioactive material that:

a. is not high-level radioactive waste, transuranic waste, spent nuclear fuel, or the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content; and

b. the United States nuclear regulatory commission, consistent with federal law and in accordance with paragraph a of this subdivision, classifies as low-level radioactive waste.

3. "Regulated waste" means any one of the following types of waste, raw sewage, septage, sludge from a sewage or water supply treatment plant, industrial-commercial waste or waste oil.

4. "Septage" means the contents of a septic tank, cesspool or other individual sewage treatment facility which received domestic sewage wastes.

5. "Waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, and other discarded material, including solid, liquid, semisolid or contained gaseous material resulting from industrial, commercial, mining and agricultural operations and from community activities, but does not include solid or dissolved materials in domestic sewage, or solid or

dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under article seventeen of this chapter, or source, special nuclear or by-product material as defined in the Atomic Energy Act of 1954, as amended (68 Stat. 923) except as may be provided by existing agreements between the state and the federal governments.

6. "Waste oil" means used engine lubricating oil and any other oil, including but not limited to, fuel oil, motor oil, gear oil, cutting oil, transmission fluid, hydraulic fluid, dielectric fluid, oil storage tank residue, animal oil, and vegetable oil, which has been contaminated by physical or chemical impurities through use or accident, and has not subsequently been rerefined.

7. "Regulated medical waste" shall have the same meaning as such term is defined in title 15 of article 27 of this chapter.

§ 72-0502. Waste transporter program fees.

1. All persons required to obtain a permit, certificate or approval pursuant to the waste transporter permit requirements set forth in title three of article twenty-seven of this chapter shall submit annually to the department a fee in an amount to be determined as follows:

a. In the case of persons permitted pursuant to title three of article twenty-seven of this chapter to transport industrial-commercial waste or low-level radioactive waste:

- (i) \$500.00 for the first vehicle permitted pursuant to title three of article twenty-seven of this chapter; and
- (ii) \$200.00 per each additional vehicle permitted.

b. In the case of all other persons:

- (i) \$250.00 for the first vehicle permitted pursuant to title three of article twenty-seven of this chapter; and
- (ii) \$100.00 per each additional vehicle permitted.

2. All persons required to obtain a permit, certificate or approval pursuant to the waste transporter permit requirements set forth in title 15 of article 27 of this chapter shall submit annually to the department a fee in the amount of five hundred dollars (\$500.00) for the first vehicle permitted, certified or approved for the transportation of regulated medical waste, and two hundred dollars (\$200.00) for each additional vehicle so permitted, certified or approved.

Provided, however, that where a city or county is delegated the authority to administer the state waste transporter program pursuant to subdivision four of section 27-0305 of this chapter and such city or county collects a fee in connection with the issuance of a permit, certificate or approval for a waste transporter, no additional liability for fees under this section shall accrue.

TITLE 6

STATE POLLUTANT DISCHARGE ELIMINATION SYSTEM PROGRAM FEE

Section 72-0601. Definitions.

72-0602. State pollutant discharge elimination system program fees.

§ 72-0601. Definitions.

When used in this title:

1. "Facility" means any establishment for which a general permit has been issued pursuant to subdivision six of section 70-0117 of this chapter or any industrial, municipal or private/commercial/institutional (P/C/I) establishment, or any vessel for which a permit is required under titles seven and eight of article seventeen of this chapter.

2. "Industrial facility" means any manufacturing operation including, but not limited to animal feeding operations, aquatic animal production facilities, mining and silvicultural operations, and solid waste management facilities.

3. "Municipal facility" means a publicly owned treatment works, including raw discharges and combined sewer overflows, or a publicly owned drinking water treatment plant.

4. "P/C/I" means a private/commercial/institutional facility which primarily discharges sewage.

5. "Power plant" means any facility which generates electricity using a steam turbine and generator, which may be fired by coal, oil, natural gas, nuclear energy, or other fuel source.

6. "State pollutant discharge elimination system program" or "SPDES program" means those activities of the department as specified in titles seven and eight of article seventeen of this chapter related to discharges into the waters of the state and any related enforcement activities.

§ 72-0602. State pollutant discharge elimination system program fees.

All persons required to obtain a permit or certificate pursuant to the state pollutant discharge elimination system (SPDES) program as defined in section 72-0601 of this title shall submit annually to the department a fee in an amount to be determined as follows:

a. \$330.00 for any P/C/I facilities having a permit to discharge or discharging at an average daily rate of less than 100,000 gallons;

b. \$675.00 for P/C/I facilities having a permit to discharge or discharging at an average daily rate of 100,000 gallons or more;

c. \$675.00 for industrial facilities having a permit to discharge or discharging at an average daily rate of less than 10,000 gallons;

d. \$2,300.00 for industrial facilities having a permit to discharge or discharging at an average daily rate of between 10,000 gallons and

99,999 gallons;

e. \$6,700.00 for industrial facilities having a permit to discharge or discharging at an average daily rate of between 100,000 gallons and 499,999 gallons;

f. \$22,500.00 for industrial facilities having a permit to discharge or discharging at an average daily rate of between 500,000 and 999,999 gallons;

g. \$33,500.00 for industrial facilities having a permit to discharge or discharging at an average daily rate of between 1,000,000 and 9,999,999 gallons;

h. \$56,000.00 for industrial facilities having a permit to discharge or discharging at an average daily rate of 10,000,000 gallons or more;

i. \$56,000.00 for any power plant;

j. \$425.00 for municipal facilities having a permit to discharge or discharging at an average daily rate of less than 200,000 gallons;

k. \$2,000.00 for municipal facilities having a permit to discharge or discharging at an average daily rate of between 200,000 and 999,999 gallons;

l. \$8,000.00 for municipal facilities having a permit to discharge or discharging at an average daily rate of between 1,000,000 and 4,999,999 gallons;

m. \$15,500.00 for municipal facilities having a permit to discharge or discharging at an average daily rate of between 5,000,000 and 39,999,999 gallons;

n. \$38,500.00 for municipal facilities having a permit to discharge or discharging at an average daily rate of 40,000,000 gallons or more;

o. \$100.00 for any facility having a permit to discharge or discharging ballast no more than 1,000,000 gallons in any twenty-four hour period;

p. \$500.00 for any facility having a permit to discharge or discharging ballast in excess of 1,000,000 gallons in any twenty-four hour period;

q. \$110.00 per acre disturbed plus \$675.00 per future impervious acre for any facility, not owned or managed by a local government or a state department, agency, or authority, discharging or authorized to discharge pursuant to a SPDES permit for stormwater discharges from construction activity. For the purposes of this subdivision, acres disturbed are acres subject to clearing, grading, or excavating subject to SPDES permitting and future impervious acres are acres that will be newly paved or roofed during construction;

r. \$50.00 for a medium concentrated animal feeding operation discharging or authorized to discharge pursuant to a general permit;

s. \$50.00 for a large concentrated animal feeding operation discharging or authorized to discharge pursuant to a general permit;

t. \$110.00 for any facility, other than a municipal separate storm sewer as defined by 40 CFR §122.26 (b) (8), discharging or authorized to discharge pursuant to a general permit unless a specific fee is imposed pursuant to subdivisions a through s of this section for such discharge or authorization to discharge.

TITLE 7

WATER TRANSPORT PERMIT PROGRAM FEE

Section 72-0701. Definitions.

72-0702. Water transport permit program fee.

§ 72-0701. Definitions.

When used in this title:

1. "Facility" means any stationary or movable intake mechanism for the withdrawal of fresh water. For the purposes of this title multiple intake mechanism on shoreline facilities or vessels shall be considered as part of one facility.

2. "Water transport permit" means a permit required by section 15-1506 of this chapter.

§ 72-0702. Water transport permit program fee.

All persons and public corporations required to obtain a water transport permit pursuant to section 15-1506 of this chapter shall submit to the department a fee for each facility equal to one hundred dollars per million gallons of fresh water withdrawn or transported pursuant to such permit.

TITLE 10

MINED LAND RECLAMATION PROGRAM FEES

Section 72-1001. Definitions.

72-1003. Fees.

72-1005. Liability for fees.

72-1007. Disposition of fees.

72-1009. Environmental regulatory account.

72-1011. Mined land reclamation program account.

§ 72-1001. Definitions.

1. "Affected land" and "land affected by mining" means the sum of that surface area of land or land under water which:

(a) has been disturbed by mining since April first, nineteen hundred seventy-five, and has not been reclaimed, and

(b) is to be disturbed by mining during the term of the permit to mine.

2. "Mining" means the extraction of overburden and minerals from the earth; the preparation and processing of minerals, including any activities or processes or parts thereof for the extraction or removal of minerals from their original location and the preparation, washing, cleaning, crushing, or other processing of minerals at the mine location so as to make them suitable for commercial, industrial or construction use, exclusive of manufacturing processes, at the mine location; the removal of such materials through sale or exchange, or for commercial, industrial or municipal use; and the disposition of overburden, tailings and waste at the mine location. "Mining" shall not include the excavation, removal and disposition of minerals from construction projects, exclusive of the creation of water bodies, or excavations in aid of agricultural activities.

3. "Minor projects" means projects which meet all of the following criteria:

(a) total acreage affected by mining for the entire mining site is less than five acres, regardless of length of mining period;

(b) total depth of mine from floor to top of mine face is less than twenty feet;

(c) there is no on-site processing of minerals (e.g., washing, crushing);

(d) there is no mining within one hundred feet of any surface waters;

(e) there is no mining of consolidated minerals;

(f) there is no mining within five hundred feet of any dwelling; and

(g) there is no mining below the water table at the mine site.

§ 72-1003. Fees.

All persons required to obtain a permit or approval or subject to regulation under this title shall submit annually to the department a fee in the amount to be determined for affected land as follows:

1. four hundred dollars for minor projects; or
2. seven hundred dollars for affected land of an acreage equal to or less than five acres; or
3. nine hundred dollars for affected land of an acreage greater than five acres and equal to or less than ten acres; or
4. fifteen hundred dollars for affected land of an acreage greater than ten acres and equal to or less than twenty acres; or
5. four thousand dollars for affected land of an acreage greater than twenty acres and equal to or less than thirty acres; or
6. eight thousand dollars for affected land of an acreage greater than thirty acres.

§ 72-1005. Liability for fees.

Liability for fees authorized by this title shall be as follows:

1. for persons holding permits or approvals or subject to regulation under this title on January first in any year beginning with the year nineteen hundred ninety-one, liability for fees shall commence on January first;
2. for persons receiving new permits or approvals or subject to regulation under this title after September first, nineteen hundred ninety-one, liability for fees shall equal the annual fee established pursuant to this title and shall be prorated from the date of issuance;
3. for all persons holding permits or approvals, or subject to regulation under this title liability to pay annual fees shall continue until such time as reclamation has been completed and approved by the department and any required financial security has been released, and shall be prorated to the date of approval by the department.

§ 72-1007. Disposition of fees.

All fees collected pursuant to this title shall be paid into the miscellaneous special revenue fund, to the credit of the mined land reclamation program account. Moneys in such account shall be kept separately from and shall not be commingled with any other moneys in the joint or sole custody of the state comptroller.

§ 72-1009. Environmental regulatory account.

1. The environmental regulatory account shall be credited with all moneys received from fees and fee interest collected; all other moneys collected by the department pursuant to title twenty-seven of article twenty-three of this chapter, except as identified under article six of the public officers law; and any other contributions or donations by the public to such account.

2. Moneys in the account, following appropriation by the legislature, shall be allocated upon the certification of approval for availability by the director of the budget for the administration and enforcement of title twenty-seven of article twenty-three of this chapter, including but not limited to monitoring, surveillance, enforcement, training, research, administration and cooperation with any federal, state or local agency.

§ 72-1011. Mined land reclamation program account.

1. There is hereby established in the joint custody of the commissioner of taxation and finance and the comptroller a special revenue fund to be known as the "mined land reclamation program account".

2. The account shall consist of all moneys received from fees, fee

penalties, and fee and fee penalty interest collected pursuant to this title, and any other moneys collected therefor or credited or transferred thereto from any other fund, account or source.

3. Moneys in the mined land reclamation program account, following appropriation by the legislature, shall be disbursed, upon the certification of approval for availability by the director of the budget, for the administration and enforcement of title twenty-seven of article twenty-three of this chapter, including but not limited to monitoring, surveillance, enforcement, training and research.

*** ARTICLE 73**

NEW YORK STATE

CANAL FLOOD MITIGATION TASK FORCE

Section 73-0101. Flood mitigation task force.

73-0103. Definitions.

73-0105. Task force composition.

73-0107. Task force duties.

* NB Repealed 120 days after the New York State canal flood mitigation task force has submitted its completed report (see ch. 456/2007 §2)

*** § 73-0101. Flood mitigation task force.**

The New York state canal flood mitigation task force, referred to in this article as the task force, is hereby established to identify reasonable measures that can be taken to enhance flood management and mitigation in and along the New York state canal system, including the Erie Canal and major water bodies within the Oswego river basin that contribute to the flooding of the canal, and to make recommendations with respect to such measures.

* NB Repealed 120 days after the New York State canal flood mitigation task force has submitted its completed report (see ch. 456/2007 §2)

*** § 73-0103. Definitions.**

When used in this article:

1. "Adaptive measures" means any adjustment, whether passive, reactive or anticipatory, that may be taken to ameliorate the anticipated adverse consequences associated with flood events.

2. "Flood control study sector" means a particular aspect of the natural or built environment, economy, or society that could potentially be adversely impacted by flood events. Such term includes, but is not limited to, stream and river banks, locks and dams, wetlands and waterfront areas, water resources, transportation infrastructure, water supply and wastewater infrastructure, human health, recreation, tourism, power generation and business, residential, farm and municipal sectors.

3. "Flood event" means an overflow or inundation that comes from a river or other body of water, whether caused by rainfall, waterway operation, dam break, water runoff or other means, and causes or threatens damage.

4. "Canal system" shall mean the canal waterways, lands and infrastructure as set out in section two of the canal law.

* NB Repealed 120 days after the New York State canal flood mitigation task force has submitted its completed report (see ch. 456/2007 §2)

*** § 73-0105. Task force composition.**

1. The task force shall consist of fourteen members; nine of whom shall be the director of the canal corporation, commissioner of the department of environmental conservation, the secretary of state, the commissioner of transportation, the director of the state emergency management office, the commissioner of parks, recreation and historic preservation, the commissioner of agriculture and markets, the chairman of the power authority of the state of New York and the commissioner of economic development or designee; and five additional members who shall be from outside the public offices listed in this section and who shall

have professional experience in the fields of hydrology, civil engineering, climatology, emergency management and soil and water conservation. The governor shall appoint three of the five additional members and the temporary president of the senate and speaker of the assembly shall each appoint one of each of the five additional members.

2. The task force shall appoint a chairperson from among its members.

3. The members of the task force shall receive no compensation for their services, but shall be allowed their actual and necessary expenses incurred in the performance of their duties.

4. The task force shall consult with the emergency management officer, or appropriate county officer, from each county adjacent or intersected by the canal system or the Oswego river basin and each such officer shall provide to the task force a document listing their concerns and recommendations related to flooding along the canal system. The task force shall consider such concerns and recommendations in its deliberations and in the formulation of its determinations and recommendations.

5. The task force shall also solicit the views of persons who reside adjacent to the canal system or major bodies within the Oswego river basin to assist it in making its determinations and formulating its recommendations.

6. To help ensure the task force's receipt of a comprehensive and diverse array of views, a citizen advisory board to the task force shall be established. The advisory board shall consist of up to thirteen members appointed for two years, seven members shall be appointed following the recommendation of the governor; two members shall be appointed following the recommendation of the temporary president of the senate; two members shall be appointed following the recommendation of the speaker of the assembly; one member shall be appointed following the recommendation of the minority leader of the senate; and one member shall be appointed following the recommendation of the minority leader of the assembly. The advisory board shall represent a diverse array of

interests, including property owners residing adjacent to or in close proximity to the canal system or major water bodies within the Oswego river basin, recreational and commercial users of the canal system, environmental groups and hydroelectric power generators that operate facilities within the canal system. No member of the advisory board may be concurrently employed by, or provide goods or services to, any agency or public corporation which is represented on the task force. The commissioner shall select a member of the advisory board to serve as chairperson.

7. The members of the advisory board shall receive no compensation for their services, but shall be allowed their actual and necessary expenses incurred in the performance of their duties.

8. The advisory board shall advise the task force on relevant information and issues related to flooding and flood mitigation in the canal system or the Oswego river basin; make recommendations to fulfill the purposes of this article; and provide advice and assistance required by the task force.

9. The task force shall meet at least six times at the call of the chairperson.

* NB Repealed 120 days after the New York State canal flood mitigation task force has submitted its completed report (see ch. 456/2007 §2)

*** § 73-0107. Task force duties.**

The role of the task force includes, but is not limited to:

1. Conduct an in-depth examination of flood control study sectors and issues related to floodplain management, flood control and flood mitigation in and along the canal system including:

(a) Adaptive measures that can be taken to mitigate flood damages, including but not limited to feasible floodplain management activities, wetland restoration, flood control structures, communication systems and structures and associated costs;

(b) Evaluation which should include impacts on agriculture, transportation, land use, health, insurance and economic sectors such as shipping, fisheries, power generation, tourism, and recreation. Impacts on infrastructure, including bridges, low-lying roads, dams, locks, causeways, water and wastewater treatment plants and docks shall be included in the evaluation; and

(c) Evaluation of canal operation procedures and plans which may have a direct or indirect impact on flood mitigation and flood management including, but not limited to, debris management, communication, water management and flood response.

2. Evaluation and assessment of any flood control or mitigation measures identified in terms of feasibility, economic and public health impacts, and effectiveness, as well as identifying impediments to implementing flood control and mitigation measures and where possible, actions that could be taken to resolve these issues.

3. The department and the canal corporation shall provide the task force with such facilities, assistance and data as will enable the task force to carry out its powers and duties. Additionally, all other agencies of the state or subdivisions thereof shall, at the request of the chair provide the task force with such facilities, assistance, and data as will enable the task force to carry out its powers and duties.

4. The task force shall have the power to:

(a) Contract for professional and technical assistance and advice;

(b) Contract for and accept assistance including, but not limited to gifts, grants, easements, and loans of funds, real property and personal property from the federal government or any agency or instrumentality of the state, or from any other public or private source to comply, subject to the provisions of this article, with the terms and conditions thereof, subject to the approval of the division of the budget.

Notwithstanding the provisions of section eleven of the state finance law, the task force may accept gifts, grants, devises and bequests, whether conditional or unconditional with the approval of the director of the budget; and

(c) Conduct scientific and environmental studies.

* NB Repealed 120 days after the New York State canal flood mitigation task force has submitted its completed report (see ch. 456/2007 §2)

ARTICLE 75
CLIMATE CHANGE

Section 75-0101. Definitions.

- 75-0103. New York state climate action council.
- 75-0105. Statewide greenhouse gas emissions report.
- 75-0107. Statewide greenhouse gas emissions limits.
- 75-0109. Promulgation of regulations to achieve statewide greenhouse gas emissions reductions.
- 75-0111. Climate justice working group.
- 75-0113. Value of carbon.
- 75-0115. Community air monitoring program.
- 75-0117. Investment of funds.
- 75-0119. Implementation reporting.

§ 75-0101. Definitions.

For the purposes of this article the following terms shall have the following meanings:

1. "Allowance" means an authorization to emit, during a specified year, up to one ton of carbon dioxide equivalent.
2. "Carbon dioxide equivalent" means the amount of carbon dioxide by mass that would produce the same global warming impact as a given mass of another greenhouse gas over an integrated one hundred-year time frame after emission.
3. "Co-pollutants" means hazardous air pollutants produced by greenhouse gas emissions sources.
4. "Council" means the New York state climate action council established pursuant to section 75-0103 of this article.

5. "Disadvantaged communities" means communities that bear burdens of negative public health effects, environmental pollution, impacts of climate change, and possess certain socioeconomic criteria, or comprise high-concentrations of low- and moderate- income households, as identified pursuant to section 75-0111 of this article.

6. "Emissions reduction measures" means programs, measures and standards, authorized pursuant to this chapter, applicable to sources or categories of sources, that are designed to reduce emissions of greenhouse gases.

7. "Greenhouse gas" means carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, and any other substance emitted into the air that may be reasonably anticipated to cause or contribute to anthropogenic climate change.

8. "Greenhouse gas emission limit" means the maximum allowable level of statewide greenhouse gas emissions, excluding emissions identified under paragraph f of subdivision two of section 75-0105 of this article, in a specified year, expressed in tons of carbon dioxide equivalent, as determined by the department pursuant to this article.

9. "Greenhouse gas emission offset" means a deduction representing one metric ton of carbon dioxide equivalent emissions, reduced, avoided, or sequestered by a greenhouse gas emission offset project from a measured baseline of emissions pursuant to the statewide greenhouse gas emissions report.

10. "Greenhouse gas emission offset projects" means one or more projects, including:

a. Natural carbon sinks including but not limited to afforestation, reforestation, or wetlands restoration;

b. Greening infrastructure;

c. Restoration and sustainable management of natural and urban forests or working lands, grasslands, coastal wetlands and sub-tidal habitats;

d. Efforts to reduce hydrofluorocarbon refrigerant, sulfur hexafluoride, and other ozone depleting substance releases;

e. Anaerobic digesters, where energy produced is directed toward localized use;

f. Carbon capture and sequestration;

g. Ecosystem restoration; and

h. Other types of projects recommended by the council in consultation with the climate justice working group that provide public health and environmental benefits, and do not create burdens in disadvantaged communities.

11. "Greenhouse gas emission source" or "source" means any anthropogenic source or category of anthropogenic sources of greenhouse gas emissions, determined by the department:

a. whose participation in the program will enable the department to effectively reduce greenhouse gas emissions; and,

b. that are capable of being monitored for compliance.

12. "Leakage" means a reduction in emissions of greenhouse gases within the state that is offset by an increase in emissions of greenhouse gases outside of the state.

13. "Statewide greenhouse gas emissions" means the total annual emissions of greenhouse gases produced within the state from anthropogenic sources and greenhouse gases produced outside of the state that are associated with the generation of electricity imported into the state. Statewide emissions shall be expressed in tons of carbon dioxide equivalents.

14. "Statewide greenhouse gas emissions limit" or "statewide emissions limit" means the maximum allowable level of statewide greenhouse gas emissions in a specified year, as determined by the department pursuant to this article.

15. "Environmental justice advisory group" shall mean the permanent environmental justice advisory group established by a chapter of the laws of two thousand nineteen amending the environmental conservation law relating to establishing a permanent environmental justice advisory group and an environmental justice interagency coordinating council, as proposed in legislative bills numbers S. 2385 and A. 1564.

§ 75-0103. New York state climate action council.

1. There is hereby established the New York state climate action council ("council") which shall consist of the following twenty-two members:

a. the commissioners of transportation, health, economic development, agriculture and markets, housing and community renewal, environmental conservation, labor, the chairperson of the public service commission, the presidents of the New York state energy research and development authority; New York power authority; Long Island power authority; the secretary of state, or their designees.

b. two non-agency expert members appointed by the governor;

c. three members to be appointed by the temporary president of the senate;

d. three members to be appointed by the speaker of the assembly;

e. one member to be appointed by the minority leader of the senate;
and

f. one member to be appointed by the minority leader of the assembly.

2. The at large members shall include at all times individuals with expertise in issues relating to climate change mitigation and/or adaptation, such as environmental justice, labor, public health and regulated industries.

3. Council members shall receive no compensation for their services but shall be reimbursed for actual and necessary expenses incurred in the performance of their duties.

4. The co-chairpersons of the council shall be the commissioner of environmental conservation and the president of the New York state energy research and development authority or their designee.

5. Each member of the council shall be entitled to one vote. The council's approval and adoption of the final scoping plan pursuant to this section, and any subsequent interim updates thereto, shall require a supermajority of the council. No action may be taken by the council unless there is a quorum, which shall at all times be a majority of the members of the council.

6. Any vacancies on the council shall be filled in the manner provided for the initial appointment.

7. The council shall convene advisory panels requiring special expertise and, at a minimum, shall establish advisory panels on transportation, energy intensive and trade-exposed industries, land-use and local government, energy efficiency and housing, power generation, and agriculture and forestry. The purpose of the advisory panels shall be to provide recommendations to the council on specific topics, in its preparation of the scoping plan, and interim updates to the scoping plan, and in fulfilling the council's ongoing duties.

a. Each advisory panel shall be chaired by the relevant agency head or his or her designee. The council may convene and dissolve additional advisory panels, in its sole discretion, and pursuant to the

requirements herein.

b. Advisory panels shall be comprised of no more than five voting members. The council shall elect advisory panel members, and such membership shall at all times represent individuals with direct involvement or expertise in matters to be addressed by the advisory panels pursuant to this section.

c. Advisory panels shall work directly with the council on the preparation of the scoping plan pursuant to this section. Each advisory panel shall coordinate with the environmental justice advisory group and climate justice working group.

d. All agencies of the state or subdivisions thereof may, at the request of any such advisory panel or the council, provide the advisory panel with such facilities, assistance, and data as will enable advisory panels to carry out their powers and duties.

8. The council shall convene a just transition working group. The working group shall be chaired by the commissioner of labor and the president of the New York state energy research and development authority and shall consist of no less than thirteen, but no more than seventeen members and shall include the commissioners of housing and community renewal, the chair of the department of public service, representatives of environmental justice communities and representatives of labor organizations, clean energy developers and at least five representatives of distinct energy-intensive industries. The just transition working group shall:

a. advise the council on issues and opportunities for workforce development and training related to energy efficiency measures, renewable energy and other clean energy technologies, with specific focus on training and workforce opportunities for disadvantaged communities, and segments of the population that may be underrepresented in the clean energy workforce such as veterans, women and formerly incarcerated persons;

b. identify energy-intensive industries and related trades and identify sector specific impacts of the state's current workforce and avenues to maximize the skills and expertise of New York state workers in the new energy economy;

c. identify sites of electric generating facilities that may be closed as a result of a transition to a clean energy sector and the issues and opportunities presented by reuse of those sites;

d. with respect to potential for greenhouse gas emission limits developed by the department of environmental conservation pursuant to this article, advise the council on the potential impacts of carbon leakage risk on New York state industries and local host communities, including the impact of any potential carbon reduction measures on the competitiveness of New York state business and industry;

e. advise the council and conduct stakeholder outreach on any other workforce matters directed by the council; and

f. at a time frame determined by the council, prepare and publish recommendations to the council on how to address: issues and opportunities related to the energy-intensive and trade-exposed entities; workforce development for trade-exposed entities, disadvantaged communities and underrepresented segments of the population; measures to minimize the carbon leakage risk and minimize anti-competitiveness impacts of any potential carbon policies and energy sector mandates.

g. The just transition working group is hereby authorized and directed to conduct a study of and report on:

i. The number of jobs created to counter climate change, which shall include but not be limited to the energy sector, building sector, transportation sector, and working lands sector;

ii. The projection of the inventory of jobs needed and the skills and training required to meet the demand of jobs to counter climate change;

and

iii. Workforce disruption due to community transitions from a low carbon economy.

9. The department and the New York state energy research and development authority shall provide the council with such facilities, assistance and data as will enable the council to carry out its powers and duties. Additionally, all other agencies of the state or subdivisions thereof may, at the request of the co-chairpersons, provide the council with such facilities, assistance, and data as will enable the council to carry out its powers and duties.

10. The council shall consult with the climate justice working group established in section 75-0111 of this article, the department of state utility intervention unit, and the federally designated electric bulk system operator.

11. The council shall on or before two years of the effective date of this article, prepare and approve a scoping plan outlining the recommendations for attaining the statewide greenhouse gas emissions limits in accordance with the schedule established in section 75-0107 of this article, and for the reduction of emissions beyond eighty-five percent, net zero emissions in all sectors of the economy, which shall inform the state energy planning board's adoption of a state energy plan in accordance with section 6-104 of the energy law. The first state energy plan issued subsequent to completion of the scoping plan required by this section shall incorporate the recommendations of the council.

12. The draft scoping plan shall be developed in consultation with the environmental justice advisory group, and the climate justice working group established pursuant to section 75-0111 of this article and other stakeholders.

a. The council shall hold at least six regional public comment hearings on the draft scoping plan, including three meetings in the upstate region and three meetings in the downstate region, and shall

allow at least one hundred twenty days for the submission of public comment.

b. The council shall provide meaningful opportunities for public comment from all segments of the population that will be impacted by the plan, including persons living in disadvantaged communities as identified pursuant to section 75-0111 of this article.

c. On or before three years of the effective date of this article, the council shall submit the final scoping plan to the governor, the speaker of the assembly and the temporary president of the senate and post such plan on its website.

13. The scoping plan shall identify and make recommendations on regulatory measures and other state actions that will ensure the attainment of the statewide greenhouse gas emissions limits established pursuant to section 75-0107 of this article. The measures and actions considered in such scoping plan shall at a minimum include:

a. Performance-based standards for sources of greenhouse gas emissions, including but not limited to sources in the transportation, building, industrial, commercial, and agricultural sectors.

b. Measures to reduce emissions from the electricity sector by displacing fossil-fuel fired electricity with renewable electricity or energy efficiency.

c. Land-use and transportation planning measures aimed at reducing greenhouse gas emissions from motor vehicles.

d. Measures to achieve long-term carbon sequestration and/or promote best management practices in land use, agriculture and forestry.

e. Measures to achieve six gigawatts of distributed solar energy capacity installed in the state by two thousand twenty-five, nine gigawatts of offshore wind capacity installed by two thousand thirty-five, a statewide energy efficiency goal of one hundred

eighty-five trillion British thermal units energy reduction from the two thousand twenty-five forecast; and three gigawatts of statewide energy storage capacity by two thousand thirty.

f. Measures to promote the beneficial electrification of personal and freight transport and other strategies to reduce greenhouse gas emissions from the transportation sector.

g. Measures to achieve reductions in energy use in existing residential or commercial buildings, including the beneficial electrification of water and space heating in buildings, establishing appliance efficiency standards, strengthening building energy codes, requiring annual building energy benchmarking, disclosing energy efficiency in home sales, and expanding the ability of state facilities to utilize performance contracting.

h. Recommendations to aid in the transition of the state workforce and the rapidly emerging clean energy industry.

i. Measures to achieve healthy forests that support clean air and water, biodiversity, and sequester carbon.

j. Measures to limit the use of chemicals, substances or products that contribute to global climate change when released to the atmosphere, but are not intended for end-use combustion.

k. Mechanisms to limit emission leakage as defined in subdivision eleven of section 75-0101 of this article.

l. Verifiable, enforceable and voluntary emissions reduction measures.

14. In developing such plan the council shall:

a. Consider all relevant information pertaining to greenhouse gas emissions reduction programs in states in the United States Climate Alliance, as well as other states, regions, localities, and nations.

b. Evaluate, using the best available economic models, emission estimation techniques and other scientific methods, the total potential costs and potential economic and non-economic benefits of the plan for reducing greenhouse gases, and make such evaluation publicly available. In conducting this evaluation, the council shall quantify:

i. The economic and social benefits of greenhouse gas emissions reductions, taking into account the value of carbon, established by the department pursuant to section 75-0113 of this article, any other tools that the council deems useful and pertinent for this analysis, and any environmental, economic and public health co-benefits (such as the reduction of co-pollutants and the diversification of energy sources); and

ii. The costs of implementing proposed emissions reduction measures, and the emissions reductions that the council anticipates achieving through these measures.

c. Take into account the relative contribution of each source or source category to statewide greenhouse gas emissions, and the potential for adverse effects on small businesses, and recommend a de minimis threshold of greenhouse gas emissions below which emission reduction requirements will not apply.

d. Identify measures to maximize reductions of both greenhouse gas emissions and co-pollutants in disadvantaged communities as identified pursuant to section 75-0111 of this article.

15. The council shall update its plan toward achieving the statewide greenhouse gas emissions limits and shall make such updates available to the governor, the speaker of the assembly and the temporary president of the senate and post such updates on its website. The first update shall occur in two thousand twenty-eight with subsequent updates due every six years thereafter.

16. The council shall identify existing climate change mitigation and adaptation efforts at the federal, state, and local levels and may make

recommendations regarding how such policies may improve the state's efforts.

17. The council shall maintain a website that includes public access to the scoping plan and greenhouse gas limit information.

§ 75-0105. Statewide greenhouse gas emissions report.

1. No later than two years after the effective date of this article, and each year thereafter, the department shall issue a report on statewide greenhouse gas emissions, expressed in tons of carbon dioxide equivalents, from all greenhouse gas emission sources in the state, including the relative contribution of each type of greenhouse gas and each type of source to the statewide total.

2. The statewide greenhouse gas emissions report shall be a comprehensive evaluation, informed by a variety of data, including but not limited to:

a. information relating to the use of fossil fuels by sector, including for electricity generation, transportation, heating, and other combustion purposes;

b. information relating to fugitive and vented emissions from systems associated with the production, processing, transport, distribution, storage, and consumption of fossil fuels, including natural gas;

c. information relating to emissions from non-fossil fuel sources, including, but not limited to, garbage incinerators, biomass combustion, landfills and landfill gas generators, and anaerobic digesters;

d. information relating to emissions associated with manufacturing, chemical production, cement plants, and other processes that produce non-combustion emissions;

e. information from sources that may be required to participate in the

registration and reporting system pursuant to subdivision four of this section; and

f. carbon dioxide emissions from biogenic sources shall be reported separately, consistent with treatment of biogenic carbon dioxide emissions under the methodologies of the Intergovernmental Panel on Climate Change.

3. The statewide greenhouse gas emissions report shall also include an estimate of greenhouse gas emissions associated with the generation of imported electricity and with the extraction and transmission of fossil fuels imported into the state which shall be counted as part of the statewide total.

4. Within one year after the effective date of this article, the department shall consider establishing a mandatory registry and reporting system from individual sources to obtain data on greenhouse gas emissions exceeding a particular threshold. If established, such registry and reporting system shall apply a consistent reporting threshold to ensure the unbiased collection of data.

5. The statewide greenhouse gas emissions report shall also include an estimate of what the statewide greenhouse gas emissions level was in 1990.

6. The statewide greenhouse gas emissions report shall utilize best available science and methods of analysis, including the comparison and reconciliation of emission estimates from all sources, fuel consumption, field data, and peer-reviewed research.

7. The statewide greenhouse gas emissions report shall clearly explain the methodology and analysis used in the department's determination of greenhouse gas emissions and shall include a detailed explanation of any changes in methodology or analysis, adjustments made to prior estimates, as needed, and any other information necessary to establish a scientifically credible account of change.

8. The department shall hold at least two public hearings to seek public input regarding the methodology and analysis used in the determination of statewide greenhouse gas emissions, and periodically thereafter.

§ 75-0107. Statewide greenhouse gas emissions limits.

1. No later than one year after the effective date of this article, the department shall, pursuant to rules and regulations promulgated after at least one public hearing, establish a statewide greenhouse gas emissions limit as a percentage of 1990 emissions, as estimated pursuant to section 75-0105 of this article, as follows:

a. 2030: 60% of 1990 emissions.

b. 2050: 15% of 1990 emissions.

2. Greenhouse gas emission limits shall be measured in units of carbon dioxide equivalents and identified for each individual type of greenhouse gas.

3. In order to ensure the most accurate determination feasible, the department shall utilize the best available scientific, technological, and economic information on greenhouse gas emissions and consult with the council, stakeholders, and the public in order to ensure that all emissions are accurately reflected in its determination of 1990 emissions levels.

4. In order to comply with the statewide greenhouse gas emissions limits promulgated pursuant to this section, a source may utilize the alternative compliance mechanism established pursuant to subdivision four of section 75-0109 of this article. The use of such mechanism shall be in accordance with the provisions of that subdivision.

§ 75-0109. Promulgation of regulations to achieve statewide greenhouse

gas emissions reductions.

1. No later than December thirty-first, two thousand twenty-eight, the department, after public workshops and consultation with the council, the environmental justice advisory group, and the climate justice working group established pursuant to section 75-0111 of this article, representatives of regulated entities, community organizations, environmental groups, health professionals, labor unions, municipal corporations, trade associations and other stakeholders, shall, after no less than two public hearings, promulgate, in accordance with subdivision three of this section, rules and regulations designed to: (i) achieve, to the maximum extent feasible and cost effective, a sixty percent reduction in statewide greenhouse gas emissions from 1990 emissions by two thousand forty; and (ii) to ensure compliance with the statewide emissions reduction limit established in paragraph b of subdivision one of section 75-0107 of this article, and work with other state agencies and authorities to promulgate regulations required by section eight of chapter one hundred six of the laws of two thousand nineteen.

2. The regulations promulgated by the department pursuant to this section shall:

a. Ensure that the aggregate emissions of greenhouse gases from greenhouse gas emission sources will not exceed the statewide greenhouse gas emissions limits established in section 75-0107 of this article.

b. Include legally enforceable emissions limits, performance standards, or measures or other requirements to control emissions from greenhouse gas emission sources, with the exception of agricultural emissions from livestock.

c. Reflect, in substantial part, the findings of the scoping plan prepared pursuant to section 75-0103 of this article.

d. Include measures to reduce emissions from greenhouse gas emission sources that have a cumulatively significant impact on statewide

greenhouse gas emissions, such as internal combustion vehicles that burn gasoline or diesel fuel and boilers or furnaces that burn oil or natural gas.

3. In promulgating these regulations, the department shall:

a. Design and implement all regulations in a manner that seeks to be equitable, to minimize costs and to maximize the total benefits to New York, and encourages early action to reduce greenhouse gas emissions;

b. Ensure that greenhouse gas emissions reductions achieved are real, permanent, quantifiable, verifiable, and enforceable by the department;

c. Ensure that activities undertaken to comply with the regulations do not result in a net increase in co-pollutant emissions or otherwise disproportionately burden disadvantaged communities as identified pursuant to section 75-0111 of this article;

d. Prioritize measures to maximize net reductions of greenhouse gas emissions and co-pollutants in disadvantaged communities as identified pursuant to section 75-0111 of this article and encourage early action to reduce greenhouse gas emissions and co-pollutants;

e. Incorporate measures to minimize leakage; and

f. Consider the following, in the course of developing a regulatory program or programs as required by this section:

i. the feasibility and adoption of: programs that utilize regulatory mechanisms, including a market-based economy-wide cap-and-invest program that could be linked to other jurisdictions and provide market certainty; clean energy supply standards; and other regulations;

ii. the affordability of the programs identified in subparagraph i of this paragraph for state residents, businesses and other entities, including how the pace and sequencing of the emissions reduction strategies affect total costs over time, and through assessing energy

cost impacts across customer classes and uses, as well as the utilization of effective cost containment measures as needed;

iii. the importance of fostering the state's economic growth and competitiveness, including the creation and maintenance of well-paying and family-sustaining jobs;

iv. the economy-wide emissions reduction strategies that result in improved public health, increased quality of life, and a cleaner environment for all New Yorkers, and that any new revenue equitably supports these outcomes;

v. the ability to maximize available funding and other resources to support emissions reductions; and

vi. the development and commercialization of low and zero emission technologies to achieve the goals of programs identified in subparagraph i of this paragraph.

4. a. The department may establish an alternative compliance mechanism to be used by sources subject to greenhouse gas emissions limits to achieve net zero emissions.

b. The use of such mechanism shall account for not greater than fifteen percent of statewide greenhouse gas emissions estimated as a percentage of nineteen ninety emissions pursuant to section 75-0105 of this article, provided that the use of this mechanism must offset a quantity greater than or equal to the greenhouse gases emitted. The offset of greenhouse gas emissions shall not result in disadvantaged communities having to bear a disproportionate burden of environmental impacts.

c. The department shall verify that greenhouse gas emission offset projects authorized pursuant to this subdivision represent greenhouse gas equivalent emission reductions or carbon sequestration that are real, additional, verifiable, enforceable, and permanent.

d. Any greenhouse gas emissions offset project shall comply with all of the requirements of this subdivision.

e. The department shall establish an application process that, at a minimum, requires a source to sufficiently demonstrate that compliance with the greenhouse gas emissions limits is not technologically feasible, and that the source has reduced emissions to the maximum extent practicable. After an initial four year period, the department shall review the participation of a source in this mechanism, and make a determination as to the source's continued need for an alternative compliance, considering the extent to which the source is utilizing the best available technology standards.

f. Sources in the electric generation sector shall not be eligible to participate in such mechanism.

g. The following types of projects shall be prohibited:

i. waste-to-energy projects, including incineration and pyrolysis; and

ii. biofuels used for energy or transportation purposes.

h. Any greenhouse gas emission offset project approved by the department shall:

i. be designed to provide a discernable benefit to the environment rather than to the source;

ii. be located in the same county, and within twenty-five linear miles, of the source of emissions, to the extent practicable;

iii. enhance the conditions of the ecosystem or geographic area adversely affected; and

iv. substantially reduce or prevent the generation or release of pollutants through source reduction.

i. A greenhouse gas emission offset project shall not be approved by the department where the project:

i. is required pursuant to any local, state or federal law, regulation, or administrative or judicial order;

ii. contains measures which the source would have undertaken anyway within the next five years;

iii. contributes to environmental research at a college or university;
or

iv. is a study or assessment without a commitment to implement the results.

j. In approving greenhouse gas emission offset projects, the department shall prioritize projects that maximize public health and environmental benefits within the state and especially localized benefits in disadvantaged communities, defined pursuant to section 75-0111 of this article.

k. The department shall establish a public registry of greenhouse gas emission offset projects approved pursuant to this subdivision.

l. Prior to the inclusion of any alternative compliance mechanism in the regulations, to the extent feasible and in the furtherance of achieving the statewide greenhouse gas emissions limit, the department shall do all of the following:

i. consult with the council, the environmental justice advisory group, and the climate justice working group;

ii. consider the potential for direct, indirect, and cumulative emission impacts from this mechanism, including localized impacts in disadvantaged communities as identified pursuant to section 75-0111 of this article;

iii. design the alternative compliance mechanism to prevent any increase in the emissions of co-pollutants; and

iv. maximize additional environmental, public health, and economic benefits for the state and for disadvantaged communities identified pursuant to section 75-0111 of this article, as appropriate.

§ 75-0111. Climate justice working group.

1. There is hereby created within the department, no later than six months after the effective date of this article, a "climate justice working group". Such working group will be comprised of representatives from: environmental justice communities, the department, the department of health, the New York state energy and research development authority, and the department of labor.

a. Environmental justice community representatives shall be members of communities of color, low-income communities, and communities bearing disproportionate pollution and climate change burdens, or shall be representatives of community-based organizations with experience and a history of advocacy on environmental justice issues, and shall include at least three representatives from New York city communities, three representatives from rural communities, and three representatives from upstate urban communities.

b. The working group, in consultation with the department, the departments of health and labor, the New York state energy and research development authority, and the environmental justice advisory group, will establish criteria to identify disadvantaged communities for the purposes of co-pollutant reductions, greenhouse gas emissions reductions, regulatory impact statements, and the allocation of investments related to this article.

c. Disadvantaged communities shall be identified based on geographic, public health, environmental hazard, and socioeconomic criteria, which shall include but are not limited to:

i. areas burdened by cumulative environmental pollution and other hazards that can lead to negative public health effects;

ii. areas with concentrations of people that are of low income, high unemployment, high rent burden, low levels of home ownership, low levels of educational attainment, or members of groups that have historically experienced discrimination on the basis of race or ethnicity; and

iii. areas vulnerable to the impacts of climate change such as flooding, storm surges, and urban heat island effects.

2. Before finalizing the criteria for identifying disadvantaged communities and identifying disadvantaged communities pursuant to subdivision one of this section, the department shall publish draft criteria and a draft list of disadvantaged communities and make such information available on its website.

a. The council shall hold at least six regional public hearings on the draft criteria and the draft list of disadvantaged communities, including three meetings in the upstate region and three meetings in the downstate region, and shall allow at least one hundred twenty days for the submission of public comment.

b. The council shall also ensure that there are meaningful opportunities for public comment for all segments of the population that will be impacted by the criteria, including persons living in areas that may be identified as disadvantaged communities under the proposed criteria.

3. The group will meet no less than annually to review the criteria and methods used to identify disadvantaged communities and may modify such methods to incorporate new data and scientific findings. The climate justice working group shall review identities of disadvantaged communities and modify such identities as needed.

§ 75-0113. Value of carbon.

1. No later than one year after the effective date of this article, the department, in consultation with the New York state energy research and development authority, shall establish a social cost of carbon for use by state agencies, expressed in terms of dollars per ton of carbon dioxide equivalent.

2. The social cost of carbon shall serve as a monetary estimate of the value of not emitting a ton of greenhouse gas emissions. As determined by the department, the social cost of carbon may be based on marginal greenhouse gas abatement costs or on the global economic, environmental, and social impacts of emitting a marginal ton of greenhouse gas emissions into the atmosphere, utilizing a range of appropriate discount rates, including a rate of zero.

3. In developing the social cost of carbon, the department shall consider prior or existing estimates of the social cost of carbon issued or adopted by the federal government, appropriate international bodies, or other appropriate and reputable scientific organizations.

§ 75-0115. Community air monitoring program.

1. For purposes of this section, the following definitions and related provisions shall apply:

a. "Community air monitoring system" means advanced sensing monitoring equipment that measures and records air pollutant concentrations in the ambient air at or near sensitive receptor locations in disadvantaged communities.

b. "Disadvantaged community" means a community identified as disadvantaged pursuant to the criteria set forth in section 75-0111 of this article.

c. "Sensitive receptors" includes hospitals, schools and day care

centers, and such other locations as the department may determine.

2. a. On or before October first, two thousand twenty-two, the department shall prepare, in consultation with the climate justice working group, a program demonstrating community air monitoring systems.

b. The program shall identify the highest priority locations in disadvantaged communities around the state to deploy community air monitoring systems, which shall be communities with potentially high exposure burdens for toxic air contaminants and criteria air pollutants. The program shall be undertaken in no less than four communities statewide with regional consideration.

c. The department shall publish the air quality data produced by the community air monitoring systems deployed pursuant to this section on its website as it becomes available.

3. On or before June first, two thousand twenty-four, the department shall prepare, in consultation with the climate justice working group, a strategy to reduce emissions of toxic air contaminants and criteria air pollutants in disadvantaged communities affected by a high cumulative exposure burden. The strategy shall include criteria for the development of community emission reduction programs. The criteria presented in the strategy shall include, but are not limited to, the following:

a. an assessment and identification of communities with high cumulative exposure burdens for toxic air contaminants and criteria air pollutants.

b. a methodology for assessing and identifying the contributing sources or categories of sources, including, but not limited to, stationary and mobile sources, and an estimate of their relative contribution to elevated exposure to air pollution in impacted communities identified pursuant to paragraph a of this subdivision.

c. an assessment of the existing and available measures for reducing emissions from the contributing sources or categories of sources

identified pursuant to paragraph b of this subdivision.

4. a. Based on the assessment and identification of disadvantaged communities with high cumulative exposure burdens for toxic air contaminants and criteria air pollutants completed pursuant to paragraph a of subdivision three of this section, the department shall select disadvantaged communities around the state for preparation of community emissions reduction programs. The department may select additional locations annually thereafter, as appropriate.

b. The department shall have the authority to adopt regulations establishing programs to achieve emissions reductions for the locations selected using the most cost-effective measures identified pursuant to paragraph c of subdivision three of this section.

§ 75-0117. Investment of funds.

State agencies, authorities and entities, in consultation with the environmental justice working group and the climate action council, shall, to the extent practicable, invest or direct available and relevant programmatic resources in a manner designed to achieve a goal for disadvantaged communities to receive forty-five percent of overall benefits of spending on clean energy and energy efficiency programs, projects or investments in the areas of housing, workforce development, pollution reduction, low income energy assistance, energy, transportation and economic development, provided however, that disadvantaged communities shall receive no less than forty percent of the overall benefits of spending on clean energy and energy efficiency programs, projects or investments and provided further that this section shall not alter funds already contracted or committed as of the effective date of this section.

§ 75-0119. Implementation reporting.

1. The department in consultation with the council shall, not less

than every four years after the promulgation of regulations pursuant to section 75-0109 of this article, publish a report which shall include recommendations regarding the implementation of greenhouse gas reduction measures.

2. The report shall, at minimum, include:

a. Whether the state is on track to meet the statewide greenhouse gas emissions limits established in section 75-0107 of this article.

b. An assessment of existing regulations and whether modifications are needed to ensure fulfillment of the statewide greenhouse gas emissions limits.

c. An overview of social benefits from the regulations or other measures, including reductions in greenhouse gas emissions and copollutants, diversification of energy sources, and other benefits to the economy, environment, and public health.

d. An overview of compliance costs for regulated entities and for the department and other state agencies.

e. Whether regulations or other greenhouse gas reduction measures undertaken are equitable, minimize costs and maximize the total benefits to the state, and encourage early action.

f. Whether activities undertaken to comply with state regulations disproportionately burden disadvantaged communities as identified pursuant to section 75-0111 of this article.

g. An assessment of local benefits and impacts of any reductions in co-pollutants related to reductions in statewide and local greenhouse gas emissions.

h. An assessment of disadvantaged communities' access to or community ownership of the services and commodities identified in section six of the chapter of the laws of two thousand nineteen which added this

article.

i. Whether entities that have voluntarily reduced their greenhouse gas emissions prior to the implementation of this article receive appropriate credit for early voluntary reductions.

j. Recommendations for future regulatory and policy action.

3. In preparing this report, the department shall, at a minimum, consult with the council, and the climate justice working group established in section 75-0111 of this article.

4. The report shall be published and posted on the department's website.

ARTICLE 76

CLIMATE CHANGE ADAPTATION COST RECOVERY PROGRAM

Section 76-0101. Definitions.

76-0103. The climate change adaptation cost recovery program.

76-0105. Requirements for climate change adaptive infrastructure projects.

§ 76-0101. Definitions.

For the purposes of this article the following terms shall have the following meanings:

1. "Affiliate" means, with respect to any specified entity, an entity that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the entity specified.

2. "Applicable payment date" means December thirty-first of the fourth calendar year following the year in which this article is enacted into law.

3. "Climate change adaptive infrastructure project" means an infrastructure project for purposes of climate change adaptation that:

a. includes but is not limited to projects designed to avoid, moderate, repair, or adapt to negative impacts caused by climate change, and to assist communities, households, and businesses in preparing for future climate change-driven disruptions. Such project types include but are not limited to restoring coastal wetlands and developing other nature-based solutions and coastal protections; upgrading storm water drainage systems; making defensive upgrades to roads, bridges, subways, and transit systems; preparing for and recovering from hurricanes and other extreme weather events; undertaking preventive health care programs and providing medical care to treat illness or injury caused by the effects of climate change; relocating, elevating, or retrofitting wastewater treatment plants vulnerable to flooding; installing energy efficient cooling systems and other weatherization and energy efficiency upgrades and retrofits in public and private buildings, including schools and public housing; upgrading parts of the electrical grid to increase stability and resilience, including supporting the creation of self-sufficient clean energy microgrids; addressing urban heat island effects through green spaces, urban forestry, and other interventions; and responding to harmful algal blooms, loss of agricultural topsoil, and other climate-driven ecosystem threats to forests, farms, fisheries, and food systems; and

b. is guided by the project criteria identified in the statewide climate change adaptation and resilience plan adopted pursuant to subdivision six of section 76-0103 of this article.

4. "Control" (including the terms controlling, controlled by and under common control with) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract, or otherwise.

5. "Controlled group" means two or more entities that are affiliates

of each other.

6. "Cost recovery amount" means seventy-five billion dollars.

7. "Cost recovery demand" means the portion of the cost recovery amount determined by the department pursuant to the program to be owed by a responsible party for payment to the fund.

8. "Covered greenhouse gas emissions" means, with respect to any entity, the total quantity of greenhouse gas emissions, expressed in metric tons of carbon dioxide equivalent, as defined in section 75-0101 of this chapter, attributable to the total amount of fossil fuels extracted by that entity during the covered period, as well as the total amount of crude oil refined by that entity during the covered period. For the purposes of this article, covered greenhouse gas emissions include those emissions attributable to all fossil fuel extraction and refining worldwide by such entity and are not limited to such emissions within the state.

9. "Covered period" means the period that began January first, two thousand and ended on December thirty-first, two thousand twenty-four.

10. "Crude oil" means oil or petroleum of any kind and in any form, including bitumen, oil sands, heavy oil, conventional and unconventional oil, shale oil, natural gas liquids, condensates, and related fossil fuels.

11. "Entity" means any individual, trustee, agent, partnership, association, corporation, company, municipality, political subdivision, or other legal organization, that holds or held an ownership interest in a fossil fuel business during the covered period. For purposes of this article, entities in a controlled group are treated as a single entity for the purposes of meeting the definition of responsible party and shall be jointly and severally liable for payment of any cost recovery demand owed by any entity in the controlled group.

12. "Fossil fuel" shall have the same definition as in section 1-103

of the energy law.

13. "Fossil fuel business" means a business engaging in the extraction of fossil fuels or the refining of petroleum products.

14. "Fund" means the climate change adaptation fund established pursuant to section ninety-seven-m of the state finance law.

15. "Greenhouse gas" shall have the same definition as in section 75-0101 of this chapter.

16. "Nature-based solutions" shall mean projects that utilize or mimic nature or natural processes and functions and that may also offer environmental, economic, and social benefits, while increasing resilience. Nature-based solutions include both green and natural infrastructure.

17. "Notice of cost recovery demand" means the written communication informing an entity that they are a responsible party and of the amount of the cost recovery demand payable to the fund.

18. "Petroleum products" shall have the same definition as in section 1-103 of the energy law.

19. "Program" means the climate change adaptation cost recovery program established under section 76-0103 of this article.

20. "Qualifying expenditure" means a payment from the fund in support of a climate change adaptive infrastructure project, including its operation and maintenance, as defined by the department.

21. "Responsible party" means any entity (or a successor in interest to such entity described herein), which, during any part of the covered period, was engaged in the trade or business of extracting fossil fuel or refining crude oil and is determined by the department to be responsible for more than one billion tons of covered greenhouse gas emissions. The term responsible party shall not include any person who

lacks sufficient contacts with the state to satisfy the due process clause of the United States Constitution.

§ 76-0103. The climate change adaptation cost recovery program.

1. There is hereby established a climate change adaptation cost recovery program to be administered by the department.

2. The purposes of the program shall be the following:

a. To secure compensatory payments from responsible parties based on a standard of strict liability to provide a source of revenue for climate change adaptive infrastructure projects within the state. Such payments in aggregate shall total the cost recovery amount and shall be due and payable on the applicable payment date.

b. To determine proportional liability of responsible parties for the cost recovery amount pursuant to subdivision three of this section;

c. To impose cost recovery demands on responsible parties and issue notices of cost recovery demand;

d. To accept and collect payment from responsible parties;

e. To identify climate change adaptive infrastructure projects;

f. To disperse funds to climate change adaptive infrastructure projects; and

g. To allocate funds in such a way as to achieve a goal that at least forty percent of the qualified expenditures from the program, but not less than thirty-five percent of such expenditures, shall go to climate change adaptive infrastructure projects that benefit disadvantaged communities as defined in section 75-0101 of this chapter.

3. a. A responsible party shall be strictly liable, without regard to

fault, for a share of the cost recovery amount, which shall be used for the costs of climate change adaptive infrastructure projects, including their operation and maintenance, supported by the fund.

b. With respect to each responsible party, the cost recovery demand shall be equal to an amount that bears the same ratio to the cost recovery amount as the responsible party's applicable share of covered greenhouse gas emissions bears to the aggregate applicable shares of covered greenhouse gas emissions of all responsible parties.

c. The applicable share of covered greenhouse gas emissions taken into account under this section for any responsible party shall be the amount by which the covered greenhouse gas emissions attributable to such responsible party exceeds one billion metric tons.

d. In determining the amount of greenhouse gas emissions attributable to any entity, the department may: i. require an entity to provide information to the department related to past practices, production, extraction, refining, emissions, or other historical information about such entity necessary or appropriate to enable the department to determine whether such entity is a responsible party and, if so, the amount of such responsible party's covered greenhouse gas emissions; ii. apply consistent emissions factors, consistent with the climate leadership and community protection act pursuant to chapter one hundred six of the laws of two thousand nineteen, to convert extraction and refining data into greenhouse gas emissions; and iii. utilize information received from the department of taxation and finance pursuant to subdivision (a) of section three hundred fourteen of the tax law.

e. i. The department shall issue notices of cost recovery demand to all responsible parties at the times set forth in paragraph a of subdivision four of this section. Payment of a cost recovery demand shall be made in full on the applicable payment date provided that, notwithstanding paragraph a of subdivision two of this section, the department may provide that a responsible party may elect to pay an amount no greater than ninety-two percent of the amount of the cost

recovery demand after the applicable payment date. Any such payments permitted to be made after the applicable payment date shall be made within twenty-four years of the applicable payment date, shall be no less frequent than annual beginning in the year following the applicable payment date, and shall not increase over time.

ii. Any responsible party who fails to make a payment required pursuant to this subdivision shall pay a penalty of fifty per centum of the unpaid payment amount, plus interest on the unpaid payment amount computed in accordance with section 6621(a)(2) of the United States internal revenue code of 1986 (Public Law 99-514, 26 U.S.C. section 1 et seq.) from the date the payment was required to be paid.

f. If there is any addition to the original amount of the final cost recovery demand as of the applicable payment date for failure to timely pay any amount required to be paid under this subdivision, a liquidation or sale of substantially all the assets of the responsible party (including in a proceeding under U.S. Code: Title 11 or similar case), a cessation of business by the responsible party, or any similar circumstance, then the unpaid balance of all unpaid amounts shall be due on the date of such event (or in the case of a proceeding under U.S. Code: Title 11 or similar case, on the day before the petition is filed). The preceding sentence shall not apply to the sale of substantially all of the assets of a responsible party to a buyer if such buyer enters into an agreement with the department under which such buyer is liable for all unpaid amounts due in the same manner as if such buyer were the responsible party.

4. a. Within thirty months of the effective date of this article, the department shall promulgate such regulations as are necessary or appropriate to carry out this article, including but not limited to:

i. provisions for the department to require an entity to provide information to the department related to past practices, production, extraction, refining, emissions, or other historical information about such entity necessary or appropriate to enable the department to determine whether such entity is a responsible party and, if so, the

amount of such responsible party's covered greenhouse gas emissions;

ii. adopting uniform and consistent methodologies using the best available information, such as publicly available databases of historical production data, to determine responsible parties and their applicable share of covered greenhouse gas emissions consistent with the provisions of this article;

iii. registering entities that are responsible parties under the program;

iv. issuing notices of cost recovery demand, no later than June thirtieth of the fourth calendar year following the effective date of this article, for each responsible party's cost recovery demand;

v. establishing a process such that:

(1) a responsible party may file a request for reconsideration of its cost recovery demand with the department within sixty days following service of the notice of cost recovery demand if within the United States, and within ninety days following such service outside the United States, and in doing so shall exhaust administrative remedies;

(2) a request for reconsideration shall state the grounds for the request and include supporting documentation, which may include but is not limited to documentation of the party's covered greenhouse gas emissions and the party's contacts with the state;

(3) the department shall consider whether any such requests for reconsideration, including whether a responsible party refining petroleum products, or who is a successor in interest to such an entity, establishes to the satisfaction of the department that a portion of the cost recovery demand amount was attributable to the refining of crude oil extracted by a responsible party, or who is a successor in interest to such an entity, that was accounted for in determining the cost recovery demand amount of such responsible party, and whether notices of cost recovery demand should be updated, and shall issue updated notices of cost recovery demand, if applicable, which shall include a statement of the grounds of the department's determination, within sixty days following the expiration of all periods for submitting a request for

reconsideration under item one of this subparagraph;

(4) if notices of cost recovery demand issued pursuant to item three of this subparagraph result in a new responsible party receiving a notice of cost recovery demand that was not issued a notice of cost recovery demand by the date required by subparagraph iv of this paragraph, then, in the same manner as set forth in items one, two and three of this subparagraph, such responsible party shall have sixty days from service within the United States, and ninety days from service outside the United States, to file a request for reconsideration, which filing shall exhaust such responsible party's administrative remedies, and the department shall consider such request for reconsideration and issue updated notices of cost recovery demand, if applicable, in the manner contemplated by item three of this subparagraph;

(5) if any updating of notices of cost recovery demand pursuant to such processes for reconsideration results in a new responsible party that was not previously issued a cost recovery demand, such new responsible party shall also be given the opportunity to file a request for reconsideration in the same manner as set forth in item four of this subparagraph, and such process shall continue until no new responsible party results from issuance of notices of cost recovery demand; and

(6) if the processes in this subparagraph result in issuances of notices of cost recovery demand after the applicable payment date, then the applicable payment date shall be the date which is thirty days after the final issuance of notices of cost recovery demand; and

vi. accepting payments from, pursuing collection efforts against, and negotiating settlements with responsible parties.

b. The department shall hold at least two public hearings, one in-person and one virtual, on proposed regulations, with a minimum of thirty days' public notice in compliance with the provisions of article seven of the public officers law.

5. The department shall develop procedures to make publicly available, by posting on its website, all data related to fossil fuel extraction and refining by entities which the department obtains pursuant to the program, to the maximum extent practicable.

6. Within eighteen months of the promulgation of the final regulations pursuant to subdivision four of this section, the department shall complete a statewide climate change adaptation and resilience plan, which shall be publicly available, including at a minimum on the department's website, and updated no less than every three years following the procedures of this subdivision, for the purpose of guiding the dispersal of funds, pursuant to section ninety-seven-m of the state finance law, to all regions of the state in a timely, efficient, and equitable manner in accordance with the provisions of this chapter. In completing such plan, the department shall:

a. collaborate with the department of state, homes and community renewal, the department of agriculture and markets, the New York state energy research and development authority, the department of public service, the department of transportation, the department of health, the division of budget and the division of homeland security and emergency services;

b. assess the adaptation needs of various areas vital to the state's economy, normal functioning, and the health and well-being of New Yorkers, including but not limited to: agriculture, biodiversity, ecosystem services, education, finance, healthcare, manufacturing, housing and land use, retail, tourism (including state and municipal parks), transportation, and municipal and local government.

c. identify major potential, proposed, and ongoing climate change adaptive infrastructure projects throughout the state;

d. identify opportunities for alignment with existing federal, state, and local funding streams;

e. identify potential municipal, not-for-profit, and community organization grant programs;

f. include in such plan project criteria, project types and recommendations for identifying and selecting climate change adaptive

infrastructure projects eligible to receive qualifying expenditures. When considering projects intended to stabilize tidal shorelines, the department shall encourage the use of nature-based solutions;

g. consult with stakeholders, including local governments, businesses, environmental advocates, the federally designated bulk system operator, relevant subject area experts, and representatives of disadvantaged communities; and

h. provide opportunities for public engagement in all regions of the state, including by holding at least two public hearings, one in-person and one virtual, with meaningful opportunities for participation and public comment from all segments of the population, including persons living in disadvantaged communities as identified pursuant to section 75-0111 of this chapter, a minimum of sixty days' public notice in compliance with the provisions of article seven of the public officers law, on a draft of the plan, a summary and analysis of the public comments and a description of any changes made to the plan based on the public comments received.

7. Total qualifying expenditures shall be allocated in such a way as to achieve a goal that at least forty percent of the qualified expenditures from the program, but not less than thirty-five percent of such expenditures, shall go to climate change adaptive infrastructure projects that benefit disadvantaged communities as defined in section 75-0101 of this chapter.

8. The department and the attorney general are hereby authorized to implement and enforce the provisions of this article.

9. Moneys received from cost recovery demands shall be deposited in the climate change adaptation fund established pursuant to section ninety-seven-m of the state finance law.

10. a. The department shall conduct an evaluation of the climate change adaptation cost recovery program. The purpose of this evaluation is to determine the effectiveness of the program in achieving its

purposes as defined in subdivision two of this section. Such evaluation shall include, at minimum:

i. a list of all responsible parties and their respective cost recovery demands, as well as any changes to an entity's status as a responsible party during the preceding program year;

ii. an accounting of all cost recovery demands made to responsible parties, actual monies collected, and penalties or other collection measures taken during the preceding program year;

iii. an accounting of all expenditures from the climate change adaptation fund established pursuant to section ninety-seven-m of the state finance law, including at a minimum:

(1) expenditures that benefit disadvantaged communities as defined in section 75-0101 of this chapter;

(2) expenditures by project type;

(3) expenditures by percentage of overall funding used for grant programs for municipalities and not-for-profit and community organizations; and

(4) expenditures for administration and implementation support;

iv. a review of climate change adaptive infrastructure projects' status, including the number of projects that have been completed and those projects which have been identified and remain unfunded;

v. a summary of the geographic distribution of climate change adaptive infrastructure projects; and

vi. identification of future spending needs.

b. Such evaluation shall be made public on the department's website and provided to the governor, the temporary president of the senate and the speaker of the assembly on or before January first of the second calendar year following the year in which this article is enacted into law, and annually on or before September thirtieth thereafter.

11. The department shall publish all information, requests for proposals, application forms, procedures and guidelines relating to climate change adaptive infrastructure projects on its website and in a manner that is accessible to the public and all potential recipients.

§ 76-0105. Requirements for climate change adaptive infrastructure projects.

For each contract for climate change adaptive infrastructure projects, funded in part or in whole from the climate change adaptation fund established pursuant to section ninety-seven-m of the state finance law, by a public entity, or a third party acting on behalf and for the benefit of a public entity, the "public work" for the purposes of this subdivision shall ensure that such contract shall contain a provision that the iron and steel used or supplied in the performance of the contract or any subcontract thereto, shall be produced or made in whole or substantial part in the United States, its territories or possessions. In the case of an iron or steel product all manufacturing must take place in the United States, from the initial melting stage through the application of coatings, except metallurgical processes involving the refinement of steel additives.