§ 1389-b. Powers of the commissioner. 1. (a) The department shall be responsible for assessing (i) serious health problems at and in the immediate vicinity of inactive hazardous waste disposal sites and (ii) any health problems deemed by the department to be related to conditions at such sites.

(b) 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 responsibility pursuant to this title; 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, their officers, employees or agents, or for ownership or responsibility for the disposal of hazardous waste, including the cost of cleanup, pursuant to this section or section 27-1313 of the environmental conservation law.

2. Whenever there is a condition dangerous to life or health resulting from an inactive hazardous waste disposal site, the commissioner shall immediately declare the existence of such condition. After the issuance of any such declaration and throughout the time period during which such a declaration is effective, the department shall be responsible for (a) monitoring such inactive hazardous waste disposal sites, (b) approving proposed inactive hazardous waste disposal site remedial programs for such sites and (c) certifying the completion of inactive hazardous waste disposal site remedial programs for such sites.

3. (a) Whenever the commissioner has issued such a declaration and throughout the time period during which such a declaration is effective, the commissioner may request the commissioner of environmental conservation pursuant to paragraph (b) of subdivision five of this section and within the funds available to the department of environmental conservation to develop an inactive hazardous waste disposal site remedial program for such site and/or, in addition to any other powers he may have, 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 for such site subject to the approval of the department and (ii) to

implement such program within reasonable time limits specified in the order. Such order shall supersede any order issued by the commissioner of environmental conservation pursuant to section 27-1313 of the environmental conservation law.

(b) Whenever the commissioner has issued such a declaration and further finds that it would be prejudicial to the public interest to delay action until an opportunity for a hearing can be provided pursuant to this title, the department may request, pursuant to paragraph c of subdivision five of this section and within the funds available to the department of environmental conservation, the department of environmental conservation to develop and implement an inactive hazardous waste disposal site remedial program for such site. The finding required pursuant to this paragraph 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 hearing is provided to the 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 defenses 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 said order. The commissioner may request the participation of the attorney general in such hearings.

5. (a) Whenever a person ordered to eliminate a condition dangerous to life or health has failed to do so within the time specified in the order, the department of environmental conservation shall develop and implement or cause to be implemented, pursuant to a memorandum of understanding between the department and the department of environmental conservation, an inactive hazardous waste disposal site remedial program for such site. The expense of developing and implementing such remedial

program by the department, the department of environmental conservation or any other state agency shall be paid by the person to whom the order was issued.

(b) In the event that the commissioner has issued a declaration that hazardous wastes at a site constitute a condition dangerous to life or health, 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 of environmental conservation may develop and implement an inactive hazardous waste disposal site remedial program for such site. 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 of such site and/or any person responsible for the disposal of hazardous wastes at such site, including, but not limited to, development and implementation of an inactive hazardous waste disposal site remedial program, payment of the cost of such a program, recovery of any reasonable expenses incurred by the state, money damages and penalties.

(c) Whenever the commissioner has made a declaration and finding pursuant to paragraph (b) of subdivision three of this section the department may request the department of environmental conservation to develop and implement an inactive hazardous waste disposal site remedial program to contain, alleviate or end the threat to life or health. 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 any person responsible for the disposal of hazardous wastes at such site, including but not limited to, development and implementation of an inactive hazardous waste disposal site remedial program, payment of the cost of such a program, recovery of any reasonable expenses incurred by the state, money damages and penalties.

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. If the person failing to comply with such order to eliminate a condition dangerous to life or health is a municipality, commission or political subdivision of the state, the comptroller shall, upon certification by the department subject to the approval of the director of the division of the budget of the expense of any action taken by the department, the department of environmental conservation or any other state agency pursuant to subdivision five of this section and upon notification to the affected person, deduct and withhold from the next succeeding allotments, payments or apportionments of local assistance aid, other than education aid, to such municipality, commission or political subdivision of the state an amount or amounts equal to the amount expended by the department, the department of environmental conservation or any other state agency and not paid. Prior to such approval by the director of the division of the budget, the director shall (a) develop a schedule of deductions and withholdings that will ensure the continuity of essential services by such municipality, commission or political subdivision of the state and (b) give thirty days written notice of such deductions and withholdings to the speaker and minority leader of the assembly, the majority and minority leaders of the senate and the chairmen and ranking minority members of the senate finance committee and the assembly ways and means committee. Such deductions or withholdings will in no case take effect before one full fiscal year of the affected person after the date of such approval by the director of the division of the budget shall have elapsed. The state, by virtue of such deductions or withholdings, shall not be obligated to pay any additional or increased allotments, payments or apportionments of state aid. Allotments, payments or apportionments withheld pursuant to this subdivision shall be credited to the general fund of the state.

8. Moneys for actions taken or to be taken by the department, the department of environmental conservation or any other state agency in connection with the elimination of conditions dangerous to life or health pursuant to subdivision five of this section, including any inspection or sampling of wastes, soils, air, surface water and groundwater done upon behalf of a state agency whether or not such action is taken prior to the issuance of a declaration pursuant to

subdivision two of 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.