

# Environmental Conservation

## ARTICLE 15 WATER RESOURCES

### 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, and all other types of toilets that use water shall be as follows:

(a) for lavatory faucets, at a constant water pressure of eighty pounds per square inch, maximum flow shall not exceed 2.5 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 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 eighty pounds per square inch, maximum flow shall not exceed 2.5 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 2.5 gallons of water per minute; and

(d) for urinals and associated flush-valve, if any, maximum flow shall not exceed an average of one gallon of water per flush; and

(e) for water closets and associated flush-valve, if any, maximum flow shall not exceed an average of one and six-tenths 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).

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.

§ 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.