

Environmental Conservation

ARTICLE 17 WATER POLLUTION CONTROL

TITLE 3 JURISDICTION OF THE DEPARTMENT; AUTHORITY; POWERS AND DUTIES

Section 17-0301. Classification of waters and adoption of standards.

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§ 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.