

# Environmental Conservation

## ARTICLE 17 WATER POLLUTION CONTROL

### TITLE 9 PROCEDURE

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#### § 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.