

Environmental Conservation Law

ARTICLE 70 UNIFORM PROCEDURES

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§ 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 discharge 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 or roadway 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) fifty 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 24-0701 of this chapter;
 - (ii) fifty dollars per application for a permit for a residential project defined as associated with one single family dwelling and customary appurtenances thereto;
 - (iii) one hundred dollars per application for multiple family dwelling and customary appurtenances thereto;
 - (iv) two 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) two 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) nine hundred dollars per application for a permit for a project as defined in this article.

(c) All fees collected pursuant to this subdivision shall be deposited into the environmental protection fund pursuant to section ninety-two-s of the state finance law.

§ 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.