

PERMIT REQUIREMENTS FOR DEVELOPMENT OF ENERGY AND
OTHER SELECTED NATURAL RESOURCES FOR THE
STATE OF NEW YORK

PREPARED FOR
APPALACHIAN REGIONAL COMMISSION
AND THE
U.S. GEOLOGICAL SURVEY

BY BARRY LAWSON ASSOCIATES

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SECTION 1.0

INTRODUCTION

This State permit guide for New York is one in a series of guidebooks prepared to explain State regulations governing the environmental consequences of the development of energy and other natural resources on State and private land. (This guidebook does not address Federal permits required on Federal lands within the State.) It is designed to provide individuals in both government and the private sector with a concise compilation of State regulations and policies dealing primarily with permitting processes concerning natural resource management and development.

The increasing number of State policies and regulations concerning natural resources, especially energy resources, makes it difficult to gain an accurate yet workable understanding of State procedures without considerable research and technical assistance. The permit guide therefore serves as a reference document to those seeking State environmental and energy resource permit information. It is intended to show clearly what is required by regulatory and permit-issuing State agencies relative to a number of resource- and energy-related areas.

All the information in this permit guide was obtained through personal interviews with representatives of the State agencies in New York responsible for the management of a particular resource area. Additional information was obtained directly from the appropriate State laws and regulations. It should be noted that the research was done during the spring of 1981 and that regulations are subject to change.

Most of the State agencies responsible for issuing permits require that applications be submitted on standard forms they provide. Such forms are usually numbered and named by the agency. If no form number is identified in the text, the application form should be requested by name.

The permit guide does not include a legal analysis or interpretation of statutes or regulations, nor is it intended to serve legal purposes. It provides a general summary of environmental and energy resource permit processes within a number of State agencies, and supplies information on selected State and local

policies and procedures, land use regulations, and environmental management. For each subject, the permit guide provides the following information:

Name of Permit
Authorizing Statute
Title of Regulation
Summary of Permit Process
Administering Agency

Corresponding to the growth of Federal, State, and local regulatory powers, the number of formal approvals necessary to initiate a specific development activity has increased substantially. Although each chapter of this guide outlines the major State approvals required for a particular development activity, they do not provide a comprehensive list of the broad range of permits, licenses, and approvals which could potentially be required for an activity, nor do they cross reference other potentially relevant chapters of the guide.

To demonstrate the complexity of this situation, the introduction to the Minerals Mining chapter (Chapter 3.2) of this guide includes a list of all State approvals which could potentially be required to initiate mining activities depending on the nature, location, and magnitude of the proposed activities. Such detailed cross referencing and analysis for all chapters is beyond the purpose and scope of this document. Therefore, initial direct contact with the appropriate State agency(ies) is recommended for anyone contemplating a project requiring a permit or other State agency approval.

SECTION 2.0

STATE POLICY AND PROCEDURES FOR CONSOLIDATED PERMIT PROGRAM

CHAPTER 2.1

STATE CLEARINGHOUSE

INTRODUCTION: The New York State Clearinghouse in the Division of Budget administers the review of applications for Federal assistance, environmental impact statements, and cooperative agreements between State and Federal agencies. The State Clearinghouse works with the Department of Environmental Conservation to obtain comments from various State agencies for consideration in making the State's response to draft environmental impact statements required under the National Environmental Policy Act of 1969 (NEPA). In addition to review by the State Clearinghouse, areawide clearinghouses review project notifications to determine their relationship to areawide plans and to coordinate review by local governments and agencies. Applications for Federal assistance are reviewed in accordance with the procedures established in the Office of Management and Budget's revised Circular A-95.

- A. **AUTHORIZING ORDER:** Executive Order Establishing a Review System for Federal Assistance Programs
- B. **TITLE OF REGULATION:** Office of Management and Budget (OMB) revised Circular A-95
- C. **SUMMARY OF A-95 NOTIFICATION AND REVIEW SYSTEM (PNRS):**
 - 1. **Applicability:** Applications for Federal assistance under programs covered by revised Circular A-95.
 - 2. **General Requirements:** The applicant must notify the State and areawide clearinghouse of the intent to apply for Federal funds.
 - 3. **Submission Requirements:** Applicants must submit a Letter of Intent, Form SCH/FACS 1A. This form is obtainable from the State Clearinghouse. An applicant can submit additional descriptive material with this notification, and if the proposed project is a physical facility, a map of the precise location of the proposed facility should be included.
 - 4. **Procedure for Obtaining Approval:**
 - a. **Time Requirements:** The applicant should submit the letter of intent early on to assure maximum time for effective coordination and to avoid delay in the timely submission of the complete application to the Federal agency.

b. Receipt of Notification: The State Clearinghouse logs the letter of intent and assigns the project a State application identifier number. The State Clearinghouse will then send an acknowledgement to the applicant showing the State application identifier number assigned to the project. The applicant should indicate this number on any subsequent correspondence concerning the project, including the completed application when submitting it to the Federal agency. The State Clearinghouse also distributes copies of the letter of intent to reviewing State or local agencies.

c. Review of Notification: (30 to 60 days)

- Interested agencies reviewing the proposal inform the Clearinghouse if they identify any problems or conflicts. If none are identified, the State Clearinghouse will send a letter so stating to the applicant and informing the applicant that State Clearinghouse review is complete. (30 days)
- If a reviewing agency identifies problems or conflicts, the State Clearinghouse will take steps to resolve them, usually by arranging for the applicant to confer with the agency noting the problem. As soon as problems are resolved, the State Clearinghouse will inform the applicant that the review is complete. If problems are not resolved through this process, the State Clearinghouse will forward comments to the applicant which must be included with the application to the Federal agency. (30 days)
- In cases where problems have been identified during the review process and an impasse in achieving resolution has been reached, the applicant can submit the full application to the State Clearinghouse once it has been prepared. The Clearinghouse then has 30 days in which to respond with comments.
- If there is a significant change in the project as described in the original notification, the applicant should notify the Clearinghouse so that interested agencies can be given the opportunity to review the revision. This applies to changes in the project itself and not to changes such as those involving funding source or starting and completion dates.

d. Applicant Action: The applicant receives either a sign-off letter from the State Clearinghouse or a letter recommending revision of the proposal. The applicant is required to submit the comments of the State Clearinghouse and the areawide clearinghouse with the application to the Federal agency.

e. Federal Agency Action: The Federal agency considers Clearinghouse comments in making its decision on the application and must explain in writing to the Clearinghouse any action it takes which is contrary to Clearinghouse recommendations.

5. Notification of Award: On receipt of the disposition of the application by the Federal agency, the State Clearinghouse, acting as the reception agency under Treasury Directive No. 1, notifies all interested parties through the Grant Information Dissemination System (GIDS).

6. Fees: None

7. Appeals: The Clearinghouse can organize overview meetings attended by applicants and representatives of agencies to review appeals to the A-95 decision.

D. ADMINISTERING AGENCY: New York State
Planning and Development
Clearinghouse
Division of Budget
State Capitol
Albany, NY 12224
(518) 476-1605

CHAPTER 2.2

NEW YORK STATE UNIFORM PROCEDURES ACT

INTRODUCTION: The Uniform Procedures Act was passed in 1977 in an attempt to establish a streamlining process for the Department of Environmental Conservation's (DEC) major permit programs covering water, air, and land resources. The Uniform Procedures Act provides a more uniform process for application submission requirements, review and notification by the DEC, public notice for major projects, project review, hearings, and fees for all covered permits.

A. AUTHORIZING STATUTE: Environmental Conservation Law, Article 70, Section 0107

B. TITLE OF REGULATION:

1. Uniform Procedures, 6 NYCRR Part 621
2. Permit Hearing Procedures, 6 NYCRR Part 624

C. SUMMARY OF DEC PERMIT PROCESS:

1. **Applicability:** Stream disturbance, dam and dock construction, dredging or filling on navigable waters; Long Island wells; water supply systems; activity within wild, scenic and recreational river designated areas; water quality certifications for Federal projects requiring Federal permits; State Pollutant Discharge Elimination System (SPDES) permits; sewage service for realty subdivisions; air pollution; liquified natural petroleum gas facilities; mining; wetlands development (both tidal and fresh water); solid and hazardous waste management facilities; septic tank cleaner and industrial waste scavenger registration; and flood hazard area development.

2. **General Requirements:** Prior to beginning the activities listed above, all persons must obtain a permit from the DEC.

3. **Procedure for Obtaining a Permit:**

a. **Submission of Application:** Applications must be submitted on standard forms provided by the DEC. Forms can be obtained from any DEC office.

b. **Completeness Review:** Upon receiving applications, the DEC first reviews applications for completeness. During this review process, the DEC determines:

- whether all required information and fees have been submitted,
- whether an applicant has applied for all permits needed for a proposed project, and
- whether an environmental impact statement must be prepared under the authority of the State Environmental Quality Review Act (SEQR). (See Chapter 2.3 of this guide)

The DEC will then request the applicant to submit additional information which may be required, additional permit applications which may be needed, and/or an acceptable draft environmental impact statement.

The applicant will be notified in writing by the DEC within 15 days (60 days for industrial SPDES permits) of its completeness decision. If an applicant is not notified within this time, an application is automatically considered complete.

c. Project Notice: If a proposed project is considered minor, no notice of the application is published.

If a project is considered major, a copy of the letter notifying the applicant of the completeness decision will be sent to the chief executive officer of the municipality in which the proposed project is located. A notice of the project will also be published in the DEC's weekly publication, Environmental Notice Bulletin. (6 NYCRR 621 details the criteria used in classifying major and minor projects)

d. Project Review: Complete applications are reviewed by the DEC staff to determine whether a proposal meets all applicable State and Federal environmental standards and requirements and whether the project will be carried out in a manner that will minimize environmental damage.

Final decisions on minor projects will be made within 45 days of the completeness notification.

Final decisions on major projects for which no hearing is held will be made within 90 days of the completeness notification.

Final decisions on major projects for which a hearing is held will be made within 60 days of the close of the hearing record.

e. Hearings Procedure: Within 60 days of the completeness notification, the DEC will determine whether a hearing on an application is necessary. Hearings are usually held when substantive issues are raised by the public or when an applicant and the DEC are unable to agree on portions of a proposal. Decision conferences may be held in lieu of a public hearing if no public objections arise but the DEC staff objects to permit issuance.

If a hearing is held, notice of the hearing will be published in the Environmental Notice Bulletin and in a newspaper of general circulation in the area in which the proposed project is located at least 14 days prior to the scheduled hearing date.

The hearing will be held within 90 days of the completeness notification and a final decision will be made within 60 days of the close of the hearing record.

f. Permit Modifications, Renewals, Reissuances, and Recertifications: Any permittee may make a written request to the DEC for modification, renewal, reissuance, or recertification of an existing permit. When such modification is warranted, the DEC will notify the permittee of its decision within 15 days of receiving the request. If the DEC decision is to deny the request, notice of the denial is published in the Environmental Notice Bulletin and the permittee is afforded an opportunity for a hearing to be held within 30 days. When a request for modification is not warranted, the request is considered and treated as an application for a new permit.

g. Permit Modifications, Suspensions, and Revocations by the DEC: The DEC may, at any time, modify, suspend, or revoke a permit upon one or more of the following grounds:

- materially false or inaccurate statements in an application or supporting papers,
- failure of the permittee to comply with any terms and conditions of a permit,
- exceeding the scope of the project as set forth in the application,
- conditions revealed during construction and operation which will require modification, and/or
- noncompliance with any provisions of the Environmental Conservation Law or rules and regulations of the DEC.

Upon such a finding, the DEC will send the permittee a notice of intent to modify, suspend, or revoke the permit, stating the facts or conduct which warrant this action. Within 10 days of receiving a notice, the permittee may submit a written statement stating why the permit should not be modified, suspended, or revoked and/or request a hearing. Within 10 days of receiving the permittee's statement or request, the DEC will either rescind the notice of intent or notify the permittee of a hearing, which must be held within 30 days.

4. **Permittee Requirements:** Any permit issued by the DEC is subject to the terms and conditions which are standard for the type of permit issued and which are contained in the official permit form. All permittees must comply in all respects with all applicable provisions of Federal, State, and/or local laws and regulations, including obtaining any additional required permit or form of approval.

5. **Fees:** Fees for application review range from \$10 for small projects to \$400 for larger ones. For projects involving multiple applications, the fee is 80 percent of the total or the single highest application fee, whichever is greater.

6. **Appeals:** Any party aggrieved by a final decision or action of the DEC may appeal such decision or action to the appropriate civil court.

D. **ADMINISTERING AGENCY:** Division of Regulatory Affairs
Department of Environmental
Conservation
50 Wolf Road
Albany, NY 12233
(518) 457-2225

CHAPTER 2.3

NEW YORK STATE ENVIRONMENTAL QUALITY REVIEW ACT

INTRODUCTION: The purpose of the State Environmental Quality Review Act (SEQR) is to "declare a State policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and enhance human and community resources; and to enrich the understanding of ecological systems and natural, human, and community resources important to the people of the State." A statewide regulatory framework is provided for SEQR's implementation by all State and local agencies.

This regulatory framework includes: procedural requirements for compliance with the law; provisions for coordinating multiple agency environmental reviews through a single lead agency; criteria for determining whether a proposed action may have a significant effect on the environment; model assessment forms to aid in determining whether an action may have a significant effect on the environment; and examples of actions and classes of actions which are likely to require an Environmental Impact Statement (EIS) and those which will not require an EIS. (6 NYCRR Part 617.12 details Type I actions which are most likely to warrant an EIS)

All agencies of New York State, including local governments, districts, etc., must satisfy the requirements of the SEQR. The Department of Conservation (DEC) maintains the statewide framework regulations (6 NYCRR Part 617) and serves in a general function analogous to that of the Federal Council of Environmental Quality. The DEC, however, does not serve in an oversight or enforcement capacity. The Division of Regulatory Affairs within the DEC provides guidance through its 9 regional offices and through the central office in Albany.

- A. **AUTHORIZING STATUTE:** Environmental Conservation Law, Article 8, Environmental Quality Review (SEQR)
- B. **TITLE OF REGULATION:** State Environmental Quality Review, 6 NYCRR Part 617

C. SUMMARY OF REGULATION:

1. **Applicability:** All agencies involved in any proposed action including direct action, funding, approval, etc., which may have a significant effect on the environment.

2. **General Requirements:** The agency undertaking, funding, or approving an action is responsible for determining whether the proposed action is subject to SEQR, involves a Federal agency, involves one or more other agencies, and for the designation of a lead agency. Once the lead agency is determined and an EIS deemed necessary, the applicant (if any) is immediately notified, along with all other involved agencies. The applicant or the agency, at the applicant's option, must prepare a draft EIS.

3. **Submission Requirements:** When an EIS must be prepared for a permit or approval request, it must include a description of: the proposed action and its environmental setting; the environmental impact of the proposed action including short and long-term effects; any adverse environmental effects which could not be avoided if the proposal were implemented; alternatives to the proposed action; any irreversible and irretrievable commitments of resources which would be involved in the proposed action if it were implemented; mitigation measures proposed to minimize environmental impacts; the growth-inducing aspects of the proposed action, if applicable and significant; effects of the proposed action on the use and conservation of energy resources, if applicable and significant; and any other information that may be required by the Commissioner of the DEC.

4. **Procedure for Obtaining a Permit or Approval:** When the lead agency has completed the draft EIS or accepted a draft EIS prepared by an applicant, the lead agency will file a notice of completion of the draft EIS and allow for a minimum 30-day review period. The lead agency will then determine whether or not a public hearing should be held. If a hearing is to be held, the lead agency will file a notice of the hearing at least 14 days prior to the hearing date in a newspaper of general circulation in the area of the proposed activity. The hearing must begin no less than 15 days nor more than 60 days after the filing of the draft EIS. A final EIS must then be prepared 45 days after close of the hearing or 60 days after the filing of the draft EIS, whichever occurs last. The final EIS must have at least a 10-day comment and review period, and final decisions for permit actions must be made within 30 days.

5. Fees: A fee may be charged to the applicant by the lead agency to recover the actual costs of preparing or reviewing the EIS, but not for both activities. For residential projects, the fee may not exceed 2 percent of total project cost. For non-residential construction projects the fee charged may not exceed 1/2 percent of total project cost.

6. Appeals: A dispute over fees charged between the applicant and lead agency may be brought to the attention of the chief fiscal officer of the agency. Any questions as to compliance with the act are enforced through the civil courts.

D. ADMINISTERING AGENCY: Division of Regulatory Affairs
Department of Environmental
Conservation
50 Wolf Road
Albany, NY 12233
(518) 457-2224

SECTION 3.0

RESOURCE EXTRACTION

CHAPTER 3.1
ENERGY RESOURCES

3.1.1 OIL AND GAS

INTRODUCTION: The New York Department of Environmental Conservation (DEC) has the authority to regulate the development, production, and utilization of oil and gas resources to prevent waste. Generally, there are 3 basic control measures: a permit to drill a well, a permit to plug or abandon a well, and a permit for underground storage.

A. NAMES OF PERMITS:

1. Well Drilling Permit
2. Underground Storage Permit
3. Permit to Plug and Abandon

B. AUTHORIZING STATUTE: Environmental Conservation Law, Article 23, Titles 1 through 15 and Title 21

C. TITLE OF REGULATION: Rules and Regulations for Mineral Resources, 6 NYCRR Parts 550 through 558

D. SUMMARY OF WELL DRILLING PERMIT PROCESS:

1. **Applicability:** The drilling, deepening, plugging back, or conversion of a well, in a new or existing pool, for oil and gas exploration, storage, production, input, or disposal or for solution salt-mining.

2. **General Requirements:** Prior to starting a regulated activity, all persons must obtain a well drilling permit from the DEC.

3. **Submission Requirements:** For wells in existing pools, applicants must submit a Notice of Intent, Form 85-12-5. For wells in a new pool, applicants must submit an Application for Permit to Drill, Deepen, Plug Back, or Convert, Form 85-12-5. Applications must be accompanied by a description of the proposed project, a well plugging and surface restoration bond, and a plat of the area prepared by a certified land surveyor or civil engineer.

4. **Procedure for Obtaining a Permit:** For wells in existing pools, once the notice of intent is filed, acknowledgement of receipt is provided to the applicant by the DEC. Upon the determination that application materials for a well in a new pool are in order, the appropriate well plugging and surface restoration bond is in force, and that the well will comply with all applicable well spacing requirements, the DEC will issue a permit. This process takes approximately 2 days.

5. **Permittee Requirements:** The notice of intent or the permit must be posted in a prominent place at the drilling site. Drilling practices must comply with all applicable provisions of the regulations with respect to the use of cable and rotary tools. Well drilling must be done in a manner that will prevent pollution. Within 30 days of the completion of any well, a well completion report must be filed with the DEC, accompanied by a well log. The DEC may request drill cutting samples. All permittees must comply with applicable provisions of the regulations defining operating practices for oil wells, gas wells, prevention of pollution, and disposal of wastes.

6. **Fees:**

- a. Notice of intent: None
- b. Application for permit: \$20

7. **Appeals:** Any party aggrieved by a final decision or action of the DEC may appeal such decision or action to the appropriate civil court.

8. **Special Notes:** An SPDES permit may be required as a supplemental permit. (See Chapter 5.2.1 of this guide)

E. **SUMMARY OF PLUG AND ABANDON PERMIT PROCESS:**

1. **Applicability:** The plugging and/or abandoning of a non-commercial oil, gas, or solution salt-mining well, either temporarily or permanently.

2. **General Requirements:** Prior to starting a regulated activity, all persons must obtain a permit to plug and abandon from the DEC.

3. **Submission Requirements:** Applicants must submit a Notice of Intention to Plug and Abandon, Form 85-12-4, along with a description of the procedure to be used.

4. Procedure for Obtaining a Permit or Approval: To shut-in a well for more than 1 year when the well is capable of producing on a commercial basis or to abandon a well temporarily for more than 90 days, the owner or operator must obtain permission from the DEC and demonstrate good cause. Extensions may be granted for a period of 1 year and are renewable upon successive petitions. Following the period of shut-in, or temporary abandonment, the well must begin producing or be permanently plugged.

To permanently abandon a well, applicants must submit the notice of intent at least 10 days prior to starting plugging operations. Permits are usually granted within 2 days and a DEC representative may be assigned to be present at the well to witness plugging operations.

5. Permittee Requirements: Plugging methods and procedures concerning well boring and casing, as outlined in 6 NYCRR Part 555.5, must be adhered to. Within 30 days after plugging the well, a plugging report must be filed with the DEC, on appropriate forms, by the person responsible for the plugging operation.

6. Fees: None

7. Appeals: Any party aggrieved by a final decision or action of the DEC may appeal such decision or action to the appropriate civil court.

8. Special Notes: Virtually all applications are approved.

F. SUMMARY OF UNDERGROUND STORAGE PERMIT PROCESS:

1. Applicability: The storage of gas or liquefied petroleum gas in natural or artificial underground reservoirs.

2. General Requirements: Prior to starting a regulated activity, all persons must obtain an underground storage permit from the DEC.

3. Submission Requirements: Applicants must submit an application for an underground gas storage permit on a standard form provided by the DEC. A map of the location and boundaries of the proposed storage reservoir; a report verifying that the proposed reservoir is adaptable to underground gas storage; and an affidavit stating that the applicant has at least 75 percent of the storage rights to the reservoir, in terms of surface acreage, and that within a reasonable time, the applicant will acquire the remaining storage rights by negotiation or condemnation proceedings must also be submitted.

4. **Procedure for Obtaining a Permit:** Once completed application materials are received by the DEC, a permit will be granted within 90 days unless the submitted application and information does not meet all applicable legal requirements. The State Geologist must approve the adaptability of the reservoir for storage before the permit will be issued.

5. **Permittee Requirements:** An annual report must be filed for each underground storage reservoir indicating any changes in the surface size or shape of the reservoir, estimating the total capacity and working capacity of the reservoir, and including any other data as requested by the DEC. Permit holders with less than 100 percent of reservoir storage rights have 2 years to acquire the remaining rights, unless this period is extended by the DEC.

Abandonment of a reservoir may proceed only after the premises are left in such a condition that they are not a health or safety menace to the public and do not affect the value of the property. The operator is liable for any clean-up costs incurred by the State.

6. **Fees:** None

7. **Appeals:** Any person aggrieved by a final decision or action of the DEC may appeal such decision or action to the appropriate civil court.

8. **Special Notes:** Permit applications must be notarized.

G. **ADMINISTERING AGENCY:** Bureau of Mineral Resources
Division of Lands and Forests
Department of Environmental
Conservation
50 Wolf Road
Albany, NY 12233
(518) 457-7110

3.1.2 COAL

INTRODUCTION: Coal resources are regulated by the Department of Environmental Conservation under the authority of the New York State Mined Land Reclamation Law. (See Chapter 3.2 of this guide)

CHAPTER 3.2

MINERALS MINING

INTRODUCTION: The mining of all mineral resources, excluding oil, gas, and solution salt-mining, is regulated by the Department of Environmental Conservation (DEC) under the authority of the New York State Mined Reclamation Law. The law establishes the State's policy with respect to the prevention of pollution and undesirable environmental impacts associated with mining activities to ensure suitable productive uses. The DEC issues mining permits for mines from which more than 1,000 tons of minerals are removed annually. Each permit application must include specific plans for mining and reclamation. A surety bond or equivalent acceptable financial security equal to the cost of reclamation is required by the DEC as a precondition to permit issuance.

In addition to the mining permit and mined-land use plan required for these mining operations, a prospective mine operator may also be required to obtain the following permits, licenses, and approvals, depending on the location, nature, and magnitude of the proposed activities:

- a blaster's certificate of competence from the Department of Labor;
- explosives licenses from the Department of Labor to own, purchase, possess, and/or transport explosives;
- an explosives magazine certificate from the Department of Labor, to store explosives and detonators;
- highway use permits from the Department of Taxation and Finance;
- a special hauling permit from the Department of Transportation;
- a permit for exploring or working any mine or for extracting minerals on State land from the Office of General Services;
- a license to excavate and remove materials from State land, underwater from the Office of General Services, for sand mining;
- permits to use chemicals for the control or elimination of aquatic insects, vegetation, or undesirable fish from the DEC Division of Lands and Forests;
- underground gas storage permit (See Chapter 3.1.1 of this guide);

- Adirondack Park Agency permits (See Chapter 4.2.1 of this guide);
- permits for construction in flood hazard areas (See Chapter 4.3.1 of this guide);
- permit for the use of State-maintained flood control land (See Chapter 4.3.2 of this guide);
- air quality permits (See Chapter 5.1 of this guide);
- a SPDES permit (See Chapter 5.2.1 of this guide);
- protection of waters permits (See Chapter 5.2.2 of this guide);
- solid waste permits (See Chapter 5.4 of this guide);
- hazardous waste permits (See Chapter 5.5 of this guide);
- a tidal wetlands permit (See Chapter 6.3.1 of this guide);
- a freshwater wetlands permit (See Chapter 6.3.2 of this guide); and
- compliance with local zoning ordinances (See Chapter 7.1 of this guide).

A. NAME OF PERMIT: Mining Permit

B. AUTHORIZING STATUTE: Environmental Conservation Law, Article 23, Section 305, Mined Land Reclamation Law, effective April 1, 1975 and amended in 1976 and 1979

C. TITLE OF REGULATION: 6 NYCRR Parts 420 through 426

D. SUMMARY OF PERMIT PROCESS:

1. Applicability: The operation of any mine from which 1,000 or more tons of minerals are removed within 12 successive calendar months. Excavation and grading when done solely in aid of onsite construction or farming are exempt actions.

2. General Requirements: Prior to starting a regulated activity, all persons must obtain a mining permit from the DEC.

3. **Submission Requirements:** Applicants must submit a Mining Permit Application and Reclamation Report, Form 85-19-2, to the DEC. Basic applications must contain information concerning the types of minerals to be extracted, an estimate of the number of surface acres of land to be affected, a mined-land use plan consisting of a mining plan and a reclamation plan, and any additional information as deemed necessary by the DEC. The required mined-land use plan must describe: the present condition of the land to be mined, the area of the minerals to be removed, the mining method to be used, the proposed method of reclaiming the affected land, and include a schedule of reclamation performance. Reclamation must be completed within 2 years following the termination of mining activity. An EIS may be required. (See Chapter 2.3 of this guide) An acceptable reclamation bond must also be submitted.

4. **Procedure for Obtaining a Permit:** All permit processing is in accordance with the Uniform Procedures Act and Regulations, 6 NYCRR Parts 621 and 624. (See Chapter 2.2 of this guide)

5. **Permittee Requirements:** All permits are conditioned upon compliance with an approved mined-land use plan. Permittees must file periodic reports as required by the DEC, indicating areas for which reclamation has been completed. The DEC inspects and evaluates the reclaimed areas. Reports are also required at the time of permit renewal. Permits are issued for 1-or 3-year terms.

6. **Fees:**

- a. Application fee for 1-year permit: \$100
- b. Renewal fee for 1-year permit: \$ 50
- c. Application fee for 3-year permit: \$200
- d. Renewal fee for 3-year permit: \$100
- e. Fee for modification of the
mined-land use plan during the
permit term: \$ 50

7. **Appeals:** Any person aggrieved by a final decision of action of the DEC may, within 60 days, appeal to the appropriate civil court.

8. **Special Notes:** A pre-application conference is recommended by the DEC.

E. **ADMINISTERING AGENCY:** Bureau of Mineral Resources
Division of Land Resources
Department of Environmental
Conservation
50 Wolf Road
Albany, NY 12233
(518) 457-7480

SECTION 4.0
LAND USE REGULATION

CHAPTER 4.1

MAJOR FACILITY SITING

4.1.1 STEAM ELECTRIC GENERATING FACILITIES

INTRODUCTION: Article 8 of the Public Service Law was enacted in 1972 to provide for the expeditious siting of major steam electric generating facilities, and to provide a balance between the need for power and the need for environmental protection. The basic form of control to implement the law is a certificate issued by the New York State Board on Electric Generation Siting and the Environment. (See Special Notes below)

- A. NAME OF APPROVAL: Certificate of Environmental Compatibility and Public Need
- B. AUTHORIZING STATUTE: Public Service Law, Article 8, Sections 140 through 149a
- C. TITLE OF REGULATION: Certificates of Environmental Compatibility and Public Need for Steam Electric Generating Facilities, 16 NYCRR Parts 70 through 80
- D. SUMMARY OF CERTIFICATION PROCESS:
 - 1. Applicability: Siting and construction of a major steam electric generating facility with a generating capacity of 50,000 kilowatts or more. The article does NOT apply to a facility for which an application was made to the Federal government, another State agency, or a local commission prior to July 1, 1972; to a facility already under construction; to a facility under exclusive Federal jurisdiction or concurrent Federal/State jurisdiction, where the Federal government has exercised its jurisdiction to the exclusion of the State; or to a facility solely for industrial use, if less than 200,000 kilowatts in capacity.
 - 2. General Requirements: Prior to the construction of such a steam electric generating facility, all persons must obtain a certificate from the Board.

3. **Submission Requirements:** Applications must be submitted in writing and include a detailed description of the proposed facility and the site, alternate site location information, studies made of potential environmental impacts and safety during construction and operation of the facility, estimated cost information, a statement of justification explaining the need for the facility, and any other information the Board or applicant considers necessary. The applicant must explain the extent to which the location, design, construction, operation, and maintenance of the proposed facility at a proposed site comply with each Federal and State law, rule, regulation or standard, interstate compact, and international requirement relevant and material to a determination of the application.

Exhibit information that must be submitted with the application includes data on public need and engineering design; air quality and meteorology; aquatic ecology; environmental noise; geology and seismology; land use and aesthetics; solid, liquid, and gaseous waste; terrestrial ecology; and water quality and quantity.

4. **Procedure for Obtaining a Certificate:** Within 60 days of receipt of a completed application, the Chairman of the Board sets a date for a public hearing. A prehearing conference is held to discuss the issues. Proceedings on an application are completed by the Board and a final decision is made within 24 months after it is determined that the application complies with Article 8, Section 142, unless the Board determines that additional time is needed to consider certain issues.

5. **Operation Requirements:** As a part of the certificate, a State Pollution Discharge Elimination System permit (SPDES) (See Chapter 5.2.1 of this guide) must be obtained from the Board. The DEC is required to provide testimony on the potential environmental impacts of proposed facilities.

6. **Fees:** The \$150 application fee is applied to a fund to assist communities and other local parties with expert witness and consultant fees. Any money not properly expended for these purposes is returned to the applicant.

7. **Appeals:** Any party aggrieved by the Board's decision may petition to the Board for a rehearing within 30 days of the issuance of its decision. After the rehearing, the party may request judicial review, according to Section 148 of the Public Service Law.

8. Special Notes: Article 8 of the Public Service Law was reenacted with amendments in 1978. Each of the acts was valid for 5 years. The 1978 amendments established time limits for new and pending proceedings, modified the agencies on the Board, designated the Public Service Commission as the agency to monitor compliance with the certificate, increased the intervenor fund, added to the number of agencies which can receive funds, and made other technical adjustments. The 1978 act does exclude old plants from the new provisions (except the composition of the Board and a special time schedule for completion), but it makes those plants under the earlier act still subject to siting procedures.

Parties to a certification proceeding include the applicant, the Department of Environmental Conservation, the Department of Commerce, the Department of Health, the Office of Planning Services, (as necessary, when the proposed facility is located within its jurisdiction), the Hudson River Valley Commission, (if necessary) the St. Lawrence - Eastern Ontario Commission, (if necessary) the Adirondack Park Agency, the Office of the State Geologist, the Office of Parks and Recreation, the Department of Public Service, and municipalities, associations, or individuals who show an interest in participating.

E. ADMINISTERING AGENCY: Public Service Commission
Office of the Secretary
Empire State Plaza - Building 3
Albany, NY 12223
(518) 474-6530

4.1.2 UTILITY TRANSMISSION LINES

INTRODUCTION: Article 7 of the Public Service Law was enacted in 1970 to provide for the siting of major utility transmission facilities, including certain electric and gas lines, and to require the Commission to weigh any adverse environmental effect against the nature and economics of various alternatives, given the state of available technology. The basic control is a certificate issued by the New York State Public Service Commission.

A. NAME OF APPROVAL: Certificate of Environmental Compatibility and Public Need

B. AUTHORIZING STATUTE: Public Service Law, Article 7

C. TITLE OF REGULATION: Certificates of Environmental Compatibility and Public Need, Utility Transmission Lines, 6 NYCRR Parts 85 through 88

D. SUMMARY OF CERTIFICATION PROCESS:

1. Applicability: Any electric transmission facility with a design capacity of 125 kilovolts or more to extend a distance of 1 mile or more or of 100 to 125 kilovolts, to extend a distance of more than 10 miles; a gas transmission line extending a distance of 1,000 feet or more, to be used to transport fuel gas at pressures in excess of 125 pounds per square inch. (The gas threshold is subject to change in pending legislation.)

2. General Requirements: A certificate of environmental compatibility and public need must be obtained from the Public Service Commission prior to construction.

3. Submission Requirements: Applications must be submitted in writing and include: a description of the proposed facility and associated equipment (e.g., substation, expanded, or new); a statement of the location of the proposed site or right-of-way; a summary and description of the project's likely environmental impacts; a statement of need for the facility; a description of proposed alternate routes; a description of the economic effects of the proposed facility; an explanation of the costs of the proposed facility; a description of all applicable local ordinances from which relief is sought, and why; and any other information the applicant or Commission may deem necessary.

For gas transmission lines, the applicant must also submit: a statement of the total maximum daily and annual volumes of gas committed to it by contract and the maximum daily and annual volumes of gas available to it from its own peak sharing or local sources; detailed market data; an explanation of estimated revenues, expenses, and income; a flow diagram showing daily operating capacities under varying conditions; and a description of the proposed facilities.

For electric transmission lines, the applicant must also submit: a detailed description of the proposed transmission line and other associated facilities; a description of any portion of the line to be constructed underground; an engineering justification; a description of anticipated effects of the proposed line and related facilities on television, radio, and other communications systems; and a description of anticipated effects on transportation systems.

Applications must be sent to appropriate State and regional agencies, municipalities traversed by the proposed facility (in principal or alternate routes), all State legislators whose districts would be traversed, and others who respond to the legal notice published in local newspapers as specified by the law.

4. **Procedure for Obtaining Certification:** Between 60 and 90 days after receipt of completed application materials, the Commission sets a date for a public hearing. The determination process averages 3 1/2 months for gas lines, (legal minimum, 91 days) and 14 months for electric lines. (Pending legislation would allow certain gas lines to be concluded without hearings if the Commission raises no objection or fails to set a hearing date within 30 days of the filing date.)

5. **Operation Requirements:** Operation requirements are included as conditions in the issued certificate, and are based on case record.

6. **Fees:** None

7. **Appeals:** Appeals may be requested according to Article 7, Section 128, Judicial Review.

E. **ADMINISTERING AGENCY:** Public Service Commission
Office of the Secretary
Empire State Plaza - Building 3
Albany, NY 12223
(518) 474-6530

4.1.3 MAJOR ONSHORE OIL STORAGE FACILITIES

INTRODUCTION: The New York State Navigation Law prohibits the discharge of petroleum, provides for licensing of major facilities, provides for the clean-up and removal of any petroleum discharge, and establishes an environmental protection and spill compensation fund. Part 610 of the Regulations makes the Department of Environmental Conservation (DEC) responsible for certifying that an applicant for a license to operate a major onshore oil storage facility has implemented or will implement State and Federal plans and regulations for the control of spills and discharges of petroleum and for containment and removal when such a discharge occurs.

A. NAME OF APPROVAL: License to Operate Oil Storage Facility

B. AUTHORIZING STATUTE: Article 12, Navigation Law, Section 191

C. TITLE OF REGULATION: Certification of Major Onshore Oil Storage Facilities, 6 NYCRR Part 610

D. SUMMARY OF CERTIFICATION PROCESS:

1. Applicability: Major onshore oil storage facilities with a capacity of 400,000 or more gallons as defined in the law.

2. General Requirements: The New York Department of Transportation (NYSDOT) issues operating licenses for existing or proposed onshore oil storage facilities. Before a license is issued, facilities need a letter of certification from the DEC that a spill prevention, clean-up and containment plan is in use.

3. Submission Requirements: Applications for a certification of major onshore petroleum facilities must be submitted on Form 18-19-2. Application materials must also include a description of the capacity of the major onshore oil storage facility and average daily throughput; a State clean-up plan consisting of the Federal spill control and counter-measure plan; a site plan of the facility; a signature of a licensed professional engineer certifying that the State plan will function; clean-up and counter-measure plans to prevent groundwater pollution; and any other information the DEC may deem necessary.

4. Procedure for Obtaining Certification: Letters of certification will be issued or denied within 90 days of receipt of completed applications by the DEC. All applications for a license to operate must be submitted to the New York State Department of Transportation on designated forms.

5. **Operation Requirements:** The owner or operator must, at all times, maintain in good repair any facilities for the prevention and control of discharges, and for containment and removal when a discharge occurs.

6. **Fees:** No fee for certification. The NYSDOT collects a fee of \$.01/barrel of oil to fund a \$25 million oil spill clean-up fund. The fee is in effect until the \$25 million level is met; then the per barrel fee will be halted. The per barrel charge is likely to increase to \$.04 in the next year.

7. **Appeals:** An applicant may appeal a denial of or conditions to the letter of certification, within 30 days of receipt of the notice, to the Commissioner of the DEC. Persons aggrieved by a final decision or action of the DEC may, within 60 days, appeal to the appropriate civil court.

8. **Special Notes:** The NYSDOT is the lead agency for clean-up operations and collects all fees for the compensation fund; the DEC certifies oil spill prevention plans.

E. **ADMINISTERING AGENCY:** Water Resource Monitoring
Division of Water
Department of Environmental
Conservation
50 Wolf Road
Albany, NY 12233
(518) 457-7360

4.1.4 LIQUEFIED NATURAL GAS FACILITIES

INTRODUCTION: Article 23 of Title 17 of the Environmental Conservation Law, enacted in 1976, gives the Department of Environmental Conservation (DEC) the responsibility for regulating the siting and operational practices of any liquefied natural gas (LNG) storage or conversion facility in the State that was not in actual operation on September 1, 1976. A hearing process is required to ensure that such facilities conform to the DEC's established siting safety criteria, are necessary, and are otherwise in the public interest. An environmental safety permit, obtained after such a hearing, may include operating requirements for such facilities. The Department of Transportation along with the DEC must establish criteria for safe intrastate transportation of LNG, including certification of land routes. Non-conforming LNG facilities that were in operation on September 1, 1976 are regulated by orders of the Commissioner of the DEC as specified in the law.

- A. AUTHORIZING STATUTE: Environmental Conservation Law, Article 23, Title 17
- B. TITLE OF REGULATION: Regulations with respect to permitting procedures and requirements are presently under development. (May 1981)
- C. ADMINISTERING AGENCY: Bureau of Energy
Division of Regulatory Affairs
Department of Environmental
Conservation
50 Wolf Road
Albany, NY 12233
(518) 457-5915

CHAPTER 4.2

LAND USE

4.2.1 ADIRONDACK PARK AGENCY

INTRODUCTION: The Adirondack Park Agency (APA) administers the Adirondack Park Agency Act, which has the purpose of ensuring the optimum overall conservation, protection, preservation, development, and use of the natural and open space resources of the Adirondack Park. The APA also administers the State Wild, Scenic, and Recreational Rivers System Act and the Freshwater Wetlands Act within the park. These regulatory responsibilities are carried out through a broad framework of regional land use controls and permit requirements. The APA's non-regulatory functions include financial and technical assistance to local planning and zoning efforts within the park, on-going regional planning, and the development of long-range park policy.

Agency permit jurisdiction is keyed to the land use areas on the official Adirondack Park Land Use and Development Plan Map. A wide variety of activities, including all new commercial or industrial uses, require a permit. In addition, in certain critical environmental areas (including wetlands) and in wild, scenic, or recreational river areas, virtually all new land uses and subdivisions require a permit. The APA has a jurisdictional inquiry system whereby, upon request, it will inform any person in writing whether or not a particular proposed activity will require a permit.

A. NAMES OF PERMITS:

1. Approval by Director of Operations of Projects, Bituminous Concrete Batch Plant
2. Approval by Director of Operations of Projects, Campground Less Than 50 Sites
3. Approval by Director of Operations of Projects, Campground More Than 50 Lots
4. Approval by Director of Operations of Projects, Commercial Uses - Public and Semi-Public Buildings
5. Approval by Director of Operations of Projects, Major Commercial or Industrial Use
6. Approval by Director of Operations of Projects, Public Utility Lines
7. Approval by Director of Operations of Projects, Sand and Gravel Extraction

8. Approval by Director of Operations of Projects, Sanitary Land Fill
9. Approval by Director of Operations of Projects, Sawmill
10. Approval by Director of Operations of Projects, Shoreline Restriction Variance
11. Approval by Director of Operations of Projects, Subdivision 6 to 19 Lots
12. Approval by Director of Operations of Projects, Subdivision 20 to 50 Lots
13. Approval by Director of Operations of Projects, Subdivision 50 to 100 Lots, Conceptual Review
14. Approval by Director of Operations of Projects, Subdivisions Involving Fewer Than 50 Lots
15. Approval by Director of Operations of Projects, Waste Disposal/Construction Debris
16. Approval of Single Family Residences and 2-Lot Subdivisions
17. Rivers System Permit

B. **AUTHORIZING STATUTE:** The Adirondack Park Agency Act, Executive Law, Article 27

C. **TITLE OF REGULATION:** 9 NYCRR Parts 570 through 588

D. **SUMMARY OF PROGRAM:**

1. **Applicability:** Generally, any land use, development, or subdivision within the Park, including all new industrial and commercial uses.

2. **General Requirements:** Prior to starting a regulated activity, all persons must obtain the appropriate permit from the APA.

3. **Submission Requirements:** Applications for APA permits should be submitted to APA headquarters or to any office of the Department of Environmental Conservation (DEC) or the Department of Health. Applications must include a description of the proposed project.

Additional information such as an environmental impact statement, expected benefits of the project, and alternate sites may also be required. Development considerations include sign standards; sewage disposal standards; natural resource considerations for such matters as water, land, air, noise, critical resource areas, wildlife, and aesthetics; historic site considerations; site development considerations; governmental and governmental review considerations; compliance with local land use controls; and overall intensity guidelines.

Small projects such as single family homes and 2-lot subdivisions may be eligible for an expedited review process. Large project applications must contain sufficient information about the entire conceptual design to enable the APA to assess its cumulative impact on the environment and on the Adirondack Park.

4. **Procedure for Obtaining an APA Permit:** Once it has been determined that an APA permit is necessary for a proposed project, appropriate forms should be obtained from the APA office. A pre-application meeting with an APA staff person is suggested, but not required, as an aid to filling out application materials. Once received by the APA, the project application is reviewed for completeness and the project sponsor is notified as to its completeness within 15 days. When the application is deemed complete, the APA then has 90 days to approve the project and issue a permit, with or without conditions, or 60 days to notify the sponsor that a public hearing is necessary. After review of the transcript of a public hearing, the APA may disapprove the project.

When more than 1 permit is needed from more than 1 agency, a lead agency approach has been developed, establishing a coordinated project review and permit system. The applicant only has to deal with the designated lead agency, which is determined by the type of project involved.

5. **Fees:** County clerk's office filing fee: \$1 plus \$3 per page

6. **Appeals:** If an application is disapproved, a project sponsor may request APA reconsideration. The project sponsor must first demonstrate that either newly discovered facts or evidence exists, that there has been a change in APA policy, or that the previous determination was based on materially erroneous findings of fact.

E. **ADMINISTERING AGENCY:** Adirondack Park Agency
P.O. Box 99
Ray Brook, NY 12977
(518) 891-4050
or
(800) 342-9566
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4.2.2 DEPARTMENT OF ENVIRONMENTAL CONSERVATION

INTRODUCTION: The Department of Environmental Conservation (DEC) has broad regulatory authority to conserve, improve, and protect the State's natural resources and environment and to control land (as well as air and water) pollution. Various chapters of this guide detail the permit requirements of the DEC.

CHAPTER 4.3

FLOOD PLAIN MANAGEMENT

4.3.1 CONSTRUCTION IN FLOOD HAZARD AREAS

INTRODUCTION: The State of New York passed an act in 1974 entitled Participation in Flood Insurance Programs, to reduce flood hazards and losses, and to prevent the termination of critically needed financial assistance by facilitating community qualification and participation in the National Flood Insurance Program. The Department of Environmental Conservation (DEC) issues permits for any development, including construction or major improvement of buildings or other structures, within the Federally-identified 100-year flood plains of certain municipalities. The purpose of this permit program is to ensure that development is consistent with Federal flood plain management standards to reduce future flood damage losses.

- A. NAME OF PERMIT: Permit - Article 36, (Construction in Flood Hazard Areas)
- B. AUTHORIZING STATUTE: Environmental Conservation Law, Article 36
- C. TITLE OF REGULATION: Flood Plain Management Regulations, Development Permits, 6 NYCRR Part 500
- D. SUMMARY OF PERMIT PROCESS:
 - 1. Applicability: Any development, including construction or major improvement of buildings or other structures, within the Federally-identified 100-year flood plains of certain municipalities.
 - 2. General Requirements: Prior to starting a regulated activity, all persons must obtain a permit for construction in flood hazard areas.
 - 3. Submission Requirements: Applicants must submit an Application for Permit for Construction in Flood Hazard Areas, Form 95-20-4, to the appropriate regional permit administrator as specified on the application form. Applications must describe the location, character, and the extent of the proposed project in general. For a project involving a new structure, or for improving or expanding an existing structure, architectural, structural, and mechanical plans must be submitted. For a subdivision development permit, architectural, structural, and mechanical plans are required, as are profiles of center lines of all utilities and other service facilities, cross-sections and profiles of all vehicular thoroughfares, and lot layout or site design plans.

To construct, erect, or place any structure, dam, obstruction, deposit, or excavation within a floodway, in addition to plans, a written certification by a licensed professional engineer or architect must be included stating that the project will comply with 6 NYCRR 500.10(2)(3) and that the project will not have a significant adverse effect on the capability of the floodway. Section 500.10 outlines in detail the standards for the issuance of a development permit.

Any mining, dredging, paving, excavating, or filling activity requires a topographic survey as well.

4. **Procedure for Obtaining a Permit:** All permit processing is in accordance with the Uniform Procedures Act and Regulations, 6 NYCRR Parts 621 and 624. (See Chapter 2.2 of this guide)

5. **Permittee Requirements:** Permittees must allow DEC staff to inspect the project. Permittees must also obtain all other necessary approvals or permits from the DEC or other State or Federal agencies or political subdivisions. Permittees must notify adjacent communities of any alteration or relocation of a water course, maintain flood-carrying capacities, and comply with any stop-work order.

6. **Fees:** \$10 minimum fee (A detailed listing of fees is included in 6 NYCRR 500.16)

7. **Appeals:** Any person aggrieved by a final decision or action of the DEC may appeal such decision or action to the appropriate civil court.

E. **ADMINISTERING AGENCY:** A current listing of affected communities may be obtained by contacting:

Flood Protection Bureau
Department of Environmental
Conservation
50 Wolf Road
Albany, NY 12233
(518) 457-3157

The regulatory program is administered in the regional offices throughout the State by the Division of Regulatory Affairs, with technical program guidance from the Division of Water.

4.3.2 USE OF STATE-MAINTAINED FLOOD CONTROL LAND

INTRODUCTION: The Department of Environmental Conservation (DEC) issues permits for the use of State-maintained flood control land acquired or burdened by a flood control easement under the authority of Article 16 of the Environmental Conservation Law. The purpose of this permit program is to ensure the integrity of flood protection facilities and to ensure their operation and maintenance by limiting motor vehicle access.

- A. NAME OF PERMIT: Permit Granted (for the Use of State-Maintained Flood Control Land)
- B. AUTHORIZING STATUTE: Environmental Conservation Law, Article 16, Section 0107
- C. TITLE OF REGULATION: 6 NYCRR Part 501
- D. SUMMARY OF PERMIT PROCESS:

1. Applicability: The construction of any improvement; the excavation or deposit of any material; and the operation of a motorized vehicle upon lands acquired or burdened by a flood control easement.

2. General Requirements: Prior to starting a regulated activity, all persons must obtain a permit for use of State-maintained flood control land.

3. Submission requirements: Applicants must submit an Application for Use of State-Maintained Flood Control Land, Form 93-19-3.

The rest of the permit processing requirements and procedures of this chapter are identical to those in Chapter 4.3.1 of this guide with the exception of the "Fees" section. The permit fee is \$25 and a surety bond or deposit may be required as a permit condition.

SECTION 5.0
ENVIRONMENTAL QUALITY MANAGEMENT

CHAPTER 5.1

AIR QUALITY

INTRODUCTION: The Air Resources Management Program of New York's Department of Environmental Conservation (DEC) establishes ambient air quality standards, regulates existing sources of air contamination, and seeks to prevent pollution from new sources. The standards that apply to air contamination source owners are incorporated into the State Implementation Plan, which was developed to implement provisions of the Federal Clean Air Act.

A. NAMES OF PERMITS:

1. Permit to Construct for Sources of Air Contamination
2. Certificate to Operate for Sources of Air Contamination
3. Permit to Construct for Indirect Sources
4. Permit for Restricted Burning

B. AUTHORIZING STATUTE: Environmental Conservation Law, Article 19

C. TITLE OF REGULATION: 6 NYCRR Parts 201, 215

D. SUMMARY OF PERMIT PROCESS:

1. **Applicability:** Generally, the construction, modification, and/or operation of an air contamination source, or an indirect source of air contamination, and the restricted burning of certain substances as specified in 6 NYCRR Part 215.

2. **General Requirements:** Prior to starting a regulated activity, all persons must obtain the appropriate permit or certificate from the DEC.

3. Submission Requirements:

a. **Permits to Construct Sources of Air Contamination:** Applicants must submit an Application for a Permit to Construct a Stationary Combustion Installation, Form 76-19-2; an Application for a Permit to Construct an Incinerator, Form 76-11-7; or an Application for a Permit to Construct Process, Exhaust, or Ventilation System, Form 76-19-3, as applicable. Applicants may also be required to submit construction plans, drawings, specifications, blueprints, maps, and environmental assessments. All applications must be signed by a professional engineer registered in the State of New York.

b. **Certificates to Operate Sources of Air Contamination:** Applicants must submit an Application for a Certificate to Operate a Stationary Combustion Installation, Form 76-19-2; an Application for a Certificate to Operate an Incinerator, Form 76-11-7; or an Application for a Certificate to Operate a Process, Exhaust, or Ventilation System, Form 76-19-3; as applicable. Applicants may also be required to submit verification that fuel to be used will meet applicable standards and stack test reports showing compliance with applicable emissions standards.

c. **Permits to Construct Indirect Sources:** Applicants must submit an Application for Permit to Construct Indirect Sources, Form 76-18-8, a complete Indirect Source Questionnaire, and any additional monitoring reports, air quality analyses, or environmental assessments which may be required.

d. **Permits for Restricted Burning:** Applicants must submit an Application for a Restricted Burning Permit, Form 76-19-1. Applicants may also be required to submit a plot plan.

4. **Procedure for Obtaining a Permit or Certificate:** All permit processing is in accordance with the Uniform Procedures Act and Regulations, 6 NYCRR Parts 621 and 624. (See Chapter 2.2 of this guide)

5. **Operation Requirements:** All facilities must be constructed, modified, and operated in compliance with all applicable standards and requirements as specified in the regulations and with all terms and conditions specified in the permit or certificate.

6. **Fees:**

- a. Permits to construct new sources of air contamination designated as major: \$500 per source.
- b. Permits to construct new sources of air contamination designated as minor: \$50 per source.
- c. Certification or recertification of sources of air contamination to operate designated as major: \$10 per year of certification.

(If a project requires more than one permit, and the applications are to be reviewed concurrently, the fee charged is 80 percent of the total fees or the highest single fee, whichever is greater.)

7. Appeals: Any party aggrieved by a final decision or action of the DEC may appeal such decision or action to the appropriate civil court.

E. ADMINISTERING AGENCY: Division of Air
Department of Environmental
Conservation
50 Wolf Road
Albany, NY 12233
(518) 457-2018

The regulatory program is administered by the 9 regional offices throughout the State.

CHAPTER 5.2

WATER QUALITY STANDARDS AND REGULATIONS

5.2.1 STATE POLLUTANT DISCHARGE ELIMINATION SYSTEM

INTRODUCTION: The State Pollutant Discharge Elimination System (SPDES) was established pursuant to the Federal Clean Water Act. It provides for a permit system designed to protect water quality by regulating the amount of pollutants that a facility may discharge into either surface water or groundwater. All permitted discharges must conform with treatment levels set by the U.S. Environmental Protection Agency (EPA) and water quality standards set by the State.

A. **NAME OF PERMIT:** SPDES Permit

B. **AUTHORIZING STATUTE:** Environmental Conservation Law, Article 17, Titles 7 and 8

C. **TITLE OF REGULATION:** State Pollutant Discharge Elimination System Permits, 6 NYCRR Parts 750 through 757

D. **SUMMARY OF PERMIT PROCESS:**

1. **Applicability:** Any proposed or existing discharge of sewage, industrial wastes, or other wastes to either surface water or groundwater, except an individual discharge to groundwater of less than 1,000 gallons per day of sewage effluent without the admixture of industrial or other wastes.

2. **General Requirements:** Anyone discharging pollutants or proposing to discharge pollutants must obtain a SPDES permit from the Department of Environmental Conservation (DEC). Any permits issued by the Federal government under the Refuse Act or National Pollutant Discharge Elimination System (NPDES) for discharges into navigable waters are considered to be valid permits under Article 17.

3. **Submission Requirements:** Forms for SPDES permit applications may be obtained from any of the DEC's offices. There are various forms, depending on type of proposed facility and discharge. The application must include a location plan or map showing the point of discharge into the receiving waters. Soil percolation data may be required for proposed discharges to groundwater. A draft environmental impact statement (EIS) may also be required. (See Chapter 2.3 of this guide)

4. Procedure for Obtaining a Permit: All permit processing is in accordance with the Uniform Procedures Act and Regulations, 6 NYCRR Parts 621 and 624. (See Chapter 2.2 of this guide)

5. Operation Requirements: A number of standards, limitations, and other requirements may be included in the SPDES permit, such as effluent limitations and performance standards. The DEC may specify average and maximum daily quantitative limitations for the level of pollutants in the authorized discharge in terms of weight or, as in the case of flow, pH, temperature, radiation, and any other pollutants not appropriately expressed by weight, in other appropriate terms. Compliance schedules will also have to be adhered to, if the discharges from the facility are not currently meeting applicable State and Federal requirements.

Any discharge may be subject to monitoring requirements including the installation, use, and maintenance of monitoring equipment and methods. Any permit requiring monitoring must include the maintenance of records of all information resulting from any monitoring activities including: date, place, and time of sampling; who made the analyses; analytical methods used; and results of analyses. The records must be kept by the permittee for a minimum of 3 years. Reports must be filed with DEC at periodic intervals specified in the permit, but not less than once a year.

6. Fees: Range from \$50 to \$300 depending on type of facility and volume of discharge.

7. Appeals: Any persons aggrieved by a final decision or action of the DEC may appeal such decision or action to the appropriate civil court.

8. Special Notes: Certain discharges are prohibited. No permit will be authorized for discharge of any radiological, chemical, or biological warfare agent, or high-level radioactive waste, or any discharge that would substantially impair anchorage and navigation.

E. ADMINISTERING AGENCY: Division of Water
Department of Environmental
Conservation
50 Wolf Road
Albany, NY 12233
(518) 457-7464

The regulatory program is administered by the 9 regional offices throughout the State.

5.2.2 PROTECTION OF WATERS PROGRAM

INTRODUCTION: The Protection of Waters Permit Program was designed to prevent the unreasonable, unnecessary, or harmful alteration of stream channels; the filling and dredging in navigable waters; and the construction or major repair of dams and docks which would benefit a private interest at the expense of the public's right. The basic control mechanism involves the issuance of a permit for any of these activities.

- A. NAME OF PERMIT: Protection of Waters Permit
- B. AUTHORIZING STATUTE: Environmental Conservation Law, Article 15, Title 5
- C. TITLE OF REGULATION: Protection of Waters Permits, 6 NYCRR Part 608
- D. SUMMARY OF PERMIT PROCESS:

1. Applicability: The proposed change, modification, disturbance to, or removal of material from any protected stream or its bed or banks; the erection, reconstruction, or repair of any dam or impoundment structure or other artificial obstruction, temporary or permanent, in or across a natural stream or watercourse; construction of certain farm ponds meeting size requirements; the erection, reconstruction, or repair of any permanent dock, pier, wharf, or other structure which may be used as a landing place on waters and which meet applicable size requirements; the excavation from or filling of any of the navigable waters of the State, or in marshes, estuaries, tidal marshes, and wetlands that are adjacent to any of the navigable waters of the State and that are inundated at mean high water level or tide.

2. General Requirements: Prior to starting a regulated activity, all persons must obtain a permit from the Department of Environmental Conservation (DEC). In addition, a water quality certificate and/or a permit from the U.S. Army Corps of Engineers is generally required for projects on waters under Federal jurisdiction. Such activity requiring a Federal permit or license must receive certification from the DEC before a Federal permit can be issued.

3. **Submission Requirements:** Applicants must submit an Application for Permit for the Construction, Reconstruction, or Repair of a Dam or Other Impoundment Structure, Form 95-19-2; an Application for a Permit for the Construction, Reconstruction, or Repair of Any Permanent Dock, Pier, or Wharf, and any Dock, Pier, or Wharf Built on Open Work Supports, which has a Top Surface Area of More than 200 Square Feet, Forms 95-19-2, 95-19-1; an Application for Permit to Dredge or Deposit Material in a Waterway, Form 95-19-2; or an Application for Permit for the Disturbance of a Stream Bed or Excavation In or Fill of Navigable Waters, Form 95-19-2, as appropriate. Applications must be submitted to the appropriate regional permit administrator. Applications must be accompanied by a sketch of the proposed project, a map showing project location, and an Environmental Impact Statement (EIS) if deemed necessary. (See Chapter 2.3 of this guide)

4. **Procedure for Obtaining a Permit:** All permit processing is in accordance with the Uniform Procedures Act and Regulations, 6 NYCRR 621 and 624. (See Chapter 2.2 of this guide)

5. **Operation Requirements:** All construction must comply with all standards, requirements, and conditions and all terms and conditions specified in the permit.

6. **Fees:** Range from \$10 to \$400 depending on the type of project

7. **Appeals:** Any person aggrieved by a final decision or action of the DEC may appeal such decision or action to the appropriate civil court.

E. **ADMINISTERING AGENCY:** Division of Regulatory Affairs
Department of Environmental
Conservation
50 Wolf Road
Albany, NY 12233
(518) 457-2225

Regulatory program administration is provided by the Division of Regulatory Affairs in the 9 regional offices throughout the State, with technical program guidance provided by the Division of Fish and Wildlife and the Division of Water.

CHAPTER 5.3

WATER SUPPLY

INTRODUCTION: New York's Water Supply Law, administered by the Department of Environmental Conservation (DEC), provides a program that ensures the equitable allocation and distribution of water supplies, and protects the quality of water by requiring the proper design, installation, operation, and maintenance of facilities. The State Department of Public Health has jurisdiction over water quality and other sanitary aspects of a project, and provides technical advice and services to the DEC.

A. **NAME OF PERMIT:** Water Supply Permit

B. **AUTHORIZING STATUTE:** Public Water Supply, Environmental Conservation Law, Article 15, Title 15

C. **TITLE OF REGULATION:** Public Water Supply, 6 NYCRR Part 601

D. **SUMMARY OF PERMIT PROCESS:**

1. **Applicability:** Installing a new water supply system; acquiring, taking, or developing any source of water; purchasing or condemning any existing water works system; extending water supply or distribution means; entering into a contract or other agreement for supply of water; or sinking additional wells. (For a complete detailed list, refer to the statute.)

2. **General Requirements:** Prior to starting a regulated activity, all persons must obtain a water supply permit from the DEC.

3. **Submission Requirements:** Applicants must submit an Application for Water Supply Permit, Form 95-19-2 or a Joint Application for Permit (Supplement W-1-Water Supply), Form 95-19-3, as appropriate. Applications must include information describing the type and purpose of project; information as to acquisition or change in existing facilities, or installation of new facilities; a description of the water taking in terms of amount of increase or total; and a description of prior applications containing maps, plans, reports, and legal documents which may have relevance to the current application. Sufficient documentation must be provided to demonstrate full authority to carry out the project, such as a copy of a town board resolution authorizing the establishment of a new water district.

A project justification is also required, explaining how decisions were made and conclusions were reached. A description of the State Environmental Quality Review (SEQR) status should indicate the type of SEQR project, whether or not a lead review agency has been established, and whether an Environmental Impact Statement, environmental assessment, or negative declaration is required.

4. **Procedure for Obtaining a Permit:** All permit processing is in accordance with the Uniform Procedures Act and Regulations, 6 NYCRR Parts 621 and 624. (See Chapter 2.2 of this guide)

5. **Operation Requirements:** Public Health Law, Section 225, Part 5, Drinking Water Supplies, sets forth operating standards for all existing and proposed sources of water supply in the State of New York. The State will prescribe the frequency at which the water supplier must collect and analyze raw water samples for contaminants.

All public water supplies must meet the inorganic, organic chemical, turbidity, microbiological, and radioactive contaminant levels as defined.

All water supply operators must have appropriate certification. Daily records of operation on approved forms must be kept, with copies sent to the Commissioner of Public Health on a monthly basis, and records of all necessary analyses, which must be done by approved laboratories, must be kept at a convenient location.

6. **Fees:** \$50 permit application fee, except as provided in 6 NYCRR 621.5(d) for combined applications

7. **Appeals:** Any person aggrieved by a final decision or action of the DEC may appeal such decision or action to the appropriate civil court.

8. **Special Notes:** The Public Service Commission has certain jurisdiction over rates and service for non-municipal water purveyors.

E. **ADMINISTERING AGENCY:** Department of Environmental
Conservation
Division of Regulatory Affairs
50 Wolf Road
Albany, NY 12233
(518) 457-7418

The regulatory program is administered in the 9 regional offices throughout the State, with technical program guidance from the Division of Water.

CHAPTER 5.4

SOLID WASTE MANAGEMENT

INTRODUCTION: The Environmental Conservation Law Article 27, Title 7 sets forth New York State's policies concerning solid waste management. The Department of Environmental Conservation (DEC), Division of Solid Waste Management is the agency responsible for administering the law. The basic controls include a permit to construct, a permit to operate, and operations standards that must be met.

A. NAMES OF PERMITS:

1. Construction Permit
2. Operation Permit

B. AUTHORIZING STATUTE: Environmental Conservation Law, Article 27, Title 7

C. TITLE OF REGULATION: Solid Waste Management Facilities, 6 NYCRR Part 360

D. SUMMARY OF REGULATION:

1. **Applicability:** The construction of new solid waste management facilities; modification of existing facilities; operation of any solid waste management facility, including facilities for storage, transfer, processing, recovering, reclaiming, and disposal of solid wastes.

2. **General Requirements:** All new or substantially modified solid waste disposal facilities require a permit to construct and a permit to operate from the DEC. In addition, there are general operating requirements and standards for all solid waste management facilities, and all permit applications must demonstrate compliance with these standards.

3. **Submission Requirements:** Operation permit applicants must submit Form 40-20-2, provided by DEC. Applications must include a detailed operation and contingency plan and demonstrate that the facility will meet operations standards, unless a schedule for remedial action has been approved or a variance issued.

Construction permit applicants must submit Form 47-19-2, provided by DEC. Applications must include detailed engineering plans and specifications for construction of the proposed facility and must demonstrate that the proposed facility will be in compliance with operations standards. An operations permit application must accompany the construction permit application. To provide sufficient time for processing, the application should be submitted not less than 90 days prior to the proposed start of construction.

In general, all engineering plans, reports, and specifications submitted for approval must demonstrate the specific means for meeting the standards in 6 NYCRR Part 360.8 and the applicable sections of the DEC's solid waste guidelines, and must be prepared by a firm or person registered to practice professional engineering in New York State. Property boundaries must be certified by a registered surveyor. Background sound level data consistent with guidelines furnished by the DEC may be required. A detailed program for closure of the facility must also be included.

4. **Procedure for Obtaining a Permit:** All permit processing is in accordance with the Uniform Procedures Act and Regulations, 6 NYCRR Part 621 and 624. (See Chapter 2.2 of this guide)

5. **Operation Requirements:** Facility operators must attend DEC approved training courses. All solid waste management facilities must operate in compliance with standards, as outlined in 6 NYCRR Part 360.8. Typical standards include those relating to surface water and groundwater protection, the control of leachate, site access, and the control of litter and vectors. There are also additional specific requirements relating to certain types of facilities such as sanitary landfills, incinerators, and industrial waste facilities.

6. **Fees:** In accordance with Uniform Procedures Regulations, fees range from no charge to \$400 depending on the type of applicant, population size, and type of waste.

7. **Appeals:** Any person aggrieved by a final decision or action of the DEC may appeal to the appropriate civil court.

8. **Special Notes:** Solid waste permit requirements have been changing in response to State and Federal mandates. Potential applicants are advised to consult with the DEC early in the formulation of application plans.

E. **ADMINISTERING AGENCY:** Division of Solid Waste Management
Department of Environmental
Conservation
50 Wolf Road
Albany, NY 12233
(518) 457-6603

CHAPTER 5.5

HAZARDOUS WASTE MANAGEMENT

INTRODUCTION: New York State's Industrial Hazardous Waste Management Act, passed in 1978, is patterned after the Federal Resource Conservation and Recovery Act (RCRA). The State's regulatory program is still being developed, but, as in the Federal program, it addresses the generation, treatment, disposal, transportation, and storage of hazardous waste. The State's Department of Environmental Conservation (DEC) requires a number of major permits to establish a new facility, and a certificate of environmental safety and public necessity from the Hazardous Waste Facility Siting Board.

- A. NAME OF PERMIT: Hazardous Waste Facility Permit
- B. AUTHORIZING STATUTE: Industrial Hazardous Waste Management Act, Environmental Conservation Law, Article 27, Section 0900, et seq.
- C. TITLE OF REGULATION: 6 NYCRR Parts 360 (amendments proposed), 361(proposed), 364(existing), 365(proposed), 366 (proposed)
- D. SUMMARY OF PERMIT PROCESS:
 - 1. Applicability: The construction, modification, or operation of any hazardous waste management facility.
 - 2. General Requirements: At the present time, a number of permits are required to establish a hazardous waste management facility. The permit process follows the Uniform Procedures Act and includes: solid waste facility construction permit, solid waste facility operation permit, wastewater discharge permit (if needed), air contamination source construction permit (if needed), air contamination source operation certificate (if needed), environmental impact statement, and siting certificate (if needed). Other permits may be required, such as: tidal wetlands permits, freshwater wetlands permits, stream bed disturbance permits, stream dredge and fill permits, and flood plain protection requirements must be met, depending upon the specific facility site.

3. Submission Requirements:

a. Siting Certificate: An application for a Certificate of Environmental Safety and Public Necessity must be filed with the DEC containing documentation for these items: a draft environmental impact statement addressing all appropriate permits, completed applications for all other required DEC permits, hazardous waste sources, facility need, alternative site locations, a detailed closure plan, and a site description. Some hazardous waste facilities, such as small processing and storage facilities, may not require the siting certificate.

b. Solid Waste Facility Construction Permit: An application for a construction permit must include detailed engineering plans and specifications, an operating permit application, a detailed closure plan, a draft environmental impact statement for major projects, and any other data that the DEC may reasonably require.

c. Solid Waste Facility Operation Permit: Applications for an operation permit must be submitted simultaneously with a construction permit application and must include a detailed description of the proposed operating plans, a contingency plan for emergency action, and any other data that the DEC may reasonably require, including demonstration that the facility meets operation standards.

d. Waste Water Discharge Permit: An application for a State Pollutant Discharge Elimination System Permit (SPDES) may be required. For details, see Chapter 5.2 of this guide.

e. Air Contamination Source Construction Permit: See Chapter 5.1 of this guide.

f. Air Contamination Source Operation Certificate: See Chapter 5.1 of this guide.

g. Environmental Impact Statement: The State Environmental Quality Review Act (SEQR) requires an Environmental Impact Statement (EIS) prepared according to regulation 6 NYCRR 617 for all significant applications. (See Chapter 2.2 of this guide)

4. Procedure for Obtaining a Permit: All permit processing is in accordance with the Uniform Procedures Act and Regulations, 6 NYCRR Part 621 and 624. (See Chapter 2.2 of this guide)

5. Operation Requirements:

a. Solid Waste Facility Operation Permit: Under proposed regulations, the permit would be effective for up to 5 years. The DEC will make inspections to monitor permit compliance and may also require onsite monitors, whose salaries are paid by the facility owner/operator but who report to the DEC.

b. Wastewater Discharge Permit: See Chapter 5.1 of this guide.

c. Air Contamination Source Construction Permit: See Chapter 5.1 of this guide.

d. Air Contamination Source Operation Permit: See Chapter 5.1 of this guide.

e. Environmental Impact Statement: See Chapter 2.2 of this guide.

6. Collection and Transportation of Industrial, Commercial, and Other Wastes: All transporters of hazardous wastes, sewage sludges, waste oil, and other industrial wastes must obtain a permit from DEC according to 6 NYCRR Part 364 of the Regulations.

7. Hazardous Waste Manifest System: Draft regulations are being developed to establish standards for generators and transporters of hazardous waste, including compliance with a manifest system. (Proposed 6 NYCRR Part 365)

8. Siting of Industrial Hazardous Waste Facilities: Draft regulations provide for a Siting Board appointed by the Governor, and development of specific criteria to be used in the facility site review process. (Proposed 6 NYCRR Part 361)

9. Fees: Will be developed in accordance with the Uniform Procedures Act

10. Appeals: Any person aggrieved by a final decision or action of the DEC may appeal to the appropriate civil court.

E. ADMINISTERING AGENCY: Division of Solid Waste Management
Department of Environmental
Conservation
50 Wolf Road
Albany, NY 12233
(518) 457-6603

CHAPTER 5.6

NOISE REGULATIONS

INTRODUCTION: The Environmental Conservation Law and the Vehicle and Traffic Law authorize the Department of Environmental Conservation (DEC) to adopt noise control regulations. The DEC regulations prescribe procedures for measurement of noise levels of motor vehicles and combinations of vehicles to determine whether those vehicles conform to the sound level limits of the Vehicle and Traffic Law. The DEC may also consider noise levels in its review of environmental impact statements required under the SEQR. (See Chapter 2.3 of this guide)

A. AUTHORIZING STATUTES:

1. Environmental Conservation Law, Article 3, Section 301, Article 19, Sections 301 and 303
2. Vehicle and Traffic Law; Section 386 as amended by Chapter 543 of the Laws of 1976

B. TITLE OF REGULATION: 6 NYCRR Parts 450 through 454

C. ADMINISTERING AGENCY: Bureau of Technical Services Division of Air Department of Environmental Conservation 50 Wolf Road Albany, NY 12233 (518)457-7454

SECTION 6.0
SOCIAL/ECOLOGICAL PRESERVATION

CHAPTER 6.1

RARE AND ENDANGERED SPECIES

6.1.1 FISH AND WILDLIFE

INTRODUCTION: New York's Endangered Species Law is essentially the same as the Federal law with an additional in-state list. The basic control is the issuance of a collectors permit by the Division of Fish and Wildlife.

- A. NAME OF PERMIT: Scientific Collection Permit
- B. AUTHORIZING STATUTE: Environmental Conservation Law, Article 11, Section 0535
- C. TITLE OF REGULATION: Traffic in Endangered Species of Fish and Wildlife, 6 NYCRR Part 82.1
- D. SUMMARY OF PERMIT PROCESS:
 - 1. Applicability: Importation, transportation, possession, or sale of any endangered species of fish or wildlife.
 - 2. General Requirements: A permit may be obtained under terms and conditions prescribed by the commissioner.
 - 3. Submission Requirements: An application for a permit for scientific collection must include a description of detailed credentials, species and numbers of each required, need and justification for the collection, how and where collections are to be made, and ultimate disposition of specimens.
 - 4. Procedure for Obtaining a Permit: All permit processing is in accordance with the Uniform Procedures Act and Regulations, 6 NYCRR Parts 621 and 624. (See Chapter 2.2 of this guide)
 - 5. Permittee Requirements: Collection and possession must be in compliance with both State and Federal endangered species laws. Permits are valid for a period of 1 year.
 - 6. Fees: \$1 per permit annually

7. Appeals: Any person aggrieved by a final decision or action of the DEC may appeal such decision or action to the appropriate civil court.

E. ADMINISTERING AGENCY: Division of Fish and Wildlife
Department of Environmental
Conservation
50 Wolf Road
Albany, NY 12233
(518) 457-5690

6.1.2 PLANTS

INTRODUCTION: New York's Protected Plants Law was enacted to augment the Federal Endangered Species Act. The State's act is designed to promote the conservation, protection, research, and propagation of selected endangered species.

- A. NAME OF PERMIT: Waiver of Protected Status
- B. AUTHORIZING STATUTE: Environmental Conservation Law, Article 9, Section 1503
- C. TITLE OF REGULATION: Removal of Protected Plants, 6 NYCRR Part 193.3
- D. SUMMARY OF PERMIT PROCESS:
 - 1. Applicability: Anyone wishing to collect plants listed under the Protected Plants Law on State/publicly owned land.
 - 2. General Requirements: An application for a waiver of protected status of native plants must be approved.
 - 3. Submission Requirements: An application must be filed with the Department of Environmental Conservation (DEC) describing the species, counties involved, time period, and purpose for which waived status would be issued.
 - 4. Permittee Requirements: The fine for removal of protected plants without a waiver is \$25.
 - 5. Fees: None
 - 6. Appeals: Any party aggrieved by a final decision or action of the DEC may appeal to the appropriate civil court.
- E. ADMINISTERING AGENCY: Bureau of Forest Resource Management
Division of Lands and Forests
Department of Environmental Conservation
50 Wolf Road
Albany, NY 12233
(518) 457-7370

CHAPTER 6.2

ARCHAEOLOGICAL AND HISTORICAL

INTRODUCTION: To ensure that archaeological or paleontological materials are removed from State-owned land only by qualified individuals for educational or scientific purposes, the State of New York, under Education Law 233, requires authorization from the Department of Education.

A. **NAME OF APPROVAL:** Department of Education Authorization

B. **AUTHORIZING STATUTE:** Education Laws 233, effective 1958

C. **TITLE OF REGULATION:** 6 NYCRR Part 190.8

D. **SUMMARY OF AUTHORIZATION PROCESS:**

1. **Applicability:** The removal of archaeological or paleontological materials from State-owned land.

2. **General Requirements:** The State Department of Education must authorize any removal of archaeological or paleontological materials from State-owned land.

3. **Submission Requirements:** An application for authorization to collect and excavate archaeological or paleontological materials from State-owned lands must be submitted to the State Department of Education. Application materials must include maps, plans, and any supplemental permits as required.

4. **Procedure for Obtaining Authorization:** Once completed application materials have been filed, the determination process takes from 30 to 45 days.

5. **Fees:** None

6. **Appeals:** An appeals process has been established for a denied permit through the Department.

E. **ADMINISTERING AGENCY:** Museum Services
Department of Education
Empire State Plaza
State Museum
Albany, NY 12230
(518) 473-1503

CHAPTER 6.3

WETLANDS

6.3.1 TIDAL WETLANDS

INTRODUCTION: The New York State Tidal Wetlands Act sets forth a policy to protect and conserve tidal wetlands by regulating their use and development. The tidal wetlands law regulates activities in tidal wetlands and adjacent areas averaging 300 feet inland from the wetland boundary. The law's basic control is a permit obtained from the Department of Environmental Conservation (DEC).

A. **NAME OF PERMIT:** Tidal Wetlands Permit

B. **AUTHORIZING STATUTE:** Environmental Conservation Law, Article 25

C. **TITLE OF REGULATION:** 6 NYCRR Part 661

D. **SUMMARY OF PERMIT PROCESS:**

1. **Applicability:** Part 661.5 of the regulations details the types of activities regulated, including: draining, dredging, excavation, or removal of soil, mud, sand, shells, gravel, or other aggregates; dumping, filling, or depositing any fill of any kind; erection of structures, roads, obstructions, or driving of pilings; pollution; subdivisions; and any impairment to the natural function of the wetland. Tidal wetlands include any such delineated areas on an inventory map and are classified as either coastal fresh marsh, intertidal marsh, coastal shoals, bars and flats, littoral zone, high marsh or salt meadow, or formerly connected tidal wetlands.

2. **General Requirements:** Any person proposing to conduct a regulated activity upon any tidal wetland must obtain a permit from the DEC.

3. **Submission Requirements:** Applications must include a detailed description of the proposed activity and a map showing the location of the area directly affected. If the proposed activity may have a significant effect on the environment, an environmental impact statement may be required under the State Environmental Quality Review Act.

Projects are designated in 4 ways: 1) uses not requiring permits or notification letter approval; 2) generally compatible uses; 3) presumptively incompatible uses; 4) incompatible uses. The Commissioner of the DEC may require that the permittee post a bond for restoration costs resulting from failure to comply with permit conditions.

4. **Procedure for Obtaining a Permit:** All permit processing is in accordance with the Uniform Procedures Act and Regulations, 6 NYCRR Parts 621 and 624. (See Chapter 2.2 of this guide)

5. **Permittee Requirements:** Permits are valid for up to 10 years. Conditions of permits or notification letter approvals must be adhered to. Permittees are liable for any violation and the Commissioner may require restoration of affected tidal wetlands to conditions prior to the violations, as possible. All permittees must perform activities so as to comply with all standards and requirements specified in the law, regulations, and permit.

6. **Fees:** Major activities: \$50
Minor activities: \$10

7. **Appeals:** Any person aggrieved by a final decision or action of the DEC may appeal to the appropriate civil court.

8. **Special Notes:** In some cases, tidal wetlands permits will also require a permit from the U.S. Army Corps of Engineers. Generally, Corps permits are required for work on structures or facilities over, in, or on the banks of navigable waters of the United States, or for the discharge of dredged or fill material into any waters of the State, including wetlands. Joint application procedures may be available between certain Corps Districts and the corresponding DEC regions. In addition, certain activities may also require a protection of waters permit. (See Chapter 5.2.2 of this guide) Generally, review and issuance of this permit is concurrent with that of the tidal wetlands permit.

E. **ADMINISTERING AGENCY:** Division of Regulatory Affairs
Department of Environmental
Conservation
50 Wolf Road
Albany, NY 12233
(518) 457-2224

Regulatory program administration is by the Division of Regulatory Affairs in the 9 regional offices throughout the State, with technical program guidance provided by the Division of Marine and Coastal Resources.

6.3.2 FRESHWATER WETLANDS

INTRODUCTION: The New York State Freshwater Wetlands Act sets forth a policy to protect and conserve freshwater wetlands by regulating their use and development.

The implementation of the program is in 2 phases: during the interim portion of the program, the Department of Environmental Conservation (DEC) inventories and administers a wetlands regulatory program and during the final regulatory program, once final maps are filed, any city, town, village, or county may assume administrative responsibility. The DEC will retain administrative responsibility in the absence of local government administration or in cases concerning unique wetlands areas.

The law's basic control involves a permit for activity in wetlands greater than 12.4 acres, and in smaller ones of unusual local importance; and covers activities such as draining, dredging, filling, any form of pollution, and erection of structures and roads.

- A. **NAME OF PERMIT:** Freshwater Wetlands Permit
- B. **AUTHORIZING STATUTE:** Environmental Conservation Law, Article 24
- C. **TITLE OF REGULATION:** 6 NYCRR Parts 662 (interim), 663 (final permits), and 664 (maps and classification)
- D. **SUMMARY OF PERMIT PROCESS:**

1. **Applicability:** Any form of draining, dredging, excavation, mining, dumping, or filling; erecting structures; constructing roads; driving pilings; and placing any obstructions, or pollution, whether occurring on the wetland itself or affecting the wetland area. A wetland's adjacent area, within 100 feet of the wetland boundary, is also within the regulatory jurisdiction.

2. **General Requirements:** Prior to starting a regulated activity, all persons must obtain a freshwater wetlands permit.

3. **Submission Requirements:** Applicants must file a permit application with the DEC regional office (interim program), the clerk of the local government having jurisdiction (final program), or the DEC where no local government administers the program. The application must include a detailed description of the proposed activity and a map showing the area directly affected. If the action may have a significant effect on the environment, an environmental impact statement may be required under the State Environmental Quality Review Act.

Certain projects may be considered minor under DEC regulations, and, in some cases, a letter of permission rather than a permit may be sufficient. The local government or the Commissioner of DEC may require that the permittee post a bond for restoration costs resulting from failure to comply with permit conditions.

4. **Procedure for Obtaining a Permit:** During the interim program, permit processing is in accordance with the Uniform Procedures Act and Regulations, 6 NYCRR Parts 621 and 624. (See Chapter 2.2 of this guide) For the final program, local governments will administer the program in accordance with procedures yet to be established by the DEC. For those areas where the DEC will administer the final program, the Uniform Procedures Act and Regulations will apply.

5. **Permittee Requirements:** Conditions of the permit or the letter of permission must be adhered to. Where any freshwater wetlands have been damaged or endangered by pollution or are subject to pollution, the Commissioner of DEC may take whatever appropriate action is necessary to abate the pollution, including ordering the cessation of solid waste disposal, deep well disposal, or liquid waste disposal.

6. **Fees:** Major activities: \$50
Major activities
in adjacent areas: \$25
Minor activities: \$10

7. **Special Notes:** Permits for wetlands in the Adirondack Park are handled by the Adirondack Park Agency. (See Chapter 4.2 of this guide)

In some cases, projects requiring a freshwater wetlands permit will also require a protection of waters permit or a permit from the U.S. Army Corps of Engineers. (See Chapters 5.2.2 and 6.3 of this guide)

E. **ADMINISTERING AGENCY:** Division of Regulatory Affairs
Department of Environmental
Conservation
50 Wolf Road
Albany, NY 12233
(518) 457-2224

The Division of Regulatory Affairs administers the regulatory program in the 9 regional offices throughout the State, with technical program assistance from the Division of Fish and Wildlife.

CHAPTER 6.4

COASTAL ZONE MANAGEMENT

INTRODUCTION: Presently, the State of New York has no approved 306 Program for Coastal Zone Management. State legislation has recently been passed and signed by the governor, and coastal management documents are currently under revision which will satisfy the requirements of Section 306(c) of the Coastal Zone Management Act of 1972, as amended.

The Department of State will be the lead agency for implementing and administering the proposed Coastal Zone Management Program in New York. The State will use a concept called "networking" to implement the program. Through this approach, State agencies will be required to consider coastal policies when reviewing their proposed actions, such as permit applications, capital projects, and funding assistance to ensure that the proposed actions will be consistent with the program.

In addition, the State legislature has passed legislation for a Coastal Erosion Program authorizing the Department of Environmental Conservation to establish a regulatory process for identifying areas which are subject to high rates of erosion and the siting of structures in coastal erosion areas. As yet, this program is not in operation.

ADMINISTERING AGENCY: Division of Local Government and
Community Services
NYS Department of State
162 Washington Avenue
Albany, NY 12231
(518) 474-8834

SECTION 7.0
LOCAL REGULATORY POLICY

CHAPTER 7.1

LOCAL GOVERNMENT LAND USE AND NATURAL RESOURCE CONTROL ENABLING LAWS

INTRODUCTION: New York State enabling legislation provides for the creation of metropolitan, regional, county, city, town, and village planning boards or commissions. Local governments -- cities, villages, and towns -- can regulate the subdivision of land and only they can establish zoning which is required to be in accordance with a comprehensive plan.

- A. AUTHORIZING STATUTES: General City Law, Section 27 et seq., Town Law, Section 261 et seq.; Village Law, Article 7, Section 700 et seq.; General Municipal Law Articles 12-A and 12-B; Public Health Law, Article 11, Title II; Real Property Law, Article 9; General Municipal Law Sections 96-a, 99-g, 247, 809, and Article 5-K
- B. TITLE AND SUMMARY OF REGULATIONS: Local jurisdictions adopt their own local laws, ordinances, and regulations, and must be contacted directly for regulatory requirements and restrictions. No land use regulatory devise or restrictive provision (zoning and subdivision regulation) or variance grant may become effective until a public hearing is held.
- C. ADMINISTERING AGENCY: Contact the appropriate local governing authority.

For a copy of "A Guide to the Planning and Zoning Laws of New York State", contact:

Division of Legal Services
Department of State
162 Washington Avenue
Albany, NY 12231

CHAPTER 7.2

SUB-STATE MANAGEMENT DISTRICTS

INTRODUCTION: The Department of Environmental Conservation (DEC) has established 9 regional offices to administer its regulatory programs.

Nashau and Suffolk Counties: Building 40
SUNY at Stony Brook
Stony Brook, NY 11790
(516) 751-7900

New York City: Two World Trade Center
New York, NY 10047
(212) 488-2758

Dutchess, Orange, Putnam,
Rockland, Sullivan, Ulster,
and Westchester Counties: 21 South Putt Corners Road
New Paltz, NY 12561
(914) 255-5453

Albany, Columbia, Green,
Delaware, Montgomery,
Otsego, Rensselaer,
Schenectady, and
Schoharie Counties: Route #10
Stamford, NY
(607) 652-7364

Clinton, Essex, Franklin,
Hamilton, Saratoga, Warren,
Washington, and Fulton
Counties: Route #86
Ray Brook, NY 12977
(518) 891-1370

Jefferson, Lewis,
St. Lawrence, Herkimer,
and Oneida Counties: State Office Building
317 Washington Street
Watertown, NY 13601
(315) 782-0100

Brown, Cayuga, Chenango,
Cortland, Onondaga, Oswego,
Madison, Tioga, and Thompson
Counties:

P.O. Box 1169
Fisher Avenue
Cortland, NY 13046
(607) 753-3095

Chemung, Genesee, Seneca,
Livingston, Monroe, Wayne,
Ontario, Orleans, Yates,
Schuyler, and Steuben
Counties:

6274 East Avon-Lima Road
Avon, NY 14414
(716) 226-2466

Allegany, Cattaraugus,
Erie, Chautauqua,
Niagara, and
Wyoming Counties:

584 Delaware Avenue
Buffalo, NY 14202
(716) 842-5828