

Mckinney's Consolidated Laws of New York Annotated [Currentness](#)

Public Health Law [\(Refs & Annos\)](#)

Chapter 45. Of the Consolidated Laws [\(Refs & Annos\)](#)

▣ [Article 13. Nuisances and Sanitation \(Refs & Annos\)](#)

→ [Title I. General Provisions; Control and Abatement](#)

→ **§ 1300. Nuisances; general powers of commissioner**

1. The commissioner shall have all necessary powers to make investigations and examinations into nuisances, or questions affecting the security of life and health in any locality.

2. The commissioner may from time to time employ competent persons to render sanitary service, and make or supervise practical and scientific investigations and examinations requiring expert skill, and prepare plans and reports relative thereto.

#### **§ 1300-a. Putting noisome or unwholesome substances or maintaining noisome business on or near highway**

A person, who deposits, leaves or keeps, on or near a highway or route of public travel, either on the land or on the water, any noisome or unwholesome substance, or establishes, maintains or carries on, upon or near a public highway or route of public travel, either on the land or on the water, any business, trade or manufacture which is noisome or detrimental to public health, is guilty of a misdemeanor, punishable by a fine of not less than one hundred dollars, or by imprisonment not less than three nor more than six months, or both.

#### **§ 1300-b. Throwing gas tar or refuse into public waters**

A person, who throws or deposits gas tar, or the refuse of a gas house or gas factory, or offal, refuse, or any other noxious, offensive, or poisonous substance into any public waters, or into any sewer or stream running or entering into such public waters, is guilty of a misdemeanor.

#### **§ 1300-c. Farming activities**

Notwithstanding any other provision of law, the agricultural activities conducted on a farm, as defined in [section six hundred seventy-one of the labor law](#), shall not be considered a private nuisance, provided such agricultural activities were commenced prior to the surrounding activities, have not increased substantially in magnitude or intensity and have not been determined to be the cause of conditions dangerous to life or health as determined by the commissioner, the local health officer or local board of health pursuant to [sections thir-](#)

teen hundred, thirteen hundred-a, thirteen hundred three and thirteen hundred four of this chapter.

#### **§ 1300-d. Flow-through pools**

<[Expires and deemed repealed Aug. 16, 2009, pursuant to L.2006, c. 595, § 2.]>

A flow-through pool built prior to January first, nineteen hundred eighty-one that has been granted a state pollutant discharge elimination system permit shall be exempt from any rule or regulation to the contrary that requires a swimming pool to have a recirculating and/or controlled water supply. For the purposes of this section, "flow-through pool" means a natural or artificial pool to which the water is piped by pump or by gravity but water flow from the pool is not returned to the pool.

#### **§ 1301. Nuisances; examination and abatement by order of governor; expenses**

1. Whenever required by the governor, the commissioner shall make an examination concerning nuisances or questions affecting the security of life and health in any locality, and shall report the results thereof to the governor, within the time prescribed by him therefor.
2. The report of every such examination, when approved by the governor, shall be filed in the office of the secretary of state, and the governor may declare the matters public nuisances, which may be found and certified in any such report to be nuisances, and may order them to be changed, abated or removed as he may direct.
3. Every such order shall be presumptive evidence of the existence of such nuisance; and the governor may, by a precept under his hand and official seal, require the district attorney, sheriff and other officers of the county where such nuisance is maintained, to take all necessary measures to execute such order and cause it to be obeyed, and the acts of any such county officer in the abatement of any such nuisance, reasonable or necessary for such abatement, shall be lawful and justifiable and the order of the governor a sufficient protection to such officer.
4. The expense of such abatement shall be paid by the municipality where the nuisance occurs, and shall be a debt recoverable by such municipality of all persons, maintaining it or assisting in its maintenance, and a lien and charge upon the lands upon which the nuisance is maintained, which may be enforced by a sale of such lands to satisfy the same.

#### **§ 1302. Nuisances; local boards of health; duty to assist commissioner**

1. Whenever requested by the commissioner, the board of health of any health district may appoint one of its

members to act with and assist the commissioner during the investigation or examination of any nuisance, or for the purpose of determining whether a public nuisance exists.

2. Such representative may take part in such examination, but the final determination of the questions involved shall rest solely with the commissioner.

### **§ 1303. Nuisances; local boards of health; general powers and duties**

1. Every local board of health and local health officer shall receive and examine into all complaints made by any inhabitant concerning nuisances, or causes of danger or injury to life and health within the health district, and may enter upon or within any place or premises where nuisances or conditions dangerous to life and health or which are the cause of nuisances existing elsewhere are known or believed to exist, and by its members or other persons designated for that purpose, inspect and examine the same.

2. The local board of health or local health officer having the powers of a local board of health shall furnish the owners, agents and occupants of the premises with a written statement of the results and conclusions of any examination conducted pursuant to the provisions of sections one thousand three hundred three to **one thousand three hundred five**, inclusive, of this chapter.

3. Every local board of health shall order the suppression and removal of all nuisances and conditions detrimental to life and health found to exist within the health district.

4. Whenever the commissioner shall by notice to the presiding officer of any local board of health, direct him to convene such local board to take certain definite proceedings concerning which the commissioner shall be satisfied that the action recommended by him is necessary for the public good, and is within the jurisdiction of such board of health, such presiding officer shall convene such local board of health, which shall take the action directed.

### **§ 1304. Nuisances; local health officers; general powers**

The local health officer of a health district having no local board of health and each county health commissioner shall have authority equal to a local board of health to investigate and abate public nuisances which may affect health.

### **§ 1305. Nuisances; abatement by local boards of health**

1. The owners, agents and occupants of any premises shall permit sanitary examinations and inspections to be made pursuant to the provisions of this article.

2. If the owner or occupant of any premises whereon any nuisance or condition deemed to be detrimental to the public health exists or the cause of the existence elsewhere, fails to comply with any order or regulation of any local board or health officer having the power of a local board of health for the suppression and removal of any such nuisance or other matter, in the judgment of the board or health officer detrimental to the public health, made, served or posted as required in this article, such board or its agents or employees may enter upon the premises to which such order or regulation relates, and suppress or remove such nuisance or other matter.

#### **§ 1306. Nuisances; abatement expenses**

1. The expense of suppression or removal of a nuisance or conditions detrimental to health shall be paid by the owner or occupant of the premises, or by the person who caused or maintained such nuisance or other matters, and the board of health of the municipality or county wherein the premises are located may maintain an action in the name of the municipality or county to recover such expense, and the same when recovered shall be paid to the treasurer of the municipality or county, or if it has no treasurer to its chief fiscal officer, to be held and used as the funds of the municipality or county.

2. Whenever the suppression or removal of such nuisance or conditions detrimental to health demand the immediate expenditure of money, every local board of health, local health officer of a health district having no board of health or county health commissioner shall be authorized to use for such purpose any money in the hands of the board, or may call on the governing body of the municipality or county as the case may be for such money. All such moneys so expended shall be immediately repaid to the fund or source whence they were received on the recovery of the same by action or otherwise from the persons responsible for the expenses of suppression or removal.

#### **§ 1307. Nuisances; abatement expenses; lien and execution**

1. If execution upon a judgment for the recovery of the expense of the suppression or removal of a nuisance or other matter, pursuant to an order or regulation of any local board of health is returned wholly or in part unsatisfied, such judgment, if docketed in the place and manner required by law to make a judgment of a court of record a lien upon real property, shall be a first lien upon such premises, having preference over all other liens and encumbrances whatever. Notwithstanding the foregoing, such lien shall not have preference over any mortgage or other encumbrance for the benefit of the state of New York or a public benefit corporation thereof.

2. The board may cause such premises to be sold for a term of time for the payment and satisfaction of such lien and the expenses of the sale, provided, however, that where such premises are encumbered by a mortgage or other encumbrance for the benefit of the state of New York or a public benefit corporation thereof, the consent of that entity shall first be obtained.

3. Notice of such sale shall be published for twelve weeks successively, at least once in each week, in a newspaper of the city, village or town, or if no newspaper is published therein, in the newspaper published nearest to such premises. If the owner or occupant of the premises, or his agent, is known, a copy of such notice shall be served upon him, either personally, at least fourteen days previous to the sale, or by mail at least twenty-eight days prior thereto.

4. The premises shall be sold to the person offering to take them for the shortest time, paying the amount unpaid on such judgment and interest and the expenses of the notice and sale. A certificate of the sale, signed and acknowledged by the president and secretary of the board, shall be made and delivered to the purchaser, and may be recorded as a conveyance of real property, and the purchaser shall thereupon be entitled to the immediate possession of such premises, and, if occupied, may maintain an action or proceeding to recover the possession thereof against the occupant, as against a tenant of real property holding over after the expiration of his term; and the cost of any such action or proceeding, if not paid by the occupant, shall also be a lien upon such premises, having the same preference as the lien of such judgment, and the right of the purchaser to such premises shall be extended for a longer term, which shall bear the same proportion to the original term as the amount of such costs bears to the amount paid by the purchaser on such sale.

5. The term of the purchaser at any such sale shall commence when he shall have acquired possession of the premises sold.

6. At any time within six months after recording such certificate of sale, the owner of the premises or any lessee, mortgagee or incumbrancer, thereof, or of any part of the same, may redeem the premises or any such part from such sale by paying to the purchaser the amount paid by him on the sale, and all cost and expenses incurred by him in any action or proceeding to recover possession with interest at the rate of ten per centum per annum thereon. If redemption is made by the owner, the right of the purchaser shall be extinguished; if by a lessee, the amount paid shall be applied as a payment upon any rent due or which may accrue upon his lease; if by a mortgagee or an incumbrancer, the amount paid shall be added to his mortgage, incumbrance or other lien, or if he have more than one to the oldest, and shall thereafter be a part of such mortgage, lien or incumbrance and enforceable as such.

#### **§ 1308. Powers and duties of local boards of health**

It shall be the duty of local boards of health to enforce the public health law, the state sanitary code and local sanitary codes whether promulgated by the county or any of the political subdivisions within said county. A local board of health is hereby authorized to make an ex parte application for a temporary restraining order and upon sufficient proof to satisfy it, the court may grant such an order, where there is a violation within the jurisdiction of the local board of health which requires immediate relief.

#### **§ 1309. City of New York; exceptions**

The provisions of [sections one thousand three hundred three to one thousand three hundred seven](#) of this chapter, inclusive, shall not apply to the city of New York.

**§ 1310. Removal of canine wastes in cities with a population of four hundred thousand or more persons and in the cities of Yonkers and Albany**

Notwithstanding any contrary provision of law, rule or regulation, in cities with a population of four hundred thousand or more persons and in the cities of Yonkers and Albany, it shall be the duty of each dog owner or person having possession, custody or control of a dog to remove any feces left by his or her dog on any sidewalk, gutter, street or other public area. Any violation of this section shall constitute a violation punishable by a fine or a civil penalty of not more than two hundred fifty dollars. For the purposes of enforcing the provisions of this section, appearance tickets may be issued by sanitation officers, dog enumerators, or wardens and by any persons authorized to issue tickets for parking violations. Notwithstanding any other provision of law to the contrary, in the city of New York, such appearance tickets may be returnable to the environmental control board which shall have the power to impose the civil penalties herein provided. The provisions of this section shall not apply to a guide dog, hearing dog or service dog accompanying any person with a disability, as defined in [subdivision twenty-one of section two hundred ninety-two of the executive law](#).

**§ 1320. Noxious weeds and growths; declaration of nuisance**

1. Whenever in any health district there shall be growing on any property therein any ragweed or other species of weed, plant or growth which is noxious or detrimental to the public health, or the seed, pollen or other emanation therefrom, when carried through the air or otherwise dispersed, is noxious or detrimental to the public health, the local board of health of any such health district may take and file upon its records what it shall regard as sufficient proof to authorize a declaration that the existence of any such growth is a nuisance or danger to the public health, and may thereupon enter the same upon its records as a nuisance and order the same to be removed, destroyed or otherwise abated on any property wherever found.

2. The local board of health may also take and file among its records what it shall regard as sufficient proof to authorize a declaration that at any season or period of the year there exists a particular and imminent danger to the public health by reason of the approaching period of pollination of any such growth and may enter such determination upon its record.

**§ 1321. Noxious weeds and growths; notice to abate; enforcement**

1. In addition to the mode of service of any notice or order of any local board of health authorized by any other section of this chapter, and during the period or season when a particular and imminent danger to public health arising out of the pollination of weeds, plants or growths is determined to exist, any such local board of health may order the destruction of such weeds, plants or growths and the disposition thereof by posting a

copy of such order conspicuously on the property where such noxious weeds, plants, or growths are found, requiring the destruction or other disposition thereof as shall be directed by such order. The posting of such order shall be sufficient notice of such order to the owner, lessee, occupant of, or principal person or persons interested in such property, of the nuisance created by such weeds, plants or growths.

2. If any such order is not complied with, or so far complied with as the local board of health shall regard as reasonable, within five days after service, or within a shorter time, which, in case of particular and imminent danger to the public health the local board of health may designate, such local board of health or other agency of the municipality or county may enter upon any such property and remove and destroy any weeds, plants and growths noxious or detrimental to the public health.

3. The provisions of [sections thirteen hundred six](#) and [thirteen hundred seven](#) of this chapter shall apply respecting the expense of such removal, destruction or abatement, except where a different method of collecting such expense is otherwise provided by law for and in respect to any health district, then and in that event the provisions of such law in connection therewith shall apply in the case of such health district.

4. The provisions of this section and of [section thirteen hundred twenty](#) of this chapter shall not operate to deprive the local legislative body of any municipality or county of the power to enact local laws in relation to any matter in respect to which such power would otherwise exist, nor shall it limit such power. If this power otherwise exists, any provision of this section and of [section thirteen hundred twenty](#) of this chapter may be superseded, supplemented or amended by local law in the same manner and to the same extent as such provisions could be superseded, supplemented or amended had this section and [section thirteen hundred twenty](#) of this chapter not been enacted.

#### **§ 1325. Tenement houses in cities; power of commissioner**

1. The commissioner shall have power to examine into the enforcement of the laws relating to tenement houses in any city.

2. Whenever required by the governor, the commissioner shall make such an examination and shall report the results thereof to the governor within the time prescribed by him therefor.

#### **§ 1330. Labor camps; violations; notice; injunction; administrative proceedings**

1. When it appears to an officer that there has been a violation of the public health law or sanitary code at or in relation to any labor camp and such violation continues two days after written notice and demand for the discontinuance thereof, served as provided herein, he shall proceed pursuant to subdivision two or three of this section with respect to such violation.

2. An officer may institute proceedings to enjoin the continuance of such violation or the continued operation of such camp and, for purposes of such proceedings, a violation of any provision of the public health law or of the sanitary code shall be considered a public nuisance which may be enjoined or restrained. No bond or undertaking shall be required of such officer in such proceedings and no application to vacate or modify any judgment obtained shall be entertained by any court without proof to such court that ten days notice of such application, and copies of the papers upon which the application is to be made, have been served upon such officer.

3. (a) A hearing may be held, upon notice of not less than three days, before an officer or his representative. The officer shall make a determination with respect to any alleged violation and may assess a penalty not to exceed one hundred dollars for each violation, provided that (i) if the respondent establishes that a violation which existed prior to the service of the notice of hearing ceased to exist on or prior to the date originally set for the hearing and has not reoccurred, then any penalty assessed for such violation shall be suspended on the condition that it will not reoccur during the next twenty-four months or (ii) for initial violations only which do not involve a serious and immediate risk to health or safety, if, prior to the date originally set for the hearing, an application for a loan for a farmworker housing project is made pursuant to [section five hundred seventy-six-d of the private housing finance law](#) and a satisfactory plan for curing the conditions giving rise to the violation is submitted to and approved by the department, then any penalty assessed may be vacated if such violation is cured within a reasonable period of time. In assessing a penalty hereunder, consideration shall be given to good faith efforts to cure the violation made on or prior to the date originally set for the hearing. A violation which continues for more than one day after the expiration of the two days for compliance provided for in subdivision one shall be considered to be a separate violation for each day that it continues after such notice and demand for discontinuance have been served.

(b) The notice of hearing also may provide that the labor camp may be ordered vacated if such an order is determined to be necessary for the health and safety of its occupants or of the community in which it is located. If the notice of hearing contains this provision and such an order is determined to be necessary, then the officer shall issue such order.

(c) The hearing officer acting pursuant to this subdivision may issue subpoenas which shall be regulated by the civil practice law and rules.

4. Before the effective date of an order or judgment enjoining the continued operation of a camp pursuant to subdivision two or of an order directing the vacating of such camp pursuant to subdivision three, the officer shall notify the county agricultural agent, the representative of the nearest office of the state employment service, and the county social services commissioner.

5. A notice required by this section may be served upon the owner or operator of the camp in the same manner as a summons in a civil action, or by registered mail to such owner or operator at the address filed by him in the department or county health department or, if an address is not so filed, to this last known address or place

of residence.

6. An officer may request and shall receive from all public officers, departments and agencies of the state and its political subdivisions such cooperation and assistance as may be necessary or proper in the enforcement of the provisions of this section.

7. Nothing contained in this section shall be construed to limit the duty or power of an officer to act with regard to an immediate threat to the health of the occupants of a camp or the community in which it is located, or to alter or abridge any of the duties and powers now or hereafter existing in the commissioner, state district health officers, county boards of health, county commissioners of health, local boards of health or other public agencies or public officials, or any private party.

8. As used in this section, the term "officer" shall mean the commissioner, or the county commissioner of health or the state district health officer having jurisdiction.

**[§ 1331. Repealed. L.1969, c. 553, § 1, eff. July 1, 1969]**

**§ 1335. Certain businesses prohibited; application**

1. It shall not be lawful for any person to engage in or carry on the business of fat rendering, boneboiling or the manufacture of fertilizers or any business as a public nuisance within the corporate limits of any incorporated city of this state, or within a distance of three miles from the corporate limits of any incorporated city, provided, however, that nothing herein contained shall prevent the rendering of fresh killed cattle or swine.

2. This section shall not apply to the counties of Fulton, Wayne, Tompkins, Chautauqua, Orange, Dutchess, Erie, Monroe, Oneida, Onondaga, New York, Schoharie, Ulster, Greene, Cayuga, Cattaraugus, Niagara, Saratoga, Schenectady, Hamilton, Montgomery and Orleans.

**§ 1336. Certain businesses prohibited; enforcement; violation**

1. All departments of health or the commissioner or commissioners thereof in any incorporated city of this state shall have power to enforce the provisions of [section thirteen hundred thirty-five](#) of this chapter.

2. Any person violating the provisions of [section thirteen hundred thirty-five](#) of this chapter shall, upon conviction thereof, be guilty of a misdemeanor.

**§ 1340. Bathing places; sanitary requirements**

1. It shall be unlawful for any person to maintain, either as owner or lessee, any bathing establishment of any kind, in this state, for the accommodation of persons, for pay, or any consideration, at a point less than five hundred feet from any sewer connection emptying therein, or thereat, so as to pollute in any way, the waters used by those using or hiring bathing houses at such bathing establishment.

2. It shall be the duty of the owner, lessee or any other person maintaining any bathing establishment of any kind:

(a) to provide separate toilet rooms, with water-closets properly provided with sanitary plumbing, constructed in a manner approved by the local board of health of the health district wherein the bathing establishment is located, and in such a way as not to contaminate the waters used by the bathers; and,

(b) to thoroughly wash and disinfect, or cause to be thoroughly washed and disinfected, in a manner approved by the said local board of health, all bathing suits that have been hired or used, before re-hiring or permitting the use of the same again.

3. *[Repealed.]*

#### **§ 1341. Bathing places; safety requirements; ropes and life preservers**

1. (a) It shall be the duty of every person maintaining, as owner or lessee, any bathing establishment of any kind along the seashore of this state for the accommodation of persons for pay, to provide, for the safety of such bathers, two lines of sound, serviceable and strong manila or hemp rope, not less than one inch in diameter, anchored at some point above high water, at the same distance apart as the lines of bathing houses, or space fronting on such beach occupied by him or them, is in width. From the two points at which such life-lines are so anchored, such life-lines shall be made to extend as far into the surf as bathing is ordinarily safe and free from danger of drowning to persons not expert in swimming, and at such points of safety, such lines shall be anchored and buoyed. From the two points of such lines so extended, anchored and buoyed, a third rope shall be extended, of a similar size, connecting the two extremities, and buoyed at such points as to be principally above the surface of the water, thereby inclosing [FN1] a space within such lines and the beach within which bathing is believed to be safe. In addition thereto, there shall be sufficient ropes of a similar size as herein described, anchored from a point at high water mark and buoyed or anchored at a parallel line or within the outer cross rope, so as to have not more than a space of seventy-five feet from one rope to another; and

(b) Every person maintaining any such bathing establishment shall cause to be painted and posted in some prominent place upon the beach near such bathing houses the following words: "Bathing beyond the lines dangerous", and

(c) Such lines so placed, anchored and buoyed, and such notice so posted, shall be so maintained and contin-

ued by every person maintaining any such establishment, during the entire season of surf bathing.

2. (a) Every person maintaining any such bathing establishment shall also keep and provide in connection therewith, for the facilitating of the rescue of persons in danger of drowning, a surfboat, not less than sixteen feet long, on each side of which there shall be hanging ropes arranged so that persons in the water can easily catch hold of same, or be supported thereby. Such boats shall be equipped with two or more sets of oars and life-lines and life-belts, and at least one ring buoy or life preserver, with quarter-inch cotton line, not less than five hundred feet in length, with suitable reel attached thereto. In addition thereto, there shall be anchored on the shore, a suitable reel with a half-inch cotton line not less than five hundred feet in length, with a life-belt attached thereto, kept in good order and proper condition, so that it can readily be used by those assisting in saving life.

(b) At all bathing establishments where there are equipments [FN1] for two hundred bathers or more, said surf or life-boat shall be stationed in the water, opposite the lines, manned and in readiness for use, during bathing hours.

3. Every person maintaining any such bathing establishment shall employ or otherwise engage or provide the services of a bathing master or life-guard at such bathing establishment, who shall be an expert swimmer, and who shall be in constant and watchful attendance during bathing hours.

4. The owner of a bathing establishment shall not be subject to the provisions of this section when it is used, occupied or maintained by a lessee for hire, but such lessee shall be deemed the keeper or proprietor or person maintaining such bathing establishment.

5. Nothing in this section shall be construed in any way to affect any bathing establishments, in any municipality, or any bathing establishments or bathing beaches operated by a regional state park commission, at which there is maintained at public expense a life-saving guard.

[FN1] So in original.

#### **§ 1342. Bathing places; violations; penalties; enforcement**

1. Any person violating any of the provisions of [section thirteen hundred forty-one](#) of this chapter, shall forfeit and pay a penalty of not less than fifty dollars, nor more than two hundred dollars to be recovered by the sheriff of the county in which such violation is committed, except in the city of New York, when the penalty shall be sued for in the name of the department of health of the city of New York and collected by it.

2. A separate penalty may be recovered for each day that any person subject to the provisions of this section may violate any of the provisions of the same; but no penalty shall be recovered for any other violation thereof

than shall have occurred during the days when the owner or lessee, or other person, maintaining the said bathing establishments, shall have kept the same open for the use of the public, or for such persons as may be the guests of any hotel with which such bathing establishments may be connected.

3. It shall be the duty of the sheriffs and constables of the several counties of this state abutting upon the seashore, to see that in their respective counties the provisions of this section are enforced, and to bring suit for the recovery of the penalty therein provided, unless some other person had already brought suit for the same.

#### **§ 1345. Hotel sanitation; sewage; ventilation**

Every hotel shall be well drained and ventilated and every hotel connected with a cesspool or located in any municipality having a sewer system shall be well ventilated, drained, plumbed and connected according to sanitary principles with such cesspool or sewer system, and shall be kept free from effluvia arising from sewer, drain, water-closet or other source within the control of the owner, manager, agent or other person in charge of said hotel.

#### **§ 1346. Hotel sanitation; bedding; sheets, towels, drinking glasses, silverware and flatware**

1. Every hotel shall furnish each guest with clean linen or cotton individual towels in each room occupied by such guest, and also in the public lavatories and washrooms of such hotel, and with clean sheets and pillow slips for the bed, bunk, or cot to be occupied by such guest.
2. Every hotel that furnishes drinking glasses, silverware or flatware in individual rooms shall provide that such items are fully sanitized using proper techniques as provided for by the department.
3. Each sheet shall be ninety-one inches long, minimum length after being hemmed and laundered, and of sufficient width to completely cover the mattress and springs, and all sheets and pillow slips after being used by one guest must be washed, ironed and dried before being furnished to another guest.
4. Nothing in this section shall prevent local municipalities from enacting stricter laws, rules or regulations.

#### **§ 1347. Hotel sanitation; enforcement; violations**

1. All departments and boards of health and the commissioner or commissioners thereof shall have the power to enforce the provisions of [sections thirteen hundred forty-five](#) to thirteen hundred forty-seven, inclusive, of this chapter.

2. The commissioners of health and the respective local boards of health and any person authorized by either of them so to do, may enter any hotel or any part thereof at any reasonable time to inspect and examine the same, to determine whether or not the laws and regulations relating to hotels are being violated.

3. Any hotel proprietor [FN1] or manager violating any of the provisions of sections thirteen hundred forty-five to thirteen hundred forty-seven, inclusive, of this chapter, is guilty of a misdemeanor.

[FN1] So in original.

#### **§ 1348. Hotel sanitation; application of article**

The provisions of sections thirteen hundred forty-five to thirteen hundred forty-seven, inclusive, of this chapter, shall not apply to cities having a population of one million inhabitants or over.

#### **§ 1350. Food places; powers of the commissioner**

1. The commissioner shall have full power and authority to inspect and supervise all public places in this state in which food is prepared, sold or served.

2. The commissioner may appoint and designate, from time to time, persons to make the inspections authorized by this section and section thirteen hundred fifty-one, of this chapter.

#### **§ 1351. Food places; duty to permit inspections**

Every owner, operator, lessor, lessee or person in charge of any hotel, restaurant, dining room, dining car, drug store, soda fountain, steamboat or other place engaged in the preparation, sale or service of food for and to the general public, and every officer or other person in charge of any public, penal or charitable institution in this state, shall permit the commissioner or his duly authorized agents or employees to have access to all parts of any and all of such places herein mentioned wherein food is stored, prepared or served for the purpose of ascertaining whether the provisions of sections thirteen hundred fifty to thirteen hundred fifty-two, inclusive, of this chapter, and the provisions of the sanitary code and provisions of local ordinances or regulations are being observed.

#### **§ 1352. Food places; sanitary requirements**

1. A person or corporation engaged in the preparation and sale of food in any hotel, public restaurant, public dining room, dining car, drug store, soda fountain, steamboat or in any other place where food is prepared, sold or served for and to the general public in this state, or an officer of any public, penal or charitable institu-

tion in this state, shall not use in the preparation or service of any food utensils, dishes, glasses or other containers which have not been previously cleansed and made sanitary. In such cleansing the use of water which has become unsanitary by previous use is prohibited.

2. It shall be unlawful to furnish or serve in any public eating or drinking establishment, any straw, tube or similar device for drinking out of glasses, cups or containers of any type unless such straw, tube or similar device conforms to and is furnished or served in accordance with the following requirements: When offered for use, it shall be completely enclosed in an impervious or a bactericidal wrapper to be opened by the ultimate user; if unwrapped it may be used if it is kept in an approved sanitary dispenser loaded from the original package without handling, which dispenses one such straw, tube or device at a time directly to the user and which is so constructed that the interior may be cleaned and kept in a sanitary condition; unused loose straws, tubes or devices already dispensed from the dispensing container shall not be used again. No single-service paper containers, paper cups, paper spoons, paper forks or paper plates shall be used a second time.

3. The commissioner shall require in food service establishments, as defined in the state sanitary code, for foods to be conveyed to the consumer uncooked and for foods handled after being cooked but prior to being conveyed to the consumer, that such food not come into direct manual contact with persons responsible for preparing or serving the food. Sanitary gloves, sanitary utensils or other effective barriers shall be utilized to avoid manual contact in the preparation and conveyance of these foods to the consumer. In preparing regulations pursuant to this subdivision, the commissioner may provide for an alternate standard that would permit minimal manual contact based upon finding that such alternate standard would protect worker safety and not compromise consumer health. In preparing regulations the commissioner shall consult with representatives of the food service industry, including workers in the industry.

4. To the extent that funds are available for the purposes set forth in this subdivision, the commissioner shall require that the following food service establishments: restaurants, bars, membership organizations, fraternal organizations, and private clubs, excepting establishments licensed pursuant to [section sixty-four-a of the alcoholic beverage control law](#), that are not regulated by the department of agriculture and markets, at all times have in their employment at least one individual who has been trained and certified by an organization, approved by the commissioner, which specializes in and provides instruction concerning the safe and proper handling, preparation, cooking, storage, serving, delivery, removal and disposal of food. Attendance at any course established pursuant to this section shall be in person, through distance learning methods, or through an Internet based online program. Such training shall meet the standards set forth by the commissioner pursuant to [section thirteen hundred fifty-five](#) of this title, either: (a) pursuant to a program approved by the commissioner under such section, or (b) pursuant to a course that shall address but not be limited to the following topics:

(i) Contamination, food allergies and foodborne illness.

(ii) Purchasing and receiving safe food.

- (iii) Keeping food safe in storage.
- (iv) Protecting food during preparation.
- (v) Protecting food during service.
- (vi) Sanitary facilities and equipment.
- (vii) Cleaning and sanitizing.
- (viii) Integrated pest management.
- (ix) Food-safety regulations and standards.
- (x) Employee food-safety training.

The commissioner shall allow a licensee a period of up to thirty days to come into compliance with this subdivision where an employee who has been certified as having completed the approved food safety training program separates from his or her place of employment.

#### **§ 1352-a. Food places; toilet facilities**

1. A person or corporation operating an establishment with a seating capacity of twenty or more wherein food is sold for consumption on the premises shall provide appropriately identified and maintained public toilet facilities except that if there exists alternate available facilities in the same building wherein such establishment is located, suitable public notice of such alternate facility shall suffice for purposes of this act.

2. The provisions of subdivision one of this section shall not apply to establishments in operation on the effective date of this act.

#### **§ 1352-b. Public eating establishments; first aid instructions concerning food lodged in throat; liability**

1. Definitions. For purposes of this section:

a. "Public eating establishment" shall mean a cafeteria or lunchroom located in a school or educational institution and a restaurant, dining room, dining car or other place engaged in the preparation and service on the

premises of food for and to the general public;

b. "Choking emergency" shall mean a situation occurring in a public eating establishment in which food has become lodged in a person's throat in such a manner as to prevent or severely inhibit the continued breathing of such person.

2. First aid instructions. a. The commissioner shall adopt and approve first aid instructions designed and intended for use in removing food lodged in the throat of a victim of a choking emergency. Such instructions shall be limited to first aid techniques not involving the use of any physical instrument or device to be inserted into the victim's mouth or throat.

b. The commissioner shall, as soon as is practicable, supply to the proprietor of every public eating establishment in this state such adopted and approved instructions.

3. Posting. The proprietor of every public eating establishment in this state shall, upon receipt thereof, post such instructions in a conspicuous place or places in order that the proprietor and employees may become familiar with them, and in order that the instructions may be consulted by any person attempting to provide relief to the victim of a choking emergency; provided, that the fact that such instructions shall not have been posted as required by this section at the time of a choking emergency shall not in and of itself subject such a proprietor, or his employees or agents, to liability in any civil action for damages for personal injuries or wrongful death arising from such choking emergency.

4. No duty to act. Nothing contained in this section shall impose any duty or obligation on any proprietor, employee or other person to remove, assist in removing, or attempt to remove food from the throat of the victim of a choking emergency.

5. Immunity from liability. Notwithstanding any inconsistent provision of law or ordinance, a proprietor, employee or other person who voluntarily and without expectation of monetary compensation removes, assists in removing, or attempts to remove food from the throat of the victim of a choking emergency in accordance with the instructions adopted by the commissioner shall not be liable for damages for injuries alleged to have been sustained by such victim or for damages for the death of such victim alleged to have occurred by reason of an act or omission in the rendering of such emergency assistance unless it is established that such injuries were, or such death was, caused by gross negligence on the part of such proprietor, employee or person.

#### **§ 1352-c. Ice cream made with wine**

No person shall sell at retail individual servings of ice cream made with wine bearing or containing more than one-half of one percent but not more than five percent of alcohol by volume, unless the following statements are prominently displayed on the printed menu (or, if no printed menus are used, on the menu board or sign

setting forth the bill of fare) immediately adjacent to the listing of the item or items of wine ice cream being offered:

1. The sale of wine ice cream to individuals under the age of twenty-one is prohibited.
2. Wine ice cream contains alcohol up to five percent by volume.
3. Notice: Wine ice cream contains alcohol used as a flavoring and, as with any product that contains alcohol:
  - (a) women should not consume alcohol during pregnancy because of the risk of birth defects, and
  - (b) consumption of alcohol impairs your ability to drive a car or operate machinery, and may cause health problems.

#### **§ 1353. Food places; violations; penalties**

1. Any person or corporation, or officer thereof, violating any of the provisions of [sections thirteen hundred fifty](#) to thirteen hundred fifty-three, inclusive, of this chapter, shall be guilty of a misdemeanor.
2. The conviction of a corporation shall not relieve any officer or officers, agents or employees of such corporation from prosecution under the provisions of [sections thirteen hundred fifty](#) to thirteen hundred fifty-three, inclusive, of this chapter.

#### **§ 1354. Contracts for meat inspection**

When a board of health of a county or part county health district or a city, or a public health committee of a county has made application to the commissioner for approval of a meat inspection program and providing such application has been approved by the commissioner, the board of supervisors of any such county or the common council of any such city, may approve and enter into a contract with another county or city for inspection in such county or city which has no meat inspection program. The county or city receiving such meat inspection shall pay to the county or city doing the meat inspection an amount agreed upon but not less than the actual cost of any such meat inspection. Any county or city may accept contributions from any individual, company or corporation which receives the benefit of any meat inspection.

#### **§ 1355. Food service safety and sanitation training**

1. The commissioner shall promulgate rules and regulations (a) establishing food service safety and sanitation

training programs and providing standards therefor or (b) providing for the approval of such programs to be administered by local health officials or private parties in accordance with such rules and regulations.

2. Such regulations shall include a provision permitting private citizens working in establishments subject to the jurisdiction of the commissioner pursuant to this title to attend such training program.

**[§§ 1360 to 1364. Repealed. L.1972, c. 664, § 6]**

**[§§ 1360 to 1364. Repealed. L.1972, c. 664, § 6]**

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**[§§ 1360 to 1364. Repealed. L.1972, c. 664, § 6]**

### **§ 1370. Definitions**

When used in this title, the following words and phrases shall have the following meanings, unless the context clearly requires otherwise:

1. “Dwelling” means a building or structure or portion thereof, including the property occupied by and appurtenant to such dwelling, which is occupied in whole or in part as the home, residence or sleeping place of one or more human beings and shall, without limiting the foregoing, include child care facilities for children under six years of age, kindergartens and nursery schools.

2. “Area of high risk” means an area designated as such by the commissioner or his representative and consisting of one or more dwellings in which a condition conducive to lead poisoning of children is present.

3. “A condition conducive to lead poisoning” means: (i) paint or other similar surface-coating material containing lead in a condition accessible for ingestion or inhalation or where peeling or chipping of the paint or other similar surface-coating material occurs or is likely to occur; and (ii) other environmental conditions which may result in significant lead exposure.

4. “Program” means the lead poisoning prevention program in the department established pursuant to [section thirteen hundred seventy-a](#) of this title.

5. “Council” means the advisory council on lead poisoning prevention established pursuant to [section thirteen hundred seventy-b](#) of this title.

6. “Elevated lead levels” means a blood lead level greater than or equal to ten micrograms of lead per deciliter of whole blood or such blood lead level as may be established by the department pursuant to rule or regulation.

7. “Person” means any natural person.

### **§ 1370-a. Lead poisoning prevention program**

1. The department shall establish a lead poisoning prevention program. This program shall be responsible for establishing and coordinating activities to prevent lead poisoning and to minimize risk of exposure to lead. The department shall exercise any and all authority which may be deemed necessary and appropriate to effectuate the provisions of this title.

2. The department shall:

(a) promulgate and enforce regulations for screening children and pregnant women, including requirements for blood lead testing, for lead poisoning, and for follow up of children and pregnant women who have elevated blood lead levels;

(b) enter into interagency agreements to coordinate lead poisoning prevention, exposure reduction, identification and treatment activities and lead reduction activities with other federal, state and local agencies and programs;

(c) establish a statewide registry of lead levels of children provided such information is maintained as confidential except for (i) disclosure for medical treatment purposes; (ii) disclosure of non-identifying epidemiological data; and (iii) disclosure of information from such registry to the statewide immunization information system established by [section twenty-one hundred sixty-eight](#) of this chapter; and

(d) develop and implement public education and community outreach programs on lead exposure, detection and risk reduction.

3. The department shall identify and designate areas in the state with significant concentrations of children identified with elevated blood lead levels as communities of concern for purposes of implementing a childhood lead poisoning primary prevention program, and may, within amounts appropriated, provide grants to implement approved programs. The commissioner of health of a county or part-county health district, a county

health director or a public health director and, in the city of New York, the commissioner of the New York city department of health and mental hygiene, shall develop and implement a childhood lead poisoning primary prevention program to prevent exposure to lead-based paint hazards for the communities of concern in their jurisdiction. The department shall provide funding to the New York city department of health and mental hygiene or county health departments to implement the approved work plan for a childhood lead poisoning primary prevention program. The work plan and budget, which shall be subject to the approval of the department, shall include, but not be limited to: (a) identification and designation of an area or areas of high risk within communities of concern; (b) a housing inspection program that includes prioritization and inspection of areas of high risk for lead hazards, correction of identified lead hazards using effective lead-safe work practices and, appropriate oversight of remediation work; (c) partnerships with other county or municipal agencies or community-based organizations to build community awareness of the childhood lead poisoning primary prevention program and activities, coordinate referrals for services, and support remediation of housing that contains lead hazards; (d) a mechanism to provide education and referral for lead testing for children and pregnant women to families who are encountered in the course of conducting primary prevention inspections and other outreach activities; and (e) a mechanism and outreach efforts to provide housing inspections for lead hazards upon request. The commissioner of health of a county or part-county health district, a county health director or a public health director and, in the city of New York, the commissioner of the New York city department of health and mental hygiene, shall also enter into an agreement or subcontract with a municipal government regarding inspection of the paint conditions in dwellings built prior to nineteen hundred seventy-eight for the area defined as the community of concern and may, when qualified staff exists, designate the local housing maintenance code enforcement agency in which the community of concern is located as an agency authorized to administer the provisions of this title pursuant to [subdivision one of section thirteen hundred seventy-five](#) of this title. A portion of grant funding received to support the local primary prevention plan may be used to reduce barriers to lead testing of children and pregnant women within the communities of concern, including the purchase of lead testing devices and supplies when the need for such resources is identified within the community. The commissioner, the commissioner of health of a county or part-county health district, a county health director or a public health director and, in the city of New York, the commissioner of the New York city department of health and mental hygiene, is authorized to enter into agreements, contracts, subcontracts or memoranda of understanding with, and provide technical and other resources to, local health officials, local building code officials, real property owners, and community organizations in such areas to create and implement policies, education and other forms of community outreach to address lead exposure, detection and risk reduction. Primary prevention plans shall target children less than six years of age living in the highest risk housing in the communities of concern identified. The plans shall also take into consideration the extent the weatherization assistance program and other such programs can be used in conjunction with lead-based paint hazard risk reduction. Funding provided for this program shall be used for the activities described in this section and shall not be used for other activities required by this title.

#### **§ 1370-b. Advisory council on lead poisoning prevention**

1. The New York state advisory council on lead poisoning prevention is hereby established in the department, to consist of the following, or their designees: the commissioner; the commissioner of labor; the commissioner of environmental conservation; the commissioner of housing and community renewal; the commissioner of

children and family services; the commissioner of temporary and disability assistance; the secretary of state; the superintendent of insurance; and fifteen public members appointed by the governor. The public members shall have a demonstrated expertise or interest in lead poisoning prevention and at least one public member shall be representative of each of the following: local government; community groups; labor unions; real estate; industry; parents; educators; local housing authorities; child health advocates; environmental groups; professional medical organizations and hospitals. The public members of the council shall have fixed terms of three years; except that five of the initial appointments shall be for two years and five shall be for one year. The council shall be chaired by the commissioner or his or her designee.

2. Members of the advisory council shall serve without compensation for their services, except that each of them may be allowed necessary and actual expenses which he or she shall incur in the performance of his or her duties under this article.

3. The council shall meet as often as may be deemed necessary to fulfill its responsibilities. The council shall have the following powers and duties:

- (a) To develop a comprehensive statewide plan to prevent lead poisoning and to minimize the risk of human exposure to lead;
- (b) To coordinate the activities of its member agencies with respect to environmental lead policy and the statewide plan;
- (c) To recommend the adoption of policies with regard to the detection and elimination of lead hazards in the environment;
- (d) To recommend the adoption of policies with regard to the identification and management of children with elevated lead levels;
- (e) To recommend the adoption of policies with regard to education and outreach strategies related to lead exposure, detection, and risk reduction;
- (f) To comment on regulations of the department under this title when the council deems appropriate;
- (g) To make recommendations to ensure the qualifications of persons performing inspection and abatement of lead through a system of licensure and certification or otherwise;
- (h) To recommend strategies for funding the lead poisoning prevention program, including but not limited to ways to enhance the funding of screening through insurance coverage and other means, and ways to finan-

cially assist property owners in abating environmental lead, such as tax credits, loan funds, and other approaches; and

(i) To report on or before December first of each year to the governor and the legislature concerning the previous year's development and implementation of the statewide plan and operation of the program, together with recommendations it deems necessary and the most currently available lead surveillance measures, including the actual number and estimated percentage of children tested for lead in accordance with New York state regulations, including age-specific testing requirements, and the actual number and estimated percentage of children identified with elevated blood lead levels. Such report shall be made available on the department's website.

#### **§ 1370-c. Screening by health care providers**

1. The department is authorized to promulgate regulations establishing the means by which and the intervals at which children and pregnant women shall be screened for elevated lead levels. The department is also authorized to require screening for lead poisoning in other high risk groups.

2. Every physician or other authorized practitioner who provides medical care to children or pregnant women, shall screen children or refer them for screening for elevated lead levels at the intervals and using the methods specified in such regulations. Every licensed, registered or approved health care facility serving children including but not limited to hospitals, clinics and health maintenance organizations, shall ensure, by providing screenings or by referring for screenings, that their patients receive screening for lead at the intervals and using the methods specified in such regulations.

3. The health practitioner who screens any child for lead shall give a certificate of screening to the parent or guardian of the child.

4. The department shall establish a separate level of payment, subject to the approval of the director of the budget, for payments made by governmental agencies for screenings performed pursuant to this section by hospitals, as defined in [section twenty-eight hundred one](#) of this chapter.

#### **§ 1370-d. Lead screening of child care or pre-school enrollees**

1. Except as provided pursuant to regulations of the department, each child care provider, public and private nursery school and pre-school licensed, certified or approved by any state or local agency shall, prior to or within three months after initial enrollment of a child under six years of age, obtain from a parent or guardian of the child evidence that said child has been screened for lead.

2. Whenever there exists no evidence of lead screening as provided for in subdivision one of this section or other acceptable evidence of the child's screening for lead, the child care provider, principal, teacher, owner or person in charge of the nursery school or pre-school shall provide the parent or guardian of the child with information on lead poisoning in children and lead poisoning prevention and refer the parent or guardian to a primary care provider or the local health authority.

3. (a) If any parent or guardian to such child is unable to obtain lead testing, such person may present such child to the health officer of the county in which the child resides, who shall then perform or arrange for the required screening.

(b) The local public health district shall develop and implement a fee schedule for households with incomes in excess of two hundred percent of the federal poverty level for lead screening pursuant to [section six hundred six](#) of this chapter, which shall vary depending on patient household income.

#### **§ 1370-e. Reporting lead exposure levels**

1. Every physician or authorized practitioner shall give notice of elevated lead levels as specified by the commissioner pursuant to regulation, to the health officer of the health district wherein the patient resides, except as otherwise provided.

2. The commissioner may, by regulation, provide that cases of elevated lead levels which occur (a) in health districts of less than fifty thousand population not having a full-time health officer, or (b) in state institutions shall be reported directly to the department or its district health officer.

3. Whenever an analysis of a clinical specimen for lead is performed by a laboratory or a physician or authorized practitioner, the director of such laboratory or such physician or authorized practitioner shall, within such period specified by the commissioner report the results and any related information in connection therewith to the local and state health officer to whom a physician or authorized practitioner is required to report such cases pursuant to this section.

4. The person in charge of every hospital, clinic, or other similar public or private institution shall give notice of every child with an elevated blood lead level coming under the care of the institution to the local or state health officer to whom a physician or authorized practitioner is required to report such cases pursuant to this section.

5. The notices required by this section shall be in a form and filed in such time period as shall be prescribed by the commissioner.

### **§ 1371. Manufacture and sale of lead painted toys and furniture**

1. No person shall manufacture, sell or hold for sale a children's toy or children's furniture having paint or other similar surface-coating material thereon containing more than .06 of one per centum of metallic lead based on the total weight of the contained solids or dried paint film.
2. The commissioner of health may waive the provisions of this section in whole or in part upon a finding by the commissioner in a particular instance that there is no significant threat to the public health; with respect to miniatures the commissioner shall do so, on terms and conditions he or she shall establish, upon a final judicial or administrative finding that there is no immediate public health threat in that instance.

### **§ 1372. Use of leaded paint**

No person shall apply paint or other similar surface-coating material containing more than .06 of one per centum of metallic lead based on the total weight of the contained solids or dried paint film to any interior surface, window sill, window frame or porch of a dwelling.

### **§ 1373. Abatement of lead poisoning conditions**

1. Whenever the commissioner or his representative shall designate an area of high risk, he may give written notice and demand, served as provided herein, for the discontinuance of a paint condition conducive to lead poisoning in any designated dwelling in such area within a specified period of time.
2. Such notice and demand shall prescribe the method of discontinuance of a condition conducive to lead poisoning which may include the removal of paint containing more than one-half of one per centum of metallic lead based on the total weight of the contained solids or dried film of the paint or other similar surface-coating material from surfaces specified by the commissioner or his representative under such safety conditions as may be indicated and the refinishing of such surfaces with a suitable finish which is not in violation of [section one thousand three hundred seventy-two](#) of this title or the covering of such surfaces with such material or the removal of lead contaminated soils or lead pipes supplying drinking water as may be deemed necessary to protect the life and health of occupants of the dwelling.
3. In the event of failure to comply with a notice and demand, the commissioner or his representative may conduct a formal hearing upon due notice in accordance with the provisions of [section twelve-a](#) of this chapter and on proof of violation of such notice and demand may order abatement of a paint condition conducive to lead poisoning upon such terms as may be appropriate and may assess a penalty not to exceed two thousand five hundred dollars for such violation.
4. A notice required by this section may be served upon an owner or occupant of the dwelling or agent of the

owner in the same manner as a summons in a civil action or by registered or certified mail to his last known address or place of residence.

5. The removal of a tenant from or the surrender by the tenant of a dwelling with respect to which the commissioner or his representative, pursuant to subdivision one of this section, has given written notice and demand for the discontinuance of a paint condition conducive to lead poisoning shall not absolve, relieve or discharge any persons chargeable therewith from the obligation and responsibility to discontinue such paint condition conducive to lead poisoning in accordance with the method of discontinuance prescribed therefor in such notice and demand.

#### **§ 1374. Receivership**

1. In the event of failure to comply with an order issued pursuant to this title and containing provision for such application, the officer issuing the order may apply to a court of competent jurisdiction in the county wherein the dwelling is located for an order appointing such officer or his designee receiver of the rents of such dwelling for the purpose of effectuating the provisions of such order.

2. An application for appointment of a receiver hereunder shall be on at least ten days' notice to the owner of the dwelling, effected in the same manner as in an action to foreclose a mortgage. A receiver appointed hereunder shall not have any right superior to those of any mortgagee or lienor of record who has not had at least ten days' notice, by personal service or registered or certified mail, of the application for appointment of a receiver.

3. A receiver appointed hereunder shall have the power to collect the accrued and accruing rents of the dwelling and shall apply such collected rents to costs and expenses incurred in connection with (a) removing, replacing, repainting and covering surfaces of the dwelling necessary to effectuate the provisions of the order of abatement, (b) interim operation and management of the dwelling, (c) administration of the receivership.

4. As soon as practicable after completion of his duties, the receiver shall render a full accounting to the court and, upon payment over of any surplus moneys to the owner or other persons as the court may approve or direct and upon the order of the court, he shall be relieved of any further responsibility or liability in connection with his receivership.

#### **§ 1375. Enforcement agencies**

1. The commissioner's designee having jurisdiction, county and city commissioners of health and local housing code enforcement agencies designated by the commissioner's designee having jurisdiction or county or city commissioner of health shall have the same authority, powers and duties within their respective jurisdictions as has the commissioner under the provisions of this title.

2. The commissioner or his representative and an official or agency specified in subdivision one of this section may request and shall receive from all public officers, departments and agencies of the state and its political subdivisions such cooperation and assistance as may be necessary or proper in the enforcement of the provisions of this title.

3. Nothing contained in this title shall be construed to alter or abridge any duties and powers now or hereafter existing in the commissioner, county boards of health, city and county commissioners of health, the New York City department of housing preservation and development and the department of health, local boards of health or other public agencies or public officials, or any private party.

**[§ 1376. Repealed. L.1992, c. 485, § 5, eff. April 1, 1993]**

#### **§ 1376-a. Sale of consumer products containing lead or cadmium**

1. In the absence of a federal standard for a specific type of product, the commissioner shall establish the maximum quantity of lead or cadmium (and the manner of testing therefor) which may be released from glazed ceramic tableware, crystal, china and other consumer products. Such maximum quantity shall be based on the best available scientific data and shall insure the safety of the public by reducing its exposure to lead and cadmium to the lowest practicable level. The commissioner may amend such maximum quantity (and the manner of testing therefor) where necessary or appropriate for the safety of the public. Until such maximum quantity of lead or cadmium established by the commissioner is effective, no glazed ceramic tableware shall be offered for sale which releases lead in excess of 7 parts per million, or cadmium in excess of .5 parts per million.

2. The commissioner is hereby empowered to order the recall of or confiscation of glazed ceramic tableware, crystal, china or other consumer products offered for sale which do not meet the standards set forth in or pursuant to this section.

3. The commissioner of health may waive the provisions of this section in whole or in part upon a finding by the commissioner in a particular instance that there is no significant threat to the public health; with respect to miniatures the commissioner shall do so, on terms and conditions he or she shall establish, upon a final judicial or administrative finding that there is no immediate public health threat in that instance.

#### **§ 1380. Definitions**

As used in this title:

1. "Solid waste management facility" means any area or site, structure, facility or equipment used for or in connection with methods including, but not limited to shredding, compression, high-temperature incineration,

pyrolyzation, separation or any other technology for resource recovery, transporting, storing, or the final placement and disposal of solid wastes in a manner satisfactory to the commissioner.

2. "Municipality" means a town, city, county, or village or any designated public agency thereof, or any two or more of the foregoing which are acting jointly in connection with a solid waste management facility, or a public authority.

3. "Commissioner" means the commissioner of environmental conservation of the state of New York.

### **§ 1381. State aid**

1. The commissioner may in the name of the state make or contract to make, within the limitation of the appropriations therefor, a state grant for payment to any municipality or to two or more municipalities jointly of not more than fifty per cent of the entire cost of the preparation of detailed plans, including consideration of recycling technology, ultimate land use, and environmental impact, for the construction of new solid waste management facilities or the improvement of existing solid waste management facilities, as determined and approved by the commissioner.

2. Payments authorized pursuant to this title shall be made in two apportionments, as follows:

(a) the first payment, not to exceed fifty per cent of the total grant, shall be payable when acceptable detailed plans are approved by the commissioner, and

(b) the balance of the grant shall be payable when construction contracts are awarded, or when construction begins, whichever occurs first.

### **§ 1382. Powers and duties of the commissioner**

In administering and enforcing the provisions of this title, the commissioner shall:

1. make an estimate of funds or appropriations for inclusion annually in the executive budget;
2. receive applications for state aid in such form and containing such information as he may require;
3. qualify municipalities for state aid and advise them concerning such qualifications;

4. approve detailed plans submitted by the applicant for the construction of solid waste management facilities or for improvement of existing solid waste management facilities where the same are found to be consistent with sound, comprehensive solid waste management planning, take into adequate account the feasibility of a recycling facility to shred, compress, pyrolize, separate or otherwise process the solid waste for resource recovery, the potential resources to be recovered, ultimate land use and are otherwise acceptable to him; provided, however, plans further:

- a. describe the components of the solid waste estimated to be generated, by weight or volume;
  - b. describe the proposed method of transporting to be utilized from its source to the solid waste management facility, and the estimated cost therefor;
  - c. detail the separation techniques proposed to be utilized at the solid waste management facility; and
  - d. specify what and where the available markets are for recovered materials within the region covered by the plan, and/or within fifty miles outside the region covered by the plan;
5. approve vouchers for payment of state aid grants;
6. perform such other and further acts and promulgate such rules and regulations as may be necessary, proper or desirable to carry out effectively the provisions of this title.

### **§ 1383. Powers of municipalities**

Any municipality or municipalities acting jointly may:

1. apply to and contract with the commissioner for state aid pursuant to this title;
2. enter into contracts for consulting engineering services for the preparation of detailed plans for the construction of solid waste management facilities or the improvement of existing solid waste management facilities; provided, however, the contract cost negotiated between the person or firm chosen to perform the consulting engineering services or market research and the applicant for state aid under this title shall be subject to the approval of the commissioner;
3. expend money received from the state pursuant to this title only for purposes consistent therewith.

**§ 1384. New York state toxic mold task force**

1. The New York state toxic mold task force is hereby established. The task force shall:

(a) assess, based on scientific evidence, the nature, scope and magnitude of the adverse environmental and health impacts caused by toxic mold in the state;

(b) measure, based on scientific evidence, the adverse health effects of exposure to molds on the general population, including specific effects on subgroups identifiable as being at greater risk of adverse health effects when exposed to molds;

(c) identify actions taken by state, and local governments, and other entities;

(d) assess the latest scientific data on exposure limits to mold in indoor environments;

(e) determine methods for the control of mold in a cost-effective and environmentally sound manner and identify measures to mitigate mold; and

(f) prepare a report to the governor and the legislature that assesses the current body of knowledge on toxic mold, provides the status of toxic mold in the state, and assesses the feasibility of any further actions to be taken by the legislature or state agencies as recommended by the task force.

2. For purpose of this title, the term “mold” shall mean any form of multicellular fungi that live on plant or animal matter and in indoor environments. Types of mold shall include, but not be limited to, cladosporium, alternaria, aspergillus, trichoderma, memnoniella, mucor, and stachybotrys chartarum, often found in water damaged building materials.

3. The task force shall issue its findings, in the form of a report, no later than November thirtieth, two thousand six.

4. The task force shall consist of a total of fourteen members and shall include the commissioner and the secretary of state or their designees. The commissioner and the secretary of state shall select the task force's twelve at-large members from each of the following: SUNY college of environmental science and forestry, New York Indoor Environmental Quality Center, Inc., New York city department of health and mental hygiene, NY STAR Center for Environmental Quality Systems, public health officer, environmental health officer, certified public health engineer, pediatric environmental health specialist, a person with an expertise in toxicology, a person with an expertise in mycology, a person with expertise in mold abatement from a labor organization that represents workers performing mold abatement and a person with expertise in real estate management, including building repair, renovation or rehabilitation of multi-family and single family resid-

ences.

5. The commissioner and the secretary of state or their designees shall serve as joint chairs of the task force.

6. The task force may consult with any organization, educational institution, governmental agency, or person including, but not limited to, the United States department of health and human services, the United States environmental protection agency, and the occupational safety and health administration.

7. The commissioner and the secretary of state may reconvene the task force, with the same or different members, after issuance of the report, to address any toxic mold issues.

8. The members of the task force shall serve without compensation, except that at-large members shall be allowed their necessary and actual expenses incurred in the performance of their duties under this title.

#### **§ 1385. Legislative intent**

Sites formerly operated as landfills to dispose of toxic substances are exposing the citizens of the state to unnecessary hazards, the duration and extent of which is unknown. To develop a plan for the alleviation of these conditions, it is necessary to conduct a study to determine the extent of such hazards. The potential hazard believed to exist at a specific landfill site in the county of Niagara, has precipitated the need for immediate action to authorize the department of health to undertake such study and to conduct a pilot program to evaluate the effect of individual corrective systems in affected residences.

#### **§ 1386. Duties of the commissioner**

The commissioner of health shall conduct a study of both the long and the short term effects of health hazards associated with exposure to toxic substances emanating from certain landfills.

#### **§ 1387. Contracts**

The commissioner of health is authorized to enter into contracts and agreements with individuals, corporations and municipalities to perform the study herein directed to alleviate the specific hazard to which the general public or members thereto may be exposed as the result of toxic substances emanating from landfills.

#### **§ 1388. Powers of the commissioner; emergencies**

In case of great and imminent peril to the health of the general public from such hazards as may be identified

as resulting from exposure to toxic substances emanating from landfills, the commissioner may declare the existence of an emergency and take such measures and do such acts as he may deem reasonably necessary and proper for the preservation and protection of the public health.

### **§ 1389. Reports**

The commissioner of health shall make an initial report to the governor and the legislature on or before September fifteenth, nineteen hundred seventy-eight of his progress and a further report to the governor and the legislature on or before April first, nineteen hundred eighty-one.

### **§ 1389-a. Definitions**

1. "Hazardous waste" means hazardous waste as defined in [section 27-1301 of the environmental conservation law](#).
2. "Inactive hazardous waste disposal site" means an inactive hazardous waste disposal site as that term is defined in [section 27-1301 of the environmental conservation law](#).
3. "Inactive hazardous waste disposal site remedial program" means an inactive hazardous waste disposal site remedial program as that term is defined in [section 27-1301 of the environmental conservation law](#).
4. "Person" means an individual, trust, firm, joint venture, joint stock company, corporation, limited liability company, partnership, association, state, municipality, commission, political subdivision of a state, public benefit corporation, or any interstate body. Provided, however for the purposes of this title, a person shall not include a person as defined in [section one thousand three hundred eighty-nine-e](#) of this title.
5. "Waste" shall have the same meaning as set forth in [section 27-1301 of the environmental conservation law](#).

### **§ 1389-b. Powers of the commissioner**

1. (a) The department shall be responsible for assessing (i) serious health problems at and in the immediate vicinity of inactive hazardous waste disposal sites and (ii) any health problems deemed by the department to be related to conditions at such sites.  
  
(b) [Section eight of the court of claims act](#) or any other provision of law to the contrary notwithstanding, the state shall be immune from liability and action with respect to any act or omission done in the discharge of the department's responsibility pursuant to this title; provided, however, that this subdivision shall not limit any li-

ability which may otherwise exist for unlawful, willful or malicious acts or omissions on the part of the state, state agencies, their officers, employees or agents, or for ownership or responsibility for the disposal of hazardous waste, including the cost of cleanup, pursuant to this section or [section 27-1313 of the environmental conservation law](#).

2. Whenever there is a condition dangerous to life or health resulting from an inactive hazardous waste disposal site, the commissioner shall immediately declare the existence of such condition. After the issuance of any such declaration and throughout the time period during which such a declaration is effective, the department shall be responsible for (a) monitoring such inactive hazardous waste disposal sites, (b) approving proposed inactive hazardous waste disposal site remedial programs for such sites and (c) certifying the completion of inactive hazardous waste disposal site remedial programs for such sites.

3. (a) Whenever the commissioner has issued such a declaration and throughout the time period during which such a declaration is effective, the commissioner may request the commissioner of environmental conservation pursuant to paragraph (b) of subdivision five of this section and within the funds available to the department of environmental conservation to develop an inactive hazardous waste disposal site remedial program for such site and/or, in addition to any other powers he may have, order the owner of such site and/or any person responsible for the disposal of hazardous wastes at such site (i) to develop an inactive hazardous waste disposal site remedial program for such site subject to the approval of the department and (ii) to implement such program within reasonable time limits specified in the order. Such order shall supersede any order issued by the commissioner of environmental conservation pursuant to [section 27-1313 of the environmental conservation law](#).

(b) Whenever the commissioner has issued such a declaration and further finds that it would be prejudicial to the public interest to delay action until an opportunity for a hearing can be provided pursuant to this title, the department may request, pursuant to paragraph c of subdivision five of this section and within the funds available to the department of environmental conservation, the department of environmental conservation to develop and implement an inactive hazardous waste disposal site remedial program for such site. The finding required pursuant to this paragraph may be made by the commissioner on an ex parte basis subject to judicial review.

4. Any order issued pursuant to subdivision three of this section shall be issued only after notice and the opportunity for hearing is provided to the persons who may be the subject of such order. The commissioner shall determine which persons are responsible pursuant to said subdivision according to applicable principles of statutory or common law liability. Such persons shall be entitled to raise any statutory or common law defenses at any such hearing and such defenses shall have the same force and effect at such hearings as they would have in a court of law. In the event a hearing is held, no order shall be issued by the commissioner under subdivision three of this section until a final decision has been rendered. Any such order shall be reviewable pursuant to article seventy-eight of the civil practice law and rules within thirty days after service of said order. The commissioner may request the participation of the attorney general in such hearings.

5. (a) Whenever a person ordered to eliminate a condition dangerous to life or health has failed to do so within the time specified in the order, the department of environmental conservation shall develop and implement or cause to be implemented, pursuant to a memorandum of understanding between the department and the department of environmental conservation, an inactive hazardous waste disposal site remedial program for such site. The expense of developing and implementing such remedial program by the department, the department of environmental conservation or any other state agency shall be paid by the person to whom the order was issued.

(b) In the event that the commissioner has issued a declaration that hazardous wastes at a site constitute a condition dangerous to life or health, but after a reasonable attempt to determine who may be responsible is either unable to determine who may be responsible, or is unable to locate a person who may be responsible, the department of environmental conservation may develop and implement an inactive hazardous waste disposal site remedial program for such site. The commissioner shall make every effort, in accordance with the requirements for notice, hearing and review provided for in this title, to secure appropriate relief from the owner of such site and/or any person responsible for the disposal of hazardous wastes at such site, including, but not limited to, development and implementation of an inactive hazardous waste disposal site remedial program, payment of the cost of such a program, recovery of any reasonable expenses incurred by the state, money damages and penalties.

(c) Whenever the commissioner has made a declaration and finding pursuant to paragraph (b) of subdivision three of this section the department may request the department of environmental conservation to develop and implement an inactive hazardous waste disposal site remedial program to contain, alleviate or end the threat to life or health. The commissioner shall make every effort, in accordance with the requirements for notice, hearing and review provided for in this title, to secure appropriate relief from the owner or operator of such site and any person responsible for the disposal of hazardous wastes at such site, including but not limited to, development and implementation of an inactive hazardous waste disposal site remedial program, payment of the cost of such a program, recovery of any reasonable expenses incurred by the state, money damages and penalties.

6. Nothing contained within this section shall be construed as impairing or in any manner affecting the right or jurisdiction of the attorney general to seek appropriate relief pursuant to his statutory or common law authority.

7. If the person failing to comply with such order to eliminate a condition dangerous to life or health is a municipality, commission or political subdivision of the state, the comptroller shall, upon certification by the department subject to the approval of the director of the division of the budget of the expense of any action taken by the department, the department of environmental conservation or any other state agency pursuant to subdivision five of this section and upon notification to the affected person, deduct and withhold from the next succeeding allotments, payments or apportionments of local assistance aid, other than education aid, to such municipality, commission or political subdivision of the state an amount or amounts equal to the amount expended by the department, the department of environmental conservation or any other state agency and not paid.

Prior to such approval by the director of the division of the budget, the director shall (a) develop a schedule of deductions and withholdings that will ensure the continuity of essential services by such municipality, commission or political subdivision of the state and (b) give thirty days written notice of such deductions and withholdings to the speaker and minority leader of the assembly, the majority and minority leaders of the senate and the chairmen and ranking minority members of the senate finance committee and the assembly ways and means committee. Such deductions or withholdings will in no case take effect before one full fiscal year of the affected person after the date of such approval by the director of the division of the budget shall have elapsed. The state, by virtue of such deductions or withholdings, shall not be obligated to pay any additional or increased allotments, payments or apportionments of state aid. Allotments, payments or apportionments withheld pursuant to this subdivision shall be credited to the general fund of the state.

8. Moneys for actions taken or to be taken by the department, the department of environmental conservation or any other state agency in connection with the elimination of conditions dangerous to life or health pursuant to subdivision five of this section, including any inspection or sampling of wastes, soils, air, surface water and groundwater done upon behalf of a state agency whether or not such action is taken prior to the issuance of a declaration pursuant to subdivision two of this section, shall be payable directly to such agencies from the hazardous waste remedial fund pursuant to [section ninety-seven-b of the state finance law](#).

#### **§ 1389-c. Rules and regulations**

The department shall have the power to make rules and regulations necessary and appropriate to carry out the purposes of this title. Any such regulations shall include provisions which establish the procedures for a hearing, pursuant to [subdivision four of section thirteen hundred eighty-nine-b](#) of this article. Such provision shall ensure a division of functions between the commissioner, the staff who present the case and any hearing officers appointed.

#### **§ 1389-d. New use of sites**

Subsequent to the adoption of regulations by the department of environmental conservation pursuant to [section 27-1317 of the environmental conservation law](#), no person may substantially change the manner in which an inactive hazardous waste disposal site on the registry prepared and maintained by the department of environmental conservation pursuant to [section 27-1305 of the environmental conservation law](#) is used, without notifying the department and, pursuant to [section 27-1317 of the environmental conservation law](#), the department of environmental conservation. A substantial change of use shall be defined in rules and regulations adopted by the department of environmental conservation and shall include, but not be limited to, the erection of a building or other structure on such site, the paving of such site for use as a roadway or parking lot, and the creation of a park or other public or private recreational facility on such site. Such notice shall be in writing, addressed to the commissioner and the commissioner of environmental conservation and shall include a brief description of the proposed change of use. Such notice shall be submitted at least sixty days before any physical alteration of the land or construction shall occur or, in the event any alteration or construction is not re-

quired to initiate such change of use, at least sixty days before any change of use.

Subsequent to the adoption of regulations by the department of environmental conservation pursuant to [section 27-1317 of the environmental conservation law](#), no person may substantially change the manner in which an inactive hazardous waste disposal site, for which a declaration has been issued by the commissioner pursuant to [subdivision two of section one thousand three hundred eighty-nine-b](#) of this title, is used without the written approval of the commissioner. The commissioner shall not approve such change of use if such new use will expose persons to a significantly increased danger to life or health.

#### **§ 1389-e. Liability exemptions and defenses**

1. Lender exemption. (a) For purposes of this title no lender shall incur any liability from any statutory claims of the state as an owner or operator of a site, or a person responsible for the disposal of a hazardous waste at such site, provided such lender, without participating in the management of such site, holds indicia of ownership primarily to protect the lender's security interest in the site or, if such lender did not participate in the management of such site prior to a foreclosure on such site, notwithstanding that such lender:

(1) forecloses on such site; and

(2) after foreclosure, sells, releases (in the case of a lease finance transaction), or liquidates such site, maintains business activities, winds up operations, or takes any other measure to preserve, protect or prepare such site prior to sale or disposition; provided, however, that such lender shall take actions to sell, release (in the case of a lease finance transaction), or otherwise divest itself of such site at the earliest practicable, commercially reasonable time, on commercially reasonable terms, taking into account market conditions and legal and regulatory requirements.

(b) This exemption shall not apply to any lender that has caused or contributed to the release or threatened release of a hazardous waste from or onto the site, or to any lender that generated, transported, or disposed of, arranged for, or that caused the generation, transportation, or disposal of hazardous waste from or onto such site.

(c) For purposes of this section:

(1) The term "participating in management" means actually participating in the management or operational affairs of a site and does not include merely having the capacity to influence, or the unexercised right to control, site operations.

(i) A lender who holds indicia of ownership primarily to protect a security interest in such site shall be con-

sidered to participate in management only if, while the borrower is in possession of such site encumbered by the security interest, the lender:

(A) exercises decision making control over the environmental compliance related to such site, such that the lender has undertaken responsibility for the hazardous waste handling or disposal practices related to such site; or

(B) exercises control at a level comparable to that of a manager of such site, such that the lender has assumed or manifested responsibility:

(I) for the overall management of such site encompassing day-to-day decision making with respect to environmental compliance; or

(II) over all or substantially all of the operational functions, excluding financial or administrative functions, of such site other than the function of environmental compliance.

(ii) The term “participate in management” does not include:

(A) Performing an act or failing to act prior to the time at which a security interest is created in a site;

(B) Holding a security interest or abandoning or releasing a security interest;

(C) Including in the terms of an extension of credit, or in a contract or security agreement relating to such extension, a covenant, warranty, or other term or condition that relates to environmental compliance;

(D) Monitoring or enforcing the terms and conditions of the extension of credit or security interest;

(E) Monitoring or undertaking one or more inspections of such site;

(F) Requiring a response action or other lawful means of addressing the release or threatened release of a hazardous waste in connection with such site prior to, during, or on the expiration of the term of the extension of credit;

(G) Providing financial or other advice or counseling in an effort to mitigate, prevent, or cure default or diminution in the value of such site;

- (H) Restructuring, renegotiating, or otherwise agreeing to alter the terms and conditions of the extension of credit or security interest, exercising forbearance;
- (I) Exercising other remedies that may be available under applicable law for the breach of a term or condition of the extension of credit or security agreement; or
- (J) Conducting a response action under [42 U.S.C. Section 9607\(d\)](#) or under the direction of an on-scene coordinator appointed under the national contingency plan if the actions do not rise to the level of participating in management within the meaning of this subparagraph.
- (2) The term “extension of credit” includes a lease finance transaction:
- (i) In which the lessor does not initially select the leased site and does not during the lease term control the daily operations or maintenance of such site; or
- (ii) That conforms with regulations issued by the appropriate federal banking agency or the appropriate state bank supervisor (as those terms are defined in section 3 of the federal deposit insurance act ([12 U.S.C. 1813](#))) or with regulations issued by the national credit union administration board, as appropriate.
- (3) The term “financial or administrative function” includes a function such as that of a credit manager, accounts payable officer, accounts receivable officer, personnel manager, comptroller, or chief financial officer, or a similar function.
- (4) The terms “foreclosure” and “foreclose” mean, respectively, acquiring and to acquire, a site through:
- (i) Purchase at sale under a judgment or decree, power of sale, or nonjudicial foreclosure sale;
- (ii) A deed in lieu of foreclosure or similar conveyance from a trustee;
- (iii) Repossession if such site was security for an extension of credit previously contracted;
- (iv) Conveyance pursuant to an extension of credit previously contracted, including the termination of a lease agreement; or
- (v) Any other formal or informal manner by which the lender acquires, for subsequent disposition, title to or possession of a site in order to protect the lender's security interest.

(5) The term “lender” means:

(i) An insured depository institution as defined in section 3 of the federal deposit insurance act ([12 U.S.C. 1813](#));

(ii) An insured credit union as defined in section 101 of the federal credit union act ([12 U.S.C. 1752](#));

(iii) A bank or association chartered under the farm credit act of 1971 ([12 U.S.C. 2001 et seq.](#));

(iv) A leasing or trust company that is an affiliate of an insured depository institution;

(v) Any person, including a successor or assignee of any such person, that makes a bona fide extension of credit to or takes or acquires a security interest from a nonaffiliated person;

(vi) The federal national mortgage association, the federal home loan mortgage corporation, the federal agricultural mortgage corporation, or any other entity that in a bona fide manner buys or sells loans or interests in loans;

(vii) A person that insures or guarantees against a default in the repayment of an extension of credit, or acts as a surety with respect to an extension of credit, to a nonaffiliated person; and

(viii) A person that provides title insurance and that acquires a site as a result of assignment or conveyance in the course of underwriting claims and claims settlement.

(6) The term “operational function” includes a function such as that of a site or plant manager, operations manager, chief operating officer, or chief executive officer.

(7) The term “security interest” includes a right under a mortgage, deed of trust, assignment, judgment, lien, pledge, security agreement, factoring agreement, or lease, and any other right accruing to a person to secure the repayment of money, the performance of a duty, or any other obligation by a nonaffiliated person.

2. Municipal exemption. (a) For the purposes of this title no public corporation shall incur any liability from any statutory claims of the state as an owner or operator of a site, or a person responsible for the disposal of a hazardous waste at such site, if such public corporation acquired such site involuntarily, and such public corporation retained such site without participating in the development of such site.

(b) This exemption shall not apply to any public corporation that has caused or contributed to the release or

threatened release of a hazardous waste from or onto the site, or to any public corporation that generated, transported, or disposed of, arranged for, or that caused the generation, transportation, or disposal of hazardous waste, from or onto the site.

(c) When used in this section:

(1) “Public corporation” means a public corporation as defined in [section sixty-five of the general construction law](#), a local public authority, supervisory district, improvement district within a county, city, town, or village, or Indian nation or tribe recognized by the state or the United States with a reservation wholly or partly within the boundaries of New York state, or any combination thereof.

(2) “Involuntary acquisition of ownership or control” includes but is not limited to the following:

(i) Acquisitions by a public corporation in its sovereign capacity, including but not limited to acquisitions pursuant to abandonment proceedings or bequest;

(ii) Acquisitions by a public corporation, or its agent, acting as a conservator or receiver pursuant to a clear and direct statutory mandate or regulatory authority;

(iii) Acquisitions of assets through foreclosure and its equivalents, or otherwise, by a public corporation in the course of administering a loan, loan guarantee, tax lien, or tax forbearance agreement, or loan insurance program; or

(iv) Acquisitions by a public corporation pursuant to seizure, injunction, condemnation, or forfeiture authority; provided that such ownership or control is not retained primarily for investment purposes.

(d) For the purpose of this section, the terms “foreclosure” and “foreclose” mean, respectively, acquiring or to acquire a brownfield site through:

(1) purchase at sale under a judgment or decree, power of sale, or non-judicial foreclosure sale;

(2) a deed in lieu of foreclosure, or similar conveyance, or abandonment from a person or trustee;

(3) conveyance pursuant to an extension of credit or tax forbearance previously contracted; or

(4) any other formal or informal manner by which a person acquires, for subsequent disposition, title to or possession of a site in order to protect the security interest of the public corporation or lender.

(e) "Participating in development" means the carrying out, or causing or permitting the carrying out, of any above-grade improvements to the site or any other environmental investigation or remediation, except for those improvements which are part of a site remedial program pursuant to this article or in furtherance of site safety, such as fencing or lighting, but does not include licensing, regulatory oversight, or the mere capacity to regulate or influence, or the unexercised right to control the operation of the property. For purposes of this section, participating in development does not include:

- (1) having the capacity to influence management of a site;
- (2) having the unexercised right to control or to regulate the site or operations thereof;
- (3) holding, abandoning, or releasing a security interest or tax lien on such site;
- (4) including a condition relating to environmental compliance in a contract, permit, license, or security agreement;
- (5) monitoring or enforcing the terms and conditions of an agreement or tax forbearance agreement;
- (6) monitoring or undertaking one or more inspections of a site including, but not limited to, boring test wells;
- (7) exercising other remedies available under applicable laws;
- (8) licensing, permitting, or granting permits, certificates of occupancy and variances as allowed by law and/or regulation;
- (9) applying for or participating in federal or state statutory programs or benefits; or
- (10) declining to take any of the actions described in subparagraphs one through nine of this paragraph.

(f) Any public corporation that has taken possession of a site shall notify the department of any release of hazardous waste within ten days of obtaining actual knowledge of such release, unless a shorter notice period is required under any other provision of law, in which case the shorter notice period controls. Failure to notify the department within the ten day or shorter notification period shall result in the loss of the exemption set forth in this section.

3. Fiduciary liability cap. For the purpose of this title, liability on the part of a fiduciary shall not exceed the assets held in the fiduciary capacity if such person is not liable independently of such person's ownership as a

fiduciary or actions taken in a fiduciary capacity including, but not limited to, the fiduciary's negligently causing or contributing to the release or threatened release of hazardous waste at such site.

(a) For purposes of this subdivision:

(1) the term "fiduciary" means a person acting for the benefit of another party as a bona fide trustee; executor; administrator; custodian; guardian of estates or guardian ad litem; receiver; conservator; committee of estates of incapacitated person; personal representative; trustee (including a successor to a trustee) under an indenture agreement, trust agreement, lease, or similar financing agreement, for debt securities, certificates of interest or certificates of participation in debt securities, or other forms of indebtedness as to which the trustee is not, in the capacity of trustee, the lender; or representative in any other capacity that the department, after providing public notice, determines to be similar to the various capacities previously described in this paragraph; and does not include either a person that is acting as a fiduciary with respect to a trust or other fiduciary estate that was organized for the primary purpose of, or is engaged in, actively carrying on a trade or business for profit, unless the trust or other fiduciary estate was created as part of, or to facilitate, one or more estate plans or because of the incapacity of a natural person or a person that acquires ownership or control of a property with the objective purpose of avoiding liability of the person or any other person.

(2) the term "fiduciary capacity" means the capacity of a person in holding title to a property, or otherwise having control of or an interest in a property, pursuant to the exercise of the responsibilities of the person as a fiduciary.

(b) Nothing in this subdivision affects the rights or immunities or other defenses that are available under law that are applicable to a person subject to this section; or creates any liability for a person or a private right of action against a fiduciary or any other person.

(c) Nothing in this subdivision applies to a person if that person acts in a capacity other than that of a fiduciary or in a beneficiary capacity and in that capacity, directly or indirectly, benefits from a trust or fiduciary relationship; or is a beneficiary and a fiduciary with respect to the same fiduciary estate and, as a fiduciary, receives benefits that exceed customary or reasonable compensation, and incidental benefits, permitted under other applicable law.

(d) This subdivision does not preclude a claim under this chapter against the assets of the estate or trust administered by the fiduciary; or a nonemployee agent or independent contractor retained by a fiduciary.

4. Affirmative defenses. (a) There shall be no liability under this title for a person otherwise liable who can establish by a preponderance of the evidence that the significant threat to the environment attributable to hazardous waste disposed at an inactive hazardous waste disposal site was caused solely by: (1) an act of God; (2) an act of war; or (3) an act or omission of a third party other than an employee or agent of such person, or than

one whose act or omission occurs in connection with a contractual relationship existing directly or indirectly with such person (except where the sole contractual arrangement arises from a published tariff and acceptance for carriage by a common carrier or rail), if such person establishes by a preponderance of the evidence that: (i) such person exercised due care with respect to the hazardous waste concerned, taking into consideration the characteristics of such hazardous waste, in light of all relevant facts and circumstances, and (ii) took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions; or any combination of them.

(b) For purposes of this section, (1) the term “act of God” means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight, (2) the term “contractual relationship” includes, but is not limited to, land contracts, deeds, or other instruments transferring title or possession, unless the real property on which the site concerned is located was acquired by such person after the disposal or placement of the hazardous waste on, in, or at such site, and such person establishes one or more of the circumstances described in clause (i), (ii), or (iii) of this subparagraph by a preponderance of the evidence:

(i) At the time such person acquired the site, such person did not know and had no reason to know that any hazardous waste which is the subject of the significant threat determination was disposed of on, in, or at the site; or

(ii) Such person is a government entity which acquired the site by escheat, or through any other involuntary transfer or acquisition or through the exercise of eminent domain authority by purchase or condemnation; or

(iii) Such person acquired the site by inheritance or bequest. In addition to establishing the foregoing, the person must establish that he or she has satisfied the requirements of clauses (i) and (ii) of subparagraph three of paragraph (a) of this subdivision, provides full cooperation, assistance, and site access to the persons that are authorized to conduct remedial actions at the site (including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial remedial action at the site), is in compliance with any land use restrictions established or relied on in connection with the remedial action at a site, and does not impede the effectiveness or integrity of any institutional and/or engineering control employed at the site in connection with a remedial action.

(c)(1) To establish that the person had no reason to know of the matter described in clause (i) of subparagraph two of paragraph (b) of this subdivision, the person must demonstrate to a court that:

(i) on or before the date on which the person acquired the site, the person carried out all appropriate inquiries, as provided in subparagraphs two and four of this paragraph, into the previous ownership and uses of the site in accordance with generally accepted good commercial and customary standards and practices; and

(ii) the person took reasonable steps to:

(A) stop any continuing release;

(B) prevent any threatened future release; and

(C) prevent or limit any human, environmental, or natural resource exposure to any previously released hazardous waste.

(2) Not later than one year after the effective date of this section, the commissioner shall by regulation establish standards and practices for the purpose of satisfying the requirement to carry out all appropriate inquiries [FN1] under subparagraph one of this paragraph.

(3) In promulgating regulations that establish the standards and practices referred to in subparagraph two of this paragraph, the commissioner shall include each of the following:

(i) the results of an inquiry by an environmental professional;

(ii) interviews with past and present owners, operators, and occupants of the site for the purpose of gathering information regarding the potential for contamination at the site;

(iii) reviews of historical sources, such as chain of title documents, aerial photographs, building department records, and land use records, to determine previous uses and occupancies of the real property since the property was first developed;

(iv) searches for recorded environmental cleanup liens against the site that are filed under federal, state, or local law;

(v) reviews of federal, state, and local government records, waste disposal records, underground storage tank records, and hazardous waste handling, generation, treatment, disposal, and spill records, concerning contamination at or near the site;

(vi) visual inspections of the site and of adjoining properties;

(vii) specialized knowledge or experience on the part of the person;

(viii) the relationship of the purchase price to the value of the property, if the property was not contaminated;

(ix) commonly known or reasonably ascertainable information about the property;

(x) the degree of obviousness of the presence or likely presence of contamination at the property, and the ability to detect the contamination by appropriate investigation.

(4)(i) With respect to property purchased before May thirty-first, nineteen hundred ninety-seven, in making a determination with respect to a person described in subparagraph one of this paragraph a court shall take into account:

(A) any specialized knowledge or experience on the part of the person;

(B) the relationship of the purchase price to the value of the property, if the property was not contaminated;

(C) commonly known or reasonably ascertainable information about the property;

(D) the obviousness of the presence or likely presence of contamination at the property; and

(E) the ability of the person to detect the contamination by appropriate inspection.

(ii) With respect to property purchased on or after May thirty-first, nineteen hundred ninety-seven, and until the commissioner of environmental conservation promulgates the regulations described in subparagraph two of this paragraph, the procedures of the American Society for Testing and Materials, including the document known as "Standard E1527-97", entitled 'Standard Practice for Environmental Site Assessment: Phase 1 Environmental Site Assessment Process', shall satisfy the requirements in subparagraph one of this paragraph.

(5) In the case of property for residential use or other similar use purchased by a nongovernmental or noncommercial entity, a site inspection and title search that reveal no basis for further investigation shall be considered to satisfy the requirements of this subparagraph.

(d) Nothing in this subdivision shall diminish the liability of any previous owner or operator of the site who would otherwise be liable under this title. Notwithstanding this subdivision, if such person obtained actual knowledge of the release or threatened release of a hazardous waste at the site when such person owned the site and then subsequently transferred ownership of the site to another person without disclosing such knowledge, such person shall be treated as a person responsible for the disposal of hazardous waste at the site, and no defense under this subdivision shall be available to such person. Nothing in this subdivision shall affect the

liability under this section of a person who, by any act or omission, caused or contributed to the release or threatened release of a hazardous waste which is the subject of such proceeding relating to such site.

[FN1] So in original (“inquires” should be “inquiries”).

#### § 1389-aa. Definitions

1. “Regulated medical waste” shall mean any of the following waste which is generated in the diagnosis, treatment or immunization of human beings or animals, in research pertaining thereto, or in production and testing of biologicals, provided, however, that “regulated medical waste” shall not include any hazardous waste identified or listed pursuant to [section 27-0903 of the environmental conservation law](#), or any household waste as defined in regulations promulgated under such section.

(a) Cultures and stocks. This waste shall include cultures and stocks of agents infectious to humans, and associated biologicals, cultures from medical or pathological laboratories, cultures and stocks of infectious agents from research and industrial laboratories, wastes from the production of biologicals, discarded live or attenuated vaccines, or culture dishes and devices used to transfer, inoculate or mix cultures.

(b) Human pathological wastes. This waste shall include tissue, organs, and body parts (except teeth and the contiguous structures of bone and gum), body fluids that are removed during surgery, autopsy, or other medical procedures, or specimens of body fluids and their containers, and discarded material saturated with such body fluids other than urine, provided that the commissioner, by duly promulgated regulation, may exclude such discarded material saturated with body fluids from this definition if the commissioner finds that it does not pose a significant risk to public health. This waste shall not include urine or fecal materials submitted for other than diagnosis of infectious diseases.

(c) Human blood and blood products. This waste shall include: (i) discarded waste human blood, discarded blood components (e.g. serum and plasma) containers with free flowing blood or blood components or discarded saturated material containing free flowing blood or blood components; and (ii) materials saturated with blood or blood products provided that the commissioner, by duly promulgated regulation, may exclude such material saturated with blood or blood products from this definition if the commissioner finds that it does not pose a significant risk to public health.

(d) Sharps. This waste shall include but not be limited to discarded unused sharps and sharps used in animal or human patient care, medical research, or clinical or pharmaceutical laboratories, hypodermic, intravenous, or other medical needles, hypodermic or intravenous syringes to which a needle or other sharp is still attached, Pasteur pipettes, scalpel blades, or blood vials. This waste shall include, but not be limited to, other types of broken or unbroken glass (including slides and cover slips) in contact with infectious agents. This waste shall not include those parts of syringes from which sharps are specifically designed to be easily removed and from which sharps have actually been removed, and which are intended for recycling or other disposal, so long as

such syringes have not come in contact with infectious agents.

(e) Animal waste. This waste shall mean discarded materials, including carcasses, body parts, body fluids, blood, or bedding originating from animals known to be contaminated with infectious agents or from animals inoculated during research, production of biologicals, or pharmaceutical testing with infectious agents.

(f) Any other waste material containing infectious agents designated by the commissioner as regulated medical waste.

2. "Storage" shall mean the containment of regulated medical waste in such a manner as not to constitute disposal of such waste.

3. "Transport" shall mean the movement of regulated medical waste from the point of generation to any intermediate points and finally to the point of ultimate disposal.

4. "Treatment" shall mean any method, technique or process designed to change the character or composition of any regulated medical waste so as to either neutralize such waste or to render such waste not infectious as approved by the commissioner pursuant to [section thirteen hundred eighty-nine-dd](#) of this title.

5. "Infectious agents" shall mean any organisms that cause disease or an adverse health impact to humans, except that the commissioner may prescribe by regulation additional infectious agents as may be necessary to protect human health and the environment.

#### **§ 1389-bb. Requirements for generators of regulated medical waste**

1. All the requirements of this title shall apply to hospitals as defined in [subdivision one of section twenty-eight hundred one](#) of this chapter and to residential health care facilities as defined in [subdivision three of section twenty-eight hundred one](#) of this chapter and clinical laboratories as defined in [section five hundred seventy-one](#) of this chapter.

2. The commissioner shall promulgate regulations establishing standards which shall be applicable to generators of regulated medical waste, as may be necessary to protect human health and the environment. Such standards shall include, but need not be limited to, requirements respecting:

(a) Recordkeeping practices that accurately identify the quantities of such regulated medical waste produced and the disposition thereof;

(b) Compliance with the marking, labeling and packaging requirements pursuant to [section thirteen hundred eighty-nine-cc](#) of this title;

(c) Compliance with the tracking system pursuant to [section 27-1504 of the environmental conservation law](#); and

(d) Submission of an annual report to the commissioner of environmental conservation, and additional reports at such times as the said commissioner deems necessary, on such forms as the said commissioner shall prescribe, respecting the quantities of regulated medical waste produced during a specified time period, and the disposition thereof.

#### **§ 1389-cc. Storage and containment of regulated medical waste**

1. Containment of regulated medical waste shall be in a manner and location which affords protection from the environment and limits exposure to the public.
2. Regulated medical waste shall be separated from other waste as soon as practicable in the generator's facility.
3. Unless otherwise approved by the department, regulated medical waste shall be contained at the producing facility only for such periods and under such conditions pursuant to rules and regulations adopted in furtherance of this title.
4. Containment of regulated medical waste shall be separate from other wastes. Containers used for the containment of regulated medical waste shall be marked prominently on the containers with the universal warning sign or the word "biohazard".
5. Regulated medical waste, except for discarded sharps, shall be contained in bags which are impervious to moisture and have a strength sufficient to resist ripping, tearing or bursting under normal conditions of usage and of handling. The bags shall be secured so as to prevent leakage during storage, handling or transport. All bags used for containment and disposal of regulated medical wastes shall be red in color.
6. All discarded sharps shall be contained for disposal in leakproof, rigid, puncture-resistant containers which are secured to preclude loss of the contents. Such containers shall be red in color or shall be conspicuously labeled with the word "infectious" or the words "regulated medical waste".
7. Before regulated medical waste is transported from the generating facility, regulated medical waste contained in disposable containers shall be placed for storage or handling in disposable or reusable pails, cartons,

drums, dumpsters or portable bins. The containment system shall be leakproof, have tight-fitting covers and be kept clean and in good repair. The containers may be of any color and shall be conspicuously labeled with the word “infectious” or the words “regulated medical waste”.

8. Reusable containers for regulated medical waste shall be thoroughly washed and decontaminated each time they are emptied unless the surfaces of the containers have been completely protected from contamination by disposable liners, bags or other devices removed with the waste.

9. Reusable pails, drums, dumpsters or bins used for containment of regulated medical waste shall not be used for containment of waste to be disposed of as other wastes or for other purposes except after being decontaminated.

10. Trash chutes shall not be used to transfer regulated medical waste between locations where it is contained.

#### **§ 1389-dd. Treatment and disposal of regulated medical waste**

1. Treatment or disposal of regulated medical waste shall be by one of the following methods:

(a) By incineration in a regulated medical waste incineration facility approved and under permit pursuant to article nineteen of the environmental conservation law, which provides complete combustion of the waste to carbonized or mineralized ash. Regulated medical waste so combusted shall be disposable as nonhazardous waste provided it is not an otherwise hazardous waste as defined in the regulations promulgated under [section 27-0903 of the environmental conservation law](#).

(b) By discharge to sewerage system if the waste is liquid or semiliquid, except as specifically prohibited by the commissioner of health.

(c) By decontamination by autoclaving, or by other technique approved by the department, so as to render the waste noninfectious. Regulated medical waste so treated shall be disposed of as solid waste provided it does not otherwise meet the definition of hazardous waste as defined in the regulations promulgated under [section 27-0903 of the environmental conservation law](#) or the regulations promulgated thereunder, and is accompanied by a certificate, in a form prescribed by the commissioner, which evidences such treatment.

(d) By other method approved by the commissioner.

2. Regulated medical waste shall not be disposed of by burial at a landfill disposal facility, unless treated in accordance with subdivision one of this section. All sharps must be rendered unrecognizable prior to disposal.

3. The commissioner, in consultation with the commissioner of environmental conservation, shall develop a limited number of cooperative pilot projects to promote the safe handling, treatment and disposal of regulated medical waste generated in private residences, including the establishment of guidelines for safe transport and handling of such waste prior to disposal. Such pilot projects shall be limited to a maximum of four municipalities throughout the state, and may vary in scope from single-facility to multi-facility projects. Nothing in this subdivision shall be construed as imposing any new requirements on generators of regulated medical waste. The commissioner shall give due consideration to the experience of the pilot projects in developing rules and regulations authorized in subdivision four of this section. Any moneys allocated by any government or organization to the department of health or the department of environmental conservation for purposes of establishing such pilot projects are hereby authorized for appropriation pursuant to this subdivision.

4. Sharps, including needles, syringes and lancets, originating from a private residence, may be delivered for disposal to a general hospital, as defined in [subdivision ten of section twenty-eight hundred one](#) of this chapter, or a residential health care facility, as defined in [subdivision three of section twenty-eight hundred one](#) of this chapter. Sharps, including needles, syringes and lancets returned pursuant to this section must be accepted by the hospital or residential health care facility on the condition that the needles, syringes and lancets have been deposited in an approved puncture proof container by the generator. The hospital or residential health care facility receiving such contained sharps must dispose of sharps in accordance with this section. The commissioner shall promulgate rules and regulations establishing guidelines for safe transport and handling of such sharps, including the approval of puncture proof containers for sharps.

#### **§ 1389-ee. Transfer of regulated medical waste to off-site treatment and disposal facilities**

1. Any generator of regulated medical waste shall transfer custody of the waste only to a transporter who is permitted as a regulated medical waste transporter by the department of environmental conservation.
2. Regulated medical waste shall be transported to an off-site treatment or disposal facility in a leakproof, fully enclosed container or vehicle compartment.
3. Regulated medical waste shall not be transported in the same vehicle with other waste unless the regulated medical waste is separately contained in rigid reusable containers or kept separate by barriers from other waste, or unless all of the waste is to be treated or disposed of as regulated medical waste in accordance with the requirements of this title.

#### **§ 1389-ff. Rules and regulations**

The commissioner shall promulgate rules and regulations in conformity with the standards for generators of regulated medical waste, and the storage, containment, treatment and disposal of regulated medical waste found in this title. Nothing in this title shall authorize the commissioner to adopt or amend any rule or regula-

tion in a manner inconsistent with the provisions of title fifteen of article twenty-seven of the environmental conservation law.

**§ 1389-gg. Violations of title thirteen**

1. Notwithstanding any other provision of this chapter, any person who violates any of the provisions of, or who fails to perform any duty imposed by this title or any rule or regulation promulgated pursuant thereto, or any term or condition of any certificate or permit issued pursuant thereto, or any final determination or order of the commissioner made pursuant to this title shall be liable in the case of a first violation for a civil penalty not to exceed twenty-five hundred dollars and an additional penalty of not more than one thousand dollars for each day during which such violation continues, to be assessed by the commissioner after an opportunity to be heard pursuant to the provisions of this chapter or by the court in any action or proceeding pursuant to this chapter, and, in addition thereto, such person may by similar process be enjoined from continuing such violation and any permit or certificate issued to such person may be revoked or suspended or a pending renewal application denied. In the case of a second and any further violation, the liability shall be for a civil penalty not to exceed five thousand dollars for each such violation and an additional penalty not to exceed twenty-five hundred dollars for each day during which such violation continues.

2. No penalty assessed or imposed pursuant to the provisions of this title shall be paid from medicaid or medicare funds.

**[§ 1389-hh. Repealed by L.1993, c. 438, § 8, eff. Nov. 23, 1993]**

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