# Volume 9

# CHAPTER 1. THE COMMON LAW ROLE IN ENVIRONMENTAL PROTECTION

- § 1:1 Common law remedies continue to supplement statutes in providing environmental protection § 1:2 Nuisance § 1:3 —Public nuisance § 1:4 —Public nuisance claims by private plaintiffs § 1:5 —Private nuisance § 1:6 **Trespass** § 1:7 Restitution and indemnity § 1:8 Statute of limitations Preemption of common law claims
- § 1:9 Preemption of common § 1:10 Riparian rights
- § 1:11 Conclusion

# CHAPTER 2. TOXIC TORT LAW IN NEW YORK

#### I. INTRODUCTION

- § 2:1 What is a toxic tort?
- § 2:2 —Examples of toxic tort litigation in New York

### II. THEORIES OF LIABILITY

- § 2:3 Introduction
- § 2:4 Negligence
- § 2:5 Elements of a negligence cause of action
- § 2:6 Duty and standard of care
- § 2:7 Causation
- § 2:8 Negligent misrepresentation
- § 2:9 Express and implied warranties
- § 2:10 Strict liability
- § 2:11 Fraudulent misrepresentation
- § 2:12 Theories of liability where the identity of the tortfeasor is unknown

#### III. THEORIES OF COMPENSABLE INJURIES

§ 2:13 Introduction

- § 2:14 Recovery for the increased risk of disease
- § 2:15 Recovery for medical monitoring
- § 2:16 Recovery for the fear of future injury

#### IV. DEFENSES

- § 2:17 Statute of limitations
- § 2:18 Contributory negligence, assumption of the risk and comparative fault
- § 2:19 Government contractor defense
- § 2:20 State of the art
- § 2:21 Bulk seller
- § 2:22 Sophisticated user
- § 2:23 Superseding and intervening cause defense

#### V. OTHER MATTERS

- § 2:25 Expert witnesses and testimony
- § 2:26 Insurance coverage for toxic tort claims

# CHAPTER 3. ADMINISTRATIVE AGENCY RELATIONSHIPS

### I. INTRODUCTION

- § 3:1 Constitutional and statutory background
- § 3:2 Due process clause
- § 3:3 SAPA requirements

# II. ADMINISTRATIVE PERMIT HEARING PROCESS UNDER DEC PRACTICE

- § 3:4 Introduction
- § 3:5 Regulatory scheme
- § 3:6 Office of hearings and mediation services relationship to DEC
- § 3:7 Uniform Permit Procedures
- § 3:8 Applicability of Part 624
- § 3:9 Notice
- § 3:10 Legislative hearing and issues conference
- § 3:11 Discovery
- § 3:12 Conduct of the hearing
- § 3:13 Evidence, burden of proof and standard of proof
- § 3:14 Hearing costs
- § 3:15 Record of the hearing

§ 3:16	Final decision
§ 3:17	Reargument
§ 3:18	Stipulations of settlement
§ 3:19	Length of the permit proceeding
§ 3:20	Actions involving the renewal, modification, suspension or
	revocation of a permit

# III. PRACTICAL TIPS FOR CROSS-EXAMINING EXPERTS IN ADMINISTRATIVE PROCEEDINGS

$\S 3:21$	Introduction
$\S 3:22$	Preparation of an expert for cross-examination
§ 3:23	Analysis of approach
$\S 3:24$	Methods of cross-examination
§ 3:25	Keeping expert testimony in perspective
§ 3:26	Areas of cross-examination

### IV. OTHER MATTERS

§ 3:27	Administrative enforcement actions
§ 3:28	Practical tips on interacting with DEC in the enforcement forum
§ 3:29	—Minimizing violations
§ 3:30	—Pre-enforcement hearing issues
§ 3:31	—DEC "guidance documents"
§ 3:32	—Institutional structure of DEC's administrative hearings process
§ 3:33	Initiation of enforcement proceedings under part 622; notices of hearings and complaints, motions for orders without hearing, and summary abatement orders
§ 3:34	Pre-hearing activity in DEC enforcement proceedings—discovery, FOIL, pre-hearing conferences, and "statements of readiness"
§ 3:35	Administrative enforcement hearings process
§ 3:36	DEC's post-hearing process
§ 3:37	Proceedings under the state inactive hazardous waste site program
§ 3:38	Agency rulemaking
§ 3:39	Role of regulations in practice involving DEC
§ 3:40	DEC's rulemaking process
8 3:41	Opportunities to participate in DEC's rulemaking process

## V. NEGOTIATED RULEMAKINGS

§ 3:42 Introduction

- § 3:43 Process issues
- § 3:44 Outcome of DEC negotiated rulemaking efforts to date
- § 3:45 Prospects for the future in New York

# VI. JUDICIAL REVIEW OF ADMINISTRATIVE DECISIONS AND PROCEDURES

- § 3:46 Article 78 proceedings
- § 3:47 Scope of Article 78
- § 3:48 Standard of review
- § 3:49 Limitations of Article 78
- § 3:50 Procedural aspects of Article 78 proceedings
- § 3:51 Declaratory judgment

# CHAPTER 4. STATE ENVIRONMENTAL QUALITY REVIEW ACT

- § 4:1 Introduction
- § 4:2 Determining whether a proposed governmental activity is subject to SEQRA
- § 4:3 —Definition of a SEQRA "action"
- § 4:4 —Preliminary planning is not a SEQRA action
- § 4:5 —Type II Actions
- § 4:6 —Other Type II and excluded actions
- § 4:7 Segmented review is generally prohibited
- § 4:8 —When related activities are a single SEQRA action
- § 4:9 —Practical problems of including future actions in an environmental assessment
- § 4:10 —When segmentation is permitted
- § 4:11 Distinction between Type I and Unlisted actions
- § 4:12 —Determine whether action is Type I or Unlisted
- § 4:13 —Part I of the EAF
- § 4:14 —Selection of a lead agency
- § 4:15 —Uncoordinated review
- § 4:16 Determination of environmental significance
- § 4:17 —Hard look doctrine
- § 4:18 —Application of the criteria of significance
- § 4:19 —Conditioned negative declaration
- § 4:20 Draft and final EIS
- § 4:21 —Finding and retaining the consultant
- § 4:22 —Establishing the content of the EIS
- § 4:23 —Assessing impacts
- § 4:24 —Alternatives and mitigation
- § 4:25 —A practice tip on drafting EIS
- § 4:26 —Formal scoping of draft EIS

§ 4:27	—Preparation of draft EIS
§ 4:28	—Public review of draft EIS
§ 4:29	—Preparation of supplemental EIS
§ 4:30	—Preparation of final EIS
§ 4:31	SEQRA findings
§ 4:32	—Findings statement
§ 4:33	—Permissible mitigating measures
§ 4:34	—Mitigating measures may not displace another agency's jurisdiction
§ 4:35	—Mitigating measures must relate to the environmental impact of the proposed action
§ 4:36	—Agency has limited discretion to allow an action that will harm the environment
§ 4:37	SEQRA litigation
§ 4:38	—Ripeness
§ 4:39	—Statute of limitations
§ 4:40	—Proper parties to SEQRA litigation
§ 4:41	—Distinct injury requirement
§ 4:42	—Zone of interest requirement
§ 4:43	—Intervention
§ 4:44	—Conduct of the litigation
$\S 4:45$	—Interim relief
§ 4:46	—Final relief
CHA	PTER 5. AIR QUALITY
§ 5:1	Introduction
§ 5:2	Relevant statutes and regulations
§ 5:3	Regulatory agencies
§ 5:4	National and regional associations and commissions
§ 5:5	Types of air pollution sources regulated
§ 5:6	National ambient air quality standards
§ 5:7	Stationary sources
§ 5:8	—Prevention of significant deterioration
§ 5:9	—National emission standards for hazardous air pollutants
§ 5:10	—New source performance standards
§ 5:11	—New source review in nonattainment areas

—General process emission sources

—Stationary combustion installations

—Clean Air Act Title V requirements—New York's operating permit program

PERC dry cleaning facilities

§ 5:19 —Special provisions for small businesses

Operating permit program

§ 5:12

§ 5:14

§ 5:15

§ 5:16

§ 5:17 § 5:18

§ 5:13 —Incinerators

§ 5:20	Emission statements
§ 5:21	Acid rain controls
§ 5:22	—State Acid Deposition Control Act
§ 5:23	—State acid deposition reduction trading programs
§ 5:24	Litigation
§ 5:25	Acid rain controls—Clean Air Act Title IV Acid Deposition Control Program
§ 5:26	—Ozone and CO reduction measures for specified stationary sources
§ 5:27	Controls on fueling at gasoline stations
§ 5:28	Petroleum and volatile organic liquid storage and transfer
§ 5:29	Surface coating processes
§ 5:30	Solvent metal cleaning processes
§ 5:31	Pharmaceutical and cosmetic manufacturing processes
§ 5:32	Graphic arts
§ 5:33	Synthetic organic chemical manufacturing facility component leaks
§ 5:34	Other VOC control measures
§ 5:35	—Other VOC requirements
§ 5:36	$-NO_x$ control measures
§ 5:37	—Architectural surface coatings
§ 5:38	Mobile sources
§ 5:39	—Controls on gasoline
§ 5:40	—Reid vapor pressure
§ 5:41	—Oxygenated fuels
§ 5:42	—Reformulated gasoline
§ 5:43	—Diesel fuel and retrofit technology
§ 5:44	—Emission controls on personal watercraft
§ 5:45	Emission controls on new motor vehicles
§ 5:46	—New York's adoption of new motor vehicle standards
§ 5:47	—Litigation
§ 5:48	—Northeast ozone transport commission LEV program
§ 5:49	—Centrally fueled fleet program
§ 5:50	Inspection and maintenance testing of in-use vehicles
§ 5:51	Emission controls on new motor vehicles—Inspection of heavy
5 0.01	duty diesel vehicles
§ 5:52	Idling restrictions on heavy-duty vehicles
§ 5:53	Emission controls on new motor vehicles—Transportation
	control measures
§ 5:54	—Transportation control measures required by the 1990 CAA amendments
§ 5:55	Employee commute option program
§ 5:56	Indirect sources
§ 5:57	State global warming initiatives

# CHAPTER 6. WATER QUALITY AND THE SPDES PROGRAM

§ 6:1	Overview
§ 6:2	—Prior enactments
§ 6:3	—FWPCA amendments of 1972
§ 6:4	Overview of the Clean Water Act
§ 6:5	Overview of New York State program
§ 6:6	SPDES permit program
§ 6:7	—Requirement for a permit
§ 6:8	—Permit process
§ 6:9	—Permit requirements
§ 6:10	—Technology-based effluent limitations
§ 6:11	-Water quality-based effluent limitations
§ 6:12	—Other permit requirements
§ 6:13	—Monitoring and reporting
§ 6:14	Regulation of indirect dischargers
§ 6:15	Enforcement
§ 6:16	Citizen suits
§ 6:17	State water quality certifications

# CHAPTER 7. WATER SUPPLY AND STREAM PROTECTION

### I. WATER SUPPLY

§ 6:18 Regulation of storm-water

$\S 7:1$	Overview
§ 7:2	State water supply program
§ 7:3	—DEC regulatory program
§ 7:4	—DOH regulatory program
§ 7:5	Surface Water Treatment Rule
§ 7:6	New York City's watershed protection program

# II. STREAM PROTECTION

§ 7:7	Stream disturbance
§ 7:8	State disturbance and dredging program
§ 7:9	Federal disturbance and dredging program
§ 7:10	Practice and procedure

### III. DOCKS

§ 7:11	State program
§ 7:12	Federal program
§ 7:13	Local programs

#### § 7:14 Practice and procedure

#### IV. DAMS

- § 7:15 State program
- § 7:16 Federal program
- § 7:17 Practice and procedure

#### V. ENFORCEMENT

- § 7:18 Penalties
- § 7:19 Removal and restoration

### CHAPTER 8. SOLID WASTE MANAGEMENT

### I. INTRODUCTION

- § 8:1 Overview
- § 8:2 Definition of solid waste

#### II. SOLID WASTE MANAGEMENT POLICY

- § 8:3 Introduction
- § 8:4 State Solid Waste Management Act
- § 8:5 State solid waste management hierarchy
- § 8:6 State solid waste management plan
- § 8:7 Local solid waste management plans
- § 8:8 New York State Solid Waste Management Board
- § 8:9 Local laws

### III. WASTE FLOW RESTRICTIONS

- § 8:10 Introduction
- § 8:11 Flow control
- § 8:12 Interstate shipment of solid waste
- § 8:13 Limitations on "outside" waste

#### IV. SOLID WASTE MANAGEMENT FACILITIES

- § 8:14 Overview
- § 8:15 Part 360—General requirements
- § 8:16 Permitting and registration
- § 8:17 Landfills
- § 8:18 Solid waste incinerators
- § 8:19 Other Part 360 facilities
- § 8:20 Host community benefit programs
- § 8:21 On-site monitors

# V. SPECIAL WASTES

§ 8:22	Introduction
§ 8:23	Asbestos
§ 8:24	Medical waste
§ 8:25	Construction and demolition debris
§ 8:26	Waste tires
§ 8:27	Used oil
§ 8:28	Household hazardous waste
§ 8:29	Vehicle dismantling facilities
§ 8:30	Electronic waste
§ 8:31	Mercury-added consumer products

### VI. RECYCLING

8 8.32	Introduction
_	
§ 8:33	Returnable Container Act
§ 8:34	Expanded Bottle Bill
§ 8:35	Beneficial use determinations
§ 8:36	Composting
§ 8:37	Recycling facilities

### VII. TRANSPORT OF SOLID WASTE

§ 8:38	Transfer stations
§ 8:39	Transporter requirements

# VIII. ENFORCEMENT OF SOLID WASTE REQUIREMENTS

§ 8:40	Federal and state authorities
§ 8:41	Trash dumpsters
§ 8:42	Environmental conservation law penalties
§ 8:43	Other state waste law penalties
§ 8:44	"Bad actor" policy
§ 8:45	State penalty policy and enforcement memoranda

# IX. PRIVATIZATION

§ 8:46 Generally

### X. ENVIRONMENTAL JUSTICE

§ 8:47 Generally

# Volume 9A

# **CHAPTER 9. HAZARDOUS WASTE**

### I. ACTIVE HAZARDOUS WASTE MANAGEMENT

A.	BACKGROUND AND STATUTORY
	FRAMEWORK

§ 9:1	Generally
§ 9:2	Resource Conservation and Recovery Act
§ 9:3	Congressional objectives
§ 9:4	Hazardous and Solid Waste Amendments of 1984
§ 9:5	RCRA subtitles
§ 9:6	State authorization criteria
§ 9:7	New York hazardous waste implemented program
§ 9:8	Overview of differences between the federal program and New York's program
§ 9:9	Definition of hazardous waste
§ 9:10	Materials eligible for "hazardous" classification; identification of solid waste

### B. IDENTIFICATION OF HAZARDOUS WASTE

§ 9:11	Generally
§ 9:12	Listed hazardous wastes
§ 9:13	Characteristic wastes
§ 9:14	Toxicity characteristic leaching procedure
§ 9:15	Mixture and derived-from rules
§ 9:16	Exclusions from the definition of hazardous waste

§ 9:17 Exemptions from hazardous waste regulation

# C. HAZARDOUS WASTE GENERATORS

§ 9:18	Generally
§ 9:19	Definition of generator
§ 9:20	Waste determination
§ 9:21	Notification and EPA identification number
§ 9:22	Accumulation of hazardous waste
§ 9:23	Manifest requirements
$\S 9:24$	Packaging and labeling the hazardous waste for shipment
$\S 9:25$	Recordkeeping and reporting
§ 9:26	Waste minimization
$\S 9:27$	Small quantity generators
§ 9:28	Form—Identification and certification
§ 9:29	—Waste generation and management
	<u>-</u>

§ 9:45 Procedure

# D. TREATMENT, STORAGE AND DISPOSAL STANDARDS

§ 9:30	Generally				
§ 9:31	Permitting procedures				
§ 9:32	Facility operating standards				
§ 9:33	Releases				
§ 9:34	Closure and post-closure requirements				
§ 9:35	Financial requirements				
§ 9:36	Additional facility-specific requirements				
§ 9:37					
	received from on site				
E.	LAND DISPOSAL RESTRICTIONS				
§ 9:38	Generally				
§ 9:39	Overview				
§ 9:40	Exemptions				
§ 9:41	Treatment standards				
F.	CORRECTIVE ACTION				
§ 9:42	Generally				
§ 9:43	Overview				
§ 9:44	Permit requirements				

# G. ENFORCEMENT PROCEEDINGS AND PENALTIES

§ 9:46	Generally
§ 9:47	Administrative remedies; EPA's RCRA penalty policy and enforcement response policy
§ 9:48	Inspections
§ 9:49	DEC's civil penalty policy
§ 9:50	"Unsuitability" statute
§ 9:51	Civil judicial enforcement
§ 9:52	Criminal enforcement
§ 9:53	Citizen suits
§ 9:54	Form—Charts of class I-II priority and criminal violations
§ 9:55	—Revised hazardous waste inspection form

# H. SITING OF INDUSTRIAL HAZARDOUS WASTE FACILITIES

§ 9:56	Statutory and regulatory requirements
$\S 9:57$	Exemptions

§ 9:58 § 9:59	Criteria for siting Permit and certificate application procedures and
§ 9:60	administrative hearing procedure Role of municipality and state preemption
I.	REGULATION OF PCBS
§ 9:61	Regulation of PCBs by the United States EPA
§ 9:62	Regulation of PCBs by the state
§ 9:63	Problems and developments in the regulation of PCBs
J.	COMMUNITY RIGHT-TO-KNOW REQUIREMENTS
§ 9:64	Generally
§ 9:65	Federal requirements under the Emergency Planning and Community Right-to-Know Act
§ 9:66	State and local planning authorities
§ 9:67	Emergency planning requirements
§ 9:68	Emergency release notification
§ 9:69	Material safety data sheet reporting requirements
§ 9:70	Emergency and hazardous chemical inventory forms
§ 9:71	Toxic chemical release forms
§ 9:72	Public access to reported data
§ 9:73	Enforcement New York City Community Pight to Know Low
§ 9:73 § 9:74	New York City Community Right-to-Know Law
§ 9:74 K.	New York City Community Right-to-Know Law
§ 9:74 K. § 9:75	New York City Community Right-to-Know Law  WORKER RIGHT-TO-KNOW REQUIREMENTS Generally
§ 9:74 K.	New York City Community Right-to-Know Law WORKER RIGHT-TO-KNOW REQUIREMENTS
§ 9:74 K. § 9:75	New York City Community Right-to-Know Law  WORKER RIGHT-TO-KNOW REQUIREMENTS  Generally Occupational Safety and Health Administration Hazard
\$ 9:74 K. \$ 9:75 \$ 9:76	New York City Community Right-to-Know Law  WORKER RIGHT-TO-KNOW REQUIREMENTS  Generally Occupational Safety and Health Administration Hazard Communication Standard (HCS)  New York worker right-to-know law
\$ 9:74  K. \$ 9:75 \$ 9:76  \$ 9:77  L. \$ 9:78	New York City Community Right-to-Know Law  WORKER RIGHT-TO-KNOW REQUIREMENTS  Generally Occupational Safety and Health Administration Hazard Communication Standard (HCS) New York worker right-to-know law  NOTIFICATION OF SPILLS AND RELEASES Generally
\$ 9:74  K. \$ 9:75 \$ 9:76 \$ 9:77  L.	New York City Community Right-to-Know Law  WORKER RIGHT-TO-KNOW REQUIREMENTS  Generally Occupational Safety and Health Administration Hazard Communication Standard (HCS) New York worker right-to-know law  NOTIFICATION OF SPILLS AND RELEASES
\$ 9:74  K. \$ 9:75 \$ 9:76  \$ 9:77  L. \$ 9:78	New York City Community Right-to-Know Law  WORKER RIGHT-TO-KNOW REQUIREMENTS  Generally Occupational Safety and Health Administration Hazard Communication Standard (HCS) New York worker right-to-know law  NOTIFICATION OF SPILLS AND RELEASES  Generally Reporting of spills or releases under New York Hazardous Substances Bulk Storage Act, and New York bulk storage
\$ 9:74  K. \$ 9:75 \$ 9:76 \$ 9:77  L. \$ 9:78 \$ 9:79	New York City Community Right-to-Know Law  WORKER RIGHT-TO-KNOW REQUIREMENTS  Generally Occupational Safety and Health Administration Hazard Communication Standard (HCS) New York worker right-to-know law  NOTIFICATION OF SPILLS AND RELEASES  Generally Reporting of spills or releases under New York Hazardous Substances Bulk Storage Act, and New York bulk storage law
\$ 9:74  K. \$ 9:75 \$ 9:76 \$ 9:77  L. \$ 9:78 \$ 9:79	New York City Community Right-to-Know Law  WORKER RIGHT-TO-KNOW REQUIREMENTS  Generally Occupational Safety and Health Administration Hazard Communication Standard (HCS) New York worker right-to-know law  NOTIFICATION OF SPILLS AND RELEASES  Generally Reporting of spills or releases under New York Hazardous Substances Bulk Storage Act, and New York bulk storage law Permit reporting requirements New York reporting requirements for hazardous spills or
\$ 9:74  K. \$ 9:75 \$ 9:76 \$ 9:77  L. \$ 9:78 \$ 9:79 \$ 9:80 \$ 9:81	New York City Community Right-to-Know Law  WORKER RIGHT-TO-KNOW REQUIREMENTS  Generally Occupational Safety and Health Administration Hazard Communication Standard (HCS) New York worker right-to-know law  NOTIFICATION OF SPILLS AND RELEASES  Generally Reporting of spills or releases under New York Hazardous Substances Bulk Storage Act, and New York bulk storage law  Permit reporting requirements New York reporting requirements for hazardous spills or releases during transportation New York reporting requirements for hazardous spills or releases from hazardous waste treatment, storage or disposa

o	0.04	3. T	T7 1	a.,		1			
Ó	9:84	New	York	City	emergency	release	reporting	requiremen	$\iota { m ts}$

TA /T	DOI	TITT	TAOTT	PREZ	777777	DTO N
IVI	P()		( )   X	PREA	/ H: IN'	1.1( ) X

- § 9:85 Federal law, regulation and incentives
- § 9:86 State tools; mandatory regulations and their rejection
- § 9:87 Renewed emphasis on voluntary pollution prevention; small business assistance
- § 9:88 New York's SEP equivalent; Environmental Benefit Project Policy

#### N. MULTI-MEDIA ENFORCEMENT

- § 9:89 Program goals
- § 9:90 Multi-media inspection, planning and enforcement policy
- § 9:91 Relation to and comparison with EPA multi-media enforcement
- § 9:92 Article 12 of the Navigation Law—Regulation of petroleum discharges
- § 9:93 —Active petroleum discharges
- § 9:94 —The New York Environmental Protection and Spill Compensation Fund
- § 9:95 —Private party liability
- § 9:96 —Liability of the responsible party to the administrator of the fund
- § 9:97 —Liability of the insurer of the responsible party
- § 9:98 —Liability of the fund
- § 9:99 —Inactive petroleum discharges
- § 9:100 —Property owner liability for underground storage tanks
- § 9:101 —Potential MTBE litigation

# II. NEW YORK'S INACTIVE HAZARDOUS WASTE PROGRAM

# A. BACKGROUND, OVERVIEW AND COMPARISON TO CERCLA

§ 9:102 Generally

#### B. DEFINITIONS

- § 9:103 Generally
- § 9:104 "Hazardous waste"
- § 9:105 "Inactive hazardous waste disposal site"
- § 9:106 "Inactive hazardous waste disposal site remedial program"

#### C. LIABLE PARTIES

§ 9:107 Generally

§ 9:108	Owner				
§ 9:109	"Any person responsible for the disposal of hazardous wa				
§ 9:110	"Guidance of applicable principles of statutory or common law liability"				
§ 9:111	Definition of "responsible party" under the regulations				
§ 9:112	Statutory defenses				
D.	INACTIVE HAZARDOUS WASTE SITE REGISTRY				
§ 9:113	Generally				
E.	IDENTIFICATION OF SITES FOR THE REGISTRY				
§ 9:114	Generally				
§ 9:115	County identification of sites				
§ 9:116	Self-reporting				
§ 9:117	Requests for information from the Department of Environmental Conservation				
§ 9:118	Information obtained through state investigations				
§ 9:119	Confidentiality of information				
F.	CLASSIFICATIONS AND OTHER INFORMATION ON THE REGISTRY				
§ 9:120	Generally				
§ 9:121	Classification system				
§ 9:122	"Significant threat to environment" standard				
§ 9:123	Classifications and other information on the registry				
G.	CHALLENGING THE SITE LISTING ON THE REGISTRY				
§ 9:124	Generally				
§ 9:125	Delisting petition				
§ 9:126	Delisting hearing				
§ 9:127	Notice of delisting				
H.	OTHER STATE REPORTS				
§ 9:128	Generally				
§ 9:129	Site Status Reporting System				
§ 9:130	State Inactive Hazardous Waste Remedial Plan				
§ 9:131	Status report on the implementation of the State Inactive Hazardous Waste Remedial Plan				
I.	DEC-PREFERRED REMEDY SELECTION				
§ 9:132	Overview				

§ 9:133	Process of selecting a remedy; screening of alternatives and
S 0.194	preparation of a feasibility study
§ 9:134	Standards, criteria and guidance
§ 9:135	Short-term effectiveness
§ 9:136	Long-term effectiveness
§ 9:137	Reduction of toxicity, mobility and volume with treatment
§ 9:138	Feasibility
§ 9:139	Overall protectiveness of human health
§ 9:140 § 9:141	Community acceptance Cost
8 9.141	Cost
J.	PROCEDURES FOR SELECTION OF A REMEDY
§ 9:142	Remedial investigation/feasibility studies
§ 9:143	Record of decision
K.	DESIGN ACTIVITIES
§ 9:144	Remedial Design/Remedial Action ("RD/RA") process
$\S 9:145$	Modifying the ROD because of the RD/RA process
L.	INTERIM REMEDIAL MEASURE
§ 9:146	Appropriate use of an interim remedial measure
§ 9:147	IRM as the final remedy
§ 9:148	Designing the IRM as the final remedy
Μ.	CONSTRUCTION ACTIVITIES
§ 9:149	Generally
N.	MECHANISMS FOR THE STATE TO OBTAIN
11.	SITE REMEDIATION
§ 9:150	Generally
§ 9:151	Administrative enforcement hearing
§ 9:152	State funded clean-ups
§ 9:153	Administrative consent orders
0	ROLE OF DEPARTMENT OF HEALTH
Ο.	ROLE OF DEPARTMENT OF REALTH
$\S 9:154$	Generally
§ 9:155	Emergency cleanup under the Public Health Law
P.	STATE FUNDING
§ 9:156	State superfund
§ 9:156 § 9:157	-
8 9.191	Use of the fund for remedial programs

§ 9:158 Environmental Quality Bond Act of 1986
--

# Q. REUSE OF INACTIVE HAZARDOUS WASTE SITES

§ 9:159	Notification of change of use of listed site
§ 9:160	Situations requiring approval of Commissioners of DEC and DOH
§ 9:161	Brownfields program and federal legislation
§ 9:162	The Brownfield Cleanup Program—Generally
§ 9:163	—Application process
§ 9:164	— Eligibility criteria
§ 9:165	——Challenges to eligibility criteria
§ 9:166	—Cleanup standards
§ 9:167	—Institutional controls
§ 9:168	—Public information and participation
§ 9:169	—Liability exemptions
§ 9:170	—Liability release and reopeners
§ 9:171	—Financial incentives
§ 9:172	—Reporting requirements for developers
§ 9:173	—Administration of the Brownfield Opportunity Area (BOA)
	program
§ 9:174	—The Environmental Restoration Project State Assistance

# R. STATE SUPERFUND MANAGEMENT BOARD

—Brownfields Cleanup Program flow chart

§ 9:176 Composition of Board

Program

# CHAPTER 10. PESTICIDES AND HERBICIDES

### I. INTRODUCTION

§ 10:1 Generally

§ 9:175

# II. FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT ("FIFRA")

$\frac{1}{2}$ 10:2	Generally
§ 10:3	Origins of FIFRA
§ 10:4	Registration of pesticides under FIFRA
§ 10:5	Reregistration of pesticides
3 10:6	Food tolerances and the Delaney Clause
§ 10:7	Relationship to state law

# III. POWERS OF THE COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

§ 10:8 Generally

### IV. STATE REGISTRATION OF PESTICIDES

§ 10:9	State registration
§ 10:10	Denial, cancellation and suspension
§ 10:11	Advisory committees
§ 10:12	Public hearing regarding registration
§ 10:13	General and restricted use of pesticides
§ 10:14	State registration may be more restrictive than federal
	registration to protect public health and the environment

### V. STATE PERMITS

- § 10:15 Commercial and purchase permits § 10:16 Aquatic use permits
- § 10:17 Experimental use permits

### VI. CERTIFICATION AND REGISTRATION

§ 10:18 State pesticide applicator certification § 10:19 State pesticide business registration

# VII. PUBLIC'S RIGHT TO KNOW; REQUIREMENTS FOR NOTIFICATION AND POSTING

§ 10:20	Commercial lawn applications
§ 10:21	Applications within buildings
§ 10:22	Current increased notification

# VIII. FEDERAL PREEMPTION OF STATE AND LOCAL LAWS

§ 10:23 FIFRA's limited preemption
§ 10:24 Preemption of state labeling regulation by FIFRA
§ 10:25 Preemption of local regulations of pesticide use
§ 10:26 Local government activities

#### IX. STATE ENFORCEMENT

§ 10:27	Generally
§ 10:28	Unlawful acts under the Environmental Conservation Law
§ 10:29	Unlawful acts under General Business Law and FIFRA
§ 10:30	Who can enforce

- § 10:31 Sanctions
- § 10:32 State enforcement policy
- § 10:33 Seizure

### X. RECENT DEVELOPMENTS

§ 10:34 Generally

# CHAPTER 11. WETLANDS AND COASTAL ZONES

- § 11:1 Overview of legislation
- § 11:2 Relationship with the Federal Clean Water Act
- § 11:3 Tidal Wetlands Act
- § 11:4 —Mapping and inventory
- § 11:5 —Permit program
- § 11:6 —Judicial review
- § 11:7 —Enforcement
- § 11:8 —De facto taking
- § 11:9 Freshwater Wetlands Act
- § 11:10 —Mapping and inventory
- § 11:11 —Permit program
- § 11:12 —Judicial review and Appeals Board
- § 11:13 —Enforcement
- § 11:14 —De facto taking
- § 11:15 Coastal erosion hazard areas
- § 11:16 —State and local regulation
- § 11:17 —Judicial review
- § 11:18 Coastal zone protection
- § 11:19 —Waterfront Revitalization and Coastal Resources Act
- § 11:20 —Relationship with Coastal Zone Management Act
- § 11:21 —Local regulation
- § 11:22 Flood hazard area regulation
- § 11:23 —Land use controls
- § 11:24 —Flood insurance program

# CHAPTER 12. OPEN SPACE CONSERVATION

#### I. OPEN SPACE CONSERVATION

- § 12:1 Generally
- § 12:2 Land trusts
- § 12:3 Deed restrictions
- § 12:4 Conservation easements

- § 12:5 Federal income tax benefits
- § 12:6 Real property tax issues
- § 12:7 Other private open space preservation options

#### II. FOREST PRESERVE

§ 12:8 Generally

### III. ADIRONDACK PARK AGENCY

- § 12:9 Introduction
- § 12:10 Generally
- § 12:11 Regulatory framework
- § 12:12 Courts and the Agency
- § 12:13 Process and practice
- § 12:14 Conclusion

# CHAPTER 13. AGRICULTURE AND FORESTRY

### I. AGRICULTURE

- § 13:1 Generally
- § 13:2 Establishing agricultural district
- § 13:3 Landowner-created districts
- § 13:4 Commissioner-created districts
- § 13:5 Consequences of district designation
- § 13:6 Real property tax relief
- § 13:7 Other consequences of district designation
- § 13:8 Agricultural assessment of lands outside a district—Section 306
- § 13:9 Litigation shield ("Right to farm")
- § 13:10 —Protective regulation

#### II. FORESTRY

- § 13:11 Introduction
- § 13:12 History
- § 13:13 Section 480 of the Real Property Tax Law
- § 13:14 Section 480-a
- § 13:15 Section 480 compared to Section 480-a
- § 13:16 Regulatory framework
- § 13:17 Procedure to obtain certification
- § 13:18 Consequences of certification
- § 13:19 Revocation—Termination
- § 13:20 Penalties

# § 13:21 Conclusion

# CHAPTER 14. HISTORIC PRESERVATION

CHAP	TER 14. HISTORIC PRESERVATION
§ 14:1	New York State Historic Preservation Act
§ 14:2	Generally
§ 14:3	—Federal precedents
§ 14:4	-Adoption of New York State Historic Preservation Act and
	Regulations
§ 14:5	Statutory and regulatory format of the Act
§ 14:6	—State Register of Historic Places
§ 14:7	—Statewide inventory of historic places
§ 14:8	—Statewide historic preservation program
§ 14:9	—Review of state agency activities affecting historic properties
§ 14:10	—State board for Historic Preservation
§ 14:11	—Agency preservation officers
§ 14:12	—Survey of historic properties
§ 14:13	—Preservation and maintenance of state historic properties
§ 14:14	—State use of historic buildings
§ 14:15	Local participation in state historic preservation program
§ 14:16	Review process for state agency activities affecting historic properties
§ 14:17	—Coordination with other review procedures
§ 14:18	Activities subject to review
§ 14:19	Definition of historic properties
§ 14:20	Assessment of impact
§ 14:21	Consultation process—Exploring feasible and prudent alternatives
§ 14:22	Consultation process; Exploring feasible and prudent alternatives—Public participation
§ 14:23	—Letter of resolution
§ 14:24	Activities exempt from review
§ 14:25	Review of series of similar activities
§ 14:26	Review process practice tips; role of regional offices
§ 14:27	—Timing of review with State Environmental Quality Review Act (SEQRA) process
§ 14:28	—Coordination with local historic preservation commission review
§ 14:29	Enforcement
§ 14:30	Local landmark preservation laws
§ 14:31	—Evolution
§ 14:32	—Distinction between historic preservation laws and zoning or aesthetic review laws
§ 14:33	Landmark commissions
§ 14:34	Enabling authorities

is pending  § 14:45 Certificates of appropriateness; changes requiring certificate  § 14:46 —Criteria; compatibility with historic character  § 14:47 —Procedures; information needed  § 14:48 —Public hearing  § 14:49 —Decision  § 14:50 Economic hardship  § 14:51 —Timing of hardship application  § 14:52 —Hardship test for-profit owners  § 14:53 —Hardship test non-profit owners  § 14:54 —Beneficial use  § 14:55 —Good faith offers to sell  § 14:56 —Efforts to find a new use  § 14:57 —Public hearings  § 14:58 —Decisions  § 14:59 Maintenance of historic properties; landmark laws distinguished from building codes  § 14:60 —Exemption of ordinary maintenance  § 14:61 —Public emergencies excluded	
\$ 14:36 Designation of landmarks and historic districts \$ 14:37 —Criteria \$ 14:38 —Record \$ 14:39 —Notice and hearing \$ 14:40 —Decision \$ 14:41 —Owner consent requirements \$ 14:42 —Impact of designation on property owner \$ 14:43 —Amending or revoking designation \$ 14:44 —Issuance of building or demolition permit while designation \$ 14:45 —Certificates of appropriateness; changes requiring certificate \$ 14:46 —Criteria; compatibility with historic character \$ 14:47 —Procedures; information needed \$ 14:48 —Public hearing \$ 14:49 —Decision \$ 14:50 —Economic hardship \$ 14:51 —Timing of hardship application \$ 14:52 —Hardship test for-profit owners \$ 14:53 —Hardship test non-profit owners \$ 14:54 —Beneficial use \$ 14:55 —Good faith offers to sell \$ 14:56 —Efforts to find a new use \$ 14:57 —Public hearings \$ 14:58 —Decisions \$ 14:59 —Maintenance of historic properties; landmark laws distinguished from building codes \$ 14:60 —Exemption of ordinary maintenance \$ 14:61 —Public emergencies excluded	
\$ 14:38 —Record \$ 14:39 —Notice and hearing \$ 14:40 —Decision \$ 14:41 —Owner consent requirements \$ 14:42 —Impact of designation on property owner \$ 14:43 —Amending or revoking designation \$ 14:44 —Issuance of building or demolition permit while designation \$ 14:45 —Criteria; compatibility with historic character \$ 14:46 —Criteria; compatibility with historic character \$ 14:47 —Procedures; information needed \$ 14:48 —Public hearing \$ 14:49 —Decision \$ 14:50 —Economic hardship \$ 14:51 —Timing of hardship application \$ 14:52 —Hardship test for-profit owners \$ 14:53 —Hardship test non-profit owners \$ 14:54 —Beneficial use \$ 14:55 —Good faith offers to sell \$ 14:56 —Efforts to find a new use \$ 14:57 —Public hearings \$ 14:58 —Decisions \$ 14:59 —Maintenance of historic properties; landmark laws distinguished from building codes \$ 14:60 —Exemption of ordinary maintenance \$ 14:61 —Public emergencies excluded	
\$ 14:39 —Notice and hearing \$ 14:40 —Decision \$ 14:41 —Owner consent requirements \$ 14:42 —Impact of designation on property owner \$ 14:43 —Amending or revoking designation \$ 14:44 —Issuance of building or demolition permit while designation \$ 14:45 —Criticates of appropriateness; changes requiring certificate \$ 14:46 —Criteria; compatibility with historic character \$ 14:47 —Procedures; information needed \$ 14:48 —Public hearing \$ 14:49 —Decision \$ 14:50 —Economic hardship \$ 14:51 —Timing of hardship application \$ 14:52 —Hardship test for-profit owners \$ 14:53 —Hardship test non-profit owners \$ 14:54 —Beneficial use \$ 14:55 —Good faith offers to sell \$ 14:56 —Efforts to find a new use \$ 14:57 —Public hearings \$ 14:58 —Decisions \$ 14:59 —Maintenance of historic properties; landmark laws distinguished from building codes \$ 14:60 —Exemption of ordinary maintenance \$ 14:61 —Public emergencies excluded	
\$ 14:39 —Notice and hearing \$ 14:40 —Decision \$ 14:41 —Owner consent requirements \$ 14:42 —Impact of designation on property owner \$ 14:43 —Amending or revoking designation \$ 14:44 —Issuance of building or demolition permit while designation \$ 14:45 —Criticates of appropriateness; changes requiring certificate \$ 14:46 —Criteria; compatibility with historic character \$ 14:47 —Procedures; information needed \$ 14:48 —Public hearing \$ 14:49 —Decision \$ 14:50 —Economic hardship \$ 14:51 —Timing of hardship application \$ 14:52 —Hardship test for-profit owners \$ 14:53 —Hardship test non-profit owners \$ 14:54 —Beneficial use \$ 14:55 —Good faith offers to sell \$ 14:56 —Efforts to find a new use \$ 14:57 —Public hearings \$ 14:58 —Decisions \$ 14:59 —Maintenance of historic properties; landmark laws distinguished from building codes \$ 14:60 —Exemption of ordinary maintenance \$ 14:61 —Public emergencies excluded	
\$ 14:40 —Decision \$ 14:41 —Owner consent requirements \$ 14:42 —Impact of designation on property owner \$ 14:43 —Amending or revoking designation \$ 14:44 —Issuance of building or demolition permit while designation \$ 14:45 —Certificates of appropriateness; changes requiring certificate \$ 14:46 —Criteria; compatibility with historic character \$ 14:47 —Procedures; information needed \$ 14:48 —Public hearing \$ 14:49 —Decision \$ 14:50 —Economic hardship \$ 14:51 —Timing of hardship application \$ 14:52 —Hardship test for-profit owners \$ 14:53 —Hardship test non-profit owners \$ 14:54 —Beneficial use \$ 14:55 —Good faith offers to sell \$ 14:56 —Efforts to find a new use \$ 14:57 —Public hearings \$ 14:58 —Decisions \$ 14:59 Maintenance of historic properties; landmark laws distinguished from building codes \$ 14:60 —Exemption of ordinary maintenance \$ 14:61 —Public emergencies excluded	
\$ 14:41 —Owner consent requirements \$ 14:42 —Impact of designation on property owner \$ 14:43 —Amending or revoking designation \$ 14:44 —Issuance of building or demolition permit while designation \$ 14:45 —Criteria; compatibility with historic character \$ 14:46 —Criteria; compatibility with historic character \$ 14:47 —Procedures; information needed \$ 14:48 —Public hearing \$ 14:49 —Decision \$ 14:50 —Economic hardship \$ 14:51 —Timing of hardship application \$ 14:52 —Hardship test for-profit owners \$ 14:53 —Hardship test non-profit owners \$ 14:54 —Beneficial use \$ 14:55 —Good faith offers to sell \$ 14:56 —Efforts to find a new use \$ 14:57 —Public hearings \$ 14:58 —Decisions \$ 14:60 —Exemption of ordinary maintenance \$ 14:61 —Public emergencies excluded	
\$ 14:42 —Impact of designation on property owner \$ 14:43 —Amending or revoking designation \$ 14:44 —Issuance of building or demolition permit while designation is pending \$ 14:45 —Certificates of appropriateness; changes requiring certificate \$ 14:46 —Criteria; compatibility with historic character \$ 14:47 —Procedures; information needed \$ 14:48 —Public hearing \$ 14:49 —Decision \$ 14:50 —Economic hardship \$ 14:51 —Timing of hardship application \$ 14:52 —Hardship test for-profit owners \$ 14:53 —Hardship test non-profit owners \$ 14:54 —Beneficial use \$ 14:55 —Good faith offers to sell \$ 14:56 —Efforts to find a new use \$ 14:57 —Public hearings \$ 14:58 —Decisions \$ 14:59 Maintenance of historic properties; landmark laws distinguished from building codes \$ 14:60 —Exemption of ordinary maintenance \$ 14:61 —Public emergencies excluded	
\$ 14:43 —Amending or revoking designation \$ 14:44 —Issuance of building or demolition permit while designation \$ 14:45 —Certificates of appropriateness; changes requiring certificates \$ 14:46 —Criteria; compatibility with historic character \$ 14:47 —Procedures; information needed \$ 14:48 —Public hearing \$ 14:49 —Decision \$ 14:50 —Economic hardship \$ 14:51 —Timing of hardship application \$ 14:52 —Hardship test for-profit owners \$ 14:53 —Hardship test non-profit owners \$ 14:54 —Beneficial use \$ 14:55 —Good faith offers to sell \$ 14:56 —Efforts to find a new use \$ 14:57 —Public hearings \$ 14:58 —Decisions \$ 14:59 Maintenance of historic properties; landmark laws distinguished from building codes \$ 14:60 —Exemption of ordinary maintenance \$ 14:61 —Public emergencies excluded	
\$ 14:44 — Issuance of building or demolition permit while designation is pending \$ 14:45 Certificates of appropriateness; changes requiring certificates \$ 14:46 — Criteria; compatibility with historic character \$ 14:47 — Procedures; information needed \$ 14:48 — Public hearing \$ 14:49 — Decision \$ 14:50 Economic hardship \$ 14:51 — Timing of hardship application \$ 14:52 — Hardship test for-profit owners \$ 14:53 — Hardship test non-profit owners \$ 14:54 — Beneficial use \$ 14:55 — Good faith offers to sell \$ 14:56 — Efforts to find a new use \$ 14:57 — Public hearings \$ 14:58 — Decisions \$ 14:59 Maintenance of historic properties; landmark laws distinguished from building codes \$ 14:60 — Exemption of ordinary maintenance \$ 14:61 — Public emergencies excluded	
\$ 14:45 Certificates of appropriateness; changes requiring certificates \$ 14:46 — Criteria; compatibility with historic character \$ 14:47 — Procedures; information needed \$ 14:48 — Public hearing \$ 14:49 — Decision \$ 14:50 Economic hardship — Timing of hardship application \$ 14:51 — Timing of hardship application — Hardship test for-profit owners \$ 14:53 — Hardship test non-profit owners \$ 14:54 — Beneficial use \$ 14:55 — Good faith offers to sell \$ 14:56 — Efforts to find a new use \$ 14:57 — Public hearings \$ 14:58 — Decisions \$ 14:59 Maintenance of historic properties; landmark laws distinguished from building codes \$ 14:60 — Exemption of ordinary maintenance \$ 14:61 — Public emergencies excluded	9
\$ 14:46 —Criteria; compatibility with historic character \$ 14:47 —Procedures; information needed \$ 14:48 —Public hearing \$ 14:49 —Decision \$ 14:50 Economic hardship \$ 14:51 —Timing of hardship application \$ 14:52 —Hardship test for-profit owners \$ 14:53 —Hardship test non-profit owners \$ 14:54 —Beneficial use \$ 14:55 —Good faith offers to sell \$ 14:56 —Efforts to find a new use \$ 14:57 —Public hearings \$ 14:58 —Decisions \$ 14:59 Maintenance of historic properties; landmark laws distinguished from building codes \$ 14:60 —Exemption of ordinary maintenance \$ 14:61 —Public emergencies excluded	
\$ 14:47 —Procedures; information needed \$ 14:48 —Public hearing \$ 14:49 —Decision \$ 14:50 Economic hardship \$ 14:51 —Timing of hardship application \$ 14:52 —Hardship test for-profit owners \$ 14:53 —Hardship test non-profit owners \$ 14:54 —Beneficial use \$ 14:55 —Good faith offers to sell \$ 14:56 —Efforts to find a new use \$ 14:57 —Public hearings \$ 14:58 —Decisions \$ 14:59 Maintenance of historic properties; landmark laws distinguished from building codes \$ 14:60 —Exemption of ordinary maintenance \$ 14:61 —Public emergencies excluded	
\$ 14:48 —Public hearing \$ 14:49 —Decision \$ 14:50 Economic hardship \$ 14:51 —Timing of hardship application \$ 14:52 —Hardship test for-profit owners \$ 14:53 —Hardship test non-profit owners \$ 14:54 —Beneficial use \$ 14:55 —Good faith offers to sell \$ 14:56 —Efforts to find a new use \$ 14:57 —Public hearings \$ 14:58 —Decisions \$ 14:59 Maintenance of historic properties; landmark laws distinguished from building codes \$ 14:60 —Exemption of ordinary maintenance \$ 14:61 —Public emergencies excluded	
\$ 14:49 —Decision \$ 14:50 Economic hardship \$ 14:51 —Timing of hardship application \$ 14:52 —Hardship test for-profit owners \$ 14:53 —Hardship test non-profit owners \$ 14:54 —Beneficial use \$ 14:55 —Good faith offers to sell \$ 14:56 —Efforts to find a new use \$ 14:57 —Public hearings \$ 14:58 —Decisions \$ 14:59 Maintenance of historic properties; landmark laws distinguished from building codes \$ 14:60 —Exemption of ordinary maintenance \$ 14:61 —Public emergencies excluded	
\$ 14:50 Economic hardship \$ 14:51 —Timing of hardship application \$ 14:52 —Hardship test for-profit owners \$ 14:53 —Hardship test non-profit owners \$ 14:54 —Beneficial use \$ 14:55 —Good faith offers to sell \$ 14:56 —Efforts to find a new use \$ 14:57 —Public hearings \$ 14:58 —Decisions \$ 14:59 Maintenance of historic properties; landmark laws distinguished from building codes \$ 14:60 —Exemption of ordinary maintenance \$ 14:61 —Public emergencies excluded	
\$ 14:51 —Timing of hardship application \$ 14:52 —Hardship test for-profit owners \$ 14:53 —Hardship test non-profit owners \$ 14:54 —Beneficial use \$ 14:55 —Good faith offers to sell \$ 14:56 —Efforts to find a new use \$ 14:57 —Public hearings \$ 14:58 —Decisions \$ 14:59 Maintenance of historic properties; landmark laws distinguished from building codes \$ 14:60 —Exemption of ordinary maintenance \$ 14:61 —Public emergencies excluded	
\$ 14:52 —Hardship test for-profit owners \$ 14:53 —Hardship test non-profit owners \$ 14:54 —Beneficial use \$ 14:55 —Good faith offers to sell \$ 14:56 —Efforts to find a new use \$ 14:57 —Public hearings \$ 14:58 —Decisions \$ 14:59 Maintenance of historic properties; landmark laws distinguished from building codes \$ 14:60 —Exemption of ordinary maintenance \$ 14:61 —Public emergencies excluded	
\$ 14:53 —Hardship test non-profit owners \$ 14:54 —Beneficial use \$ 14:55 —Good faith offers to sell \$ 14:56 —Efforts to find a new use \$ 14:57 —Public hearings \$ 14:58 —Decisions \$ 14:59 Maintenance of historic properties; landmark laws distinguished from building codes \$ 14:60 —Exemption of ordinary maintenance \$ 14:61 —Public emergencies excluded	
<ul> <li>§ 14:54 —Beneficial use</li> <li>§ 14:55 —Good faith offers to sell</li> <li>§ 14:56 —Efforts to find a new use</li> <li>§ 14:57 —Public hearings</li> <li>§ 14:58 —Decisions</li> <li>§ 14:59 Maintenance of historic properties; landmark laws distinguished from building codes</li> <li>§ 14:60 —Exemption of ordinary maintenance</li> <li>§ 14:61 —Public emergencies excluded</li> </ul>	
§ 14:55 —Good faith offers to sell § 14:56 —Efforts to find a new use § 14:57 —Public hearings § 14:58 —Decisions § 14:59 Maintenance of historic properties; landmark laws distinguished from building codes § 14:60 —Exemption of ordinary maintenance § 14:61 —Public emergencies excluded	
§ 14:56 —Efforts to find a new use § 14:57 —Public hearings § 14:58 —Decisions § 14:59 Maintenance of historic properties; landmark laws distinguished from building codes § 14:60 —Exemption of ordinary maintenance § 14:61 —Public emergencies excluded	
§ 14:57 —Public hearings § 14:58 —Decisions § 14:59 Maintenance of historic properties; landmark laws distinguished from building codes § 14:60 —Exemption of ordinary maintenance § 14:61 —Public emergencies excluded	
§ 14:58 —Decisions § 14:59 Maintenance of historic properties; landmark laws distinguished from building codes § 14:60 —Exemption of ordinary maintenance § 14:61 —Public emergencies excluded	
§ 14:59 Maintenance of historic properties; landmark laws distinguished from building codes § 14:60 —Exemption of ordinary maintenance § 14:61 —Public emergencies excluded	
distinguished from building codes § 14:60 —Exemption of ordinary maintenance § 14:61 —Public emergencies excluded	
§ 14:60 —Exemption of ordinary maintenance § 14:61 —Public emergencies excluded	
§ 14:61 —Public emergencies excluded	
§ 14:62 Enforcement and penalties	
§ 14:63 Appeals	
§ 14:64 Practice tips	
§ 14:65 National Historic Preservation Act	
§ 14:66 —Purposes	
§ 14:67 —Advisory Council on Historic Preservation	
§ 14:68 —Coordination of federal and state reviews	
§ 14:69 Review of federal activities affecting historic properties— Areas in which federal law differs from New York's	
§ 14:70 Review of federal activities affecting historic properties; Areas in which federal law differs from New York's— Definition of historic properties	
§ 14:71 —Consultation process	
§ 14:72 —Consulting parties	
§ 14:73 —Assessment of effects	
§ 14:74 Public participation	

§ 14:75	Memorandum of agreement
§ 14:76	Failure to agree
§ 14:77	Foreclosure of comment
§ 14:78	Anticipatory demolition
§ 14:79	Special requirements for national historic landmarks
§ 14:80	Properties discovered during an undertaking
§ 14:81	Practice tips; nature of Section 106 negotiation process
§ 14:82	<ul> <li>Roles of State Historic Preservation Office, Advisory</li> <li>Council on Historic Preservation and Department of Interior</li> </ul>
§ 14:83	Section 4(f), Department of Transportation Act; purpose
§ 14:84	—Agencies involved
§ 14:85	—Compliance process; use of historic sites
§ 14:86	—Compliance process; feasible and prudent alternatives
§ 14:87	Consideration of historic resources under State Environmental Quality Review Act (SEQRA)
§ 14:88	—Definition of environment
§ 14:89	—Type I actions presumptively requiring environmental review
§ 14:90	—Significant effect
§ 14:91	New York State Uniform Fire Prevention and Building Code—Relationship to federal handicapped access standards
§ 14:92	Federal tax incentives for historic preservation
§ 14:93	State tax incentives for historic preservation
_	PTER 15. ENERGY: SITING AND
	RONMENTAL IMPACT REVIEW OF
ELEC	TRIC AND NATURAL GAS FACILITIES
§ 15:1	Introduction
§ 15:2	Siting electric generating plants—SEQRA review and local zoning approvals
§ 15:3	Former electric generating plant siting boards
§ 15:4	—Siting in the Article VIII era (1972–1988)
§ 15:5	—Siting in the Article X Era (1992–2002)
§ 15:6	—Whether siting boards will be re-instituted; issues; pros and cons
§ 15:7	Electric generator siting and market pricing of electricity
§ 15:8	—Managing the market and dispatch of electricity; the NY ISO
§ 15:9	—Comprehensive reliability planning and the NY ISO
§ 15:10	—Electric generation siting in the competitive era
§ 15:11	Siting and environmental review of electric and natural gas

—Siting non-major electric transmission lines—SEQRA and

§ 15:12

transmission facilities

local laws

- § 15:13 —Federal electric transmission initiative under the Energy Policy Act of 2005
   § 15:14 —Interstate natural gas transmission lines under the Natural Gas Act and NEPA
- § 15:15 Liquefied natural gas facilities

# CHAPTER 16. WILDLIFE AND ENDANGERED SPECIES PROTECTION

#### I. NEW YORK FISH AND WILDLIFE REGULATION

- § 16:1 Generally
- § 16:2 Fish and wildlife management
- § 16:3 Prohibited acts
- § 16:4 Hunting, fishing and trapping licenses
- § 16:5 Regulation of individual activities
- § 16:6 Preserves and conservation areas
- § 16:7 Marine and coastal resources

# II. OVERVIEW OF FEDERAL ENDANGERED SPECIES LEGISLATION

- § 16:8 Generally
- § 16:9 Listing of species
- § 16:10 Procedure
- § 16:11 Delisting
- § 16:12 Prohibited actions
- § 16:13 Harass
- § 16:14 Other illegal activities
- § 16:15 Species held in captivity
- § 16:16 Enforcement and penalties
- § 16:17 Other federal responsibilities
- § 16:18 Permits
- § 16:19 New York endangered species laws
- § 16:20 Enforcement of the Fish and Wildlife Law

### CHAPTER 17. NOISE

- § 17:1 Resolving noise problems
- § 17:2 Measurement of sound
- § 17:3 Effects of noise
- § 17:4 Nuisance actions
- § 17:5 —Private nuisance; elements of cause of action
- § 17:6 —Unreasonable interference
- § 17:7 —Defendant's compliance with law
- § 17:8 —Coming to the nuisance

§ 17:9	—Substantial interference
§ 17:10	—Remedies
§ 17:11	—Public nuisance
§ 17:12	—Common law public nuisance
§ 17:13	—Special damages
§ 17:14	—Injunctive relief
§ 17:15	—Public nuisance statutes
§ 17:16	—Other statutory prohibitions against noise
§ 17:17	Noise-related landlord-tenant law
§ 17:18	Local law
§ 17:19	—Enforcement agencies
§ 17:20	—Preemption
§ 17:21	—Proper promulgation
§ 17:22	—Vagueness
§ 17:23	—Anti-noise laws affecting protected expression
§ 17:24	—Noise near schools, hospitals, courts, etc
§ 17:25	—Motor vehicle horns and alarms
§ 17:26	—Noise-related building construction requirements
§ 17:27	—Noise restrictions applicable to building-related mechanical
3	equipment
§ 17:28	State law
§ 17:29	-Muffler law and motor vehicle sound-level limits; car radios
§ 17:30	—Noise at premises licensed to sell alcoholic beverages
§ 17:31	—Noise of pleasure vessels
§ 17:32	—Snowmobile noise
§ 17:33	—Noise insulation of public schools
§ 17:34	—Noise at shooting ranges
§ 17:35	—Disorderly conduct
§ 17:36	—Noise near places of worship; noise of sports activities and
5 11.00	parades on Sundays
§ 17:37	Hearing loss—Workers' Compensation Law
§ 17:38	Federal law
§ 17:39	—Occupational Safety and Health Act of 1970
§ 17:40	—Housing and Urban Development
§ 17:41	Noise Control Act
§ 17:42	—Product noise-emission and labeling regulations; railroad
3 11.12	and common carrier noise-emissions
§ 17:43	Record-keeping; testing; warranties; advertisements;
, 1,,,,,	prohibitions; penalties; petitions for review
§ 17:44	Preemption of state law
§ 17:45	Quiet Communities Program
§ 17:46	Citizen suits
§ 17:47	Airport noise law
§ 17:48	—Federal airport noise law
8 17.40	Programation of local law

§ 17:50	—Access restrictions
§ 17:51	—Noise compatibility programs; land use planning
§ 17:52	—Protection of airport operators and federal government
_	from liability; evidence inadmissible in airport noise actions
§ 17:53	—Noise compatibility programs; airport construction and
	operation
§ 17:54	—Sonic boom
§ 17:55	—Land uses compatible with airport noise; airport noise
	measurement
§ 17:56	—Citizen suits
§ 17:57	—Nuisance actions
§ 17:58	—De facto takings due to aircraft noise
§ 17:59	—Type of damage required
§ 17:60	—Responsible party
§ 17:61	—Flights not over the property
§ 17:62	—De jure appropriations of avigation easements
§ 17:63	—Measure of damages for appropriation
§ 17:64	—Procedural matters; statutes of limitations
§ 17:65	Highway noise—Federal funding laws
§ 17:66	——Compensation
	T

# CHAPTER 18. CRIMINAL ENFORCEMENT OF ENVIRONMENTAL LAW

### I. OVERVIEW

# A. IN GENERAL

§ 18:1 Introduction

# B. GUIDE TO THE LAW AND KEY DEFINITIONS

§ 18:2	Generally
§ 18:3	Hazardous wastes
§ 18:4	Hazardous substances
§ 18:5	Water
§ 18:6	Waters of the state
§ 18:7	Point source
§ 18:8	State Pollutant Discharge Elimination System—ECL
	§ 17-0105(13)
§ 18:9	Pollutant—ECL § 71-1932
§ 18:10	Air pollution
§ 18:11	Air contaminant—ECL § 19-0107(2)
§ 18:12	Medical waste
§ 18:13	Pesticides
§ 18:14	Fish and wildlife, lands and forests

#### II. ELEMENTS AND DEGREES OF CRIMES

Δ	HΔ	<b>7.</b> A	RD	OUS	WA	STES
<b>~</b> .					v v /¬	

- § 18:15 Unclassified misdemeanors—ECL § 71-2705(2)
- § 18:16 Unlawful possession of hazardous wastes in the second degree—ECL § 71-2707
- § 18:17 Unlawful possession of hazardous wastes in the first degree—ECL § 71-2709
- $\$  18:19 Unlawful dealing in hazardous wastes in the first degree— ECL  $\$  71-2717
- § 18:20 Presumptions—ECL § 72-2719

#### B. HAZARDOUS SUBSTANCES

- § 18:21 Generally
- § 18:22 Endangering public health, safety or the environment in the fifth degree—ECL § 71-2710
- § 18:23 Endangering public health, safety or the environment in the fourth degree—ECL § 71-2711
- § 18:24 Endangering public health, safety or the environment in the third degree—ECL § 71-2712
- \$ 18:25 Endangering public health, safety or the environment in the second degree—ECL \$ 71-2713
- § 18:26 Endangering public health, safety or the environment in the first degree—ECL § 71-2714
- § 18:27 Defenses and additional considerations

#### B. SOLID WASTE

§ 18:28 Generally

#### C. WATER

- § 18:29 Generally
- § 18:30 General criminal sanction—ECL § 71-1933(1)
- § 18:31 Specific water offenses—ECL § 71-1933(3)
- § 18:32 Knowing water offense—ECL § 71-1933(4)
- § 18:33 Intentional water offense—ECL § 71-1933(5)
- § 18:34 Reporting violation with intent to deceive—ECL § 71-1933(7)
- § 18:35 Streams
- § 18:36 Freshwater wetlands
- § 18:37 Tidal wetlands
- § 18:38 Defenses

D	٨	TD
	$\mathbf{A}$	IК

§ 18:39 Generally

### E. PESTICIDES

§ 18:40 Generally

### F. MEDICAL WASTE

- § 18:41 Generally
- § 18:42 Strict liability medical waste offense—ECL § 71-4402(2)(a)
- $\$  18:43 Intentional, knowing or reckless medical waste offense—ECL  $\$  71-4402(2)(b)
- § 18:44 Unlawful possessing of medical waste in the second degree— ECL § 71-4403
- $\$  18:45 Unlawful possession of medical waste in the first degree— ECL  $\$  71-4404
- \$ 18:46 Unlawful release of medical waste in the fourth degree—ECL \$ 71-4405
- § 18:47 Unlawful release of medical waste in the third degree—ECL § 71-4406
- $\$  18:48 Unlawful release of medical waste in the second degree— ECL  $\$  71-4407
- § 18:49 Unlawful release of medical waste in the first degree—ECL § 71-4408
- § 18:50 Unlawful dealing in medical waste—ECL § 71-4409

### G. MINERAL RESOURCES

§ 18:51 Generally

### H. CONSERVATION, FISH AND WILDLIFE

§ 18:52 Generally

#### I. OTHER OFFENSES

- § 18:53 Failure to report releases of pollutants
- § 18:54 Conventional offenses

# III. JURISDICTIONAL REQUIREMENTS

§ 18:55 Concurrent jurisdiction of Attorney General and District Attorney

### IV. CULPABLE MENTAL STATES

§ 18:56 Generally

### § 18:57 Legislative history

# V. CRIMINAL LIABILITY IN A CORPORATE SETTING

§ 18:58	Generally
§ 18:59	Acting within the scope of employment
§ 18:60	Failure to perform a legal duty
§ 18:61	Responsible corporate officer doctrine

# VI. CRIMINAL ENFORCEMENT SETTING

§ 18:62	Searches and investigations
§ 18:63	Prosecutorial discretion
0 10 01	α

§ 18:64 Sentencing

## VII. DEALING WITH THE PROSECUTION

### A. IN GENERAL

§ 18:65	Considerations during the initial stages of an investigation
§ 18:66	Preliminary negotiations
§ 18:67	Developing a case strategy

# B. RESPONDING TO THE GOVERNMENT'S INVESTIGATION

§ 18:68	Choice between cooperation and noncooperation
§ 18:69	Noncooperation
§ 18:70	Cooperation
§ 18:71	-Access to corporate employees, officers, and directors
$\S 18:72$	—Voluntary disclosure of documents
§ 18:73	—Providing a written submission to the government
§ 18:74	——Elements of written submission
§ 18:75	— When and to whom the written submission should be
	mada

### **Table of Laws and Rules**

**Table of Cases** 

Index