

## NEW YORK STATE NAVIGATION LAW

§ 30. Navigation, jurisdiction over. The commissioner shall have jurisdiction over navigation on the navigable waters of the state and, except as otherwise provided, shall enforce the provisions of this chapter and the regulations established thereunder. As a guide to the interpretation and application of this article, nothing authorized hereunder shall be construed to convey any property rights, either in real estate or material, or any exclusive privilege; nor authorize any injury to private property or invasion of private rights or any infringement of federal, state or local laws or regulations, but shall express the assent of the state so far as it concerns the public rights of navigation. Nothing contained in this section shall be construed to limit, impair or affect the general powers and duties of the canal corporation relating to canals as set forth in section ten of the canal law.

§ 31. Excavation, fill or other modification of water course. No person or local public corporation shall excavate or place fill in the navigable waters of the state without first obtaining a permit therefor in conformity with the provisions of section 15-0505 of the environmental conservation law.

§ 32. Location of structures in or on navigable waters. 1. Notwithstanding the provisions of subdivision two of section forty-six-a of this chapter, no wharf, dock, pier, jetty, platform or other structure built on floats, columns, open timber, piles or similar open-work supports, temporary or permanent, shall be constructed, installed, repaired, modified, expanded or otherwise placed by any person in the navigable waters of the state or in a navigable channel or replaced by any person in such waters or channel on or after the effective date of this section after having been removed from such waters or channel for a period in excess of thirty days so as to interfere with the free and direct access to such waters from the property, wharf, dock or similar structure of any other person unless written permission is obtained therefor from such other person.

2. In case any written complaint shall be filed with the commissioner of general services and he shall have cause to believe, or in case the commissioner himself shall have cause to believe, that any person is violating the provisions of this section or any rule or regulation promulgated pursuant to this section, the commissioner shall cause a prompt investigation to be made.

3. The commissioner shall have the power, after hearing on due notice, to make and serve an order, setting forth the findings of fact and conclusions therefrom, directing any person constructing, installing, repairing, modifying, expanding or otherwise placing or using any such structure to either move or remove the said structure or to reconstruct, repair or modify the same within such reasonable time and in such manner as shall be specified in said order, and it shall be the duty of every such person to obey, observe and comply with such order and the conditions therein prescribed. The commissioner is authorized to adopt, amend, repeal and enforce such rules and regulations as he may deem necessary to govern administrative procedures applicable to hearings under this section.

4. It shall be unlawful for any person to fail, omit or neglect to comply with such order or to fail to move, remove, reconstruct, repair or modify said structure as provided in the order within a reasonable time as designated by the commissioner.

5. Any person who fails, omits or neglects to comply with or otherwise violates any such order shall be liable for a civil penalty of not more than one hundred dollars for such violation and an additional civil penalty of not more than one hundred dollars for each day during which such violation continues, to be assessed by the commissioner.

6. The commissioner is hereby authorized to commence an action or proceeding in a court of competent jurisdiction to compel compliance with any order made and to recover any penalty assessed pursuant to the provisions of this section.

7. Any civil penalty or order issued by the commissioner under this section shall be reviewable in a proceeding under article seventy-eight of the civil practice law and rules.

8. The provisions of this section shall not apply to marine terminals including piers, wharves, docks, bulkheads, slips, basins and other structures or facilities used in the transportation of waterborne cargo or passengers in interstate or foreign commerce.

§ 35-a. Floating objects other than aids to navigation. 1. The commissioner may authorize, through the issuance of a revocable permit, the placing in the navigable waters of the state, of mooring buoys, bathing beach markers, swimming floats, speed zone markers, or any other floating object having no navigational significance, if in his opinion the placing of such floating object will not be a hazard to navigation.

2. The commissioner is hereby authorized to make rules and regulations for the issuance of such permits and he shall establish a uniform system of marking all floating objects that he authorizes to be placed.

3. Adjacent upland owners may place one mooring buoy and one swimming float of not more than one hundred square feet of surface area, in the waters adjacent to and within the boundaries of their shoreline, provided however, that no floating object and no vessel or part thereof which is secured to a mooring buoy shall at any time extend more than one hundred feet from shore and further provided that no floating object may be placed in a navigable channel or in any location in which it will interfere with free and safe navigation or free access to another person's property. The commissioner shall have the right to remove or alter the location of any such buoy or float in the interest of navigation.

4. The commissioner may, by rule, regulation, or order, designate lakes, or areas within lakes, in which fishing buoys may be placed. The commissioner shall specify the size, shape, color and material of construction for such buoys, the manner of placing same and the type of ground tackle to be used. No fishing buoys may be placed in the navigable waters of the state except as specified by the commissioner in rules and regulations authorized herein.

5. The commissioner may prescribe a reasonable service charge to cover the cost of issuance of permits authorized by this section. Revenues from such service charges shall be deposited into the "I love NY waterways" boating safety fund established pursuant to section ninety-seven-nn of the state finance law.

6. The provisions of this section which pertain to the mooring of vessels shall not apply to areas in which local ordinances so pertaining

have been duly approved by the commissioner or in which areas federal laws or rules and regulations regulate the anchoring or mooring of vessels.

7. A violation of this section or the rules and regulations authorized herein shall constitute an offense punishable by a fine of not to exceed fifty dollars.

§ 36. Removal of unauthorized floating object. No unattended floating object shall be anchored within the navigable waters of the state for any purpose, except as same may be authorized under the United States laws, rules and regulations or by section thirty-five and thirty-five-a of this chapter or by local ordinances as may be duly approved by the commissioner. Any person finding such anchored object is authorized to remove the same.

## NEW YORK STATE ENVIRONMENTAL CONSERVATION LAW

§ 15-0701. Harmless alterations in watercourses and lakes; prescriptive rights or privileges; action for declaratory judgment; limitations of time.

1. An alteration (whether or not it causes water to cover or permeate land previously dry) in the natural flow, quantity, quality or condition of a natural watercourse or lake situated in this state and either on or below the surface of the earth, effected by the use either on or off riparian land, withdrawal, impoundment, or obstruction of the water in such watercourse or lake, or by the addition of water thereto, or by changes in the banks, bed, course or other physical characteristics of such watercourses or lake, is reasonable and lawful as against any person, as defined in subdivision two of section 15-0107, having an interest in such watercourse or lake, unless such alteration is causing harm to him or it, or would cause him or it immediate harm if and when begun. No action for nominal damages or for an injunction shall be maintainable because of such an alteration against any person or corporation, whether a riparian owner or not, on the ground that such alteration is an infringement of the plaintiff's private rights and privileges in the waters of, or with respect to, such watercourse or lake unless such alteration is causing plaintiff harm, or would cause him or it immediate harm if and when begun. This subdivision shall apply to such an action regardless of whether the alteration sought to be made the basis of it was caused before or after the effective date of this section.

2. For the purpose of this section, "harm" shall mean:

a. Interference with a present use of the water by the complaining party or an interference with the complaining party's present enjoyment of riparian land occurring prior to suit, or which will immediately occur when the alteration complained of is begun, regardless of whether such interference has caused or will ever cause such party measurable financial loss; or

b. A decrease in the market value of the complaining party's interest in riparian land occurring prior to suit, or which will immediately occur when the alteration complained of is begun, regardless of whether his use of the water or enjoyment of riparian land was interfered with prior to suit, or will be immediately interfered with when the alteration complained of is begun.

3. Interference with the present enjoyment of riparian land may be

established by proof that the alteration complained of or sought to be enjoined is rendering or will immediately render riparian land owned or occupied by the complainant less suitable or useful for the purpose or purposes to which he is presently devoting it. The evidence admissible to establish a decrease in the suitability or utility of such land for such purposes may include, but not be limited to, evidence tending to show that the act complained of has diminished, or when begun, will immediately diminish, the desirability for recreational purposes, or the natural beauty of the body of water to which the land owned or occupied by the complainant is riparian.

4. The cause of action essential to the initiation and creation of a prescriptive right or privilege against a private riparian owner to continue an alteration in the natural condition of such a watercourse or lake shall not be supplied by such an alteration until it shall have caused such riparian owner harm and then only if it is unreasonable.

5. Nothing contained in this section shall, however, be construed as depriving any person or corporation having an interest in such watercourse or lake of any remedy either at law or in equity which he now has, or may hereafter acquire, under the law of this state for harm caused him by an unreasonable alteration in the natural condition of such a watercourse or lake, regardless of whether such alteration was harmful and unreasonable from its initiation or subsequently became so.

6. Any person desirous of ascertaining the extent of the rights and privileges of himself and others in the water of or with respect to the natural condition of such a natural watercourse or lake may maintain an action for a declaratory judgment defining the extent of such rights and privileges. Neither proof of present harm nor of the likelihood of future harm to the plaintiff from an alteration in the natural condition of such watercourse or lake shall be prerequisite to the maintenance of such an action, the judgment in which shall not affect the rights and privileges of any person or corporation not a party thereto. Such an action shall be maintainable by persons, corporations, governmental units, owners of land riparian to such a natural watercourse or lake, persons to whom such owners have granted their riparian rights in whole or in part, and owners of prescriptive rights or privileges in the water of or with respect to such watercourses or lakes.

7. No statute of limitations shall begin to run against a cause of action for such a declaratory judgment until a plaintiff who is empowered by this section to maintain it has been harmed by an unreasonable alteration in the natural condition of such watercourse or lake effected by the person or his predecessor in interest against whom such an action may be maintained.

8. Notwithstanding any other provision of this section, if the harm resulting from an unreasonable alteration of the natural condition of such a natural watercourse or lake is one which would not ordinarily be noticeable by an owner of land actually present thereon, no statute of limitations shall begin to run against any cause of action referred to in subdivisions four and five of this section until the party harmed is fairly chargeable with knowledge that he has been harmed.

9. Nothing herein contained shall be construed to alter or affect the right to exercise any power which the state of New York or any agency thereof, or any county, city, town or village or any agency thereof, may have to enjoin the initiation or continuance of an alteration in the natural condition of a natural watercourse or lake.

§ 15-0505. Protection of navigable waters; excavation or fill; permit.

1. No person, local public corporation or interstate authority shall excavate or place fill below the mean high water level in any of the navigable waters of the state, or in marshes, estuaries, tidal marshes and wetlands that are adjacent to and contiguous at any point to any of the navigable waters of the state and that are inundated at mean high water level or tide, without a permit issued pursuant to subdivision 3 of this section. For the purposes of this section, fill shall include, but shall not be limited to, earth, clay, silt, sand, gravel, stone, rock, shale, concrete (whole or fragmentary), ashes, cinders, slag, metal, or any other similar material whether or not enclosed or contained by (1) crib work of wood, timber, logs, concrete or metal, (2) bulkheads and cofferdams of timber sheeting, bracing and piling or steel sheet piling or steel H piling, separated or in combination. Nothing contained in this section is intended to be, nor shall be construed to

limit, impair or affect the memorandum of understanding which any state department enters into with the Department of Environmental Conservation or the general powers and duties of the Department of Transportation relating to canals or the general powers and duties of the Department of Environmental Conservation relating to flood control.

2. A permit application or request for a permit renewal or modification shall be made on forms provided by the department and shall consist of a description of the character and extent of the proposed project or work, drawings, plans and specifications providing the location and details of the proposed project or work, and such additional information as the department may require.

3. Before granting a permit, a permit renewal or a permit modification pursuant to this section the department shall ascertain the probable effect on the use of such waters for navigation, the health, safety and welfare of the people of the state and the effect on the natural resources of the state, including soil, forests, water, fish and aquatic resources therein, likely to result from the proposed project or work.

4. The department shall review the permit application or request for renewal or modification of an existing permit and may grant or deny the permit or request, or may grant the permit with such conditions as will safeguard life or property against danger or destruction and as will make the navigable waters safe for use by the public.

5. The rules and regulations adopted by the department to implement this section and the provisions of article 70 of this chapter and rules and regulations adopted thereunder shall govern the processing of permit applications, renewals, modifications, suspensions and revocations under this section.

6. The provisions of subdivisions 1, 2, 3 and 4 of this section shall not apply to emergency work in waters described in subdivision 1 of this section which is immediately necessary to protect the health, safety and well-being of any person or persons or to prevent damage to personal or real property, provided that the department is given written notification by registered mail or telegraph within forty-eight hours after the commencement of the work and within forty-eight hours following the completion of the work. Whenever such emergency work is performed as provided in this subdivision, it shall be performed in a manner that will cause the least change, modification, disturbance or damage to the environment.

7. The requirements of this section shall be in addition to those specified in section 15-0501 of this title, provided however, that the department may, by rule and regulation, provide that only one application for a permit or request for renewal or modification of an existing permit need be filed when the proposed project or work requires a department permit under this section and section 15-0501 of this title.

§ 15-0507. Structures impounding waters; structures in waters; responsibility of owner; inspection.

1. Any owner of a dam or other structure which impounds waters shall at all times operate and maintain said structure and all appurtenant structures in a safe condition. As used in this section and section 71-1109 of this chapter, "owner" means any person or local public corporation who owns, erects, reconstructs, repairs, maintains or uses a dam or other structure which impounds waters. The commissioner may promulgate regulations requiring any owner to prepare and implement a safety program for such dam or structure as necessary to safeguard life,

property or natural resources. Regulations governing the safety program may include requirements for inspections, monitoring, maintenance and operation, emergency action planning, financial security, recordkeeping and reporting or any other requirement the commissioner deems necessary to safeguard life, property or natural resources. Such requirement shall only apply to those dams or other structures that impound waters which pose, in the event of failure, a threat of personal injury, substantial property damage or substantial natural resource damage.

2. Whenever in the judgment of the department public safety requires, the department shall investigate dams and other structures impounding waters in the state, and docks, piers and wharves extending into such waters.

3. In addition to any other power set forth in this chapter, including the power to issue an order pursuant to section 71-0301 of this chapter, the department shall have the power, whenever in the judgment of the department it may be necessary to safeguard life or property or to protect the natural resources of the state, after hearing on due notice, to issue an order, setting forth the findings of fact and conclusions therefrom, directing any owner:

a. to conduct studies, investigations and analyses necessary to evaluate the safety of the structure, including but not limited to visual inspections, measurements, foundation exploration and testing, materials testing, hydraulic and hydrologic analyses, structural stability analyses and seepage investigations; and

b. to either remove the said structure or to erect, reconstruct or repair the same within such reasonable time and in such manner as shall be specified in said order.

It shall be the duty of every such owner to obey, observe and comply with such order and with the conditions therein prescribed. The provisions of title 9 of this article with respect to administrative procedures shall be applicable to hearings under this section.

4. It shall be unlawful for any owner to fail, omit or neglect to comply with such order within a reasonable time as designated by the department.

5. Upon the violation of any such order, the department shall have power to enter upon the lands and waters where such structures are located for the purpose of removing, repairing or reconstructing the same and to take such other and further precautions which it may deem necessary to safeguard life or property or protect the natural resources of the state against danger occasioned by the presence of such structures. In removing, repairing and reconstructing such structures or other properties so affected the department shall not deviate from the method, manner and specifications contained in the original order.

6. The department shall certify the amount of the costs and expenses incurred by the department and any state departments for the removal, repair or reconstruction aforesaid in any wise connected therewith to the county legislative body of the county or counties in which the said lands and waters are located, whereupon it shall be the duty of such county legislative body of each county to add the amount so certified to the assessment rolls of such locality or localities as a charge against the real property upon which the dam, dock or other structure is located, designated or described by the department as chargeable therewith, and to issue its warrant or warrants for the collection thereof. Thereupon it shall become the duty of such locality or localities through their proper officers to collect the amount so certified in the same manner as other taxes are collected in such locality or localities and when collected to pay the same to the

department, who shall thereupon, pay the same into the State Treasury. Any amount so levied shall thereupon become and be a lien upon the real property affected thereby to the same extent as any tax levy becomes and is a lien thereon. The department may also assert other rights of recovery as may exist by law for such costs and expenses incurred.

§ 15-0511. Alterations to watercourses and lakes; inspection and correction; illegal impounding of waters.

1. Whenever in the judgment of the commissioner, public safety requires, or an illegal excavation, fill, or dam exists in or on the waters of the state, the commissioner may cause an investigation to be made of the nature of the hazard or violation and its probable effect on the health, safety and welfare of the people of the state, and the effect on the environment and natural resources including forests, soil, water, fish and wildlife.

2. In addition to any other power set forth in this chapter, including the power to issue an order pursuant to section 71-0301 of this chapter, the commissioner shall have the power, after hearing on due notice, to issue an order, setting forth the findings of fact and conclusions therefrom, directing any person or local public corporation, who hereafter makes or allows to be made or is making an illegal or unsafe excavation or fill, or who constructs an illegal dam, to conduct studies, investigations, and analyses necessary to evaluate the safety of the structure, including but not limited to visual inspections, measurements, foundation exploration and testing, materials testing, hydraulic and hydrologic analyses, structural stability analysis and seepage investigations and to remove, replace or correct the dam or excavated or filled materials, within such reasonable time and in such manner as shall be specified in said order, and it shall be the duty of every such person or local public corporation to obey, observe and comply with such order and with the conditions therein prescribed. The provisions of title 9 of this article with respect to administrative procedures shall be applicable to hearings under this section.

3. It shall be unlawful for any person or local public corporation to fail, omit or neglect to comply with such order within a reasonable time as designated by the commissioner.

4. Upon the violation of any such order, the commissioner, or a duly appointed representative, shall have power to enter upon the lands and waters where such illegal or unsafe disturbances are located for the purpose of removing, replacing or correcting the same and to take such other and further precautions which the commissioner may deem necessary to safeguard life or property or protect the environment of the state against danger occasioned by the presence of the illegal or unsafe excavation, fill or dams. In removing or replacing such structures or other properties so affected the commissioner shall not deviate from the method, manner and specifications contained in the original order.

5. The commissioner shall certify the amount of the costs and expenses incurred by the department and any state departments for the removal or replacing aforesaid in anywise connected therewith to the county legislative body of the county or counties in which the said lands and waters are located, whereupon it shall be the duty of such county legislative body of each county to add the amount so certified to the assessment rolls of such locality or localities as a charge against the real property upon which the excavation, fill or dam is located, designated or described by the commissioner as chargeable therewith, and to issue its warrant or warrants for the collection thereof. Thereupon



it shall become the duty of such locality or localities through their proper officers to collect the amount so certified in the same manner as other taxes are collected in such locality or localities and when collected to pay the same to the department which shall thereupon pay the same into the State Treasury. Any amount so levied shall thereupon become and be a lien upon the real property affected thereby to the same extent as any tax levy becomes and is a lien thereon. The department may also assert other rights of recovery as may exist by law for such costs and expenses incurred.