

# DRAFT

May 8, 2007

To: Great Lakes United--GLU  
From: Conservation Law Center, Inc., Bloomington, Indiana

## Draft Legislation Under Article 17 of the New York Environmental Conservation Law: The Aquatic Invasive Species Control Act

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- Introduction to draft legislation Pages 1-4
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### Introduction to Draft Legislation

In drafting the aquatic invasive species legislation for New York State, we gave thoughtful consideration to the comments and suggestions of GLU and of other parties with whom GLU consulted. Our draft legislation attached below (referred to as “Version 1”) is not inconsistent with the Michigan aquatic nuisance species statute, MCLS § 324.3101 *et seq.*, at least in its general approach. Our legislation, however, differs from the Michigan statute in several important respects to reflect the unique statutory context of New York pollution law as well as to incorporate what we consider to be improvements over the Michigan statute.

After describing Version 1, we summarize five alternatives. These alternatives provide you with choices and also highlight Version 1’s unique provisions. We will timely draft any or all of the alternative versions at your request.

### VERSION 1

Version 1 is probably at the outer boundary of what can be expected to pass the legislature. Version 1 regulates any oceangoing vessel entering, traversing or operating in Great Lakes waters within New York jurisdiction, except for a vessel of the United States Department of Defense or United States Coast Guard.<sup>1</sup> Version 1 thus applies to oceangoing vessels regardless of whether they carry ballast water, regardless of where they discharge their ballast water, and regardless of where they are bound. The scope of our legislation is thus significantly broader than the Michigan statute, which regulates only “oceangoing vessels engaging in port operations.” The broader scope of applicability for New York is necessary to capture a large percentage of ships entering the Great Lakes given that few ships coming in through the St. Lawrence Seaway stop in New York ports.

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<sup>1</sup> Version 1 excludes ocean and coastal waters and the Hudson River.

Version 1, like the Michigan statute, employs a permit system as its main regulatory tool. However, Version 1 differs from the Michigan statute by exempting from the permit requirement those oceangoing vessels that have no “potential” or “capability” to discharge or release invasive species into New York Great Lakes waters. In other words, if an owner or operator can demonstrate that the vessel will not discharge aquatic invasive species because the vessel has no potential or capability to do so, the vessel would not have to apply for a permit. Note the specific wording here is different from the Ohio bill LSC 127 0981, which exempts from a permit requirement oceangoing vessels not “capable of discharging ballast water.” See Ohio bill sec. 1535.02(A)(2). Our permit scheme covers ships that are capable of releasing invasive species carried in places other than ballast water (e.g., anchor chain, sea chest, and hull), and partly addresses one persistent complaint about the federal legislation on the subject: i.e., that the law neglects important pathways of invasive species introduction other than ballast water.

Those few oceangoing vessels not capable of releasing invasive species and thus not requiring a permit are still regulated under Version 1. Such vessels are required to provide notice that they are operating in New York Great Lakes waters and to report ballast water management information to the agency if equipped with at least one ballast tank. The burden and costs on such vessels are minimized by requiring only the information required by the U.S. Coast Guard.

For those oceangoing vessels covered by (i.e., not exempt from) the permit system (which will probably include most oceangoing vessels using New York waters), the agency shall issue a permit only if the applicant demonstrates: (1) that any ballast water is exchanged in the open ocean, is treated, or is subject to an equivalent protective method defined by the agency, if the vessel is equipped with a ballast tank; (2) that control standards for vectors other than ballast water are met; and (3) that all procedural requirements are met. The specific standards are to be determined by the agency and promulgated as regulations. The promulgated standards will be deemed “environmentally sound technology and methods.” The statutory provisions are structured so that the development of new technologies, methods, and standards related to ballast water and other vectors will not require the statute to be revised. For example, future technologies to control the introduction of invasive species via the anchor chain, sea chest, and hull can be designated by the agency as “environmentally sound technology and methods” and would become part of the permit requirement by rule.

Our requirements for permit issuance differ significantly from the Michigan scheme. The Michigan statute states that the agency shall issue a permit for an oceangoing vessel only if the applicant can demonstrate that the vessel “will not discharge aquatic nuisance species,” or if the vessel discharges ballast water or other waste, “that the operator of the vessel will utilize environmentally sound technology and methods, as determined by the department, that can be used to prevent the discharge of aquatic nuisance species.” In our scheme for New York, if the operator demonstrates that the vessel “will not discharge aquatic nuisance species,” then no permit is required. But that will be difficult to demonstrate given the multiple vectors of introduction on a vessel. If the permit requirement applies, a demonstration that the vessel will not discharge ballast water into New York waters would not alone get the applicant a permit. The only way to get a permit to operate in New York waters is to demonstrate that: (1) ballast water is exchanged in the open ocean, treated, or subject to an equivalently protective method, if

the vessel is equipped with a ballast tank; (2) other substantive non-ballast control standards are met; and (3) all procedural requirements are met. In other words, the legislation says to vessel operators: New York will not allow you to enter and operate in our Great Lakes waters if you do not demonstrate that you use protective technologies, regardless of whether or not you plan to or actually do discharge ballast water into our waters, so long as your vessel is capable of releasing aquatic invasive species from any location on your ship. Only “clean” ships can get a permit, and only permitted ships can enter New York waters of the Great Lakes. Note this is a broad regulatory scheme and may be challenged as unduly burdensome to those ships just passing through and not discharging ballast water into New York waters (see Versions 3-6 for alternatives to this broad scope of regulation).

Version 1 additionally provides for enforcement and penalties for violations. Version 1 also sets up an aquatic invasive species control fund under the state finance law, whereby all moneys, fees, and fines arising out of the administration and enforcement of the aquatic invasive species control act are to be deposited in the state treasury and credited to the fund.

## **ALTERNATIVE VERSIONS**

### **Version 2**

Version 2 would contain a beefed up notification and reporting provision from Version 1, but would not contain a permit requirement. In place of a permit system, Version 2 would specify that it is illegal for a vessel with potential to discharge aquatic invasive species to enter and operate in New York Great Lakes waters without using authorized methods for control of invasive species; that is, only “clean” vessels can operate in New York waters. Version 2 would superficially look like the Aubertine bill 1355, except for the following significant differences: (1) unlike in 1355, where the standards apply only to discharge of ballast water in New York waters, Version 2 would set standards even for vessels that did not plan to discharge their ballast water in New York waters so long as they had the “potential” to release invasive species from any location on the ship; (2) unlike in 1355, Version 2 would apply to oceangoing vessels regardless of whether they carry ballast water, where they discharge ballast water, and where they are bound. See 1355, secs. 17-2105(1), -2107. Version 2 would produce the same general result as Version 1, in that both versions would prohibit entry to state waters unless (1) ballast water is exchanged in the open ocean, treated, or subject to an equivalent method, if the vessel is equipped with ballast tanks; (2) other substantive non-ballast control standards are met; and (3) all procedural requirements are met. Without a permit system, however, agency enforcement and control may be more difficult.

### **Version 3**

Version 3 would be the same as Version 2 (no permit system), except that the limited applicability of the Aubertine bill 1355 would be used. Thus, the standards would apply only to vessels that carry ballast water, use a U.S. port, and plan to discharge into New York Great Lakes waters. In other words, Version 3 would prohibit discharge of ballast water (rather than entry of the vessel into state waters) unless the ballast water is exchanged in the open ocean, treated, or subject to an equivalent method. Version 3 may not be very effective for New York if most vessels do not discharge in New York Great Lakes waters. This version is the least likely to be challenged in court, however.

### **Version 4**

Version 4 would be the same as Version 1, with a permit system, except that the standards would apply only to vessels that carry ballast water, use a U.S. port, and plan to discharge into New York Great Lakes waters. Thus, Version 4 would apply a permit system to the discharge of ballast water rather than the entry of the vessel into state waters. As with Version 3, Version 4 may not be very effective for New York if most vessels do not discharge in New York Great Lakes waters. But this version is relatively safe from challenges.

#### **Version 5**

Version 5 would combine the entry prohibitions of Version 2 with the permit system of Version 4. Thus, only “clean” vessels could enter and operate in New York Great Lakes waters, but vessels would only need a permit to discharge ballast water into these waters. An Indiana bill used this combination of prohibition and permitting.

#### **Version 6**

In Version 6, the legislation would be expressly incorporated and integrated into the SPDES permit system of titles 7 and 8, article 17. The state pollutant discharge elimination system (SPDES) was enacted to insure that New York State possesses adequate authority to issue permits regulating the discharge of pollutants from outlets or point sources into the waters of the state upon condition that such discharges will meet all applicable requirements of the federal Clean Water Act, and for New York to participate in the national NPDES program. § 17-0801. An SPDES permit will be issued to an applicant if the commissioner finds that a discharge from an outlet or point source or modified disposal system will not be in contravention of the standards adopted or applied by the department, or if no classification has been made of the receiving waters, finds that the discharge will not be injurious to public health and public enjoyment, the propagation and protection of fish and wild life, and the industrial development of the state. § 17-0701.

Note that this version may limit regulation to sources that actually will discharge aquatic invasive species into New York waters, and the “potential to discharge” language used in Version 1 may not be sufficient.

VERSION 1: STATUTE FORMAT

In table of contents, changed sections are highlighted and added sections are bold and highlighted.

In statute text, changed subsections are highlighted; existing text is in this style type; deletions are struck through in this style type, and additions are bold and highlighted in this style type.

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TITLE 1. GENERAL PROVISIONS AND PUBLIC POLICY

§ 17-0101. Declaration of policy

It is declared to be the public policy of the state of New York to maintain reasonable standards of purity of the waters of the state consistent with public health and public enjoyment thereof, the propagation and protection of fish and wild life, including birds, mammals and other terrestrial and ~~aequatic~~ aquatic life, and the industrial development of the state, and to that end require the use of all known available and reasonable methods to prevent and control the pollution of the waters of the state of New York.

TITLE 1. GENERAL PROVISIONS AND PUBLIC POLICY

§ 17-0103. Statement of purpose

It is the purpose of this article to safeguard the waters of the state from pollution by preventing any new pollution and abating pollution existing when the predecessor of this chapter was enacted, under a program consistent with the declaration of policy stated in section 17-0101.

TITLE 1. GENERAL PROVISIONS AND PUBLIC POLICY

§ 17-0105. Definitions applicable to portions of this article

When used in titles 1 to 11, inclusive, and titles 14 and 19 of this article:

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2. "Waters" or "waters of the state" shall be construed to include lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic ocean within the territorial limits of the state of New York and all other bodies of surface or underground water, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters which do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction.
3. "Marine district" shall include the waters of the Atlantic ocean within three nautical miles from the coast line and all other tidal waters within the state, except the Hudson river northerly of the south end of Manhattan Island.

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TITLE 3. JURISDICTION OF THE DEPARTMENT; AUTHORITY; POWERS AND DUTIES

§ 17-0301. Classification of waters and adoption of standards

1. It is recognized that, due to variable factors, no single standard of quality and purity of the waters is applicable to all waters of the state or to different segments of the same waters.
2. In order to attain the objectives of this article, the department after proper study, and after conducting public hearing upon due notice, shall group the designated waters of the state into classes. Such classification shall be made in accordance with considerations of best usage in the interest of the public and with regard to the considerations mentioned in subdivision 3 hereof.
3. In adopting the classification of waters and the standards of purity and quality above mentioned, the department shall give consideration to:
  - a. The size, depth, surface area covered, volume, direction and rate of flow, stream gradient and temperature of the water;

- b. The character of the district bordering said waters and its peculiar suitability for the particular uses, and with a view to conserving the value of the same and encouraging the most appropriate use of lands bordering said waters, for residential, agricultural, industrial or recreational purposes;
  - c. The uses which have been made, are being made or may be made, of said waters for transportation, domestic and industrial consumption, bathing, fishing and fish culture, fire prevention, the disposal of sewage, industrial waste and other wastes, or other uses within this state, and, at the discretion of the department, any such uses in another state on interstate waters flowing through or originating in this state;
  - d. The extent of present defilement or fouling of said waters which has already occurred or resulted from past discharges therein.
4. The department, after proper study, and after conducting public hearings upon due notice, shall adopt and assign standards of quality and purity for each such classification necessary for the public use or benefit contemplated by such classification. Such standards shall prescribe what qualities and properties of water shall indicate a polluted condition of the waters of the state which is actually or potentially deleterious, harmful, detrimental or injurious to the public health, safety or welfare, to terrestrial or aquatic life or the growth and propagation thereof, or to the use of such waters for domestic, commercial, industrial, agricultural, recreational or other reasonable purposes, with respect to the various classes established pursuant to subdivision 2 hereof.
5. In establishing such standards, consideration shall be given to the following factors:
- a. The extent, if any, to which floating solids may be permitted in the water;
  - b. The extent to which suspended solids, colloids or a combination of solids with other substances suspended in water, may be permitted;
  - c. Organisms of the coliform group or any other organisms from wastes of animal or human origin shall not exceed the following prescribed standards for usage of the classified waters of the state:
    - (1) Sources of water supply for drinking, culinary or food processing purposes which, if subjected to approved disinfection treatment, with additional treatment if necessary to remove naturally present impurities, meet or will meet New York State Health Department drinking water standards and any other usages: For such sources the monthly median coliform value for one hundred ml of sample shall not exceed fifty from a minimum of five examinations and provided that not more than twenty percent of the samples shall exceed a coliform value of two hundred forty for one hundred ml of sample.
    - (2) Sources of water supply for drinking, culinary or food processing purposes which, if subjected to approved treatment equal to coagulation, sedimentation, filtration and disinfection, with additional treatment if necessary to reduce naturally present impurities, will meet New York State Department of Health drinking water standards; bathing, fishing, boating, and any other usages: For such sources the monthly median coliform value for one hundred ml of sample shall not exceed five thousand from a minimum of five examinations and provided that not more than twenty percent of the samples shall exceed a coliform value of twenty thousand for one hundred ml of sample.
    - (3) Sources of water for bathing, fishing, boating, and any other usages except shellfishing for market purposes in tidal salt waters: For such sources the monthly median coliform value for one hundred ml of sample shall not exceed two thousand four hundred from a minimum of five examinations and provided that not more than twenty percent of the samples shall exceed a coliform value of five thousand for one hundred ml of sample and provided further that surface waters receiving treated sewage discharges which pass through residential communities where there is a potential exposure of population

to the surface waters shall be protected by the requirement that all effluents from sewage treatment plants shall be adequately disinfected prior to discharge into the surface waters in order that the monthly median coliform value for one hundred ml of sample shall not exceed two thousand four hundred from a minimum of five examinations and provided that not more than twenty percent of the samples shall exceed a coliform value of five thousand for one hundred ml of sample.

- (4) Sources of water for shellfishing for market purposes and any other usages of tidal salt waters: Median MPN not to exceed seventy coliform organisms per one hundred milliliter sample in a series of four or more samples collected during any thirty-day period in the waters of a shellfishing area, and not exceeding in more than ten percent of the samples collected during the period an MPN of two hundred thirty coliform organisms per one hundred milliliters for a five-tube, or an MPN of three hundred thirty per one hundred milliliters for a three-tube decimal dilution test in those areas most probably exposed to fecal contamination during the most unfavorable hydrographic conditions.
  - (5) All samples shall be collected, analyzed, and reported in a manner satisfactory to the commissioner.
  - (6) When the above prescribed standards are exceeded the commissioner shall make an investigation to determine the source or sources of pollution. When it shall appear to the commissioner after investigation, that there has been a violation of any of the provisions of titles 1 to 11, inclusive, and title 19 of this article he shall take further proceedings as provided in section 17-0905.
  - (7) The department may adopt and assign more restrictive standards for the best usages of the waters of the state.
- d. The extent of the oxygen demand which may be permitted in the receiving waters;
  - e. Such other physical, chemical or biological properties necessary for the attainment of the objectives of this article, as set forth in section 17-0101.
6. The adoption, alteration or modification of the standards of quality and purity, above prescribed, shall be made by the department only after public hearing on due notice.
  7. The "Rules and Classifications and Standards of Quality and Purity for Waters of New York State," hitherto adopted by the former New York water pollution control board by order made and entered October 23, 1950 effective October 25, 1950, as duly amended in the manner provided by law, are hereby approved and adopted as the general system and plan of the classification of the waters of the state and the standards of quality and purity thereof applicable to such general classification of the waters and are hereby deemed established and adopted by the department.
  8. All classifications and standards of quality and purity hitherto assigned, by the former New York Water Pollution Control Board, or by the former Water Resources Commission by order, duly and respectively made and entered, to designated and specified waters of the state, are hereby approved and adopted as the classification and standards of quality and purity for such specified waters so respectively hitherto classified and are hereby deemed established, adopted and so assigned by the department.
  9. The "Rules and Classifications and Standards of Quality and Purity for Waters of New York State," so hitherto adopted by the former Water Pollution Control Board and by the former Water Resources Commission and hereinabove readopted may from time to time be altered or modified by the department after public hearing thereon. Any classification of the specified waters of the state, so hitherto assigned by the former Water Pollution Control Board or by the former Water Resources Commission and hereinabove readopted may from time to time be altered or modified by the department after public hearing thereon.
  10. Notices of public hearing for the consideration, adoption, modification, alteration and/or amendment of the general classification-standards system or of the classification of waters and the standards of purity and quality thereof [fig 1] shall:

- a. Be published at least twice in a newspaper regularly published or circulated in the county or counties bordering or through which the waters sought to be classified, or for which standards are sought to be adopted, flow, the first date of publication of which shall be at least thirty days before the date fixed for such hearing, and
  - b. Be mailed at least thirty days before such hearing to the chief executive of each municipal corporation bordering or through which said waters, for which standards are sought to be adopted, flow, and to such other persons as the department has reason to believe may be affected by the proposed standards.
11. The fact that an application for the modification or alteration of classifications and standards of quality and purity has been made pursuant to this section shall not of itself constitute a sufficient ground for an injunction against, or a stay of, any proceeding or order authorized by this article.
  12. In all hearings in connection with the modification or alteration of classifications and standards of quality and purity heretofore assigned by the former Water Pollution Control Board or the former Water Resources Commission or hereafter assigned by the department by order, duly and respectively made and entered, to designated and specified waters of the state, except as provided in paragraphs a and b of subdivision 10 of this section, the administrative procedures to be followed shall be governed by article two of the state administrative procedure act.
  13. The department shall not require the expense of any public hearing initiated by petition of any person or public corporation in connection with the adoption, modification or alteration of classification of waters or standards of purity and quality thereof to be paid by such person or public corporation.
  14. The classification of waters and standards of quality and purity thereof, upon adoption, shall, before becoming effective, be filed with the Secretary of State for publication in the "Official Compilation of Codes, Rules and Regulations of the state of New York" published pursuant to section 102 of the Executive Law.

TITLE 3. JURISDICTION OF THE DEPARTMENT; AUTHORITY; POWERS AND DUTIES

§ 17-0303. General powers and duties applicable to portions of this article

1. The provisions of this section shall apply only to titles 1 to 11, inclusive, and titles 19 and 21 of this article.
2. The department shall have administrative jurisdiction to abate and prevent the pollution of waters of the state in the manner herein provided in accordance with the classification of waters adopted by the department pursuant to section 17-0301 and in accordance with standards, criteria, limitations, rules and regulations and permit conditions adopted, promulgated or applied by the department pursuant to titles 8 and 21 hereof.
3. The department, acting through the commissioner may, from time to time, adopt, amend, or cancel administrative rules and regulations governing the procedure to be followed with respect to hearing, filing of reports, the issuance of permits, and all other matters relating to procedure, and generally, may make such administrative rules and regulations, and do and perform any and all acts, not inconsistent with the provisions of this article listed in subdivision 1 of this section, as may be necessary or proper to carry into effect such provisions of this article listed in subdivision 1 of this section, and may make, amend and repeal rules and regulations for the storage of liquids likely to pollute the waters of the state including, but not limited to, standards for the construction, installation, maintenance, protection and diking of tanks used to store any such liquids and their associated structures, piping, valves, fittings, fixtures and outlets, in conjunction with the promulgation of which, the commissioner shall consider codes and practices of industries concerned with the handling and storage of such liquids and the time required for persons engaged in such industries to conform with such rules and regulations. Such rules and regulations, before becoming effective, shall be filed with the secretary of state for publication in the "Official Compilation of

Codes, Rules and Regulations of the State of New York" published pursuant to section ~~420~~ § 102 of the Executive Law.

4. The commissioner is hereby authorized to:
  - a. Hold public hearings, receive pertinent and relevant proof from any party in interest who appears at such hearing, compel the attendance of witnesses, make findings of fact and determinations, and ~~assess~~ assess such penalties therefor as are hereinafter prescribed, all with respect to the violations of the provisions of this article listed in subdivision 1 of this section, or the orders issued by the commissioner;
  - b. Make, modify or cancel orders requiring the discontinuance of the discharge of sewage, industrial waste or other wastes into any waters of the state in accordance with the provisions of this article listed in subdivision 1 of this section, and specifying the conditions and time within which such discontinuance must be accomplished.
  - c. Institute or cause to be instituted in a court of competent jurisdiction proceedings to compel compliance with the provisions of this article listed in subdivision 1 of this section or the determinations and orders of the commissioner;
  - d. Issue or deny permits, under such conditions as may be prescribed for the prevention and abatement of pollution, for the discharge of sewage, industrial waste or other wastes, or for the installation or operation of disposal systems or parts thereof;
  - e. Continue any permit heretofore or hereafter issued under the provisions of this article listed in subdivision 1 of this section, or under the authority of laws previously enacted and thereafter repealed, whenever, after hearing thereon, the commissioner determines that such continuation is necessary or desirable to prevent or abate pollution of any waters of the state;
  - f. Revoke or modify any construction, operating or discharge permit heretofore or hereafter issued under the provisions of this article listed in subdivision 1 of this section, or under the authority of laws previously enacted and thereafter repealed, whenever, after hearing thereon, the commissioner determines that such revocation or modification is necessary or desirable to prevent or abate pollution of any waters of the state provided, however, that the hearing required under this paragraph may be waived in writing by the applicant or ~~permitee~~ permittee;
  - g. Conduct such investigations as may be deemed advisable and necessary to carry out the intents and purposes of the provisions of this article listed in subdivision 1 of this section;
  - h. Settle or compromise, with the approval of the attorney general, any action or cause of action for the recovery of a penalty under the provisions of this article listed in subdivision 1 of this section as he may deem advantageous to the state;
  - i. Perform such other and further acts as may be necessary, proper or desirable, to carry out effectively the duties and responsibilities prescribed in the provisions of this article listed in subdivision 1 of this section.
5. It shall be the duty and responsibility of the department to:
  - a. Encourage voluntary cooperation by all persons in preventing and abating pollution of the waters of the state;
  - b. Encourage the formulation and execution of plans by cooperative groups or associations of municipalities, industries, and other users of the waters who, severally or jointly, are or may be the source of pollution in the same waters, for the prevention and abatement of pollution;

- c. Cooperate with the appropriate agencies of the United States or other states, or any interstate agencies in respect to pollution control matters, or for the formulation for submission to the legislature of interstate pollution control compacts or agreements;
  - d. Conduct or cause to be conducted studies and research, and provide services by itself or in cooperation with federal, interstate, state or municipal agencies, with respect to pollution abatement or control problems, disposal systems, and treatment of sewage, industrial waste and other wastes, which shall include but not be limited to (1) advances in effectiveness and economies in waste water treatment and plant design and operation, (2) feasible and economical means for providing sewers and sewage treatment works for small communities, (3) economical means for future incorporation of separate sewer service units into area-wide systems, (4) studies of selected problems, such as industrial wastes and changing sewage characteristics, (5) development of a data processing system for periodic determination of the status of water pollution control throughout the state, (6) provision of advisory services for municipal officials in relation to sewage problems, including information material concerning planning, construction and operation, financial assistance programs and methods of defraying the costs of sewers and sewage treatment plants, and (7) assimilative capacities of streams, lakes and other waters of the state;
  - e. Prepare and develop a general comprehensive plan for the abatement of existing pollution and the prevention of new pollution, by the installation, use, and operation of practical and available systems, methods and means for controlling pollution, recognizing different requirements for separate waters and for different segments of the same waters;
  - f. Require to be submitted to it, and to consider for approval, plans for disposal systems or any part thereof, and to inspect the construction thereof for compliance with the approved plans;
  - g. Serve as an agency of the state for the receipt of moneys from the federal government, or other public or private agencies, and to expend the same, after appropriation therefor, for the purpose of pollution control, studies or research.
  - h. Establish a water quality surveillance network with sufficient stations and sampling schedule to meet the needs of the state, including ground water and surface water, both fresh and salt, and publish the results of such water quality surveillance network periodically;
  - i. Develop a public education and promotion program to aid and assist public officials in publicizing needs and securing support for pollution control action;
  - j. Prepare an annual report on the status of the water pollution control program, covering all phases of the program;
  - k. [Repealed]
  - l. Promulgate rules, regulations and standards, subject to the requirements of subdivision 3 of section 17-0303, providing for the testing and measuring of sewage, industrial waste or other wastes, at their outlet or point source into waters of the state, and further providing for the maintaining of a permanent record of the resulting data, and periodically reporting such record to the commissioner, subject to the restriction set forth in subdivision 6 of section 17-0303.
6. The commissioner, or his authorized representative, shall have the right to enter at all reasonable times in or upon any property, public or private, for the purpose of inspecting and investigating conditions relating to pollution, or the possible pollution of any waters of the state, which inspection or examination does not involve confidential information relating to secret processes or economics of operation.

7. The commissioner, or his authorized representative may examine any records or memoranda pertaining to the operation of a disposal system or treatment works which examination does not involve confidential information relating to secret processes or to economics of operation.
8. The commissioner, or his or her authorized representative, shall disclose to the public the date, location and source of a petroleum spill, including, but not limited to, information pertaining to the cleanup of such spill and the presence of methyl tertiary butyl ether (MTBE). In the event of such spill, the department shall post such information on its website within a reasonable period of time, including additional related information as soon thereafter as it becomes available.

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## TITLE 9. PROCEDURE

### § 17-0901. Hearings

1. Public hearings shall be conducted by the commissioner, or his duly designated representative or representatives prior to issuance of an order directing any person to discontinue discharge of sewage, industrial waste or other wastes which contravene the standards established for any waters of the state or standards, criteria, limitations, rules or regulations promulgated or applied pursuant to title 8 or title 21 hereof.
2. The hearings herein provided may be conducted by the commissioner, or by the duly designated hearing officer or officers, at any time and place.
3. A record, or summary thereof, of the proceedings of said hearings shall be made and filed with the department. If requested to do so by any party concerned with said hearing, the full stenographic notes of the testimony presented at said hearing shall be taken and filed. The stenographer shall, upon the payment of his fees allowed by law therefor, furnish a certified transcript of the whole or any part of his notes to any party to the action requiring the same.
4. In any such hearing, the hearing officer or any member of the hearing panel, may administer oaths, examine witnesses, and issue, in the name of the department, notices of hearings and subpoenas requiring the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in any such hearing. A designation of a person or persons by the commissioner to perform the functions herein authorized shall be in writing and filed in the department.
5. In case of contumacy or refusal to obey a notice of hearing or subpoena issued under this section, the supreme court shall have jurisdiction, upon application of the commissioner or his duly designated representative, to issue an order requiring such person to appear and testify or produce evidence, as the case may require, and any failure to obey such order of the court may be punished by said court as a contempt thereof.

## TITLE 9. PROCEDURE

### § 17-0903. Notices; service of process

1. Notices of all public hearings held pursuant to this title shall specify the time, date and place of hearing.
2. Service of all processes, except subpoenas, shall be made in the same manner as a summons in a civil action or by registered or certified mail with a return receipt requested, addressed to the individual served in person or in a representative capacity as hereinafter provided at his last known residence, office or place of business. Such service shall be made upon a municipality by serving the chief executive or counsel thereof, upon a sewer district, authority, commission or private corporation by serving an officer thereof, or upon an unincorporated association or partnership or other company of persons, which has a president or treasurer, by serving either of such officers.

3. Subpoenas shall be served upon the witnesses personally, together with such fees therefor as may be provided by law.

#### TITLE 9. PROCEDURE

##### § 17-0905. Proceedings before the commissioner

1. The commissioner may, on his own motion, investigate or make inquiry, in a manner to be determined by him, as to the condition of any of the waters of the state and as to any alleged act of pollution or omission or failure to comply with any provisions of titles 1 to 11, inclusive, or titles 19 or 21 of this article.
2. Whenever it shall appear to the commissioner, after investigation, that there has been a violation of any of the provisions of titles 1 to 11, inclusive, or titles 19 or 21 of this article, he shall give written notice to the alleged violator or violators setting forth any thing or act done or omitted to be done or claimed to be in violation of any such provisions, and requiring that the matters complained of be corrected, or that the alleged violator appear in person or by attorney before the ~~commissioner~~ commissioner or his duly designated representative, at the time and place in said notice specified, and answer the charges complained of.
3. Whenever it shall appear to the commissioner, after investigation, that industrial or other wastes turned or allowed to run into a sewer or sewage disposal system, the content of which ultimately is discharged into the waters of the state, is a cause or contributes to the pollution of the said waters, he shall also notify the person or persons allowed to be responsible for the discharge of the industrial or other wastes into the sewer or sewage disposal system of any alleged violations on his or their part and shall notify him or them to appear at said hearing and answer the charges made against him or them.
4. At least twenty days' notice of such hearing shall be given.
5. Upon the return day of such notice the person so notified shall file with the commissioner a statement setting forth the position of the person so notified, the answer, if any, to the charges made against him, the methods, practices and procedures, if any, which are being taken to prevent polluting discharges into the waters of the state or the sewer or sewage disposal system which ultimately empties into said waters, and any other defenses or information pertinent to the case. Pertinent and relevant testimony of witnesses shall be received in support of or opposition to said statement.
6. The burden of proof with respect to violations of or liability imposed by titles 1 to 11, inclusive, and titles 19 and 21 of this article shall, except as otherwise provided in section 71-1941, be upon the department.
7. After due consideration of the written and oral statements, and testimony and arguments filed pursuant to subdivision 5 above, or on default in appearance on said return day, the commissioner may issue and enter such final order or make such final determination as he deems appropriate under the circumstances, and shall notify such person or persons thereof in writing, personally, or by registered mail.

#### TITLE 9. PROCEDURE

##### § 17-0907. Hearings for persons aggrieved

1. This section shall apply only to titles 1 to 11, inclusive, and titles 19 and 21 of this article.
2. The commissioner shall grant a hearing to any person not previously heard in connection with the making of a determination, or order, who within twenty days after service upon him of a copy of a notice, order or determination of the commissioner, may file a petition with the department alleging that the said order or determination is or are contrary to fact and injurious to him, and that said order or determination cause him damage by the invasion of or interference with a private right or privilege, particularly appertaining to him. At such hearing the petitioner may appear in person or by attorney, present witnesses, submit evidence and be given full opportunity to be heard. Following such hearing, the commissioner shall make his determination, which, unless an appeal is taken therefrom, shall be final and conclusive.

TITLE 9. PROCEDURE

§ 17-0909. Review by courts

1. The provisions of this section shall apply only to titles 1 to 11, inclusive, and titles 19 and 21 of this article.
2. All orders or determinations of the commissioner or the department shall be subject to review as provided in article 78 of the Civil Practice Law and Rules. Application for such review must be made within sixty days after service in person or by mail of a copy of the determination, or decision upon the attorney of record of the applicant and of each person who has filed a notice of appearance, or to the applicant in person directly if not represented by an attorney.
3. Where a review as provided by article 78 of the Civil Practice Law and Rules is not maintainable, either because the person aggrieved was not a party to the original proceedings, or for any other reason, an order or determination of the former water pollution control board, the former water resources commission, the department or the commissioner may nevertheless be reviewed as hereinafter provided:
  - a. Application for relief shall be made by special proceeding. The petition shall be verified and shall set forth that the classification of waters, standards of quality and purity thereof, or the finding, determination, decision or order sought to be reviewed is illegal, in whole or in part, and specify the grounds of the illegality; it may be accompanied by affidavits and other written proof, and shall demand the relief to which the petitioner supposes himself entitled, in the alternative or otherwise. Such petition may be made by any person or persons jointly or severally aggrieved by a denial or revocation of a permit or by any decision of the former Water Pollution Control Board, the former Water Resources Commission, the department, or the commissioner or any act of the executive secretary or other agent or person acting in the name of such board, commission, department, or the commissioner whether or not such petitioner is or was a party to the proceedings sought to be reviewed.
  - b. A proceeding brought under the provisions of this subdivision must be instituted by service of the petition and notices of application for relief, within four months after publication as herein provided of the classification of waters or the standards of purity and quality of waters, or after the finding, determination, decision or order sought to be reviewed becomes final and binding upon the petitioner or the person whom he represents, either in law or in fact; or with the court's permission within two years, where the petitioner or the person whom he represents, at the time such determination became final and binding upon him, was under the age of twenty-one years, or mentally ill, or imprisoned on a criminal charge or sentenced for a term of less than life.
  - c. In all other respects the procedure prescribed in subdivision 2 shall be applicable to a review provided by this subdivision.

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TITLE 11. SCOPE AND CONSTRUCTION; OTHER REMEDIES

§ 17-1101. Existing rights and remedies preserved

It is the purpose of titles 1 to 11, inclusive, and titles 19 and 21 of this article to provide additional and cumulative remedies to abate the pollution of the waters of the state and nothing herein contained shall abridge or alter rights of action or remedies now or hereafter existing, nor shall any such provisions or any act done by virtue of such provisions, be construed as estopping the state, persons or municipalities, as riparian owners or otherwise, in the exercise of their rights to suppress nuisances or to abate any pollution now or hereafter existing.

TITLE 11. SCOPE AND CONSTRUCTION; OTHER REMEDIES

§ 17-1103. Persons other than the state acquire no actionable rights

The bases for proceedings or actions resulting from the violations of the prohibitions contained in titles 1 to 11, inclusive, and titles 19 and 21 of this article inure solely to and are for the benefit of the people generally of the state

of New York, and it is not intended to in any way create new, or enlarge existing rights of riparian owners or others. A determination by the department or the commissioner that pollution exists or that violations of any such prohibitions have occurred or are occurring, whether or not a proceeding or action may be brought by the state, shall create by reason thereof no presumptions of law or findings of fact inuring to or for the benefit of persons other than the state.

#### TITLE 11. SCOPE AND CONSTRUCTION; OTHER REMEDIES

##### § 17-1105. Conflicting laws

Titles 1 to 11, inclusive, and titles 19 and 21 of this article shall not be construed as repealing any of the laws relating to the pollution of the waters of the state not herein expressly repealed, but shall be held and construed as ancillary to and supplementing the same and in addition to the laws now in force, except as the same may be in direct conflict herewith.

#### TITLE 11. SCOPE AND CONSTRUCTION; OTHER REMEDIES

##### § 17-1107. Other Environmental Conservation Laws to remain in effect

Nothing contained in titles 1 to 11, inclusive, and titles 19 and 21 of this article shall be construed as amending or repealing sections 11-0503 or 13-0345 and any parts of said sections inconsistent with the provisions of titles 1 to 11, inclusive, and titles 19 and 21 of this article or with any rule, regulation, order or determination authorized by titles 1 to 11, inclusive, and titles 19 and 21 of this article shall be held to be effective.

\* \* \*

#### TITLE 21. AQUATIC INVASIVE SPECIES CONTROL

##### § 17-2101. Short title

This title shall be known and may be cited as the “Aquatic Invasive Species Control Act.”

#### TITLE 21. AQUATIC INVASIVE SPECIES CONTROL

##### § 17-2102. Findings

The legislature finds that aquatic invasive species already introduced into the Great Lakes, predominantly through ballast water discharges but also through other pathways from oceangoing vessels, have led to significant ecological and economic impacts. At least one-hundred eighty aquatic invasive species are established in the Great Lakes. Since the opening of the St. Lawrence Seaway in nineteen hundred and fifty-nine, ballast water discharges from oceangoing vessels have been implicated in more than two-thirds of the introductions of new aquatic invasive species in the Great Lakes.

The legislature further finds that the aquatic invasive species introduced into the Great Lakes, such as the sea lamprey, zebra mussel, ruffe, goby, and spiny water flea, have competed with and preyed upon native plants, fish and wildlife, resulting in dramatic decreases in population sizes, compromised species viability, and serious alterations to the ecosystem. These impacts may be irreversible.

The legislature further finds that aquatic invasive species have harmed the Great Lakes’ commercial and recreational fishing industries and damaged water supply and energy production infrastructure. These damages have resulted in billions of dollars of economic disruption; including more than 1.5 billion dollars expended to address the impacts of the zebra mussel in the Great Lakes.

The legislature further finds that because all oceangoing vessels entering the Great Lakes must pass through New York State’s Great Lakes waters, regardless of whether they stop at New York State ports, New York waters are vulnerable to release and introduction of aquatic invasive species.

The legislature further finds that an oceangoing vessel can carry aquatic invasive species in a variety of locations on the vessel, including but not limited to the ballast water, anchor chain, sea chest, and hull, and

such vessels are typically capable of discharging or releasing such invasive species whether intentionally or accidentally.

The legislature further finds that the prophylactic measure of requiring permits for vessels capable of discharging or releasing aquatic invasive species into state waters, even if not planning to use a New York state port or to discharge or release ballast water, is necessary to effectively control the introduction of invasive species by oceangoing vessels, given that oceangoing vessels are important and historically under-regulated contributors to such introductions.

The legislature further finds that the threat of new introductions of aquatic invasive species in the Great Lakes is real and growing. Introduction of a new aquatic invasive species anywhere in the Great Lakes poses a threat to the entire Great Lakes ecosystem, including the waters of the state.

The legislature further finds that in two thousand and five the state of Michigan created the Great Lakes Aquatic Nuisance Species Coalition to bring states together to collaboratively devise consistent state regulations to manage discharge of aquatic invasive species from oceangoing vessel ballast water to protect the Great Lakes. New York State carries a singular obligation to actively participate in the Great Lakes Aquatic Nuisance Species Coalition and to support the Coalition's mission.

## TITLE 21. AQUATIC INVASIVE SPECIES CONTROL

### § 17-2103. Definitions

As used in this title:

(a) "Aquatic invasive species" means a non-indigenous species that threatens or could threaten the diversity or abundance of native species or the ecological stability of infested waters, or commercial, agricultural, aquacultural, or recreational activities dependent on such waters.

(b) "Ballast tank" means any tank or hold on a vessel used for carrying ballast water, whether or not the tank or hold was designed for that purpose.

(c) "Ballast water" means any water and associated matter taken on board a vessel to control or maintain trim, draft, stability or stress of the vessel, without regard to the manner in which it is carried.

(d) "Ballast water treatment method" means a method of treating ballast water and sediments to remove or destroy living biological organisms through one or more of the following:

- (i) filtration;
- (ii) the application of biocides or ultraviolet light;
- (iii) thermal methods;
- (iv) deoxygenation;
- (v) other treatment techniques approved by the department.

(e) "Commissioner" means the Commissioner of Environmental Conservation.

(f) "Department" means the Department of Environmental Conservation.

(g) "Exchange" means to replace the water in a ballast tank using one of the following methods:

- (1) Flow through exchange means to flush out ballast water by pumping in mid-ocean water at the bottom of the ballast tank and continuously overflowing the tank from the top until three full volumes of water has been changed—to minimize the number of original organisms remaining in the tank.

(2) Empty/refill exchange means to pump out the ballast water until the ballast tank is empty or as close to empty as the master or operator of the vessel determines is safe, then refilling it with mid-ocean water; masters/operators should pump out as close to 100 percent of the ballast water as is safe to do so.

(h) “Great Lakes” means Lake Ontario, Lake Erie, Lake Huron (including Lake St. Clair), Lake Michigan, Lake Superior, and the connecting channels (Saint Mary’s River, Saint Clair River, Detroit River, Niagara River, and Saint Lawrence River to the Canadian Border), and includes all other bodies of water within the drainage basin of such lakes and connecting channels.

(i) “Great Lakes waters of the state” shall mean the waters of the state within the Great Lakes.

(j) “Non-indigenous species” means any species or other viable biological material that enters an ecosystem beyond its historic range, including any such organism transferred from one country into another.

(k) “Oceangoing vessel” means a vessel that operates on the Great Lakes or the St. Lawrence waterway after operating in coastal or ocean waters outside of the Great Lakes or the St. Lawrence waterway, including open-ocean vessels and vessels that remain entirely within coastal waters less than 200 nautical miles from shore.

(l) “Open sea exchange” means an exchange that occurs more than 50 nautical miles from any shore. If the United State Coast Guard requires a vessel to conduct an exchange further offshore, then that distance is the required distance for purposes of compliance with this title.

(m) “Operator” includes master, agent, person-in-charge or charterer.

(n) “Person” or “persons” means any any individual, public or private corporation, political subdivision, government agency, municipality, industry, co-partnership, association, firm, trust, estate or any other legal entity whatsoever.

(o) “Recognized marine trade association” means those trade associations in the state that promote improved ballast water management practices by educating their members on the provisions of this title, participating in regional ballast water coordination, assisting the department in the collection of ballast water exchange forms, and the monitoring of ballast water.

(p) “Sediment” means any matter settled out of ballast water within a vessel.

(q) “Vector” means a pathway and mechanism for entry for aquatic invasive species into the Great lakes waters of the state.

(r) “Vessel” means a self-propelled ship in commerce of three hundred gross tons or more.

(s) “Voyage” means any transit by a vessel in the Great Lakes waters of the state.

(t) “Waters of the state” shall have the same meaning as provided in subdivision 2 of section 17-0105 of this article.

## TITLE 21. AQUATIC INVASIVE SPECIES CONTROL

### § 17-2105. Applicability

1. This title shall apply to all oceangoing vessels entering, traversing or operating in the Great Lakes waters of the state, except a vessel of the United States Department of Defense or United States Coast Guard subject to the requirements of 16 U.S.C. 4713, or any vessel of the armed forces as defined in the Federal Water Pollution Control Act (33 U.S.C. 1322(a)) that is subject to the “Uniform National Discharge Standards for Vessels of the Armed Forces” (33 U.S.C. 1322(n)).

2. This title shall not be deemed to authorize the discharge of oil or noxious liquid substances in a manner prohibited by state, federal, or international laws or regulations. Ballast water containing or carried in any tank containing a residue of oil, noxious liquid substances, or any other pollutant shall be discharged in accordance with the applicable laws and regulations.

3. Nothing in this title shall be construed to relieve the operator in charge of a vessel of the responsibility for ensuring the safety and stability of the vessel or the safety of the crew and passengers.

#### **TITLE 21. AQUATIC INVASIVE SPECIES CONTROL**

##### **§ 17-2107. Rules, regulations and standards**

The department shall promulgate and adopt rules, regulations and standards to implement this title, and in doing so may consult with the state department of health, regulated industries and potentially affected parties, including but not limited to shipping interests, ports, shellfish growers, fisheries, aquaculture interests, environmental interests, interested citizens who have knowledge of the issues, and appropriate governmental representatives including the United States Coast Guard.

#### **TITLE 21. AQUATIC INVASIVE SPECIES CONTROL**

##### **§ 17-2109. Notification and reporting**

Beginning January 1, 2009, all oceangoing vessels entering, traversing or operating in the Great Lakes waters of the state shall notify the department of such operation and, if the vessel is equipped with a ballast tank, report to the department ballast water management information using ballast water reporting forms that are acceptable to the United States Coast Guard or otherwise designated by the department if Coast Guard forms are not available. The frequency and manner of such notification and reporting shall be established by the department by rule.

#### **TITLE 21. AQUATIC INVASIVE SPECIES CONTROL**

##### **§ 17-2111. Discharge/release permit**

1. Subject to the exemption in paragraph 2 of this section, beginning January 1, 2009, all oceangoing vessels entering, traversing or operating in the Great Lakes waters of the state shall obtain a permit from the department; no vessel subject to the requirements of this section may be operated in the Great Lakes waters of the state without such permit.

2. A vessel shall be exempt from the permit requirement of this section only if the owner or operator of the vessel demonstrates to the department that the vessel has no capability or potential to discharge or release non-indigenous aquatic invasive species into the Great Lakes waters of the state by any vector. A designation or claim of no ballast on board (NOBOB) shall not be sufficient to exempt a vessel from the permit requirement of this section. The department shall reassess the exempt status of any vessel covered by this title annually. Exemption from the permit requirements of this section shall not exempt a vessel from the notification and reporting obligations of section 17-2109.

3. Upon submittal of a complete application for a permit, the department shall issue or deny a permit. The department shall issue a permit only if the applicant demonstrates to the department that:

- (a) the operator of the vessel will use environmentally sound technology and methods prior to entry into the Great Lakes waters of the state to prevent the discharge or release of aquatic invasive species; and
- (b) all other applicable procedural requirements contained in this chapter or designated by rule are satisfied.

The department shall deny a permit if the permit application contains misleading or false information. Additional grounds for denial of a permit shall be established by the department in rules.

4. An oceangoing vessel shall be deemed to use environmentally sound technology and methods to prevent the discharge or release of aquatic invasive species if:

- (a) the operator of a vessel equipped with a ballast tank:
  - (i) conducts an open sea exchange of ballast water that meets the standards set by the department, or
  - (ii) uses a ballast water treatment method that meets the standards set by the department, or
  - (iii) uses alternative technology and methods determined by the department to be at least as effective as the technology and methods described in (i) through (ii) inclusive in preventing and controlling infestations of aquatic invasive species via ballast water;
- and
- (b) the operator of any vessel uses technology and methods determined by the department to be effective and necessary to prevent and control infestations of aquatic invasive species via vectors other than ballast water.

5. If the department issues a permit for a vessel, the permit shall include terms that are necessary to ensure compliance with this title and associated rules, regulations, standards, protocols and orders. No person issued a permit shall violate the terms of the permit.

6. By January 1, 2009, the department shall set standards for the discharge of untreated ballast water and associated sediment into the Great Lakes waters of the state. Such standards shall ensure that the discharge of untreated ballast water poses minimal risk of introducing non-indigenous species. In developing such standards the department shall consider the best available technology and the extent to which the technology is practically feasible. The standards shall be compatible with standards set by the United States Coast Guard and international treaties to the extent appropriate without compromising the purposes of this title.

7. By January 1, 2009, the department shall set standards for environmentally sound methods of treating ballast water and associated sediment that may be discharged into the Great Lakes waters of the state. Such standards shall ensure that the discharge of treated ballast water poses minimal risk of introducing non-indigenous species and complies with all relevant state and federal laws. In developing such standards the department shall consider the best available technology and the extent to which the technology is practically feasible. The standards shall be compatible with standards set by the United States Coast Guard and international treaties to the extent appropriate without compromising the purposes of this title.

8. By January 1, 2009, the department shall set standards for environmentally sound methods of preventing and controlling the release of aquatic invasive species into the Great Lakes waters of the state from vessels by vectors other than ballast water. In developing such standards the department shall consider the best available technology and the extent to which the technology is practically feasible. The standards shall be compatible with standards set by the United States Coast Guard and international treaties to the extent appropriate without compromising the purposes of this title.

9. By January 1, 2009, the department shall adopt sampling and testing protocols for monitoring the biological components of ballast water and associated sediment and of non-ballast vectors that may be discharged into the Great Lakes waters of the state. The sampling and testing protocols must consist of cost-effective, scientifically verifiable methods that, to the extent practicable and without compromising the purposes of this title, utilize easily measured indices that indicate the presence of non-indigenous species or pathogenic species. The department shall specify appropriate quality assurance and quality control for the sampling and testing protocols.

10. The owner or operator of any vessel requiring a permit under this section must ensure that the vessel under its ownership or control complies with the following monitoring, sampling, and reporting requirements:

- (a) all vessels covered by this section must report to the department ballast water management information, including individual ballast tank sample data for each voyage, using ballast water reporting forms that are acceptable to the United States Coast Guard or otherwise

designated by the department if Coast Guard forms are not available, in a frequency and manner established by the department by rule;

- (b) a vessel that meets the reporting requirements of subdivision (a) shall be deemed to satisfy the reporting requirements of section 17-2109.
- (c) all vessels covered by this section must submit to the department non-indigenous species monitoring data using the monitoring, sampling, and testing protocols established by the department by rule.

11. The department shall use monitoring data to measure the effectiveness of efforts to prevent the introduction of non-indigenous species; to evaluate the risk of new, non-indigenous species introductions from the discharge of ballast water; and to evaluate the efficacy of ballast water exchange practices and other methods to prevent the discharge or release of aquatic invasive species.

12. The department shall consult with federal and state agencies, regulated industries and potentially affected parties in carrying out the provisions of this section.

13. The rules and regulations adopted by the department to implement this title and the provisions of article seventy of this chapter and rules and regulations thereunder shall govern permit applications, issuance, denial, renewals, modifications, suspensions, revocations and reissuances under this title.

14. The applicable procedures provided in title 9 of article seventeen shall apply to this section.

15. To carry out the purposes of this section or any rule, regulation, order, or permit issued thereunder, the department or its authorized representative, upon presentation of appropriate credentials, shall at reasonable times:

- (a) have a right of entry to, upon, or through any vessel subject to the permit requirement of this section, for the purpose of inspecting and investigating conditions relating to the discharge or release, or possible discharge or release, of aquatic invasive species into Great Lakes waters of the state;
- (b) have access to examine and copy any records or memoranda required to be maintained under this section;
- (c) have access to inspect any monitoring equipment or method which is required under this section;
- (d) have access to sample ballast water and sediment and to sample other locations on the vessel that the department determines are necessary to assess compliance with permit terms and the requirements of this section; and
- (e) make other appropriate inquiries to assess the compliance of any vessel with permit terms and the requirements of this section.

16. The department is authorized to establish a reasonable fee for processing of permit applications and issuance of permits under this section to compensate the department for its expenses.

17. The schedule of annual permit fees under the aquatic invasive species control program shall be the fees specified in title 12 of article seventy-two.

**TITLE 21. AQUATIC INVASIVE SPECIES CONTROL**  
**§ 17-2113. Enforcement; violations and penalties**

1. Except as limited by subdivisions 2 through 5 inclusive of this section, the procedures provided in sections 71-1927, 71-1929, 71-1931, and 71-1935 of article seventy-one and the applicable sections of title 9 of article seventeen shall apply to enforcement under this title.

2. Except as limited by subdivision 3 of this section, the commissioner or the commissioner's designee may impose a civil penalty or warning for a violation of the requirements of this title on the owner or operator of a vessel who fails to comply with the requirements imposed under sections 17-2109 and 17-2111. The penalty shall not exceed twenty-five thousand dollars for each violation.

3. The civil penalty for a violation of monitoring, sampling or reporting requirements of section 17-2111 shall not exceed ten thousand dollars for each violation.

4. Any owner or operator or any marine trade association who knowingly, and with intent to deceive, falsifies a ballast water management report form is liable for a civil penalty in an amount not to exceed one-hundred thousand dollars for each violation, and such violation shall constitute grounds for revocation of a permit issued under § 17-2111.

5. In assessing the amount of any such civil penalty the commissioner or court shall consider:

- (a) the type, extent and amount of damage and the quality and nature of risks created by the violation;
- (b) whether the violation was intentional, negligent, or without any fault;
- (c) the degree of care taken by or on behalf of the party charged to prevent the occurrence of the violation;
- (d) the efforts made by or on behalf of the party charged to reduce or mitigate the damage which resulted from the violation.

6. Such penalties or reimbursements or both due the people of the state by reason of the liability provided in subdivisions 2, 3, and 4 of this section may be assessed by the commissioner by order after a hearing or hearings noticed and conducted and reviewable as provided in title 9 of article seventeen.

7. If the department prevails using any judicial process to collect a penalty under this section, the department shall also be awarded its costs and reasonable attorney's fees.

## **TITLE 21. AQUATIC INVASIVE SPECIES CONTROL**

### **§ 17-2115. Aquatic invasive species control fund**

1. All moneys, fees, fines and penalties arising out of the administration and enforcement of this title (the aquatic invasive species control act) shall be deposited in the state treasury and credited to the aquatic invasive species control fund established by section 83-b of the State Finance Law and shall be available for the uses and purposes of such fund.

2. Money in the fund shall be used by the commissioner for the following:

- (a) to prevent the introduction of aquatic invasive species into the Great Lakes waters of the state;
- (b) to control the spread of aquatic invasive species introduced into the Great Lakes waters of the state prior to the effective date of this section;
- (c) to reclaim and rehabilitate aquatic resources impacted or injured by aquatic invasive species;
- (d) to administer this title and the rules and regulations adopted under this title.

## ARTICLE 70. UNIFORM PROCEDURES

### ARTICLE 70. UNIFORM PROCEDURES

#### § 70-0101. Purpose

It is the purpose of this article to establish uniform review procedures for major regulatory programs of the department and to establish time periods for department action on permits under such programs.

### ARTICLE 70. UNIFORM PROCEDURES

#### § 70-0103. Legislative findings and declarations

The legislature finds and declares that:

1. It is the intent of the legislature to assure the fair, expeditious and thorough administrative review of regulatory permits.
2. It is the intent of the legislature that, to the extent feasible and appropriate, statutory and regulatory procedures shall be made uniform and inconsistencies and redundancies shall be eliminated.
3. It is the intent of the legislature to establish reasonable time periods for administrative agency action on permits.
4. It is the intent of the legislature to encourage public participation in government review and decision-making processes and to promote public understanding of all government activities.
5. It is the intent of the legislature that, to the maximum extent feasible, a comprehensive project review approach shall replace separate and individual permit application reviews.

### ARTICLE 70. UNIFORM PROCEDURES

#### § 70-0105. Definitions

Unless the context otherwise requires, the definitions in this section shall govern the construction of the following terms as used in this article:

1. "Environmental notice bulletin" shall mean the publication of the department published pursuant to section 3-0306 of this chapter.
2. "Complete application" shall mean an application for a permit which is in an approved form and is determined by the department to be complete for the purpose of commencing review of the application but which may need to be supplemented during the course of review as to matters contained in the application in order to enable the department to make the findings and determinations required by law. A complete application shall include such draft impact statement as may be required pursuant to article eight of this chapter.
3. "Minor project" shall mean a proposed project which by its nature and with respect to its location will not have a significant impact on the environment and will not exceed criteria established in rules and regulations adopted by the department pursuant to subdivision one of section 70-0107 of this article.
4. "Permit" shall mean any permit, certificate, license or other form of department approval, modification, suspension, revocation, renewal, reissuance or recertification issued in connection with any regulatory program referred to in subdivision three of section 70-0107 of this article as further specified by rule and regulation.
5. "Project" shall mean any activity that requires one or more department permits.

6. "Emergency" shall mean a natural or an accidental human-made event which presents an immediate threat to life, health, property, or natural resources.

#### ARTICLE 70. UNIFORM PROCEDURES

##### § 70-0107. Rules and regulations; applicability

1. The department, after public hearing, shall adopt rules and regulations to assure the efficient and expeditious administration of this article. Such rules and regulations shall include but not be limited to provisions regarding notice, review, public participation and public hearings.
2. Notwithstanding any inconsistent provisions of this chapter or any rule or regulation of the department, the procedures provided in this article and in rules and regulations adopted by the department pursuant to subdivision one of this section shall govern the review by the department of applications for permits for proposed projects and modifications, suspensions, revocations, renewals, reissuances and recertifications of permits under the regulatory programs of the department specified in subdivision three of this section. Such procedures shall also apply to any government entity to which the commissioner has delegated powers to administer such programs pursuant to section 3-0301 of this chapter, to the extent specified in such delegation.
3. The following regulatory programs of this chapter shall be subject to the procedures provided in this article:
  - (a) protection of waters (title five of article fifteen);
  - (b) water supply and water transport (title fifteen of article fifteen);
  - (c) wild, scenic and recreational rivers system (title twenty-seven of article fifteen), except for that part of article twenty-four administered by the Adirondack park agency, which shall be subject to the procedures provided in section eight hundred nine of the executive law;
  - (d) certifications under section 401 of the federal water pollution control act amendments of 1972 (public law 92-500) pursuant to article three of this chapter;
  - (e) state pollutant discharge elimination system (title eight of article seventeen);
  - (f) realty subdivisions: sewerage service (title fifteen of article seventeen);
  - (g) air pollution control (article nineteen);
  - (h) liquefied natural and petroleum gas (title seventeen of article twenty-three);
  - (i) mined land reclamation (title twenty-seven of article twenty-three);
  - (j) freshwater wetlands (article twenty-four), except for that part of article twenty- four administered by the Adirondack park agency, which shall be subject to the procedures provided in section eight hundred nine of the executive law;
  - (k) tidal wetlands (article twenty-five);
  - (l) collection, treatment and disposal of refuse and other solid waste (article twenty-seven);  
~~and~~
  - (m) coastal erosion hazard areas (article thirty-four);
  - (n) [Repealed]

**(o) aquatic invasive species control (title twenty-one of article seventeen).**

ARTICLE 70. UNIFORM PROCEDURES

§ 70-0109. Time periods for department action on permit applications

1.
  - (a) On or before fifteen calendar days after the receipt of an application for a permit which has been filed in a manner and in a form prescribed by the department, the department shall mail written notice to the applicant of its determination whether or not the application is complete.
  - (b) If the department fails to mail written notice to an applicant of its determination whether or not an application is complete within such fifteen calendar day period, the application shall be deemed complete.
  - (c) If the department determines the application is not complete, the notice shall include a concise statement of the respects in which the application is incomplete.
  - (d) The resubmission of the application or the submission of such additional information shall commence a new fifteen calendar day period for department review of the additional information for purposes of determining completeness.
  - (e) If the department determines the application is complete, the notice shall so state.
2.
  - (a) Immediately upon determining that an application is complete, the department shall cause a notice of application to be published in the next available environmental notice bulletin which shall be not later than ten calendar days after the date of such determination and not less than once during the fifteen calendar day period following such determination in a newspaper having general circulation in the area in which the project is proposed to be located, and shall provide notice to the chief executive officer of each municipality in which the proposed project is located, and may direct the applicant to provide such reasonable notice and opportunity for comment to the public as the department deems appropriate. Newspaper publications shall be provided by the applicant.
  - (b) The time period for public comment on a permit application shall be stated in the notice of application.
3.
  - (a) Within the time periods specified in subparagraphs (i) and (ii) of this subdivision and subject to the provisions of subdivisions four, five and six of this section, the department shall make a decision on an application for a permit by mailing the applicant a permit, a permit with conditions or a statement that the permit applied for has been denied.
    - (i) In the case of an application for a permit for which no public hearing has been held, such decision shall be mailed on or before ninety calendar days after the department mails written notice to the applicant that the application is complete or on or before ninety calendar days after the application is deemed complete pursuant to the provisions of this article.
    - (ii) In the case of an application for a permit for which a public hearing has been held, the department shall mail its decision to the applicant and to all parties to the hearing on or before sixty calendar days after receipt by the department of a complete record, as that term is defined in paragraphs (a) through (e) of subdivision one of section three hundred two of the state administrative procedure act.
  - (b) If the department fails to mail a decision on an application for a permit within the time periods specified, the applicant may cause notice of such failure to be made to the department by means of certified mail return receipt requested addressed to the commissioner. If, within five working days

after the receipt of such notice, the department fails to mail a decision, the application shall be deemed approved and a permit deemed granted subject to any standard terms or conditions applicable to such a permit. However, no permit shall be deemed approved where such permit is issued in lieu of a federal permit pursuant to an authorization granted to the state pursuant to either Public Law 94-580, the "Federal Resource Conservation and Recovery Act of 1976", or Title V of Public Law 101-549, the "Clean Air Act", and where the issuance of a permit in such a manner is contrary to such authorization.

4. The time periods for a department decision on an application for a permit as specified in subdivision three of this section shall be suspended pending receipt by the department of any final environmental impact statement and any explicit findings related to a proposed project as may be required pursuant to article eight (environmental quality review) of this chapter when the department is not the lead agency as that term is used in rules and regulations adopted by the department pursuant to section 8-0113 of said article.
5. The department shall make no decision and no permit shall be deemed granted until the applicant has paid all applicable fees and costs.
6. Any time period specified in this article may be waived and extended for good cause by written request by the applicant with the consent of the department, or by the written request of the commissioner or his designee with the consent of the applicant.

Legislative History:

#### ARTICLE 70. UNIFORM PROCEDURES

##### § 70-0111. Minor projects

- (a) On or before fifteen calendar days after the receipt of an application for a permit for a minor project, the department shall mail written notice to the applicant of its determination whether or not the application is complete. If the department fails to mail written notice to an applicant of its determination whether or not an application is complete within such fifteen calendar day period, the application shall be deemed complete.
- (b) Within forty-five calendar days after the department mails written notice to the applicant that an application for a permit for a minor project is complete or within forty-five calendar days after the application is deemed complete pursuant to the provisions of this article and subject to the provisions of subdivisions four, five, and six of section 70-0109, the department shall make a decision on the application by mailing the applicant a permit, a permit with conditions or a statement that the permit applied for has been denied.
- (c) If the department fails to make a decision on an application for a permit for a minor project within such forty-five calendar day period, then the provisions of paragraph (b) of subdivision three of section 70-0109 shall apply.
- (d) The department may provide, by rule and regulation pursuant to section 70-0107 of this article, for the issuance of general permits covering minor projects. Such general permits may be issued following such events as natural disasters or acts of God which lead numbers of individuals to seek to undertake similar types of minor projects that are of a remedial nature. Such permits may be issued only upon a written statement of necessity by the commissioner justifying the issuance of such general permit and may be issued only for a specified duration of time.

#### ARTICLE 70. UNIFORM PROCEDURES

##### § 70-0113. Confidentiality

The provisions of section eighty-eight of article six of the public officers law shall apply to information confidentially disclosed by applicants to the department, except as otherwise provided in this chapter.

#### ARTICLE 70. UNIFORM PROCEDURES

§ 70-0115. Permit modifications, suspensions, revocations, renewals, reissuances and recertifications

1. Upon the provision of notice stating the grounds for its action and giving an opportunity for hearing to the permit holder, the department may modify, suspend or revoke a permit.
2. A permit holder may make written request to the department for the renewal, reissuance, recertification or modification of an existing permit. Such a request shall be accompanied by sufficient information supporting the request for the departmental action sought.
  - (a) In the case of a request (i) which does not involve a material change in permit conditions, then applicable law, environmental conditions or technology since the date of issuance of the existing permit, or (ii) for which an opportunity for public comment or hearing or both is not required by applicable law, the department shall on or before fifteen calendar days after the receipt of a request mail a written determination to the permit holder of its decision on the request. If the decision is to deny the request, the permit holder shall be afforded an opportunity for hearing and notice of such decision shall be given by the department in the next available issue of the environmental notice bulletin.
  - (b) In the case of a request which may involve a material change as described in paragraph (a) of this subdivision, or for which an opportunity for public comment or hearing or both is required by applicable law, the department shall on or before fifteen calendar days after the receipt of a request mail a written determination to the permit holder that the request shall be treated as an application for a new permit.
  - (c) In the case of a request for the renewal, reissuance, recertification or modification of an existing state pollutant discharge elimination system permit issued in lieu of a national pollutant discharge elimination system permit the request shall be treated as an application for a new permit. Any other request may be treated as an application for a new permit.
  - (d) In the case of a request for the renewal, reissuance, recertification or modification of an existing permit issued pursuant to article nineteen of this chapter, the request may be treated as an application for a new permit.

If, pursuant to paragraph (a) or (b) of this subdivision, the department fails to mail a written determination to the permit holder within such fifteen calendar day period, then the provisions of paragraph (b) of subdivision three of section 70-0109 of this chapter shall apply.

ARTICLE 70. UNIFORM PROCEDURES

§ 70-0116. Emergency authorization

1. The department may waive the procedural requirements of this article to issue an emergency authorization for an action which is immediately necessary to respond to an emergency.
2. Emergency authorization may be given only if the department makes a finding of emergency. Such emergency authorization may be issued for a term not to exceed thirty days. It may be renewed for one term not to exceed thirty days. On or before sixty days from the department's original approval, the action must be concluded or the authorized party must file with the department a complete application for a permit and be subject to all the procedural requirements of this article.
3. The department must be notified prior to the commencement of the action. If circumstances warrant immediate action by a state or local government agency such that prior notice to the department is not possible, then the department must be notified by that agency within twenty-four hours after commencement of the action. In any event, the department must respond by either granting or denying emergency authorization within two business days of its receipt of such notice.

4. Actions taken pursuant to a grant of emergency authorization must be carried out in a manner that will cause the least change, modification or adverse impact to life, health, property or natural resources. The department may attach conditions to its emergency authorizations and shall enforce them in order to assure compliance with this and other regulatory standards that would apply to such actions absent an emergency.
5. The department may require plans or any other information it deems necessary to review the proposed action to determine whether emergency authorization is warranted and whether the proposed action is consistent with regulatory standards.
6. The department shall issue an order summarily suspending an action taken before the grant of an emergency authorization if the department finds that no emergency exists or the department shall issue an order suspending an emergency authorization if the department finds that the action is no longer immediately necessary to protect life, health, property or natural resources. Such action shall be ceased immediately upon receipt of such order by the authorized party.
7.
  - (a) Violations will be enforced pursuant to article seventy-one of this chapter.
  - (b) A person who violates any provision of this section or any term or condition of an emergency authorization shall also be required to perform restoration, mitigation, or elimination of environmental damage, which is necessary as a direct result of that action. In the event that such person fails to undertake such work, the department or its agent may enter upon the lands and waters where the action took place and perform restoration or other activities which may be necessary to mitigate or eliminate environmental damage caused by such action. Should the department undertake such work, or cause it to be undertaken, the full cost for it shall be charged to and become the responsibility of the person who conducted the action.
8. The provisions of this section and the regulations promulgated hereunder shall apply notwithstanding any inconsistent provision of law.

#### ARTICLE 70. UNIFORM PROCEDURES

##### § 70-0117. Special provisions

1.
  - (a) An applicant may submit simultaneously all applications for permits associated with a proposed project in order to facilitate a comprehensive project review.
  - (b) Except for good cause shown by the applicant, the department may require an applicant to submit simultaneously any or all applications for permits associated with a proposed project when, in the department's judgment, it is necessary to facilitate a comprehensive review of the project.
2. At any time during the review of an application for a permit or a request by a permit holder for the renewal, reissuance, recertification or modification of an existing permit, the department may request additional information from the applicant or permit holder with regard to any matter contained in the application or request when such additional information is necessary for the department to make any findings or determinations required by law. Such a request shall not extend any time period for department action contained in this article. Failure by the applicant or permit holder to provide such information may be grounds for denial by the department of the application or request.
3. Where there is a requirement pursuant to federal law for a tentative determination or draft permit to be prepared prior to public notice or hearing, the time within which the department shall make its determination whether or not the application is complete shall be extended by forty-five calendar days. This subdivision shall not apply to applications for state pollutant discharge elimination system permits for the discharge of sewage (as defined in section 17-0105 of this chapter) only.

4. In conjunction with one or more applications for permits, the department may, on request of an applicant undertake a conceptual review of a proposed project evaluating the general approvability or nonapprovability of a proposed project, including all proposed phases or segments thereof, subject to the development and submission of more detailed plans and information and such additional applications for permits in the future as may be necessary. The department shall, in rules and regulations approved by the state environmental board, establish criteria and guidelines for the conceptual review of proposed projects. The department shall establish, in rules and regulations adopted pursuant to section 70-0107 of this chapter, procedures governing the conceptual review of proposed projects.
5.
  - (a) Under the state pollutant discharge elimination system program (article seventeen of this chapter), the department may issue a general permit, upon application or on its own initiative, to cover ballast discharges from vessels, including tankers, while moored in port which (i) are within a stated geographical area, (ii) involve the same or substantially similar type of operations, (iii) discharge the same types of pollutants, (iv) require the same effluent limitations or operating conditions, (v) require the same or similar monitoring, and (vi) which will result in minimal adverse cumulative impacts.
  - (b) General permits can only be issued if the department determines such discharges, by virtue of their nature and location, are more appropriately controlled under a general permit than under individual permits.
  - (c) Any general permit issued under this subdivision shall set forth the conditions which shall apply to any discharge authorized by such general permit.
  - (d) The department may require any person authorized by a general permit to apply for and obtain an individual permit and the department shall adopt rules and regulations specifying circumstances under which an individual permit may be required.
  - (e) General permits shall be governed by the procedures set forth in this article for the review of major projects and shall be subject to the provisions of article seventy-two of this chapter.
6.
  - (a) Under the state pollutant discharge elimination system program (article seventeen of this chapter), the department may issue a general permit, upon application or on its own initiative, to cover a category of point sources of one or more discharges within a stated geographical area which (i) involve the same or substantially similar types of operations, (ii) discharge the same types of pollutants, (iii) require the same effluent limitations or operating conditions, (iv) require the same or similar monitoring, and (v) which will result in minimal adverse cumulative impacts.
  - (b) General permits can only be issued for the following categories of discharges, if, by virtue of their nature and location, the department determines such discharges are more appropriately controlled under a general permit than under individual permits:
    - (i) separate storm sewers or stormwater conveyance systems; or
    - (ii) less than ten thousand gallons per day of sewage effluent without the admixture of industrial waste or other wastes; or
    - (iii) thermal discharges of less than one million gallons per day.
  - (c) Any general permit issued under this subdivision shall set forth the conditions which shall apply to any discharge authorized by such general permit.
  - (d) The department may require any person authorized by a general permit to apply for and obtain an individual permit and the department shall adopt rules and regulations specifying circumstances under which an individual permit may be required.

- (e) General permits shall be governed by the procedures set forth in this article for the issuance of major permits.
- 7. Notwithstanding any other provision of law, the department shall not charge any application fee or any other fee for any activity undertaken pursuant to an adopt-a-park, shoreline or roadway program pursuant to section two hundred seventy-seven of the general municipal law.
- 8. [Redesignated]

ARTICLE 70. UNIFORM PROCEDURES  
§ 70-0119. Public hearings

- 1. After evaluating an application for a permit and any comments of department staff, other state agencies or units of government or members of the public, the department shall, on or before sixty calendar days after it mails notice to the applicant that the application is complete or on or before sixty days after the application is deemed complete pursuant to the provisions of this article, determine whether or not to conduct a public hearing on the application and mail written notice to the applicant of a determination to conduct a public hearing. Such determination shall be based on whether the evaluation or comments raise substantive and significant issues relating to any findings or determinations the department is required to make pursuant to this chapter, including the reasonable likelihood that a permit applied for will be denied or can be granted only with major modifications to the project because the project as proposed may not meet statutory or regulatory criteria or standards; provided, however, where any comments received from members of the public or otherwise raise substantive and significant issues relating to the application and resolution of any such issue may result in denial of the permit or the imposition of significant conditions thereon, the department shall hold a public hearing on the application.
- 2. If a public hearing is to be held, it shall commence on or before ninety calendar days after the department mails written notice to the applicant that the application is complete or on or before ninety calendar days after the application is deemed complete pursuant to the provisions of this article. Reasonable notice of the hearing shall be given to the applicant and to persons who have made written request to participate in it and notice to the public shall be given by publication of a notice of hearing in the environmental notice bulletin, in a newspaper as otherwise required by law, and in such other manner as the department may direct, if any.
- 3. The department may require an applicant to pay the cost of renting a hearing room and of preparing a transcript associated with a public hearing conducted pursuant to this article. Prior to commencing a public hearing pursuant to this article, the department may require an applicant to post a bond or other suitable undertaking to assure payment of such costs.
- 4. When an applicant has submitted applications for one or more permits associated with a project and more than one public hearing is required, including public hearings pursuant to article eight of this chapter, said public hearings shall be consolidated into a single public hearing at the request of the applicant wherever practicable. Public hearings associated with a project shall also be consolidated or held jointly with one or more other state or local agencies, whenever practicable.
- 5. Public hearings pursuant to this article shall be conducted as provided in rules and regulations adopted by the department pursuant to section 70-0107 and as provided in the state administrative procedure act.

ARTICLE 70. UNIFORM PROCEDURES  
§ 70-0121. Severability

The provisions of this article shall be severable, and if any clause, sentence, paragraph, subdivision or part of this article shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder, but shall be confined in its operation to the clause, sentence, paragraph, subdivision or part thereof directly involved in the controversy in which such judgment shall have been rendered.

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## ARTICLE 71. ENFORCEMENT

### TITLE 19. ENFORCEMENT OF TITLES 1 THROUGH 11 AND 15 THROUGH ~~19~~ 21 INCLUSIVE OF ARTICLE 17 AND SPILLS OF BULK LIQUIDS

#### § 71-1901. Applicability of this title

In addition to the provisions of section 71-0101 and 71-0301 and title 17 of this article, the provisions of this title shall be applicable to the enforcement of titles 1 through 11 and 15 through ~~19~~ 21 inclusive of article 17.

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### TITLE 19. ENFORCEMENT OF TITLES 1 THROUGH 11 AND 15 THROUGH ~~19~~ 21 INCLUSIVE OF ARTICLE 17 AND SPILLS OF BULK LIQUIDS

#### § 71-1927. Enforcement of titles 1 through 11 inclusive and titles 19 and 21 of article 17

The commissioner is hereby authorized to:

1. Institute or cause to be instituted in a court of competent jurisdiction proceedings to compel compliance with the provisions of titles 1 through 11 inclusive and titles 19 and 21 of article 17 or the determinations and orders of the commissioner.
2. Settle or compromise, with the approval of the Attorney General, any action or cause of action for the recovery of a penalty under titles 1 through 11 inclusive and titles 19 and 21 of article 17 as he may deem advantageous to the state.

### TITLE 19. ENFORCEMENT OF TITLES 1 THROUGH 11 AND 15 THROUGH ~~19~~ 21 INCLUSIVE OF ARTICLE 17 AND SPILLS OF BULK LIQUIDS

#### § 71-1929. Violations; civil liability

1. A person who violates any of the provisions of, or who fails to perform any duty imposed by titles 1 through 11 inclusive and titles 19 and 21 of article 17, or the rules, regulations, orders or determinations of the commissioner promulgated thereto or the terms of any permit issued thereunder, shall be liable to a penalty of not to exceed thirty-seven thousand five hundred dollars per day for each violation, and, in addition thereto, such person may be enjoined from continuing such violation as hereinafter provided. Violation of a permit condition shall constitute grounds for revocation of such permit, which revocation may be accomplished either as provided in paragraph f of subdivision 4 of section 17-0303 or by order of judgment of the supreme court as an alternate or additional civil penalty in an action brought pursuant to subdivision 3 of this section.
2. Any penalties for violations of titles 1 through 11 inclusive and title 19 of article 17 resulting in the killing of fish or shellfish, shall be credited to the conservation fund established by section 83 of the State Finance Law and shall be available for the uses and purposes of such fund.
3. The penalties provided by subdivisions one and two shall be recoverable in an action brought by the Attorney General.
4. An action or cause of action for the recovery of a penalty under this title may be settled or compromised by the Attorney General after proceedings are brought to recover such penalties and prior to the entry for judgment therefor.

TITLE 19. ENFORCEMENT OF TITLES 1 THROUGH 11 AND 15 THROUGH 49 21 INCLUSIVE OF ARTICLE 17 AND SPILLS OF BULK LIQUIDS

§ 71-1931. Injunctions

It shall be the duty of the Attorney General upon the request of the commissioner to bring an action for an injunction against any person violating any of the provisions of titles 1 through 11 inclusive and titles 19 and 21 of article 17 or violating any rule or regulation promulgated pursuant thereto, or any order or determination of the commissioner or a condition of any certificate or permit issued by the department; provided, however, that the department or the commissioner shall furnish the Attorney General with such material, evidentiary matter or proof as may be requested by the Attorney General for the prosecution of such an action. In any action for an injunction brought pursuant hereto any finding of the commissioner or hearing officer or panel appointed and designated by the commissioner shall be prima facie evidence of the fact or facts found therein.

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TITLE 19. ENFORCEMENT OF TITLES 1 THROUGH 11 AND 15 THROUGH 49 21 INCLUSIVE OF ARTICLE 17 AND SPILLS OF BULK LIQUIDS

§ 71-1935. Emergencies excepted

The civil and criminal liabilities imposed by sections 71-1929 and 71-1933 of this title upon persons violating the provisions of titles 1 through 11 inclusive and titles 19 and 21 of article 17 and by sections 71-1929 and 71-1933 of this title shall not be construed to include any violation which was caused by an act of God, war, strike, riot or other catastrophe as to which negligence or willful misconduct on the part of such person was not the proximate cause.

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ARTICLE 72. ENVIRONMENTAL REGULATORY PROGRAM FEES

TITLE 1. DECLARATION OF POLICY; DEFINITIONS

§ 72-0101. Declaration of policy

The legislature of the state of New York hereby declares that comprehensive environmental regulatory management programs are essential to protect New York state's environmental resources and the public's health and welfare. It further declares that those regulated entities which use or have an impact on the state's environmental resources should bear the costs of the regulatory provisions which permit the use of these resources in a manner consistent with the environmental, economic and social needs of the state. The legislature further declares that regulatory fees are an appropriate mechanism to pay a portion of the costs of the department's regulatory functions and programs and a portion of the costs to fund the cleanup of inactive hazardous waste disposal sites and that such fees should be borne by the state's regulated entities in order to further strengthen the state's capabilities to achieve its environmental quality objectives. The legislature further declares that the department's regulatory programs and corresponding costs vary according to certain relevant technical criteria which shall be considered in determining adjustments to fees as provided in this chapter.

TITLE 1. DECLARATION OF POLICY; DEFINITIONS

§ 72-0103. Definitions

When used in this article:

"State environmental regulatory program" means any of the regulatory or permit programs for which fees are assessed under this article.

TITLE 2. ANNUAL PROGRAM COSTS AND FEES

§ 72-0201. Fees and penalties

1.
  - a. Notwithstanding any general or special law to the contrary, all persons who require a permit or approval pursuant to a state environmental regulatory program, or who are subject to regulation under a state environmental regulatory program shall submit a fee as authorized under this article annually to the department, on such forms and at such times as specified by the department.
  - b. Notwithstanding any general or special law to the contrary, one-half of all monies collected by the department pursuant to section 72-0402 and section 72-0502 of this article shall be deposited in the hazardous waste remedial fund, created pursuant to section ninety-seven-b of the state finance law.
  - c. Notwithstanding any general or special law to the contrary, all monies collected by the department pursuant to subdivision twelve of this section and section 72-0303 of this article shall be deposited in the operating permit program account of the clean air fund created pursuant to section ninety-seven-oo of the state finance law.
  - d. Notwithstanding any general or special law to the contrary, all monies collected by the department pursuant to title ten of this article shall be deposited in the mined land reclamation program account created pursuant to section 72-1011 of this article.
  - e. Notwithstanding any general or special law to the contrary, all monies collected by the department pursuant to section 72-0403 of this article shall be deposited in the industry fee transfer account of the hazardous waste remedial fund established by subdivision one of section ninety-seven-b of the state finance law.
2. All persons subject to regulation under a state environmental regulatory program including those persons holding existing permits, certificates or approvals under such programs shall be liable for fees authorized by this article on and after April first, nineteen hundred eighty-three.
3. Liability for fees authorized by this chapter for persons receiving new permits, certificates or approvals shall equal the annual fee established pursuant to this title and prorated from the date of issuance.
4. Payment of fees shall be due within thirty days of billing by the department.
5. If the amount of the fee is not paid within forty-five days of the last date prescribed under subdivision four of this section, a penalty shall be imposed on such deficiency. The amount of such penalty shall not exceed five percent of such deficiency per month and the total penalty shall not exceed twenty-five percent of the deficiency.

Notice of the determination of a penalty, and notice of the right to appeal such determination shall be given to the person liable for the payment of the fee and any penalty due. The penalty as determined pursuant to this subdivision shall be finally and irrevocably assessed unless a hearing is requested by certified mail to the commissioner within thirty days after receiving notice of the determination of a penalty, or unless the commissioner on his own motion shall redetermine such penalty. After such hearing the commissioner shall give notice of final determination to the person against whom the fee and penalty is assessed. No such penalty as defined in this subdivision shall be assessed until after the expiration of the period in which a hearing may be requested, or after the issuance of a final determination following a hearing, whichever comes later.

6. In addition to any penalty that may be assessed pursuant to subdivision five of this section, there shall be collected interest upon the unpaid amount at the underpayment rate set by the commissioner of taxation and finance pursuant to section one thousand ninety-six of the tax law, minus two percentage points. Such interest shall accrue thirty days from the date prescribed for fee payment until payment is actually made to the department.

7. In the event that a person fails to pay any fee as finally determined, such determination to be final when all administrative and judicial appeals thereof, if any, have been completed, the department may suspend, until the fee is paid, the permit, certificate or approval for the activity which is subject to that fee.
8. The commissioner shall promulgate regulations necessary to effectuate the purposes of this article. Such regulations may also include provisions regarding hearings to resolve disputed fee and penalty determinations.
9.
  - a. In the event a penalty or interest is collected pursuant to subdivision five or six of this section for fees due under section 72-0402, or section 72-0502 of this article, one-half of the penalty or interest shall be deposited by the department in the industry fee transfer account of the hazardous waste remedial fund.
  - b. In the event a penalty or interest is collected pursuant to subdivision five or six of this section for fees due under section 72-0403 of this article, such penalty or interest shall be deposited in the industry fee transfer account of the hazardous waste remedial fund established by subdivision one of section ninety-seven-b of the state finance law.
10. No portion of the fees collected pursuant to this article shall be used for any purpose if such use, under federal law, would preclude the collection of such a fee.
11.
  - a. All fees collected pursuant to this article shall be paid into the environmental conservation special revenue fund to the credit of the environmental regulatory account, unless herein provided otherwise.
  - b. Moneys of such account shall include interest earnings on any account balances and shall be available for appropriation and allocation for the purposes of carrying out the provisions of this chapter.
  - c. The moneys of the account shall be paid out on the audit and warrant of the comptroller on vouchers certified or approved by the commissioner or his duly designated representative.
  - d. Notwithstanding the provisions of any general or special law, no moneys shall be available from the account until a certificate of allocation and a schedule of amounts to be available therefor shall have been issued by the director of the budget, and a copy of such certificate filed with the comptroller. Such certificate may be amended from time to time by the director of the budget and a copy of each such amendment shall be filed with the comptroller.
  - e. Any reference to the environmental enforcement account in any special or general law shall be deemed to be a reference to the environmental regulatory account.
12. Notwithstanding any other provision of this section, any person who fails to pay fees required pursuant to section 72-0303 of this article shall pay a penalty of fifty per centum of the unpaid fee amount, plus interest on the unpaid fee amount computed in accordance with section 6621(a)(2) of the United States internal revenue code of 1986 (Public Law 99-514, 26 U.S.C. section 1 et seq.) from the date the fee was required to be paid.

## **TITLE 12. AQUATIC INVASIVE SPECIES CONTROL PROGRAM FEE**

### **§ 72-1201. Definitions**

#### **When used in this title:**

- (a) **“Aquatic invasive species control program” means those activities of the department as specified in title 21 of article seventeen of this chapter related to discharges into the Great Lakes and any related enforcement activities.**

- (b) "Person" or "persons" means any individual, public or private corporation, political subdivision, government agency, municipality, industry, co-partnership, association, firm, trust, estate or any other legal entity whatsoever.

**TITLE 12. AQUATIC INVASIVE SPECIES CONTROL PROGRAM FEE**

**§ 72-1202. Aquatic invasive species control program fees**

All persons issued a permit pursuant to the aquatic invasive species control program as defined in section 72-1201 of this title shall submit annually to the department a fee in the amount of \$ 1000.00.

\* \* \*

STATE FINANCE LAW

ARTICLE 6. FUNDS OF THE STATE

§ 71. Abolition, maintenance and establishment of funds

1. Notwithstanding any provision of law to the contrary, each fund established prior to the effective date of this section other than by law and in existence at the time of the effective date of this section, shall be either abolished or continued in existence by the comptroller with the concurrence of the director of the budget. The balance in any fund so abolished shall be paid into the appropriate fund. The comptroller, after consultation with the director of the budget and the heads of agencies and public benefit corporations significantly involved in the operations of such funds, but in no event later than one hundred twenty days following the effective date of this section, shall submit to the legislature and the governor a report specifying the action which, with the concurrence of the director of the budget, he has taken or intends to take in regard to every such fund and the fund type into which he intends to classify each fund so continued. The comptroller with the concurrence of the director of the budget, at any time following the submission of this report, may abolish any fund established other than by law provided that at the time of such action he shall submit a notice of such action and the reasons therefor to the legislature and the governor.
2. The comptroller, after consultation with the director of the budget and the heads of agencies and public benefit corporations significantly involved in the operations of funds established by law but in no event later than one hundred twenty days following the effective date of this section, shall submit to the legislature and the governor a report specifying every such fund and setting forth for each such fund a recommendation of the comptroller as to the desirability of repealing the statute establishing such fund, continuing the statutory authorization for such fund, or modifying the statute establishing such fund in one or more particular respects. Such report shall also indicate the fund type into which the comptroller intends to classify each fund established by law in the event that the legislative action recommended in such report as to that fund is enacted and the fund type into which he intends to classify each fund if no legislative action is taken in regard to that fund.
3. The comptroller with the concurrence of the director of the budget may establish such additional funds as are necessary to properly manage and account for the financial activities and resources of the state, provided that in establishing funds and in continuing funds, only the minimum number of funds necessary to comply with legal requirements and generally accepted accounting principles shall be established and continued and provided that at the time an additional fund is established he shall submit to the legislature and the governor a notice of such action and a statement setting forth the initial date of such action, the sources and uses of the financial resources of such fund, the fund type into which he intends to classify such fund, and an explanation of the necessity for its establishment.

**ARTICLE 6. FUNDS OF THE STATE**

**§ 83-b. Aquatic invasive species control fund**

The aquatic invasive species control fund shall consist of all moneys belonging to the state received by the department of environmental conservation from the permit application fees, annual permit fees under the

aquatic invasive species control program, and all moneys received in actions for penalties or reimbursements, and all other moneys arising out of the application of any provisions under title 21 of article seventeen of the environmental conservation law. These moneys, after appropriation by the legislature, shall be available to the department of environmental conservation for the administration and enforcement of the aquatic invasive species control program, for the prevention and control of aquatic invasive species introductions, for rehabilitation of resources impacted or injured by aquatic invasive species, and for all other proper expenses of the department of environmental conservation in the administration of the provisions of title 21 of article seventeen of the environmental conservation law.

VERSION 1: BILL FORMAT

BILL TEXT:

STATE OF NEW YORK

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XXXX

2007-2008 Regular Sessions

IN ASSEMBLY

May 5, 2007

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Introduced by M. of A. AUBERTINE

An Act to amend the Environmental Conservation Law and State Finance Law, in relation to control of aquatic invasive species.

**The people of the State of New York, represented in Senate and Assembly, do enact as follows:**

SECTION 1. The legislature finds that some non-indigenous species and certain pathogens have the potential to cause economic, environmental and health and safety damage to the state and that current efforts to stop the introduction of non-indigenous species and certain pathogens from shipping vessels do not adequately reduce the risk of new introductions into the Great Lakes watershed. New York's interest in protecting the health, safety and welfare of its citizens, natural resource and environment is a legitimate local interest falling well within the traditional police powers of the several states.

The legislature, however, recognizes the international ramifications and the rapidly changing dimensions of this issue, as well as the difficulty that any one state has in either legally or practically managing this issue. Congress, however, recognizing that the state and the federal government should work in concert on this issue, inserted into the National Invasive Species Act of 1996, 16 U.S.C. § 4701 et. seq., a specific provision, a savings clause, at 16 U.S.C. § 4725, which disclaims congressional intent to preempt states from acting to control non-indigenous species. Acknowledging the possible limits of state jurisdiction over international waters, the legislature declares its support for the efforts of the United State Coast Guard and international maritime organizations. New York intends to complement the United States Coast Guard's ballast water management program.

EXPLANATION – Mater in **italics** (underscored) is new; matter in brackets [--] is old law to be omitted.

SECTION 2. Article 17 of the Environmental Conservation Law is amended by changing title 3, § 17-0303 to read as follows:

§ 17-0303. General powers and duties applicable to portions of this article

1. The provisions of this section shall apply only to titles 1 to 11, inclusive, and titles 19 and 21 of this article.
2. The department shall have administrative jurisdiction to abate and prevent the pollution of waters of the state in the manner herein provided in accordance with the classification of waters adopted by the department pursuant to section 17-0301 and in accordance with standards, criteria, limitations, rules and regulations and permit conditions adopted, promulgated or applied by the department pursuant to titles 8 and 21 hereof.

\* \* \*

SECTION 3. Article 17 of the Environmental Conservation Law is amended by changing title 9 to read as follows:

§ 17-0901. Hearings

1. Public hearings shall be conducted by the commissioner, or his duly designated representative or representatives prior to issuance of an order directing any person to discontinue discharge of sewage, industrial waste or other wastes which contravene the standards established for any waters of the state or standards, criteria, limitations, rules or regulations promulgated or applied pursuant to title 8 or title 21 hereof.

\* \* \*

§ 17-0905. Proceedings before the commissioner

1. The commissioner may, on his own motion, investigate or make inquiry, in a manner to be determined by him, as to the condition of any of the waters of the state and as to any alleged act of pollution or omission or failure to comply with any provisions of titles 1 to 11, inclusive, or titles 19 or 21 of this article.
2. Whenever it shall appear to the commissioner, after investigation, that there has been a violation of any of the provisions of titles 1 to 11, inclusive, or titles 19 or 21 of this article, he shall give written notice to the alleged violator or violators setting forth any thing or act done or omitted to be done or claimed to be in violation of any such provisions, and requiring that the matters complained of be corrected, or that the alleged violator appear in person or by attorney before the [commisisoner] **commissioner** or his duly designated representative, at the time and place in said notice specified, and answer the charges complained of.

\* \* \*

6. The burden of proof with respect to violations of or liability imposed by titles 1 to 11, inclusive, and titles 19 and 21 of this article shall, except as otherwise provided in section 71-1941, be upon the department.

\* \* \*

§ 17-0907. Hearings for persons aggrieved

1. This section shall apply only to titles 1 to 11, inclusive, and titles 19 and 21 of this article.

\* \* \*

§ 17-0909. Review by courts

1. The provisions of this section shall apply only to titles 1 to 11, inclusive, and titles 19 and 21 of this article.

\* \* \*

SECTION 4. Article 17 of the Environmental Conservation Law is amended by changing title 11 to read as follows:

§ 17-1101. Existing rights and remedies preserved

It is the purpose of titles 1 to 11, inclusive, and titles 19 and 21 of this article to provide additional and cumulative remedies to abate the pollution of the waters of the state and nothing herein contained shall abridge or alter rights of action or remedies now or hereafter existing, nor shall any such provisions or any act done by virtue of such provisions, be construed as estopping the state, persons or municipalities, as riparian owners or otherwise, in the exercise of their rights to suppress nuisances or to abate any pollution now or hereafter existing.

§ 17-1103. Persons other than the state acquire no actionable rights

The bases for proceedings or actions resulting from the violations of the prohibitions contained in titles 1 to 11, inclusive, and titles 19 and 21 of this article inure solely to and are for the benefit of the people generally of the state of New York, and it is not intended to in any way create new, or enlarge existing rights of riparian owners or others. A determination by the department or the commissioner that pollution exists or that violations of any such prohibitions have occurred or are occurring, whether or not a proceeding or action may be brought by the state, shall create by reason thereof no presumptions of law or findings of fact inuring to or for the benefit of persons other than the state.

§ 17-1105. Conflicting laws

Titles 1 to 11, inclusive, and titles 19 and 21 of this article shall not be construed as repealing any of the laws relating to the pollution of the waters of the state not herein expressly repealed, but shall be held and construed as ancillary to and supplementing the same and in addition to the laws now in force, except as the same may be in direct conflict herewith.

§ 17-1107. Other Environmental Conservation Laws to remain in effect

Nothing contained in titles 1 to 11, inclusive, and titles 19 and 21 of this article shall be construed as amending or repealing sections 11-0503 or 13-0345 and any parts of said sections inconsistent with the provisions of titles 1 to 11, inclusive, and titles 19 and 21 of this article or with any rule, regulation, order or determination authorized by titles 1 to 11, inclusive, and titles 19 and 21 of this article shall be held to be effective.

SECTION 5. Article 17 of the Environmental Conservation Law is amended by adding a new title 21 to read as follows:

**TITLE 21.**

**AQUATIC INVASIVE SPECIES CONTROL**

<b>Section</b>	<b>17-2101.</b>	<b>Short title</b>
	<b>17-2102.</b>	<b>Findings</b>
	<b>17-2103.</b>	<b>Definitions</b>
	<b>17-2105.</b>	<b>Applicability</b>
	<b>17-2107.</b>	<b>Rules, regulations and standards</b>
	<b>17-2109.</b>	<b>Notification and reporting</b>
	<b>17-2111.</b>	<b>Discharge permit</b>
	<b>17-2113.</b>	<b>Enforcement; violations and penalties</b>
	<b>17-2115.</b>	<b>Aquatic invasive species control fund</b>

**§ 17-2101. Short title**

**This title shall be known and may be cited as the “Aquatic Invasive Species Control Act.”**

**§ 17-2102. Findings**

**The legislature finds that aquatic invasive species already introduced into the Great Lakes, predominantly through ballast water discharges but also through other pathways from oceangoing vessels, have led to significant ecological and economic impacts. At least one-hundred eighty aquatic invasive species are established in the Great Lakes. Since the opening of the St. Lawrence Seaway in nineteen hundred and fifty-nine, ballast water discharges from oceangoing vessels have been implicated in more than two-thirds of the introductions of new aquatic invasive species in the Great Lakes.**

**The legislature further finds that the aquatic invasive species introduced into the Great Lakes, such as the sea lamprey, zebra mussel, ruffe, goby, and spiny water flea, have competed with and preyed upon native plants, fish and wildlife, resulting in dramatic decreases in population sizes, compromised species viability, and serious alterations to the ecosystem. These impacts may be irreversible.**

**The legislature further finds that aquatic invasive species have harmed the Great Lakes’ commercial and recreational fishing industries and damaged water supply and energy production infrastructure. These damages have resulted in billions of dollars of economic disruption; including more than 1.5 billion dollars expended to address the impacts of the zebra mussel in the Great Lakes.**

**The legislature further finds that because all oceangoing vessels entering the Great Lakes must pass through New York State’s Great Lakes waters, regardless of whether they stop at New York State ports, New York waters are vulnerable to release and introduction of aquatic invasive species.**

**The legislature further finds that an oceangoing vessel can carry aquatic invasive species in a variety of locations on the vessel, including but not limited to the ballast water, anchor**

chain, sea chest, and hull, and such vessels are typically capable of discharging or releasing such invasive species into state waters whether intentionally or accidentally.

The legislature further finds that the prophylactic measure of requiring permits for vessels capable of discharging or releasing aquatic invasive species into state waters, even if not planning to use a New York state port or to discharge or release ballast water, is necessary to effectively control the introduction of invasive species by oceangoing vessels, given that oceangoing vessels are important and historically under-regulated contributors to such introductions.

The legislature further finds that the threat of new introductions of aquatic invasive species in the Great Lakes is real and growing. Introduction of a new aquatic invasive species anywhere in the Great Lakes poses a threat to the entire Great Lakes ecosystem, including the waters of the state.

The legislature further finds that in two thousand and five the state of Michigan created the Great Lakes Aquatic Nuisance Species Coalition to bring states together to collaboratively devise consistent state regulations to manage discharge of aquatic invasive species from oceangoing vessel ballast water to protect the Great Lakes. New York State carries a singular obligation to actively participate in the Great Lakes Aquatic Nuisance Species Coalition and to support the Coalition's mission.

#### § 17-2103. Definitions

As used in this title:

(a) "Aquatic invasive species" means a non-indigenous species that threatens or could threaten the diversity or abundance of native species or the ecological stability of infested waters, or commercial, agricultural, aquacultural, or recreational activities dependent on such waters.

(b) "Ballast tank" means any tank or hold on a vessel used for carrying ballast water, whether or not the tank or hold was designed for that purpose.

(c) "Ballast water" means any water and associated matter taken on board a vessel to control or maintain trim, draft, stability or stress of the vessel, without regard to the manner in which it is carried.

(d) "Ballast water treatment method" means a method of treating ballast water and sediments to remove or destroy living biological organisms through one or more of the following:

(i) filtration;

(ii) the application of biocides or ultraviolet light;

(iii) thermal methods;

(iv) deoxygenation;

(v) other treatment techniques approved by the department.

(e) "Commissioner" means the Commissioner of Environmental Conservation.

(f) "Department" means the Department of Environmental Conservation.

(g) "Exchange" means to replace the water in a ballast tank using one of the following methods:

(1) Flow through exchange means to flush out ballast water by pumping in mid-ocean water at the bottom of the ballast tank and continuously overflowing the tank from the top until three full volumes of water has been changed—to minimize the number of original organisms remaining in the tank.

(2) Empty/refill exchange means to pump out the ballast water until the ballast tank is empty or as close to empty as the master or operator of the vessel determines is safe, then refilling it with mid-ocean water; masters/operators should pump out as close to 100 percent of the ballast water as is safe to do so.

(h) “Great Lakes” means Lake Ontario, Lake Erie, Lake Huron (including Lake St. Clair), Lake Michigan, Lake Superior, and the connecting channels (Saint Mary’s River, Saint Clair River, Detroit River, Niagara River, and Saint Lawrence River to the Canadian Border), and includes all other bodies of water within the drainage basin of such lakes and connecting channels.

(i) “Great Lakes waters of the state” shall mean the waters of the state within the Great Lakes.

(j) “Non-indigenous species” means any species or other viable biological material that enters an ecosystem beyond its historic range, including any such organism transferred from one country into another.

(k) “Oceangoing vessel” means a vessel that operates on the Great Lakes or the St. Lawrence waterway after operating in coastal or ocean waters outside of the Great Lakes or the St. Lawrence waterway, including open-ocean vessels and vessels that remain entirely within coastal waters less than 200 nautical miles from shore.

(l) “Open sea exchange” means an exchange that occurs more than 50 nautical miles from any shore. If the United State Coast Guard requires a vessel to conduct an exchange further offshore, then that distance is the required distance for purposes of compliance with this title.

(m) “Operator” includes master, agent, person-in-charge or charterer.

(n) “Person” or “persons” means any any individual, public or private corporation, political subdivision, government agency, municipality, industry, co-partnership, association, firm, trust, estate or any other legal entity whatsoever.

(o) “Recognized marine trade association” means those trade associations in the state that promote improved ballast water management practices by educating their members on the provisions of this title, participating in regional ballast water coordination, assisting the department in the collection of ballast water exchange forms, and the monitoring of ballast water.

(p) “Sediment” means any matter settled out of ballast water within a vessel.

(q) “Vector” means a pathway and mechanism for entry for aquatic invasive species into the Great lakes waters of the state.

(r) “Vessel” means a self-propelled ship in commerce of three hundred gross tons or more.

(s) “Voyage” means any transit by a vessel in the Great Lakes waters of the state.

(t) “Waters of the state” shall have the same meaning as provided in subdivision 2 of section 17-0105 of this article.

#### § 17-2105. Applicability

**1. This title shall apply to all oceangoing vessels entering, traversing or operating in the Great Lakes waters of the state, except a vessel of the United States Department of Defense or United States Coast Guard subject to the requirements of 16 U.S.C. 4713, or any vessel of the armed forces as defined in the Federal Water Pollution Control Act (33 U.S.C. 1322(a)) that is subject to the “Uniform National Discharge Standards for Vessels of the Armed Forces” (33 U.S.C. 1322(n)).**

**2. This title shall not be deemed to authorize the discharge of oil or noxious liquid substances in a manner prohibited by state, federal, or international laws or regulations. Ballast water containing or carried in any tank containing a residue of oil, noxious liquid substances, or any other pollutant shall be discharged in accordance with the applicable laws and regulations.**

**3. Nothing in this title shall be construed to relieve the operator in charge of a vessel of the responsibility for ensuring the safety and stability of the vessel or the safety of the crew and passengers.**

#### **§ 17-2107. Rules, regulations and standards**

**The department shall promulgate and adopt rules, regulations and standards to implement this title, and in doing so may consult with the state department of health, regulated industries and potentially affected parties, including but not limited to shipping interests, ports, shellfish growers, fisheries, aquaculture interests, environmental interests, interested citizens who have knowledge of the issues, and appropriate governmental representatives including the United States Coast Guard.**

#### **§ 17-2109. Notification and reporting**

**Beginning January 1, 2009, all oceangoing vessels entering, traversing or operating in the Great Lakes waters of the state shall notify the department of such operation and, if the vessel is equipped with a ballast tank, report to the department ballast water management information using ballast water reporting forms that are acceptable to the United States Coast Guard or otherwise designated by the department if Coast Guard forms are not available. The frequency and manner of such notification and reporting shall be established by the department by rule.**

#### **§ 17-2111. Discharge/release permit**

**1. Subject to the exception in paragraph 2 of this section, beginning January 1, 2009, all oceangoing vessels entering, traversing or operating in the Great Lakes waters of the state shall obtain a permit from the department; no vessel subject to the requirements of this section may be operated in the Great Lakes waters of the state without such permit.**

**2. A vessel shall be exempt from the permit requirement of this section only if the owner or operator of the vessel demonstrates to the department that the vessel has no capability or potential to discharge or release non-indigenous aquatic invasive species into the Great Lakes waters of the state by any vector. A designation or claim of no ballast on board (NOBOB) shall not be sufficient to exempt a vessel from the permit requirement of this section. The department shall reassess the exempt status of any vessel covered by this title annually. Exemption from the permit requirements of this section shall not exempt a vessel from the notification and reporting obligations of section 17-2109.**

**3. Upon submittal of a complete application for a permit, the department shall issue or deny a permit. The department shall issue a permit only if the applicant demonstrates to the department that:**

- (a) the operator of the vessel will use environmentally sound technology and methods prior to entry into the Great Lakes waters of the state to prevent the discharge or release of aquatic invasive species; and**
- (b) all other applicable procedural requirements contained in this chapter or designated by rule are satisfied.**

**The department shall deny a permit if the permit application contains misleading or false information. Additional grounds for denial of a permit shall be established by the department in rules.**

**4. An oceangoing vessel shall be deemed to use environmentally sound technology and methods to prevent the discharge or release of aquatic invasive species if:**

- (a) the operator of a vessel equipped with a ballast tank:
  - (i) conducts an open sea exchange of ballast water that meets the standards set by the department, or**
  - (ii) uses a ballast water treatment method that meets the standards set by the department, or**
  - (iii) uses alternative technology and methods determined by the department to be at least as effective as the technology and methods described in (i) through (ii) inclusive in preventing and controlling infestations of aquatic invasive species via ballast water;****

**and**

- (b) the operator of any vessel uses technology and methods determined by the department to be effective and necessary to prevent and control infestations of aquatic invasive species via vectors other than ballast water.**

**5. If the department issues a permit for a vessel, the permit shall include terms that are necessary to ensure compliance with this title and associated rules, regulations, standards, protocols and orders. No person issued a permit shall violate the terms of the permit.**

**6. By January 1, 2009, the department shall set standards for the discharge of untreated ballast water and associated sediment into the Great Lakes waters of the state. Such standards shall ensure that the discharge of untreated ballast water poses minimal risk of introducing non-indigenous species. In developing such standards the department shall consider the best available technology and the extent to which the technology is practically feasible. The standards shall be compatible with standards set by the United States Coast Guard and international treaties to the extent appropriate without compromising the purposes of this title.**

**7. By January 1, 2009, the department shall set standards for environmentally sound methods of treating ballast water and associated sediment that may be discharged into the Great Lakes waters of the state. Such standards shall ensure that the discharge of treated ballast water poses minimal risk of introducing non-indigenous species and complies with all relevant state and federal laws. In developing such standards the department shall consider the best available technology and the extent to which the technology is practically feasible. The standards shall be compatible with standards set by the United States Coast Guard and international treaties to the extent appropriate without compromising the purposes of this title.**

8. By January 1, 2009, the department shall set standards for environmentally sound methods of preventing and controlling the release of aquatic invasive species into the Great Lakes waters of the state from vessels by vectors other than ballast water. In developing such standards the department shall consider the best available technology and the extent to which the technology is practically feasible. The standards shall be compatible with standards set by the United States Coast Guard and international treaties to the extent appropriate without compromising the purposes of this title.

9. By January 1, 2009, the department shall adopt sampling and testing protocols for monitoring the biological components of ballast water and associated sediment and of non-ballast vectors that may be discharged into the Great Lakes waters of the state. The sampling and testing protocols must consist of cost-effective, scientifically verifiable methods that, to the extent practicable and without compromising the purposes of this title, utilize easily measured indices that indicate the presence of non-indigenous species or pathogenic species. The department shall specify appropriate quality assurance and quality control for the sampling and testing protocols.

10. The owner or operator of any vessel requiring a permit under this section must ensure that the vessel under its ownership or control complies with the following monitoring, sampling, and reporting requirements:

(a) all vessels covered by this section must report to the department ballast water management information, including individual ballast tank sample data for each voyage, using ballast water reporting forms that are acceptable to the United States Coast Guard or otherwise designated by the department if Coast Guard forms are not available, in a frequency and manner established by the department by rule;

(b) a vessel that meets the reporting requirements of subdivision (a) shall be deemed to satisfy the reporting requirements of section 17-2109.

(c) all vessels covered by this section must submit to the department non-indigenous species monitoring data using the monitoring, sampling, and testing protocols established by the department by rule.

11. The department shall use monitoring data to measure the effectiveness of efforts to prevent the introduction of non-indigenous species; to evaluate the risk of new, non-indigenous species introductions from the discharge of ballast water; and to evaluate the efficacy of ballast water exchange practices and other methods to prevent the discharge or release of aquatic invasive species.

12. The department shall consult with federal and state agencies, regulated industries and potentially affected parties in carrying out the provisions of this section.

13. The rules and regulations adopted by the department to implement this title and the provisions of article seventy of this chapter and rules and regulations thereunder shall govern permit applications, issuance, denial, renewals, modifications, suspensions, revocations and reissuances under this title.

14. The applicable procedures provided in title 9 of article seventeen shall apply to this section.

15. To carry out the purposes of this section or any rule, regulation, order, or permit issued thereunder, the department or its authorized representative, upon presentation of appropriate credentials, shall at reasonable times:

- (a) have a right of entry to, upon, or through any vessel subject to the permit requirement of this section, for the purpose of inspecting and investigating conditions relating to the discharge or release, or possible discharge or release, of aquatic invasive species into Great Lakes waters of the state;
- (b) have access to examine and copy any records or memoranda required to be maintained under this section;
- (c) have access to inspect any monitoring equipment or method which is required under this section;
- (d) have access to sample ballast water and sediment and to sample other locations on the vessel that the department determines are necessary to assess compliance with permit terms and the requirements of this section; and
- (e) make other appropriate inquiries to assess the compliance of any vessel with permit terms and the requirements of this section.

16. The department is authorized to establish a reasonable fee for processing of permit applications and issuance of permits under this section to compensate the department for its expenses.

17. The schedule of annual permit fees under the aquatic invasive species control program shall be the fees specified in title 12 of article seventy-two.

#### § 17-2113. Enforcement; violations and penalties

1. Except as limited by subdivisions 2 through 5 inclusive of this section, the procedures provided in sections 71-1927, 71-1929, 71-1931, and 71-1935 of article seventy-one and the applicable sections of title 9 of article seventeen shall apply to enforcement under this title.

2. Except as limited by subdivision 3 of this section, the commissioner or the commissioner's designee may impose a civil penalty or warning for a violation of the requirements of this title on the owner or operator of a vessel who fails to comply with the requirements imposed under sections 17-2109 and 17-2111. The penalty shall not exceed twenty-five thousand dollars for each violation.

3. The civil penalty for a violation of monitoring, sampling or reporting requirements of section 17-2111 shall not exceed ten thousand dollars for each violation.

4. Any owner or operator or any marine trade association who knowingly, and with intent to deceive, falsifies a ballast water management report form is liable for a civil penalty in an amount not to exceed one-hundred thousand dollars for each violation, and such violation shall constitute grounds for revocation of a permit issued under section 17-2111.

5. In assessing the amount of any such civil penalty the commissioner or court shall consider:

- (a) the type, extent and amount of damage and the quality and nature of risks created by the violation;
- (b) whether the violation was intentional, negligent, or without any fault;
- (c) the degree of care taken by or on behalf of the party charged to prevent the occurrence of the violation;
- (d) the efforts made by or on behalf of the party charged to reduce or mitigate the damage which resulted from the violation.

6. Such penalties or reimbursements or both due the people of the state by reason of the liability provided in subdivisions 2, 3, and 4 of this section may be assessed by the

**commissioner by order after a hearing or hearings noticed and conducted and reviewable as provided in title 9 of article seventeen.**

**7. If the department prevails using any judicial process to collect a penalty under this section, the department shall also be awarded its costs and reasonable attorney's fees.**

**§ 17-2115. Aquatic invasive species control fund**

**1. All moneys, fees, fines and penalties arising out of the administration and enforcement of this title (the aquatic invasive species control act) shall be deposited in the state treasury and credited to the aquatic invasive species control fund established by section 83-b of the State Finance Law and shall be available for the uses and purposes of such fund.**

**2. Money in the fund shall be used by the commissioner for the following:**

- (a) to prevent the introduction of aquatic invasive species into the Great Lakes waters of the state;**
- (b) to control the spread of aquatic invasive species introduced into the Great Lakes waters of the state prior to the effective date of this section;**
- (c) to reclaim and rehabilitate aquatic resources impacted or injured by aquatic invasive species;**
- (d) to administer this title and the rules and regulations adopted under this title.**

SECTION 6. Article 70 of the Environmental Conservation Law is amended by changing § 70-0107 to read as follows:

§ 70-0107. Rules and regulations; applicability

1. The department, after public hearing, shall adopt rules and regulations to assure the efficient and expeditious administration of this article. Such rules and regulations shall include but not be limited to provisions regarding notice, review, public participation and public hearings.
2. Notwithstanding any inconsistent provisions of this chapter or any rule or regulation of the department, the procedures provided in this article and in rules and regulations adopted by the department pursuant to subdivision one of this section shall govern the review by the department of applications for permits for proposed projects and modifications, suspensions, revocations, renewals, reissuances and recertifications of permits under the regulatory programs of the department specified in subdivision three of this section. Such procedures shall also apply to any government entity to which the commissioner has delegated powers to administer such programs pursuant to section 3-0301 of this chapter, to the extent specified in such delegation.
3. The following regulatory programs of this chapter shall be subject to the procedures provided in this article:
  - (a) protection of waters (title five of article fifteen);
  - (b) water supply and water transport (title fifteen of article fifteen);
  - (c) wild, scenic and recreational rivers system (title twenty-seven of article fifteen), except for that part of article twenty-four administered by the Adirondack park agency, which shall be subject to the procedures provided in section eight hundred nine of the executive law;

- (d) certifications under section 401 of the federal water pollution control act amendments of 1972 (public law 92-500) pursuant to article three of this chapter;
- (e) state pollutant discharge elimination system (title eight of article seventeen);
- (f) realty subdivisions: sewerage service (title fifteen of article seventeen);
- (g) air pollution control (article nineteen);
- (h) liquefied natural and petroleum gas (title seventeen of article twenty-three);
- (i) mined land reclamation (title twenty-seven of article twenty-three);
- (j) freshwater wetlands (article twenty-four), except for that part of article twenty-four administered by the Adirondack park agency, which shall be subject to the procedures provided in section eight hundred nine of the executive law;
- (k) tidal wetlands (article twenty-five);
- (l) collection, treatment and disposal of refuse and other solid waste (article twenty-seven); **[and]**
- (m) coastal erosion hazard areas (article thirty-four)**[.]**;
- (n) **[Repealed]**
- (o) aquatic invasive species control (title twenty-one of article seventeen).**

SECTION 7. Article 71 of the Environmental Conservation Law is amended by changing title 19 to read as follows:

**TITLE 19. ENFORCEMENT OF TITLES 1 THROUGH 11 AND 15 THROUGH [19] 21 INCLUSIVE OF ARTICLE 17 AND SPILLS OF BULK LIQUIDS**

§ 71-1901. Applicability of this title

In addition to the provisions of section 71-0101 and 71-0301 and title 17 of this article, the provisions of this title shall be applicable to the enforcement of titles 1 through 11 and 15 through [19] 21 inclusive of article 17.

**TITLE 19. ENFORCEMENT OF TITLES 1 THROUGH 11 AND 15 THROUGH [19] 21 INCLUSIVE OF ARTICLE 17 AND SPILLS OF BULK LIQUIDS**

§ 71-1927. Enforcement of titles 1 through 11 inclusive and titles 19 **and** 21 of article 17

The commissioner is hereby authorized to:

1. Institute or cause to be instituted in a court of competent jurisdiction proceedings to compel compliance with the provisions of titles 1 through 11 inclusive and titles 19 **and** 21 of article 17 or the determinations and orders of the commissioner.
2. Settle or compromise, with the approval of the Attorney General, any action or cause of action for the recovery of a penalty under titles 1 through 11 inclusive and titles 19 **and** 21 of article 17 as he may deem advantageous to the state.

**TITLE 19. ENFORCEMENT OF TITLES 1 THROUGH 11 AND 15 THROUGH [19] 21 INCLUSIVE OF ARTICLE 17 AND SPILLS OF BULK LIQUIDS**

§ 71-1929. Violations; civil liability

1. A person who violates any of the provisions of, or who fails to perform any duty imposed by titles 1 through 11 inclusive and titles 19 and 21 of article 17, or the rules, regulations, orders or determinations of the commissioner promulgated thereto or the terms of any permit issued thereunder, shall be liable to a penalty of not to exceed thirty-seven thousand five hundred dollars per day for each violation, and, in addition thereto, such person may be enjoined from continuing such violation as hereinafter provided. Violation of a permit condition shall constitute grounds for revocation of such permit, which revocation may be accomplished either as provided in paragraph f of subdivision 4 of section 17-0303 or by order of judgment of the supreme court as an alternate or additional civil penalty in an action brought pursuant to subdivision 3 of this section.
2. Any penalties for violations of titles 1 through 11 inclusive and title 19 of article 17 resulting in the killing of fish or shellfish, shall be credited to the conservation fund established by section 83 of the State Finance Law and shall be available for the uses and purposes of such fund.
3. The penalties provided by subdivisions one and two shall be recoverable in an action brought by the Attorney General.
4. An action or cause of action for the recovery of a penalty under this title may be settled or compromised by the Attorney General after proceedings are brought to recover such penalties and prior to the entry for judgment therefor.

**TITLE 19. ENFORCEMENT OF TITLES 1 THROUGH 11 AND 15 THROUGH [19] 21 INCLUSIVE OF ARTICLE 17 AND SPILLS OF BULK LIQUIDS**

§ 71-1931. Injunctions

It shall be the duty of the Attorney General upon the request of the commissioner to bring an action for an injunction against any person violating any of the provisions of titles 1 through 11 inclusive and titles 19 and 21 of article 17 or violating any rule or regulation promulgated pursuant thereto, or any order or determination of the commissioner or a condition of any certificate or permit issued by the department; provided, however, that the department or the commissioner shall furnish the Attorney General with such material, evidentiary matter or proof as may be requested by the Attorney General for the prosecution of such an action. In any action for an injunction brought pursuant hereto any finding of the commissioner or hearing officer or panel appointed and designated by the commissioner shall be prima facie evidence of the fact or facts found therein.

**TITLE 19. ENFORCEMENT OF TITLES 1 THROUGH 11 AND 15 THROUGH [19] 21 INCLUSIVE OF ARTICLE 17 AND SPILLS OF BULK LIQUIDS**

§ 71-1935. Emergencies excepted

The civil and criminal liabilities imposed by sections 71-1929 and 71-1933 of this title upon persons violating the provisions of titles 1 through 11 inclusive and titles 19 and 21 of article 17 and by sections 71-1929 and 71-1933 of this title shall not be construed to include any violation which was caused by an act of God, war, strike, riot or other catastrophe as to which negligence or willful misconduct on the part of such person was not the proximate cause.

SECTION 8. Article 72 of the Environmental Conservation Law is amended by adding a new title 12 to read as follows:

**TITLE 12.**

**AQUATIC INVASIVE SPECIES CONTROL PROGRAM FEE**

**Section 72-1201. Definitions**

**72-1202. Aquatic invasive species control program fees**

**§ 72-1201. Definitions**

**When used in this title:**

- (a) “Aquatic invasive species control program” means those activities of the department as specified in title 21 of article seventeen of this chapter related to discharges into the Great Lakes and any related enforcement activities.**
- (b) “Person” or “persons” means any individual, public or private corporation, political subdivision, government agency, municipality, industry, co-partnership, association, firm, trust, estate or any other legal entity whatsoever.**

**TITLE 12. AQUATIC INVASIVE SPECIES CONTROL PROGRAM FEE**

**§ 72-1202. Aquatic invasive species control program fees**

**All persons issued a permit pursuant to the aquatic invasive species control program as defined in section 72-1201 of this title shall submit annually to the department a fee in the amount of \$ 1000.00.**

SECTION 9. Article 6 of the State Finance Law is amended by adding a new § 83-b to read as follows:

**§ 83-b. Aquatic invasive species control fund**

**The aquatic invasive species control fund shall consist of all moneys belonging to the state received by the department of environmental conservation from the permit application fees, annual permit fees under the aquatic invasive species control program, and all moneys received in actions for penalties or reimbursements, and all other moneys arising out of the application of any provisions under title 21 of article seventeen of the environmental conservation law. These moneys, after appropriation by the legislature, shall be available to the department of environmental conservation for the administration and enforcement of the aquatic invasive species control program, for the prevention and control of aquatic invasive species introductions, for rehabilitation of resources impacted or injured by aquatic invasive species, and for all other proper expenses of the department of environmental conservation in the administration of the provisions of title 21 of article seventeen of the environmental conservation law.**

SECTION 10. This Act shall take effect on year after it shall have become a law; provided that the Department of Environmental Conservation shall promulgate any and all regulations necessitated by this Act within **360** days after it shall have become a law.

