

Chapter 873 **SANITARY CODE***

***Editor's note:** The last complete revision of the Sanitary Code was promulgated in 1959 to be effective September 1, 1959. At that time the Sanitary Code consisted of Articles I through XII. The following is the disposition of those Articles: Article I was repealed effective 9-1-1971 and replaced by Article I of this chapter; Article II is included as Article IV of this chapter; Article III was repealed effective 1-1-1976 and replaced by Article V of this chapter; Article IV is included as Article VI of this chapter; Article V is included as Article VII of this chapter; Article VI was repealed effective 6-1-1976; Article VII is included as Article VIII of this chapter; Article VIII is included as Article IX of this chapter; Article IX was repealed effective 9-1-1971 and replaced by Article X of this chapter; Article X was repealed effective 6-1-1976; Article XI is included as Article XI of this chapter; Article XII is included as Article XII of this chapter.

Inasmuch as Ch. 873 contains duplicative section numbers (for example, there is a § 873.411 in both Articles IV and V), when reference is made to a particular section number in Ch. 873 the corresponding article number should also be utilized. This issue is currently under review by the county.

Cross references: Department of Health, Ch. 149; public health, Ch. 261.

Statutory references--Authority, Public Health Law, §§ 309, 348 and 349.

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ARTICLE I. SHORT TITLE; GENERAL DEFINITIONS, GENERAL PROVISIONS

Sec. 873.100. Short title.

The rules and regulations herein contained together with any and all amendments thereto shall constitute and comprise the Sanitary Code of the County of Westchester and shall be known and may be cited as the Westchester County Sanitary Code.

(Added 11-20-1986, eff. 11-20-1986*)

***Editor's note:** This resolution added a new Article I and also repealed former Article I, effective 9-1-1971 as amended.

Sec. 873.101. General definitions.

1. Whenever used in this code, unless otherwise expressly stated or unless the context or subject matter requires a different meaning, the following terms shall have the respective meanings hereinafter set forth or indicated:
 - a. *Board*. The term "board" means the Board of Health of the County of Westchester.
 - b. *The Code*. The term "the code" means the Sanitary Code of the County of Westchester.
 - c. *Charter*. The term "Charter" means the Charter of the County of Westchester.
 - d. *Communicable disease*. The term "communicable disease" means infectious, contagious or communicable disease.
 - e. *County*. The term "county" means the County of Westchester.
 - f. *Commissioner*. The term "commissioner" means the Commissioner of Health of the County of Westchester.
 - g. *Department*. The term "department" means the Department of Health of Westchester County.
 - h. *Health district*. The term "health district" means the geographical area comprising the County of Westchester.
 - i. *Certificate*. When used in the code, the words "certificate," "permit" or "license" are interchangeable.
 - j. *Permit*. The term "permit" means a written license and authorization to carry on a specified activity or activities as regulated by this code, the New York State Sanitary Code, the Public Health Law, or the Environmental Conservation Law, and includes any written approval issued by the commissioner or his duly designated representative.
 - k. *Permittee*. The term "permittee" means a person who holds a valid permit issued by the commissioner, the department, the State Department of Health, or the State Department of Environmental Conservation.
 - l. *Person*. The term "person" means any individual, firm, profit or not-for-profit corporation, cooperative, association, partnership, institution, political subdivision, government agency, public body, joint-stock association, trust, estate, or other group of individuals or combination of the foregoing, or any other legal entity whatsoever, except the State of New York and its agencies.
 - m. *Public Health Council*. The term "Public Health Council" means the Public Health Council of the State of New York.
 - n. *Municipality*. The term "municipality" means a city, town or village located within the County of Westchester.
 - o. *State*. The term "state" means the State of New York.
 - p. *State Sanitary Code*. The term "State Sanitary Code" means the rules and regulations promulgated by the Public Health Council of the State of New York and designated as the State Sanitary Code.

(Added 11-20-1986, eff. 11-20-1986)

Sec. 873.102. Applicability; legal effect.

1. The provisions of the code shall be in force throughout the County of Westchester.
2. The provisions of this code shall have the force and effect of law.
3. It shall be the duty of the Board of Health and the commissioner to enforce each and every provision of this code.
4. Nothing herein contained in this code shall be construed to restrict the power of any city, town or any village to adopt and enforce additional ordinances or enforce existing ordinances relating to health and sanitation, provided that such ordinances are not inconsistent with the provisions of the Public Health Law, the Environmental Conservation Law or the State Sanitary Code.
5. Whenever the sense of the code may require:
 - a. Any singular word or term used herein shall also be read as in the plural; and
 - b. Any masculine word or term used herein shall also be read as in the feminine.

(Added 11-20-1986, eff. 11-20-1986)

Sec. 873.103. Legal presumptions; evidence; reports as evidence.

1. As provided by the Public Health Law, certified copies of the code shall be received in evidence in all courts and proceedings in the county.
2. As provided by the Public Health Law, every rule, regulation, order and direction adopted by the board shall state the date on which it takes effect; and a copy thereof signed by the commissioner or his deputy shall be filed as a public record in the department, in the State Department of Health and in the office of the Westchester County Clerk; and shall be published in such manner as the board may from time to time determine.
3. As provided by the Public Health Law, the written reports of state and local health officers, inspectors, investigators, nurses and other representatives of state and local health officers on questions of fact pertaining to, concerning or arising under and in connection with complaints, alleged violations, investigations, proceedings, actions, authority and orders, related to the enforcement of this code, the Public Health Law, the Environmental Conservation Law, the State Sanitary Code or any local health regulation shall be presumptive evidence of the facts so stated therein, and shall be received as such in all courts, administrative hearings and places.

(Added 11-20-1986, eff. 11-20-1986)

Sec. 873.104. Construction.

1. This code is intended to be consistent with the applicable federal and state law

and shall be construed, whenever necessary, to achieve such consistency.

2. This code shall be liberally construed for the protection of health and safety in the health district.

Sec. 873.105. Separability of provisions.

1. In the event that any provision of this code is declared unconstitutional or invalid, the constitutionality or validity of every other provision of the code shall not be affected thereby.
2. In the event that the applicability of any provision of this code to any person or circumstance is held to be invalid, the applicability of such provision to other persons and circumstances shall not be affected thereby.

(Added 11-20-1986, eff. 11-20-1986)

Sec. 873.106. Saving clause.

1. Nothing contained in this code shall affect or impair any act done or right accruing, accrued or acquired or any penalty, forfeiture or punishment incurred prior to the time when this act shall take effect, under or by virtue of the provision or provisions of law or the Sanitary Code, as in force immediately prior to the time this code shall take effect, but the same may be asserted, enforced, prosecuted or inflicted, as fully and to the same extent as if this code shall not have taken effect.
2. When enacted pursuant to the Public Health Law of the State of New York, an act of the board which adds or purports to add a new article, section, subdivision or other provision to the code shall take effect, shall be deemed and construed as having been added to such code, as amended by this code, and shall be given full effect according to its context as if the same had been added expressly and in terms of such code, and shall be deemed and construed to have been inserted in such code, in the appropriate respective position in regard to and as modifying the effect of the corresponding provision or provisions of such code, as herein adopted and promulgated.
3. Reference in any law to an existing article, section, subdivision or other provision of the Westchester County Sanitary Code, as in force immediately prior to the time this code shall take effect, shall be deemed and construed to refer to the corresponding article, section, subdivision or other provision of such law, as renumbered, modified or amended by this code.
4. Reference in any general, special or local law, rule, regulation or public document to any provision or provisions of the Westchester County Sanitary Code, as in force immediately prior to the time this code shall take effect, shall be deemed to be and construed as a reference to the corresponding provision or provisions of such code, irrespective of whether such provision or provisions is or are contained in one or more than one article, section, subdivision or other part thereof.

(Added 11-20-1986, eff. 11-20-1986)

Sec. 873.107. Sanitary code; certified copies.

The commissioner or his deputy shall furnish certified copies of the code and its amendments for a fee of \$1.00 per page of the code.

(Added 11-20-1986, eff. 11-20-1986)

ARTICLE II. THE DEPARTMENT OF HEALTH; ADMINISTRATION AND ENFORCEMENT

Sec. 873.200. The Board of Health; officers; meetings.

1. The board shall be organized and constituted as required by the provisions of the Public Health Law and the Charter of the County of Westchester.
2. The board shall meet one day of each month.
3. The President or other presiding officer of the board may call special meetings thereof when, in his judgment, the protection, preservation or improvement of the public health of the county or any part thereof requires it, and as otherwise provided in the Public Health Law of the State of New York; in the event that a special meeting, in the judgment of the President or the president's designee, is required and there is insufficient time for the calling of an in-person meeting; the President or other presiding officer shall personally telephone the membership of the board and record the subject matter thereof, the member with whom discussion took place and the vote or response of such member of the board.
4. A majority of the 13 members of the board shall constitute a quorum at any regular or special meeting of the board.
5. The board shall elect a President from among its members, who shall serve as presiding officer of the board.
6. The board shall elect a Vice President from among its members, who shall serve as presiding officer of the board in the absence of the president.
7. The board may adopt by a majority vote bylaws for the proper conduct of its affairs, election of officers and appointment of committees, not inconsistent with law.

(Added 11-20-1986, eff. 11-20-1986*)

***Editor's note:** This resolution added a new Article II and also repealed former Article II, effective 9-1-1971, as amended.

Sec. 873.201. The Board of Health; general powers.

1. General powers.
 - a. As provided by the Charter and the Administrative Code of the County of Westchester, and subject to the provisions of the Public Health Law, the Environmental Conservation Law, and the State Sanitary Code, the board

shall adopt, promulgate, amend or repeal rules and regulations affecting public health in the county.

- b. From time to time, the board shall make and publish such rules and regulations not inconsistent with the Public Health Law, the Environmental Conservation Law, and the State Sanitary Code as it may deem necessary and proper for the execution and enforcement thereof.
2. At the request of the commissioner, the board shall consider any matter relating to the preservation, protection and improvement of the public health and may advise the commissioner thereon.
3. From time to time, the board may submit to the commissioner any recommendations relating to the preservation, protection and improvement of the public health.

(Added 11-20-1986, eff. 11-20-1986)

Sec. 873.202. The Board of Health; quasi-judicial powers.

1. As provided by the Public Health Law, the board may:
 - a. Issue subpoenas;
 - b. Compel the attendance of witnesses;
 - c. Administer oaths to witnesses and compel them to testify;
 - d. By resolution, designate one of its members to sign and issue subpoenas;
 - e. Issue warrants to any peace officer of any municipality in the health district or to the Sheriff of the county to apprehend and/or remove such person or persons as cannot otherwise be subjected to its orders or regulations;
 - f. Prescribe and impose penalties for the violation of, or failure to comply with any of its orders or provisions of the code, or of the State Sanitary Code not exceeding \$1,000.00 for each single violation or failure;
 - g. Make, without publication thereof, such orders and regulations for the suppression of nuisances and concerning all other matters in its judgment detrimental to the public health in special or individual cases, not of general application, and serve copies thereof upon the owner or occupant of any premises whereon such nuisances or other matters may exist, or upon which may exist the cause of other nuisances to other premises, or cause the same to be conspicuously posted thereon;
 - h. Maintain actions in any court of competent jurisdiction to restrain by injunction violators of its orders and the orders, rules, and regulations of the board, or otherwise to enforce such orders and regulations, and
 - i. By resolution, designate the commissioner or any person or persons as a hearing officer to conduct a formal hearing or hearings for the purpose of holding and conducting hearings for and on behalf of the board, taking testimony and reporting findings of fact, conclusions of law and recommendations concerning any investigation, complaint, charge,

inquiry, study or violations within the jurisdiction of the department and having the powers of the board in this article.

(Added 11-20-1986, eff. 11-20-1986; amended 10-18-2001, eff. 10-18-2001)

Sec. 873.203. The commissioner; general powers.

1. As provided by the Public Health Law, the commissioner shall:
 - a. Make an annual sanitary survey and maintain sanitary supervision over the territory within the county;
 - b. Make a sanitary inspection periodically of all places of public assemblage, and report thereon to those responsible for the maintenance of such places of public assemblage;
 - c. Promote the spread of information as to the cause, nature and prevention of prevalent diseases, and the preservation and improvement of health;
 - d. Take such steps as may be necessary to secure prompt and full reports by physicians of reportable diseases;
 - e. Take such steps as may be necessary to secure prompt and complete registration of births and deaths;
 - f. Attend conferences called by the State Commissioner of Health or his authorized representatives;
 - g. Enforce within the county the provisions of the Public Health Law, the Environmental Conservation Law within the jurisdiction of the department, State Sanitary Code and the code.
2. Notwithstanding any other law, the commissioner may promulgate, adopt and administer Administrative rules, regulations and standards which the commissioner deems necessary or desirable to carry out or enforce the provisions of the code. Such rules and regulations and standards shall become effective upon promulgation by the commissioner.
3. Whenever the commissioner is empowered to or charged with the responsibility to do or perform an act, he may designate any officer or employee of the department to do or perform the act in his place and stead.

(Added 11-20-1986, eff. 11-20-1986)

Sec. 873.204. The commissioner; emergency powers.

1. As provided by the Public Health Law (§ 352), the commissioner may authorize action necessary to alleviate emergencies where an imminent imperilment to the public health and safety exists.
2. Upon the occurrence of an emergency where an imminent imperilment to the public health and safety exists, the commissioner, or his or her designee, shall notify the County Executive, the Office of Public Affairs, county legislators(s) and local elected officials from the areas affected by the emergency.

(Added 11-20-1986, eff. 11-20-1986; amended by L.L. No. 18-1998)

Sec. 873.205. Inspections; in general.

1. As provided by law, the commissioner or any authorized representative of the department may inspect any premises, matter or thing within its jurisdiction, including but not limited to, any premises where an activity regulated by the Public Health Law, State Sanitary Code, the Environmental Conservation Law, or any and all regulations promulgated pursuant thereto, or the code is carried on.
2. As provided by law, the representatives of the department may inspect any record required to be kept pursuant to law or regulation within the jurisdiction of this department.

(Added 11-20-1986, eff. 11-20-1986)

Sec. 873.206. Inspections; interference.

1. As provided by law, no person shall interfere with, obstruct or refuse to allow any employee or authorized representative of the department to enter upon and inspect any premises, place or thing within the jurisdiction of the department, in the discharge of his official duties or of department business.
2. As provided by law, no person shall interfere with, obstruct or refuse to allow the examination of any occupant of any premises, place or thing by an authorized employee or representative of the department, in the discharge of his official duties.
3. As provided by law, no person shall molest or resist any representative of the department in the discharge of his official duties.

(Added 11-20-1986, eff. 11-20-1986)

Sec. 873.207. Inspections; taking samples.

As provided by law, the commissioner or any authorized representative of the department may take and remove any substance or thing or any necessary part or portion thereof from any premises or place as a sample for investigation or evidence when in the opinion of such representative, such substance or thing may be dangerous or detrimental to the public health, or is required for sampling, testing or analysis for the protection of public health and the environment.

(Added 11-20-1986, eff. 11-20-1986)

Sec. 873.208. Notices; posting; destroying.

1. Notices shall be in the English language; provided, however, if the department is of the opinion that the person or persons to whom a required warning, notice or instructional sign is addressed may not understand the English language, the department may require that such warning, notice or sign shall appear legibly both in English and such other designated foreign language as may be necessary.
2. No person shall remove, mutilate, conceal, obstruct or tear down any notice or placard of the department posted in or on any premises or public place except by written permission of an authorized representative of the commissioner.

(Added 11-20-1986, eff. 11-20-1986)

Sec. 873.209. Investigations; formal hearings.

1. The board may cause to be held a hearing on any application, complaint, circumstances, or alleged violation of the laws and regulations within the jurisdiction of the department.
2. Notice of hearing.
 - a. A formal hearing shall be on due and adequate notice to the person or persons concerned and shall be set down for a day certain.
 - b. A notice of hearing shall set forth:
 - i. The time and place of the hearing;
 - ii. Charges and violations complained of, if any, with specific reference to the provisions and sections of the law, rule and regulation involved;
 - iii. The right to present evidence;
 - iv. The right to examine and cross-examine witnesses;
 - v. The right to be represented by counsel; and,
 - vi. That failure to appear shall constitute a default by the respondent, that the hearing may proceed in his absence and a determination made based upon evidence submitted by the department or a warrant may be issued compelling his attendance.
3. Witnesses.
 - a. On the return day of a hearing, the hearing officer shall note the appearances of the persons attending the hearing.
 - b. Witnesses shall be sworn and testimony shall be recorded either by a certified stenographer or by use of an electronic recording device.
 - c. Transcripts.
 - i. The testimony shall be transcribed upon the request of any interested party.
 - ii. The party so requesting the transcript shall pay the costs and expenses in connection therewith.
4. After each hearing, the hearing officer shall prepare findings of fact, conclusions, and recommendations upon which the board shall make a formal order, setting forth the determination, conditions, if any, to be complied with, and civil penalties, if any.
5. The order of the board following a hearing shall be filed in the department, and a copy thereof shall be served on all respondents as provided for in section 873.210 of this article.
6. Nothing herein contained shall preclude the department from taking any action in

addition to or apart from the formal hearing herein provided for, as may be provided by law; nor shall the department be precluded from taking such other action by virtue of the order of the board made pursuant to this section.

(Added 11-20-1986, eff. 11-20-1986)

Sec. 873.210. Investigations; hearings; service of notice.

Unless otherwise expressly provided for by law, or by any other provision of the code, or the State Sanitary Code, service of notice of hearings shall be made as follows:

1. By delivering the notice within the health district to the person to be served, or if the person is not an individual, with a partner of a partnership, or a member of the group concerned, or with an officer of the corporation; or
2. By delivering the notice within the health district to a person of suitable age and discretion who is in charge of the office or premises concerned at the actual office or premises and by mailing the notice to the last known residence, place of business, dwelling place, or usual place of abode of the person to be served; or
3. By affixing the notice to the door of the premises concerned within the health district and by mailing the notice to the last known residence, place of business, dwelling place or usual place of abode of the person to be served; or
4. By enclosing the notice in a postpaid envelope addressed to the person to be served at his place of business, dwelling place, usual place of abode or last known address, and depositing such envelope at a United States Post Office or official depository under the exclusive care and custody of the United States Postal Service, within the health district, for delivery by either first class or certified mail, return receipt requested; or
5. By any combination of the provisions contained in this section.

(Added 11-20-1986, eff. 11-20-1986)

Sec. 873.211. Investigations; hearings; appearances.

1. At any hearing conducted pursuant to the code, any party to the proceedings may appear personally or with counsel and shall be given the opportunity to produce evidence and witnesses and, at a hearing, to cross-examine witnesses.
2. At any hearing conducted pursuant to the code, if a party shall appear without counsel, the hearing officer shall advise such party of his right to counsel; and that if he desires to proceed without counsel, that he may call witnesses, cross-examine witnesses and produce evidence in his behalf.
3. At any hearing, a party appearing on behalf of, as agent for, or in the absence of any person who is an owner, permittee or other party responsible, under the code or by law for any of the violations alleged in the petition, shall produce at the hearing written authorization signed by that person, owner, permittee or responsible party:

- a. Authorizing the party or agent to act on behalf of that person, owner, permittee or responsible party at the hearing; and
 - b. Stating that the person, owner or responsible party, shall be bound by any of the findings, recommendations or conclusions adopted by the board.
4. Appearances shall be noted on the official record of hearings.

(Added 11-20-1986, eff. 11-20-1986)

Sec. 873.212. Investigations; hearings, adjournments.

1. The hearing officer may grant adjournments upon request of any party to the proceedings, provided that an adjournment shall not be for an indefinite period of time, but shall be set down for a day certain.
2. If an adjournment is requested in advance of the hearing date, such request shall be presented to the hearing officer in writing, and shall specify the reason for such request.
3. In considering an application for adjournment of a hearing, the hearing officer shall consider whether the purpose of the hearing will be affected or defeated by the granting of such adjournment.

(Added 11-20-1986, eff. 11-20-1986)

Sec. 873.213. Investigations; hearings; subpoenas; addition of parties.

1. The board, or any member of the board designated by resolution of the board for such purpose, or the hearing officer, shall issue subpoenas upon request of any party to the proceedings of any hearing set down by the board.
2. It shall be the responsibility of the party requesting the issuance of a subpoena to effect service thereof.
3. The hearing officer may add a party to the proceedings upon due and adequate notice to both the party to be added and the parties named in the proceedings.

(Added 11-20-1986, eff. 11-20-1986)

Sec. 873.214. Investigations; hearings; procedure.

1. The hearing officer shall not be bound by the strict rules of evidence in the conduct of a hearing, but the determination shall be founded upon sufficient legal evidence to sustain it.
2. Upon the conclusion of a hearing, the board shall take such action upon such findings, determinations and recommendations as it deems proper, and shall execute an order carrying such findings and determinations into effect.
3. The actions of the board may include the assessment of civil penalties, as provided by law and by the code.
4. An order of suspension or revocation of any permit or license may contain such provisions, as to renewal or reinstatement, as the board may direct.

5. The board may direct a rehearing or require the taking of additional evidence, and may rescind or affirm, in whole or in part, a prior determination after such rehearing.

(Added 11-20-1986, eff. 11-20-1986)

Sec. 873.215. Investigations; post-hearing procedures.

1. The board shall cause to be served upon the respondents, copies of findings of fact, conclusions and recommendations and orders made as a result of a formal hearing.
2. Service of findings of fact, conclusions and recommendations and order shall be made in the manner prescribed for the service of notice of hearings.
3. A copy of any order made by the board shall be filed as a public record in the department and shall be published in such manner as the board may from time to time determine.

(Added 11-20-1986, eff. 11-20-1986)

Sec. 873.216. Enforcement; seizure; embargo; condemnation; disposition.

1. Seizure and embargo.
 - a. When, in the opinion of the commissioner or the commissioner's representative, an article, substance or thing is deemed unfit for human consumption, or does not meet the requirements of the State Sanitary Code or the code, or otherwise constitutes a danger or is prejudicial to the public health, the commissioner or the commissioner's representative may seize, embargo or condemn such material.
 - b. The commissioner or the commissioner's representative may destroy, render harmless, or otherwise dispose of all seized, embargoed or condemned material or may direct the owner or person in control thereof to do so.
 - c. When the commissioner or the commissioner's representative determines that embargoed material consists in part of materials which are not in violation of the State Sanitary Code or the code, and which may be salvaged, or that embargoed materials or any part thereof can be brought into compliance with the law, the commissioner or the commissioner's representative shall permit the owner or person in control, unless, in the opinion of the commissioner or the commissioner's representative, the protection of the public health otherwise requires, to separate salvageable portions, or to bring such materials into compliance with the State Sanitary Code or the code at the place of embargo or other place acceptable to the commissioner or the commissioner's representative.
 - d. When seized, embargoed or condemned material is disposed of by the commissioner or the commissioner's representative otherwise than by destruction, it shall be returned to the owner or person in control after it has been rendered harmless.

2. All activities carried on pursuant to this section shall be done in a manner consistent with the maintenance of the public health, giving due regard to the property rights of the owner or person in control of the affected material.
3. Except where the protection of the public health requires immediate action, the commissioner or the commissioner's representative shall not seize, embargo, condemn, destroy, render harmless or otherwise dispose of any material pursuant to subsection 1. of this section, until the owner or person in control is notified by an effective means of communication and is given opportunity to be heard.
4. Any article, substance or thing embargoed pursuant to the provisions of this section shall be identified by the placing and physical attachment thereon of an identification tag or label which shall state the alleged nature and description of the article, substance or thing, the reason for embargo, the date of embargo and the signature of the commissioner or the commissioner's representative effecting or causing such embargo.
5. No article, substance or thing embargoed pursuant to the provisions of this section shall be used, removed, destroyed or otherwise disposed of while under such embargo except by and under the direction of the commissioner or the commissioner's representative.

(Added 11-20-1986, eff. 11-20-1986)

Sec. 873.217. Enforcement; violations; notice.

1. Upon the finding of a noncompliance, violation or violations of the Public Health Law, the Environmental Conservation Law, within the jurisdiction of the department, the State Sanitary Code, the provisions of the code or the rules and regulations promulgated thereunder, or any other code and the rules and regulations promulgated thereunder within the jurisdiction of the department, the commissioner or his representative may serve a notice of noncompliance or violation in writing, setting forth therein the nature of the noncompliance or violation.
2. A notice of noncompliance or of violation served pursuant to the provisions of this section may be served in person, by mail, by telegraph, or by posting such notice conspicuously on the premises.
3. Such notice shall provide that the noncompliance or violation shall be abated and shall set forth the date or dates of violation and section of code claimed violated.
4. In the event that the objectionable conditions are not removed pursuant to and in accordance with the notice of noncompliance or violation notice, and if the nature of the noncompliance or violation requires immediate control for the protection of life and health, to give public notice, the commissioner or his representative may cause to be conspicuously posted on the premises or equipment, an appropriate notice or sign, which notice or sign shall not be removed except as authorized in writing by the commissioner or his representative.

(Added 11-20-1986, eff. 11-20-1986)

Sec. 873.218. Enforcement; violations; criminal penalties.

1. As provided by the Public Health Law, the provisions of the State Sanitary Code shall have the force and effect of law and the noncompliance or nonconformance with any provision thereof shall constitute a violation, punishable, on conviction for a first offense, by a fine not exceeding \$250.00 or by imprisonment not exceeding 15 days, or both; and for a second or subsequent offense, by a fine not exceeding \$500.00 or by imprisonment not exceeding 15 days, or both.
2. As provided by the Public Health Law, any noncompliance or nonconformance with any provision of the code or of a rule or regulation duly made thereunder shall constitute a violation punishable on convictions for a first offense by a fine of not more than \$250.00 or by imprisonment for not more than 15 days, or by both such fine and imprisonment; and for a second or subsequent offense by a fine not exceeding \$500.00 or by imprisonment for not exceeding 15 days, or both.
3. As provided by the Public Health Law, a person who willfully violates or refuses or omits to comply with any lawful order or regulation prescribed by the board, or the commissioner, is guilty of a misdemeanor; except, however, that where such order or regulation applies to a tenant with respect to his own dwelling unit, or to an owner-occupied one-or two-family dwelling, such person is guilty of an offense for the first violation punishable by a fine not to exceed \$50.00 and, for a second or subsequent violation, is guilty of a misdemeanor punishable by a fine not to exceed \$500.00 or by imprisonment not to exceed six months, or by both such fine and imprisonment.

(Added 11-20-1986, eff. 11-20-1986)

Sec. 873.219. Enforcement; violations; civil penalties.

1. Any person who violates, disobeys or disregards the terms of any lawful order or regulation of the State Sanitary Code, the code, or the board shall be subject to the imposition of a civil penalty by the board, not exceeding \$1,000.00 for each single violation or failure or omission to act.
2. The penalty provided for by this section may be sued for and recovered by the board in any court of competent jurisdiction.
3. An action or cause of action for the recovery of a penalty under this section may be settled or compromised by the board after proceedings are brought to recover such penalties prior to the entry of judgment therefor.
4. Nothing in this section contained shall be construed to alter or repeal any existing provision of law declaring such violations or any of them to be violations, misdemeanors or felonies or prescribing the penalty therefor.

(Added 11-20-1986, eff. 11-20-1986; amended 10-18-2001, eff. 10-18-2001)

Sec. 873.220. Enforcement; violations; other than by prosecution.

1. Notwithstanding enforcement of the code by way of prosecution, recovery of civil penalties, revocation of permits, seizure, embargo and condemnation, or other means, the department, by its duly authorized representative, may seek to obtain voluntary compliance with the code by way of notice, permit, warning or educational means.

2. Nothing in this section shall be construed to require that such noncompulsory methods must be employed or attempted before proceeding by way of compulsory or other legally prescribed procedures.

(Added 11-20-1986, eff. 11-20-1986)

Sec. 873.221. Enforcement; compliance; bonds and undertakings.

The commissioner may require any person subject to the provisions of the code to file with the commissioner a bond or undertaking in such form, including but not limited to bank or certified check, as shall be deemed by the commissioner to be adequate, to ensure compliance with any order, permit, license or approval issued by the commissioner, pursuant to the provision of the code, the Public Health Law or the State Sanitary Code.

(Added 11-20-1986, eff. 11-20-1986)

ARTICLE III. PERMITS AND LICENSES: GENERAL PROVISIONS

Sec. 873.300. Permits and licenses; applications.

1. Application for a permit or for the renewal of a permit shall be made on forms furnished by the department and shall contain all information called for by said forms and shall be accompanied by the applicable fee, if any.
2. Initial permits and renewals.
 - a. Application for an initial permit shall be accompanied, if required by the department, by a written official document or statement issued by the appropriate municipal authority having jurisdiction and concern with the zoning laws, ordinances or regulations of the municipality in which the operation, facility, activity, premises, or use for which the permit is sought, stating that the operation, facility, activity, premises or use, if permitted, will not violate any existing zoning laws, ordinance or regulation of such municipality.
 - b. Application for a permit or for the renewal of a permit shall be accompanied by such other information, evidence or documentation as the department may require, or as may be otherwise provided by the code.
3. In addition to the information specifically required to be submitted to the department, or if no specific information is required for certain permits, the department may require the following information:
 - a. The name, age, residence and business address of the applicant and, if the applicant is a partnership or other group, of each member of such partnership or group; and, if the applicant is a public corporation, of each officer of the corporation; and, if the applicant is a nonpublic corporation, including a not-for-profit corporation, the name of each of the shareholders.
 - b. To the extent that such information is relevant to the conduct of the

business, trade, occupation or activity for which the permit is to be issued, information concerning the applicant, its individual members or officers, relating to education, training or experience, physical health, addiction to alcohol or habit-forming drugs, history of prior criminal conviction, including violations and offenses, other than motor vehicle offenses, history of mental illness, and record of insolvency or bankruptcy.

4. Application for a permit or for the renewal of a permit shall be made and signed by:
 - a. In the case of an individual who is to be the permittee, by the individual, or by his representative, who is duly authorized in writing to make such application;
 - b. In the case of a partnership which is to be the permittee, by a general partner or a representative of the partnership, who is duly authorized in writing to make such application;
 - c. In the case of an unincorporated association or group which is to be the permittee, by a director, duly authorized officer or duly authorized representative of the association or group, who shall submit a certified copy of a resolution of the governing Board or executive committee of such association or group, authorizing the making of such application; or
 - d. In the case of a corporation which is to be the permittee, by a director, duly authorized officer or duly authorized representative of the corporation, who shall submit a copy of a resolution bearing the corporate seal of corporation, authorizing the making of such application; or
 - e. In the case of a municipality which is to be the permittee, other than the county, by the executive officer or his representative, who is duly authorized in writing to make such application.
5. Age requirement.
 - a. Every individual applicant for a permit or for renewal of a permit shall be 18 years of age or over; and, in the case of a partnership applicant, the partner signing the application shall be 18 years of age or over.
 - b. The department may waive this requirement for an individual applicant, if such applicant appears to be sufficiently competent and responsible as to assure that the public health will not be jeopardized if a permit is granted to such applicant and provided that such applicant appears to be in a position to be liable for any violation that may occur during the operation, conduct or maintenance of the activity authorized by the permit.
6. What application constitutes.
 - a. Application for a permit or for renewal of a permit shall constitute an agreement that the permittee assumes responsibility for the operation, conduct and maintenance of the activity authorized by the permit, in accordance with the provisions of the code and the conditions required by the permit, and to inspections pertaining thereto.
 - b. Application for a permit or for renewal of a permit shall constitute a consent to inspection of the premises and collection of samples.

7. Pending approval, disapproval or other consideration of an application for renewal of a permit required by the code and received by the department, the existing permit shall be deemed to be in full force and effect until such renewal application is acted upon; provided, however, that this provision shall not apply to a renewal application that was not submitted to and filed with the department prior to the expiration date of the existing permit.

(Added 11-20-1986, eff. 11-20-1986*)

***Editor's note:** This resolution added a new Article II and also repealed former Article II, effective 9-1-1971, as amended.

Sec. 873.301. Permits and licenses; posting; expiration.

1. Every permit shall expire on the date stated in the permit, but may be extended by the department in writing for a specified limited time for cause.
2. An application for renewal of a permit shall be submitted not later than 60 days prior to the expiration date of such permit, unless otherwise required by the code or by law.
3. A permittee shall comply with the conditions contained in the permit and the provisions of the code under which such permit was issued.
4. Every permit shall be kept on the premises designated or covered by the permit and shall be posted in a conspicuous place on such premises, in such manner as to be clearly visible to the public, and shall be available for inspection at all times by the department.
5. Permits shall remain the property of the department and shall be surrendered to a duly authorized representative of the department on demand upon the expiration thereof or when suspended or revoked as herein provided.

(Added 11-20-1986, eff. 11-20-1986)

Sec. 873.302. Permits and licenses; by municipalities.

No provision of the code shall be construed to restrict or abrogate the authority of any municipality in the county to issue permits or licenses pursuant to any ordinance of such municipality; provided, however, that the issuance of such municipal permit or license shall not relieve the permittee from the obligation to comply with the applicable requirements of the code.

(Added 11-20-1986, eff. 11-20-1986)

Sec. 873.303. Permits and licenses; not transferable.

1. A permit issued to a particular permittee or for a designated purpose, place, or vehicle shall not be valid for use by any other person or for any other purpose, place or vehicle.

2. Any attempted or purported transfer of a permit to a person not designated as the permittee therein, or for a purpose or place not authorized by such permit automatically revokes such permit.
3. In the event of a change in ownership of an individually owned or partnership business or a corporation other than a publicly held corporation, the permit shall not be transferable.

(Added 11-20-1986, eff. 11-20-1986)

Sec. 873.304. Permits and licenses; suspension and revocation.

1. The commissioner may suspend or revoke a permit which was issued by the department for violation or nonconformance with the conditions or requirements or provisions of the code under which such permit was issued.
2. The board may suspend or revoke a permit for cause after due notice and hearing.
3. Nothing herein contained shall interfere with the authority of the commissioner or his representative duly authorized in writing to summarily suspend and revoke a permit issued by the department, pending a hearing on the merits, if in the opinion of the commissioner, or his representative duly authorized in writing, the immediate protection of the public health demands such summary action; provided, however, that the permittee shall be entitled to a hearing by the board as soon after such summary action as is practicable and within 15 days after such summary action.

(Added 11-20-1986, eff. 11-20-1986)

Sec. 873.305. Permits and licenses; refusal to issue.

1. The department may refuse to issue a permit or a renewal thereof when the application therefor is incomplete or not accompanied by the required fee, if any.
2. The department may refuse to issue a permit or renewal thereof when the applicant fails to provide any information required by the department in addition to the information furnished on the application.
3. The department may refuse to issue a permit or renewal thereof if the application or investigation thereof indicates to the department that the activity or premises to be covered by the permit applied for does not meet the requirements of the code or other provision of law; or that the maintenance, conduct or operation of such activity or premises does not meet the requirements of the code or provisions of law or may result in a public health hazard.
4. The department may refuse to issue a permit or renewal thereof or a certificate of approval for any activity, operation or premises that, in the opinion of the department, may result in a condition which may be dangerous or harmful to health and life, or that fails to meet the requirements of the Public Health Law, the Environmental Conservation Law within the jurisdiction of the department, the State Sanitary Code or the requirements of the code.
5. Approval of an application for a permit shall be denied for any sufficient or

competent reason including, but not limited to, any of the following:

- a. The proposed construction, location, purpose, business or other act pertaining thereto is in violation of the provisions of the Public Health Law, the Environmental Conservation Law within the jurisdiction of the department, the State Sanitary Code, the code, or any local municipal law, ordinance or regulation pertaining thereto;
- b. Inaccurate, incomplete, false or misleading information stated in the application, including any plans or other data submitted in support thereof or competency to perform not shown to the satisfaction of the commissioner;
- c. Failure to correct existing violations of regulations pertaining to any particular place, vehicle or business after service of written notice thereof, whether or not related to the pending application; except, however, that the department may approve the application if existing violations have been substantially corrected in the opinion of the department; or
- d. Failure to comply with any previous or outstanding order issued by the board or the commissioner after service of written notice thereof, whether or not related to the pending application; except, however, that the department may approve the application if, in the opinion of the department, there has been full or substantial compliance with the previous or outstanding order.
- e. Failure to attend and complete a required training course.

(Added 11-20-1986, eff. 11-20-1986)

Sec. 873.306. Permits and licenses; denial; suspension; revocation; forfeiture; effective date.

1. Except as may otherwise be ordered by the board or by the commissioner, the denial of a permit or certificate of approval or the suspension or revocation of a permit or certificate of approval shall become final five days after service of a notice thereof, exclusive of the day of service, on the applicant or permittee concerned.
2. Service of a notice of denial or refusal to issue a permit or certificate of renewal shall be made in the manner provided in the code for the service of a notice of hearing.
3. If no action has been taken under a permit or written approval within the period specified in the permit or written approval or if no period is specified, within a period of one year following the date of issuance thereof, or within a period beyond which the purpose, need or usefulness of the permit or written approval no longer exists, the permit or written approval shall become null and void.

(Added 11-20-1986, eff. 11-20-1986)

Sec. 873.307. Permits and licenses; denial; appeal.

1. When the department refuses to issue a permit or a renewal thereof or a

certificate of approval, the applicant may appeal such action to the board by serving a notice of appeal in writing on the department addressed to the commissioner or to the board within ten days following the service of notice of denial or refusal to issue the permit.

2. The notice of appeal shall contain:
 - a. The full name of the applicant, permittee or party affected;
 - b. The type of permit or certificate of approval for which the application was made or the nature of the action complained of;
 - c. The place of business listed in the application to which the appeal relates;
 - d. A statement that the applicant or permittee or other party affected appeals to the board to review the action of the department; and,
 - e. The signature of the applicant, permittee or party affected, or, if the permittee or party affected is not an individual, the signature and title of a partner or other individual of the partnership or group, or of an officer of a corporate applicant, permittee or party affected.
3. Within three days following service of the notice of appeal, or simultaneous with such service, the applicant, permittee or party affected shall submit a memorandum addressed to the commissioner or to the board containing his objection to the action of the department.
4. The board may affirm or overrule the action of the department, either in whole or in part, or it may set the matter down for a hearing upon notice as provided in Article II of the code.
5. In the event that the circumstances require action that in the opinion of the commissioner cannot await the convening of the board, the commissioner shall cause to be issued and served in the name of the board a notice of hearing to take testimony and evidence relative to the appeal; provided, however, that the hearing officer designated to hold such hearing shall be a person other than the commissioner and one who prior to the hearing has been designated by the board to hold hearings on behalf of the board.

(Added 11-20-1986, eff. 11-20-1986)

Sec. 873.308. Permits and licenses; operation without permit.

1. The commissioner or his representative duly authorized in writing shall have the authority and power to order the cessation of operations or construction of any business, establishment or facility required by the code to have obtained a permit for the operation or construction of any business, establishment or facility but which is being operated or constructed without such permit.
2. The commissioner may employ the assistance of law enforcement officers and other officials as provided by the provisions of the Public Health Law and other applicable statutes and rules and regulations to enforce the order herein provided for.
3. The owner or operator of any business, establishment or facility closed or directed to cease operations or construction pursuant to this section shall be

entitled to a hearing to be held within a reasonable time; provided, however, that the owner or operator of such business, establishment or facility requests a hearing in writing within ten days of the order of the commissioner or his representative duly authorized in writing.

(Added 11-20-1986, eff. 11-20-1986)

Sec. 873.309. Permits and licenses; failure to comply; cessation of construction and operation.

1. The board or the commissioner or his representative duly authorized in writing may issue a written notice to be served upon the person or permittee involved, or upon any person connected with or working in or about a construction or operation to cease the construction or operation, whereupon the construction or operation shall immediately cease, under the following circumstances:
 - a. That the process of construction or the operation involved reveals conditions otherwise than as indicated in the approved plans and application, and permits as issued; or,
 - b. That the construction or operation involved is in violation of any ordinance or regulation of any duly constituted government authority or any political subdivision; or,
 - c. That the construction or operation involved is otherwise than in accordance with standards, rules and regulations pertaining to such construction or the conditions of a permit or written approval issued pursuant to the provisions of the Public Health Law, the Environmental Conservation Law within the jurisdiction of the department, the State Sanitary Code or the code.
2. Service of the written notice shall be made in the manner prescribed for the service of notice of hearings.
3. The permittee shall be entitled to a hearing by the board within a reasonable time; provided, however, that the permittee requests a hearing, in writing, within ten days of the service of the written notice.
4. The commissioner may employ the assistance of law enforcement officers and other officials as provided by provisions of the Public Health Law and other applicable statutes and rules and regulations to enforce the written notice herein provided for.

(Added 11-20-1986, eff. 11-20-1986)

ARTICLE IV. COMMUNICABLE DISEASE CONTROL

Sec. 873.400. Communicable diseases; definitions.

Whenever used in this article, unless otherwise expressly stated, or unless the context or subject matter requires a different meaning, the following terms shall have the respective meanings hereafter set forth or indicated:

1. *Adult.* The term "adult" means a person fifteen (15) years of age or over.

2. *Carrier.* The term "carrier" means a person who harbors the pathogenic organism of a communicable disease, but who does not show evidence of the disease; or, a person to whom epidemiologic evidence points as the source of one (1) or more cases, but who refuses to submit specimens of his bodily discharges to the department for examination; or, a person who is reported to the department to be a carrier by the health authorities of the State of New York, or of any other municipality, state, national or international organization of which the United States of America is a member.
3. *Case.* The term "case" means an instance of a communicable disease or condition occurring in a person; or, a person who shows evidence of a reportable disease or condition.
4. *Communicable disease.* The term "communicable disease" means an infectious, contagious disease transmissible by direct or indirect contact as designated in the State Sanitary Code.
5. *Date of last exposure of household contacts.* The term "date of last exposure of household contacts" means the date of the removal of such household contacts to premises other than those where the case or carrier exists, or the date of the removal of the patient to other premises, or the date of release of the patient from isolation.
6. *Hospital associated infections.* The term "hospital associated infections" means (a) an increased incidence or outbreak of disease due to microbiological agents or their toxic products occurring in patients or persons working in the hospital; (b) existence or suspicion of staphylococcal disease, diarrhea of the newborn or other infection in the newborn, including gonorrhoeal conjunctivitis; (c) the occurrence in an infant of two (2) or more explosive stools from any cause in any twenty-four (24) hour period; (d) the admission to the hospital of any infant born in said hospital with diarrhea, staphylococcal infection or any other infection, the onset of which occurred when the infant was twenty-eight (28) days of age or less; and (e) the occurrence in any maternity patient of diarrhea, staphylococcal infection or any other infection, the onset of which occurred either prior to admission or while in the hospital.
7. *Household contacts.* The term "household contacts" means every person who lives in a premises occupied by a case or carrier.
8. *Incidental contacts.* The term "incidental contacts" means persons other than those having household contact with a case or carrier.
9. *Isolate.* The term "isolate" means to confine to premises or in an institution, to a room or ward, under such conditions as will prevent the transmission of the pathogenic organism from a case or carrier to a susceptible person.
10. *Isolation.* The term "isolation" means the care of the case in a hospital approved by the commissioner or his representative; or, the continuous separation of the case in a room used exclusively for care of the case and from which all persons are excluded except the physician, nurse or other person in attendance, and such other persons as may be authorized by

the commissioner.

11. *Quarantine of premises.* The term "quarantine of premises" means the (1) prohibition of ingress or egress of any person other than medical attendants and such other persons as may be authorized by the commissioner or his representative, from the premises where a case, as designated by the commissioner or his representative, exists, or, (2) prohibition of the removal from such premises of any article which may be contaminated with infective material through contact with the case or carrier or with the secretions or excretions, unless such article has been disinfected, and unless permission for such removal, pursuant to instructions from the commissioner or his representative, has been given, and, (3) posting and maintaining at the entrance of the premises where a case or carrier exists, a placard stating the existence therein of a case of communicable disease.
12. *Personal quarantine.* The term "personal quarantine" means restricting household or incidental contacts to premises designated by the commissioner or his representative.
13. *Premises.* The term "premises" means any structure occupied or intended to be occupied, in whole or part, by one (1) or more human beings.

(Added 4-23-1987, eff. 4-23-1987*)

***Editor's note:** This resolution which added this article also repealed former Article IV, Communicable Diseases, effective 9-1-1959, as amended.

Sec. 873.401. Communicable diseases; general powers and duties of commissioner.

1. The commissioner or his representative shall:
 - a. Guard against the introduction of communicable diseases as designated in the Code; and
 - b. Report promptly to the State Department of Health all known cases and carriers of communicable disease as required by the State Department of Health.
2. The commissioner or his representative may:
 - a. Provide for care and isolation of any person affected with a communicable disease whenever in his opinion such care or isolation is necessary for the protection of the public health;
 - b. Prohibit and take steps necessary to prevent any contact with the use of premises, places or things known to have been in contact with a case or carrier of communicable disease or suspected of having been in contact with such a case or carrier;
 - c. Require, and if necessary provide, the means for the thorough purification

and cleansing of premises, places or things before any contact or use thereof shall be allowed;

- d. Investigate all physician reports recording patients afflicted with a communicable disease or carrier and whose behavior is such as to expose household or incidental contacts to danger of infection;
- e. Investigate cases of communicable disease, ascertain sources of infection, seek out contacts and take other action to reduce morbidity and mortality, and take any other action and procedures required by the Code;
- f. Inspect and control persons, places and things infected with or exposed to such disease or suspected of having been infected or exposed to such disease.

(Added 4-23-1987, eff. 4-23-1987)

Sec. 873.402. Communicable diseases; reportable cases.

- 1. The diseases designated as communicable diseases shall be deemed reportable communicable diseases and shall include:

Amebiasis

Animal bites for which rabies prophylaxis is given

Anthrax

Babesiosis

Botulism

Brucellosis

Campylobacteriosis

Chancroid

Chlamydia trachomatis infection

Cholera

Cryptosporidiosis

Diphtheria

E. coli 0157:H7 infection

Ehrlichiosis

Encephalitis

Foodborne illness (specify agent)

Giardiasis

Gonococcal infection

Granuloma inguinale

Haemophilus influenzae (invasive disease)

Hantavirus Disease

Hemolytic uremic syndrome

Hepatitis A, B, C, * non-A, non-B

Hepatitis B carrier in pregnancy

Hepatitis A in a food handler

Histoplasmosis

Hospital associated infection(s)

-increased incidence or outbreak

-staph/strep in the newborn

Kawasaki syndrome

Legionellosis

Leprosy

Leptospirosis

Listeriosis

Lyme disease

Lymphogranuloma venereum

Malaria

Measles

Meningitis

-Aseptic

Haemophilus

Meningococcal

-Other (specify type)

Meningococemia

Mumps

Pertussis

Plague

Pneumococcal infections (invasive disease due to antibiotic resistant streptococcus pneumoniae)

Poliomyelitis

Psittacosis

Rabies

Reye's syndrome

Rocky Mountain spotted fever
Rubella
Salmonellosis
Shigellosis
Streptococcal infections (invasive disease due to Group A beta hemolytic strep)
Syphilis
Tetanus
Toxic shock syndrome
Trichinosis
Tuberculosis
Tularemia
Typhoid
Typhus
Yellow Fever
Yersiniosis

2. Notwithstanding any provision or condition in effect, the commissioner may designate any other communicable disease as reportable in order to protect the public health.

(Added 4-23-1987, eff. 4-23-1987; amended 10-15-1998, eff. 10-15-1998; amended 1-27-2000)

Sec. 873.403. Communicable diseases; duty to report; physicians.

1. Time limit; contents of report.
 - a. Every physician shall report within 24 hours of the time the case is first seen the full name, age and address of every patient having or suspected of having a reportable communicable disease together with the name of the disease, date of onset, symptoms and any other related information that may be required by the commissioner.
 - b. If a communicable disease is reported verbally, such report shall be thereafter made in writing on forms acceptable to the department.
2. When a case of reportable communicable disease occurs in any institution or hospital, the person in charge of such hospital or institution shall report the case as required in subsection 1. of this section; provided, however, that the physician who initially saw the case shall first report such case to the department and then to the person in charge of the hospital or institution or his representative.
- c. When a case of reportable communicable disease occurs in a state or county institution, the person in charge of such institution shall report the case to the

State Department of Health and to the department as provided by 10 NYCRR 2.10(a).

4. Notwithstanding the provisions contained in this section, an outbreak of any disease or condition, of known or unknown etiology which may be a danger to public health or any unusual manifestation of disease in an individual, shall be reported to the department in writing within 24 hours on forms designated by the department.

(Added 4-23-1987, eff. 4-23-1987)

Sec. 873.404. Communicable diseases; duty to report; diagnosis after death.

If a pathologist, medical examiner or other person determines from examination of remains of a deceased person, or from the history of the events leading to death, that at the time of death the said deceased patient apparently was affected with a reportable communicable disease, he shall report the case promptly to the department.

(Added 4-23-1987, eff. 4-23-1987)

Sec. 873.405. Communicable diseases; duty to report; laboratories.

It shall be the duty of every laboratory director or his representative having knowledge of a positive test for a reportable communicable disease to report the name and address of the person having or suspected of having such reportable communicable disease to the department within 24 hours.

(Added 4-23-1987, eff. 4-23-1987)

Sec. 873.406. Communicable diseases; duty to report; schools.

It shall be the duty of every school medical officer, principal, teacher or other school official having knowledge of a case or suspected case of reportable communicable disease in a pupil, student, member of the faculty or staff to report the name and address of the person having or suspected of having such reportable communicable disease to the department within 24 hours of the time such school official shall have knowledge of the existence or a suspicion of such disease.

(Added 4-23-1987, eff. 4-23-1987)

Sec. 873.407. Communicable diseases; duty to report; nonphysicians.

When no physician is in attendance it shall be the duty of the head of the household or the person in charge of any institution, school, hotel, boardinghouse, camp or vessel, or any public health nurse, or any other person having knowledge of a case of any disease presumably communicable to report within 24 hours of having knowledge thereof.

(Added 4-23-1987, eff. 4-23-1987)

Sec. 873.408. Communicable diseases; duty to report; dairy farm cases.

1. When a case of salmonella infection (including typhoid and paratyphoid fevers), diphtheria, streptococcal sore throat, scarlet fever, shigellosis (bacillary dysentery), cholera, infectious hepatitis or poliomyelitis occurs on any farm or dairy producing milk, cream, butter or other dairy products for sale or to be consumed in the raw state, it shall be the duty of the physician in attendance to report to the department immediately the existence of such case on such farm or dairy.
2. If no physician is in attendance, it shall be the duty of the owner, lessee or person in charge of such farm or dairy to immediately report to the department the name and address of any person who is affected with a disease presumably communicable who is employed or resides on or in such farm or dairy, or who comes in contact in any way with its products.

(Added 4-23-1987, eff. 4-23-1987)

Sec. 873.409. Communicable diseases; duty to report; food poisoning.

1. Every physician, nurse or person in charge of any school, hospital, institution, dispensary, laboratory, labor camp or other camp, who shall have knowledge of the occurrence of a number or group of cases of illness believed to have been due to the consumption of spoiled or poisonous food, shall report the same immediately.
2. The person in charge of a state or county institution in which such cases may occur shall report such cases to the State Health Department and to the department as provided in 10 NYCRR 2.15(b).

(Added 4-23-1987, eff. 4-23-1987)

Sec. 873.410. Communicable diseases; reports and records; duty to maintain.

It shall be the duty of every physician, hospital and institution to keep a record of all cases or suspected cases of communicable disease reported to the department on forms designated by the department.

(Added 4-23-1987, eff. 4-23-1987)

Sec. 873.411. Communicable diseases; reports and records confidential.

1. Reports and records of cases of sexually transmitted disease and records of clinical or laboratory examinations for any of such disease shall be deemed confidential and not be subject to inspection by persons other than authorized personnel or representatives of the department and the State Department of Health.
2. Inspection of records.
 - a. Reports and records of cases or carriers of communicable diseases shall not be subject to inspection by persons other than authorized personnel and representatives of the department and the State Department of Health.

- b. The person to whom any records included within this subsection relates, or his legal representative may authorize the commissioner in writing, subscribed and sworn to before a notary public or other person authorized by law, to open such record to inspection; provided, however, that nothing herein contained shall be construed to interfere with the confidential nature of such records as prescribed by Article 45 of the Civil Practice Law and Rules of the State of New York.
3. Disclosure of information for treatment.
 - a. Subsections 1. and 2. of this section shall not be construed to prevent authorized personnel of the department from furnishing appropriate information to a physician or institution providing examination or treatment to a patient suspected or affected with a disease or condition, or to any agency approved by the department for prevention, treatment or social care, or to any person when necessary for the protection of health.
 - b. A person, institution or agency to whom such information may be furnished, or to whom access to records has been given is hereby prohibited from divulging any part thereof so as to disclose the identity of the person to whom such information or record relates, except insofar as such disclosure may be necessary for the treatment of a case or carrier or for the protection of the health of others.
4. Tuberculosis records.
 - a. The commissioner or his representative may disclose information contained in laboratory or other reports relating to cases of tuberculosis only when in his judgment it will serve the best interests of the patient or his family, or contribute to the protection of the public health; for such purposes the commissioner may permit access to such reports by representatives of official or nonofficial agencies concerned with the control of tuberculosis.
 - b. In an action or prosecution for violation of any of the provisions of the Public Health Law, the State Sanitary Code or this code, tuberculosis records made pursuant to the Public Health Law shall be produced pursuant to a duly issued and served subpoena and shall be allowed to be placed in evidence insofar as the same shall be deemed relevant by the court or presiding officer.

(Added 4-23-1987, eff. 4-23-1987)

Sec. 873.412. Communicable diseases; specimens; duty of physician to furnish.

1. A physician in attendance of a person affected with, or suspected of being affected with any of the diseases set forth in this section shall submit to a laboratory approved by the State Department of Health for examination such specimens as may be designated by the commissioner or State Commissioner of Health, together with data concerning the history and clinical manifestations pertinent to the examination.
2. The diseases for which specimens are required to be submitted to the provisions

of this section are:

Anthrax

Babesiosis

Botulism

Brucellosis

Campylobacteriosis

Cholera

Congenital rubella syndrome

Conjunctivitis, purulent, of the newborn (28 days of age or less)

Diarrhea occurring in infants 28 days of age or less or weighing less than 2,500 grams (five and one-half pounds)

Diphtheria

Giardiasis

Histoplasmosis

Legionellosis

Leprosy

Leptospirosis

Lyme

Malaria

Meningitis, Hemophilus, Meningococcal

Meningococemia

Plague

Poliomyelitis

Reye's syndrome

Rocky Mountain spotted fever

Salmonellosis

Shigellosis

Syphilis

Tuberculosis, active

Tularemia

Typhoid

Typhus

Yellow fever

Yersiniosis

(Added 4-23-1987, eff. 4-23-1987)

Sec. 873.413. Communicable diseases; investigation by commissioner after report.

1. Upon receiving a report of a case of communicable disease, the commissioner or his representative shall:
 - a. Make such investigation as the circumstances may require for the purpose of verifying the diagnosis, ascertaining the source of infection and discovering contacts and unreported cases; and
 - b. Collect and submit, or cause to be collected and submitted for laboratory examination such specimens as may furnish necessary or desirable information in determining the source of infection or in assisting diagnosis, and furnish and cause to be furnished with the specimens pertinent data on forms prescribed by the commissioner in regard to the history of the case, the physical findings and the epidemiological investigations which indicate the need for the examination requested.

(Added 4-23-1987, eff. 4-23-1987)

Sec. 873.414. Communicable diseases; precautions by commissioner.

1. Upon receiving a report of a case of communicable disease, the commissioner or his representative shall:
 - a. Give to a head of every household living in the building in which such case exists or in which a person became affected with a communicable disease, such appropriate circular as may be issued or approved by the commissioner and such advice as may be indicated; and,
 - b. Institute recognized measures which tend to reduce morbidity and mortality.*

***Editor's note:** Rules and Regulations of the Commissioner Policy No. CD 1-87, eff. 4-23-1987, provides that the term "recognized measures" means the procedures outlined in the latest edition of Control of Communicable Diseases in May by Abram S. Benenson.

(Added 4-23-1987, eff. 4-23-1987)

Sec. 873.415. Communicable diseases; public notice; placards.

1. No person shall interfere with or obstruct the commissioner or his representative in the posting of any notice or placard announcing or stating the existence of a case of communicable disease in or on any place or premises, nor shall any person conceal, mutilate or remove such placard or notice, except by permission of the commissioner or his representative.

2. It shall be the duty of the owner, lessee or the person in charge of any place or premises whereon such notice or placard of a case of communicable disease was posted to notify the department immediately in the event such notice or placard has been concealed, mutilated or removed from such place or premises.

(Added 4-23-1987, eff. 4-23-1987)

Sec. 873.416. Communicable diseases; cleansing; renovation; disinfection; embalming.

1. Adequate cleansing, renovation or disinfection of rooms, furniture and belongings, when deemed necessary by the commissioner or required by the Public Health Law, the State Sanitary Code or the code, shall immediately follow the release, removal or death of a person affected with a communicable disease.
2. Every funeral director, undertaker, embalmer or other person in charge of the preparation for burial of the body of a deceased person shall:
 - a. Ascertain whether such person died of a communicable disease;
 - b. Clean, disinfect or sterilize immediately after handling, embalming or preparing for burial the body of a person dead of a communicable disease, such parts of the person's garments or utensils or other articles of the funeral director, undertaker, embalmer or other assistants as may have been subject to contamination with infected material;
 - c. Cause the body to be placed in a casket or receptacle promptly if a person died of cholera, glanders, plague or typhus fever, which casket shall be immediately and permanently closed.
3. Subsection 2. of this section shall not be construed to prohibit the embalming of any such body, but if the body is to be embalmed, the funeral director, undertaker or embalmer shall cause such embalming or other preparation to be done immediately upon taking charge of the said body; provided that when a state permit for embalming is required, such embalming shall not be performed, unless such state permit has first been received; and, provided further, that immediately after the embalming procedures have been completed, the body shall be placed in a casket or receptacle as hereinbefore provided.

(Added 4-23-1987, eff. 4-23-1987)

Sec. 873.417. Communicable diseases; isolation; duties of physician.

1. Upon discovering a carrier or case of a reportable communicable disease, the attending physician shall cause the patient to be isolated, if in his judgment the carrier or case constitutes a danger to the public health except as provided by section 873.418.
2. The attending physician shall:
 - a. Advise the other members of the household regarding precautions and appropriate specific preventive measures;
 - b. Furnish the patient and any person attending such patient with such detailed instructions regarding the disinfection and disposal of infective

secretions and excretions as may be prescribed by the commissioner.

(Added 4-23-1987, eff. 4-23-1987)

Sec. 873.418. Communicable diseases; isolation; duties of commissioner.

1. The commissioner shall establish and maintain appropriate isolation whenever the following cases come to the attention of the department:
 - a. Chicken pox in persons 15 or more years of age.
 - b. Conjunctivitis, purulent, of the newborn.
 - c. Rubella (German measles).
 - d. Hepatitis, infectious.
 - e. Measles.
 - f. Meningitis (all forms) or meningococemia (septicemia).
 - g. Poliomyelitis.
 - h. Streptococcal sore throat (including scarlet fever).
 - i. Typhoid fever.
 - j. Salmonella infection (including paratyphoid fever).
 - k. Shigellosis (bacillary dysentery).
 - l. Mumps.
 - m. Ophthalmia neonatorum.
 - n. Pneumonia.
 - o. Viral hemorrhagic fever.
2. The commissioner shall establish and maintain appropriate isolation of the following cases as well as quarantine of the contacts whenever such cases come to the attention of the department:
 - a. Cholera.
 - b. Plague.
 - c. Typhus fever.
 - d. Diphtheria.

(Added 4-23-1987, eff. 4-23-1987)

Sec. 873.419. Communicable diseases; food handling and sales.

No person who suffers from cholera, amebiasis or shigellosis (bacillary dysentery), streptococcal sore throat, scarlet fever, salmonella infection (including paratyphoid fever), poliomyelitis, diphtheria, tuberculosis, infectious hepatitis, superficial staphylococcal infection or typhoid fever, or is a carrier of the organisms causing the above conditions, shall serve or handle in any manner whatsoever food intended for

sale.

(Added 4-23-1987, eff. 4-23-1987)

Sec. 873.420. Communicable diseases; control of dangerous and careless patients; commitment.

Whenever a complaint is made by a physician to the department that any person who is a case or carrier of typhoid fever, tuberculosis, diphtheria or other communicable disease and whose behavior is such as to expose members of his family or household or other persons with whom he may be associated to danger of infection, the commissioner or his representative shall forthwith investigate the circumstances alleged, and shall proceed pursuant to and as required by the provisions of the Public Health Law in a court of competent jurisdiction for the purpose of commitment of such person, as the circumstances may require.

(Added 4-23-1987, eff. 4-23-1987)

ARTICLE V. FOODS

Sec. 873.411. Food service establishments; definitions.

1. Whenever used in this code, unless otherwise expressly stated or unless the context or subject matter requires a different meaning, the following terms shall have the respective meanings hereinafter set forth or indicated:
 - a. *Catering.* The term "catering" means any service, business, enterprise, activity, facility, establishment or place that is engaged in the preparation of, or the provision of, prepared food or drink, or both, to any person or group of persons, for human consumption, including transportation of such prepared food or drink to any place other than the place of preparation, for a consideration.
 - b. *Eating place.* The term "eating place" means any establishment or operation where food is served or provided for the public with or without charge; provided, however, that it will not include: the business of catering, food vending machine operation, frozen dessert manufacturer, mobile food unit operation and the operation of a retail bakery.
 - c. *Food service establishment.* The term "food service establishment", "service food establishment" or "food establishment" means any fixed or mobile restaurant; drive-in; coffee shop; cafeteria; short-order cafe; delicatessen; luncheonette; grill; tearoom; sandwich shop; soda fountain; bar; tavern; cocktail lounge; night club; roadside stand; take-out prepared food place; retail bakery; industrial feeding establishment; private, public or nonprofit organization or institution, including: schools; nursing homes; day care centers and hospitals; religious and fraternal organizations routinely serving food; catering kitchens; commissary or similar places in which food is prepared for sale or for service on the premises or elsewhere; and any other establishment or operation where food is served or provided for the public, with or without charge.
 - d. *Food vending machine operation.* The term "food vending machine

operation" means the distribution, sale or offering to sell, food or drink, or both, from a vending machine or the furnishing, installation, servicing or maintenance of one (1) or more food or drink vending machines by contract, agreement or ownership.

- e. *Food vending machine operator.* The term "food vending machine operator" means anyone who owns or engages in the business of food vending machine operation.
 - f. *Food vendor.* The term "food vendor" means any person who sells, offers for sale or dispenses any food or drink to the consumer for human consumption from a mobile food unit.
 - g. *Frozen dessert manufacturer.* The term "frozen dessert manufacturer" shall have the meaning ascribed to it in Parts 39 and 240 of the Rules and Regulations of the Department of Agriculture and Markets of the State of New York.
 - h. *Retail bakery.* The term "retail bakery" means an establishment which, as its primary business, sells baked goods directly to the consumer and does not engage in the business of selling baked goods wholesale to commercial establishments except on a limited basis.
 - i. *Contamination.* The term "contamination" means exposing food to: filth, toxic substances, excessive manual contact during preparation or service, rodent or insect contact or infestation, or any condition which permits introduction of pathogenic microorganisms or foreign matter. Potentially hazardous foods held at temperatures between forty-five (45) degrees Fahrenheit [seven and two-tenths (7 2/10) degrees Celsius] and one hundred forty (140) degrees Fahrenheit [sixty (60) degrees Celsius] during display or for a period of time exceeding that reasonably required for preparation are considered to be contaminated.
 - j. *Potentially hazardous food.* The term "potentially hazardous food" means any food that consists in whole or part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacea or other ingredients, including synthetic ingredients, in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms except that it does not include clean, whole, uncracked, odor-free shell eggs.
2. Terms not defined in this section, but defined or used in Part 14 of the State Sanitary Code, shall have the meanings ascribed to them therein.

(§ 1, Art. III, eff. 1-1-1976; amended 4-30-1981, eff. 6-1-1981)

Sec. 873.421. Food service establishments; plans.

- 1. No person shall undertake to construct a food service establishment or make modifications to an existing food service establishment without first submitting to the commissioner plans and specifications and any other information as may be required by the department and without obtaining prior written approval therefor.
- 2. In addition a fee of \$10.00 shall accompany each subsequent review of plans for the same establishment until such plans are approved.

3. The provisions of this section shall not apply where the submission of plans is for:
 - a. The county;
 - b. A municipality;
 - c. A church;
 - d. A synagogue; or
 - e. A public or parochial school.

(§ 2, Art. III, eff. 1-1-1976; amended 11-20-1980, eff. 1-1-1981; 12-20-1990, eff. 1-1-1991)

Sec. 873.431. Food service establishments; construction.

1. All rooms in every food service establishment in which food is stored, prepared or served, or in which utensils are washed or stored, shall be constructed in accordance with the requirements of the State Sanitary Code and the following requirements:
 - a. Doors and other openings to the outside atmosphere other than windows, shall be self-closing, screened or otherwise provided with a means of preventing the entrance of flies or insects through such openings and shall be of rodent-proof construction; and,
 - b. Windows opening to the outside atmosphere shall be screened to prevent the entrance of flies or other insects and shall be of rodent-proof construction and shall be so constructed and installed as to prevent the use of inside sills for any purpose related to the preparation or storage of food or drink.
2. Toilet and handwashing facilities.
 - a. All food service establishments existing on the effective date of this article shall have adequate toilet and handwashing facilities located on, or convenient to, the premises of such food service establishment, which facilities shall be readily accessible to persons employed as food handlers or otherwise.
 - b. All food service establishments constructed or undergoing major renovation after the effective date of this article shall have adequate toilet and handwashing facilities, separate for the respective sexes employed as foodhandlers or otherwise, located on the premises of such food service establishment and readily accessible to such employees; provided, however, that the department may accept toilets and handwashing facilities convenient to the food service establishment when it is not practical to provide such facilities on the premises thereof.
 - c. Durable and legible signs in English and in such other language as may be required by the department shall be posted in each toilet room and at each handwashing facility, not within a toilet room, used by food handlers and other employees, directing all employees to wash and clean their hands after each visit to the toilet and frequently during the hours of

employment to prevent contamination of food and drink.

3.
 - a. All food service establishments designed to seat 50 or more customers at one time for consumption of food or drink in the establishment, or where alcoholic beverages are served, shall have adequate toilet and handwashing facilities readily available to customers.
 - b. Such facilities shall be easily accessible to the customers without passing through food preparation or storage areas, separate for each sex, and shall include at least one toilet and one handwashing basin for each sex.
4. All toilet rooms provided for employees or customers of food service establishments, or both, shall:
 - a. be completely enclosed, provided with self-closing doors and adequately ventilated and lighted;
 - b. be provided with at least one toilet and one handwashing basin;
 - c. be provided with an adequate supply of hot and cold running water, powdered or liquid soap and sanitary individual towels, or the equivalent thereof, for use at all times that such food service establishment is in operation.

(§ 3, Art. III, eff. 1-1-1976; amended 4-29-1976, eff. 5-1-1976)

Sec. 873.441. Food service establishments; permits.

No person shall operate or maintain a food service establishment in the county without first having made application for, and obtaining, a permit from the department.

(§ 4, Art. III, eff. 1-1-1976)

Sec. 873.451. Food service establishments; maintenance.

1. Every food service establishment shall employ or engage the services of a custom applicator or exterminator certified by the Department of Environmental Conservation of the State of New York, when required by the department, to provide extermination and preventive measures necessary to maintain the premises free from rodents and insects.
2. Operators of food service establishments shall keep and maintain on the premises records containing the name, address, certification number and reports of the custom applicator or exterminator servicing the establishment.
3. Records required to be kept and maintained by the provisions of this section shall be available at the premises to representatives of the department.
4. No substance shall be kept or used as an insecticide or exterminating agency in any place where food or drink is exposed during sale, preparation, holding or dispensing, or in such manner as to contaminate such food or drink.

(§ 5, Art. III, eff. 1-1-1976)

Sec. 873.452. Food service establishments; food; food contamination.

No person shall manufacture, produce, pack, possess, use, sell, offer for sale, serve, deliver or give away any potentially hazardous food which contains:

- a. More than 100 hemolytic staphylococcus aureus organisms per gram of food sample; or
- b. More than 100 coliform organisms per gram of food sample; or
- c. More than 100,000 total bacteria per gram of food sample; or
- d. Any fecal coliform, salmonella, shigella or other pathogenic microorganisms.

(Added 4-30-1981, eff. 6-1-1981)

Sec. 873.461. Food service establishments; sanitation; equipment.

1. Any food or meat grinder which is not thoroughly and completely cleansed and sanitized after each usage shall be kept under refrigeration of 45 degrees Fahrenheit or less, and shall be cleansed and disinfected at least once every day of use.
2. Any food or meat grinder used for pork or pork products may not be used to grind any other food or meat unless the grinder is dismantled and thoroughly and completely cleansed and sanitized between such usages.

(§ 6, Art. III, eff. 1-1-1976)

Sec. 873.471. Food service establishments; utensils and containers; single-service articles.

1. All soda straws, tubes or similar devices for drinking from containers served at a food service establishment shall be individually wrapped.
2. All toothpicks or similar devices served at a food service establishment shall be individually wrapped.
3. All single-service utensils and articles shall be wrapped or dispensed from a single-service dispenser acceptable to the department in such manner as to prevent contamination of surfaces which may come into contact with food or drink or the mouth of the user.

(§ 7, Art. III, eff. 1-1-1976)

Sec. 873.481. Food service establishments; food vending machine operation; permits; maintenance and operation.

1. No person shall engage in the business of food vending machine operation without having first obtained a permit therefor from the department. Excluded from such requirement are those machines dispensing products that are not subject to spoilage or temperature sensitivity.
2. The premise or premises used by a vending machine operator for the purpose of readying for use or servicing food or drink vending machines, or for the packaging or preparation of food or drink for transportation to food or drink

vending machine locations, shall be specified in the permit, and no other premises shall be used for such purpose.

3. Each food and drink vending machine shall be kept securely locked or fastened when operative, except during servicing or inspection.
4. The interior of every food vending machine shall be readily available to the department at the premises at which the machine is located, for the purposes of inspection.
5. The operation of a food or drink vending machine in such manner as to constitute an unsanitary condition or a public health hazard, failure to provide a key or opening device or failure to open the interior of the machine for inspection at any reasonable time, shall be sufficient cause for the department to render the machine inoperative or to forthwith embargo the machine and its contents, or to do both; provided, however, that due notice of such action shall be given the permit holder of record or to the person responsible for the care and servicing of such machine.
6. The name, address and telephone number of the permittee shall be legibly, prominently and permanently displayed on the exterior of each food or drink vending machine.

(§ 8, Art. III, eff. 1-1-1976; amended 8-23-1984, eff. 1-1-1985)

Sec. 873.491. Food service establishments; mobile food unit.

1. No person shall engage in the business of operating a mobile food unit without first having obtained a permit therefor from the department.
2. Every mobile food unit shall have posted clearly, at all times, on both sides of the outside of the mobile food unit in letters not less than four inches in height and 1 1/2 inches in width, the name and address of the person or persons who owns, leases or operates the business of the mobile food unit, and the department permit number.
3. A permit shall not be required under this section for a food vendor who operates as part of a food service establishment under a valid permit issued pursuant to the provisions of this article.
4. Every food vendor shall file a copy of his route with the department at the time of filing an application for a permit as required by this article and shall file significant changes with the department within ten days thereof.
5. Every food vendor shall maintain the premises or location upon which his mobile food unit is operated in a clean and sanitary condition and free from litter and refuse and shall provide proper receptacles for refuse.

(§ 9, Art. III, eff. 1-1-1976)

Sec. 873.501. Food service establishments; frozen desserts.

1. No person shall engage in the business of manufacturing frozen desserts in the county without first having obtained a permit therefor from the department.

2. The plant for the manufacture or processing of frozen desserts, together with the equipment, sanitary facilities, manufacturing processes and the ingredients used therein, shall conform to the provisions of this code and the State Sanitary Code.
3. No person other than the manufacturer or processor of frozen desserts shall sell, offer for sale or deliver any frozen dessert in the county without first having obtained a permit therefor from the department, provided that such frozen dessert shall have been manufactured or processed in a plant or place that shall hold a permit as provided by subdivision 1. of this section.

(§ 10, Art. III, eff. 1-1-1976)

Sec. 873.511. Food service establishments; catering

1. No person shall engage in the business of catering without first having obtained a permit therefor from the department.
2. The business of catering shall be conducted from a fixed and designated place of business or location as shown in the permit.
3. Food product temperatures are to be measured and recorded for potentially hazardous food at the time of delivery or service to the customer. No food is to be delivered or served which is not in compliance with Section 14-1.40 of Chapter 1 of the New York State Sanitary Code.
4. A written statement is to be given to the customer. This statement must include the recorded temperatures of the potentially hazardous food at delivery or service and simple instructions regarding refrigeration, hot-holding, cooking or reheating, as applicable. A copy of this statement is to be retained by the caterer for 90 days.
5. The requirements of subsections 3. and 4. of this section shall also apply to all food service establishments that deliver large quantities (amounts of food greater than for single-family consumption) of potentially hazardous food.

(§ 11, Art. III, eff. 1-1-1976; amended 3-17-1994, eff. 3-17-1994)

Sec. 873.521. Food service establishments; day-care centers.

No person shall own, operate or maintain a day-care center as defined in the Social Services Law and rules and regulations pertaining thereto if such day care center provides food for the children, staff, personnel or any other persons, without first having obtained a permit as required by the provisions of this article for a food service establishment.

(§ 12, Art. III, eff. 1-1-1976)

Sec. 873.531. Food service establishments; retail bakeries.

No person shall maintain or operate a retail bakery without first having obtained a permit therefor from the department.

(§ 13, Art. III, eff. 1-1-1976)

Sec. 873.541. Food service establishments; food handlers.

1. No person shall expectorate in any room in which food is prepared, processed, handled, stored or served or in which utensils are washed or stored.
2. The owner and person in charge of a food service establishment and all food handlers employed therein shall be responsible for compliance with the requirements of this article.
3. Upon request by the department, the owner or operator of any food service establishment shall furnish to the department a complete list of all persons engaged in the management, maintenance or operation of such establishment, including the names of the owner or operator and his relatives engaged in the management, maintenance or operation of such establishment.

(§ 14, Art. III, eff. 1-1-1976)

Sec. 873.551. Food service establishments; food protection; meat or meat products.

The use of any matter which imparts or retains color to meat or to casings, is prohibited, unless such use complies with the provisions of federal, state and local laws and the rules and regulations promulgated pursuant thereto.

(§ 15, Art. III, eff. 1-1-1976)

Sec. 873.561. Food service establishments; bakery products; custard-filled.

1. Custard-filled bakery products shall not be displayed, offered for sale, or sold except on the day of manufacture, which day shall be the day on which manufactured, but may include a period of time of not more than two hours preceding midnight of the previous day.
2. Every particle of the entire custard-mix to be used in the manufacture of custard-filled bakery products shall be brought to and held at a temperature of not less than 200 degrees Fahrenheit continuously for not less than ten minutes and within one hour thereafter shall be placed in a refrigerating temperature of not over 45 degrees Fahrenheit and kept at or below such temperature until applied to the bakery product.
3. Custard-filled bakery products shall not be kept, displayed, offered for sale or transported for sale unless such products shall have been cooled to a temperature of 45 degrees Fahrenheit, or lower, in clean containers filled to a depth of not more than three inches.
4. Custard-filled bakery products shall not be sold or transported for sale or offered for sale unless such products are wrapped or packaged so as to protect the contents from contamination and such wrapper or package shall bear prominently displayed on the outside thereof in legible letters, the name of the manufacturing baker and the day of manufacture.
5. Custard-filled bakery products manufactured, kept, displayed or served in violation of the provisions of this section or of the State Sanitary Code are hereby

declared to be dangerous to the public health and as such, subject to condemnation by any authorized representative of the department.

(§ 16, Art. III, eff. 1-1-1976)

Sec. 873.571. Food service establishments; food protection; applicability of State Sanitary Code.

1. All food service establishments shall meet the requirements of the State Sanitary Code, in addition to meeting the requirements of this code.
2. In the case of a conflict between the State Sanitary Code and this code, the more stringent requirement shall prevail.

(§ 17, Art. III, eff. 1-1-1976)

ARTICLE VI. MILK AND CREAM

Sec. 873.581. Designation of grade.

No milk or cream shall be sold or offered for sale or delivered to consumers unless it shall bear prominently one and only one of the following designations: Certified Pasteurized; Grade A Pasteurized; Certified; Special A Raw.

(§ 1, Art. IV, eff. 9-1-1959)

Sec. 873.591. Milk labels.

1. No raw milk shall be sold or offered for sale or delivered to consumers unless the day of the week when and the place where bottling and capping were performed are set forth clearly and legibly on the outer cap, hood or tag or single service container if caps or hoods are not used.
2. No pasteurized cream shall be kept or transported in cans unless the day of the month, the month and year when and the place where pasteurization was performed are set forth clearly and legibly on a tag affixed to every such can.
3. A proof print sketch or proof print of all caps, hoods, tags, single service containers not requiring caps or hoods and labels for milk, cream or milk products shall be submitted to the Department of Health and approval thereof secured before use.

(§ 2, Art. IV, eff. 9-1-1959)

Sec. 873.601. Inspection of dairies required.

No milk, cream or milk products shall be sold or offered for sale or delivered to consumers as pasteurized milk, cream or milk products unless an inspection has been made during the previous 12 months of each dairy from which such milk, cream, or milk products are obtained and unless each dairy shall be found by such inspection to comply with the requirements of the State Sanitary Code. Such inspections shall be made only by persons approved for such work by the commissioner. A report of the result of each such inspection shall be made upon an official dairy score sheet approved by the

Department of Health. Such report shall be filed at the pasteurizing plant, creamery or shipping station to which such milk is delivered and kept on file for one year. Each new or additional dairy from which such milk, cream or milk products shall be obtained shall first be inspected by a representative of an official agency and shall be found to be producing milk in conformance to the State Sanitary Code before the milk is received.

(§ 3, Art. IV, eff. 9-1-1959)

Sec. 873.611. Bacteria counts required.

1. No milk, cream or milk products shall be sold or offered for sale or delivered to consumers unless a bacteria count shall have been made within the previous month of a sample of the raw milk from each dairy producing such milk for milk, cream or milk products and such samples shall be taken at the pasteurizing plant, creamery, shipping station or bottling plant receiving such milk, from the weigh vat or dump tank containing the entire shipment of the dairy or by compositing from each of the cans, properly agitated, comprising the entire shipment of the dairy.
2. The method used in making such bacteria counts shall be the standard agar plate method or standard direct microscopic method. Reports of all bacteria counts in excess of the requirements of the State Sanitary Code shall be immediately transmitted to the producer of such milk and further bacteria counts on such milk shall be made at intervals of five days after the original count was taken. If three such successive bacteria counts shall be found to be in excess of the requirements of the State Sanitary Code, such milk shall be excluded by the pasteurizing plant, creamery, shipping station or bottling plant and shall not again be received until the condition or conditions causing such excessive counts shall have been corrected as shown by a satisfactory bacteria count made on a composite sample of milk collected at the dairy farm of such producer. The results of all such bacteria counts identified with the names of producers shall be sent to the Department of Health once each month unless other arrangements are authorized by the commissioner.

(§ 4, Art. IV, eff. 9-1-1959)

Sec. 873.621. Examination of cattle dealers' herds.

No milk, cream or milk products shall be sold or offered for sale which shall be produced on a dairy farm where the business of buying and selling cattle is carried on unless every dairy animal which shall be brought onto such dairy farm shall first have been physically examined by a licensed veterinarian and found to be sound and healthy. Every dairy animal on each such dairy farm shall be ear-tagged, each such tag shall bear a separate number and an identifying physical description of each animal shall appear on an individual certificate form which shall be attached to the certificate on file covering the veterinarian's examination of the herd on such dairy farm.

(§ 5, Art. IV, eff. 9-1-1959)

Sec. 873.631. No caps permitted at distributing stations.

No milk, cream or milk products, bottle caps or hood covers shall be kept, stored

or used at any distributing station, store or place where milk or cream is received in bottles for distribution or in any vehicle while in use for the delivery of milk, cream or milk products.

(§ 6, Art. IV, eff. 9-1-1959)

Sec. 873.641. Vehicles to bear dealer's name.

Every wagon, truck or vehicle used in the transportation and distribution of milk, cream or milk products shall have the name and address of the dealer operating such vehicle clearly and legibly set forth on each of the two sides. The name and address shall be in letters which shall be not less than three inches in height and which shall average not less than one and one-half inches in width. Every such wagon, truck or vehicle shall be kept in a clean and sanitary condition.

(§ 7, Art. IV, eff. 9-1-1959)

Sec. 873.651. Milk bottle closures.

No milk, cream or milk products shall be sold or offered for sale in bottles unless the pouring lips of such bottles are completely covered, unless special permission has been given by the commissioner for another type of cover. This regulation shall not apply to fermented milk products.

(§ 7, Art. IV, eff. 9-1-1959)

ARTICLE VII. WATER SUPPLIES

Sec. 873.700. Water supplies; definitions.

When used in this article, unless otherwise expressly stated or unless the context or subject matter requires a different meaning, the following terms shall have the respective meanings hereinafter set forth or indicated:

1. *Auxiliary source of water.* The term "auxiliary source of water" means a source of water which is not normally used, but which has been approved by the department and the State Department of Health and other state agencies having jurisdiction as a source of water and developed for use when for any reason the normal source or sources fail to meet normal demand therefor.
2. *Domestic use.* The term "domestic use" means water used or intended for use for drinking purposes, food preparation, washing, laundering of clothes, sanitary facilities and purposes, household cleaning or medical purposes.
3. *Emergency source of water.* The term "emergency source of water" means a source of water which has not been developed or approved as a regular or auxiliary source of water and which is developed during an emergency for temporary use as a source of water in case of failure or inadequacy of the regular or auxiliary source of water.
4. *Individual water supply system.* The term "individual water supply system"

means a single system of piping, tanks or other facilities together with a source of water intended to supply a single parcel of land unless the system is a public water supply as defined herein.

5. *Person*. The term "person" means, except for any federal or state agencies, any individual, firm, public or private corporation, association, partnership, institution, political subdivision, government agency, public body, joint-stock association, trust, estate or other group of individuals or combination of the foregoing or any other legal entity whatsoever, and includes the plural as well as the singular.
6. *Potable water*. The term "potable water" means water which meets the drinking water quality requirements established in Part 5 of the State Sanitary Code.
7. *Private water supply or private water system*. The term "private water supply or private water system" means a single system of piping, tanks or other facilities together with a source of water installed to supply buildings located on not less than two (2) and not more than four (4) parcels of land not occupied by the owner of the source of water or employees thereof unless the system is a public water supply as defined herein.
8. *Public water supply or public water system*. The term "public water supply or public water system" means a water system which provides piped water to the public for human consumption, if such system has at least five service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year, which term shall include:
 - a. Source, collection, treatment, storage and distribution facilities under control of the supplier of water to such system and used in connection with such system; and
 - b. Source, collection or pretreatment storage facilities not under control which are used in connection with such system.
9. *Sanitary*. The term "sanitary" means a condition or state that is free from filth or infective matter.
10. *Source of public water supply*. The term "source of public water supply" means any groundwater aquifer, surface water body or watercourse from which water is taken, either periodically or continuously, for drinking, culinary or food-processing purposes or which has been designated for present or future use as a source of water supply for domestic or municipal purposes.
11. *Water treatment plant*. The term "water treatment plant" means any facility, equipment or device which, through the addition of chemicals or through any other means or combinations of treatment, shall change the physical, chemical, radiological or microbiological quality of the water.

(Added 6-22-1989, eff. 6-22-1989*)

***Editor's note:** This resolution added a new Article VII and also repealed former Article

Sec. 873.701. Water supplies; potable water; standards of quality; safety.

1. No person shall provide or make available or accessible a supply of water for domestic use, unless such water supply is potable and unless the source, treatment and distribution of such water shall be so protected from actual or potential pollution and so maintained as to deliver at all times a potable water.
2. Water delivered for domestic use shall not contain microbacterial, chemical, radiological or other contamination in such quantity as may be injurious to health or as may indicate such water to be unsatisfactory for human consumption as determined by a test or tests in a laboratory approved for such purpose by the State Department of Health.
3. No person shall permit any connection between a potable water supply and an unapproved auxiliary water supply or any structure containing sewage, nonpotable water or other substance injurious to health, except in such manner as to prevent the entrance of such liquid or substance into the potable water supply system and otherwise in conformity with the provisions of the Code.
4. No spring basin, collection basin, well or infiltration gallery used as a source of water supply, nor any main, standpipe, reservoir, tank or other pipe or structure through which water is delivered to consumers for potable purposes shall be placed in use after it has been constructed, cleaned or repaired until such structure or main has been disinfected in a manner approved by the State Department of Health.*

***Editor's note:** For standards for disinfecting a main or structure, see Rules and Regulations of the Commissioner Policy No. WS 1-89, effective 7-5-1989, which is on file in the office of the Commissioner of Health.

5. Use other than domestic.
 - a. No person shall provide or maintain a water supply in or for the use of the occupants of any habitable building or at any public place for use other than for domestic use which does not comply with this Code and the requirements of the department unless each outlet is provided with a permanent, prominent and legible label or sign reading "UNSAFE WATER, DO NOT DRINK."
 - b. No drinking fountains, outlets or taps shall be connected to a source of nonpotable water.
6. Any person who shall provide or make accessible a supply of water for domestic use shall submit to the department a report of bacteriological examination of such delivered water made by a laboratory approved for the purpose by the State Commissioner of Health, as often as the department may deem necessary, provided that the frequency of such examinations shall not be less than that set

forth in the State Sanitary Code.

7. Potable water delivered to consumers shall comply with the drinking water standards established by the State Department of Health.

(Added 6-22-1989, eff. 6-22-1989)

Sec. 873.702. Water supplies; bottled drinking water; permit.

1. The sale, offering for sale or delivery of bottled natural or distilled water intended for domestic use is prohibited unless the person bottling such water shall have been approved by the State Commissioner of Health.*

***Editor's note:** For standards used to determine compliance with this section, see Rules and Regulations of the Commissioner Policy No. WS 2-1989, effective 7-5-1989, which is on file in the office of the Commissioner of Health.

2. Bottled drinking water sold, offered for sale or delivered for human consumption or domestic use shall comply with the drinking water standards established by the State Department of Health.

(Added 6-22-1989, eff. 6-22-1989)

Sec. 873.703. Water supplies; potable water; factories; institutions; similar establishments.

1. Whenever a public water supply is available, no water from any other water supply system shall be furnished for human consumption or domestic use unless such other water supply system has been approved by the department in accordance with the Code.
2. If no satisfactory public water supply is available, the water for domestic use shall comply with the drinking water standards provided for by the Department of Health of the State of New York.
3. Water not approved for domestic use.
 - a. If the water supply for industrial or fire protection purposes is obtained entirely or in part from a source not approved for domestic use, this supply shall be distributed through an independent piping system having no connection with the system for domestic use.
 - b. Each faucet or other outlet furnishing water not safe for domestic use shall be provided with a permanent, prominent and legible label or sign "UNSAFE WATER, DO NOT DRINK."
 - c. No drinking fountain, outlets or taps shall be connected to a nonpotable source of water.

(Added 6-22-1989, eff. 6-22-1989)

Sec. 873.704. Water supplies; ice.

1. No person shall give, sell, offer for sale or deliver any artificial ice unless such ice shall have been produced from a potable water supply and manufactured, prepared and delivered under clean and sanitary conditions.
2. No person shall give, sell, offer for sale or deliver any natural ice for domestic refrigeration or for use in foods or beverages.

(Added 6-22-1989, eff. 6-22-1989)

Sec. 873.705. Water supplies; treatment and abandonment.

1. Whenever the department shall determine that water delivered to consumers for domestic use does not meet the requirements of the State Sanitary Code or the Code, the supplier of such water supply shall be notified of such condition, in writing.
2. The notice herein provided for may order the treatment or posting of such water supply or any portion of the distribution system or connections that do not meet the requirements of the State Sanitary Code or of the Code.
3. The commissioner may order the abandonment, sealing or posting of such water supply or any portion of the distribution system or connections that do not meet the requirements of the State Sanitary Code or the Code.

(Added 6-22-1989, eff. 6-22-1989)

Sec. 873.706. Water supplies; continuation of water service.

1. Any person who shall have contracted, undertaken or who is bound by any document or other legal obligation to furnish a supply of water for use in any habitable building shall maintain an adequate supply of water complying with the standards of the Code and the State Sanitary Code.
2. No person who shall have contracted, undertaken or who is bound by the terms of any agreement, whether verbal or written, or other legal obligation to supply water for use in any habitable building, while so obligated, shall shut off or discontinue service except as permitted by the Public Health Law or the State Sanitary Code.

(Added 6-22-1989, eff. 6-22-1989)

Sec. 873.707. Water supplies; public and private water systems; approval of plans and completed works; and certificate for use.

1. No person shall make, install or construct or allow to be made, installed or constructed a private or public water system or any addition to or modification thereof which may affect the quality of the water or which may affect the adequacy of the supply thereof until the plans and specifications shall have been submitted to and received the prior approval of the commissioner.*

***Editor's note:** For standards used to evaluate the construction of a public or private water system, see Rules and Regulations of the Commissioner Policy No. WS 3-89, which is on file in the office of the Commissioner of Health.

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2. The application for approval of plans to construct a private or public water system shall be made on forms provided by the department and shall be accompanied by such engineering reports, plans, specifications, reports of bacterial, chemical, physical and microscopic analyses of the water source and such other information as may be required by the department, and in accordance with the requirements of the department.
 3. An application for approval of plans for a private water supply shall be accompanied by evidence, satisfactory to the department, that there is no public water supply available to the premises to be served by such private water supply or that it is not practicable or economically feasible to connect to a public water supply.
 4. Form of plans.
 - a. The department may prescribe the number of copies and the format in which the information required by this section shall be submitted.
 - b. Plans, specifications, soil and groundwater information shall contain the signature, seal and address of the professional engineer or registered and licensed architect pursuant to the Education Law of the State of New York under whose supervision such plans, specifications, soil and groundwater information was prepared.
 5. No person shall place public or private water supply into service or to be used or allow such water supply to be placed into service or to be used until he has applied for and received prior approval of the completed works and certificate for use from the commissioner.*

***Editor's note:** As to expiration dates of such certificates, see Rules and Regulations of the Commissioner Policy No. WS 4-89, effective 7-5-1989, which is on file in the office of the Commissioner of Health.

6. All public and private water supplies must operate and maintain their equipment, facilities and appurtenances to ensure continued compliance with this Code.

(Added 6-22-1989, eff. 6-22-1989)

Sec. 873.708. Water supplies; individual water supply systems; approval of plans and completed works; and certificate for use.

1. No person shall undertake to construct any new building or structure requiring an individual water supply system or make, install or construct or allow to be made, installed and constructed an individual water supply system until the plans and specifications first shall have been submitted to and received the approval of the department.
2. Application for approval of plans to construct an individual water supply system shall be made on forms provided by the department and shall be accompanied

by such engineering reports, plans, specifications and such other information as may be required by the department and in accordance with the requirements of the department.

3. An individual water supply system shall be constructed and maintained in conformity with the plans and specifications approved by the department and in compliance with the terms of any approvals issued in respect thereto and with the provisions of the Code.
4. No person shall use any new individual water supply system to furnish water for domestic use or any new building be occupied without first obtaining a valid certificate issued by the department to use such system.*

***Editor's note:** For expiration dates of such certificates, see Rules and Regulations of the Commissioner Policy No. WS 6-89, effective 7-5-1989, which is on file in the office of the Commissioner of Health.

5. Certification.
 - a. Application for a certificate for use of a new individual water supply system shall be made, in writing, to the department and shall be accompanied by a written statement from a professional engineer or architect licensed and registered to practice in the State of New York, certifying that the new individual water supply system has been constructed in accordance with the approved permit to construct, plans and specifications.
 - b. The issuance of a certificate for use shall not be construed as a guaranty by the department that the system has been properly constructed or will function satisfactorily.

(Added 6-22-1989, eff. 6-22-1989)

Sec. 873.709. Water supplies; water supply systems; construction; inspections.

1. No water supply system shall be constructed otherwise than in accordance with the plans and specifications filed with and approved by the department.
2. The department may inspect any water supply system at any time during or after construction and may prohibit the operation and use of such system until the department is satisfied that the water supply system is constructed in accordance with the approved plans and specifications and approved amendments thereto and is capable of producing water of satisfactory quality for intended purposes.
3. No person shall construct or abandon any water well unless a permit has first been secured from the permit issuing official.

(Added 6-22-1989, eff. 6-22-1989)

Sec. 873.710. Water supplies; water supply systems; operation records;

permits.

1. *Supervision.*
 - a. Every public and private water supply system shall be under the supervision of at least one water supply system operator.
 - b. All water supply system operators and assistant operators shall meet the qualification requirements of the department, provided that such persons shall be deemed qualified if they hold a certificate from the Department of Health of the State of New York in the proper grade pursuant to the provisions of the State Sanitary Code.
2. *Daily records.*
 - a. Any person who owns or operates a public or private water supply system shall keep complete daily records of the operation of any water treatment or disinfection of water required pursuant to the provisions of all applicable codes and the conditions of any written approval issued pursuant thereto.
 - b. Complete daily records of operation herein required shall be kept on forms furnished or approved by the department or the State Commissioner of Health.
 - c. A copy of daily records of operation shall be forwarded to the department at the end of each month of operation within ten days thereafter.
 - d. Daily operating records and reports of laboratory tests shall be readily available and produced for inspection by representatives of the department.
3. *Permits.* No person shall operate a public or private water system without a valid permit issued by the commissioner.

(Added 6-22-1989, eff. 6-22-1989; amended 11-19-1992, eff. 1-1-1993)

Sec. 873.711. Water supplies; water supply systems; emergency changes.

1. No owner or operator of any public or private water supply system shall:
 - a. Take, use or cause to be taken for use for water supply purposes water from an emergency source other than the regular or auxiliary sources of water supply;
 - b. Discontinue the disinfection or treatment of any public or private water supply; or
 - c. Make any change whatsoever which may affect the quality of such water supply without first having notified the commissioner and the State Commissioner of Health or representative therefor by telephone and without having obtained the prior approval of the commissioner or the State Commissioner of Health for such change.
2. A printed copy of this section and of the appropriate section of the State Sanitary Code relating to emergency changes affecting water supply shall be permanently posted in the office of the owner and operator of each public or private water

supply.

3. All owners or operators of any public or private water supply shall notify the department as soon as practicable but within 24 hours of any emergency condition, including but not limited to the interruption in the water supply.

(Added 6-22-1989, eff. 6-22-1989)

Sec. 873.712. Water supplies; water supply systems; connections.

1. Where a public water main is available, no new connection or arrangement for a water supply shall be made other than an individual service to the public water main for each building to be served.
2. Connection with public water supply.
 - a. When a public water supply is or shall become available and accessible to any occupied building or structure served by an individual water supply system, the owner may be required at his expense to install a connection thereto, in accordance with any regulations of the owner of such public water supply system, within 90 days after the date of an order, in writing, issued by the commissioner or the commissioner's representative to do so, provided that the water main is readily accessible to any property line of such premises and is otherwise capable of providing adequate service.
 - b. The commissioner may, upon prior written application, waive the strict compliance with the provisions of subsection 2.a. above in a particular case, subject to appropriate conditions, where such waiver is in harmony with the general purpose and intent of this Code.
3. Where a public water supply is available, no person shall maintain an individual water supply system for domestic use without first having obtained a special permit therefor from the department, and no direct physical connection shall be maintained or permitted between such individual system and the public water supply system without the prior written approval of the owner of the public water supply and the department.

(Added 6-22-1989, eff. 6-22-1989)

Sec. 873.713. Water supplies; unsafe well or spring.

1. Whenever the commissioner or the commissioner's representative shall determine, upon the basis of laboratory examinations of samples of water from a well or spring or from a sanitary survey of a well spring, that the consumption of water from such well or spring may be injurious or hazardous to health, the use of such well or spring shall be discontinued forthwith upon notice of such determination.
2. The commissioner or the commissioner's representative may take such action as he may deem necessary to effect the discontinuance of a well or spring the consumption of water from which may be injurious or hazardous to health or which may be a potential danger to health, unless written permission is obtained from the commissioner or the commissioner's representative for the use of such water in such manner and for such purpose as will not endanger health.

(Added 6-22-1989, eff. 6-22-1989)

Sec. 873.714. Water supplies; new houses and buildings, disinfection.

1. Before occupancy of a house or building constructed after the effective date of this Code, the public water system thereof shall be effectively flushed with water from the water source provided to service the premises, after which a sample of water shall be collected from the water distribution system of such house or building, shall be submitted to a laboratory acceptable to the State Department of Health for bacterial analysis and the results of such tests shall be on file and available on the premises.
2. In the event that the laboratory analysis indicates that the microbiological quality does not meet the standards for microbiological quality for water for domestic use as set forth in the State Sanitary Code, the public water system shall be effectively disinfected and microbiological sampling and analysis repeated until the microbiological quality meets the standards.

(Added 6-22-1989, eff. 6-22-1989)

Sec. 873.715. Water supplies; separability.

If any provision of this article is held invalid, such invalidity shall not affect other provisions which shall be given effect without the invalid provision.

(Added 6-22-1989, eff. 6-22-1989)

ARTICLE VIII. SEWERAGE, SEWAGE AND REFUSE*

***Editor's note:** An amendment adopted July 19, 2001, amended Art. VIII of the Sanitary Code in its entirety, in effect repealing and reenacting said article to read as herein set out. The former Art. VIII, §§ 873.701--873.811, pertained to similar subject matter and was derived from §§ 1--12 of Art. VII, effective Sept. 1, 1959.

Sec. 873.720. Purpose.

The purpose of this article is two-fold.

- A. The first purpose is to ensure that the health and safety of the drinking water and other natural resources of the County of Westchester is preserved and that potential threats to such natural resources are monitored and reduced through the implementation of a system whereby providers of separate sewage disposal system services will be licensed by the Commissioner of Health and subject to reporting requirements which will enable the Department of Health to record and monitor all available data relating to separate sewage disposal systems located within Westchester County, and to establish database and public education systems pursuant thereto; and

- B. The second purpose is to ensure that the sewage and other wastewater generated from habitable buildings and properties in Westchester County is processed in the most environmentally appropriate manner possible by requiring all separate sewage disposal systems constructed or installed in Westchester County conform to the standards established in the New York State Public Health Law, by the Board of Health and/or the Commissioner of Health, and/or to require, where possible, the connection of such buildings or properties to public sewer systems.

(Added 7-19-2001, eff. 7-19-2001)

Sec. 873.721. Definitions.

Whenever used in this article, the following terms shall have the meaning set forth below:

- A. *Construction* shall mean installation or replacement of sewage disposal system components, including soil, gravel, pipes, tankage, pits, junction boxes, and all associated appurtenances and/or distribution systems.
- B. *Septic system contractor* shall mean an individual who engages in the performance of any one (1) or more of the following services, or who offers to provide the following services for a fee, in Westchester County, with respect to separate sewage disposal systems: construction; installation; repair and/or rehabilitation; and servicing, except for evacuation of septage.
- C. *Licensed septic system contractor and/or licensee* means a septic system contractor who possesses a valid license issued by the Westchester County Commissioner of Health pursuant to the provisions outlined in section 873.722 herein.
- D. *Individual* means any person, firm, company, association, corporation, partnership, co-partnership, joint-stock company, trust, governmental entity, or any other legal business entity and/or the employees thereof.
- E. *Harmful or deleterious substance* shall mean one (1) or a combination of the following:
 - (1) Roof, cellar, foundation, footing, area, storm, surface or ground water.
 - (2) Discharge of domestic sewage in excess of one hundred fifty (150) gallons per day per capita or at a rate exceeding three hundred (300) gallons per capita per day within any one-hour period.
 - (3) Liquid, gaseous, solid or other trade or industrial waste for which a written approval has not been obtained from the official agency having by law responsible charge of the receiving sanitary sewer or sewer treatment works to which such sewer is tributary, when having one (1) or more of the following characteristics at point of discharge:
 - a. Volume exceeding the limits acceptable to the above

official agency.

- b. Solids in excess of one thousand (1,000) parts per million.
 - c. Viscosity in excess of 1 10/100.
 - d. Temperature lower than thirty-two (32) degrees Fahrenheit or above one hundred fifty (150) degrees Fahrenheit.
 - e. Color in excess of five hundred (500) parts per million.
 - f. Biochemical oxygen demand in excess of four hundred (400) parts per million.
 - g. Chlorine demand in excess of twenty-five (25) parts per million measured after thirty (30) minutes holding at sixty-eight (68) F.
 - h. Suspended solids in excess of three hundred (300) parts per million.
 - i. Settleable solids measured by Imhoff cone in one (1) hour in excess of ten (10) milliliters per liter of discharge.
 - j. Hydrogen ion concentration below four and one-half (4.5) or in excess of nine and one-half (9.5).
 - k. Unshredded garbage, refuse, decayed wood, sawdust, shavings, bark, sand, lime, cinders, ashes, offal, oil, tar, dye stuffs, grit, abrasives, metal filings, trimmings or other offensive material exclusive of domestic waterborne sewage.
 - l. Chemicals or chemical compounds which are toxic, inflammable or explosive by themselves or upon acidification, alkalization, oxidation or reduction, or are strong reducing agents, inflammable or explosive gases, liquids or solids.
 - m. Viable pathogenic bacteria, other than normally discharged in raw domestic sewage.
 - n. Radioactive material which is not readily soluble in water and in an amount such that the radioactivity shall not exceed one (1) microcurie of Strontium-90 or Polonium-210; or one hundred (100) microcurie of Iodine-131 or Potassium-32, or any other radioactive material having a half-life of more than thirty (30) days; or ten (10) microcuries of other radioactive material; for each one million (1,000,000) gallons of sewage in the receiving sewer. This limit shall not apply to any radioactive material which has been diluted and homogeneously mixed with stable isotopes of the same element in the same chemical form to the extent that the dose rate does not exceed three hundred (300) millirems per week.
- F. *Offensive material* shall mean any sewage, fecal matter, manure, offal,

garbage, dead animals, meat wastes, blood, tankage, brine, urine or any putrescible organic matter or the contents of privies, cesspools, septic tanks or chemical toilets, either in liquid or solid state, or any other substance or liquid dangerous or prejudicial to health.

- G. *Privy* shall mean any facility or structure provided for the temporary storage or disposal of human excreta without water carriage.
- H. *Sanitary landfill* shall mean the controlled process of disposing of refuse or offensive material by depositing, compacting in layers and completely covering all such refuse and material.
- I. *Separate sewage disposal system* shall mean the whole or any part of a system or facilities or means for the treatment or modification or ultimate disposal of water-borne sewage or domestic wastes or trade wastes or offensive material, regardless of location with respect to any building or structure or premises thereby served. Such system shall include but shall not be limited to facilities for the treatment or modification or required control of harmful or deleterious substance before discharge to a sewage disposal system (individually and/or collectively referred to herein as "SSDS").

(Added 7-19-2001, eff. 7-19-2001)

Sec. 873.722. Licensing requirements for septic system contractors.

Notwithstanding any other provision of this chapter to the contrary:

- A. Beginning on April 1, 2002, each and every person who provides or offers to provide services as a septic system contractor in Westchester County shall have obtained a license from the Commissioner in accordance with the requirements of this section. No person may provide or offer to provide services as a septic system contractor after April 1, 2002, without first having obtained such a license, except as may be authorized by the commissioner pursuant to section 873.722 C.(12), below.
- B. Application requirements.
 - (1) Any individual who seeks to operate as a septic system contractor in Westchester County shall submit an application to the commissioner on a form to be provided by the commissioner, along with the initial non-refundable application fee in the amount set forth below.
 - (2) Any individual who seeks to operate as a septic system contractor in Westchester County shall also be required to participate in a licensing instruction program developed and implemented by the department, or its duly authorized designee, which program shall include both course work in the areas of septic system construction, installation and operation and standard examinations relating to the matters covered by such course work.
 - (3) As part of the licensing instruction program, the department shall hold courses and examinations periodically, at such time and in such locations as the commissioner shall specify. Any person who

has completed the application form and submitted the required application fee and licensing instruction program fee, shall be eligible to participate in the next regularly scheduled license instruction program. Pursuant to such licensing instruction program, the department shall conduct such examinations, which may take the form of written, oral and/or practical examinations, as it deems necessary to test the applicants' knowledge of SSDS construction, installation, repair, and rehabilitation.

C. Licensing.

- (1) Upon the successful completion of the licensing instruction program, including successful completion of the examination to the satisfaction of the commissioner, and the payment of the biennial licensing fee, the commissioner shall issue a license certificate to the individual, which license shall indicate that the holder thereof is entitled to engage in the work or occupation of a licensed septic system contractor. All licenses shall expire two years from the date of issuance.
- (2) The licensee shall carry the license certificate on his person at all times while engaging in or performing the work for which the license has been issued in Westchester County. Such license shall be shown to any properly interested person, including customers, upon request. The licensee shall also conspicuously post a sign, at the primary public street entrance to the work site, which sign shall contain the licensee's Department of Health license number in a form to be specified by the commissioner.
- (3) Licenses issued by the department pursuant to this section shall be utilized only by the person named on such license and shall be non-transferable. The license of one individual shall not be deemed to satisfy the separate licensing requirements applicable to employees, contractors and/or subcontractors of such individual where such employees, contractors and/or subcontractors are performing services which require a license pursuant to this section.
- (4) All such construction; installation; repair and/or rehabilitation; and servicing of SSDS in Westchester County, except for the evacuation of septage, shall be subject to the direct supervision of the licensee. For purposes of this subsection, "direct supervision" shall mean that the licensed individual shall be responsible for all activities on site, and shall, during the course of providing such services, be physically present at the work site.
- (5) Exceptions to licensing requirements. The provisions of this section shall not apply to individuals who are employees of any federal or state agencies, when such individuals are acting within the scope of that employment.
- (6) Fees. The non-refundable fees which shall be paid to the department in connection with the application and licensing procedures outlined herein shall be:

- a. Original application fee: \$200.00 per applicant.
 - b. License instruction program fee (including the cost of examination): \$100.00 per applicant for initial exam; \$25.00 for re-issuance of examinations and/or for renewal examinations.
 - c. Biennial license/renewal fee: \$200.00 per licensee.
- (7) The commissioner may require the participation of licensed septic system contractors at department-sponsored informational seminars at any time during any licensing term in order to ensure that all licensed septic system contractors are informed of developing issues, technologies, and laws which may impact the performance of services by the licensed septic system contractor in Westchester County.
- (8) A licensed septic system contractor shall comply, at its own expense, with the provisions of all applicable federal, state and municipal laws, rules, regulations or requirements including, but not limited to, all federal, state and municipal laws, rules, regulations or requirements applicable to the licensee as an employer of labor or otherwise. All licensees shall be required to comply with all rules, regulations and licensing requirements pertaining to its professional status and that of its employees, partners, associates, subcontractors and others employed to render the services hereunder.
- (9) Renewal. No person shall perform the services of a licensed septic system contractor after the expiration of the license issued by the department. The licensed septic system contractor may seek renewal of its license by submitting a renewal application, on the form provided by the department, to the department not less than 30 days in advance of the expiration date of the licensed septic system contractor's existing license. Prior to the approval of the renewal license, the licensed septic system contractor shall be required to submit a completed application and pay the biennial renewal fee of \$200.00, as referenced above, prior to the department's issuance of the renewal license, and may be required to successfully complete a renewal examination. The commissioner may, in his discretion, require any licensee who fails to submit the renewal application within the time frames specified above to submit an application and fees, in accordance with this section, as though the licensee had not previously been licensed by the commissioner.
- (10) The commissioner may refuse to issue or renew a license in the event that an individual fails to satisfactorily complete the licensing instruction program, examination, or renewal examination, or fails to comply with the licensing standards outlined herein.
- (11) Upon the issuance of a license by the commissioner, the names and contact information for each licensed septic system contractor shall be placed on a public registry to be maintained by the

commissioner and made available for consumer review and reference.

- (12) The commissioner, in his discretion, may issue a temporary license to a prospective licensed septic system contractor in the case of an emergency where, in the opinion of the commissioner, the condition of a SSDS poses a threat to public health and safety, provided however, that the duration of such temporary license shall not exceed six months. The commissioner may, in his discretion, refuse to issue a temporary license or suspend any existing temporary license where the commissioner deems the qualifications or work practices of the holder of the temporary license to be unsatisfactory, or where the threat to public health and safety has been eliminated to the satisfaction of the commissioner. The issuance of such a temporary license may be utilized by its holder only with respect to the emergency identified and which formed the basis for issuance of the temporary license, and shall not entitle the holder thereof to provide services as a licensed septic system contractor in Westchester County generally. The holder of such a temporary license shall be required to pay pro rata fees, in accordance with the fees established in subsection C.(6), above, on a month-to-month basis for the term of such temporary license.

(Added 7-19-2001, eff. 7-19-2001)

Sec. 873.723. Standards applicable to licensed septic system contractors.

- A. All licensed septic system contractors shall comply with all provisions set forth in this Article VIII to the extent that such provisions relate to licensed septic system contractors or SSDS, and to any other provision of this chapter which relates to license holders.
- B. All licensed septic system contractors shall comply with all standards of workmanship as may be established in the training programs to be provided by the department, or its designee, pursuant to such licensing program, or generally in the industry.
- C. No person shall knowingly engage in any fraud or material deception of the commissioner, the department, or any Westchester County consumer with respect to the qualifications or licensing status of the individual, its employees, or independent contractors, or the services which are offered or provided to any such consumer, in connection with the services regulated hereunder.
- D. No person shall knowingly cooperate with any individual engaged in any fraud or material deception of the commissioner, the department, or any Westchester County consumer with respect to the qualifications or licensing status of the individual, its employees, or independent contractors, or the professional services which are offered or provided by such individual to any such consumer, in connection with the services regulated hereunder.

(Added 7-19-2001, eff. 7-19-2001)

Sec. 873.724. Reporting requirements for licensed septic system contractors.

Notwithstanding any other provision of this chapter to the contrary:

- A. Each and every licensed septic system contractor shall be required to complete a septic system data form in the form provided by the commissioner upon the completion of any on-site services performed with respect to any SSDS in Westchester County, which form shall specify the service provided to the property owner and any other information which the commissioner, in his discretion, may deem appropriate. Each and every licensed septic system contractor shall be required to issue a copy of the septic system data form to both the commissioner and to the owner of the facility which is served by such SSDS within ten business days of the service date. Such septic system data forms shall include language which informs the property owner that all licensed septic system contractors shall be required to maintain their Westchester County license; shall be required to display such license and license number to the property owner upon request; and shall specify the contact information for the department.
- B. In the event that any service provided by the licensed septic system contractor indicates that the SSDS presents a significant threat to public health, safety and/or the environment, the licensed septic system contractor shall state the existence and nature of such emergency clearly on the face of such septic system data form, and shall issue a copy of the septic system data form to both the commissioner and to the owner of the facility which is served by the SSDS within three business days of the service date.
- C. To the extent that the condition of any given SSDS is such that the licensed septic system contractor cannot bring the SSDS into compliance with all applicable federal, state and municipal laws, rules, regulations or requirements, the licensed septic system contractor shall advise the consumer of such condition in advance of providing any services to the consumer with respect to such SSDS, and shall note on the face of any septic system data form prepared with respect to such SSDS both the existence of such condition and the subsequent efforts, if any, made by the licensed septic system contractor to bring the SSDS into conformance with such laws, rules and regulations, and the consumer's assent to same.
- D. Licensed septic system contractors shall be required to maintain a copy of each and every septic system data form for a period of not less than six years from the date of service.
- E. The commissioner shall maintain a database of the records for each SSDS, which records are to be provided by all licensed septic system contractors, and shall include, but not be limited to, the following information, where applicable:
 - (1) Residence address;
 - (2) Number of bedrooms;

- (3) Number of bathrooms;
- (4) Square footage of residence/commercial structure;
- (5) Type of sewage disposal system;
- (6) Grade/slope of disposal area;
- (7) Percolation rate at disposal area;
- (8) Distance from well, if applicable;
- (9) Well yield (gallons per minute), if applicable;
- (10) Depth of well (feet), and physical characteristics of well, if applicable;
- (11) Date of system installation;
- (12) Name of system installer;
- (13) A listing of current and previous owners; and
- (14) Maintenance history.

- F. The information contained in such database shall be made available for inspection by members of the public at reasonable times during the regular business hours of the department.

(Added 7-19-2001, eff. 7-19-2001)

Sec. 873.725. Penalties and enforcement.

Except as expressly stated in this Article VIII, any person who is deemed to have violated section 873.723 hereof, shall be subject to enforcement proceedings in accordance with the provisions of sections 209--215; 217--221; and 304--309 of this chapter. Each day of a continuing violation shall constitute a separate and distinct violation hereunder. This provision is not, however, intended to impose any liability or affirmative obligation upon the owner of any real property which is served by an SSDS regarding any such services which may be provided on such property by any unlicensed individual where that individual represented to such owner that he or she was a licensed septic system contractor.

(Added 7-19-2001, eff. 7-19-2001)

Sec. 873.726. Permit required for separate sewage systems.

- A. No person shall undertake to construct any new building or structure requiring a separate sewage disposal system or to construct such system to serve any existing building or structure without first having obtained the written approval for such system issued pursuant to the Public Health Law or by the commissioner.
- B. No such system for the subsurface disposal of sewage shall hereafter be approved on any building site not having in existence on the date of approval the required usable area. Such area thereafter shall be so isolated and protected as to effectively prevent removal, displacement, compaction or other adverse physical change in the characteristics of the soil or in the drainage of the area

designated for such usage.

- C. Such separate sewage disposal system shall be constructed, installed, repaired and/or rehabilitated in accordance with the standards, rules or regulations duly promulgated by the commissioner and with the terms or conditions of the permit issued therefor or approved amendments thereto.
- D. Whenever inspection indicates the construction to be otherwise than in accordance with the Public Health Law or this Code or the conditions of any permit or written approval issued pursuant thereto or the standards applicable to said construction, all work shall cease upon written notice served upon any person connected with or working in or about the said system or any part thereof, or by registered mail to the last recorded address of the person named in such permit or approval. Thereafter no further work shall be done other than to remedy such violation and to proceed with work in compliance with the aforementioned requirements, provided the inspector determines that the work may properly proceed. Otherwise, the written approval shall terminate and no further work shall be undertaken until a new written approval shall have been obtained.

Whenever considered necessary by the inspector, any covered work shall be promptly uncovered for inspection at any time before issuance of the certificate of completion. Any approval shall be subject to modification or change as may be directed in writing by a representative of the commissioner due to conditions found during construction, provided that such inspector may at his discretion require all or part of the construction to cease until approval of the necessary modification or change has been obtained in the same manner as the original approval.

- E. No new separate sewage disposal system shall be placed in operation nor shall any new building requiring such system be occupied until a certificate shall have been issued indicating that such disposal system has been constructed in compliance with the terms of the approval issued and the requirements of this code. Such certificate of completion may be issued by the commissioner or by any building or plumbing inspector of a local municipality within the Health District duly authorized by the commissioner so to do. Such certificate of completion may be issued upon receipt of written certification by a professional engineer, registered architect or land surveyor, licensed to practice in the State of New York, stating that the system has been installed under his supervision as shown on plans submitted with such certification in accordance with the terms of the approval and the requirements of this code.
- F. In the event of the failure of any separate sewage disposal system installed under the approval of the commissioner or otherwise, the owner of the building or structure served thereby shall forthwith cause an investigation to be made of the reason for such failure and shall place the system in a proper and sanitary operating condition by any legal means within such period of time as may be determined by the commissioner to be reasonable to perform such work. During such investigation any portion of the system may be left open for inspection provided it is protected so as to effectively prevent direct contact with the sewage contents. The findings of the commissioner shall be presumptive evidence of the cause of failure. In the event the owner is not subject to legal process, the occupant of the premises shall be responsible for the maintenance of the separate sewage disposal system in a satisfactory and sanitary condition during such occupancy.

- G. The issuance of any approval or certification pursuant to the provisions of this code shall not be construed as a guaranty by the commissioner or the Westchester County Department of Health or any employee or agent that the system has been properly constructed or will function satisfactorily, nor shall it in any way restrict the actions or powers of the commissioner in the enforcement of any law or regulation.

(Added 7-19-2001, eff. 7-19-2001)

Sec. 873.727. Sewer connection required.

The owner of any habitable building or property used for human occupancy, employment, recreation or other purpose abutting upon any street, alley or right-of-way in which there is located a public sanitary sewer may be required to install at the expense of such owner suitable toilet facilities therein and to connect such facilities directly with the public sanitary sewer, in accordance with any local regulations of the municipality owning such sewer, within 90 days after date of an order in writing issued by the commissioner to do so, provided that such sewer is within 100 feet of any property line of such premises and is otherwise accessible. Where a public sanitary sewer is available no new arrangement shall be made other than an individual connection to serve each building site.

(Added 7-19-2001, eff. 7-19-2001)

Cross references: Department of Environmental Facilities, Chs. 128 and 237; Environmental Coordinating Agency, Ch. 342; environmental facilities sewer ordinance, Ch. 824; sanitary sewer districts, Ch. 964.

Sec. 873.728. Sewer connections in sewerred areas.

Within the corporate limits of any city or village or within a town sewer district, no new habitable building shall be occupied unless served by a connection to the public sanitary sewer system, provided that a temporary system for the separate disposal of sewage or other wastes may be installed to serve an individual and isolated premises in accordance with the requirements of this code when the prior written consent of the municipal council or board or its duly authorized representative having jurisdiction over such sewer district is filed with the application. Such temporary facilities shall be approved only when a method of ultimately providing for a connection to a public sanitary sewer is indicated by the municipal governing council or board. This regulation shall not apply to a building site of 40,000 square feet or more in area which contains the usable area otherwise required.

(Added 7-19-2001, eff. 7-19-2001)

Sec. 873.729. Building served by separate sewers.

Where a public sanitary sewer is not available and accessible, every habitable building hereafter constructed shall be properly plumbed and the building sewer shall be connected to a separate sewage disposal system complying with the provisions of this code, and no other means for the disposal of water-borne sewage shall be employed. When a public sanitary sewer shall become available to the property so served, a direct connection shall be made to such public sanitary sewer and any separate sewerage

facilities shall be abandoned and every tank or pit in such system shall be opened, emptied of any sewage and completely filled in with inert material.

(Added 7-19-2001, eff. 7-19-2001)

Sec. 873.730. Protection of public sewers.

No person shall discharge or cause the discharge of any harmful or deleterious substance to any sanitary sewer or separate sewage disposal system so as to endanger the use of or the materials of construction of such sewer or system or so as to result in the stoppage or other failure of the sewerage system or subsequent sewage treatment, unless a permit for such discharge has been secured from the official agency having by law responsible charge of such sewerage system or sewage treatment works and such discharge conforms to the terms of such permit.

No unauthorized person shall break, damage, destroy, uncover, interfere with or commit any act which shall harm any structure, device, equipment or treatment process which is a part of a public sanitary sewerage system or sewage treatment works.

(Added 7-19-2001, eff. 7-19-2001)

Sec. 873.731. Exposure of sewage.

No person shall construct, or maintain any privy, cesspool, sewage disposal system, pipe or drain so as to expose or discharge the sewage contents or other deleterious liquid or matter therefrom to the atmosphere or on the surface of the ground or into any storm sewer or drain nor so as to endanger any source of supply of drinking water nor so as to discharge into any water course or body of water unless approval for such discharge shall have been issued therefor in accordance with the provisions of this code or the Public Health Law.

Complete daily records shall be kept of the operation of any sewage or waste treatment or chlorination as required under the provisions of any written approval for discharge issued therefor in accordance with the provisions of this code or the Public Health Law.

(Added 7-19-2001, eff. 7-19-2001)

Sec. 873.732. Temporary facilities on construction.

Any builder, contractor or other person employing men on the construction of any highway, building or structure shall provide or cause to be provided a temporary privy or privies or other satisfactory toilet facilities at a convenient place upon the premises, or readily accessible thereto and the same shall be properly enclosed and the contents thereof shall be completely covered with clean inert material or otherwise effectively treated or removed immediately by the end of each shift or working day.

(Added 7-19-2001, eff. 7-19-2001)

Sec. 873.733. Disposal of offensive material.

- A. *Storage.* No person shall permit, deposit, store or hold any offensive material on any premises or place or in any building or structure unless such material is so

treated, screened, covered or placed as not to create a nuisance detrimental to health. All containers for the storage of such material shall completely confine the material, shall be rodent and insect proof and shall be kept in an inoffensive and sanitary condition at all times.

- B. *Privies.* No person shall hereafter construct, or provide any privy unless it is constructed and maintained so that all human excreta is received in a water-tight vault or receptacle wherein the contents are continuously subjected to an effective disinfectant. The commissioner may require the use of any existing privy to be discontinued, the contents removed, and the pit filled with inert material, whenever the use of such privy is no longer necessary or whenever such privy is located, constructed or maintained otherwise than in conformity to the provisions of the State or County Sanitary Code, or creates a nuisance. All privies shall be properly enclosed and screened, ventilated, lighted, kept in repair and shall be maintained at all times in a clean and sanitary condition. No privy shall be located or maintained within ten feet of any property line, within 25 feet of any public street or way or within 25 feet of any door or window of any building used for human occupancy. No such facilities shall be constructed under or within any building or structure intended or used for human occupancy.
- C. *Protection of facilities.* No person shall dispose of any substance into any plumbing line, sewer, privy or separate sewage disposal system other than that which said facility is designed or is intended to receive.
- D. *Burial or discharge.* No person shall dispose of any offensive material by burial unless it shall be buried at least 250 feet from any source of water supply or so disposed of at such other place that no water supply will be polluted and where nuisance will not be created, subject to regulations for the protection of public water supplies adopted pursuant to the provisions of the Public Health Law.
- E. *Garbage fed to hogs.* No garbage shall be fed to hogs unless said garbage has first been heated to at least 212 degrees Fahrenheit continuously for 30 minutes in apparatus and by methods approved by the commissioner.

(Added 7-19-2001, eff. 7-19-2001)

Sec. 873.734. Removal and transportation of offensive material.

No person shall remove or transport or permit the removal or transportation of any offensive material except in such manner and in or by such conveyance as will prevent the creation of a nuisance or the loss or discharge of such material in any public place. All such material shall be so handled, covered or treated that it cannot escape or be accessible to rodents, flies or other insects or create a nuisance. All vehicles and implements used in connection therewith shall be kept in an inoffensive and sanitary condition and when not in use shall be so stored or kept as not to create a nuisance.

(Added 7-19-2001, eff. 7-19-2001)

Sec. 873.735. Permit required for collection.

No person, except a municipality, shall engage in the business of removing, collecting or transporting offensive material without first having obtained a permit therefor from the commissioner.

(Added 7-19-2001, eff. 7-19-2001)

Sec. 873.736. Approval of disposal area.

- (a) The operation or maintenance of a dump for the disposal of refuse or offensive material is hereby declared to constitute a public health nuisance. No offensive material or combustible refuse shall be disposed of other than through the use of a sanitary landfill established, operated and maintained in accordance with standards established by the Commissioner of Health, or by use of an incinerator constructed, operated and maintained so as to comply with other requirements of the Sanitary Code or of the Public Health Law.
- (b) Any person, including a municipal corporation, who uses or permits the use of any land or water as a public place of disposal of offensive material or combustible refuse by means of a sanitary landfill shall obtain a permit therefor from the commissioner.
- (c) At any disposal area all material of any type whatsoever shall be deposited, controlled, treated, covered or handled in such a manner as not to create offensive odors, a breeding place for insects, vermin or rodents, the dissemination or dust or fires or the exposure of any person to toxic, poisonous or hazardous substances.

(Added 7-19-2001, eff. 7-19-2001)

ARTICLE IX. SANITATION OF HABITABLE BUILDINGS

Sec. 873.821. Definitions.

- 1. "Dwelling unit" shall mean a room or group of rooms with facilities for regular preparation of meals and occupied or intended to be occupied by one household consisting of one (1) family as a home where its members live and sleep.
- 2. "Habitable building" shall mean any structure intended to be occupied in whole or in part by one (1) or more human beings.
- 3. Exception. Except where specifically defined elsewhere in this code, the definitions and standards contained in the Recommended Standard Plumbing Code promulgated by the State Department of Health and in the State Building Construction Code Applicable to One- and Two-Family Dwellings and the State Building Construction Code Applicable to Multiple Dwellings and any subsequent amendments thereto or revisions thereof shall apply.

(§ 1, Art. VIII, eff. 9-1-1959)

Sec. 873.831. General provisions.

- 1. *Scope.* Every existing habitable public or private building which is in whole or in part leased by the owner or his agent or which is permitted to be used by patrons or by the general public and every habitable building hereafter constructed shall comply with the following minimum requirements.
- 2. *Structure.* Every habitable building shall be constructed of durable material

capable of providing adequate protection from the elements and excessive moisture. All parts thereof shall be kept in good repair and structurally sound and fit for human habitation. Such materials shall be used as may be necessary to maintain all living rooms in a clean and sanitary condition.

3. *Lighting and ventilation.* Every room and passageway in any habitable building shall be provided with lighting and ventilation obtained by suitable and safe natural or artificial means or a combination thereof and adequate for the health and safety of every occupant. Every opening or equipment provided for ventilating purposes shall be maintained in repair and free of obstruction and shall be of such construction as to be readily opened, securely closed or operated.
4. *Plumbing.* Each and every plumbing fixture, pipe, drain, sewer and sewer connection shall be properly plumbed, of sanitary design and construction and maintained in repair and in sanitary condition.
5. *Minimum plumbing fixtures.* Every habitable building shall be provided with at least the minimum number and type of plumbing fixtures specified by the Recommended Standard Plumbing Code or such number and type which in the opinion of the commissioner shall be necessary for the particular type of occupancy; provided that any privy now in use in lieu of any water closet as may be otherwise required may be continued in use until such time as its abandonment is ordered by the commissioner.
6. *Overcrowding.* Every dwelling unit shall contain not less than 400 cubic feet of air space nor less than 65 square feet of floor space per occupant; provided that in stores, offices and multiple dwellings the space requirements contained in the State Building Construction Code Applicable to Multiple Dwellings shall apply; and provided further that this regulation shall not apply to occupancies otherwise subject to the supervision of appropriate state agencies. No dwelling unit shall be occupied by more than 2.0 persons per habitable space.
7. *Insects and pests.* All approved means necessary or required shall be taken to eliminate flies, insects, rodents or other vermin from any habitable building and to prevent the breeding or harboring of such vermin on the premises.
8. *Equipment requirements.* Except as otherwise provided in this Code or other Public Health Law, equipment in one- and two-family dwellings and in multiple dwellings shall meet the requirements of the State Building Construction Code Applicable to One- and Two-Family Dwellings or the State Building Construction Code Applicable to Multiple Dwellings or more restrictive local laws or ordinances, as the case may be, and shall be maintained at all times in repair and in a safe and sanitary condition. In all buildings where heating, mechanical, electrical equipment, incinerators, elevators and dumbwaiters, or equipment capable of emitting radioactivity are provided such equipment shall be maintained at all times in repair and in a safe and sanitary condition so as not to create a health hazard and shall be designed, installed, maintained and operated in conformity with generally accepted standards under conditions of normal usage.

(§ 2, Art. VIII, eff. 9-1-1959)

Sec. 873.841. Heating of occupied buildings.

1. A person who has contracted or undertaken to furnish heat, or who is required by any contract, agreement, lease or other arrangement or by law, to heat or furnish heat to any building or part thereof, occupied as a place of habitation shall furnish heat to every occupied room in such building or part thereof so as to maintain temperatures as follows:
 - a. Not less than 68 degrees Fahrenheit between the hours of 6:00 a.m. and 10:00 p.m. whenever the temperature outside of the building or part thereof shall fall below 55 degrees Fahrenheit; and
 - b. Not less than 60 degrees Fahrenheit between the hours of 10:00 p.m. and 6:00 a.m. whenever the temperature outside of the building or part thereof shall fall below 55 degrees Fahrenheit.
2. A person who has contracted or undertaken or who is required by any contract, agreement, lease or other arrangement or by law to heat or furnish heat to any building or portion thereof, occupied as a business establishment or for public or governmental purposes where one or more persons are employed, shall furnish heat for every occupied room in such building, or portion thereof, so that a minimum air temperature of 68 degrees Fahrenheit may be maintained therein during the usual working hours established and maintained in a building, or portion thereof, occupied as a business establishment or for public or governmental purposes, unless other hours are provided by a contract or agreement.
3. For the purposes of this section the temperature within a place of habitation or any building or portion thereof occupied as a business establishment or for public or governmental purposes where one or more persons are employed shall be that obtained at a distance of 18 inches above the average floor level and three feet from an outside wall of the room in which such temperature is obtained.
4. An owner, agent or responsible person in charge of a building for which heat is required to be furnished pursuant to this section shall be liable for failure to comply with this section.
5. Any person who is required to furnish heat pursuant to this section shall maintain the device, system or both, which provides such heat, in a safe and operable condition.
6. Inspections.
 - a. Any person who is required to furnish heat pursuant to this section shall cause the device, system or both, which provides such heat, to be inspected annually by a person qualified to make such inspection.
 - b. A record of such inspection shall be maintained on the premises and a copy shall be furnished to the department upon request.
7. In the event of failure or malfunction of the device, system or both, which provides heat to a building or part thereof as required by this section, the department may require that the owner, agent or responsible person in charge shall provide an acceptable and safe method of providing heat until the failure or malfunction is repaired.

8. The provisions of this section shall not apply to a building or portion thereof used and occupied as a trade, business or occupation where low air temperatures are essential and unavoidable nor where failure to maintain the required temperature is the direct result of a negligent or malicious act of the occupant, necessary repairs or alterations or any cause beyond the control of the owner, agent or responsible person in charge; except as may otherwise be required by the department pursuant to section 873.861.*

***Editor's note:** The original subsection referred to a nonexistent subdivision five so the reference to section 873.861 was inserted since that is apparently the correct reference.

(§ 3, Art. VIII, eff. 9-1-1959; amended 11-21-1974, eff. 12-15-1974; 12-4-1975, eff. 1-1-1976)

Sec. 873.851. Prohibited occupancies.

1. No person shall occupy any building, place or vehicle as a place of habitation unless adequate and sanitary facilities for the disposal of sewage have been provided therefor.
2. No person shall occupy any habitable building unless a safe and adequate supply of potable water is available. Drinking cups for common use shall not be used or permitted at any public place nor provided for use by employees.
3. No cellar, hallway, closet, bathroom or any room where there is a water-closet or any place dangerous or prejudicial to life or health shall be used for a place of sleeping or residence.

(§ 4, Art. VIII, eff. 9-1-1959)

Sec. 873.861. Maintenance of premises.

Every habitable building and every part thereof shall be kept clean and free from any accumulation of offensive material, rubbish or similar matter and shall be kept free of insect, vermin or rodent infestation. It shall be the responsibility of each occupant or tenant to keep in a clean condition that portion of the property which he occupies or over which he has control. No person shall deposit any material into any plumbing fixture which may result in the failure of such fixture, but this shall not relieve the owner of the responsibility of placing such fixture in repair. It shall be the responsibility of the person having possession of or being in charge of any property as owner, executor, administrator, trustee, guardian or agent to maintain any property under such control in compliance with the provisions of the Sanitary Code.

The owner or agent of a multiple dwelling, as defined in the Multiple Residence Law, shall post in a conspicuous place at the main entrance to such dwelling the name and address of the owner who shall reside in the County of Westchester or the name and address of a responsible person residing in the County of Westchester who shall be the duly authorized agent designated by written instrument on file with the person or department charged with the enforcement of the Multiple Residence Law or the Commissioner of Health, which person shall be in responsible charge of such premises

and responsible for compliance with any and all provisions of this code.

(§ 5, Art. VIII, eff. 9-1-1959)

Sec. 873.871. Storage and removal of refuse.

1. The person in charge of a habitable building shall provide and maintain therein for the use of the occupants proper receptacles for the storage of garbage and refuse and shall cause such offensive material to be removed from the premises at least once each week, except that combustible material may be destroyed in an incinerator operated in such manner as to produce no nuisance.
2. In buildings having two or more dwelling units or rooming units and in the absence of written agreement to the contrary the owner or his agent shall be held responsible for the provision of such receptacles conveniently located in sanitary enclosures on the premises and readily accessible to tenants at all times and shall be responsible for the removal of such material at least once a week or more often as may be necessary to prevent the creation of a nuisance.

(§ 6, Art. VIII, eff. 9-1-1959)

Sec. 873.881. Drainage.

Every court, yard or other area on the premises of any habitable building shall be so graded or drained as to prevent the accumulation of water within or without the building.

(§ 7, Art. VIII, eff. 9-1-1959)

Sec. 873.891. Unsanitary buildings.

Whenever any building, or a part thereof, shall become unsanitary, or any dwelling shall become so unsanitary as to be unfit for human habitation or whenever occupancy of a building or dwelling shall cause an unsanitary condition on or adjacent to the premises thereof and such condition shall be determined by the commissioner, after due notice to the owner and hearing thereon, to constitute a nuisance or condition detrimental to life and health, the commissioner may issue an order requiring the owner thereof to abate said nuisance or condition by placing said building or dwelling in a sanitary or habitable condition within a time specified in said order. Upon the failure of such owner to comply with said order, the commissioner may issue a further order, to be affixed conspicuously upon such building or dwelling and served upon the occupant or lessee thereof and upon the owner thereof or his agent, requiring all persons to vacate such building or dwelling and to discontinue its use at such time as shall be stated in said order and until such time as the building or dwelling shall be placed in a sanitary, or habitable condition and the nuisance abated. Upon the failure of such building or dwelling to be vacated within the time specified, the board of Health may issue a warrant to the Sheriff directing that such building or dwelling shall be vacated, and the Sheriff shall forthwith execute such warrant pursuant to law.

(§ 8, Art. VIII, eff. 9-1-1959)

Sec. 873.901. Standards.

In determining compliance with the provisions of this article, the commissioner may be guided by the provisions of the Recommended Standard Plumbing Code promulgated by the New York State Department of Health, or the American Standard Plumbing Code, known as ASA A40.7-1949, or the State Building Construction Code Applicable to One- and Two-Family Dwellings, or the State Building Construction Code Applicable to Multiple Dwellings and any subsequent amendments thereto or revisions thereof; or the provisions of any building, plumbing or other code enacted by the local municipality in which the building is located, provided that the provisions of such Code do not permit lower or less exacting requirements than required by the Sanitary Code.

(§ 9, Art. VIII, eff. 9-1-1959)

Sec. 873.911. Housing hygiene and occupancy.*

***Editor's note:** By resolution of 8-19-1982, the Board of Health adopted Part 21, the State Hygiene and Occupancy Code, of the New York State Sanitary Code, in its entirety, to be effective 9-1-1982.

(Added as § 10, Art. VIII, 11-21-1974, eff. 1-1-1975 and 12-15-1974; repealed 12-4-1975, eff. 1-1-1976)

Sec. 873.921. Heating of business establishments.

(Added as § 11, Art. VIII, 1-23-1975, eff. 1-1-1976; repealed 12-4-1975, eff. 1-1-1976)

Sec. 873.931. Termination of fuel supply for nonpayment.

(Added 11-29-1979, eff. 11-29-1979, expired 5-1-1980)

ARTICLE X. REALTY SUBDIVISIONS

Sec. 873.931. Realty subdivisions; declaration of policy.

1. The purposes of the provisions of this article are to promote healthful and safe environmental conditions within and adjacent to all types of realty subdivisions and to assist local municipal agencies to achieve healthful communities. To this end, public water supply and public sewerage facilities should be provided, whenever possible, and be constructed and maintained in accordance with accepted state and national standards.
2. Separate water supply systems shall be considered temporary systems. Such systems are inadequate in many areas of the health district to meet domestic needs in new realty subdivisions.
3. In considering applications for approval of realty subdivisions, community needs and potential hazards, both natural and man-made, may be considered for the purpose of assuring residents clean air, clean water, clean recreational areas and clean land.

(§ 1100, Art. 11, eff. 9-1-1971)

Cross references: Department of Environmental Facilities, Chs. 128 and 237; Department of Planning, Ch. 191; Planning Board, Ch. 277, Art. IV; environmental facilities sewer ordinance, Ch. 824; sanitary sewer districts, Ch. 964.

Sec. 873.941. Realty subdivisions; definitions.

1. *Realty subdivisions.* The term "realty subdivision" means any tract of land which is divided into more than two (2) habitable building sites or parcels on any site along an existing or proposed street, highway, easement or right-of-way or other means or proposed means of access, road or street, for sale, lease or rent, regardless of whether the sites are to be sold or offered for sale or leased for any period of time, are described by metes and bounds or by reference to a map or survey of the property or by any other method of description.
2. *Usable area.* The term "usable area" means the general area required and suitable for the normal and reasonable development of each building site in a realty subdivision to permit the provision of water supply and sewage facilities to serve the area for the proposed occupancy in accordance with provisions of local ordinances, watershed rules and regulations and the requirements of the department or other provisions of law.
3. *Separate water supply system.* The term "separate water supply system" shall mean a single system of piping, tanks or other facilities together with a source of water intended to supply a single building site.
4. *Separate sewerage system.* The term "separate sewerage system" shall mean a single system of piping, tanks or other facilities serving only a single building and disposing of sewage or other liquid wastes into the soil of the lot.
5. *Public water system.* The term "public water system" shall mean a water supply and necessary appurtenances together with a distribution system serving more than one (1) lot, whether owned by a municipal corporation or private utility.
6. *Public sewerage system.* The term "public sewerage system" shall mean a system utilized for the collection and disposal of sewage or other wastes of a liquid nature, including the various devices for the treatment of such wastes serving more than one (1) lot, whether owned by a municipal corporation or private utility.
7. *Dry sewer.* The term "dry sewer" shall mean a pipe intended to carry domestic waste at such time as sewerage and treatment facilities are constructed and available.

(§ 1101, Art. 11, eff. 9-1-1971)

Sec. 873.951. Realty subdivisions; approval of plans.

1. No person shall engage in the development of a realty subdivision or sell, offer for sale or contract for sale of land therein or erect any permanent building thereon without first obtaining the approval of the department for the proposed methods of providing water and sewerage facilities and land drainage, and until such plan shall have been filed in the office of the Clerk of the County of

Westchester.

2. A plan submitted to the department pursuant to this section shall show methods of providing adequate water supply and adequate disposition of sewage and land drainage to serve each building site according to the standards and requirements of the department.
3. The installation of any water supply and any sewerage disposal facilities, public or separate, shall be in accordance with the plans approved by the department, the state Department of Health, the state Department of Environmental Conservation or approved revision or revisions thereof.
4. The approval of any realty subdivision plan under and pursuant to the provisions of the Public Health Law and this code shall become effective only upon filing of the approved plan in the office of the Clerk of the County of Westchester within one year of the date of approval.
5. Approval.
 - a. The approval by the department of the proposed methods of providing water and sewerage facilities and land drainage shall be indicated by a stamp or endorsement on the face of the original tracing of the subdivision plan.
 - b. Such approval by the department shall be obtained prior to the filing of any map or plan showing such subdivision of land in the office of the Clerk of the County of Westchester or in any other required public office.
6. The original tracing of the subdivision plan shall show on the face thereof the written consent of the owner of record approving the filing of said map.
7. If a plan is disapproved by the department, such plan shall be returned to the person who submitted the plan with a summary of the reasons for disapproval.
8. (Reserved)
9. As a condition of such approval, the department may require the installation within a specified period, in accordance with the plans presented or approved revisions thereof, of the whole or any part of the water, sewerage or land drainage facilities for said realty subdivision; or the department may require that the land shall have been suitably improved and shall have adequate land drainage and usable areas for such installations before approval of the plan.
10. In addition to any other cause as otherwise provided in this code, the department shall deny approval of any realty subdivision if it appears that a condition or hazard detrimental to health or safety may be created thereby or, if it appears that excessive demands may be imposed upon any public or community facility or service proposed to serve such subdivision.
11. Plans and specifications for the construction of any proposed public water supply or public sewerage systems shall be submitted to and shall receive approval of the department, the state Department of Health, or the state Department of Environmental Conservation, prior to the approval of the plans for the realty subdivision to be served.

(§ 1102, Art. 11, eff. 9-1-1971; amended 2-26-1987, eff. 4-1-1987)

Sec. 873.961. Realty subdivisions; application for approval; required data.

1. The original tracing shall show methods for furnishing adequate water supply, sewerage and drainage to serve each building site.
2. Applications for approval shall be accompanied by such maps, plans, reports, specifications and data as the department may require or direct.
3. The department may require that a report and such plans as may be needed, covering the following environmental factors may be submitted:
 - a. The method of solid waste collection and disposal;
 - b. The extent to which proposed land uses and structures may cause air pollution;
 - c. The methods for grading to prevent changes in soil percolation capacity and to provide for adequate collection and disposal of surface and ground water;
 - d. The methods to prevent contravention of surface and ground water quality standards;
 - e. The effect on the subdivision of environmental pollutants or hazards either on the property or from surrounding areas resulting from such facilities, activities or conditions as industrial or commercial structures or operations, highways, solid waste disposal sites, swamps, quarries, sink holes, limestone deposits, gravel pits, airports, watercourses, agricultural uses, floodplains and unstable soil condition;
 - f. The potential effect of the subdivision on environmental factors in surrounding areas.
4. The department may require that a test well be constructed on the site of a realty subdivision.

(§ 1103, Art. II, eff. 9-1-1971)

Sec. 873.971. Realty subdivisions; filing map.

Any realty subdivision plan approved by the department shall be filed in the office of the Clerk of the County of Westchester within one year of such approval.

(§ 1104, Art. 11, eff. 9-1-1971)

Sec. 873.981. Realty subdivisions; usable areas.

1. A usable area shall not be deemed to include any area occupied by a building, structure, lake, stream, pond or swamp, areas of exposed or underlying rock or ground water within five feet of the ground surface or marginal areas subject to flooding or along streams or other bodies of water.
2. The area intended for separate sewerage systems shall be well drained by natural or approved artificial means.
3. The minimum usable areas specified herein are intended to apply to single-family occupancies.

4. The department may require such usable area as it may deem necessary or adequate for any other type of land usage indicated on the plan or permitted under existing zoning laws, if any.
5. The usable area shall include a protective area not less than ten feet in width laterally on all sides of the separate sewerage system but shall not include such other protective area between any separate sewerage system and any water supply, line of drainage, watercourse or other hazardous condition as the department shall deem necessary and adequate.
6. As applied to separate sewerage systems, the usable area shall contain suitable absorptive natural soils for a depth of not less than seven feet above ground water or ledge rock. No site shall be deemed suitable for development as a soil absorption area which would require the placement or removal of natural soils for a depth greater than one-half the required depth of soil.

(§ 1105, Art. 11, eff. 9-1-1971; amended 5-27-1976, eff. 6-1-1976)

Sec. 873.991. Realty subdivisions; public systems required.

1. If in the opinion of the department, a proposed realty subdivision is located in an area in which conditions preclude the installation of separate water supply systems or separate sewerage systems, or both, the department may require installation of a public or community water or sewerage system, or both.
2. If a realty subdivision consists of 50 or more building sites or housing for 200 or more persons, the department may require installation of a public or community water or sewerage system, or both.

(§ 1106, Art. 11, eff. 9-1-1971)

Sec. 873.1001. Realty subdivisions; separate water and separate sewerage systems.

1. Where it is proposed to provide separate water supply and separate sewerage systems, each building site shall contain the required usable area for such facilities based upon the particular conditions as determined by appropriate soil investigations and design report acceptable to the department. In any case, the usable area for separate water supply and separate sewerage systems shall not be less than 14,000 square feet.
2. A plan may be required which shall indicate the required usable area for each building site and such other information as the department may require.
3. A separate water supply system shall consist of a drilled well which has a capacity of providing an average yield of not less than five gallons per minute of potable water.
4. The use of individually dug wells or springs shall not be approved.
5. A separate sewerage system shall consist of septic tanks followed by subsurface leaching systems designed for the appropriate land usage.
6. The use of cesspools shall not be approved.

7. Whenever duly approved public water supply or public sewerage systems are made available and accessible for any sites or properties within such subdivision, any prior general approval for construction with separate water supply or separate sewerage systems shall be deemed null and void, and further construction shall be served by individual connections to the public systems so provided.

(§ 1107, Art. 11, eff. 9-1-1971)

Sec. 873.1011. Realty subdivisions; public water and separate sewerage systems.

1. Where water is to be provided by provision of or the extension of a public water supply system and sewerage is to be provided by a separate sewerage system on each building site, the usable area for sewerage facilities on each building site shall be based upon the particular conditions on each building site as determined by appropriate soil investigations and design report acceptable to the department. In any case, the usable area for separate sewerage systems shall not be less than 5,000 square feet.
2. Such usable area may be reduced not more than 50 percent where public sanitary sewer mains are installed in accordance with a duly approved plan for sewerage of the community and service connections from the sewer main to the property lines are installed so as to readily serve each site when such public sewerage system is available for use.
3. A plan may be required which shall indicate the required usable area for each building site and such other information as the department may require.
4. A separate sewerage system shall consist of septic tanks followed by subsurface leaching systems designed for the appropriate land usage.
5. The use of cesspools shall not be approved.
6. Whenever duly approved public sewerage facilities are made available and accessible for any sites or properties within such realty subdivision, any prior general approval for separate sewerage systems shall be deemed null and void, and further construction shall be served by individual connections to the public sewerage systems so provided.

(§ 1108, Art. 11, eff. 9-1-1971)

Sec. 873.1021. Realty subdivisions; public water and public sewerage systems.

1. Where water and sewerage services are to be provided by public water mains and public sanitary sewers, the required approval may be indicated by stamp or endorsement on the face of the original tracing of the proposed realty subdivision plan indicating that such approval is issued subject to the provision of such systems to serve every habitable building constructed therein.
2. Such systems shall thereafter be installed to serve every habitable structure in such realty subdivision.

3. Where it is proposed to provide water supply to sewerage systems by connection to an existing public water supply or sewerage system, the applicant shall supply the department with a certification, in writing, by the owner of the utility that such systems are adequate and will be furnished and maintained to serve the proposed subdivision.

(§ 1109, Art. 11, eff. 9-1-1971)

Sec. 873.1031. Realty subdivisions; public water supply; in general.

Public water supply systems shall be capable of delivering water meeting the provisions of the State Sanitary Code relating to drinking water supplies. Such systems shall provide for continuity of service, and if from a ground water source shall provide at least two separate sources, each of which shall have the required capacity, and the system shall have at least one day's available storage at design capacity.

(§ 1110, Art. 11, eff. 9-1-1971)

Sec. 873.1041. Realty subdivisions; water and sewerage; joint systems.

1. No arrangement intended to furnish water from a single well or other source of water to more than one building site, except individual connections from a public water supply shall be approved.
2. No arrangement intended to dispose of sewage by a separate sewerage system to serve more than one building site, except individual connections to a public sanitary sewer, shall be approved.

(§ 1111, Art. 11, eff. 9-1-1971)

Sec. 873.1051. Realty subdivisions; water and sewerage; existing improvement districts.

1. Within the corporate limits of any city or village or within any town water or sewer district, no plan for development of a realty subdivision shall be approved except where the plan provides for the extension or extensions of such water or public sanitary sewer systems to serve every habitable structure in such development; provided, however, that where each building site has an area of 40,000 square feet or greater, separate sewerage systems may be approved when, in the opinion of the department, the extension of public sanitary sewer systems is not necessary and each such site contains the required usable area.
2. Within the corporate limits of any city or village or within any town water or sewer district wherein public sewerage is contemplated within five years or less as determined by a resolution of the municipal governing board, interim separate sewerage systems may be permitted by the department provided that:
 - a. Dry sanitary sewers are designed, duly approved and properly installed in accordance with the municipal sewerage plan;
 - b. Capped or plugged plumbing is installed to serve each building and individual sewer connections are installed to the dry sewer; and
 - c. The soil is otherwise suitable for separate sewerage systems.

(§ 1112, Art. 11, eff. 9-1-1971)

Sec. 873.1061. Realty subdivisions; sale before construction of systems.

1. Whenever building sites are sold or offered for sale without the actual provision or construction of water supply or sewerage or land drainage systems having been installed, the seller shall furnish to each purchaser of such site at the time of the sale a legible reproduction of the realty subdivision plan bearing the approval of the department and indicating the arrangements for water supply and sewerage approved by the department.
2. The contract of sale or deed to the property shall contain a provision to the effect that the arrangements for water supply and sewage disposal and land drainage shall be installed in accordance with the plans approved by the department prior to the start of construction of any building on the property so acquired.

(§ 1113, Art. 11, eff. 9-1-1971)

Sec. 873.1071. Realty subdivisions; violations.

1. No person shall engage in the development of a realty subdivision otherwise than in accordance with the conditions or terms of the approval as given by the department, or approved amendments thereto.
2. Vacation of violations.
 - a. In addition to and independently of any other penalty, whenever the department shall have knowledge of the development of a realty subdivision otherwise than in accordance with the approval as given by the department, or approved amendments thereto, the commissioner shall issue a written notice of violation and such notice shall be served personally or by registered mail to the last-known address of the person filing such map and to the owner or owners of record of lands within such realty subdivision, if known, and to the developer, if known, otherwise by posting conspicuously on the property. A duplicate of such notice may be filed in any public office having jurisdiction.
 - b. After delivery of such notice as herein provided, the further development, sale, offer for sale, or contract for sale or rent of building sites therein and the extension or construction of water or sewerage systems to serve any habitable building therein shall be prohibited; provided, however, that upon submission of evidence satisfactory to the commissioner that the further development of the realty subdivision and the extension or construction of water or sewerage systems to serve any habitable building therein will be continued in accordance with approved plans or approved amendments thereto, the commissioner may authorize in writing the resumption of the development, extension or construction involved on such conditions, including the correction of the violation, as the commissioner shall prescribe. The violation shall not be vacated until such time as the commissioner shall be satisfied that the development, extension or construction involved is proceeding in accordance with the approved plans or amendments thereto.

- c. The sale, offer for sale, or contract for sale or rent of building sites of the realty subdivision shall not be permitted until the violation has been vacated in writing.

(§ 1114, Art. 11, eff. 9-1-1971)

Sec. 873.1081. Realty subdivisions; applicability of local laws.

1. Nothing contained in this article shall be construed to abrogate the authority of any municipal or other duly constituted agency having by law authority to regulate or control such subdivisions or any public facilities therein provided or proposed.
2. Nothing contained herein shall be construed to impair or abrogate the powers and functions of the Water Resources Commission or of any state or county agency having jurisdiction as now or hereafter provided by law.

(§ 1115, Art. 11, eff. 9-1-1971)

Sec. 873.1091. Realty subdivisions; variances.

1. The commissioner may on written application grant a variance from a specific provision of this article in a particular case, subject to appropriate conditions, where such variance is in harmony with the general purpose and intent of this code.
2. The commissioner may impose more stringent requirements in a specific case when necessary to assure an adequate and satisfactory water supply and sewerage system for the realty subdivision.

(§ 1116, Art. 11, eff. 9-1-1971)

ARTICLE XI. MISCELLANEOUS PROVISIONS

Sec. 873.1101. Definitions.

1. *Fumigant* shall mean and include any substance which by itself or in combination with any other substance is capable of emitting or emits or liberates a gas, fumes, or vapors and which gas, fumes or vapors, when so emitted or liberated, may be lethal, poisonous or dangerous to human life.
2. *Poisonous insecticide or exterminator* shall mean and include any substance, not a fumigant, used for the destruction or control of insects, fungi, vermin, rodents or other pests and which may be destructive to human life in quantities of sixty (60) grains or less.

(§ 1, Art. XI, eff. 9-1-1959; renumbered as § 1, Art. XIII, eff. 9-1-1971)

Sec. 873.1111. Pollution of atmosphere.

(§ 2, Art. XI, eff. 9-1-1959; repealed 2-25-1971 and 6-3-1971, eff. 9-1-1971)

Sec. 873.1120. Public function; permit.

No person shall operate a public function, as defined in Part 18 of Chapter I of the New York State Sanitary Code, without first obtaining a valid permit issued by the department to operate such facility.

(Added 12-20-1990, eff. 1-1-1991)

Sec. 873.1121. Cleanliness of public toilets.

Every person who shall provide a toilet for the use of employees, patrons or members or available to the public shall maintain such toilet at all times in a clean, well lighted, ventilated and sanitary condition. An adequate supply of clean toilet paper shall be provided at all times. The floor of any such toilet under and adjacent to a urinal fixture shall be impervious to moisture and properly drained. No drinking cup, towel, hair brush or comb shall be provided for common use in any such toilet or in a washroom, rest room or locker room adjacent thereto. The owner of a building or dwelling, or his agent in charge thereof, wherein two or more tenants shall have common use of a toilet or privy, shall be responsible for the maintenance of such toilet or privy in repair and in a clean and sanitary condition.

(§ 3, Art. XI, eff. 9-1-1959; renumbered as § 3, Art. XIII, eff. 9-1-1971)

Sec. 873.1131. Fumigants and insecticides.

1. *Poisonous insecticides and exterminators.* The handling, storage or use of any poisonous insecticide or exterminator in any place where food or drink is served, sold, processed, kept or offered for sale is prohibited unless the container is labeled as required by the State Sanitary Code and is kept readily available upon the premises until the insecticide or exterminator has been completely removed, or unless a clearly legible sign bearing information identical to the information required on the label of the container is posted conspicuously in every room where such insecticide or exterminator is in use.
2. *Sodium fluoroacetate (1080).* No person shall possess, distribute, sell or offer for sale or deliver or transport other than in interstate traffic, sodium fluoroacetate, also known as Compound 1080, or any solution or preparation made therefrom, unless he shall have first obtained a special permit therefor from the commissioner.
3. *Cyanogen gas.* No person shall use any fumigant emitting or capable of emitting cyanogen gas within any building or structure, other than in an unoccupied commercial or business establishment which is completely isolated and separated from any occupied structure, unless he shall have first obtained a special permit therefor from the commissioner and provided that the use of the fumigant is otherwise undertaken in accordance with rules and regulations adopted pursuant to this code.
4. *Special permits.* A separate application shall be made and a separate permit shall be required for each use of sodium fluoroacetate or cyanogen gas. Such permit shall be issued only to a particular individual, for a specified use or purpose, and for such use or purpose only on a specified date and under such conditions as may be stated thereon. Such permit shall be valid only for the

specified individual, use or purpose and date. The issuance of such permits shall be at the discretion of the commissioner, who shall give due consideration to the qualifications and fitness of the applicant, the need for the use of the specified material and the conditions under which such material is proposed to be used, possessed, delivered or transported. The commissioner may make and promulgate such rules and regulations relating to the use of sodium fluoroacetate or cyanogen gas as he may consider necessary to protect public health and to enforce the provisions of this code.

(§ 4, Art. XI, eff. 9-1-1959; renumbered as § 4, Art. XIII, eff. 9-1-1971)

Sec. 873.1141. Wading pools.

No wading pool shall be constructed or made available for public use unless it shall be provided with suitable facilities for replacement of water and for cleaning. Every such wading pool shall be maintained in a clean and sanitary condition and the water used therein shall be from a public water supply or from a source approved by the Department of Health.

(§ 5, Art. XI, eff. 9-1-1959; renumbered as § 5, Art. XIII, eff. 9-1-1971)

Sec. 873.1151. Public exhibitions prohibited except under permit.

No person shall set up or operate any transient circus or carnival or public exhibition unless a special permit therefor shall first have been obtained from the commissioner and unless such circus, carnival or exhibition shall, in the provision and maintenance of sanitary facilities and in the preparation, handling and sale of food and drink, conform fully to the provisions of the Sanitary Code.

(§ 6, Art XI, eff. 9-1-1959; renumbered as § 6, Art XIII, eff. 9-1-1971)

Sec. 873.1161. Unconstitutionality clause.

In the event any section, paragraph, sentence, clause or phrase of this Sanitary Code shall be declared unconstitutional or invalid for any reason, the remainder of said code shall not be affected thereby.

(§ 7, Art XI, eff. 9-1-1959; renumbered as § 7, Art XIII, eff. 9-1-1971)

Sec. 873.1171. Migrant labor camp; permits.

No person shall operate a migrant labor camp, as defined in Part 15 of Chapter I of the New York State Sanitary Code, without first obtaining a valid permit issued by the department to operate such facility.

(Added 12-20-1990, eff. 1-1-1991)

Sec. 873.1181. Temporary resident; permit.

No person shall operate a temporary residence, as defined in Part 7 of Chapter I of the New York State Sanitary Code, without first obtaining a valid permit issued by the department to operate such facility.

(Added 12-20-1990, eff. 1-1-1991)

Sec. 873.1191. Mobile home park; permit.

No person shall operate a mobile home park, as defined in Part 17 of the New York State Sanitary Code, without first obtaining a valid permit issued by the department to operate such facility.

(Added 12-20-1990, eff. 1-1-1991)

ARTICLE XII. BATHING FACILITIES

Sec. 873.1200. Swimming pools; permit.

No person shall operate a swimming pool, as defined in Part 6-1 of Chapter I of the New York State Sanitary Code, without first obtaining a valid permit issued by the department to operate such facility.

(Added 6-22-1989, eff. 6-22-1989*; amended 3-19-1992, eff. 3-30-1992)

***Editor's note:** This resolution added a new Article XII and also repealed former Article XII, effective 11-12-1987.

Sec. 873.1201. Bathing beaches; permit.

No person shall operate a bathing beach, as defined in Part 6-2 of Chapter I of the New York State Sanitary Code, without first obtaining a valid permit issued by the department to operate such facility.

(Added 6-22-1989, eff. 6-22-1989; amended 3-19-1992, eff. 3-30-1992)

Sec. 873.1202. Swimming pools; operator.

All pools larger than 1,000 square feet in surface area or pools disinfected using gas chlorine shall be maintained by a qualified swimming pool treatment operator within one year of the effective date of this section. A "qualified swimming pool treatment operator" shall mean an individual possessing evidence of the successful completion of either of the following courses:

1. A New York State Department of Health Water Treatment Plant Operator Certification Course Type A or B; or
2. An adequate course of instruction regarding the safe and effective operation and maintenance of pool treatment equipment.

(Added 6-22-1989, eff. 6-22-1989; amended 3-19-1992, eff. 3-30-1992)

Sec. 873.1203. Bathing facilities; certificates.

1. No person shall operate or maintain or permit the use of any bathing facility

without first having obtained a certificate to operate from the commissioner.*

***Editor's note:** For issuance and term of certificates, see Rules and Regulations of the Commissioner Policy No. BF 2-89, effective 7-5-1989, which is on file in the office of the Commissioner of Health.

2. An application for a certificate to operate shall be made to the department on forms provided by the department at least 30 days before the use of such facility.
3. Every certificate shall be kept on the premises designated by the certificate and shall be posted in a conspicuous place in the premises in such manner as to be visible to the public and shall be available for inspection at all times by the department.
4. This section does not apply to childrens' camps where the bathing beach or swimming pool that is located on the camp's property is solely used for the patrons of the camp.

(Added 6-22-1989, eff. 6-22-1989)

Sec. 873.1204. Bathing facilities; safety.

1. At least one qualified lifeguard shall be required at all swimming pools for each 75 bathers.*

***Editor's note:** For exceptions for facilities containing wading and whirlpools, see Rules and Regulations of the Commissioner Policy No. BF-89, effective 7-5-1989, which is on file in the office of the Commissioner of Health.

2. The bathers shall be under the direct supervision of the qualified lifeguard.
3. Additional qualified lifeguards shall be required by the commissioner whenever, in his opinion, it is necessary for the protection of the bathers. When more than six lifeguards are required, the commissioner may accept a management safety plan submitted by the operator to justify ratios exceeding one lifeguard per 75 bathers.
4. First-aid equipment.
 - a. All bathing facilities and bathing beaches must have the following equipment on site and readily available:
 - i. A 24-unit first-aid kit.*

***Editor's note:** For standards for first aid kits, see Rules and Regulations of the Commissioner of Health Policy No. BF 3-89, effective 7-5-1989, which is on file in the office of the Commissioner of Health.

- ii. A spine board, minimum six feet long and 16 inches wide, with ten hand holes and two straps.
 - iii. A pocket mask for CPR.
 - iv. Extrication collars.
- b. The following minimum equipment shall at all times be provided and readily available at each swimming pool, white-water slide, wave pool, special purpose pool and movable bottom pool:
 - i. Two rescue tubes with six feet of line.
 - ii. One reaching pole 15 feet long.
- c. The following minimum equipment shall be provided and readily available at each bathing beach:
 - i. Two rescue tubes six feet long.
 - ii. One rescue pole 15 feet long to be located at docks or floats when applicable for such bathing beach.
 - iii. One rescue board.
 - iv. One boat for tidal beaches and for large beach in excess of 500 people.
- d. A responsible person may be employed in lieu of a qualified lifeguard at wading pools.
- e. At spa pools, a responsible person must post an American Red Cross basic life-support CPR or equivalent and be capable of monitoring the operation of the spa pool water treatment equipment.
- f. A warning sign with an area of at least three square feet stating the following caution statements shall be conspicuously posted in the vicinity of the spa:

CAUTION

1. Elderly persons and those suffering from heart disease, diabetes, high or low blood pressure should be prohibited from using the spa pool.
2. Unsupervised use by children is prohibited.
3. Do not use while under the influence of alcohol, anticoagulants, antihistamines, vasoconstrictors, vasodilators, stimulants, hypnotics, narcotics or tranquilizers.
4. Do not use alone.
5. Observe a reasonable time limit [e.g. 15 minutes], then shower, cool down and, if you wish, return for another brief stay. Longer exposure may result in nausea, dizziness or fainting.
6. Help can be obtained by using the telephone and posted

emergency telephone numbers for police, fire department, physician, ambulance and hospital.

- g. The maximum water temperature for spa pools shall not exceed 104 degrees Fahrenheit. A thermostatic control for the water shall be provided. An audible alarm system shall be installed and maintained to warn of any temperature over 104 degrees Fahrenheit.
 - h. A manual timer shall be installed that will require resetting after 15 minutes and controls either the heater or agitation pump.
- 5. An elevated lifeguard chair of sufficient height to provide an unobstructed view of the entire pool shall be provided at each swimming pool, white-water slide, wave pool, special purpose pool, moveable bottom pool or bathing beach at each lifeguard station.
 - 6. All lifeguards shall, at all times while on duty, wear a hat or outer garment conspicuously bearing the word "lifeguard" in durable letters in a color in contrast to the color of the hat or outer garment.
 - 7. At wading pools and spa pools, one responsible person shall be provided on the premises whenever it is open for use.
 - 8. At spa pools, this person shall possess a Race for Life Cardiopulmonary Resuscitation (CPR) certificate from the American National Red Cross or its equivalent and shall be knowledgeable in the monitoring and operation of the spa pool water treatment equipment, and the required pool safety plan shall contain provisions for acceptable supervision of each spa pool on the premises.
 - 9. No swimming pool or bathing beach operated at any place shall be used or open for use unless lifesaving equipment is maintained and readily accessible for use as provided by law.

(Added 6-22-1989 eff. 6-22-1989)

Sec. 873.1205. Bathing facilities enforcement.

- 1. Whenever the results of samples of water taken by representatives of the department show bacterial quality in excess of the standards set forth in the Code or Part 6 of the State Sanitary Code, the commissioner shall order treatment of the water involved or discontinuance of the use of such waters and related bathing facilities.
- 2. Enforcement.
 - a. When in the opinion of the commissioner or the commissioner's representative a bathing facility does not meet the requirements of the Code, Part 6 of the State Sanitary Code or the standards and requirements of the department and so may constitute a danger to life, safety or health, the commissioner or representative shall require the immediate cessation of the operation of the bathing facility, and all persons shall forthwith vacate the bathing facility.
 - b. Whenever a representative of the commissioner shall find a violation of this article as may constitute a danger to life, safety and health, he shall

verbally direct the immediate cessation of the operation of the bathing facility, and all persons shall forthwith vacate the facility.

- c. Notice of violation and notice to cease operation shall within 24 hours of notice of cessation of operation be served upon the person, if any, found in charge of the bathing facility or by posting such notice at the bathing facility to the effect that such waters are unsafe for swimming, wading or bathing and that bathing is prohibited.
3. Nothing herein contained shall preclude any other enforcement procedure or the assessment of penalties as provided by law.

(Added 6-22-1989, eff. 6-22-1989)

Sec. 873.1206. Bathing facilities; sewage disposal.

No person shall construct any sewage disposal facilities at a bathing facility without first having obtained approval from the commissioner for such construction.

(Added 6-22-1989, eff. 6-22-1989)

Sec. 873.1207. Bathing facilities; swimming pools; wading pools; maintenance of quality of water.

1. The water in a swimming pool or wading pool shall be maintained at all times in such an alkaline condition that the pH value of the water in the swimming pool or wading pool shall be between 7.2 and 8.2.
2. Visible cleanliness.
 - a. The bottom and sidewalls of a swimming pool or wading pool shall be kept free from sediment and visible dirt.
 - b. Visible floating matter on the surface of a swimming pool or wading pool shall be removed.
 - c. The water in a swimming pool or wading pool shall be sufficiently clear to permit a white and black object four inches in diameter placed on the bottom of the pool at the deepest point to be clearly visible from the side thereof when the pool is in use.
3. Not more than 15 percent of a series of seven or more samples or not any sample in a series of six or less samples collected from a swimming pool in any one month shall show either the presence of bacteria of the coliform group in any of the five ten-milliliter portions examined when the multiple tube fermentation test is used or the presence of more than 1.0 coliform organisms per 50 milliliters when the membrane filter test is used or contain more than 200 bacteria per milliliter.
4. Whenever the condition or quality of the water at a swimming pool or wading pool or the physical condition at a swimming pool or wading pool, in the opinion of the commissioner or duly authorized representative, in writing, is detrimental or potentially detrimental to health, welfare or safety or a combination thereof, the commissioner or the commissioner's representatives in writing, shall order the swimming pool or wading pool and area be closed and enjoined from operation.

(Added 6-22-1989, eff. 6-22-1989)

Sec. 873.1208. Bathing facilities; bathing beaches; maintenance of quality of water.

1. Standards.
 - a. No series of five or more samples of bathing water collected from a bathing beach in any 30-day period shall exceed a logarithmic mean of 2,400 organisms of the coliform group per 100 milliliters nor shall 20 percent of the total samples collected during any 30-day period exceed 5,000 organisms of the coliform group per 100 milliliters.
 - b. No sample from a public or private partly artificial pool or beach maintained on any freshwater stream, lake, pond or other body of water when collected as in the preceding subsection shall show the presence of bacteria of the coliform group as indicated by a most probable number per 100 milliliters of 2,400, and in any series of six or more samples, the mean average most probable number per 100 milliliters shall not exceed 240.
 - c. No sample from a public or private beach located on Long Island Sound or the Hudson River, when collected as in subsection 1.a., shall show the presence of bacteria of the coliform group exceeding a most probable number per 100 milliliters of 4,600 and no two consecutive samples the mean average most probable number per 100 milliliter of 2,400.
 - d. When the standards herein prescribed are exceeded, the department shall cause an investigation to be made to determine and eliminate the source or sources of pollution.
 - e. Whenever the condition or quality of the water at a bathing beach or the physical condition at a bathing beach, in the opinion of the commissioner or the commissioner's representative, in writing, is detrimental or potentially detrimental to health, welfare or safety or a combination thereof, the commissioner or the commissioner's representative, in writing, shall order the bathing beach and area to be closed and enjoined from operation.
2. The pH of bathing beach water shall be within the range of 6.5 to 8.3 inclusive except when due to natural causes and in no case shall it be less than 5.0 nor more than 9.0.

(Added 6-22-1989, eff. 6-22-1989)

Sec. 873.1209. Bathing facilities; swimming pools; wading pools; disinfection.

1. Chlorination.
 - a. When the disinfection of the water in a swimming pool or wading pool is by chlorination secured through the use of chlorine, calcium hypochlorite or sodium hypochlorite, the dose of chlorine or chlorine compound added shall be sufficient to secure a concentration of at least 0.6 milligram per

liter free residual chlorine or at least 1.2 combined residual chlorine or the sum of free residual chlorine plus combined residual chlorine of at least 1.2 milligrams per liter in all portions of the swimming pool or wading pool throughout each bathing period; provided, however, that the pH value of the water is maintained between 7.2 and 7.8.

- b. When the water in a swimming pool or wading pool to be disinfected with chlorine has a pH value between 7.8 and 8.2, a free residual chlorine of at least 1.5 milligrams per liter shall be maintained in the water at all times.
- c. The DPD ferrous titrimetric, leucocrystal violet tests or an equivalent test approved by the State Commissioner of Health or the department shall be made at the beginning, during and at the end of each day that the swimming pool or wading pool is in use to determine the concentration of free residual chlorine and combined residual chlorine in the water.
- d. All chlorine shall be added to a swimming pool or wading pool by mechanical means as set forth in Subpart 6-1 of the New York State Sanitary Code.*

***Editor's note:** For manner of adding chlorine, see Rules and Regulations of the Commissioner Policy No. BF 4-89, effective 7-5-1989, which is on file in the office of the Commissioner of Health.

2. When the disinfection of the water in a swimming pool or wading pool is by the use of bromine, the following conditions shall be met:
 - a. Approved feeding equipment shall be provided with pH control and the pH shall be kept between 7.0 and 7.8;
 - b. Test kits shall be provided to measure pH and residual bromine;
 - c. A bromine residual between 1.5 and 3.0 milligrams per liter shall be maintained at all times the pool is in use; and,
 - d. Where bromine is used as a disinfectant, the permit-issuing official shall first approve use of solid stick-type bromine and the equipment provided for feeding on a continuous basis.

(Added 6-22-1989, eff. 6-22-1989)

Sec. 873.1210. Bathing facilities; operators.

All pools included by the Commissioner's Rules and Regulations No. BF 6-89 shall be maintained by an approved pool operator.*

***Editor's note:** See Rules and Regulations of the Commissioner Policy No. BF 6-89, effective 7-5-1989, which is on file in the office of the Commissioner of Health.

(Added 6-22-1989, eff. 6-22-1989)

Sec. 873.1211. Bathing facilities; separability.

If any provision of this article is held invalid, such invalidity shall not affect other provisions which shall be given effect without the invalid provision.

(Added 6-22-1989, eff. 6-22-1989)

ARTICLE XIII. AIR QUALITY

Sec. 873.1301. Air quality; definitions.

Whenever used in this article, unless otherwise expressly stated or unless the context or subject matter requires a different meaning, the following terms shall have the respective meanings hereinafter set forth or indicated:

1. *Aerosol.* The term "aerosol" means a gaseous system containing disperse particulates.
2. *Air contaminant.* The term "air contaminant" means a dust, fume, gas, mist, odor, smoke, vapor, pollen or any combination thereof.
3. *Air contamination.* The term "air contamination" means the presence in the outdoor atmosphere of one (1) or more air contaminants which contribute or which are likely to contribute to a condition of air pollution.
4. *Air contamination source.* The term "air contamination source" means any apparatus, equipment, contrivance or machine capable of causing emission of any contaminant to the outdoor atmosphere either directly or indirectly or through an exhaust system, control equipment or stack; provided, however, that when more than one (1) apparatus, piece of equipment, contrivance or machine is connected to a single exhaust system, control equipment, stack or emission point, each such apparatus, piece of equipment, contrivance or machine shall be considered to be a separate air contamination source.
5. *Air pollution.* The term "air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in quantities, of characteristics and of a duration which are or may be injurious to human, plant or animal life or to property or which unreasonable interferes with the comfortable enjoyment of life and property throughout the county or throughout such areas of the county as shall be affected thereby.
6. *Air pollution episode.* The term "air pollution episode" means an accident, occurrence, condition, weather conditions and/or concentration of an air contaminant or contaminants so that the immediate action is necessary to prevent further increases in air contamination or damage to life, property or environmental quality.
7. *Air quality area classifications.* The term "air quality area classifications" means air quality area classifications as set forth in Part 256 of Subchapter A of Chapter III of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR).
8. *Ambient air quality standards.* The term "ambient air quality standards" means the ambient air quality standards required to be met under and pursuant to the

provisions of Part 257, Subchapter A of Chapter III of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR).

9. *Combustion installation.* The term "combustion installation" means a plant, equipment or device in which fuel is burned for the primary purpose of generating heat, steam or hot water.
10. *Combustion products.* The term "combustion products" means particulate and gaseous contaminants created by the burning of any kind of fuel.
11. *Control equipment.* The term "control equipment" means a device which is used to reduce the quantity or change the physical or chemical characteristics of the emission of air contaminants from any air sources.
12. *Designated zone.* The term "designated zone" means a zone after the furnace outlet of an incinerator in which the emissions from the furnace outlet are subjected to a temperature of not less than one thousand four hundred (1,400) F. for a period of time designated by the commissioner.
13. *Dry-cleaning facility.* The term "dry-cleaning facility" means any facility engaged in the cleaning of fabrics in an essentially nonaqueous solvent by means of one (1) or more washes in a solvent, extraction of excess solvent by spinning and drying by tumbling in an airstream. The facility includes but is not limited to any washer, dryer, filter and purification systems, waste disposal systems, holding tanks, pumps and attendant piping and valves.
14. *Emission point.* The term "emission point" means any point at which air contaminants enter the outer atmosphere from an air contamination source.
15. *Exhaust and ventilation system.* The term "exhaust and ventilation system" means any process which removes and transports any air contaminant products from their point of generation to the outer atmosphere.
16. *Fly ash.* The term "fly ash" means visible solid particulate matter emitted from an air contamination source to the outer atmosphere.
17. *Fuel.* The term "fuel" means solid, liquid or gaseous combustible materials.
18. *Fuel-burning equipment.* The term "fuel-burning equipment" means any furnace, steam, hot-air or hot-water generating equipment or any other device, exclusive of process equipment in which the fuel is burned.
19. *Fuel oil.* The term "fuel oil" means any virgin distillate oil, virgin residual oil, re-refined oil or any blend of the aforementioned meeting the latest specifications of the American Society of Testing Materials (ASTM) D396.
20. *Furnace outlet.* The term "furnace outlet" means the end point at which the air contaminants exit from the primary chamber in a single chamber incinerator and the secondary chamber in a multiple-chamber incinerator.
21. *Garbage.* The term "garbage" means animal and vegetable waste resulting from the handling, preparation, cooking and serving food.
22. *Incinerator.* The term "incinerator" means any structure or furnace in which combustion takes place, the primary purpose of which is the reduction in volume and weight of unwanted materials, classified only as Type 0, 1, 2, 3 or 4 refuse,

is used as a fuel alone or in conjunction with other fuel.

23. *Opacity.* The term "opacity" means the degree to which emissions other than condensed water reduce the transmission of light and obscure the view of an object in the background.
24. *Open fire.* The term "open fire" means any outdoor fire or outdoor smoke producing process from which air contaminants are emitted directly into the outer atmosphere.
25. *Outer atmosphere.* The term "outer atmosphere" means all space outside of buildings, structures, stacks or exterior ducts.
26. *Particulates.* The term "particulates" means any air-or gas-borne material, except water, which exists as a liquid or solid. The determination of the quantity of particulates present in a stack shall be determined in accordance with emission testing methods acceptable to the commissioner.
27. *Person.* Except for any federal or state agencies, the term "person" means any individual, firm, public or private corporation, association, partnership, institution, political subdivision, government agency, public body, joint-stock association, trust, estate or other group of individuals or combination of the foregoing or any other legal entity whatsoever, and includes the plural as well as the singular.
28. *Process.* The term "process" means any industrial, commercial, agricultural or other activity, operation, manufacturer or treatment (except incineration of Type 0, 1, 2, 3 and 4 waste, open burning and operation of combustion installations) in which chemical, biological and/or physical properties of the material or materials are changed and which emits air contaminants to the outer atmosphere.
29. *Process weight.* The term "process weight" means the total weight of all materials introduced into any specific process which may cause any discharge into the outer atmosphere and shall include solid fuels used in the process, but shall not include liquid and gaseous fuels, uncombined water and combustion air.
30. *Process weight per hour.* The term "process weight per hour" means the total process weight divided by the number of hours in one complete operation of the process from the beginning of a cycle to the completion thereof and, for any continuing processes, shall be determined on a daily basis.
31. *Re-refined oil.* The term "re-refined oil" means any waste oil from which physical and chemical contaminants have been removed so that it is equivalent to virgin distillate or virgin residual oil.
32. *Refuse.* The term "refuse" means all waste material, including but not be limited to offensive material, garbage, rubbish, incinerator residue, street cleaning, dead animals, offal and Types 0, 1, 2, 3, 4, 5 and 6 wastes.
33. *Refuse disposal area.* The term "refuse disposal area" means land used for depositing of refuse except that it shall not include land used from depositing of refuse from a single family, a member of which is the owner, occupant or lessee of said land, or any part of a farm on which only animal wastes resulting from the operation of such farm are deposited, and includes, but is not limited to, those areas commonly referred to as landfills, sanitary landfills and dumps.
34. *Residence time.* The term "residence time" means the length of time in which the

product of combustion reaches the desired temperature and is maintained at that temperature.

35. *Rubbish*. The term "rubbish" means solid or liquid waste material, including but not limited to paper and paper products, rags, trees, or leaves, needles and branches therefrom, vines, lawn and garden debris, furniture, cans, crockery, plastics, cartons, chemicals, paint, greases, sludges, oils and other petroleum product, wood, sawdust, demolition materials, tires, and automobiles and other vehicles and parts, for junk, salvage or disposal.
36. *Smoke*. The term "smoke" means an air contaminant consisting of small gas-borne particles emitted by source of air contamination.
37. *Source sample*. The term "source sample" means a sample of the emission from an air contamination source, collected for analysis from within a stack.
38. *Stack*. The term "stack" means any conduit, chimney, duct, vent, flue or opening of any kind arranged to conduct any air contaminant to the outer atmosphere.
39. *Type 0 waste*. The term "Type 0 waste" means rubbish consisting of highly combustible materials such as paper, wood and cardboard, including up to ten percent treated papers, rags, plastic or rubber from commercial and industrial sources of the following characteristics approximately one hundred (100) percent rubbish by weight; ten (10) percent moisture by weight; five (5) percent incombustible solids by weight and a heat value of eight thousand five hundred (8,500) BTU per pound of refuse.
40. *Type 1 waste*. The term "Type 1 waste" means some garbage but primarily rubbish consisting of combustible material such as paper, cardboard, wood, combustible floor sweepings from residential, commercial and industrial sources of the following characteristics: approximately eighty (80) percent rubbish, twenty (20) percent garbage; twenty-five (25) percent moisture by weight; ten (10) percent incombustible solids by weight; six thousand five hundred (6,500) BTU per pound of refuse.
41. *Type 2 waste*. The term "Type 2 waste" means rubbish and garbage from residential sources of the following characteristics: approximately fifty (50) percent rubbish, fifty (50) percent garbage; fifty (50) percent moisture by weight; seven (7) percent incombustible solids by weight and four thousand three hundred (4,300) BTU per pound of refuse.
42. *Type 3 waste*. The term "Type 3 waste" means some rubbish, but primarily garbage consisting of animal and vegetable matter from restaurants, hotels, markets, institutional and commercial sources of the following characteristics: approximately sixty-five (65) percent garbage, thirty-five (35) percent rubbish; seventy (70) percent moisture by weight; five (5) percent incombustible solids by weight and two thousand five hundred (2,500) BTU per pound of refuse.
43. *Type 4 waste*. The term "Type 4 waste" means human and animal solid refuse consisting of carcasses and organs from hospitals, laboratories, abattoirs, animal pounds and similar sources of the following characteristics: approximately one hundred (100) percent animal and human tissue by weight; eighty-five (85) percent moisture by weight; five (5) percent incombustible solids by weight and one thousand (1,000) BTU per pound of refuse.

44. *Type 5 waste.* The term "Type 5 waste" means gaseous, liquid or semiliquid refuse from processes such as tar, paint, solvents and chemical sludge of the following characteristics: approximately variable by weight; dependent on predominant components moisture by weight; variable incombustible solids by weight and variable BTU per pound of refuse.
45. *Type 6 waste.* The term "Type 6 waste" means solid or semi-refuse from processes such as rubber, plastics, wood and sewage sludge of the following characteristics: approximately variable by weight; dependent on predominant components by weight; variable moisture by weight; variable incombustible solids by weight; and variable BTU per pound of refuse.
46. *Trained observer.* The term "trained observer" means any person who holds certification in training to observe opacity from the Department of Environmental Conservation of the State of New York or any similar course acceptable to the commissioner.
47. *USEPA Method Nine.* The term "USEPA Method Nine" means the method for visual determination of the opacity of emissions as approved and promulgated by the United States Environmental Protection Agency as published in the Federal Register, Volume 39, Number 219, November 12, 1974, and any revisions thereto.
48. *Waste oil.* The term "waste oil" means any oil or mixture of oil that does not constitute fuel oil as defined in this section.

(Added 5-28-1987, eff. 5-28-1987;* amended 3-18-1993, eff. 3-18-1993)

***Editor's note:** This resolution also repealed former Article XIII, Air Pollution Control, adopted 9-1-1971 as Art. 16.

Sec. 873.1302. Air quality; general provisions.

1. No person shall permit or cause any air contamination source to produce air pollution.
2. Any person responsible for a new, existing or modified source of air pollution shall provide pertinent data concerning emissions, equipment and operations.
3. Any person who shall refuse to comply with any provision of this article or who hinders, obstructs, delays, resists, prevents or in any way interferes or attempts to interfere with the commissioner or his representative in the performance of his duties or assists any other person in such conduct or who refuses to permit such personnel, after identification, to perform his duties by refusing him entrance to any premises in which the provisions of the code are being, have been or are suspected of being violated or refuses to permit the inspection or examination of such premises for compliance with and enforcement of the code shall be liable for such penalty as prescribed by law and the provisions of the code.
4. All persons owning, operating, in charge of or in control of any equipment who shall cause, permit or participate in any violation of the code shall be liable for

such penalty as prescribed by law and the provisions of the code.

5. Any person violating any of the provisions of this article or who knowingly makes any false statement or false report in connection therewith shall be liable for such penalty as prescribed by law and the provisions of the code.
6. Any information relating to secret processes, methods of manufacture or production submitted in connection with reports, plans and specifications or testing shall be considered as privileged communications and shall not be released or made public without the express permission of the applicant except as prescribed by law.

(Added 5-28-1987, eff. 5-28-1987)

Sec. 873.1303. Air quality; new sources; plans; approval.

1. No person shall undertake to construct a new air contamination source, exhaust and ventilation system, stack or control equipment or make modifications to an existing air contamination source, exhaust and ventilation system, stack or control equipment without first submitting to the commissioner an application, plans and specifications and any other information as may be required by the department and without obtaining prior written approval therefor, except as hereinafter provided.
2. Reports, plans and specifications for construction of an air contamination source, exhaust and ventilation system, stack or control equipment or modifications to an existing air contamination source, exhaust and ventilation system, stack or control equipment shall be submitted in accordance with the standards, guides, rules and regulations duly promulgated by the commissioner.
3. The department may require a physical and chemical analysis or test of any emission before any approval, the expense of which analysis or test shall be borne by the applicant.

(Added 5-28-1987, eff. 5-28-1987)

Sec. 873.1304. Air quality; action on applications.

1. The department shall acknowledge receipt of each application, reports, plans and specifications to construct an air contamination source, exhaust and ventilation system, stack or control equipment or to make modifications to an existing air contamination source, exhaust and ventilation system, stack or control equipment.
2. An approval of an application to construct an air contamination source, exhaust and ventilation system, stack or control equipment or to make modifications to an existing air contamination source, exhaust and ventilation system, stack or control equipment shall be granted only when in conformance with the requirements of the code, rules, regulations and standards of the commissioner, the department, the Department of Environmental Conservation of the State of New York and the Environmental Protection Agency of the United States.
3. If an application to construct an air contamination source, exhaust and ventilation system, stack or control equipment or to make modifications to an existing air

contamination source, exhaust and ventilation system, stack or control equipment be denied, the applicant shall be notified in writing to that effect and the reasons therefor.

4. Denial of an application shall be without prejudice to the applicant's filing an amended application or to request a hearing therefor.

(Added 5-28-1987, eff. 5-28-1987)

Sec. 873.1305. Air quality; new sources; modifications; approval to construct; nontransferable.

Approval to construct an air contamination source, exhaust and ventilation system, stack or control equipment or to make modifications to any existing air contamination source, exhaust and ventilation system, stack or control equipment shall not be transferable from one approved location to another or from one piece of equipment to another or from one person to another.

(Added 5-28-1987, eff. 5-28-1987)

Sec. 873.1306. Air quality; new and existing sources; modifications; certificate to operate; nontransferable; filing.

1. No person shall operate an air contamination source without first obtaining a valid certificate issued by the department to operate such source.
2. Application.
 - a. Application for a certificate to operate an air contamination source or modification to an existing air contamination source shall be made in writing to the department and shall be accompanied by a written statement from a professional engineer, licensed and registered to practice in the State of New York, certifying that the new air contamination source or modification to an existing air contamination source has been constructed in accordance with the approved permit to construct, plans and specifications.
 - b. Such application shall be made within 30 days of the date of completion of the air contamination source on forms provided by the department and in accordance with the permit to construct.
3. Issuance of certificate; renewal.
 - a. A certificate to operate an air contamination source shall be issued for a period of time in accordance with the Commissioner's Rules and Regulations.*

***Editor's note:** See Rules and Regulations of the Commissioner Policy No. AQ 1-87, effective 5-28-1987, which is on file in the office of the Commissioner of Health.

- b. Application for a renewal certificate to operate an air contamination source shall be filed with the department within 60 days prior to the

expiration of the existing certificate and shall be made on forms provided by the department.

4. A certificate to operate an air contamination source shall not be transferable from one approved location to another or from one air contamination source to another or from one person to another.
5. A certificate to operate an air contamination source, or a copy thereof, shall be permanently retained on the certified premises.
6. No person shall maintain, cause or allow to be operated a stationary combustion installation with a rated capacity of 1,000,000 Btu's per hour or more, using number two, four and six oil as fuel without a certificate to operate issued by the department.

(Added 5-28-1987, eff. 5-28-1987)

Sec. 873.1307. Air quality; new sources; modifications; safeguarding information.

1. Information pertaining to manufacture, production or secret processes submitted in connection with an application, report, plans and specifications to construct an air contamination source, control equipment, exhaust and ventilation system or stack, or to make modification to an existing air contamination source, control equipment, exhaust and ventilation system or stack, and designated as secret or proprietary information shall be kept confidential by the department, except that it may be produced at an administrative hearing, a court of competent jurisdiction or pursuant to any applicable provisions of law; provided, however, that the quantity, physical and chemical characteristics of actual and allowable air contaminant emissions shall be considered to be public information.
2. The provisions of this section shall also apply to alteration, reconstruction and extension of systems.

(Added 5-28-1987, eff. 5-28-1987)

Sec. 873.1308. Air quality; exemptions; relocations; minor alterations.

1. Whenever it is considered by the department that a new installation or modification to an existing installation is not likely to increase the amount or change the effects or characteristics of air contaminants discharged, such installation or modification may be exempted from the provisions of section 873.1303 of this code.
2. Reports, plans and specifications for relocations of a previously approved air contamination source within the same premises or minor alterations of such air contamination source need not be submitted for approval; provided, however, that the department shall be in advance thereof notified in writing by the owner or his duly authorized representative of each relocation or minor alteration.
3. A relocation or minor alteration of an air contamination source shall be one which does not change significantly the amount, character or effect of emissions.
4. Determination as to whether a relocation or minor alteration of an air

contamination source is exempt from the filing of reports, plans and specifications shall be made by the department.

(Added 5-28-1987, eff. 5-28-1987)

Sec. 873.1309. Air quality; testing of installations.

1. Notification.
 - a. The owner of an installation for which a permit to construct an air contamination source has been issued by the department shall notify the department in writing of its completion, and such notification must occur prior to the expiration of the permit to construct.
 - b. The owner of an installation shall notify the department at least 30 days prior to the test date of the time and place of any tests to be performed on the installation as required by the department and in accordance with the approved report, plans and specifications for the installation, which date shall be scheduled and acceptable to the department.
 - c. If tests, including stack tests, are required in accordance with the permit to construct, the owner shall specify in writing by whom they are to be conducted.
2. Conduct of tests; costs.
 - a. A representative of the department shall be present and witness the test or tests to be conducted on the installation.
 - b. Tests shall be made and conducted in a manner acceptable to the department, and the results of such tests shall be submitted to the department.
 - c. The costs of tests shall be borne by the owner of the installation.
3. Samples.
 - a. When additional tests are found necessary by the department in order for it to make a determination of contaminant emissions, sampling holes and pertinent allied facilities, as needed, shall be requested in writing to the owner by the department and shall then be provided by the owner, at his expense and at such location as the department may require.
 - b. In such instances, the owner shall provide a suitable power source to the point of testing so that sampling instruments can be operated as required.
 - c. Analytical results of samples collected by the department shall be furnished to the owner of the installation.
4. Nothing herein concerning tests conducted by and paid for by the owner shall be deemed as a waiver of the department's right to conduct separate or additional tests of an installation which shall be conducted at a mutually agreeable time and at the expense of the department.
5. Sampling and analytical determinations to ascertain compliance with this section shall be made in accordance with methods and procedures acceptable to the department.

6. A person who owns, operates or controls an air contamination source shall submit a test report to the department within 60 days after completion of the test.

(Added 5-28-1987, eff. 5-28-1987)

Sec. 873.1310. Air quality; control equipment.

1. Control equipment shall be selected so as to afford the highest efficiency or the lowest discharge rate that is reasonable and practicable.
2. Reasonableness and practicability shall take into account cost, the air contaminant concentration in the emission gas stream, particle characteristics and other properties of the contaminant and of the emission gas stream.
3. All devices used to effect compliance shall be installed, easily accessible, readable and maintained and operated in a satisfactory manner and in accordance with the provisions of this code and existing laws.
4. Collection of air contaminants.
 - a. Collected air contaminants shall be removed and disposed of in conformity with this code and existing laws and at such intervals as may be necessary to maintain the equipment at the required operating efficiency.
 - b. Collection and disposal of air contaminants shall be performed in a manner so as not to reintroduce contaminants to the outer atmosphere or otherwise create a public health hazard or nuisance.

(Added 5-28-1987, eff. 5-28-1987)

Sec. 873.1311. Air quality; emissions from processes and exhaust and ventilation systems.

1. No person shall cause, permit or allow the emission of air contaminants from an emission source resulting from an operation which exceeds the permissible emission rates or standards certified for that emission source by the Department of Environmental Conservation of the State of New York* or other applicable provisions of law.

***Editor's note:** See Rules and Regulations of the Commissioner Policy No. AQ 3-87, effective 5-28-1987, which is on file in the office of the Commissioner of Health.

2. No person shall cause or permit the emissions from a process and exhaust and ventilation systems to be equal to or greater than 20 percent opacity as determined by a trained certified observer using USEPA Method Nine.
3. An air contamination source shall not be operated other than in accordance with its design.

(Added 5-28-1987, eff. 5-28-1987)

Sec. 873.1312. Air quality; general prohibitions.

1. No person shall operate or maintain any air contamination source so as to cause, suffer or allow air contaminants to escape or be discharged into the atmosphere in quantities that may possibly endanger the public health, safety or welfare.
2. No person shall cause or allow any air contamination source to emit any air contaminant having an opacity equal to or greater than 20 percent opacity, except where otherwise provided by the code, at open fires for which a restricted burning permit has been issued by the department.

(Added 5-28-1987, eff. 5-28-1987)

Sec. 873.1313. Air quality; open fires; prohibitions.

1. Except as permitted by section 873.1314, no person shall burn, cause, suffer, allow or permit the burning of an open fire.
2. No person shall burn, cause, suffer, allow or permit the burning in an open fire of refuse during an air pollution episode in an area for which such air pollution has been designated.

(Added 5-28-1987, eff. 5-28-1987)

Sec. 873.1314. Air quality; open fires; restricted burning.

1. Except where prohibited by law, burning in an open fire may be permitted as follows:
 - a. Burning of land clearing or demolition material, or both, consisting of wood, trees, tree trimmings with attached leaves or brush, generated by land clearing or demolition for the erection of any structure; for the construction or modification of any highway, railroad, pipeline or power or communication line; or for the development or modification of a recreational area or park, provided that substantial proof is submitted to the department showing that no alternative means of disposal of such materials acceptable to the department is available and that all available means to minimize open burning will be employed and that such burning will be done on-site and in accordance with a permit issued by the department after written application therefor;
 - b. Burning of solid or liquid fuels or structures at any designated fire training site when under the direct control and supervision of qualified instructors for the instruction and training of firemen, provided that such burning is done in accordance with a permit issued by the department after written application therefor;
 - c. Any burning otherwise permitted by law; provided, however, that burning in open fires may not be permitted in any area wherein buildings are so located or arranged that the open fire will constitute a health, fire or safety hazard or public nuisance.
2. Permits.
 - a. An application for a permit required by this section shall include the

reasons why such burning should be permitted and such other information as may be required by the department to ensure that such burning will be unlikely to result in contravention of air quality standards.

- b. Any permit which may be issued shall be for a specified period of time and shall contain such conditions as are deemed necessary to minimize air pollution and prevent contravention of air quality standards.
- c. Any permit issued for restricted burning may be revoked by the department if there is a failure to comply with its conditions, a violation of law in connection with the burning or the occurrence or likely occurrence of either air pollution or contravention of air quality standards as a result of the burning.

(Added 5-28-1987, eff. 5-28-1987)

Sec. 873.1315. Air quality; combustion installations; fuel-burning equipment; smoke; limitations.

No person shall operate a combustion installation or fuel-burning equipment so as to produce, emit or permit the escape of smoke, regardless of how produced or discharged, having an opacity equal to or greater than 20 percent, for any time period, as determined by a trained certified observer using USEPA Method Nine, except:

1. That the production, emission or permitting the escape of smoke during startup or emergencies in excess of those permitted by this section shall not be considered as noncompliance with this section if the source owner can demonstrate to the satisfaction of the department that such excessive emissions were not preventable; or
2. As otherwise provided for by the provisions of the Public Health Law, the Environmental Conservation Law, or rules and regulations promulgated pursuant thereto, or any other applicable provision of the code.

(Added 5-28-1987, eff. 5-28-1987)

Sec. 873.1316. Air quality; combustion installations; fuel-burning equipment; smoke; emission abatement.

1. Any fuel-burning equipment with an input heat capacity equal to or greater than 1,000,000 Btu's per hour which has repeatedly on more than one occasion emitted smoke exceeding permissible smoke opacity limits, as determined by the department, shall be equipped with an acceptable opacity monitor which will automatically cause an audible alarm device and a visible flashing red light to be activated when smoke of an opacity equal to or greater than 20 percent is produced by the combustion installation or fuel-burning equipment; provided, however, that the opacity monitor shall have the following characteristics:
 - a. The alarm device shall be sufficiently loud so as to be heard by a person of normal hearing at a distance of 20 feet from the signal;
 - b. The alarm device and the flashing red light shall continue to operate until manually reset;

- c. The alarm device and flashing red light shall be located at the principal work location of the person responsible for the operation of the equipment;
 - d. If an opacity monitor fails to operate properly, the monitor shall automatically cause an alarm device sufficiently loud to be heard by a person of normal hearing 20 feet from the alarm and a readily visible flashing red light to be activated which shall continue until manually reset; and
 - e. The opacity monitor and alarm device shall be maintained in good operating order, regularly inspected, cleaned and shall be promptly repaired, altered or replaced when necessary.
 - f. A record shall be kept in which the date and time the alarm device activated, and the department shall be notified within 24 hours of such activation.
2. The department may require:
 - a. The installation of control equipment, devices to control or devices to record emissions from any combustion installation or fuel-burning equipment with a rated input heat capacity equal to or greater than 1,000,000 Btu's per hour which causes or is maintained or operated so as to cause noncompliance with the code;
 - b. A change in the manner of operation of any combustion installation or fuel-burning equipment or control equipment which is operated so as to result in noncompliance with the code;
 - c. The cleaning, repair, replacement or alteration of any combustion installation, fuel-burning equipment or control equipment which causes or is maintained or is operated as to result in noncompliance with the code.
 3. Sealing.
 - a. The commissioner may order the discontinuance of use and may seal any combustion installation or fuel-burning equipment which does not comply with the provisions of the code.
 - b. The seal may be removed from the equipment only upon written notice from the commissioner or his representative stating that the equipment has been corrected to the satisfaction of the commissioner and that it may be restored to use or operation.
 4. No person shall use or permit the use of any combustion installation or fuel-burning equipment with a rated heat input capacity equal to or greater than 1,000,000 Btu's per hour for a purpose or in a manner which causes it to function improperly or other than in accordance with its design.

(Added 5-28-1987, eff. 5-28-1987)

Sec. 873.1317. Air quality; emissions from diesel engines; limitations.

1. No person shall operate, allow or permit the operation of a diesel engine or vehicle propelled by a diesel engine in such a manner as to emit exhaust

emissions equal to or greater than 20 percent opacity for a continuous period of more than five seconds as determined by a trained certified observer.

2. No person shall allow or permit a bus or truck, the motive power for which is provided by a diesel engine, to idle for more than five consecutive minutes when the bus or truck is not in motion, except that this provision shall not apply when:
 - a. A bus or truck, the motive power for which is provided by a diesel engine, is forced to remain motionless because of traffic conditions over which the operator thereof has no control;
 - b. Regulations adopted by a federal, state or local agency having jurisdiction require the maintenance of a specific temperature for passenger comfort, in which case the idling time may be increased to the extent necessary to comply with such regulations;
 - c. A diesel engine is being used to provide power for an essential auxiliary purpose, such as loading, discharging, mixing or processing cargo; controlling cargo temperature; construction; lumbering; oil or gas well servicing; farming operations; or when operation of the engine is required for the purpose of maintenance;
 - d. Trucks and heavy-duty construction equipment propelled by diesel engines, owned and operated by persons engaged in mining and quarrying, are used within the confines of such person's property; and
 - e. A bus or truck propelled by a diesel engine is to remain motionless for a period exceeding two hours, and during which period the ambient temperature is continuously below 25 degrees Fahrenheit).
3. This section shall apply to any person who owns, operates, leases, supervises or who otherwise has charge, supervision or control of such vehicle and to any person who owns, leases or occupies land and has actual or apparent domain or control over such vehicle or engine which is present on such land.
4. This section shall not apply to fire trucks and other emergency vehicles and equipment while performing essential services.

(Added 5-28-1987, eff. 5-28-1987)

Sec. 873.1318. Air quality; incinerators; prohibitions.

No person shall cause, allow or permit the installation or construction of an incinerator having a rated capacity of 2,000 pounds per hour or less, except:

1. When regulations adopted by a federal or state agency having jurisdiction require the installation or construction of an incinerator to dispose of contaminated or infectious materials from hospitals, nursing homes, biological laboratories or veterinary hospitals; or
2. When regulations adopted by a federal or state agency having jurisdiction require the installation or construction of an incinerator to dispose of secret documents or United States currency; or
3. When such incinerator is installed or constructed for the express purpose of cremation of human or animal remains; or

4. When the design and construction of the incinerator is shown by actual emission sampling and analysis conducted by and at the expense of the owner or manufacturer under actual on-site operating conditions and with routine maintenance, to produce emissions that do not exceed smoke and particulate emission limits as set forth elsewhere in the code or to produce emissions that do not exceed smoke and particulate emission limits as otherwise set forth in the laws, rules and regulations of the State Department of Environmental Conservation.

(Added 5-28-1987, eff. 5-28-1987)

Sec. 873.1319. Air quality; incinerators; emission limits; operation.

1. All incinerators having a rated capacity of 2,000 pounds per hour or less shall be operated so that particulate emissions do not exceed the permissible emission limits as provided for or shall be equipped with adequate control devices or redesigned and rebuilt so as to meet the permissible emission limits as set forth in the laws, rules and regulations of the State Department of Environmental Conservation.
2. No incinerator having a rated capacity of 2,000 pounds per hour or less shall be operated so as to emit smoke of an opacity greater than 20 percent as determined by a trained and certified observer using USEPA Method Nine.
3. No person shall use or permit the use of an incinerator with a rated capacity of 2,000 pounds per hour or less for a purpose or in a manner which causes it to function improperly or other than in accordance with its design.
4. No person shall cause or permit the operation of an incinerator with a rated capacity of 2,000 pounds per hour or less at any time other than between the hours of 7:00 a.m. and 5:00 p.m. of the same day, except by written permission of the department.
5. No person shall cause or permit the operation of an incinerator with a rated capacity of 2,000 pounds per hour or less so as to emit fly ash to the outer atmosphere.
6. Any person seeking approval to operate, cause or permit the operation of an incinerator with a rated capacity of 2,000 pounds per hour or less at any time other than as herein provided shall submit a written request to the department stating:
 - a. The full name and address of the applicant;
 - b. The location of the incinerator;
 - c. A brief description of the incinerator and its apparatus;
 - d. The reason for requesting such approval;
 - e. The hours during which the applicant seeks to operate the incinerator;
and
 - f. The length of time for which the approval is requested.
7. If two or more incinerators are connected to a single stack, the total refuse

charged to all incinerators connected to the same stack shall be the refuse charged for the purpose of determining the permissible particulate emission.

8. If a single incinerator is connected to two or more stacks, the refuse charged to a single incinerator shall be the refuse charged for the purpose of determining the permissible particulate emission.
9. In order to control the emission of odors:
 - a. No person shall construct, install, use or cause to be used any continuously fed incinerator unless the gas temperature at the furnace outlet or at a designated zone exists that is designed to be automatically maintained and is automatically maintained at a temperature and residence time, in accordance with the Commissioner's Rules and Regulations.*

***Editor's note:** See Rules and Regulations of the Commissioner Policy No. AQ 2-87, effective 5-28-1987, which is on file in the office of the Commissioner of Health.

- b. No person shall construct, install, use or cause to be used any batch-fed incinerator unless the gas temperature at the furnace outlet or designated zone is designed to be automatically maintained and is automatically maintained at a temperature and residence time in accordance with the Commissioner's Rules and Regulations.*

***Editor's note:** See Rules and Regulations of the Commissioner Policy No. AQ 2-87, effective 5-28-1987, which is on file in the office of the Commissioner of Health.

- c. Incinerators with a capacity of 2,000 pounds per hour or less of refuse charged shall be equipped with a sensing device indicating the gas temperature at the furnace outlet or at the designated zone.
10. Incinerators with a capacity of greater than 2,000 pounds per hour of refuse charged shall comply with all applicable codes, rules, regulations and policies of the department,* the New York State Department of Environmental Conservation and the United States Environmental Protection Agency.

***Editor's note:** See Rules and Regulations of the Commissioner Policy No. AQ 3-87, effective 5-28-1987, which is on file in the office of the Commissioner of Health.

11. All burners shall be located and operated in a manner so that the operation of such burners conforms to all codes and does not serve as a potential hazard.
12. All monitoring and recording equipment must be located in such a manner that information from such equipment can be easily ascertained.

(Added 5-28-1987, eff. 5-28-1987)

Sec. 873.1320. Air quality; incinerators; abatement.

1. Where the department has reasonable cause to believe that any incinerator with a rated capacity of 2,000 pounds per hour or less is emitting particulate matter in excess of the allowable emission rate as provided by the code, the department may require the owner or lessee of the incinerator to conduct such tests as are necessary to determine whether the equipment or its operation exceeds the allowable emission rate as provided by this code and to submit the test results to the department within 30 days after such tests are completed.
 - a. All such testing shall be performed in accordance with the Commissioner's Rules and Regulations.*

***Editor's note:** See Rules and Regulations of the Commissioner Policy No. AQ 4-87, effective 5-28-1987, which is on file in the office of the Commissioner of Health.

- b. The owner or lessee shall notify the department of the time and place of any such testing at least 30 days before the commencement of the test and shall make reasonable facilities available for a representative of the department to be present and witness the tests.
2. If, in the opinion of the department, tests by the department are necessary, in addition to those conducted by the owner or lessee of the incinerator, the department may order the owner or lessee to provide sampling ports in the stack as the department may request, to provide a power source suitable to the points of testing and to provide allied facilities, exclusive of sampling devices.
 - a. The provisions for sampling ports, the power source and allied facilities shall be made at the owner's or lessee's expense.
 - b. The owner or lessee shall be furnished with a copy of the analytical results of the source samples collected.
3. If any of the test results indicate a contravention of particulate emission limits as provided by the code, the department may require the installation of appropriate control equipment to reduce such particulate emissions to a level meeting such emission limits or the department may seal the incinerator if such equipment is not installed within the time prescribed by the department.
4. The department may order the cleaning, repair, replacement or alteration of any equipment or control equipment which causes or is operated so as to result in noncompliance with the applicable provisions of the code.
5. The department may order a change in the manner of operation of any incinerator which is operated so as to result in noncompliance with the applicable provisions of the code.
6. Sealing of nonconforming incinerator.
 - a. The commissioner may order the discontinuance of use and may seal any incinerator with a rated capacity of 2,000 pounds per hour or less which does not conform to the provisions of the code.

- b. The seal may be removed from the incinerator only by the department and only upon written authorization from the commissioner following written application to the department by the owner of the incinerator stating that the incinerator has been or will be repaired, modified, upgraded, removed, reconstructed or replaced in a manner and within a time acceptable to the commissioner.
- c. The authorization from the commissioner may set forth any terms and conditions the commissioner deems appropriate concerning the particular incinerator to be repaired, modified, upgraded, removed, reconstructed or replaced.

(Added 5-28-1987, eff. 5-28-1987)

Sec. 873.1321. Air quality; fuel composition and use; prohibitions.

1. No person shall construct, install or modify or cause to be constructed, installed or modified any combustion installation that is designed for use of a solid fuel containing 0.20 pound of sulfur per million Btu's gross heat content, except as may otherwise be provided for in the Environmental Conservation Law or the rules and regulations promulgated pursuant thereto.
2. No solid fuel that contains more than 0.20 pound of sulfur per million Btu's gross heat content shall be sold, offered for sale or purchased for use in or used in any stationary combustion installation except as may otherwise be provided for in the Environmental Conservation Law or the rules and regulations promulgated pursuant thereto.
3. No person shall sell, offer for sale or purchase for use in or use in any stationary air contamination source fuel, other than distillate and residual oil, having a sulfur content greater than 0.37 percent by weight, except as may otherwise be provided for in the Environmental Conservation Law or the rules and regulations promulgated pursuant thereto.
4. No waste fuel shall be offered for sale or purchased for use in any stationary air contamination source except upon prior written approval of the commissioner.

(Added 5-28-1987, eff. 5-28-1987)

Sec. 873.1322. Air quality; fuel composition and use; exceptions.

1. The commissioner may except, in whole or in part, the fuel sulfur content restrictions imposed under the code where an applicant establishes to his satisfaction that the fuel use thus permitted will not result in the emission of sulfur compounds, expressed as sulfur dioxide, to the outdoor atmosphere at a rate greater than would be obtained through the use of fuels otherwise mandated, the following cases:
 - a. Where a mixture of fuels is burned simultaneously in each furnace of a stationary combustion installation in operation or under construction before January 1, 1968, producing steam or electric power for sale; or
 - b. Where fuel is used as a process constituent; or

- c. Where approved control equipment is installed; or
 - d. Where a substantial portion of the sulfur in the fuel burned is retained in the ash and not emitted to the outdoor atmosphere; or
 - e. Where such fuel is used to demonstrate the performance of an experimental air cleaning installation for removal of sulfur compounds from stack emissions.
2. For those installations where coal or coke has been the regular source of fuel, the commissioner shall permit the sale and continued use of such fuel; provided, however, that the continued sale and use of such fuel complies with provisions of this section relative to the sulfur content thereof.
3. The commissioner may exempt persons from the requirements of this article, upon evidence satisfactory to the commissioner that:
 - a. There is an insufficient supply of fuel meeting the requirements of section 873.1321 of the code; and
 - b. The insufficiency of the supply of fuel is certified by the Chairman of the Public Service Commission of the State of New York.
4. The commissioner may upon prior written application permit the sale, offer for sale, purchase and use of fuels with a sulfur content in excess of that as specified herein, provided that the purchaser maintains a continuous monitoring network for sulfur compounds, expressed as sulfur dioxide, acceptable to the commissioner and employs a system for the prompt switching to fuel with a sulfur content as specified in the code whenever continuous monitoring shows that an ambient air quality standard for sulfur dioxide will tend to be exceeded; provided, however, that the commissioner may require the installation of any available device, method or procedure so that any emission shall not exceed the standards provided for herein.
5. Nothing herein shall be construed to allow the emission of air contaminants in quantities which alone, or in combination with other sources, would contravene the standards established by the United States Environmental Protection Agency and the Department of Environmental Conservation of the State of New York for the ambient air quality region in which the air contamination source is located or to cause air pollution as defined in the code.

(Added 5-28-1987, eff. 5-28-1987)

Sec. 873.1323. Air quality; fuel composition and use; compliance.

1. The department may require submission of fuel analysis or results of stack sampling, or both, to ensure compliance with the provisions of the code, and no person shall fail to submit such information when so required by the department.
2. Persons selling fuels in the county shall maintain records of sales of all fuel containing sulfur and of all fuel analysis required by the department and shall make such records available for inspection by the department during normal business hours.

(Added 5-28-1987, eff. 5-28-1987)

Sec. 873.1324. Air quality; particulates caused by combustion of solid fuel; control.

1. Permissible emission rates.
 - a. No person shall cause, suffer, permit or allow to be emitted into the atmosphere, from any stationary combustion installation burning solid fuels for heat or power generation, particulates in excess of the permissible emission rates, determined as maximum weight discharge, as specified in the following table:

TABLE INSET:

Total Heat Input* (million Btu's/hr.)	Permissible Emission Rate** (lb./million Btu's)
1 to 10	0.600
20	0.550
30	0.500
40	0.450
50	0.440
60	0.420
70	0.400
80	0.390
90	0.380
100	0.370
200	0.320
300	0.290
400	0.275
500	0.262
600	0.252
700	0.242
800	0.236
900	0.230
1,000	0.225
2,000	0.193
3,000	0.177
4,000	0.166
5,000	0.158
6,000	0.152
7,000	0.147
8,000	0.142
9,000	0.139
10,000	0.136

* Installations having a total input less than 1,000,000 Btu's per hour are exempted.

** Total input between 1,000,000 and 10,000,000 Btu's per hour: Maximum weight discharge shall be six-tenths pound per million Btu's per hour input.

Total input between 10,000,000 and 10,000,000,000,000 Btu's per

hour: Use $E = 1.02/p0.219$ to determine the maximum weight discharge where E = maximum weight discharge in pounds per hour and p = total input in million Btu's per hour.

The heat content of coal shall be determined by a method acceptable to the department.

Individual combustion units with an input equal to or less than 300,000,000,000 Btu's per hour and in operation prior to June 1, 1972, may exceed the values in this table, provided that they meet the following criteria:

Spreader stokers: Allowable weight discharge shall not exceed sixty-hundredths pound per million Btu's input.

Individual combustion units other than spreader stokers shall not exceed the following:

TABLE INSET:

Input (million Btu's/hr.)	Maximum Weight Discharge (lb./million Btu's ^{***})
1 to 100	0.60
200	0.45
300	0.30

*** The total heat input under normal operating conditions shall be used in determining the permissible emission rate.

- b. If two or more stationary combustion units are connected to a common air cleaning device and/or stack, the total heat input rating of all units connected to the cleaning device and/or stack shall be the heat input rating for the purpose of computing the allowable weight discharge.
2. If two or more stationary combustion units having individual air cleaning devices are connected to a single stack, the total allowable weight discharge shall be the sum of the allowable discharges from each individual unit.
3. No person shall construct, install, modify or cause to be constructed, installed or modified, within the county, any hand-fired stationary combustion installation for heat or power generation designed to burn bituminous coal.
4. The department may modify the limits specified in this section if, in view of the properties of the emissions, isolated conditions, stack height and other factors, it can be clearly demonstrated that discharge of the contaminant or contaminants will not add to an existing or predictable atmospheric burden of such contaminant or contaminants so that adverse effects would reasonably be expected therefrom.
5. Notwithstanding any provision herein, no person shall cause, suffer, permit or allow the emission of air contaminants in quantities which alone, or in combination with other sources, would cause air pollution as defined in the code

or contravene the air quality or emission standards established by the United States Environmental Protection Agency and the Department of Environmental Conservation of the State of New York.

6. In order to determine compliance with this article, any person operating or maintaining emission sources described in this section shall provide pertinent data concerning emissions upon request of the department.

(Added 5-28-1987, eff. 5-28-1987)

Sec. 873.1325. Air quality; fuel-burning equipment and incinerators; operation; supervisions.

1. No person shall cause or permit the use of any fuel-burning equipment having an input capacity of 1,000,000 Btu's per hour or greater or of any incinerator having a rated capacity of 2,000 pounds per hour or less, except under the operation and supervision of a person who has successfully completed, within one year of the commencement of his employment, a course of instruction in air quality control given by or acceptable to the department.
2. Upon successful completion of the course of instruction required by this section, the operator or supervisor shall receive a certificate containing the name of the course of instruction, the name of the operator or supervisor and the date of successful completion of the course.
3. No person shall employ an operator or supervisor of fuel-burning equipment with an input capacity of 1,000,000 Btu's per hour or greater or of an incinerator with a rated capacity of 2,000 pounds per hour or less who does not have a certificate as required by this section.

(Added 5-28-1987, eff. 5-28-1987)

Sec. 873.1326. Air quality; standards.

In determining compliance with the provisions of the code, the department may be guided by the provisions of Chapter III of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York, or the specific air quality standards assigned to geographical areas of the county and any subsequent amendments thereto or revisions thereof, or the provisions of any other rules or codes which may be enacted by the Department of Environmental Conservation of the State of New York or by the local municipality in which the installation is located, provided that the provisions of such rules or codes do not permit lower or less stringent requirements than required by the code.

(Added 5-28-1987, eff. 5-28-1987)

Sec. 873.1327. Air quality; indoor air quality; dry cleaning facilities.

1. Every room and passageway in any habitable building, except for an office and/or industrial building, shall be maintained to ensure the public of an indoor atmosphere acceptable to the commissioner.
2. All equipment providing an indoor atmosphere shall be maintained in repair and

not be used for purposes other than in accordance with its design.

3. All dry-cleaning facilities shall maintain the indoor atmosphere in their rooms and every room and passageway in the habitable building in which they are located in accordance with law.
4. No person shall operate a dry-cleaning facility without first obtaining a valid permit issued by the department to operate such facility.

(Added 5-28-1987, eff. 5-28-1987; amended 3-18-1993, eff. 3-18-1993)

Sec. 873.1328. Air quality; ambient air quality.

The ambient air quality within the boundaries of the county shall be governed by the federal government and state ambient air quality standards for priority pollutants.

(Added 5-28-1987, eff. 5-28-1987)

Sec. 873.1329. Air quality; severability.

If any provision of this article is held invalid, such invalidity shall not affect other provisions which shall be given effect without the invalid provision.

(Added 5-28-1987, eff. 5-28-1987)

ARTICLE XIV. NUISANCES AND SANITATION

Sec. 873.1400. Nuisances; inspections and investigations.

1. The commissioner or the commissioner's representative shall investigate all complaints of any nuisance which may in his opinion affect health, or which may be a cause of danger or injury to life and health.
2. The commissioner or the commissioner's representative may enter upon, about or within any place, facility, premises or vehicle where a nuisance or condition dangerous to life and health exists, or where in his opinion a place, facility or premises is maintained, operated or being constructed in a manner as to constitute a nuisance, or else where its maintenance, operation or construction may be the cause of the existence of a nuisance or condition dangerous to life or health elsewhere.
3. The owner, agent and occupants of any place, facility, premises or vehicle being maintained, operated or constructed shall permit examinations, inspections, investigations and samples to be made and taken pursuant to the provisions of the Public Health Law, the Environmental Conservation Law, the State Sanitary Code, the code and administrative rules and regulations promulgated pursuant to such laws and codes.

(Added 11-20-1986, eff. 11-20-1986)

Sec. 873.1401. Nuisances; notice to owners and others.

1. The commissioner or the commissioner's representative shall furnish the owner,

agent or occupants of a place, facility, premises or vehicle upon which a nuisance or condition dangerous to life or health has been found to exist, or which is the cause of a nuisance or condition dangerous to life or health elsewhere, with a written statement of the nature of the nuisance or condition, the demand for correction and that an enforcement action may be brought.

2. The commissioner or the commissioner's representative shall initiate such procedures as in his opinion shall result in the immediate abatement or voluntary abatement of any nuisance or condition dangerous to life or health found to exist upon or within any place, facility, premises or vehicle which is the cause of the existence of a nuisance or condition dangerous to life or health elsewhere.

(Added 11-20-1986, eff. 11-20-1986)

Sec. 873.1402. Nuisances; abatement.

1. The commissioner or the commissioner's representative duly authorized in writing shall order the abatement, suppression or removal of all nuisances and conditions which in his opinion are detrimental or prejudicial to life or health.
2. Failure by the owner, agent or occupants of any place, facility, premises or vehicle whereon any nuisance or condition deemed to be detrimental or prejudicial to the public health exists, or deemed to be the cause of the existence of such nuisance or condition elsewhere, to comply with any order or regulation for the abatement, suppression or removal of such nuisance or condition may be reason for the commissioner or the commissioner's representative to enter upon the place, facility, premises or vehicle to which such order or regulation relates, and to abate, suppress or remove such nuisance or condition.

(Added 11-20-1986, eff. 11-20-1986)

Sec. 873.1403. Nuisances; abatement expenses; lien on premises.

1. The expense of abatement, suppression or removal of a nuisance or condition detrimental to life or health incurred by the department shall be paid by the owner or occupant of the place, facility, premises or vehicle or by the person who caused or maintained such nuisance or condition.
2. As provided by the Public Health Law, the department or county may maintain an action in a court of competent jurisdiction to recover the expense of such abatement, suppression or removal.
3. As provided by the Public Health Law, a judgment obtained for the expense of abatement, suppression or removal of a nuisance shall be a first lien upon such premises, having preference over all other liens and encumbrances whatever.
4. As provided by the Public Health Law, such premises may be sold for a term of time for the payment and satisfaction of such lien and the expenses of the sale.

(Added 11-20-1986, eff. 11-20-1986)

Sec. 873.1404. Nuisances; noxious weeds and growths.

1. Declaration; prohibited acts.

- a. The commissioner may declare at any season or period of the year that there exists a particular and imminent danger to the public health by reason of an approaching period of pollination of any ragweed or other species of weed, plant or growth which is noxious or detrimental to public health or that the seed, pollen or emanation therefrom, when carried through the air or otherwise dispersed, is noxious or detrimental to public health; provided, however, that such declaration shall be made in writing upon sufficient evidence and shall be filed in the department.
 - b. If the commissioner acts pursuant to this section, it shall be unlawful for any person who owns, maintains, occupies or is in charge or in control of any lot or premises to permit, cause, suffer or allow poison ivy, ragweed or other poisonous or allergenic weed to grow on such lot or premises.
2. The provisions of the code applicable to abatement and enforcement of nuisances and other violations generally shall be applicable to any condition or situation coming within the purview of this section.

(Added 11-20-1986, eff. 11-20-1986)

Sec. 873.1405. Nuisances; vacant grounds; rodents and vermin.

The owner or person in charge or in control of grounds which are vacant shall keep them free of all public nuisances affecting health as defined in the Commissioner's Rules and Regulations.*

***Editor's note:** The Commissioner's Rules and Regulations are on file in the office of the Department of Health.

(Added 11-20-1986, eff. 11-20-1986)

Sec. 873.1406. Sanitation; public places; toilets.

1. Every person who shall provide or be in charge of or in control of a toilet for the use of employees, patrons or other persons, or which shall be otherwise available to the general public, whether owned, operated or maintained by a private organization or government agency, shall maintain such toilet in a clean, well-lighted, ventilated and sanitary condition at all times.
2. The floor of any such toilet shall be impervious to moisture and shall have proper drainage facilities.
3. An adequate supply of soap, sanitary individual towels or their equivalent and toilet paper shall be provided in such toilet, and there shall be running water available at all times.

(Added 11-20-1986, eff. 11-20-1986)

ARTICLE XV. SEXUALLY TRANSMITTED DISEASE CONTROL

Sec. 873.1500. Sexually transmitted diseases; definition.

Whenever used in the Code, sexually transmitted diseases are conditions principally transmitted by sexual contact and may have impact on the health of newborns, and include the following:

Chancroid
Condyloma acuminata
Gardnerella vaginitis
Genital herpes
Gonorrhea
Granuloma inguinale
Lymphogranuloma venereum
Non-gonococcal (mucopurulent) cervicitis
Non-specific urethritis
 (Non-gonococcal urethritis)
Pediculosis pubis
PID Gonococcal/Non-gonococcal
Scabies
Syphilis
Trichomoniasis
Yeast vaginitis

(Added 4-23-1987, eff. 4-23-1987)

Sec. 873.1501. Sexually transmitted diseases; duty to report.

1. Every physician or person in charge of an institution or hospital shall within 24 hours report cases of sexually transmitted diseases on forms approved by the department.
2. Whenever any person suffering from any sexually transmitted disease shall discontinue treatment, while in the judgment of the attending physician such person is capable of transmitting the disease to others, such physician shall immediately report such facts to the department.
3. Every laboratory director or his representative shall promptly report positive reports of laboratory tests of specimen indicative of chancroid, gonorrhea, granuloma inguinale, lymphogranuloma venereum and syphilis to the department.

(Added 4-23-1987, eff. 4-23-1987)

Sec. 873.1502. Sexually transmitted diseases; reports and records, confidential.

Reports and records of cases, carriers and suspected cases of sexually transmitted diseases shall be deemed confidential except insofar as is necessary to carry out the purpose of Article XV and shall not be subject to inspection by persons other than persons authorized by the commissioner or his representative.

(Added 4-23-1987, eff. 4-23-1987)

Sec. 873.1503. Sexually transmitted diseases; duties of attending physician.

The physician attending a patient affected with a sexually transmitted disease shall inform such patient of the availability of appropriate treatment and the necessity of continuing treatment until such time as the possibility of transmission of the disease is either eliminated or reduced to the extent possible; and give such patient appropriate health information.

(Added 4-23-1987, eff. 4-23-1987)

Sec. 873.1504. Sexually transmitted diseases; duties of Commissioner.

The commissioner or his representative shall investigate all reports of sexually transmitted disease received by the department; establish, maintain and require isolation, examination, treatment and care of any person affected with sexually transmitted disease whenever, in his opinion, such isolation, examination, treatment or care is necessary for the protection of the public health and/or to control morbidity and mortality; and investigate all persons who may have sexual exposure to persons with sexually transmitted diseases and take appropriate therapeutic and preventive measures as may be required.

(Added 4-23-1987, eff. 4-23-1987)

ARTICLE XVI. TUBERCULOSIS CONTROL

Sec. 873.1600. Tuberculosis; definition.

The term "tuberculosis" means any infection caused by *Mycobacterium tuberculosis*.

(Added 4-23-1987, eff. 4-23-1987)

Sec. 873.1601. Tuberculosis; powers and duties of Commissioner.

1. Examination.
 - a. Upon receiving a duly signed report of a person who appears to be affected with active tuberculosis under and pursuant to the Public Health Law, the commissioner or his representative shall cause an examination to be made of the person and shall take such further measures as may be indicated as a result of such examination.
 - b. If such person has been reported to the department by a physician as one affected by pulmonary tuberculosis, the commissioner or his

representative shall ascertain promptly whether such physician is maintaining proper medical and preventative care.

- c. If such a person has been reported to the department and such person is not under the care and supervision of a physician, the department shall take such further measures as may be indicated, including the furnishing of such care and supervision.
2. Inspection of premises; notices.
 - a. The commissioner or his representative may inspect any premises where a person affected with tuberculosis is located to insure compliance with the requirements of the Public Health Law, the State Sanitary Code and the code.
 - b. The commissioner shall cause to be posted such notices as may be required of the Public Health Law and the State Sanitary Code as may be required.
 3. The commissioner or his representative shall investigate all persons who may have been in contact with any person affected with or suspected of having active tuberculosis and take appropriate preventive and therapeutic measures as may be required.

(Added 4-23-1987, eff. 4-23-1987)

Sec. 873.1602. Tuberculosis; duty to report.

Every physician and person in charge of a hospital or institution shall be required to report cases of tuberculosis to the department.

(Added 4-23-1987, eff. 4-23-1987)

Sec. 873.1603. Tuberculosis; duties of attending physician.

It shall be the duty of a physician in attendance of a person affected with active tuberculosis to instruct such patient or the head of a household on the proper precautions for the containment of the infection.

(Added 4-23-1987, eff. 4-23-1987)

ARTICLE XVII. RABIES CONTROL

Sec. 873.1700. Rabies control; duty to report.

1. Every physician or person in charge of an institution or hospital, every police officer or animal control officer, shall immediately report to the department the full name, age, address and telephone number of any person who has been bitten by an animal and the date of biting or contact with the saliva of such animal.
2. It shall be the duty of every physician who has reason to believe that contact with a rabid or suspect rabid animal has occurred requiring rabies prophylaxis subsequent to the exposure to report all such incidents and pertinent facts relating to any such bite, or exposure or treatment prior to the initiation of such

prophylaxis to the department.

3. If the person bitten is not an adult, it shall be the duty of the parent or guardian to make such report to the department.

(Added 4-23-1987, eff. 4-23-1987; amended 6-20-2002)

Sec. 873.1701. Rabies control; rabid animals.

1. It shall be the duty of every person having knowledge of the existence of an animal afflicted or suspected of being afflicted with rabies to report immediately to the department the existence of such animal, the place where seen, the owner's name, if known, and the observed signs suggesting rabies including but not limited to biting and/or scratching.
2. Upon the request of the Department of Health, the veterinarian who administered the rabies vaccine to a specified animal, or has a copy of a vaccination certificate in the animal's medical records, shall provide either oral confirmation of administration of the rabies vaccine, including the date the rabies vaccine was administered, or a copy of the vaccination certificate.
3. Seizure and destruction.
 - a. The commissioner or his representative shall secure and confine or cause to be secured and confined under competent observation any animal within his jurisdiction suspected of having rabies.
 - b. If such animal cannot be secured and confined, the commissioner shall order such animal to be killed; provided, however, that biting bats shall be killed immediately.
 - c. It shall be the duty of the commissioner or his representative to submit the animal's head to a laboratory approved for this purpose by the State Commissioner of Health.
 - d. The expense of such veterinary euthanasia and decapitation shall be borne by the owner of the animal.
4. Confinement.
 - a. If the animal is to be confined, it shall be isolated for no less than ten (10) days or for such period of time as is necessary to determine the diagnosis of the disease as the commissioner or his representative may in his judgment determine.
 - b. Such confinement may take place either in a veterinary hospital or in a locked enclosure approved by the commissioner as being so constructed and maintained that the animal cannot escape or have contact with any other animal or human being except with the person responsible for the care of the confined animal.
 - c. The expense of the confinement of an animal suspected of being exposed to rabies shall be borne by the owner of the animal.
 - d. An animal under restriction shall not be removed from confinement and the county prior to the conclusion of the prescribed confinement except

with the approval of the commissioner.

- e. No animal shall be removed pursuant to this section except upon approval of the commissioner.
5. Any animal that is currently immunized against rabies and has been bitten by or exposed to a suspected rabid animal shall receive a booster inoculation for rabies within five (5) days of the contact. Animals not boosted within five (5) days must either be quarantined in such confinement as described for no less than six (6) months or euthanized immediately.

(Added 4-23-1987, eff. 4-23-1987; amended 6-20-2002)

ARTICLE XVIII. CHILDREN'S SUMMER CAMPS

Sec. 873.1800. Nonswimmer identification.

- 1) A camper evaluated as a nonswimmer shall be readily distinguishable from an intermediate or swimmer by wearing a conspicuously colored bathing cap, headband, wrist tag or other alternative acceptable to the Westchester County Health Department.
- 2) The commissioner may waive, in full or part, the requirement of this section, provided that the application submitted sets forth sufficient reasons which, in the opinion of the commissioner, justifies the issuance of a waiver.

(Added 3-19-1992, eff. 3-30-1992)

Sec. 873.1801. Annual camp workshop attendance.

- 1) The camp director, assistant camp director or camp operator shall attend the annual children's camp workshop by the Westchester County Department of Health.
- 2) Failure of the camp director, assistant camp director or camp operator to attend the annual workshop: a) will constitute a violation of the code and/or State Sanitary Code; and b) will result in a penalty in accordance with Article II of the code and c) will require the camp director, assistant camp director or camp operator to attend, at a time and location to be determined by the commissioner, a video presentation of the annual workshop.
- 3) In addition to the grounds set forth in section 873.300 et seq., a permit to operate a camp will be denied upon the failure of the camp director, assistant director or operator to attend a video presentation of the annual workshop and failure to pay the imposed penalty.
- 4) The commissioner may waive, in writing, either in full or in part, the requirement(s) of this section, provided that the application submitted by the camp director, assistant camp director or camp operator sets forth sufficient reasons which, in the discretion of the commissioner, justifies the issuance of a waiver.

(Added 3-19-1992, eff. 3-30-1992; Amend. of 1-16-2003, eff. 1-17-2003)

Sec. 873.1802. Supervision at off-site swimming areas.

- 1) *Lifeguard identification.* Children's summer camp lifeguards, while at off-site swimming pools or bathing beaches, shall have their garments identified with the camp's name.
- 2) *Lifeguard ratio.* A children's summer day camp operator shall provide one (1) qualified lifeguard (as defined in Chapter I, Subpart 7-2 of the New York State Sanitary Code) for every twenty-five (25) bathers when using swimming pools and bathing beaches located on property owned or leased solely for the exclusive use of the children's camp, or at off-site swimming pools and bathing beaches owned and operated by others.
- 3) *Supervision.* The camp operator, when using off-site swimming facilities, shall establish and enforce a method of bather safety that requires counselors to be in the water while directly supervising nonswimmers at a ratio of 1:10 for children older than eight (8) years of age; 1:8 for children younger than eight (8) years of age; and 1:6 for children younger than six (6) years of age.
- 4) *Variance.* The commissioner may, on written application, grant a variance from this regulation in a specific case, subject to conditions where such variance is consistent with the general purpose and intent of the code, and where there are practical difficulties or unnecessary hardships in carrying out the strict letter of the provision.

(Added 3-19-1992, eff. 3-30-1992)

Sec. 873.1803. Parental notification.

At the discretion of the Board of Health, the camp operator, camp director, or assistant camp director shall provide written notification to parents of campers who are currently attending or who attended the camp during that season, of violations that constitute public health hazards. If so ordered by the Board of Health, said notifications shall be made and written documentation to the commissioner that notification has been made, within fifteen (15) days of receipt of an order from the Board of Health and the report from the hearing officer of violations. Stipulation to a charge of violation or combination of violations that constitute public health hazards shall waive the right to contest a Board of Health order for said parental notification.

(Added 1-16-2003, eff. 1-17-2003)

Sec. 873.1804. Background checks.

In addition to the requirements contained in section 873.300 et seq., the camp director, assistant camp director or camp operator shall obtain, review and evaluate at least two (2) written references of every prospective employee prior to that employee commencing employment with the camp. The two (2) references shall not include any relative of the employee. A written record of these satisfactorily completed reference checks shall be maintained on file by the camp director for review by the department.

(Added 1-16-2003, eff. 1-17-2003)

ARTICLE XIX. ANIMAL FACILITIES

Sec. 873.1900. Animal facilities; general purpose.

The purpose of the provisions of this article is to prevent the spread of communicable disease by monitoring the sanitary conditions of those facilities engaged in the business of sheltering, boarding, grooming, training or selling animals.

(Added 7-28-1987, eff. 1-1-1988)

Sec. 873.1901. Animal facilities; definitions.

Whenever used in this code, unless otherwise expressly stated or unless the context or subject matter requires a different meaning, the following terms shall have the respective meanings hereinafter set forth or indicated:

1. *Animal.* The term "animal" means any bird, mammal, reptile, amphibian, fish, arthropod or other invertebrate kept as a pet, for exhibit, work, sale, companionship or protection by a person, possession of which is not prohibited by the commissioner or any federal, state or local laws, rules or regulations.
2. *Animal facility.* The term "animal facility" means any location, establishment, business, place of public exhibition or amusement, stable, salon, kennel, animal shelter or parlor, where live animals are sold, offered for sale, given away, exchanged, bartered, sheltered, boarded, stabled, exhibited, bred, trained or groomed other than a private home where animals are continuously maintained as household pets, zoological park, aquarium, laboratory, educational or scientific institution.
3. *Animal shelter.* The term "animal shelter" means any facility where homeless, stray, abandoned or unwanted animals are received, harbored, maintained or made available for adoption to the general public and which is owned, operated or maintained by a duly incorporated humane society, animal welfare society, society for the prevention of the cruelty to animals or other nonprofit or tax-exempt organization devoted to the welfare, protection or humane treatment of animals.
4. *Animal vendor.* The term "animal vendor" means any person who is in the business of selling, offering for sale, bartering, giving or exchanging live animals.
5. *Communicable disease.* The term "communicable disease" means an infectious, contagious disease transmissible by direct or indirect contact as designated in the State Sanitary Code.
6. *Dangerous animal.* The term "dangerous animal" means any bird, mammal, reptile, amphibian, arachnid, fish, arthropod or other invertebrate, which has communicable disease or is venomous or hazardous to persons or animals.
7. *Licensed veterinarian.* The term "licensed veterinarian" means a person who is licensed to practice veterinary medicine in the State of New York.

(Added 7-28-1987, eff. 1-1-88)

Sec. 873.1902. Animal facilities; general provisions.

1. No person who owns, leases or is in charge of an animal facility shall permit, cause or allow any condition to exist thereon which shall constitute a nuisance or be dangerous or prejudicial to public health or animal health or welfare, which shall include but not be limited to taking any necessary steps to control or eliminate rodents, insects and all other vermin.
2. Any person who owns, leases or is in charge of an animal facility shall meet the minimum housing requirements as established by the commissioner, provide ventilation, lighting and plumbing, keep clean the floors, walls, implements and cages and disinfect the cages as often as needed, but in any event not less than once each day.
3. Every animal facility shall have and use equipment, implements and materials such as brooms, hoses, hose connections, vacuum cleaners, covered metal receptacles, brushes, disinfectant and detergent to maintain sanitary conditions.

(Added 7-28-1987, eff. 1-1-1988)

Sec. 873.1903. Animal facilities; permit to operate.

No animal vendor or person who owns, leases or otherwise engages in the business of maintaining an animal facility shall do so without a permit issued by the commissioner.*

***Editor's note:** See Rules and Regulations of the Commissioner Policy No. AF 1-87, effective 1-1-1988, which is on file in the office of the Commissioner of Health.

(Added 7-28-1987, eff. 1-1-88)

Sec. 873.1904. Animal facilities; construction; submission of plans.

1. Any person who intends to make, install, construct or place in operation a new animal facility, or any part thereof, or who intends to make renovations to an existing animal facility, or any part thereof, shall submit to the department an application accompanied by plans and specifications for review and approval by the department.
2. Plans and specifications.
 - a. All plans and specifications for the construction of a new animal facility shall be prepared and certified, signed and sealed by an engineer or architect licensed and registered in the State of New York.
 - b. All plans and specifications for the renovation or modification of an existing animal facility, or any part thereof, shall be prepared and certified, signed and sealed by an engineer or architect licensed and registered in the State of New York; provided, however, that the provisions of this subsection may be waived when in the opinion of the commissioner renovations are minor in nature.

3. Application for such approval of plans and specifications shall be made on forms prescribed by or acceptable to the department.
4. Plans and specifications for construction of a new animal facility or the modification, reconstruction or renovation of an existing animal facility shall be in accordance with the requirements of all state, city and municipal laws, codes, rules and regulations.

(Added 7-28-1987, eff. 1-1-1988)

Sec. 873.1905. Animal facilities; dangerous animals; maintenance.

No person shall keep, house, stable, board, shelter, breed, train, groom or otherwise maintain any dangerous animal in any animal facility other than a zoological park or aquarium, laboratory or education or scientific institution without the written authorization of the commissioner, except farm animals and fowl on a lawful farm area exempt from provisions of this section.

(Added 7-28-1987, eff. 1-1-1988)

Sec. 873.1906. Animal facilities; prohibited sale; other restrictions.

1. No person shall sell, offer for sale, give, exchange or barter any dangerous animal or other animal that is found by the commissioner to be prejudicial to the public health.
2. No person shall sell, offer for sale, give, exchange or barter any chicks or ducklings less than two months of age in any quantity less than six dozen.
3. Records.
 - a. An animal vendor shall maintain and keep records for two years of purchases, sales, transfers, receipt and other disposition of all dogs or cats.
 - b. Whenever a dog or cat is purchased, sold, transferred, received or otherwise disposed of, the animal vendor shall make a dated entry in the record, which shall contain the name and address of the person to whom it was sold or transferred or from whom it was received and other pertinent information regarding any other disposition, including but not limited to a complete description of the dog or cat, its age, sex and breed.
4. No animal vendor shall sell, offer for sale, give, exchange or barter an animal which is suspected as having psittacosis or ornithosis, canine distemper, feline distemper, ringworm, canine parvo virus, feline leukemia or strongyloidiasis or such other disease deemed serious by the commissioner; nor shall he shelter, board, stable or otherwise maintain such animal unless it is being medically treated for such condition and under the care or supervision of a veterinarian licensed to practice in the State of New York.
5. No animal vendor shall sell, offer for sale, give, exchange or barter any dog or cat unless such animal has been treated with the appropriate antehelminthic for the control of roundworms and hookworms.

(Added 7-28-1987, eff. 1-1-1988)

Sec. 873.1907. Animal facilities; control of pet birds.

1. Any animal vendor who deals in psittacine or other pet birds shall keep records of such transactions for a period of two years, which shall include the number and species of birds received, purchased, sold, exchanged or given away, the tag number for each bird if one is present, the date of each transaction, the name and address from whom received or purchased and to whom sold, bartered, exchanged or given away, such records to be available for inspection by a representative of the department at all times.
2. Any animal vendor having custody or care of any bird of the psittacine family shall notify the department either verbally or in writing immediately with regard to any unusual illness or death concerning such bird.
3. Any person having custody of care of any bird of the psittacine family shall report to the department either verbally or in writing, immediately upon confirmation of diagnosis, all cases of psittacosis in such birds.
4. When in the opinion of the commissioner a pet bird is suspected to be a source of human disease, is infected with a disease or exposed to a disease which is a potential source of human disease, or otherwise constitutes a danger or is prejudicial to the public health, the commissioner may order that the pet bird be quarantined at the owner's expense, and such quarantine shall remain in effect until the department is satisfied that the quarantined pet bird is no longer a hazard to the public health, at which time the commissioner shall in writing lift the quarantine.
5. For the purposes of determining whether a quarantine should be lifted, the commissioner may consider the following:
 - a. The results of laboratory tests specified by the department in writing in a laboratory acceptable to the department of a representative sample of birds submitted to the laboratory by the owner for testing at his own expense.
 - b. The condition of the quarantined bird after treatment with specified medication or medicated feed, or both, for a period of 45 consecutive days, a record of which shall be maintained by the owner and submitted to the department.
 - c. Destruction by the owner at his expense of the quarantined bird in a manner acceptable to the department and in the presence of a representative of the department, after which:
 - i. The owner shall make available upon request the bird for further examination; or
 - ii. The owner shall dispose of the bird in a manner acceptable to the department and in the presence of a representative of the department; and
 - iii. The owner shall at his own expense thoroughly disinfect the premises formerly occupied by the quarantined bird.

(Added 7-28-1987, eff. 1-1-1988)

Sec. 873.1908. Animal facilities; standards.

All animal facilities shall comply with all applicable codes, rules, regulations and policies of the department* and all federal and state agencies.

***Editor's note:** See Rules and Regulations of the Commissioner Policy No. AF 2-87, effective 1-1-1988, which is on file in the office of the Commissioner of Health.

(Added 7-28-1987, eff. 1-1-1988)

Sec. 873.1909. Animal facilities; severability.

If any provision of this article is held invalid, such invalidity shall not affect other provisions which shall be given effect without the invalid provision.

(Added 7-28-1987, eff. 1-1-1988)

ARTICLE XX. SMOKING; CLEAN INDOOR AIR

Sec. 873.2001. Purpose.

The purpose of this article is to protect people from the deleterious effects of second-hand or environmental tobacco smoke by prohibiting or regulating smoking in certain indoor places.

(Added 4-1-1996, eff. 7-1-1996*)

***Editor's note:** This resolution added a new Article XX and also rescinded the former Article XX, effective 7-12-79, as amended.

Sec. 873.2011. Definitions.

Whenever used in this article the following terms shall have the meaning hereinafter set forth or indicated:

1. *Auditorium* means the part of a public building where an audience sits but does not include any corridors, hallways or lobbies adjacent thereto.
2. *Bar* means any indoor area open to the public devoted to the sale and service of alcoholic beverages for on-premises consumption and where the service of food is only incidental to the consumption of such beverages. Service of food shall be considered incidental if the food service generates less than forty (40) percent of the total annual gross sales. Any bar that generates forty (40) percent or more of total annual gross sales from the sale of food for on-premises consumption shall be a food service establishment.
3. *Bar area of a food service establishment* means any indoor area including

bar stools, tables and chairs of a food service establishment, devoted to the sale and service of alcoholic beverages for on-premises consumption and where the service of food is only incidental to the consumption of such beverages. Service of food shall be considered incidental if the food service in this area constitutes less than forty (40) percent of total gross sales of the area.

4. *Buffer zone* shall mean six (6) feet of continuous space or a continuous barrier (with necessary openings for ingress and egress) of at least fifty-six (56) inches in height separating the bar area where smoking is allowed from the rest of the non-smoking food service establishment. No smoking is allowed in the buffer zone.
5. *Employer* shall mean any person, partnership, associate, corporation or nonprofit entity which employs one (1) or more persons.
6. *Factory* means any mill or other manufacturing establishment where one (1) or more persons are employed in manufacturing, including making, altering, repairing, finishing, bottling, canning, cleaning or laundering any article or thing.
7. *Food service establishment* means any indoor area open to the public or portion thereof in which the business is the sale of food for on-premises consumption and which has an indoor seating capacity of one or more persons including, but not limited to restaurants, cafeterias, coffee shops, diners, sandwich shops or short order cafes. A food service establishment shall not include the bar area of such establishment.
8. *Indoor area open to the public* means any indoor area or portion thereof generally accessible to the public.
9. *Place of employment* means any indoor area or portion thereof under the control of an employer in which employees of the employer perform services but which is not generally accessible to the public.
10. *Public building* means any building owned or operated by any county, city, town, village or any other political subdivision, public improvement or special district, public authority, commission, agency or public benefit corporation; or any other separate corporate instrumentality or unit of local government.
11. *Smoke-free work area* means an enclosed indoor area in a place of employment where no smoking occurs. Such area shall be clearly designated, and separate from any smoking area.
12. *Smoking* means burning of a lighted cigar, cigarette, pipe or any other matter of substance which contains tobacco.
13. *Smoking area* means an enclosed indoor area in which smoking is permitted. Such smoking area shall be clearly designated and separate from any area in which smoking is not permitted. In a place of employment, the smoking area shall be separated from a smoke-free work area by walls or some other means, equally effective in reducing the effects of smoke on the smoke-free work area, other than ventilation systems or air cleaning devices.

14. *Tobacco business* means a sole proprietorship, corporation, partnership or other enterprise in which the primary activity is the sale, manufacture or promotion of tobacco, tobacco products and accessories either at wholesale or retail, and in which the sale, manufacture or promotion of other products is merely incidental.
15. *Waiting area* means any indoor area where people are in line or otherwise waiting for a dining seat in a food service establishment. It shall include the bar area of a food service establishment if people are directed to wait there.
16. *Warehouse* means any building or structure used for the purpose of storing merchandise or commodities.
17. *Work area* means an area in a place of employment where one (1) or more employees are routinely assigned and perform services for their employer.

(Added 4-1-1996, eff. 7-1-1996)

Sec. 873.2021. Smoking restrictions.

1. Smoking shall not be permitted and no person shall smoke in the following indoor areas open to the public:
 - (A) Auditoriums;
 - (B) Elevators;
 - (C) Gymnasiums;
 - (D) Enclosed indoor areas open to the public containing a swimming pool;
 - (E) Indoor areas open to the public in food stores provided, however, that any separate or distinct portion or part of such establishment which is dedicated to the sale of food for on-premises consumption shall be governed by the provisions of subdivision 5. of this section;
 - (F) Classrooms, provided however, that a classroom being used or occupied, temporarily or permanently, for purposes other than instruction or training shall be governed by the provisions of subdivision 2. of this section;
 - (G) Public means of mass transportation, and when occupied by passengers, buses, vans, taxicabs and limousines; and
 - (H) Ticketing and boarding areas in public transportation terminals.
2. Except as provided in subdivisions 3., 4. and 5. of this section, smoking shall not be permitted and no person shall smoke in any indoor area open to the public, including but not limited to any indoor area open to the public in:
 - (A) All public and private schools, including elementary and secondary schools, colleges, universities and other educational and vocational institutions;
 - (B) General hospitals and residential health care facilities as defined in the New York State Public Health Law, and other health care facilities

licensed by the state in which persons reside, provided, however, that cafeterias and lunchrooms in such facilities shall be governed by the provisions of paragraph (C) of subdivision 6. of this section;

- (C) Public buildings, provided, however, that an employee whose work area is in an indoor area open to the public shall be governed by the provisions of subdivision 6. of this section;
 - (D) Theaters;
 - (E) Museums;
 - (F) Libraries;
 - (G) Retail stores in which goods, wares or merchandise are offered for sale;
 - (H) Commercial establishments used for the purpose of carrying on or exercising any trade, profession, vocation or charitable activity;
 - (I) Indoor arenas;
 - (J) Waiting rooms and waiting areas;
 - (K) Banks and other financial institutions;
 - (L) Restrooms;
 - (M) Waiting areas in public transportation terminals; and
 - (N) Service areas in cafeterias and businesses selling food for on-premises and off-premises consumption.
3. The owner, operator or manager of an indoor area open to the public subject to subdivision 2. of this section may designate a smoking area or areas. Such smoking area shall not include any of the indoor areas open to the public set forth in subdivision 1. of this section.
4. (A) The owner, operator or manager of a bowling establishment may permit smoking in the concourse area, which is the area directly behind and immediately contiguous to the bowler settee area, but shall provide a nonsmoking area constituting at least 25 percent of the square footage of the concourse area.
- (B) The organizer or sponsor of bingo shall provide a contiguous nonsmoking area sufficient to meet patron demand. If at least 50 percent of seating capacity is designated for nonsmokers, demand shall be deemed to have been met. The organizer or sponsor may not determine that no such demand exists. Notice shall be prominently posted at each entrance stating that a nonsmoking section is available.
5. The following smoking restrictions and prohibitions shall apply at food service establishments:
- (A) Smoking shall not be permitted and no person shall smoke in the indoor dining, waiting and other public areas of food service establishments. This prohibition shall not pertain to the bar area of the food service establishment or a bar as defined in this article. A buffer zone where smoking is prohibited shall be maintained between the bar area where smoking is prohibited and the rest of the food service establishment where smoking is allowed and the rest of the food service establishment where

smoking is prohibited.

6. Each employer shall adopt and implement a written smoking policy. The policy shall apply only to a place of employment as defined in section 873.2011 9. of this article and shall require at least the following:
- (A) That employers shall provide nonsmoking employees with a smokefree work area;
 - (B) That employers may set aside a work area for smoking if all employees assigned to the work area agree to the designation;
 - (C) That employers shall provide for contiguous nonsmoking areas in employee cafeterias, lunchrooms and lounges. The contiguous nonsmoking areas in employee cafeterias and lunchrooms shall be sufficient to meet employee demand. An employer may not determine that no such demand exists. If 70 percent of the indoor seating capacity is designated as a nonsmoking area, employee demand shall be deemed to have been met. The designation of less than 70 percent of the indoor seating capacity for dining of a food service establishment as a nonsmoking area shall not create the presumption of noncompliance with the provisions of this subdivision;
 - (D) That smoking shall be prohibited in auditoriums, gymnasiums, restrooms, elevators, classrooms, hallways, employee medical facilities and rooms or areas which contain photocopying equipment or other office equipment used in common, and in company vehicles occupied by more than one person unless the occupants of such vehicle agree that smoking may be permitted.
 - (E) That smoking shall be prohibited in conference rooms and meeting rooms, unless everyone in that room agrees that smoking may be permitted;
 - (F) That an employer may designate a separate enclosed room or rooms not open to the public for use as a smoking area;
 - (G) That employers shall prominently post the smoking policy in the workplace, and supply a written copy upon request to any existing or prospective employee;
 - (H) An employer shall not be required to make any expenditures or structural changes to create a smoke-free work area. In the event an employer cannot, after using its best efforts, comply with an employee's request for a smoke-free work area, the employer shall designate that employee's work area as a smoke-free work area; and
 - (I) Any provisions in a smoking policy that are more restrictive than the minimum requirements set forth in this subdivision shall, if a collective bargaining unit exists, be subject to applicable law governing collective bargaining.

(Added 4-1-1996, eff. 7-1-1996)

Sec. 873.2031. Posting of signs.

1. "Smoking" or "no smoking" signs, or the international "no smoking" symbol, which consists of a pictorial representation of a burning cigarette enclosed in a circle with a bar across it, shall be prominently posted and properly maintained where smoking is regulated by this article, by the owner, operator, manager or other person having control of such indoor area.
2. The owner, operator or manager of a hotel or motel that chooses to develop and implement a smoking policy for rooms rented to guests shall post a notice at the reception area of the establishment as to the availability, upon request, of rooms in which no smoking is allowed.

(Added 4-1-1996, eff. 7-1-1996)

Sec. 873.2041. Smoking restrictions inapplicable.

This article shall not apply to:

1. Private homes, private residences and private automobiles;
2. Any indoor area where private social functions are being held when seating arrangements are under the control of the sponsor of the function and not the owner, operator, manager or person in charge of such indoor area;
3. Any indoor area open to the public exclusively reserved for conventions and trade shows if the sponsor or organizer gives notice in any promotional material or advertisements that smoking will not be restricted, and prominently posts notice at the entrance to the convention or trade show advising the public that smoking will not be restricted;
4. A hotel or motel room rented to one or more guests;
5. Tobacco businesses;
6. Limousines under private hire by an individual or corporation; and
7. Wholly or partially enclosed private boxes in indoor arenas.

(Added 4-1-1996, eff. 7-1-1996)

Sec. 873.2051. General provisions.

1. Nothing in this article shall be construed to deny the owner, operator or manager of a place covered by this article the right to designate the entire place, or any part thereof, as a nonsmoking area.

(Added 4-1-1996, eff. 7-1-1996)

Sec. 873.2061. Violations.

1. It shall be unlawful for any person, firm, corporation or other entity that owns, manages, operates or otherwise controls the use of an indoor area open to the public in which smoking is prohibited or restricted pursuant to section 873.2021 of this article to fail to comply with the provisions of this article. For violations of this subdivision, it shall be an affirmative defense that during the relevant time

period actual control of the indoor area open to the public was not exercised by the respondent, but rather by a lessee, the sublessee or any other person. To establish an affirmative defense, the respondent shall submit an affidavit and may submit any other relevant proof indicating that the respondent did not exercise and other proof indicating that the respondent did not exercise actual control of said area during the relevant time period. Such affidavit and other proof shall be mailed by certified mail to the appropriate enforcement officer within 30 days of receipt of such notice of violation.

2. It shall be unlawful for any person, firm, corporation or other entity that owns, manages or operates a food service establishment or bar in which smoking is restricted or prohibited to fail to designate areas pursuant to subdivision 5. of section 873.2021 of this article, or to fail to make good faith efforts to ensure that employees responsible for seating arrangements substantially comply with the requirements of this article. In actions brought for violations of subdivision 5. of section 873.2021 of this article, it shall be an affirmative defense that notice of a violation was provided to a customer.
3. It shall be unlawful for an employer whose place of employment is subject to subdivision 6. of section 873.2021 of this article to fail to comply with the provisions of such subdivision. For violations of subdivision 6. of section 873.2021 of this article, it shall be an affirmative defense that the employer has made good faith efforts to ensure that employees comply with the provisions of any policy adopted pursuant to subdivision 6. of section 873.2021 of this article.
4. It shall be unlawful for any person to smoke in any area where smoking is prohibited or restricted under section 873.2021 of this article.

(Added 4-1-1996, eff. 7-1-1996)

Sec. 873.2071. Enforcement.

1. For the purpose of this article the term "Enforcement Officer" shall mean the Commissioner of Health of Westchester County or his designated representatives.
2. Any person who desires to register a complaint under this article may do so with the appropriate Enforcement Officer.
3. The owner, manager, operator or other person having control of any indoor area open to the public, food service establishment or place of employment under this article, shall inform, or shall designate an agent who shall be responsible for informing individuals smoking in a area in which smoking is not permitted that they are in violation of this article.

(Added 4-1-1996, eff. 7-1-1996)

Sec. 873.2081. Waiver.

1. The Enforcement Officer may grant a waiver from the application of a specific provision of this article, provided that prior to the granting of any such waiver the applicant for a waiver shall establish that:
 - (A) Compliance with a specific provision of this article would cause undue

financial hardship; or

- (B) Other factors, including but not limited to the physical layout, exist which would render strict compliance unreasonable.
- 2. Notwithstanding subdivision 1. of this section, the Enforcement Officer shall grant a waiver from the application of subdivision 6. of section 873.2021 of this article to any applicant who as the owner, operator or manager of a factory or warehouse demonstrates that the effects of smoking on employees in work areas have been reduced to a minimal degree by factors, including but not limited to, the physical layout or size of such factory or warehouse.
- 3. Subdivision 2. of this section shall not apply to work areas in separate enclosed offices, employee cafeterias, lunchrooms or lounges in a factory or warehouse.
- 4. Every waiver granted shall be subject to such conditions or restrictions as may be necessary to minimize the adverse effects of the waiver upon persons subject to an involuntary exposure to second-hand smoke and to ensure that the waiver is consistent with the general purpose of this article.

(Added 4-1-1996, eff. 7-1-1996)

Sec. 873.2091. Penalties.

The Board of Health may impose civil penalties for violations of this article in accordance with the provisions set forth in Article II of Chapter 873 of this sanitary code.

(Added 4-1-1996, eff. 7-1-1996)

Sec. 873.2101. Limitation of causes of action.

An employer, administrator, manager, owner or operator of any indoor area, food service establishment, or place of employment regulated by this article who complies or fails to comply with the provisions of this article shall not be subject to any legal liability or action solely as a result of such compliance or noncompliance except as provided in section 873.2091 of this article. Nothing in any other section of this article shall be construed to create, impair, alter, limit, modify, enlarge, abrogate or restrict any theory of liability upon which any person may be held liable to any other person for exposure to smoke.

(Added 4-1-1996, eff. 7-1-1996)

Sec. 873.2111. Rules and regulations.

The commissioner shall not promulgate any rules or regulations to effectuate the provisions of section 873.2011, subdivision 6. of section 873.2021 or subdivision 1. of section 873.2031 of this article, the commissioner shall not promulgate any rules or regulations that create, limit or enlarge any smoking restrictions.

(Added 4-1-1996, eff. 7-1-1996)

ARTICLE XXI. ADDITIONAL FEES

Sec. 873.2100. Migrant labor camp application fee.

1. Every application for a permit or for a renewal of a permit to operate a Migrant Labor Camp pursuant to Article XI, section 873.1171, subsection 1, of the Westchester County Sanitary Code shall be accompanied by a nonrefundable application fee of \$100.00.
2. The commissioner may waive, in full or part, the requirement of this section, provided that the application submitted sets forth sufficient reasons which, in the opinion of the commissioner, justifies the issuance of a waiver.

(Added 11-20-1980, eff. 1-1-1981; amended 1-28-1988, eff. 7-1-1988; 12-20-1990, eff. 1-1-1991)

Sec. 873.2101. Temporary residences; application fees.

1. Effective May 16, 2003, every application for a permit or for a renewal of a permit to operate a temporary residence pursuant to Article XI, section 873.1181 of the Westchester County Sanitary Code shall be accompanied by a nonrefundable application fee based on the temporary residence's rental capacities and facilities as specified in the following tables:

TABLE INSET:

Temporary Residence (Number of Rental Units or Lots)	Application Fee
1 to 20	\$160.00
21 to 50	240.00
51 to 100	315.00
101 to 200	420.00
201 or more	590.00

Temporary residences with food service establishments are required to pay the following cumulative charges in addition to the basic rental capacity charge:

TABLE INSET:

Food Service Establishment (Based on seating capacity)	Fee
0 to 100	\$570.00
101 to 200	820.00
201 or more	1,075.00

Frozen dessert	25.00
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Temporary residences with swimming pools or bathing beaches are required to pay the following cumulative charges in addition to the basic rental capacity charges and the food service establishment charges:

Type	Fee per Year
Swimming pool greater than 50 persons . . .	\$505.00
Swimming pool less than 50 persons . . .	250.00
Spa/whirlpool . . .	250.00
Wading pool . . .	250.00
Bathing beaches . . .	250.00

2. The commissioner may waive, in full or part, the requirement of this section, provided that the application submitted sets forth sufficient reasons which, in the opinion of the commissioner, justifies the issuance of a waiver.

(Added 11-20-1980, eff. 1-1-1981; amended 1-28-1988, eff. 7-1-1988; 12-20-1990, eff. 1-1-1991; 10-17-1991, eff. 11-1-1991; 3-19-1992, eff. 3-30-1992; 11-19-1992, eff. 1-1-1993; amended 5-15-2003, eff. 5-16-2003)

Sec. 873.2102. X-ray installations/inspections.

1. Effective May 16, 2003, every X-ray installation that requires inspection pursuant to Part 16.10 of Chapter I of the New York State Sanitary Code must submit a nonrefundable inspection fee as specified in the following table:

TABLE INSET:

Inspection Frequency	Fee
Every 2 years	\$505.00 per first unit, plus \$190.00 per additional unit
Every 3 years	\$380.00 per first unit, plus \$155.00 per additional unit
Every 5 years	\$170.00 per first unit, plus \$95.00 per additional unit

2. The commissioner may waive, in full or in part, the requirement of this section, provided that the application submitted sets forth sufficient reasons which, in the opinion of the commissioner, justifies the issuance of a waiver.

(Added 11-20-1980, eff. 1-1-1981; amended 4-18-1991, eff. 5-1-1991; amended 6-16-1994, eff. 7-1-1994; amended 5-15-2003, eff. 5-16-2003)

Sec. 873.2103. Food service establishment; application fees.

1. Effective May 16, 2003, every application for a permit or for renewal of a permit for a food service establishment that will be operated for a period of fifteen (15) days or more in a calendar year pursuant to Article V, section 873.441 of the Westchester County Sanitary Code, shall be accompanied by a nonrefundable application fee as specified in the following table:

TABLE INSET:

Food Service Establishment		
Eating place A		
	Seats 0-100	\$570.00
	Seats 101-200	820.00
	Seats 201+	1,075.00
Eating place B		
	Seats 0-100	380.00
	Seats 101-200	560.00
	Seats 201+	710.00
Eating place C		
	Seats 0-100	320.00
	Seats 101-200	420.00
	Seats 201+	550.00
Delicatessen		.00
Ice manufacturer		.00
Commissary		.00
Caterer		.00
Frozen dessert manufacturer		.00
Mobile food unit		.00
Bakery		.00
Vending machine		.00
Eating place school A		
	Seats 0-100	410.00
	Seats 101-200	475.00
	Seats 201+	570.00

Eating place school B		
	Seats 0-100	320.00
	Seats 101-200	410.00
	Seats 201+	505.00
Eating place school C		
	Seats 0-100	250.00
	Seats 101-200	350.00
	Seats 201+	445.00
Temporary food service permits		.00

2. Every application for a permit for a food service establishment that will be operated for a period of less than fifteen (15) days in a calendar year pursuant to Article V, section 873.441 of the Westchester County Sanitary Code, shall be accompanied by a nonrefundable application fee of sixty-five dollars (\$65.00).
3. Food service establishment plans submitted pursuant to Article V, section 873.421, subsection 1., of the Westchester County Sanitary Code shall be accompanied by a nonrefundable fee as specified in the following table:

TABLE INSET:

Food Service Establishment Seating Capacity	Fee
0 to 100	\$190.00
101 to 200	250.00
201 or more	320.00

4. In addition, a sixty-five dollar (\$65.00) fee shall accompany each subsequent review of plans for the same establishment until such plans are approved.
5. The commissioner may waive, in full or part, the requirement of this section, provided that the application submitted sets forth sufficient reasons which, in the opinion of the commissioner, justifies the issuance of a waiver.

(Added 11-20-1986, eff. 11-20-1986; amended 1-28-1988, eff. 7-1-1988; 12-20-1990, eff. 1-1-1991; 10-17-1991, eff. 11-1-1991; 11-19-1992, eff. 1-1-1993; amended 5-15-2003, eff. 5-16-2003)

Sec. 873.2104. Realty subdivision application fees.

1. Effective May 16, 2003, every realty subdivision application requiring approval pursuant to Chapter 873, Article X, of the Sanitary Code shall be accompanied

with a nonrefundable application fee as specified in the following table:

TABLE INSET:

Type of Lot or Building	Application Fee
Lots or buildings serviced by public sewers	\$125.00 per lot, per building
Lots or buildings with separate sewage systems	\$190.00 per lot, per building
Condominiums or cooperatives serviced by public sewers	\$125.00 per building
Condominiums or cooperatives with separate sewage systems	\$190.00 per building

2. The commissioner may waive, in full or part, the requirements of this section, provided that the application submitted sets forth sufficient reasons which, in the opinion of the commissioner, justify the issuance of a waiver.

(Added 2-26-1987, eff. 4-1-1987; amended 5-15-2003, eff. 5-16-2003)

Sec. 873.2105. Bathing facilities; fees.

1. Effective May 16, 2003, every application for a bathing beach or swimming pool requiring construction approval from the commissioner pursuant to 6-2.8 and 6-1.8 of Part 6, Chapter I of the New York State Sanitary Code shall be accompanied by a nonrefundable application fee as specified in the following table:

TABLE INSET:

Facility	Fee
Swimming pool	\$630.00 per pool
Bathing beach	\$400.00 per beach

2. Effective May 16, 2003, every application for a swimming pool and bathing beach pursuant to Chapter 873, Article XII, sections 873.1200 and 873.1201, respectively, of the Sanitary Code shall be accompanied with a nonrefundable

application fee as specified in the following table:

TABLE INSET:

Facility	Annual Fee
Swimming pool greater than 50 persons	\$505.00
Swimming pool less than 50 persons	\$250.00
Spa/whirl pool	\$250.00
Wading pool	\$250.00
Bathing beach	\$250.00

3. The commissioner may waive, in full or part, the requirements of this section provided that the application submitted sets forth sufficient reasons which, in the opinion of the commissioner, justify the issuance of a waiver.

(Added 11-12-1987, eff. 11-12-1987; amended 3-19-1992, eff. 3-30-1992; amended 5-15-2003, eff. 5-16-2003)

Sec. 873.2106. Mobile home park application fees.

1. Every application for a permit or for a renewal of a permit to operate a mobile home park pursuant to Article XI, section 873.1191, of the Westchester County Sanitary Code shall be accompanied by a nonrefundable application fee as specified in the following table:

TABLE INSET:

Number of Sites	Fee
Less than 75	\$100.00
75 or more	175.00

2. The commissioner may waive, in full or part, the requirement of this section, provided that the application submitted sets forth sufficient reasons which, in the opinion of the commissioner, justifies the issuance of a waiver.

(Added 1-28-1988, eff. 7-1-1988; amended 12-20-1990, eff. 1-1-1991)

Sec. 873.2107. Public function application fees.

1. Every application for a permit to operate a public function pursuant to Article XI, section 873.1120, of the Westchester County Sanitary Code shall be accompanied by a nonrefundable application fee as specified in the following

tables:

- a. One to ten public functions per year:

TABLE INSET:

Number of Health Care Units	Fee
Less than 3	\$100.00
3 or more	200.00

- b. Ten or more public functions per year:

TABLE INSET:

Number of Health Care Units	Fee
Less than 3	\$300.00
3 or more	600.00

2. The commissioner may waive, in full or part, the requirement of this section, provided that the application sets forth sufficient reasons which, in the opinion of the commissioner, justifies the issuance of a waiver.

(Added 2-25-1988, eff. 4-1-1988; amended 12-20-1990 eff. 1-1-1991)

Sec. 873.2108. Animal facility; fees.

1. Effective May 16, 2003 every application for a permit to operate an animal facility pursuant to Article XIX of the Westchester County Sanitary Code shall be accompanied by a nonrefundable application fee as specified in the following table:

Facility	Fee
Animal wholesaler . . .	\$250.00
Pet shop . . .	180.00
Stable . . .	90.00
Kennel . . .	90.00
Grooming parlor or salon . . .	90.00
Animal breeder . . .	90.00
Animal trainer . . .	90.00
Animal shelter . . .	No fee

2. Every application for a permit to operate an animal facility for a period of less than fifteen (15) days in a calendar year shall be accompanied by a nonrefundable application fee of one hundred twenty-five dollars (\$125.00).

3. Animal facility plans submitted to the commissioner for approval shall be accompanied by a nonrefundable fee of sixty-five dollars (\$65.00).
4. In addition, a fee of thirty dollars (\$30.00) shall accompany each subsequent review of plans for the same establishment until such plans are approved.
5. The commissioner may waive, in full or in part, the requirement of this section, provided that the application submitted sets forth sufficient reason which, in the opinion of the commissioner, justifies the issuance of a waiver.

(Added 4-28-1988, eff. 5-1-1988; amended 12-20-1990, eff. 1-1-1991; amended 5-15-2003, eff. 5-16-2003)

Sec. 873.2109. Air quality; fees.

1. Effective May 16, 2003, every submittal for a written approval to undertake the construction or modification of an air contamination source pursuant to Article XIII, section 873.1303 of the Westchester County Sanitary Code shall be accompanied by a nonrefundable fee as specified in the following table:

TABLE INSET:

Source	Fee Per Unit
Combustion installation	\$380.00
Incinerator	505.00
Process	630.00

2. Effective May 16, 2003, every application for a certificate to operate an air contamination source pursuant to Article XIII, section 873.1306 of the Westchester County Sanitary Code shall be accompanied by a nonrefundable fee as specified in the following table:

TABLE INSET:

Source	Annual Fee Per Unit
Combustion installation	\$ 0.00
Incinerator	0.00
Process	250.00

3. Every application for a permit to operate a dry-cleaning facility pursuant to Article XIII, section 873.1327 of the Westchester County Sanitary Code shall be accompanied by a nonrefundable fee of one hundred ninety dollars (\$190.00).
4. The commissioner may waive, in full or part, the requirement of this section provided that the application submitted sets forth sufficient reasons which, in the opinion of the commissioner, justifies the issuance of a waiver.

(Added 1-17-1991, eff. 2-1-1991; amended 3-18-1993, eff. 3-18-1993; amended 5-15-2003, eff. 5-16-2003)

Sec. 873.2110. Transportation of offensive material; fee.

1. Every application for a permit for the removal, collection or transportation of offensive material pursuant to the provisions of Article VIII, section 873.801, of the Westchester County Sanitary Code shall be accompanied by a nonrefundable fee of fifty dollars (\$50.00) per vehicle.
2. The commissioner may waive, in full or part, the requirement of this section, provided that the application submitted sets forth sufficient reasons which, in the opinion of the commissioner, justifies the issuance of a waiver.

(Added 12-20-1990, eff. 1-1-1991)

Sec. 873.2111. Separate disposal system; fee.

1. Effective May 16, 2003, every submittal for written approval to undertake the construction of a separate disposal system for a single-family residence pursuant to the provisions of Article VIII, section 873.711 of the Westchester County Sanitary Code shall be accompanied by a nonrefundable fee of three hundred eighty dollars (\$380.00) per system.
2. Effective May 16, 2003, submittal for written approval to undertake the construction of a separate disposal system other than a single-family residence pursuant to the provision of Article VIII, section 873.711 of the Westchester Sanitary Code shall be accompanied by a nonrefundable fee of thirty dollars (\$30.00) per one hundred (100) gallons of design flow. The minimum fee shall be five hundred and five dollars (\$505.00), and the maximum fee shall be three thousand, one hundred fifty dollars (\$3,150.00) for any separate disposal system approval under this section.
3. The commissioner may waive, in full or part, the requirement of this section, provided that the application submitted sets forth sufficient reasons which, in the opinion of the commissioner, justifies the issuance of a waiver.

(Added 12-20-1990, eff. 1-1-1991; amended 11-19-1992, eff. 1-1-1993; amended 5-15-2003, eff. 5-16-2003)

Sec. 873.2112. Individual water supply system; fee.

1. Effective May 16, 2003, every submittal for written approval to undertake the construction of an individual water supply system pursuant to the provisions of Article VII, section 873.708, of the Westchester Sanitary Code shall be accomplished by a nonrefundable fee of one hundred ninety dollars (\$190.00) per system.
2. The commissioner may waive, in full or part, the requirement of this section, provided that the application submitted sets forth sufficient reasons which, in the opinion of the commissioner, justifies the issuance of a waiver.

(Added 12-20-1990, eff. 1-1-1991; amended 5-15-2003, eff. 5-16-2003)

Sec. 873.2113. Public and private water system; fees.

1. Effective May 16, 2003, every submittal for written approval to undertake the construction or modification of a public or private water system pursuant to the provisions of Article VII, section 873.707, of the Westchester County Sanitary Code shall be accompanied by a nonrefundable fee of one hundred ninety dollars (\$190.00) per lot to be served or thirty dollars (\$30.00) per one hundred (100) gallons of the design flow of a water treatment facility, with a maximum fee of thirty-one thousand five hundred dollars (\$31,500.00).
2. The commissioner may waive, in full or part, the requirement of this section, provided that the application submitted sets forth sufficient reasons which, in the opinion of the commissioner, justifies the issuance of a waiver.

(Amended 5-15-2003, eff. 5-16-2003)

Sec. 873.2114. Pollution discharge; fees.

1. Effective May 16, 2003, every submittal for written approval to undertake the construction or modification of a pollution discharge pursuant to the provisions of Article XXII, section 873.2202, of the Westchester County Sanitary Code shall be accompanied by a nonrefundable fee of one hundred twenty-five dollars (\$125.00) per lot to be served or thirty dollars (\$30.00) per one hundred (100) gallons of design flow of a wastewater treatment facility, with a maximum fee of thirty-one thousand, five hundred dollars (\$31,500.00).
2. The commissioner may waive, in full or part, the requirement of this section, provided that the application submitted sets forth sufficient reasons which, in the opinion of the commissioner, justifies the issuance of a waiver.

(Added 12-20-1990, eff. 1-1-1991; amended 5-15-2003, eff. 5-16-2003)

Sec. 873.2115. Water pollution discharge certificate; application fee.

Effective May 16, 2003, every application for a certificate to operate a water pollution discharge pursuant to Article XXII, section 873.2204 of the Westchester County Sanitary Code shall be accompanied by a nonrefundable application fee based on gallons per day (GPD) of design flow as specified in the following table:

TABLE INSET:

Gallons Per Day (GPD)	Fee
Less than 30,000	\$190.00
30,000--100,000	320.00
100,001--500,000	570.00
500,001--2,000,000	880.00
Greater than 2,000,000	1,135.00

(Added 11-19-1992, eff. 1-1-1993; amended 5-15-2003, eff. 5-16-2003)

Sec. 873.2116. Public or private water systems; application fee.

Effective May 16, 2003, every application for a permit to operate a public or private water system pursuant to Article VII, section 873.710 of the Westchester County Sanitary Code shall be accompanied by a nonrefundable application fee based on the population served as specified in the following table:

TABLE INSET:

Population Served	Fee
0--100	\$ 95.00
101--10,000	250.00
10,001--30,000	445.00
30,001--100,000	755.00
100,000	1,260.00

(Added 11-19-1992, eff. 1-1-1993; amended 5-15-2003, eff. 5-16-2003)

Sec. 873.2117. Cross-connection control; fee.

Effective May 16, 2003, every application for approval of a cross-connection control device to a public or private water system pursuant to Article VII, section 873.707 of the Westchester County Sanitary Code shall be accompanied by a nonrefundable fee of sixty-five dollars (\$65.00).

(Added 11-19-1992, eff. 1-1-1993; amended 5-15-2003, eff. 5-16-2003)

ARTICLE XXII. WATER POLLUTION CONTROL

Sec. 873.2200. Water pollution control; definitions.

Whenever used in this article, unless otherwise expressly stated or unless the context of subject matter requires a different meaning, the following terms shall have the respective meanings hereinafter set forth or indicated:

1. *Industrial wastes.* The term "industrial wastes" means any liquid, gaseous, solid or waste substance or combination thereof resulting from any direct or indirect process of industry, manufacturing, trade, business or from the development or recovery of any natural resources.
2. *Offensive material.* The term "offensive material" means any sewage, fecal matter, manure, offal, animal vegetable waste, sludge or garbage, dead animal, meat wastes, blood, tankage, brine or any putrescible organic matter, including but not limited to the contents of privies, cesspools, septic tanks or chemical toilets, either in liquid or solid state, or any other substance or liquid that is or may be dangerous or prejudicial to public health or to the environment.

3. *Other wastes.* The term "other wastes" means decayed wood, sawdust, shavings, bark, sand, lime, cinders, ashes, oil, petroleum products, tar, dyestuffs, acids, chemicals and all other discarded matter not sewage, industrial waste or offensive material.
4. *Person.* The term "person" means any individual, firm, profit or not-for-profit corporation, cooperative, association, partnership, institution, political subdivision, government agency, public body, joint-stock association, trust, estate or other group of individuals or combination of the foregoing or any other legal entity whatsoever, except the State of New York and its agencies.
5. *Pollution discharge.* The term "pollution discharge" means the voluntary or involuntary release of industrial waste, offensive material or other waste, except stormwater drainage, into the waters within the county.
6. *Pollution hazard.* The term "pollution hazard" means a condition resulting from the entry of industrial waste, offensive material or other wastes into any of the waters within the county, whereby the quality of such waters may be adversely affected in their use for drinking, transportation, bathing, fishing or fish culture, culinary or other water supply uses, including wildlife conservation; or whereby the lands contiguous with or adjacent to such waters may be adversely affected in their use for residential, industrial, recreational or wildlife conservational purposes; or whereby the quality of such waters may be adversely affected in regard to their intended purpose as established by the provisions of the Code or the Environmental Conservation Law of the State of New York and applicable rules and regulations promulgated pursuant thereto.
7. *Sewage.* The term "sewage" means water-carried human, animal or vegetative wastes and laundry wastes from residences, buildings, industrial establishments or other places, together with such groundwater infiltration and surface water as may be present or may include any admixture with industrial wastes or other wastes.
8. *Waters within the county.* The term "waters within the county" means any lake, bay, sound, pond, impounding reservoir, spring, well, river, stream, creek, estuary, marsh, inlet and canal and groundwater, either wholly or in part within the County of Westchester or which is contiguous with any part of the land within the County of Westchester.

(Added 6-22-1989, eff. 1-1-1990)

Sec. 873.2201. Water pollution control; general prohibition.

1. No person shall directly or indirectly throw, drain, dump, run or otherwise discharge or allow to be discharged into the waters within the county any offensive material, industrial wastes, sewage or other waste that shall cause or contribute to a condition which causes or may reasonably be expected to cause a pollution hazard.
2. No person shall directly or indirectly throw, drain, dump or run from any vessel, vehicle or structure on land or water any industrial waste, offensive material or other waste in the waters within the county.

(Added 6-22-1989, eff. 1-1-1990)

Sec. 873.2202. Water pollution control; new pollution discharges.

1. No person shall undertake to construct a new pollution discharge or make modifications to an existing pollution discharge, except discharges to groundwater, without:
 - a. First submitting to the commissioner an application, plans and specifications and any other information as may be required by the department; and
 - b. Obtaining prior written approval therefor.
2. Reports, plans and specifications for construction of a pollution discharge or modification to an existing pollution discharge shall be submitted for approval in accordance with the standards, guides, rules and regulations duly promulgated by the commissioner.

(Added 6-22-1989, eff. 1-1-1990)

Sec. 873.2203. Water pollution control; new pollution discharges; modifications; approval to construct; nontransferable.

Approval to construct a new pollution discharge or to make modifications to an existing pollution discharge, except discharges to groundwater, shall not be transferable from one location to another or from one person to another.

(Added 6-22-1989, eff. 1-1-1990)

Sec. 873.2204. Water pollution control; new and existing pollution discharges; certificate to operate; nontransferable; filing.

1. No person shall operate a pollution discharge, except discharge to groundwater, without a valid certificate issued by the commissioner to operate such source.
2. Application for certificate.
 - a. Application for a certificate to operate a pollution discharge or modification to an existing pollution discharge, except discharge to groundwater, shall be made on forms provided by the department and shall be accompanied by a written statement from a professional engineer, licensed and registered to practice in the State of New York, certifying that the pollution discharge or modification to an existing pollution discharge has been constructed in accordance with the permit to construct and the approved plans and specifications.
 - b. Such application shall be made thirty (30) days prior to the date of completion of the pollution discharge on forms provided by the department.
3. Term of certificate.
 - a. A certificate to operate a pollution discharge shall be issued for a period of time in accordance with the commissioner's rules and regulations.*

***Editor's note:** See Rules and Regulations of the Commissioner Policy No. WPC 1-89, effective 7-5-1989, which is on file in the office of the Commissioner of Health.

- b. Application for a renewal certificate to operate a pollution discharge shall be filed with the department no less than sixty (60) days prior to the expiration of the existing certificate and shall be made on forms provided by the department.
4. A certificate to operate a pollution discharge shall not be transferable from one location to another or from one person to another.
5. A certificate to operate a pollution discharge or copy thereof shall be permanently retained on the site of the pollution discharge.

(Added 6-22-1989, eff. 1-1-1990; amended 3-20-2003, eff. 3-21-2003)

Sec. 873.2205. Water pollution control; standards.

In determining compliance with the provisions of this article, the department shall be guided by the Environmental Conservation Law, provisions of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York and the policy rules and regulations adopted by the commissioner.

(Added 6-22-1989, eff. 1-1-1990)

Sec. 873.2206. Water pollution control; spills.

1. The voluntary or involuntary discharge or spillage of any industrial waste, offensive material or other waste to the surface of the ground, roadway or waters within the county must be immediately reported to the commissioner.
2. No person shall allow the voluntary or involuntary discharge or spillage of any liquid that may affect or may reasonably be expected to affect the waters within the county.*

***Editor's note:** For standards for evaluating effects of liquid spills, see Rules and Regulations of the Commissioner Policy No. WPC 2-89, effective 7-5-1989, which is on file in the office of the Commissioner of Health.

3. All necessary preventative action must be taken by the responsible person to minimize the damage to the public and the environment as a result of a voluntary or involuntary discharge or spillage of any liquid to the surface of the ground, roadway or waters within the county.

(Added 6-22-1989, eff. 1-1-1990)

Sec. 873.2207. Water pollution control; operation and performance.

1. No person shall use or permit the use of any treatment facility for offensive material, industrial waste or other waste in a manner as causes it to function improperly or other than in accordance with its design or state or county permit conditions.
2. Daily records regarding the operation of any wastewater treatment facility shall be kept by the operator and shall be:
 - a. Complete, accurate and include all parameters that require monitoring as prescribed by state or county regulatory agencies.
 - b. Maintained for a period three (3) years at the facility; and
 - c. Submitted within twenty-eight (28) calendar days after the close of the previous month's operation.

(Added 6-22-1989, eff. 1-1-1990; amended 3-20-2003, eff. 3-21-2003)

Sec. 873.2208. Water pollution control; waters within the county.

The quality of the waters within the county shall be monitored to ensure compliance with applicable standards adopted by the United States Environmental Protection Agency, New York State Department of Health, New York State Department of Environmental Conservation and this department.

(Added 6-22-1989, eff. 1-1-1990)

Sec. 873.2209. Water pollution control; separability.

If any provision of this article is held invalid, such invalidity shall not affect other provisions which shall be given effect without the invalid provision.

(Added 6-22-1989, eff. 1-1-1990)

Sec. 873.2210. Sewage pump stations; annual reporting.

1. For purposes of this section, the term "Owner" shall mean every person, as defined in Section 873.101(1) of this chapter and every municipality, as defined in section 873.101(n) of this chapter that owns a sewage pump station for the conveyance of domestic sewage, excepting those pump stations which serve individual residences and those pump stations which are physically located on the grounds of a waste water treatment plant.
 2. a. Every Owner shall submit a written, annual report to the commissioner, or his duly authorized designee, for each pump station owned. Annual reports shall be submitted on a calendar year basis, and all reports for the year ending December 31st shall be submitted to the commissioner no later than March 1st of the year following the reporting period, whether or not such pump station is operable during the reporting period. Notwithstanding the above, reports for calendar year 2002 shall be submitted to the commissioner on or before April 1, 2003.
 - b. Nothing herein shall be construed to prohibit or preclude the submission of annual reports by the operator of a pump station facility on behalf of its

Owner, provided however, that the Owner shall be deemed to be in violation of this article in the event of any failure to submit the reports required hereunder.

3. Every Owner shall submit the required reports to the commissioner, or his duly authorized designee, in the form to be established by the commissioner, which form shall be made available at the offices of the Department and on-line. All reports shall include, but not be limited to, the following information:
 - a. The legal name of the Owner;
 - b. The address and telephone number of the Owner;
 - c. The legal name of the operator, if different from the Owner;
 - d. The address and telephone number of the operator, if different from the Owner;
 - e. The name of the official contact person for pump station (operations and emergencies);
 - f. An emergency telephone number for the Owner and/or operator of the pump station where contact can be made with such Owner and/or operator twenty-four (24) hours a day in the event of an emergency which, in the sole discretion of the Commissioner, or his duly authorized designee, presents a risk to the public health and which requires immediate contact with such Owner and/or operator. The failure to provide such contact information; the failure to maintain the operation of the contact number; and/or the failure to respond to such an emergency call, shall be deemed to be a violation of this article. Nothing herein shall be construed to prohibit the Owner and/or operator from providing an emergency pager number; a voice mail number; or the number of an answering service in satisfaction of this subsection (3)(f), provided however, that such pager, voice messaging system, or answering service is accessible on a twenty-four (24) hour a day basis, and provided that the Owner and/or operator responds to any call made by the Commissioner or his duly authorized designee within one (1) hour;
 - g. The name of the pump station;
 - h. The location of the pump station, including:
 - (i.) Block & Lot Number;
 - (ii.) Nearest street/intersections;
 - (iii.) Sewer district (local and county);
 - (iv.) Service area; and
 - (v.) Watershed area in which pump station is located, if applicable, and name of tributary waste water treatment plant where such pump station discharges;
 - i. Date of construction;
 - j. Dates of any reconstruction and/or major capital improvements and summary of work performed;

- k. Design capacity; number of pumps or ejectors; and average daily flow of pump station;
 - l. Over-flow or by-pass pipes and discharge locations;
 - m. Information regarding generators/stand-by power, if applicable; and
 - n. Alarm/overflow history, including type of overflow and where reported, if applicable.
4. In addition to the annual reports required pursuant to subsection (2), above, Owners shall also be required to inform the commissioner, or his duly authorized designee, in the event that there is a change in the emergency contact person, operator, or contact number, as referenced in subsections (3)(d), (3)(e), and (3)(f), above, for a particular pump station; in the event of an overflow/alarm at the facility which results in the discharge of sewage; and/or in the event that the pump station is taken off-line for any reason during the course of any reporting cycle. Such notices shall be issued to the Commissioner within 14 days of any such occurrence. In addition, all Owners shall be required to provide any other information which the Commissioner shall, from time to time, reasonably request regarding said pump station and/or its operations.
5. Any person who is deemed to have violated this section shall be subject to enforcement proceedings in accordance with the provisions of article II of this chapter.

(Added 3-20-2003, eff. 3-23-2003)

ARTICLE XXIII. LEAD CONTROL

Sec. 873.2300. Statement of basis and purpose.

Because lead poisoning continues to present a serious public health concern, an amendment to the Westchester County Sanitary Code Chapter 873 is proposed. The new Article XXIII, Lead Control, describes and codifies acceptable reporting requirements for lead testing done on Westchester County children up to the age of seventy-two (72) months.

(Added 5-26-1994, eff. 6-1-1994)

Sec. 873.2301. Lead laboratory reporting for public health follow-up.

- (a) For purposes of this subpart, "laboratory" shall mean any laboratory that holds a permit issued in accordance with Public Health Law Article 5, Title V and is authorized to conduct blood lead analyses by the State of New York.
- (b) Laboratories shall report the results of all blood lead analyses performed on children residing in Westchester County up to the age of 72 months, to the Westchester County Commissioner of Health as follows:

0 - 44 ug/dL within 5 business days
>= 45 ug/dL within 24 hours

- (c) Laboratories shall report on such forms, as prescribed by the Commissioner of Health, which must include:

Last name of child

First name of child

Child's date of birth

County of child's residence

Child's race

Telephone number of parent/guardian

Child's gender

Parent/guardian name

Blood lead level

Sample type (venous/capillary)

Collection date

Physician ordering test (name/address)

Child's insurance

Analysis date (carrier name/policy)

Child's address

- (d) In addition to any other reporting required by this subpart, all laboratories shall notify the provider ordering the blood test of the results of any analysis in a child up to seventy-two (72) months of age as follows:

0 - 44 ug/dL within 5 business days

>= 45 ug/dL within 24 hours

- (e) Nothing in this subpart shall be construed to relieve any laboratory from reporting results of any blood lead analysis to any other entity as required by state or federal statutes or regulations.

(Added 5-26-1994, eff. 6-1-1994)

ARTICLE XXIV. HOUSING HYGIENE AND OCCUPANCY

Sec. 873.2400. Introduction.

There exist and may in the future exist, within Westchester County premises, dwellings, dwelling units, rooming units, or parts thereof, which by reason of their structure, equipment, sanitation, maintenance, use, or occupancy affect or are likely to affect adversely the public health (including the physical, mental and social well-being of persons and families), safety, and general welfare. To correct and prevent the existence of such adverse conditions, and to achieve and maintain such levels of residential environmental quality as will protect and promote public health, safety, and general

welfare, the establishment and enforcement of minimum housing standards are required.

(Added 2-20-1997)

Sec. 873.2401. Purposes.

It is hereby declared that the purpose of this article is to protect, preserve, and promote the physical and mental health and social well-being of the people, to minimize the incidence of communicable diseases, to regulate privately and publicly owned dwellings for the purpose of maintaining adequate sanitation and public health and to protect the safety of the people and to promote the general welfare by regulations which shall be applicable to all dwellings now in existence or hereafter constructed. It is hereby further declared that the purpose of this article is to insure that the quality of housing is adequate for protection of public health, safety and general welfare. The achievement of this purpose includes the establishment of minimum standards for basic equipment and facilities for healthful living, such as adequate water, waste disposal bathroom facilities, light, ventilation, heating and cooling, for safety from fire and accidents, for the use and location and amount of space for human occupancy, and for an adequate level of maintenance; setting forth the responsibilities of owners, operators and occupants of dwellings; and establishing the necessary provisions for administration and enforcement.

(Added 2-20-1997)

Sec. 873.2402. Application and scope.

1. The requirements of this article shall:
 - a. Apply to all dwellings, dwelling units, habitable rooms within the jurisdiction of Westchester County Health Department, except those regulated under Articles 7 and 15 of the State Sanitary Code.
 - b. Be consistent with the provisions of applicable state and local laws, codes, rules and regulations; provided, however, that where the provisions of this article are more restrictive, they shall govern, and where the provisions of such applicable state or local laws, codes, rules and regulations are more restrictive, they shall govern.
2. The commissioner may, on written application and after review, grant a variance from a specific provision of this article in a specific case subject to appropriate conditions where such variance is in harmony with the general purpose and intent of this article and where there are practical difficulties or unnecessary hardship in carrying out the strict letter of its provision.
3. If any provisions of this article are held invalid, such invalidity shall not affect other provisions which shall be given effect without the invalid provisions.

(Added 2-20-1997)

Sec. 873.2403. Dwelling unfit for human habitation.

Whenever the commissioner finds that any dwelling constitutes a serious hazard to the health or safety of the occupant or to the public because it is dilapidated, unsanitary, vermin-infected or lacking in the facilities required by this article, he may

designate such dwelling unfit for human habitation, order the dwelling vacated, and may cause to be posted on the main entrance of any dwelling so closed, a placard with the following words: "Use of this building for human habitation is prohibited and unlawful". If the owner fails to comply with an order issued by the commissioner to bring the dwelling into compliance with the requirements of this article within a reasonable time, the commissioner may order such dwelling to be removed or demolished as provided for by applicable state law, the Laws of Westchester County, and laws and regulations of the town, village or city having jurisdiction. The provisions of this section are applicable also to unoccupied dwelling units and the owners thereof shall be chargeable with compliance.

(Added 2-20-1997)

Sec. 873.2404. Inspection and enforcement.

1. The Commissioner of Health and any person authorized by him to do so, may without fee or hindrance, make inspections to determine the condition of dwellings, dwelling units, and the premises on which they are located, in order to fulfill the purposes of this article.
2. For the purpose of making such inspections, the inspector is hereby authorized to enter, examine and survey all dwellings, dwelling units, and the premises on which they are located. Except for emergencies, or where authorized by other law, or for the convenience of the occupant or owner, such inspections shall be made between the hours of 8:00 a.m. and 5:00 p.m.
3. The owner, the operator and the occupant shall give the inspector free access to the dwelling, dwelling unit, and the premises on which they are located, for the purpose of such an inspection.
4. Evidence of a violation discovered during such inspection shall not be used against the violator in either a criminal or civil proceeding except under the following conditions:
 - a. Written notice of said violation shall be left with or mailed to the person responsible for correction of such violation or in the alternative such notice shall be posted in a conspicuous place upon the dwelling, dwelling unit or the premises where the violation is discovered;
 - b. Said written notice states a specific and reasonable time within which such violation shall be eliminated; and
 - c. At the end of such time the violation has not been eliminated.
4. Criminal penalties for violations of this article shall be those provided for in section 229 of the Public Health Law.
5. Civil penalties for violations of this article shall be those provided for in Sections 12 and 309 of the Public Health Law. Determinations with respect to violations and/or assessing of penalties shall be subject to review as provided in Article 78 of the Civil Practice Law and Rules.

(Added 2-20-1997)

Sec. 873.2405. Definitions.

1. *Accessory structure* shall mean a detached structure or an attached structure located on or partially on any premises, which is not used or not intended to be used for living or sleeping by human occupants.
2. *Approved* shall mean approved by the Commissioner of the Westchester County Department of Health.
3. *Central heating system* shall mean a single system supplying heat to one (1) or more dwelling unit(s).
4. *Commissioner* shall mean the Commissioner of the Westchester County Department of Health.
5. *Conditions conducive to lead poisoning* shall mean the presence of a paint or other similar surface-coating material in a condition accessible for ingestion or where peeling or chipping of the paint or other similar surface-coating material occurs or is likely to occur and which paint or other similar surface-coating material contains more than one-half (1/2) of one (1) percent of metallic lead based on the total weight of the contained solids or dried paint film on interior walls, ceilings, doors, baseboards or window sills and frames or porches of any dwelling.
6. *Dwelling* shall mean any building or structure which is wholly or partly used or intended to be used for living or sleeping by human occupants.
7. *Dwelling unit* shall mean any room or group of rooms located within a dwelling and forming a single habitable unit with facilities which are used or intended to be used for living, sleeping, cooking, and eating.
8. *Egress* shall mean a place or means of going safely to the outside of a dwelling or building.
9. *Extermination* shall mean the control and elimination of insects, rodents, or other pests by eliminating their harborage places; by removing or making inaccessible materials that may serve as their food; by poisoning, spraying, fumigating, trapping, or by any other recognized and legal pest elimination methods.
10. *Family* shall mean one (1) adult person plus one (1) or more persons who are legally related to said person and residing in the same dwelling unit with said person.
11. *Garbage* shall mean the animal and vegetable waste resulting from the handling, preparation, cooking, serving, and nonconsumption of food.
12. *Guest* shall mean any person who shares a dwelling unit in a nonpermanent status for not more than thirty (30) days.
13. *Habitable room* shall mean a room or enclosed floor space used or intended to be used for living, sleeping, cooking, or eating purposes, excluding bathrooms, water closet compartments, laundries, furnace rooms, pantries, kitchenettes and utility rooms of less than fifty (50) square feet, foyers or communicating corridors, stairways, closets and storage spaces; and workshops, hobby and recreation areas in unsealed or uninsulated parts of structure below ground level or in attics.
14. *Heated water* shall mean water heated to a temperature of not less than one

hundred twenty (120) degrees Fahrenheit.

15. *Household* shall mean a family and/or one (1) or more unrelated persons, who share the same dwelling and use some or all of its cooking and eating facilities. It shall include servants and not more than two (2) boarders.
16. *Infestation* shall mean the presence within or around a dwelling of any insects, rodents or other pests.
17. *Kitchen* shall mean any room used primarily for cooking or preparation of food and containing any or all of the following equipment: sink and/or other device for dishwashing, stove or other device for cooking, refrigerator or other device for cool storage of food. Where a room is used for cooking and preparation of food, but not primarily so used, kitchen shall mean that portion of such room which contains the above equipment and an area within three (3) feet of such equipment.
18. *Multiple dwelling* shall mean any dwelling containing more than two (2) dwelling units.
19. *Occupant* shall mean any person, over one (1) year of age, living, sleeping, cooking, or eating in, or actually having possession of, a dwelling unit or a rooming unit; except that in dwelling units a guest will not be considered an occupant.
20. *Operator* shall mean any person who has charge, care or control of a building, or part thereof, in which there are dwelling units or rooming units.
21. *Owner* shall mean any person who, alone or jointly or severally with another:
 - a. Shall have legal title to any dwelling or dwelling unit, with or without accompanying actual possession thereof, or
 - b. Shall have charge, care, or control of any dwelling or dwelling unit, as owner, lessee, mortgagee or vendee in possession, assignee of rents, or as a receiver; or an executor, administrator, trustee, or guardian of the estate of the owner. Any agent for any of the above shall be bound to comply with the provisions of this article to the same extent as if he were the owner.
22. *Permissible occupancy* shall mean the maximum number of persons permitted as family or household to reside in a dwelling unit based on the square feet per person in habitable rooms.
23. *Person* shall mean and include any individual, firm, public or private corporation, municipality, political subdivision, association, trust, estate, agency, board, department or bureau of a municipality, partnership, or any other legal entity whatsoever which is recognized by law as the subject of rights and duties.
24. *Plumbing* shall mean and include all of the following supplied facilities and equipment: gas pipes, gas burning equipment, water pipes, garbage disposal units, waste pipes, water closets, sinks, installed dishwashers, lavatories, bathtubs, shower baths, installed clothes washing machines, catch basins, drains, vents, and other similar supplied fixtures, together with all connections to water, sewer, or gas lines.

25. *Privacy* shall mean the ability of a person or persons to carry out an activity without interruption or interference, either by sight or sound, by persons outside of the household.
26. *Premises* shall mean a platted lot or part thereof or unplatted lot or parcel of land or plot of land, whether or not it has erected thereon a dwelling or nondwelling structure and it includes any building, accessory structure or other structure thereon.
27. *Rat harborage* shall mean any place where rats can live, nest or seek shelter.
28. *Rat proofing* shall mean a form of construction which will prevent the ingress or egress of rats to or from a given space or building, or gaining access to food, water, or harborage. It consists of the closing and keeping closed of every opening in foundations, basements, cellars, exterior and interior walls, ground or first floors, roofs, sidewalk gratings, sidewalk openings and other places that may be reached and entered by rat climbing, burrowing or other methods, by the use of materials impervious to rat gnawing or by other methods approved by the full-time health officer.
29. *Refuse* shall mean all putrescible and nonputrescible solids (except body wastes) including garbage, rubbish, ashes and dead animals.
30. *Refuse container* shall mean a watertight container that is constructed of metal, or other durable material impervious to rodents, that is capable of being serviced without creating unsanitary conditions, or such other containers approved by the commissioner. Openings into the container such as covers and doors shall be tight-fitting.
31. *Rubbish* shall mean nonputrescible solid wastes (excluding ashes) consisting of either or both:
 - a. Combustible wastes such as paper, cardboard, rags, furniture, plastic containers, yard clippings, tree branches, leaves and wood, and;
 - b. Noncombustible wastes such as tin cans, glass, crockery and discarded appliances.
32. *Safety* shall mean the condition of being reasonably free from danger and hazards which may cause accidents or disease.
33. *Supplied* shall mean paid for, furnished, provided by, or under the control of the owner or operator.
34. Whenever the words "dwelling", "dwelling unit", "premises", "structure" are used in this article, they shall be construed as though they were followed by the words "or any part thereof". Words used in the singular include the plural, and the plural the singular, the masculine gender includes the feminine and the feminine the masculine.

(Added 2-20-1997)

Sec. 873.2406. Occupancy and letting.

No owner or other person shall occupy or let to another person any vacant dwelling or dwelling unit unless it and the premises are clean, sanitary, fit for human

occupancy, and comply with the requirements of this article and all applicable laws.

(Added 2-20-1997)

Sec. 873.2407. Owner to maintain in a clean and sanitary condition.

Every owner of a dwelling containing two or more dwelling units shall maintain in a clean and sanitary condition the shared or public areas of the dwelling and premises thereof.

(Added 2-20-1997)

Sec. 873.2408. Occupant to maintain in a clean and sanitary condition.

Every occupant of a dwelling or dwelling unit shall maintain in a clean and sanitary condition that part or those parts of the dwelling, dwelling unit and premises thereof that he occupies and controls.

(Added 2-20-1997)

Sec. 873.2409. Occupant to dispose of rubbish.

Every occupant of a dwelling or dwelling unit shall store or dispose of all his rubbish in a clean, sanitary and safe manner.

(Added 2-20-1997)

Sec. 873.2410. Occupant to dispose of garbage.

Every occupant of a dwelling or dwelling unit shall dispose of or store all his garbage or any other organic waste which might provide food for insects or rodents, in a clean, sanitary and safe manner. Rodent-proof, insect-proof, watertight refuse containers shall be used for storage pending collection.

(Added 2-20-1997)

Sec. 873.2411. Containers to be provided for rubbish and garbage.

Every owner of a dwelling containing three or more dwelling units shall supply facilities or refuse containers for the sanitary and safe storage and/or disposal of rubbish and garbage. In single or two family dwellings it shall be the responsibility of the occupant to furnish such facilities or refuse containers.

(Added 2-20-1997)

Sec. 873.2412. Screens, double doors, storm doors and windows.

The owner of a dwelling unit shall be responsible for providing and hanging all screens and double or storm doors and windows whenever the same are required under the provisions of this article, except where a written agreement between the owner and occupant provides otherwise. In the absence of a written agreement between the owner and occupant providing otherwise, maintenance or replacement of screens, storm doors and windows, once installed in any one season become the responsibility of the

occupant.

(Added 2-20-1997)

Sec. 873.2413. Responsibility for extermination.

Every occupant of a dwelling containing a single dwelling unit shall be responsible for the extermination of any insects, rodents, or other pests therein or on the premises; and every occupant of a dwelling unit in a dwelling containing more than one dwelling unit shall be responsible for such extermination whenever his dwelling unit is the only one infested. Notwithstanding the foregoing provisions of this section, whenever infestation is caused by failure of the owner to maintain a dwelling in a rat-proof or reasonable insect-proof condition, extermination shall be the responsibility of the owner. Whenever infestation exists in two or more of the dwelling units in any dwelling, or in the shared or public parts of any dwelling containing two or more dwelling units, extermination thereof shall be the responsibility of the owner.

(Added 2-20-1997)

Sec. 873.2414. Rodent control.

1. Every occupant of a dwelling or dwelling unit shall store and dispose of accumulated rubbish, boxes, lumber, scrap metal, or any other materials in such a manner as to prevent rodent harborage in or about any dwelling or dwelling unit. Materials shall be stacked neatly in piles elevated at a level high enough to permit effective cleaning.
2. Every owner of a dwelling containing two or more dwelling units shall supply facilities or make provisions for the storage and disposal of accumulated rubbish, boxes, lumber, scrap metal or any other materials in such a manner as to prevent rodent harborage in or about the shared or public areas of a dwelling or its premises. Materials shall be stacked neatly in piles elevated at a level high enough to permit effective cleaning.
3. Every owner or occupant of a dwelling or dwelling unit shall not store, place, or allow to accumulate any materials that may serve as food or harborage for rodents in a site accessible to rodents.
4. No person shall feed in the open any domestic or wild fowl, birds or animals other than in a suitable container and in such a manner so as to prevent scattering of food upon the ground or ground level which can or will provide food for rodents, insects, vermin or other pests.

(Added 2-20-1997)

Sec. 873.2415. Occupants responsibility as to supplied fixtures and facilities.

1. Every occupant of a dwelling unit shall keep all supplied fixtures and facilities therein in a clean, sanitary and operable condition and shall be responsible for the exercise of reasonable care in the proper use and operation thereof.
2. Every occupant shall keep his domestic animals and pets in a clean and sanitary

manner and under control.

(Added 2-20-1997)

Sec. 873.2416. Basic equipment and facilities required for dwelling or dwelling unit occupied or let for living, sleeping, cooking or eating.

No person shall occupy as owner, occupant or let to another for occupancy any dwelling or dwelling unit, for the purposes of living, sleeping, cooking or eating therein, which does not comply with the following requirements:

1. Every dwelling unit shall have a room or portion of a room in which food may be prepared and/or cooked and which room shall have adequate floor area available for occupant use and be equipped with the following:
 - a. A kitchen sink in good working condition and properly connected to a water supply system which is approved by the commissioner and which provides at all times an adequate amount of heated and unheated running water under pressure, and which is connected to a sewer system approved by the commissioner.
 - b. Cabinets and/or shelves for the storage of eating, drinking, and cooking equipment and utensils and of food that does not under ordinary maximum summer conditions require refrigeration for safe keeping; a counter or table for food preparation; provided, further, that said cabinets and/or shelves and counter or table shall be sufficient for the permissible occupancy of the dwelling unit and shall be of sound construction furnished with surfaces that are easily cleanable and that will not impart any toxic or deleterious effect to food.
 - c. A stove, or similar device, for cooking food and a refrigerator for the safe storage of food at temperatures less than 45 degrees Fahrenheit, but more than 32 degrees Fahrenheit, which are properly installed with all necessary connections for safe, sanitary and efficient operation; provided that such stove and refrigerator need not be installed when a dwelling unit is not occupied, when the occupant is expected to provide same on occupancy, and sufficient space for the safe and efficient installation and operation of said stove and refrigerator is provided.
2. Within every dwelling unit there shall be a non-habitable room which affords privacy to a person within said room and which is equipped with a flush water closet in good working condition. Said flush water closet shall be connected to a water system that at all times provides an adequate amount of running water under pressure to cause the water closet to be operated properly and shall be connected to a sewer system which is approved by the commissioner.
3. Within every dwelling unit there shall be a room which affords privacy to a person within said room which is equipped with a lavatory sink. Said lavatory sink may be in the same room as the flush water closet or in another room; provided that, if located in a room other than the one containing the flush water closet, the water closet shall be located in close

proximity to the door leading directly into the room in which said lavatory sink is located. The lavatory sink shall be in good working condition and properly connected to a water supply system which is approved by the commissioner and which provides at all times an adequate amount of heated and unheated, running water under pressure, and which is connected to a sewer system approved by the commissioner.

4. Within every dwelling unit there shall be a room which affords privacy to a person within said room and which is equipped with a bathtub or shower in good working condition. Said bathtub or shower may be in the same room as the flush water closet or in another room and shall be properly connected to a water supply system which is approved by the commissioner and which provides at all times an adequate amount of heated and unheated running water under pressure, and which is connected to a sewer system approved by the commissioner.
5. Every dwelling unit in a one- or two-family dwelling shall have at least one approved means of egress and a second approved means of egress for each floor above the second where there is living above the second floor. Every multiple dwelling shall have remotely located from each other two or more approved means of egress from each floor leading to safe and open space at ground level, as required by law. A sprinkler system satisfactory to the commissioner, may be substituted in lieu of one means of egress provided that no existing state or local statute is contravened.

(Added 2-20-1997)

Sec. 873.2417. Light and ventilation required for dwelling or dwelling unit occupied or let for living purposes.

No person shall occupy as owner, occupant or let to another for occupancy any dwelling or dwelling unit, for the purpose of living therein, which does not comply with the following requirements:

1. Every habitable room shall have at least one window or skylight facing directly outdoors. The minimum total window or skylight area, measured between stops, for every habitable room shall be at least 10 percent of the floor area of such room. Whenever outside walls or other portions of structures face a window of any such room and such light-obstruction structures are located less than three feet from the window and extend to a level above that of the ceiling of the room, such window shall not be deemed to face directly to the outdoors and shall not be included as contributing to the required minimum total window area.
2. Every habitable room shall have at least one window or skylight which can easily be opened, or such other device as will adequately ventilate the room. The total of openable window area in every habitable room shall be equal to at least 45 percent of the minimum window area size or minimum skylight type window size as required in subdivision 1. above, except where there is supplied some other device affording adequate ventilation and approved by the commissioner.
3. Every bathroom and water closet compartment shall comply with the light

and ventilation requirement for habitable rooms contained in subdivisions 1. and 2. above, except that no window or skylight shall be required in adequately ventilated bathrooms and water closet compartments equipped with a ventilation system which is approved by the commissioner.

4. Where there is electric service available from power lines which are not more than 300 feet away from a dwelling, every dwelling unit and all public and common areas shall be supplied with electric service, outlets and fixtures. Such outlets and fixtures shall be properly installed, shall be maintained in good and safe working condition, and shall be connected to the source of electric power in a manner prescribed by law. The capacity of such service and the number of outlets and fixtures shall be as follows:
 - a. Every habitable room shall have an electric service and outlets and/or fixtures capable of providing at least three watts per square foot of floor area.
 - b. Every habitable room shall have at least one floor or wall type electric convenience outlet for 60 square feet or fraction thereof of floor area, and in no case less than two such outlets.
 - c. Every water closet compartment, bathroom, laundry room, furnace room, and public hall shall contain at least one supplied ceiling or wall type electric light fixture.
 - d. Convenient switches for turning on one light in each room or passageway shall be located so as to permit the area ahead to be lighted.
5. Every public hall and stairway in every multiple dwelling shall be adequately lighted by natural or electric light at all times so as to provide at least ten foot-candles of light at the tread or floor level. Every public hall and stairway in structures containing not more than two dwelling units shall be supplied with conveniently located light switches controlling an adequate lighting system which may be turned on when needed, instead of full-time lighting.

(Added 2-20-1997)

Sec. 873.2418. Thermal requirements for occupying or letting, for living purposes.

No person shall occupy as owner, occupant, or let to another for occupancy any dwelling or dwelling unit, for the purpose of living therein, which does not comply with the following requirements:

1. Every dwelling shall have heating facilities which are properly installed, and are maintained in safe and good working condition, and are capable of safely and adequately heating all habitable rooms, bathrooms and water closet compartments in every dwelling unit as noted in subdivision 2. below.
2. The owner is responsible for furnishing the heat unless the rental

agreement provides otherwise. Where the owner furnishes the heat, the temperature shall be maintained at not less than 68 degrees Fahrenheit at a distance of 18 inches above floor level and three feet from an outside wall.

3. Unvented flame space heaters and space heaters without backdraft diverter and automatic controls are prohibited; portable electric heaters, approved under the appropriate local or state electrical and/or fire prevention code are acceptable (where they meet the provisions of subdivision 1. of this section). Where there is no such local or state code, portable electric heaters meeting the standards of the National Electrical Code, as approved by the Underwriter Laboratories, Inc. and the commissioner are acceptable. Gas-fueled space or water heaters and accessories or controls shall be properly installed and be of a type approved by the American Gas Association and the commissioner.

(Added 2-20-1997)

Sec. 873.2419. Maintenance and installation requirements for dwelling or dwelling unit occupied or let for living purposes.

No person shall occupy as owner, occupant or let to another for occupancy any dwelling or dwelling unit, for the purpose of living therein, which does not comply with the following requirements:

1. Every foundation, roof and exterior wall, door, skylight and window shall be reasonably weather-tight, watertight, and damp-free and shall be kept in sound condition and good repair. Floor, interior walls, doors and ceilings shall be sound and in good repair. All exterior wood surfaces other than decay resistant woods, shall be protected from the elements and decay by paint or other protective covering or treatment. Lead based and other toxic paints and materials shall not be used on any interior surface or any surface readily accessible to children. Walls shall be capable of affording privacy for the occupants. Every premises shall be well-graded, drained and maintained in a clean, sanitary and safe condition.
2. Every window, exterior door and basement hatchway or similar devices, shall be kept rodent-proof and reasonably watertight and weather-tight, and shall be kept in sound working condition and good repair.
3. During that portion of the year when there is a need for protection against mosquitoes, flies and other flying insects, every door opening directly from a dwelling unit to outside space shall have supplied properly fitting screens having at least 16 mesh and a self-closing device; and every window or other device with openings to outdoor space, used or intended to be used for ventilation, shall likewise be supplied with screens; provided that such screens shall not be required during such period in rooms deemed by the commissioner to be located high enough in the upper stories of buildings as to be free from such insects, and in rooms located in areas which are deemed by the commissioner to have so few insects as to render screens unnecessary.

4. Every window located at or near ground level used or intended to be used for ventilation, and every other opening located at or near ground level which might provide an entry for rodents, shall be supplied with adequate gauge screen or such other devices as will effectively prevent their entrance.
5. Every foundation, roof, floor, exterior and interior wall, ceiling, inside and outside stair, porch, and every appurtenance to any of these shall be safe to use and capable of supporting the loads that normal use may cause to be placed thereon; and shall be kept in sound condition and good repair. Every inside and outside stair or step shall have uniform risers and treads and be provided with non-skid materials. Stairways shall have handrails structurally sound, of reasonable height, and where needed, balusters adequately spaced.
6. Every plumbing fixture and water and waste pipe shall be properly installed and maintained in good sanitary working condition.
7. Every water closet compartment, bathroom and kitchen floor surface and baseboard shall be constructed and maintained so as to be reasonably impervious to water so as to permit such floor to be easily kept in a clean and sanitary condition.
8. Every plumbing fixture pipe, chimney, flue and smoke pipe, and every other facility, piece of equipment, or utility which is present in a dwelling or dwelling unit, or which is required under this article, shall be constructed and installed in conformance with the applicable local, state or national codes and shall be maintained in satisfactory working condition.
9. All construction and materials and ways and means of egress, and installation and use of equipment shall conform to applicable laws dealing with fire protection.
10. Existing paint conditions conducive to lead poisoning shall be eliminated in accordance with procedures contained in Article 13, Title X of the Public Health Law.

(Added 2-20-1997)

Sec. 873.2420. Discontinuance of services, facilities, equipment or utilities.

No owner, operator, or occupant shall cause or be responsible for causing any service, facility, equipment or utility which is required under this article to be removed from or shut off from or discontinued for any occupied dwelling or dwelling unit let or occupied by him; except for such temporary interruption as may be necessary while actual repairs or alterations are in process, or during temporary emergencies when discontinuance of service is either not reasonably avoidable or is approved by the commissioner. Except in a case of emergency, notice of a temporary interruption shall be given to occupants of the dwelling units in which there will be a temporary interruption in services, facilities, equipment, or utilities.

(Added 2-20-1997)

Sec. 873.2421. Maximum density, minimum space, use and location requirements.

1. No person shall occupy or let to be occupied any dwelling or dwelling unit, for the purpose of living therein, unless there is compliance with the following requirements:
 - a. Every dwelling unit shall contain at least 150 square feet of floor space for the first occupant thereof and least 100 additional square feet of floor space for every additional occupant thereof, the floor space to be calculated on the basis of total habitable room area.
 - b. A dwelling unit shall not be occupied by more than one family, plus two occupants unrelated to the family, except for guests or domestic employees.
 - c. The ceiling height of any habitable room shall be at least 7 1/2 feet; except that in any habitable room under a sloping ceiling at least one half of the floor area shall have a ceiling height of at least 7 1/2 feet, and the floor area of that part of such a room where the ceiling height is less than five feet shall not be considered as part of the floor area in computing the total floor area of the room for the purpose of determining the maximum permissible occupancy.
 - d. No space located partially or totally below grade shall be used as a habitable room of a dwelling unit unless:
 - i. The floor and those portions of the walls below grade are of waterproof and damp-proof construction.
 - ii. The minimum window area is equal to at least that required in section 873.2417 1. of this article and is located entirely above the grade of the ground adjoining such window area, or, if windows are located wholly or partly below grade, there be constructed a properly drained window well the ground area of which is equal to or greater than the area of the masonry opening for the window, the bottom of which is below the top of the impervious masonry construction under this window, with the minimum horizontal distance at a right angle from any point of the window wall being equal to or greater than the vertical depth of the window well, as measured from the bottom of the masonry opening for the window.
 - iii. The total openable window area in each room is equal to at least the minimum as required under section 873.2417 2. of this article, except where there are supplied some other devices affording adequate ventilation and humidity control which are approved by the commissioner.
 - iv. There are no pipes, ducts or other obstructions less than six feet, eight inches from the floor level which interfere with the normal use of the room or area.
 - e. In every dwelling unit of two or more rooms, every room occupied for sleeping purposes shall contain at least 70 square feet of floor space for

the first occupant, and at least 50 square feet of floor space for each additional occupant thereof.

- f. No dwelling or dwelling unit containing two or more sleeping rooms shall have such room arrangements that access to a bathroom or water closet compartment intended for use by occupants of more than one sleeping room can be had only by going through another sleeping room; nor shall room arrangements be such that access to a sleeping room can be had only by going through another sleeping room or a bathroom or water closet compartment.
- g. Every dwelling unit shall have at least four square feet of closet space for the personal effects of each permissible occupant: if it is lacking, in whole or in part, an amount of space equal in square footage to the deficiency shall be subtracted from the area of habitable room space used in determining permissible occupancy.
- h. Each dwelling shall have a suitable facility for the safe storage of drugs, household poisons and other hazardous materials.

(Added 2-20-1997)

ARTICLE XXV. PETROLEUM BULK STORAGE

Sec. 873.2501. Declaration of policy.

It is hereby declared to be the health policy of the Westchester County Health District to regulate petroleum storage facilities in order to protect the public health, welfare and the lands and waters of the County of Westchester.

(Added 6-17-1999)

Sec. 873.2502. Definitions.

The following is a list of terms and definitions that will be used in this article:

- 1. *Aboveground tank* means any stationary tank that is not entirely covered with earth or other material or any tank that can be inspected in a subterranean vault.
- 2. *API* means American Petroleum Institute.
- 3. *Carrier* means a person who transports and transfers petroleum from one (1) pipe or tank to another.
- 4. *Cathodic protection* means corrosion protection for an underground metal tank or pipe by causing a continuous electric current to flow from one (1) or more electrodes or a sacrificial anode to the protected structure.
- 5. *Combined storage capacity* means the sum of the designed storage capacity at a facility of each tank that has not been permanently closed.
- 6. *Commissioner* shall mean the Commissioner of Health for the County of Westchester.

7. *Corrosion resistant*, when referring to an underground tank means any tank that meets standards for new underground tanks specified in section 873.2522 of this article. When referring to a pipe, it is specified in section 873.2533 10.c. of this article.
8. *County* means the County of Westchester.
9. *Department* means the Westchester County Department of Health.
10. *Discharge* means any intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of petroleum into the waters of the county or onto lands from which it might flow or drain into said waters, except discharges pursuant to and in compliance with the conditions of a valid county, state or federal permit.
11. *Existing facility* means a facility that has been constructed and is capable of being operated as of the effective date of this article.
12. *Facility* or *storage facility* means one (1) or more stationary or non-stationary tanks, including any associated intra-facility pipelines, fixtures or other equipment, which have a combined storage capacity of over one thousand one hundred (1,100) gallons of petroleum at the same site. A facility may include aboveground tanks, underground tanks, non-stationary tanks or any combination of the above. Pipelines that enter or leave the site are not part of the facility. A residential or commercial premise will not be considered a facility if tanks are not interconnected, are used to store heating oil for on-premises consumption and no single tank has a capacity greater than one thousand one hundred (1,100) gallons.
13. *Leak monitoring system* means a leak detection system as required in sections 873.2524, 873.2529 and 873.2533 10.c. of this article.
14. *Lining* means a coating of a non-corrodible material resistant to the product stored and bonded firmly to the interior surface of the tank.
15. *NACE* means the National Association of Corrosion Engineers.
16. *New facility* means a facility that is not an existing facility.
17. *NFPA* means National Fire Prevention Association.
18. *Non-stationary tank* means any tank or container which in practice and design is mobile, including tanks on wheels, trolleys, skids, pallets or rollers, and vessels such as a fifty-five (55) gallon drum.
19. *NYCRR* means the official compilation of Codes, Rules and Regulations of the State of New York.
20. *NYSDEC* means the New York State Department of Environmental Conservation.
21. *Oil production facility* means all wells, flow lines, separation equipment, storage facilities, gathering lines and auxiliary non-transportation-related equipment used for the storage and handling of unrefined petroleum.

22. *Operator* means any person who leases, operates, controls or supervises a facility.
23. *Out-of-service* means a facility or portion thereof no longer in use. Facilities or tanks which are used for seasonal storage, for surcharge storage or for standby storage are not considered out-of-service.
24. *Owner* means any person who has legal or equitable title to a facility.
25. *Permanently closed* means an out-of-service storage tank or facility that has been closed in a manner prescribed by section 873.2520 2. of this article.
26. *Person* means any individual, public or private corporation, political subdivision, government agency, municipality, industry, co-partnership, association, firm, trust, estate or any other legal entity.
27. *Petroleum* means any petroleum-based oil of any kind which is liquid at twenty (20) degrees C under atmospheric pressure and has been refined, re-refined or otherwise processed for the purpose of being burned as a fuel to produce heat or usable energy or which is suitable for use as a motor fuel or lubricant in the operation or maintenance of an engine. Waste oil which has been reprocessed or re-refined and which is being stored for sale or use as fuel or lubricant is considered petroleum for purposes of this article.
28. *Reconditioned* means any tank which is rehabilitated by installing an interior liner or which is permanently repaired in a manner prescribed by sections 873.2525 and 873.2531 of this article.
29. *Secondary containment* means containment that prevents any materials spilled or leaked from reaching the land or water outside the containment area before cleanup occurs.
30. *Spill or spillage* means any escape of petroleum from the ordinary containers employed in the normal course of storage, transfer, processing or use.
31. *Stationary tank* means all underground tanks or any aboveground tank that is non-mobile. Examples of stationary aboveground tanks include tanks that may rest on the ground or may be fixed or permanently in place on foundations, racks, cradles or stilts.
32. *Storage facility*, see definition of "facility" herein.
33. *Substantially modified facility* is any existing facility that has been modified in one (1) or more of the following ways:
 - a. One (1) or more stationary tanks has been added;
 - b. An existing stationary tank has been replaced, reconditioned or permanently closed;
 - c. A leaking storage tank has been replaced, repaired or permanently closed;
 - d. Installation of a non-stationary tank storage area;

- e. Repair, replacement or installation of piping systems; or
- f. Substitution of one (1) product for another product in a stationary or non-stationary tank.

The repair, replacement or installation of other equipment does not substantially modify a facility.

- 34. *Tightness test* means a test that is performed in a manner consistent with the criteria set forth in section 873.2517 6. of this article.
- 35. *ULC* means Underwriters' Laboratory of Canada.
- 36. *Underground tank* means any tank completely covered with earth or other material. Tanks in subterranean vaults accessible for inspections are considered aboveground tanks for the purpose of this article.
- 37. *Unprotected tank* means an underground tank that does not meet standards specified in section 873.2522 of this article. Examples of unprotected tanks include, but are not limited to, bare steel tanks, steel tanks which have been rehabilitated with an interior lining, steel tanks with exterior coatings of paint, asphalt or other similar material, steel tanks which have been retrofitted with cathodic protection and permeable concrete-encased bare steel tanks.
- 38. *Used oil* means any oil that has been refined from crude oil or any synthetic oil that has been used and, as a result of such use, is contaminated by physical or chemical impurities.
- 39. *Waters* or *waters of the county* shall be construed to include lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets and canals within the territorial limits of the County of Westchester and all other bodies of surface or underground waters, natural or artificial, fresh or salt, public or private (except those private waters which do not combine or effect a junction with natural surface of underground waters), which are wholly or partially within or bordering the county or within its jurisdiction.
- 40. *Working capacity* means the total capacity of a tank less an allowance for expansion and freeboard.

(Added 6-17-1999)

Sec. 873.2503. Applicability.

This article applies to all aboveground and underground petroleum storage facilities with a combined storage capacity of over 1,100 gallons except the following:

- 1. Oil production facilities;
- 2. Facilities regulated under the Federal Natural Gas Act; and
- 3. Facilities licensed under Article 12 of the New York State Navigation Law.

(Added 6-17-1999)

Sec. 873.2504. Severability.

If any provision of this article or its application to any person or circumstance is held to be invalid, the remainder of this article and the application of that provision to other persons or circumstances will not be affected.

(Added 6-17-1999)

Sec. 873.2505. Access to records and facilities.

1. The owner or operator must allow any designated officer or employee of this department or the New York State Department of Environmental Conservation (NYSDEC), at reasonable times and upon reasonable notice, to review and to copy any books, papers, documents and records relating to record-keeping requirements and compliance with this article.
2. Any designated officer or employee of this department or NYSDEC may, at reasonable times and upon reasonable notice, enter and inspect any premises which store or which are reasonably believed to store any petroleum products, for compliance with the provisions of this article.

(Added 6-17-1999)

Sec. 873.2506. Enforcement.

1. Any person who violates any of the provisions of this article or any order issued by the commissioner shall be liable for the civil, administrative and criminal penalties as set forth in the Westchester County Sanitary Code and §§ 309 and 348 of the New York State Public Health Law. The Department reserves the right to forward major violations of this article to NYSDEC for enforcement under Article 71 of the New York State Environmental Conservation Law.
2. Whenever the commissioner has reason to believe that any person is in violation of any provision of the Westchester County Sanitary Code or the administrative regulations adopted thereunder, he or she shall commence an appropriate enforcement action. In addition, the commissioner shall take appropriate enforcement action whenever there are violations of orders issued pursuant to any of the foregoing provisions regardless of whether such orders have been issued by the county or a court of competent jurisdiction.
3. Whenever, on the basis of information available to NYSDEC, there is reason to believe that any person is in violation of any of the provisions of ECL, Article 17, Title 10, or of 6 NYCRR Parts 612-614, NYSDEC shall notify the county of such finding. If the county does not commence an appropriate enforcement action within 30 days of the receipt of such notification, NYSDEC may initiate appropriate enforcement action to compel compliance and seek appropriate remedies, including penalties and site remediation.
4. Notwithstanding paragraph 3. above, nothing in this order restricts or diminishes the authority of the NYSDEC Commissioner to initiate or cause to be initiated actions for violations of Article 17, Title 10, or 6 NYCRR, Parts 612-614 or violations of the New York State Navigation Law.

(Added 6-17-1999)

Sec. 873.2507. Powers of the commissioner.

1. The commissioner may make, or cause to be made, any investigation or study which, in his opinion, is necessary for enforcing this article or controlling or reducing the contamination, pollution, potential contamination or potential pollution within the county.
2. The commissioner may order the owner, operator or any person in possession of any land, structure or equipment to take whatever action is necessary, in the opinion of the commissioner, to bring the land, structure or equipment into compliance with the provisions of this Code. This includes, but is not limited to, the ordering of tank testing and/or the emptying of a facility when leakage is suspected or when continued operation of the facility would present a hazard or potential hazard to the general public, firefighting personnel, property, plant or animal life, groundwater quality or surface water quality or which interferes with the healthful enjoyment of life and property throughout such areas of the Westchester County Health District as may be affected thereby.
3. The commissioner may set additional standards for the storage and handling of petroleum products that are necessary to carry out the purpose of this article.

(Added 6-17-1999)

Sec. 873.2508. Variances.

The commissioner may, upon written application from any person subject to this article, grant a variance from one or more specific provisions from sections 873.2521 through 873.2534, inclusive, of this article. In granting a variance, the department may impose specific conditions necessary to assure that the variance will have no significant adverse impact on the environment or public health. An application for a variance must:

1. Identify the specific section or sections from which a variance is sought;
2. Provide the department with evidence, including data, plans, specifications and test results, that shows the new or alternative designs, practices or methods protect the environment in a manner equal to or greater than the requirements of this article.

(Added 6-17-1999)

Sec. 873.2509. Fees.

The commissioner shall establish a schedule of fees for permits, certifications, reviews and training to recover any direct cost associated with implementing, administering or enforcing the provisions of this article.

(Added 6-17-1999)

Sec. 873.2510. Prohibitions.

It shall be unlawful for any person to discharge petroleum products or material contaminated with petroleum in the county unless such discharge is specifically in accordance with a permit issued by the State of New York, the Federal government or other agency acceptable to the commissioner.

(Added 6-17-1999)

Sec. 873.2511. Indemnification/disclaimer of liability.

1. The permittee shall indemnify, hold harmless and defend the department against any claim, cause of action, disability, loss, liability, damage or cost of expense, howsoever arising, which occurs by reason of an unlawful discharge in connection with a permittee's operations under this permit, except as with permittee's operations under this permit, except as arises from the department's sole willful act or sole active negligence.
2. The degree of protection required by this article is considered reasonable for regulatory purposes. The standards set forth herein are minimal standards and this article does not imply that compliance will ensure that there will be no unlawful discharge of petroleum products. This article shall not create liability on the part of the department, any officer or employee thereof, for any damages that result from reliance on this article or any administrative decision lawfully made thereunder. All persons handling, storing, using, processing, and disposing of petroleum products within the county shall be and are advised to determine to their own satisfaction the level of protection, in addition to that required by this article, necessary or desirable to ensure that there is no unlawful discharge of petroleum products.

(Added 6-17-1999)

Sec. 873.2512. Referenced materials.

Citations used in this article refer to the publications as amended, listed below. These publications are available for copying and inspection at the Offices of the Westchester County Department of Health.

1. "NFPA No. 30" means the National Fire Protection Association, Flammable and Combustible Liquids Code, No. 30, July 5, 1984, NFPA, Batterymarch Park, Quincy, Massachusetts 02269 (Pages 30-14, 30-15, 30-17, 30-20 and 30-21).
2. "NFPA No. 30A" means the National Fire Protection Association, Automotive and Marine Service Station Code, No. 30A, July 5, 1984, NFPA, Batterymarch Park, Quincy, Massachusetts 02269 (Pages 30A-7 and 30A-8).
3. "UL No. 58" means Underwriters' Laboratories, Standards for Steel Underground Tanks for Flammable and Combustible Liquids, No. 58, April 10, 1981, Underwriters' Laboratories, 333 Pfingston Road, Northbrook, Illinois 60062.
4. "UL No. 142" means Underwriters' Laboratories, Standard for Steel Aboveground Tanks for Flammable and Combustible Liquids, No. 142, January 16, 1985, Underwriters' Laboratories, 333 Pfingston Road, Northbrook, Illinois 60062.
5. "UL No. 1316" means Underwriters' Laboratories, Standard for Glass Fiber-Reinforced Plastic Underground Tanks for Petroleum Products, No. 1316, July 1, 1983, Underwriters' Laboratories, 333 Pfingston Road,

Northbrook, Illinois 60062.

6. "ULC-S603" means Underwriters' Laboratories of Canada, No. ULC-S603-M, 1981, Standards for Steel Underground Tanks for Flammable and Combustible Liquids, 1981, Underwriters' Laboratories of Canada, 7 Crouse Road, Scarborough, Ontario, Canada M1R3A9.
7. "ULC-S603.1" means Underwriters' Laboratories of Canada, No. ULC-S603.1-M, 1982, Standard for Galvanic Corrosion Protection Systems for Steel Underground Tanks for Flammable and Combustible Liquids, 1982, Underwriters' Laboratories of Canada, 7 Crouse Road, Scarborough, Ontario, Canada M1R3A9.
8. "CAN4-S601-M84" means Underwriters' Laboratories of Canada, No. CAN4-S601-M84, Standard for Shop Fabricated Steel Aboveground Horizontal Tanks for Flammable and Combustible Liquids, 1984 Underwriters' Laboratories of Canada, 7 Crouse Road, Scarborough, Ontario, Canada M1R3A9.
9. "CAN4-S630-M84" means Underwriters' Laboratories of Canada, No. CAN4-S630-M84, Standard for Shop Fabricated Steel Aboveground Vertical Tanks for Flammable and Combustible Liquids, 1984 Underwriters' Laboratories of Canada, 7 Crouse Road, Scarborough, Ontario, Canada M1R3A9.
10. "ULC No. CAN4-S615-M83" means Underwriters' Laboratories of Canada, No. CAN4-S615-M83 Standard for Reinforced Plastic Underground Tanks for Petroleum Products, 1983, Underwriters' Laboratories of Canada, 7 Crouse Road, Scarborough, Ontario, Canada M1R3A9.
11. "API Standard No. 620" means American Petroleum Institute, Standard No. 620, Recommended Rules for Design and Construction of Large, Welded, Low Pressure Storage Tanks, April 1985, American Petroleum Institute, 1220 L Street, N.W., Washington, D.C. 20005.
12. "API Standard No. 650" means American Petroleum Institute, Standard No. 650, Welded Steel Tanks for Oil Storage, February 1984, American Petroleum Institute, 1220 L Street, N.W., Washington, D.C. 20005.
13. "API Standard No. 1632" means American Petroleum Institute, Publication No. 1632, Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems, February 1982, American Petroleum Institute, 1220 L Street, N.W., Washington, D.C. 20005.
14. "Steel Tank Institute Standard No. sti-P₃" means Specifications for sti-P₃ System for Corrosion Protection of Underground Steel Storage Tanks, July 1983, Steel Tank Institute, 666 Dundee Road, Suite 705, Northbrook, Illinois 60062.
15. "NACE Standard RP-01-69" means National Association of Corrosion Engineers, Recommended Practice-Control of External Corrosion on Underground or Submerged Metallic Piping Systems RP-01-69 (January 1983 Revision), National Association of Corrosion Engineers, Box 218340, Houston, Texas 77218.

(Added 6-17-1999)

Sec. 873.2513. Registration of facilities.

1. *Existing facilities.*
 - a. Upon adoption of this article, the owner of any petroleum storage facility having capacity of over 1,100 gallons must register the facility with the department or, if previously registered under the New York State Codes, Rules and Regulations, when said registration expires. This shall include any out-of-service facility that has not been permanently closed.
 - b. Registration must be renewed every five years from the date of the last valid registration until the department receives written notice that the facility has been permanently closed or that ownership of the facility has been transferred.
2. *Transfer of ownership.* If ownership of the facility changes, the new owner must re-register the facility with the department within 15 days after ownership transfer.
3. *New facilities.* The owner must register any new facility with the department before it is placed in service.
4. *Substantially modified facilities.* Within 15 days prior to substantially modifying a facility, the owner must notify the department of such modification on forms supplied by the department. This includes the substitution of one product for another product in a stationary or non-stationary tank.
5. *Registration certificate.*
 - a. Upon submittal of a complete registration application and payment of the registration fee, the department shall issue a validated registration certificate. The operator must conspicuously display a registration certificate that is current and valid on the premises of the facility at all times.
 - b. A registration certificate shall not be transferred from one location to another, from one storage facility to another or from one person to another.
6. *Application forms.*
 - a. Facilities must be registered on application forms provided by the department unless the department approves an alternative means of registration. Forms are available from department offices.
 - b. An application submitted by a corporation must be signed by a principal executive officer of at least the level of vice-president or a duly authorized representative who is responsible for the operation of the facility. An application submitted by a partnership or a sole proprietorship must be signed by a general partner or proprietor. An application submitted by a municipal, state or other public facility must be signed by a principal executive officer, ranking elected official or other duly authorized employee.

- c. The owner must submit with each application for registration or registration renewal a site plan that clearly reveals the location of all tanks, piping and other associated equipment. The plan must be submitted on an 8.5" by 11" plain piece of paper and include:
 - 1) Property lines;
 - 2) All buildings;
 - 3) Adjacent streets and their names;
 - 4) Storage tanks identified by corresponding registration number;
 - 5) Storm drains and cesspools; and
 - 6) Location of non-stationary tanks and container storage areas.
7. *Registration fee.* The owner must submit with each application for registration, registration renewal and notification of substantial modification [see section 873.2513 4.], a fee in accordance with a schedule established by the commissioner.

(Added 6-17-1999)

Sec. 873.2514. Bulk storage in flood plains.

Any facility located in a 100-year flood plain must be safeguarded against buoyancy and lateral movement by flood waters in accordance with operating standards set forth in NFPA No. 30, Section 2-5.6, and in accordance with state and local flood plain regulations. If such safeguards include ballasting of tanks with water during flood warning periods, tanks valves and other openings must be closed and secured in a locked position in advance of the flood. Ballast water removed from the tank after the flood must not be discharged to the waters of the county if the discharge would contravene the standards of 6 NYCRR, Parts 701, 702 or 703.

(Added 6-17-1999)

Sec. 873.2515. Overfill prevention and secondary containment systems.

1. *Responsibility for transfer.* The operator, when on the premises or when in control of a petroleum transfer, shall be responsible for transfer activities. If the operator is not on the premises or not in control of a petroleum transfer, the carrier will be responsible for transfer activities. The operator or carrier must employ practices and equipment for preventing transfer spills and accidental discharges. Prior to the transfer, the operator or carrier must determine that the receiving tank has available capacity to receive the volume of petroleum to be transferred. The operator or carrier must monitor every aspect of the delivery and must take immediate action to stop the flow of petroleum when the working capacity of the tank has been reached or should an equipment failure or emergency occur.
2. *Spill catchment basins for fill ports.* One hundred eighty days after the effective date of these regulations, all fill ports must be equipped with a spill containment device (spill catchment basin) which allows the carrier to drain product from the delivery hose and return it to the tank. The spill containment basin must be

designed so that it is product-tight, drains or pumps product into the tank, and will not collect water, dirt, or debris. The spill containment basin must be kept covered at all times except when product is delivered or the tank is gauged and must be kept clean and water-free. A spill catchment basin is not required for an existing heating oil tank at a facility or storage facility except when such facility is substantially modified.

3. *Color coding of fill ports.*
 - a. Effective the date of these regulations, the owner or operator must permanently mark all fill ports to identify the product inside the tank. These markings must be consistent with the color and symbol code of the American Petroleum Institute (API).
 - b. The colors to be used are:

TABLE INSET:

Higher leaded gasoline	Red
Middle leaded gasoline	Blue
Lower leaded gasoline	White
Higher unleaded gasoline	Red with white cross
Middle unleaded gasoline	Blue with white cross
Lower unleaded gasoline	White with black cross
Vapor recovery	Orange
Diesel	Yellow
#1 fuel oil	Purple with yellow bar
#2 fuel oil	Green
Kerosene	Brown
Aviation gasoline/jet fuel	Reference API Bulletin 1542

- c. The symbols to be used are:
 - 1) A circle for gasoline products and vapor recovery lines;
 - 2) A hexagon for other distillates; and
 - 3) A border must be painted around fuel products containing extenders such as alcohol. The border will be black around a white symbol and white around all other colors.

- d. Monitoring wells must be permanently marked and identified as a "monitoring well".
4. *Requirements for valves and gauges.*
- a. *Shutoff valve for remote pumping unit at motor fuel dispenser.* All dispensers of motor fuel under pressure from a remote pumping system must be equipped with a shear valve (impact valve) which is located in the supply line at the inlet of the dispenser. This valve must be designed to close automatically in the event that the dispenser is accidentally dislodged from the inlet pipe. A valve meeting the standards set forth in NFPA No. 30A, Section 4-3.6 [see section 873.2512(2)] meets the requirements of this subsection.
 - b. *Shutoff valve for gravity-fed motor fuel dispenser.* All tanks which cause a gravity head on a dispenser of motor fuels must be equipped with a device such as a solenoid valve which is positioned adjacent to and downstream from the operating valve required in section 873.2515 4.e. The valve must be installed and adjusted so that liquid cannot flow by gravity from the tank in case of piping or dispenser hose failure. A valve meeting the standards set forth in NFPA No. 30A, Section 2-1.7 (see section 873.2512) meets the requirements of this subsection.
 - c. *Gauges for aboveground storage tanks.*
 - 1) All aboveground petroleum tanks must be equipped with a gauge that accurately shows the level of product in the tank. The gauge must be accessible to the carrier and be installed so it can be conveniently read.
 - 2) The design capacity, working capacity and identification number of the tank must be clearly marked on the tank and at the gauge.
 - 3) A high-level warning alarm, a high-level liquid pump cutoff controller or equivalent device may be used in lieu of the gauge required above.
 - d. *Check valve for pump-filled tank.* All fill pipes leading to a pump-filled petroleum tank must be equipped with a properly functioning check valve or equivalent device which provides automatic protection against backflow. A check valve is required only when the piping arrangement of the fill pipe is such that backflow from the receiving tank is possible.
 - e. *Operating valve for gravity-drained tank.* Each tank connection through which petroleum can normally flow must be equipped with an operating valve to control the flow. A valve that meets the standards set forth in NFPA No. 30, Section 2-2.7.1 (see section 873.2512) meets the requirements of this subsection.
5. *Secondary containment for aboveground tanks.*
- a. A secondary containment system must be installed around any aboveground petroleum storage tank which:
 - 1) Could reasonably be expected to discharge petroleum to the waters of the county; or

- 2) Has a capacity greater than 1,100 gallons or more. The secondary containment system must be constructed so that spills of petroleum and chemical components of petroleum will not permeate, drain, infiltrate or otherwise escape to the groundwaters or surface waters before cleanup occurs. The secondary containment system may consist of a combination of dikes, liners, pads, ponds, impoundments, curbs, ditches, sumps, receiving tanks and other equipment capable of containing the product stored. Construction of diking and the storage capacity of the diked area must be in accordance with NFPA No. 30, Section 2-2.3.3 [see section 873.2512 2.].
 - b. If soil is used for the secondary containment system, it must be of such character that any spill will be readily recoverable and will result in a minimal amount of soil contamination.
 - c. Storm water which collects within the secondary containment system must be controlled by a manually operated pump or siphon or a gravity drain pipe which has one manually controlled dike valve on the outside of the dike. An additional valve may be located inside the dike if it can be manually operated from outside the dike. All pumps, siphons and valves must be properly maintained and kept in good condition. If gravity drainpipes are used, all dike valves must be locked in a closed position except when the operator is in the process of draining clean water from the diked area.
 - d. Storm water or any other discharge at a facility must be uncontaminated and free of sheen prior to discharge. Storm water that is contaminated must be treated to reduce petroleum concentration to 15 parts per million (ppm) or less and to remove any visible sheen prior to discharge. Additional requirements may be imposed under 6 NYCRR, Parts 751-758, for protection of the county's waters.
6. *Maintenance of spill prevention equipment.* The owner or operator must keep all gauges, valves and other equipment for spill and overfill prevention in good working order.

(Added 6-17-1999)

Sec. 873.2516. Inventory monitoring for underground storage facilities.

1. *Tank inventory records.*
 - a. The operator of an underground storage tank must keep daily inventory records for the purpose of detecting leaks. Records must be kept for each tank (or battery of tanks if they are interconnected) and gains. Records must be reconciled at least twice per week and must account for all variables that could affect an apparent loss or gain and must be in accordance with generally accepted practices.
 - b. If the tank is unmetered or if the tank contains petroleum for consumptive use on the premise where stored, the operator may detect inventory leakage in an alternative method to section 873.2516 1.a. above. This may include an annual standpipe analysis or other method acceptable to

the department.

2. *Exemptions.* No inventory monitoring is required:
 - a. For an underground tank storing No. 5 or No. 6 fuel oil; or
 - b. Where the operator can demonstrate to the satisfaction of the department that it is technically impossible to perform inventory monitoring for the purpose of leak detection.
3. *Maintenance of inventory records.*
 - a. Inventory monitoring records must be maintained and made available for department inspection for a period of not less than five years. Current records (the last 90 days) must be maintained by the operator at the facility.
 - b. Failure to maintain and reconcile such records constitutes cause for department-ordered tests and inspections of the facility at operator expense as set forth in section 873.2519 of this article and/or the installation of monitoring wells at operator expense.
4. *Reporting of inventory losses.* If inventory monitoring required in section 873.2516 1. shows an inventory loss, a recurring accumulation of water in the bottom of the tank during any ten-day period, apparent product losses or gains exceeding three-quarters of one percent of the tank volume or apparent losses or gains exceeding 7 1/2 gallons per 1,000 gallons delivered, the operator must initiate an investigation into the possible causes. If, within 48 hours, the causes cannot be explained by inaccurate record-keeping, temperature variation or other factors not related to leakage, the operator must notify this department by calling 914-813-5000 and the NYSDEC Spill Hotline at 1-800-457-7362 within New York State or 518-457-7362 outside New York State and must take the tank out of service in accordance with section 873.2520 until such time that inspection and/or tightness tests are performed, the cause is determined and necessary repairs or replacements are made.

(Added 6-17-1999)

Sec. 873.2517. Underground storage facilities testing and monitoring.

1. *Periodic tightness testing.*
 - a. The owner of any underground petroleum storage tank and connecting piping system must have the tank and pipes periodically tested for tightness as shown below:

Testing Schedule--Underground Tanks

Category A. Unprotected tank. Initial test when the tank is ten years old. Retest every five years thereafter until reaching the age of 25 years. Upon reaching 25 years of age, tanks must be tested yearly.

Category B. Corrosion-resistant tank. Initial test when the tank is 15 years old. Retest every five years thereafter until permanently closed.

Category C. Corrosion-resistant tank and piping which have a leak monitoring system or a new tank and piping installed in conformance with section 873.2521 through section 873.2534, inclusive, and section 873.2536 of this article require no periodic testing. Monitoring of cathodic protection and leak detection systems must be performed in accordance with sections 873.2517 7. and 873.2517 8. Tanks that have been reconditioned in accordance with section 873.2525 are not eligible for the exemption from periodic tank testing.

- b. Unprotected tanks and piping of undetermined age or whose documentation of tank system age is not acceptable to the commissioner must be tested at the time of registration and thereafter must be retested on a yearly schedule.
 - c. If, for any reason, testing or inspections are not performed as required in this section, the tank and piping system must be replaced in accordance with sections 873.2521 through 873.2533, inclusive, of this article or taken out of service pursuant to the requirements of section 873.2520 of this article.
2. *Exemptions.* No periodic tightness test is required:
- a. On a tank and piping system storing No. 5 or No. 6 fuel oil;
 - b. On a tank and piping system which has a capacity of 1,100 gallons or less unless the department determines that the tank or piping system could reasonably be expected to leak petroleum to the waters of the county;
 - c. On a tank and piping system which is corrosion resistant and has a leak monitoring system;
 - d. On tanks and piping systems installed in conformance with the standards for new construction as set forth in sections 873.2521 through 873.2524, inclusive, and section 873.2526 of this article; or
 - e. Where the size of the tank exceeds 50,000 gallons or where it is technically impossible to perform a meaningful tightness test. In this case, an alternative test or inspection that is acceptable to the department must be conducted.
3. *Qualifications of test technicians.* All tightness tests must be performed by a technician who has an understanding of variables which affect the test, is trained in the performance of the test, meets the qualifications and adheres to procedures as set forth by the department and who is approved by this department to test in Westchester County.
4. *Test reports.*
- a. A test report must be sent by the owner or technician to the department no later than 30 days after performance of the test, except any test or inspection which shows the facility is leaking must be reported by any person with knowledge of such leak to the department immediately by calling 914-813-5000 and to the NYSDEC Spill Hotline within two hours at 1-800-457-7362 within New York State and 518-457-7362 outside New

York State.

- b. All test reports must be in a form satisfactory to the department and must include the following information:
 - 1) Facility registration number;
 - 2) Identification number used on the application form required in section 873.2513 6. of this article for tank and piping system tested;
 - 3) Date of test;
 - 4) Results of test;
 - 5) Test method;
 - 6) Certification by the technician that the test complies with criteria for a tightness test in section 873.2517 6.;
 - 7) Statement of technician's qualifications;
 - 8) Address of technician; and
 - 9) Signature of technician.
 - c. A copy of the test report(s) must be maintained by the owner of the facility for at least five years.
5. *Repair, replacement and closure of leaking systems.* Any part of the storage facility that is not tight must be promptly emptied. A program must be immediately initiated by the operator or owner to locate the cause of the loss and clean up any residue in accordance with section 873.2519 3. of this article. The tank must be promptly repaired, replaced or taken out of service in accordance with section 873.2520 of this article.
 6. *Criteria for tightness test.* Any tightness test method must first be accepted by NYSDEC prior to acceptance by this department. A tightness test is a test acceptable to the department that will determine if a tank and piping system are tight or not tight. The test must be capable of detecting a tank or piping leak as small as 0.05 of a gallon in one hour, accounting for variables such as vapor pockets, thermal expansion of product, temperature stratification, groundwater level, evaporation, pressure and end deflection.
 7. *Monitoring of corrosion-resistant tanks and pipes.*
 - a. The owner or operator of any corrosion-resistant underground tank or pipe which is exempt from tightness testing that section 873.2517 2. must monitor all cathodic protection and leak detection systems.
 - b. The adequacy of a cathodic protection system must be monitored at least annually. If at any time the system fails to provide the necessary electrical current to prevent corrosion, the cathodic protection system must be restored within 30 days. Any tank or pipe with a non-working cathodic protection system will be considered unprotected and must be tested for tightness within one year and retested every five years thereafter until the tank system reaches 25 years of age, upon which time the tank system must be tested yearly until the tank system is permanently closed.

8. *Inspection of leak monitoring systems.* The owner or operator must monitor observation wells for traces of petroleum at least once per week. All other monitoring systems must be inspected monthly. Monitoring systems must be kept in proper working order. If at any time the monitoring system fails to function effectively, it must be repaired within 30 days. Any tank or piping system with a non-working monitoring system must be tested for tightness within one year and retested every five years thereafter until the tank system reaches 25 years of age, upon which time the tank system must be tested yearly until the tank system is permanently closed.
9. *Monitoring records.* Monitoring records for cathodic protection and leak detection systems must be maintained on the premises for a period of at least one year.

(Added 6-17-1999)

Sec. 873.2518. Aboveground storage tank facilities inspections.

1. *Monthly inspections.* The owner or operator of an aboveground storage facility must inspect the facility at least monthly. This must include:
 - a. Inspecting exterior surfaces of tanks, pipes, valves and other equipment for leaks and maintenance deficiencies;
 - b. Identifying cracks, areas of wear, corrosion and thinning, poor maintenance and operating practices, excessive settlement of structures, separation or swelling of tank insulation, malfunctioning equipment and structural and foundation weaknesses; and
 - c. Inspecting and monitoring all leak detection systems, cathodic protection monitoring equipment or other monitoring or warning systems which may be in place at the facility.
2. *Ten-year inspections schedule.*
 - a. In addition to monthly inspections required above, the owner or operator must perform a detailed inspection as described in section 873.2518 4. of any aboveground tank with a capacity of 10,000 gallons or more or any tank with a capacity less than 10,000 gallons which could reasonably be expected to discharge petroleum to the waters of the county. The initial inspection must be performed when the tank is ten years old or upon the effective date of this article, whichever comes later.
 - b. Any tank which is of an unknown age must be inspected upon the effective date of this article.
 - c. If a tank is due for an initial inspection but has previously been inspected in a manner consistent with the criteria set forth in section 873.2518 4. within a ten-year period prior to the due date, the department may accept this previous inspection.
 - d. Reinspection of all tanks is required no later than ten years from the date of the previous inspection.
3. *Ten-year inspections exemptions.* Ten-year inspections are not required for:
 - a. Tanks which are entirely aboveground such as tanks on racks, cradles or

- stilts;
 - b. Tanks storing No. 5 or No. 6 fuel oil; or
 - c. Tanks installed in conformance with the standards for new construction set forth in sections 873.2527 through 873.2530, inclusive, of this article.
4. *Requirements for ten-year inspections.* A ten-year inspection must consist of a tightness test of the tank and connecting underground pipes or an inspection that consists of the following:
- a. Cleaning the tank and difficult-to-reach areas within the tank in accordance with generally accepted practices;
 - b. Removal, transportation and disposal of sludge in a manner consistent with all applicable county, state and federal law; and
 - c. Inspecting the tank shell for soundness and testing all welds and seams on the tank bottom for porosity and tightness. The test must be consistent with generally accepted industry testing and inspection practices. This may include one or a combination of the following:
 - 1) A tightness test, an air pressure, hydrostatic or vacuum test, a penetrating dye test, a non-destructive test to detect thinning of the tank or hammering to detect weak areas;
 - 2) Visual inspection of the internal surfaces of the tank and difficult to reach areas for corrosion or failure;
 - 3) Inspection of the internal coatings for any signs of failure of the coating system such as cracks, bubbles, blisters, peeling, curling or separation; and
 - 4) A tightness test of any connecting underground pipes.
5. *Inspection reports.*
- a. Reports for each monthly inspection and ten-year inspection must be maintained and made available to the department upon request for a period of at least ten years.
 - b. The reports must include the following information:
 - 1) Facility registration number;
 - 2) Identification number for tank inspected;
 - 3) Date of inspection;
 - 4) Results of inspection, including a report on the need for repair;
 - 5) Certification by the inspector that the inspection has been performed in a manner consistent with the requirements of section 873.2518;
 - 6) Address of inspector; and
 - 7) Signature of inspector.
6. *Repair of equipment deficiencies.* If an inspection reveals a leak, a tank or

equipment deficiency, a deficiency in monitoring equipment, excessive thinning of the tank shell which would indicate structural weakness when the tank is filled with petroleum or any other deficiency which could result in failure of the facility to function properly or store and contain the product in storage, remedial measures must be promptly taken to eliminate the leak or deficiency and clean up any residue in accordance with section 873.2519 3.

7. *Uninspected facilities.* If any portion of a facility is not inspected as required, the uninspected portion of the facility must be taken out of service pursuant to the requirements of section 873.2520.

(Added 6-17-1999)

Sec. 873.2519. Additional testing, spill notification and clean up requirements.

1. *Additional testing and inspection requirements.* When a leak of petroleum is suspected, appears probable, where tests or inspections have not been performed or where accurate inventory records are not kept and reconciled as required in section 873.2516, the commissioner may order the owner or operator to inspect and to test the tanks or equipment for tightness and structural soundness and/or to take whatever action is necessary in the opinion of the commissioner to bring the facility into compliance with the provisions of this code. If the owner or operator fails to conduct such test and inspections within ten days, the department may conduct tests and inspections for tightness and/or structural soundness as appropriate. The expenses of conducting such tests as ordered by the department shall be paid by the facility owner.
2. *Reporting of spills and discharges.* Any person with knowledge of a spill, leak or discharge of petroleum must report the incident to this department immediately and to NYSDEC within two hours of discovery. The results of any inventory record, test or inspection which shows a facility is leaking must be reported to this department immediately and to NYSDEC within two hours of discovery. Notification to this Department must be made by calling 914-813-5000. Notification to NYSDEC must be made by calling the Spill Hotline at 1-800-457-7362 within New York State and 518-457-7362 outside New York State. Notification to this department shall not be deemed compliance with any reporting requirement of any other federal, state or local law.
3. *Remedial action.*
 - a. The facility owner shall be responsible to immediately institute and expediently complete all actions necessary to remedy the effects of any discharge. A comprehensive report must be submitted to this department within two weeks of the discharge indicating the cause of the discharge and detailing remedial action undertaken. A copy of this report, as well as any status reports, must also be submitted to NYSDEC Region 3 Spills Office in New Paltz pursuant to Article 12 of the State Navigation Law. Status reports, in addition to the final report, will be required as deemed necessary by the commissioner and NYSDEC. NYSDEC is responsible to ensure appropriate and timely action is taken in response to a petroleum release. These reports are necessary in order to make this determination. Additional status reports, in addition to a final report, will be required as

deemed necessary by the commissioner.

- b. Any excavated soils shall be sampled within 24 hours of excavation for a hazardous waste determination in compliance with 6 NYCRR, Part 371.
 - c. Results of excavated soil sampled must be submitted to the department within ten working days from the date of the sampling.
 - d. Closure samples must be collected within 24 hours of excavation completion and analyzed per NYSDEC STARS Memo #1. Laboratory results must be reported to the department within ten working days thereafter.
4. *Site assessment.* A written closure plan describing the procedure to be used for tank decommissioning and site assessment to determine potential groundwater impacts may be required when the department has reason to believe a tank may have contaminated surrounding soils or groundwater.

(Added 6-17-1999)

Sec. 873.2520. Closure of out-of-service stationary tanks.

1. *Closure of tanks temporarily out of service.*
 - a. Storage tanks or facilities that are temporarily out of service for 30 or more days must be closed as follows:
 - 1) All product must be removed from the tank and piping system to the lowest draw-off point;
 - 2) Any waste product removed from the tank must be disposed of in accordance with all applicable state and federal requirements. Tanks must be protected from flotation in accordance with good engineering practices; and
 - 3) All manways must be locked or bolted securely and fill lines, gauge openings or pump lines must be capped or plugged to prevent unauthorized use or tampering.
 - b. Storage tanks or facilities that are temporarily out of service are subject to all requirements of this article including, but not limited to, periodic tightness testing, inspection, reporting and registration requirements as set forth in section 873.2513 of this article.
2. *Closure of tanks permanently out of service.* Any tank or facility that is permanently out of service must comply with the following:
 - a. Liquid and sludge must be removed from the tank and connecting lines. Any waste products removed must be disposed of in accordance with all applicable state and federal requirements.
 - b. The tank must be rendered free of petroleum vapors. Provisions must be made for natural breathing of the tank to ensure that the tank remains vapor-free.
 - c. All connecting lines must be disconnected and removed or securely capped or plugged. Manways must be securely fastened in place.

- d. Underground tank(s) and piping must be removed from the ground unless the system tested tight in accordance with section 873.2517 within 180 days or less of the closure date, in which case tanks may be filled to capacity with a solid inert material such as sand or concrete slurry. If an inert material is used, all voids within the tank must be filled. The test reports for tanks must be submitted to the department prior to closure in place.
 - e. Aboveground tanks must be stenciled with the date of permanent closure.
 - f. Aboveground tanks must be protected from flotation in accordance with good engineering practice.
3. *Out-of-service tanks and facilities.* Storage tanks or facilities which have not been closed pursuant to section 873.2520 2. are subject to all requirements of this article including, but not limited to, periodic tightness testing, inspection, reporting and registration requirements as set forth in section 873.2513 of this article.
 4. *Reporting of out-of-service tanks.* The Owner of a tank or facility which is to be permanently closed must notify the Department within 15 days prior to permanent closure of the tank or facility pursuant to the requirements of section 873.2513 4. of this article.
 5. *Used tanks.*
 - a. Tanks that are removed and do not meet the standards for new tanks set forth in sections 873.2522 or 873.2527 cannot be reinstalled for the purpose of petroleum storage.
 - b. If a tank meets the standards for new tanks, it may be reinstalled for petroleum storage if, after thorough cleaning and inspection internally and externally, it is found to be structurally sound and free of pinholes, cracks, structural damage or excessive corrosion or wear. Such tanks must be reinstalled and tested in accordance with the requirements of this article.
 - c. If a tank is to be disposed of as junk, it must be retested for petroleum vapors, rendered vapor-free if necessary, and punched with holes to make it unfit for storage of liquids.
 6. *Financial assurances.* Forms of surety or financial assurances may be required by the department to ensure proper closure of facilities. The amount of such financial assurance will be set by the department. Any requirement of financial assurances must be accompanied by a finding by the department of the public interest and shall set forth the reasons for requiring such financial assurances.

(Added 6-17-1999)

Sec. 873.2521. Requirements for new and substantially modified petroleum storage facilities.

1. *Construction and modification permits.* No person shall construct, install or substantially modify a petroleum storage facility with a combined storage capacity of over 1,100 gallons until a permit issued by the commissioner has been obtained.

2. *Handling and storage.* A new facility or a tank must employ all practices and equipment for handling and storage of petroleum as required in sections 873.2514 through 873.2520, inclusive, before the new facility or tank is placed in service.
3. *Applicability.*
 - a. Upon the effective date of this article, all new petroleum facilities or any addition, repair or replacement to an existing facility must be constructed, designed and installed in accordance with sections 873.2522 through 873.2534, inclusive, of this article.
 - b. This applies to all aboveground and underground facilities with a combined capacity of over 1,100 gallons except as set forth in section 873.2521 3.
 - c. Facilities licensed by NYSDEC under Article 12 of the Navigation Law and facilities regulated under the Federal Natural Gas Act are exempted from this article.

(Added 6-17-1999)

Sec. 873.2522. Minimum standards for new underground petroleum storage tanks.

1. *Label requirements.*
 - a. All new underground tanks used in Westchester County must bear a permanent stencil, label or plate which contains the following information:
 - 1) A manufacturer's statement that "This tank conforms with section 873.2522 of the Westchester County Sanitary Code";
 - 2) The standard of design by which the tank was manufactured;
 - 3) The petroleum products and percentages by volume of petroleum additives which may be stored permanently and compatibly within the tank or reference to a list available from the manufacturer which identifies products compatible with all tank materials;
 - 4) The year in which the tank was manufactured;
 - 5) A unique identification number;
 - 6) The dimensions, design and working capacity and model number of tank; and
 - 7) The name of the manufacturer.
 - b. A second label that shows all of the information required above and which also shows the date of installation must be conspicuously displayed and permanently affixed to the fill port. It must be readily visible to the carrier and may be imbedded in concrete, welded to the fill port or otherwise permanently affixed.
2. *Wear plates.* All tanks must have a ten gauge or thicker steel wear plate under each tank opening. Each plate must cover an area of at least 144 square inches

and must be installed in a manner that avoids crevice corrosion.

3. *Pressure testing of new tanks.* All new tanks, their welds, seams and connecting fittings must be factory tested for tightness using standard engineering practices. All tanks sold for use in Westchester County must be guaranteed by the manufacturer to be tight.
4. *Fiberglass-reinforced plastic tanks.*
 - a. All fiberglass-reinforced plastic underground petroleum storage tanks must be designed and manufactured in accordance with one of the following standards:
 - 1) UL No. 1316; or
 - 2) ULC No. CAN4-S615-M83 (see section 873.2512).
 - b. Fiberglass-reinforced plastic tanks must be of sufficient structural strength to withstand normal handling and underground use and must be chemically compatible with petroleum products, product additives and corrosive soils. Materials must be of sufficient density and strength to form a hard impermeable shell that will not crack, wear, soften or separate under normal service conditions.
5. *Cathodically-protected steel tanks.*
 - a. Cathodically-protected steel tanks used for underground storage of petroleum must meet or exceed one of the following design and manufacturing standards:
 - 1) ULC-S603; or
 - 2) UL No. 58 (see section 873.2512).
 - b. In addition to the design and manufacturing standard in section 873.2522 5., such steel tanks must be cathodically protected with sacrificial anodes or an impressed current system that is designed, fabricated and installed in accordance with one of the following standards:
 - 1) API Publication No. 1632;
 - 2) ULC-S603.1;
 - 3) Steel Tank Institute Standard No. sti-P₃; or
 - 4) NACE Standard RP-01-69 (see section 873.2512).
 - c. The cathodic protection system must be designed to provide a minimum of 30 years of protection.
 - d. A qualified engineer or corrosion specialist must supervise the installation of the cathodic protection system where this is necessary to assure that the system has been installed as designed.
 - e. Each cathodic protection system must have a monitor that enables the owner or operator check on the adequacy of cathodic protection.
 - f. Tanks which are protected by sacrificial anodes must be electronically insulated from the piping system with dielectric fittings, bushings,

washers, sleeves or gaskets which are chemically stable when exposed to petroleum, petroleum additives or corrosive soils.

- g. In addition to the above, tanks must be factory coated with coal tar-based epoxy or other coating which will provide equivalent protection and corrosion resistance. The coating must have a minimum finished thickness of ten mils (0.01 inches) on the shell and 15 mils (0.015 inches) on the head. The coating must be electrically tested for short circuits or coating faults. Defects and any inadequacies in the coating must be repaired. The application of the coating must be in strict accordance with the instructions of the supplier of the coating material.

6. *Steel tanks clad with fiberglass-reinforced plastic.*

- a. Underground petroleum storage tanks constructed of steel clad with fiberglass-reinforced plastic must meet or exceed one of the following design and manufacturing standards:
 - 1) ULC-S603; or
 - 2) UL No. 58 (see section 873.2512).
- b. Tanks must be electrically insulated from the piping system with dielectric fittings, bushings, washers, sleeves or gaskets that are chemically stable when exposed to petroleum, petroleum additives or corrosive soils.
- c. Tanks must have an exterior fiberglass-reinforced plastic shell bound firmly to the steel. This must consist of a base coat of resin five to eight mils (0.005 to 0.008 inches) in thickness overlaid by two layers of resin with fiberglass reinforcement with a thickness of at least 85 mils (0.085 inches) after rolling. A final coat of resin must be applied to a thickness of ten to 15 mils (0.01 to 0.015 inches). The thickness of the completed coating must be a minimum of 100 mils (0.1 inches) after curing. The coating's coefficient of thermal expansion must be compatible with steel so that stress due to temperature changes will not be detrimental to the soundness of the coating and a permanent bond between coating and steel is maintained. The coating must be of sufficient density and strength to form a hard, impermeable shell which will not crack, wick, wear, soften or separate and which must be capable of containing the product under normal service conditions in the event the steel wall is perforated. The coating must be non-corrodible under adverse electrolytic conditions and must be chemically compatible with petroleum products and product additives.
- d. The coating must be factory inspected for air pockets, cracks, blisters, pinholes and electrically tested at 10,000 volts for coating short circuits or coating faults. Any defects must be repaired. The coating must be factory checked with a Barcol Hardness Tester or equivalent to assure compliance with the manufacturer's minimum specified hardness standard for cured resin.

7. *Double-walled tanks.*

- a. Any of the tanks allowed in section 873.2522 4.--7., inclusive, may be fabricated in double-walled construction in accordance with acceptable

industry practices.

- b. A double-walled tank that is designed and manufactured in accordance with all of the following standards also satisfies the requirement for secondary containment and leak monitoring set forth in sections 873.2523 and 873.2524:
 - 1) The interstitial space of the double-walled tank can be monitored for tightness;
 - 2) Outer jackets of steel must have a minimum thickness of ten gauge and be coated as prescribed in section 873.2522 5. or section 873.2522 6.;
 - 3) There must be no penetrations of any kind through the jacket to the tank except top entry manholes and fittings required for filling the tank, venting the tank or monitoring the interstitial space;
 - 4) The outer jacket must cover at least the bottom 80 percent of the tank; and
 - 5) The jacket must be designed to contain an inert gas or liquid at a pressure greater than the maximum internal pressure or be able to contain a vacuum for a period of one month.

(Added 6-17-1999)

Sec. 873.2523. Minimum standards for secondary containment for new underground storage tanks.

1. *General requirements.* All new underground petroleum storage tanks must have a secondary containment system that collects and contains a leak. This must consist of one of the following:
 - a. A double-walled tank;
 - b. A vault;
 - c. Cut-off walls; or
 - d. An impervious underlayment.
2. *Standards for secondary containment.*
 - a. *Double-walled tanks.* If the secondary containment system consists of a double-walled tank, the tank must be constructed in accordance with section 873.2522 7. and must have a monitoring system in accordance with section 873.2524 2.
 - b. *Vaults.* If a vault is used for secondary containment, the vault must be water tight, impervious to leakage of petroleum and able to withstand chemical deterioration and structural stresses from internal and external causes. The vault must be a continuous structure with a chemical-resistant water stop used at any joint. There must be no drain connections or other entries through the vault except that there may be top entry manholes and other top openings for filling and emptying the tank, venting and for monitoring and pumping of petroleum which may

leak into the vault. The tank(s) within the vault must be encased or bedded in a manner consistent with acceptable engineering practices.

c. *Cut-off walls.*

- 1) Cut-off walls may be used where groundwater levels are above the bottom of the tank excavation.
- 2) A cut-off wall must consist of an impermeable barrier that has a permeability rate to water equal to or less than 1×10^{-6} cm/sec. It must not deteriorate in an underground environment and in the presence of petroleum.
- 3) A cut-off wall must extend around the perimeter of the excavation and to an elevation below the lowest groundwater level.
- 4) If a synthetic membrane is used for a cut-off wall, any seams, punctures or tears in the membrane must be repaired and made leak tight prior to backfilling. No penetrations of the cut-off wall are allowed.
- 5) Impervious native soil may serve as a cut-off wall when the impervious soil is continuous and is of sufficient depth, thickness and extent to contain a leak. The soil must have a permeability rate to water equal to or less than 1×10^{-6} cm/sec.
- 6) Anchoring or weighing to resist buoyancy forces is required where groundwater or floods may affect the tank.

d. *Impervious underlayment.*

- 1) An impervious underlayment may be used under a tank at sites where groundwater levels are below the bottom of the excavation and where soils are well drained. This underlayment must have a permeability rate to water equal to or less than 1×10^{-6} cm/sec and must not deteriorate in an underground environment and in the presence of petroleum. The underlayment may consist of impervious native soils, an impervious concrete pad, synthetic membranes or any equivalent material. If a membrane is used, any seams must be repaired prior to backfilling.
- 2) The underlayment must extend at least one foot beyond the sides and ends of the tank and must have a slope to the sump of at least one-quarter-inch per foot. An observation well as required in section 873.2524 4. must be positioned in the sump and extend to the surface of the excavation for the purpose of sampling for leakage and pumping out water or product which may accumulate.
- 3) Surface waters must be drained from the site using good engineering practices. This may include capping the site with asphalt, concrete or other impervious cover that is sloped to drain ways leading away from the storage tanks.

(Added 6-17-1999)

Sec. 873.2524. Monitoring of new underground storage tanks.

1. *General requirements.* All new tanks must have one of the following leak monitoring systems:
 - a. A double-walled tank with monitoring of the interstitial (annular) space;
 - b. An in-tank monitoring system; or
 - c. An observation well or wells.
2. *Monitoring of double-walled tanks.* If a double-walled tank is used, the interstitial space must be monitored for tightness using pressure monitoring, vacuum monitoring, electronic monitoring, manual sampling once per week or an equivalent method.
3. *In-tank monitoring systems.* If an in-tank monitoring system is used, it must consist of in-tank equipment which provides continuous monitoring of any leakage from the tank of two-tenths of a gallon per hour or larger.
4. *Observation wells.*
 - a. If an observation (monitoring) well or series of wells are used, they must consist of slotted or screened wells at least four inches in diameter. The well must be installed down gradient in the groundwater or at a sump within the secondary containment system and to an elevation at least 24 inches below the bottom of the tank. The well must be installed within the backfill surrounding the tank. At least one well is required at each facility. The well must be monitored for traces of petroleum at least once per week as required in section 873.2517 8. of this article.
 - b. An observation well may be used as a vapor or odor well if the site is uncontaminated. If the well becomes contaminated with petroleum, it must either be purged free of odors or monitored for petroleum contamination through another method capable of detecting 1/64 of an inch of petroleum floating on the water surface or other method acceptable to the department.
 - c. Wells must be protected from damage if located in a traffic area.
 - d. Wells must be sealed or capped so as to preclude liquid from entering the well from the surface and clearly marked as monitoring wells to prevent accidental delivery of product.

(Added 6-17-1999)

Sec. 873.2525. Minimum standards for reconditioning an underground steel tank.

1. *Tightness testing schedules.* A reconditioned underground steel tank and its associated piping must be tightness tested in accordance with section 873.2517 1. The original installation date of the tank and piping will determine the due date for required testing.
2. *Manufacturer's guarantee.* An underground steel tank may be reconditioned by installing an interior coating (lining) under the direction of the lining manufacturer

or a certified representative. The manufacturer or representative must guarantee to the owner in writing that the coating will not fail, crack, separate or deteriorate and the tank will not leak the product specified in storage for a period of ten years. A copy of the guarantee must be kept by the owner for the life of the tank.

3. *Structural requirements.*

- a. A steel tank may be lined with a coating only if it meets the following structural conditions:
 - 1) It has a design shell thickness of seven gauge or more;
 - 2) The tank has a minimum metal thickness of one-eighth inch at holes after reaming;
 - 3) The tank has no open seam or split;
 - 4) The tank has less than ten holes with none larger than one-half inch in diameter; and
 - 5) The tank meets all standards for structural soundness of the lining manufacturer.
- b. A tank that fails to meet all of the requirements of section 873.2525 1.c. must be permanently closed.
- c. To determine adherence to the requirements of section 873.2525 1.c. above, the entire interior surface of the tank must be tapped with a ballpen hammer for soundness or inspected using other equivalent or superior non-destructive methods. Weak areas, holes and seams must be ballpenhammered before and after sandblasting to obtain structurally sound edges. Holes and seams must be reamed until the edges of the opening are a minimum of one-eighth inch thick.

4. *Preparation of tank interior.*

- a. *Cleaning of tank prior to repair.* Prior to repair, a tank must be cleaned in accordance with generally accepted practices. Wash water must not be discharged to the lands or waters of the county if the discharge would contravene the standards of 6 NYCRR, Parts 701, 702 or 703.
- b. *Sludge removal.* Sludge accumulation on the bottom of the tank must be removed, transported and disposed of in a manner consistent with all state and federal requirements for solid waste disposal.
- c. *Sandblasting of internal surfaces.* The entire internal tank surface must be sandblasted completely free of scale, rust and foreign matter. Following sandblasting, the entire surface must be brushed and vacuumed such that the surface, when viewed without magnification, is free of all moisture and foreign matter.
- d. *Plugging of perforations.* All perforations must be tightly plugged with boiler plugs or screws made of non-corrodible plastic. Boiler plugs or screws must be covered with a laminate of resin and fiberglass cloth which overlaps all sides of the plug with a minimum of six inches and has a minimum area of 144 square inches.

5. *Installation of striker plates.* Prior to applying the coating material, a ten gauge steel plate which covers a minimum of 144 square inches must be installed and centered under the fill tube and gauging tube. The plate must be bonded to the interior surface of the tank.
6. *Coating (lining) specifications.*
 - a. Any non-corrodible epoxy-based resins, isophthalic polyester-based resins or equivalent coating may be used for reconditioning a steel tank if the coating is of sufficient thickness, density and strength to form a hard, impermeable shell which will not leak, crack, wear, soften or separate from the interior surface of the tank.
 - b. The coating, when applied to properly prepared steel as required in section 873.2525 4.c., must maintain a permanent bond to the tank.
 - c. The coating's coefficient of thermal expansion must be compatible with steel so that stress due to temperature changes will not be detrimental to the soundness of the coating.
 - d. The coating must be chemically compatible with petroleum products and product additives.
7. *Application of coating.*
 - a. The coating must be applied and cured in strict accordance with manufacturer's specifications.
 - b. The coating must be applied as soon as possible, but not later than eight hours after sandblasting and cleaning of the internal surface. Visible rust, moisture or foreign materials must not be present.
8. *Inspection of coatings.* The coating must be checked for air pockets and blisters and electrically tested for pinholes. The coating thickness must be checked with an Elcometer Thickness Gauge or equivalent and the hardness checked with a Barcol Hardness Tester or equivalent to assure compliance with manufacturer's specifications. Any defects must be repaired.
9. *Tank closings after reconditioning.*
 - a. If the tank has a manway, the manway cover gasket must be replaced with a new gasket before resealing.
 - b. If the tank does not have a manway and an opening has been cut, the tank must have a manway properly welded in place prior to beginning work or the tank must be sealed as follows:
 - 1) A one-quarter-inch thick steel cover plate, rolled to the contour of the tank exterior must be made to overlap the hole at least two inches on each side (e.g., measure at least 26" × 26" if the opening was cut 22" × 22").
 - 2) The cover must be used as a template to locate three-quarter-inch diameter holes on five inch centers, one inch from the edge of the cover.
 - 3) The cover plate must be sandblasted and both sides and the

entire inside surface of the plate must be covered with coating material to act as a gasket.

- 4) Before the coating on the cover cures, the cover must be fastened to the tank using one-half-inch minimum diameter bolts. The bolt shafts are to be placed through the holes from the inside of the tank and held in place by spring clips, then fastened with lock washer and nuts which have been dipped in a seam sealer.
 - 5) After being bolted to the tank, the cover plate and surrounding tank surface must be properly sandblasted, coated with coating material and allowed to cure before backfilling the hole.
10. *Tank tightness testing.* Following closure of the tank and before backfilling, the relined tank must be given a tightness test and a test report must be sent to the department.

(Added 6-17-1999)

Sec. 873.2526. Installation of underground facilities.

1. *Installation plans.*
 - a. Plans must be prepared and signed by a registered professional engineer or architect licensed to practice in the State of New York. Plans must be submitted to the department, attention PBS Section.
 - b. Plans must include a statement indicating that the design complies with the standards for new and substantially modified facilities of Article XXV of the Westchester County Sanitary Code.
2. *Application of New York State Uniform Fire Prevention and Building Code.* Underground tanks must be installed in a manner consistent with the following sections of the New York State Uniform Fire Prevention and Building Code and the NFPA No. 30:
 - a. New York State Uniform Fire Prevention and Building Code, 10 NYCRR, Sections 1002.2 and 1002.5; and
 - b. NFPA No. 30, Sections 2-3.1, 2-3.2, 2-5.6.1, 2-5.6.3, 2-5.6.4, 2-5.6.5 and 2-7 (see section 873.2512).
3. *Manufacturer's instructions.* In addition to the above requirements, all tanks must be installed in strict accordance with manufacturer's instructions. This includes repair of any damage to the tank coatings prior to backfilling.
4. *Testing of new tanks.* Before being covered or enclosed and placed in service, all new tanks must be tested for tightness in accordance with section 873.2517 6.
5. *Notification of Code Enforcement Official.*
 - a. Any person installing a new storage facility or substantially modifying a facility must apply to the authority responsible for enforcement of the Uniform Fire Prevention and Building Code for any building permit required by such authority prior to commencement of installation.
 - b. In addition, any person installing a new storage facility or substantially

modifying a facility must give at least 24 hours notice to this department and to the local building or fire code enforcement official prior to commencement of excavation, testing for tightness and backfilling. The building or fire code enforcement official shall also be given a copy of the permanent facility registration certificate as issued by the department under section 873.2513 of this article. If a permanent certificate has not been issued, a copy of the temporary certificate shall be supplied to the code enforcement official in its place.

6. *Final approval.* Final approval of plans will be issued upon satisfactory receipt of as-built site plans and a statement from the registered professional engineer or the architect and the installer indicating that the system has been installed in compliance with the standards for new and substantially modified facilities of Article XXV of the Westchester County Sanitary Code. The owner must maintain an approved copy of the as-built site plans.

(Added 6-17-1999)

Sec. 873.2527. Requirements for new aboveground tanks.

1. *Design and construction standards.*
 - a. New aboveground petroleum storage tanks must be constructed of steel and meet or exceed one of the following design and manufacturing standards:
 - 1) UL No. 142;
 - 2) UL No. 58;
 - 3) API Standard No. 650;
 - 4) API Standard No. 620;
 - 5) CAN4-S601-M84; or
 - 6) CAN4-S630-M84
(see section 873.2512).
 - b. Any aboveground petroleum storage tank which does not comply with the above requirements, such as a riveted or bolted steel tank, a tank constructed of wood, concrete, aluminum or fiberglass-reinforced plastic, may not be installed.
2. *Cathodic protection for tank bottoms.*
 - a. Bottoms of new tanks that rest on or in the ground must be cathodically protected with sacrificial anodes or an impressed current system that is designed, fabricated and installed in accordance with recognized engineering practices.
 - b. The cathodic protection system must be designed to provide a minimum of 30 years of protection.
 - c. A qualified engineer or corrosion specialist must supervise the installation of the cathodic protection system where this is necessary to assure that the system has been installed as designed.

- d. Each cathodic protection system must have a monitor that enables the owner or operator to check on the adequacy of cathodic protection.
3. *Painting of exterior tank surfaces.* The exterior surfaces of all new aboveground storage tanks must be protected by a primer coat, a bond coat and two or more final coats of paint or have an equivalent surface coating system designed to prevent corrosion and deterioration.

(Added 6-17-1999)

Sec. 873.2528. Impermeable barrier for aboveground tanks.

Any new stationary tank that is designed to rest on the ground must be constructed with a double bottom or underlain by an impervious barrier such as a concrete pad or cutoff barrier. If a barrier is used, it must have a permeability rate to water equal to or less than 1×10^{-6} cm/sec and must not deteriorate in an underground environment or in the presence of petroleum.

(Added 6-17-1999)

Sec. 873.2529. Monitoring systems for new aboveground tanks.

All new aboveground tanks must have equipment for monitoring between the tank bottom and the impermeable barrier required in section 873.2528. This includes, but is not limited to, perforated gravity collection pipes or channels in a concrete foundation pad that may be monitored for the presence of petroleum visually, electronically or by other satisfactory methods. Observation wells or other systems which monitor the soil or groundwater beneath the impermeable barrier do not satisfy the leak detection requirements of this section.

(Added 6-17-1999)

Sec. 873.2530. Other minimum requirements for new aboveground petroleum storage tank facilities.

Additional equipment required in sections 873.2515 3. through 873.2513 5., inclusive, where appropriate, must be installed on all new installations.

(Added 6-17-1999)

Sec. 873.2531. Repairing and reconditioning of aboveground tank facilities.

1. *Permanent repairs.* All repairs must be permanent in nature and equal to or better than the standards of original construction. Such repairs must consist of:
 - a. Steel welds or steel patches which are welded in place in accordance with accepted practices; or
 - b. Practices set forth for reconditioning of underground tanks, as described in section 873.2525.
2. *Welds.* All welds associated with the repair of a tank must be inspected and tested for tightness before the tank is returned to service.

3. *Chemical compatibility with petroleum products.* Linings, coatings, grouts and other sealing materials which are chemically compatible with the petroleum product being stored may be used in conjunction with a permanent steel tank repair as outlined above, but by themselves are not acceptable permanent repairs.
4. *Cleaning of tank prior to repair.*
 - a. Prior to repair, a tank must be cleaned in accordance with generally accepted practices. Waste water must not be discharged to the waters of the county if the discharge would contravene the standards of 10 NYCRR, Parts 701, 702 or 703.
 - b. Sludge that has accumulated on the bottom of the tank must be removed, transported and disposed of in a manner consistent with all applicable state and federal requirements for solid waste disposal.
5. *Coating (lining) specifications.*
 - a. Any non-corrodible epoxy-based resins, isophthalic polyester-based resins or equivalent coating which is bonded firmly to the interior surfaces may be used as a coating to protect a tank from future corrosion.
 - b. The coating must be applied as soon as possible, but not later than eight hours after sandblasting and cleaning of the internal surface. Visible rust, moisture or foreign matter must not be present.
 - c. The coating must be of sufficient thickness, density and strength to form a hard impermeable shell that will not crack, soften or separate from the interior surface of the tank. The coating, when applied to properly prepared steel, must maintain a permanent bond to the tank.
 - d. The coating's coefficient of thermal expansion must be compatible with steel so that stress due to temperature changes will not be detrimental to the soundness of the coating.
 - e. The coating must be chemically compatible with petroleum products and product additives.
 - f. The coating material must be applied and cured in strict accordance with manufacturer's specifications.
 - g. Coatings used to protect the bottom of a tank must extend up the side of the tank a minimum of 18 inches.
6. *Inspection of coating.* The coating must be checked for blisters and air pockets and electrically tested for pinholes. The coating thickness must be checked with an Elcometer Thickness Gauge or equivalent and the hardness checked with a Barcol Hardness Tester or equivalent to assure compliance with manufacturer's specifications. Any defects must be repaired.
7. *Manufacturer's guarantee.* The interior coating must be installed under the direction of the lining manufacturer or a certified representative. The manufacturer or representative must guarantee to the owner in writing that the coating will not leak the product specified in storage and the lining will not deteriorate in any way for a period of ten years. A copy of the guarantee must be

kept by the owner for the life of the tank.

(Added 6-17-1999)

Sec. 873.2532. Installation of aboveground facilities.

1. *Installation plans.*
 - a. Plans must be prepared and signed by a registered professional engineer or architect licensed to practice in the State of New York.
 - b. Plans must include a statement indicating that the design complies with the standards for new and substantially modified facilities of Article XXV of the Westchester County Sanitary Code.
 - c. Plans must be submitted to the department, attention Petroleum Bulk Storage Section.
2. *Application of New York State Uniform Fire Prevention and Building Code.* Aboveground tanks and appurtenances must be installed in a manner consistent with the following sections of the New York State Uniform Fire Prevention and Building Code and NFPA No. 30:
 - a. New York State Uniform Fire Prevention and Building Code, 9 NYCRR, Sections 1002 and 1171.2; and
 - b. NFPA No. 30, Sections 2-5.1, 2-5.2, 2-5.3, 2-5.4 and 2-5.5 (see section 873.2512).
3. *Foundation design.* New aboveground tanks must be supported on a well-drained stable foundation that prevents movement, rolling or settling of the tank and is designed to minimize corrosion of the tank bottom.
4. *Avoiding traffic hazards.* New aboveground tanks, pipes and distribution equipment must not be located along highway curves or otherwise exposed to traffic hazards.
5. *Testing of new tanks.* Before being placed in service, all new tanks must be tested for tightness and inspected in accordance with requirements outlined in API Standard 650 (see section 873.2512). If a pneumatic test is used, all fittings, welds and joints must be coated with a soap solution and inspected for air leaks.
6. *Notification of Code Enforcement Official.*
 - a. Any person installing an aboveground tank must apply to the authority responsible for enforcement of the Uniform Fire Prevention and Building Code for any building permit required by such authority prior to commencement of installation.
 - b. In addition, any person installing an aboveground tank must give at least 24 hours notice to this department and the local building or fire code enforcement official prior to commencement of installation. The local code enforcement official must also be given a copy of the permanent facility registration certificate as issued by the department pursuant to section 873.2513 of this article. If a permanent certificate has not been issued, a copy of the temporary certificate shall be supplied to the code

enforcement officer in its place.

7. *Final approval.* Final approval of the plans will be issued upon receipt of statement from both the registered professional engineer or architect and the installer indicating that the system has been installed in accordance with plans previously submitted to the department and in compliance with standards for new and substantially modified facilities of Article XXV of the Westchester County Sanitary Code.

(Added 6-17-1999)

Sec. 873.2533. Requirements for new underground piping systems.

1. *Installation plans.*
 - a. Plans for all new underground piping systems must be prepared and signed by a registered professional engineer or architect licensed to practice in the State of New York.
 - b. Plans must include a statement indicating that the design complies with the standards for new and substantially modified facilities of Article XXV of the Westchester County Sanitary Code. Plans must be submitted to the department, attention Petroleum Bulk Storage Section.
 - c. Final approval of the plans will be issued upon receipt of a statement from both the registered professional engineer or architect and the installer indicating that the system has been installed in accordance with plans previously submitted to the department and in compliance with the standards of new and substantially modified facilities of Article XXV of the Westchester County Sanitary Code.
2. *General requirement.* All new underground piping systems, including fittings and connections, must be made of steel or iron that is cathodically protected, fiberglass-reinforced plastic or other equivalent non-corrodible material.
3. *Cathodic protection for steel/iron pipe.* If piping systems are made of steel or iron, they must meet all of the following requirements for cathodic protection:
 - a. The cathodic protection system must be designed, fabricated and installed in accordance with recognized standards and industry practices;
 - b. The cathodic protection system must provide a minimum of 30 years protection in highly corrosive soils; and
 - c. Cathodic protection must be provided by the use of one or a combination of the following: galvanic coatings, sacrificial anodes, or impressed current.
4. *Testing sacrificial anodes and impressed current systems.* Where sacrificial anodes or impressed current systems are used, monitors to check on the adequacy of the system must be installed and kept in proper working condition. If at any time the monitor shows that the electrical current necessary to prevent corrosion is not being maintained, the system must be restored or the piping system will be considered unprotected and must be tested for tightness in accordance with section 873.2517 1. of this article.

5. *Additional hardware required for cathodic protection.* Except where cathodic protection is provided by impressed current, underground piping systems must have dielectric bushings, washers, sleeves or gaskets installed at the end to electrically isolate the piping system from the tank and dispenser. These dielectric connectors must be chemically compatible when exposed to petroleum, petroleum additives and corrosive soils.
6. *Fiberglass-reinforced plastic pipes.* If fiberglass-reinforced plastic pipes are used, the materials, joints and joint adhesives must be chemically compatible with petroleum, petroleum additives and soil environments.
7. *Fabrication and material standards.* Pipes, fittings and adhesives must be designed, fabricated and factory tested in accordance with generally accepted structural, material and performance standards for pressurized underground piping systems.
8. *Access ports.* All new underground piping systems must be designed, constructed and installed with access ports to permit tightness testing without the need for extensive excavation.
9. *Installation.*
 - a. All underground piping systems must be installed in accordance with recognized industry practices. All joints must be liquid and airtight.
 - b. All piping systems must be tested for tightness before being covered, enclosed or placed in use.
10. *Other system requirements.*
 - a. Additional equipment as required by section 873.2515 2. through 873.2514 4., inclusive, where appropriate, must be installed on all new installations. Overfill prevention equipment must be used on all new underground storage tank fill systems.
 - b. Systems with a float vent valve must be installed with an extractable tee and may only be used on tanks that are limited to gravity fill.
 - c. Any new underground piping systems employing a remote pumping system for dispensing motor fuel must be equipped with a leak detector (leak monitoring system) capable of detecting pressure loss or product loss on the discharge side of the pump. A remote pump is any pump separated from the dispense and which has the discharge line(s) operating under pressure.
 - d. New underground piping systems employing a suction pump must not be equipped with more than one check valve.
 - e. Each new underground piping system shall be provided with an approved means of monitoring the system for leakage.
 - f. New underground piping must be tightness tested prior to being placed into service in accordance with section 873.2517.

(Added 6-17-1999)

Sec. 873.2534. Non-stationary tanks and containers.

1. Storage.

- a. All non-stationary tanks and containers used for the storage of petroleum products, whether indoors or outdoors, shall be stored in a way that will prevent the release of any of the contents of the container to the surface waters, groundwaters, surface of the ground or below ground of Westchester County.
- b. Non-stationary tanks and containers of petroleum products shall at all times be stored on an impervious, chemical-resistant surface that is compatible with the material being stored.
- c. Non-stationary tanks and containers shall be stored in a secure manner and protected from vandalism, unauthorized access and damage by traffic, machinery or falling objects.
- d. Non-stationary tanks and containers stored outdoors shall be protected against freezing, rusting and other weather-related damage.
- e. Non-stationary tanks and containers shall be stored in a roofed facility with an impervious floor approved by the commissioner or on an approved, diked, impervious storage pad provided with adequate means of collecting and removing any accumulated storm water. Provisions must be made for contaminated water to be disposed of in an approved manner.
- f. Indoor storage shall be in an area with an impervious floor and no floor drains, unless it can be demonstrated that no direct discharge will occur.
- g. Non-stationary tanks and containers above 25 gallons in size shall contain a placard or marking that identifies the contents. The identifying lettering shall be in accordance with regulations and standards adopted by or acceptable to the commissioner.

2. Handling.

- a. Non-stationary tanks and containers shall be filled, emptied, transported and otherwise handled in a manner which will prevent the release to the surface waters, groundwaters, surface of the ground or below ground of Westchester County of any toxic or hazardous materials.
- b. Drums shall not be stacked more than three high and only on their ends unless approved storage racks are provided.
- c. Any area with stored containers and non-stationary tanks must be inspected on a daily basis by the owner or operator or his representative. Any indication of leakage or damage must be reported immediately to the department at 914-813-5000 and within two hours to the NYSDEC Spill Hotline at 1-800-457-7362 within New York State and 518-457-7362 outside New York State and action taken to correct the problem.
- d. Inventory records of stored materials shall be kept at all times and shall be available for inspection by the commissioner. Records shall clearly indicate deliveries, consumption, sale or final disposal and amount of all

products. These records shall be kept for a period of five years.

3. *New installations.*

- a. New non-stationary tanks and container areas shall be installed in a manner that will prevent the release into the surface waters, groundwaters, surface of the ground or below ground of Westchester County of any petroleum products.
- b. Installation shall be in accordance with plans submitted to and approved by the commissioner. Plans must be submitted to the department, attention Petroleum Bulk Storage Section.

(Added 6-17-1999)

Sec. 873.2535. Filling of unregistered tanks.

1. It shall be a violation of this article to fill a tank greater than 55 gallons subject to this article that is not registered with the department or for which a valid registration has expired.
2. It shall be a violation of this article for an individual to fill a tank subject to this article without first verifying that a valid registration is in effect for the tank.

(Added 6-17-1999)

Sec. 873.2536. Used oil.

1. For the purpose of this article, used oil shall be considered petroleum.
2. All stationary tanks used for storage of used oil will be registered with the county and labeled in accordance with 6 NYCRR, Parts 360 and 374-2, and comply with all provisions of this article.

(Added 6-17-1999)