

# Trends in Urban Environmental Criminal Enforcement



# Reasons for Criminal Enforcement

- **The Violation May Be Extremely Serious**
- **Civil Enforcement Alone Not A Deterrent**
- **Illegal Profits/Financial Incentive for Improper Disposal**
- **The Violation May Seriously Undermine the Regulatory Program**

# Environmental Statutes

- New York's environmental laws are codified in the "Environmental Conservation Law," which authorizes civil and criminal enforcement of state laws, as well as federal environmental statutes.
- Important federal statutes delegated to the state for enforcement include among others:
  - the Clean Water Act (U.S.C.A. §§ 19-5-101 to 123),
  - the Clean Air Act (U.S.C.A. §§ 19- 2-101 to 127),
  - and the Resource Conservation and Recovery Act (Solid and Hazardous Waste Act) which regulates solid wastes (U.S.C.A. §§ 19-6-101 to 824).

# Roles in the Criminal Process

- **Law Enforcement**
- **Prosecutors**
- **Defense Counsel**



# Law Enforcement

- Environmental Conservation Officers (ECOs)
- BECI: Bureau of Environmental Criminal Investigations – DEC Detectives
- DA or AG Investigators
- Local Police Officers
- USEPA Special Agents

# Prosecutors

- Office of the Attorney General
- Local District Attorney's Offices
- Office of the United States Attorney
- Responsible for the review of the evidence, investigation, charging decisions and prosecution of the defendants.

# Defense Counsel

## Retained or Assigned Counsel

- Defends the accused to ensure the investigation was done within legal parameters;
- Accusatory instruments are appropriately drafted and legally sufficient;
- Get the best deal for his/her client.

# Major Types of N.Y. State Prosecutions for Environmental Crimes:

- Water Pollution
- Fish and Wildlife
- Solid Waste (including Hazardous Waste)
- Hazardous Substances
- Air





# Statutory Scheme – 7 Areas of Criminal Enforcement

- All areas subject to regulatory scheme
- Regulatory Violation, with Culpable Mental State, is an offense.
- Seriousness of offense varies with seriousness of regulated activity
- Specific activity in each area criminalized



# Culpable Mental State

## Penal Law §15.05

Required for most crimes under ECL:

Intentionally - conscious objective to cause such result or engage in such conduct

Knowingly - aware that his conduct is of such nature or that such circumstances exists

Recklessly - aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or such circumstance exists

Criminal Negligence - fails to perceive a substantial and unjustifiable risk that such result will occur or such circumstance exists



# EXCEPT...

- Air Cases

Article 19 of the ECL states that any person who “willfully” violates a provision of Article 19 shall be guilty of a misdemeanor.

# Accusatory Instruments

- Summons
- Felony or Misdemeanor Complaint
- Indictment



# Water Pollution



# Water Pollution

- State regulates all discharges into waters of the state.
- Discharge not illegal itself generally, however a person needs to obtain a permit to discharge.
- Permit from Department of Environmental Conservation.
- Different types of permits.
  
- Two main types of criminal unpermitted discharges:
  - 1) Point Source
  - 2) Non-Point Source Discharges

# Point Source Discharges

## ECL §§ 17-0701, 17-0801, 71-1933

1. It shall be unlawful for any person, until a written SPDES permit therefor has been granted by the commissioner, or by his designated representative, and unless such permit remains in full force and effect, to:
  - a. Make or cause to make or use any outlet or point source for the discharge of sewage, industrial waste or other wastes or the effluent therefrom, into the waters of this state

1) Waters of the State

2) Point Source

3) SPDES Permit



# How Point Source Discharges Are Regulated:

- Self Reporting
- Daily Monitoring
- Best Available Control Technology (BACT)





# Non-Point Source Discharges

ECL § 17-0501

General prohibition against pollution

1. It shall be unlawful for any person, directly or indirectly, to throw, drain, run or otherwise discharge into such waters organic or inorganic matter that shall cause or contribute to a condition in contravention of the standards adopted by the department pursuant to section 17-0301.

- Contravention of the standards adopted by the department pursuant to section 17-0301
- Classification of Water Bodies
- (AA, A, B, C, D)



# Wildlife Crimes



# Wildlife Crimes

## Two Types of Wildlife Crimes

- Recreational Activities (i.e. hunting, fishing, trapping)
- Illegal Commercialization
  - Native Wildlife
  - Non-native Wildlife
  - Endangered and Threatened Species



## Wildlife Crimes (Recreational Activities)

- Start off with the theory that the State owns everything.
  - § ECL 11-0105 – The State of New York owns all fish, game, wildlife, shellfish, crustacea and protected insects in the state, except those legally acquired and held in private ownership.
- If you want to hunt, fish, trap you generally need a license.



- If you don't get license.....



## Illegal Commercialization/ Endangered and Threatened Species

- Article 11 and 13 of the ECL set out various statutory provisions that regulate the possession and sale of wildlife.
- Two major statutory provisions are:
- **ECL § 11-0107(2)** – No person shall, at any time of the year, buy, sell, offer or expose for sale, transport, or have in his possession any “**fish protected by law, game, protected wildlife, shellfish, harbor seals, crustacea protected by law, or part thereof, or protected insect, whether taken within the state or coming from without the state, except as permitted by the Fish and Wildlife Law.**”
- **ECL § 11-0535(2)** – makes illegal the “taking, importation, transportation, possession or sale of any **endangered or threatened species** of fish, shellfish, crustacea or wildlife, or hides or other parts thereof, or the sale or possession with intent to sell of any article made in whole or in part from the skin, hide or other parts of any endangered or threatened species of fish, shellfish, crustacea or wildlife” (except under license or permit from DEC).

# Enforcement- The Penalty Section

## ECL §71-0924

Where the value of wildlife  
or parts thereof is:

**\$250 or less**

### **Violation**

(Mandatory \$500 fine  
& up to 15 days jail)

**Over \$250  
up to \$1,500**

### **Unclassified Misd.**

(Mandatory \$5,000 fine  
& up to 1 year jail)

**Over \$1,500**

### **E Felony**

(up to 4 years jail  
& max \$5,000 fine)

# Solid Waste

Encompasses all types of waste, including liquids. The disposal of solid wastes is regulated by the ECL, and an unlawful release (disposal, abandonment or other methods) is a crime.

## *Stuff*

household garbage, municipal waste, construction and demolition debris



## *Bad Stuff*

hazardous wastes/ substances, (i.e. lead, chlorine, regulated medical waste, and petroleum products)



## *Really Bad Stuff*

acutely hazardous waste/ substances (AKA ethyl methyl death), such as arsenic acid, benzyl cyanide and hydrofluoric acid



# Regulatory Framework

- Municipal Waste - must be taken to a sanitary landfill.
- Hazardous Waste - regulated from “cradle to grave.” Documentation tracks the waste from its creation until its proper disposal (manifest system).





# What is a Substance Hazardous to Public Health Safety or the Environment?

- ECL §71-2702(10) – “any substance which:
- (a) is identified or listed as a hazardous waste in regulations promulgated pursuant to section 27-0903 of this chapter and all amendments thereto, regardless of whether at the time of release the substance was actually a waste; or
- (b) appears on the list in regulations promulgated pursuant to paragraph (a) of subdivision one of section 37-0103 of this chapter and all amendments thereto.”



# Something is classified as a hazardous waste or substance in two different ways:

- 1) **Listed** - the substance or waste is on a list found in DEC's regulations; or
- 2) **Characteristic** - the substance or waste satisfies the criteria of one of four categories defined in DEC's regulations.
  - Toxicity - a small amount of it can cause death (e.g. hydrochloric acid);
  - Corrosivity - High or low pH or corrodes steel at a certain rate;
  - Ignitability - It has a flash point of 140° F; or
  - Reactivity - It is an unstable substance that reacts violently with water (i.e. explodes).



# Environmental Search Warrants

## What's the same?

- Must meet all the requirements of C.P.L. Article 690
- Based upon probable cause
- Search for and “seize” evidence of a crime
- Return to the court “without unnecessary delay”



# Environmental Search Warrants

## What's different?

- The requirements for safe execution of the search warrant
- The nature of the search activities
- The nature of the material to be “seized”
- The types of information used to establish probable cause
- Disposition of seized evidence





Sample No. **AL05736**

### REPORT OF ANALYSIS

Westchester County Department of Labs and Research

10 Dana Road Valhalla, New York 10595

Sample Location :

Received By : DLV

Bottle No : PIT 1

Collection Point : SOIL

Collected By : HEINZINGER

ID of Source : PIT IN FLOOR

Collection Date : 04/02/2009 AT 8:30:00PM

Agency : Westchester County Health Dept.  
Bur. Hazardous Material Control  
145 Huguenot Street  
New Rochelle, NY 10801  
Att: Carlos Torres

Submitted On : 04/03/2009 AT 8:59:00AM

PWS No. :

Type Descriptor : Source Code : 000

pH :

Free Cl2 : Residual Cl2 :

Sample chilled on arrival ? : YES

Sample Type : S\_SOIL

add'l Report To :

Comment : Sample AL05736 was extracted  
using wrist shaker and analyzed by  
NYSDOH 310-13, w

Method	Test Description	Results	Qualifier	Units	DL/LOQ	Analyzed on	Validator
--------	------------------	---------	-----------	-------	--------	-------------	-----------

#### Organics

##### Purgeable Organic Compounds in Solids

SW846/8260B	1,1,1-TRICHLOROETHANE	< LOQ		ug/Kg(dry wt)	607	04/03/2009	SV
SW846/8260B	1,1,2,2-TETRACHLOROETHANE	< LOQ		ug/Kg(dry wt)	607	04/03/2009	SV
SW846/8260B	1,1,2-TRICHLOROETHANE	< LOQ		ug/Kg(dry wt)	607	04/03/2009	SV
SW846/8260B	1,1-DICHLOROETHANE	< LOQ		ug/Kg(dry wt)	607	04/03/2009	SV
SW846/8260B	1,1-DICHLOROETHENE	< LOQ		ug/Kg(dry wt)	607	04/03/2009	SV
SW846/8260B	1,2-DICHLOROBENZENE	< LOQ		ug/Kg(dry wt)	607	04/03/2009	SV
SW846/8260B	1,2-DICHLOROETHANE	< LOQ		ug/Kg(dry wt)	607	04/03/2009	SV
SW846/8260B	1,2-DICHLOROPROPANE	< LOQ		ug/Kg(dry wt)	607	04/03/2009	SV
SW846/8260B	1,3-DICHLOROBENZENE	< LOQ		ug/Kg(dry wt)	607	04/03/2009	SV
SW846/8260B	1,4-DICHLOROBENZENE	< LOQ		ug/Kg(dry wt)	607	04/03/2009	SV
SW846/8260B	4-Methyl-2-pentanone	< LOQ		ug/Kg(dry wt)	607	04/03/2009	SV
SW846/8260B	BENZENE	4770		ug/Kg(dry wt)	607	04/03/2009	SV

# Eavesdropping Warrants

- Can only be used to investigate any of the acts designated as felonies in title twenty-seven of article seventy-one of the environmental conservation law: Solid Waste (with a prior conviction and a release of more than 70 cy of Solid Waste), Hazardous Waste and Hazardous Substance felonies.

# Other Environmental Crimes

- Air Pollution
- Pesticides
- Mining
- Tidal & Freshwater Wetlands





# Environmental Crimes Under the Penal Law

- Inchoate Crimes - PL Articles 100-115 (Solicitation, Conspiracy, Attempt, Facilitation)
- Assault Offenses - PL Article 120
- Homicide Offenses - PL Article 125
- Criminal Mischief Offenses - PL Article 145
- Larceny - PL Article 155
- Other Theft Offenses - PL Article 165
- Forgery Offenses - PL Article 170
- False Written Statement Offenses - PL Article 175
- Commercial Bribery Offenses - PL Article 180
- Scheme to Defraud - PL §§ 190.60 and 190.65
- Official Misconduct and Obstruction of Public Servants - PL Article 195
- Bribery Involving Public Servants and Related Offenses - PL Article 200
- Perjury and Related Offenses - PL Article 210
- Contempt and Other Offenses Relating to Judicial Proceedings - PL Article 215
- Criminal Nuisance in the Second Degree - PL § 240.45(1)
- Unlawfully Possessing Noxious Material - PL § 270.05
- Organized Crime Control Act: Enterprise Corruption - PL Article 460

## ATTORNEY GENERAL SUCCESSFUL WILDLIFE PROSECUTIONS

### People v. Jack Yang

Sale of Madagascar Radiated Tortoise (an Endangered Species) for \$20,000



### People v. Bao Ding Sea Food Inc. Seized Warehouse of Severely Contaminated Raw Razor Clams and Oysters from China



# ATTORNEY GENERAL SUCCESSFUL SOLID WASTE PROSECUTIONS

People v. Brisman

Abandoned Truck full of Hazardous Waste  
from Perfume Manufacturing Business



People v. H.S. Finishing

Abandoned Metal Finishing Facility



# ATTORNEY GENERAL SUCCESSFUL WATER POLLUTION PROSECUTIONS

## People v. Schmitt

Marina owner dumped raw sewage into Jamaica Bay Tidal Estuary for decades and destroyed acres of protected tidal wetlands.





*- Trip to one of the last pristine areas of the Alaskan wilderness (\$2,599.00)*

*- Guided tour to view Polar Bear in natural environment (\$1,699.00)*

*- Heavily padded winter coat (\$499.00)*

*- Surviving your close Polar Bear encounter with only 100 deep scratches (Priceless!!!)*

© Roger Nilsson



© Ro



© Roger Nilsson



## **Environmental Crime Enforcement<sup>1</sup>**

The industrialization of our society has resulted in the development of processes and products that are potentially dangerous to our health, safety and environment. As a result, a comprehensive regulatory scheme has been promulgated to manage the lawful release of pollutants to the environment. State and federal environmental laws set standards for what people and institutions must do to control or prevent pollution. The administrative and civil enforcement of these laws and regulations can be very effective in ensuring the regulated community is in compliance. Unfortunately, this is not always the case and criminal enforcement of the environmental laws becomes necessary.

Criminal enforcement may be appropriate for several reasons:

### **The Violation May Be Extremely Serious**

Environmental criminal activities can often involve hazardous waste and other extremely toxic chemicals. Improper handling of regulated wastes often has a detrimental effect on the public and the environment.

### **Civil Enforcement Alone Not A Sufficient Deterrent**

Civil enforcement generally results in fines for the violation. Many companies often consider such fines a cost of doing business and calculate this into the retail cost. Consequently, the public indirectly pays for the violations. Criminal enforcement can result in incarceration, an extremely effective deterrent.

### **Illegal Profits/Financial Incentive for Improper Disposal**

Those who generate and/or dispose of pollution often find it profitable to dispose of the pollution illegally. Additionally, some companies may defraud other legitimate businesses by improperly disposing waste they have contracted to legally dispose. For example, businesses may disguise hazardous waste in their ordinary solid waste to be picked up by their hauler.

### **The Violation May Seriously Undermine the Regulatory Program**

Environmental regulatory programs rely on companies to submit self-monitoring data and to honestly comply with other reporting requirements. If a company fails to report, or submits false information to the regulatory program, the effectiveness of the program is severely impacted.

---

Assistant Attorney General Hugh L. McLean of the Environmental Crimes Unit contributed significantly to the preparation of these materials.

## **What is Environmental Crime?**

Typically, it is intentionally, knowingly, recklessly, or with criminal negligence, violating our environmental laws and regulations. Criminal liability for environmental violations can occur at any stage in the generation, treatment, transportation and disposal of regulated wastes. Although the most important basis for criminal prosecution of these crimes is under the Environmental Conservation Law criminal prosecutions for these violations may also be brought under several different parts of the New York State Penal Law:

Inchoate Crimes –

PL Articles

100: Solicitation

105: Conspiracy

110: Attempt

115: Facilitation

Assault Offenses - PL Article 120

Homicide Offenses - PL Article 125

Criminal Mischief Offenses - PL Article 145

Larceny - PL Article 155

Other Theft Offenses - PL Article 165

Forgery Offenses - PL Article 170

False Written Statement Offenses - PL Article 175

Commercial Bribery Offenses - PL Article 180

Scheme to Defraud - PL 190.60 and 190.65

Official Misconduct and Obstruction of Public Servants - PL Article 195

Bribery Involving Public Servants and Related Offenses - PL Article 200

Perjury and Related Offenses - PL Article 210

Contempt and Other Offenses Relating to Judicial Proceedings-PL Article 215

Criminal Nuisance in the Second Degree - PL 240.45(1)

Unlawfully Possessing Noxious Material - PL 270.05

Organized Crime Control Act: Enterprise Corruption - PL Article 460

## **Who Creates Pollution?**

Major generators of pollution include large manufacturing companies that make cars, furniture and clothes, and chemical industries that produce acids, cyanide, heavy metals, ignitables, reactives and solvents. Although large manufacturers, like the chemical industry, account for 71% of all hazardous waste produced, they comprise only 17% of all generators. So, who are some of the other generators?

## **Potential Smaller Community Offenders.**

Water pollution, hazardous waste, household garbage and medical wastes are products of our society. Many small and medium businesses in the local community are producers of regulated wastes and are subject to liability. These include: furniture



builders or refinishers; electroplaters or metal stampers; automotive repair and body shops; gas stations; analytical laboratories; photo shops; funeral homes; dry cleaners; agricultural pesticide dealers; and hospitals. In addition, homeowners may dispose of hazardous materials comingled with their household waste.

### **What Are The Motives?**

Money. Greed. The desire to make money or to save money. Proper storage, treatment and disposal of pollution is expensive. For example, the cost of legal disposal of hazardous waste ranges from \$400 - \$1,200 per 55 gallon drum, depending on the chemicals involved. Some generators choose to dispose illegally rather than pay the high cost of legitimate disposal. On the other hand, hazardous waste transporters often collect fees to properly dispose of the waste, but choose to illegally dispose of it and increase their profits.

### **Environmental Statutes.**

New York's environmental laws are codified in the Environmental Conservation Law, which authorizes civil and criminal enforcement of state laws, as well as federal environmental statutes. Important federal statutes delegated to the state for enforcement include among others: the Clean Water Act (U.S.C.A. 19-5-101 to 123), the Clean Air Act (U.S.C.A. 19- 2-101 to 127), and the Resource Conservation and Recovery Act (Solid and Hazardous Waste Act) which regulates solid wastes (U.S.C.A. 19-6-101 to 824).

## **Provisions of the Environmental Conservation Law**

### **Solid Waste – Hazardous Waste and Substances Hazardous to the Public Health, Safety or the Environment**

#### **§ 71-2702. Definitions.**

As used in section 27-0914 of this chapter, and this title, the following terms shall have the following meanings:

1. "Hazardous wastes" means:
  - (a) Those wastes identified or listed in regulations promulgated pursuant to section 27-0903 of this chapter and all amendments thereto;
  - (b) Acute hazardous wastes and;
  - (c) Waste oils, including but not limited to, used engine lubricating oil, fuel oil, motor oil, gear oil, cutting oil, transmission fluid, hydraulic fluid, dielectric fluid, oil storage tank residue, animal oil, and vegetable oil, which have been contaminated by physical or chemical impurities, through use or accident, and have not been subsequently

rerefined, and which fail one or more of the characteristic tests listed in regulations promulgated pursuant to section 27-0903 of this chapter and all amendments thereto or which contain any waste identified or listed in regulations promulgated pursuant to section 27-0903 of this chapter and all amendments thereto.

2. "Acute hazardous wastes" means those wastes identified or listed as "acute hazardous wastes" in regulations promulgated pursuant to section 27-0903 of this chapter and all amendments thereto.

3. "Authorization" means the possession, where required, of a valid license, permit or certificate issued by an agency of the state of New York or the federal government or an order issued by the commissioner or the administrator of the federal environmental protection agency under applicable statutes, rules or regulations regarding the possession or release of hazardous or acutely hazardous wastes or substances hazardous or acutely hazardous to public health, safety or the environment or otherwise engaging in conduct which is exempt under applicable statutes, rules or regulations from the requirements of possessing such a license, permit, certificate or order.

4. "Site of generation" means premises where hazardous wastes are produced, used, or stored pursuant to authorization or registration under the federal solid waste disposal act or under article twenty-seven of this chapter, and all contiguous property owned or leased by the owner or lessor of said premises, including contiguous property which may be otherwise divided by a public or private right-of-way, provided the entrance and exit between the properties is at a crossroads intersection, and access is by crossing as opposed to going along the right-of-way, and non-contiguous property owned or leased by the owner or lessor of said premises, but connected by a right-of-way which he controls and to which the public does not have access.

5. "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any substance so that such substance or any related constituent thereof may enter the environment, or the abandonment of any substance. Disposal also means the thermal destruction of waste or hazardous waste and the burning of such wastes as fuel for the purpose of recovering useable energy.

6. "Primary water supply" means a body of surface water, fresh or saline or water in a saturated zone or stratum beneath the surface of land or water, best usage of which includes being used for drinking, culinary or food processing, including potable mineral waters, and so classified in regulations promulgated pursuant to section 15-0313 or 17-0301 of this chapter, as amended.

7. "Water" includes lakes, bays, ponds, rivers, streams, and other waters as further defined in subdivision two of section 17-0105 of this chapter.

8. "Pound" means an avoirdupois pound.

9. "Gallon" means a unit of liquid capacity equal to two hundred thirty-one cubic inches or four quarts.

10. "Substance hazardous to public health, safety or the environment" means any substance which:

(a) is identified or listed as a hazardous waste in regulations promulgated pursuant to section 27-0903 of this chapter and all amendments thereto, regardless of whether at the time of release the substance was actually a waste; or

(b) appears on the list in regulations promulgated pursuant to paragraph (a) of subdivision one of section 37-0103 of this chapter and all amendments thereto.

11. "Substance acutely hazardous to public health, safety or the environment" means any substance which:

(a) is listed as an acute hazardous waste in regulations promulgated pursuant to section 27-0903 of this chapter and all amendments thereto, regardless of whether at the time of release the substance was actually a waste; or

(b) appears on the list in regulations promulgated pursuant to paragraph (b) of subdivision one of section 37-0103 of this chapter and all amendments thereto.

12. "Environment" means any water, water vapor, any land including land surface or subsurface, air, fish, wildlife, biota, and all other natural resources.

13. "Release" means any pumping, pouring, emitting, emptying, or leaching, directly or indirectly, of a substance so that the substance or any related constituent thereof, or any degradation product of such a substance or of a related constituent thereof, may enter the environment, or the disposal of any substance.

14. "Abandonment" means the intentional relinquishment or forsaking of all possession or control of any substance. In any prosecution under this title, it is an affirmative defense to an allegation of abandonment that the defendant surrendered possession or control of such substance to another party who knowingly and voluntarily consented to assume such possession or control.

## **Solid Waste – ECL §71-2703(2)**

**Criminal sanctions.** a. Any person who, having any of the culpable mental states defined in section 15.05 of the penal law, shall violate any of the provisions of or who fails to perform any duty imposed by title 3 or 7 of article 27 of this chapter, or any rules and regulations promulgated pursuant thereto, or any final determination or order of the commissioner made pursuant to this title shall be guilty of a violation and, upon conviction thereof, shall be punished by a fine of not less than one thousand five hundred dollars nor more than fifteen thousand dollars per day of violation or by imprisonment for not more than fifteen days or by both such fine and imprisonment.

b. i. Any person who shall violate paragraph a of this subdivision and thereby causes or attempts to cause the release of more than ten cubic yards of solid waste into the environment shall be guilty of a class B misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than three thousand seven hundred fifty dollars per day nor more than twenty-two thousand five hundred dollars per day of violation, or by imprisonment for a term in accordance with the penal law, or by both such fine and imprisonment.

ii. Any person who shall violate paragraph a of this subdivision and thereby causes or attempts to cause the release of more than ten cubic yards of solid waste into the environment, after having been convicted of a violation of this subdivision within the preceding five years, shall be guilty of a class A misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than three thousand seven hundred fifty dollars per day nor more than thirty-seven thousand five hundred dollars per day of violation, or by imprisonment for a term in accordance with the penal law, or by both such fine and imprisonment.

c. i. Any person who shall violate paragraph a of this subdivision and thereby causes or attempts to cause the release of more than seventy cubic yards of solid waste into the environment shall be guilty of a class A misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than three thousand seven hundred fifty dollars per day nor more than thirty-seven thousand five hundred dollars per day of violation, or by imprisonment for a term in accordance with the penal law, or by both such fine and imprisonment.

ii. Any person who shall violate paragraph a of this subdivision and thereby causes or attempts to cause the release of more than seventy cubic yards of solid waste into the environment, after having been convicted of a violation of this subdivision within the preceding five

years, shall be guilty of a class E felony and, upon conviction thereof, shall be punished by a fine of not less than seven thousand five hundred dollars per day nor more than seventy-five thousand dollars per day of violation, or by imprisonment for a term in accordance with the penal law, or by both such fine and imprisonment.

3. Additional sanctions. Any person who violates any of the provisions of, or who fails to perform any duty imposed by title 7 of article 27, with regard to the construction and operation of facilities for the disposal of construction and demolition debris or any rule or regulation promulgated pursuant thereto, or any term or condition of any certificate or permit issued pursuant thereto or any final determination or order of the commissioner made pursuant to this title shall be liable for a civil penalty not to exceed fifteen thousand dollars and each day of such deposition shall constitute a separate violation and said civil penalty is in addition to any other fines or penalties which may be applied pursuant to this title.

4. Definition. As used in this section, the following term shall have the following meaning "release" means any pumping, pouring, emitting, emptying, discharge, deposit, injection, dumping, spilling or placing of a substance.

5. Penalty assessment criteria. In determining the amount of any fine, penalty or sentence imposed pursuant to this section, the commissioner or the court shall take into consideration any evidence introduced by a party regarding the economic impact of a penalty on a business, the compliance history of a violator, good faith efforts of a violator to comply, any economic benefit obtained from noncompliance, the amount of risk or damage to public health or the environment caused by a violator, whether the violation was procedural in nature, or such other factors as justice may require.

## **Water - ECL§71-1933**

§ 71-1933. Violations; criminal liability.

1. Any person who, having any of the culpable mental states defined in section 15.05 of the penal law, shall violate any of the provisions of titles 1 through 5, 9 through 11 and 19 of article 17 or the rules, regulations, orders or determinations of the commissioner promulgated thereto, or the terms of any permit issued thereunder, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than three thousand seven hundred fifty dollars nor more than thirty-seven thousand five hundred dollars per day of

violation or by imprisonment for a term of not more than one year, or by both such fine and imprisonment. If the conviction is for an offense committed after a first conviction of such person under this subdivision, punishment shall be by a fine of not more than seventy-five thousand dollars per day of violation, or by imprisonment for not more than two years, or by both.

2. No prosecution under this section shall be instituted until after final disposition of an appeal or review, if any, provided by section 17-0909 or its predecessor, section 1244 of the Public Health Law.

3. Any person who with criminal negligence, as defined in section 15.05 of the penal law,

a. violates

i. any provision of title 7 or 8 of article 17 of this chapter, or

ii. the rules or regulations promulgated thereunder, or

iii. any term of any permit issued thereunder, or

iv. any requirement imposed in a pretreatment program approved pursuant to section 402(a)(3) or 402(b)(8) of the Federal Water Pollution Control Act (33 USC § 1342(a)(3) or § 1342(b)(8)) or approved pursuant to title 7 or 8 of article 17 of this chapter, or

v. any final administrative orders issued pursuant to this article where an opportunity for a hearing is provided, or

b. introduces into a sewer system or publicly owned treatment works any pollutant or hazardous substance

i. when such person knew that such introduction was likely to cause personal injury or property damage, except if that introduction was in compliance with all applicable federal, state or local requirements or permits, or

ii. which causes the treatment works to violate any term of any permit issued under title 7 or 8 of article 17 of this chapter or the rules or regulations promulgated thereunder except if that introduction was in compliance with all applicable federal, state or local requirements or permits; shall be guilty of a class A misdemeanor.

4. Any person who knowingly, as defined in section 15.05 of the penal law,

a. violates

i. any provision of title 7 or 8 of article 17 of this chapter, or

ii. the rules or regulations promulgated thereunder, or

iii. any term of any permit issued thereunder, or

iv. any requirement imposed in a pretreatment program approved pursuant to section 402(a)(3) or 402(b)(8) of the Federal Water Pollution Control Act (33 USC § 1342(a)(3) or § 1342(b)(8)) or approved pursuant to title 7 or 8 of article 17 of this chapter, or

v. any final administrative orders issued pursuant to this article where an opportunity for a hearing was provided, or

b. introduces into a sewer system or publicly owned treatment works any pollutant or hazardous substance

i. when such person knew that such introduction was likely to cause personal injury, except if that introduction was in compliance with all applicable federal, state or local requirements or permits, or

ii. which causes the treatment works to violate any term of any permit issued under title 7 or 8 of article 17 of this chapter or the rules or regulations promulgated thereunder except if that introduction was in compliance with all applicable federal, state or local requirements or permits; shall be guilty of a class E felony.

5. Any person who intentionally, as defined in section 15.05 of the penal law,

a. violates

i. any provision of title 7 or 8 of article 17 of this chapter, or

ii. the rules or regulations promulgated thereunder, or

iii. any term of any permit issued thereunder, or

iv. any final administrative orders issued pursuant to this article where an opportunity for a hearing was provided, and

b. knows at that time that he thereby places another person who is not a participant in the crime in imminent danger of death or serious bodily injury shall be guilty of a class C felony.

c. for the purpose of paragraphs a and b of this subdivision:

in determining whether a defendant who is an individual knew that his conduct placed another person in imminent danger of death or serious bodily injury

(a) the person is responsible only for actual awareness or actual belief that he possessed; and

(b) knowledge possessed by a person other than the defendant but not by the defendant himself may not be attributed to the defendant.

6. For purposes of subdivisions three, four and five of this section, a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

7. Any person who, with intent to deceive, makes any false material statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to title 7 or 8 of article 17 of this chapter or who intentionally falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained pursuant to title 7 or 8 or article 17 of this chapter shall be guilty of a class E felony.

8. a. When a person is convicted of a crime under the provisions of this section, the sentence of the court shall be as follows:

i. A fine, as set forth in paragraph b of this subdivision;

- ii. A sentence of imprisonment, as set forth in paragraph c of this subdivision; or
  - iii. Any combination of such fine or imprisonment.
  - b. Fines. A sentence to pay a fine shall be a sentence to pay an amount fixed by the court, not exceeding:
    - i. \$750,000 for a class C felony committed by an organization as defined in section 71-1932 of this title;
    - ii. \$375,000 for a class C felony;
    - iii. \$75,000 per day of continuing violation for a class E felony defined under subdivision four of this section but in no event less than \$7,500; and \$15,000 for a class E felony defined under subdivision seven of this section;
    - iv. \$37,500 per day of continuing violation for a class A misdemeanor but in no event less than \$3,750.
  - c. Imprisonment. A sentence of imprisonment shall be a sentence of imprisonment authorized by article seventy of the penal law.
9. All prosecutions under this section shall be instituted by the department or the commissioner and shall be conducted by the Attorney General in the name of the people of the state of New York.
10. In the prosecution of any criminal proceeding under this section by the Attorney General and, in any proceeding before a grand jury in connection therewith, the Attorney General shall exercise all the powers and perform all the duties which the District Attorney would otherwise be authorized or required to exercise or perform, and in such a proceeding the District Attorney shall exercise such powers and perform such duties as are requested of him by the Attorney General.

**Fish and Wildlife - Articles 11 and 13 of the ECL set out various statutory provisions that regulate the possession and sale of wildlife.**

**ECL § 11-0107(2)** – No person shall, at any time of the year, buy, sell, offer or expose for sale, transport, or have in his possession any “fish protected by law, game, protected wildlife, shellfish, harbor seals, crustacea protected by law, or part thereof, or protected insect, whether taken within the state or coming from without the state, except as permitted by the Fish and Wildlife Law.”

**ECL § 11-0535(2)** – makes illegal the “taking, importation, transportation, possession or sale of any endangered or threatened species of fish, shellfish, crustacea or wildlife, or hides or other parts thereof, or the sale or possession with intent to sell of any article made in whole or in part from the skin, hide or other parts of any endangered or threatened species of fish, shellfish, crustacea or wildlife” (except under license or permit from DEC).



## **Endangering the Public Health, Safety or the Environment ECL §§71-2710 through 71-2714**

### Elements of Endangering Public Health Safety or the Environment Offenses

- A person engages in conduct;
- With a culpable mental state;
- Which causes a release;
- Of a hazardous or acutely hazardous substance.

The seriousness of the offense (Class B Misdemeanor to Class C Felony) is based upon the culpable mental state, the quantity of the release and the potential for or actual injury.

### **Corporate Defendants - Penal Law §20.20**

1. As used in this section:

(a) “Agent” means any director, officer or employee of a corporation, or any other person who is authorized to act in behalf of the corporation.

(b) “High managerial agent” means an officer of a corporation or any other agent in a position of comparable authority with respect to the formulation of corporate policy or the supervision in a managerial capacity of subordinate employees.

2. A corporation is guilty of an offense when:

(a) The conduct constituting the offense consists of an omission to discharge a specific duty of affirmative performance imposed on corporations by law; or

(b) The conduct constituting the offense is engaged in, authorized, solicited, requested, commanded, or recklessly tolerated by the board of directors or by a high managerial agent acting within the scope of his employment and in behalf of the corporation; or

(c) The conduct constituting the offense is engaged in by an agent of the corporation while acting within the scope of his employment and in behalf of the corporation, and the offense is (i) a misdemeanor or a violation, (ii) one defined by a statute which clearly indicates a legislative intent to impose such criminal liability on a corporation, or (iii) any offense set forth in title twenty-seven of article seventy-one of the environmental conservation law.

**Criminal Enforcement of the Environmental Conservation Law  
Quick Reference Guide**

<b>Regulated Activity</b>	<b>Article and Title</b>	<b>Enforcement (Article 71)</b>	<b>Relevant Regulations (6 NYCRR)</b>
Air	Art. 19	§71-2105	Chapter III Parts 200-236, 248 and Subchapter B
Water	Art. 17, Titles 7 & 8	§71-1933	Chapter X, Article 2 Parts 750-01 - 750-02
Water: Classification	Art. 15, Title 27		Chapter X, Article 2, Subpart B
Water: Quality Standards	Art. 17, <a href="#">Title 5</a>	<a href="#">§ 71-1933</a>	Chapter X, Article 2, Parts 700-706
Water: Wetlands	Art. 24 & 25	§71-2303(2) and §71-2503(2)	Chapter X, Article 1 Parts 660-665
Water: Other	Art. 15 & 17	§71-1131	Chapter X, Article 1, Parts 670-672 and Article 2, Parts 701-704
Regulated Medical Waste	Art. 27, Title 15	§71-4402(2)-4409	Chapter IV, Subchapter B, Part 360, Subpart 360-10 & 360-17
Pesticides	Art. 33	§71-2907(3)	Chapter IV, Subchapter A, Parts 320-329
Solid Waste	Art. 27	§71-2703(2)	Chapter IV, Subchapter B, Part 360-364
Hazardous Wastes	Art. 37, Titles 1 & 2	§71-2705(2), §§71-2707-2710, §71-2715, §71-2717	Chapter IV, Subchapter B, Parts 370-375
Hazardous Substances	Art. 40	§§71-2710-2714 §71-4303(2)	Chapter V, Parts 595-599

# Notes



ENVIROMENTAL CONSERVATION LAW ARTICLE 27 TITLE 26

ELECTRONIC EQUIPMENT RECYCLING AND REUSE

Section 27-2601. Definitions.

27-2603. Manufacturer collection; recycling surcharge.

27-2605. Manufacturer electronic waste registration and responsibilities.

27-2607. Retailer requirements.

27-2609. Labeling.

27-2611. Disposal ban.

27-2613. Electronic waste collection, consolidation and recycling.

27-2615. Department responsibilities.

27-2617. Reporting requirements.

27-2619. Preemption.

27-2621. Disposition of fees.

§ 27-2601. Definitions.

As used in this title:

1. "Cathode ray tube" means a vacuum tube or picture tube used to convert an electronic signal into a visual image.

2. "Computer" means an electronic, magnetic, optical, electrochemical or other high-speed data processing device performing a logical, arithmetic or storage function, including a laptop computer and desktop computer, and includes any cable, cord, or wiring permanently affixed to or incorporated into such product, and may include both a computer central processing unit and a monitor; but such term shall not include an automated typewriter or typesetter, a portable hand-held calculator, a portable digital assistant, server, or other similar device.

3. "Computer peripheral" means a monitor; electronic keyboard; electronic mouse or similar pointing device; facsimile machine, document scanner, or printer intended for use with a computer; and includes any cable, cord, or wiring permanently affixed to or incorporated into any such product. Computer peripheral shall not include any document scanner or printer which weighs one hundred pounds or more.

4. "Consumer" means a person located in the state who owns or uses covered electronic equipment, including but not limited to an individual, a business, corporation, limited partnership, not-for-profit corporation, the state, a public corporation, public school, school district, private or parochial school or board of cooperative educational services or governmental entity, but does not include an entity involved in a wholesale transaction between a distributor and retailer.

5. "Covered electronic equipment" means: a computer; computer peripheral; small electronic equipment; small-scale server; cathode ray tube; or television, as defined in this section. "Covered electronic equipment" does not include any motor vehicle or any part thereof; camera or video camera; portable or stationary radio; household appliances such as clothes washers, clothes dryers, refrigerators, freezers, microwave ovens, ovens, ranges or dishwashers; equipment that is functionally or physically part of a larger piece of equipment intended for use in an industrial, research and development or commercial setting; security or anti-terrorism equipment; monitoring and control instrument or system; thermostat; hand-held transceiver; telephone of any type; portable digital assistant or similar device; calculator; global positioning

system (GPS) receiver or similar navigation device; a server other than a small-scale server; a cash register or retail self checkout system; a stand-alone storage product intended for use in industrial, research and development or commercial settings; commercial medical equipment that contains within it a cathode ray tube, a flat panel display or similar video display device, and is not separate from the larger piece of equipment; or other medical devices as that term is defined under the Federal Food, Drug and Cosmetic Act.

6. "Electronic waste" means covered electronic equipment that has been discarded or is no longer wanted by its owner, or for any other reason enters the waste collection, recovery, treatment, processing, or recycling system. For purposes of section 27-2611 of this title, "electronic waste" does not include the case, shell, or other enclosure of covered electronic equipment from which incorporated assemblies, sub-assemblies, components, materials, wiring, circuitry and commodities have been removed.

7. "Electronic waste collection site" means a facility at a fixed or temporary site at which electronic waste is accepted from consumers and temporarily stored for more than five days in a calendar year before such waste is transported to an electronic waste consolidation facility or electronic waste recycling facility. Electronic waste collection sites include, but are not limited to, dedicated sites and facilities for the acceptance of electronic waste, and retail stores and outlets, municipal or private electronic waste collection sites and not-for-profit donation sites that have agreed to accept electronic waste.

8. "Electronic waste consolidation facility" means a facility that receives and stores electronic waste for the purpose of organizing, categorizing or consolidating items of electronic waste before such waste is transported to an electronic waste recycling facility. Electronic waste consolidation facilities include, but are not limited to, facilities of brokers acting as intermediaries between electronic waste buyers and sellers, and regional centers at which electronic waste is organized, categorized or consolidated after being transported to such centers from electronic waste collection sites or other electronic waste consolidation facilities.

9. "Electronic waste recycling facility" means a facility at which electronic waste is recycled.

10. "Label" means a marker on the surface of covered electronic equipment conveying information; for the purposes of this title, labels must be permanent and can be attached, printed, engraved or incorporated in any other permanent way that is obvious and visible to users of the product.

11. "Manufacturer" means a person who: (a) assembles or substantially assembles covered electronic equipment for sale in the state; (b) manufactures covered electronic equipment under its own brand name or under any other brand name for sale in the state; (c) sells, under its own brand name, covered electronic equipment sold in the state; (d) owns a brand name that it licenses to another person for use on covered electronic equipment sold in the state; (e) imports covered electronic equipment for sale in the state; or (f) manufactures covered electronic equipment for sale in the state without affixing a brand name. "Manufacturer" does not mean a person who assembles or substantially assembles, and sells less than one thousand units of covered electronic equipment annually in this state, or whose primary business is the sale of covered electronic equipment which is comprised primarily of rebuilt, refurbished or used components. If more than one person is a manufacturer of a brand of covered electronic equipment, any such person may assume

responsibility for obligations of a manufacturer of that brand under this title. If none of those persons assumes responsibility for the obligations of a manufacturer under this title, any and all such persons jointly and severally may be considered to be the responsible manufacturer of that brand for purposes of this title.

12. "Manufacturer's brands" means a manufacturer's name, brand name or brand label, and all manufacturer's names, brand names and brand labels for which the manufacturer has a legal right or interest, including those names, brand names, and brand labels of companies that have been acquired by the manufacturer or in which the manufacturer asserts a legal interest such as trademark, license, service mark, or patent.

13. "Monitor" means a separate visual display component of a computer, whether sold separately or together with a computer central processing unit, and includes a cathode ray tube, liquid crystal display, gas plasma, digital light processing or other image projection technology, greater than four inches when measured diagonally, and its case, interior wires and circuitry, and any cable cord or wiring permanently affixed thereto or incorporated into such product.

14. "Person" means any individual, business entity, partnership, company, corporation, not-for-profit corporation, association, governmental entity, public benefit corporation, public authority, firm, organization, or any other group of individuals, or any officer or employee or agent thereof.

15. "Recycle" means to separate, dismantle or process the materials, components or commodities contained in electronic waste for the purpose of preparing the materials, components or commodities for use or reuse in new products or components thereof, but not for energy recovery or energy generation by means of combustion, gasification, pyrolysis or other means. Recycling includes the manual and mechanical separation of electronic waste to recover materials, components or commodities contained therein for the purpose of reuse or recycling, and changing the physical or chemical composition of electronic waste to segregate components for purposes of recycling those components.

16. "Retailer" means a person who sells covered electronic equipment to a person in the state through any means, including, but not limited to, transactions conducted through retail sales outlets, mail, catalogs, the telephone or the internet, or any electronic means. "Retailer" does not include a person who sells or offers for sale fewer than ten items of covered electronic equipment during a calendar year.

17. "Reuse" means the use of electronic waste that is tested and certified to be in good working order and which was removed from the waste stream for use for the same purpose for which it was manufactured, including the continued use of whole systems or components.

18. "Sell" or "sale" means any transfer for consideration of title or the right to use, from a manufacturer or retailer to a person, including, but not limited to, transactions conducted through retail sales outlets, catalogs, mail, the telephone, the internet, or any electronic means; this includes transfer of new products or used products that may have been refurbished by their manufacturer or manufacturer-approved party and that are offered for sale by a manufacturer or retailer, but does not include consumer-to-consumer second-hand transfer. "Sell or sale" does not include: (a) the transfer of used covered electronic equipment or a lease of covered electronic equipment; or (b) wholesale transactions among a manufacturer, wholesaler and retailer.

19. "Small electronic equipment" means any portable digital music player that has memory capability and is battery-powered, video cassette recorder, a digital video disc player, digital video recorder, digital

converter box, cable or satellite receiver, or electronic or video game console, and includes any cable, cord, or wiring permanently affixed to or incorporated into any such product.

20. "Small-scale server" means a computer that typically uses desktop components in a desktop form factor, but is designed primarily to be a storage host for other computers. To be considered a small-scale server, a computer must have the following characteristics: designed in a pedestal, tower, or other form factor similar to those of desktop computers such that all data processing, storage, and network interfacing is contained within one box or product; intended to be operational twenty-four hours per day and seven days a week, and unscheduled downtime is extremely low, such as on the order of hours per year; is capable of operating in a simultaneous multi-user environment serving several users through networked client units; and designed for an industry accepted operating system for home or low-end server applications.

21. "Television" means a display system containing a cathode ray tube or any other type of display primarily intended to receive video programming via broadcast, cable or satellite transmission, having a viewable area greater than four inches when measured diagonally.

§ 27-2603. Manufacturer collection; recycling surcharge.

1. (a) Beginning April first, two thousand eleven, a manufacturer of covered electronic equipment must accept for collection, handling and recycling or reuse electronic waste for which it is the manufacturer. Such waste shall count toward the amount of electronic waste required to be accepted pursuant to subdivision four of this section.

(b) Beginning April first, two thousand eleven, a manufacturer of covered electronic equipment must accept for collection, handling and recycling or reuse one piece of electronic waste of any manufacturer's brand if offered by a consumer with the purchase of covered electronic equipment of the same type by a consumer. Such waste shall count toward the amount of the electronic waste required to be accepted pursuant to subdivision four of this section.

2. Beginning April first, two thousand eleven, each manufacturer must accept for collection, handling and recycling or reuse the manufacturer's acceptance standard as specified in subdivision four of this section.

3. Statewide recycling or reuse goal. (a) For the period from April first, two thousand eleven through December thirty-first, two thousand eleven, the statewide recycling or reuse goal for electronic waste shall be the product of the latest population estimate for the state, as published by the U.S. Census bureau multiplied by three pounds multiplied by three-quarters.

(b) For calendar year two thousand twelve, the statewide recycling or reuse goal for all electronic waste shall be the product of the latest population estimate for the state, as published by the U.S. Census bureau multiplied by four pounds.

(c) For calendar year two thousand thirteen, the statewide recycling or reuse goal for all electronic waste shall be the product of the latest population estimate for the state, as published by the U.S. Census bureau multiplied by five pounds.

(d) For calendar year two thousand fourteen and annually thereafter, the statewide recycling or reuse goal for all electronic waste is the product of the base weight multiplied by the goal attainment percentage. For the purposes of this paragraph, "base weight" means the greater of:



(i) the average weight of all electronic waste collected for recycling or reuse during the previous three calendar years as reported to the department pursuant to paragraph (b) of subdivision one of section 27-2617 of this title; or (ii) the three year average of the sum of all electronic waste collected for recycling or reuse during the previous three calendar years based on information reported to the department pursuant to paragraph (b) of subdivision one, paragraph (b) of subdivision two and paragraph (b) of subdivision three of section 27-2613 of this title.

(e) The "goal attainment percentage" means:

(i) ninety percent if the base weight is less than ninety percent of the statewide recycling or reuse goal for the previous calendar year;

(ii) ninety-five percent if the base weight is ninety percent or greater, but does not exceed ninety-five percent of the statewide recycling or reuse goal for the previous calendar year;

(iii) one hundred percent if the base weight is ninety-five percent or greater, but does not exceed one hundred five percent of the statewide recycling or reuse goal for the previous calendar year;

(iv) one hundred five percent if the base weight is one hundred five percent or greater, but does not exceed one hundred ten percent of the statewide recycling or reuse goal for the previous calendar year; and

(v) one hundred ten percent if the base weight is one hundred ten percent or greater of the statewide recycling or reuse goal for the previous calendar year.

4. Manufacturer acceptance standard. (a) For the period April first, two thousand eleven through December thirty-first, two thousand eleven and annually thereafter, each manufacturer's acceptance standard is the product of the statewide recycling or reuse goal under paragraph (a), (b), (c) or (d) of subdivision three of this section, as appropriate, multiplied by that manufacturer's market share pursuant to paragraph (b) of this subdivision.

(b) Each manufacturer's market share of electronic waste shall be determined by the department based on the manufacturer's percentage share of the total weight of covered electronic equipment sold as determined by the best available information, including, but not limited to, state sales data reported by weight. Beginning April first, two thousand eleven, and every calendar year thereafter, the department shall provide each manufacturer with a determination of its market share of electronic waste which shall be the quotient of the total weight of the manufacturer's covered electronic equipment sold to persons in this state based on the average annual retail sales during the preceding three calendar years, as reported under sections 27-2605 and 27-2617 of this title divided by the total weight of all manufacturers covered electronic equipment sold to persons in this state based on the average annual retail sales during the preceding three calendar years, as reported under sections 27-2605 and 27-2617 of this title.

5. In the absence of a waiver by the department pursuant to subdivision three of section 27-2615 of this title, beginning in calendar year two thousand thirteen, a manufacturer that fails to meet its manufacturer's acceptance standard for the previous calendar year as required by subdivision four of this section shall be subject to a recycling surcharge, determined as follows:

(a) If a manufacturer accepts at least ninety percent but less than one hundred percent of its manufacturer's acceptance standard as required by subdivision four of this section, the surcharge shall be thirty cents multiplied by the number of additional pounds of electronic waste that should have been accepted by such manufacturer.

(b) If a manufacturer accepts at least fifty percent but less than ninety percent of its manufacturer's acceptance standard as required by subdivision four of this section, the surcharge shall be forty cents multiplied by the number of additional pounds of electronic waste that should have been accepted by such manufacturer.

(c) If a manufacturer accepts less than fifty percent of its manufacturer's acceptance standard as required by subdivision four of this section, the surcharge shall be fifty cents multiplied by the number of additional pounds of electronic waste that should have been accepted by such manufacturer.

6. The recycling surcharge shall be paid to the department with the annual report required pursuant to section 27-2617 of this title.

7. Beginning with calendar year two thousand fourteen, if a manufacturer accepts more than its manufacturer's acceptance standard as required by subdivision four of this section, the excess weight may be used as electronic waste acceptance credits and may be sold, traded, or banked for a period no longer than three calendar years succeeding the year in which the credits were earned; provided, however, that no more than twenty-five percent of a manufacturer's obligation for any calendar year may be met with recycling credits generated in a prior calendar year.

§ 27-2605. Manufacturer electronic waste registration and responsibilities.

1. A manufacturer shall submit a registration on a form prescribed by the department to the department by January first, two thousand eleven, along with a registration fee of five thousand dollars. The department may require such form to be filed electronically. Such registration shall include:

(a) the manufacturer's name, address, and telephone number;

(b) the name and title of an officer, director, or other individual designated as the manufacturer's contact for purposes of this title;

(c) a list identifying the manufacturer's brands;

(d) a general description of the manner in which the manufacturer will comply with section 27-2603 of this title, including specific information on the manufacturer's electronic waste acceptance program in the state, and a current list of locations within the state where consumers may return electronic waste;

(e) sales data reported by weight for the manufacturer's covered electronic equipment sold in this state for the previous three calendar years, categorized by type to the extent known. If the manufacturer cannot provide accurate state sales data, it must explain why such data cannot be provided, and estimate state sales data by (i) dividing its national sales data by weight by the national population according to the most recent census and multiplying the result by the population of the state, or (ii) another method approved by the department;

(f) a statement disclosing whether: (i) any covered electronic device sold in this state exceeds the maximum concentration values established for lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls (PBBs), and polybrominated diphenyl ethers (PBDEs) under the restriction of hazardous substances directive (RoHS) pursuant to 2002/95/EC of the European Parliament and Council and any amendments thereto and if so, a listing of any covered electronic equipment that is not in compliance with such directive; or (ii) the manufacturer has received an exemption from one or more of those maximum concentration

values under the RoHS directive that has been approved and published by the European Commission; and

(g) any other information as the department may require.

2. A manufacturer's registration is effective upon acceptance by the department and must be updated within thirty days of any material change to the information required by subdivision one of this section.

3. Any person who becomes a manufacturer on or after January first, two thousand eleven shall register with the department prior to selling or offering for sale in the state any covered electronic equipment, and must comply with the requirements of this title.

4. No later than April first, two thousand eleven, a manufacturer shall not sell or offer for sale electronic equipment in the state unless the manufacturer has registered with the department and maintains an electronic waste acceptance program through which the manufacturer, either directly or through an agent or designee, accepts electronic waste from consumers in the state for recycling. The manufacturer shall ensure that retailers are notified of such registration.

5. The electronic waste acceptance program shall include, at a minimum:

(a) collection, handling and recycling or reuse of electronic waste pursuant to section 27-2603 of this title in a manner convenient to consumers. The following acceptance methods shall be considered reasonably convenient: (i) mail or ship back return programs; (ii) collection or acceptance events conducted by the manufacturer or the manufacturer's agent or designee, including events conducted through local governments or private parties; (iii) fixed acceptance locations such as dedicated acceptance sites operated by the manufacturer or its agent or designee; (iv) agreements with local governments, retail stores, sales outlets and not-for-profit organizations which have agreed to provide facilities for the collection of electronic waste; (v) community collection events; and (vi) any combination of these or other acceptance methods which effectively provide for the acceptance of electronic waste for recycling or reuse through means that are available and reasonably convenient to consumers in the state. At a minimum, the manufacturer shall ensure that all counties of the state, and all municipalities which have a population of ten thousand or greater, have at least one method of acceptance that is available within such county or municipality. The department may establish additional requirements to ensure convenient collection from consumers;

(b) information on how consumers can destroy all data on any electronic waste, either through physical destruction of the hard drive or through data wiping;

(c) a public education program to inform consumers about the manufacturer's electronic waste acceptance program, including at a minimum: (i) an internet website and a toll-free telephone number and written information included in the product manual for, or at the time of sale of, covered electronic equipment that provides sufficient information to allow a consumer of covered electronic equipment to learn how to return the covered equipment for recycling or reuse, and in the case of manufacturers of computers, hard drives and other covered electronic equipment that have internal memory on which personal or other confidential data can be stored, such website shall provide instructions for how consumers can destroy such data before surrendering the products for recycling or reuse; (ii) advertisements and press releases if any; and

(d) any other information as required by the department in accordance with regulations promulgated pursuant to this article.

6. A manufacturer shall maintain records demonstrating compliance with

this title and make them available for audit and inspection by the department for a period of three years.

7. A manufacturer may satisfy the electronic waste collection requirements of this section by agreeing to participate in a collective electronic waste acceptance program with other manufacturers. Any such collective electronic waste acceptance program must meet the same requirements as an individual manufacturer. Any collective electronic waste acceptance program must include a list of manufacturers that are participating in such program along with other identifying information as may be required by the department. Such program shall submit a registration to the department along with a registration fee of ten thousand dollars.

8. A manufacturer shall be responsible for all costs associated with the implementation of the electronic waste acceptance program. The manufacturer shall not charge consumers for the collection, handling and recycling and reuse of electronic waste, provided that such prohibition shall not apply to a charge on business consumers or to charges for premium services. This prohibition shall not apply to a manufacturer's contract with a consumer for the collection, handling, recycling or reuse of electronic waste that was entered into prior to the effective date of this section. For purposes of this subdivision, "business consumer" means a for-profit entity which has fifty or more full time employees or a not-for-profit corporation with seventy-five or more full time employees, but not a not-for-profit corporation designated under section 501(c)(3) of the internal revenue code. For purposes of this subdivision, "premium services" means equipment and data security services, refurbishment for reuse by the consumer, and other custom services as may be determined by the department.

§ 27-2607. Retailer requirements.

1. At the location of sale of covered electronic equipment, a retailer shall provide purchasers of covered electronic equipment with information, if any, about opportunities for the return of electronic waste that has been provided to the retailer by a manufacturer.

2. Beginning April first, two thousand eleven, no retailer shall sell or offer for sale in the state any covered electronic equipment unless the manufacturer and the manufacturer's brands are registered with the department pursuant to section 27-2605 of this title. If the retailer purchased covered electronic equipment from a manufacturer who fails to register by January first, two thousand eleven, or prior to the date the manufacturer withdrew its registration or the registration was revoked by the department, the retailer may continue to sell the covered electronic equipment for one hundred eighty days after April first, two thousand eleven, or the date the registration was withdrawn or revoked.

§ 27-2609. Labeling.

Beginning April first, two thousand eleven, a manufacturer may not offer for sale in the state or deliver to retailers for subsequent sale covered electronic equipment unless it has a visible, permanent label clearly identifying the manufacturer of that equipment.

§ 27-2611. Disposal ban.

1. Beginning April first, two thousand eleven, no manufacturer, retailer, or owner or operator of an electronic waste collection site, electronic waste consolidation facility or electronic waste recycling facility in the state shall dispose of electronic waste at a solid waste management facility or hazardous waste management facility, or place electronic waste for collection which is intended for disposal at a solid waste management facility or hazardous waste management facility.

2. Beginning January first, two thousand twelve, no person except for an individual or household shall place or dispose of any electronic waste in any solid waste management facility, or place electronic waste for collection which is intended for disposal at a solid waste management facility or hazardous waste management facility in this state. Persons engaged in the collection of solid waste for delivery to a solid waste management facility shall provide written information to users of such facility on the proper methods for the recycling of electronic waste.

3. Beginning January first, two thousand fifteen, no individual or household shall place or dispose of any electronic waste in any solid waste management facility, or place electronic waste for collection which is intended for disposal at a solid waste management facility or hazardous waste management facility in this state.

4. Beginning January first, two thousand twelve, an owner or operator of a solid waste management facility or hazardous waste management facility shall educate users of such facility on the proper methods for the management of electronic waste. Such education shall include:

(a) providing written information to users of such facility on the proper methods for recycling of electronic waste; and

(b) posting, in conspicuous locations at such facility, signs stating that electronic waste may not be disposed of at the facility.

§ 27-2613. Electronic waste collection, consolidation and recycling.

1. Electronic waste collection sites. No later than January first, two thousand eleven, each person who owns or operates an electronic waste collection site in the state shall:

(a) register with the department on a form prescribed by the department. The department may require such form to be filed electronically. The registration shall include: (i) the name, address, and telephone number of the owners and the operators of the electronic waste collection site; and (ii) the name, address, and telephone number of the electronic waste collection site. Any person who commences the operation of an electronic waste collection site on or after January first, two thousand eleven shall register with the department at least thirty days prior to receiving any electronic waste at such collection site. A registration is effective upon acceptance by the department. In the case of collection sites operated by a retailer, a single registration listing the name, address, and telephone number of the individual collection sites may be submitted covering all their collection sites;

(b) beginning March first, two thousand twelve, each person operating an electronic waste collection site shall submit to the department an annual report for the period of April first, two thousand eleven through December thirty-first, two thousand eleven and each calendar year thereafter, on a form prescribed by the department. The department may require annual reports to be filed electronically. Annual reports shall

include, but not be limited to, the following information: (i) the quantity, by weight, of electronic waste received from consumers in the state; (ii) the name and address of each person to whom the electronic waste collection site sent electronic waste during the reporting period, along with the quantity, by weight, of electronic waste that was sent to each such person; and (iii) the weight of electronic waste collected on behalf of or pursuant to an agreement with each manufacturer during the reporting period. All quantities of electronic waste reported by the collection site must separately include electronic waste generated by New York state consumers and electronic waste received from or shipped outside the state;

(c) manage electronic waste in a manner that complies with all applicable laws, rules and regulations;

(d) store electronic waste (i) in a fully enclosed building with a roof, floor and walls, or (ii) in a secure container (e.g., package or vehicle), that is constructed and maintained to minimize breakage of electronic waste and to prevent releases of hazardous materials to the environment;

(e) remove electronic waste from the site within one year of the waste's receipt at the site, and maintain records demonstrating compliance with this requirement.

2. Electronic waste consolidation facilities. (a) No later than January first, two thousand eleven, each person who operates an electronic waste consolidation facility in the state shall register with the department on a form prescribed by the department. The department may require such form to be filed electronically. The registration shall include: (i) the name, address and telephone number of the owner and the operator of the facility; and (ii) the name, address and telephone number of the electronic waste consolidation facility. Any person who commences the operation of an electronic waste consolidation facility on or after January first, two thousand eleven shall register with the department at least thirty days prior to receiving any electronic waste. A registration is effective upon acceptance by the department. Any registration required by this paragraph shall be accompanied by a registration fee of two hundred fifty dollars.

(b) Beginning March first, two thousand twelve, each person operating an electronic waste consolidation facility shall submit to the department an annual report for the period of April first, two thousand eleven through December thirty-first, two thousand eleven and each calendar year thereafter, on a form prescribed by the department. The department may require annual reports to be filed electronically. Annual reports shall include, but not be limited to, the following information: (i) the name and address of each electronic waste collection site from which the consolidation facility received electronic waste during the reporting period, along with the quantity, by weight, of electronic waste received from each collection site; (ii) the name and address of each person to whom the electronic waste consolidation facility sent electronic waste during the reporting period, along with the quantity, by weight, of electronic waste that was sent to each such person; (iii) the weight of electronic waste collected on behalf of or pursuant to an agreement with each manufacturer during the reporting period; and (iv) a certification by the owner or operator of the electronic waste consolidation facility that such a facility has complied with the requirements of this title and all other applicable laws, rules, and regulations. All quantities of electronic waste reported by the consolidation facility must separately include electronic waste generated by New York state consumers and electronic waste received from or shipped outside the state.

(c) Each person operating an electronic waste consolidation facility shall:

(i) manage electronic waste in a manner that complies with all applicable laws, rules and regulations;

(ii) store electronic waste (A) in a fully enclosed building with a roof, floor and walls, or (B) in a secure container (e.g., package or vehicle), that is constructed and maintained to minimize breakage of electronic waste and to prevent releases of hazardous materials to the environment;

(iii) have a means to control entry, at all times, to the active portion of the facility;

(iv) inform all employees who handle or have responsibility for managing electronic waste about the proper handling and emergency procedures appropriate to the type or types of electronic waste handled at the facility;

(v) remove electronic waste from the site within one year of the waste's receipt at the site, and maintain records demonstrating compliance with this requirement; and

(vi) maintain the records required by paragraphs (a) and (b) of this subdivision and by subparagraph (v) of this paragraph on site and make them available for audit and inspection by the department for a period of three years.

(d) A person operating an electronic waste consolidation facility shall not engage in electronic waste recycling unless such person is also registered as an electronic waste recycling facility, and complies with the requirements of this section that are applicable to each type of facility.

(e) A person operating an electronic waste consolidation facility may accept electronic waste in the same manner as an electronic waste collection site provided that such person complies with the requirements of this section that are applicable to electronic waste collection sites.

3. Electronic waste recycling facilities. (a) No later than January first, two thousand eleven, each person operating an electronic waste recycling facility in the state shall register with the department on a form prescribed by the department. The department may require such form to be filed electronically. The registration shall include: (i) the name, address and telephone number of the owner and the operator of the facility; and (ii) the name, address, and telephone number of the electronic waste recycling facility. Any person who commences the operation of an electronic waste recycling facility on or after January first, two thousand eleven shall register with the department at least thirty days prior to receiving any electronic waste. A registration is effective upon acceptance by the department. Any registration required by this paragraph shall be accompanied by a registration fee of two hundred fifty dollars.

(b) Beginning March first, two thousand twelve, each person operating an electronic waste recycling facility shall submit to the department an annual report for the period of April first, two thousand eleven through December thirty-first, two thousand eleven and each calendar year thereafter, on a form prescribed by the department. The department may require annual reports to be filed electronically. Annual reports shall include, but not be limited to, the following information: (i) the quantity, by weight, of electronic waste received from consumers in the state; (ii) the name and address of each electronic waste collection site and electronic waste consolidation facility from which electronic waste was received during the reporting period, along with the quantity,

by weight, of electronic waste received from each person; (iii) the name and address of each person to whom the facility sent electronic waste or component materials during the reporting period, along with the quantity, by weight, of electronic waste or component materials thereof sent to each such person; (iv) the weight of electronic waste collected on behalf of or pursuant to an agreement with each manufacturer during the reporting period; and (v) a certification by the owner or operator of the facility that such facility has complied with the requirements of this title and all other applicable laws, rules, and regulations. All quantities of electronic waste reported by the recycling facility must separately include electronic waste generated by New York state consumers and electronic waste received from or shipped outside the state.

(c) Each person operating an electronic waste recycling facility shall:

(i) manage and recycle electronic waste in a manner that complies with all applicable laws, rules and regulations;

(ii) store electronic waste (A) in a fully enclosed building with a roof, floor and walls, or (B) in a secure container (e.g., package or vehicle), that is constructed and maintained to minimize breakage of electronic waste and to prevent releases of hazardous materials to the environment;

(iii) have a means to control entry, at all times, through gates or other entrances to the active portion of the facility;

(iv) inform all employees who handle or have responsibility for managing electronic waste about proper handling and emergency procedures appropriate to the type or types of electronic waste handled at the facility;

(v) remove electronic waste from the site within one year of the waste's receipt at the site, and maintain records demonstrating compliance with this requirement; and

(vi) maintain the records required by paragraphs (a) and (b) of this subdivision and by subparagraph (v) of this paragraph on site and make them available for audit and inspection by the department for a period of three years.

(d) A person operating an electronic waste recycling facility may also operate such facility as an electronic waste consolidation facility provided that such person complies with the requirements of this section that are applicable to each type of facility. Where a facility is operated for both purposes, only one registration fee must be paid.

(e) A person operating an electronic waste recycling facility may accept electronic waste in the same manner as an electronic waste collection site provided that such person complies with the requirements of this section that are applicable to electronic waste collection sites.

4. Except to the extent otherwise required by law, no manufacturer or person operating an electronic waste collection site, electronic waste consolidation facility or electronic waste recycling facility shall have any responsibility or liability for any data in any form stored on electronic waste surrendered for recycling or reuse, unless such person misuses or knowingly and intentionally, or with gross negligence, discloses the data. This provision shall not prohibit any such person from entering into agreements that provide for the destruction of data on covered electronic equipment.



§ 27-2615. Department responsibilities.

1. The department is authorized to promulgate rules and regulations necessary to implement and administer this title. At a minimum, the department shall promulgate rules and regulations on: standards for reuse; electronic waste acceptance credits; waivers of the recycling surcharge; and acceptable alternative methods for the determination of state sales data.

2. The department shall (a) maintain a list of manufacturers who are registered pursuant to section 27-2605 of this title, (b) maintain a list of each such manufacturer's brands, and (c) post such lists on the department's website.

3. The department may waive the recycling surcharge payable by a manufacturer under this title when the manufacturer demonstrates in an application to the department it was unable to accept the weight of electronic waste required by section 27-2603 of this title despite the manufacturer's best efforts. The application shall be made with the annual report required by section 27-2617 of this title. The application shall include such information as the department requires. A waiver provided pursuant to this subdivision shall not relieve a manufacturer from the obligation to comply with the provisions of this title not specifically addressed in such waiver.

§ 27-2617. Reporting requirements.

1. Beginning March first, two thousand twelve, for the period of April first, two thousand eleven through December thirty-first, two thousand eleven and each calendar year thereafter, a manufacturer that offers covered electronic equipment for sale in this state shall submit a report to the department on a form prescribed by the department that includes the following:

(a) sales data reported by weight for the manufacturer's covered electronic equipment sold in this state for the previous three calendar years, categorized by type to the extent known. If the manufacturer cannot provide accurate state sales data, it must explain why such data cannot be provided, and estimate state sales data by (i) dividing its national sales data by weight by the national population according to the most recent census and multiplying the result by the population of the state, or (ii) another method approved by the department;

(b) the quantity, by weight, of electronic waste collected for recycling or reuse in this state, categorized by the type of covered electronic equipment collected during the reporting period, the methods used to accept the electronic waste, and the approximate weight of electronic waste accepted by each method used to the extent known;

(c) all quantities of electronic waste reported by the manufacturer must separately include electronic waste generated by New York state consumers and electronic waste received from or shipped outside the state: (i) the quantity, by weight, of electronic waste received directly from consumers in the state through a mail back program; (ii) the name and address of each electronic waste collection site, electronic waste consolidation facility, and electronic waste recycling facility at which electronic waste from consumers was received on behalf of the manufacturer during the reporting period, along with the quantity, by weight, of electronic waste received; and (iii) the name and address of each person to whom the manufacturer sent electronic waste or component materials during the reporting period, along with the quantity, by

weight, of electronic waste or component materials thereof sent to each such person;

(d) the number of electronic waste acceptance credits purchased, sold, banked and traded during the reporting period, the number of electronic waste acceptance credits used to meet the requirements of section 27-2603 of this title, and from whom they were purchased and to whom they were sold or traded, and the number of electronic waste acceptance credits retained as of the date of the report;

(e) the amount of any recycling surcharge owed for the reporting period, with sufficient information to demonstrate the basis for the calculation of the surcharge;

(f) the names and locations of electronic waste recycling facilities utilized by the manufacturer and entities to which electronic waste is sent for reuse, whether in the state or outside the state, including details on the methods of recycling or reuse of electronic waste, any disassembly or physical recovery operation used, and the environmental management measures implemented by such recycling facility or entity;

(g) information detailing the acceptance methods made available to consumers in municipalities which have a population of greater than ten thousand and in each county of the state to meet the requirements of paragraph (a) of subdivision five of section 27-2605 of this title;

(h) a brief description of its public education program including the number of visits to the internet website and calls to the toll-free telephone number provided by the manufacturer as required by section 27-2605 of this title;

(i) any other information as required by the department; and

(j) a signature by an officer, director, or other individual affirming the accuracy of the report.

2. The department may require annual reports to be filed electronically.

3. The report shall be accompanied by an annual reporting fee of three thousand dollars, and any recycling surcharge due pursuant to section 27-2603 of this title.

4. The department shall submit a report on implementation of the title in this state to the governor and legislature by April first, two thousand twelve and every two years thereafter. The report must include, at a minimum, an evaluation of:

(a) the electronic waste stream in the state;

(b) recycling and reuse rates in the state for covered electronic equipment;

(c) a discussion of compliance and enforcement related to the requirements of this title;

(d) recommendations for any changes to this title; and

(e) a discussion of opportunities for business development in the state related to the acceptance, collection, handling and recycling or reuse of electronic equipment in this state.

§ 27-2619. Preemption.

Jurisdiction in all matters pertaining to electronic waste recycling, including but not limited to the obligations of manufacturers, retailers, electronic waste collection sites, electronic waste consolidation facilities and electronic waste recycling facilities with respect to electronic waste recycling, is, by this title, vested exclusively in the state. Any provision of any local law or ordinance, or any rule or regulation promulgated thereto, governing covered electronic equipment and

the collection, reuse, or recycling of electronic waste shall upon the effective date of this title be preempted.

§ 27-2621. Disposition of fees.

All fees and charges collected pursuant to this title shall be deposited into the environmental protection fund established pursuant to section ninety-two-s of the state finance law.

§ 71-2729. Enforcement of title 26 of article 27 of this chapter.

1. a. Any consumer, as defined in title twenty-six of article twenty-seven of this chapter, who violates any provision of, or fails to perform any duty imposed by, section 27-2611 of this chapter, shall be liable for a civil penalty not to exceed one hundred dollars for each violation.

b. Any person, except a consumer, manufacturer, or an owner or operator of an electronic waste collection site, electronic waste consolidation facility, or electronic waste recycling facility as these terms are defined in title twenty-six of article twenty-seven of this chapter, who violates any provision, or fails to perform any duty imposed by section 27-2611 of this chapter, shall be liable for a civil penalty not to exceed two hundred fifty dollars for each violation.

c. Any manufacturer, or any person operating an electronic waste collection site, an electronic waste consolidation facility, or an electronic waste recycling facility as those terms are defined in title twenty-six of article twenty-seven of this chapter, who:

i. fails to submit any report, registration, fee, or surcharge to the department as required by title twenty-six of article twenty-seven of this chapter shall be liable for a civil penalty not to exceed one thousand dollars for each day such report, registration, fee, or surcharge is not submitted; and

ii. violates any other provision of title twenty-six of article twenty-seven of this chapter or fails to perform any duty imposed by such title, except for subdivision four of section 27-2603 of this chapter, shall be liable for a civil penalty for each violation not to exceed one thousand dollars for the first violation, two thousand five hundred dollars for the second violation and five thousand dollars for the third and subsequent violations of this title within a twelve-month period.

d. Any retailer, as defined by section 27-2601 of this chapter, who violates any provision of title twenty-six of article twenty-seven of this chapter or fails to perform any duty imposed by such title, shall be liable for a civil penalty for each violation not to exceed two hundred fifty dollars for the first violation, five hundred dollars for the second violation and one thousand dollars for the third and subsequent violations of this title in a twelve-month period.

e. Civil penalties under this section shall be assessed by the commissioner after a hearing or opportunity to be heard pursuant to the provisions of section 71-1709 of this article, or by the court in any action or proceeding pursuant to this section, and, in addition thereto, such person may by similar process be enjoined from continuing such violation.

2. All penalties collected pursuant to this section shall be paid over to the commissioner for deposit to the environmental protection fund established pursuant to section ninety-two-s of the state finance law.