

NYSDEC Information Gathering Authority Under the SSF

Under §27-1309, NYSDEC is allowed access to and has the right to copy all books, papers, documents and records related to current and past generation, transportation and disposal of hazardous waste. The NYSDEC may issue subpoenas requiring the production of such records as well as to take testimony by deposition of persons regarding current and past hazardous waste activities. The subpoenas and depositions are subject to the CPLR.

The NYSDEC is authorized to enter upon inactive hazardous waste disposal sites as well as nearby areas to inspect as well as to collect soil, surface water and groundwater samples. The NYSDEC is first required to make a reasonable effort to identify the owner of the property and to provide the landowner with at least ten days written notice of the intent to collect samples. If the NYSDEC commissioner makes written determination that such ten day notice will not allow the department to protect the environment or public health, the NYSDEC only needs to provide the landowner with two days written notice. Any such inspection shall be conducted at reasonable times and be completed with reasonable promptness. The owner may request split samples. The costs of the sampling may be recovered by the DEC pursuant to the statute or common law.

Under the NYSDEC regulations, property owners are prohibited from either obstructing or attempting to obstruct the NYSDEC or its authorized agents acting pursuant to ECL 27-1305, 27-1309 or 27-1313. Property owners who violate this prohibition may be subject to fines of up to \$37,500 per day.