

Sec. 22a-2a-1. Delegation of authority for the abatement of air pollution

(a) Definitions

“Designee” means a Director of Health who has entered into a memorandum of agreement under this section.

“Director of Health” means a local or district director of health appointed under the provisions of Sections 19a-200, 19a-201, or 19a-242 of the Connecticut General Statutes.

“District Department of Health” means a district department of health established in accordance with section 19a-241 of the General Statutes.

“Investigation” means observation, inquiry, the collection of samples for analysis and the recording of any pertinent facts relative to any existing or potential source of air pollution.

“Air pollution” means the presence in the outdoor atmosphere of one or more air pollutants or any combination thereof in such quantities and of such characteristics and duration as to be, or be likely to be, injurious to public welfare, to the health of human, plant or animal life, or to property, or to reasonably interfere with the enjoyment of life and property.

(b) Scope of delegation

(1) The commissioner of Environmental Protection may by memorandum of agreement made pursuant to these regulations delegate the authority to investigate certain existing or potential air pollution discharges as described in Chapter 446c of the Connecticut General Statutes to any Director of Health. No authority to investigate any existing or potential source of pollution originating from a facility or property owned by the state or any instrumentality of the state shall be granted by these regulations.

(2) The commissioner may delegate to a Director of Health all or part of the authority to investigate violations of the standards, criteria and other requirements pertaining to visible emissions, fugitive dust, and odors contained in Sections 22a-174-11, 22a-174-18 (a), 22a-174-18 (b) and 22a-174-23 of the Regulations of Connecticut State Agencies.

(3) In carrying out delegated authority a designee shall be considered an agent of the commissioner and shall have the investigatory powers specified in Section 22a-174-4 (f) of the Regulations of Connecticut State Agencies.

(4) Within fifteen days of the detection of a suspected violation of any standard, criteria or other requirement which the designee has been authorized to investigate, the designee shall submit an investigative report to the commissioner and to the facility owner, describing the suspected violation and the methods by which it was detected. The report may also include recommended actions to be taken by the commissioner to abate the violation. Within thirty days of the receipt of such an investigative report the commissioner shall send written notice to the designee describing either the appropriate course of action to abate the violation or a statement of why no action is necessary. In the event that further investigation by the department is required, the commissioner shall so notify the designee and shall, at the completion of the investigation, inform the designee in writing of any necessary action.

(5) In addition to notifying the commissioner of the detection of a suspected violation as specified in subdivision (b) (4) the designee shall make reasonable effort in light of all circumstances to correct the suspected violation by discussion with the facility owner or operator.

(c) Procedures for delegation

(1) A Director of Health may request delegation of all or part of the authority within the scope of these regulations with the consent of the chief executive officer of the municipality or of the board of the district department of health by which the Director of Health is employed. The applicant shall submit a request for delegation of authority on forms provided by the commissioner. The request shall include the names of one or more staff members who will be considered as alternate designees in the event of the resignation or incapacitation of the Director of Health.

(2) In making a decision on an application, the commissioner shall consider all factors which the commissioner deems relevant, including but not limited to:

(A) the level of experience and training of the applicant and staff members;

(B) the nature of the duties to be delegated and the facilities subject to regulation in the area in question; and

(C) At least thirty days prior to granting or denying a request for delegation of authority, the commissioner shall publish once, in a newspaper having general circulation in the municipalities affected, notice of (1) The name and title of the person requesting such delegation (2) The municipality(s) affected by such a request and (3) The scope of the delegation requested. Such notice shall also be sent to the chief executive officers of any affected municipalities and to the Commissioner of Health Services. Based upon the response to such notice the commissioner may determine that it is in the best public interest to hold a public hearing prior to approving or denying the request for delegation. Notice of such hearing shall be published at least thirty days before the hearing in a newspaper having a substantial circulation in the municipality(s) affected.

(3) (A) The commissioner shall notify the applicant in writing of any decision on the application and shall state the reasons if an application is denied. If an application is approved the commissioner shall prepare a memorandum of agreement which defines the scope of the delegation. The commissioner and applicant shall both sign the memorandum of agreement. The memorandum of agreement must include the effective and expiration dates and may be valid for up to three years.

(B) Prior to the expiration of the memorandum of agreement, the commissioner shall review the designee's performance of delegated duties, including but not limited to recordkeeping, reporting and ability to exercise investigatory authority in a timely and efficient manner. If the commissioner is satisfied with the performance of the designee, the memorandum of agreement shall be renewed for a period not to exceed three years.

(4) An applicant or designee shall notify the commissioner of any changes in the information provided in the application within ten days of such change.

(5) If the designee leaves employment as Director of Health, the memorandum of agreement is automatically suspended, unless an alternate designee specified in Subdivision (c) (1) is available to fulfill the requirements of the memorandum of agreement until a new Director of Health is appointed. The replacement Director of Health, when one is appointed, shall apply for approval as the new designee. The replacement shall apply for such approval on a form provided by the commissioner. Upon approval of replacement, the commissioner shall alter the memorandum of agreement as necessary.

(6) The scope of delegation stated in a memorandum of agreement shall not be construed

to encompass authority for any provision of Chapter 446c of the Connecticut General Statutes which is adopted after the effective date of such agreement. The commissioner and a designee may, with the written consent of the chief executive officer of the municipality or of the board of the district department of health by which the designee is employed, amend a memorandum of agreement to include additional delegation of authority at any time.

(d) Training and standards of conduct for designees

(1) A designee may allow staff members to perform delegated duties, provided that the designee oversees and is ultimately responsible for the work.

(2) Each designee and all staff members who will perform delegated duties shall complete an initial training course, and, as the commissioner deems necessary, additional courses on air pollution control. Such courses may include, but not be limited to, the instruction in methods of administering and enforcing the laws, and technical training.

(3) Designees and members of their staffs who perform delegated duties shall abide by the standards of conduct for state employees contained in Chapter 10 of the Connecticut General Statutes, as amended.

(e) Records and reporting

(1) Each designee shall maintain orderly files which include but are not limited to the following:

(A) Records of complaints received regarding the categories of emissions covered by these regulations.

(B) Copies of all reports and results of any inspections made pursuant to these regulations.

(C) Copies of laboratory results of any samples collected during any investigation made pursuant to these regulations.

(D) Copies of any pertinent correspondence.

(2) During the month of September of each year, a designee shall submit a report to the commissioner summarizing the activities of the designee or staff members under the delegated authority for the previous twelve months. Such reports shall be on forms provided by the commissioner. At a minimum, the report must include the number of inspections conducted, and a summary of the problems encountered in investigations. The report may include recommendations for improvements in the regulation of air pollutants in this state.

(f) Complaints regarding delegated agents

The commissioner is empowered to receive and investigate complaints regarding the conduct of delegated agents, and the efficiency of delegated programs. If, in the commissioner's discretion, the consideration of suspension for cause or revocation of delegation as described in section (g) or (h) of these regulations is warranted, the commissioner shall hold a hearing prior to undertaking such action. At least thirty days prior to such hearing the commissioner shall provide a notice of such hearing to the delegated agent, to the chief executive officer of the municipality and to any person who has filed a complaint relevant to the inquiry. Following such hearing the commissioner shall decide to (1) continue the delegation agreement or (2) modify the delegation agreement, and shall provide notice of the decision to all parties in this matter. Such notice is the final decision of the commissioner.

(g) Suspension of delegation

The commissioner, may at the request of the designee or for cause, suspend all or part of any delegation agreement concluded pursuant to these regulations for such periods as the commissioner deems necessary to achieve effective management of the delegated authority.

(h) Revocation of delegation

The commissioner may revoke all or part of a delegation of authority upon written notice to the designee and the chief executive officer of the municipality or the board of the district department of health by which the designee is employed. Revocation is effective upon receipt of such notice by both persons.

(i) Termination by designee

A designee may relinquish all or part of the delegated responsibilities upon thirty days written notice to the commissioner and the chief executive officer of the municipality or the board of the district department of health by which the designee is employed.

(j) Program review

The commissioner shall maintain a record of the cost to the Department of Environmental Protection of administering the regulations for administering the delegation program under this section. Three years from the effective date of this section, the commissioner shall assess the benefits, including any cost reductions, and liabilities to the Department of the delegation program, including but not limited to the costs specified above, the number of inspections conducted by designees, and the overall effectiveness of delegation in reducing air pollution in the state.

(Effective December 26, 1985)