

Sections 463 and 464 of the new Explosives Labor Law

40 § 463. Review. All questions of fact arising under this article shall
41 be decided by the commissioner and there shall be no appeal from [his]
42 such decision on any such question of fact[, but there shall be a right
43 of review by the board of standards and appeals of any decision of the
44 commissioner denying an application for a license or certificate, or
45 denying the renewal thereof, or revoking a license or certificate, as
46 provided in section one hundred ten, article three of the labor law].
47 Upon the entry of an order issued under sections four hundred fifty-nine
48 and four hundred sixty of this article, any party aggrieved thereby may
49 commence a proceeding for review thereof pursuant to article seventy-
50 eight of the civil practice law and rules within thirty days from the
51 notice of the filing of the said order in the office of the commission-
52 er. **Said proceeding shall be commenced directly in the appellate divi-
53 sion of the supreme court. Nothing in this section shall in any way
54 limit, qualify or prevent the commissioner from destroying explosives as
55 provided under section four hundred sixty of this article.**

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1 § 15. Section 464 of the labor law, as amended by chapter 307 of the
2 laws of 1984, is amended to read as follows:

3 § 464. [Penalties] Costs and penalties. 1. If the commissioner
4 directs the storage, destruction or other disposition of explosives
5 pursuant to the provisions of section four hundred fifty-nine or four
6 hundred sixty of this article, the commissioner may issue an order which
7 shall set forth the costs of such storage, transportation, handling,
8 destruction or other disposition and assess such costs against the owner
9 of such explosives, which shall be in addition to any other penalties
10 imposed.

11 2. (a) If the commissioner determines that any person has violated any
12 provision of this article, section four hundred eighty-two of the gener-
13 al business law relating to blasters and pyrotechnicians, or any rule or
14 regulation promulgated thereunder, the commissioner may issue an order
15 which shall describe the nature of the violation and assess such person
16 **a civil penalty of up to ten thousand dollars per violation per day
17 until the violation is corrected.** The penalty authorized pursuant to
18 this paragraph shall be paid to the commissioner for deposit in the
19 treasury of the state. In assessing the amount of the penalty, the
20 commissioner shall give due consideration to the size of the person's
21 business, the good faith effort of the person, the gravity of the

22 violation, and the history of previous violations.

23 (b) Whenever the commissioner issues an order under this section
24 against a person, the commissioner shall serve notice of the order by
25 registered mail upon the person at his or her last known address. Within
26 five days of service of the order, the person may make written demand
27 upon the commissioner for a hearing whereupon the commissioner shall
28 give such person written notice of the time and place of the hearing to
29 be held not less than ten days thereafter.

30 (c) Upon the entry of an order issued following a hearing under this
31 section, any party aggrieved by an order issued under this subdivision
32 or subdivision one of this section may commence a proceeding for review
33 thereof pursuant to article seventy-eight of the civil practice law and
34 rules within thirty days from the notice of the filing of the said order
35 in the office of the commissioner. Said proceeding shall be commenced
36 directly in the Appellate Division of the Supreme Court.

37 (d) Provided that no proceeding for judicial review as provided for in
38 this section shall then be pending and the time for initiation of such
39 proceeding shall have expired, the commissioner may file with the county
40 clerk of the county where the person resides or has a place of business,
41 the order of the commissioner, containing the amount of the civil penal-
42 ty. The filing of such order or decision shall have the full force and
43 effect of a judgment duly docketed in the office of such clerk, the
44 order or decision may be enforced by and in the name of the commissioner
45 in the same manner, and with like effect, as that prescribed by the
46 civil practice law and rules for the enforcement of a money judgment.

47 (e) A civil penalty provided for in this subdivision shall be in addi-
48 tion to and may be imposed concurrently with any other penalty or remedy
49 provided for in this article.

50 3. Any person violating any provision of this article, or any rule or
51 regulation made hereunder, shall be guilty of a class E felony;
52 provided, however, that any person who possesses an explosive without
53 being duly licensed or otherwise authorized to do so under the
54 provisions of this article shall be guilty of a class D felony. Whenev-
55 er, as a result of a plea bargaining agreement the charge is reduced to
56 a lesser offense, such offense may, in addition to any term of imprison-
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1 ment prescribed by such offense, be punishable by a fine not to exceed
2 twenty-five hundred dollars.