

SUBPART 645-7

REGULATORY FEES

Section

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Section 645-7.1 Purpose and Intent. The purpose of this Part is to collect regulatory fees, in accordance with the requirements of ECL Section 43-0125, to fund the costs of regulation, management and conservation activities which assure the protection and continued beneficial use of the resources of the Park.

Section 645-7.2 Persons Required to Pay. Regulatory fees must be paid by each person not specifically exempted herein who:

(a) owns or constructs a dock, mooring or wharf within the Park, exclusive of Trout Lake; and

(b) uses on the waters of Lake George any mechanically propelled boat or vessel with a motor of ten horsepower or more ~~or any non-mechanically propelled boat or vessel eighteen feet or more in length.~~

Section 645-7.3 When Regulatory Fees must be Paid.

(a) Except as hereinafter expressly provided, regulatory fees required pursuant to this Part shall be due and payable April 1st of each calendar year and shall be deemed timely paid if paid on or before that date.

(b) For the calendar year 1988, the commission may, by order, extend the date when the regulatory fees are due and payable.

(c) Regulatory fees shall be paid to the "Lake George Park Commission" at the following address or at such place as the commission may designate:

P.O. Box 749
75 Fort George Road
Lake George, New York 12845

Section 645-7.4 Penalty for Nonpayment.

(a) Any person failing to pay to the commission an annual regulatory fee, or any installment thereof, within 30 days of the date from which such fee is due and payable, must pay a penalty.

(b) The penalty assessed under this Section shall be two percent (2%) of the deficiency per month or any part of a month.

(c) The penalty required pursuant to this Section shall not be imposed during the period in which a regulatory fee is being disputed pursuant to the procedures provided in this Part, provided that the entire undisputed portion of the regulatory fee is paid in full within 30 days after the regulatory fee becomes due and payable. If a person disputing a regulatory fee fails to pay the undisputed portion of the fee, then a penalty shall be assessed for the entire amount of the fee which is determined to be due and payable.

(d) In the event that a person pays the undisputed portion of a penalty pending a request for reconsideration of the fee, no penalty shall be assessed on the disputed amount until 30 days after the request for redetermination is finally determined by the commission. For the purpose of this Section, the matter shall be deemed finally determined when the procedures provided for in Section 645-7.5 of this Subpart have been exhausted.

(e) The penalty assessed pursuant to this Section is final and irrevocable unless:

(1) the person against whom the penalty was assessed mails by certified mail or hand delivers to the commission within 30 days of the date of the assessment a written request for reconsideration of the penalty; or

(2) the commission independently re-determines the penalty. Any such request must set forth the basis for the failure to pay the fee. The commission shall have the authority to rescind or reduce a penalty upon a finding that the failure to pay the fee was based upon reasonable cause, and was not willful, due to neglect or other reasonable cause.

Section 645-7.5 Procedures to Challenge a Regulatory Fee.

(a) Any person having a question about the basis for an annual regulatory fee or how it was calculated, may contact the commission staff to request an explanation. The commission staff shall promptly explain the computation of the regulatory fee.

(b) Any person wishing to challenge the amount of a regulatory fee must make a request for redetermination on such forms as the commission may prescribe. Such a request shall be mailed by certified mail or hand delivered to the commission within 30 days of the date when any such fee became due and payable. The failure to make such a request within 30 days from the date when the fee became due and payable shall bar further consideration of that fee unless changed circumstances require reconsideration of that fee in a subsequent fee year. The

failure of the commission staff to explain the basis for the fee in accordance with paragraph (a) of this Section shall not be grounds for the extension of the 30-day period provided herein.

(c) Any request for reconsideration must, at a minimum, be accompanied by an explanation of why a reduction in the amount of the regulatory fee imposed is appropriate, a statement of what the revised regulatory fee should be, and appropriate documentary evidence to support the claim. Any evidence submitted relative to the size or configuration of a dock or wharf shall be verified by either the owner or the owner's agent, or shall be based upon a survey prepared by a licensed land surveyor.

(d) The commission shall not consider any request for redetermination if a person fails to:

(1) make the request within the 30 day time period provided herein; and

(2) make payment in full of the undisputed amount of the regulatory fee.

(e) Upon receipt of a request for redetermination, the commission staff shall determine whether the initial determination should be revised. The staff determination shall be made within 30 days of receipt of the request for redetermination, unless the staff shall determine that it has insufficient information to act upon the request for redetermination. In such an event, the staff shall, within such 30 day period, mail to the person initiating the request for redetermination a request for further information, specifying the nature of the information that must be submitted. The staff determination shall be made within 30 days following receipt of all of the requested information. In the event that any person initiating a request for a determination shall fail to respond to a request for further information within 30 days from the request by staff, the commission may deem the request for redetermination abandoned and assess a penalty on the disputed amount from the date the 30 day period expired.

(f) A person shall have a right to appeal to the commission from any determination issued by the staff in response to a request for redetermination. Such an appeal must be initiated within 30 days following the mailing by staff of the determination rendered pursuant to paragraph (e) of this Section. The appeal shall be made in writing, and shall be mailed by certified mail or hand delivered to the commission within 30 days from the receipt of the staff determination. Such an appeal must be accompanied by an explanation as to why a reduction in the regulatory fee is appropriate, a statement of what the revised regulatory fee should be, appropriate verified documentary evidence, together with an explanation of why the commission staff has not properly responded to the issues raised in support of the initial request for redetermination.

(g) The commission staff shall have 30 days to respond in writing to any such appeal. The appeal and the response of commission staff shall be presented to the commission at the next regular meeting following either the response by staff or the expiration of 30 days following the initiation of the appeal, whichever occurs first. The commission shall, by order of the Chairman or two members of the commission, determine whether to allow an oral presentation in connection with the appeal. In such an event, the person initiating the appeal shall be notified of such fact not less than 5 business days prior to the meeting of the commission.

(h) Following the initiation of an appeal, no party shall directly or indirectly through a representative communicate with the commission or any member of the commission relative to any issue pending in the appeal without providing notice and an opportunity for all parties to participate.

(i) If any issues of fact are required to be determined on such an appeal, the commission may, in its discretion, refer the appeal to a hearing officer, who shall conduct a hearing on said issues in accordance with Subpart 645-6 of this Part. In such event, the appeal shall be heard by the commission at the next regular meeting following the delivery to the commission of the hearing officer's report.

(j) The commission shall render a decision regarding any such appeal no later than the next regular meeting following the date on which the appeal is heard. Any such decision shall be in writing, shall be mailed to the appellant and any attorney of record by certified mail, and shall take effect 5 days from the date of mailing. The commission's decision must be made upon consideration of the complete record, must be supported by substantial evidence and shall state the reasons for the decision. Any such decision may be reviewed pursuant to Article 78 of the CPLR.

Section 645-7.6 Dock, Mooring and Wharf Fees.

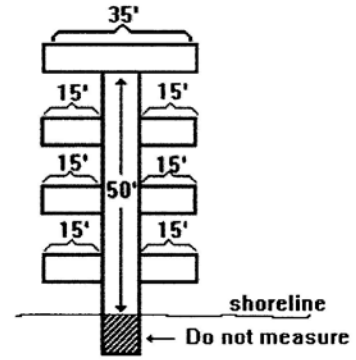
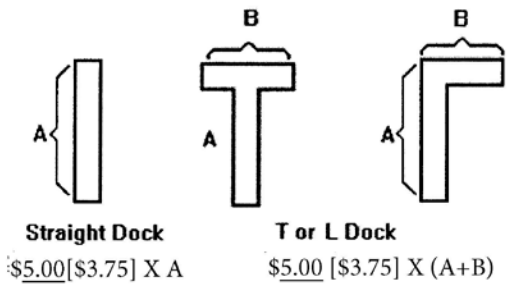
(a) No person shall use or construct a dock, wharf or mooring on the waters of the Park without paying the fee required by this Section.

(b) The owner of a dock, wharf or mooring used for residential purposes shall pay an annual fee of ~~\$37.50~~ fifty dollars (\$50.00) for each such dock, wharf or mooring.

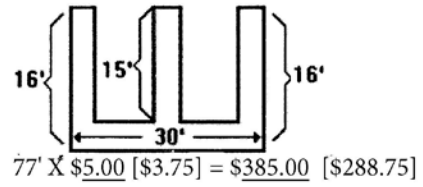
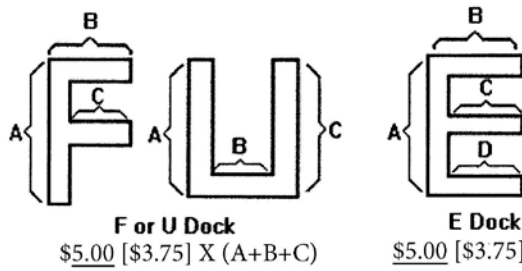
(c) The owner of an association dock, wharf or mooring shall pay an annual fee in the amount of ~~\$37.50~~ fifty dollars (\$50.00) times the total number of units with deeded or contractual access to the association docks, wharfs or moorings, or the actual number of vessels capable of being docked or moored at the association docks, wharfs or moorings, whichever is less.

(d) The owner of a dock or wharf used for commercial purposes shall pay an annual fee of ~~three dollars and seventy five cents (\$3.75)~~ five dollars (\$5.00) per useable linear foot for each such dock or wharf. Useable linear footage shall be measured as the distance along the longest side of any structure used as a dock or wharf, together with the length of the longest side of all lateral structures which extend from the dock or wharf and which are capable of sustaining foot traffic for access to and from vessels and/or for berthing vessels. No linear distance shall be counted twice for the purpose of determining the fee required pursuant to this paragraph. Docks or wharfs which connect to shore shall be measured from the point where the decking or walkway intersects the shore, but in no event beyond the mean high- water mark. For the convenience of the regulated community, examples of typical dock configurations and the applicable fees are provided in this Subdivision.

CALCULATING A COMMERCIAL DOCK FEE



$175' \times \$5.00$ [$\$3.75$] = $\$875$ [656.25]



(e) The owner of a mooring used for commercial purposes shall pay an annual fee of ~~\$75.00~~ one hundred dollars (\$100) for each such mooring.

(f) The owner of a dock or wharf constructed on or after January 1, 1988 used for commercial purposes shall pay a first time fee of ~~\$7.50-ten dollars (\$10.00)~~ per useable linear foot for each such dock or wharf. Useable linear footage shall be calculated in accordance with paragraph (d) of this Section. Such fee shall be payable prior to the issuance of a permit to construct the dock or wharf and shall be in lieu of the fee assessable pursuant to paragraph (d) of this Section for the calendar year in which such a permit is issued. Each successive year thereafter, the owner shall pay the fee required by paragraph (d) of this Section. This provision shall not apply to the replacement in kind of an existing dock or wharf, but shall apply to any modification, extension, or expansion of an existing dock or wharf.

(g) The owner of each quick launch facility shall, in addition to the fees assessable pursuant to other paragraphs of this Section, pay an annual fee of ~~\$3.75~~ five dollars (\$5.00) per useable linear foot for the total useable linear footage of dry storage capacity at the quick launch subject to the following:

(1) Where the quick launch facility uses wet storage capacity exclusively for vessels which are quick launched, the total useable linear footage of such capacity shall be subtracted from the total useable linear footage of dry storage capacity to prevent the double assessment of storage capacity which is used by the same vessels; and

(2) Where a quick launch facility does not use a rack storage or other system where the useable linear footage of storage capacity is measurable, the owner shall pay an annual fee based upon the total estimated linear footage of the vessels to be stored during a calendar year. Such owners shall, prior to April 1st of each year, estimate the total linear footage of vessels to be stored during that calendar year and shall pay the fee required by this subparagraph based upon that estimate. The estimate required herein shall not be less than the total linear footage of vessels stored during the previous calendar year, unless the owner demonstrates why the amount should be less. The commission shall not be bound by such an estimate if its staff determines it to be unreasonable, in which event the staff may calculate the estimated fee. Any person who is required to pay a regulatory fee based upon an estimate shall, on or before October 1st of the year in which such an estimate is given, report to the commission on such forms as the commission may prescribe the actual linear footage vessels stored during that calendar year. Such reports shall be verified by the owner or operator. Any amount which is disclosed to be due and payable to the commission shall be due and payable on October 1st of such year and shall be subject to a penalty in accordance with the provisions of Section 645-7.4 of this Subpart if not paid within 30 days of such date. Any excess amount shall be credited against the regulatory fee due and payable for the next succeeding fiscal year. Any dispute over the computation of such a recalculated fee shall be resolved under the procedures of Section 645-7.5 of this Subpart.

(h) Upon the registration of a dock, wharf or mooring, the owner shall affix the registration placard provided by the commission to the structure in a manner that makes it visible from the lake, if possible.

Section 645-7.7 Boat Fees.

(a) No person shall use a vessel subject to a fee pursuant to this Section on the waters of Lake George without registering the vessel with the commission and paying the fee imposed by this Section. The registration and fees required by this Section shall be in addition to the registration fees otherwise provided by law.

(b) Any mechanically propelled boat or vessel with a motor of ten horsepower or more ~~and any non-mechanically propelled boat or vessel eighteen feet or more in length~~ used on ~~the waters of~~ Lake George shall be registered with the commission and the owner or operator shall pay an annual registration fee as follows:

(1) for boats less than twenty-one feet in length - ~~\$30.00~~ \$40.00;

(2) for boats twenty-one to twenty-five feet in length - ~~\$37.50~~ \$50.00;

(3) for boats over twenty-five feet in length - ~~\$37.50~~ ~~\$50.00~~ ~~and plus~~ \$7.50 for each foot or part thereof by which the length exceeds twenty-five feet; and

(4) for boats over twenty-five feet in length which are outfitted for overnight use - ~~\$37.50~~ \$50.00 ~~and plus~~ \$30.00 for each foot or part thereof by which the overall length exceeds twenty-five feet.

(c) Boat length shall be the length overall of the boat measured as the distance from the transom to the bow.

(d) The owner or operator of any vessel which is berthed, used or operated on Lake George for less than 21 consecutive days and which is subject to annual registration and a fee pursuant to this Section may, in lieu of annual registration register the vessel with the commission for a single day and pay a fee of ~~\$7.50~~ \$12.00 for each day. Alternatively, any such person may, in lieu of annual registration register the vessel with the commission for seven consecutive days and pay a fee of ~~\$11.25~~ \$20.00. Any person may convert a day registration into a weekly registration and may convert either a day registration or a weekly registration into an annual registration. Upon any such conversion and proof of payment, the person shall be given credit for any fee paid for that vessel during the same calendar year.

(e) No person shall operate a vessel on the waters of Lake George which is subject to a fee pursuant to this Section without affixing the sticker provided by the commission as proof of payment of such fee on the vessel in such a place as the commission may prescribe.

(f) The application for boat registration shall be on such forms as the commission may prescribe and contain a statement setting forth the location where the boat will be docked or stored for the boating season and the name of the owner of said location.

Section 645-7.8 Exemptions. The state or any agency of the state, and any municipality acting in a governmental capacity, shall be exempt from the fee requirements of this Subpart.