

§1319-R. Facility siting

1. Licenses for hazardous waste facilities. The department shall issue a license for a hazardous waste facility whenever the department finds that the facility will not pollute any water of the State, contaminate the ambient air, constitute a hazard to health or welfare or create a nuisance. Licenses must be issued under the terms and conditions as the department prescribes and for a term not to exceed 5 years. The department may establish reasonable time schedules for compliance with this subchapter and rules promulgated by the board.

A. The department must find that:

- (1) The applicant presents evidence of sufficient financial capacity, including projections of utilization of the facility by hazardous waste generators, to justify granting the license;
- (2) Issuing the license is consistent with the applicable standards, requirements and procedures of this chapter;
- (3) In the case of a disposal facility, the volume of the waste and the risks related to its handling have been reduced to the maximum practical extent by treatment and volume reduction prior to disposal; and
- (4) If corrective action required by section 1319-V can not be completed by an applicant prior to issuance of a license, the applicant has the financial capacity to undertake and complete the corrective action. [PL 1991, c. 66, Pt. A, §39 (RPR).]

B. The department shall issue an interim license for a waste facility for hazardous waste or shall deem the facility to be so licensed if:

- (1) The waste facility is in existence on April 1, 1980, or the waste facility is in existence on the effective date of statutory or regulatory changes that first render the facility subject to the requirement to have a license under this subchapter;
- (2) The owner or operator has within 60 days of first becoming subject to the license requirements of this subchapter:
 - (a) Notified the commissioner of the location of the facility;
 - (b) Provided a detailed description of the operation of the facility;
 - (c) Identified the hazardous waste that the facility handles; and
 - (d) Applied for a license to handle hazardous waste;
- (3) The waste facility is not altered or operated except in accordance with the board's rules;
- (4) The waste facility has a discharge or emission license under section 414 or 591 and the facility is operated in accordance with that license; and
- (5) The facility was not previously denied a noninterim hazardous waste license or an interim license has not expired pursuant to paragraph C, subparagraphs (2) to (6). [PL 1991, c. 66, Pt. A, §39 (RPR).]

C. Interim licenses expire on the earliest of the following dates:

- (1) The date of the final administrative disposition of the application for a hazardous waste facility license;
- (2) The date of a finding of the department that the disposition referred to in subparagraph (1) was not made because of the applicant's failure to furnish information reasonably required or requested to process the application;
- (3) The date of expiration of the license issued under section 414 or 591;

(4) The date on which the application for a noninterim hazardous waste facility license is due if the person operating under the interim license fails to apply for that noninterim license;

(5) For interim licenses issued prior to November 8, 1984, unless the owner or operator of the facility has filed a complete application with the commissioner before one of the following dates and that application demonstrates compliance with all applicable ground water and financial responsibility requirements:

- (a) November 8, 1985, for a land disposal facility;
- (b) November 8, 1986, for a hazardous waste incinerator; or
- (c) November 8, 1989, for any facility other than a land disposal facility or hazardous waste incinerator; or

(6) Twelve months after the facility first becomes subject to the permit requirements of this subchapter unless the owner or operator of the facility has filed a complete application with the commissioner before that date and that application demonstrates compliance with all applicable ground water and financial responsibility requirements. [PL 1991, c. 66, Pt. A, §39 (RPR).]

D. If the commissioner determines based on documentation received from an electronics demanufacturing facility licensed by the department that the facility meets the provisions of this paragraph, the commissioner may allow the facility to undertake the controlled breakage of cathode ray tubes. If the commissioner does not approve or deny the facility's request to undertake controlled breakage of cathode ray tubes within 30 calendar days of receiving the documentation, the facility may undertake controlled breakage of cathode ray tubes in accordance with the provisions of this paragraph.

(1) The facility shall ensure that no crushing or treatment of universal waste or hazardous subcomponents occurs other than dismantling except that controlled breakage of cathode ray tubes may be performed in a manner protective of public health and safety and the environment. Controlled breakage of cathode ray tubes may occur only in a dedicated space with ventilation equipment that prevents the release of fugitive emissions to adjacent areas. Lead and cadmium concentrations immediately outside the dedicated space may not significantly exceed background levels of lead and cadmium concentrations or current ambient air quality standards for the State. The facility shall determine background levels through monitoring. The facility shall meet the conditions listed in 40 Code of Federal Regulations, Section 261.39 (2010). As used in this subparagraph, "fugitive emissions" has the same meaning as in section 582, subsection 7-C-1.

(2) The facility shall obtain certification from an environmental and safety program approved by the department and submit proof of certification to the department, except that if a facility has not completed certification, controlled breakage of cathode ray tubes may begin prior to certification if:

- (a) The facility provides information to the department on its process of achieving certification, including a detailed gap analysis; and
- (b) The controlled breakage is monitored by an environmental professional to ensure environmental and safety standards are met.

(3) The facility shall develop a written operating manual specifying how to safely break cathode ray tubes. The operating manual must be available to all employees at the facility and include:

- (a) Operating and maintenance procedures developed in accordance with any related manufacturer's specifications;
- (b) Procedures for testing and monitoring of equipment;

- (c) Procedures to address emergency situations, including, but not limited to, procedures to address lead and cadmium hazards, waste handling and equipment failure;
- (d) Procedures to assess whether surrounding areas will be negatively affected either by physical proximity to or air exchange with a heating, ventilation and air conditioning system;
- (e) Procedures for proper waste management practices; and
- (f) Procedures for employee training to ensure employees have been trained in operation and maintenance of equipment, including, but not limited to, engineering controls to mitigate hazardous waste releases and personal protective equipment use.

The department shall adopt rules to implement this paragraph. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [RR 2021, c. 2, Pt. A, §133 (COR).]

[RR 2021, c. 2, Pt. A, §133 (COR).]

2. Municipal ordinances. Municipalities may enact necessary police power ordinances dealing with commercial hazardous waste facilities, provided that the ordinances are not more stringent than or duplicative of the hazardous waste provisions of this chapter or rules and orders promulgated by the board or commissioner. The department shall incorporate all applicable local requirements to the fullest extent practicable.

[PL 1989, c. 890, Pt. A, §40 (AFF); PL 1989, c. 890, Pt. B, §263 (AMD).]

3. Site review. All persons who make application for a license to construct, operate or substantially expand a commercial hazardous waste facility shall give, at the same time, written notice to the municipal officers of the municipality in which the proposed facility will be located. The municipality through its municipal officers is granted intervenor status in any proceeding for site review of a commercial hazardous waste facility. The commissioner shall reimburse the municipalities' direct costs, not to exceed \$5,000, for participation in the proceedings.

The Governor may appoint a person to facilitate communications between the applicant and the municipality and between the department and the municipality.

The State may accept public and private funds from any source for the purpose of carrying out responsibilities under this section.

Notwithstanding section 341-D, subsection 2, the board shall decide all applications for commercial hazardous waste facilities.

The board shall hold at least one public hearing in the municipality in which the facility will be located.

During any proceeding for site review of a commercial hazardous waste facility, the legislative body of the municipality in which the facility is to be located may appoint 4 representatives to the board. If the facility is proposed to be located in an unorganized township, the county commissioners of that county may appoint 4 representatives. These representatives may vote on board decisions related to the proposed commercial hazardous waste facility. All representatives appointed under this subsection shall participate on the board only for that site review, until final disposition of the application, including any administrative or judicial appeals. A license application may not be considered by the board unless all municipal members of the board and the municipality have been given written notice of the board meeting and provided copies of all written recommendations of the department, at least 30 days prior to the date of the meeting. The municipal members are entitled to the same pay for each day and expenses as regular board members during the period of their service, to be paid by the department. [PL 1991, c. 205 (AMD).]

4. Municipal fees authorized. A municipality, by ordinance, may levy a fee on a commercial hazardous waste facility located in the municipality. These fees must be applied as a percentage of the

annual billings of the facility to its customers. No fee so levied may exceed 2% of the annual billings. The municipality may audit the accounts of a facility to determine the amount of the fee owed to the municipality. Payment of the fee by the facility to the municipality is a condition of any license approved under this section.

[PL 1991, c. 205 (AMD).]

5. Application. Except for substantial expansion, this section does not apply to any facility granted an interim or final license prior to September 18, 1981.

[PL 1989, c. 890, Pt. A, §40 (AFF); PL 1989, c. 890, Pt. B, §263 (AMD).]

6. Post-closure licenses. When the board determines that a facility under the jurisdiction of this subchapter does not have and will not be issued a license pursuant to this subchapter, the board may issue a license containing terms and conditions governing the post-closure requirements applicable to the facility, including, but not limited to, environmental monitoring and corrective action. The findings in subsection 1, paragraph A, subparagraphs (1), (2) and (3) are not required for post-closure licenses.

[PL 1997, c. 624, §19 (AMD).]

7. Criteria for facility development. In addition to other criteria established by law or rule for facilities under this section, the following criteria for facility development apply to an application for treatment, storage and disposal facilities for hazardous waste.

A. The applicant has the financial capacity and technical ability to develop the project in a manner consistent with state environmental standards. [PL 1993, c. 383, §37 (NEW).]

B. The applicant has provided adequately for fitting the project harmoniously into the existing natural environment and has ensured that the project will not adversely affect existing uses, scenic character, air quality, water quality or other natural resources in the municipality or in neighboring municipalities. [PL 1993, c. 383, §37 (NEW).]

C. The proposed project does not pose an unreasonable risk that a discharge to significant ground water aquifer will occur. [PL 1993, c. 383, §37 (NEW).]

D. The project will be built on soil types suitable to the nature of the undertaking and will not cause unreasonable erosion of soil or sediment. [PL 1993, c. 383, §37 (NEW).]

E. The applicant will provide adequately for traffic movement of all types into, out of or within the project area. The department shall consider traffic movement both on site and off site including public safety and congestion along waste conveyance transportation routes. The Department of Transportation shall provide the department with an analysis of traffic movement of all types into, out of or within the project area. [PL 1993, c. 383, §37 (NEW).]

F. The applicant has provided adequately for utilities including water supplies, sewerage facilities, solid waste disposal and roadways required for the project and has ensured that the project will not have an unreasonable adverse effect on the existing or proposed utilities and roadways in the municipality or area served by those services. [PL 1993, c. 383, §37 (NEW).]

G. The project will not unreasonably cause or increase the flooding of the alteration area or adjacent properties nor create an unreasonable flood hazard to a structure. [PL 1993, c. 383, §37 (NEW).]

[PL 1993, c. 383, §37 (NEW).]

8. Prohibition. The department may not issue a license for a hazardous waste disposal facility or any commercial hazardous waste facility if the proposed facility overlies a significant ground water aquifer or a primary sand and gravel recharge area.

[PL 1993, c. 383, §37 (NEW).]

SECTION HISTORY

PL 1987, c. 517, §28 (NEW). PL 1989, c. 794, §§5,6 (AMD). PL 1989, c. 890, §§A40,B263 (AMD). PL 1991, c. 66, §A39 (AMD). PL 1991, c. 205 (AMD). PL 1993, c. 383, §37 (AMD). PL 1997, c. 624, §19 (AMD). PL 2011, c. 250, §1 (AMD). RR 2021, c. 2, Pt. A, §133 (COR).

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