



Massachusetts Department of Environmental Protection
Bureau of Waste Prevention – Solid Waste Management
Determination of Need

BWP SW 02 Determination of Need, Large Operation

BWP SW 17 Determination of Need, Small Operation

BWP SW 18 Determination of Need, Modification

Instructions and Supporting Materials

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- permit fact sheet
- completeness checklist

Introduction

MassDEP *Permit Applications*, as well as *Instructions & Support Materials*, are available for download from the MassDEP Web site at mass.gov/dep in two file formats: Microsoft Word™ and Adobe Acrobat PDF™. Either format allows documents to be printed.

Instructions & Support Materials files in Microsoft Word™ format contain a series of documents that provide guidance on how to prepare a permit application. Although we recommend that you print out the entire package, you may choose to print specific documents by selecting the appropriate page numbers for printing.

Permit Applications in Microsoft Word™ format must be downloaded separately. Users with Microsoft Word™ 97 or later may complete these forms electronically.

Permitting packages in Adobe Acrobat PDF™ format combine *Permit Applications* and *Instructions & Support Materials* in a single document. Adobe Acrobat PDF™ files may only be viewed and printed without alteration. *Permit Applications* in this format may not be completed electronically.



BWP SW 02, 17, 18

Permit Fact Sheet

1. What is the purpose of this determination?

Composting and recycling facilities are considered solid waste management facilities and require a site assignment (310 CMR 16.00) and a permit (310 CMR 19.000), unless the composting or recycling operation is: categorically exempt (310 CMR 16.05(2)), conditionally exempt (310 CMR 16.05(3),(4), or (5)), or is exempt pursuant to the Determination of Need procedure, 310 CMR 16.05(6).

BWP SW 02 and BWP SW 17: Certain composting or recycling operations are eligible to request a Determination of Need for site assignment to determine whether or not the operation is a solid waste management facility. If it is not, the operation is exempt from site assignment. (Operations exempt from site assignment are also exempt from the permitting requirements of 310 CMR 19.000).

BWP SW 18: A composting or recycling operation that has previously been exempted from site assignment pursuant to the Determination of Need process may be required to apply for a Modification of the Determination of Need prior to making changes in the composting or recycling operation.

Legislative authority for this determination is found in MGL c. 21A, ss. 2 & 8 and c. 111, ss. 150A and 150A_. Regulatory authority is found in 310 CMR 16.00: Site Assignment Regulations for Solid Waste Facilities, specifically 310 CMR 16.05(6), Determination of Need for Site Assignment and 310 CMR 16.05(9), Project Modifications.

2. Who must apply?

- **New Operations, BWP SW 02 or BWP SW 17.**

Any individual, business or organization that intends to compost or recycle eligible materials [see 16.05(6)] where the operation is not either categorically or conditionally exempted from site assignment pursuant to 310 CMR 16.05(2) or 16.05(3), (4), or (5), must apply for a Determination of Need for site assignment in accordance with 310 CMR 16.05(6) unless the facility intends to acquire a site assignment in accordance with BWP SW 01, Site Suitability Report.

- **Operations seeking to modify a Determination of Need, BWP SW 18.**

A composting or recycling operation must apply for a modification if it has previously obtained an exemption under the Determination of Need process and intends to modify its design or operations to such an extent that a revised application for a determination of need is required pursuant to 310 CMR 16.05(9).



BWP SW 02, 17, 18 Permit Fact Sheet

2a. Which application should I use, BWP SW 02, BWP SW 17, or BWP SW 18?

New Operations		
Type of Operation	BWP SW 02 - Large	BWP SW 17 - Small
Recycling	Processes more than 100 tons per day.	Processes no more than 100 tons per day. (Do not apply if conditionally exempt pursuant to 16.05(3)).
Composting using windrow technology	Receives for processing more than 10 tons per day of approved food processing residues, produce or pre-sorted organic material from cafeterias or restaurants alone or in addition to other compostable material in accordance with 310 CMR 16.05(6)(b).	Receives for processing the following materials in accordance with 310 CMR 16.05(6)(b) - 10 tons per day or less of approved food processing residues, produce or pre-sorted organic material from cafeterias or restaurants; and other compostable materials.
Composting using other than windrow technology	Receives for processing more than one ton per day of compostable materials in accordance with 310 CMR 16.05(6)(b).	Receives for processing one ton or less per day of compostable materials in accordance with 310 CMR 16.05(6)(b).
Modifications (BWP SW 18)		
Any operation that has previously received a Determination that a site assignment is not needed, and intends to modify its operations such that a revised application must be submitted under the provisions of 310 CMR 16.05(9), should use BWP SW 18. This application is for modifications of all sizes of composting and recycling operations.		

3. What other requirements should be considered when applying for these determinations?

Wetlands, water pollution, sewer connection or air quality permits may be required in certain circumstances if a facility will be constructed on the site after the determination has been made. Local permits may be required as well in those circumstances. Operations, whether exempted from site assignment or not, will be required to comply with local zoning regulations, where applicable.

Note: These additional requirements are intended to serve as a guide to the applicant. It does not necessarily include **all** additional requirements.

4. What is the application fee?

BWP SW 02 Determination of Need, Large.....\$6,945
BWP SW 17 Determination of Need, Small.....\$1,125
BWP SW 18 Determination of Need, Modification.....\$1,125



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Permit Fact Sheet

5. What is the Primary Permit Location? What is the Reserve Copy Location?

Primary Permit Location:
Department of Environmental Protection
_____ * **Regional Office**
Solid Waste Management

Reserve Copy Location:
Not required.

* Find your region: <http://mass.gov/dep/about/region/findyour.htm>

In addition, one copy of the application must be sent to the local board of health.

6. Where can I get a copy of the timelines?

The timelines are available on the MassDEP Website: www.mass.gov/dep/service/online/fees.htm

7. What is the annual compliance fee?

There is no applicable annual compliance fee for these categories.

8. How long are these determinations in effect?

A negative determination of need exempts a recycling or composting operation from site assignment regulations and from permitting. Therefore, a negative determination of need will in general have no time limitation unless one is included as a condition of granting the determination.

9. How can I avoid the most common mistakes made in applying for these determinations?

- a. Submit all the information required on the application form.
- b. Submit a copy of the application to the local board of health for their review and comments.
- c. Submit fee and one copy of the MassDEP Transmittal Form <http://mass.gov/dep/service/online/trasmfrm.shtml> to Department of Environmental Protection, P.O. Box 4062, Boston, MA 02211.

10. What are the regulations that apply to these determinations? Where can I get copies?

These regulations include, but are not limited to:

- a. Site Assignment Regulations for Solid Waste Facilities, 310 CMR 16.00.
- b. Timely Action Schedule and Fee Provisions, 310 CMR 4.00.

These may be purchased at:

State Bookstore (in State House)
Room 116
Boston, MA 02133
617-727-2834

State Bookstore
436 Dwight Street, Room 102
Springfield, MA 01103
413-784-1376



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BWP SW 02, 17, 18 Determination of Need Application Completeness Checklist

- The MassDEP Transmittal Form is completed: <http://mass.gov/dep/service/online/trasmfrm.shtml>
- Application Form for Determination of Need for Site Assignment has been completed.
- Certification Statement has been submitted and signed (310 CMR 16.07).

To submit the application package:

- Checklist items have been completed.
- Send one copy of the application along with one copy of the MassDEP Transmittal Form to:

Department of Environmental Protection
_____ * Regional Office
Solid Waste Management

* Find your region: <http://mass.gov/dep/about/region/findyour.htm>

- Send one copy of the application with one copy of the MassDEP Transmittal Form to:

Board of Health
_____ (Address)
_____ (City or Town)

- Send fee of:

\$6,945 for BWP SW 02;
\$1,125 for BWP SW 17;
\$1,125 for BWP SW 18;

in the form of check or money order made payable to *Commonwealth of Massachusetts*, along with one copy of the MassDEP Transmittal Form to:

Department of Environmental Protection
P.O. Box 4062
Boston, MA 02211



Massachusetts Department of Environmental Protection
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BWP SW 17 Determination of Need, Small Operation
BWP SW 18 Determination of Need, Modification

Transmittal Number _____

Facility ID# (if known) _____

Application for Determination of Need

Application Form for Determination of Need for Site Assignment for certain Recycling and Composting Operations

Important: When filling out forms on the computer, use only the tab key to move your cursor - do not use the return key.



(For Use With 310 CMR 16.05)

Project Name: _____

Location: _____
City/Town

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Application for Determination of Need

Application Category

This form is used as the application for three categories of Determination of Need for Site Assignment. The Instructions Section (see below) explains what information should be supplied for the various categories.

Please check off which category you are applying under:

BWP SW 02 Determination of Need, Large Operation

- Recycling Operation not exempted under 310 CMR 16.05(3) that processes more than 100 tons per day pursuant to 310 CMR 16.05(6)(a).

BWP SW 17 Determination of Need, Small Operation

- Recycling Operation not exempted under 310 CMR 16.05(3) that processes no more than 100 tons per day pursuant to 310 CMR 16.05(6)(a).
- Composting Operation not exempted under 310 CMR 16.05(4) pursuant to 310 CMR 16.05(6)(b) or (c)

BWP SW 18 Determination of Need, Modification

- Any operation that has previously received a Determination that a site assignment is not needed that intends to modify its operations such that under the provisions of 310 CMR 16.05(9) a modified application must be submitted should use BWP SW 18. This application is for modifications of all sizes of composting and recycling operations.



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Application for Determination of Need

Purpose of this Application Form

This application form is to be used when applying to the Department of Environmental Protection (Department) for a "Determination of Need" for a site assignment under provisions of 310 CMR 16.05(6) and (7).

Explanation of Determination of Need

Solid Waste Management Facilities are only allowed to be operated on land that has obtained a Site Assignment under the provisions of the **Site Assignment Regulations for Solid Waste Management Facilities**, 310 CMR 16.00 (Site Assignment Regulations).

The "Applicability" section of the Site Assignment Regulations, 310 CMR 16.05, contains the provisions for determining whether an operation is classified as a Solid Waste Management Facility and consequently requires a Site Assignment. There are several paragraphs in 310 CMR 16.05 that identify operations or classes of operations that are exempt from site assignment, conditionally exempt from site assignment or eligible to apply for a determination as to whether a Site Assignment is needed.

These paragraphs are:

16.05(2) identifies facilities that are not subject to the Site Assignment Regulations.

16.05(3), (4) & (5) identifies facilities that are "conditionally" exempt from site assignment. Facilities that meet the relevant criteria do not require site assignment as long as they are operated according to the specified conditions.

16.05(6) identifies facilities that are eligible to apply, under the provisions of 16.05(7), for a "Determination of Need" to determine whether they are exempt from site assignment. A facility that is subject to this section is required to obtain a site assignment unless it is determined by the Department that a site assignment is not needed. This determination is based on the information supplied by the applicant on this application form and the criteria set forth in 16.05(7).

Operations Eligible for Determination of Need {16.05(6)}

Recycling and composting operations that are not exempted from requiring a site assignment under 310 CMR 16.05(2), (3), (4) or (5) may apply for an exemption from site assignment when the operation is one of the following:

- a recycling operation that handles only pre-sorted recyclable materials, or
- a composting operation that does not compost unprocessed meat and fish wastes, solid wastes and/ or sludges except sludges that only contain material from plants, fruits and vegetables, or
- other conditionally exempt operation.

The terms "pre-sort," "compostable material," "composting," "recyclable material," "recycle" and "speculative accumulation" are defined in 310 CMR 16.02. These definitions are as follows:

Pre-Sort means to separate, from other solid waste, materials that are to be recycled or composted.

Compostable Material means an organic material that has the potential to be composted, excluding waste water treatment residuals, which is not co-mingled with solid waste or contaminated by significant amounts of toxic substances.

Composting means a process of accelerated biodegradation and stabilization of organic material under controlled conditions yielding a product which can safely be used.

Recyclable or Recyclable Material means a material that has the potential to be recycled and which is not comingled with solid waste or contaminated by significant amounts of toxic substances.



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Purpose of this Application Form (cont.)

Recycle means to recover or reclaim materials or by-products:

- (a) which are to be reused; or
- (b) which are to be employed as an ingredient or a feedstock in an industrial or manufacturing process to make a product; or
- (c) which are to be employed in a particular function or application as an effective substitute for a commercial product or commodity.

“Recycle” does not mean to recover energy from the combustion of a material.

Speculative Accumulation means the accumulation or storage of a recyclable or compostable material when the recycling or composting of the material is not now, or cannot reasonably be expected to be, occurring. Speculative accumulation shall be deemed to be occurring when:

- (a) the material cannot feasibly be recycled or composted; or
- (b) less than 75% by weight or volume as appropriate of the recyclable or compostable material is utilized, sold or transferred off-site in a manner which does not constitute disposal or handling pending disposal within a time frame to be determined by the Department.

Instructions for Completing the Application Form

There are two sets on instructions for completing this application form. One set is for preparing any application for a new recycling/composting operation and applies to applications for both large (BWP SW 02) and small (BWP SW 17) operations. The other set of instructions is for preparing an application to modify a Determination of Need (BWP SW 18).

Instructions for New Operations (BWP SW 02 and BWP SW 17)

Not all applicants will be required to supply all the information requested on this form. On the other hand, some applicants may be asked to supply additional information that is not specifically requested on this form.

Consequently, the Department strongly recommends that applicants review the regulations and this application form and then consult with the Department before completing and filing this form.

After determining what information must be supplied, complete the appropriate sections of this form, attach maps and plans, sign the application, and file copies with the Department and Board of Health (see below).

To make it easier to refer to the regulations, the application form is annotated with references to corresponding sections in the regulations. These section numbers are enclosed in braces, {...}. For example, a reference to “310 CMR 16.05(6)” is written as “{16.05(6)}.”

Instructions for Modification of Determination of Need (BWP SW 18)

The only information that must be supplied is information that has changed since the previous Determination of Need application or will change as result of the proposed modification. In addition, a copy of the previous application for Determination of Need and the Department’s written determination should be attached.

In instances where requested information will not change since the previous application, the applicant may either indicate “unchanged” or provide the information.



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Application Form (cont.)

5. Ownership: Does the person named above as the “applicant” own the site?

Yes No

If “no”, provide the name, address and telephone number of the owner of the site:

Name of Owner

Street Address

City/Town

State

Zip Code

Telephone Number

6. Site Identification: Provide the street address of the site:

Street Address

City/Town

State

Zip Code

7. General Description of Compostable/Recyclable Material {16.05(7)(b)1.}: Describe the material that will be recycled or composted.

8. Chemical and Physical Analysis {16.05(7)(b)2.}

Instructions: The Department may not require the following information. Consult the Department if you feel this information is not needed for the Department to adequately evaluate the proposed project. Please note that it is the responsibility of the applicant to inform the Department of any chemical or physical characteristics of the material that may pose a threat to human health and safety or the environment.

8a. Chemical Analysis: Attach a chemical analysis of the recyclable/compostable material and of any residues or off-specification products that will remain after processing. Include analyses for possible contaminants.

8b. Physical Description: Attach a description of the physical properties of the recyclable/compostable material.



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Application Form (cont.)

9. Quantity of Material Processed and Stored {16.05(7)(b)3.}

Instructions: Provide the following information for each type of material that is to be recycled or composted. Please use “tons” as the unit of measure in the following responses, unless some other unit is more appropriate. If other units are used, indicate what units are used.

9a. Maximum Quantity of Material Received: What is the maximum amount of recyclable/compostable material that will be received at the site on a single day?

Material	Maximum Amount Received Per Day
_____	_____
_____	_____
_____	_____
_____	_____

9b. Total Quantity of Material Received per Year: How much recyclable/compostable material will be brought to the site in one year?

Material	Total Quantity Received Per Year
_____	_____
_____	_____
_____	_____
_____	_____

9c. Days of Operation: How many days each week will the facility be receiving recyclable/compostable material? If applicable, indicate how this will vary over the course of the year. Also specify the total number of days the facility will accept compostable/recyclable material in one year.

Material	# of Days per Week Receiving	Variation in Receiving Schedule (describe)	# of Days per Year Receiving
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____



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Material	# of Days per Week Receiving	Variation in Receiving Schedule (describe)	# of Days per Year Receiving
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

9d. Average Quantity of Material Received: On average, how much compostable/recyclable material will be brought to the site each day the facility is receiving material? If this will vary over the course of the year, compute averages representing various periods throughout the year and indicate the periods for which these averages were computed.

Material	Average Amount Received Per Day	Average Amount Received Per Period (indicate amount and period)
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

9e. Quantity of Material Stored Prior to Processing: What is the maximum amount of recyclable/compostable material that will be stored on the site prior to processing?

Material	Maximum Amount Stored Prior to Processing
_____	_____
_____	_____
_____	_____
_____	_____



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9f. Quantity of Material Stored While “In-Process”: What is the maximum amount of material that is in various intermediate stages of processing that will be stored on the site?

Material

Maximum Amount Stored while “In-Process”

9g. Quantity of Finished Product Stored on Site: What is the maximum amount of material or product that has completed processing that will be stored on site prior to shipment?

Material or Product

Maximum Amount Stored Prior to Shipment

9h. Quantity of Waste Stored on Site: What is the maximum amount of waste (all residuals, residues and off-specification product) that will be stored at the site prior to shipment?

Material or Product for which Waste is Generated

Maximum Amount of Waste Stored



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Application Form (cont.)

10. Quality of Recyclable/Compostable Material {16.05(7)(b)3.}

10a. General Condition of Recyclable/Compostable Material: Describe the condition of the recyclable/compostable material when it arrives at the site. Include an estimate of how much solid waste will be contained in the material.

Estimated Solid Waste Content: _____

10b. Toxic Substances: Will the material contain any toxic substances?

Yes No

If so, identify the substances, explain the origin of the toxic substances, and estimate the amount or concentration of the toxic substances. (The Department may request a complete analysis of the material. See Question 8.)

Substance	Origin of Substance	Estimated Concentration
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

11. Sources of Recyclable/Compostable Material: What are the sources of the material? (Please be as specific as possible.)

12. Composting/Recycling Methods {16.05(7)(b)4.}: Describe the composting/recycling methods that will be used.



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Application Form (cont.)

13. Products and Their Use {16.05(7)(b)5.}

13a. Product Description: Describe the products or materials to be produced and the intended uses of these products or materials.

Products or Materials to be Produced

Intended Uses

13b. Similar Recycling/Composting Operations: Are the products and materials identified above currently being produced in other recycling/composting operations similar to the proposed operation?

Yes No

Explain:

13c. Toxic Contaminants in Product: Will the products or materials produced by the composting/recycling operation contain toxic constituents which may make products or materials unsuitable for some uses?

Yes No

Explain:

14. Markets for Products {16.05(7)(b)6.}: Provide documentation showing that markets or uses for the composted material, recycled material or products exist. The documentation should account for both the amount and type of material or product to be produced. When possible, contractual agreements or letters of intent should be provided.



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Application Form (cont.)

15. Pre-Sorting {16.05(7)(c)4.}

15a. Pre-Sorting Method and Location: Explain how and where the material will be pre-sorted (separated from other solid waste).

15b. Pre-Sorting Quality Control: What measures will be taken to assure pre-sorting is done properly? (e.g., inspections, training, supervision, rejecting loads)

16. Equipment {16.05(7)(c)5.}

16a. Equipment Description: Describe all processing equipment such as grinders, shredders, air classifiers, and screening equipment. Explain the function of each piece of equipment, its rated capacity and the amount of material that each piece of equipment will process each day.

Equipment	Function	Rated Capacity	Amount of Material Processed Daily
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____



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16b. Equipment Function in Overall Process: Explain how each piece of equipment fits into the overall process. Explain how the material flows from one piece of equipment to the next and the condition of the material before and after it is processed by each piece of equipment.

17. Waste Water {16.05(7)(c)6.}

17a. Quantity of Waste Water Generated: How much waste water will be generated in each process and what will be done with the waste water? Also, identify the contaminants in the waste water. (Express quantity in terms of gallons of waste water per unit (ton) of recyclable/compostable material input to the process.)

Process	Amount of Wastewater Generated	What Will Be Done with the Wastewater	Contaminants Identified
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____



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17b. Rainwater Control: Will rainwater or run-on water come in contact with stored materials, products or residues?

Yes No

If “yes”, describe what contaminants this water may acquire and how the contaminated water will be handled:

17c. Waste Water Discharge Permits: Have appropriate permits for any discharges of waste water been obtained from the Division of Water Pollution Control under provisions of 314 CMR 3.00-12.00?

Yes No

18. Air Emissions: Will the operation generate air or noise emissions for which permits are required from the Division of Air Quality Control under the provisions of 310 CMR 7.00?

Yes No

If “yes”, please explain and state whether permits have been obtained:

19. Solid Residues {16.05(7)(c)7.}

19a. Quantity of Solid Residues: How much solid residues and off-specification material will be generated? (Express quantity in terms of tons of solid residues per unit (ton) of recyclable/compostable material input to the process. Provide information for each type of recycling/composting operation to be conducted at the site. See 16.05(7)(d)5.a.-d. for guidance on what constitutes a “type” of recycling/composting.)

Recycling/Composting Operation	Amount Solid Residues/Off-inspection Material Generated
_____	_____
_____	_____
_____	_____
_____	_____



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Application Form (cont.)

19b. Solid Residue Disposal: Where will this residue or off-specification material be disposed? State all disposal methods and locations.

Residue/Off-inspection Material	Disposal Method	Location of Disposal Site
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

19c. Hazardous Waste: Will any residue or off-specification material meet the criteria for being classified a hazardous waste under the Massachusetts Hazardous Waste Regulations, 310 CMR 30.00?

Yes No

If “yes”, specify which residues/off-inspection materials are considered hazardous:

20. Nuisance Conditions: Does the proposed composting/recycling operation have the potential to create nuisance conditions such as: noise, odors, dust, litter or the attraction of rodents or insects?

Yes No

If “yes,” explain what measures will be taken to prevent these nuisance conditions from occurring.



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Application Form (cont.)

21. Contingencies for Shutdown: In the event that markets for the recycled/composted products or materials are lost, or operations are discontinued for any reason, what will be the disposition of all compostable/recyclable materials, in-process materials and recycled/composted materials and products?

22. Time Frame for Checking for Speculative Accumulation {16.05(7)(d)6.}: One indication that speculative accumulation is occurring is that less than 75% of the material brought to the facility is processed and shipped for purposes other than disposal in a “time frame to be determined by the Department.” State the minimum time frame that is appropriate for the proposed operation.

Minimum Time Frame: _____

If the time frame is greater than one month, explain what characteristics of the proposed operation justify the use of the longer time frame:

23. Weighing or Measuring Equipment and Procedures: Describe the equipment (e.g., scales) that will be used to determine the amount of compostable/recyclable material brought to the site and the quantity of products and wastes removed from the site. Describe the procedures that will be followed to assure accurate and complete measurements are made.

Description of Equipment:

Description of Procedures:



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24. Record Keeping: Describe the records that will be kept and the record keeping procedures that will be used to assure that accurate information on the quantity of materials received at and transferred from the site is available.

25. Other Information Requested by the Department {16.05 (7) (b) 7. and (c) 8.}: The Department may request additional site specific information or data needed to determine whether the proposed recycling/composting operation requires a site assignment.

26. Signatures and Certification

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my own knowledge and/or on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate and complete. I am aware that there are significant penalties both civil and criminal for submitting false information including possible fines and imprisonment.

Applicant's Signature

Date

Agent's Signature

Date