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MODIFICATIONS TO 310 CMR 16.00, SITE ASSIGNMENT REGULATIONS

December, 1996

I. INTRODUCTION

This document contains proposed modifications to the Site Assignment Regulations, 310 CMR 16.00. There is an accompanying Discussion Document which explains the Capacity Allocation Process regulations being proposed as well as other changes being proposed. Sections of the regulations with modifications are denoted by vertical lines on the left margin of the page. The proposed modifications are indicated by showing text to be added in double underline and ~~text to be deleted with a line through it~~. This document does not contain the complete Site Assignment Regulations. Only sections with modifications have been included. Please note that certain changes to the site assignment regulations had previously been proposed as a part of the development of the Compost Facility Regulations, which went to public hearing at the beginning of 1996, but which have not yet been promulgated. These proposed changes, on which DEP has already received comment, are included here **in bold**.

All interested parties are encouraged to submit either written or oral comments during the public comment period which ends on **February 7, 1997**. During this comment period DEP will hold public hearings in several locations as described in the enclosed notification

To submit written comments or obtain further information, please contact:

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310 CMR 16.00: SITE ASSIGNMENT REGULATIONS FOR SOLID WASTE FACILITIES

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16.01: Purpose and Authority

(1) Purpose. 310 CMR 16.00 is composed of ~~six four~~ Parts pertaining to the process for comparatively evaluating proposed landfill projects, for selecting the project(s) necessary or convenient to meet the landfill disposal requirements of the Commonwealth in a manner that protects the public health, safety and the environment and for determining ~~deciding~~ whether a parcel of land is suitable to serve as a ~~the~~ site for a solid waste management facility. Part I contains general regulations applicable to all parts of 310 CMR 16.00. Part II describes the Capacity Allocation Process. ~~The first~~ Part III describes the procedures for submitting an application to the Department and the board of health for site assignment and sets forth the review process used by the Department in determining whether a site is suitable. This Part also ~~I is intended to provide for the complete submission of~~ describes the information necessary for determining site suitability and for ~~extensive opportunity for public comment. within a relatively short review period.~~ ~~The second~~ Part IV sets forth rules governing the public hearings ~~to be held~~ by the board of health for ~~the purpose of~~ assigning a site. ~~The third~~ Part V sets forth the process by which the board of health assesses the Application Fee and the allowed expenditures of those funds for reviewing the application and conducting the public hearings. ~~The final~~ Part VI establishes the site suitability criteria ~~that are to be~~ applied by the Department and the board of health in determining whether a site is suitable. Part VIIV is intended to makes the siting of facilities subject to consistent standards and provides for the protection of public health and safety and the environment. Protection of public health, safety and the environment is primarily the prevention of pollution from the site, but also encompasses the function of the site within an integrated solid waste management system which maximizes material reuse and conservation of natural resources.

(2) Authority. 310 CMR 16.00 is promulgated by the Department of Environmental Protection pursuant to M.G.L. c. 16, s. 21, c. 21A, §§ 2 and 8 and c. 111, §§ 150A and 150A½.

16.02: Definitions

[NOTE TO REVIEWERS: ONLY DEFINITIONS THAT ARE BEING MODIFIED OR ADDED HAVE BEEN INCLUDED IN THIS DOCUMENT.]

The following words when used herein, except as otherwise required by the context, shall have the following meaning:

Abutter means the owner of land sharing a common boundary or corner with the site of the proposed activity in any direction, including land located directly across a street, way, creek, river, stream, brook or canal.

Capacity Allocation Process (CAP) means the process described in these regulations at 310 CMR 16.11 - 16.24 under which disposal projects are comparatively evaluated for the allocation of waste disposal capacity.

CAP Project means a disposal facility project that has submitted an application in accordance with 310 CMR 16.11 - 16.24.

Interim Wellhead Protection Area (IWPA) means an area defined by 310 CMR 22.02, Drinking Water Regulations, as may be amended, extending to a ½ mile radius from a public water supply wellhead which is intended to protect the wellhead pending the delineation of its Zone II.

[NOTE: WATER SUPPLY REGULATIONS DEFINITION - Interim Wellhead Protection Area (IWPA). For public water systems using wells or wellfields that lack a Department approved Zone II, the Department will apply an interim wellhead protection area. This interim wellhead protection area shall be a one-half mile radius measured from the well or wellfield for sources whose approved pumping rate is 100,000 gpd or greater. For wells or wellfields that pump less than 100,000 gpd, the IWPA radius is proportional to the approved pumping rate which may be calculated according to the following equation: IWPA radius in feet = [32 x pumping rate in gallons per minute] + 400. A default IWPA radius or an IWPA radius otherwise computed and determined by the Department shall be applied to transient non-community (TNC) and non-transient non-community (NTNC) wells when there is no metered rate of withdrawal or no approved pumping rate. The default IWPA radius shall be 500 feet for TNC wells and 750 feet for NTNC wells.

Mitigation Measures means actions or activities designed to correct or avoid degrading or damaging environmental receptors such as ground or surface waters, soils, air, wetlands or other receptors.

New Site means a parcel of land for which an applicant seeks site assignment as a solid waste facility which has not been previously assigned and is not contiguous to an existing site assigned area.

Non-Municipal Solid Waste (Non-MSW) means solid waste which is not residential or commercial solid waste and which includes, but is not limited to, wastes such as construction and demolition debris and industrial solid wastes.

Notice to Proceed means notice from the Department that a CAP project proponent may continue through the remainder of the solid waste permitting process, as determined by the Capacity Allocation Process regulations at 310 CMR 16.11 - 16.24.

Proposed Drinking Water Source Area means the preliminary Zone II or the preliminary IWPA for a proposed water supply well that has received a site exam approval by the Department and is actively pursuing source approval as set forth in the Drinking Water Regulations at 310 CMR 22.21, Source Approval;

Potential Private Water Supply means a Class I aquifer as defined at 314 CMR 6.03: *Ground Water Quality Standards*, as may be amended, ~~capable of yielding water of sufficient quality and quantity~~ which is located under a parcel of land that at the time of the earlier of the following two filings, the Site Assignment Application or, where applicable, the Massachusetts Environmental Policy Act Environmental Notification Form, is:

- (a) zoned residential or commercial;
- (b) not served by a public water supply; and
- (c) subject to a subdivision plan or a building permit application approved by the appropriate municipal authority.

Potentially Productive Aquifer means:

(a) all aquifers delineated by the U.S. Geological Survey (USGS) as a high or medium yield aquifer; and

(b) all aquifers located east of the Cape Cod Canal (Cape Cod), on the Elizabeth Islands, on Martha's Vineyard, or on Nantucket.

~~Potential Public Water Supply means a drinking water source which, at the time of the earlier of the following two filings, the Site Assignment Application, or where applicable, the Massachusetts Environmental Policy Act Environmental Notification Form, has been determined to be capable of yielding water of sufficient quality and quantity for future development as a public water supply, and either:~~

- ~~(a) has been designated and received Departmental approval under the "Guidelines and Policies for Public Water Systems", as amended; or~~
- ~~(b) has had the necessary documentation submitted on its behalf for determination as a Potential Public Water Supply as defined by the Department's Division of Water Supply.~~

Project Evaluation Committee (Committee) means the Commissioners or Directors of the following Executive Office of Environmental Affairs departments and offices or their designees: Department of Environmental Protection, Department of Environmental Management, Massachusetts Environmental Policy Act office, Department of Fisheries, Wildlife, and Environmental Law Enforcement, Coastal Zone Management Office, and the Metropolitan District Commission; or other persons as designated by the Secretary of the Executive Office of Environmental Affairs.

Site Assignment means a determination by a board of health or by the Department as specified in M.G.L. c. 111, § 150A that which:

- (a) designates an area of land for one or more solid waste uses subject to conditions with respect to the extent, character and nature of the facility that may be imposed by the assigning agency after a public hearing in accordance with M.G.L. c.111, s.150A; or

(b) establishes that an area of land was utilized as a site for the disposal onto land of solid waste or as a site for a refuse disposal incinerator prior to July 25, 1955, ~~as provided in St. 1955, c. 310, § 2.~~ The area of land ~~determined to be~~ site assigned under this subsection shall be limited to the lateral limits of the waste deposition area ("the footprint") or the area occupied by the incinerator on July 25, 1955, except as otherwise approved by the Department in approved plans. Said assignment shall apply only to uninterrupted solid waste disposal activities within the footprint or plan-approved area and shall have no legal force or effect at any time after the cessation commencement of non-disposal activities except as otherwise provided at 310 CMR 16.21; or
(c) establishes that an area of land was utilized as a site where a handling facility was in existence prior to August 28, 1970 and has been in operation since August 28, 1970.

:
Watershed means an area defined by 310 CMR 22.02, Drinking Water Regulations, as may be amended.

[NOTE: WATER SUPPLY REGULATIONS DEFINITION - Watershed means the area contained within geomorphic or topographic boundaries of higher elevations which cause surface water and groundwater to drain or flow to lower elevations into water used as a source of public water supply.]

Zone A means an area defined by 310 CMR 22.02, Drinking Water Regulations, as may be amended.

[NOTE: WATER SUPPLY REGULATIONS DEFINITION - Zone A means: a) the land area between the surface water source and the upper boundary of the bank; b) the land area within a 400 foot lateral distance from the upper boundary of the bank of a Class A surface water source, as defined in 314 CMR 4.05(3)(a); and (c) the land area within a 200 foot lateral distance from the upper boundary of the bank of a tributary or associated surface water body.]

Zone B means an area defined by 310 CMR 22.02, Drinking Water Regulations, as may be amended.

[NOTE: WATER SUPPLY REGULATIONS DEFINITION - Zone B means the land area within one-half mile of the upper boundary of the bank of a Class A surface water source, as defined in 314 CMR 4.05(3)(a), or edge of watershed, whichever is less. However, Zone B shall always include the land area within a 400 foot lateral distance from the upper boundary of the bank of the Class A surface water source.]

Zone C means an area defined by 310 CMR 22.02, Drinking Water Regulations, as may be amended.

[NOTE: WATER SUPPLY REGULATIONS DEFINITION - Zone C means the land area not designated as Zone A or B within the watershed of a Class A surface water source as defined at 314 CMR 4.05(3)(a).]

Zone of Contribution means the recharge area that provides water to a well.

Zone I means an area defined by 310 CMR 22.02, Drinking Water Regulations, as may be amended.

[NOTE: WATER SUPPLY REGULATIONS DEFINITION - Zone I means the protective radius required around a public water supply well or wellfield. For public water system wells with approved yields of 100,000 gpd or greater, the protective radius is 400 feet. Tubular wellfields require a 250 foot protective radius. Protective radii for all other public water system wells are determined by the following equation: Zone I radius in feet = (150 x log of pumping rate in gpd) - 350. This equation is equivalent to the chart in the Division's Water Supply Guidelines.

A default Zone I radius or a Zone I radius otherwise computed and determined by the Department shall be applied to transient non-community (TNC) and non-transient non-community (NTNC) wells when there is no metered rate of withdrawal or no approved pumping rate. The default Zone I radius shall be 100 feet for TNC wells and 250 feet for NTNC wells.]

Zone II means an area defined by 310 CMR 22.02, Drinking Water Regulations, as may be amended. ~~means that area of an aquifer which contributes water to a well under the most severe recharge and pumping conditions that can be realistically anticipated (pumping at the safe yield of the well for 180 days without any natural recharge occurring); it is bounded by the groundwater divides which result from pumping the well and by contact of the edge of the aquifer with less permeable materials such as till and bedrock. At some locations, streams and lakes may form recharge boundaries. For the purposes of 310 CMR 16.00, a Zone II area is one which has been defined and delineated in accordance with the Department's Division of Water Supply "Guidelines for Public Water Systems", September, 1984 Supplement to the 1979 edition or the most recent version thereof.~~

[NOTE: WATER SUPPLY REGULATIONS DEFINITION - Zone II means that area of an aquifer which contributes water to a well under the most severe pumping and recharge conditions that can be realistically anticipated (180 days of pumping at approved yield, with no recharge from precipitation). It is bounded by the groundwater divides which result from pumping the well and by contact of the aquifer with less permeable materials such as till or bedrock. In some cases, streams or lakes may act as recharge boundaries. In all cases, Zone II shall extend upgradient to its point of intersection with prevailing hydrogeologic boundaries (a groundwater flow divide, a contact with till or bedrock, or a recharge boundary).]

16.03: Time

(1) Computation of Time. Unless otherwise specifically provided by law, 310 CMR 16.00, and any determination issued pursuant to 310 CMR 16.00, any time period prescribed or referred to in 310 CMR 16.00 shall begin with the first day following the act which initiates the running of the time period, and shall include every calendar day, including the last day of the time period so computed. If the last day is a Saturday, Sunday, legal holiday, or any other day in which the

Department's offices are closed, the time period shall run until the end of the next business day. If the time period prescribed or referred to is six days or less, only days when the offices of the Department are open shall be included in the computation.

(2) Timely Filing. Papers required or permitted to be filed under 310 CMR 16.00, or any provision of the applicable law must be filed at the board of health office or such other place as the board of health, Department or 310 CMR 16.00 shall designate within the time limits for such filings as set by 310 CMR 16.00. Papers filed in the following manner shall be deemed to be filed as set forth herein:

- (a) hand-delivery during business hours shall be deemed filed on the day delivered;
- (b) hand-delivered during non-business hours shall be deemed filed on the next regular business day; and
- (c) mailing by placing in U.S. mail shall be deemed filed on the date so postmarked.

(3) All papers shall show the date received by the board of health and the Department, and the board of health and the Department shall cooperate in giving date receipts to Persons filing papers by hand-delivery.

16.04: Severability

It is hereby declared the provisions of 310 CMR 16.00 are severable, and if any provision hereof or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions of 310 CMR 16.00, and the application thereof to persons or circumstances which can be given effect without the invalid provision or application.

16.05: Applicability

(1) General. 310 CMR 16.00 shall govern the [Capacity Allocation Process \(CAP\)](#) and the process of application, review, public hearing and decision for a site assignment to expand a solid waste management facility or establish a new solid waste management facility at an unassigned site.

(2) Facilities and Operations to Which 310 CMR 16.00 Does Not Apply. 310 CMR 16.00 does not apply to the following facilities or operations:

- (a) Hazardous Waste Facilities. Facilities that manage hazardous wastes which are regulated pursuant to 310 CMR 30.000;
- (b) Waste Water Treatment Residuals Facilities. Facilities which manage waste-water treatment plant residuals subject to the siting process pursuant to M.G.L. c. 83, § 6 and regulated pursuant to 314 CMR 12.00, provided that 310 CMR 16.00 does apply to solid waste management facilities which co-dispose **or co-compost** waste-water treatment plant residuals with solid waste;
- (c) Small Combustion Facilities. Solid waste combustion facilities that are rated by the Department at one ton per hour or less pursuant to M.G.L. c. 111, § 150A;

(d) Farming Operations. The use or application of agricultural manures in normal farming operations.

(e) Solid Waste Storage Containers. Dumpsters, roll-offs, or other temporary storage containers located at, and used exclusively for the collection of solid waste generated by an apartment house or complex, condominium association, school, recreational areas, industrial or commercial establishment, office, individual residence or farm, construction site or demolition site; and

(f) Manufacturing and Industrial Operations. The following classes of manufacturing or industrial operations which temporarily store and/or utilize pre-sorted recyclable materials in the manufacturing or industrial process, including:

1. paper mills, including de-inking plants and paperboard manufacturers;
2. steel mills;
3. aluminum smelting operations and mills;
4. glass manufacturing plants;
5. plastic manufacturing plants;
6. tire re-capping plants;
7. de-tinning plants;
8. asphalt batching plants.

(3) Conditionally Exempt Recycling Activities Operations. The following ~~recycling operations or~~ activities do not require a site assignment provided the operation incorporates good management practice, is carried out in a manner that prevents an unpermitted discharge of pollutants to air, water, soil and ~~or~~ other natural resources of the Commonwealth and results in no public nuisance:

(a) Recycling Drop-Off Centers. Recycling drop-off centers.

(b) Returnable Bottle-Bottle Bill-Handling Operations. Operations which collect, store, and process only beverage containers subject to the provisions of M.G.L. c. 94, §§ 321 through 326.

(c) Paper Baling and Handling. Baling and handling operations that process only recyclable paper (includes all grades of paper and paperboard).

(d) Recycling Operations. Operations processing, transferring or temporarily storing recyclables, but not including operations which recycle construction and demolition debris or special wastes, which comply with the following additional conditions:

1. the operation receives only recyclable material pre-sorted by the original generator;
2. the operation receives no more than 100 tons per day (tpd) of recyclable materials, including incidental solid waste, but not including paper;
3. the operation receives, handles and stores recyclable materials, incidental solid waste and residues only within an enclosed handling area or adequately covered containers or trucks;
4. the amount of residue generated by a processing operation does not average more than 15% of the weight of the recyclables processed during any quarter.
5. there is no speculative accumulation of any material. For purposes of 310 CMR 16.05, speculative accumulation shall be presumed to occur if materials, whether in their as-received, in-process or processed condition, are stored for more than 90 days from the date of their receipt at the recycling operation. This time limit may be exceeded in the case of storage

of a processed material pending accumulation of a transportable load (e.g. one full truck load).

6. accurate records are maintained and certified reports are submitted every 90 days for the first year of operation and once a year thereafter which provide information to enable the Department to determine that the operation has complied with the conditions set forth at 310 CMR 16.05(3)(d)1. through 5. (Reports shall be filed with the appropriate Department regional office and with the board of health); and

7. at least 30 days prior to commencement of operations, the operator, on a form as may be supplied by the Department, notifies the Department and the board of health of the intent to operate.

(e) Asphalt, Brick and Concrete Recycling Operations. An asphalt, brick or concrete rubble processing (crushing) operation when:

1. the operation is located at:

a. an active quarry or active sand and gravel pit where any rubble transported to the site of the operation is pre-sorted so it contains only asphalt, brick or concrete rubble; or

b. the site of a demolition and/or construction project where all the rubble processed is generated at the site;

2. the rubble is processed so the maximum length of the largest dimension of any piece of rubble is less than six inches;

3. all rebar is removed in the process and is recycled or disposed in an approved facility;

4. there is no speculative accumulation of the rubble or rebar prior to or after crushing and accurate records are maintained that are adequate for the Department to determine whether speculative accumulation is occurring; and

5. at least 30 days prior to commencement of operations, the operator notifies the Department and the board of health using a form as may be supplied by the Department.

(4) Conditionally Exempt Composting Operations. The following composting operations and activities do not require a site assignment provided the operation incorporates good management practice, is carried out in a manner that prevents an unpermitted discharge of pollutants to air, water or other natural resources of the Commonwealth and results in no public nuisance:

(a) Backyard Composting. Backyard composting.

(b) Leaf Composting Operations. Operations which transfer or compost clean leaves and yard waste, provided that either:

1. the operation is registered with the Department; or

2. the operation is located within the property boundaries of the site where all the leaf and yard **material** is generated;

(c) Agricultural Waste Composting. A composting operation for agricultural wastes, when located on a farm engaged in "agriculture" or "farming" as defined in M.G.L. c. 128, § 1A. Such composting operation may, in addition to agricultural wastes, utilize only the following compostable materials, provided the operation is registered with and complies with policies of the Department of Food and Agriculture:

1. leaf and yard **material**;

2. wood wastes;
3. clean newspaper or cardboard;
4. clean shells and bones;
5. non-agricultural sources of manures and animal bedding materials.
6. not more than ten tons per day of compostable material composed of generator pre-sorted produce, and/or generator pre-sorted vegetative residues from food or beverage processing that consists solely of materials from plants, (e.g., husks, leaves, skins, sediments and roots) and other plant by-products from fruit or vegetable canning, freezing or preserving operations; and
7. not more than one ton per day of pre-sorted kitchen, restaurant and institutional food waste.

(d) **Composting on Industrial, Commercial or Institutional Sites or Zoos.** A composting operation located at an industrial, commercial or institutional site which composts less than **two tons or four cubic yards** per week **vegetative materials or food materials or animal manures** which are generated on-site, and where, at least 30 days prior to commencement of operations, the operator notifies the Department and the board of health, using a form as may be supplied by the Department.

(5) **Other Conditionally Exempted Operations.** The following operations do not require a site assignment or a Solid Waste Management Facility Permit pursuant to 310 CMR 19.000, provided the operation incorporates good management practice, is carried out in a manner that prevents an unpermitted discharge of pollutants to air, water or other natural resources of the Commonwealth and results in no public nuisance:

~~(a) **Dumpsters and Roll-Offs.** Dumpsters, roll-offs, or other temporary storage containers located at, and used exclusively for the solid waste generated and collected by a department of public works;~~

(a) Temporary Storage by Public Works Departments. Dumpsters, roll-offs, or other temporary storage containers or temporary storage areas at a location controlled by a public works department such as a municipal department of public works, the Massachusetts Highway Department, Massachusetts Turnpike Authority, Massachusetts District Commission or similar government agency, when used exclusively for solid waste generated and collected by the public works department and when storage is appropriate for the type of waste (e.g., materials such as trash from roadside trash barrels should be stored in dumpsters or roll-offs while materials such as street sweepings may be stored without containers);

(b) Hospital and Laboratory Infectious Waste Storage Areas. Hospitals, medical laboratories and biotechnology companies which accept for storage, pending off-site treatment or disposal, infectious waste generated on-site by the hospital, medical laboratory or biotechnology company, or infectious waste generated off-site, provided:

1. the hospital, biotechnology company or laboratory has sufficient properly designed and operated infectious waste storage areas and manages all infectious waste in compliance with the Regulations for Storage and Disposal of Infectious or Physically Dangerous Medical or Biological Waste, State Sanitary Code Chapter VIII, 105 CMR 480.000; and

2. the hospital, biotechnology company or medical laboratory accepts and stores off-site generated infectious waste with on-site generated infectious waste only as follows:

a. Hospitals. Collects and stores infectious waste generated off-site from hospitals or clinics which the hospitals owns, or from hospitals, clinics or physicians with whom the hospital has a professional affiliation for the provision of medical services.

b. Medical Laboratories. Collects and stores infectious waste generated off-site from laboratories it operates, or generated off-site by customers to whom the laboratory provides laboratory services and only to the extent that the infectious waste collected from such customers and stored does not, on a daily basis, exceed the amount of infectious waste generated on-site from the laboratory's own laboratory activities.

c. Biotechnology Companies. Collects and stores infectious waste generated off-site from the company's biotechnology operations conducted at buildings owned or leased by the company.

3. the infectious waste storage area would not otherwise require a site assignment or solid waste management facility permit pursuant to 310 CMR 16.00 and 310 CMR 19.000, respectively.

(c) Occasional Solid Waste Vehicle Layover. Sites owned or leased by a solid waste transporter for purposes of truck storage or repair where enclosed trucks, trailers and other solid waste handling and transfer equipment containing loads of solid waste are occasionally stored for overnight or weekend layover prior to transportation to a solid waste management facility, provided:

1. there is no unloading or transfer of the solid waste from the container or vehicle to the ground or to another container or vehicle; and

2. the zoning of the truck storage or repair site would not disallow such an activity or use.

(d) Residential Disposal of Wood Wastes. Disposal of wood wastes at a single family residence or farm where the wood wastes are both generated and disposed within the boundaries of such residence or farm by the occupant or resident of that residence or farm.

(e) Wood Chipping and Shredding Operations. Wood chipping and wood shredding operations when:

1. only brush, stumps, lumber ends and trimmings, wood pallets, bark, wood chips, shavings, slash and other clean wood, which are not mixed with other solid wastes, are processed;

2. no wood containing or likely to contain asbestos, glues, or chemical preservatives such as creosote, pentachlorophenol, paints, stains or other coatings is processed;

3. there is no speculative accumulation of wood or wood chips prior to or after processing. For purposes of 310 CMR 16.05, the time period for evaluating if speculative accumulation is occurring shall be 90 days; and

4. at least 30 days prior to commencement of operations, the operator notifies the Department and the board of health, using a form as may supplied by the Department.

(6) Determination of Need for Site Assignment. The Department shall make a determination of need for site assignment for the following operations upon application pursuant to 310 CMR 16.05(7). These following operations shall be

presumed to be solid waste management facilities unless the Department issues a determination that site assignment is not required:

(a) recycling operations not exempted under 310 CMR 16.05(3) and handling only pre-sorted recyclable materials; and

(b) composting operations **which accept the following types and amounts of materials generated off-site:**

1. leaves and yard material greater than thirty thousand (30,000) cubic yards or six thousand tons of leaves and yard material on site at any time;

2. vegetative material (including manures and bulking amendments or carbon sources) less than or equal to 20 cubic yards or ten tons per day;

3. food material (including manures and bulking amendments or carbon sources) less than or equal to 10 cubic yards or 5 tons per day;

(c) **agricultural composting operation which are not exempt under 310 CMR 16.05(5)(a)3.**

(7) Determination Process.

(a) Any person making application for a determination of need for site assignment under 310 CMR 16.05(7) shall submit an application **using forms and procedures specified in the Timely Action and Fees Provisions Regulations, 310 CMR 4.00** to:

1. the appropriate regional office of the Department; and
2. a copy to the board of health of jurisdiction.

(b) Information on Materials. The following information, where applicable for a given material, shall be provided by the applicant:

1. a general description of the recyclable or compostable material;
2. a chemical and/or physical characterization of the recyclable or compostable material where specifically required by the Department;
3. identification of the quantity, quality and sources of the recyclable or compostable material;
4. the proposed method(s) for recycling or composting the material;
5. a description of the product(s) to be made from the material or a description of the use to which the material will be put;
6. appropriate documentation that markets or uses exist for the compost, recyclable materials or products; and
7. other information or data as required by the Department.

(c) Information on the Site. The application shall include the following descriptions, plans or other information, where deemed necessary by the Department:

1. a locus map indicating the location of the proposed facility;
2. a site map indicating:
 - a. the zoning classification of the site and adjacent areas; and
 - b. the location of all wetlands on and adjacent to the site;
3. site and design plans which include:
 - a. the location and size of all on-site storage areas for recyclable or compostable materials and products; and
 - b. the layout of all processing equipment, buildings, roads, run-on and run-off controls, where applicable, and other appurtenances.

4. the proposed method or methods for pre-sorting recyclable or compostable materials from other solid wastes prior to delivery to the facility;
 5. a description of all processing equipment to be used at the facility (for example grinders, shredders, air classifiers, and screening equipment);
 6. the quantity and quality of any wastewater to be produced and the proposed method of discharge;
 7. the quantity and quality of any residues and off-specification materials generated and how and where these wastes will be disposed; and
 8. other site specific information as required by the Department.
- (d) Criteria for Department Determination of Need. The Department shall use the following criteria to determine if a site assignment is required:
1. the application is accurate and complete;
 2. the extent to which the material meets the definition of a recyclable or compostable material. ~~In determining if a material is compostable or recyclable the Department may consider~~ ing, but not be limited to, the nature of any contaminants and their probable effect on products or public health, safety and the environment;
 3. the material can feasibly be processed, if applicable, and recycled or composted under the proposal set forth in the application;
 4. the extent to which the material is pre-sorted. In determining if a material is pre-sorted the Department may consider the relative proportion of solid waste to incoming recyclable or compostable materials;
 5. the quantity of residues generated through the processing of recyclable or compostable materials, including rejects, does not average more than the following percentages by weight or volume where applicable, as determined by the Department, of materials handled during any quarter:
 - a. 5% for the recycling of demolition debris or construction material;
 - b. 5% for composting of leaf and yard waste;
 - c. 15% for recycling of post-consumer recyclables;
 - d. such other percentage for other materials as the Department may establish in order to minimize residue generation. The residue generation criteria may be modified by the Department under the following circumstances:
 - i. the industry average for processing materials of the same nature utilizing the best available processing equipment is different than the percentages set forth in 310 CMR 16.05(7)(d)5.a. through c.
 - ii. the scale of the facility is sufficiently small that actual residue generation is minimal;
 - iii. the facility is a demonstration or pilot project of fixed limited duration.
 6. there will be no speculative accumulation of materials;
 7. the facility will not operate as a de facto transfer station, solid waste storage facility or processing facility, for which a site assignment would be required;
 8. materials and products will be handled in a manner which will not cause the development of nuisance conditions and will ensure protection of public health and safety and the environment; and
 9. the proposed project can be successfully completed in compliance with all other appropriate local, state and federal rules and regulations.

(e) Determinations of Need.

1. All Department decisions regarding determinations of need for site assignment for recycling or composting facilities shall be made in writing.
2. The Department shall issue a draft determination and send a copy to the applicant and board of health.
3. The Department shall accept written comments up to 21 days from the date of issuance of the draft determination. Commentors may, in their comments, request the Department to revise with conditions a draft determination or show why the facility should be required to obtain site assignment as a solid waste management facility.
4. The Department shall issue a final determination following the 21 day comment period.
5. The Department may make a determination that no site assignment is needed subject to the applicant's compliance with conditions. These conditions may include, but are not limited to:
 - a. requirements to ensure that only exempt recycling or composting operations are conducted on the site;
 - b. weighing and operational reporting requirements, including maintenance of a daily log of the quantity of materials received and shipped, estimation or weighing of materials, depending on facility size, and regular certified reports detailing operating conditions and material disposition;
 - c. the authority of the Department or the board of health without prior notice to periodically enter upon and inspect the site, the facility and relevant operating records to determine and compel compliance with applicable regulations and the conditions of the determination;
 - d. payment of penalties in accordance with the provisions of M.G.L. c. 21A, § 16 for violation of a condition or other requirement; and
 - e. a termination date.

(8) Violations of the Conditions of a Determination. In the event of a violation of applicable regulations or conditions established in a determination the Department may modify, suspend or revoke the determination or initiate an enforcement action in accordance with applicable statutes or regulations. Where a determination is suspended, operations shall cease until:

- (a) the operator corrects the violation to the satisfaction of the Department; or
- (b) the operator applies for and obtains a site assignment and solid waste management facility permit.

(9) Project Modifications.

- (a) The proponent shall notify the Department and the board of health of proposed changes in design or operations where:
 1. the facility operator intends to recycle or compost material(s) substantially different from those materials for which the current determination was granted;
 2. the design and/or operation of the facility is to be altered; or
 3. the facility operator proposes to increase the volume or quantity of materials to be handled by the operation above that volume or quantity established in the current determination.

(b) Where the Department determines that the change in design or operation is significant, the Department may require a revised application for determination of need be submitted to the Department, with a copy submitted to the board of health, for review. The board of health may comment within 21 days on any proposed modification.

(10) Demonstration Projects for Recycling or Composting Pre-Sorted Material.

The Department may approve projects to demonstrate innovative recycling or composting techniques at unassigned sites as provided below.

(a) General Conditions. The following conditions shall apply to all demonstration projects approved under 310 CMR 16.05(10):

1. The materials to be processed shall be limited to the pre-sorted recyclable or compostable materials permitted to be processed by operations set forth at 310 CMR 16.05(3) and (4); and
2. projects shall be limited to a specified time period not to exceed one year, after which time they shall terminate unless appropriate approvals are obtained.

(b) Application. An application to conduct a recycling or composting demonstration project shall be submitted to the Department, the board of health and, in the case of agricultural composting, to the Department of Food and Agriculture. The application shall contain:

1. the information described at 310 CMR 16.05(7)(b) and (c) as required by the Department;
2. the proposed duration of the demonstration project; and
3. a description and schedule of interim and final reports to be submitted to the Department describing and evaluating the project.

(c) Criteria for Department Determination. The Department shall consider the following criteria when determining whether to allow the demonstration project:

1. the potential for adverse impacts taking into account the recyclable and compostable materials, project location, design and operating controls, management practices and operator experience;
2. the likelihood of obtaining useful, new information in the time frame proposed for the demonstration project; and
3. the ability of the applicant to appropriately use or dispose of all project materials.

(d) Department Decision. The Department shall follow the procedure described at 310 CMR 16.05(7)(e)1. through 4. when issuing its decision on whether to allow the demonstration project.

16.06: Prohibitions

No place in any city or town shall be maintained or operated as a site for a facility unless such place has been assigned by the board of health or the Department, whichever is applicable, pursuant to M.G.L. c. 111, § 150A. Any disposal of solid waste at any location not so assigned shall constitute a violation of said statute and of 310 CMR 16.00.

16.07: Certification

~~Any person, required by 310 CMR 16.00 or any order issued by the Department, to submit papers shall identify themselves by name, profession, and relationship to the applicant and legal interest in the proposed site, and make the following 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 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."~~

16.07: Accurate and Timely Submittals

(1) Accurate Submittals. No person shall make any false, inaccurate, or misleading statement in any application, document, information or statement which that person submits or is required to submit to the Department pursuant to 310 CMR 16.00.

(2) Timely Submittals. Any application, document, information or statement which any person is required to submit to the Department shall be submitted within the time period prescribed in 310 CMR 16.00 unless otherwise specified by the Department.

16.08: Accurate and Complete Record Keeping

No person shall make any false or misleading statement in any record, report, plan, file, log, or register which that person keeps or is required to keep, pursuant to 310 CMR 16.00. Any record keeping which any person is required to perform shall be promptly, fully, and accurately performed and shall otherwise be in compliance with 310 CMR 16.00.

16.09: Certification and Engineer's Supervision

(1) Certification. Any person, required by 310 CMR 16.00 to submit papers shall identify themselves by name, profession, and relationship to the applicant and legal interest in the facility, and make the following 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 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."

(2) Engineering Supervision. All papers pertaining to design, operation, maintenance, or engineering of a site or a facility shall be completed under the supervision of a registered professional engineer knowledgeable in solid waste facility design, construction and operation and shall bear the seal, signature and discipline of said engineer. The soils, geology, air modeling, air monitoring and groundwater sections of an application shall be completed by competent professionals experienced in the fields of soil science and soil engineering, geology, air modeling, air monitoring and groundwater, respectively, under the

supervision of a registered professional engineer. All mapping and surveying shall be completed by a registered surveyor.

16.10: Determinations by the Department

(1) Burden. Where an applicant is seeking a determination from the Department, the applicant has the burden of establishing, on the basis of credible evidence from a competent source, such facts as are necessary to meet the conditions and criteria set forth in the applicable provisions of 310 CMR 16.00.

(2) Additional Information. In addition to such submissions by the applicant, the Department may accept and rely upon credible evidence from other competent sources.

[NOTE: 16.11 THROUGH 16.24 IS ALL NEW AND HAS NOT BEEN UNDERLINED.]

16.11: Capacity Allocation Process (CAP)

- (1) Applicability. The capacity allocation process (CAP) shall apply to the following new and expanding solid waste disposal facilities:
 - (a) all new landfills and landfill expansions except:
 1. ash monofills specifically for the disposal of ash from a designated solid waste combustion facility;
 2. vertical expansions for non-MSW or increases in the rate of disposal of non-MSW at existing unlined landfills which are subject to a consent order for closure and such expansion or rate increase is either:
 - a. integral to the proper closure of the facility within the specified time period (e.g. necessary to achieve a proper final capping system through the establishment of proper grades or elevations); or
 - b. essential to finance the closure of the facility.
 3. at the discretion of the Department, a landfill applying for a permit which includes either:
 - a. a demonstration project; or
 - b. an innovative technology.
 4. a landfill permit for a new landfill, landfill expansion or landfill modification which is necessary to respond to a threat to public health, safety and the environment, as determined by the Department;
 5. a landfill at which the Department determines it is reasonably likely that, due to exceptional conditions within the area served by the landfill, severe economic and unavoidable hardship to the community may result if the facility were not constructed.
 - (b) all new solid waste combustion facilities and expansions to existing solid waste combustion facilities.
- (2) Analysis of Need for Disposal Capacity.
 - (a) Analysis of Need. The Department periodically shall determine the amount of solid waste disposal capacity needed to dispose solid waste generated in Massachusetts and necessary to protect the public health and safety and the environment. The Department shall incorporate this determination into the statewide master plan pursuant to M.G.L. c. 16, s. 21.
 - (b) Amount of Disposal Capacity. In determining the amount of solid waste disposal capacity needed the Department may consider, without limitation, the following factors:
 1. waste generation;
 2. waste reduction and diversion through reuse, recycling, processing and composting;
 3. availability of and utilization rates for permitted disposal capacity.
 - (c) Type of Disposal Capacity. In determining the type of solid waste disposal capacity (e.g. MSW, non-MSW, C&D) needed the Department may consider without limitation, the following factors:
 1. maximizing waste reduction and diversion;
 2. energy recovery;

3. conservation and preservation of natural resources;
 4. promotion of an integrated solid waste management system.
- (d) Restricting Disposal Capacity. Notwithstanding 310 CMR 16.11(3)(a), if the Department determines there is sufficient permitted disposal capacity, the Department may stay the review or approval of any and all application(s) for additional disposal capacity.
- (e) Capacity Allocation. If the Department determines that there may be a need for additional solid waste disposal capacity, the Department may initiate the capacity allocation process set forth at 310 CMR 16.11(4) to select the disposal capacity proposal(s) which qualify for a Notice to Proceed.

(3) Projects Eligible for Capacity Allocation Process. Any proponent of a solid waste management disposal facility project proposal may file an application for the Capacity Allocation Process.

(4) Commencement of the Capacity Allocation Process and Notifications. The Capacity Allocation Process (CAP) shall commence upon notification by the Department as follows:

(a) General Notification. Notification shall be placed by the Department in the Environmental Monitor, the Massachusetts Municipal Association Newsletter and major newspapers of general circulation in the Commonwealth;

(b) Content of Notification. Said notice shall, at a minimum, contain the following information:

1. a brief description of the estimated capacity need which must be addressed including the amount of capacity needed on an annual basis, the estimated duration of that need and the type(s) of wastes for which capacity is needed;
2. the date by which CAP applications shall be submitted to the Department;
3. the schedule for review of applications, selection of a project and opportunities for public comment; and
4. the contact person at the Department and phone number to call to obtain more detailed information about the CAP process.

16.12: Public Information Meeting

The Department may schedule one or more informational meetings for project proponents and other interested parties to provide information on the CAP including, without limitation, the schedules for submittals and actions by the Committee, the application process itself, criteria to be addressed, and review procedures.

16.13: Application for Capacity Allocation Projects

- (1) A project proponent shall submit an application, on a form provided by the Department, which includes, at a minimum, the following information:
- (a) the name and address of the applicant;

- (b) certification of ownership of the land or a written agreement from the landowner granting the project proponent the right to operate a disposal facility on the site;
- (c) experience of the proponent and facility operator, if known, in solid waste disposal facility construction and operation;
- (d) operational and compliance history at the project and at other disposal facilities of the proponent or the operator;
- (e) comparison of the project with the Tier I and Tier II criteria set forth at 310 CMR 16.15 and 16.18, respectively;
- (f) feasibility study indicating whether the project can be constructed and operated in accordance with the schedule established by the Department and including, without limitation:
 1. the proposed project's status relative to local zoning and other land use restrictions;
 2. a project schedule identifying all tasks or steps required to obtain a permit to operate the facility;
- (g) methods and actions taken for financing the project;
- (h) relative impacts on human receptors;
- (i) relative impacts on environmental receptors;
- (j) impact on significant historic or archeological areas;
- (k) traffic impacts;
- (l) minimum amount of tonnage required to make the project financially viable, with supporting explanation;
- (m) length of term of the permit necessary for financial viability of the project and supporting explanation;
- (n) project's contribution to achieving integrated waste management goals of source reduction, toxicity reduction, reuse, recycling, composting and energy recovery;
- (o) impacts related to land use; and
- (p) a copy of the Environmental Notification Form (ENF), if required by 301 CMR 11.26(7)(f) of the Massachusetts Environmental Policy Act Regulations (MEPA), or certification that the project has completed review under MEPA.

(2) The Department may require the applicant to provide in the application, without limitation, information or reference maps, reports, analyses and other data previously submitted in the course of state or local reviews of the site or facility including, without limitation, MEPA, site assignment, permit reviews, site assessment or zoning, or new information prepared for a CAP application.

(3) In addition to the information provided through their application, the applicant shall provide such additional and reasonably available information as may be required by the Department to evaluate the project in relation to the criteria set forth at 310 CMR 16.15 and 16.18.

(4) Signatures. Applications shall be signed and sworn to by the applicant(s) and his/her agent, if any, as to all statements of fact therein, as set forth in 310 CMR 16.09. Where the applicant is not the owner in fee simple of the title or interest in the site, then said owner shall also sign the application.

- (5) Application Submission Requirements. The applicant shall file:
 - (a) one copy of the application with the Department;
 - (b) one copy of the application with the local board of health;
 - (c) one copy of the application with the board of health of any municipality within one-half mile of any boundary of the proposed site ("abutting board of health"); and
 - (d) one copy of the application with the Massachusetts Environmental Policy Act (MEPA) office where the proponent has not already completed MEPA review.

16.14: Public Review and Comment on Application

- (1) Public Notice of Filing of Application.
 - (a) Publication. The applicant shall have a notice published in at least one daily or weekly newspaper in the municipality where the proponent's project is proposed and where the municipality is within one-half mile of an adjacent municipality, in the adjacent municipality. Said notice shall appear at least one week prior to the due date for applications specified by the Department at 310 CMR 16.11(5)(b)2.
 - (b) Where the municipality has a population of greater than 15% of residents that do not speak English as their primary language, the applicant shall publish an additional notice in a daily or weekly newspaper(s) circulated in that community written in the primary language(s) of these residents. The notice will provide information regarding the project, the capacity allocation process, and the opportunities for public participation in the capacity allocation process.
- (2) Public Comments.
 - (a) The Department shall accept written comments from the board of health, abutting board of health, or other interested persons regarding the completeness of the application and the merits or deficiencies of a project for a period of thirty (30) days after the application due date identified by the Department at 310 CMR 16.11(5)(b)2.
 - (b) Extending or Reopening the Public Comment Period. The Department may extend the public comment period for one or more applicants. If an extension is granted, the applicant shall publish a notice thereof in the manner prescribed in 310 CMR 16.14(1). Such notice shall describe the extension and specify any new issues to be considered.
- (4) Modifications of the Application. For a period of 40 days commencing with start of the public comment period, the applicant may modify or supplement its application to respond to comments regarding completeness of the application submitted in accordance with 310 CMR 16.14(3), or in response to comments of the Department.

16.15: TIER I Review

- (1) Purpose. The purpose of the TIER I review is to:

- (a) determine whether a project is eligible for comparative evaluation under TIER II based on the Tier I Location Criteria set forth at 310 CMR 16.15(5);
- (b) allow the Committee to issue a preliminary rating of the eligible projects.

(2) Tier I Criteria.

- (a) The criteria used to review projects under Tier I Review shall include whether:
 - 1. the application is complete; and
 - 2. the project meets the list of minimum setbacks or other geographical restrictions set forth at 310 CMR 16.15(3);
- (b) Failure to meet any of these criteria shall result in the disqualification of a project from further consideration.

(3) Tier I Location Criteria. No site shall be considered eligible for Tier II review where any area of waste deposition would:

- (a) not meet the Criteria for Landfill Facilities as set forth at 310 CMR 16.60(3)(a); and
- (b) not meet the General Site Suitability Criteria as set forth at 310 CMR 16.60(4)(a), (d) and (g), Agricultural Lands, Areas of Critical Environmental Concern, and Size of Facility, respectively; and
- (c) be less than 15 miles from the intake area of the Wachusett Reservoir or Quabbin Reservoir.

(4) TIER I Report.

- (a) The Committee shall issue a report containing the findings from the TIER I review within 45 days of the date set for submission of applications, provided that the issuance date of the report may be extended for up to an additional 30 days by the Project Evaluation Committee.
- (b) The report shall categorize the projects into the following groups:
 - 1. eligible to proceed to TIER II; or
 - 2. ineligible to proceed to TIER II; or
 - 3. conditionally eligible as described at 310 CMR 16.15(5).
- (c) The report also shall state the facts and reasons in support of the category to which each project is assigned and, if applicable, its preliminary rating.
- (d) The report also may include the adoption of evaluation methods as described at 310 CMR 16.17(3)(b) for TIER II review.

(5) Conditionally Eligible.

- (a) A project may be classified as conditionally eligible when the application is determined to be incomplete.
- (b) The applicant shall submit sufficient information within ten (10) days of the release of the TIER I report to correct the deficiencies in the application. Failure to submit sufficient information will render the project ineligible to be evaluated under TIER II review.
- (c) Upon submission of sufficient information to correct the deficiencies, the Department shall issue a notice to the applicant and the local board of the health that the project is eligible to be evaluated under TIER II review.

16.16: Public Notice of TIER I Report

- (1) Public Notice. The Committee shall provide public notice upon release of the TIER I report. Where the report contains evaluation methods pursuant to 310 CMR 16.15(6)(d) the public notice may initiate a public comment period on the proposed evaluation methods.
- (2) Method of Notice. The Committee's notice of the release of the report shall be by the following methods:
 - (a) By mail or other means to all the persons and municipal agencies that received notice pursuant to 310 CMR 16.11(5) and other persons who request in writing to receive written notice.
 - (b) By publication in the newspapers designated to publish notice of the commencement of the capacity allocation process pursuant to 310 CMR 16.11(5).

16.17: TIER II Review.

- (1) Purpose. The purpose of the TIER II review is to conduct a comparative review of eligible CAP projects identified from the TIER I review so that the Committee may recommend to the Commissioner which project(s) should be allowed to proceed to permitting and construction pursuant to 310 CMR 16.00 and 19.000. Projects that are not recommended are subject to the restriction imposed pursuant to 310 CMR 16.11(3)(d).
- (2) Information Sources. The Committee's evaluation of the projects shall be based on information provided in the application and supplemental submissions, public comments, and other credible evidence from competent sources. These other sources may include, without limitation:
 - (a) records maintained by the agencies within the Executive Office of Environmental Affairs, the Department of Public Health and federal, state and municipal agencies; and
 - (b) analytical maps developed through application of the Department's Geographic Information System.
- (3) Conducting the Comparative Evaluation
 - (a) The Committee shall evaluate projects based on the characteristics of each project in relation to the criteria set forth at 310 CMR 16.18. In evaluating a project's characteristics the Committee may apply both quantitative and qualitative measures.
 - (b) The Committee may adopt such guidelines and procedures as it deems useful in the analysis and presentation of information regarding the projects' characteristics.
 - (c) The Committee also may choose to preliminarily screen all projects on a quantitative basis and limit all or part of a qualitative evaluation to a group of the higher ranked projects based on the quantitative review.
 - (d) The Committee may choose to interview a number of highly rated applicants or all of the applicants.

16.18: Tier II Criteria Categories

(1) Relative Impact to Human Receptors.

(a) Quantitative Significance. The criteria at 310 CMR 16.18(1)(d) shall represent 40% of the total rating in a quantitative review.

(b) Qualitative Significance. These criteria shall be considered highly significant in a qualitative review.

(c) Measurement Standards. In evaluating these criteria the Committee shall presume that the greater the distance between the project and the receptor the less the reasonably likely impact on the receptor. The application form will delineate appropriate measurement boundaries for the specific factors listed below. The project proponent may rebut the presumption by submitting information in the application to demonstrate the presumption is not applicable due to site specific factors or mitigation measures.

(d) Specific Factors. The following factors shall be evaluated:

1. distance to residential population of 25 people or greater or 10 dwelling units or greater;
2. distance to a school or institution (e.g. nursing home, hospital, elderly housing, day care, or prison);
3. distance to the following Groundwater Drinking Water Supply Sources:
 - a. Zone III;
 - b. Interim Wellhead Protection Area;
 - c. location of the site within a Potentially Productive Aquifer that is reasonably capable of being developed for a future drinking water source given factors including, without limitation, land use development, population density and water quality;
 - d. Sole Source Aquifer with and without downgradient receptors;
4. distances to the following Surface Water Drinking Water Supplies:
 - a. location of site within the Zone C of a public surface drinking water source;
 - b. upgradient of perennial watercourse draining to a surface water supply within 1 mile of waste deposition;
5. extent and nature of natural buffers between waste deposition area and abutting property lines;
6. number of other waste facilities (including waste handling, processing or disposal facilities; listed sites under 21E or federal superfund) within one mile of project site; and
7. number of structures within 2500 feet that might be affected by landfill gas migration and the gas migration potential of soils on and adjacent to the site.

(2) Relative Impacts to Ecological Receptors:

(a) Quantitative Significance. These criteria shall represent 20% of the total rating in a quantitative review.

(b) Qualitative Significance. These criteria shall be considered highly significant in a qualitative review.

(c) Measurement Standards. In evaluating these criteria the Committee shall presume that the greater the distance between the project and the receptor the less the reasonably likely impact on the receptor. The application form

will delineate appropriate measurement boundaries for the specific factors listed below. The project proponent may rebut the presumption by submitting information in the application to demonstrate the presumption is not applicable due to site specific factors or mitigation measures.

(d) Specific Factors. The project shall be evaluated based upon:

1. extent of wetlands on or adjacent to the site;
2. distance from ponds, lakes or rivers;
3. distance from coastal areas or ecologically important areas identified under the Coastal Zone Wilderness Act or Sensitive Areas identified under the National Estuary Program or Near Coastal Water Program of the Clean Water Act or areas subject to coastal flooding;
4. distance between groundwater and the liner;
5. distance from active farmland;
6. distance from an Area of Critical Environmental Concern;
7. distance from Endangered or Threatened Species or Ecologically Significant Community listed by the Natural Heritage Program;
8. distance from Federal or State Wildlife or Game Management Area, or Wildlife Refuge Area;
9. distance from federal, State or local Preserve, Forest, Park, Conservation, Recreation, or Natural Area;
10. distance from Old Growth Forest;
11. distance from federal or State Wild or Scenic River;
12. distance from forest lands in contiguous blocks of one hundred acres or more;
13. distance from a vernal pool, surface water or other natural wetland habitat;
14. distance from a wild trout stream;
15. distance from a significant wildlife migration corridor or feeding area; and
16. distance from areas important to the maintenance of unique biotic communities.

(3) Land Use Impacts.

(a) Quantitative Significance. These criteria shall represent 20% of the total rating in a quantitative review.

(b) Qualitative Significance. These criteria shall be considered moderately significant in a qualitative review.

(c) Measurement Standards. In evaluating these criteria the Committee shall presume that the less the project consumes undeveloped the less potential adverse impact the project will have on the environment. The project proponent may rebut the presumption by submitting information in the application to demonstrate the presumption is not applicable due to site specific factors or mitigation measures.

(d) Specific Factors. The site shall be evaluated based on the extent to which the project includes:

1. a tonnage expansion only;
 2. a vertical expansion within an operating landfill;
 3. a lateral expansion or greenfield abutting a previously used landfill;
- or

4. establishment of a new landfill where the new landfill does not abut an area previously used for solid waste disposal. For purposes of this section parcels separated only by a service road for the exclusive use of the facility will be considered abutting.

(4) Historical and Archeological Impacts

(a) Quantitative Significance. These criteria shall represent 15% of the total rating in a quantitative review.

(b) Qualitative Significance. These criteria shall be considered significant in a qualitative review.

(c) Measurement Standards. In evaluating these criteria the Committee shall presume that the greater the distance between the site assigned area of a project and the receptor, or the less the extent the protected receptor exists on the site, the less potential adverse impact the project will have on the protected area. The project proponent may rebut the presumption by submitting information in the application to demonstrate the presumption is not applicable due to site specific factors or mitigation measures.

(d) Specific Factors: distance from a federal or state archeological or historical site as included in the State Register of Historic Places or the National Register of Historic Places.

(5) Compliance History

(a) Quantitative Significance. These criteria shall represent 5% of the total rating in a quantitative review.

(b) Qualitative Significance. These criteria shall be considered moderately significant in a qualitative review.

(c) Measurement Standard. In evaluating these criteria the Committee shall presume that the better the history of compliance of existing facilities owned and/or operated by the proponent at the project site or at other sites the less the reasonably likely impact on public health, safety or the environment. The project proponent may rebut the presumption by submitting information in the application to demonstrate the presumption is not applicable due to site specific factors or mitigation measures.

(d) Specific Factor.

1. history of nuisance conditions;
2. history of contamination of groundwater or surface water drinking water supply(ies) in excess of Massachusetts Maximum Contaminant Levels (MCLs);
3. off site migration of storm water due to inadequate storm water collection;
4. history of methane levels at or above 25% of the Lower Explosive Level at the required point of monitoring;
5. history of prior notices of violations of state or federal law or regulations related to landfill operations within the previous five (5) years; and
6. history of corrective actions taken in response to notices of violations through administrative or judicial order within previous five (5) years.

(6) Impact on Transportation.

(a) Qualitative Significance. These criteria shall be considered moderately significant in a qualitative review.

(b) Measurement Standard. In evaluating these criteria the Committee shall presume that the less traffic generated by the project through residential areas the less the degradation of service; and the further the site from an operating airport the less the existing or reasonably likely adverse impact the project will have on public health, safety or the environment. The project proponent may rebut the presumption by submitting information in the application to demonstrate the presumption is not applicable due to site specific factors or mitigation measures.

(c) Specific Factors. The following factors shall be evaluated:

1. extent of existing or increased facility-related traffic through residential areas ;
2. extent of degradation of service on roads leading to the facility; and
3. distance from the site to airports.

(7) Mitigation Measures

(a) Qualitative Significance. These criteria shall be considered moderately significant in a qualitative review.

(b) Measurement Standards. In evaluating these criteria the Committee shall presume that the extent to which the project applicant commits to perform mitigation actions to either correct prior environmental damage not caused by the applicant's operations or to reduce the potential impact of the project shall better protect public health, safety and the environment. Mitigation measures shall not include those actions required to meet minimum regulatory design or performance standards. impact on public health, safety or the environment. The project proponent may rebut the presumption by submitting information in the application to demonstrate the presumption is not applicable due to site specific factors or mitigation measures.

(c) Specific Factors. Specific factors to be considered by the Committee may include, but are not limited to, the following:

1. recreate destroyed or degraded wetlands;
2. clean up off-site contamination of groundwater;
3. cap an unlined landfill on an accelerated schedule;
4. construction and maintenance of recreational facilities; and
5. innovative mitigation actions.

(8) Contribution to Improving Statewide or Local Integrated Solid Waste Management System.

(a) Qualitative Significance. These criteria shall be considered highly significant in a qualitative review.

(b) Measurement Standard. The Committee shall evaluate projects based on:

1. the extent to which the proposed site use(s), alone or in conjunction with other sites, provides or facilitates means to maximize diversion or processing of each component of the anticipated waste stream to reduce potential adverse impacts from disposal and utilize reusable materials and only thereafter extract energy from the remaining solid waste prior to final disposal; and
2. the extent to which the proposed use(s) of the site, alone or in conjunction with other sites, may contribute to the establishment and

maintenance of a statewide integrated solid waste management system to protect the public health, safety and the environment.

(c) Specific Factors. Specific factors to be considered by the Committee may include, but are not limited to, the following:

1. waste stream components affected;
2. scope and quality of program elements or activities;
3. quantification of projected outcomes;
4. guarantees and commitments; and
5. other applicable measures of success.

(9) Contribution to Addressing a Unique or Exceptional Local or Regional Solid Waste Issue.

(a) Qualitative Significance. These criteria shall be considered highly significant in a qualitative review.

(b) Measurement Standard. The Committee shall evaluate projects based on the extent to which the project contributes to addressing a unique or exceptional solid waste issue(s) which, if not addressed, may result in a substantial detriment to the residents and or businesses in the affected area.

(c) Specific Factors. Specific factors to be considered by the Committee may include, but are not limited to, the following:

1. demonstration and quantification of unique or exceptional issue(s);
2. impact of project on current waste management system;
3. manner and extent of project's contribution to addressing issue; and
4. analysis of non-project alternatives to address issue.

(10) Project Feasibility.

(a) Qualitative Significance. These criteria will be evaluated to determine the likelihood that the project can be constructed within the timeframe set by the Department to meet the need for disposal capacity. This criteria shall be considered highly significant in a qualitative review.

(b) Measurement Standard. Projects shall be evaluated based upon the presumption that projects that have secured other state and local approvals, are securely financed and have less complex design or construction procedures are more feasible than projects that lack one or more of these characteristics.

(c) Specific Factors. The following factors will be evaluated:

1. status relative to site assignment, Department permits and valid zoning or other local land use by-laws or special permits;
2. other indicators of project support or endorsement by municipal officials;
3. status of financial security as evidenced by the availability of appropriate financial mechanisms, municipal government authorization and appropriations (if applicable), and history of prior financial performance;
4. permit and construction schedules for the CAP project; and
5. performance history on other landfill construction projects.

(11) Contribution to Economic Development

(a) Qualitative Significance. These criteria shall be considered less significant in a qualitative review.

(b) Measurement Standard. The Committee shall evaluate projects based on the extent to which the project may create recycling employment and investment opportunities in the region independent of activities directly related to the construction and operation of the landfill.

(c) Specific Factors.

1. extent of job creation; and
2. extent of investment creation.

16.19: TIER II Report.

(1) The Committee shall issue a report containing the ratings and recommendations from the TIER II review within 45 days of the issuance of the Tier I report, provided that the Committee may extend the date of issuance for an additional 30 days.

(2) In addition to recommending the projects which should be allocated capacity, the report may also recommend alternate projects to be allocated capacity in the event of a bypass as prescribed at 310 CMR 16.21, Reallocation of Capacity to Alternative Projects.

(3) The Committee shall state the facts and reasons in support of the projects it recommends for allocation of capacity in the report.

16.20: Public Notice of TIER II

(1) Public Notice. The Committee shall provide public notice, upon release of the TIER II report and initiation of the public comment period, using the following methods:

(a) by mail to: all applicants and all municipalities (boards of health) where projects are proposed and abutting boards of health with eligible CAP projects in the municipality that received notice pursuant to 310 CMR 16.11(5) and other persons who request the Department in writing to receive written notice.

(b) By publication, in the newspapers designated to publish notice of the commencement of the capacity allocation process pursuant to 310 CMR 16.11(5).

(2) Comment Period.

(a) Public notices issued pursuant to 310 CMR 16.20(1) shall allow at least 21 days for public comment on the recommendations of the Tier II report.

(b) Written Comments. During the public comment period any interested person may submit written comments on the report to the Committee. The Committee may revise the report in response to public comment.

(c) Extending or Reopening the Public Comment Period. The Committee may extend the public comment period. If an extension is granted, public notice shall be given in the manner prescribed at 310 CMR 16.20(1). Such notice shall specify any issues to be considered.

16.21: Allocation Decision

- (1) A decision by the Commissioner allocating the capacity shall be published within 30 days of the close of the public comment period.
- (2) The Commissioner's decision shall include, without limitation:
 - (a) a list of the projects to which capacity has been allocated;
 - (b) the amount of capacity allocated to each project; and
 - (c) the proposed permit term for each project.
- (3) The Commissioner shall select the projects to be allocated capacity consistent with the recommended rankings from the Committee provided that the Commissioner shall have discretion to determine the amount of capacity to be allocated to each recommended project. In determining the amount of capacity to be allocated the Commissioner may consider, without limitation, the following factors:
 - (a) the relative importance of the projects' contribution to regional or local solid waste management needs;
 - (b) the minimum amount of capacity required to make the project financially viable; and
 - (c) the economic impact the project will have on the host community and the surrounding region.
- (4) The Commissioner's decision may also include a list of alternative projects recommended for capacity allocation in the event a reallocation is necessary in accordance with 310 CMR 16.23.

16.22: Notification to Proceed.

- (1) After issuance of the Commissioner's allocation decision the Department shall issue a notification to proceed with permitting to the selected project(s).
- (2) The project's proponents shall proceed promptly and without delay to obtain all required federal, state and local approvals and permits, where not previously obtained.
- (3) The project's proponents shall:
 - (a) enter into an agreement with the Department establishing milestones and other terms and conditions for the permitting and construction of the project; and
 - (b) demonstrate financial capability to secure timely permitting and construction of the project.

16.23: Reallocation of Capacity to Alternative Project(s)

- (1) If a project which receives a Notification to Proceed in accordance with 310 CMR 16.22 is unable or unwilling to meet the requirements established pursuant to 310 CMR 16.22(2) and (3), or if the Department determines that it is reasonably unlikely that the project will be operating to provide the necessary disposal capacity at the time it is needed, the Department may reallocate the capacity.

(2) The Department shall give ten days notice to the project proponent before reallocating capacity as provided by 310 CMR 16.23(1) requiring the project proponent to show cause why the Department should not reallocate the disposal capacity to an alternate project.

(3) In response to the Department's notice, the project developer may submit, within 21 days, a response demonstrating its ability to perform in accordance with the agreement required pursuant to 16.22(3).

(4) Where the project developer fails to submit a response or submits a response that in the Department's opinion fails to demonstrate the ability or willingness of the developer to comply with the requirements established in accordance with 310 CMR 16.22(2) and (3), the Department may allocate the disposal capacity to another project.

16.24: Appeals

(1) Any person aggrieved by the Commissioner's decision to allocate capacity or the Department's to reallocate capacity may file an appeal for judicial review of said decision in accordance with the provisions of M.G.L. c. 111, § 150A and c. 30A. not later than 30 days following the issuance of a notification to proceed, or a decision to reallocate capacity. The standing of a person to file an appeal and the procedures for filing such appeal shall be governed by the provisions of M.G.L. c. 30A. Unless the person requesting an appeal requests and is granted a stay of the terms and conditions of the permit by a court of competent jurisdiction, the permit decision shall remain effective or become effective at the conclusion of the 30 day period.

(2) Notice of Action. Any aggrieved person intending to appeal a grant or denial of a permit to the Superior Court shall first provide notice of intention to commence such action. Said notices of intention shall include the Department file number and shall identify with particularity the issues and reason why it is believed the permit decision was not proper. Such notice shall be provided to the Office of General Counsel of the Department at least five days prior to the filing of an appeal.

(3) No allegation shall be made in any judicial appeal of a permit decision unless the matter complained of was raised at the appropriate point in the administrative review procedures established in these regulations, provided that a matter may be raised upon a showing that it is material and that it was not reasonably possible with due diligence to have been raised during such procedures or that matter sought to be raised is of critical importance to the environmental impact of the permitted activity.

[NOTE: MODIFICATIONS TO THE REGULATIONS RESUME HERE.
STRIKEOUT AND DOUBLE-UNDERLINES INDICATE ALL MODIFICATIONS.]

16.3008: Site Assignment Application Submission Requirements

(1) General. Any person wishing to establish a new facility on a site that has not previously been assigned or to Expand a Site must file a Site Assignment Application (application) with the board of health and provide copies to the Department and the Department of Public Health.

(2) Modifications to Site Assignments. Except in the case of an application to expand a site, or to modify a condition that was of significant importance in the Department's determination that the site was suitable, or as specified at 310 CMR 16.41, the Board of Health may modify a site assignment without a new application or site suitability report by the Department, provided:

(a) the Department determines the requested modification is not significant;
and

(b) the Board of Health holds a public hearing in accordance with the requirements of M.G.L. C.30A prior to making the modification.

(3)(2) Copies. The applicant shall file:

(a) two copies of the application with the local board of health;

(b) two copies of the application with the Department, one to the Division of Solid Waste Management, Boston, and one to the regional office in which the proposed site is located.

(c) one copy of the application with the Department of Public Health, Bureau of Environmental Health Services, Boston.

(d) One copy of the application with the board of health of any municipality within one half mile of any boundary of the proposed site ("abutting board of health").

(4)(3) Service of Copies. Simultaneous with the filing of any and all papers with the board of health, the applicant filing such papers shall send a copy(ies) to the Department and the Department of Public Health, as prescribed in 310 CMR 16.3008(2). All papers filed with the board of health shall be accompanied by a certificate signed under the pains and penalty of perjury that copies have been sent, specifying the mode of service, date mailed or delivered, the address, and address of service. Failure to comply with these requirements shall be grounds for refusal by the board of health or the Department to accept papers for filing.

(5)(4) Fees. The applicant shall tender payment of the Technical Fee in accordance with 310 CMR 16.5030(2)(b) or enter into alternative fee payment arrangements to the satisfaction of the board of health.

(6)(5) Site Assignment Application.

(a) General. The application shall be completed using forms supplied by the Department and shall contain sufficient data and other relevant information to allow the Department and the board of health to determine, independent of additional information, whether the site is suitable.

(b) Preparation of Papers. All papers pertaining to design, operation, maintenance, or engineering of a site or a facility shall be prepared under the supervision of a registered professional engineer knowledgeable in solid waste facility design, construction and operation and shall bear the seal, signature and discipline of said engineer. The soils, geology and groundwater sections of an application, if applicable, shall be completed by professionals experienced in those fields under the supervision of a registered professional engineer. All mapping and surveying shall be completed by a registered surveyor.

(c) Waiver. The application shall clearly state whether a waiver, as provided in 310 CMR 16.3918 or 310 CMR 16.6040(6), is requested. Applications for waivers shall be independent of the main body of the Site Assignment Application and shall include:

1. reference to the specific criteria or provision for which the waiver is requested;
2. all documentation that the applicant wants to present in support of the waiver including detailed facility design plans where appropriate.

(d) Massachusetts Environmental Policy Act (MEPA).

1. The application shall include a demonstration that:
 - a. the MEPA process does not apply; or
 - b. the MEPA process does apply and the Secretary has determined that an EIR is required; or
 - c. the MEPA process has already been completed and the Secretary has issued a certificate or a determination that no EIR is required.
2. The first Technical Review Period (TR1) as specified under the Timely Action and Fee Provisions Regulations, 310 CMR 4.00, shall not be completed until the Secretary's final certificate has been issued.

(e) Signatures. Applications shall be signed and sworn to by the applicant(s) and his/her agent, if different, as to all statements of fact therein, as set forth in 310 CMR 16.0907. Where the applicant is not the owner in fee simple of the title or interest in the site, then said owner shall also sign the application.

~~(7)(6)~~ Confidentiality. Any information submitted pursuant to 310 CMR 16.00 may be claimed as confidential by the applicant in accordance with the provisions of 310 CMR 3.00, Access to and Confidentiality of Department Records and Files. Information regarding the name and address of the permittee and data related to the potential impact of the proposed activity on public health, safety and the environment shall not be classified as confidential.

16.3109: Public Access to Application

The board of health shall ensure that a copy of the application and all subsequent filings are available for reasonable public inspection and copying. The board of health may charge reasonable fees for such copying.

16.3210: Review of Application for Completeness

(1) Report Number. The Department shall assign a Report Number to each application when the application is filed with the Department and notify the applicant, the board of health, and the Department of Public Health. The Report Number shall be used in all subsequent correspondence with the board of health,

the Department, the applicant and the Department of Public Health and shall appear on any subsequent filings by the applicant.

(2) Public Comments. During the Determination Period, as defined in 310 CMR 16.3240(3) the Department shall accept written comments from the board of health or interested persons regarding the completeness of the application.

(3) Determinations. The Department shall issue a written determination to the applicant as to the completeness of the application on or before 21 days after the filing of said application with the Department. An application shall not be considered complete unless the Technical Fee, if any, has been paid and the application forms are complete and accompanied by the appropriate supporting documentation. If the Department determines that the application is incomplete, deficiencies shall be stated. The Department shall send a copy of such determination to the board of health and the Department of Public Health.

(4) Public Notice of Application. The applicant, after receipt of notice of completeness from the Department, shall notify abutters to the site and abutting board(s) of health and provide public notice that an application has been filed with the local board of health. The notice shall:

(a) appear in at least one newspaper that has general circulation within the municipality; and

(b) include the location of the site; the size of the site; the type of facility; the type of waste or material to be handled at the facility; daily tonnage or throughput; the names, and addresses of the proponents; the public location within the community and hours where the application may be inspected; the time period for comment to be received by the Department and the address to which the comments should be mailed.

(c) Where the municipality has a population of greater than 15% of residents who do not speak English as their primary language, the applicant shall publish an additional notice in a daily or weekly newspaper(s) circulated in that community written in the primary language (s) of these residents.

(5) Commencement of Review Period. The Department Review Period shall commence when the applicant has provided proof to the Department that the public notice requirement as set forth in 310 CMR 16.3240(4) has been satisfied. Proof may be in the form of a copy of the public notice in the publication.

16.3341: Review Period

(1) General. Upon commencement of the Review Period, the Department shall review the application to determine if the site is suitable.

(2) Public Comments. During the initial 21 days of the Review Period the Department shall accept written comments from the board of health or other interested persons regarding the suitability of the site. All comments shall be filed with the Department's Regional Office in which the proposed site is located. The Department shall make available all comments received regarding the application to the applicant and the board of health at their request.

- (3) Applicant Response and Modification.
- (a) Response to Comments. The applicant may respond in writing and/or the Department may require the applicant to respond to comments during the initial 40 days of the Review Period.
- (b) Modification of Application. During the initial 40 days of the Review Period the applicant may modify an application provided that said modifications, when taken in their totality, do not constitute a major modification. The Department shall determine if modifications are major and issue written notice of such determinations to the applicant.
- (c) Major Modifications. The applicant must notify the Department and the board of health within five days of receipt of a notice from the Department that a single modification or a series of modifications constitute a major modification, whether it intends to:
1. withdraw the application; or
 2. withdraw the modifications and let the Department review of the application continue on the unmodified application.
- (4) Failure to File Notification. Failure of the applicant to file a notification within the appropriate time will constitute a withdrawal pursuant to 310 CMR 16.334(3)(c)2.
- (5) Additional Information. The Department may require the applicant to provide additional information as the Department deems necessary to fully evaluate if the site is suitable.
- (6) Restricting of Comments or Response. After 40 days the Department may restrict further comments or responses to allow the completion of the Department review of the site.
- (7) Issuance of Report. The Department shall issue the Report on Suitability (Report) within 60 days of the receipt of proof that the public notice requirement set forth in 310 CMR 16.324(4) has been satisfied.

16.3413: Department Report On Suitability (Report)

- (1) General. The Department shall forward the Report and the accompanying record to the board of health and shall provide a copy of the Report to the applicant.
- (2) Content. The Report shall include:
- (a) the Report Number;
 - (b) a statement indicating that the application does or does not contain sufficient data to allow the Department to determine if the site meets the criteria. A determination that an application did not contain sufficient information to allow a determination on each criteria shall be sufficient grounds for a negative determination of suitability;
 - (c) a statement that the site meets or fails to meet each the site suitability criteria set forth in 310 CMR 16.6040, including any conditions; and
 - (d) findings of fact pertaining to the application, any waiver that was requested, and the suitability of the site.

- (3) Basis for Report. The Report shall be based upon:
 - (a) the record;
 - (b) the facts and information otherwise available to the Department;
 - (c) expertise of the Department;
 - (d) expertise of other local, state or federal agencies consulted by the Department.
- (4) Record. The record shall consist of the application, including any waivers requested or any modifications submitted; any report or records the Department has used in making its determination; and any and all correspondence, notices, and written comments by the Department, boards of health, applicant or the public which have been submitted in accordance with 310 CMR 16.00.
- (5) Public Access. The board of health shall ensure that the Department's Report on Suitability and the Department Record are made available for copying and reasonable inspection.

16.3514: Reconsideration of Findings

- (1) Motions for Reconsideration. When the Department's Report contains a finding that the site fails to meet the site suitability criteria, the Department may entertain written motions for reconsideration from the applicant stating the basis on which the reconsideration is requested, if filed within 14 days of issuance of the Report. The motion for reconsideration shall state the fact(s) which it is contended the Department has overlooked or misapprehended and shall contain such argument in support of the motion as the applicant desires to present. Action on any motion for reconsideration is at the discretion of the Department.
- (2) Comments. The Department may allow comments from the board of health, the Department of Public Health and the general public for a specified time period if it decides to reconsider the findings.
- (3) Reissuance of Report. In the event the Department reconsiders and changes its determination, it shall amend the Report accordingly and reissue the Report.

16.3615: Further Action on Application

- (1) Negative Determinations of Suitability. When the Department issues a Report with a finding that a site fails to meet the site suitability criteria ~~or that an application does not contain sufficient data to allow a determination on the criteria,~~ the site assignment process is complete 30 days after the issuance of the report unless and the board of health shall not hold a public hearing as prescribed in 310 CMR 16.40, ~~20 provided that an applicant.~~ Prior to the required notice from the Board of Health for such public hearing, any aggrieved party applicant may request the Department to reconsider the findings in the Report, and the Report may be reissued. The Board of Health may adopt the Department's report as its decision.

Within 30 days after the decision of the Board of Health, any person aggrieved by such decision, may appeal the decision.

(2) Positive Determinations of Suitability. When the Department issues a Report with a finding that the site does meet the site suitability criteria, the board of health shall proceed to hold a public hearing pursuant to 310 CMR 16.40~~20~~ for the purpose of deciding whether to grant or refuse to grant a site assignment for the parcel of property which is the subject of the Department Report.

16.37~~16~~: Requests for Technical Assistance from the Department

(1) Technical Assistance. The board of health may request advice, guidance, or technical assistance from the Department to assist in the review of the information contained within the application or the Report. Any request for technical assistance shall be in writing. The technical assistance from the Department shall stop on the date of the first scheduled public hearing, except where it will serve to clarify information contained within the Department Report.

(2) Informal Arrangements. After a request for technical assistance, the Department and the board of health may enter into informal arrangements to facilitate the review of the application, provided that the applicant is informed of any such arrangement.

16.38~~17~~: Application Review by the Department of Public Health

(1) Review and Comments. The Department of Public Health (DPH) shall review the application and comment as to any potential adverse impacts the site may have on public health and safety. Such review and comment shall be made no later than 60 days after the start of the Review Period. The Department of Public Health may submit or discuss its comments with the Department during the Review Period.

(2) Department of Public Health Report. The Department of Public Health at the written request of the board of health shall make or have made a written report containing its comments on the potential adverse impacts of the site on public health and safety and may submit said report no later than 60 days after the start of the Review Period. The DPH may submit such report to the board of health.

(3) Coordination with Board of Health. The DPH shall coordinate and cooperate with the board of health on any matter relating to the report upon written request by the board of health to DPH.

16.39~~18~~: Waiver

(1) General. The Commissioner may waive any provision or requirement contained in Parts I, II or III of 310 CMR 16.00, or at 310 CMR 16.41~~21~~: *Alternative Use of Assigned Site*, not specifically required by law where the Commissioner finds:

- (a) that the waiver is necessary to accommodate an overriding community, regional or state public interest; and
- (b) the granting of the waiver would not interfere with the ability of the board of health to fulfill its duties; and

(c) the granting of the waiver would not diminish the ability of the general public to review and comment on the proposed project; and
(d) where the applicant seeks a waiver from CAP process at 310 CMR 16.11 - 16.24 for new landfills and landfill expansions proposing to dispose less than a total of 50 tons per day (TPD) of solid waste which are otherwise subject to CAP pursuant to 310 CMR 16.11(1) a waiver shall not be granted unless the Commissioner determines that:

1. the municipality demonstrates that it has achieved or will, at minimum, achieve the average municipal recycling rate as determined by the Department for the state as a whole. The waiver application shall indicate either that such rate has already been achieved for the municipality(ies) to be served by the facility or shall provide a plan, with timetable, for achieving such recycling rate and the means by which the recycling rate shall be achieved. Such plan may include, for example, programs for establishment of unit-pricing, curbside collection of recyclables, public education efforts, ordinances for independent waste haulers operating within the municipality or region to provide recycling services, and expansion of the number and/or type of recyclable materials to be collected;
2. the landfill will serve a local need for disposal capacity;
3. the proponent will implement programs that prevent or reduce the landfilling of materials with toxic constituents;
4. the project has secured support from residents of the community; and
5. the project has demonstrated committed sources of funds to ensure that the landfill can be operated and maintained through the post-closure period in full compliance with 310 CMR 19.000, Solid Waste Management Facility Regulations.

(2) Filings. All requests for waivers shall be filed and documented in accordance with 310 CMR 16.3008(5)(c).

16.4020: Public Hearing Rules

(1) Preamble. "Public Hearings" pursuant to M.G.L. c. 30A are not "Adjudicatory Proceedings" within the meaning of M.G.L. c. 30A, § 1. See M.G.L. c. 30A, § 2. Pursuant to M.G.L. c. 111, § 150A, however, "for the limited purpose of appeal from such public hearings, a local board of health shall be deemed to be a state agency under the provisions of said chapter thirty A and its proceedings and decision shall be deemed to be a final decision in an adjudicatory proceeding". The public hearing process is designed to permit the flexibility and informality appropriate to the board of health proceeding, while providing the board of health with procedural direction and the authority to create a record and render a decision within a limited time period which is amenable to the procedures and the standards of judicial review applicable under M.G.L. c. 30A, § 14.

(2) Applicability. 310 CMR 16.4020, governs the conduct of public hearings by a board of health on a Site Assignment Application following the issuance of a Report by the Department finding that a proposed site is a suitable for a specified type(s) of solid waste facility(ies), as required by M.G.L. c. 111, § 150A.

(3) Public Hearing Definitions. The following words when used in 310 CMR 16.4020, shall, except as otherwise required by context, have the following meaning:

Abutting Board of Health means a board of health of a municipality located within ½ mile of a boundary of the proposed site.

Applicant means person named in the application as the owner of a property interest in the site and the operator of the proposed facility where the owner has entered into an agreement with an operator at the time the application is filed.

Authorized Representative means individual authorized by a party to represent him in these matters.

Board of Health or (Board) means legally designated health authority of the city, town or other legally constituted governmental unit within the Commonwealth having the usual powers and duties of the board of health of a city or town, or its authorized agent or representative; provided that in any case in which a solid waste management facility extends into the geographic areas of two or more boards of health, said boards may coordinate activities in effecting compliance with 310 CMR 16.00 for the management of solid waste. Unless otherwise explicitly stated, "the board of health" means the board of health of the municipality in which the proposed site is located.

Decision means final decision rendered by the board of health.

Hearing Officer means an individual(s) duly designated by the board of health to conduct the public hearing.

Papers means all written communications filed in the public hearing, including motions and other documents.

Party means the applicant, any abutting board(s) of health and any abutter(s), group of ten citizens or other intervenor duly registered pursuant to 310 CMR 16.4020(9)(b).

Person(s) means a private person, firm, or corporation, or any federal, state, or local governmental or other entity which is not an agency.

Subpoena means a document which commands a witness to appear at a given time and give testimony before a court or an administrative proceeding such as a hearing; and may require the witness to produce before the hearing tribunal any documents, papers, or records in his possession or control.

(4) Representation

(a) Appearance. An individual may appear on his own behalf. A duly authorized officer or employee may represent a corporation; an authorized member may represent a partnership or joint venture; and an authorized trustee may represent a trust. Any Party in the public hearing shall have the right to be accompanied, represented and advised by an authorized representative.

(b) Notice of Appearance. An appearance shall be made in the public hearing by filing a written notice with the board of health or Hearing Officer. Such notice shall contain the names, address and telephone number of the authorized representative.

(5) Time

(a) Timely Filing. Papers required or permitted to be filed under 310 CMR 16.4020, or any provision of the applicable law must be filed at the board of health office or such other place as the board shall designate within the time limits for such filing as are set by 310 CMR 16.4020 or the Hearing Officer. Papers filed in the following manner shall be deemed to be filed as set forth herein:

1. Hand-Delivery during business hours shall be deemed filed on the day delivered.
2. Hand-Delivery during times other than during regular business hours shall be deemed filed on the next regular business day.
3. Mailing in U.S. Mail shall be deemed filed on the date so postmarked.

All papers shall show the date received by the board and the board shall cooperate in giving date receipts to Persons filing papers by hand-delivery.

(b) Notice of Board of Health Actions. Communications concerning public hearings pursuant to 310 CMR 16.00 from the board or the Hearing Officer shall be presumably deemed received upon the day of hand-delivery or if mailed three days after deposit in the U.S. mail.

(c) Computation of Time. Unless otherwise specifically provided by law or 310 CMR 16.4020, computation of any time period referred to in 310 CMR 16.4020 shall begin with the first day following the act which initiates the running of the time period. The last day of the time period so computed is to be included unless it is a Saturday, Sunday, or legal holiday or any other day on which the office of the board is closed, in which event the period shall run until the end of the next following business day. When the time period is less than six days, intervening days when the board is closed shall be excluded in the computation.

(d) Extension of Time. It shall be within the discretion of the board or Hearing Officer, for good cause shown, to extend any time limit contained in 310 CMR 16.4020. All requests for extension of time shall be made by motion before the expiration of the original or previously extended time period. This discretion shall not apply to any limitation of the time prescribed by the Massachusetts General Laws.

(6) Filings Generally

(a) Title. Papers filed with a board shall state the report number, the title of the proceeding, the name of the Person in whose behalf the filing is made and the name of the applicant.

(b) Signatures. Papers filed with a board shall be signed and dated by the Party on whose behalf the filing is made or by the Party's Authorized Representative. This signature constitutes a certification by the signer that he has read the document, knows the content thereof, and that such statements are true, that it is not interposed for delay and that if the document has been signed by an Authorized Representative that he has full power and authority to do so.

(c) Form. Size and printing requirements. All Papers, except those submittals and documents which are kept in a larger format during the ordinary course of a Party's business, shall be hand-printed or typewritten on paper 8 to 8½ inches wide, by 11 inches long. Mimeographed, multigraphed, photoduplicated Papers will be accepted as hand-printed or typewritten. All papers shall be clear and legible.

(d) Copies. The original of all Papers shall be filed together with two copies.

(e) Service. Simultaneously with all filings of any and all Papers with the board, the Party filing such Papers shall send a copy thereof to all other Parties to the proceedings, by delivery in hand, or by United States mail, postage prepaid, properly addressed. All papers filed with the board shall be accompanied by a statement signed under the pains and penalty of perjury that copies have been sent, specifying the mode of service date, the Party to whom sent, the Party's address, and address of service. Failure to comply with this rule shall be grounds for refusal by the board to accept Papers for filing.

Any Party may request a waiver of the requirement of 310 CMR 16.4020(6)(e). The Hearing Officer may grant the request if significant expense or waste of resources would be avoided and if adequate arrangements can be made for access to the Papers by all persons who would otherwise be entitled to service of a copy.

(7) Initiation of Hearings.

(a) Commencement. The board shall commence a public hearing pursuant to 310 CMR 16.4020 within 30 days of receipt of the Department's Report On Suitability (Report).

(b) Public Notice. At least 21 days prior to commencement of the public hearing the board shall cause notice of the public hearing to be published. Such notice shall be published in daily or, if not possible, weekly newspapers of general circulation in the municipality. Where the municipality has a population of greater than 15% of residents that do not speak English as their primary language, the board of health shall publish an additional notice in a daily or weekly newspaper(s) circulated in that community written in the primary language (s) of these residents.

(c) Form and Content. The notice shall give the date, time and location of the public hearing, a description of the proposed facility including the type of facility, proposed disposal tonnage, proposed hours of operation, the identity and mailing address of the applicant; the public location within the community and hours where the application may be inspected; the time period for written comment on the application to the board and the address to which comments should be mailed. In addition the notice shall contain the following statement: "The Department of Environmental Protection has issued a Report in which it determines that the above described place is a suitable place for the proposed facility. Copies of the Department's Report On Suitability and the site suitability criteria (310 CMR 16.00) are available for copying and examination along with the application."

(8) Examination of Record Below; Discovery

(a) Availability of the Record. The Report, the application, and all comments received by the Department on the application are public records and shall be made available by the board for inspection and copying by any person during

reasonable business hours. The board may charge reasonable copying fees for any of the documents comprising the record below. There shall be no additional discovery.

(b) Prefiled Direct Testimony. The Hearing Officer may, on his/her own motion, order all Parties to file within a reasonable time in advance of the public hearing full written text of the testimony of their witnesses on direct examination on issues pertinent to site assignment, including all exhibits to be offered into evidence, or on issues specified by the Hearing Officer. Such testimony shall be filed by or before a time specified by the Hearing Officer and shall be available to examination and copying as provided in 310 CMR 16.4020(8)(a). The Hearing Officer may also require the filing of written rebuttal testimony within a reasonable time after the filing of the direct testimony described in the preceding sentence. All testimony filed pursuant to this rule shall be subject to the penalties of perjury. All witnesses whose testimony is filed pursuant to this rule shall appear at the hearing on the merits and be available for further examination or cross-examination at the discretion of the Hearing Officer. If a witness is not available for further examination or cross examination at the hearing on the merits, the written testimony of the witness shall be excluded from the record unless the Parties agree otherwise.

(9) Intervention and Participation.

(a) Intervention. Any Person who with good cause wishes to intervene in a public hearing shall file a written request (petition) for leave to intervene. Persons whom the Hearing Officer determines are specifically and substantively affected by the hearing shall be allowed to intervene. For the purpose of the Public Hearing the following persons shall be considered to be specifically and substantively affected by the hearing and shall be eligible to register as a Party to the hearing:

1. Abutters. Any abutter or group of abutters to the proposed facility shall be a Party to the hearing by timely submission of a Party Registration Statement in accordance with 310 CMR 16.4020(9)(b).
2. Ten Citizens Groups. Any group of ten or more persons may Register collectively as a Party to the public hearing in which damage to the environment as defined in M.G.L. c. 214, § 7A is or might be at issue; provided, however, that such intervention shall be limited to the issue of the damage to the environment and the elimination or reduction thereof in order that any decision in the public hearing shall include the disposition of such issue.

(b) Registration. The registration of an abutter, group of abutters or ten citizen groups as a Party or the petition of a person to be an intervenor to the public hearing shall be valid only if submitted prior to the commencement of the hearing. The registration statement shall be signed under pains and penalty of perjury and contain the following information:

1. name and address of the registrant(s);
2. proposed party status (abutter, group of abutters, ten citizen group or intervenor);
3. identity of the Authorized Representative, if any;
4. for individuals wishing to register as an abutter a description of the abutting property including its boundaries and current use and a statement that the registrant is the owner of the parcel; and

5. for individuals or groups of individuals petitioning to be an intervenor a statement indicating how they will be substantially and specifically affected by the proposed facility.

If no Authorized Representative is identified in the Registration Statement the first person mentioned in the Statement as a member of the group shall be deemed the Authorized Representative of the group. Said Authorized Representative shall have the sole authority to sign submissions by the group. A group that registers as a Party shall be collectively deemed a Party and shall have the rights of participation of a Party as set forth in 310 CMR 16.4020, except as limited by 310 CMR 16.4020(9).

(c) Rights of Intervenors. Any person permitted to intervene shall have all rights of, and be subject to, all limitations imposed upon a Party, however, the Hearing Officer may exclude repetitive or irrelevant material. Every Petition to intervene shall be treated as a petition in the alternative to participate.

(d) Rights of Participants

1. Any person specifically affected by a proceeding shall be permitted to participate. Permission to participate shall be limited to the right to present testimony, to argue orally at the close of the public hearing and to file a brief. Permission to participate, unless otherwise stated, shall not be deemed to constitute an expression that the person allowed to participate is a party in interest who may be aggrieved by any final decision.

2. Participants shall not be required to submit to cross examination except upon the determination of the Hearing Officer that cross examination is necessary in the interest of a full and fair hearing and an adequate record. Such cross examination of participants shall be conducted through the Hearing Officer. Failure of a Participant to submit to cross examination allowed by the Hearing Officer shall be grounds to strike the Participant's statements.

(10) Conduct of Public Hearing.

(a) Public Hearings, Where Held. Hearings shall be held at a public meeting hall, appropriately sized to accommodate all Parties and the number of persons reasonably anticipated to attend in the city or town where the site is located. The public hearing shall continue until it is closed by the Hearing Officer. Arrangements by the board to provide a place for such public meeting shall anticipate that the public hearing may extend for several days.

(b) General. Hearings shall be as informal as may be reasonable and appropriate under the circumstances. The applicant shall be the party to first proceed to introduce evidence and testimony except as ordered by the Hearing Officer.

(c) Decorum. All Parties, Authorized Representatives, witnesses and other persons present at the public hearing shall conduct themselves in a manner so as not to obstruct or delay the orderly presentation of evidence and issues. Where such decorum is not observed, the Hearing Officer may take appropriate action.

(d) Hearing Officer. The Hearing Officer shall define issues, receive and consider relevant and reliable evidence and exclude irrelevant evidence, ensure an orderly presentation of the evidence and issues, and aid the board in reaching a decision based on the evidence presented at the hearing and in accordance with the standards set forth in M.G.L. c. 111, § 150A.

(e) Rights of Parties. All Parties shall have the right to present evidence, cross-examine, make objections and make oral arguments. Cross-examination shall occur immediately after any witness' testimony has been received. Whenever appropriate, the Hearing Officer may permit redirect and recross.

(f) Evidence and Testimony

1. A witness' testimony shall be under oath or affirmation.

2. All evidence and testimony, materials and legal rules on which a decision is to be based must be entered into the Record of the public hearing, unless excluded pursuant to 310 CMR 16.4020(8)(b), or (10)(f)3.

3. Witnesses giving testimony shall be available for such further examination or cross examination as is determined to be appropriate by the Hearing Officer. Failure of a witness to be so available may be grounds to strike any other testimony given by such witness from the record at the sole discretion of the Hearing Officer. The Hearing Officer may limit or exclude unduly repetitious or irrelevant evidence. The Report and the Department Record shall not constitute testimony for the purposes of 310 CMR 16.4020

4. All documents and other evidence offered in evidence shall be open to examination by the Parties.

5. All evidence including any records, investigative reports, documents and stipulations which are to be relied upon in making a decision must be offered and made a part of the Record. Documentary evidence may be in the form of copies or excerpts, or by incorporation by reference.

(g) Administrative Notice. The Hearing Officer or the board of health may take notice of any fact which may be judicially noticed by the courts, and in addition may take notice of general, technical or scientific facts within their specialized knowledge. Parties shall be notified of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed. The board may utilize their experience, technical competence and specialized knowledge in the evaluation of the evidence presented to them.

(h) Subpoenas. No subpoenas may be issued or enforced requiring the attendance and testimony of a witness or the production of documents at the public hearing.

(i) Transcript of Proceedings. Testimony and argument at the hearing shall be either recorded electronically or stenographically. Transcripts of the proceedings shall be supplied to any Party, upon request, at his own expense. Any Party, upon motion, may order a stenographer to transcribe the proceedings, at his own expense. In such event, a stenographic record shall be provided to the board or Hearing Officer at no expense to the board, and upon such other terms as the board or Hearing Officer shall order.

(j) Contents of Record. The record of the proceedings shall include the Department's Report On Suitability and accompanying Record, the Department of Public Health report, if any, and shall in addition, consist of the following items appropriate to the hearing: pleadings, prehearing conference memoranda, magnetic tapes, orders, briefs, and memoranda, transcripts, exhibits and other papers or documents which the Hearing Officer has specifically designated be made part of the record.

(k) Decision.

1. Time of Decision. The board shall render its decision within 45 days of the initial date of the public hearing.

2. Standard of Decision. A board shall determine that a site is suitable for assignment as a site for a new or expanded solid waste facility unless it makes a finding, supported by the record of the hearing, that the siting thereof would constitute a danger to the public health, safety or environment, based on the siting criteria set forth and established under 310 CMR 16.6040.

3. Tentative Decisions. Tentative decisions shall not be issued as a matter of routine, but shall be issued only if a Party requests a tentative decision either in writing or orally on the record, prior to the close of the hearing on the merits; or if the board determines that a tentative decision should be issued in the interest of justice. Every tentative decision shall be in writing and shall be signed by a majority of those officials of the board who rendered the decision. Every tentative decision shall contain a statement of the reasons therefor, including a determination of fact pertaining to each of the site suitability criteria listed in 310 CMR 16.6040 or law necessary to the decision. If the majority of the board who must sign the final decision have personally heard or read the evidence, the board shall not be required to comply with a request to issue a tentative decision.

4. Final Decision. Every final decision shall be in writing and shall be signed by a majority of those officials of the board who rendered the decision. Every final decision shall contain a statement of the reasons therefore, including a determination of fact pertaining to each of the site suitability criteria listed in 310 CMR 16.6040 or law necessary to the decision, provided that if a final decision was preceded by a tentative decision, the final decisions may incorporate by reference those determinations set forth in the tentative decision, subject to such modifications and discussion as the Hearing Officer or board may deem appropriate to respond to timely filed opposing and concurring views with the tentative decision.

(11) Selection and Qualification of Hearing Officer

(a) The Hearing Officer shall be selected by majority vote of the board of health.

(b) The person selected to be the Hearing Officer shall be impartial and have the requisite qualifications to properly perform the duties and responsibilities of a Hearing Officer. Except as agreed to by the parties and a majority of the board of health, no person shall be a Hearing Officer who:

1. is related to any board member, abutting board of health member, party, abutter, or applicant;

2. is a current or former employee or agent of the applicant or of the municipality where the proposed site is located or a municipality of an abutting board of health prior to selection as Hearing Officer.

Notwithstanding the aforesaid, a person who has previously served as a Hearing Officer is not excluded from subsequent service as a Hearing Officer;

3. has a personal financial interest or at the time of selection or at any time during the proceedings be employed by any person having a financial interest in the board's decision on site suitability; or

4. does not have experience by training or practice in conducting administrative or judicial proceeding's.

- (c) Duties. The Hearing Officer's duties shall include:
1. opening and closing the hearing;
 2. establishing the order of the proceedings;
 3. ensuring that only reliable and relevant testimony is introduced;
 4. assisting all those giving testimony to make a full and free statement of the facts in order to bring all information necessary to determine whether a site is suitable or not suitable;
 5. ensuring that all Parties have an opportunity to present their claims orally or in writing and to present witnesses and evidence relevant to the suitability or non-suitability of the site;
 6. ensuring that participants have an opportunity to present evidence, whether orally or in writing, relevant to the suitability or non-suitability of a site;
 7. introducing into the record any regulations, statutes, memoranda or other materials he believes relevant to the issues at the proceeding;
 8. receiving, ruling on, limiting or excluding evidence pursuant to 310 CMR 16.40~~20~~(10)(f); and
 9. establishing a date and time following the close of hearing until which time written evidence will be received, considered and made part of the record.

Where procedural issues arise regarding the conduct of the hearing which are not governed by 310 CMR 16.40~~20~~ the Hearing Officer may rely on 801 CMR 1.00: *Standard Adjudicatory Rules of Practice and Procedure*, to resolve such issues.

- (d) Powers. The Hearing Officer's powers shall include the authority to:
1. request a statement of the issue or issues and define the relevant issues;
 2. regulate the presentation of the evidence and the participation of the Parties or their representatives, or the participation of other Persons, for the purpose of ensuring an adequate and comprehensible record of the proceedings. To this end the Hearing Officer may conduct his own examination of witnesses, may require that all examination or cross examination of witnesses be directed through the Hearing Officer, through some other person, or by any other means or method of examination or cross examination of witnesses as he determines is appropriate to ensure full examination of the issues; and
 3. regulate the presentation of the evidence and the participation of the Parties or their representative or the participation of other Persons for the purpose of ensuring that the public hearing is concluded in a timely manner to allow the board to render a written decision within 45 days of the commencement date of the public hearing. To this end the Hearing Officer shall impose such time restrictions and limitations on oral presentations as he deems appropriate.

(12) Imposition of Conditions The board may include in any decision to grant a site assignment such limitations with respect to the extent, character and nature of the facility or expansion thereof, as may be necessary to ensure that the facility or expansion thereof will not present a threat to the public health, safety or the environment.

(13) Notice of Decision.

- (a) Incorporation into the Record. Upon its issuance, the decision shall be incorporated into the Record and made available for inspection and copying as set forth in 310 CMR 16.4020(8)(a).
- (b) Time of Notice. Within seven days of issuance of its decision the board shall publish notice of its decision in the same manner as set forth in 310 CMR 16.4020(7)(b).
- (c) Content of Notice. The nature of decision shall identify the applicant, briefly describe the proposed facility, including its location, and set forth the board determination. The notice shall include the following provision: "Any person aggrieved by the decision of the board of health may, within 30 days of publication of this Notice of Decision appeal under the provisions of M.G.L. c. 30A, § 14."

16.4124: Alternative Use of Assigned Site

- (1) Site Assignment Under St. 1955, c. 310, § 2. Where a site has been assigned as a dumping ground or a refuse disposal incinerator pursuant to St. 1955, c.310, s.2, or at a site where a handling facility was in existence prior to August 28, 1970 and has been in operation since August 28, 1970, a different solid waste activity shall not be conducted at the site except in accordance with a new site assignment established in accordance with 310 CMR 16.00, except as provided at 310 CMR 16.4124(3)(a).
- (2) General Use Site Assignment. Where a site assignment does not contain a condition limiting its use to a particular method of solid waste management, a new or modified site assignment is not required to obtain a permit for any solid waste management activity at the site.
- (3) Specific Use Site Assignment. Where a site is assigned for a specific solid waste purpose, a different solid waste activity shall not be conducted at the site except in accordance with a new or modified site assignment, except as allowed at 310 CMR 16.4124(3)(a) or (b):
 - (a) Recycling, Composting or Other Processing. Recycling or composting may be approved at any assigned, permitted active disposal or handling facility without requiring a new or modified site assignment when such activity is integrated into the assigned solid waste management operation and the tonnage limits, if any, for recycling or composting are not exceeded. After the solid waste facility ceases operation the recycling or composting of solid waste shall not be permitted at the site except in accordance with 310 CMR 16.4124(3)(b) and the processing of recyclable or compostable material shall not be permitted except in accordance with a Department approval for post-closure use of the site.
 - (b) Handling Facility at a Closed or Inactive Landfill or Combustion Facility Site. A site which has been assigned for use as a landfill or combustion facility which has been closed or is in the process of imminently closing shall not require a new or modified site assignment to obtain an approval for the storage, transfer or processing of solid waste when:
 - 1. the facility does not receive solid waste in excess of the tonnage limits stated in the site assignment for landfilling, or combustion or processing;

2. the outstanding site assignment does not contain a condition which directly or indirectly prohibits the handling activity or establishes a date for the termination of all solid waste activities at the site which is shorter than the anticipated useful life of the handling facility; and
3. the site meets the suitability criteria at 310 CMR 16.6040(3)(d), unless a waiver of one or more criteria has been granted pursuant to 310 16.6040(6).

16.5030: Fees

(1) Application Fees

(a) General. The Application Fee is a fee which is paid by an applicant to the board of health. The board of health may use the fee for eligible costs of reviewing technical data, obtaining technical assistance and conducting a public hearing. The Application Fee shall be assessed as two separate fees:

1. Technical Fee; and
2. Public Hearing Fee.

(b) Excess Fees. The board of health shall return to the applicant any of the Application Fee in excess of the actual expenditures for allowable costs following the completion of the site assignment process.

(c) Alternative Systems. The board of health may establish, in lieu of part or all of 310 CMR 16.5030, another system for the assessment and payment of an Application Fee provided such system is agreed to by the applicant.

(d) Nothing in 310 CMR 16.5030 creates or modifies any rights of boards of health relative to the assessment or collection of fees under applicable statutes, by-laws, or ordinances governing municipal finance.

(2) Technical Fee.

(a) General. The Technical Fee may be used by the board of health to cover the cost of conducting a review of technical data and/or to cover a portion of the cost of other technical assistance.

(b) Assessment of Fee.

1. Assessment. The board of health, upon the receipt of an application, may assess by a written notice to the applicant a Technical Fee for said application not to exceed the maximum amount set forth in 310 CMR 16.99.

2. Form of Payment. The board shall prescribe the amount of the fee and the manner of payment in writing to the applicant within ten days of the filing of the application in accordance with 310 CMR 16.3008.

3. Payment. The applicant shall pay the Technical Fee in the amount and manner prescribed by the board of health.

4. Waiver. The board of health may waive all or a portion of the Technical Fee. Any such waiver shall be made in writing to the applicant.

5. Absence of assessment or waiver. In the absence of an assessment or waiver of the Technical Fee by the board of health in accordance with 310 CMR 16.5030(2)(b)1., 2. or 4., the applicant may satisfy the Technical Fee payment requirements by making a payment in the form of a certified or bank check or money order, in an amount equal to the maximum Technical Fee for the appropriate facility as specified in 310 CMR 16.99.

(c) Technical Review

1. General. The Technical Fee may be expended for 100% of the allowable cost of reviewing technical data submitted to the board of health.

2. Allowable costs. Allowable costs for technical review include the cost of hiring consultants and related technical experts to assist the board of health in reviewing the application, the Department Report on Suitability, the Department of Public Health's Report and comments, public comments and any subsequent amendments or additions to the application.

3. Allowable tasks. Allowable tasks for the consultants and related technical experts include:

- a. determining completeness and accuracy of data in the application;
- b. determining whether the correct analytical techniques were used, whether valid data were obtained, and whether the data support the proposed conclusions;
- c. determining what other data should be obtained, the means to obtain it and its potential significance;
- d. examining municipal, Department and other relevant records and consulting with Department staff;
- e. visiting the site to make a visual inspection;
- f. preparing and submitting comments to the Department on technical issues relating to the site and the site suitability criteria;
- g. reviewing the Department Report on Suitability and other data submitted prior to and during the hearing; and
- h. preparing a written report of comments and determinations.

4. Excluded Costs. Allowable costs for technical review shall not include the cost of conducting site, environmental or population sampling and analyses, otherwise generating new data, or performing independent analyses of environmental health impacts. These costs may qualify as allowable costs for technical assistance in accordance with 310 CMR 16.5030(d)2.

(d) Technical Assistance

1. General. The Technical Fee may cover 50% of the cost of providing expert legal, scientific or engineering assistance to the board of health to assure that all points of view are adequately presented and evaluated at the public hearing.

2. Allowable costs. Allowable costs for technical assistance include the cost of hiring consultants, technical experts or legal counsel. Allowable types of technical assistance include:

- a. legal counsel to represent the board of health at the hearing and to examine witnesses at the hearing;
- b. scientific and/or engineering experts to help develop evidence, question witnesses and/or testify at the hearing; and
- c. photographic or graphic expertise.

(e) Extraordinary Expenses

1. Assessment. After commencement of the public hearing, pursuant to the requirements of 310 CMR 16.4020, the board of health may assess in writing, an additional Technical Fee payment when the following conditions are satisfied:

- a. the evidence proposed to be obtained by the expenditure of the fee is likely to be critical to the determination of site suitability; and
- b. the applicant has failed to provide such evidence upon request by the Hearing Officer; and

- c. the evidence cannot be acquired without the expenditure by the board of health of funds in excess of the Technical Fee; and
 - d. the evidence did not exist or was not reasonably discoverable through due diligence by the board of health prior to the request; or
 - e. the evidence is based on new scientific or technical standards or criteria which were previously unavailable.
2. Payment or Appeal. The applicant upon receipt of the written request may:
 - a. within three days appeal to the Hearing Officer for a determination as to the appropriateness and reasonableness of the fee assessment; or
 - b. make the appropriate payment as prescribed by the board of health within ten days.
 3. Hearing Officer's Decision on Appeals.
 - a. Standard of Decision. The Hearing Officer shall determine that an extraordinary expense request is reasonable only if she or he finds that the conditions in 16.5030(2)(e)1. are satisfied.
 - b. Decision by the Hearing Officer. The Hearing Officer shall issue a written determination to the applicant and the board of health. When the Hearing Officer determines the assessment is reasonable the applicant shall make the appropriate payment as directed by the board of health within six days. When the Hearing Officer determines the assessment is not reasonable the applicant shall not be required to make the payment.
 4. Non-payment. The board of health may withhold final disposition of the site assignment application until the applicant submits the payment or issue a determination based on the available information.

(3) Public Hearing Fee.

- (a) General. The board of health may use the Public Hearing Fee to cover the cost of conducting a public hearing that meets the requirements of 310 CMR 16.4020.
- (b) Assessment and Payment of the Public Hearing Fee. The board of health, upon the receipt of a Department Report on suitability that contains a finding that a site is suitable, may assess a Public Hearing Fee.
 1. Initial Public Hearing Fee Assessment.
 - a. Assessment. The board of health shall prescribe to the applicant in writing the amount and manner of payment of the initial public hearing fee assessment.
 - b. Maximum Amount. The maximum amount of the initial assessment shall be 50% of the maximum allowable Technical Fee for the appropriate size and type of facility, as set in 310 CMR 16.99.
 - c. Payment. The applicant shall pay the initial public hearing fee assessment as prescribed by the board of health within 15 days of receipt of the written request from the board.
 2. Additional Public Hearing Fee Assessments.
 - a. General. In the event that the initial Public Hearing Fee assessment is insufficient to cover the allowable costs described in 310 CMR 16.5030(3)(d) the board of health may require additional Public Hearing Fee payments.

b. Assessment. The board of health shall prescribe to the applicant, in writing, the amount and manner of payment of the additional public hearing fee assessments.

c. Payment. The applicant shall pay the additional assessment within six days of receipt of the written request from the board of health.

3. Fee Waiver. The board of health may waive all or a portion of the Public Hearing Fee.

(c) Non-payment of Fees

1. Suspension of Hearings. In the event that any fee assessment is not paid as required, the board of health may suspend the public hearing, or, in the case of the initial payment, delay the opening of the public hearing.

2. Resumption of Hearings. Any hearing delayed or suspended because of non-payment of fees shall be commenced or resumed within seven days of receipt of payment or resolution of a fee dispute in accordance with 310 CMR 16.5030(6).

3. Exception. When the applicant is the municipality itself or an agency thereof, the public hearing shall not be delayed or suspended because of non-payment of any public hearing fee assessment.

(d) Allowable Costs. The only allowable costs that may be paid from the Public Hearing Fee are:

1. the cost of any notice required under 310 CMR 16.4020;

2. the cost of recording, through a stenographic record, tape recording, or other means as determined by the Hearing Officer the record of the proceedings;

3. the cost of having a Hearing Officer perform the duties set forth in 310 CMR 16.4020;

4. the cost of producing any copies required under 310 CMR 16.4020; and

5. the cost of renting a hall, chairs and/or public address system when the municipality has no such facilities or equipment which are adequate for the purpose of the public hearing.

Transcription of the proceedings shall not be paid for from the Hearing Fee except by order of the Hearing Officer prior to a final decision on site assignment by the board of health. The cost of transcribing or otherwise preparing an official transcript for appeal shall not be paid by the Public Hearing Fee.

(4) Expenditure of the Application Fee

(a) General. All expenditures of the Application Fee shall be reasonable. The amount paid for any service shall not exceed the usual and customary amount for such service.

(b) Obligation of Funds. The board of health shall not spend or enter into obligations to spend any or all of the Technical Fee without a scope of work. The scope of work shall detail proposed contractor's services and include cost estimates for each service and describe whether the proposed service is for technical review or technical assistance.

(c) Record Keeping. The board of health shall make and retain or require all persons paid from the Application Fee to make and retain written records which set forth:

1. a description of each of the services performed and work products developed; and

2. the amount expended for each such service or work product.
- (d) Production of Records. The board of health, upon written request from the applicant, the Hearing Officer or the Department, shall provide or cause their contractor to provide, within a reasonable time not to exceed 14 days, a copy of said records.
- (e) Cessation of Expenditures. The board of health shall not spend any additional amount of the Application Fee and shall make reasonable efforts to halt all work on any activities that would be covered by the Application Fee, when the board of health receives either:
 1. a Department Report on Suitability that finds a site not suitable; or
 2. a notice from the applicant withdrawing the application from consideration.
- (5) Reimbursement of Unexpended Fees
 - (a) Request for Reimbursement. After a final decision on the application or upon the withdrawal of an application, the applicant may submit a written request to the board of health to provide a final accounting of all funds expended or owed from the Application Fee and to return all unexpended and uncommitted funds. For the purpose of 310 CMR 16.5030, a final decision shall be either:
 1. the Department Report on Suitability finding a site to be not suitable; or
 2. a determination by the board of health to assign a site or to refuse to assign a site after a public hearing.
 - (b) Accounting. The board of health shall provide a full accounting of all expenditures within 45 days of receipt of the request.
 - (c) Reimbursement. The board of health shall return the unencumbered funds within a reasonable time period.
- (6) Fee Disputes
 - (a) The board of health shall expend and, if applicable, reimburse to the applicant all fees in accordance with the requirements of 310 CMR 16.5030.
 - (b) Any claims by the applicant against the board of health for improper disposition of fees shall be adjudicated in a court of competent jurisdiction or, if mutually agreed upon by the parties, by arbitration or mediation.

Preamble

310 CMR 16.6040 establishes the criteria and decision making process the Department shall utilize in determining whether a site is suitable for a proposed solid waste management facility and upon which boards of health must base a determination to grant or refuse to grant a site assignment.

16.6040: Site Suitability Criteria

- (1) Determination of Suitability.
 - (a) Department's Determination. The Department shall determine whether a site for a new or expanded facility of the type and scope proposed is suitable or not suitable based upon the criteria set forth in 310 CMR 16.6040(3), (4) and (5). No site shall be deemed to be suitable where the solid waste management activities will constitute a danger to public health or safety or the environment.

In determining whether or not a proposed facility at a specified site meets the criteria, the Department shall:

1. determine whether the facility is located within a defined area where siting is prohibited (restricted area);
2. apply in "non-restricted areas" such state and federal standards, criteria, guidelines or allowable limits and written health policies which are intended to protect the public health, safety, and the environment, or where such protective limits have not been adopted, the Department shall evaluate the potential for an adverse impact on a facility/site specific basis;
3. consider whether the site is in a preferred municipality as defined herein; and
4. consider whether the site use promotes integrated solid waste management in accordance with 310 CMR 16.6040.

(b) Site Assignment by Boards of Health. The board of health shall assign a place requested by an applicant as a site for a new facility or the expansion of an existing facility unless it makes a finding that the siting thereof would constitute a danger to public health, safety, or the environment. The finding shall be supported by the record of evidence and shall be based upon the relevant criteria set forth at 310 CMR 16.6040(3), (4) and (5) as applied by the Department in accordance with 310 CMR 16.6040(1)(a)2. The board of health shall not impose any condition pertaining to facility design except in accordance with conditions placed by the Department pursuant to 310 CMR 16.6040(1)(c)3.

(c) Facility Design Review.

1. General. All applications shall be evaluated with the presumption that the proposed facility shall be designed and constructed to meet all relevant state and federal statutory, regulatory and policy requirements.
2. Design Considerations. The review of an application shall not consider detailed facility designs or operations except where:
 - a. the Department determines that specific design or operation plans or data are necessary to determine whether potential discharges or emissions from the proposed facility could render the site not suitable and requires the applicant to submit such relevant and detailed information; or
 - b. the applicant intends to alter the site or design the facility to meet specific site suitability criteria and submits such plans or other information as the Department deems necessary to determine if the criteria are satisfied.
3. Design Conditions. When facility design or operation plans are submitted the Department may base a site suitability determination on:
 - a. the incorporation of specific facility design elements; or
 - b. compliance with performance and technical standards and criteria.

(2) Application of the Site Suitability Criteria. Facility specific site suitability criteria are set forth in 310 CMR 16.6040(3) for each of the following types of solid waste management facilities:

- (a) landfills;
- (b) single waste landfills (Reserved)
- (c) solid waste combustion facilities; and

- (d) solid waste handling facilities; **and**
- (e) **compost facilities.**

Generally applicable criteria are set forth in 310 CMR 16. ~~60~~40(4) and apply equally to all types of solid waste management facilities.

(3) Facility Specific Site Suitability Criteria.

(a) Criteria for Landfill Facilities. No site shall be determined to be suitable or be assigned as a landfill facility where:

1. any area of waste deposition would be within a Zone II area of an existing public water supply well;
2. any area of waste deposition would be within the Interim Wellhead Protection Area (IWPA) of an existing public water supply, provided that the proponent may conduct a preliminary Zone II study, approved of by the Department, to determine if the waste deposition area would be beyond the Zone II of the public water supply well in question;
3. any area of waste deposition would be within 15,000 feet upgradient of the existing public water supply well for which a Zone II has not been calculated; the proponent may conduct a preliminary Zone II study, approved of by the Department, to determine if the waste deposition area would be beyond the Zone II of the public water supply well in question;
4. the area of waste deposition would be within a proposed drinking water source area, public water supply; provided that the documentation necessary to obtain a source approval has been submitted prior to the earlier of either the site assignment application, or where applicable, the Massachusetts Environmental Policy Act Environmental Notification Form;
5. it is determined by the Department that a discharge from the area of waste deposition would pose a danger to a proposed drinking water source area public water supply for which a Zone II has not been determined;
6. any area of waste deposition would be over the recharge area of a Sole Source Aquifer, unless:
 - a. there are no existing public water supplies or proposed drinking water source areas public water supplies downgradient of the site;
 - b. there are no existing or potential private water supplies downgradient of the site; however, the applicant may have the option of providing an alternative public water supply to replace all the existing or potential downgradient private groundwater supplies; and
 - c. there exists a sufficient existing public water supply or proposed drinking water source area public water supply to meet the municipality's projected needs;
7. the facility has been prohibited from siting or expanding within the zone of contribution of an existing public water supply or proposed drinking water source area, or the recharge area of a surface drinking water supply pursuant to a municipal ordinance or by-law enacted in accordance with MGL c. 40A, section 9;
- 8.7. any area of waste deposition would be within the Zone C of a surface drinking water supply if a new site, or within the Zone B of a surface drinking water supply if an existing site; less than 1/2 mile upgradient of a surface drinking water supply as defined by groundwater flow or surface water drainage;
- 9.8. any area of waste deposition would be less than ~~400~~ 250 feet upgradient, as defined by groundwater flow or surface water drainage, of a

perennial water course that drains to a surface drinking water supply which is within one mile of the waste deposition area;

~~10.9. any area of waste deposition would be less than 500 feet downgradient of a surface drinking water supply as defined by groundwater flow or surface water drainage;~~

~~11.10.~~ any area of waste deposition would be within 500 feet of a private water supply well existing or established as a potential supply at the time of submittal of the application; provided, however, the applicant may show a valid option to purchase the restricted area, including the well and a guarantee not to use the well as a drinking supply, the exercise of which shall be a condition of any site assignment;

~~12.11.~~ the maximum high groundwater table is within four feet of the ground surface in areas where waste deposition is to occur or, where a liner is designed to the satisfaction of the Department, within four feet of the bottom of the lower-most liner;

~~13.12.~~ the outermost limits of waste deposition or leachate containment structures would be within a resource area protected by the Wetlands Protection Act, M.G.L. c. 131, § 40, including the 100 year floodplain;

~~14.13.~~ any area of waste deposition or the leachate containment structures would be less than 250 feet to a lake or river (not including a stream) as defined in 310 CMR 10.00, other than a drinking water supply; or

~~15.14.~~ any area of waste deposition would be within 500 feet of an occupied residential dwelling, bedded health care facility, prison, lower educational institution or children's pre-school, excluding equipment storage or maintenance structures existing or established at the time of submittal of the application; provided, however, that the applicant may show a valid option to purchase the restricted area, the exercise of which shall be a condition of any site assignment.

~~16.15.~~ waste deposition on the site would result in a threat of an adverse impact to groundwater through the discharge of leachate, unless it is demonstrated to the satisfaction of the Department that a groundwater protection system will be incorporated to prevent such threat.

(b) Criteria for Single Waste Landfills (Reserved)

(c) Criteria for Solid Waste Combustion Facilities. No site shall be determined to be suitable or be assigned as a solid waste combustion facility where:

1. a waste handling area would be within the Zone I of a public water supply;

2. a waste handling area would be within the Interim Wellhead Protection Area (IWPA) or Zone II of an existing public water supply, or within a proposed drinking water source area, public water supply; provided that the documentation necessary to obtain a source approval has been submitted prior to the earlier of either the site assignment application, or where applicable, the Massachusetts Environmental Policy Act Environmental Notification Form, and unless necessary restrictions are imposed to minimize the risk of an adverse impact to the groundwater; and either

a. the proponent can demonstrate to the satisfaction of the Department that the facility cannot reasonably be sited outside the IWPA or Zone II; or

- b. there would be a net environmental benefit to the groundwater by siting the facility within the Zone II or the IWPA where the site has been previously used for solid waste management activities.
 2. the waste handling area would be within the Zone A less than 500 feet ~~upgradient~~ of a surface drinking water supply ~~as defined by groundwater flow or surface water drainage;~~
 3. ~~the waste handling area would be less than 250 feet downgradient of a surface drinking water supply as defined by groundwater flow or surface water drainage;~~
 4. the waste handling area would be within 250 feet of an existing or potential private water supply well existing or established at the time of submittal of the application, provided, the applicant may show a valid option to purchase the restricted area including the well and a guarantee not to use the well as a drinking water source, the exercise of which shall be a condition of any site assignment.
 5. the maximum high groundwater table is within two feet of the ground surface in areas where waste handling is to occur unless it is demonstrated that a two foot separation can be designed to the satisfaction of the Department; or
 6. the waste handling area would be within 500 feet of an occupied residential dwelling, prison, bedded health care facility, lower educational institution or children's preschool, excluding equipment storage or maintenance structures existing or established at the time of submittal of the application; provided, however, that the applicant may show a valid option to purchase the restricted area, the exercise of which shall be a condition of any site assignment.
- (d) Criteria for Solid Waste Handling Facilities. No site shall be determined to be suitable or be assigned as a solid waste handling facility where:
1. a waste handling area would be within the Zone I of a public water supply well;
 - ~~2.~~ a waste handling area would be within the Interim Wellhead Protection Area (IWPA) or Zone II of an existing public water supply, or within a proposed drinking water source area, public water supply; provided that the documentation necessary to obtain a source approval has been submitted prior to the earlier of either the site assignment application, or where applicable, the Massachusetts Environmental Policy Act Environmental Notification Form and unless necessary restrictions are imposed to minimize the risk of an adverse impact to the groundwater; and either
 - a. the proponent can demonstrate to the satisfaction of the Department that the facility cannot reasonably be sited outside the IWPA or Zone II; or
 - b. there would be a net environmental benefit to the groundwater by siting the facility within the Zone II or the IWPA where the site has been previously used for solid waste management activities.
 2. the waste handling area would be within the Zone A less than 500 feet ~~upgradient~~ of a surface drinking water supply ~~as defined by groundwater flow or surface water drainage;~~
 3. ~~the waste handling area would be less than 250 feet downgradient of a surface drinking water supply as defined by groundwater flow or surface water drainage;~~

4. the waste handling area would be within 250 feet of an existing or potential private water supply well existing or established at the time of submittal of the application; provided, the applicant may show a valid option to purchase the restricted area including the well and a guarantee not to use the well as a drinking water source, the exercise of which shall be a condition of any site assignment.
5. the maximum high groundwater table would be within two feet of the ground surface in areas where waste handling is to occur unless it is demonstrated that a two foot separation can be designed to the satisfaction of the Department; or
6. the waste handling area would be within 250 feet of an occupied residential dwelling, prison, bedded health care facility, lower educational institution or children's preschool, excluding equipment storage or maintenance structures existing or established at the time of submittal of the application; provided, however, that the applicant may show a valid option to purchase the restricted area, the exercise of which shall be a condition of any site assignment.

(e) Criteria for Compost Facilities. No site shall be determined to be suitable where:

- 1. For a Type A Facility:**
 - a. the facility lacks monitoring capabilities and the waste handling area is located within a proposed drinking water source area or an interim well head protection area or a Zone II area.**
- 2. For a Type B Facility the facility is open-air and located within a proposed drinking water source area, interim wellhead protection area or a Zone II area.**
- 3. For Any Facility, the waste handling area would be:**
 - a. located within 250 feet of a private well;**
 - b. located at a height less than 4 feet above the maximum high groundwater table in areas where materials handling is to occur;**
 - c. located within 750 feet of an occupied residential dwelling, prison, bedded health care facility, lower educational institution or children's preschool, excluding equipment storage or maintenance structures; provided, however, that the applicant may show a valid option to purchase the restricted area, the exercise of which shall be a condition of any site assignment;**
 - d. enclosed and located within 100 feet of the property line;**
 - e. open-air and located within 150 feet of the property line;**
 - f. located within a Zone I;**
 - g. located within 400 feet of the 100 year flood plain of a surface water supply source; and**
 - h. located within 200 feet of a tributary to a surface water supply.**

(4) General Site Suitability Criteria. The following Site Suitability Criteria shall apply to all types of solid waste management facilities.

- (a) Agricultural Lands. No site shall be determined to be suitable or be assigned as a solid waste management facility **except in the case where the**

facility is a compost facility where a 100 foot buffer would not be present between the site assigned area and active farmland.

(b) Traffic and Access to the Site. No site shall be determined to be suitable or be assigned as a solid waste management facility where traffic impacts from the facility operation would constitute a danger to the public health, safety, or the environment taking into consideration the following factors:

1. traffic congestion;
2. pedestrian and vehicular safety;
3. road configurations;
4. alternate routes; and
5. vehicle emissions

(c) Wildlife and Wildlife Habitat. No site shall be determined to be suitable or be assigned as a solid waste management facility where such siting would:

1. have an adverse impact on Endangered, Threatened, or Special Concern species listed by the Natural Heritage and Endangered Species Program of the Division of Fisheries and Wildlife in its database;
2. have an adverse impact on an Ecologically Significant Natural Community as documented by the Natural Heritage and Endangered Species Program in its database; or
3. have an adverse impact on the wildlife habitat of any state Wildlife Management Area.

(d) Areas of Critical Environmental Concern.

1. No landfill shall be sited within an Area of Critical Environmental Concern (ACEC).
2. No combustion facility, composting facility or handling facility shall be sited within an ACEC where the facility would fail to protect the outstanding resources of the ACEC as identified in the Secretary's designation.
3. No solid waste management facility shall be sited outside, but adjacent to, an ACEC where the facility would fail to protect the outstanding resources of the ACEC as identified in the Secretary's designation.

~~No site shall be determined to be suitable or be assigned as a solid waste management facility where such siting:~~

1. ~~would be located within an Area of Critical Environmental Concern (ACEC), as designated by the Secretary of the Executive Office of Environmental Affairs; or~~
2. ~~would fail to protect the outstanding resources of an ACEC as identified in the Secretary's designation if the solid waste management facility is to be located outside, but adjacent to the ACEC.~~

(e) Potential Air Quality Impacts. No site shall be determined to be suitable or be assigned as a solid waste management facility where the anticipated emissions from the facility would not meet required state and federal air quality standards or criteria or would otherwise constitute a danger to the public health, safety or the environment, taking into consideration:

1. the concentration and dispersion of emissions
2. the number and proximity of sensitive receptors; and
3. the attainment status of the area.

(f) Potential for the Creation of Nuisances. No site shall be determined to be suitable or be assigned as a solid waste management facility where the

establishment or operation of the facility would result in nuisance conditions which would constitute a danger to the public health, safety or the environment taking into consideration the following factors:

1. noise;
2. litter;
3. vermin such as rodents and insects;
4. odors;
5. bird hazards to air traffic; and
6. other nuisance problems.

(g) Size of Facility. No site shall be determined to be suitable or be assigned as a solid waste management facility if the size of the proposed site is insufficient to properly operate and maintain the proposed facility. ~~In making this determination, the distance of the waste handling area or disposal area from the property boundary shall be taken into account.~~ The minimum distance between the waste handling area or deposition area and the property boundary shall be 100 feet, provided that a shorter distance may be suitable for that portion of the waste handling or deposition area which borders a separate solid waste management facility.

(h) Areas Previously Used for Solid Waste Disposal. Where an area adjacent to the site of a proposed facility has been previously used for solid waste disposal the following factors shall be considered by the Department in determining whether a site is suitable and by the board of health in determining whether to assign a site:

1. the nature and extent to which the prior solid waste activities on the adjacent site currently adversely impact or threaten to adversely impact the proposed site;
2. the nature and extent to which the proposed site may impact the site previously used for solid waste disposal; and
3. the nature and extent to which the combined impacts of the proposed site and the previously used adjacent site adversely impact on the public health, safety and the environment; taking into consideration:
 - a. whether the proposed site is an expansion of or constitutes beneficial integration of the solid waste activities with the adjacent site;
 - b. whether the proposed facility is related to the closure and/or remedial activities at the adjacent site; and
 - c. the extent to which the design and operation of the proposed facility will mitigate existing or potential impacts from the adjacent site.

(i) Existing Facilities.

1. In evaluating proposed sites for new solid waste management facilities the Department and the board of health shall give preferential consideration to sites located in municipalities in which no existing landfill or solid waste combustion facilities are located. This preference shall be applied only to new facilities which will not be for the exclusive use of the municipality in which the site is located. The Department and the board of health shall weigh such preference against the following considerations when the proposed site is located in a community with an existing disposal facility:
 - a. the extent to which the municipality's or region's solid waste needs will be met by the proposed facility; and
 - b. the extent to which the proposed facility incorporates recycling, composting or waste diversion activities.

2. Where an existing disposal facility and a proposed new disposal facility in a municipality each are designed to accept 300 tons per day (300 TPD) or more the Department and the board of health shall consider whether the cumulative impacts of the proposed facility and the documented impacts of the existing disposal facility constitutes a danger to public health, safety or the environment, taking into consideration whether the proposed facility is related to the closure and/or remedial activities at the existing disposal facility.

(j) Regional Participation. The Department and the board of health shall give preferential consideration to sites located in municipalities not participating in a regional disposal facility. The Department and the board of health shall weigh such preference against the following considerations when the proposed site is located in a community participating in a regional disposal facility:

1. the extent to which the proposed facility meets the municipality's and the region's solid waste management needs; and
2. the extent to which the proposed facility incorporates recycling, composting, or waste diversion activities.

(5) Promotion of Integrated Solid Waste Management

~~(a) In determining whether a site is suitable for a combustion facility or a landfill the Department shall consider the following factors:~~

- ~~1. The potential yearly and lifetime capacity created by the proposed site use(s) in relation to the reasonably anticipated disposal capacity requirements and reduction/diversion goals of the Commonwealth and the geographic area(s) which the site will serve.~~
- ~~2. The extent to which the proposed site use(s), alone or in conjunction with other sites, provides or affords feasible means to maximize diversion or processing of each component of the anticipated waste stream in order to reduce potential adverse impacts from disposal and utilize reusable materials and only thereafter extract energy from the remaining solid waste prior to final disposal.~~
- ~~3. The extent to which the proposed use(s) of the site, alone or in conjunction with other sites, will contribute to the establishment and maintenance of a statewide integrated solid waste management system which will protect the public health and conserve the natural resources of the Commonwealth.~~

(a)(b) In determining whether a site is suitable for a combustion facility or a landfill the Department and the board of health shall consider the extent to which the proposed use of the site directly incorporates recycling and composting techniques or is otherwise integrated into recycling and composting activities for the geographic area(s) which the site will serve.

(b)(e) A site proposed for a combustion facility or a landfill shall be reviewed to determine if the site is also suitable for a recycling or composting facility either in conjunction with or instead of the proposed facility.

(c)(d) Site assignment applications which incorporate significant recycling or composting uses, in accordance with the goals of the statewide plan, shall receive preferred consideration. Such consideration may include, without limitation:

1. approval of a facility in a non-preferred municipality as set forth at 310 CMR 16.6040(4)(i) and (j); or

2. consideration of a waiver application as set forth in 310 CMR 16.6040(6).

(6) Waiver

(a) General. The Commissioner may waive any of the facility specific site suitability criteria contained in 310 CMR 16.6040(3) not specifically required by law when the Commissioner finds that strict compliance with such criteria would result in undue hardship and would not serve to minimize or avoid adverse impact. Hardship based on delay in compliance by the proponent, increased facility construction or operational costs or reduced facility revenue generation will not be sufficient, except in extraordinary circumstances, to invoke 310 CMR 16.6040(6).

(b) Criteria. A waiver shall not be granted unless the Commissioner determines that the granting of a waiver is necessary to accommodate an overriding community, regional, or state public interest and the granting of the waiver would not diminish the level of protection to public health and safety and the environment that will exist in the absence of the waiver.

(c) Considerations. In determining whether a waiver should be granted, the Commissioner shall consider, in addition to the criteria contained in 310 CMR 16.6040(6)(b) the following factors:

1. the availability of other suitable sites in the affected municipality or regional district;
2. whether the site is in a preferred municipality as defined in M.G.L. c. 111, § 150A½;
3. the minimum facility size required to reasonably meet essential waste handling activities;
4. whether the waiver will result in environmental benefits in excess of those that could be achieved in the absence of the waiver;
5. the extent to which the proposed facility is part of an integrated solid waste management activity; and
6. whether the solid waste management objectives of the proposed project could be achieved in the absence of the waiver.

(d) Filings. All requests for waivers shall be filed and documented in accordance with 310 CMR 16.3098(5)(c).

16.99: APPENDIX A

TECHNICAL FEE

The board of health shall assess the Technical Fee based on the type and size of facility or site stated on the application.

The maximum allowable Technical Fee that the board of health may assess shall be computed using the appropriate table for each type of facility.

TABLE 1. MAXIMUM TECHNICAL FEE FOR LANDFILLS

The maximum amount of the Technical Fee for a landfill is computed on the basis of the total area of the site specified in the application.

<u>Size (acres)</u>	<u>Maximum Fee (\$)</u>
0-10	\$15,000
10-25	\$15,000 plus \$1,000 for each acre in excess of 10
over 25	\$30,000 plus \$ 200 for each acre in excess of 25

TABLE 2. MAXIMUM TECHNICAL FEE FOR HANDLING FACILITIES AND COMPOST FACILITIES

The maximum amount of the Technical Fee for a handling facility is computed on the basis of the maximum daily volume of waste (measured in tons per day) proposed to be accepted as specified in the application as follows:

$$\text{Maximum Fee} = \$3000 + [\$20 \times \text{Daily Volume (tons/day)}]$$

TABLE 3. MAXIMUM TECHNICAL FEE FOR COMBUSTION FACILITIES

The maximum amount of the Technical Fee for a waste combustion facility is computed on the basis of the maximum daily volume of waste (measured in tons per day) proposed to be processed as specified in the application as follows:

$$\text{Maximum Fee} = \$25000 + [\$10 \times \text{Daily Volume (tons/day)}]$$

ADJUSTMENT OF TECHNICAL FEE FOR INFLATION

The maximum allowable technical fee shall be adjusted for inflation using the following procedure:

$$\text{MTF (current year)} = \text{MTF(Table)} \times [\text{BCPI(current year - 1)/BCPI(1988)}]$$

Where:

MTF(Table) = Maximum Technical Fee Computed using Table 1, 2 or 3 in this Appendix for the specific facility under consideration

MTF(current year) = Maximum Technical Fee for the current year (i.e., the MTF applicable to the Application being submitted)

BCPI(1988) = Boston Consumer Price Index for September, 1988

BCPI(current year - 1) = Boston Consumer Price Index for September for the year preceding the current year

The Index used for this inflation adjustment is the September figure for the Boston Consumer Price Index for All Urban Consumers issued by the US Department of Labor, Bureau of Labor Statistics.

REGULATORY AUTHORITY

310 CMR 16.00: M.G.L. c. 21A, §§ 2 and 8; c. 111, §§ 150A and 150A½.