

## 310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION

### 310 CMR 16.00: SITE ASSIGNMENT REGULATIONS FOR SOLID WASTE FACILITIES

**Section 16.01 is proposed to be replaced in its entirety by the following section 16.01.**

#### 16.01: General Requirements

(1) Purpose. *310 CMR 16.00* governs the process of application, review, public hearing and decision for a site assignment to establish a new solid waste management facility at an unassigned site or to expand a solid waste management facility, exemptions from such requirements, and the issuance of permits for recycling, composting and conversion. *310 CMR 16.00* is composed of four parts.

- (a) The first part identifies the activities that require a site assignment and the activities and operations that are exempt from site assignment but remain subject to regulation by the Department.
- (b) The second part prescribes the procedures for submitting an application to a board of health or the Department, whichever is applicable, for site assignment.
- (c) The third part sets forth the rules for a public hearing held by the board of health for assigning a site.
- (d) The final part establishes the site suitability criteria that are to be applied by the board of health or the Department, whichever is applicable, in determining whether a site is suitable.

(2) Authority. *310 CMR 16.00* is promulgated by the Department pursuant to *M.G.L. c. 16, §§ 18-24, c. 21A, §§ 2 and 8, c. 21H, § 7, and c. 111, §§ 150A and 150A 1/2*.

(3) Applicability. The site assignment requirements set forth at *310 CMR 16.00* shall apply to facilities that store, process, transfer, treat, or dispose of solid waste. They shall not apply to:

- (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 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) Activities and operations exempt from site assignment pursuant to *310 CMR 16.03, 16.04 and 16.05*. Owners and Operators in full compliance with the applicable requirements set forth at *310 CMR 16.03, 16.04 and 16.05* and all other requirements that may apply; and
- (e) Beneficial reuse of a solid waste pursuant to *310 CMR 19.060*. The beneficial reuse of a solid waste as a secondary material in full compliance with the requirements set forth at *310 CMR 19.000* and all other requirements that may apply.

(4) Determinations of Need Issued Prior to [Promulgation Date]. An owner and/or operator to whom a Determination of Need has been issued pursuant to the versions of *310 CMR 16.05* effective on or before [the effective date of these regulations], is subject to the following requirements. Nothing in this section shall be construed to limit the authority of the Department to take any enforcement action if the owner or operator fails to comply with

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any Determination of Need during its remaining term or with the requirements of *310 CMR 16.00* or *310 CMR 19.000*.

(a) Determination of Need With an Expiration Date. At least 90 days prior to the expiration of a Determination of Need, an owner and/or operator to whom a Determination of Need with an expiration date has been issued may continue operating in compliance with such Determination of Need until either the owner or operator takes the following steps or the Determination of Need expires, whichever is earlier:

1. File a notice with the Department demonstrating that the Determination of Need activity qualifies for exemption pursuant to *310 CMR 16.03*. Upon filing of such notice, the owner and operator shall continue operating only in accordance with the applicable exemption at *310 CMR 16.03*, and the Determination of Need shall no longer be in effect;
2. File a certification with the Department in accordance with the provisions of *310 CMR 16.06(1)*. Upon such filing, the owner and operator shall continue operating only in accordance with the applicable permit by rule at *310 CMR 16.04*, and the Determination of Need shall no longer be in effect; or
3. If *310 CMR 16.01(4)(a)1* and *2* do not apply, file a certification with the Department in accordance with the provisions of *310 CMR 16.06(1)* indicating that the operation is in compliance with the Determination of Need. Upon filing such certification, the Determination of Need converts to a permit issued pursuant to *310 CMR 16.05*, and the owner and operator shall comply with the permit and all conditions therein. Such permit shall expire five years from the date of filing such certification. The owner or operator shall timely submit a renewal application that complies with *310 CMR 16.05* for consideration by the Department at least 180 days prior to the expiration date.

(b) Determination of Need Without an Expiration Date. An owner and/or operator to whom a Determination of Need without an expiration date has been issued may continue operating in compliance with such Determination of Need for a period no later than five years after [the effective date of these regulations], by which date either the owner or operator shall:

1. File a notice with the Department demonstrating that the Determination of Need activity qualifies for exemption pursuant to *310 CMR 16.03*. Upon filing of such notice, the owner and operator shall continue operating in accordance with the applicable exemption at *310 CMR 16.03*, and the Determination of Need shall no longer be in effect;
2. File a certification with the Department in accordance with the provisions of *310 CMR 16.06(1)*. Upon such filing, the owner and operator shall continue operating only in accordance with the applicable permit by rule at *310 CMR 16.05* and the Determination of Need shall no longer be in effect; or
3. If *310 CMR 16.01(4)(b)1* and *2* do not apply, file a certification with the Department in accordance with the provisions of *310 CMR 16.06(1)* indicating that the operation is in compliance with the Determination of Need. Upon filing such certification, the Determination of Need converts to a permit issued pursuant to *310 CMR 16.05*, and the owner and operator shall comply with the permit and all conditions therein. Such permit shall expire five years from the date of filing such certification. The owner or operator shall timely submit a renewal application that complies with *310 CMR 16.05* for consideration by the Department at least 180 days prior to the expiration date.

(5) Joint and Several Liability. Wherever in these regulations, *310 CMR 16.00*, the regulations state that the owner or operator shall take action or refrain from taking action,

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the owner and operator shall be jointly and severally liable such that the Department may take action for any violations against either the owner, the operator or both.

### **Section 16.01(6) Time was moved from the former section 16.03: Time in its entirety.**

#### (6) Time.

(a) 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.

(b) 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:

1. Hand-delivery during business hours shall be deemed filed on the day delivered;
2. Hand-delivered during non-business hours shall be deemed filed on the next regular business day; and
3. Mailing by placing in U.S. mail shall be deemed filed on the date so postmarked.

(c) 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.

### **Section 16.01(7) Severability was moved from the former section 16.04: Severability in its entirety.**

(7) 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.

### **Section 16.01(8) was moved from the former section 16.07: Prohibitions in its entirety.**

(8) 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*.

(9) Prohibition on Speculative Accumulation. Any person accumulating or storing material shall bear the burden of maintaining accurate records sufficient to demonstrate to the Department's satisfaction that the material is not being speculatively accumulated. Speculative accumulation occurs when:

- (a) It is not feasible to recycle, convert, compost or otherwise use the material in compliance with the requirements of *310 CMR 16.00*; or

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(b) Less than 75% by weight or volume, as appropriate, of the material that is being recycled, converted, composted or used (whether in its as-received, in-process or processed condition) is:

1. Recycled, converted or composted or used in compliance with the requirements of *310 CMR 16.00*; or
2. Transferred off-site for such purposes, within 180 days from the date of its receipt, unless a different time period is specified by the Department.

### (10) Enforcement.

(a) Violations. It shall be a violation of *310 CMR 16.00* for any person to:

1. Fail to submit a timely certification pursuant to *310 CMR 16.06(1)*;
2. Make any false, inaccurate, incomplete, or misleading statements in any certification required pursuant to *310 CMR 16.06(1)*;
3. Make any false, inaccurate, incomplete or misleading statements in any record, report, plan, file, log, or register which that person is required to keep pursuant to the applicable standards;
4. Hold themselves out as a responsible official in violation of the requirements contained in *310 CMR 16.06(1)*;
5. Deny the Department access to enter upon and inspect the site, the operation and relevant operating records to determine and compel compliance with applicable regulations and the conditions of any permit issued pursuant to *310 CMR 16.05*;
6. Or fail to comply fully with the applicable standards, requirements or conditions established under *310 CMR 16.00* or with the provisions of any determination or order issued pursuant to *310 CMR 16.00*;
7. Act without a permit or site assignment where one is required; or
8. Violate any other provision of *310 CMR 16.00*.

(b) Action by the Department. Nothing in *310 CMR 16.00*, or in any order issued pursuant thereto, shall be construed to limit any right of the Department to take enforcement action pursuant to any other authority. Whenever the Department has cause to believe that a violation has occurred, it may without limitation:

1. Order the owner or operator, or any other person responsible for the violation, to cease operations until the violation is corrected to the satisfaction of the Department or such person obtains a site assignment and solid waste management facility permit;

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2. Order the owner or operator, or any other person responsible for the violation, to cease all illegal activity immediately or at a specified date, and to comply fully *310 CMR 16.00* and *19.000*, or any permit or conditions pursuant to *310 CMR 16.00*;
3. Order the owner or operator, or other person responsible for the violation, to take appropriate remedial measures immediately or by a specified date to bring the site into compliance or to protect public health or safety or the environment, including without limitation closure of the site;
4. Rescind, suspend, revoke, or modify any permit by rule or permit issued pursuant to *310 CMR 16.00* and/or initiate an enforcement action in accordance with applicable statutes or regulations. Where a permit is suspended, operations shall cease until:
  - a. The owner or operator corrects the violation to the satisfaction of the Department; or
  - b. The owner or operator applies for and obtains a site assignment and solid waste management facility permit.
5. Issue a notice of non-compliance or assess a civil administrative penalty pursuant to *M.G.L. c. 21A, § 16* and *310 CMR 5.00*;
6. Take such other action provided by *310 CMR 16.00* or *310 CMR 19.000* or other applicable statutory or regulatory authority as the Department deems appropriate.

(c) Right to Adjudicatory Hearing. A person who is the subject of an order issued pursuant to *310 CMR 16.01(10)* shall have the right to request an adjudicatory hearing on such order within 21 calendar days of the date of service of the order by filing a notice of claim with the Department in accordance with the procedures set forth herein and in *310 CMR 1.01*. Any right to an adjudicatory hearing concerning assessment of a civil administrative penalty shall be determined in accordance with the provisions of *310 CMR 5.00*.

(d) Waiver of Right to Adjudicatory Hearing. Any person who is the subject of an order issued pursuant to *310 CMR 16.01(10)* shall be deemed to have waived the right to an adjudicatory hearing unless within 21 calendar days of the date of service of the order the Department receives a written statement setting forth the basis for the request for an adjudicatory hearing, subject to and in compliance with the applicable provisions of *310 CMR 1.01*.

(e) Service of Notices and Orders. Service in all civil administrative penalty actions is governed by *310 CMR 5.00*. The Department may serve an order issued pursuant to *310 CMR 16.00* according to any of the following procedures except for processes, notices, and orders issued in the course of an adjudicatory hearing which are governed by the provisions of *310 CMR 1.01*:

1. Service of an order is complete when it is hand delivered by an employee or agent of the Department to the person to be served or to any officer,

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employee, responsible official or agent of the person. The fact and date of service is established by the return or affidavit of the person making service.

2. Service of an order when made by any form of mail requiring the return of a receipt signed by the person to be served is complete upon delivery to the person or to any officer, employee, responsible official or agent of the person. The fact and date of service is established by the returned receipt.
3. The Department may make service of an order in any other manner, including any form of electronic mail, facsimile or other electronic medium, national overnight carrier, regular mail to the last known address or other publication or method of delivery. The Department may use such alternative methods of service only when the person to be served declines to accept receipt by the service methods specified in *310 CMR 16.01(10)(e)3*. The fact of service in such cases is established by such records as may be available. The date of service shall be the date on which the Department initiates electronic transmission, the date of publication, one day after the date of overnight mailing or three days after the date of regular mailing.

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**Proposed additions to the definitions are displayed in double underline and proposed deletions are displayed in ~~strikeout~~.**

### 16.02: Definitions

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, but not limited to, land located directly across a street, way, creek, river, stream, brook or canal.

Adjacent Area means a parcel of land contiguous to a site or in close enough proximity to be directly impacted by water, air or soil borne pollutants, not exceeding a 1/2 mile radius from the site.

Adjudicatory Hearing or Hearing means the portion of the adjudicatory proceeding initiated by filing a notice of claim with the Office of Administrative Appeals pursuant to 310 CMR 1.01, where parties may present evidence on issues of fact, and argument on issues of law and concluded by the Commissioner's issuance of a final decision pursuant to 310 CMR 1.01(14).

Adjudicatory Proceeding means a proceeding under *M.G.L. c. 30A* that may culminate in an adjudicatory hearing and the Commissioner's issuance of a final decision pursuant to *310 CMR 1.01(14)*. It is a proceeding before the Department in which the legal rights, duties or privileges of specifically named persons are required by constitutional right, by provisions of *M.G.L. c. 30A*, or by any other provision of the General Laws to be determined after opportunity for a Department hearing, but does not include the types of proceedings described in *M.G.L. c. 30A § 1(a)* through *(f)*.

Adverse Impact means an injurious impact which is significant in relation to the public health, safety, or environmental interest being protected.

Aerobic Digestion means a process of accelerated biodegradation of compostable materials using microorganisms under controlled aerobic conditions which results in stabilization of the compostable materials and yields products which can safely be used.

Aggrieved Person means any person who, because of an act or failure to act by the Department, may suffer an injury in fact which is different either in kind or magnitude from that suffered by the general public and which is within the scope of the interests protected by *310 CMR 16.00*.

Agricultural Waste-Material means ~~discarded~~ organic materials produced from the raising and processing of plants and animals as part of agronomic, horticultural, aquacultural or silvicultural operations, including, but not limited to, animal manures, animal products and by-products (including carcasses), bedding materials, plant stalks, ~~leaves-materials~~, leaves, and other vegetative matter materials and ~~discarded by-products~~ from the on-farm processing of fruits and vegetables.

Anaerobic Digestion means a process of accelerated biodegradation of compostable materials using microorganisms under controlled anaerobic conditions which results in stabilization of the compostable materials and yields products which can safely be used.

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

Area of Critical Environmental Concern (ACEC) means an area designated by the Secretary of the Executive Office of Energy and Environmental Affairs pursuant to *301 CMR 12.00- Areas of Critical Environmental Concern*.

Asphalt Pavement, Brick, and Concrete Rubble means rubble that contains only weathered (cured) asphalt pavement, clay bricks and attached mortar normally used in construction, or concrete that may contain rebar. The rubble shall ~~be clean and~~ not be painted, coated or impregnated with any substance. The rubble shall not be mixed with or contaminated by any other wastes or debris.

~~Backyard Composting means the composting of organic solid waste, such as grass clippings, leaves or brush generated by a homeowner or tenant of a single or multi-family residential unit or an apartment complex unit, where composting occurs at that dwelling place.~~

Biodegradable or Biodegradation means capable of being broken down into carbon dioxide, water and humus by the action of living things, such as microorganisms.

Biodegradable Product means a product that meets the standards of the American Society for Testing and Materials (ASTM) D6400 and D6868 as of the promulgation date of these regulations.

Cathode Ray Tube, CRT or Intact CRT means an intact glass tube used to provide the visual display in televisions, computer monitors, oscilloscopes and similar scientific equipment, but does not include the other components of an electronic product containing a CRT even if the product and the CRT are disassembled.

Clean Wood means discarded material consisting of trees, stumps and brush, including but not limited to sawdust, chips, shavings, bark, and new or used lumber. Clean wood does not include: (1) wood from commingled construction and demolition waste; (2) engineered wood products; and (3) wood containing or likely to contain: (a) asbestos; (b) chemical preservatives such as, but not limited to, creosote or pentachlorophenol; or (c) paints, stains or other coatings, or adhesives.

Combustion Facility means a facility employing an enclosed system using controlled flame combustion, the primary purpose of which is to thermally break down solid wastes, producing ash that contains little or no combustible materials, including but not limited to refuse incinerators.

Commissioner means the Commissioner of the Department of Environmental Protection or his or her designee.

Compostable Material means an organic material, excluding sanitary waste water treatment residuals, that has the potential to be composted and which is source separated from waste pre-sorted and not contaminated by significant amounts of toxic substances.

Composting or Composted means a type of aerobic digestion process of accelerated biodegradation and stabilization of organic material using windrows or piles. under controlled conditions yielding a product which can safely be used.

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Construction and Demolition Waste means the waste building materials and rubble resulting from the construction, remodeling, repair or demolition of buildings, pavements, roads or other structures. Construction and demolition waste includes but is not limited to, concrete, bricks, lumber, masonry, plaster, rebar, road paving materials, and wood.

Conversion means aerobic or anaerobic digestion of compostable materials or enzymatic, thermal or chemical degradation of compostable materials.

CRT Operation means an area or works other than a household that is used for the collection, storage, transfer, containment, or handling of Non-commodity CRTs. The CRT Operation is the place where the determination of whether a CRT is a Non-commodity CRT is made. An operation only handling commodity CRTs is not a CRT Operation. An organization that accepts CRTs for resale is not regulated if it doesn't make the determination that a CRT is not a commodity CRT, but rather leaves that determination to its transferees.<sup>1</sup>

Department means the Department of Environmental Protection.

Department Report on Suitability means the report issued by the Department pursuant to *M.G.L. c. 111, § 150A*, stating whether a site proposed for a solid waste management facility in an application for a site assignment is suitable.

Disposal means the final dumping, landfilling or placement of solid waste into or on any land or water or the ~~incineration~~ combustion of solid waste.

Disposal Facility means any solid waste combustion facility rated by the Department at more than one ton per hour or any landfill that is operating pursuant to a valid site assignment and Department-issued permit.

Downgradient means:

- (a) In reference to surface water, the direction perpendicular to lines of equal elevation over a distance in which elevation continuously decreases, measured from the point or area in question; or
- (b) In reference to groundwater, the direction perpendicular to lines of equipotential over a distance in which total head continuously decreases, measured from the point or area in question.

~~Existing Public Water Supply~~ see ~~Public Water Supply~~.

Expand a Site means to move or expand a solid waste facility's operation to a previously unassigned site that is contiguous to the original site or to modify a solid waste facility's operations causing it to exceed any capacity or total volume limit stated in its current site assignment.

Facility means ~~an established~~ a site or works, and other appurtenances thereto, which is, has been or will be used for the handling, storage, transfer, processing, treatment or

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<sup>1</sup> ~~The implication is that an operation only handling commodity CRTs is not a CRT Operation. Thus, a charity that accepts CRTs for resale is not regulated if it doesn't make the determination that a CRT is not a commodity CRT, but rather leaves that determination to its transferees.~~

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disposal of solid waste including all land, structures and improvements which are directly related to solid waste activities, but not including a solid waste combustion facility that is rated by the Department at one ton per hour or less.

Food Material means source separated material produced from human or animal food production, preparation and consumption activities ~~at homes, restaurants, cafeterias, or dining halls~~ which consists of, but is not limited to, fruits, vegetables, ~~and~~ grains, and fish and animal products and byproducts, ~~and soiled paper unsuitable for recycling.~~

Group of Ten Persons means a group of at least 10 persons who are residents of Massachusetts.

Handling Area means an area used for the transfer, storage, processing or treatment of solid waste, excluding weigh stations or access roads.

Handling Facility means any facility that is not a disposal facility, for example transfer stations, storage facilities and other facilities used primarily for the storage, processing or treatment of solid waste. {"Handling facility" includes recycling facilities and composting facilities that are required to obtain a site assignment ~~pursuant to 310 CMR 16.05~~}.

Infectious Waste means "Infectious Waste or Physically Dangerous Medical or Biological Waste" as defined in 105 CMR 480.000, Department of Public Health, State Sanitary Code and includes: blood and blood products; pathological waste; cultures and stocks of infectious agents and associated biologicals; contaminated animal carcasses, body parts and bedding; sharps; and biotechnological by-product effluents.

Interim Wellhead Protection Area (IWPA) means that wellhead area established pursuant to ~~under 310 CMR 22.02: Drinking Water.~~

Issuance means the date on which the Department mails its permit decision to the applicant.

Land Actively Devoted to Agricultural or Horticultural Uses means that land as defined at *M.G.L. c. 61A, § 3.*

Landfill means a facility or part of a facility established in accordance with a valid site assignment and Department-issued permit for the disposal of solid waste into or on land.

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-potential Drinking Water Source Area means that area defined by 310 CMR 40.0006: ~~Massachusetts Contingency Plan.~~

Non-commodity CRT means a CRT that has been determined will not be returned to service as an operable CRT, and has not been disposed.<sup>2</sup> CRTs that are disposed of intact, and

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<sup>2</sup> ~~The implication is that all CRTs are recyclable once they are determined not to be commodities as operable CRTs, but it takes an affirmative determination for a CRT to convert from a commodity. Note: The hazardous waste regulations do not apply to households.~~

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CRTs that are crushed or ground up (excluding monochrome CRTs) are subject to *310 CMR 30.000*. All CRTs are recyclable once they are determined not to be commodities as operable CRTs.

Operation means recycling (or the storage or transfer of recyclables), composting (or the transfer of compostable materials) or conversion activities, subject to *310 CMR 16.04 or 16.05*, and the area or works on which all such activities take place.

Operator means any person who has care, charge or control of a facility or operation subject to *310 CMR 16.00*, including without limitation, an agent or lessee of the owner or an independent contractor.

Organic Material means vegetative material, food material, agricultural material, biodegradable products, biodegradable paper, and yard waste.

Owner means any person who alone or in conjunction with others has legal ownership, a leasehold interest, or effective control over the real property upon which a facility or operation is located, or the airspace above said real property; "owner" does not mean persons holding bare legal title for the purpose of providing security for financing.

Perennial Water Course means a stream or river that flows year round.

Person(s) means any individual, partnership, association, firm, company, corporation, department, agency, group, public body (including a city, town, district, county, authority, state, federal, or other governmental unit) or any other entity responsible in any way for any activity, facility, or operation subject to *310 CMR 16.00*.

Pollution shall have the same meaning as in *310 CMR 19.006: ~~Solid Waste Management~~*.

Post-Consumer Recyclables means the following materials which have served their intended end use and have been pre-sorted:

- (a) Containers, films and wraps and other forms of packaging made from metal, glass, plastic or paper; and
- (b) Newspaper, office paper, cardboard and other grades of paper.

Potential Private Water Supply means a Class I aquifer as defined at *314 CMR 6.03* 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.

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Pre-Sort means to segregate a material for reuse, recycling, ~~or~~ composting or conversion by preventing the material from being commingled with solid waste at the point of generation or to separate ~~and recover the~~ that material from solid waste at a processing facility. Pre-sorting does not require the ~~recovery or separation of non-recyclable~~ components that are integral to ~~a recyclable product~~ that material (e.g. insulation or electronic components in white goods).

Private Water Supply means a well used as a source of drinking water supplying a non-public water system with any volume of groundwater from any source.

Processing means the use of any method, technique or process to ~~reduce the volume or~~ alter the physical characteristics of solid waste or recyclable or compostable materials through any means, including, without limitation, separating, baling, shredding, crushing or reworking. Storage alone does not constitute processing.

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 under the Drinking Water Regulations at *310 CMR 22.21(1)*: ~~Source Approval~~.

Public Water Supply means a source of drinking water supplying a public water system as defined in *310 CMR 22.00*.

Putrescible means a material, usually nitrogenous, containing a high water content, likely to undergo decomposition at ordinary temperatures, and likely to give off odors.

Recyclable or Recyclable Material means a material that has the potential to be recycled and which is pre-sorted ~~and not contaminated by significant amounts of toxic substances~~. Recyclable material does not include organic materials that will be composted or converted.

Recycle or Recycled means to recover materials or by-products which are:

- (a) ~~re~~Used; or
- (b) ~~u~~Used as an ingredient or a feedstock in an industrial or manufacturing process to make a marketable product; or
- (c) ~~u~~Used in a particular function or application as an effective substitute for a commercial product or commodity.

"Recycle" does not mean to recover energy from the combustion of a material or to create a fuel. "Recycle" does not include composting or conversion.

Recycling Drop-Off Center means a location where pre-sorted post-consumer recyclables are deposited by the generators of the recyclables for collection and transfer to a facility for processing or directly to a market.

Regional Disposal Facility means a solid waste facility that is a member of a regional disposal district established in accordance with *M.G.L. c. 40, § 44K*, or a solid waste facility that receives substantial quantities of solid waste on a regular basis from two or more municipalities.

Residence or Residential means a single, multi-family, or group home, residential unit or apartment complex. For purposes of these regulations 310 CMR 16.00, a group home means an establishment, usually resembling a private home, for providing a small group of

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persons with special needs, such as handicapped or elderly persons or children, with lodging and supervised care.

Residuals or Residue means all solid waste remaining after treatment or processing, and includes, without limitation, ash, material which is processed for recycling or composting but is unmarketable or speculatively accumulated due to its inferior quality and other solid waste which is not recovered. Non-recyclable material which is integral to a pre-sorted recyclable product shall not constitute residue for the purpose of calculating residue generation rates. Residuals remaining after treatment or processing are not considered Pre-Sorted material. Air and water discharges managed in accordance with applicable regulations are not considered residue.

Responsible Official is one of the following:

- (a) For a corporation: a president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function who has been duly authorized pursuant to a corporate vote, or a representative of the corporation who has been duly authorized pursuant to a corporate vote provided the representative is responsible for the overall operation of the facility;
- (b) For a limited liability company, a member with the authority to bind the company and all the members;
- (c) For a partnership: a general partner with the authority to bind the partnership or the proprietor, respectively;
- (d) For a sole proprietorship: the sole proprietor; or
- (e) For a municipality, state, federal, or other public agency including any legislatively created authority, board, commission, district, etc.: either a principal executive officer or ranking elected official who is empowered to enter into contracts on behalf of the municipality or public agency.

Restricted Area means an area specified in 310 CMR 16.40(3) and (4) from which a solid waste management facility is excluded.

Review Period means the 60 day period during which the Department shall review the Site Assignment Application and issue the Department report.

Riverfront Area means that area defined by 310 CMR 10.00: ~~Wetlands Protection~~.

Site Assignment means a determination by a board of health or by the Department as specified in M.G.L. c. 111, § 150A 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, § 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 statute 1955, c. 310 § 2. The area of land site assigned ~~under 310 CMR 16.02: Site Assignment~~ under this subsection shall be limited to the lateral limits of the waste deposition area ("the footprint"), or the area occupied by the incinerator, as they existed 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 of disposal activities except as otherwise provided at 310 CMR 16.21.

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Sludge means the accumulated solids and/or semisolids deposited or removed by the processing and/or treatment of gasses, water or other fluids.

Sole Source Aquifer means an aquifer so designated by the U.S. Environmental Protection Agency, or by the Department under the authority of a state program as may be established, that supplies 50% or more of the drinking water for the aquifer service area, and the volume of water which could be supplied by alternative sources is insufficient to replace the petitioned aquifer should it become contaminated.

Solid Waste or Waste means ~~useless, unwanted or discarded~~ solid, liquid or contained gaseous material resulting from industrial, commercial, mining, agricultural, municipal or household activities that is abandoned by being disposed ~~or incinerated~~ or is stored, treated, processed or transferred pending such disposal, ~~incineration or other treatment~~, but does not include:

- (a) hazardous wastes as defined and regulated pursuant to *310 CMR 30.000*;
- (b) sludge or septage which is land applied in compliance with *310 CMR 32.00*;
- (c) waste-water treatment facility residuals and sludge ash from either publicly or privately owned waste-water treatment facilities that treat only sewage, which is treated and/or disposed at a site regulated pursuant to *M.G.L. c. 83, §§ 6 & 7* and/or *M.G.L. c. 21, §§ 26 through 53* and the regulations promulgated thereunder, unless the waste-water treatment residuals and/or sludge ash are co-disposed with solid waste;
- (d) septage and sewage as defined and regulated pursuant to *314 CMR 5.00*, as may be amended, and regulated pursuant to either *M.G.L. c. 21, §§ 26 through 53* or *310 CMR 15.00*, as may be amended, provided that *310 CMR 16.00* does apply to solid waste management facilities which co-dispose septage and sewage with solid waste;
- (e) ash produced from the combustion of coal when reused as prescribed pursuant to *M.G.L. c. 111, § 150A*;
- (f) solid or dissolved materials in irrigation return flows;
- (g) source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended;
- (h) those materials and by-products generated from and reused within an original manufacturing process; ~~and~~
- (i) ~~compostable or recyclable~~ pre-sorted materials when composted or recycled used in an operation not required to be assigned pursuant to in compliance with 310 CMR 16.03 or 16.045(2) through (6); and
- (j) source separated organic material as defined in 310 CMR 16.02, only when processed at an anaerobic digestion operation at a Publicly Owned Treatment Works as defined in 314 CMR 12.00 and as approved by the Department pursuant to 314 CMR 12.00.

Solid Waste Management Facility means ~~(see "Facility.")~~

Source Separated means separated from solid waste at the point of generation and kept separate from solid waste.

Speculative Accumulation means the accumulation or storage of ~~a recyclable or compostable~~ material where the recycling, ~~or composting,~~ conversion, or other use of the material in compliance with the requirements of 310 CMR 16.00 is not occurring or cannot reasonably be expected to occur in the future. Any ~~recyclable or compostable~~ material that is

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speculatively accumulated is ~~deemed to be~~ a solid waste. ~~Speculative accumulation arises when:~~

- ~~(a) it is not feasible to recycle or compost the material; or~~
- ~~(b) less than 75% by weight or volume, as appropriate, of the recyclable or compostable material is recycled or composted or transferred off-site for recycling or composting within a time frame to be determined by the Department.~~

Storage means the temporary containment of a material or solid waste ~~or compostable or recyclable materials~~ in a manner which does not constitute disposal.

Storage Facility means a handling facility where solid waste is temporarily stored ~~in a manner not constituting disposal prior to being disposed, processed or treated, or transferred for such disposal, processing or treatment.~~

Suitable means a determination by the Department that a proposed site meets the Site Suitability Criteria as set forth in *310 CMR 16.00*.

Transfer Station means a handling facility where solid waste is brought, stored and transferred from one vehicle or container to another vehicle or container for transport off-site to a solid waste treatment, processing or disposal facility.

Treatment means the use of any method, technique or process to change the chemical, or biological character or composition of any solid waste; to neutralize such waste; to render such waste safer to transport, store or dispose; or make such waste amenable to recovery, storage or volume reduction.

Upgradient means:

- (a) in reference to surface water, the direction perpendicular to lines of equal elevation over a distance in which elevation continuously increases, measured from the point or area in question; or
- (b) in reference to groundwater, the direction perpendicular to lines of equipotential over a distance in which total head continuously increases, measured from the point or area in question.

Vegetative Material means ~~source-separated material that which~~ consists of plant material, solely of vegetative waste such as ~~including but not limited to,~~ fruits, vegetables and grains, ~~that is produced from food preparation activities at, but not limited to,~~ grocery stores, fruit or vegetable canning, freezing or preserving operations, ~~and food or beverage processing establishments.~~

Watershed means that area defined by *310 CMR 22.02—Drinking Water*.

~~Wood Waste~~ means ~~discarded material consisting of trees, stumps and brush, including but not limited to sawdust, chips, shavings and bark. Wood waste does not include new or used lumber or wood from construction and demolition waste and does not include wood pieces or particles containing or likely to contain asbestos, or chemical preservatives such as creosote or pentachlorophenol, or paints, stains or other coatings.~~

Yard Waste means deciduous and coniferous seasonal deposition (e.g., leaves), grass clippings, weeds, hedge clippings, garden materials and brush.

Zone A means that area defined by *310 CMR 22.02:—Drinking Water*.

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Zone B means that area defined by 310 CMR 22.02: ~~Drinking Water~~.

Zone C means that area defined by 310 CMR 22.02: ~~Drinking Water~~.

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

Zone I means that area defined by 310 CMR 22.02: ~~Drinking Water~~.

Zone II means that area defined by 310 CMR 22.02: ~~Drinking Water~~.

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**Section 16.05 is proposed to be replaced in its entirety by Sections 16.03, 16.04 16.05 and 16.06.**

16.03: Exemptions

(1) General. *310 CMR 16.03* applies to solid waste handling activities exempt from site assignment and the storage, handling, or processing, including but not limited to recycling, composting and converting, of pre-sorted recyclables and compostable materials.

- (a) *310 CMR 16.03* does not apply to facilities that store, process, transfer, treat or dispose of solid waste or residuals. Such facilities require a site assignment and Solid Waste Management Facility Permit pursuant to *310 CMR 19.000*.
- (b) If a person stores, processes, recycles, composts, converts, or otherwise handles compostable or recyclable materials in a manner that is not in compliance with *310 CMR 16.03*, *310 CMR 16.03* may cease to apply and all provisions of *310 CMR 16.00* and *310 CMR 19.000* shall apply.
- (c) Burden of Proof. In every proceeding, the owner and operator bear the burden to persuade the Department that the owner's or operator's activities being conducted pursuant to *310 CMR 16.03* do not create nuisance conditions and do not pose a threat to public health, safety or the environment.
- (d) Access. The owner and operator shall allow the Department access to enter upon the property and inspect the activities and relevant operating records.

(2) Category 1 Exemptions. The following types of activities do not require a site assignment pursuant to *310 CMR 16.00*:

- (a) Manufacturing or industrial activities:
  - 1. Paper mills, including de-inking plants and paperboard manufacturers;
  - 2. Steel mills;
  - 3. Aluminum smelting plants and mills;
  - 4. Glass manufacturing plants;
  - 5. Plastic manufacturing plants;
  - 6. Tire re-capping plants;
  - 7. De-tinning plants;
  - 8. Cement and concrete plants;
  - 9. Foundries;
  - 10. Asphalt batching plants;
  - 11. The use of clean wood as defined in *310 CMR 16.02* only, except wood handling addressed at *310 CMR 16.03(3)(a)7.*; and

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### 12. Rendering plants.

- (b) The use or application of manures in normal farming activities.
- (c) At a residence, composting of compostable materials generated at the residence.
- (d) Disposal of stumps, trees and brush at a single family home or farm where the stumps, trees and brush are generated and disposed within the boundaries of such home or farm by the occupant or resident of that home or farm.

(3) Category 2 Storage and Processing Exemptions. The following activities do not require a site assignment or a Solid Waste Management Facility Permit pursuant to *310 CMR 16.00* and *310 CMR 19.000*, provided the owner and operator incorporates best management practices and carries out his/her activities in a manner that prevents an unpermitted discharge of pollutants to air, water or other natural resources of the Commonwealth, results in no public nuisance, and does not present a threat to the public health, safety or the environment:

#### (a) Storage and Processing.

1. Temporary Solid Waste Storage. Temporary storage of solid waste in dumpsters, roll-offs, or other temporary storage containers for the collection of solid waste generated on-site. This storage exemption shall not apply to a CRT operation.
2. 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 or state department of public works, transportation, public parks or recreation or similar government entity, when used exclusively for solid waste generated and collected by the government entity and when storage is appropriate for the type of waste (e.g., materials such as trash from roadside trash barrels are stored in dumpsters or roll-offs while materials such as street sweepings may be stored without containers).
3. Occasional Solid Waste Vehicle Layover. Property owned or leased by a solid waste transporter for purposes of truck storage or repair where 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:
  - a. There is no unloading or transfer of the solid waste from the container or vehicle to the ground or to another container or vehicle;
  - b. The trucks or other solid waste handling and transfer equipment are sufficiently enclosed to prevent nuisance conditions; and
  - c. The zoning provisions applicable to the truck storage or repair site would not disallow such an activity or use.
  - d. For purposes of this section, *310 CMR 16.03(3)(a)3.*, occasionally means not a routine or scheduled activity but the result of unexpected circumstances such as equipment breakdown or unscheduled closure of a solid waste management facility.

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4. Occasional Non-commodity CRT Vehicle Layover. Property owned or leased by transporters of Non-commodity CRTs to hold Non-commodity CRTs prior to transportation to a CRT Operation, a CRT recycling facility, or a permitted hazardous waste treatment, storage or disposal facility, provided that Non-commodity CRTs are held in a vehicle at the site for no longer than ten days. This provision creates a conditional exemption for locations where transporters handle CRTs.
5. 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 the hospital, medical laboratory or biotechnology company complies with the following requirements.
  - a. The hospital, biotechnology company or medical laboratory has sufficient properly designed and operated infectious waste storage areas and manages all infectious waste in compliance with *105 CMR 480.000*, Regulations for Storage and Disposal of Infectious or Physically Dangerous Medical or Biological Waste.
  - b. The hospital, biotechnology company or medical laboratory accepts and stores off-site generated infectious waste with on-site generated infectious waste only in accordance with the applicable requirements below.
    - i. Hospitals. A hospital collects and stores infectious waste generated off-site from hospitals or clinics which the hospital owns, or from hospitals, clinics or physicians with whom the hospital has a professional affiliation for the provision of medical services.
    - ii. Medical Laboratories. A medical laboratory 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.
    - iii. Biotechnology Companies. A biotechnology company collects and stores infectious waste generated off-site from the company's biotechnology operations conducted at buildings owned or leased by the company.
  - c. No hospital, medical laboratory or biotechnology company may store infectious waste in accordance with this section *310 CMR 16.03(3)(a)5*. if the infectious waste storage area would otherwise require a site assignment or solid waste management facility permit pursuant to *310 CMR 16.00* and *310 CMR 19.000*.
6. Municipal Food Material Collection Centers. Municipally owned collection centers for residents to drop off food materials, provided that:
  - a. The center accepts only food materials from residents of the municipality;

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- b. The food material is stored in a container which is kept sealed when food material is not being added;
  - c. No more than 1 ton of food material is collected per day;
  - d. The food material is stored at the center and removed from the center in a manner that does not create nuisance conditions, such as but not limited to, odors or vectors; and
  - e. At least 30 days prior to commencement of operations, the owner or operator notifies the Department and the local Board of Health, in writing, using a form provided by the Department.
7. Wood Handling Activities. Wood handling activities, including but not limited to consolidation and transfer, chipping and wood shredding, when:
- a. Only clean wood, not mixed with solid waste, is stored, handled or processed;
  - b. There is no speculative accumulation of clean wood prior to or after processing. For purposes of this section, 310 CMR 16.03(3)(a)7., the accumulation time period that determines if speculative accumulation is occurring shall be 90 days; and
  - c. At least 30 days prior to commencement of operations, the owner or operator notifies the Department and the local Board of Health, in writing, using a form provided by the Department.
8. Asphalt Pavement, Brick and Concrete Recycling Operations. An asphalt pavement, brick or concrete rubble processing (crushing) operation when:
- a. The operation is located at:
    - i. An active quarry or active sand and gravel pit where any asphalt pavement, brick and concrete rubble that is transported to the operation is pre-sorted, so it contains only asphalt pavement, brick or concrete rubble; or
    - ii. The site of a demolition and/or construction project where all the asphalt pavement, brick and concrete rubble processed is generated at the site;
  - b. The material consists solely of asphalt pavement, brick and concrete rubble that is not mixed with or contaminated by other wastes or debris;
  - c. The asphalt pavement, brick and concrete rubble is processed so the maximum length of the largest dimension of any piece of rubble is less than six inches;
  - d. All rebar is removed in the process and is recycled or disposed in an approved facility;
  - e. There is no speculative accumulation of the asphalt pavement, brick and concrete rubble or rebar prior to or after processing. For purposes of this section, 310 CMR 16.03(3)(a)8., the accumulation time period that determines if speculative accumulation is occurring shall be 6 months;
  - f. At least 30 days prior to commencement of operation, the owner or operator notifies the Department and the local Board of Health in writing using a form provided by the Department; and

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- g. The owner or operator maintains accurate records and annually submits by February 15<sup>th</sup> to the Department a report on a form provided by the Department that shall include, at a minimum, the amounts and types of materials recycled and the amount of residuals sent for disposal.
9. Tire Chipping, Shredding or Other Tire Processing. Tire chipping, shredding or other tire processing when:
- a. Only tires or tires with wheel rims attached, that are not mixed with other solid waste, are processed;
  - b. The quantity of whole tires on site does not exceed the number of tires that can be processed in a 24 hour period or 1000 tires, whichever is greater;
  - c. The total quantity of processed tires (tire chips, shreds or other tire derived products) at the site does not exceed five times the weight of tires that can be processed in a 24 hour period or the equivalent of 5000 tires, whichever is greater;
  - d. Whole tires and processed tires are stored in buildings, covered containers or covered to prevent the infiltration of water;
  - e. Whole tires and processed tires are stored in accordance with *310 CMR 7.00* and local fire department requirements for storing combustible material;
  - f. There is no speculative accumulation of tires and/or processed tires prior to or after processing. For purposes of this section, *310 CMR 16.03(3)(a)9.*, the time period for evaluating if speculative accumulation is occurring shall be 30 days;
  - g. Processed tires are:
    - i. Used to make new synthetic polymers ("rubber");
    - ii. Used in accordance with a Beneficial Use Determination or other approval required by the Department;
    - iii. Combusted in a facility that is not a solid waste facility and in accordance with a specific air quality approval issued under *310 CMR 7.00* that approves the combustion of tires or processed tires as an alternative fuel; or
    - iv. Transferred to a solid waste management facility approved by the Department or transferred out-of-state in accordance with that state's laws; and
  - h. At least 30 days prior to commencement of operation, the owner or operator notifies the Department, the local Board of Health, and the local fire department in writing using a form provided by the Department.
10. CRT Operations. A CRT Operation, provided that the owner and operator of the CRT Operation complies with the following additional conditions:
- a. The owner and operator of the CRT Operation collect, store, handle and

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transport CRTs in a manner that prevents and minimizes breakage, and immediately contain all releases resulting from inadvertent breakage of CRTs, clean up any broken material and safely package any broken material in containers resistant to puncture by glass pieces;

b. The owner and operator of the CRT Operation store and maintain CRTs segregated from any solid waste (in other words, do not put CRTs in a dumpster);

c. When shipping a Non-commodity CRT to foreign countries, the owner and operator of a CRT Operation meet the requirements at *310 CMR 30.1039*;

d. The owner and operator of a CRT Operation transfer Non-commodity CRTs only to another CRT Operation, a CRT recycling facility, or a permitted hazardous waste treatment, storage and disposal facility (a CRT recycling facility includes out-of-state smelters and facilities that conduct glass-to-glass recycling.);

e. The owner and operator of a CRT Operation label Non-commodity CRTs as follows: "Non-commodity Cathode Ray Tubes" or "Non-commodity CRTs";

f. The owner and operator of a CRT Operation hold a CRT for no longer than one year from its date of receipt. A CRT stored for more than one year is presumed to be a Non-commodity CRT. Such presumption may be rebutted if the owner or operator has documentation demonstrating that the CRT is intended to be returned to service as an operable CRT. The owner and operator of a CRT Operation may store CRTs for longer than one year from the date of receipt solely for the purpose of accumulating such quantity of CRTs as is necessary to facilitate proper shipment (e.g. economically viable load), recovery, treatment or disposal. The owner and operator of a CRT Operation bear the burden of demonstrating the need for any such additional period of accumulation;

g. If the owner or operator of a CRT Operation accumulates more than 40 tons of Non-commodity CRTs on-site for more than 21 calendar days, then the owner or operator of the CRT Operation shall:

i. Notify the Department in writing of the activity within ten days of the first occurrence. Once the threshold is exceeded during a calendar year, a CRT Operation shall retain its regulated status under this provision for the remainder of the calendar year. The owner or operator of a CRT Operation that has not already notified the Department of its CRT activities and anticipates accumulating 40 tons or more of Non-commodity CRTs shall send written notification to the Department, before meeting or exceeding the 40 ton/21 day limit;

ii. Maintain records of incoming and outgoing CRTs, including from where each shipment was received and where each shipment was sent;

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- iii. Maintain a system that demonstrates the duration of CRT accumulation; and
  - iv. Maintain records for three years. This period shall extend automatically for the duration of any enforcement action;
  - h. The owner and operator of a CRT Operation allow DEP to enter the facility to conduct inspections;
  - i. An owner or operator of a CRT Operation that violates any of the above conditions may be subject to enforcement pursuant to *310 CMR 16.05*; and
  - j. The owner or operator of a CRT Operation maintains accurate records and annually submits by February 15<sup>th</sup> to the Department a report on a form provided by the Department that includes, at a minimum, the amounts and types of materials recycled and the amount of residuals sent for disposal.
11. Activities Located at an Agricultural Unit. Activities located at an agricultural unit as defined in *330 CMR 25.02* provided that the owner and operator comply with the regulations and guidelines of the Department of Agricultural Resources. If the Department of Agricultural Resources determines that the activity is no longer regulated by *330 CMR 25.00* or *330 CMR 15.00*, the owner and operator shall be subject to the permit by rule requirements, pursuant to *310 CMR 16.04*, or seek a permit, pursuant to *310 CMR 16.05*, as applicable.
12. Composting Not at a Residence. Composting (other than at a residence) less than ten cubic yards or less than five tons per week of vegetative materials, food materials or animal manures that are generated on-site, and where, at least 30 days prior to commencement of operation, the owner or operator notifies the Department and the local Board of Health in writing using a form provided by the Department.

### (b) Recycling.

- 1. Recycling Drop-Off Centers. Recycling drop-off centers.
- 2. One-day Collection Events. One-day collection events for recyclable materials.
- 3. Beverage Container Redemption Centers. Redemption centers which collect, store, and process beverage containers subject to the provisions of *M.G.L. c. 94, §§ 321 through 326*.
- 4. Paper Baling and Handling. Paper Baling and handling of recyclable paper only (including all grades of paper and paperboard).

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### 16.04: Permits By Rule for an Operation that Recycles, Processes, Transfers or Stores Recyclables or Composts or Converts Organic Materials.

(1) Permits by Rule for Recycling Operations. The recycling, processing, transferring or storing of recyclables does not require a site assignment or a solid waste management facility permit pursuant to *310 CMR 19.000* provided the operation complies with the following performance standards:

- (a) The operation receives only pre-sorted recyclable material. Construction and Demolition Waste is not considered pre-sorted unless the various elements (e.g. concrete, bricks, lumber, masonry, plaster, rebar, road paving materials, and wood) are separated;
- (b) The recyclable material is not contaminated by toxic substances at levels which may pose a threat to the public health, safety or the environment after processing the recyclables;
- (c) The operation receives, handles and stores recyclable materials, incidental solid waste and residues only within a handling area or containers or trucks sufficiently enclosed and covered to prevent nuisance conditions;
- (d) The operation receives no more than 250 tons per day of recyclable materials;
- (e) The amount of residue generated by a processing operation does not average more than 10% of the weight of the recyclables processed during any quarter;
- (f) There is no speculative accumulation of any material. For purposes of this section *310 CMR 16.04(1)(f)*, speculative accumulation shall be presumed to occur if materials, whether in their as-received, in-process or processed condition, are stored for more than 180 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 one full truck load;
- (g) The operation incorporates best management practices, is carried out in a manner that prevents an unpermitted discharge of pollutants to air, water or other natural resources of the Commonwealth, results in no public nuisance, and will not present a threat to public health, safety or the environment;
- (h) The owner and operator ensure that the quality of pre-sorted materials is sufficient for the operation and that the quality of the operation's products is sufficient for the products to be marketable;
- (i) The owner or operator maintains accurate records and annually submits by February 15<sup>th</sup> to the Department a report on a form provided by the Department that shall include, at a minimum, the amounts and types of materials recycled and the amount of residual material sent for disposal during the previous calendar year;
- (j) If located at a solid waste management facility, the operation does not adversely impact the solid waste management facility; and

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- (k) The owner or operator submits a compliance certification in accordance with *310 CMR 16.06*.

(2) Permits by Rule for Operations that Transfer, Compost or Convert Source Separated Organic Materials. An operation that transfers, composts or converts source separated organic materials in accordance with *310 CMR 16.04(2)(b)* or *(c)* below, does not require a site assignment or a solid waste management facility permit pursuant to *310 CMR 19.000* provided that the general performance standards set forth at *310 CMR 16.04(2)(a)* are also met.

- (a) General Performance Standards for Composting and Aerobic and Anaerobic Digestion of Organic Materials. An operation that composts or converts organic materials meets general performance standards if it:

1. Meets all applicable performance standards;
2. Ensures the quality of the pre-sorted materials and products is sufficient for the operation and that the quality of the operation's products is sufficient for the products to be marketable;
3. Is carried out in a manner that prevents an unpermitted discharge of pollutants to air, water or other natural resources of the Commonwealth;
4. Results in no public nuisance;
5. Will not present a threat to public health, safety or the environment;
6. Employs properly trained personnel including, but not limited to, personnel trained by the manufacturer in the proper operation and maintenance of equipment necessary for the operation;
7. Employs an appropriate number of personnel for the size and type of the operation;
8. Uses equipment that is appropriate for the size and type of the operation;
9. Maintains access to adequate water supply with adequate pressure for fire control;
10. Implements an odor control plan that is appropriate for the size and type of the operation;
11. Has a contingency plan for management of the compostable materials and products should there be an interruption in operation;
12. Maintains proper thermal regulation and monitoring to prevent nuisance conditions, including conditions that pose a risk to public health and conditions such as, but not limited to, spontaneous combustion, vectors, and pathogens;
13. Maintains proper site engineering and management to prevent ponding of water and leachate and to prevent run-off;

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14. Is located at least 250 feet from any existing private water supply well in use at the time the operation commences;

15. Generates no more than 5% residuals during any calendar quarter;

16. If located at a solid waste management facility, does not adversely impact the solid waste management facility and is in accordance with the facility's site assignment and solid waste management facility permit;

17. Maintains accurate records and its owner or operator annually submits by February 15<sup>th</sup> to the Department a report on a form provided by the Department that shall include, at a minimum, the amounts and types of organic materials used and the amount of residual material sent for disposal during the previous calendar year; and

18. Does not cause or allow the speculative accumulation of material to occur. For the purpose of this section *310 CMR 16.04(2)(a)(18)*, speculative accumulation shall be presumed to occur if materials, whether in their as-received, in-process or processed condition, are stored for more than 180 days from the date of their receipt at the operation. This time limit may be exceeded in the case of storage of a processed material pending accumulation of one full truck load.

(b) Specific Performance Standards for Composting Organic Materials. Composting organic materials also shall meet the specific performance standards at *310 CMR 16.04(2)(b)1.* through *6.* and *7.* or *8.* to prevent nuisance conditions, prevent unpermitted discharges, and to produce a stable, mature and usable final compost product. These performance standards are:

1. Timely and regular aeration of the compost to ensure proper aerobic, temperature and moisture conditions, and porosity;

2. Adequate and appropriate bulking material (Group One Materials) readily available on site to mix with incoming Group Two Materials daily to prevent nuisance conditions;

3. Timely incorporation of materials to prevent nuisance conditions including but not limited to odors and vectors. All Group Two material shall be mixed into the compost windrows or piles to such an extent that it is evenly distributed throughout the pile or windrow and is unrecognizable as a separate material as soon as possible but no later than by the end of each day, or transferred offsite by the close of business on the same day that it is received at the operation;

4. Group Two Materials listed below at *310 CMR 16.04(2)(b): Table 1* shall be no more than 25% of the total compost windrow mixture by volume or no less than a 30:1 carbon to nitrogen ratio. If an owner or operator uses a material not listed in the Table, the Department, the owner, and the operator shall assume the material is a Group Two putrescible material unless the owner or operator maintains records that demonstrate to the Department's satisfaction that the carbon to nitrogen ratio is at least 30:1;

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5. The operation has a maximum volume per unit area of 5,000 cubic yards per acre; and
6. The owner or operator submits a compliance certification in accordance with 310 CMR 16.06(1).

310 CMR 16.04(2)(b): Table 1. Organic Materials

<b>Table 1 Examples of Organic Materials</b>			
<b>Group 1: Materials High in Carbon and Not Likely to Become Putrescible (Carbon to Nitrogen ratio above 30:1)</b>		<b>Group 2: Materials High in Nitrogen and Likely to Become Putrescible (Carbon to Nitrogen ratio below 30:1)</b>	
<b>Example Materials</b>	<b>C:N ratio</b>	<b>Example Materials</b>	<b>C:N ratio</b>
Clean wood (chips, bark shavings, sawdust)	100-1300:1	Vegetable material	11-19:1
Cardboard	560:1	Food material	14-16:1
Paper and paper products	125-850:1	Grass clippings	17:1
Leaves	40-80:1	Green plant material (i.e., weeds, hay)	15-19:1
Straw	60-80:1	Fish waste	2.6-5.0:1
Corn stalks	60-73:1	Manure	6-14:1
Shrub trimmings	53:1	Residuals from aerobic and anaerobic digestion processes	Variable

7. Yard Waste Composting Operations. For a composting operation which transfers or composts yard waste, the composting operation shall:
  - i. accept only source separated yard waste;
  - ii. contain no greater than 25% grass clippings by volume;
  - iii. contain less than 50,000 cubic yards or less than 10,000 tons total on site at any one time; and

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- iv. have a maximum volume per unit area of 5,000 cubic yards per acre (if using open piles or windrows).

8. General Composting Operations. For a composting operation which composts source separated organic material, the composting operation shall:

- i. accept only source separated organic material; and
- ii. accept no more than 30 tons per day of Group Two materials, listed at *310 CMR 16.04(2)(b)*: Table 1. Organic Materials, and shall contain less than 50,000 cubic yards or less than 10,000 tons total on site at any one time. If an owner or operator uses a material not listed in the Table, the Department, the owner, and the operator shall assume the material is a Group Two putrescible material unless the owner or operator maintains records that demonstrate to the Department's satisfaction that the carbon to nitrogen ratio is at least 30.

(c) Specific Performance Standards for Aerobic and Anaerobic Digestion Operations. An Operation which digests organic materials in an aerobic or anaerobic digester shall meet the specific performance standards at *310 CMR 16.04(2)(c)1*. through *6*. to prevent nuisance conditions, prevents unpermitted discharges, and produces a stable, mature and usable final product. Some of these performance standards include but are not limited to:

1. The operation accepts only source separated organic materials;
2. The operation does not accept more than 60 tons per day of organic material for digestion;
3. All material generated off-site is delivered to the operation via sealed tanker trucks using a direct connection (e.g. hose) technology to limit nuisance conditions;
4. All organic material is added to the active digestion system by the end of the business day on which it is received or shall be stored in fully enclosed tanks with odor controls prior to addition to the digestion system for no more than 24 hours before added into the digestion process;
5. All solid and liquid materials produced as a result of the digestion process is disposed of in accordance with all applicable regulations or receive a beneficial use determination from the Department or other appropriate approval from another state agency for its reuse; and
6. The owner or operator submits a compliance certification in accordance with *310 CMR 16.06(1)*.

### 16.05 Permits for Recycling, Composting and Conversion.

(1) Applicability. If an operation does not qualify for an exemption pursuant to *310 CMR 16.03* or a permit by rule pursuant to *310 CMR 16.04*, then the owner or operator may

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apply for a permit pursuant to this section *310 CMR 16.05*. An owner or operator proposing to transfer and/or process material prior to transfer to an operation with a permit issued pursuant to this section *310 CMR 16.05* also may apply for a permit pursuant to this section *310 CMR 16.05*. An owner or operator may apply for a permit under this section provided the operation will:

- (a) Handle only pre-sorted materials in accordance with *310 CMR 16.05(3)(b)*;
- (b) Incorporate best management practices;
- (c) Operate in a manner that prevents an unpermitted discharge of pollutants to air, water or other natural resources of the Commonwealth;
- (d) Result in no public nuisance;
- (e) Not present a threat to public health, safety or the environment; and
- (f) Not adversely impact the solid waste management facility if the operation is located at a solid waste management facility.

(2) Permit Application. Any person applying for a permit pursuant to *310 CMR 16.05* shall submit an application using forms and procedures specified in *310 CMR 4.00* to the Department and a copy to the local Board of Health.

(a) General Application Requirements.

- 1. All papers pertaining to design, operation, maintenance, or engineering of an operation to be permitted pursuant to *310 CMR 16.05* shall be completed under the supervision of a Massachusetts registered professional engineer knowledgeable in conversion technology design, construction and operation and shall bear the seal, signature and discipline of said engineer.
- 2. All mapping and surveying shall be completed by a registered surveyor.
- 3. The Department reserves the right to require additional information.

(b) Information on Pre-Sorted Materials. The following information shall be provided by the applicant for each pre-sorted material:

- 1. A general description of the material;
- 2. A chemical and physical characterization of the material where specifically required by the Department;
- 3. The quantity, quality and sources of the material; and
- 4. The proposed method(s) for processing, recycling, composting or converting the material.

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

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1. A locus map indicating the location of the proposed operation;
2. A site map indicating:
  - a. The zoning classification of the site and adjacent areas;
  - b. The location of all wetlands on and adjacent to the site; and
  - c. The distance to all sensitive receptors public and private water supply wells, wetlands, streams and rivers within one-half mile of the operation; and
1. Site and design plans which include:
  - a. The location and size of all on-site storage areas for pre-sorted materials and products; and
  - b. The layout of all processing equipment, buildings, roads, drainage plan, where applicable, and other appurtenances.

(d) Information on the Technology. The application shall include the following information:

1. A description of all equipment to be used at the operation including but not limited to odor control equipment;
2. A description of the size of the operation in tons per day;
3. A Process flow chart and operation and maintenance plan; and
4. The following plans:
  - a. An operations and maintenance plan, including nuisance controls;
  - b. A training plan;
  - c. A safety plan; and
  - d. A contingency plan for management of the compostable materials and products should there be an interruption in operation.

(e) Information on the Products and Residue Produced. The application shall include the following information:

1. A description of the products to be produced and how any products will be used;
2. Information on how the owner and operator will ensure the quality of the products;

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3. Documentation that markets or uses exist for the compost, recyclable materials or products;
4. The quantity and composition of any solid waste, residues and off-specification materials generated and how and where these wastes, residues and materials will be disposed; and
5. The quantity and composition of all emissions or discharges, including but not limited to wastewater discharges and air emissions, and the proposed method of discharge and disposal.

(3) Review Criteria. The Department shall use the following criteria in reviewing the permit application:

(a) The application is accurate and complete. The application shall include a demonstration that:

1. The MEPA process does not apply; or
2. The MEPA process does apply and the Secretary has determined that an EIR is required; or
3. The MEPA process has already been completed and the Secretary has issued a certificate or a determination that no EIR is required.
4. The first Technical Review Period (TR1) as specified in *310 CMR 4.00* shall not be completed until the Secretary's final certificate has been issued.

(b) The materials are pre-sorted, and material used for composting or conversion are source separated, and more specifically;

1. Construction and Demolition Waste is not considered pre-sorted unless the various elements (e.g. concrete, bricks, lumber, masonry, plaster, rebar, road paving materials, and wood) are separated;
2. Have been sorted or kept from being commingled with solid waste either at the site of generation or at a processing facility and before receipt at the proposed operation;
3. Are not contaminated with toxic substances as determined by the Department;
4. Have been separated from solid waste to the maximum extent possible; and
5. Contain the lowest possible amount of solid waste. The Department shall establish in any permit issued pursuant to this section *310 CMR 16.05* an acceptable maximum limit of solid waste or other materials mixed in with the pre-sorted materials which will be recycled, composted or converted in accordance with the permit.

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- (c) The materials meet the definition of a recyclable or compostable material. In determining if a material is recyclable or compostable, the Department may consider, but not be limited to, the nature of any contaminants and their probable effect on products or public health, safety and the environment;
  - (d) The materials can feasibly be processed, if applicable, and recycled, composted or converted under the proposal set forth in the application;
  - (e) The quantity of residues generated through the processing of materials, including rejects, does not average more than the following percentages by weight or volume whichever is applicable, as determined by the Department, of materials handled during any calendar quarter:
    - 1. 5% for compostable materials;
    - 2. 5% for the recycling of demolition debris or construction material;
    - 3. 10% for recycling of post-consumer recyclables; or
    - 4. Such other percentage for other materials as the Department may establish in order to minimize residue generation. The residue generation criteria established above at *310 CMR 16.05(3)(e)1., 2., or 3.* may be modified by the Department under the following circumstances:
      - a. 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(3)(e)1., 2., or 3.*; or
      - b. The scale of the operation is sufficiently small that actual residue generation is minimal.
  - (f) The site is appropriate for the particular proposed activity, size, and technology taking into consideration, but not limited to, distances to sensitive receptors, public and private water supply wells, wetlands, streams and rivers;
  - (g) There will be no speculative accumulation of materials;
  - (h) 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 will not result in an unpermitted release to air, water or land; and
  - (i) The proposed operation can be successfully completed in compliance with all other appropriate local, state and federal rules and regulations.
- (4) Permit Conditions. The Department may issue a permit subject to the applicant's compliance with conditions. These conditions may include, but are not limited to:
- (a) Requirements to ensure that only recycling, composting or conversion operations as defined in *310 CMR 16.02* are conducted on the site;

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- (b) Operational recordkeeping and reporting requirements, including maintenance of a daily log of the quantity of materials received and shipped, and regular certified reports detailing operating conditions and material disposition;
- (c) Requirements to ensure only pre-sorted or source separated materials are received or processed at the operation;
- (d) Requirements to ensure the quality of the pre-sorted or source separated materials;
- (e) Requirements to minimize residue generation and to ensure proper disposal of residues;
- (f) Requirements to prevent speculative accumulation of pre-sorted materials, products and residues;
- (g) Requirements to maintain accurate records and annually submit by February 15th to the Department a report on a form provided by the Department that shall include, at a minimum, the amounts and types of materials used and the amount of residuals sent for disposal;
- (h) A requirement that the owner or operator annually submit a compliance certification in accordance with *310 CMR 16.06(1)*;
- (i) A requirement that the owner or operator provide a financial assurance mechanism as defined in *310 CMR 19.051*;
- (j) Consent to the right of the Department without prior notice to periodically enter upon and inspect the property, the operation and relevant operating records to determine and compel compliance with applicable regulations and the conditions of the determination; and
- (k) An expiration date on which the permit expires, with a date by which the applicant shall timely submit a renewal application for consideration by the Department. The permit shall expire on the termination date unless the applicant submits a renewal application at least 180 days prior to the expiration date provided in the permit.

### (5) Public Review of Permit.

- (a) Public Notice. The Department shall issue a draft permit decision granting or denying the application. A copy of the draft decision shall be provided to the applicant and local Board of Health and any person who asks in writing for a copy of the draft decision and provides the Department with an electronic mail address, or if he or she does not have an electronic mail address, then with his or her U.S. Mail address.
  - 1. Public notice, paid for by the applicant, shall be provided in a daily or weekly newspaper of general circulation in the locality of the operation.

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### 2. Content of Public Notice.

- a. A description of the proposed facility including the type of facility, proposed tonnage, location and hours of operation;
- b. The identity and mailing address of the applicant;
- c. The public location where the application can be inspected; and
- d. The time period for written comments on the application and the address to which comments should be mailed.

- (b) Public Comment Period. The Department shall accept written comments from any person up to 30 days from the date the public notice is first published in a newspaper or on a later date specified in the public notice. Persons commenting on the draft decision may request that the Department revise its permit decision or impose additional conditions on a permit. Any person who wants a copy of the permit decision at the time of issuance shall provide the Department with his or her electronic mail address, or if he or she does not have an electronic mail address, then with his or her U.S. Mail address. Submitting comments does not automatically make a person a party to the proceeding.
- (c) Intervention by Group of Ten Persons. A group of ten persons may intervene in an adjudicatory proceeding relating to a permit application, submitted pursuant to *310 CMR 16.05*, only by sending a letter, to the Department prior to the public comment period deadline, stating: (a) its intent to intervene as a group of ten persons; (b) the facts and grounds on why the group believes the permit decision will cause damage to the environment, as defined in *M.G.L. c. 214, § 7A*; and (c) the relief sought. The letter shall include an affidavit from each person stating his/her intent to be part of the group and to be represented by the group's authorized representative. Any group of ten persons filing written comments which meet these requirements shall be considered a party to the proceeding for the purposes of notice and any other procedural rights applicable to such proceedings under *M.G.L. c. 30A*, including specifically the right to request an adjudicatory hearing on the decision in accordance with *310 CMR 16.05(6)(d)*.
- (d) Public Hearing. The Department shall schedule a public hearing within the municipality wherein the proposed operation is to be located when the applicant requests a public hearing or the Commissioner or his designee determines that there is sufficient public interest. The content of the public notice, to be provided by the applicant, for such hearing shall include the date, time, and place of the public hearing and the nature and purpose of the public hearing.
- (e) The Department shall issue a permit decision following the 30 day comment period, unless a public hearing is scheduled, in which case the Department shall issue a permit decision 30 days after the public hearing. If a person files a request for an adjudicatory hearing in a timely manner, then Department's permit decision is not final until the Commissioner issues a final decision pursuant to *310 CMR 1.01(14)*; otherwise the permit decision is final after the twenty-first day following the issuance of the permit decision. No applicant shall commence construction pursuant to the terms and conditions of a permit decision until the decision becomes final as specified herein. After the permit decision is final, stay of the permit shall be governed by *M.G.L. c. 30A, §14*.

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### (6) Request for Adjudicatory Hearing of the Department's Permit Decision and Process for Intervention.

- (a) The following persons shall have the right to request an adjudicatory hearing of a permit decision (not a draft decision) issued by the Department:
1. The Applicant.
  2. An Aggrieved Person. An aggrieved person shall have the burden of proof to establish his or her status as an aggrieved person as defined herein and must state with specificity in the request for an adjudicatory hearing as to the basis of such person's aggrievement.
  3. Groups of Ten Persons. A group of ten persons that has submitted written comments in accordance with *310 CMR 16.05(5)(c)* has a right to request an adjudicatory hearing with respect to the permit decision issued pursuant to *310 CMR 16.05*. In the case of a group of ten persons requesting an adjudicatory hearing, the issues at hearing shall be limited to those of damage to the environment and the elimination or reduction thereof, as defined under *M.G.L. c. 214, § 7A*. The request for adjudicatory hearing shall clearly and specifically state the facts and grounds for the appeal and the relief sought and each person shall file an affidavit stating the intent to be a part of the group and to be represented by its authorized representative.
- (b) Intervention in Adjudicatory Hearings. Nothing in this regulation shall prevent a person from requesting to intervene in an adjudicatory hearing pursuant to *310 CMR 1.01(7)*. Any motion to intervene pursuant to *310 CMR 1.01(7)* shall be filed within 21 days from the date the first request for an adjudicatory hearing is filed with the Department.
- (c) Limitation on Matters Raised In Request for Adjudicatory Hearing. The matters that may be raised in a request for an adjudicatory hearing by a person who has the right to request an adjudicatory hearing are limited to only the matters raised during the public comment period; provided however, that a matter may be raised upon a showing that it was not reasonably possible with due diligence to have raised such matter during the public comment process or for good cause shown.
- (d) Process for Requesting an Adjudicatory Hearing. A written request for an adjudicatory hearing shall be filed or postmarked within 21 days from the date the Department issues its permit decision. The adjudicatory hearing request shall be in the form of a notice of claim and shall comply with all the requirements of *310 CMR 1.01*. The person requesting the adjudicatory hearing shall send a copy of the request for adjudicatory hearing by first class mail or hand delivery, to any person who has submitted an address with timely written comments to the Department.

### (7) Permit Modifications.

- (a) The proponent shall notify the Department and the local Board of Health of proposed changes in design or operations where:

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1. The owner or operator intends to recycle, convert or compost material(s) substantially different from those materials for which the current permit was granted;
2. The design and/or management of the operation is to be altered;
3. The owner or 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 permit; or
4. As otherwise specified in the permit.

(b) Where the Department determines that the change in design or operation is significant, the Department may require the submittal of a revised permit application, with a copy submitted to the local Board of Health, for review. Review of such revised permit application shall be as if it were an initial permit.

(c) Where the Department issues a decision on a modification to an existing permit, any person requesting an adjudicatory hearing pursuant to *310 CMR 16.05(6)* may raise in such request only those issues related to modification of the permit.

(8) Demonstration Projects for Recycling, Composting or Converting Pre-Sorted Material. The Department may approve projects to demonstrate innovative recycling, composting or conversion techniques as provided below.

(a) General Conditions. The following conditions shall apply to all demonstration projects approved pursuant to *310 CMR 16.05(8)*:

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*; and
2. Projects shall be limited to a specified time period not to exceed two years, after which time they shall terminate unless an extension is granted in writing by the Department or appropriate written approvals are obtained.

(b) Application. An application to conduct a recycling, composting or conversion demonstration project shall be submitted to the Department, and the local Board of Health. The application shall contain:

1. The information described at *16.05(2)* 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) Review Criteria. 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,

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compostable materials, project location, design and operating controls, management practices and the 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) Review Process. The Department, at its discretion, may follow the procedure described at *310 CMR 16.05(5)*, when issuing its decision on whether to allow the demonstration project.

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### 16.06: General Requirements for Recycling, Composting and Conversion Permits by Rule and Permits.

#### (1) Compliance Certification Requirements.

(a) Compliance Certification Schedule. The owner or operator of each operation that recycles, stores, transfers or handles recyclable materials, or composts, converts or otherwise processes or handles organic materials, which qualifies for a permit by rule, pursuant to *310 CMR 16.04*, or permit issued by the Department, pursuant to *310 CMR 16.05*, shall submit a compliance certification to the Department and the local Board of Health, in accordance with *310 CMR 16.06* within 30 days of the commencement of a new operation or the acquisition of such an operation. An operation in existence on the promulgation date of these regulations shall submit a certification within 90 days after the promulgation date of these regulations unless the owner and/or operator has a Determination of Need issued pursuant to the versions of *310 CMR 16.05* effective on or before [the effective date of these regulations], in which case the owner and operator shall comply with *310 CMR 16.01(4)*. The owner or operator of an operation for which a certification is required to be submitted shall submit a new compliance certification every February 15<sup>th</sup> to the Department on a form provided by the Department.

(b) Certification Statement. The responsible official for each operation shall submit a certification. Each certification shall be on a form prescribed by the Department and shall address compliance with the performance standards and conditions to which the operation is subject. The certification form may include specialized forms for specific categories of operation, and any owner or operator required to submit a certification pursuant to *310 CMR 16.06(1)* shall submit all applicable forms. The certification shall:

1. State whether the operation is in compliance with the applicable performance standards and conditions as listed on the certification form;
2. Include a commitment to identify to the Department any violations that occur; and
3. Include the following statement: "I, [name of responsible official], attest under the pains and penalties of perjury:
  - a. That I have personally examined and am familiar with the information contained in this submittal, including any and all documents accompanying this certification statement;
  - b. That, based on my inquiry of those individuals responsible for obtaining the information, the information contained in this submittal is to the best of my knowledge, true, accurate, and complete;
  - c. That systems to maintain compliance are in place at the operation and will be maintained even if processes or operating procedures are changed; and
  - d. That I am fully authorized to make this attestation on behalf of this Operation.  
"I am aware that there are significant penalties, including, but not limited to possible fines and imprisonment, for submitting false, inaccurate, or incomplete information."

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(2) Burden of Proof. In every proceeding, the owner and operator of any operation which qualifies for a permit pursuant to *310 CMR 16.04* or *16.05* bear the burden to persuade the Department that the operation does not create nuisance conditions and does not pose a threat to public health, safety or the environment.

(3) Access. The owner and operator of any operation which qualifies for a permit pursuant to *310 CMR 16.04* or *16.05* shall allow the Department access to enter upon and inspect the site, the operation and relevant operating records to determine and compel compliance with applicable regulations and the conditions of any permit issued pursuant to *310 CMR 16.05*.

(4) Notwithstanding *310 CMR 19.000* and any solid waste management facility permit condition, the owner and operator of a solid waste management facility with a solid waste management permit may conduct activities pursuant to *310 CMR 16.03*, *16.04* or *16.05* by complying with the applicable requirements of *310 CMR 16.03*, *16.04* and *16.05*.